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THE RESOLUTION PROFESSIONAL

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(A Section 8 Company Promoted by ICAI and Registered as an IPA with IBBI)

EVOLVING DYNAMICS OF INSOLVENCY FRAMEWORK: THE ROAD AHEAD

ABOUT IIIPI

The Insolvency and Bankruptcy Code, 2016 (Code) provides that no entity shall carry on its business as an Insolvency Professional Agency (IPA) under this Code and enrol Insolvency Professionals (IPs) as its members except under and in accordance with a certificate of registration issued in this behalf by the Insolvency and Bankruptcy Board of India (IBBI).

Against this backdrop of the Code and the IBBI (Insolvency Professional Agencies) Regulation, 2016 (IPA Regulation), The Institute of Chartered Accountants of India (ICAI) formed Indian Institute of Insolvency Professionals of ICAI (IIIPI), a Section 8 company to enrol and regulate IPs as its members in accordance with the Code read with its Regulations. The Company was incorporated on 25th November 2016.

IIIPI is the first Insolvency Professional Agency (IPA) of India registered with IBBI. The certificate of registration was handed over to the agency by the then Hon'ble Minister of Finance Late Shri Arun Jaitley on 28th November 2016.

OUR VISION

To be a leading institution for development of an independent, ethical and world-class insolvency profession responding to needs and expectations of the stakeholders.

STRATEGIC PRIORITIES

- Capacity building of members by enhancing their all-round competency for their professional development in global context.
- Capacity building of other stakeholders for facilitating efficient and cost effective insolvency resolution proceedings.
- Deploying an independent regulatory framework with focus on ethical code of conduct by the members.
- Working closely with the regulator and contributing to policy formulation including with respect to the best practices in the insolvency domain.
- Conducting research on areas considered critical for development of a robust insolvency resolution framework.

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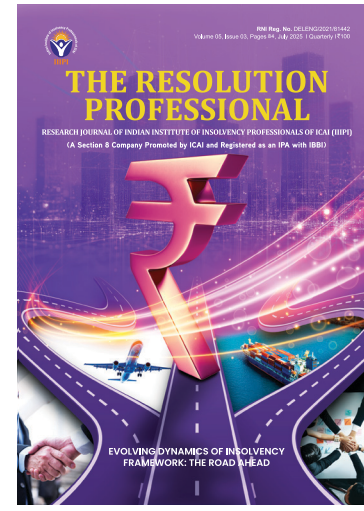

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From Chairman- Editorial Board

CA. Charanjot Singh Nanda
President, ICAI
Chairman, Editorial Board – IIIPI

Dear Professional Colleagues,

"Progress is impossible without change, and those who cannot change their minds cannot change anything."

These words of George Bernard Shaw remind us that the responsibility of institutions is not merely to follow change, but also to lead it.

For over eight years, various institutions under the Insolvency and Bankruptcy Code, 2016 (IBC) have spearheaded a crucial reform by addressing financial distress and facilitating the recirculation of resources within the economy. The insolvency framework in India has been instrumental in promoting financial discipline, business accountability, and improved governance.

Till 30th June 2025, 1258 companies have been rescued through resolution as going concerns with creditors realizing ₹3.96 lakh crore. This realisation is about 33.70% as against the admitted claims and about 178.17% as against the liquidation value. Resolution plans on average are yielding 94.89% of fair value of the CDs. Such realisation by creditors from resolution plans have increased from 95% of fair value and 136% of liquidation value in FY 2023-24 to 157% of fair value and 230% of Liquidation Value in FY 2024-25.

A research study titled, "Behavioural Impact of IBC conducted by The Indian Institute of Management (IIM), Bangalore in May 2025, found that the IBC has instilled greater discipline in the credit allocation process, compelling borrowers to adhere to stipulated payment schedules. The study observed a significant decline in 'Overdue' corporate loans between 2018 to 2024. In 2019–20, an account remained 'Overdue' for 169–194 days before being classified as 'Default' by creditor which reduced to 33–81 days in 2023–24. Furthermore, it took on average 248–344 days for a loan account to transition from 'Overdue' to 'Normal' in 2019–2020, which has lessened to 30–87 days in 2023–24.

Since the inception of the IBC regime, IIIP of ICAI (IIIPI) has emerged as a front runner in terms of policy advocacy, publication and capacity building initiatives. Presently, about 63% of the total Insolvency Professional (IPs) are affiliated with IIIPI of which 83% are the members of ICAI. IIIPI's capacity building programs on Cross-Border Insolvency, Group Insolvency, Avoidance Transaction, etc., provide its members an edge in the insolvency profession.

Its quarterly research journal, The Resolution Professional, has emerged as a credible platform across stakeholders for high quality articles, case studies, practical insights and considered opinion. The exchange of ideas and insights fostered through this publication plays a vital role in deepening the collective understanding of the insolvency framework in India.

As we look ahead, we must reaffirm our commitment to building an insolvency regime that is time-bound, transparent, and upholds values of justice, accountability, and institutional integrity. In the words of Ramdhari Singh Dinkar, the great nationalist poet:

"वह प्रदीप जो दीख रहा है झिलमिल, दूर नहीं है;
थककर बैठ गये क्या भाई! मंजिल दूर नहीं है".

