

# SC allows case settlement after insolvency proceedings begin

The apex court also rules that a case can be withdrawn after proceedings have begun against a company

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**J**ust seven months after the operationalization of the Insolvency and Bankruptcy Code (IBC), it has been tested by the apex court.

The Supreme Court on Monday ruled that a settlement can be considered and a case can be withdrawn after insolvency proceedings have started against a company.

It was hearing a case concerning corporate debtor Lokhandwala Kataria Construction Pvt. Ltd. on an application filed by financial creditor Nisus Finance and Investment Manager LLP.

The Mumbai bench of the National Company Law Tribunal (NCLT) on 15 June initiated a corporate insolvency resolution process against the debtor.

Later, the company and the creditor approached the National Company Law Appellate Tribunal (NCLAT) saying that the two had settled the dispute and that some of the dues had already been paid.

NCLAT said on 13 July that under the IBC 2016, a case can be withdrawn before the admission of an insolvency case, and not after that.

The parties then filed a plea with the Supreme Court, which allowed settlement to be considered under article 142 of the Indian constitution.

Article 142 provides that "the Supreme Court in the exercise



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of its jurisdiction may pass such decrees or make such orders as is necessary for doing complete justice in any cause or matter pending before it".

"The policy underlying IBC shifts the incentive of the parties from individual recovery actions to collective action. In that context, after a petition has been filed in NCLT, allowing out-of-court bilateral settlement between the borrower and one creditor may contradict that basic objective of collective action," said Pratik Datta, a researcher at the National Institute of Public Finance and Policy, New Delhi.

After the admission of the petition, it acquires the character of representative suit and through publication in newspapers, other creditors get a right

to participate in the insolvency resolution process and therefore IBC does not allow the petition to be dismissed on the basis of a compromise between the operational creditor and corporate debtor.

To be sure, Article 142 is restricted to facts of a particular case and may not act as a precedent for the NCLT or NCLAT to allow an out-of-court settlement in every insolvency case. In the order, Supreme Court also observed that NCLT and NCLAT do not have inherent powers and will be ruled by provisions of IBC.

"Since this order is under Article 142, it should be treated on the facts of that particular case and not as a precedent of general applicability," added Datta. "It is not disturbing the

basic pillars or edifices of IBC. However, we might see some more cases of similar nature come up and process would need to mature accordingly.

"The government may also consider amending the IBC to make provisions for settlement of insolvency proceedings once a plea is admitted," said Rakesh Nangia, managing partner, Nangia and Co. LLP, which does some insolvency work.

"A preferential treatment has been given to creditor (in terms of settling its dues) who has filed the plea. If this were to continue then the creditor who files the case will always get a preferential treatment and the other creditors of the company would be left in a lurch," said Manita Binani, an insolvency resolution professional.

## NCLT lets banks move insolvency proceedings against Bhushan firms

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NEW DELHI

**T**he National Company Law Tribunal (NCLT) Wednesday allowed banks to initiate insolvency proceedings against Bhushan Steel Ltd and another company, Bhushan Steel and Power Ltd. In the case of Bhushan Steel, the petition for launching the insolvency process was filed by State Bank of India (SBI), the lead bank of the lenders' consortium, while a similar plea was filed by Punjab National Bank (PNB) against Bhushan Steel and Power. Since the petitions have been admitted by the NCLT, there is 180-day timeline to decide on resolution plan in accordance with the Insolvency and Bankruptcy Code (IBC), 2016.

NCLT on 13 July issued notices to Bhushan Steel as well as Bhushan Steel and Power over insolvency proceedings initiated by their lenders.

The companies were directed to file their reply. Both the petitions were filed under the Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, where the creditor initiates insolvency proceedings with a claim. After hearing both parties, the tribunal had kept its order reserved for 19 July.

Separately, bankruptcy proceedings have also been initiated against others, including Electrosteel Steel and Lanco Infratech, Alok Industries and Jyoti Structures, which are among 12 cases of loan default identified by the central bank for early action. These 12 constitute a quarter of the over 1.88 trillion of NPAs.



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## EXPERT VIEW

INDRANIL SEN GUPTA



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## TIME RUNNING OUT FOR RBI RATE CUTS

**W**e expect the Reserve Bank of India (RBI) monetary policy committee (MPC) to cut policy rates by a quarter of a percentage point on 2 August. In our view, time is running out. An RBI rate cut now would signal lending rate cut to banks before the start of the "busy" industrial season in October. As 2016 showed, "busy" season RBI rate cuts do not transmit to lending rate cuts.

Delays would push the next lending rate cut to the "slack" season beginning April. We reiterate that lending rate cuts hold the key to recovery. It is only when the cost of credit comes off that demand revives to exhaust capacity and spark investment. This would also buttress RBI's efforts to improve banks' asset quality as the bulk of non-performing assets are cyclical, fuelled by high rates in a long global recession.

We flag six reasons why the RBI Monetary Policy Committee's (MPC) inflation concerns are likely to continue to dissolve:

First, inflation risks are muted. Despite a tomato price spike, food inflation is falling on good summer rabi harvest. We track July inflation at about 2% atop June's 1.5%. We expect consumer price index (CPI) inflation to average a weak 3% in H1 FY18 and 3.7% in FY18, well within RBI's 2-6% inflation target. RBI has itself cut its inflation forecast to 2.5-3.5% from 4.5% in H1 FY18 in the last policy meeting. Core CPI inflation (when adjusting petrol and diesel prices) has slipped to 3.7% from 4.8% in October rather than being sticky. RBI now finds that "the industrial outlook... indicates that pricing power remains weak".

Secondly, we do not expect the output gap to close anytime soon, with high lending rates delaying recovery. This obviously curbs pricing power. Old series GDP growth, at about 5.5%, remains well within our estimated 7% potential. RBI also acknowledges "...deceleration of activity... since Q2..."

Third, rising hopes of a normal monsoon should dampen inflation. Autumn kharif sowing is also higher than last year, although the drop in obseed cropping is a concern.

Fourth, GST rates are neutral to the inflation outcome. Fifth, the second round effects of the hike in housing rent allowance (HRA) by the 7th Pay Commission can hardly be considered material as the first round is largely statistical. As a large number of government employees reside in government quarters, they would not be financial beneficiaries.

Sixth, "imported" oil inflation risks are coming off on lower oil prices and a softer US dollar.

This naturally begs the question, can RBI really cut 50 basis points as Ravindra Dholakia, an MPC member, has called for? We see a second cut only if good monsoon water a sufficiently bumper crop to sustain low infla-

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