



**INSOLVENCY &
RESTRUCTURING**

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LUTHRA & LUTHRA LLP

CHARTERED ACCOUNTANTS



Statistics



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Global round up – Insolvency & Bankruptcy in Canada

FREE FALL IN FORTUNES

Shares of companies undergoing insolvency proceedings have fallen sharply. Change over 17 April (in %)

Alok Industries	-9.6
Amtek Auto	-8.8
Bhushan Steel	-11.2
Electrosteel Steels	-9.7
Jyoti Structures	-9.6
Monnet Ispat and Energy	-14.1

Source : BSE



■ Binani Cement resolution hearing in NCLT Kolkata on April 16, 2018

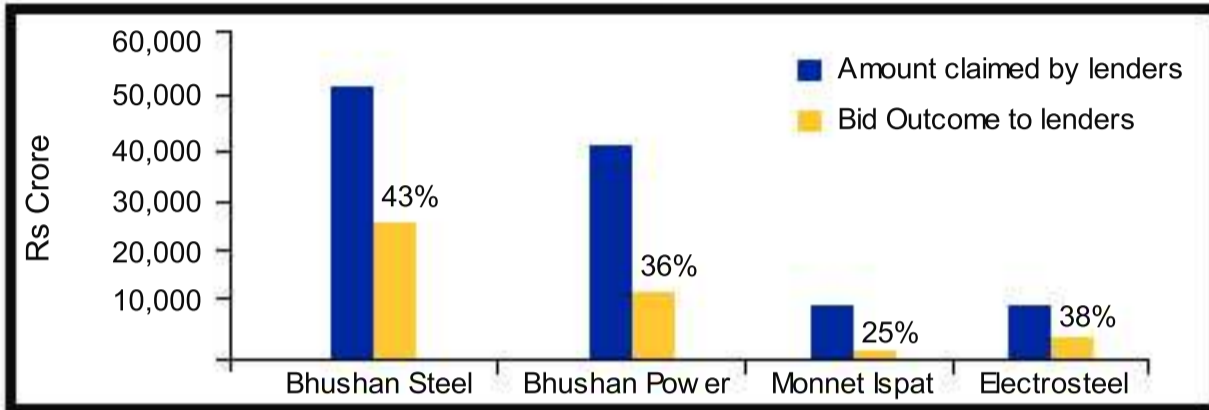


■ Dalmia Bharat's bid likely valued at ₹ 6,600 crore

■ CoC approved Dalmia Bharat-controlled Rajputana properties' bid on March 16, 2018

■ NCLT admitted claims worth ₹ 6,469.36 crore from financial creditors of Binani Cement

■ Binani Industries appealed at the SC to terminate resolution process under IBC



BANKRUPTCY



UPDATES & AMENDMENTS

Circular issued by IBBI for compliance with the Insolvency Professionals (Amendment) Regulations, 2018

IBBI has recently notified the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018 in the Gazette of India dated March 28, 2018 w.e.f April 1, 2018. Presently there are 76 Insolvency professional entities (IPEs) registered with IBBI.

Insolvency Professional Entities are required to ensure compliance with the provisions of Regulation 12(1) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 by June, 2018 or September 30, 2018, as the case may be, under intimation to the IBBI, failing which the IPE may be derecognized in accordance with Regulation 10.

Insolvency professional entities (IPEs)

Following are the amendments made in the erstwhile Regulations for the IPEs recognized **as on 1st April, 2018** :

To comply with the provisions of clauses (e), (f) and (g) of Regulation 12(1) on or before 30th June, 2018

- (a) majority of its Partners or Directors, as the case may be, are Insolvency Professionals;
- (b) majority of its Whole Time Directors are Insolvency Professionals, in case it is a company; and
- (c) none of its Partners or Directors is a Partner or a Director of another Insolvency Professional Entity

To comply with the provisions of clauses (a), (b) (c) and (d) on or before 30th September, 2018

- (a) its sole objective is to provide support services to Insolvency Professionals, who are its Partners or Directors, as the case may be;
- (b) it has a net worth of not less than one crore rupees;



- (c) majority of its shares is held by Insolvency Professionals, who are its Directors, in case it is a Company;
- (d) majority of capital contribution is made by Insolvency Professionals, who are its Partners, in case it is a Limited Liability Partnership Firm or a registered Partnership Firm;

