



Rajput Jain & Associates

Chartered Accountants

An ISO 9001:2008 Certified Firm

ABOUT RAJPUT JAIN & ASSOCIATES

Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders.

Focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.

Rajput Jain & Associates, a professional firm, offers its clients a full range of services, to serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields

Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

Overall Summary & Case Laws of Insolvency and Bankruptcy Code, 2016

Appeals under SARFAESI/DRT/IBC Code

- **SARFAESI:** Deposit **50%** of Debt
- **DRT:** Lessor but not less than **25%**
- **DRAT:** DRAT within 30 days, can be extended 15 days, So total 45 days may be available and appeal to supreme court within 45 days, can be further extended 15 days, then 60 days may be available.
- **IRP Period:** There is normal time of 180 days available, further extension 90 days, chairperson of the DRAT may extend 10 days more with reasons to be recorded, means total 280 days available.
- **Fast track Process:** Corporate Debtor/ LLP/ Small Company/ Start Up/ Unlisted Assets Less than 1 crore. File NCLT with proof of default of information utility or any other method prescribed. Normal 90 days available, further extension 45 days on RP application so total 135 days available.

Application to AA Rules

- **Form 1:** Application by FC
- **Form 2:** Written consent by IRP
- **Form 3:** Form of Demand Notice
- **Form 4:** Form of Notice with which invoice demanding payment to attach
- **Form 5:** Application by OC
- **Form 6:** Application by corporate debtors

IPA Rules

- **Form A:** Application for certificate of Registration
- **Form B:** Certificate

IP Rules

- **Form A:** APPLY FOR REGN BY IP (INDIVIDUAL)
- **FORM B:** CERTIFICATE TO IP
- **FORM C:** APPLN BY IP ENTITY
- **FORM D:** CERTIFICATE TO IP ENTITY
- **FORM E:** ANNUAL STATEMENT OF PROF FEES OF IP
- **FORM F:** CESSATION/JOINING OF DIRECTOR/PARTNER IN IP ENTITY
- **FORM G:** ANNUAL STATT OF TURNOVER OF IP ENTITY

CIRP Rules

- **FORM A-** PUBLIC ANNOUNCEMENT
- **FORM AA-** WRITTEN CONSENT TO ACT AS RP
- **FORM AB-** WRITTEN CONSENT TO ACT AS AR
- **FORM B-** PROOF OF CLAIM BY OC EXCEPT WORKMAN/EMPEES
- **FORM C-** CLAIMS BY FC
- **FORM CA-** CLAIM BY FC IN A CLASS
- **FORM D-** CLAIM BY WORKMAN/EMPEE
- **FORM E-** CLAIM BY AR FOR WORKMAN/EMPEE
- **FORM F-** CLAIM BY OC (OTHER THAN OC AND FC)
- **FORM FA-** APPLN FOR WITHDRAWAL OF CIRP
- **FORM G-** INVITATION FOR EXPRESSION OF INTEREST
- **FORM H-** COMPLIANCE CERTIFICATE

Liquidation Process after CIRP Rules

- **SCH 1-** MODE OF SALE
- **SCH 2-** FORM A-REPORTING CONSULTANTS/STAKEHOLDERS
- **FORM B-** PUBLIC ANNOUNCEMENT
- **FORM C-** PROOF OF CLAIM BY OC EXCEPT W/E
- **FORM D-** PROFF OF CLAIM BY FC
- **FORM E-** PROOF OF CLAIM BY W/E
- **FORM F-** PROOF OF CLAIM BY AR FOR W/E
- **FORM G-** PROOF OF CLAIM BY OTHER STAKEHOLDER

Procedure for Governing Board Meetings-Rules

SCHEDULE I- OATH OF OFFICE AND SECRECY

SCHEDULE II- CHARTER OF CONDUCT FOR MEMBERS OF BOARD

Information Utilities Rules

FORM A- APPLN FOR CERTIFICATE OF REGN

FORM B- CERTIFICATE OF REGISTRATION

FORM C- INFORMATION MAY BE ACCEPTED IN THIS FORM WITH SUCH MODIFICATIONS AS IU DEEMS FIT

Voluntary Liquidation Process Rules

SCHEDULE I

FORM A- PUBLIC ANNOUNCEMENT **FORM B-** CLAIM BY OC EXCEPT W/E **FORM C-** CLAIM BY FC

FORM D- CLAIM BY W/E

FORM E- CLAIM BY AR OF W/E

FORM F- CLAIM BY OTHER STAKEHOLDER

SCHEDULE II- REGISTER FORMATS

Fast track Insolvency Resolution Process Rules

SCHEDULE

FORM A- PUBLIC ANNOUNCEMENT **FORM B-** CLAIM BY OC EXCEPT W/E **FORM C-** CLAIM BY FC

FORM D- CLAIM BY WORKMAN/EMPLOYEE

FORM E- CLAIM BY AR FOR W/E

FORM F- CLAIM BY OC (OTHER FC AND OC)

FORM G- INVITATION OF RESOLUTION PLANS

Employee Services Rules

SCHEDULE I- MODE OF RECRUITMENT, ELIGIBILITY AND COMPOSITION OF SELECTION

SCHEDULE II- EMPLOYEES REVIEW 3 MONTHS BEFORE THEY ATTAIN 55 YRS AGE OR COMPLETE 30 YRS OF SERVICE WHICHEVER IS EARLIER

Grievances and Complaint Handling Procedure

FORM A- COMPLIANT AGAINST (NAME OF SERVICE)

PORVIDER/ASSOCIATE PERSON)

Registered Valuer Rules

ANNEXURE I- MODEL CODE OF CONDUCT FOR RV

ANNEXURE II-....

FORM A- APPLN BY INDIVIDUAL AS RV

FORM B- APPLN BY COMPANY/PARTNERSHIP FIRM AS RV

FORM C-CERTIFICATE OF REGN

FORM D-APPLN OF RECOGNITION

FORM E-CERT OF RECOGNITION RV, ORGABISATION RECOGNITION NO **ANNEXURE III-**GOVERNANCE STRUCTIURE AND MODEL BY LAWS FOR RV **ANNEXURE IV-**ELGIBILITY OF QUALIFICATION AND EXPERIENCE FOR RV

Governance Structure and Model by Laws for RV

PART I

- 1-GOVERNANCE STRUCTURE
- 2-RV ORGANISATION- BYE LAWS
- 3- AMENDMENT OF BYE LAWS
- 4-COMPOSITION OF GOVERNING BOARD

PART II

- I-GENERAL
- II- DEFINITIONS

RV-Composition of Governing Board

MORE THAN HALF DIRECTORS= RESIDENT
NOT MORE THAN 1/4TH DIRECTORS SHALL BE RV MORE THAN HALF=INDEPENDENT DIRECTORS PRESENECE IN QUORM-1 INDEPENDENT DIRECTOR
ID=EXPERT FINNACE, LAW AND MANAGEMENT, NOT RV,
149(6) COMPANIES ACT FULFILLS ID=CHAIRPERSON
MORE THAN HALF= ROUND TO NEXT HIGHER NUMBER NOTE
MORE THAN 1/4TH = ROUND TO BE LOWER NUMBER

Fresh Start Process (Section 80 to 93 IBC)

Provisions

- Income 60,000, assets 20,000, debt 35,000
- Application may be made by person themselves or RP
- Application for FSO (fresh start order) is approved or rejected by AA based on report of RP
- Fresh start order should be shared with all creditors

THERE ARE TWO MORATORIUM-

- Interim moratorium period commence from the date of filing application to the date of admission/rejection of such application
- Post moratorium period commences from date of admission to end of period 180days
- I moratorium, debtor inform business partners that he undergoes FSP
- FSO specifies qualifying debts and other amounts qualifying for discharge

- There is no committee of creditors in FSP
- The debtor cannot travel outside country
- RP can reduce claims based on objections from creditors and apply for orders to AA
- Any creditor aggrieved by action of RP in matter of recording objections, may apply to AA
- RP give opportunity to both debtors and creditor when any objection is raised
- Debtor cannot change any material changes in information/documents since date of application
- RP can be replaced by debtor/creditor based on application to AA
- RP cannot apply to AA for revocation of FSO if he travelled abroad and not returned

