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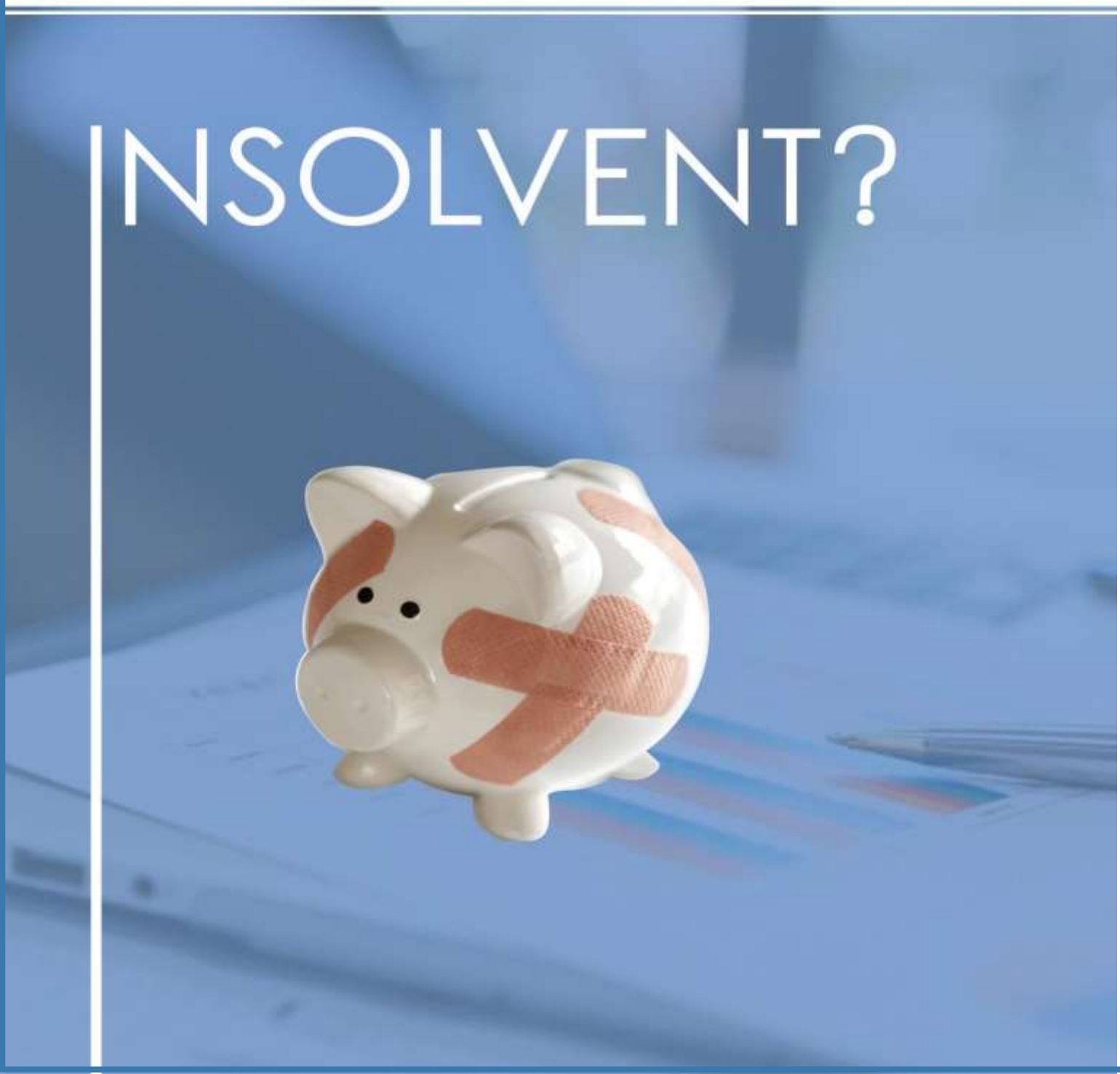

From the Editor's Desk

Dear Insolvency Professionals,

Pre-packs as an alternate to IBC

Pre-packaged insolvency is a pre-planned process in which a financially distressed company & its creditors tries to reach an agreement with a buyer for its sale prior to initiating insolvency proceedings. It helps to avoid lengthy negotiations with creditors of the company after the commencement of insolvency proceedings, enabling insolvency resolution in an expeditious manner without an involvement of courts & tribunals.

