

Insolvency and Bankruptcy Board of India

Subject: Status Note on Insolvency Transactions under Corporate Insolvency Resolution Process

Transactions under the Insolvency and Bankruptcy Code, 2016 (Code) move into a phase where the participants have gathered better understanding of the CIRP processes, some processes have reached conclusion and the courts and tribunals have given their interpretation of the Code on a number of issues. The note attempts to provide the details relating to these.

2. As on 31st August, 2017, 3249 applications under CIRP were filed in the various benches of NCLT.

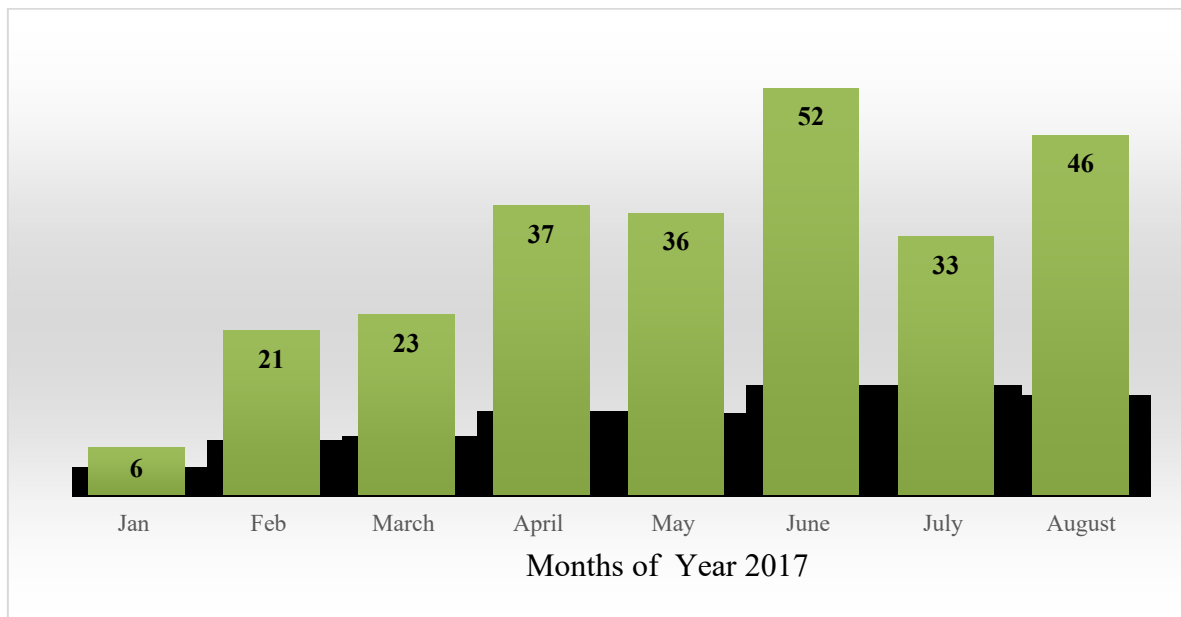
3. 254 CIRP transactions were admitted by the NCLTs. Of the 12 cases identified by the RBI and referred to banks for action under the Code, 11 have been admitted. These account for initial default amount of Rs.70,974.13 crore. One case (Era Infra Engineering) has been filed in the NCLT, Principal Bench. Details of the 11 CIRP cases are enclosed in Annexure 'A'. NCLAT has set aside orders in respect of 12 CIRP Transactions admitted by NCLTs.

4. More than 299 applications for admission have been rejected, dismissed or withdrawn.

5. The transactions undergoing CIRP accounted for an initial default amounting to Rs. 85,550.96 crore as on 31st August, 2017. 81 transactions were initiated where the initial default amount was less than Rs.1 crore, accounting for 32% of all CIRP transactions and 94 transactions were initiated where the initial default amount ranged between Rs.1-50 crore, accounting for 34% of all CIRP transactions. This is represented in Chart.3.

