

## **WEEKLY CORPORATE UPDATES**

*Saturday 17<sup>th</sup> September, 2022*

(Curated & compiled by)

### **Team Indiacorp Law**

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## MCA UPDATES

### *Companies (Specification of definition details) Amendment Rules, 2022*

Notification No: G.S.R. 700(E)

Dated: 15<sup>th</sup> September, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated 15<sup>th</sup> September, 2022 has notified the “Companies (Specification of definition details) Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette. Vide this notification MCA has increased thresholds limit for small companies by increasing paid up Capital from “not exceeding Rs. 2 crore” to “not exceeding Rs. 4 crore” and turnover from “not exceeding Rs. 20 crore” to “not exceeding Rs. 40 crore.

Vide this notification, in the Companies (Specification of definition details) Rules, 2014, in rule 2, in sub-rule (1), for clause (t), the following clause shall be substituted, namely:-

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.”.

Related Link: <https://egazette.nic.in/WriteReadData/2022/238857.pdf>

### *MCA crackdown on Chinese shell companies in India*

Press Release Number: 1858389

Dated: 11<sup>th</sup> September, 2022

After the simultaneous search and seizure operations conducted by the Ministry of Corporate Affairs on 8th Sept. 2022, on the offices of Jillian Consultants India Private Ltd, a wholly owned subsidiary of Jilian Hong Kong Ltd., at Gurgaon, FinintyPvt Ltd at Bangalore and HusysConsulting Ltd, an erstwhile listed company at Hyderabad, the Serious Fraud Investigation Office (SFIO) has arrested Mr. Dortse. Mr. Dortse is on the Board of Jillian India Ltd and has clearly emerged as the mastermind of the whole racket of incorporating large number of shell companies with Chinese links in India and providing dummy Directors on their Boards. The arrested person Mr. Dortse had shown himself to be a resident of Mandi in Himachal Pradesh as per the records filed with the Registrar of Companies.

Evidence procured during the enquiry by ROC Delhi and the simultaneous search operations clearly points to dummy Directors being paid by Jilian India Ltd. to act as dummies in several shell companies. Boxes filled with company seals and digital signatures of dummy directors have been recovered from the site. The Indian employees were in touch with the Chinese counterparts through a Chinese instant messaging app. Husys Ltd. was also found to be acting on behalf of Jilian India Ltd. Initial observations reveal that Husys Ltd. had a pact with Jilian Hong Kong Ltd. Investigations so far have revealed the possible involvement of these shell companies in serious financial crimes detrimental to the financial security of the country.

Related Link: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1858389>

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## SEBI UPDATES

### *SEBI asks PE, VC funds to share details on startup valuation practices*

*Dated: 12th September, 2022*

*SEBI is taking a close look at how private equity houses (PE) and venture capital funds (VCF) value the startups and unicorns they bankroll. The capital market regulator has asked a large number of funds to disclose their valuation practices, any significant change in the valuation methodology in the past three years, qualification of the valuer, if the valuer hired is an associate of the fund or its manager or sponsor among other things.*

*Related Link: <https://www.moneycontrol.com/news/business/sebi-asks-pe-vc-funds-to-share-details-on-startup-valuation-practices-report-9163011.html>*

### *Master Circular on Surveillance of Securities Market*

*Circular No.: SEBI/HO/ISD/ISD-PoD-2/P/CIR/2022/118*

*Dated: 13th September, 2022*

*In order to ensure availability of comprehensive information mentioned in the circulars pertaining to Surveillance of Securities Market at one place, SEBI has been issuing Master Circular. This circular covers various circulars issued till August, 31, 2022 by Integrated Surveillance Department. This Master Circular shall supersede previous Master Circular No. SEBI/HO/ISD/ISD/CIR/P/2021/22 dated March 01, 2021*

*Related Link: [https://www.sebi.gov.in/legal/master-circulars/sep-2022/master-circular-on-surveillance-of-securities-market\\_62914.html](https://www.sebi.gov.in/legal/master-circulars/sep-2022/master-circular-on-surveillance-of-securities-market_62914.html)*