Pre-pack would not only reduce time taken for insolvency resolution & will permit greater value maximization but will also reduce the burden on tribunals.

Expect more vibrancy from Insolvency Resolution Process.

Stay Alert!
Anju Agarwal
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NEWS FLASH FROM THE LAST MONTH

NCLT- No new petition under Section 7 IBC to be entertained without filing record of default

The NCLT has directed filing of default record from Information Utility along with new petitions under Section 7 of IBC, 2016.

As per the order of the NCLT, all concerned are directed to file default record from Information Utility along with the new petition being filed under Section 7 of IBC, 2016, positively.
It is stated that no new petition shall be entertained without record of default under Section 7 of IBC. The order has also directed Authorized Representatives/ parties in the cases pending for admission under Section 7 of IBC, 2016 to file default record from Information Utility before the next date of hearing. This has been issued with approval of Honorable Acting President of the NCLT.

NCLAT- Order passed by NCLT on appointment of RP for Metenere Ltd. upheld

The Appellate Tribunal has upheld order passed by Honourable NCLT which prohibits appointment of an ex-bank official as Resolution Professional of a bankrupt company due to the possibility of bias.

The NCLAT has upheld an order passed by NCLT, Delhi bench over the appointment of a former official of State Bank of India as a Resolution Professional in CIRP of Metenere Ltd. This judgement could have an impact on Corporate Insolvency Resolutions of many companies including Rs. 40,000 crore Videocon Industries case.

While, on 4th January, 2020, the Delhi bench of NCLT passed a judgement ordering State Bank of India to substitute RP on the basis of an appeal of bias filed by Metenere Ltd. SBI appealed against this order before appellate tribunal. Metenere Ltd. argued that RP was an 'interested party' as he was receiving pension from SBI, which was considered as salary under the Income Tax Act, apart from being an ex-employee of the bank.

SBI held that these are no grounds under the IBC for disqualification of the RP and he only acts as a facilitator without any adjudicatory (decision making) powers in the CIRP. The three-judge bench dismissed Metenere's interested party argument but said that, "it cannot be denied that the Appellant (SBI) restricted its choice to propose him as 'Interim Resolution Professional' obviously taking account his loyalty in the past and the long services rendered by him." Aggrieved by the order of the NCLT, SBI filed an appeal before the NCLT.

Banks let 124 companies undergo liquidation despite Resolution Plans

124 companies are undergoing into liquidation despite resolution plans that promised higher recovery of money. At the end of March 2020, insolvency process for about 914 companies were

closed. About 57% of the total insolvency cases which were closed ended by passing orders of liquidation by the tribunals, as compared with 14% that ended in resolution plans.
The Insolvency & Bankruptcy Code contemplates value maximization and not price. The value improves if a business is continued and its assets are used in a more efficient manner. Efficiency of a business improves if it is continued for a longer period and its assets are used more efficiently. This could be achieved by bringing a change in management structure, acquisition or disposal of assets, restructuring of the company or turning around the business.

Since the starting of the IBC, over 396 manufacturing companies have been liquidated. More than 200 companies ordered to be sold separately were from real estate sector and construction companies, while another 117 companies were from retail and wholesale trading sector. Banks will have to build more consensus amongst themselves to save companies and employment, considering the declining state of the Indian economy. Concreted approach by lenders can bring resolution of stressed assets of companies.

Financial creditors recovered over 64% of admitted claims through IBC in 1st October, 2019-31st December, 2019

Financial creditors realized 64% of their admitted claims through insolvency process in January-March is much higher than average of about 46% over the period up to December 2019. The realization was due in large part to the resolution of Jaypee Infratech (JIL), where financial creditors recovered Rs. 23,223 crore, over 100% of the amount claimed as per the latest newsletter issued by the IBBI. With the resolution of Jaypee Infratech asset, the insolvency process for eight of the 12 cases identified by the Reserve Bank of India for referral under the IBC has been completed.