LOGICAL SEQUENCE IN FSP IS-

- Application to AA, FSO, final list of qualifying debts by RP, discharge order
- Discharge order can discharge interest, penalties or other sums owned under contract
- Excluded debts ...does not include
- Liability in relation to credit card debt
- Immediate family meaning-
- Dependent mother is included in immediate family.
- Immediate family-means spouse, dependent children and dependent parents
- Debtor should not own a house encumbered or unencumbered
- Application contains financial information of him and his immediate family up to 2 yrs prior to the date of application
- Qualifying debts does not include-an excluded debt, secured debt, any debt which has been incurred 3 months prior to the application date of FSP
- Discharge order to be forwarded to IBBI
- AA direct board within 7 days when application is filed directly by debtor
- IBBI nominate RP within 10 days of receiving direction by AA
- RP examine his report within 10 days to
- AA after receiving application

Section 188 to 195 IBC Code

- Meeting each quarter, 4 meeting in year. Any 3 member may require to have meeting.
- Quorum, if 8 or more then 5, if less than 5 then 3 member. Minutes will be duly numbered
- Whole time member not to take gift. If exceeding Rs. 5000 then give to IBBI
- Minimum 7 MD, ID, SD. ID-2 tenures 3yrs, cooling period 3 yrs
- Not more than 1/4 – IP, Chairperson-ID
- Retirement age- NCLT Chairperson (67 years), Ordinary members (65 years), NCLAT President (70 years), Ordinary Members (67 years), High Court Judge (62 years), Supreme

Court (65 years), Employer (55 years or 30 years) earlier by giving 3 months' notice, Employee Self leave (50 years or 30 years) by giving 3 months' notice

- Information Utility (Managing Director)- not above 55 years but relaxed up to 60 years, may serve up to 65 years.
- Independent Director may be appointed for 3 years- up to 70 years and ID Chairperson

Independent Director

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,

Every Listed public Company

At least 1/3rd of the total number of directors

Audit Committee is must shall consist of a minimum of 3 directors with independent directors forming a majority
Audit Committee is must and shall consist of 2/3rd of members be independent directors

Public Company

Paid up capital ≥ Rs. 10 Crores (**OR**) Turnover ≥ Rs. 100 Crores (**OR**) Aggregate, outstanding loans, debentures and deposits > Rs. 50 Crores- At least 2 directors as independent director.

Information utility

Public, Minimum net worth 50 crore, outstanding shareholders up to 49%, Apply for Regn fees Rs. 50 Lacs, Apply in Form A, 6 months before renewal Rs. 50 Lacs, Certificate valid 5 years, Grant certificate in 60 days,

Share capital: MORE THAN 10% NOT ALLOWED, UPTO 25%-ALLOWED G/S/D/I/FI, UPTO 51%-3 YRS ACTING IN CONCERT, UPTO 100%-INDIAN CO. 3 YRS, PROVIDED NO ONE HOLDS MORE THAN 10%, 100%-CS SG SAC

More than 5% Paid up share capital inform in 15 days

Insolvency Professional Agency

Section 8 company, Minimum net worth 10 crore, outstanding shareholders up to 49%, not subsidiary more than 1 year Apply for Regn fees Rs. 10 Lacs, Apply in Form A, 6 months before renewal Rs. 5 Lacs, Certificate valid 5 years, In principal approval 1 year, but validity 5 years, Grant certificate in 60 days, Nonrefundable application fees Rs. 5 Lacs, No person not more than 5% Paid up share capital

Model Bye Laws and Governing Board of IPA Rules

- IPA CAN AMEND THEIR RULES BY A RESOLUTION PASSED BY VOTES, IN FAVOUR BEING **NOT LESS THAN THREE TIMES** NUMBER OF VOTES CASTED AGAINST RESOLUTION BY DIRECTORS.
- **WITHIN 7 DAYS OF PASSING THE AMENDMENT, IT SHALL BE FILED WITH IBBI.**

- **WITHIN 15 DAYS FROM DATE AMENDMENT MADE EFFECTIVE, SHALL FILE PRINTED COPY TO IBBI**
- **AMENDED BYE LAWS OF APA COME INTO EFFECT ON 7TH DAY OF RECEIPT OF APPROVAL FROM THE BOARD**
- **NOT MORE THAN 1/4TH OF THE DIRECTORS WILL BE IP (EXAMPLE- 12 DIRECTORS THAN MAXIMUM IP WILL BE 3)**
- **MORE THAN HALF OF DIRECTORS SHALL BE RESIDENT IN INDIA (IF 12 DIRECTORS THAN MINUM 7 WILL BE RESIDENT)**
- **MINIMUM 1 INDEPENDENT DIRECTOR TO BE PRESENT IN MEETING**
- **AN ID WILL BE CHAIRPERSON**
- **MINIMUM THRESHOLD NUMBER IN GRIEVANCE REDRESSAL COMMITTEE CONSTITUTED BY GOV BOARD IS 3.(THREE)**
- **CHAIRPERSON OF ALL COMMITTEES= INDEPENDENT DIRECTOR EXCEPT ADVISORY COMMITTEE**
- **AT LEAST 1 MEMBER OF GRIEVANCES REDRESSAL COMMITTEE SHOULD BE IP**
- **AN APPEAL CAN BE PREFERRED AGAINST DECISION OF IPA IN RESPECT TO MEMBERSHIP....TO WHOM...ANS: MEMBERSHIP COMMITTEE**
- **MONITORING POLICY OF MONITORING COMMITTEE MONITORS PROFESSIONAL ACTIVITY OF IP**
- **ON COMPLETION OF 30 DAYS FROM DATE OF ACCEPTANCE OF SURRENDER, HIS/HER NAME WILL BE STRUCK OFF IPA IS AWARE THAT NON RESIDENT IN INDIA**
- **WHEN IP MEMBER OF IPA IS BECOMING NON RESIDENT- TEMPORARY SURRENDER OF MEMBERSHIP AT LEAST 30 DAYS BEFORE**

Formation of CoC in How much Time

CIRP: IRP TO FILE REPORT TO AA FOR CONSTITUTION OF COMMITTEE IN 21 DAYS FROM HIS APPOINTED DATE

Fast track: FORMATION OF CoC WITH IN 21 DAYS FROM DATE OF OF INTERIM RESOLUTIONAL PROFESSIONAL (IRP) APPOINTMENT

1st Meeting when to held

CIRP: IRP TO HOLD 1ST MEETING **WITHIN 7 DAYS** OF FILING REPORTS /S 17.

Fast track: IRP TO HOLD 1ST MEETING **WITHIN 7 DAYS** OF FILING THE REPORT UNDER THIS SECTION

Convene Meeting- 33% Quorum required in both CIRP and Fast track (but may modified and to be adjourned same time place next day)

Notice Reduction Time

CIRP: BEFORE 24 HOURS, MINIMUM, MEAN 7 DAYS TO 24 HOURS

Fast Track: BEFORE 24 HOURS, MINIMUM, BEFORE 24 HOURS MINIMUM

Mode of Notice

CIRP and Fast track: BY EMAIL-TEXT OR ATTACHMENT, BY ELECTRONIC LINK (UNIFORM RESOURCE LOCATOR), NON EDITABLE ATTACHMENT (PORTABLE DOCUMENT FORMAT), EMAIL-TOTAL NO. SENT, FAILED TRANSMISSIONS, SUBSEQUENT RESENDING (PROOF OF RESENDING) FAILED TRANSMISSIONS- BEYOND CONTROL-NOT RESPONSIBLE, UNIFORM RESOURCE LOCATOR OR ADDRESS OF WEBSITE AND DETAILS HOW TO ACCESS THE DOCUMENT OR INFORMATION

Notice- What it contains

CIRP and Fast track: CONTAINS-VENUE, TIME, DATE OF MEETING, VIDEO CONFERENCING- IF AUTHORIZED REPRESENTATIVE THEN GIVE DETAILS, AGENDA- LIST OF MATTERS, LIST OF ISSUES TO BE VOTED, NOTICE-PROCESS AND, NUMBER FOR VOTING, PROVIDE LOG IN ID AND PASSWORD CONTACT DETAILS OF PERSON-WHO ADDRESS

Participating through video conferencing

CIRP and Fast track: OPTION TO ATTEND THROUGH VIDEO CONFERENCING, OTHER AUDIO AND VISUAL MEAS RP TO ENSURE UNINTERRUPTED AND CLEAR VIDEO AUDIO AND VISUAL CONNECTION

RP TO TAKE CARE

(1) ENSURE SUFFICIENT SECURITY AND IDENTIFICATION PROCED..