### *SEBI mulls framework for market making to deepen bond markets*

*Dated: 13th September, 2022*

*With over 98 per cent of corporate bonds being private placements, leading to a shallow secondary market, SEBI is planning to come out with a framework for market-making to help markets become more vibrant and funds cheaper, a SEBI member said. Concerted efforts by regulators and government have seen corporate bond outstanding touching Rs 40.20 lakh crore in FY22 from Rs 10.51 lakh crore in FY12, while the secondary market is about 30 per cent of this. Annual issuances during this period have increased from Rs 3.80 lakh crore to close to Rs 6 lakh crore.*

*Related Link: [https://www.business-standard.com/article/markets/sebi-mulls-framework-for-market-making-to-deepen-bond-markets-122091301076\\_1.html](https://www.business-standard.com/article/markets/sebi-mulls-framework-for-market-making-to-deepen-bond-markets-122091301076_1.html)*

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## RBI UPDATES

### *Rising credit card and UPI payments indicate increase in consumption, say experts*

*Dated: 11th September, 2022*

*Rising credit card and UPI payments indicate towards increase in consumption amid recovery in economic activities with ebbing impact of Covid pandemic, said experts and market players. As per the RBI's monthly data, Unified Payments Interface (UPI) transaction increased from Rs. 9.83 lakh crore in April this year to Rs. 10.73 lakh crore in August. Similarly, credit card spends through PoS (Point of Sale) terminal increased from Rs. 29,988 crore in April this year to Rs. 32,383 crore in August. The credit card spending on e-commerce platforms, which was valued at Rs. 51,375 crore in April, rose to Rs. 55,264 crore in August.*

*Related Link: <https://www.financialexpress.com/industry/banking-finance/rising-credit-card-and-upi-payments-indicate-increase-in-consumption-say-experts/2662840/>*

### *Loan waiver not a benefit, banks exempt from 10% TDS for one-time settlement*

*Dated: 13th September, 2022*

*Banks will not be required to deduct 10% tax at source (TDS) on One-Time Settlement (OTS) or loan waivers, the Central Board of Direct Taxes (CBDT) said on September 13, 2022. The exemption will be available to all public financial institutions, scheduled banks, cooperative banks, rural development banks, state financial corporations, and state industrial investment corporations.*

*Related Link: <https://economictimes.indiatimes.com/industry/banking/finance/banking/loan-waiver-not-a-benefit-banks-exempt-from-10-tds-for-one-time-settlement/articleshow/94185009.cms>*

### *Chip shortage impacts banks' card issuance, likely to trigger CCI probe*

*Dated: 14th September, 2022*

*A representation made by Indian Banks Association (IBA) to the government is likely to trigger a Competition Commission of India (CCI) probe into alleged cartelization by chip suppliers, which is seen to be hampering card issuance by banks. The trigger for the representation arose out of the difficulty faced by banks in providing RuPay cards to account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) which aims to expand affordable access to financial services such as bank accounts, remittances, credit, insurance and pensions.*

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Related Link: <https://www.thehindubusinessline.com/money-and-banking/chip-shortage-impactsbanks-card-issuance-likely-to-trigger-cci-probe/article65882060.ece>

## ***RTI disclosure of sensitive info will breach right to privacy: Banks tell SC***

*Dated: 14th September, 2022*

*Lenders, including SBI, PNB and HDFC Bank, on September 13, 2022 vehemently opposed any disclosure of their “highly confidential and sensitive” inspection and risk assessment reports under the Right to Information Act (RTI), saying this would amount to invasion of right to privacy of their lenders and customers, shareholders and employees. The Reserve Bank of India (RBI) supported the banks’ argument. The apex court had, in February 2021, revived its 2015 judgment making it necessary for RBI to disclose financial information related to private and public banks under the RTI Act.*

Related Link: <https://www.financialexpress.com/industry/banking-finance/rti-disclosure-of-sensitiveinfo-will-breach-right-to-privacy-banks-tell-sc/2665786/>

