

Restructuring & Insolvency

Monthly Newsletter

August 2024

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STATUTORY UPDATES

The Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2024 issued on June 05, 2024.¹

- IBBI has issued the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2024 (**Recommendation Guidelines**) in order to provide for a procedure to prepare a panel of IPs to act as IRPs, Liquidators, RPs and Bankruptcy Trustees.
- These Recommendation Guidelines provides for the following criteria to prepare a panel of Ips, which shall be effective from July 01, 2024 to December 31, 2024.
 - **Eligibility of IPs** – (i) No disciplinary proceeding; (ii) No conviction at any time during last three years; (iii) submission of Expression of Interest along with Consent to act as IRP, RP, Liquidator and Bankruptcy Trustee for appointment by Adjudicating Authority; (iv) Must have a valid Authorisation for Assignment (**AFA**) for the relevant period.
 - **Expression of Interest** – On invitation by the IBBI, the IP should submit EOI by the specified date in Form A, which shall be unconditional consent by an IP to act as IRP, RP, Liquidator and Bankruptcy Trustee for any corporate or individual debtor and will include the details of the sectors in which assignments have been handled by the respect Ips.
 - **Panel of IPs** – The IBBI will prepare a common zone-wise panel for appointment of IRP, RP, Liquidator and Bankruptcy Trustee and share with the Adjudicating Authority, which will have a validity of six months.
 - **Sorting Criteria** – These Recommendation guidelines give due weightage to the experience of the IPs in the order of the volume of completed assignment.
 - **Conditions for IPs** – The inclusion of an IP in the Panel will be deemed acceptance to act as IRP, RP, Liquidator and Bankruptcy Trustee and the IP shall not withdraw their consent or refuse the appointment unless otherwise permitted by the Adjudicating Authority. Any refusal shall be treated as deviation from consent and the name of the IP will be removed from the panel for six months.

¹ [The Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees \(Recommendation\) Guidelines, 2024](#)

- The appointment of an IP is at the discretion of the Adjudicating Authority and may refer to or direct the Board for the appointment of IP including the recommendation of IP, from or outside the Panel and in such cases, the Board may accordingly take suitable action for the appointment of IP, from or outside the panel.

Discussion Paper on “Reducing compliance by Review of CIRP Forms submitted by Insolvency Professionals to IBBI” dated June 10, 2024²

- On initiation of Corporate Insolvency Resolution Process (CIRP) in respect of a Corporate Debtor, an Insolvency Professional (IP) is appointed, who exercises the powers of the Board of Directors of a Corporate Debtor and ensures compliances on its behalf. The performance of an IP is monitored by IBBI who in turn collects, maintains and disseminate all the information and records relating to the CIRP. In order to facilitate this collection, Regulation 40B of the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 (CIRP Regulations) a set of forms are required to be filed by the IP with the IBBI, as elaborated in the CIRP Regulations.
- By way of this discussion paper, the Insolvency and Bankruptcy Board of India (IBBI) has proposed modifications in the CIRP Forms submitted under Section 40B of the CIRP Regulations by an IP, in order to remove duplicity and redundancy and has further suggested consequent changes in the CIRP Regulations.
- Most importantly, by way of this discussion paper, IBBI proposes a shift from stage/ event based compliance to monthly compliance reporting i.e. filing of applicable forms by 10th of every month, in order to streamline the compliance process by an IP.
- A brief of the suggested modifications in forms under Regulation 40B is as under:

Existing Form	Particulars / Period covered and scope	Modified Form	Modified Particulars	Remarks
IP 1	Per-Assignment Form to be filled by an IP and includes his as well as Corporate Debtor’s details.	-	-	This form is proposed to be dropped as the relevant details are submitted in assignment portal and other compliances.
CIRP 1	From Commencement of CIRP till Issue of Public Announcement and includes details of IRP, Corporate Debtor, public announcement, non-compliances with provisions of the IBC, etc.	CP-1	Forms CIRP 1 and CIPR 2 proposed to be merged as CP-1, which can be filed after constitution of CoC.	