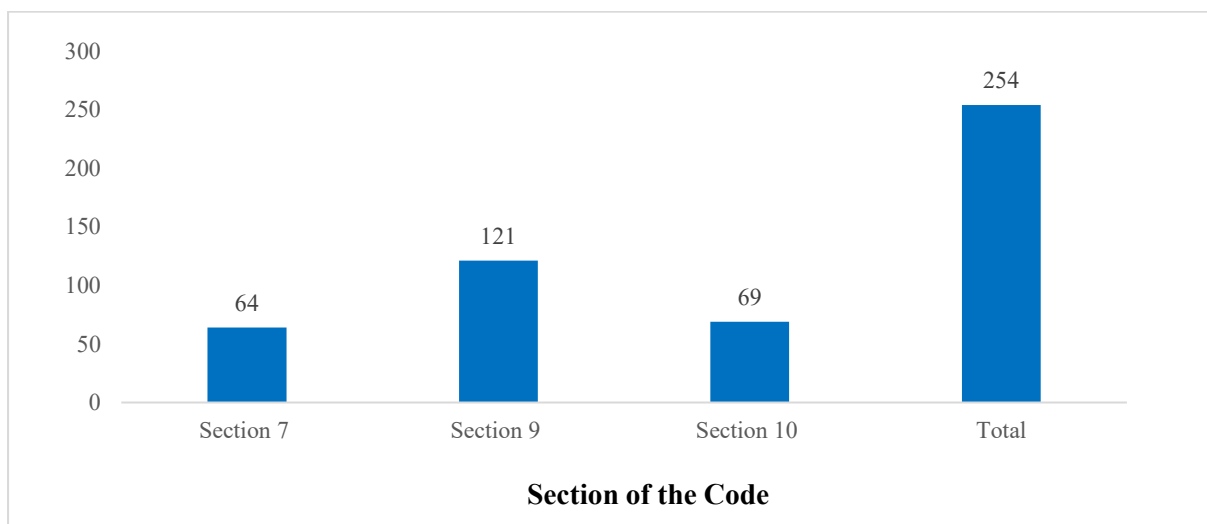
6. Monthly distribution of admitted applications is represented in the Chart 1:

Chart 1. Month-wise Distribution of **254** Applications Admitted by NCLTs
(Position as on 31st August, 2017)



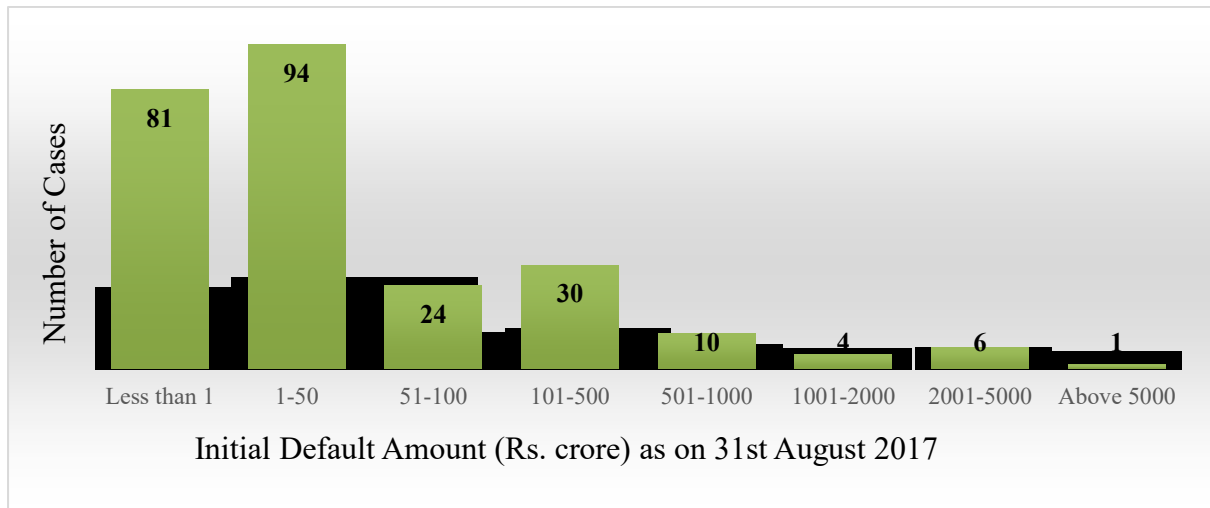
7. The distribution of admitted applications based on the section under which CIRP is initiated is represented in the Chart 2:

Chart 2. Section-wise Distribution of **254** Applications (position as on 31st August, 2017)



8. Data relating to amount of initial default amount is presented in the chart below:

Chart 3. Initial default amount of **250** applications (position as on 31st August, 2017)



9. The distribution of admitted applications across NCLT benches is as represented below:

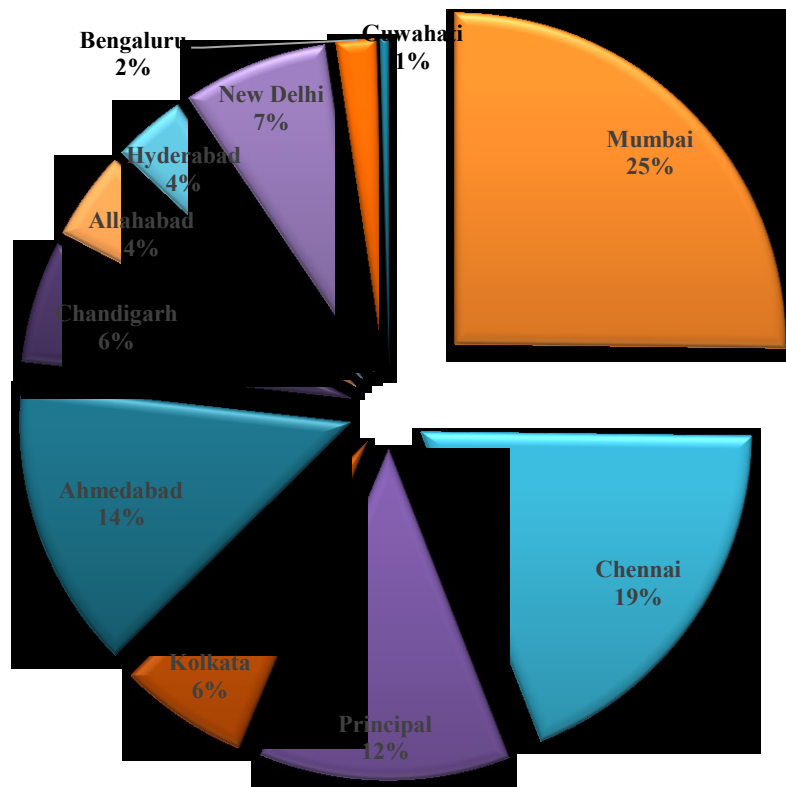


Chart 4. Bench-wise Distribution of Applications (Position as on 31st August, 2017)

10. One case, that of Synergies Doorey Automotive Ltd. completed the CIRP process and resulted in resolution of the corporate debtor. Three cases of liquidation have been admitted by the adjudicating authority. These include Bhupen Electronic Ltd. Wind Ways Packaging Pvt. Ltd. and VNR Infrastructure Ltd. Sixteen transactions completed 180 days in the period ending 31st August, 2017. These transactions have either resulted in resolution, liquidation or have sought extension from the Adjudicating Authority.

11. 22 corporate persons have intimated the Board that they had initiated the voluntary liquidation process as on August 31, 2017.

12. In order to address a critical gap in the availability of information to investors, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have provided additional mandatory disclosures by listed entities/securities in respect of default as meaning non-payment of interest or principal amount in full on the pre-agreed date be made to the stock exchanges when the entity has defaulted in payment of interest / instalment obligations on debt securities (including commercial paper), Medium Term Notes (MTNs), Foreign Currency Convertible Bonds (FCCBs), loans from banks and financial institutions, External Commercial Borrowings (ECBs) etc. The entities shall make disclosures to the stock exchanges within one working day from the date of default at the first instance of default in the format specified in the with effect from 1st October 1, 2017.