## ***Rupee Drawing Arrangement - Enabling Bharat Bill Payment System (BBPS) to process cross-border inbound Bill Payments***

*Notification No.: RBI/2022-23/115*

*Dated: 15th September, 2022*

*The Reserve Bank of India (RBI) has decided to allow foreign inward remittances received under the Rupee Drawing Arrangement (RDA), to be transferred to the KYC compliant bank account of the biller (beneficiary) through Bharat Bill Payment System (BBPS).*

*Currently, foreign inward remittances received under RDA can be transferred to the KYC compliant beneficiary bank accounts through electronic mode, such as, NEFT, IMPS.*

*Rupee Drawing Arrangement (RDA) is a channel to receive cross-border remittances from overseas jurisdictions. Under this arrangement, the Authorised Category I banks enter into tie-ups with the non-resident Exchange Houses in the FATF compliant countries to open and maintain their Vostro Account.*

*BBPS is a RBI mandated system which offers integrated and interoperable bill payment services to customers across geographies with certainty, reliability and safety of transactions.*

Related Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12386&Mode=0>

### **Concerns:**

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## *Exim Bank's GOI-supported Line of Credit of USD 448 million to the Government of Republic of Uzbekistan for Social Infrastructure and Other Development Projects*

Notification No.: RBI/2022-2023/116

Dated: 15th September, 2022

*Export-Import Bank of India (Exim Bank) has entered into an agreement dated December 10, 2020 with the Government of Republic of Uzbekistan, for making available to the latter, Government of India supported Line of Credit (LoC) of USD 448 million (USD Four Hundred and Forty-Eight Million Only) for the purpose of financing the social infrastructure and other development projects. The export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their eligibility under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of at least 75 per cent of the contract price shall be supplied by the seller from India, and the remaining 25 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.*

*2. The Agreement under the LoC is effective from September 12, 2022. Under the LoC, the terminal utilization period is 60 months from the scheduled completion date of the project.*

*3. Shipments under the LoC shall be declared in Export Declaration Form/Shipping Bill as per instructions issued by the Reserve Bank from time to time.*

*4. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.*

*5. AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain complete details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website [www.eximbankindia.in](http://www.eximbankindia.in)*

*6. The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.*

Related Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12387&Mode=0>

## *RBI modifies master directions for interest rate on deposits*

### **Concerns:**

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RBI on Friday (September 16, 2022) notified that its master direction dated March 03, 2016, on interest rates on deposits and May 12, 2016, on 'Co-operative Banks – Interest Rate on Deposits' have been modified. Further, the instructions regarding eligibility for the opening of savings account contained in Section 28 (h) and Section 27 (h) of the above-mentioned Master Directions (MDs) dated March 03, 2016, and May 12, have been modified to make them more explicit" the circular of the banking regulator said.

"In terms of Master Direction 2016, the reference rates for arriving at the interest rates on FCNR (B) deposits shall be quoted/displayed by the Foreign Exchange Dealers Association of India (FEDAI). However, with effect from January 31, 2022, the reference rates mentioned above are being quoted/displayed by Financial Benchmarks India Pvt. Ltd. (FBIL). In this regard, the relevant sections of both the Master Directions dated March 03, 2016, and May 12, 2016, have been suitably modified", said RBI.

Related Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12388&Mode=0>

## IBC & NCLT UPDATES

### **Section 27 of the Insolvency & Bankruptcy Code does not contemplate any opportunity of hearing to the Resolution Professionals be given by the Adjudicating Authority before approving the proposal of new Resolution Professional**