² [Discussion paper on Reducing Compliance by Review of CIRP Forms submitted by Insolvency Professionals \(IPs\) to IBBI](#)

CIRP 2	From Public announcement till confirmation/ replacement of IRP and includes details of AR of class of creditors, receipt and verification of claims, constitution of CoC, expenses incurred, support services from an IPE, etc.			
CIRP 3	From appointment of RP till issue of Information Memorandum (IM) and includes details of the RP, registered valuers, handing over of records, non-cooperation applications against the ex-management, details of IM, etc.	CP-2	Forms CIRP 3 and CIPR 4 proposed to be merged as CP-2, which can be filed after issue of RFRP.	
CIRP 4	From issue of IM till issue of Request for Resolution Plan (RFRP) and includes Expression of Interest (EOI), RFRP, evaluation matrix and modifications thereof, etc.			
CIRP 5	From issue of RFRP till completion of CIRP and includes updated list of claimants and updated CoC, details of resolution applicants, resolution plans received, application filed with Adjudicating authority for approval of Resolution Plan, details of resolution plan approved, expenses incurred by RP, appointment of professionals, support services from an IPE, etc.	CP-3A and CP-3B	This form is proposed to be divided in two forms: Form CP-3A which will include details of the plan approval application, liquidation or closure (including by way of withdrawal/ settlement/ others), filed with the Adjudicating Authority; (a) Form CP-3B which will include details of the order of Adjudicating Authority approving the resolution plan or ordering liquidation or closure.	

CIRP 6	Event specific form which includes, filing of an avoidance application, raising of interim finance, commencement of resolution process in respect of guarantors of Corporate Debtor, extension/ exclusion of CIRP, premature closure of CIRP, liquidation before completion of CIRP, non-implementation of approved resolution plan.	-	-	This form is proposed to be dropped as the relevant details are captured in other forms.
CIRP 7	Form required to be filed in case the public announcement, appointment of RP, issuance of IM, RFRP is not done within timeline stipulated under the IBC or when CIRP is not completed within the timeline stipulated.	CP-5	This Form is simplified to include status of CIRP, reasons for delay, if any and update on meetings held during the month and shall be required to be filed at the end of every month.	
CIRP 8	Intimation of details of opinion and determination of the RP under Regulation 35A of the CIRP Regulations.	CP-4	This form is revised to capture the details of avoidance transactions reported to the Adjudicating Authority.	

[Discussion Paper on amendments to IBBI \(Insolvency Resolution Process for Corporate Persons\) Regulations, 2016 dated June 19, 2024.](#)³

- The IBBI has issued a discussion paper dated June 19, 2024 and has proposed certain amendments to the CIRP Regulations to address the following issues.
 - Valuation report for the Corporate Debtor as a whole: The CIRP Regulations provides for appointment of separate registered valuer in each asset class for the Corporate Debtor. However, the Companies (Registered Valuers and Valuation) Rules, 2017 (**Valuation Rules**) provides for valuation to be carried out by a single valuer as a whole. In order to align and avoid any ambiguity in the conduct of valuation, IBBI has proposed to amend Regulation 35 of the CIRP Regulations to specify that the RP shall assign two registered valuers to conduct valuation of the Corporate Debtor as a whole, who may in turn obtain inputs or a separate valuation for an asset class for his valuation report from another registered valuer.
 - One valuation estimate for cost sensitive companies: The CIRP Regulations requires a RP to appoint two registered valuers for determination of the fair and liquidation value of the Corporate Debtor. The IBBI notes that CIRP of companies up to certain asset size and MSMEs are very cost sensitive owing to their size and multiple valuation escalates the CIRP Cost and contribute to delay in the process. In order to avoid these complexities, IBBI has proposed to amend Regulation 27 to specify that CIRP of Corporate Debtors having asset size upto INR 1000 Crores and in CIRP of a Corporate Debtor classified as an MSME, the Resolution Professional will appoint only one registered valuer for providing estimates of the fair value

³ [Discussion paper on amendments to IBBI \(Insolvency Resolution Process for Corporate Persons\) Regulations, 2016](#)

and liquidation value. However, the CoC may, after recording appropriate reasons, appoint two valuers, if necessary.

- Voting by authorised representative (AR) prior to appointment by Adjudicating Authority (AA): In order to allow the class of creditors to exercise their rights as financial creditors, the IBBI has proposed to amend Regulation 16 A to specify that the AR selected by the majority class of creditors, shall be allowed to attend the CoC meetings, *in-interim*, pending his approval from the AA.
- Release of guarantees under a resolution plan: In order to clarify the position of law, the IBBI has proposed to Amend Regulation 37 (f) of the CIRP Regulation to specify that a resolution plan shall not prevent the creditors from enforcing their rights against the guarantors of the corporate debtor.

[Insolvency and Bankruptcy Board of India \(Inspection and Investigation\) \(Amendment\) Regulations, 2024 dated August 13, 2024.](#)⁴

- By way of Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2024, the IBBI has made an amendment in Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 to extend the timeline for disposal of a show-cause notice by the disciplinary committee to 60 days (as against 35 days), from the due date for receipt of its reply.

