

Restructuring & Insolvency

Monthly Newsletter

January 2025

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THE MONTH OF NOVEMBER AND DECEMBER 2024**



STATUTORY UPDATES

Insolvency and Bankruptcy Board of India (IBBI) – Discussion Paper on amendments to IBBI (Liquidation Process) Regulations, 2016 and IBBI (Voluntary Liquidation Process) Regulations, 2017 dated November 19, 2024

- In this Discussion Paper, the Insolvency and Bankruptcy Board of India (**IBBI**) has proposed the following amendments in the IBBI (Liquidation Process) Regulations, 2016 (**Liquidation Regulations**) with the aim of enhancing the efficiency of Liquidation Processes and gaining stakeholder confidence.
 - Auction Framework under Schedule I of the Liquidation Regulations
 - Prospective Bidders shall be allowed to participate in the auction process on the basis of their affidavit of eligibility under Section 29A of the Insolvency and Bankruptcy Code, 2016 (**IBC**). In order to avoid misuse of this provision, it is also proposed that the Earnest Money Deposit (**EMD**) submitted by the bidder shall stand forfeited in case of false declaration under Section 29A.
 - Thereafter, the Liquidator shall conduct his due diligence and conduct verification of the eligibility of the H1 bidder within 3 days from its declaration and place the same before the Stakeholders Consultation Committee (**SCC**).
 - In the event the H1 bid (being above the reserve price) is not acceptable to the Liquidator, the Liquidator shall mandatorily consult with the SCC.
 - Compromise and Arrangement under Regulation 2B of Liquidation Regulations

In order to streamline the process of approval of Scheme under Section 230 of Companies Act, 2013 with sale of a Corporate Debtor as a going concern and to ensure transparency in the process, the IBBI proposes that the Liquidator shall be required to file final report along with Form H before the Adjudicating Authority (**AA**) whenever any application for approval of Scheme under Section 230 of Companies Act, 2013 is filed.
 - Corporate Liquidation Account and Corporate Voluntary Liquidation Account

Corporate Liquidation Account (CLA) and Corporate Voluntary Liquidation Account (CVLA) were opened by IBBI to deposit undistributed amount to the stakeholders (not traceable or otherwise) in order to facilitate the closure of the liquidation processes for the Corporate Debtor. Regulation 46 of the Liquidation Regulations and Regulation 39 of the Voluntary Liquidation Regulations mandate such CLA and CVLA to be opened within the Public Accounts of India. In order to improve overall management and response time to stakeholders, the IBBI proposes that the requirement of opening such CLA and CVLA account within the Public Funds of India be dispensed with, which otherwise leads to multiple hierarchical levels causing delay in distribution to its stakeholders.

- Uncalled/ Unpaid Capital Contribution in IBBI (Voluntary Liquidation Process) Regulations, 2017 (Voluntary Liquidation Regulations)

Regulation 33 of the Voluntary Liquidation regulations required the Liquidator to realise any amount due from any contributory to the corporate person before any distribution thereto. However, in order to avoid unnecessary delays in the process, considering that the Regulations already protect the interests of the stakeholders, IBBI proposes to amend Regulation 33 of the Voluntary Liquidation Process Regulations to allow the voluntary liquidation process to be completed even when there is still some uncalled capital for the corporate person.

Insolvency and Bankruptcy Board of India – Discussion Paper on Monitoring Committee under Corporate Insolvency Resolution Process (CIRP) dated November 19, 2024

- In order to strengthen the regulatory framework for governing the implementation of a resolution plan under the aegis of a monitoring committee and in line with the observations made by the Hon'ble Supreme Court in ***State Bank of India & Ors v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr***, dated November 07, 2024, IBBI proposes to amend Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) which provides for the mandatory contents of a resolution plan, to include the following:
 - A Resolution Plan shall provide for constitution of monitoring committee till the completion of implementation of the Resolution Plan.
 - The monitoring committee proposed shall comprise of the resolution professional or another insolvency professional proposed by the committee (Chairman), nominees of Committee of Creditors (**CoC**) and equal nominees of the successful resolution applicant.
 - A resolution plan may also provide for replacement of a member in the monitoring committee, as may be deemed fit.
 - The monitoring committee shall be required to submit quarterly progress reports to the AA.
 - The successful resolution applicant shall bear the expenses of a monitoring committee.
 - The monitoring committee shall seek appropriate directions from the AA in case the implementation of the resolution plan is not in accordance with the terms thereof.



RECENT JUDGMENTS

Sunil Kumar Sharma v ICICI Bank Limited & Anr. – NCLAT, New Delhi Bench

Judgment dated December 06, 2024 [Company Appeal (AT) (Insolvency) No. 1158-1162 of 2024]

Background facts

- This Appeal has been preferred by the suspended board of director of Jaiprakash Associates Limited (**Corporate Debtor/ JAL**) before NCLAT challenging the admission of Petition under Section 7 of the IBC filed by the Financial Creditor i.e., ICICI Bank Limited (**ICICI**).
- Briefly, ICICI Bank Ltd along with other financial institutions extended credit facilities to the Corporate Debtor. On March 31, 2015, the account of the Corporate Debtor had been declared as a Non Performing Asset (**NPA**).
- Thereafter, a Debt Realignment Plan (**DRP**) was approved by the lenders of the Corporate Debtor on June 22, 2017 in terms of which the debts and its businesses were divided into three buckets being Bucket 1, Bucket 2A and Bucket 2B.
- In the meantime, a Writ Petition being Chitra Sharma v Union of India bearing W.P. No. 744/2017 was filed before the Supreme Court (**SC**) by certain homebuyers of Jaypee Infratech Limited (**JIL**) (subsidiary of JAL), wherein an Interim Order was passed directing the Corporate Debtor to deposit a sum of INR 2000 Crores and that any Assets or Property of JAL is to be sold, prior approval of the Court must be obtained.
- Thereafter, RBI wrote to ICICI Bank Ltd (**ICICI**) directing it to file a petition under Section 7 of the IBC against JAL within 15 days. JAL filed a WP before the Allahabad High Court challenging the letter by RBI, which was dismissed by the High Court. This order was further affirmed by the SC.
- ICICI thereafter filed a Section 7 Petition against the Corporate Debtor before Hon'ble NCLT Allahabad Bench for a default of INR 1269.10 Crores.
- In the meanwhile, the First Motion for the Scheme for approval of DRP was approved by NCLT Allahabad on December 08, 2017, followed by the filing of the Second Motion on January 23, 2018. The Corporate Debtor filed applications in 2019 and 2023 to dismiss or adjourn proceedings, citing ongoing restructuring discussions with ICICI Bank. On May 29, 2024, a One-Time Settlement (**OTS**) proposal of INR 16,016 crores was submitted to ICICI Bank.
- On June 03, 2024, NCLT admitted the Section 7 Petition and rejected the deferment application. This order was challenged by the Appellant before the NCLAT.
- The Appellant argued that all debt of the Corporate Debtor had been waived/ extinguished in view of the execution of a Master Restructuring Agreement (**MRA**) and approval of first motion petition followed by filing of second motion petition before NCLT. The Appellant also argued that the RBI

could not mandate any financial creditor to file any petition under Section 7 of the IBC against any debtor.

