

17 April 2020

IBC 2016 in Motion

UK Court Defers Bankruptcy against Vijay Mallya

Covid-19 dashes hopes for Jet Airways revival

Lenders to Jet Airways are gearing up to liquidate the airline as they are losing all hope of finding a new owner for it given the massive stress in the global aviation sector due to the travel restrictions imposed across the globe following the Covid-19 epidemic. While the lenders had taken 90 more days to find a buyer under the NCLT-led insolvency process before the epidemic broke out, banking sources said *it would now be impossible to get a bidder at a time when the aviation sector's outlook is gloomy*. NCLT has given three months' time from March 15 for revival of the defunct airline through a fresh invitation for expression of interest (EOI).

Real estate lost Rs 1 lakh cr so far amid corona crisis: NAREDCO

India's real estate sector is likely to have lost about Rs 1 lakh crore so far amid the coronavirus crisis and the nation-wide lockdown. Addressing the media on Thursday, President, National Real Estate Development Council (NAREDCO) said the conservative estimate of the losses to real estate as of the present is around Rs 1 lakh crore, and is rising with each passing day.

The industry body has sought a cut in goods and services tax and the suspension of insolvency proceedings in NCLT along with a relief package. The realty body has asked the government to reduce GST across the board by 50 per cent for three months and 25 per cent for the fiscal. It also said that the final GST due should be payable in six quarterly instalments starting October 2020 with no interest.

Orchid Pharma resolution: Banks will be able to show recovery in Q4

Lenders to Orchid Pharma have received close to Rs 1,100 crore from Gurgaon-based Dhanuka Laboratories on the last working day of the financial year 2020. The monitoring committee attached to the insolvency process of Orchid Pharma implemented the resolution plan on March 31. This implies around 32% recovery for banks against total exposure of Rs 3,299 crore to Orchid Pharma. The development on late evening of March 31 also marks significance as banks will be able to show recovery on their books in the March quarter.

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UK High Court defers bankruptcy plea by SBI-led banks against Vijay Mallya

In a major relief for liquor baron Vijay Mallya, the High Court in London on Thursday deferred hearings on a plea by the SBI-led consortium of Indian banks, seeking the indebted tycoon to be declared bankrupt to enable them recover a loan of around GBP 1.145 billion from him, reported PTI.

Justice Michael Briggs of the insolvency division of the High Court granted relief to Mallya, ruling that *he should be given time till his petitions to the Supreme Court of India and his settlement proposal before the Karnataka High Court be determined, allowing him time to repay his debts to the banks in full.*

From NCLT to 4,800% returns: It's a multibagger amid market mayhem

As equity investors lost about Rs 50 lakh crore wealth in the brutal selloff triggered by the Covid-19 outbreak, one stock rallied over 1,000 per cent in last two months. Not just that! The stock also scripted a trailblazing comeback from 52-week lows, as the company emerged out of the NCLT after a corporate insolvency resolution process. We are talking about smallcap stock *Ruchi Soya Industries, which was acquired by Patanjali Ayurved in late 2019*. The stock has since risen over 5,300 cent to hit all-time high of Rs 162 on March 30, rising from a 52-week low of Rs 3.28 hit on July 24, 2019

DHFL resolution delayed amid COVID-19 lockdown

Suitors for troubled mortgage lender Dewan Housing Finance Limited (DHFL) may miss the April 16 deadline to submit binding bids for the company amid the 21-day national lockdown imposed to prevent the spread of COVID-19 outbreak. *The committee of creditors, therefore, is deliberating on extending the deadline to submit bids at least by 21 days to May 7 for now, banking executives and may extend it further if the lockdown related disruptions continue. A 30-40 day deferral for submission of resolution plans due to the lockdown is perhaps on the cards.*

Debt restructuring: Jain Irrigation to submit revised proposal to lenders by next week

In a last-ditch effort to save the company, *Jain Irrigation is going to submit a revised proposal to lenders by next week for debt restructuring*. Jain Irrigation was undergoing a debt-restructuring process after banks signed an inter-creditor agreement (ICA) to resolve the company. The company is going to submit a proposal to restructure Rs 4,000 crore of debt, in which the *loan is likely to be split into sustainable and unsustainable portions.*

Substantial recovery likely against IL&FS Rs 94k cr debt

With multi-pronged strategies in place for IL&FS resolution, *the government expects substantial recovery against the group's Rs 94,000 crore external debt and the recovered amount could be much more than the sum realised under the insolvency law so far*. Apart from the exercise of recasting the financial statements, an SFIO probe report regarding an IL&FS subsidiary is nearing completion and some matters are before the National Company Law Appellate Tribunal (NCLAT) and the Bombay High Court.