Insolvency professionals(IPs)

Following are the amendments made in the erstwhile Regulations for the IPs

1. The syllabus, format, qualifying marks and frequency of the Limited Insolvency Examination shall be published on the website of the Board at **least three months** before the examination unlike previously where the same were made available only one month before the examination.
2. An individual shall now be eligible for registration, if he:
 - (a) has passed the Limited Insolvency Examination within **twelve months before** the date of his application for enrolment with the insolvency professional agency;
 - (b) has completed a **pre-registration educational course**, required by the Board, from an insolvency professional agency after his enrolment as a professional member; and
 - (c) has successfully completed the **National Insolvency Programme** approved by the Board;
 - (d) successfully completed the **Graduate Insolvency Programme**, approved by the Board;
 - (e) fifteen years' of experience in management, after receiving a Bachelor's degree from a university established or recognised by law; or
 - (f) ten years' of experience as a Chartered Accountant registered as a member of the Institute of Chartered Accountants of India, Company Secretary registered as a member of the Institute of Company Secretaries of India, Cost Accountant registered as a member of the Institute of Cost Accountants of India, or Advocate enrolled with the Bar Council.
3. The IP should undergo continuing professional education and shall not outsource any of his duties and responsibilities under the Code unless specifically permitted by the Board.
4. An IP shall disclose as to whether he was an employee of or has been in the panel of any

Financial Creditor of the Corporate Debtor, to the Committee of Creditors and to the IPE of which he is a professional member and the agency shall publish such disclosure on its website.

5. An IP shall further do not influence the decision or the work of the Committee of Creditors or Debtor, or other Stakeholders under the Code, so as to make any undue or unlawful gains for himself or his related parties, or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any mala fide objectives.
6. An IP shall disclose the fee payable to him, the fee payable to the IPE and the fee payable to professionals engaged by him to the IPA of which he is a professional member and the agency shall publish such disclosure on its website.

IBBI signs a Memorandum of Understanding with IICA

On 10th April, 2018, IBBI has signed a Memorandum of Understanding (MoU) with the Indian Institute of Corporate Affairs (IICA) for collaboration in research and publication, advancement of knowledge, capacity building, awareness and advocacy initiatives on the basis of reciprocity, best effort, mutual benefit and frequent interactions.

This is an initiative to strengthen the insolvency & bankruptcy framework.

IBBI has issued a Press release - Rendering of Valuation Services without a Certificate of Registration under the Companies (Registered Valuers and Valuation) Rules, 2017 is allowed till 30th September,2018.

IBBI has vide press release dated 2nd April, 2018, has extended the deadline for rendering Valuation Services without a Certificate of Registration under the Companies(Registered Valuers and Valuation) Rules, 2017 until 30th September,2018.

The previous transition mechanism was prescribed under Rule 11 which provided that any person, who may be rendering valuation services under the Companies Act, 2013 on the date of commencement of the Rules, may continue to render such valuation services without a certificate of registration up to 31st March, 2018. This timeline has now been extended up to 30th September,2018.



ARTICLE OF THE MONTH

Homebuyers under IBC

Protection of interest of Home buyers who have invested their hard-earned money in buying a house and are waiting for the possession of their flats could soon be granted the status of financial creditors like banks and accorded similar benefits, in case their realty firm goes through insolvency proceedings. This is one of the major concerns of government considering the backdrop of frauds in the real estate sector.

Moreover the existence of lacuna with respect to home buyers and their categorization under the Insolvency & Bankruptcy Code (IBC) requires immediate redressal to subvert injustice meted out to them.

Adding another bout of uncertainty for home buyers is how the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA) will work out for the real estate companies that enter the bankruptcy process.



Hard Times

HOMEBUYERS LEFT IN LURCH

31,000 of Jaypee Infratech, that was referred to NCLT by IDBI

19,000 of Unitech, that was taken to NCLT by corporate affairs ministry

41,000 of Amrapali, referred by BoB to the bankruptcy court

These homebuyers have moved SC to protect their interests

According to Section 7, 9 & 10 of the IBC, the Financial Creditor, the Operational Creditor and the Corporate Debtor may initiate Corporate Insolvency Resolution Process against the Corporate Debtor in the form and manner as stipulated therein.