(2) TO PROVIDE VIDEO CONFERENCING OR OTHER AUDIO AND VISUAL FOR EFFECTIVE TRANSMISSION AND PARTICIPATION RECORD AND MINUTES

(3) SAFEGUARDING AND MARKING PHYSICAL RECORDING OR ELECTRONIC RECORDING (4) PARTICIPANTS- ABLE TO HEAR THROUGH AUDIO VIDEO

-DIFFERENTLY ABLED-ALLOW TO ACCOMPANY A PERSON IN INDIA ONLY

Conduct of Meeting

CIRP and Fast track: RP- CHAIRPERSON

RP TO TAKE ROLL CALL, ATTENDING THROUGH VIDEO/AUDIO NAD VISUAL- PARTICIPANT SAY- NAME, MEMBER OR PROXY, LOCATION, MEMBER OR GROUP, WHETHER RECD AGENDA AND MATERIAL, NO OTHER THAN HIM ATTENDING

RP- SPEAK NAME OF PERSONS PRESENT AND CONFIRM QUORUM NO OTHER PERSON ACCESS- WITHOUT RP PERMISSION

MINUTES- ATTENDANCE, DISCLOSE- VIDEO/AUDIO/VISUAL CIRCULATE BY ELECTRONIC MEANS WITHIN 48 HOURS

Voting by Committee

CIRP and Fast track:

28(1) ACTIONS (SALE OF UNENCUMBERED ASSETS UPTO 10% OF CLAIMS, OTHER THAN ORDINARY BUSINESS)-TO CONSIDER. OTHER ACTIONS MAY BE CONSIDERED RP TO TAKE VOTE FOR ALL ITEMS OF AGENDA RP SHALL (1) CIRCULATE, ELECTRONICALLY, WITHIN 48 HOURS, VOTE BY ELECTRONIC MEANS/ELECTRONIC VOTING-SEEK VOTE, WHO DID NOT

PARTICIPATE, WHERE VOTING OPEN FOR 24 HOURS AT END OF VOTING, ELECTRONIC VOTING PORTAL BLOCKED. NO CHANGE, ONCE CASTED, RP WITHIN 24 HOURS (WITHIN 48 HOURS IF ELECTRO), CIRCULATE DECISION –WHO VOTED IN FAVOUR AND AGAINST WITH NAMES.

VOTING BY ELECTRONIC VOTING MEANS-

- SECURED SYSTEM-DISPLAY OF ELECTRONIC BALLOTS, RECORD- FAVOR/AGAINST, COUNT IN ELECTRONIC REGISTRY IN CENTRALIZED SERVER, ADEQUATE CYBER SECURITY.
- SECURED- HARDWARE/SOFTWARE-1234

Section 21 of IBC Code CIRP CoC (Sec 21(1) to 21(10))

- 21(1) IRP –COLLATION OF CLAIMS, DETERMINATION OF FINANCIAL POSITION- CONSTITUTE A COMMITTEE
- 21(2) ALL FC, FC MAY APPOINT AN AR FOR THEM, RELATED PARTY NO VOTING RIGHT BUT IF SOLELY CONVERSION, SUBSTITUTION DEBT INTO EQUITY PRIOR TO INSOLVENCY COMMENCEMENT DATE
- 21(3) 2 OR MORE FC PART OF CONSORTIUM CREDITORS, EACH WILL BE FC AND VOTING **PROPORTIONATELY**
- 21(4) FC AND OC BOTH THEN-FC AND OC SEPARATE COUNT
- 21(5) OC ASSIGNS TO FC THEN FC VOTING RIGHT DOESN'T EFFECT
- 21(6) FINANCIAL DEBT, AS PART OF CONSORTIUM ARRANGEMENT/SYNDICATED FACILITY-PROVIDE SINGLE TRUSTEE FOR ALL FC THEN AUTHORIZED TRUSTEE TO ACT ON BEHALF OF COC EXTENT **VOTING SHARE** REPRESENT HIMSELF TO EXTENT OF VOTING SHARE MAY APPOINT RP AT HIS OWN COST
- 21(6A) FD-(a) TRUSTEE/AGENT THEN- ACT AS AR FOR ALL
- 21(6A)(b) CLASS OF CREDITORS,, IRP MAY APPLY AA ALONG WITH ALL FC, CONTAINING NAME OF RP, OTHER THAN RP, TO ACT AS AR.... PRIOR TO 1ST MEETING OF COC
- 21(6B) REMUNERATION PAYABLE TO AR-
 - (i) UNDER CLAUSE 6A(a)(b)(c) AS PER TERMS OF FD
 - (ii) form part of insolvency cost
- 21(7) IBBI MAY SPECIFY MANNER OF VOTING...FOR FC UNDER (6) AND (6A)
- 21(8) 51% VOTING SHARE NO FC THEN OC
- 21(9) COC SHALL HAVE RIGHT TO HAVE INFORMATION FROM RP
- 21(10) RP WILL PROVIDE INFORMATION TO COC

SARFAESI ACT

SECTION 13: Enforcement of Security Interest

13(1) - WITHOUT INTERVENTION OF COURT OR TRIBUNAL

13(2) -MAY REQUIRE BORROWER BY NOTICE IN WRITING--- WITHIN 60 DAYS PROVIDED THAT NA

(1) ISSUE OF DEBT SECURITIES

(2) DEBENTURE TRUSTEE

13(3)-DETAILS OF AMOUNT PAYABLE BY THE BORROWER

AND THE SECURED ASSETS INTENDED TO BE ENFORCED BY SECURED CREDITOR

13(4) -IF BORROWER FAILS THEN ANY OF THE BELOW ACTION-

(a) take possession of assets, right to transfer right by way lease, assignment (b)take over management

Provided transfer by way of lease, assignment only if substantial part is security of debt. Provided- related business only (in case of mix)

13(4) (c) - appoint any person to manage secured assets 13(4)

(d) -in case of sale of assets, get the sale amount back **13(5)** - IF 13(4)(d) - is opted them it will be valid discharge

13(5A)-sale of immovable property, reserve price fixed....then secured creditor may make a bid. 13(5B)-if bid is made in section 13(5A) the adjustment to do

13(5C)-sec 9 of Banking Regulation Act shall apply if opted (5A)

13(6) -AFTER TAKING POSSESSION OR TAKE OVER MANAGEMENT-TRANSFER VALID

13(7) -HELD IN TRUST, FIRSST PAYMENT OF COST CHARGES AND SECONDLY DISCHARGE OF DUES

13(8) -PUBLIC NOTICE-(I) SECURED ASSETS SHALL NOT TRANSFER (II) NO FURTHR STEP

SECTION 14 -CHIEF METROPOLITAN MAGISTRATE OR DISTRICT MAGISTRATE TO ASSIST SECURED CREDITOR IN TAKING POSSESSION OF SECURED ASSET

SECTION 16 -NO COMPENSATION TO DIRECTORS FOR LOSS OF OFFICE

SECTION 17 -MEASURES TO RECOVER SECURED ASSETS

SECTION 20-CENTRAL REGISTRY

SECTION 27 - EVERY COMPANY, EVERY OFFICER OF COMPANY, SECURED CREDITOR OR EVERY OFFICER OF SECURED CREDITOR...FINE RS.5000 FOR EVERY DAY

SECTION 29 - IMPRISONMENT UPTO 1 YEAR OR FINE OR BOTH

Various Reports under IBC

Liquidation (after CIRP): HERE PROVISIONS ARE STRICT AS ASSETS ARE LESS. In Liquidation there are **3 Reports**-Preliminary Report, Progress Report (it contains Quarterly reports, Audited Reports, may be 9 to 10 reports, Asset Sale Report. This process make take up to 2 years.