Dated: 11<sup>th</sup> September, 2022

This Appeal has been filed before the National Company Law Appellate Tribunal against the order dated 11.07.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench in I.A. No. 682 of 2022 in CP(IB) No. 391/Chd/Pb/2018 by which order the application filed by the Punjab National Bank – the Financial Creditor for replacement of the Resolution Professional has been allowed and in place of the Appellant another person has been appointed as Resolution Professional. Aggrieved by the impugned order, the Appellant has come up in this Appeal. Learned counsel for the Resolution Professional submitted before National Company Law Appellate Tribunal that the Adjudicating Authority passed the impugned order without giving any opportunity of hearing and within issuing any notice to the Appellant. It is submitted that when the order was being passed by the Adjudicating Authority replacing the Appellant, he was entitled for the opportunity to be heard in the application in consonance with the principles of natural justice. Section 27 of the I&B Code which provides for replacement of the Resolution Professional by the Committee of Creditors (CoC) does not exclude applicability of natural justice and the Appellant was entitled for the opportunity to be heard. Order Appeal is dismissed by the Hon'ble National Company Law Appellate Tribunal and interalia observed that when we look into the scheme of Section 27 as delineated by the

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statute, it does not contemplate any opportunity of hearing to the Resolution Professionals be given by the Adjudicating Authority before approving the proposal of new Resolution Professional. Section 27 requires the CoC to forward the name of proposed Resolution Professional to the Adjudicating Authority and the Adjudicating Authority is required to forward the name of the proposed Resolution Professional to the Board for its confirmation. The scheme of Section 27 does not indicate that Resolution Profession is to be made party and is to be issued notice before taking decision to appoint another Resolution Professional. Looking to the purpose and object of the I&B Code, where timeline is the essential factor to be taken into consideration at all stages, there is no warrant to permit a Lis to be raised by the Resolution Professional challenging his replacement by the CoC. The decision taken by the CoC is a decision by vote of 66% and when the decision is by votes of a collective body, the decision is not easily assailable and replacement is complete as per Scheme of Section 27 when the resolution is passed with requisite 66% voting share.

Related Link: <https://ibbi.gov.in/uploads/order/9c6a9e4d559a568b21db5cc7e190b6c0.pdf>

## ***Plea filed by a single member seeking replacement IRP was rightly rejected as it couldn't receive 66% voting by CoC***

Dated: 12<sup>th</sup> September, 2022

Where certain time was lost from CIRP period due to stay order passed by Appellate Tribunal and lockdown, however, resolution for filing an application for exclusion of time period had not been approved by CoC, NCLT, on application filed by IRP, had rightly excluded said time period from CIRP period while exercising its discretionary power to keep corporate debtor as a going concern.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000319171/plea-filed-by-a-single-member-seeking-replacement-irp-was-rightly-rejected-as-it-couldnt-receive-66-voting-by-coc-caselaws>

## ***NCLT order approving resolution plan didn't need interference as EPFO didn't file claim before RP during CIRP proceedings***

Dated: 12<sup>th</sup> September, 2022

Where EPFO had not filed any claim before Resolution Professional during CIRP proceedings of corporate debtor, same was not required to be included in approved resolution plan, wherein no allocation had been made towards dues of EPFO.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/101010000000321905/nclt-order-approving-resolution-plan-didnt-need-interference-as-epfo-didnt-file-claim-before-rp-during-cirp-proceedings-caselaws>

## ***No default in repayment occurred where corporate debtor paid portion as per settlement but failed to buyback its shares***

Dated: 13<sup>th</sup> September, 2022

### **Concerns:**

M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)



Where financial creditor had given credit facilities to corporate debtor and corporate debtor had paid cash portion as per settlement but failed to buy-back its shares as agreed, there was no financial debt or default in repayment of debt and, therefore, application filed by financial creditor under section 7 for initiation of CIRP against corporate debtor was to be rejected.

Related Link:

<https://www.taxmann.com/research/ibc/top-story/10101000000320774/no-default-in-repayment-occurred-where-corporate-debtor-paid-portion-as-per-settlement-but-failed-to-buyback-its-shares-caselaws>