[Insolvency and Bankruptcy Board of India \(Information Utilities\) \(Amendment\) Regulations, 2024 dated August 13, 2024.](#)⁵

- By way of Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2024 (**Information Utilities Amendment Regulations**), the IBBI has made the following amendments in Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (**Information Utilities Regulations**).
 - Regulation 21 has been amended to specify that the Information Utility (**IU**) shall deliver the information of default upon the debtor within a period of 7 days and shall allow the debtor a period of 7 days (at each reminder) to respond to such information.
 - Regulation 21A has been inserted to specify verification of information including the email address of the debtor, proof of debt, acknowledgement of debt, etc. before issuing record of default in Form D. It further provides that a debtor disputing default shall provide reasons for such dispute and upload evidence of the same. In case of financial creditors include in second schedule of the RBI Act, 1934, an IU shall record the status of authentication as disputed if the debtor has provided reasons and evidence, which has been verified and issue a record of default as authenticated in respect of the balance default amount.

⁴ [Insolvency and Bankruptcy Board of India \(Inspection and Investigation\) \(Amendment\) Regulations, 2024](#)

⁵ [Insolvency and Bankruptcy Board of India \(Information Utilities\) \(Amendment\) Regulations, 2024](#)



RECENT JUDGMENTS

Case 1 – Title*	BRS Ventures Investments Ltd. v SREI Infrastructure Finance Ltd. & Anr. – Supreme Court
Case 1 - Citation*	Judgment dated July 23, 2024 [Civil Appeal No. 4565 of 2021]
Background facts*	

- This Appeal was preferred by BRS Ventures Investment Ltd., the Successful Resolution Applicant (**SRA**) of Assam Company India Ltd. (**ACIL**), the holding company of Gujarat Hydrocarbon and Power SEZ Ltd., the Corporate Debtor (**CD**), challenging the initiation of CIRP in respect of the CD.
- This Appeal was preferred by BRS Ventures Investment Ltd., the Successful Resolution Applicant (**SRA**) of Assam Company India Ltd. (**ACIL**), the holding company of Gujarat Hydrocarbon and Power SEZ Ltd., the Corporate Debtor (**CD**), challenging the initiation of CIRP in respect of the CD.
- Briefly, the CD had availed loan facilities from SREI Infrastructure Finance Ltd. (**SREI**) which was secured inter-alia by the Corporate Guarantee of ACIL. On default by the CD, SREI invoked the Corporate Guarantee given by ACIL and subsequently filed an application under Section 7 of the IBC. In the CIRP of ACIL, SREI had an admitted claim of INR 241.27 Crores, as against which, the approved resolution plan of the Appellant provided for a sum of INR 38.87 Crores as full and final settlement.
- Later, SREI proceeded to initiate CIRP in respect of the CD for the balance debt of INR 1428 Crores, which was admitted by the AA. The order of the AA was further upheld by the NCLAT.
- The Appellant argued that in view of settlement under the approved resolution plan, the rights of SREI shall stand subrogated in favour of the Appellant in terms of Section 140 of the Indian Contract Act, 1872 (**Contract Act**). He further submitted that having accepted performance from third party, in terms of Section 63 read with Section 41 of the Contract Act, SREI is now stopped from enforcing remaining party of the debt.
- On the other hand, it was the submission of SREI that the liability of CD concerning the balance debt continued to exist as the resolution plan of the Appellant specifically discharged the guarantee of ACIL and its assets pursuant to the settlement under the plan. However, the liability of CD continued. SREI relied on the judgement of Supreme Court in *Lalit Kumar Jain v*

Union of India & Ors., (2021) 9 SCC 321 to argue that approval of resolution plan for ACIL does not ipso facto discharge the liability of CD.

The issue at hand*

- Whether a creditor can proceed simultaneously against the principal borrower and the guarantor under the IBC?
- Whether the liability of principal borrower can be discharge on approval of resolution plan for the guarantor, which provides for payment to the creditor?
- Whether the Assets of the CD are a part of the CIRP of its holding company/ ACIL?
- Whether the guarantor / ACIL will have the right of subrogation under Section 140 of the Contract Act for the entire debt of SREI qua the CD?