Preliminary Report: To AA within 75 days with details-(1) capital structure (2)estimate A/L on liquid commence date – books.(3)books not reliable-such reliable estimate(4)FURTHER ENQUIRY- PROMOTION, FORMATION AND FAILURE (5) PROPOSED PLAN LIQUIDATION, TIMELINE AND COST OF LIQUIDATION.

Progress Report: (i) 1st Progress Report within 15 days after end of quarter

(ii) Subsequent within 15 days after end of every quarter
(iii) If liquidator ceases in between then Report up to cessation date, within 15 days (for eg. If liquidator ceases on 10th

February then report will be submitted up to 10th feb within 25th February (10+15 days)

(IV) PROGRESS REPORT WILL CONTAIN-

-APPOINTMENT, TENURE AND CESSATION OF APPOINTMENT OF PROFESSIONALS

-STATT PROGRESS IN LIQUIDATION-

LIST OF STAKEHOLDERS, Property remain to be sold, Distribution to stakeholders, Distribution of unsold property, Details fees-fees due and received by liquidator together with activities carried by him, Remuneration Paid to professional appointed by liquidator along with their activities, other expense by liquidator, Development in any material litigation, filing and development in application filed for avoidance transactions, changes if any in estimated liquidation cost

(3) FOR QUARTER-RECEIPTS AND PAYMENT, CUMULATIVE AMOUNT SIUNCE DATE OFLIQUIDATION

(4) STATT MATERIAL CHANGES IN EXPECTED REALIZATION OF PROPERTY, Provided that this is not accessable to anyone except AA permission

(5) 4TH QUARTER-END OF FY, AUDITED ACCOUNTS OF LIQUIDATOR FOR YR- RECEIPTS ANDPAYMENTS.

-IF LIQUIDATOR CEASES THE UPTO DATE OF CEASING REPORT WITHIN 15 DAYS OF DATE OF CEASING

Asset Sale Report

LIQUIDATOR MAY SELL-ON STANDALONE BASIS, INSLUMP SALE, IN SET OF ASSETS IN LIQUIDITY, ASSETS IN PARCEL, CD AS GOING CONCERN, BUSINESS OF CD AS GOING CONCERN (NO SECURITYINTEREST)

Voluntary Liquidation: COMPANY HAS SUFFICIENT FUND TO PAY LIABILITIES. ALL LIABILITIES ARE PAID IN NORMAL COURSE AND COMPANY IS CLOSED. There are 2 Reports-Preliminary Report, Final Report

Preliminary Report: To AA within 75 days with details-(1) capital structure (2)estimate A/L on liquid commence date – books.(3)books not reliable-such reliable estimate(4)FURTHER ENQUIRY- PROMOTION, FORMATION AND FAILURE (5) PROPOSED PLAN LIQUIDATION, TIMELINE AND COST OF LIQUIDATION.

Final Report: A statement showing Assets disposed off, debts discharged, No litigation pending, A sale statement- Asset realizable value, cost, explanation for shortfall if value less than registered valuer, person to whom sale, other relevant details, liquidator send final report to Registrar and Board, liquidator to send final report to AA with application 59(7).

Section 7: Financial Creditors

Any Person to whom a financial debt is owed & includes a person to whom such debt legally assigned or transferred.

Section 9: Operational Creditors

Any Person to whom an operational debt is owed & includes a person to whom such debt legally assigned or transferred.

Section 10: Corporate Debtor

A corporate person who owes a debt to any person.

Insolvency Resolution Professional

Appointment by adjudicating authority within 14 days from admission of application,

Tenure shall not exceed 30 days from the date of appointment

Resolution Professional

Appointment by Committee of Creditors may in their first meeting- within 7 (Seven) days of Constitution of Committee, Resolve to appoint the Interim Resolution Professional as a Resolution Professional **(OR)** Replace the Interim Resolution Professional by another Resolution Professional.

Resolution Professional shall conduct the entire Insolvency Resolution Process and manage the operations of the company during the corporate Insolvency Resolution Process Period. Resolution Professional shall exercise all such powers and duties as are vested on the Interim Resolution Professional. All Meetings of the Committee of Creditors shall be conducted by the Resolution Professional.

Duties of Resolution Professional

Meeting of CoC- Convene and attend all the meetings, present all resolution plans at the meetings.

Documents- Maintain an updated list of claims, Prepare the information memorandum

Rights- Take immediate custody and control of all the assets including business records of the company/LLP, Represent and act on behalf of the company/LLP with third parties.

Replacement of Insolvency professional

CoC to replace the Resolution Professional any time during the pendency of IRP. CoC may forward name of another Insolvency Professional to the Adjudicating Authority. The Adjudicating Authority shall forward name of proposed Resolution Professional to the Board for confirmation. On confirmation being received from the Board, appoint him as Resolution Professional.

Committee of Creditors

In interim resolution professional shall- collate all claims and determine of financial position to constitute a committee of creditors- comprising of all financial creditors and all the

decision of committee taken by vote of not less than 75%. If an Operational Creditor has assigned or legally transferred any Operational Debt to a Financial Creditor, the Assignee of Transferee shall be considered as an Operational Creditor to the extent of such assignment or legal transfer IBC Board may specify the manner of determining of voting share.

Resolution Plan

Preparation of Information Memorandum for formulating a Resolution Plan. Providing to Resolution Applicant access to all relevant information. Resolution Applicant will submit a Resolution Plan to the Resolution Professional prepared as per Information Memorandum. Examination of Resolution Plan, Presentation of RP to CoC for Approval, Submitting Resolution Plan to Adjudicating Authority, Adjudicating Authority may by order approve the Resolution Plan, Moratorium Period ends- R P will be binding on the Corp. Debtor, its Employees, Members, Creditors, Guarantors & other Stakeholders. If Resolution Plan not approved or not ready within 180 days or adjudicating authority rejects the Resolution Plan. It will pass a Liquidation Order, R P will act as a Liquidator and all the powers of the Board of Directors will vest with the Liquidator.

Allotment of Shares

The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation;

Section 236 Purchasing of minority shares

Any person or group of persons becoming **90%**. Majority or holding **90%** of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

Section 247 of Companies Act, 2013

Sec 247(1): Valuation by Registered valuer Where a valuation is required to be made in respect of: -Any property, Securities or goodwill or - Net worth of a company or its liabilities.

Sec 247(2): The valuer appointed under sub-section (1) shall make an impartial, true and fair valuation.

Sec 247(3): If a valuer contravenes the provisions of this section the valuer shall be punishable with: If no intention to defraud- Fine Rs. 25000 to Rs. 100000. If intention to defraud-Fine Rs. 100000 to 500000 and imprisonment up to 1 year.

Further any person contravening this section, shall not be eligible for registration until expiry of 5 years from the date of completion of punishment (Rule 3(3)).

Sec 247(4): Where a valuer has been convicted under sub-

section (3), he shall be liable to—refund the remuneration received by him to the company; and pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements made in his report.

CASE LAWS OF INSOLVENCY AND BANKRUPTCY CODE 2016

SREE METALIKS LIMITED AND ANOTHER V. UOI AND ANR.

Calcutta High Court observed that the requirement of NCLT and NCLAT to adhere to the principles of natural justice be determined from Section 7(4) of the Code and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. It held that, the NCLT is obliged to afford a reasonable opportunity to the financial debtor and it may do so prior to admitting the petition filed under Section 7 of the Code.

M/S. STARLOG ENTERPRISES LIMITED V. ICICI BANK

Section 424 of the Companies Act, 2013 requires the NCLT and NCLAT to adhere to the principles of natural justice. Held, it is the mandatory duty of the Adjudicating Authority to issue notice before admitting application for CIRP u/S 9 of the Code.