## **IBBI Circular-Details of matters pending with Supreme Court of India and various High Courts**

Dated: 13<sup>th</sup> September, 2022

Of late, it has been observed that in a few matters Hon'ble Supreme Court and several High Courts have considered and delivered judgements wherein stand of Union of India (MCA) or IBBI remained unrepresented since both these institutions were not a party in the concerned proceedings. This matter is of great concern as in some of such cases scheme of the Code was in question which required to be defended earnestly. While we are trying to retrieve the situation through further legal recourse, our apprehension is that there could be many more such important matters pending or might arise in future. Insolvency Professionals are advised to inform IBBI without any delay about any important issues relating to vires, interpretation and applicability of the provisions of the Code, Rules and Regulations made thereunder are being contested before the High Courts and the Supreme Court of India, in respect of any assignment handled by them as on date. Further, the information as above shall be submitted by Insolvency Professionals as and when any such case is filed before Supreme Court and High Courts. For pending cases, the case papers with issues involved in brief shall be forwarded to IBBI at the email [legal.proceeding@ibbi.gov.in](mailto:legal.proceeding@ibbi.gov.in) by September, 2022 and for any future case promptly when the case comes to notice/ knowledge of the Insolvency Professional.

Related Link: <https://ibbi.gov.in/uploads/legalframework/017e888faf88f38d3f7caa2aabc7efed.pdf>

## **Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022**

Dated: 13<sup>th</sup> September, 2022 No. IBBI/2022-23/GN/REG092.

In exercise of the powers conferred by sections 196, 207 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, namely: - 1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022. (2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, in the First Schedule, after clause 26, the following clause shall be inserted, namely: "26A. An insolvency professional shall not accept /share any fees or charges from any professional and/or support service provider who are appointed under the processes."

### **Concerns:**

M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)

## ***The Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022***

Dated: 13th September, 2022

*The Insolvency and Bankruptcy Board of India (IBBI) vide its notification dated September 13, 2022 has notified “the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022” which shall come into force on the date of its publication in the Official Gazette. According to the amendment Clause 26A has been inserted in the first schedule of the regulations stating that, “an insolvency professional shall not accept /share any fees or charges from any professional and/or support service provider who are appointed under the processes”.*

Related Link: <https://ibbi.gov.in/uploads/legalframework/8a614479d5c2b8eacb205e226f5e841a.pdf>

## ***Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022***

Dated: 13th September, 2022 No. IBBI/2022-23/GN/REG091

*In exercise of the powers conferred by clauses (aa) and (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: - 1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022. (2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), the word “Schedule” shall be substituted with the word and mark “Schedule-I”, wherever it is appearing. 3. In the principal regulations, after regulation 34A, the following regulations shall be inserted, namely:- “34B. Fee to be paid to interim resolution professional and resolution professional.*

Related Link: <https://ibbi.gov.in/uploads/legalframework/7c96f51884d5ad840f4a7af0d6bba604.pdf>

## ***IBBI prescribes norms relating to payment of minimum fees and performance-linked incentive to IRPs/RPs***

Dated: 14<sup>th</sup> September, 2022

*IBBI has notified IBBI (Insolvency Resolution Process for Corporate Persons) (3rd Amendment) Regulations, 2022. A new regulation 34B is added to the existing regulations. Regulation 34B prescribes for the fee to be paid to interim resolution professional (IRP) and resolution professional (RP). As per the amended norms, the fee of IRP/RP appointed on or after 01-10-2022 shall be as specified in Schedule II. Further norms w.r.t performance-linked incentive fees are also prescribed.*

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Related Link: <https://www.taxmann.com/research/ibc/top-story/104010000000100033/ibbi-prescribes-norms-relating-to-payment-of-minimum-fees-and-performance-linked-incentive-to-irsrps-cirnot>

## **Now IPs can't accept/share fees or charges from any professional/support service providers appointed under IBC**

Dated: 14<sup>th</sup> September, 2022

The Govt. has notified the IBBI (Insolvency Professionals) (Second Amendment) Regulations, 2022 to further amend the IBBI (Insolvency Professionals) Regulations, 2016. Amendment has been made in the First Schedule representing the Code of Conduct for IPs. A new clause 26A has been inserted which restricts IPs from accepting /sharing any fees or charges from any professional and/or support service provider who are appointed under the processes.