(*The lamp that you see flickering in the distance is not far; have you sat down out of exhaustion, brother? Your destination is not far.*)

CA. Charanjot Singh Nanda
President, ICAI
Chairman, Editorial Board – IIIPI

From Chairman- Governing Board, IIIPI

Dr. Ashok Kumar Mishra
Chairman-Governing Board,
IIIPI

Dear Member,

As India continues to reinforce its commitment to financial discipline and corporate governance, the significance of the insolvency ecosystem has become increasingly paramount. Today, Insolvency Professionals are being looked upon as catalysts for corporate revival and long-term value creation. Therefore, the ability of IPs to balance competing interests, navigate complex negotiations, and uphold ethical standards makes them indispensable to sustaining investor confidence and fostering a culture of accountability in India's business ecosystem. To strengthen the profession and ensure its well-rounded development, IIIPI has recently constituted a study group to examine the challenges faced by IPs, regulatory or otherwise, and suggest the way forward.

In the past over eight years, we have witnessed significant progress in the insolvency ecosystem. From enhanced resolution outcomes to increased transparency in processes, the collective efforts of all stakeholders have strengthened the credibility of the IBC framework and improved its effectiveness in resolving financially stressed companies. The number of resolution plans approved by the NCLT annually has increased by about 39 per cent between 2022-23 and 2024-25. The rescued companies have been immensely contributing to value generation as well as employment creation in the country.

Furthering the cause of a robust insolvency ecosystem in the country, IBBI has recently empowered the Committee of Creditors (CoC) to invite, through the Resolution Professional, the providers of interim finance to attend CoC meetings as observers which will enable the latter to make well-informed decisions for financing the Corporate Debtor during the Corporate Insolvency Resolution Process (CIRP). Besides, the introduction of part-wise resolution of the CD can reduce timelines, prevent value erosion in viable segments, and encourage broader investor participation. In fact, many such suggestions are part of a IIIPI's study group report on 'developing market for stressed assets in India' as released recently.

However, the one aspect which we all need to focus upon is – timeliness of insolvency process, which has been matter of concern across the stakeholders. Presently, the resolution under the IBC takes 597 days, which is much higher than 180 days (extendable up to 330 days) mandated in the Code. As of March 31, 2025, 78% CIRP cases were pending in NCLTs for more than 270 days. We need to reimagine to find out ways to reduce this pendency to a minimum and ensure that maximum CIRP cases are disposed of within the timeline prescribed under the IBC. Based upon the initial feedback, IIIPI has recently constituted another study group to examine and propose ways to make IBC law, being a commercial and economic legislation, more expedient.

Since its inception in 2016, IIIPI remains at the forefront of this transformation, empowering professionals with the knowledge, ethics, and tools necessary to uphold the objectives of the Insolvency and Bankruptcy Code (IBC), 2016. Through various cutting-edge programs, research activities, publications, and a peer-review mechanism, among other initiatives, IIIPI consistently strives to provide its members with the best possible industry exposure. We are also engaging actively with national and international forums to share best practices and ensure that Indian insolvency professionals remain globally competitive.

The Resolution Professional research journal of IIIPI, through research articles, case studies, addresses, interviews, and timely updates, serves as a dynamic platform for providing value edition to stakeholders across the insolvency ecosystem. I hope the July 2025 edition of the journal will meet your expectations, besides equipping and motivating you towards taking the IBC regime to greater heights.

Let us work together to uphold the trust placed in us and build a robust and resilient insolvency ecosystem.

With Regards

Dr. Ashok Kumar Mishra
Chairman
IIIPI

From Editor's Desk

Dear Member,

The evolution of the insolvency and bankruptcy framework in India has been one of the most significant reforms in recent times, reshaping the contours of corporate governance, financial discipline, and confidence of stakeholders. At the heart of this transformation lies Insolvency Professionals (IPs), who are entrusted with balancing the interests of all stakeholders while ensuring the revival or resolution of stressed companies. Their role extends far beyond procedure; it encompasses ethical stewardship, commercial acumen, and deep understanding of both law and business. As the ecosystem expands, insolvency professionals must also embrace technology, data-driven insights, and global best practices to strengthen efficiency and accountability. At IIIPI, we always endeavour to ensure that this journal – *The Resolution Professional*, acts as both a mirror and a guide for the insolvency profession in the country.

In this edition of The Resolution Professional, we are publishing the Address of Shri Sudhaker Shukla, Former Whole Time Member (WTM), Insolvency and Bankruptcy Board of India (IBBI), which he had delivered as the Guest of Honour at the Inaugural Session of One-Day Workshop on Group and Cross-Border Insolvency for Insolvency Professionals (IPs) on June 14, 2025. The address offers insights into various aspects of Group Insolvency and Cross-Border Insolvency.

Moreover, this edition has five research articles and a case study on the successful resolution of Rite Builtec Pvt. Ltd. In the opening article "Role of Foreign Direct Investment (FDI) in Resolving IBC Cases", the author draws some key takeaways from foreign jurisdictions to attract and sustain FDI in resolving companies under the IBC, which, according to the author, is vital for boosting resolutions and positioning India as a global hub for investments in distressed assets. The second article "Homebuyers: Secured or Unsecured creditors under IBC, 2016?", after analyzing various provisions and related judgements pertaining to the Transfer of Property Act, 1882, RERA and IBC, advocates for inclusion of homebuyers under the category of secured financial creditors. In the third article "Challenges in the Personal Insolvency Resolution Process under the IBC", the author analyses various hurdles before PPIRP and recommends specific solutions to address them. The fourth article, "Limitation and Individual Insolvency under the IBC: Challenges and Evolving Jurisprudence" presents a thorough analysis of various legal provisions and related jurisprudence on applicability of limitation law to individual insolvency proceedings. Besides, the author has also made a few recommendations to ensure consistency in applying limitation laws across insolvency proceedings. In the concluding article, "From Rules to Analytics: A Comprehensive Review and Interplay of IBC in Bank Fund Management", the author offers a critical evaluation of the practical application of certain models in formulating effective banking strategies.