However, under what category the aggrieved homebuyers would fall is still ambiguous and unclear.

Whether Homebuyer is a Financial Creditor or an Operational Creditor?

It is pertinent to first note who is a Financial Creditor and Operational Creditor under the Code.

A Financial Creditor is a person to whom a financial debt is owed against consideration for time value of money. Further, Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes among others any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

On the other hand, an Operational Creditor is a person to whom an operational debt is owed on account of goods or services including workman and govt. dues. Further, Operational debt refers to a claim in respect of the provisions of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. The IBC doesn't clarify as to the position of homebuyers.

Further according to the Section 53 of the IBC, the priority is given to secured creditors. Also a secured creditor, banks will continue to have a more favourable position. The resolution plan of most bidders takes care of only secured creditors, while the unsecured ones are left high and dry.

WHAT IT MEANS FOR HOME BUYERS

- They will be part of CoC that approves the resolution plan
- Their voting rights to be in sync with advance payments
- They will be third in preference order to get liquidation proceeds
- But they will also have to take haircuts

Judicial Pronouncements

The first case in which the position of homebuyers was questioned was in the case of **Nikhil Mehta vs. AMR Infrastructures**. An Application u/s 7 was made before NCLT for initiating CIRP against AMR.

The facts state that the Appellant had booked a residential unit, office space and a shop in a project being developed by AMR which undertook to pay a particular amount to the buyer each month, as Committed Returns/ Assured Returns from the date of execution of the MOU till the time of handing over the actual physical possession to the buyer. After certain time, AMR started making erratic payments of the monthly Assured Returns to the Applicants, coming to a halt altogether later on. It was alleged that the cheques issued by AMR were dishonored for the reasons of insufficient funds. Despite various demands, no further payments were made. Distressed, the Appellant moved a Petition to NCLT in the capacity of Financial Creditor.

The Adjudicating Authority dismissed the Petition and held that the agreement in question was a 'pure and simple agreement of sale and purchase of a piece of property and has not acquired the status of a financial debt as the transaction does not have consideration for the time value of money. NCLT contended that the monies were not disbursed by the Appellant 'against the consideration for the time value of money', and the clause relating to 'assured return' is associated with the delivery of possession and is not a 'Financial Debt'

Aggrieved, the Appellant preferred an appeal before NCLAT. The NCLAT observed that a huge amount of money was mobilized by AMR to aid the development of the project, that too without any collateral or security. In absence of this scheme of Assured Return, AMR would have been constrained to procure this amount from Financial Institutions. Thus, NCLAT arrived at a conclusion that the 'Corporate Debtor' treated the appellants as 'investors' and borrowed the amount pursuant to sale purchase agreement for their commercial purpose treating at par with 'loan' in their return. Thereby, the amount invested by appellants falls within the ambit of 'Financial Debt', as defined in Section 5(8) (f) of The Code. Thus it was held that the Appellant is a Financial Creditor.

It must be noted that this pronouncement by NCLAT was specifically applicable to the "Committed assured return plans". With respect to homebuyers whose contracts did not incorporate such similar clauses, it appeared that they might not qualify as 'Financial' or 'Operational' Creditors, and may not invoke insolvency process under IBC.

However, IBBI had amended the Regulations and introduced a third category of Creditors i.e. Creditors other than Financial and Operational Creditors, who may submit their claims to the Interim Resolution Professional vide Form F. Thus, such homebuyers may take aid of this Form and may file their claims with the IRP. However, they can neither trigger the CIRP, nor be on the Committee of Creditors (CoC).

Further, in **Col. Vinod Awasthy v. AMR Infrastructure Ltd.**, NCLT ruled that notwithstanding the presence of an assured return clause, a purchaser of a flat cannot be treated as a provider of 'goods' or 'services' to the builder and therefore, does not qualify as an 'Operational Creditor' and cannot initiate Insolvency Process in that capacity.