Related Link: <https://www.taxmann.com/research/ibc/top-story/104010000000100034/now-ips-cant-acceptshare-fees-or-charges-from-any-professionalsupport-service-providers-appointed-under-ibc-cirnot>

## **Sale in favor of auction-purchaser was rightly cancelled as it failed to deposit sale consideration within 90 days: NCLAT**

Dated: 14<sup>th</sup> September, 2022

Where in liquidation of corporate debtor, bid of appellant-auction purchaser was accepted for sale of corporate debtor as a going concern, however, appellant failed to deposit sale consideration within 90 days, there was no error in order of NCLT in admitting application of liquidator to cancel sale in favour of appellant.

Related Link: <https://www.taxmann.com/research/ibc/top-story/1010100000000321599/sale-in-favor-of-auction-purchaser-was-rightly-cancelled-as-it-failed-to-deposit-sale-consideration-within-90-days-nclat-caselaws>

## **IBBI asks IPs to inform Board about important matters pending with Courts relating to the interpretation of IBC**

Dated: 14<sup>th</sup> September, 2022

The IBBI has advised Insolvency Professionals (IPs) to inform IBBI without any delay about any important issues relating to vires, interpretation and applicability of the provisions of the Code, Rules and Regulations made thereunder are being contested before the High Courts and the Supreme Court, in respect of any assignment handled by them as on date. Further, the information as above shall be submitted by IPs as and when any such case is filed before Supreme Court and High Courts.

Related Link: <https://www.taxmann.com/research/ibc/top-story/104010000000100037/ibbi-asks-ips-to-inform-board-about-important-matters-pending-with-courts-relating-to-the-interpretation-of-ibc-cirnot>

## **Adjustment of TDS refund against tax demands was right; Liquidator's plea seeking refund from IT dept. was rightly rejected**

### **Concerns:**

M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)

Dated: 14<sup>th</sup> September, 2022

Where corporate debtor was put into liquidation and Income-tax department, filed its claim before liquidator and adjusted amount of TDS refund towards outstanding tax demands against corporate debtor, in view of section 245 of Income-tax Act, 1961, there was no illegality in order of NCLT rejecting application of liquidator seeking direction against income-tax department to issue refund.

Related Link: <https://www.taxmann.com/research/ibc/top-story/10101000000319712/adjustment-of-tds-refund-against-tax-demands-was-right-liquidators-plea-seeking-refund-from-it-dept-was-rightly-rejected-caselaws>

## **Amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and Insolvency and Bankruptcy Board of India (Insolvency Professionals), Regulations 2016.**

Dated: 13th September, 2022

The Insolvency and Bankruptcy Board India (IBBI) notified the following regulations on 13th September 2022: a) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022, and b) Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022. 2. The salient features of the amendments effected by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022 are as under: (i) The fee of the interim resolution professional or the resolution professional, appointed on or after 1 st October 2022 shall be decided by the applicant or committee in accordance with the said amendment regulations. (ii) An insolvency professional shall be paid minimum fixed fee in the range of one lakh rupee to five lakh rupees, per month, depending on the quantum of claims admitted, as specified under Table-1 of Schedule-II of the said amendment regulations. However, the applicant or committee may decide to fix higher amount of fees than the said minimum fixed fee, after taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

Related Link: <https://ibbi.gov.in/uploads/press/8e6f1038595ca9a05af14e51daf09560.pdf>

## **Admission of CIRP plea rejected as CD raised disputes in reply to demand notice and pointed out same in emails: NCLAT**

Dated: 15<sup>th</sup> September, 2022

Where corporate debtor stated in its reply to demand notice that dispute with regard to quality of goods, adjustment of costs of material not lifted, and difference of profit towards commission were still pending and same was also pointed out in multiple e-mails by corporate debtor, impugned order of NCLT admitting CIRP application against corporate debtor was to be set aside.