In this edition, we have also published the first part of a research paper titled "Understanding Cost Dynamics of IBC Processes for Small/MSME CDs Vs. Large CDs" developed by IIIPI's officials.

Besides, the journal also has its regular features, i.e., Legal Framework, IBC Case Laws, IBC News, Know Your Ethics, IIIPI News, IIIPI's Publications, Media Coverage, Services, Help Us to Serve You Better, and Crossword.

Please feel free to share your candid feedback to help us improve the quality of the journal, by writing to us on iiipi.journal@icai.in

Wish you a happy reading.

Editor

Address By Sh. Sudhaker Shukla, Former WTM, IBBI

Group Insolvency and Cross-Border Insolvency

Guest of Honour at the Inaugural Session of One-Day Virtual Workshop on Group and Cross-Border Insolvency for Insolvency Professionals (IPs) on June 14, 2025.

Shri Sudhaker Shukla
Former Whole Time Member (WTM),
Insolvency and Bankruptcy Board of India (IBBI)

Shri Sudhaker Shukla, Former Whole Time Member (WTM), Insolvency and Bankruptcy Board of India (IBBI), looked after Research and Regulation Wing comprising Corporate Insolvency, Corporate Liquidation (including Voluntary Liquidation), Individual Insolvency and Individual Bankruptcy, Research & Publication, Data Management & Dissemination and Advocacy. In addition, he was also handling Human Resources, National Insolvency & Graduate Insolvency Programmes, Continuing Professional Education and Knowledge Management & Partnership divisions in the IBBI.

Shri Shukla served as a member of the Indian Economic Service (IES) for over 34 years in various capacities across Ministries and Departments of the Government of India. His last assignment was as Chief Economic Adviser in the Ministry of Rural Development. Earlier, he served as Adviser in African Development Bank. He has wide experience in dealing with various regulations.

On June 14, 2025, Shri Shukla delivered the inaugural address at the One-Day Virtual Workshop on Group and Cross-Border Insolvency for Insolvency Professionals (IPs), as Guest of Honour. In his address, he discussed various pros and cons of Group and Cross-Border Insolvency and highlighted its relevance to the IBC regime. ***Read on to know more....***

The futuristic reforms are ever evolving and an essential part of any vibrant ecosystem. The geo-political world order has continuously been under evolution. If we observe the trajectory of insolvency regimes in other jurisdictions, the progression has been from Individual Insolvency to Corporate Insolvency, followed by Group and Cross-border Insolvency. The current debate revolves around Group and Cross-border Insolvency, and going forward, the focus is likely to shift towards incorporating environmental concerns and dealing with cryptocurrency and digital assets in cross-border settings, alongside implementation of group insolvency frameworks.

International Experience

Adoption of futuristic aspirations depends upon stage of any country's economy, which may vary from one country to another. Debate in India, since 2018, has consistently recognized the need for Cross-Border Insolvency as a priority arguably, even before debate on introduction of group insolvency gained traction. In contrast, in advanced jurisdictions, the debate on Group Insolvency for interconnected enterprises started since first half of the 19th century onwards and group insolvency; much before cross border insolvency issues which came in focus since early 20th century. The debate was basically on what constitutes a group and why a group is needed as driver of the economic growth. The economic theories attributed the rise of group enterprises to several factors; it was argued that dominant market power and risk-taking entrepreneurship go hand in hand. Dunning's Eclectic Paradigm gives us a glimpse of what constitutes the importance of a group—basically, market ownership, locational advantage, and internalization of cost. Furthermore, hypothesis has been tested and proven that vertical and horizontal integration becomes vital in carrying forward the group's position in the international economic order. Multinational companies evolved and flourished with colonization. However, as nation-states got the freedom and emerged out of the grips of colonial powers, the need for cross-

border insolvency was mainly raised by the advanced jurisdictions to protect economic good associated with the multilateralism.

The United Nations Commission on International Trade Law (UNCITRAL) a subsidiary body of UN General Assembly, too, choose to bring its focus and building consensus through in-depth deliberations on Cross-Border Insolvency first and then discussions on Group Insolvency of interconnected group entities were initiated. For many countries of Global South such a sequencing is a debating point. The UNCITRAL Model Law on Enterprise Groups, 2019, states that "*Recognizing the need for a generally acceptable model law that would focus on insolvency proceedings relating to multiple debtors that are members of the same enterprise group, thereby extending the provisions of the Model Law on Cross Border Insolvency….".* Intention is not to find fault with the sequencing, but the point is being emphasised that option related to whether a particular jurisdiction intends to gain experience through experimentation with available best practices related to group insolvency before launching cross border dispensation or work on both simultaneously should be left with the wisdom of that jurisdiction.

