



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

# IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

*A professional is someone who can do his best work when he doesn't feel like it*

## ➤ **Related Party Can't Be Allowed Backdoor Entry Into CoC On Account Of Its Operational Debt: NCLT Kolkata**

The NCLT, Kolkata bench of Justice Ashok Kumar Bhardwaj has held that once a Financial Creditor had been classified as a “related party”, it could not be allowed to gain entry into Committee of Creditors (CoC) on account of its Operational Debt as it would amount to defeating the legislative intent of keeping related parties out and running of CoC by external creditors. Reliance was placed upon the judgment of the Supreme Court in Phoenix Arc Private Limited vs. Spade Financial Services Private Limited & Ors. to hold that the exclusion referred to in first proviso to Section 21(2) of Insolvency and Bankruptcy Code, 2016 (IBC) lays emphasis on the relationship existing between the parties and not the debt itself.

**M/s Energy Properties Private Limited (Corporate Debtor)** is the owner of a plot of land in Howrah, West Bengal. **M/s Avani Towers Private Limited (Financial Creditor/Developer)** signed a Development Agreement dated 16.06.2008. According to the terms of the agreement, the Developer was required to deposit Rs.12 crores as security. The security deposit included a further amount of up to Rs. 3 crores subject to an interest rate of 18% per year compounded quarterly. The Financial Creditor did not do any development work on the relevant premises. Parties engaged in a dispute as a result of non-performance of development work.

The Financial Creditor filed a petition under section 7 of IBC qua the debt of Rs. 10.91 crores, which consisted of the security deposit of Rs. 3.50 crores. On 20.03.2024, NCLT admitted the petition. The Applicant stated that Avani Towers is a related party of the Corporate Debtor under Section 5(24) of the IBC. The Applicant contended that the classification of claim of Avani Towers as operational debt was erroneous and *dehors* the provisions of IBC. Avani Towers had a 40% shareholding in the Corporate Debtor. Therefore, it was disqualified from being a member of the CoC. The RP treated the sum of Rs. 12 crores as operational debt only to avoid the trappings of Section 21 of IBC and to constitute the CoC with Avani Towers having an overwhelming majority in it.

**Source: Live Law**

**Read Full news:** <https://www.livelaw.in/ibc-cases/nclt-kolkata-related-party-cant-be-allowed-backdoor-entry-into-coc-on-account-of-operational-debt-277072>

## ➤ **Limitation Period For Both Corporate Debtor And Personal Guarantor Will Commence From Same Date: NCLT Hyderabad**

The NCLT Hyderabad bench of **Sri Rajeev Bhardwaj (Judicial Member)** and **Sri Sanjay Puri (Technical Member)** has held that the Personal Guarantor should be treated on an equal legal footing with the Corporate Debtor, as it is clearly established by the law that the liability of Corporate Debtor and Personal Guarantor are co-extensive in nature. Therefore, the provisions of the Limitation Act must be applied consistently to both the Corporate Debtor and the Personal Guarantor. The limitation period for both the parties will commence from the same date.

This petition has been filed by M/s. Jammu And Kashmir Bank Limited (Financial Creditor/FC/Petitioner) under Section 95 of the IBC seeking an order for initiation of Personal Insolvency Resolution Process against Personal Guarantor (Personal Guarantor/PG/Respondent) of M/s. IndBarath Energy (Utkal) Limited (CD/ Principal Borrower).

**Source: Live Law**

**Read Full news:** <https://www.livelaw.in/ibc-cases/limitation-period-for-both-corporate-debtor-and-personal-guarantor-will-commence-from-same-date-nclt-hyderabad-277073>

## ➤ **IBBI extends deadline for liquidation form submissions**

The Insolvency Bankruptcy Board of India has released a circular on the extension of time for filing Forms to monitor liquidation and voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016.

The board has decided to extend the last date of submission of the liquidation and voluntary liquidation forms till December 31, 2024. Further clarifying that, for ongoing liquidation and voluntary liquidation cases, the responsibility for filing all forms shall lie with the Insolvency Professionals (IP) currently handling the process.

**Source: Legal Economic Times**

**Read Full news:** <https://legal.economictimes.indiatimes.com/news/corporate-business/ibbi-extends-deadline-for-liquidation-form-submissions/115933770>