Another important case to be considered is the **Jaypee Infratech** Insolvency Case. Jaypee infratech project started its wish town city project in Noida. Two subsidiary Companies of Jaypee group were involved, namely the Jaiprakash Associates Limited (JAL) which allocated the letters to homebuyers and Jaypee Infratech Limited (JIL) who received the payments in its bank account from the homebuyers. It accumulated 25000 Crores from around 35000 homebuyers. It was alleged that the money was usurped to fund Jaypee group's other flagship projects and the wish town city project was abandoned leaving thousands of homebuyers in a lurch. A group of aggrieved homebuyers approached the National Consumer Disputes Redressal Commission (NCDRC), however the Commission did not adjudicate on the same. Simultaneously IDBI, being a Financial Creditor, had advanced a loan of approximately 526 Crores to the Company which was due. Accordingly it filed a petition u/s 7 of the IBC before NCLT Allahabad. The Petition was admitted by NCLT vide its order dated August 9, 2017 for initiating insolvency proceedings against Jaypee Infratech and also approved the appointment of an IRP and declared Moratorium. Due to this, institution of suits before any other Statutory Authority was prohibited. This ruling was a huge setback to the homebuyers as their savings and investments both were jeopardized. The homebuyers then prayed the Supreme Court which vide its order dated September 4, 2017 stayed the order of NCLT. This ruling came as a relief to the homebuyers who could seek legal recourse under NCDRC or RERA.

The Supreme Court held that no insolvency proceedings will proceed henceforth until the status of the homebuyers - whether they are Financial / Operational Creditors and/or Secured/Unsecured Creditors is decided. However, an interlocutory application was filed by IDBI for vacating/modifying the Supreme Court order as the order subsequently lead to the control of Company in the hands of the erstwhile management from IRP which would further hamper the interests of Creditors and Homebuyers. It was prayed that some time is granted to the IRP to formulate at least a preliminary scheme to protect the interest of all stakeholders. To this, the Homebuyers averred that if the control is restored with the IRP, there must be a representative from the homebuyers or someone may be appointed on the CoC to espouse their interest. The Supreme Court vide its order dated September 11, 2017 directed that IRP takes over the management of JIL and submits an Interim Resolution Plan to protect the interests of homebuyers. To further espouse their interest, representatives have been made to participate in the meetings of CoC. Further, the court has restrained the Managing Director and Directors of JIL & JAL from travelling abroad without its permission and asked the parent Company, JAL, to deposit Rs 2,000 Cr with the registry to safeguard the interest of the home buyers.

Comments :

Though there is still no clarity on the position of Homebuyers under the Code, earnest efforts have been made to safeguard their interests. Homebuyers, in the meantime, can submit their claims with the IRP vide Form F.

Any issue relating to determination of some rights of the buyer could be dealt under the RERA while the recovery proceedings could be treated as per the provisions of IBC.

Also, in a move aimed at providing relief to the MSME and homebuyers, a panel set up to look into various issues relating to the IBC is considering to ease insolvency rules for small enterprises and treating homebuyers as financial creditors while deeming the amount raised from them for real estate projects as financial debt.



JURY'S WORLD

Important Ruling by NCLT, New Delhi Bench dated 04/04/2018

Brij Mohan Sahni (Financial Creditor/Petitioner) & Pawan Buildwell Pvt. Ltd (Corporate Debtor)

Facts of the Case:

- Brij Mohan Sahni along with his deceased brother Lt. Sh. Surinder Mohan Sahni, were equal Partners of the Firm M/ s Gay Printers. The said Partnership Firm had given a loan of Rs. 1 Cr @ 15% interest per annum to the Corporate Debtor in two installments viz. Rs. 70 Lacs on 01.04.2014 and 30 Lacs on 07.04.2014 as evidenced through its Bank Statements
- Mr. Surinder Mohan Sahni died on 02.10.2015. Upon his death, the partnership dissolved by operation of Law and his 50% share in the Firm was bequeathed by his Brother in terms of his Will dated 17.03.2015. Thus all assets of the erstwhile partnership Firm M/s. Gay Printers, including the loan of Rs. 1 Cr given to the Corporate Debtor, solely vested with the Petitioner. The Petitioner then inducted his son as Partner in M/s Gay Printers.
- The Corporate Debtor acknowledged its liability to pay interest @ 15% for F.Y. 2014-15 & 2015-16 and even though no interest was paid, TDS was duly deducted and deposited and could be reflected in Form 26AS. On account of failure to pay interest, the principal loan amount along with interest accrued was recalled. However, the Corporate Debtor was unable to pay off its financial debts.
- First, a Petition u/s 7 of IBC was filed by M/s Gay Printers to initiate Corporate Insolvency Resolution Process against Corporate Debtor. However, the same was rejected on the ground that induction of a new Partner upon the death of the only other Partner is viewed as constitution of a new partnership Firm and not a continuation of the existing Firm, which automatically stands dissolved upon the death of one of the two Partners. Moreover, the new Partnership Firm would not succeed to the assets of the previous firm. Thus the Petition was rejected. An appeal was filed by M/s Gay Printers impugning the decision of NCLT, however the same was dismissed by the Hon'ble NCLAT.
- It was then in this regard, the Petitioner contending that the loan of Rs. 1 Cr given to the Corporate Debtor solely vested with the Petitioner by virtue of the Will of his deceased brother, filed a Petition u/s 7 of IBC in his individual capacity as