- It was also argued that various OTS offers have been submitted to the Creditors which have NOT been rejected till date by the creditors. Further, since the MRA specifically covers the six facilities alleged to be in default and the same having been executed, the debt in question stands extinguished.

Issues at hand?

- Whether the direction of the RBI to the ICICI to initiate CIRP process against the Corporate Debtor determines default of the Corporate Debtor under Section 3(12) of the IBC?
- Whether the MRA covers the 6 facilities claimed by the Section 7 Application of the ICICI Bank against the CD?
- Whether the Financial Creditor has proved debt and default on part of the Corporate Debtor?

The decision of the Tribunal

- The NCLAT affirmed the order passed by NCLT admitting the Corporate Debtor under CIRP noting that the Financial Creditor has been able to establish debt and default i.e., being the only two criteria needed to admit the Corporate Debtor under CIRP.
- The NCLAT Court emphasised on the following principles underlying the IBC for deducing a finding in respect of the issues raised and affirming the Order passed by the NCLT admitting the Corporate Debtor under CIRP.
 - The NCLAT noted the explanation to Section 35AA of the Banking Regulation Act, 1949 to state that it is a default within the meaning of the IBC which plays the foundation for issuing any direction by the RBI to initiate CIRP. In addition to this in *Chitra Sharma v UOI* as well the SC has allowed the RBI's application praying to initiate CIRP against JAL. The NCLAT agrees that it is the Adjudicating Authority who can determine default on the part of the Corporate Debtor which will form the foundation for passing an order for admission of Section 7 application. However, the issue at present is whether the directions issued by the RBI are relevant material on determining this question of default, which has been held in the positive under the statutory scheme under Section 35AA.
 - When a direction by the RBI, the regulator of banking companies, to issue CIRP against the Corporate Debtor then the same direction has to be seen as relevant material for determining an application under Section 7 including the determination of default as defined under Section 3(12).
 - The NCLAT concluded that the debt under the MRA which relates to Bucket 2A which was to be serviced by the Corporate Debtor is not relevant to the facilities for which the Section 7 application has been filed by the FC. Therefore, it is established that the approved Restructuring Plan did indeed create a scheme of arrangement to transfer the debt of INR 11833.55 Crore (including interest) to an SPV, namely Jaypee Infrastructure Development Ltd., which debt was referable to Bucket 2B, and the Section 7 application filed by the ICICI Bank related to debt of Bucket 2B only. Additionally, the MRA entered into between JAL and the lenders did not cover the facilities of which default is claimed by ICICI against the Corporate Debtor.
 - It is reasoned by the NCLAT that a scheme of arrangement with creditors filed by the Corporate Debtor before the NCLT which remains pending cannot stop default or cause any impediment in proceedings under Section 7. It is not relevant that there was no default on part of the Corporate Debtor qua the debt. The scheme of arrangement was to come into effect from July 01, 2017 yet it never did and the debt under Bucket 2B was never transferred to the SPV. Therefore, the debt continued with the Corporate Debtor and default in the debt was clearly made out.
 - The NCLAT reiterated that the interests of the corporate debtor must be detached from those of its promoters/those who are in management and accordingly, disposed of the Appeal.

HSA **Viewpoint**

In our view, this judgement affirms that Debt and Default are the only two criteria for admission of any company under CIRP and the pendency of a scheme of Compromise and Arrangement under the Section 230-232 of the Companies Act, 2013 are not an impediment for the creditor to file proceedings under Section 7 of the IBC.

NCC Limited v Golden Jubilee Hotels Pvt Ltd & Ors. – NCLAT, New Delhi

Judgement dated December 11, 2024 [Company Appeal (AT) (Insolvency) No. 426 of 2020, 430 of 2020, 432 of 2020, 710 of 2020]

Background facts

- These Appeals have been preferred by Operational Creditors and suspended board of directors of Golden Jubilee Hotels Pvt Ltd (**Corporate Debtor**) assailing the approval of the Resolution Plan submitted by BREP Asia II Indian Holding Co. II (NQ) PTE. Ltd (**SRA**) for the Corporate Debtor.
- While four Appeals have been filed by Operational Creditors having provided various services to the Corporate Debtor, the other two appeals have been filed by the suspended director/promoter of the Corporate Debtor challenging the approval of the Resolution Plan (**R Plan**) and its classification as a related party and Promoter of the Corporate Debtor.
- The Appellants argued that there was NIL payment provided in respect of their claims in the R Plan, which is contrary to law and therefore, the R Plan should not be approved. The NCLT held that the Appellant being an Operational Creditor had no locus to challenge the same.
- This order of the NCLT was challenge before the NCLAT wherein, the NCLT was directed to consider whether the Operational Creditors have been given the same treatment as the Financial Creditors under the R Plan and further directed that if the R Plan is found to be discriminatory, it shall be upon the NCLT to pass direction following the Supreme Court (**SC**) judgment of *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.* in Writ Petition (Civil) No. 99 of 2018.
- The Appellants then moved to the NCLT objecting to the R Plan again on the grounds that the CoC approved R Plan discriminates between similarly situated Operational Creditors by creating a Special OCs class under the R Plan. It was submitted creation of a special category of OCs is beyond the scheme of the IBC. Relying on the SC judgment of *Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee)*, [(2021) 10 SCC 623], it was submitted that there cannot be any further classification in the same category of OCs.
- It was also submitted that the R Plan was approved despite it being a Conditional RP wherein all payments are subject to the fulfilment of a condition precedent. This is despite the fact that in the 14th CoC meeting resolution applicants were requested to remove condition precedents from the R Plans.
- The Respondents argued that *Swiss Ribbons* and the Preamble of the IBC are quoted to emphasize that the prime objective of the IBC is resolution of the Corporate Debtor. Further, the Respondents placed reliance on *K. Shashidhar Vs Indian Overseas Bank & Ors* in Civil appeal No. 10673 of 2018 with 10719 & 10971 of 2018 and SLP No. 29181 of 2018 and *Essar Steel* judgment to state that the commercial wisdom of the CoC is supreme and it may involve differential payment to different classes of creditors.
- The SRA submitted that differential treatment within the same class of creditors is legal and permissible and that distribution of dues to OCs can differ and as long as there is an intelligible differentia behind such a difference the same is just fair and reasonable.
- The SRA also argued that the sub-classification is based on valid, intelligible differentia and is correct in law.
- The NCLT rejected the objections by the Operational Creditors and relied on the case of *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.* [(2020) 8 SCC 531] for allowing creation of a sub-class of Operational Creditors.