Evolving Insolvency Regime in India

Offering plain vanilla options to begin with, the BLRC Report recommended to bring in complex processes later with the maturity of the insolvency eco-system. While section 234 and section 235 of the code refer the possibility of facilitating cross border cases, however, it is altogether silent on group insolvency dispensation. Adjudicating Authority by way of invoking inherent powers had covered a lot of ground in the space of dealing with group insolvency and cross border issues. On policy front, several background papers have been prepared which are in the public domain. Insolvency and Bankruptcy Board of India (IBBI) set up a Working Group on Group Insolvency headed by Mr. U K Sinha (2019) which was followed by Cross Border Insolvency Rules/Regulations Committee (CBIRC under the Chairmanship of Dr K P Krishnan (2020). Later the mandate of this expert Group was expanded to analyse Model Law on Enterprise Group (MLEGI). On sequencing issues both reports have suggested different approaches. Mr. Sinha Committee emphasized that *"The thrust of the framework is 'facilitation', 'flexibility' and 'choice'. It envisages an enabling group insolvency framework, to be implemented in a phased manner. The first phase may facilitate procedural co-ordination of only companies in domestic groups. Cross-border group insolvency and substantive consolidation could be considered at a later stage, depending on the experience of implementing the earlier phases of the framework, and the felt need at the relevant time".* On the other hand, Dr Krishnan Report recommendation state that the MLEGI may not be adopted at present, and its adoption may be considered after enactment of single entity cross border dispensation. Both reports align and converge to have cautious approach till necessary experience is gained in complex processes. If you see from the lens of convergence, both reports are basically saying the same thing with differentiated order of preference depending on maturity of systems. One says we cannot have a credible Group Insolvency regime without having Cross-Border Insolvency, while other focuses on experimentation with cross border before group entities come into focus. These are divergent but similar views. The emphasis on sequencing can't be more important than the context. The underlying context is to deliver the workable regime giving prominence to national interest and priorities.

Challenges in Implementation of Cross-Border Insolvency

It is important to ponder about factors which are impeding introduction of Cross-Border Insolvency in the country. The UNCITRAL model identifies its five pillars – nexus or control, recognition, cooperation, coordination, and reciprocity. These are now settled principles in many jurisdictions. All advanced jurisdictions acknowledge that such a framework gives a lot of flexibility in managing various nuances that could be faced by any regime. Despite having that flexibility, why has Cross-Border Insolvency not got the needed traction from most of the countries in the world as well as in India? About 60 countries have adopted it, but rest of the world is still thinking and manoeuvring its drawing board. This certainly raises doubts about uniformity in approach towards cross border dispensation across the jurisdictions.

We need to focus on issues especially in the context of our insolvency regime. Despite being high on

agenda aided by various expert committee reports and discussion papers since 2018, the concept is still shrouded in mystery. Now, the media reports say, that along with other amendments clarity on cross border dispensation will also emerge in the monsoon or winter session of the Parliament. But why have we taken seven years of pause and pondering before rolling out such a regime? The attributable factors, in my mind, are:

1. **Lack of Data and Research**: First reason is the dearth of data to establish its efficacy. As part of IBBI earlier we struggled to get credible studies across the world. We were in touch with the World Bank and other international agencies in the field of insolvency to get some sense of research inputs on the effectiveness of the Cross-Border regime in any country. At that time, we had only one study which said that foreign direct investments in the USA have increased in leaps and bounds after implementation of Cross-Border Insolvency. It appeared to be an overly simplistic statement to make without empirical backing. But yes, whatever its worth may be, at least this one study was available. Now, we are told by World Bank that one more study has come, and we are trying to lay hands on that.

2. **Jurisdictional Complexity**: Though I am not a lawyer but as an economist, I can see, various laws have their own evolutional history. Whether conventional, commercial, or criminal laws, all have evolved in given circumstances in the context of each jurisdiction. The country specific orientation reflects in the cross-border regimes as well. Even if cross-border dispensation is made applicable in India, how to deal with different laws of the land and their interaction with laws of other jurisdictions will be a important phenomenon one must watch for.

3. **Valuation Standards:** Third issue would be asset identification and associated valuation standards. India is yet to develop a set of robust valuation standards. We follow certain international valuation standards. ICAI was in the forefront to help us in designing valuation standards for the insolvency use-case in India, but I don't think these have seen the light of the day yet. If we don't have valuation standards and those are not uniform across countries, it would be very difficult to compare property valuations done in the US and India for the same kind of asset. Digital assets are also becoming very important in the international sphere. We don't have any framework to deal with them. The standard operating procedure (SOP) on digital assets is still evolving. The Reserve Bank of India (RBI) is talking about it, but we are not there yet. Advanced jurisdictions are already into digital asset valuation techniques. We also need to leapfrog in this area.

4. **Coordination of Procedures**: Each jurisdiction has different timelines and procedures. Whether Corporate Debtor is to be guided by Insolvency Professional (creditor in control) or by the promoter (debtor in control) is a clear distinction across different jurisdictions. Some jurisdictions, even without prescribed timelines, are ahead in terms of efficiency in respect of dealing the restructuring of stressed asset. We, despite having a robust timeline, are lagging on the front of adherence aspect. Differing timelines will open more arbitration and mediation issues. We are behind here too. The international arbitration hub has shifted from London to Singapore due to cost considerations. India needs to aim at being on the leaderboard. Institutional setup is coming up in Gujarat International Finance Tech City (GIFT City), which is a positive development. If we don't have such alternative arbitration dispensations, cross-border disputes will invariably end up in Singapore.

5. **Public Policy Exception**: IBBI's study available on its website reveals demonstratively that each country interprets public policy exceptions in its own way. On one end, you have the USA, where restrictions are minimal. On the other end, you have Japan, where almost everything is excluded in the name of public policy. Korea and Japan fall into that category. How to reconcile with this issue will be a thing to watch as we move forward.