M/S. INNOVENTIVE INDUSTRIES LTD. V. ICICI BANK & ANR.

Different decisions of the Hon'ble Apex Court illuminated to determine as to how far rule of natural justice is an essential element. The Tribunal observed that it is mandatory for the adjudicating authority to follow the Principles of rules of natural justice while passing an order under the Code. It held that the Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by the corporate debtor and to find out whether the application is complete and or there is any other defect required to be removed. However, adherence to Principles of natural justice does not mean that in every situation the adjudicating authority is required to afford reasonable opportunity of hearing to the corporate debtor before passing its order.

UNIGREEN GLOBAL PVT. LTD.

Broad guidelines pertaining to disclosures to be made by the Corporate Debtor have been enunciated under the Code. Costs imposed u/S 65 of the Code with a view to discourage the parties from abusing the process envisaged under the Code.

KIRUSA SOFTWARE PVT. LTD. V. MOBILOX INNOVATIONS PVT. LTD.

Adjudicating Authority to examine whether 'notice of dispute' in fact raises the dispute and that too within the parameters of two definitions - 'debt' and 'default'.

Definition of 'dispute' is inclusive and not exhaustive under the Code and applies to all kinds of disputes in relation to 'debt' and 'default'.

M/S. ONE COAT PLASTER V. M/S. AMBIENCE PVT. LTD. & SHIVAM CONSTRUCTION CO. LTD.

Definition of 'dispute' U/s 5(6) of the Code elucidated and held to be an illustrative one. Also, NCLT U/s 8(1) has sufficient room to determine whether a 'dispute' exists.

ESSAR PROJECTS INDIA LTD. V. MCL GLOBAL STEEL PVT. LTD.

Section 5(6) read with Section 8 of the IBC reveals that the Corporate Debtor needs to prove that the 'dispute' is in existence either by way of suit in court of law or arbitration. A mere mentioning that the 'dispute' is in existence in relation to a debt is not sufficient.

M/S. DF DEUTSCHE FORFAIT AG AND ANR. V. M/S. UTTAM GALVA STEEL LTD.

'Dispute' held to be a dispute in a suit or arbitration and not otherwise. 'Existence of dispute' held to be pendency of either suit or arbitration proceeding before the receipt of notice u/S 8 of the Code.

NIKHIL MEHTA & SONS (HUF) & OTHERS VS. AMIR INFRASTRUCTURE LTD.

Case Reference: Applicant booked units in Real Estate projects of CD, CD agreed for assured returns on delayed possessions, multiple winding up proceedings were filed against CD, Applicant approached NCLT as FC.

Order: Applicant were not FC as no time value of money available, Dismissed, Further in Col. VINOD AWASTHY VS AMR INFRASTRUCTURE LTD. also dismissed on similar grounds, Applicant filed under OC.

CULROSS OPPORTUNITIES SP AND PETER BECK & PARTNERS VS. SHARON BIO- MEDICINE LTD.

Case Reference: Applicant were FCCB Holders, FCCB to be converted into Equity Shares at the option of Bondholders, Bondholders extended conversion terms, Applicant approached NCLT as FC

Order: Application admitted as FCCB holders are Financial Creditors (FC)

ICICI BANK VS. PALOGIX INFRASTRUCTURE PVT. LTD.

Case Reference: ICICI filed case in IBC, Competency of the Attorney holder to initiate proceedings raised, strict interpretation & specific authorization from Board required, Whether POA executed before enactment of Code provides right under IBC.

Order: No express authority under IBC, Application rejected

INDIAN BANK VS KADEVI INDUSTRIES LTD.

Case Reference: Indian Bank filed case in IBC, POA executed

before enactment of Code

Order: POA to be passed by Bank is an internal issue, Resolution under IBC to be available in time bound manner, Application admitted

VDS PLASTIC PVT. LTD. VS PAL MOHAN ELECTRONICS PVT. LTD.

Case Reference: OC filed application considering that no dispute persist since there are no pending suits or arbitration at the time of Notice issuance, CD showed existence of dispute though no suits/arbitration pending, CD argued that Definition of Dispute is inclusive

Order: Definition not limited to prior suit or arbitration, OC submission upheld

DF DUETSCHER FORFAIT AG AND ANR. VS. M/S. UTTAM GALVA STEEL LTD.

Case Reference: CD had entered into supplies of Billets with AIC Handels GmbH, AIC discounted these bills with DF Deutsche through assignment, OC files case with NCLT

Order: No pleading or defending party, the terminology like Petitioner/ Respondent or Plaintiff/ Defendant is not present in IBC, Not an adversarial proceeding, Ratio Legis more important than Ratio Decided, Case admitted.

ANNAPURNA INFRASTRUCTURE PVT. LTD. & OTHERS VS SOIL INFRA RESOURCES LTD

Case Reference: OC filed with IBC, OC had earlier approached for Arbitration for which Award was pronounced, Arbitration Award was challenged and appealed.

Order: Arbitration Award is not final as the appeal is pending, so dispute exists., OC has availed one remedy & second remedy under IBC is against principles of Judicial administration, Would promote Forum shopping, Application rejected.

J.K. JUTE MILLS COMPANY LIMITED V. M/S. SURENDRA TRADING COMPANY

Case Reference: NCLT delayed the proceedings for admitting/rejecting application, CD objection was not taken cognizance, CD approached NCLAT

Order: The time period of 14 days prescribed u/s 7, 9, 10 is to be counted from the date of receipt on which it is listed for admission / order, NCLT can in appropriate cases admit or reject cases after the prescribed period., Time is the essence of the Code, Application being defective/incomplete to be rejected by NCLT.

PRIDECO COMMERCIAL PROJECTS PVT. LTD. VS ERA INFRA ENGG LTD.

Case Reference: OC approached NCLT, CD challenged the order of NCLT citing no Notice of claim u/s 8 provided, OC argued that Notice as issued u/s 271 of Companies Act to be treated as Notice under IBC.

Order: Notice u/s 8 is mandatory, NCLT Order set aside.

DEEM ROLL-TECH LTD. VS R. L. STEEL AND ENERGY LTD. SPECULUM PLAST PVT. LTD. VS PTC TECHNO PVT. LTD

Case Reference: OC filed under IBC, Debt time barred under the Limitation Act, 1963

Order: Provisions of Section 433 of Companies Act applicable to IBC, Debt being time barred, proceeding under IBC not maintainable, Cases rejected.

URBAN INFRASTRUCTURE TRUSTEE LTD. VS NEELKANTH TOWNSHIP & CONSTRUCTIONS PVT. LTD.

Case Reference: FC filed under IBC towards recovery of Debentures, CD claimed that claim time barred.

Order: Debt not time barred as admission in financial statement gives fresh limitation period as per Sec 18 of Limitation Act, Case admitted

ALCHEMIST ASSET RECONSTRUCTION CO LTD. VS HOTEL GAUDAVAN PVT. LTD

Case Reference: Non co-operation by CD to IRP appointed., No details provided and obstruction to it's role.

Order: NCLT instructs DGP/SP to provide sufficient security to IRP for functioning., Banks were asked to accept IRP instructions, Contempt powers against promoters and KMP

CUSHMAN AND WAKEFIELD INDIA VS. UNION

Rule 3(2) require qualification for valuer, Nain contravention that experienced subsidiary or associate of registered valuer can act as registered valuer, no separate class has been carved out under the act, Sec 247 of Companies Act introduced 1st time in Companies Act..... Impartial true and fair valuation, embargo on subsidiaries of joint venture sand associate Rational nexus, SC relied on judgement Haniraj, HC dismissed Writ petitions of joint ventures subsidiaries

LIBERTY HOUSE GROUP PRIVATE LTD. VS. SBI

Apply by plaintiff for interim injunction restraining encashment of BGANDOBJECTION OF Defendant to the subject Jurisdiction of court BG ENCASHMENT KARNE SE ROKO, PLAINTIFF(LIBERTY) SUIT has delayed the receipt if payment.... Nearly 3 months, law requires while vacating injunction..... Balance of equities, Court DIRECTED LIBERTY to pay 25 lacs in each of suits, civil courts can be approached where there is no remedy, RAAMTEKARGL LTDANTEK GRP OF COS., 100 CRORE40 CRORE60 CRORE, sec 231 of CODE us akin to SARFAESI..... in relation to..MARDIA CHEMICALS LTD.... PARTIES have liberty to see redressed of grievances, guarantor bank to make payment hereunder in 1st demand within 3 working days of receipt if notice

AKSHAY JHUNJHUNWALA AND ANR. VS. UNION

Difference between FC and OC being irrational unintelligible.... Sec7, 8, 9 shd be struck down, ONLY FC has

right to member if CoC Paradigm shift in conception, SC..Court shd be slow un staying applicability of piece of legislation Economic sphere U just and glaring unconstitutional, Bankruptcy Committee give rationale to FC treat in particular way vis a vis OC Plausible view....