Govt extends tenure of NCLT acting President

The government has extended the tenure of acting President of National Company Law Tribunal for another three months. It has been decided to extend the tenure as *acting President for a period of another three months with effect from 5th April, 2020, or till joining of new President, or until further orders, whichever is earlier,*" the MCA said in an intimation issued to Registrar, NCLT.

IIA raises concern over amendment in Insolvency and Bankruptcy Code, 2016

IIA elaborated that amending the *minimum monetary limit of default from Rs 1 lakh to Rs 1 Crore* and claiming it to have been done to protect MSMEs is not accurate. Fact of the matter is, *Corporate and Government entities get protected to the extent the limit has been raised while the MSMEs have lost a strong leverage that could be used to make the powerful ones settle cases of amount due to MSMEs.*

According to IIA (Indian Industries Association) this amendment has taken the MSMEs by surprise and say they had never raised the issue. According to IIA the amendment has been basically done to please the large industries so that MSME cannot file cases in NCLT. *MSME now shall have to wait till the debt becomes One Crore instead of One Lakh,* according to IIA.

Covid shadow hangs heavy over insolvency proceedings

The hiatus in insolvency proceedings could have an adverse impact on the valuations of already stressed assets and possibly lead to a further delay in finding a resolution. The IBC has seen its ups and downs. With the current Covid-19 sensitivity, further delays on ongoing insolvency proceedings cannot be avoided. The Insolvency and Bankruptcy Board of India (IBBI) has notified Regulation 40C (IBBI CIRP Regulations). *The regulation specifies that the period of lockdown shall not be considered for the mandatory 330-day*

timeline under the IBC. These delays are force majeure situations, but will certainly have a significant impact on liquidation value and fair value of the stressed assets.

NCLT asks litigants, stakeholders to file Joint Memo of Written Submissions to expedite virtual hearings

In order to expedite virtual hearings and dispensation of justice without any delay during the COVID-19 lockdown, the National Company Law Tribunal (NCLT) has made *an appeal to litigants and stakeholders* under Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016 to file Joint Memo of Written Submissions. The NCLT has stated that Memo will be a user-friendly document which will *help in arriving at decisions quickly, and avoid filing of reply and rejoinder.*

Cash-strapped DHFL not to make any payment to lenders, bondholders

Dewan Housing Finance Corporation (DHFL) has said it *will not make any interest or principal payment to lenders as well as bond holders as the company is under resolution process.*

The Corporate Insolvency Resolution Process (CIRP) was initiated against the debt-ridden company as per the provisions of the Insolvency and Bankruptcy Code, 2016 with effect from December 3, 2019. DHFL said all the *rated debt papers of the company are carrying default grade ratings* and disclosures on the same have been made to the exchanges.

The creditors of the company were duly informed about commencement of the CIRP and were requested to submit their claims to the company in the prescribed manner as per the provisions of the Code. The *amounts to be received towards the dues by the creditors will be based on a resolution plan to be approved in due course by the NCLT, Mumbai, as per DHFL's regulatory filing.*

Sintex Industries' default amount stands at Rs 2,203 crore

In a regulatory filing with BSE, Sintex Industries said the total financial indebtedness, including *short term and long-term debt, is Rs 7,218.85 crores*, as on March-end 2020. Sintex Industries has informed the exchanges that of the total Rs 6,213.50 crores of loans/ revolving facilities from banks / financial institutions, the amount of *default is Rs 2,203.57 crores as on March-end 2020.* The company's core business spans across textiles and yarns. The company had disclosed in its third quarter (Q3) FY2020 financial results that a petition has been filed by the financial creditors before the National Company Law Tribunal (NCLT), Ahmedabad, under Section 7 of Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against it.

NCLT allows Corporation to take over city hospital

The National Company Law Tribunal (NCLT) Principal Bench, New Delhi (camp at Chennai), has allowed the Tamil Nadu government to *temporarily take over Santosh Hospitals* in Besant Nagar, *which is closed and under liquidation, and utilise its infrastructure for COVID-19 treatment.* *Santhosh Hospitals had filed for voluntary insolvency* and is under liquidation now. The possession of the hospital is with Muthoot Fincorp Limited, one of the lenders to the hospital. The other major lender is DCB Bank.

Covid-19 crisis led to Rs 4,000-cr fresh NPAs: PNB MD CEO Mallikarjuna Rao

Punjab National Bank's (PNB's) integration with Oriental Bank of Commerce (OBC) and United Bank of India (UBI) came at a time when the country was in lockdown to mitigate the impact of the coronavirus disease (Covid-19). On the eve of PNB's 126th foundation day, the bank's Managing Director and Chief Executive Officer said that *the pandemic's impact on customer outreach programmes related to the amalgamation.*

Covid-19: MSME loan portfolio of NBFCs, MFIs likely to see collections drop post moratorium as well

Small business loan portfolios of non-banking finance companies (NBFC) and microfinance institutions (MFI) are expected to see a decline in their collections even after the three-month moratorium period is over, according to *CARE Ratings.* *Amidst lockdowns, the earning capacity of this class of society, as well as that of small traders and shopkeepers, would be severely affected.*

IBC suspension: Creditors to take a hit, but breather for several firms

The proposed suspension of insolvency proceedings for six months will hit both financial and operational creditors, experts say. However, the breather might allow several companies unable to service their debt to ward off the threat of being dragged to the insolvency courts.