Issue at hand?

- Whether a separate class of creditors within Operational Creditors can be created?
- Whether differential treatment inter-se the same class of creditors is permissible?
- Whether the NCLAT can direct redistribution without change in the R Plan and infringing on the commercial wisdom of the CoC?
- Whether a conditional R Plan violates provisions of IBC?

Decision of the Tribunal

- The NCLAT upheld the Order passed by the NCLT and rejected the Appeals filed by the Appellants, in view of the following observations.
 - The NCLAT noted that certain creditors play a pivotal role in keeping the Corporate Debtor as a going concern and hence, fair and equitable treatment does not necessarily mean equal treatment among all creditors within the same class.

- The NCLAT reiterated the supremacy of commercial wisdom of the CoC in approving the R Plan including creditor categorization and prioritization.
- The NCLAT observed that creation of a special category of Operational Creditors was necessary for achieving resolution for the Corporate Debtor and was justified in view of their critical nature to the Corporate Debtor.
- Notably, the NCLAT referred the matter to the IBBI and suggested that instead of a straight jacket waterfall mechanism (as provided under Section 53 of the IBC), a calibrated waterfall could be introduced which would ensure that the Operational Creditors are also appropriately taken care of under any R Plan as at present, the recovery made by OC is only 10.57% while the recovery made by FC are at 34.80%.
- In terms of the above observations, the NCLAT disposed of the Appeals.

HSA
Viewpoint

In our view, this suggestion by the NCLAT to adopt the calibrated waterfall mechanism, if implemented, might be a game changer for the Operational Creditors.

Indian Renewable Energy Development Agency Ltd. v Waaree Energies Ltd & Anr. – NCLAT, New Delhi

Judgment dated December 06, 2024 [Company Appeal (AT)(INS) No. 1380 of 2024]

Background facts

- This Appeal has been preferred by the Appellant before the NCLAT challenging the decision of the NCLT, New Delhi (**NCLT**) declaring the Respondent No. 1 i.e. Waaree Energies Ltd as a Financial Creditor of the Corporate Debtor.
- Briefly, it is the case of Respondent No. 1 that it financed the Corporate Debtor i.e. Taxus Infrastructure and Power Projects Pvt Ltd (**Corporate Debtor**) by subscribing 1 Lakh secured Compulsory Convertible Debentures (**CCD**) having face value of INR 1000/- each for a period of 65 months. However, the Respondent No. 1 did not receive the payment under the Project Agreement and hence initiated arbitration proceedings against the Corporate Debtor. Consequently, an Award in favour of Respondent No. 1 was passed.
- Vide Order dated October 10, 2022, CIRP came to be initiated in respect of the Corporate Debtor. Pursuant to the provisions of the IBC, the Respondent No. 1 filed its claim in Form C relying on the Arbitral Award, which was accepted by the Resolution Professional.
- However, certain objections were raised against the status of Respondent No. 1 as a Financial Creditor of the Corporate Debtor and the Resolution Professional obtained a legal opinion in that regard. In view of the Legal Opinion, the Resolution Professional took a view that the Respondent No. 1 is not a Financial Creditor of the Corporate Debtor since the Arbitral Award has not attained finality. The Resolution Professional also moved to the High Court under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside of the Arbitral Award.
- In the meanwhile, the Respondent No. 1 moved to the NCLT challenging the decision of the Resolution Professional rejecting its claim. The NCLT after hearing the parties observed that the Respondent No. 1 is a Financial Creditor of the Corporate Debtor. It further observed that the Award being in the favour of Respondent No. 1 could not have been ignored. Further, CCDs having an interest component signifies time value for money and has to be categorised as a Financial Debt.
- This order passed by the NCLT has been challenged by the Appellants on the basis of the following grounds:
 - No provision of redemption of CCDs.
 - Transaction of conversion into equity shares cannot be termed as a Financial Debt.
 - The investment had no time value of money.
 - Even the Arbitral Award is under challenge.
- The Respondent No. 1 refuting the submissions of the Appellant submitted that debenture is a Financial debt under Section 5 (8) of the IBC. The Respondent No. 1 relied on various clauses of the Debenture Subscription Agreement (**DSA**) to say that the transaction was in the nature of time value of money and is a Financial Debt of the Corporate Debtor.

Issue at hand?

- Whether the transaction entered into between the Corporate Debtor and the Respondent No. 1 by means of Debentures carry a time value of money and is a Financial Debt under Section 5 (8) of the IBC?

Decision of the Tribunal

- The NCLAT upheld the order passed by the NCLT holding that the Respondent No. 1 is a Financial Creditor of the Corporate Debtor under Section 5 (8) of the IBC and consequently, dismissed the Appeal filed by the Appellants.
- The NCLAT took note of various clauses under the DSA and observed that the investor has an option to request for conversion of CCD into equity, which option was to be exercised within a period of 65 months from the date of allotment. The NCLAT further noted that the Respondent No. 1 has already sought for payment of amount with interest and since no payment in lieu of such notice was made and no debentures were converted into equity shares, the same resulted in an event of default, entitling the Respondent No. 1 to claim 24% interest per annum. This shows that the transaction had a time value of money and is therefore, a Financial Debt under Section 5 (8) of the IBC.
- The NCLAT also took note of the judgement passed by the Hon'ble Supreme Court in *IFCI Ltd vs Sutanu Sinha & Ors (2023) SCC OnLine SC 1529* and concluded that the best way to ascertain the nature of a transaction is the examination of clauses of the Agreement between the parties.
- The NCLAT therefore held that the clauses under the DSA showcase time value of money and the same amounts to Financial Debt under Section 5 (8) of the IBC.