### **Concerns:**

M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)

Related Link: <https://www.taxmann.com/research/ibc/top-story/101010000000325332/admission-of-cirp-plea-rejected-as-cd-raised-disputes-in-reply-to-demand-notice-and-pointed-out-same-in-emails-nclat-caselaws>

## ***Period for which winding up plea was pending before HC ought to be excluded in computing limitation for filing CIRP***

*Dated: 15<sup>th</sup> September, 2022*

*Where High Court itself had granted liberty to operational creditor while dismissing winding up petition filed by operational creditor to take steps as per law against corporate debtor, period during which winding up petition was pending before High Court ought to have been excluded in computing period of limitation for filing section 9 application.*

Related Link: <https://www.taxmann.com/research/ibc/top-story/101010000000321745/period-for-which-winding-up-plea-was-pending-before-hc-ought-to-be-excluded-in-computing-limitation-for-filing-cirp-caselaws>

## ***Part-payment by appellant towards loan availed by corporate debtor in exchange of 100% shares wasn't a financial debt***

*Dated: 16<sup>th</sup> September, 2022*

*Where appellants-shareholders of corporate debtor holding 48 per cent shareholding of corporate debtor made part payment towards loan availed by corporate debtor on understanding that 100 per cent shares of corporate debtor would be transferred to appellants, appellants were related parties and amount paid by them was towards 'equity' and same could not be treated as financial debt.*

Related Link: <https://www.taxmann.com/research/ibc/top-story/101010000000321677/part-payment-by-appellant-towards-loan-availed-by-corporate-debtor-in-exchange-of-100-shares-wasnt-a-financial-debt-caselaws>

## ***Successful auction purchaser is not liable to pay pre-CIRP dues of electricity supplier: NCLAT***

*Dated: 16<sup>th</sup> September, 2022*

*Where in liquidation proceeding corporate debtor was sold as a going concern to auction purchaser and pre-CIRP dues of electricity supplier was treated as operational debt and dues pertaining to CIRP period was to be treated as CIRP cost, same were to be paid as per section 53 and electricity supplier was not entitled to recover its dues from successful auction purchaser.*

Related Link: <https://www.taxmann.com/research/ibc/top-story/101010000000321859/successful-auction-purchaser-is-not-liable-to-pay-pre-cirp-dues-of-electricity-supplier-nclat-caselaws>

## ***Insolvency and Bankruptcy Board Of India Notification***

### **Concerns:**

*M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)*

In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: – (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022.

(2) They shall come into force on the date of publication in the Official Gazette.

In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as ‘the principal regulations’), after regulation 4B, the following shall be inserted, namely: –

(1) The interim resolution professional shall open an email account and use it for all correspondences with stakeholders and in the event of his replacement by a resolution professional, shall handover the credentials of the email to him.

(2) The resolution professional shall, in case of his replacement with another resolution professional or a liquidator, hand over the credentials of the email to the other resolution professional or the liquidator, as the case may be.”

Related Link: <https://ibbi.gov.in/uploads/legalframework/f4b9ec30ad9f68f89b29639786cb62ef.pdf>

## **Insolvency And Bankruptcy Board Of India Notification**

Dated:16th September, 2022 No. IBBI/2022-23/GN/REG093

The Insolvency and Bankruptcy Board of India (IBBI) on September 16, 2022, issued the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 to further amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The following amendments have been made:

After regulation 4B, the regulation 4C has been inserted, namely:

“4C. Process e-mail.

o The interim resolution professional shall open an email account and use it for all correspondences with stakeholders and in the event of his replacement by a resolution professional, shall handover the credentials of the email to him.

o The resolution professional shall, in case of his replacement with another resolution professional or a liquidator, hand over the credentials of the email to the other resolution professional or the liquidator, as the case may be.”•

After regulation 6, the regulation 6A has been inserted, namely:- “6A. Communication to creditors. The interim resolution professional shall send a communication along with a copy of public announcement made under regulation 6, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available. Provided that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors.”In regulation 35A, for sub-regulation (3), the following has been substituted, namely:- “(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the

### **Concerns:**

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**Solicitors and Advocates**

Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.”• In regulation 35A, after sub-regulation (3), the following has been inserted, namely:-“(3A) The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.”

Related Link: <https://ibbi.gov.in/uploads/legalframework/98dce83da57b0395e163467c9dae521b.pdf>

**Thanking You,**

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**Concerns:**

*M/s Indiacorp Law, Advocates & Solicitors, Noida & Jangpura Extension (New Delhi)*