

# THE HORIZON

January-March 2017

## Insolvency and Bankruptcy Code 2016



### About Us

Established in 1993, Dhir & Dhir Associates is a full service law firm with a pan India presence in prime cities of New Delhi, Mumbai, Hyderabad and strategic alliance with associate lawyers in more than 15 States. The firm also has an international presence with a representative office in Japan. This network of alliances gives the benefit to the clients of a single window service provider, to deal with all kinds of matters within the country and cross-border transactions under one umbrella. With over 100 professionals including lawyers, some with dual qualifications of chartered accountants, company secretaries, cost accountants, MBAs and engineers, the firm is adept in handling complex legal and financial matters. The firm and its partners have been recognized as the leaders in "Restructuring and Insolvency" and "Dispute Resolution", and have also been highly ranked for "Banking and Finance", "Projects, Infrastructure & Energy", "Technology, Media and Telecommunication", "Project Finance", "Corporate /M&A", "Financial Service Regulatory" and "Private Equity" in leading legal publications including Chamber and Partners, Legal 500, IBLJ, IFLR1000 and Asia Law Profile.



**Dhir  
& Dhir**  
Advocates & Solicitors

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# Heralding a Positive Change – Repeal of SICA, Dawn of New Era of Restructuring & Insolvency under the IBC 2016

India is heading towards a new era of dealing with insolvencies and bankruptcies, whether corporate or individual, by promulgating a comprehensive Insolvency & Bankruptcy code at par with global standards to facilitate ease of doing business in India.

The Government has synchronized the demise of Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) (SICA) on 30th November 2016 perfectly with putting in place all the enabling structures required to commence the implementation of the restructuring process under the Insolvency and Bankruptcy Code, 2016, (IBC) to provide a viable alternative process for resolving their issues to the concerned stakeholders, w.e.f. 1st December, 2016. Accordingly, the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR)

have been dissolved and as such any reference made or inquiry pending to or before the Board or Appeal or any proceeding of whatever nature pending before the Appellate Authority or the Board under the SICA shall stand abated.

However, the SICA Repeal Act provides that a company in respect of which such appeal or reference or inquiry under SICA stands abated, may make reference to the National Company Law Tribunal under the IBC within one hundred and eighty days from the commencement of the IBC in accordance with the provisions of the IBC.



## Background

Mr. Arun Jaitley in his Budget speech in 2015 had stressed on reforms of the bankruptcy law as a key priority area for improving the ease of doing business in India. Accordingly, Bankruptcy Law Reforms Committee (BLRC) under the able leadership of Mr. T. K. Viswanathan was set up and its report formed the basis of promulgation of the Insolvency and Bankruptcy Code 2016 (IBC) in May 2016.

Dr. M.S. Sahoo was appointed as the first Chairman of the Bankruptcy Board on 1st October, 2016 and within two months with the support of Mr. Tapan Ray, Secretary, Ministry of Corporate Affairs and Mr. A. S. Bhatia, Joint Secretary, Ministry of Corporate Affairs has been able to operationalize the process of IBC by formulating the notifications and registering Insolvency Professional Agencies and Insolvency Professionals.



## Impact Assessment

The Code provides that in cases of a default by the corporate debtor, any concerned creditor, be it the financial creditor, the corporate debtor or the operational creditor (after mandatory 10 days demand notice) can file a Corporate Insolvency Resolution Process (CIRP) and recommend its own proposed Insolvency Professional (IP) to be appointed with respect to the corporate debtor.

The Code is drawn on the lines of the UK insolvency laws, envisaging an automatic takeover of management by the Insolvency Professionals (IP) at the inception of the Corporate Insolvency Resolution Process (CIRP) so that during the resolution process the 'creditor is in possession' of the assets of the defaulting borrowers as against the old regime of 'debtor in possession'. The Code proposes the setting up of the Information Utilities as the structured entities to record and certify the existence of debts/defaults for the initiation of the process of restructuring and revival, which is yet to be operationalized. However the non operationalization of the Information utilities would not be a road block in commencing the restructuring process under the IBC.

On admission of the CIRP by the National Company Law Tribunal (NCLT) which is the Adjudicating Authority (AA) under the Code, the Insolvency Professional would take over the affairs of the company by replacing the management, finalize list of creditors and call for meeting of creditors. The IP will have to consider the restructuring schemes formulated by any Resolution Applicant who may desire to put up a resolution proposal for takeover/ revival of the corporate debtor. If the scheme is approved by 75% of the majority of creditors in the meeting of the Committee of Creditors (wherein only the financial creditors have voting rights), then it stands approved, otherwise the corporate debtor would mandatorily go into liquidation.