Preliminary Developments on Group Insolvency in India

On Group Insolvency, most of you may recall that IBBI had recently brought out a Discussion Paper detailing certain features of Group Insolvency through subordinate legislation or Regulations. This was regarding facilitating joint hearings, appointment of a common resolution professional, information sharing protocols, and synchronized timelines.

The discussion paper was out, but seemingly got much resistance from the stakeholders who advised that we could not possibly tinker with the regime using regulations and modification of this magnitude needed to be carried out through legislative intervention only. Else, it would be challenged and tested in court, putting a question to its sustenance.

Principles Underlying Group Insolvency and Substantive Consolidation

In examining any group interconnectedness in any jurisdiction, it is be seen whether the principle of separateness is nominal/technical in nature or whether it lies at the heart of company law. Piercing the corporate veil would be difficult to sustain in the eyes of law. There are judgments in other jurisdictions that argue, one needs to look behind the veil before concluding about justification of separation between two legal entities. Indian judgments largely uphold corporate separateness as a core issue.

Even as Group Insolvency is not codified yet, case laws are emerging in India. For instance, the principles underlying and requiring consolidation have been documented in the Lavasa and few other judgments. Interlinkages, value of resolution, synergy of value, interdependence, and interlacing of finance have been identified as the key principles to consider.

For substantive consolidation, the World Bank's prescription is that it is possible only when there is an intent to defraud. But in the Videocon judgment, substantive consolidation was allowed based on common control, common directors, common assets and liabilities, pooling of resources, interlinking of debts, singleness of economics, and common financial creditors. If these conditions are satisfied, then substantive consolidation can be done.

Lifting of the corporate veil has also been dealt with by the NCLT in the matter of *Som Resorts Private Limited.* It underscores the same logic - if the intent is to defraud, the corporate veil can be pierced.

In conclusion I want to leave with thoughts that insolvency regime is ready to embrace the cross border and group insolvency dispensation within the framework of IBC. There is much needed clarity on concepts, approach and implementation strategy through amendment in Code, Rules and Regulations. Jurisprudence has already taken the lead. Hence, we all eagerly await the final announcements with the hope that related amendments will not be too prescriptive. Rather indicative framework will give the regulator enough flexibility for the course corrections as situation may warrant. I would like to end here leaving these thoughts in your creative minds to ponder over upcoming reforms.

Thank you very much for this opportunity and wishing IIIPI and the participants the best.

Role of Foreign Direct Investment (FDI) in Resolving IBC Cases

M. Suresh Kumar
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The Insolvency and Bankruptcy Code (IBC) 2016, transformed India's insolvency landscape, but its effectiveness depends largely on the availability of capital for resolving distressed businesses. This article examines the crucial role of Foreign Direct Investment (FDI) in enhancing IBC outcomes through capital infusion, strategic expertise, and competitive bidding. It analyses the legal frameworks governing FDI in insolvency cases, including FEMA, RBI, SEBI, and sector-specific rules, and explores feasibility of key investment routes for FDI such as ARCs, AIFs, SSFs, and ECBs. Through examples of successfully resolved CIRP cases and sectoral impact of FDI on IBC processes, the author advocates for relaxation of FDI norms except in crucial sectors. Besides, he draws some key takeaways from foreign jurisdictions to attract and sustain FDI in resolving companies under the IBC, which, according to the author, is vital for boosting resolutions and positioning India as a global hub for investments in distressed assets.
Read on to know more…

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC), marked a significant transformation in India's corporate insolvency resolution framework by providing a time-bound and structured process for distressed businesses. It is aimed to promote creditor confidence, enhance recovery rates, and ensure economic stability. However, one of the key challenges in the resolution of insolvent companies is the unavailability of sufficient funding to revive these businesses. This is where Foreign Direct Investment (FDI) can play a crucial role.

The introduction of IBC has not only streamlined insolvency proceedings but also opened doors for foreign investors looking for distressed asset investment opportunities in India. The participation of global investors, Asset Reconstruction Companies (ARCs), and private equity funds in insolvency resolutions has led to better recovery rates, improved market confidence, and faster turnaround of distressed businesses.

1.1. Statutory Background

India's insolvency reform is constitutionally anchored under Entry 9 of List III (Concurrent List) and Article 246 of the Indian Constitution, which empower both Parliament and states' legislatures to legislate on

bankruptcy matters. This shared competence forms the foundation for the IBC and enables the integration of cross-border mechanisms including FDI participation. The significance of FDI in insolvency resolution are as under:

a. **Infusion of Fresh Capital**: Many distressed companies require substantial capital for restructuring and operational revival, which foreign investors can provide.
b. **Better Valuation & Competitive Bidding**: Increased foreign participation enhances competition in the Corporate Insolvency Resolution Process (CIRP), leading to better valuation and recovery for creditors.
c. **Expertise and Global Best Practices**: Foreign investors often bring in strategic expertise, technology, and best management practices, improving business sustainability.
d. **Strengthening India's Position as an Investment Hub:** The success of IBC cases involving foreign investment has positioned. India as an attractive market for distressed asset resolution.

Despite its potential, the FDI faces several challenges in resolving IBC cases including regulatory bottlenecks, valuation concerns, and procedural complexities.

Despite its potential, the FDI faces several challenges in resolving IBC cases including regulatory bottlenecks, valuation concerns, and procedural complexities. Recent reforms in FDI policies and insolvency laws have made the process more streamlined, but there is still significant scope for improvement.

In this article, the author explores legal framework governing FDI in the IBC cases, the impact of foreign investments on insolvency resolution, and its challenges. Besides, India's approach has been compared with global best practices and policy recommendations have been provided for enhancing the participation of foreign investment under the IBC framework.