The decision of the Court*

- The Supreme Court observed that Section 60 (2) & (3) of the IBC contemplates separate and simultaneous proceedings against the CD and its guarantor and address the forum where the CIRP shall be instituted. This clarifies that CIRP can be simultaneously initiated against the principal borrower as well its guarantor.
- The Supreme Court further relied on Sections 126 to 139 of the Contract Act to observe that if a creditor recovers certain amount from the guarantor and agrees not to proceed against him for the balance amount, that will not extinguish the remaining debt payable by the principal borrower. Replying on *Lalit Kumar (Supra)*, the Supreme Court held that the contract between the creditor and surety being independent and being discharged by operation of law / involuntary process (i.e. by a resolution plan), it will not amount to discharge of the principal borrower and the creditor is entitled to proceed against the principal borrower for the remaining part of the debt.
- The Supreme Court observed that a holding company and its subsidiary are distinct legal entities and owning of shares of the subsidiary company, will not make the holding company the owner of subsidiary's assets. It is for this reason, that the Supreme Court held that that the assets of the subsidiary company cannot form a part of the resolution plan of a holding company.
- In so far as the right to subrogation under Section 140 is concerned, the Supreme Court held that the subrogation will only be to the extent of amount recovered by the creditor from the surety i.e. the amount paid by surety on behalf of the principal borrower to the creditor. The Supreme Court specifically observed that in no manner, will the right of the creditor to recover the balance debt from the principal borrower will be extinguished.

HSA **Viewpoint**

This judgement emphasises on the separate legal persona of each company and upholds the rights of the creditors to proceed against them individually and simultaneously, to the extent of amount payable.

Case 2 – Title*	Swan Energy Ltd v Chandan Prakash Jain, RP of E-Complex Pvt Ltd. & Ors. – NCLAT, New Delhi
Case 2 - Citation*	Judgement dated July, 25, 2024 [Comp App (AT)(INS) No. 313 of 2024]
Background facts*	

- This appeal has been preferred by a Resolution Applicant challenging approval of a resolution plan of Westend Investment and Finance Consultancy Pvt Ltd (**Westend**) by the AA, while the Application under Section 30 of the IBC was filed seeking approval of resolution plan submitted by Invent Assets Securitisation & Reconstruction Pvt Ltd. (**Invent**).
- Briefly, CIRP in respect of E-Complex Pvt Ltd (**CD**) was initiated and in accordance with the IBC, Invent was declared as the SRA for the CD and accordingly, the RP filed an application under Section 30 (6) of the IBC, seeking approval of the Resolution Plan.
- In the meanwhile, the RBI issued a circular stating that ARCs are not permitted to commence or carry any business other than that of securitisation and asset reconstruction or the business referred to in Section 10 (1) of the SARFAESI Act, without prior approval of RBI. In view of this

circular, the SRA i.e. Invent became ineligible to continue to be a Resolution Applicant without approval of the RBI.

- Accordingly, the Committee of Creditors (CoC) of the CD, in a subsequent CoC meeting approved the revised resolution plan with modification to replace Westend in place of Invent as the Resolution Applicant under the approved Resolution Plan.
- The Appellant argued that the AA committed an error in approving a modified resolution plan with a new resolution applicant who had neither submitted his Expression of Interest nor submitted a Resolution Plan in the CIRP of the CD. On the other hand, it was argued on behalf of the Respondents that Westend was merely implementing the resolution plan submitted by Invent, which was provided for in the Approved Resolution Plan.

The issue at hand*

- Whether the CoC had jurisdiction to modify a resolution plan pending before the AA?
- Whether the CoC had jurisdiction to substitute the SRA with another party, who was not a party of the CIRP?

The decision of the Tribunal*

- The NCLAT relying on the judgement passed by the Supreme Court in *Ebix Singapore Pvt Ltd v CoC of Educomp Solutions Ltd & Anr.*, (2022) 2 SCC 401, held that any Resolution Plan approved by the CoC is binding and cannot be withdrawn or modified.
- The NCLAT emphasised that right from RFRP and mandatory contents of the Resolution Plan, there are different stages for revaluation of the Resolution Plan and an Applicant who did not participate in any of the stages of CIRP process cannot suddenly be substituted as SRA to implement resolution plan for the CD.
- The NCLAT relied on Regulation 39 (1) (b) of the CIRP Regulations to hold that the statute is absolutely clear that a Resolution Plan received from a person whose name does not appear in the final list of PRAs cannot be considered. In the present case, there being no dispute that Westend never submitted Resolution Plan for the CD and was not included in the final list of PRAs, the NCLAT held that the CoC has no jurisdiction to approve the Resolution Plan treating it to be the plan of Westend or to substitute Westend as the Resolution Applicant in place of Invent.
- The NCLAT further observed that the clause for infusion of equity by resolution applicant indirectly or directly through its subsidiary, SPV, LLP, etc cannot be read to mean that the SRA will nominate its nominee the SRA

HSA Viewpoint

This judgement passed by the NCLAT highlights that the supremacy of the commercial wisdom of CoC has to be exercised within the four corners of the statute laid down by the legislature.