The Code provides for a statutory period of 180 days (extendable by 90 days) for completion the Insolvency Resolution Process failing which the corporate debtor will mandatorily go into the liquidation process. During the CIRP, complete moratorium is provided to the corporate debtor against recovery proceedings, attachments, SARFAESI etc. to give breathing time to the said corporate debtor to facilitate its restructuring.

## **The Next Mile Ahead**

The new regime is premised on the commercial wisdom of the creditors as the determining factor for restructuring of the Corporate debtor. This places great responsibility on the creditors to act in a pragmatic manner, estimate the real value recoverable from the securities held by them and recognize erosion in value of their debt so that a viable restructuring proposal can be worked out. In case they fail to do so, the case will proceed to liquidation where they may have to suffer greater loss in value. As such the code is both a threat and an opportunity to the stake holders. Corporate Debtors cannot hold on to the assets in

distress while keeping the creditors at bay. Equally the creditors have to take quick and pragmatic decisions to determine erosion in value of their assets and recover their dues to the extent possible, failing which they will suffer further loss in value. The code provides a platform to bonafide borrowers and pragmatic creditors to sit together and prepare a restructuring plan to the benefit of both parties. In case the company cannot be revived, it would go into liquidation and its promoters / Guarantors would have to face Bankruptcy proceedings which will provide them an exit route and after the cooling off period, they may restart their commercial lives.

# Seal the Deal – a Glimpse of New Mandates

*The firm has the privilege of filing the first CIRP in India and has filed CIRPs on behalf of the corporate debtors as well as the creditors under the IBC 2016*

## **DHIR & DHIR ASSOCIATES REPRESENTS UB ENGINEERING LTD (UBEL) AT NCLT**



Dhir & Dhir Associates represents UB Engineering Ltd (UBEL), part of the Vijay Mallya-owned UB Group in a legal battle of insolvency. The CIRP was filed by the corporate debtors-UB Engineering Ltd and represented by Mr. Alok Dhir, Managing Partner, Dhir & Dhir Associates, who argued the case before the NCLT (Mumbai) in January, 2017. With the enforcement of the Insolvency and Bankruptcy Code 2016, this is the first time the case has been accepted by the NCLT under the new law.

## **DHIR & DHIR ASSOCIATES ADVISED NMDC LIMITED ON ITS INR 75.27 BILLION BUYBACK**



The firm advised NMDC Limited, a Navratna Public Sector Enterprise, on its INR 75.27 billion (approx.) buyback of 20% (approx.) its equity shares. The firm advised NMDC Limited and the manager to the Buyback viz. IDBI Capital Markets & Securities Limited on various transaction related issues. The firm provided legal advice and also assisted in drafting public announcement, documentations, various communications with the stock exchanges and regulators.

## **DHIR & DHIR ASSOCIATES ACTED AS LENDER'S LEGAL COUNSEL FOR POWER FINANCE CORPORATION LIMITED**



Dhir & Dhir Associates acted as the Lender's Legal Counsel to Power Finance Corporation Limited for the financial assistance aggregating to INR 1.96 Billion sanctioned by it to Photon Ojas Private Limited for part financing the cost of setting up of 50 MW Solar PV Power Project at District Mansa in the State of Punjab. The mandate included drafting of financing and security documents, conducting due diligence on the borrower, its promoters and project documents, and issuing opinions on the legal issues.

## **MOIL LIMITED APPOINTS DHIR & DHIR ASSOCIATES AS ITS LEGAL COUNSEL**



Manganese Ore India Limited

Dhir & Dhir Associates advised MOIL Limited, a Schedule "A" Miniratna Category- I Company, on its INR 8.63 Billion (approx.) buyback of 21% (approx.) its equity shares. The team advised MOIL Limited and the manager to the Buyback viz. IDBI Capital Markets & Securities Limited on various transaction related issues from time to time. The assignment also included drafting of public announcement, various communications with the stock exchanges and the regulator.