HSA **Viewpoint**

By way of this Judgement, the NCLAT highlights the importance of documentation and the intention of parties while executing such documents.

Puneet P. Bhatia v ASREC (India) Ltd & Anr. – NCLAT, New Delhi

Judgement dated December 09, 2024 [Company Appeal (AT)(INS) No. 139 of 2024]

Background facts

- This Appeal has been filed by the suspended director of Barracks Retail India Pvt Ltd (**Corporate Debtor**) challenging the admission order passed by the NCLT, Mumbai Bench (**NCLT**).
- Briefly put, the Corporate Debtor is a garment manufacturing company incorporated under the Companies Act 2013.
- The Corporate Debtor availed certain financial facilities from Bharat Cooperative Bank through sanction letters dated March 21, 2017, August 14, 2018 and March 11, 2020. However, despite restructuring, the Corporate Debtor failed to meet its repayment obligations to the Bank.
- The Bank issued Loan Recall Notice dated December 07, 2020 and requested for clearance of the entire loan amount. The Bank also informed the Corporate Debtor that the RBI officials have classified the account of the Corporate Debtor as NPA on November 01, 2019.
- Later, vide Assignment Agreement dated March 25, 2021, the loans of the Corporate Debtor were assigned to ARSEC. ARSEC later filed an application under Section 7 of the IBC citing the date of default as October 31, 2020. This was objected by the Corporate Debtor in terms of Section 10A of the IBC.
- ARSEC later filed an application changing the date of default to 90 days prior to the declaration of account as NPA by RBI i.e., August 02, 2019. Later, vide Order dated January 09, 2024, the NCLT admitted the Company Petition filed by ARSEC initiating CIRP in respect of the Corporate Debtor.
- This Admission Order was challenged by the Appellant arguing that the Company Petition is barred by Section 10A of the IBC and therefore, the Impugned Order deserves to be set aside.
- On the other hand, the Respondents argued that the date of default is beyond the 10A period, as amended before the NCLT and therefore, the NCLT has correctly initiated CIRP in respect of the Corporate Debtor.

Issue at hand?

- Whether an amendment can be made in the date of default mentioned in a Company Petition?

Decision of the Tribunal

- The NCLAT upheld the order passed by the NCLT allowing the amendment in the date of default by the Petitioner.
- The NCLAT relied on the order passed by the Hon'ble Supreme Court in *Dena Bank v C. Shivakumar Reddy & Anr*, (2021) 10 SCC 330 holding that amendments to an application can be made before the passing of final order in a Section 7 Petition.
- The NCLAT further observed that the mere fact that the restructuring of debt occurred in March, 2020 does not in itself establish that the default arose during the 10A period and therefore, held that the date of default has been correctly identified by ARSEC, as affirmed by the NCLT.

HSA **Viewpoint**

This judgement passed by the NCLAT aids in achieving the objectives of timely resolution under the IBC.

Mohammed Enterprises (Tanzania) Ltd v Farooq Ali Khan & Ors. – Supreme Court

Judgement dated January 03, 2025 [Civil Appeal No. 48-50 of 2025]

Background facts

- These Appeals have been preferred by the Successful Resolution Applicant, the Committee of Creditors (**CoC**) and the Resolution Professional of Associate Décor Ltd (**Corporate Debtor**) challenging the Order passed by the High Court of Karnataka exercising its judicial review interdicting Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor.
- Briefly, CIRP in respect of the Corporate Debtor came to be initiated vide Order dated October 26, 2018. Pursuant to the process under the IBC, a resolution plan was approved by the CoC of the Corporate Debtor on February 11, 2020. Thereafter, an unsuccessful Resolution Applicant moved before the NCLT for consideration of its resolution plan by the CoC, which was allowed by the NCLT. This decision by the NCLT was challenged before the NCLAT and the NCLAT set aside the order passed by NCLT. This Order by the NCLAT was affirmed by the Supreme Court on November 25, 2022.
- In the meanwhile, the suspended director approached the High Court *inter – alia* seeking quashing of meeting of CoC meeting approving the Resolution Plan. Vide Order dated November 22, 2023, the High Court allowed the Writ Petition and set aside the approval of Resolution Plan by the CoC. This Order was challenged by way of Review Petitions by financial creditors and the order was reconsidered by the High Court. However, vide Order dated April 22, 2024, the High Court against set aside the approval of the resolution plan on the basis of natural justice, holding that 24 hours' notice was not granted.
- The Appellants argued that the High Court cannot exercise its discretionary jurisdiction under Article 226 of the Constitution of India in breach of the principles contemplated under the IBC.
- On the other hand, the Respondents *inter alia* argued that the writ petition under Article 226 is not barred, particularly when there is violation of the principle of natural justice.

Issue at hand?