the Successor-in-interest and the sole beneficiary of the dissolved Firm, M/s Gay Printers.

➤ To this Petition, the Corporate Debtor prayed resisting on the following grounds:

- Principles of Res Judicata would be applicable;
- The Will is not proved and no Succession Certificate has been obtained;
- The Petition invokes the provision of Order 2 Rule 2 of CPC;
- Mere deposit of TDS is not acknowledgment of debt.

Judgment by NCLT

The NCLT pronounced its decision on the basis of following contentions:

- The Adjudicating Authority contended that the principles of res judicata would not be applicable to the facts of this case as the previous petition was filed by the Partnership Firm M/s Gay Printers, while the present petition has been filed by Mr. Brij Mohan Sahni in his individual capacity. The parties to both the Petitions are distinct and separate. Moreover, the rejection of the previous petition was not on merits but on the locus of the new partnership firm to claim the Financial Debt. Thus in the absence of a decision on the merits of the case, res judicata cannot be invoked.
- It was averred that to question the Petitioner's entitlement to the estate of the deceased under the Will is not to be objected upon by the Corporate Debtor specially when there is no objection from the other legal heirs of the deceased. The Corporate Debtor has no caveatable interest in the assets of the deceased. Accordingly, the insistence on a succession certificate is also ill founded and such frivolous pleas cannot be an escape route to usurp the money given to the Corporate Debtor.
- Order 2 Rule 2 of CPC states that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. The Corporate Debtor could not satisfy the Adjudicating Authority that how the same would be applicable in the facts and circumstances of the present case and held that the objection is without any merits.
- The Adjudicating Authority held that the Corporate Debtor's submission that mere deposit of TDS is not acknowledgment of debt is also

misplaced. In the present case the Corporate Debtor does not deny having received a sum of Rs. 1 Cr which is duly substantiated through the banking transactions. Further, the Corporate Debtor has admitted through e-mail correspondence that interest @ 15% p.a. would be directly remitted into the account of the Partnership Firm. Moreover TDS has been deducted on interest amount and deposited with IT authorities as evident from Form 26AS. Thus, the liability to pay interest @ 15% p.a. is confirmed not only by emails on record but also corroborated by the deduction of TDS on the accrued interest.

Decision:

The Adjudicating Authority held that there was no merit in the arguments advanced by the Corporate Debtor to resist the prayer for initiating CIRP against it and thus admitted the Petition filed by Financial Creditor u/s 7 of IBC

Important Ruling by NCLT, Hyderabad Bench dated 03/04/2018

State Bank of India ,Power Finance Corporation Limited (Financial Creditors) & East Coast Energy Private Limited (Corporate Debtor)

Facts of the Case:

- State Bank of India (SBI) filed petition for initiating Corporate Insolvency Resolution Process against East Coast Energy Private Limited (Corporate Debtor) u/s 7 of the Insolvency & Bankruptcy Code. SBI filed this petition through AGM and Authorized Officer, Hyderabad, in terms of the Letter of Authority dated 01.01.2018 issued by the Dy. Manager of SBI.
- Similarly, Power Finance Corporation Limited (PFC) filed petition u/s 7 of the Code requesting to trigger Corporate Insolvency Resolution Process against Corporate Debtor. A Board Resolution was passed dated 09.11.2016 wherein it was stated that the Chairman and MD are authorized on behalf of PFC to institute suits and they may sub-delegate powers to any other whole-time Director(s) or Officer(s) of the Company and execute General/Special Power of Attorney in this regard under the common seal of Company as and when necessary. Accordingly, such power was delegated to DGM and Manager through a Power of Attorney dated 14/12/2017 and a petition was filed.
- The Corporate Debtor pleaded that the petitions

are not maintainable for want of proper authority to institute and file the petitions as in case of SBI, the Letter of Authority did not disclose the source of power and under what authority Dy. General Manager issued the letter and for PFC, the Authorization Letter did not disclose about the institution of legal proceedings before the Tribunal and on the other hand the letter only authorised to file Application before Resolution Professional by DGM.

➤ State Bank of India (SBI) filed petition for initiating Corporate Insolvency Resolution Process against East Coast Energy Private Limited (Corporate Debtor) u/s 7 of the Insolvency & Bankruptcy Code. SBI filed this petition through AGM and Authorized Officer, Hyderabad, in terms of the Letter of Authority dated 01.01.2018 issued by the Dy. Manager of SBI.

➤ Similarly, Power Finance Corporation Limited (PFC) filed petition u/s 7 of the Code requesting to trigger Corporate Insolvency Resolution Process against Corporate Debtor. A Board Resolution was passed dated 09.11.2016 wherein it was stated that the Chairman and MD are authorized on behalf of PFC to institute suits and they may sub-delegate powers to any other whole-time Director(s) or Officer(s) of the Company and execute General/Special Power of Attorney in this regard under the common seal of Company as and when necessary. Accordingly, such power was delegated to DGM and Manager through a Power of Attorney dated 14/12/2017 and a petition was filed.

➤ The Corporate Debtor pleaded that the petitions are not maintainable for want of proper authority to institute and file the petitions as in case of SBI, the Letter of Authority did not disclose the source of power and under what authority Dy. General Manager issued the letter and for PFC, the Authorization Letter did not disclose about the institution of legal proceedings before the Tribunal and on the other hand the letter only authorised to file Application before Resolution Professional by DGM.

Queries/Challenges:

➤ [Whether the Petitions filed u/s 7 by the Financial Creditors are not maintainable for want of proper authority to institute and file such Petitions?](#)

Contentions by the Financial Creditors:

➤ SBI contended that pursuant to Regulation 76(1) of SBI General Regulations 1955 framed u/s 50 of the SBI Act, the Executive Committee of Central Board authorised all officers in the grades of SMDS-IV and above to sign all documents in respect of in charge of functions of the post held for the time being to file the plaint, petitions etc. Thus in accordance with Regulation 76(1), the AGM, being above the SMDS Grade, is authorised to file this petition even in the absence of an Authorization Letter.

➤ PFC contended that any defect in the Authorization Letter is a curable defect under proviso to sub-section 5 of Section 7. Accordingly, it voluntarily rectified the defect in delegation of power letter dated 14.12.2017 by producing another delegation of power letter dated 15.02.2018 wherein the Chairman & MD of PFC specifically approved and informed that DGM is authorised to sign and file the Petition against the Corporate Debtor before NCLT. The Letter further approved all acts and deeds done by DGM including the institution of Petition. Thus, DGM is a proper authority to file the petition and the same is properly instituted.

Judgment by NCLT

The NCLT pronounced its decision on the basis of following judgments:

➤ On perusing upon the judgment of the Hon'ble NCLAT, New Delhi in Palogix Infrastructure Private Limited Vs. ICICI Bank Limited, it is clear that if there is a general authorization given by the Financial Creditor or Operational Creditor or Corporate Applicant in favor of its Officers it is sufficient even though it is named as or labeled as 'Power of Attorney'.

➤ In the judgment *Innoventive Industries Limited Vs ICICI Bank and Ors.*, the Hon'ble Supreme Court held that the Adjudicating Authority has to satisfy itself that a default has occurred and as soon as such satisfaction is recorded the application must be admitted unless it is incomplete. The extract of the judgment is reproduced below:

On the other hand, as we have seen, in the case of a Corporate Debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default

has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

Thus, the Adjudicating Authority while dealing with the petition u/s 7 of IBC need to satisfy that a default has occurred for payment of financial debts and that the petition is complete in all aspects.