Case 3 – Title*	Ms. Mausumi Bhattacharjee v Jumbo Chemicals and Allied Industries & Anr. – NCLAT, New Delhi
Case 3 - Citation*	Judgment dated July 02, 2024 [Comp App (AT)(INS) No. 886 of 2024 & I.A. No. 3196 of 2024]
Background facts*	

- This Appeal was preferred by the shareholder and Suspended board of director of Arjun Industries Ltd (CD) against the initiation of CIRP in respect of the CD.
- Briefly, the CD availed financial services from IDBI and later defaulted on the repayment of such financial services availed. In view thereof, IDBI issued legal notice and filed an OA before the DRT seeking recovery of outstanding amount. During the pendency of the OA before the DRT, the CD entered into a OTS with IDBI.
- However, the CD failed to honour the OTS. Later, the said debt came to be assigned to Jumbo Chemicals and Allied Industries Pvt Ltd. (Jumbo Chemicals) Such assignment of debt was challenged by the CD before the High Court of Delhi and the same was dismissed. Further, in the year 2014, Jumbo Chemicals also filed a petition before the High court of Delhi seeking winding up of the CD, which was dismissed by the single bench of Delhi High Court and subsequently by the Division Bench of the High Court in Appeal.

- Thereafter, in 2019, the Appellant and Jumbo Chemicals entered into a settlement agreement to sell the mortgaged properties and divide the proceed of sale between them. However, later, the Appellant by way of an email sought to cancel the settlement agreement between the parties, which was objected to by Jumbo Chemicals.
- Pursuant thereto, Jumbo Chemicals filed an application before the AA seeking initiation of CIRP in respect of the CD, which was allowed by the AA.
- The Appellant placing its reliance on Section 62 of the Contract Act argues that if parties to a contract agree to substitute a new contract for it, the original contract need not be performed. It was further argued by the Appellant that the old contract between the parties stood novated by the 2019 settlement agreement and therefore, the previous agreement ceased to exist.
- As per the Appellant, the 2019 settlement agreement did not mention existence of any financial debt and was a simpliciter agreement to sell mortgaged properties. Therefore, the alleged breach on account of its cancellation cannot constitute default under section 3(12) of the IBC and no application under Section 7 could have been filed.
- The Respondent objected to novation of the previous agreements and argued the existence of original debt owed by the CD.

The issue at hand*

- Whether the settlement agreement entered into between the parties in the year 2019 amounts to novation of contract and consequently, supersedes the previously entered into loan agreements?

The decision of the Tribunal*

- The NCLAT observed that if the contract is altered in material particulars to change its essential character, the modified contract must be read as doing away with the original contract but if the modified contract has no independent contractual force, no new contract comes into play.
- The NCLAT placing its reliance on *Manohar Koyal v Thakur Das Naskar [(1888) 15 Cal 319]* further observed that a subsequent agreement being made after the breach of original agreement, and that the borrower having failed to perform satisfactorily, remained liable under the original contract.
- The NCLAT, while dismissing the Appeal filed by the Appellant observed that novation of an agreement include elements like agreement of all parties to a new contract, extinguishment of the old obligations and the validity in supersession of the old contract by the new one, which in the present case, did not exist.

HSA Viewpoint

This judgement by the NCLAT points out the elements of novation of a contract and specify that an agreement entered into between the parties to arrive at a settlement in view of an existing debt cannot be said to be novating the financing documents under which the default has taken place. However, the NCLAT cautions to emphasize on the wordings and intension of the parties while executing such settlement agreement

Case 4 – Title*	Shubham Corporation Pvt Ltd v Shubham Corporation Pvt Ltd & Anr – NCLAT, New Delhi
Case 4 - Citation*	Judgment dated May 22, 2024 [Comp App (AT)(CH)(INS) No. 163 of 2023 & IA Nos. 33, 532 & 534 of 2023]
Background facts*	

- This Appeal has been preferred by Shubham Corporation Pvt Ltd challenging the rejection of revised list of creditors by the AA which included the claim of the Appellant as a Financial Creditor of Navayuga Infotech Pvt Ltd (CD).
- Briefly, the Appellant advanced unsecured loans to the CD during the period 2012 to 2020. Since the CD was unable to repay the entire loan amount, it offered to issue Compulsory Convertible Debentures (CCD) carrying 0 % interest to the Appellant and consequently, a Debenture Subscription Agreement (DSA) was signed between the Appellant and the CD.
- It was submitted that as per the DSA, debentures were issued which remain as such till conversion to equity shares, at the end of 10 years from the date of allotment, if not exercised earlier by the Appellant.