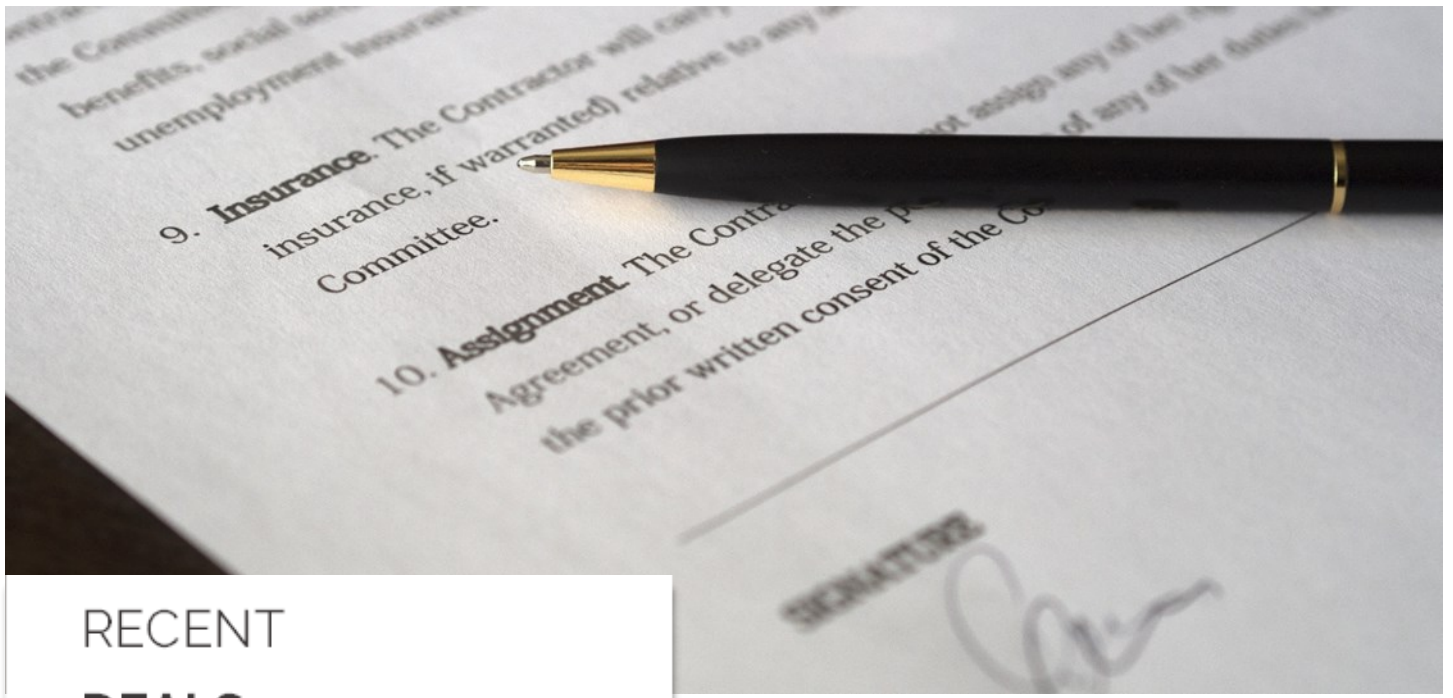
- Whether the debt alleged by the operational creditor falls, continuing before, during and after the Section 10A period, nullify the effect of Section 10A of the IBC?

Decision of the Tribunal

- The Supreme Court held that the High Court ought not to have entertained the Writ Petition filed by the Petitioners and observed that *“The Insolvency and Bankruptcy Code is a complete code in itself having sufficient checks and balances, remedial avenues and appeals. Adherence of protocols and procedures maintains legal discipline and preserves the balance between the need for order and the quest for justice. The supervisory and judicial review powers vested in High Courts represent critical constitutional safeguards, yet their exercise demands rigorous scrutiny and judicious application. This is certainly not a case for the High Court to interdict CIRP proceedings under the Insolvency and Bankruptcy Code.”*
- Accordingly, the Supreme Court directed the NCLT to re-start the proceedings from where it was interdicted by the High Court and complete the same expeditiously.

HSA **Viewpoint**

This judgement emphasises on the objectives and reasons for creation of a special statute for insolvency resolution and dissuades the jurisdiction of any other Civil Court in relation to questions arising out of CIRP of any Corporate Debtor, including jurisdiction of a High Court under Article 226 of the Constitution of India.



RECENT DEALS

Resolution of Neueon Towers Ltd

- The NCLT, Hyderabad bench (**NCLT**) vide Order dated October 23, 2024 approved the Resolution Plan submitted jointly by M/s Preca Solutions India Pvt Ltd, Dr. Madala Srinivasu and Ms. Madala Anithaa (**SRA**), in the CIRP of Neueon Towers Ltd (**Corporate Debtor**), undergoing CIRP in terms of Order dated June 03, 2019 passed by the NCLT.
- Pertinently, the Corporate Debtor is engaged in the business of providing telecom infrastructure services and has its registered office in Hyderabad, Telangana.
- Pursuant to the initiation of CIRP, the Resolution Professional (**RP**) made Public Announcement in Form A on June 05, 2019 inviting claims from the creditors, workers and employees of the Corporate Debtor and from government bodies. Basis the claims received, the RP constituted a Committee of Creditors (**CoC**) for the Corporate Debtor in accordance with Section 21 of the IBC on June 24, 2019. The CoC comprised of nine financial creditors having an aggregate claim of INR 3407.25 Crores.
- On November 04, 2020, a resolution plan submitted by M/s Longview Resources (HK) Ltd came to be approved by 98.70% voting shares of the CoC. However, the same stood rejected by the NCLT on October 14, 2021 and Liquidation order in respect of the Corporate Debtor was passed.
- The Liquidation Order passed by the NCLT came to be challenged before the NCLAT, Chennai Bench wherein, vide Order dated June 12, 2023, the NCLAT, Chennai Bench set aside the Liquidation Order and remanded the plan approval application back to the NCLT.
- However, by that time, the EMD by the then successful resolution applicant had been refunded and the resolution applicant became unresponsive. In view thereof, fresh process was initiated and a fresh Form – G dated July 26, 2023 was published by the Resolution Professional. In pursuance thereto, the Resolution Professional received resolution plans from three Prospective Resolution Applicants (**PRAs**) namely:
 - M/s Preca Solutions India Pvt Ltd
 - M/s Gurupreeth Galvanising Private Ltd
 - M/s Suguna Metals Ltd.
- Later, M/s Preca Solutions India Pvt Ltd entered into a consortium agreement with Dr. Madala Srinivasu and Ms. Madala Anithaa, and the resolution plan being compliant with the provisions of the IBC, has been approved by the CoC with a voting share of 95.89% on July 06, 2024.
- Consequently, the SRA was issued a Letter of Intent by the resolution professional on July 7, 2024 and in terms thereof, the SRA has submitted its Performance Bank Guarantee dated July 10, 2024 for a sum of INR 10.5 Crores.

- As per the Registered Valuers appointed in terms of the IBC, the average Liquidation Value of the Corporate Debtor was determined to be INR 94.56 Crores and the average Fair Value was determined to be INR 135.88 Crores.
- The approved Resolution Plan has a plan value of INR 101.50 Crores and proposes to pay the following amounts within a period of 270 days from the Trigger Date defined under the Resolution Plan.
 - CIRP Costs – INR 10.58
 - Crores Secured Financial Creditors – INR 98.06 Crores
 - Employees – INR 0.10 Crores
 - Government Dues – INR 0.10 Crores
 - OCs other than Workmen and Employees and Government Dues – INR 0.14 Crores
- It is relevant to note that the SRA has reserved its right to implement the resolution plan through a subsidiary/ associate/ SPV or its nominees, which shall be identified within 30 days of the Trigger Date and the same shall be in compliance of provisions of Section 29A of the IBC.
- Notably, the amount of INR 101.50 Crores will be infused by the SRA by way of equity, quasi equity, by means of investor loan and other debt instruments.
- The resolution plan shall be monitored by a monitoring committee comprising of two lead members from the CoC and one member from the SRA and the Resolution Professional shall be the chairman of such committee.
- After taking note of the provisions, the NCLT observed that the Resolution Plan submitted by the SRA meets the requirements under Section 30 (2) and Regulations 37, 38, 38 (1A) and 39 (4) of the CIRP Regulations and is not in contravention of Section 29A of the IBC and therefore, approved the Resolution Plan submitted by the SRA, as approved by the NCLT.
- The NCLT further observed that the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Further, any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited***, [(2021) 9 SCC 321].