NBCC's bid to acquire Jaypee Infratech is continuing to be heard before the NCLAT, even the tribunal has refused to stay the resolution plan. About 56.98% of the Cocrporate Insolvency Resolution Processes (CIRPs) which were closed ended in orders for liquidation, as compared to 13.77% ending with a resolution plan. 72.46% of the CIRPs which ended upon liquidation of the companies (637 out of 879 as per the available data) were earlier with BIFR and/or defunct.

The banks have evolved consultative and resolution mechanisms centered around IBC, the legislation (Insolvency & Bankruptcy Code) is also widely believed to have inspired to bring a change in the behavior of offending promoters. This is set to change over the next 12 months as the Central Government has suspended all fresh insolvency proceedings against companies for a year. Suspension of IBC could make difficult to recover money from the banks. "The time-period of one year appears to be adequate at present, during the times of pandemic of COVID-19 to sort any temporary cash flow mismatches. However, if the severity of the pandemic were to increase upon increasing the longevity of the lockdown or lead to fresh lockdown later on, it could thus delay economic revival, then we could see a sudden increase in cases being referred under the IBC after the period of one year gets over. This would be detrimental to the resolution process which is already facing challenges from tribunals over-burdened with cases."

NCLT refuses petition against Indian Steel

NCLT has refused to admit insolvency petition filed by India Resurgence Asset Reconstruction Company, a joint venture between Piramal Enterprises and Bain Capital against Indian Steel Corporation, calling the petition to be 'defective'.

"For all reasons, the preset Company Petition fails and therefore, we are constrained not to admit the same as prayed for at this moment," the Mumbai Bench of NCLT said in its order.
The present petition was filed before the Honorable NCLT as Indian Steel Corporation has failed to make payment of a sum of Rs. 1487.59 crores as on 30th September, 2019.

India Resurgence ARC has acquired the debt by an assignment agreement in May 2019 from State Bank of India. The debt also included loans extended to the company by the erstwhile associate banks of SBI, viz., State Bank of Indore (in 2010), State Bank of Saurashtra (in 2013), State Bank of Bikaner & Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala and State Bank of Travancore (all in 2017).

Indian Steel Corporation owed SBI an amount of Rs. 1,829 crores, while the bank sold its exposure to India Resurgence for Rs. 362 crores. The public sector bank took a 61% haircut on the asset.
After hearing arguments from both the parties, the NCLT bench of Mumbai headed by judges Rajasekhar V.K. and Ravikumar Duraisamy said that there is no document placed on record acknowledging the liability in the three- year period commencing from 31.12.2013 or 01.01.2014, which would have the effect of extending the period of limitation in terms of Section 18 of the Limitation Act, 1963.

"The petition filed by the Financial Creditor, i.e., India Resurgence ARC is, therefore, defective to the extent indicated," said the bench. The order added that the petitioner is at liberty to pursue its legal remedies in the pending proceedings before DRT, Jabalpur.
India Steel Corporation manufactures cold rolled coils and sheets, the company has a manufacturing facility in Bhimasar, Gujarat. SBI classified this company as a non-performing asset (NPA) during May, 2016.

IBBI seeks public comments on existing regulations

Continuing efforts to ensure a more conducive regulatory framework for stakeholders, IBBI has sought comments from the public on existing regulations under the Insolvency law. IBBI is a key entity in implementing the IBC.

IBBI said they may contemplate, at leisure, the important issues in the regulatory framework that hinder transactions and offer alternative solutions to address them.

IBBI said in a press release that "This is akin to crowd sourcing of ideas. This would enable every idea to reach the regulator. Consequently, the universe of ideas available with the regulator would be much larger and the possibility of a more conducive regulatory framework much higher".

According to the regulator, IBBI, despite the best of efforts and intentions, a regulator may not always have the understanding of ground realities, as much and as early as the stakeholders and the regulated may have, particularly in a dynamic environment. Further, it noted that comments received from the public between April 13 and December 31, 2020 would be processed together and the following due process, regulations would be modified to the extent considered necessary.

The press release issued on 4th May, 2020 said that "It will be the endeavor of the IBBI to notify modified regulations by March 31, 2021 and bring them into force on April 1, 2021". It also added that public consultation enables collective choice and hence plays an important role in the evolution of the regulatory framework.