Expeditious resolution of insolvency issue of co. Plausible =Reasonable or that you can believe, HC found nothing on record to take different view ground of breach of principle if natural justice

POWER GRID CORPORATION OF INDIA LTD. VS. JYOTI STRUCTURES LTD.

Sec 34 arbitration proceeding going on.... Issue is whether present proceedings under sec 34 of the Act need to be started as per 14(1)(a) of code, Continuity of proceeding would not case harm.. To any PARTY, proceedings would not hit by embargo of sec 14(1)(a), continuation does not result in endangering, diminishing, dissipating or adversely impact assets

JOTUN INDIA PRIVATE LIMITED VS. PSL LIMITED

NO BAR ON NCLT EVEN winding up petition Pending, High Court recalled.. Vacating order if company court, order may be recalled if there us inherent risk, Non speaking order Non reasoned order, Petition by creditor may have been admitted But provisional liquidator order is not passed

DR. VIDYA SAGAR GARG VS. IBBI

IBBI rejected petitioner is not fit, High court said writ petition is premature Petitioner was given liberty to approach court once discharge appln was disposed if by concerned Trial court, FIR was lodged in name of IP

LEO EDIBLES & FATS LIMITED VS TRO

IT DEPARTT can it stop registration of property in ground of attachment, It depart can claim from liquidation Estate, We are not inclined to grant any interim order that petitioner she not deposit balance sell consideration, Petitioner grievance was with regard to Sub registrar Erragadda Hyderabad in refusing to register its purchase of immovable property in. Liquidation proceeding of VNR INFRASTRUCTURE LTD, sec 178 of Income Tax Act...it was held that IT DEPARTT CANNOT claim a priority in respect of clearance of tax dues of the said co, as provided under section 178(2) and (3) IT ACT Sec 36(3)(b)...of Code

AMTEK AUTO LTD

Main contention was = the selected resolution applicant is not complying with the terms of resolution plan, In this case applicant prayed for- That the resolution applicant be directed to implement the resolution plan as per terms the committee of creditors be reinstated to, Corporate debtor as

a going concern, In this case applicant prayed that IBBI may be directed to initiate the process under section 74(3) of the code, Where the corporate debtoron whom the approved resolution plan is binding under section 31, knowingly and wilfully contravene any of the terms of such resolution plan or abets such contravention, such corporate debtor ...shall be punishable with imprisonment of not less than one year but may be extended to five years or with fine which shall not be less than one lac rupees but may extend to one crore or with both, Where corporate debtor contravenes wilfully... NCLT held that the applicant or financial creditors approach IBBI or the Central Govt, The NCLT cannot pass order exceeding jurisdiction as it cannot lay guideline

STERLING SEZ AND INFRASTRUCTURE LIMITED IBC

The applicant sought relief- to direct the enforcement directorate to release the attachment on all the assets and properties of the company, Since the attachment order passed by the PMLA court hit by the provisions of section 14 of code and considering the overriding effect of IBC code under section 238 , this tribunal is of the considered view that the attachment order under PMLA act is nullity and non-set in law, The purpose and object of IBC is for resolution of corporate debtor by maximizing the value that can be received the creditors and stakeholders, IBC override PMLA

STATE BANK OF INDIA VS. AGR

This was held by NCLT Delhi branch, SBI initiated CIRP against AGR Ltd under section 7 of IBC code for default of Rs. 540,22,62,958 repayment of loan...540 lacs, The entity who submitted resolution plan is not interested in implementing it, AA (NCLT) keeping in view the conduct of resolution applicant saddled them with a cost of Rs.1 lac to be paid to the CD.

ESSAR STEEL ASIA HOLDING LTD. VS. SATISH KUMAR GUPTA

Application was filed seeking direction from the NCLT to place the matter before the meeting of CoC, Applicant made a plea that their dues be considered in similar footing as per section 12a of the code, Facts of section 12 a....The AA may allow the withdrawal of application admitted under section 7, 9 or 10 of IBC code on an application made by applicant with approval of 90% voting share of the committee of creditors in such manner as may be specified, There is no provision for making settlement of the case and closing the CIRP other than application by financial creditors / operational creditors, NCLT found no ground by the RP and CoC not accepting the settlement.

ASSET RECONSTRUCTION COMPANY INDIA LTD. VS. VICTORY HOTELS LTD.

One of the contention was that all resolutions passed by CoC

is to be passed with 66% voting share, Section 28(1) of code stipulates that all matters to be decided by CoC with not less than 51% votes except otherwise provided in code. ..What is otherwise....Section 28(8) stipulates the matters for passing of resolution by 66% vote, Requisite majority...51%

EDELWEISS ASSET RECONSTRUCTION CO. LTD. VS AML STEEL & POWER LTD

A miscellaneous appeal was made by resolution professional under section 60(5)(c) for extension of time period from CIRP period, Relied on following case- Quinn Logistic India Pvt Ltd vs. Mac Soft Tech P Ltd, NCLT considering the extra ordinary situation that the assets are in Naxalite prone area and efforts are being made by the RP and the CoC to reach and finalize a resolution plan , excluded 90 days from the CIRP

BELTHANGADY TALUK RUBBER GROWERS MARKETING & PROCESSING COOPERATIVE SOCIETY LTD VS. FALCON TYRES LTD

Case was against corporate debtor by operational creditor, Basic documents on which decision relied- invoices and purchase order, Section 9 case, Demand notice under section 8.

MERCHEM LIMITED (NITREX CHEMICALS INDIA LTD VS. RAVINDRA BELEYUR AND ORS)

Main contention was to give opportunity to the RA to attend CoC meeting, Giving the opportunity to the resolution applicant to attend CoC meeting is provided in section 30(5) of IBC code, Placed reliance on following cases- ANG INDUSTRIES LTD VS. SHAH BROTHERS ISPAT LTD, RAJPUTANA PROPERTIES PVT. LTD. VS. ULTRATECH LTD

AFFINITY FINANCE SERVICES P LTD VS. KIEV FINANCE LTD

Law considered by NCLT as to power to reviews its own orders, Application was filed by liquidator under section 12(2) read with 60(2) of IBC code with a request to recall and revoke the order of liquidation of cd passed by AA on 10.9.2018 as after the order was passed the prayer was made, NCLT held that since order of liquidation has already been passed, it cannot reviews or recall its order and rejected application.

NAG YANG SHOES P LTD

Applicant was filed by applicant resolution bidder under section 11 of the NCLT rules 2016 praying to pass order directing liquidator to extend the payment date in compliance with corporate resolution plan, there is no specific provision in IBC code to give extension of time for compliance of resolution plan, Application is infructuous and stand dismissed, The application was for extension of time for payment of 75% of the amount is not in line with bid agreement and also there is no specific provision in IBS code

to extend time, Further 2nd bidder has paid full amount of bid amount, In the circumstances. So application is infructuous.

JHV DISTILLERIES AND SUGAR MILLS LIMITED

Petition was for liquidation of the corporate debtor by financial creditor, RP applied for liquidation of corporate debtor, without approval of CoC and without inviting corporate resolution, the RP applied for liquidation.