Resolution of Sadhna Media Pvt Ltd

- The NCLT, New Delhi Bench (**NCLT**) vide Order dated September 17, 2024 approved the resolution plan submitted by Vigyashree Infrastructure Private Ltd, the Successful Resolution Applicant (**SRA**), in the CIRP of Sadhna Media Private Limited. (**Corporate Debtor**).
- The Corporate Debtor is a private company engaged in the business of Telecommunication, Broadcasting and information supply services.
- The CIRP for the Corporate Debtor commenced pursuant to an order dated March 30, 2022 by the Hon'ble National Company Law Tribunal.
- The Resolution Professional made public announcements in Form-A on April 14, 2022 inviting claims from the creditors of the Corporate Debtor and on receipt thereof constituted the Committee of Creditors.
- The Resolution Professional admitted claims amounting to INR 123.9 Crores in the CIRP of the Corporate Debtor.
- The RP also published Form G on three occasions i.e., June 26, 2022, July 14, 2022 and August 08, 2022 inviting Expression of Interest (**Eoi**) from Prospective Resolution Applicants (**PRAs**). Pursuant thereto, the Resolution Professional received EOIs from 4 PRAs out of which, M/s S.K Jain Infrastructure Pvt Ltd and M/s Vigyashree Infrastructure Pvt Ltd submitting resolution plans for the Corporate Debtor.
- Pursuant to verification under section 29A of the IBC by the Resolution Professional and compliance under the provisions of IBC, the Resolution Professional placed the Resolution Plans before the CoC.
- After extensive deliberation by the CoC in its meetings, the resolution plan submitted by M/s Vigyashree Infrastructure Pvt Ltd was approved unanimously by the CoC on December 17, 2022.
- Pursuant to the approval by CoC, the Resolution Professional issued a Letter of Intent (**Loi**) to the SRA, who in turn submitted its performance guarantee of INR 50 lakhs in favour of Corporate Debtor.
- Further, the FCs shall release their charges on security of corporate debtor held by them and provide NOC/Satisfaction Letter.

- Notably, the average Fair Value of the Corporate Debtor is INR 16.10 Crores and the Liquidation Value of the Corporate Debtor is INR 13.18 Crores.
- The approved Resolution Plan has a Plan Value of INR 13.5 Crores and proposes the following payment to the creditors of the Corporate Debtor:
 - CIRP Cost – At actuals within 60 days from the approval of the Resolution Plan.
 - Unsecured Financial Creditors – INR 13.25 Crores within 90 days from the approval of the Resolution Plan;
 - Operational Creditors - INR 5 Lakhs within 60 days from the approval of the Resolution Plan.
 - Government Dues – INR 20 Lakhs within 60 days from the approval of the Resolution Plan.
- The amount proposed under the Resolution Plan will be infused by the SRA from its internal sources and group companies.
- The plan provides for constitution of a Monitoring Committee within 7 days of the effective date, comprising of one representative from CoC, one representative from the SRA and a third-party professional or the Resolution Professional.
- The NCLT observed that the Resolution Plan meets the requirements of Section 30(2) of the IBC and Regulations 37, 38, and 39 (4) of the CIRP Regulations and accordingly approved the Resolution Plan submitted by the SRA. The NCLT also referred to ***Embassy Property Development Pvt. Ltd. v. State of Karnataka*** directing the Successful Resolution Applicant to seek reliefs and concessions from the appropriate forum in compliance with applicable laws.
- The NCLT noted that the approved Resolution Plan would be binding on the Corporate Debtor, its employees, members, creditors (including the Central and State Governments, as well as local authorities with outstanding dues under any prevailing law), guarantors, and other stakeholders involved in the plan. However, the approval of the Resolution Plan does not imply a waiver of the Corporate Debtor's statutory obligations or liabilities. Such matters will be addressed by the appropriate authorities in accordance with the law and in line with the precedent set by the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*** [(2021) 9 SCC 321].

Resolution of Vikas Multiplex Developers Pvt Ltd

- The NCLT, New Delhi (**NCLT**) vide Order dated December 02, 2024 approved the resolution plan submitted by Mr Ashok Kumar Goyal, the Successful Resolution Applicant (**SRA**), in the CIRP of Vikas Multiplex Developers Pvt. Ltd. (**Corporate Debtor**).
- Pertinently, the Corporate Debtor is engaged in the business of real estate and construction. Its primary asset is the "Vikas Mall" situated in Dehradun, Uttarakhand.
- Omkara Assets Reconstruction Pvt. Ltd. filed company petition seeking initiation of CIRP in respect of the Corporate Debtor, which was admitted by the NCLT vide its Order dated June 15, 2023, and Mr. Sandeep Mahajan was confirmed as the Interim Resolution Professional (IRP). Subsequently, Ms. Ritu Rastogi replaced Mr. Mahajan as the Resolution Professional on February 20, 2024.
- The IRP made public announcement in Form-A on June 17, 2023 inviting claims from the creditors of the Corporate Debtor and intimating the public about the commencement of CIRP against the Corporate Debtor.
- The Resolution Professional later published Form G on August 14, 2023 in two leading newspapers namely Business Standard and Rashtriya Sahara inviting Expression of Interest (**EoI**) from Prospective Resolution Applicants (**PRAs**).
- The Resolution Professional received 5 EoIs. However, despite multiple extensions granted to PRAs for submission of resolution plans, only one resolution plan by Om Telecom Logistics Pvt. Ltd was submitted by December 26, 2023, which was considered to be low as compared to the admitted claims.
- In view thereof, a fresh G dated January 01, 2024 was issued by the Resolution Professional, pursuant to which, the RP received 6 EoIs and accordingly published a Provisional List of PRAs. The RP further issued RFRP and Information Memorandum to the eligible PRAs on January 30, 2024.
- In furtherance of the RFRP and Information Memorandum, the RP received Resolution Plans from only 3 PRAs. The CoC conducted challenge mechanism to improve the financial proposals under the plans received. These resolution plans were then placed before the CoC, who, after multiple rounds of discussions and negotiations, approved the Resolution Plan submitted by the SRA in September 03, 2024.