13. The RBI amended the Credit Information Companies Regulations, 2006 on 11th August, 2017 providing for information utilities and a resolution professional appointed under the Code.

14. There are a few landmark orders from Supreme Court, NCLT and NCLAT, which will have substantial bearing on the implementation of the Code. A brief of a few such orders are presented hereunder:

1.	Authority	Supreme Court of India
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	Matter	Lokhandwala Kataria Construction Private Limited Vs. Nisus Finance and Investment Managers LLP.
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Issue Whether the NCLAT allow a compromise after admission of a transaction under the inherent power under Rule 11 of the NCLAT Rules, 2016 to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal. NCLAT observed that it could not did not use its inherent powers in the case.

Held The Supreme Court utilized their powers under Article 142 of the Constitution of India to put a quietus to the matter and further took the Consent Terms entered into between the parties on record and also recorded the undertaking of the corporate debtor before them to abide by the Consent Terms in toto, and appeal stands disposed of. **(para4, page1)**

2. Authority NCLT, New Delhi, Principal Bench

Matter Reliance Commercial Finance Limited vs Ved Cellulose Limited

Issue Whether CIRP can be initiated during the pendency of arbitration proceeding.

Held The pendency of arbitration proceeding is not a hindrance under section 7 of the Code for initiating Corporate Insolvency Resolution Process. **(para 6, page 6 of the Order)**

3. Authority NCLT, Ahmedabad Bench

Matter State Bank of India Vs Essar Steels Ltd.

Issue Whether the proceedings under the Code defy the debt restructuring plan undertaken by Essar Steels along with its lenders?

Held The debt restructuring plan proposed by Essar Steel with its lenders was pending for about two years and substantial progress was not made. NCLT clarified that the debt restructuring plan could form part of the insolvency process itself and can be taken into consideration by the committee of creditors under the Code, hence cannot be a reason to stall proceedings under the Code.
(para 24 at page 21)

4. Authority National Company Law Tribunal

Matter Neelkanth Township & Construction Pvt. Ltd. V/s. Urban Infrastructure Trustees Limited.

Issue Whether the application under section 7 of the Code is time barred, as the debt claim was related to the years 2011, 2012 and 2013.

Held The adjudicating authority observed: “...*There is nothing on the record that Limitation Act, 2013 is applicable to the Code.... The I & B Code, 2016 is not an Act for recovery of money claim, it relates to initiation of Corporate Insolvency Resolution Process.*”
(Para 24 pg 11)

5. Authority National Company Law Appellate Tribunal

Matter Aruna Hotels Limited Vs. Mr. N. Krishnan, Mr. D. Ramjee, Mr. C. Ganapathy

Issue	The OC/ex- employees served notice through their advocates to the CD who contended that this did not meet with the conditions under section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
Held	The notice has to be issued by the operational creditors impugned order passed by the Adjudicating Authority was set aside and the CD allowed to function independently through its Board of Directors with immediate effect.
6. Authority	NCLT, Chennai Bench
Matter	Rio Glass Solar SA Vs. Shriram EPC Ltd
Issue	The OC not having an account in any of the banks in India, filed an application under section 9 of the Code for initiating CIRP, submitting bank statement of a foreign bank to the NCLT in accordance with section 9(3)(c) of the Code, which was contended by the CD.
Held	The AA observed: “... <i>It is a fact that the Operational Creditor has no account in India. Therefore, it is not at all possible to produce a certificate from any Bank in India. If the arguments of the counsel of the Corporate Debtor are considered, then, the same will render the provisions of the I&B Code otiose. In other words, the purpose and object of the legislation would be defeated.....In view of it, his objection stands rejected.</i> ” (Page 7 , para 9).