AVINASH RAJ CONSTRUCTION PLTD

Financial creditor made application against Avinash Raj, The definition of financial debt has been defined in section 5(8) (a), Money given by financial creditor is not financial debt.

KARAGAM SPINNERS P LTD AND E SREE METALIKS LIMITED AND ANOTHER VS. UNION OF INDIA

Application has been filed by the regional commissioner in tcp/225(ib)/2017, 1st priority be given to epfo dues over all other dues, Direction be given to rp to drop conclusion that epfo should be made responsible for missing machinery, Applicant submitted that as per section 8 of epf act 1952, the amount due to EPFO is to be recovered from the employer, Liquidator has correctly recorded the epfo dues.

SIDBI VS. TIRUPATI JUTE INDUSTRIES LTD

The legislatures has not ensured the AA (NCLT) with the jurisdiction or authority to analyse or evaluate commercial decision of the CoC much less to enquire into the justness of rejection of resolution plan by dissent financial creditor, Cd was liquidated as a going concern, Aggrieved by selection of the resolution applicant, two other non-selected resolution applicant filed separate application for cancellation of selected resolution plan.

ASSET RECONSTRUCTION COMPANY (INDIA) P LTD VS, SHIVAM WATER TREATERS LTD

Main contention of RP was non-cooperation of ex directors of cd in taking possession of the asset by RP, A section 70 as referred in the case is – punishment for misconduct in course of CIRP, After taking full control of cd, RP has to comply with directions of NCLAT, Fact was conformed that RP has to comply with (a) and (b) after taking possession of assets from

EDELWEISS ASSET RECONSTRUCTION CO, LTD VS. BHARATI DEFENCE AND INFRASTRUCTURE LTD

Section 7 by financial creditor, The resolution plan proposes to right size the current workman employees and consultants employed/ appointed by the company...NCLT ordered, NCLT is of strong opinion that it would be inappropriate to approve such plan which contravene law, NCLT is of strong that it would be inappropriate to approve such plan.

ARCELORMITTAL INDIA PRIVATE LIMITED VS. SATISH

KUMAR GUPTA & ORS

The first case considering the newly inserted section 29A to the insolvency and bankruptcy code, 2016, the court given liberty to the parties to submit resolution plan, Supreme Court applied the special power under article 142 of the constitution of India to allow party to submit resolution plan even if it is ineligible under I B code, 2016.

MACQUARIE BANK LTD. VS SHILPI CABLE TECHNOLOGIES LTD.

SC observed that A demand notice of an unpaid operational debt can be issued by A lawyer on behalf of the operational creditor if properly authorised under section 8 of the code must be read as including an operational creditor authorised agent and lawyer, the notice issued by the advocate on the behalf of the appellant can't be treated as notice under section 8 of the 'I & B code, the demand notice was signed by the advocate of the corporate debtor and the corporate debtor has authority as per the prescribed forms.

SHIVAM WATER TREATERS PVT. LTD. VS. UNION OF INDIA

Supreme court said high court is requested not to enter into debate pertaining to the validity of insolvency and bankruptcy code 2016 or the constitutional validity of NCLT, this was a SPL...Special leave petition, SC said-SC order does not debar the petitioner to challenge the validity of composition of the national company law tribunal, validity or the constitutional of the insolvency and bankruptcy code 2016 under article 32 of the constitution

B K EDUCATIONAL SERVICES LTD VS. PARAG GUPTA

SC considered order of NCLT and NCLAT – the provisions of the limitation act were not applicable for initiation of corporate insolvency resolution process, the Supreme Court held that NCLAT has erred in holding that the right to apply under section 7 of the code for initiation corporate insolvency resolution process accrues from 01.12.2016 i.e. From the date of the code came into force, the limitation act is applicable in case of matters covered under the IB code, supreme court passed order = any dispute being time barred could have been come under the IB code.

CHITRA SHARMA VS. UNION OF INDIA

Proceedings have been initiated under article 32 of the constitution for protecting the interest of home buyers Supreme Court considered the home buyers as financial creditor. Supreme court applied the special power under article 142 of the constitution of India supreme court held that a COC shall be constituted afresh in accordance with provision of the insolvency and bankruptcy ordinance, 2018, more particular the amended definition of the expression financial creditors the court permitted the IRP to invite fresh expressions of interest for the submission of resolution plans by applicants, in addition to the short listed bidders

JAIPUR METALS & ELECTRICALS EMPLOYEES ORGANISATION THROUGH GEN. SEC. VS. JAIPUR METALS & ELECTRICALS LTD. THROUGH ITS MD & SONS

Supreme court set aside the judgement of high court on jurisdiction of this case, The NCLT proceedings will continue from the stage at which they have been left for, The company petition pending before high court cannot be proceeded with further in view of the section 238 of the code, The NCLT was absolutely correct in applying section 238 of the code to an independent proceeding instituted by a secured financial creditor, The appeal before the supreme court was in respect of refusal of the high court to transfer winding up proceedings pending before it to the national company law tribunal, The hon'ble supreme court did not consider, Irregularity in appointment of resolution professional, Irregularity in selecting resolution plan, Irregularity in refusing to accept any resolution plan.

SWISS RIBBONS PVT. LTD. & ANR. VS UNION OF IONDIA & ORS

The constitutional validity of various provisions of the insolvency and bankruptcy code, 2016 was challenged, there is point of contention that there is no difference between financial creditors and the operational creditors, The insolvency code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole, The court observed that earlier experiments in terms of legislations having failed, 'trial' having led to repeated errors that ultimately led to the enactment of the IB code, their is an intelligible differentiate between the financial debts and operational debts, which are unsecured, which is directly related to the object sought to be achieved by the code.

FORECH INDIA PVT. LTD. VS EDELWEISS ASSETS RECONSTRUCTION COMPANY LTD

Section 11 of the IB code ,2016 is of limited application and only bars a corporate debtor from initiating a petition under section 10 of the code in respect of whom a liquidation order has been made, The supreme court observed that until a liquidation order has been made against the corporate debtor, an insolvency petition may be filed under section 7 or section 9, Supreme court declined to interfere with the ultimate order passed by the appellate tribunal because the financial creditor application which has been admitted by the tribunal and is an independent proceedings, The present matter arise from an operational creditor's appeal to continue with a winding up petition that has been filed by the said creditor way back in 2014.

VIJAY KUMAR JAIN VS STANDARD CHARTERED BANK & ORS

The appeal arises out of an appellate tribunal's judgement rejecting the appellant's prayer for directions to the

resolution professional to provide all relevant documents including the insolvency resolution plan in question to the members of the suspended board of directors of the corporate debtor, the bankruptcy law committee report of November, 2015 stated. The court will enable symmetry of information between debtors and creditors, The law must ensure that information that is essential for the insolvency and bankruptcy resolution process is created and available when it is required, The law must ensure that access to this information is made available to all the creditors to the enterprise, either directly or through the regulated professional, The law must enable access to this information to third parties who can participate the resolution process, through the regulated professional.

K.SASHIDHAR V.INDIAN OVERSEAS BANK & ORS

The NCLAT affirmed the order passed by the national company law tribunal, Mumbai bench recording rejection of the resolution plan concerning iii and directing initiation of liquidation process under chapter iii of part ii of the I & b code, The vote of COC for approval exceeded more than 66% of the voting share of the financial creditors and but not 75% yet the benefit of the amended provision could not be availed, as it come only during the pendency of the appeal before the NCLAT, The supreme court declined to exercise the powers under article 142 of the constitution, It was held that as a result the NCLAT has concluded in the impugned decision that the resolution plan of the concerned corporate debtor has not been approved by requisite percent of voting shares of the financial creditor, In absence of any alternative resolution plan presented within the statutory period of 270 days, the inevitable sequel is to initiate liquidation process under section 33 of the code.

SWARAJ INFRASTRUCTURE PVT.LTD V. KOTAK MAHINDRA BANK LTD.

The case involves the right of a secured creditor to file a winding up petition after such secured creditor has obtained a decree from the debts recovery tribunal and recovery certificate, this case deals with doctrine of election.