- It was argued by the Appellant that the mode of discharge of a debt does not essentially change the character of debt. A CCD similar to a debenture is an acknowledgement of debt and remains a debt till converted into shares and are distinct from shares. The Appellant also placed reliance of Section 5 (8)(c)(f) to argue that debentures are a financial debt. It was also argued that Interest on the debt/liability is not a *sine qua non* or indispensable requirement for the advance to be a 'financial debt' under the IBC. As per the Appellant, an unmatured CCD must be treated as a financial debt.
- On the other hand, the Respondent argued that the Appellant is only a CCD holder and does not have a right of repayment in respect of the CCD. As per the terms of the DSA, there was no obligation to repay on the CD and the only remedy to the Appellant was to convert the CCD, at any time within the period of 10 years, failing which it shall automatically stand converted to shares. It was argued that the mere fact that the date of conversion to equity shares has not arisen, is no reason to change the character of the debentures, considering the fact that it carries with it no obligation of repayment. The Respondent placed reliance on judgement passed by the NCLAT in Comp App (AT)(CH)(INS) No. 108 of 2023 and 4929 of 2023, both titled *IFCI Ltd v Sutanu Sinha*.

The issue at hand*

- Whether CCDs, which do not carry any obligation to repay, should be treated as debt or equity, while admitting claim under the IBC?

The decision of the Tribunal*

- The NCLAT took note of the terms of the DSA which specified that the CCDs shall be of face value of INR 10/- and shall be freely transferable. The DSA further specified that the CCDs can be converted into equity shares at any time before the expiry of 10 years from the date of allotment of CCDs and if no such option is exercised, such CCDs will automatically be converted to equity shares as per conversion formula given in clause 2.3. On conversion of CCDs into equity shares, the Appellant will be eligible for rights proportional to its shareholding and as mutually agreed with the Company.
- The NCLAT observed that the only obligation of the CD was to issue shares in exchange of the said debentures. These debentures are not interest bearing and are Zero Coupon CCDs. As per the DSA, the debentures have to be compulsorily converted into shares and do not carry any obligation towards repayment of the original debt.
- The NCLAT held that the Appellant had voluntarily and contractually given up any right whatsoever to receive repayment of principal or interest and is now only entitled to receive shares in accordance with the DSA.
- The NCLAT relied upon *IFCI Ltd (Supra)* and held that a convertible debenture can be regarded as "debt" or "equity" based on the test of liability for repayment. If the terms of convertible debentures provide for repayment of borrower's principal amount at any time, it can be treated as a debt instrument but if it does not contemplate repayment of the principal amount at any time, and compulsorily results into conversion to equity share, it is an equity instrument.
- In terms of the above finding, the NCLAT dismissed the Appeal holding that the CCD held by the Appellant are equity instrument and cannot be said to be a financial debt under Section 5 (8) of the IBC.

HSA **Viewpoint**

By way of this judgement distinctly clarifies that while debentures may be in the nature of debt, a CCD can be in the nature of debt or equity, based on the test of liability for repayment.



RECENT DEALS

Deal 1: Resolution of Aditya Vidyut Appliances Ltd and Aditya Fabrication Pvt Ltd

- The NCLT, Mumbai bench (**NCLT**) vide Order dated August 12, 2024 approved the Resolution Plan submitted by consortium of **SKM Steels Ltd** and Mr. Shankar Sevia Pawar (**SRA**), in the CIRP of Aditya Vidyut Appliances Ltd (**AVAL**) and Aditya Fabrication Pvt Ltd (**AFPL**) (**CDs**), both undergoing consolidated CIRP in terms of Order dated April 16, 2021 passed by the **NCLT**.
- Pertinently, AVAL was engaged in the business of repair of distribution transformers and offered products such as Power Transformers, Furnace Transformers, Rectifier Transformers, Railway Transformers, Distribution Transformers, Wind Mill Transformers and Rectifiers, etc. AFAL was engaged in the business of buying, selling, and fabricating transformers and other electrical goods. AFPL was mainly floated to act as an extended arm of AVAL for whom AFPL was undertaking job work and the major revenue of AFPL was from job work and lease rents from AVAL.
- Pursuant to consolidation of the CIRPs for AVAL and AFAL, the RP constituted a consolidated CoC for the CDs and a fresh Form – G inviting fresh EOI for both the CDs was published.
- The RP received eight EOIs out of which, seven applicants were found to be eligible and made it to the final list of PRAs on July 07, 2021. Pursuant thereto, the RP received resolution plans from three PRAs being:
 - Narayan Shenvi Prabhu in consortium with Mittal House Trading LLC
 - Rational Engineers Ltd
 - SKM Steels in consortium with Mr. Shankar Sevia Pawar
- These Resolution plans were put forth before the CoC for discussion and deliberations. The Resolution Applicants were also granted opportunities to address the concerns of the CoC and revise their respective resolution plans.
- After thorough discussions during several CoC meetings, all the resolution plans were put to vote and the Resolution Plan submitted by SKM Steels in consortium with Mr. Shankar Sevia Pawar was approved by 83.56% of majority of the CoC and was declared as the SRA.

