



**31st October, 2018**

The Insolvency and Bankruptcy Code, 2016 (IBC) is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy.

**InSync** in this edition aims at explaining the latest amendment in the IBBI (Insolvency Professionals) Regulations, 2016 and the judgment passed by Hon'ble The Supreme Court of India in B.K. Educational Services Private Limited Vs. Parag Gupta and Associates.

**Amendment in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016**

The Insolvency and Bankruptcy Board of India has amended the IBBI (Insolvency Professionals) Regulations, 2016. With the amendment having been effective from 11<sup>th</sup> October, 2018, an Insolvency Professional will now have to pay to the Board, a fee at the rate of 0.25% of the professional fee earned for the services rendered by him in the preceding financial year, on or before the 30<sup>th</sup> April every year. Also, the Insolvency Professional Entity is now required to pay to the Board, a fee at the rate of 0.25% of the turnover from the services rendered by it in the preceding financial year, on or before the 30<sup>th</sup> April every year.

Furthermore, in order to get recognition as an Insolvency Professional, **an eligible person will now have to pay an application fee of Rs. 50, 000** along with the application for recognition. In case an individual ceases or joins as a director or partner of an insolvency professional entity, the entity is required to inform the Board **within 7 days along with a fee of Rs. 2, 000.**

A delay in payment of fee by an Insolvency Professional or an Insolvency Professional Entity will exert pull on a simple interest at the rate of **12 percent p.a. on the amount of unpaid fee.**

**IBBI amends the IBBI (Insolvency Professionals) Regulations, 2016.**

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**Application fee of Rs. 50,000 to be paid to the Board to get recognized as an Insolvency Professional.**

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**Delay in payment of fee will attract 12% p.a. on the amount of unpaid fee.**

**Limitation Act, 1963 applicable to applications made under the Insolvency and Bankruptcy Code, 2016.**

**Application barred under Article 137 of the Limitation Act, 1963 if default has occurred over three years prior to the date of filing of application.**

### **Limitation Act applicable to applications filed under the Insolvency and Bankruptcy Code**

In a recent judgment dated 11.10.2018, Hon'ble the Supreme Court of India, in the matter of *B.K. Educational Services Private Limited Vs. Parag Gupta and Associates*, held that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Insolvency and Bankruptcy Code, 2016, Article 137 of the Limitation Act gets invited. The "right to sue", therefore, accrues when a default takes place. The appeal was filed against the NCLAT order dated 07.11.2018 wherein the NCLAT had held that the provisions of the Limitation Act, 1963 are not applicable.

### **What is Article 137 of the Limitation Act**

Article 137 of the Limitation Act, 1963 provides the period of limitation in case of "*any other application for which no period of limitation is provided elsewhere*" as three years from the time when the right to apply accrues.

The Court, furthermore, made it clear that if the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where section 5 of the Limitation Act can be applied to condone the delay in filing such application.

The appeal was concerned with Section 238A of the Insolvency and Bankruptcy Code, 2016 which was inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 with effect from 06.06.2018. The appellants had raised the question as to whether the Limitation Act, 1963 would apply to applications that are made under Section 7 and/or Section 9 of the Code on and from its initiation on 01.12.2016 till 06.06.2018.

### **What is Section 238A?**

Section 238A provides that the provisions of the Limitation Act, 1963 will apply to the proceedings or appeals before the Adjudicating Authority, the NCLAT, the DRT or the DRAT, as the case may be.

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