K. KISHAN VIJAY NIRMAN COMPANY PVT. LTD.

The appeal raises an important question as to whether the insolvency and bankruptcy code, 2016 can be invoked in respect of an operational debt where an arbitral award has been passed against the operational debtor, which has not been finally adjudicated upon, The appellant tribunal was in error in referring to sec.238 of the code. The said section provides the provision of this code shall have effect, notwithstanding anything inconsistent therewith contained in any law for the time being in force or any instrument having effect by virtue of any law.

SUNRISE 14 A/S DENMARK V RAVI MAHAJAN

In the case of the operational creditors, the petition filed by a foreign company need not observe such requirements of a statute which are impossible of compliance, namely, of getting a certificate from Indian financial institutions evidencing default in repayment of a debt, The supreme court set aside the judgement of NCLAT and restore that of NCLAT, A petition filed by an advocate of foreign company would be maintainable if it is not supported by a certificate from Indian financial institutions evidencing default in repayment of debt.

EDELWEISS V. SYNERGIES

Sec 238 overriding effect. Arguments that mergers and amalgamations are not allowed in Resolution plan or merger is violating 30(2)(c)...TO BE REJECTED MEANS MERGER ARE ALLOWED, Resolution plan submitted by applicant cannot be violate in arc 30(2) or sec 230_232 of the Companies Act 2013

CONSOLIDATED ENGINEERING. COMPANY & ANR. ...APPELLANTS. VERSUS. GOLDEN JUBILEE HOTELS PVT. LTD

Claim reduced from 50 crores to 30 crores... Which resulted in bringing down percentage of debt less than 10% of total debt, this order cannot be cited as precedence, Appellate Tribunal further directed that in CASE of contrary decision taken, the OC may file appropriate apply in appropriate forum at proper stage.

SKS POWER GENERATION ... VS. V NAGRAJAN

RELATED to CIRP of Cethar Order was passed by NCLT without deciding 43 and 45 Preferential Transactions and relevant time. Avoiding of Undervaluation shares of Respondents Rs 158 crore.... Directed R10 to pay

EXPORT IMPORT BANK V. ASTONFIELD

Main issue was Shareholder hake no authority in CoC meeting Simply by pledging shares, right of shareholders are not cancelled NCLAT deferred 10(3)(c)...books of account as may be specified, HC considered that writ petition at this point pre mature. Petitioner was given liberty to approach this court once the discharge application was disposed of by concerned trial court, AA held that presumed that shareholder ceases right to vote with regard to company. Their right under 10(3)(c) us not lost. WRONGLY mentioned sec. 7 in judgement

EXPORT IMPORT BANK OF INDIA V. CHL LTD

Deed inly stipulate mode of discharge if guarantee and not nature if liability, once set in motion... Action irreversible, guarantee cannot be invoked as on date as there us in fresh demand sec 128 Indian contract Act, AA unjustified un dismissing apply in sec 7...liability if surety is not co extensive with principal borrower.

RAJENDRA K BHUTA VS. MAHARASHTRA HOUSING

GURUASHISH CONSTRUCTION P LTD VS. MAHARASHTRA

Period of Moratorium comes to end, matter on appeal has been mere academic one. NCLAT finds no merit in appeal, so dismissed, Appeal against NCLT order rejecting application filed BY RP.

GAMMON INDIA LTD VS. NERLAKANTH

Application lies against one of members (partners) if partnership firm, which is a co. Registered under co Act No, Applicant filed under 433e and 433f with 434 of Company Act... For winding up... 54 crore along with interest @15%2 MCQ COMING 15% INTEREST... THIS CASE 24% INTEREST. NO ONE KNOWS IN INDIA AND IBBI DOESN'T REPLY, 3 GRP CO. agreement for 7 story residential building and RP says no satisfactory work,

S C SEKRAN VS. AMIT GUPTA

Liquidator to proceed as per law, verify claims, control assets... Carry for beneficial liquidation, Keep Company as going concern... NCLT not inclined to interfere, 2 appeals were preferred by Hindustan Dord Oliver Ltd and HDO Technology Ltd, Period of pendency of appeal should be excluded, AA said liquidator to take steps under sec 230 of Co Act before selling all assets

FERRO ALLOYS VS. RURAL ELECTRIFICATION BAHADUR SHREE RAM VS. RURAL OR BANK OF INDIA

564 crore Lated 604 crore with interest Principal borrower default... So suit file on corporate guarantor, Corporate guarantee is joint and Several coextensive with principal and can we invoked even without exhausting remedies of principal borrower, pay forthwith along with-- interest within 21 days, AA noticed.. Simultaneous 2 application For CIRP Principal borrower and corporate guarantor.

CANARA BANK VS. CHRONICLE HOLDINGS

NCLT Cannot exclude any court from Moratorium.. Including proceeding pending HC OR SC, NCLAT.. No money suit before SC in article 131 of constitution...DISPUTE GOI AND SG, SC has power under article 32 and HC IN article 226.... Which cannot be curtailed.

SBI Vs. SATISH

NCLAT says matter will be finally DECIDED BY SC. ARECELORMITTAL, IT is not clear why NCLT adjourned twice... DECISION OF SC AND COC AND PLACEMENT IF RP... NCLAT SAYS NCLAT stated... Hopefully matter we be heard by NCLT, Applicant was given assurance tag in case AA doesn't pass order as per law, AA held that right to property under ARTICLE 300A is not absolute.

PRASAD GEMPEX... VS. STAR AGRO

RP rejected claim if FC OC... HOW AND WHY Applicant Assailed, RP has no power. RP cannot forfeit claims No

judicial powers after rejection and after Moratorium... Ant remedy4)2RASTAR AGROASSAM CO5) SECTION 60(6)....STEPS CAN BE TAKEN.

TATA STEEL VS. LIBERTY

No numerous opportunities.. Even bigger person... Tata...OC treat similarly creditors present or video conference can vote.... Absent creditors no Vote, RA MAKING belated bid.... Allowed No, CoC can allow resolution plan... Beyond prescribed limit, Process Document.... CoC has right to negotiate better terms with RP.

ASHOK JIVRAJKA DIRECTOR ALOK... VS. AXIS

2CIRP against holding and subsidiary, Contention, 1st sue holding and then subsidiary BUT NO...allowed subsidiary 1st Concerned AA... DECIDE IN 3 WEEKS

PRASAD GEMPEX... VS. STAR AGRO

RP rejected claim if FC OC... HOW AND WHY Applicant Assailed, RP has no power. RP cannot forfeit claims No judicial powers after rejection and after Moratorium... Ant remedy4)2RASTAR AGROASSAM CO5) SECTION 60(6)....STEPS CAN BE TAKEN.

DR. VISHNU V. PIRAMAL

Sunrise naturopathy Sun system institute2 corporate guarantors, NCLAT.... Clause... h... Of financial debt 5(8) includes counter guarantee obligations in respect of guarantee. So allowed. ALSO Sec 128 Indian contract Act states.... Which inter alia states guarantor liability is coextensive.. So allowed, NCLAT ALLOWED.... CAN PROCEED TO CORPORATE GUARANTOR

S C SEKRAN VS. AMIT GUPTA

Liquidator to proceed as per law, verify claims, control assets... Carry for beneficial liquidation, Keep Company as going concern... NCLT not inclined to interfere, 2 appeals were preferred by Hindustan Dord Oliver Ltd and HDO Technology Ltd, Period of pendency of appeal should be excluded, AA said liquidator to take steps under sec 230 of Co Act before selling all assets.

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Corporate & Head Office



- Address: 1598, Level-1, Sector 22-B, Chandigarh
- Mobile No: 9555555480, 9811322784, 9871857333
- Email : rajputjainandassociates@gmail.com
- Address: Building No. 53/160 R5, Bhakti Nagar, Pandeypur Varanasi 221002 (U.P) India
- Address: D 301 Omex Royal Apartment Sector 44 Noida, India
- Address: Building No 65 Ward No.10 Lakhe Chaur Marg, Kathmandu Metropolitan Kathmandu, Nepal.

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