# Awards and Accolades



INDIA BUSINESS  
LAW JOURNAL



Alok Dhir is recognized as an exceptional lawyer and featured in **'The A-List: India's top 100 lawyers 2016'** by India Business Law Journal and the Indian Corporate Counsel Association



Dhir & Dhir Associates has won an award in **India Business Law Journal's 2016 Indian Law Firm Awards** in the category **'Restructuring, refinancing & insolvency'** practice

**Leading individuals: Alok Dhir & Nilesh Sharma**-Restructuring & Insolvency 2016 by Chambers & Partners



Ranked in band 3 in Dispute Resolution 2016 by Chambers & Partners

Ranked in band 4 in Projects, Infrastructure & Energy and Technology, Media & Telecommunication 2016 by Chambers & Partners

Recommended as an **Outstanding Firm** in Restructuring & Insolvency 2016 by Asia Law Profiles



**Highly Recommended in Dispute Resolution, Banking & Finance, Corporate/M&A, Financial Services Regulatory, Private Equity and Project Finance** 2016 by Asia Law Profiles

**Leading Lawyer – Maneesha Dhir** for Dispute Resolution 2016 by

**Leading Lawyers – Alok Dhir and Nilesh Sharma** for Dispute Resolution –Insolvency 2016



**Tier IV firm in Banking and M&A** 2017 by IFLR1000

**Tier III firm in Capital Markets, Project Finance and Private Equity** 2017 by IFLR1000

# Making Headlines

## Company Law Tribunal admits Vijay Mallya's UB Engineering insolvency plea

**Business Standard**

Dhir & Dhir Associates represents UB Engineering Ltd (UBEL), part of the Vijay Mallya-owned UB Group in a legal battle of insolvency. The CIRP was filed by the corporate debtors-UB Engineering Ltd and represented by Mr. Alok Dhir, Managing Partner, Dhir & Dhir Associates, who argued the case before the NCLT (Mumbai) on 18th January, 2017. The news was covered by [Business Standard](#)



**THE ECONOMIC TIMES**

## Corporate defaulters may lose much protection under new code

On November 30, the government ended protection under the Sick Industrial Companies Act (SICA) and replaced it with a new insolvency code.

Alok Dhir, founding member, Dhir & Dhir, said a corporate insolvency resolution process (CIRP) regulation under the newly notified bankruptcy code would replace the earlier protection. His firm is one of the most active in bankruptcy protection. Read more at: [Economic Times](#)

## Bankruptcy code: Govt notifies norms for insolvency resolution

"The sections for appeal, trial by special court of criminal offences, and operational sections have been notified with the rules for insolvency resolution, which puts in place the structure for filing CIRP applications," said Alok Dhir, managing partner at Dhir and Dhir Associates, a law firm.

Read more at: [Livemint](#)



## Insolvency Code all set to kick in: Dhir & Dhir registers maximum IPs

In total, twenty-one IPs have also been registered. Founding partners at Dhir & Dhir Associates, Alok Dhir & Manisha Dhir, along with partners Sandeep Kumar Gupta and Nilesh Sharma have also become certified IPs under the Code. Read more: [Bar & Bench](#)

## New insolvency framework marches with army of 600 IPs

**Business Standard**

Delhi-based Nilesh Sharma among the first IPs., said while the framework is in the initial stage and might have teething trouble, the opportunity is immense in the long run. He feels unsecured creditors will utilize this framework in large numbers, as they'd no longer have to file petitions for winding up. Sharma, a senior partner with Dhir & Dhir Associates, said the new framework would help tackle the problem of bad debts in banks in the long run. Read more at: [Business Standard](#)



**Mr. Dhir, sharing his insights on the Legal Issues and Challenges at ASSOCHAM's National Conference - Insolvency & Bankruptcy Code on 25th Oct 2016**



**Mr. Dhir addressing the 2<sup>nd</sup> Annual Conference on Legal Challenges of Debt Restructuring: SDR & S4A held in Mumbai on 15th December, 2016 organized by India Infrastructure publishing**



**Mr. Dhir, speaking on the New Legal Framework to Insolvency Resolution at CII's conference on 'Insolvency and Bankruptcy Code, 2016 – Impact Analysis' held on 12<sup>th</sup> January, 2017, Kolkata**



**Mr. Dhir, sharing his views on the CIRP Procedure and Challenges at Merchants' Chamber of Commerce & Industry's Interactive Session on 'Insolvency and Bankruptcy Code, 2016' held on 12<sup>th</sup> January, 2017, Kolkata**







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#### **DISCLAIMER**

This Newsletter is for informational purposes only. The information and/or observations contained in this newsletter do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this newsletter do not necessarily constitute the final opinion of Dhir & Dhir Associates and should you have any queries, please feel free to contact us at [editor@dhirassociates.com](mailto:editor@dhirassociates.com)



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