Decision:

The Adjudicating Authority being satisfied that there is occurrence of default in repayment of Financial

debts due to SBI and PFC, admitted both the Petitions, appointed an IRP and declared moratorium.

Comments:

A general authorization given by the Financial Creditor or Operational Creditor or Corporate Applicant in favor of its Officers is sufficient even though it is named as or labeled as 'Power of Attorney'.

The Adjudicating Authority while dealing with petition u/s 7 of IBC need to satisfy that a default has occurred for payment of financial debts and that the petition is complete in all aspects. It is beyond the scope of this authority to examine and consider the fact and circumstances that lead to occurrence of default.



INSOLVENCY & BANKRUPTCY IN CANADA



The Canadian bankruptcy and insolvency law is governed under jurisdiction of the federal government. The legislative framework is summarized below:

- **Bankruptcy and Insolvency Act (BIA)** - Federal legislation that governs bankruptcies and proposals in Canada
- **Companies' Creditors Arrangement Act (CCAA)** - Federal law to rescue financially distressed Companies from being bankrupt and is applicable for companies owing debt above \$5 million.
- **Wage Earner Protection Program Act** - Compensates eligible workers when Employer is declared bankrupt

Administration of Insolvency Law:

The Office of the Superintendent of Bankruptcy (OSB) is charged with the administration of the BIA and CCAA. It is further entrusted with the following responsibilities of maintaining records of proceedings under the BIA and the CCAA, recording and investigating complaints, licensing the Insolvency Trustees and setting and enforcing professional standards for the administration of estates.

The Licensed Insolvency Trustees (LITs) are officers of the court and are responsible for administering proposals and bankruptcies, protecting the rights of creditors, investigating the affairs of the Debtor and ensuring that the rights of the Debtor are not abused.

Options available under distress:

➤ **Bankruptcy** - Bankruptcy is a legal process to relieve debtors of their debts. At the end of the process, the bankrupt is released from the obligation to repay its debts with some exceptions.

➤ **Proposal** - A proposal is an offer to Creditors to pay a percentage of what is owed over a specific period of time, or to extend the amount of time to pay off the debt, or a combination of both. Creditors may accept or reject the proposal based on voting. There are two types of proposals, **Consumer proposals**—(to individuals who owe less than \$250,000, excluding mortgages) and **Commercial proposals** (no limit on money owned).

Once all the terms of the proposal are met, the Debtor is legally released from the debts as per the terms of the proposal.

➤ **CCAA Proceeding** - Insolvent Companies owing more than \$5 million may initiate CCAA proceedings for granting short term protection while they work on an offer to Creditors for some form of payment so they can restructure their businesses and financial affairs. CCAA proceedings are carried out under court supervision.

Bankruptcy - Canadian Insolvency Statistics					
Canada's bankruptcy rate has risen over the last five years as set out below:					
Bankruptcies and Proposals : 2012-2016					
	2012	2013	2014	2015	2016
Cons. Bank.	71,495	69,224	64,839	63,406	63,372
Bus. Bank.	3,236	3,187	3,116	3,089	2,884
Proposals	48,020	50,548	54,314	59,221	63,471
Total	122,751	122,959	122,269	125,716	129,727

Annual Report 2017 - Insolvencies in Canada

Total Insolvencies	125,807
Bankruptcies	60,669
Proposals	65,138

Further, as per the Report on Insolvency Statistics in Canada January'2018 edition, the total number of insolvencies in January 2018 was 3.2% higher than the total number of insolvencies in January 2017. For the 12-month period ending January 31, 2018, the total number of insolvencies decreased by 2.9% compared with the 12-month period ending January 31, 2017.



CONTACT US



Although due care has been taken in bringing out this update, Luthra & Luthra LLP, Chartered Accountants does not own the responsibility for any error or omission. The users are advised to cross check with the original material before acting upon the content herein.

The information included herein does not relate to any specific case of an individual or a legal entity. It is therefore advised that professional advice on individual cases is always sought. Luthra & Luthra LLP, Chartered Accountants assumes no responsibility for decisions made by the reader based on this Newsletter.



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