- Accordingly, the Resolution Professional issued a Letter of Intent (**LoI**) to the SRA on September 06, 2023 and in pursuance thereof, the SRA has submitted a Performance Security of INR 1.72 Crores.
- Notably, the approved Resolution Plan has a plan value of INR 21 Crores and proposes the following treatment to the creditors of the Corporate Debtor:
 - CIRP Costs – INR 35 Lakhs (At actuals) within 90 days from the approval of the Resolution Plan.
 - Secured Financial Creditor- INR 15 Crores within 180 days from the approval of the Resolution Plan.
 - Unsecured Financial Creditors- Other than in a class – INR 8.14 Lakhs within 90 days from the date of approval of Resolution Plan.
 - Operational Creditors other than workmen/ employees and government dues- INR 8,460/- within 90 days from the approval of the Resolution Plan.
 - Construction Cost– INR 2.06 Crores shall be infused to complete the construction of the Corporate Debtor’s project and the work will commence within 30 days from the approval of the Resolution Plan.
 - Contingent Fund- INR 3.50 Crores have been kept to cater to the unforeseen claims/events.
- It is also pertinent to note that the average Liquidation Value of the Corporate Debtor was determined as INR 19.27 Crores and the average Fair Value of the Corporate Debtor was determined as INR 28.43 Crores.
- In order to supervise the implementation of the Resolution Plan, a Monitoring Committee comprising of one representative of the SRA, one representative of the Secured Financial Creditor and an Insolvency Professional / Resolution Professional shall be constituted.
- The NCLT observed that the Resolution Plan meets the requirements of Section 30(2) of the IBC and Regulations 37, 38, 38 (1A) and 39 (4) of the CIRP Regulations and accordingly approved the Resolution Plan submitted by the SRA.

Resolution of Parental Drugs India Ltd

- The NCLT, Mumbai Bench (**NCLT**) vide Order dated January 16, 2025 has approved the Resolution Plan submitted by IHL Lifesciences Pvt Ltd, the Successful Resolution Applicant (**SRA**), in the CIRP of Parental Drugs India Ltd. (**Corporate Debtor**).
- Pertinently, the Corporate Debtor is engaged in manufacturing, sale and distribution of intravenous fluids and also a leading player in import, sale and distribution of polymer products in central India.
- Vide Order dated February 9, 2023, Corporate Insolvency Resolution Process (**CIRP**) came to be initiated in respect of the Corporate Debtor and Mr. Kairav Anil Trivedi was appointed as the Interim Resolution Professional (**IRP**) for the Corporate Debtor.
- The IRP made public announcement in Form-A on February 13, 2023 inviting claims from the creditors of the Corporate Debtor and intimating the public about the commencement of CIRP against the Corporate Debtor.
- Later, the IRP was replaced by Mr. Prawincharan Pratulcharan Dwary as the Resolution Professional (**RP**) for the Corporate Debtor.
- The RP then invited Expression of Interest (EOI) in Form G Regulation 36A (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) from Prospective Resolution Applicants (**PRAs**) on March 15, 2024. Pursuant thereto, the RP received 26 EOIs for the Corporate Debtor.
- During the 9th CoC meeting convened on March 26, 2024, the RP apprised the CoC members of the receipts of EOIs for the Corporate Debtor, who in turn, approved the RFRP and Evaluation Matrix for the Corporate Debtor.
- Thereafter, during the 16th CoC meeting convened on June 19, 2024, the RP informed the members about the receipt of 2 Resolution Plans from United Biotech Private Ltd and IHL Lifesciences Private Ltd/ SRA respectively. The Resolution Plan submitted by United Biotech Private Ltd was however non-compliant.
- Thereafter, the CoC considered the Resolution Plan submitted by the SRA and approved the same unanimously during the 19th CoC meeting held on August 12, 2024. Accordingly, a Letter of Intent dated August 20, 2024 was issued to the SRA and on September 07, 2024, the SRA provided a PBG issued by State Bank of India in accordance with Regulation 36B (4A) of the CIRP Regulations.
- Notably, the approved Resolution Plan has a plan value of INR 90 Crores and proposes the following treatment to the creditors of the Corporate Debtor:
 - CIRP Costs – INR 3.4 Crores (At actuals).

- Secured Financial Creditor- INR 57.55 Crores against the admitted amount of INR 1179.30 Crores.
 - Employee & Workmen (excluding gratuity) – INR 1.09 Crores against the admitted amount of INR 9.99 Crores.
 - EPFO Dues – 10.66 Crores (At actuals).
 - Gratuity Dues – 4.65 Crores (At actuals).
 - Other operational Creditors (excluding Govt. Dues) – 3.92 Lakhs against admitted sum of INR 98.02 Lakhs.
- Apart from the above settlement amount, the Resolution Plan approved for the Corporate Debtor provides for a sum of INR 11.79 Crores towards Capital expenditure & Working Capital needs of the Corporate Debtor. Further, the Resolution Plan also provides for a contingency fund of INR 80 Lakhs for the Corporate Debtor.
 - It is also pertinent to note that the average Liquidation Value of the Corporate Debtor was determined as INR 42.36 Crores and the average Fair Value of the Corporate Debtor was determined as INR 64.13 Crores.
 - The NCLT observed that the Resolution Plan meets the requirements of Section 30(2) of the IBC and Regulations 37, 38, 38 (1A) and 39 (4) of the CIRP Regulations and accordingly approved the Resolution Plan submitted by the SRA.
 - The NCLT also noted the waivers and concessions sought by the SRA and observed that all these waivers shall be subject to approval by relevant authorities in terms of the judgement passed by the Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited***, [(2021) 9 SCC 321].