DHFL Insolvency process timeline may be extended to June 30

The date of closure of the Corporate Insolvency Resolution Process (CIRP) of the financially distressed real estate project, Dewan Housing Finance Corporation Limited (DHFL) is expected to be extended to June 30th, 2020 from May 31st, 2020. This will give more time to the investors (resolution applicants) who have participated in the Expression of Interest (EOI) to submit their resolution plans.

With the new development, the sale of DHFL may be possible only by August, 2020 or September, 2020.

It can be thus concluded that the time-period for the Corporate Insolvency Resolution Process (CIRP) for DHFL may be extended to June 30th, 2020 to give more time to its investors/ resolution applicants to submit their resolution plans. With the extension of the timeline of the insolvency process of DHFL, the sale of the real estate project is possible only by August, 2020 or September, 2020.

LATEST JUDGEMENTS

Durga Enterprises v. SRS Meditech Ltd.- NCLT, Chandigarh[1]

The operational creditor filed an application under Section 9 of the IBC, 2016 for initiation of CIRP against the corporate debtor, i.e., Durga Enterprises. The Adjudicating Authority admitted the said application and, a Resolution Professional was appointed. The resolution plan submitted by the resolution applicant was approved by 92.65% of voting by members of Committee of Creditors.

The NCLT observed that in terms of said plan apart from upfront payment to its creditors, deferred payment from recovery of outstanding receivables of Government departments and market or fresh contribution of the resolution applicant was to be paid to creditors. Further, the resolution applicant will provide funds to the corporate debtor for building infrastructure of factory and for working capital requirements. Since, resolution plan complied with all provisions of Insolvency & Bankruptcy Code and regulations and did not contravene any provisions of law for time being in force. Hence, plea of the operational creditor was admitted.

Foseco India Ltd. v. Om Boseco Rail Products Ltd.- NCLT, Kolkata Bench

The applicant/ operational creditor in this case, Foseco India filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, i.e., Om Boseco Rail Products Limited for alleged default in payment of operational debt amounting to Rs. 90,00,919.10.

Whether a notification under Section 4 of the IBC, 2016 which raises the minimum default limit will be applicable to the admission of the insolvency application filed under the Code?

The Honorable Adjudicating Authority held that a well-settled principle of a statue (law) is presumed to be prospective (for the future) unless it is held to be retrospective (for the past) or by necessary implication under any law or Act. When the amendment to Section 4 of IBC was inserted, a proviso was also added regarding enhancement of pecuniary (monetary) jurisdiction for filing application as against a small and medium scale industries has not been in the notification mentioned that its application will be retrospective. Therefore, it appears to the Honorable NCLT, Kolkata Bench that the amendment to Section 4 IBC shall be mandatorily considered as 'prospective' in nature and not retrospective.

Sanjeev Kumar v. Aithent Technologies Pvt. Ltd. & Anr.- NCLAT, New Delhi[2]

Controversy raised before the NCLT/ Adjudicating Authority by the Corporate Debtor, i.e., Sanjeev Kumar is covered by Judgement of the NCLAT and the impugned order admitting the application under Section 9 of the Insolvency & Bankruptcy Code, 2016 is unsustainable.

1 (IA) 67/2020 CP (IB) No. 64/Chd/Hry/2018)
2 (Company Appeal (AT) (Ins.) 474 of 2020)

It has been held that the Interim Resolution Professional (IRP) will ensure that the company remains ‘going concern’ and will take assistance of the suspended Board of Directors of the company. The persons who are working will perform their duties including the paid directors. The person who is authorized to sign the bank cheques may sign them only after authorization of the Interim Resolution Professional (IRP) with his counter signature at the back side of the cheques. In such a case, the bank shall release the payment. The IRP will place this order before the banks, in which accounts of the Corporate Debtor are maintained. The bank account(s) of the Corporate Debtor will be allowed to be operated for day-to-day functioning of the company such as for the payment of current bills of the suppliers, salaries and wages of the employees/workmen, electricity bills etc.

Thank You!

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- Bankruptcy Process,
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- Appointment of Insolvency Professionals,
- Assets Management of the Company,
- Fresh Start Process,
- Hearing of Cases or any other enquiries

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