7. Authority	National Company Law Appellate Tribunal
Matter	Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt Ltd.
Issue	Whether the CIRP transaction can be completed before 180 days?
Held	<p>The Appellate Authority observed “in case (s) where all the creditors have been satisfied and there is no default with any other creditor, the formality of submission of resolution plan under section 30 or its approval under section 31 is required to be expedited on the basis of the plan if prepared. In such a case, the Adjudication Authority without waiting for 180 days of resolution process, may approve the resolution plan under section 31, after recording its satisfaction that all creditors have been paid/satisfied and any other creditor do not claim any amount in absence of default and required to close the Insolvency Resolution Process.”</p> <p>(Para 18 and page 16 of the order).</p>

8. Authority	National Company Law Appellate Tribunal
Matter	Schweitzer Systemtek India Private Limited Vs. Phoenix ARC Private Limited
Issue	Whether the property which is not owned by a CD shall come within the ambits of the Moratorium u/s 14 of the Code?
Held	<p>The property not owned by the CD shall not come within the ambits of the Moratorium. It observed: “...The impugned order having passed by Adjudicating Authority in accordance with law</p> <p>(Para no 9 page no 9).... ‘Section 60 of the I & B Code as per which under sub-section (2) if Corporate Insolvency Resolution</p>

Process, or liquidation proceeding of a corporate debtor is pending before the 'AA', an application relating to the 'insolvency resolution' or 'bankruptcy' of a personal guarantor required to be filed before the same Bench of AA, meaning thereby, separate application for initiation of resolution process require to be filed against the guarantor before the same very Bench of the AA who is hearing the corporate resolution process or liquidation proceeding against principal corporate debtor'. **(Para 6 & 7 page no 8 & 9).**

9. Authority NCLT, Hyderabad Bench

Matter 'IDBI Bank Limited Vs. Lanco Infratech Limited'

Issue Whether the proposed interim resolution professional suggested by the FC was competent to act as an Interim Resolution Professional(IRP) for the applicant company

Held The AA referring to Paragraph 22 of the Code of Conduct for Insolvency Professionals as provided in the First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations 2016 which provides that "An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignment", observed: "... we agreed to the submissions of the respondent and observe that since the IRP proposed would not find sufficient time to act as IRP for the respondent company. Most of the activities prescribed in the Code are time bound, therefore we suggest to change the aforesaid IRP, accordingly FC proposed another IRP....", whose appointment was considered. **(para 19, page 19-20)**

10. Authority NCLT , Allahabad Bench

Matter Prabodh Kumar Gupta & ORS Vs. Jaypee Infratech Limited

Issue Whether the home buyers are stakeholders?

Held The AA observed: “... we feel appropriate to observe as such that the position of the present petitioners is undisputedly as of stakeholders. Therefore, the IRP appointed by this Court (in the above referred matter) in respect of corporate debtor is equally expected to consider and take care of the interest of the petitioners along with other creditors/stakeholder (eg. Home/flat buyers) and to receive/collect their respective claims in accordance with law.” Further, it was submitted that the legal issue, which is the subject matter of the present petition on the status of fixed depositors as FC can be dealt with by this Court in appropriate case on some other occasion.

Annexure A**Details of 12 Companies referred for insolvency by RBI**

S.No	Company	Applicant	Order Date	Bench	Underlying Default Amount (Rs. crore)
1	Alok Industries	SBI	18.07.2017	Ahmedabad	3772.15
2	Amtek Auto	Corporation Bank	24.07.2017	Chandigarh	824
3	ABG Shipyard	ICICI Bank	01.08.2017	Ahmedabad	4291.90
4	Bhushan Steel Ltd.	SBI	26.07.2017	Principal	4616.62
5	Bhushan Power & Steel Ltd.	PNB	26.07.2017	Principal	4383.12
6	Electrosteel Steel	SBI	21.07.2017	Kolkata	4185.20
7	Essar Steel	SBI/SCB	02.08.2017	Ahmedabad	45,000
8	Jyoti Structures Ltd.	SBI	04.07.2017	Mumbai	1,600.74
9	Jaypee Infratech	IDBI Bank	09.08.2017	Allahabad	526.11
10	Lanco Infratech	IDBI Bank	07.08.2017	Hyderabad	234.96
11	Monnet Ispat and Energy Ltd.	SBI	18.07.2017	Mumbai	1539.33
Total					70974.13