2. Comparative Analysis: Domestic vs.Foreign Capital in the IBC Resolutions

The success of the IBC regime in India depends significantly on the availability of capital to revive distressed businesses and maximize recovery for creditors. While domestic investors, banks, and financial institutions play a crucial role, they often face limitations in funding large-scale corporate resolutions. This creates an urgent need for FDI in stressed asset.

A comparison between domestic and foreign capital in insolvency resolutions in Table -1 highlights on why FDI is becoming increasingly important.

From this analysis, it is evident that foreign investors play a transformative role in the resolution of stressed assets by bringing in capital depth, strategic insights, and competitive bidding.

Table 1: Comparison between domestic and foreign capital in insolvency resolutions

Factor	Domestic Investors	Foreign Investors
Capital Availability	Limited due to NPA burden on banks and restricted financial resources.	Abundant capital from global funds, PE investors, and multinational corporations.
Risk Appetite	• Conservative • Preference for secured lending over distressed asset investments.	• Higher risk tolerance • Willing to invest in deep restructuring.
Investment Horizon	Short-term focus, often limited to financial restructuring.	Long-term commitment with strategic business transformation.
Expertise	Limited exposure to turnaround strategies, especially in high-tech industries.	Advanced technology, global best practices, and specialized turnaround skills.
Regulatory Constraints	Subject to RBI lending norms and banking sector exposure limits.	FDI regulations provide greater flexibility for direct investments and joint ventures.

2.1. How FDI Can Address Existing Gaps in IBC Resolutions?

Several IBC cases have witnessed low recovery rates or failed resolutions due to inadequate investor participation. FDI can bridge these gaps by:

(a) Providing an alternative capital source when Indian lenders and ARCs fail to generate enough bids.

(b) Offering long-term investment approaches, ensuring businesses don't collapse post-resolution.

(c) Encouraging global best practices in distressed assets management, ensuring better outcomes for both creditors and employees.

(d) Expanding the buyer pool for distressed assets, leading to more competitive resolutions.

> **The role of FDI in resolving IBC cases is not just about capital infusion—it brings better valuation, expertise, global best practices, and strengthens India's financial ecosystem.**

The role of FDI in resolving IBC cases is not just about capital infusion—it brings better valuation, expertise, global best practices, and strengthens India's financial ecosystem. Given the limitations of domestic investors, foreign capital has become a necessary driver for successful resolution.

3. Legal Framework Governing FDI in IBC Cases

Foreign investment in distressed assets and insolvency resolutions is regulated under multiple laws and policies in India. While the government has eased FDI norms to attract global investors, certain sectoral restrictions, compliance requirements, and regulatory approvals still apply.

3.1. Key Regulations Governing FDI in IBC Cases

Foreign investments in distressed companies undergoing resolution under the IBC must comply with:

a. Foreign Exchange Management Act (FEMA), 1999 [Foreign Exchange Management (Non-Debt instrument) Rules 2019]

b. Consolidated FDI Policy & Press Notes [issued by DPIIT]

c. Reserve Bank of India (RBI) Guidelines [Investment in NPA's / ARCs]

d. SEBI Regulations on Stressed Asset Investments & AIFs.

e. Insolvency and Bankruptcy Code (IBC), 2016.

f. Competition Commission of India (CCI) Approval.

4. FDI Routes for Investing in the IBC Cases.

Foreign investors looking to participate in India's distressed asset market under the IBC, have multiple entry routes. Depending on their risk appetite, investment strategy, and

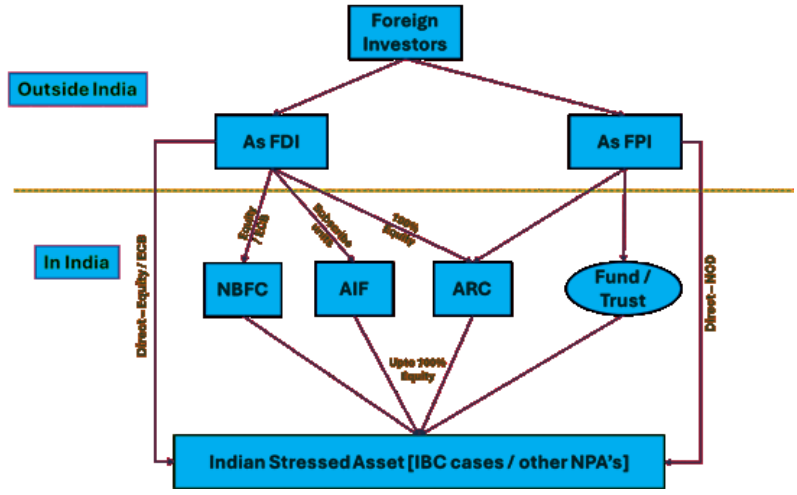
Table -2: FDI routes for investment in the IBC processes

Direct Acquisition of Corporate Debtors through Resolution plan process	(a) Foreign investors can bid for stressed companies by submitting a Resolution Plan under CIRP. (b) Approval from the Committee of Creditors (CoC) and the National Company Law Tribunal (NCLT) is required. (c) Strategic investors (such as global corporations and MNCs) prefer this route to expand their operations in India. **(d) Example**: ArcelorMittal's ₹42,000 crore acquisition of Essar Steel, a successful foreign **acquisition**[1&2] under the IBC.