- The Resolution Plan proposes a total financial outlay of INR 102.47 Crores as against the admitted debt of INR 426.23 Crores. Out of the said amount of INR 102.47 Crores, a sum of INR 73.18 Crores shall be distributed in tranches amongst the creditors, in the following manner:
 - A sum of INR 66.47 Crores against an admitted debt of INR 180.42 Crores to the Secured Financial Creditors.
 - A sum of INR 0.10 Crores against an admitted debt of INR 1.01 Crores to the Unsecured Financial Creditors.
 - A sum of INR 1.21 Crores to the Operation Creditors of the CDs as against the admitted debt of INR 121.21 Crores.
 - A sum of INR 2.40 Crores against an admitted debt of INR 4.80 Crores to the Secured Financial Creditors.
 - A sum of INR 1 Crores have been kept towards contingency fund.
 - A sum of INR 2 Crores towards the estimated CIRP Costs, to be paid at actuals. Notably, any benefit of unutilised amount shall be made available to the financial creditors over and above the payout proposed under the plan
- The SRA proposed to make the upfront payment within a period of 30 days from the effective date and the deferred payment within a period of 2 years.
- Apart from the distribution of INR 73.18 Crores, SRA has proposed a sum of INR 21.65 Crores towards capital expenditure and the balance of Rs. 7.64 Crore shall be utilized for working capital.
- The benefits from the Avoidance Transactions shall accrue to the CoC and the CoC shall bear all the cost of pursuing such transactions.
- A Monitoring Committee comprising of a member of the CoC and one members of the SRA shall be constituted on the effective date till the last deferred payment is made, in order to supervise the implementation of the resolution plan.
- The NCLT observed that the resolution plan proposes that all past dues towards salaries and other benefits such as PF dues, etc. of the employees and workmen for the period after the CIRP commencement date and until the effective date/or retirement benefits accruing to the benefits which have arisen after the CIRP commencement date shall also stand extinguished and the liability of the Resolution Applicant/Corporate Debtor shall be limited to the amount payable to the employees and workmen as provided in Clause 7 (b) (ii) of this resolution plan. In this regard, the NCLT clarified that in accordance with the judgement of the Supreme Court in *Jet Aircraft (Supra)*, the SRA shall be bound to pay the Provident Fund and gratuity dues payable to the employees.
- With the above observations, the NCLT observed that the Resolution Plan meets the requirements of Section 30(2) of the IBC and Regulations 37, 38 and 39 of the CIRP Regulations and accordingly approved the Resolution Plan submitted by the SRA.

Deal 2: Resolution of Alchemist Infra Realty Ltd

- The NCLT, New Delhi (**NCLT**) vide Order dated July 04, 2024 approved the resolution plan submitted by Vantage Point Asset Management Pte Ltd. (**SRA**), in the CIRP of Alchemist Infra Realty Ltd (**CD**), as unanimously approved by the CoC.
- On March 23, 2022, CIRP came to be initiated in respect of the CD. The RP published Form A on April 06, 2022 and thereafter, constituted the CoC for the CD. The RP verified and admitted claims to the tune of INR 947.42 Crores for the CD.
- The RP published Form – G on June 15, 22 and received EOIs from five PRAs. The final list of PRAs was published on July 25, 2022. However, no resolution plans were received for the CD and the CoC decided to publish fresh Form G dated April 05, 2023 to invite new PRAs in addition to the existing ones. The RP received six EOIs in response to fresh Form G.