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

Companies admitted to insolvency

- November 2024

#	Name of Corporate Debtor	NCLT Bench	Business Activity
1	Spicy Entertainment and Media Limited	Kolkata	Media and Entertainment
2	Kordas' Handlers and Logistics Private Limited	Bengaluru	Construction and Real Estate Services
3	Gemini Communications Limited.	Chennai	Telecommunication
4	Kriti Prakash Private Limited	Allahabad	Print and digital media
5	Vivin Drugs and Pharmaceuticals Limited	Hyderabad	Pharmaceutical
6	D.I. Steels Private Limited	Mumbai	Steel Trading
7	Karan Development Services Private Limited	Indore	Construction
8	Guruanand Silk Mills Private Limited	Mumbai	Manufacturing of textiles
9	Advance Recycling Solutions LLP	Delhi	Manufacturing and trading of machinery and equipment
10	Raheja Developers Limited	Delhi	Real Estate
11	Digital Ventures Private Limited	Mumbai	Infrastructure
12	Malvika Steel Limited	Allahabad	Manufacture of Iron and Steel
13	Maharashtra Bio Fertilizers India Private Limited	Mumbai	Manufacturers of Agrochemicals, plant growth regulators and micro-nutrients.
14	Sahara Hospitality Limited	Mumbai	Manpower supply services
15	RPL Solar Power Private Limited	Mumbai	Production, collection and distribution of electricity
16	VXL Instruments Limited	Mumbai	Human health activities
17	Steadfast Shipping Private Limited	Mumbai	Building and repair of ships and boats
18	Bhagyaodaya Infrastructure Development Limited	Mumbai	Construction/ Real Estate
19	Trig Guardforce Limited	Mumbai	Security solutions provider
20	Sargam Metals Private Limited	Chennai	Manufacturing of unitized system, semi unitized system and aluminium composite panel cladding.

- December 2024

#	Name of Corporate Debtor	NCLT Bench	Business Activity
1	Pavni (MP) Solar Pvt Ltd	New Delhi	Renewable Energy
2	Tranzlease Holdings (India) Pvt Ltd	Mumbai	Automobile services
3	Mona Portfolio Ltd	New Delhi	Finance
4	Ekshakti.com Pvt Ltd	Chennai	Customised Clothing
5	Viaromanaa Fashions (India) Pvt Ltd	Mumbai	Trading of leather goods
6	Hare Krishna Media Tech Pvt Ltd	Mumbai	Entertainment services
7	CIAN Healthcare Ltd	Mumbai	Pharmaceutical products
8	Everest Infra Energy Ltd	Guwahati	Electrical engineering and Civil Infrastructure
9	Redkenco Health Tech Pvt Ltd	Mumbai	Health Analytics
10	United Steel Builders Systems Pvt Ltd	Chennai	Manufacturing of building products
11	Sri Marg Human Resource Pvt Ltd	Chennai	Supply of Manpower services
12	Sarita Steel & Power Ltd	Kolkata	Metals and Minerals
13	Angle Infrastructure Pvt Ltd	New Delhi	Real Estate
14	Swastik Homebuild Pvt Ltd	Chandigarh	Real Estate
15	Quality Care Dialysis Pvt Ltd	Mumbai	Healthcare
16	Richfield Industries P Ltd	New Delhi	Packaged goods
17	Hero Electric Vehicles Pvt Ltd	New Delhi	Automobile
18	Solapur Tollways Pvt Ltd	Kolkata	Construction
19	Expertus Infotech Pvt Ltd	Chennai	Business outsourcing

Companies admitted to liquidation process in the month of November and December 2024

- November 2024

#	Name of Corporate Debtor	NCLT Bench	Business Activity
1	Royal Infracsoft Private Limited	Kolkata	Construction
2	Ravi Electronics Pvt Ltd	Hyderabad	Manufacturing of television and radio receivers, sound or video recording or reproducing apparatus, and associated goods
3	Villmar Agro Polymers Private Limited	Amaravati	Manufacturing of Chemicals
4	Wearit Global Ltd.	Kochi	Production, collection and distribution of electricity.
5	Asten Realtors Private Limited	Chennai	Civil Engineering
6	Visa Energy Ventures Limited	Kolkata	Production, collection and distribution of electricity.
7	Sky Infra Logistics Private Limited	Kolkata	Transport

- December 2024

#	Name of Corporate Debtor	NCLT Bench	Business Activity
1	Yatin Steels India Pvt Ltd	Mumbai	Metals and Mineral
2	Oasis Marine Pvt Ltd	Ahmedabad	Agriculture
3	CBC Fashions (Asia) Pvt Ltd	Chennai	Manufacturing of apparels
4	Gemus Engineering Ltd	Kolkata	Manufacturing of ductile iron castings
5	Blue Arcade Properties Pvt Ltd	Mumbai	Construction
6	Madhav Ginning and Pressing Pvt Ltd	Ahmedabad	Cotton ginning and pressing
7	Tulip Hotels Pvt Ltd	Mumbai	Hospitality

CONTRIBUTIONS BY:













Abhirup Dasgupta | Partner

Ishaan Duggal | Principal Associate

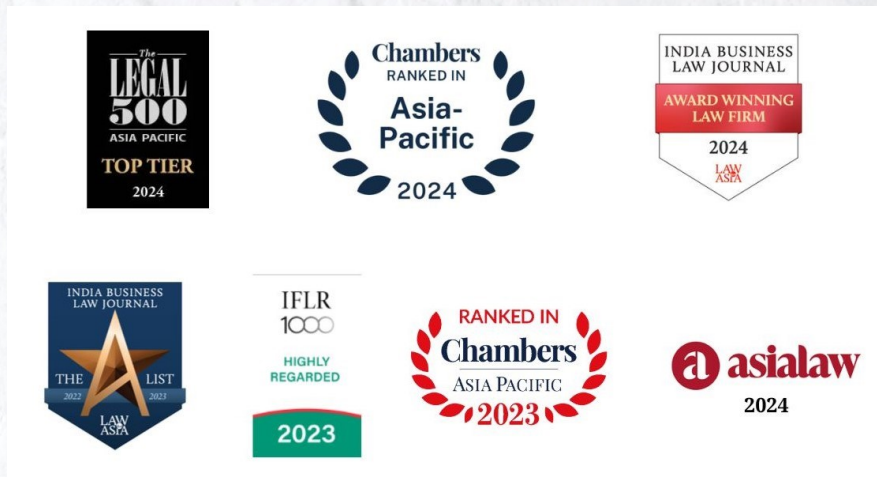
Ruchi Goyal | Associate

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 PROJECT FINANCE	 REAL ESTATE	 REGULATORY & POLICY
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