[1] ArcelorMittal and Nippon Steel complete acquisition of Essar Steel, Press Release (https://corporate.arcelormittal.com/media/press-releases/arcelormittal-and-nippon-steel-complete-acquisition)

[2] ArcelorMittal and Nippon Steel Complete Joint Acquisition of Essar Steel in India, Press Release (https://www.nipponsteel.com/common/secure/en/news/20191216_400.pdf)

Investment through Asset Reconstruction Companies (ARCs)	(a) 100% FDI is **permitted**[3] in ARCs via the automatic route [*subject to RBI's 'fit-and-proper' criteria*], making it an attractive option for foreign funds. (b) ARCs specialize in acquiring non-performing assets (NPAs) from banks and restructuring them for sale. (c) Foreign investors can either set up their own ARCs or invest in existing Indian ARCs. **(d) Example**: Blackstone-backed International Asset Reconstruction Company (IARC) is one of the active players in India's distressed assets market.
Participation in Alternative Investment Funds (AIFs) and Special Situation Funds (SSFs)	(a) SEBI regulates Category II AIFs, which include stressed asset funds that pool foreign capital. (b) Special Situation Funds (SSFs), a new category under AIF regulations, are designed specifically for distressed asset investments. (c) Foreign investors prefer this route due to lower compliance burdens and flexible exit options.
Strategic Partnerships with Domestic Investors	(a) Foreign players partner with Indian financial institutions, NBFCs, or ARCs to co-invest in IBC cases. (b) This helps foreign investors navigate regulatory complexities while leveraging local expertise.
Special Purpose Vehicles (SPVs) for Distressed Asset Investments	(a) Foreign investors can create SPVs or Joint Ventures (JVs) for acquiring distressed companies under the IBC. (b) This structure allows for risk sharing and tax optimization. (c) Large sovereign funds and global PE investors use SPVs for structured investments in stressed assets.



3.Ministry of Commerce and Industry. Press Note No. 4 (2016 Series) (https://dpiit.gov.in/sites/default/files/pn4_2016.pdf)

> **The availability of multiple routes for foreign investors ensures that FDI plays a diverse and critical role in IBC resolutions.**

regulatory considerations, they can choose from direct acquisitions, partnerships, structured investments, and special investment vehicles that is explained in Table -2.

The availability of multiple routes for foreign investors ensures that FDI plays a diverse and critical role in IBC resolutions.Each investment path has its own advantages, depending on the investor's risk profile and market entry strategy.

5. Role of External Commercial Borrowings (ECBs) in FDI-Led IBC Resolutions

In addition to the capital flow in equity instruments, debt structures in the form of External Commercial Borrowings (ECBs) have emerged as a critical financing tool for foreign investors looking to participate in India's stressed asset market. ECBs allow eligible Indian companies to borrow from foreign lenders, including international banks, financial institutions, and private equity investors, providing much-needed liquidity for insolvency resolutions under the IBC. The Reserve Bank of India (RBI) has progressively liberalized ECB norms to facilitate foreign capital infusion in distressed companies.

In 2019, the RBI **permitted**[4] eligible corporate borrowers to avail ECBs for repaying domestic rupee loans, provided the repayment is part of a Resolution Plan approved under the IBC. This relaxation has enabled foreign investors to fund IBC acquisitions through structured offshore debt, reducing dependence on domestic financing. ECBs also offer the advantage of lower interest rates compared to domestic loans, making them a cost-effective solution for distressed companies seeking revival. However, restrictions such as end-use limitations, minimum average maturity periods, and sector-specific caps continue to impact the flexibility of ECB funding in insolvency resolutions. Expanding ECB accessibility, particularly for resolution applicants and distressed asset investors, could significantly enhance FDI participation in India's IBC ecosystem. Policy liberalization in these areas [e.g., All-in-Cost (AIC) ceilings and Minimum Average Maturity Period (MAMP) requirements], can unlock significant capital participation from global lenders.

5.1. Sectoral Restrictions and Compliance Requirements

While India has relaxed FDI norms for distressed assets, some restrictions and compliance obligations remain (Table-3).

Table 3: Sectoral restrictions and compliance requirements for FDI in India

Key Aspects	Detailed Description
Approval Route for Certain Sectors	(a) Defence, telecom, pharma (brownfield) and insurance sectors require government approval for foreign investment. (b) In critical infrastructure sectors, security clearances may be required.
Foreign Investor Eligibility under IBC	(a) Section 29A[1] of IBC bars defaulting promoters and certain related parties from bidding. (b) Foreign investors must prove they do not have any conflict of interest.
Valuation and Pricing Guidelines	RBI regulations may require that the valuation of stressed assets follow fair market pricing norms [Liquidation value vs Going concern's fair value issues]
Repatriation of Sale Proceeds	FEMA compliance is required for repatriating of funds back to foreign investors after resolution

[4] Reserve Bank of India, RBI/2019-20/20 A.P. (DIR Series) Circular No. 04 dated July 30, 2019 (https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT20F2121527F10B4CB7B93F63AE8B5C4760.PDF)

6. Impact of FDI on the IBC Resolution Process

Foreign Direct Investment (FDI) has played a transformative role in India's insolvency resolution ecosystem under the IBC. A glimpse of transformative impact on IBC resolutions with entry of foreign investors is presented in Table-4 and Table-5.

Table -4: Impact of FDI on resolution of CDs under the IBC.