Does moratorium cover loans to NBFCs, SIDBI queries RBI

Small Industries Development Bank of India has asked the RBI to clarify whether the three-month moratorium it announced recently will apply to loans given to nonbanking finance companies. The central bank's ruling could determine the fate of NBFCs that are strapped for liquidity.

Can the insolvency code handle the aftermath of the corona crisis?

The lockdown, occasioned by the spread of the novel coronavirus, is causing significant stress for Indian business. Even though the Reserve Bank of India (RBI) has instituted debt moratoriums and finance minister has announced a slew of relief packages, one expects a significant spike in the number of bankruptcies.

IBC: Assurance for tough times

The economic consequences of the COVID-19 pandemic and the lockdown that followed will undoubtedly be disastrous. These crippling blows have come close on the heels of the worst economic slowdown experienced by the country in the recent past. Almost every sector was badly affected. The manufacturing sector had seen a drastic drop in production due to a steep fall in consumption.

Government mulls setting up national institute of valuers on the lines of ICAI

The ministry of corporate affairs (MCA) proposed to establish the *National Institute of Valuers (NIV)* as the regulatory body for the valuation profession as per the recommendations of a committee of experts (CoE). The recommendations were part of the *Draft Valuers Bill, 2020*, which proposes to regulate and develop the profession along the lines of the Institute of Chartered Accountants of India (ICAI) for *valuation professionals*.

In first deal outside NCLT, RattanIndia rescued by foreign funds; lenders take 38% haircut

In the first instance of resolution of a stressed power asset *outside the IBC mechanism where the promoters have retained management control*, a consortium of lenders led by Power Finance Corporation has agreed to take a 38% haircut against their exposure of Rs 6,575 crore to RattanIndia Power's 1,350 MW Amravati plant.

Aditya Birla Asset Reconstruction Company will take over the power plant's balance Rs 4,050-crore debt with funding from foreign funds including Goldman Sachs and Varde Partners. *After this arrangement, the old lenders' consortium and the ARC will own 15% each* in RattanIndia Power.

Approved Resolution Plan Binding On Govt Authorities

The Rajasthan High Court has quashed the notices issued by the Goods and Services Tax Department against Ultra Tech Cement claiming the dues of erstwhile Binani Cements Ltd. The Court noted that the *GST department had unsuccessfully challenged the resolution plan before the Supreme Court. The court emphasized that IBC was a special law and that the purpose is to revive dying industry by providing an opportunity for a resolution applicant to take over the same and begin the operation on a clean slate.*

The resolution can be taken even during the CIRP, if any Promoter as investor agrees to invest the money

NCLAT in the matter of Rajesh Goyal Vs. Babita Gupta & Ors. held that the procedure as followed in *Flat Buyers Association Winter Hills - 77, Gurgaon* shows *curtailment of period of resolution without asking for resolution plan from the third party before finalisation of the resolution plan*. The resolution can be taken even during the corporate insolvency resolution process, *if any Promoter as investor agrees to invest the money for keeping the company as a going concern and complete the project within the time frame*. In view of the fact that part of the infrastructure (Apartments/Flats) has already been completed, the allottees

(Financial Creditors) who were the main beneficiaries of the infrastructure have already reached settlement with the Promoter and the fact that *the Promoter as an outsider financial creditor has agreed to invest the amount, not from the account of the Corporate Debtor but from other sources to keep the infrastructure as a going concern.*

Jaypee judgment creates a conundrum for lenders

Supreme Court held that the lenders to JAL (Jaiprakash Associates Limited), holding the *mortgages in question would fall into the category of secured creditors.* However, as such *mortgages did not represent any loan, facility or advance to the corporate debtor nor towards protecting any facility or security of the corporate debtor,* it could not be said that *the corporate debtor owed them any financial debt within the meaning of section 5(8) of the code.* Hence, such lenders to JAL *did not fall into the category of financial creditors of the corporate debtor of JIL (Jaypee Infratech Limited).*

The decision of the SC in the present case may be treated as a seminal case in the jurisprudence of preferential transactions. Although in deciding whether the lenders to JAL can be categorized as financial creditors of JIL, the definition clauses of the code do support such an interpretation, *it will be interesting to see what impact it has on financial creditors in situations where CIRPs start simultaneously against the principal borrowers and the third party security providers in respect of their existing claims* filed with the resolution professional in those CIRPs.

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