- Pursuant thereto, only one Resolution Plan i.e. from the SRA was received by the RP and after thorough discussions and deliberation, the same was put to vote pursuant to the 12th CoC meeting held on October 12, 2023. The Resolution Plan submitted by the SRA was approved by the CoC on October 18, 2023.
- The SRA proposed a financial outlay of INR 470.92 Crores as against the admitted claims of INR 947.42 Crores in the following manner.
 - A sum of INR 5 Crores towards the estimated CIRP Costs.
 - A sum of INR 137.15 Crores to the Creditors in class.
 - A sum of INR 12.85 Crores towards contingency fund.
 - A sum of INR 315.92 Crores towards Financial Creditor.
- Notably the Fair Value of the CD is INR 380.93 Crores and the Liquidation Value of the CD is 302.3 Crores.
- The timeline for implementation of the approved Resolution Plan submitted by the SRA is 4 years from the Effective Date.
- The NCLT, after taking note of the reliefs and concessions sought and the compliances under Section 29A of the IBC, Regulation 38 and 39 of the CIRP Regulations, approved the Resolution Plan submitted by the SRA for the CD.



COMPANIES ADMITTED TO INSOLVENCY AND LIQUIDATION PROCESS IN THE MONTH OF JULY 2024

COMPANIES ADMITTED TO INSOLVENCY IN THE MONTH OF JULY 2024

Sr. No	Name of Corporate Debtor	NCLT Bench	Business Activity
1	Srivisha Infra Pvt Ltd	Chennai	Construction
2	Mahila Udyog Ltd	Mumbai	Manufacture of food products and beverages
3	Metenere Ltd	New Delhi	Manufacturing of metals
4	Point Developers Pvt Ltd	Mumbai	Construction
5	TAG Offshore Limited	Mumbai	Supporting and auxiliary transport activities
6	Anand Infoedge Pvt Ltd	New Delhi	Computer and related activities
7	Mist Avenue Pvt Ltd	New Delhi	Real estate activities
8	Mist Direct Sales Pvt Ltd	New Delhi	Real estate activities
9	Isinox Ltd	Mumbai	Manufacture of basic metals
10	Think & Learn Pvt Ltd	Bengaluru	Education
11	Primat Infrapower & Multiventures Pvt Ltd	Mumbai	Consultancy
12	Cema Electric Lighting Products India Pvt Ltd	Chennai	Manufactures and markets a wide variety of lighting products
13	Titanium Tantalum Products Ltd	Chennai	Manufacture of other electrical equipment
14	I-Vantage India Pvt Ltd	Hyderabad	Software publishing, consultancy and supply software, operating systems software, business & other applications software, computer games software
15	Silver Jubilee Motors Ltd	Mumbai	Sale of motor vehicles
16	Almighty Advertising Pvt Ltd	New Delhi	Other business activities
17	VR Commodities Pvt Ltd	Amravati	Retail trade

COMPANIES ADMITTED TO LIQUIDATION PROCESS IN THE MONTH OF JULY 2024

Sr. No	Name of Corporate Debtor	NCLT Bench	Business Activity
1	Sambandam Dairy Farm Pvt Ltd	Chennai	Production, processing and preservation of meat, fish, fruit vegetables, oils and fats.
2	You Seung Sang Sa India Construction Pvt Ltd	Chennai	Building of complete constructions or parts thereof; civil engineering
3	Evergo Stock (India) Pvt Ltd	Chennai	Other financial intermediation
4	Bromex Pvt Ltd	Chennai	Wholesale

5	Jelenta Polytraders Pvt Ltd	Kolkata	Trading
6	Trans-fab Power India Pvt Ltd	Mumbai	Manufacturing and distribution of power transformers
7	Systems Technology Group (India) Pvt Ltd	Chennai	Service provider
8	Fujirebio India Pvt Ltd	New Delhi	Trading
9	Ila Metals Pvt Ltd	Ahmedabad	Community, personal & Social Services
10	OM Auto Technocraft Pvt Ltd	Ahmedabad	Manufacturing (Machinery & Equipment)
11	Legend Artists Pvt Ltd	Bengaluru	Business Services
12	Alstrong ACP manufacturing India Pvt Ltd	New Delhi	Manufacturing (Metals & Chemicals, and products thereof)
13	Dharitrimaa Urja Pvt Ltd	New Delhi	Mining and agglomeration of hard coal
14	Octagon Communications Pvt Ltd	Ahmedabad	Legal, accounting, book-keeping and auditing activities; tax consultancy; market research and public opinion polling; business and management consultancy
15	Zoom Dealcom Pvt Ltd	Kolkata	Trading
16	Sambandam Dairy Farm Pvt Ltd	Chennai	Production, processing and preservation of meat, fish, fruit vegetables, oils and fats.

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