Key Contributions	Details	Case Studies
Capital Infusion and Higher Recovery Rates	Foreign investors have driven recovery rates up to 45-50% in high-profile cases, compared to the average 32% for domestic-led resolutions.	**ArcelorMittal's Acquisition of Essar Steel (2019):** ArcelorMittal acquired Essar Steel for ₹42,000 crore, ensuring a 92% recovery for creditors.
Global Expertise and Sustainable Revival	Foreign investors bring technology, governance improvements, and market access, facilitating sustainable business revivals.	**Tata Steel's Acquisition of Bhushan Steel (not direct FDI)**: Post-acquisition, Tata Steel implemented advanced technologies and improved governance, leading to operational **efficiencies**[5&6] (Tata automated its operations with leveraged Japanese process innovation)
Competitive Bidding and Valuation Upside	Foreign participation intensifies bidding, leading to higher asset valuations.	**Binani Cement (2018):** A bidding war between Dalmia Bharat and Ultratech raised the offer from ₹6,700 crore to ₹7,950 **crore**[7&8]**.**

Table – 5: Sector wise impact of FDI in IBC cases

Sector	FDI Involvement	Examples
Steel	More than 50% of resolved cases involve foreign acquirers	**(a) Vedanta:** Acquired Electrosteel Steels. **(b) ArcelorMittal:** Acquired Essar Steel. **(c) Jet Airways** (2021): The Jalan-Kalrock Consortium, comprising UAE-based businessman Murari Lal Jalan and UK-based Kalrock Capital, won the bid to revive Jet Airways. However, as of November 2024, the Supreme Court ordered the liquidation of Jet Airways due to the consortium's failure to meet financial commitments.
Aviation	FDI has played a crucial role in attempts to revive airlines.	
Renewables	Foreign investors have acquired stressed assets in the renewable energy sector.	**ReNew Power and Goldman Sachs:** Acquired stressed solar assets, contributing to sectoral growth.

Foreign investment has significantly improved resolutions under the IBC, bringing in higher recovery rates, better competition, capital infusion, business revival, and employment retention despite usual challenges and roadblocks.

7. Challenges and Roadblocks in FDI Participation

While FDI has played a crucial role in improving insolvency resolutions under the IBC, foreign investors still face multiple challenges that affect their participation.

a. Regulatory Complexities and Compliance Burdens (Multiple Regulations)
b. Uncertainty in Valuation of Distressed Companies
c. Political and Economic Risks for Foreign Investors
d. Delays in Approvals from RBI and Sectoral Regulators
e. Legal Uncertainties and Judicial Delays

[5] The Avenue Mail (2025). Tata Steel Gamharia wins JIPM Excellence Award 2024, February 07, (https://avenuemail.in/tata-steel-gamharia-wins-jipm-excellence-award-2024/)

[6] Business Today (2021). How Tata Steel turned around bankrupt Bhushan Steel, May 18 (https://www.businesstoday.in/latest/corporate/story/how-tata-steel-turned-around-bankrupt-bhushan-steel-296337-2021-05-18)

[7] The Economic Times (2018). NCLAT Approves UltraTech's Revised Bid of ₹7,950 crore for Binani Cement, November 15 (https://economictimes.indiatimes.com/industry/indl-goods/svs/cement/nclat-holds-ultratechs-bid-for-binani-cement-valid/articleshow/66615756.cms?from=mdr)

[8] The Times of India (2018). Benani Cement's CoC decides to stick with ₹6,350 crore offer from Dalmia Bharat Cement, April 04 (https://timesofindia.indiatimes.com/business/india-business/binani-cements-coc-decides-to-stick-with-rs-6350-crore-offer-from-dalmia-bharat-cement/articleshow/63617981.cms)

While domestic resolution applicants benefit from familiarity with local processes, foreign investors often face hurdles such as restricted access to detailed operational data, compressed due diligence timelines, and regulatory approval uncertainties. These asymmetries can lead to suboptimal evaluation in CIRP bidding.

> **Global best practices from advanced jurisdictions like the US, UK, and Singapore provide valuable insights into how India can further enhance foreign investment participation in insolvency cases.**

Further, regulatory challenges, valuation uncertainties, approval delays, and legal risks still deter many foreign investors. Addressing these challenges through simplified FDI rules, faster approvals, and better legal clarity will further enhance foreign investment participation.

Table-6: Comparative Study of Insolvency Resolution Models

Country	Key Features	FDI Participation	Key Takeaways for us
United States (Chapter 11 Bankruptcy)	Allows debtor-in-possession (DIP) financing, ensuring business continuity during insolvency.	High FDI involvement due to a clear and flexible investment process.	Introducing structured distressed asset investment models like DIP financing can attract more foreign investors.
United Kingdom (Administration & Pre-Pack Sales)	Pre-packaged sales allow faster resolution, reducing valuation uncertainties.	Foreign investors actively acquire distressed UK businesses.	Developing a well-regulated pre-pack insolvency framework can make India's IBC process more FDI-friendly.
Singapore (Debt Restructuring & Cross-Border Insolvency Law)	Strong investor protection and quick resolution timelines.	Singapore attracts global hedge funds and distressed asset investors due to a stable legal environment.	Strengthening cross-border insolvency mechanisms in India can boost global investor confidence.

8. Global Perspective: How Other Jurisdictions Encourage FDI in Insolvency

India's insolvency framework under IBC has significantly improved the resolution process for distressed businesses. However, global best practices from advanced jurisdictions like the US, UK, and Singapore provide valuable insights into how India can further enhance foreign investment participation in insolvency cases (Table-6). By adopting global best practices, India can enhance foreign investor participation in distressed asset resolution, making the IBC framework more robust and internationally competitive.

Table-7: Key recommendations to attract FDI into the distressed asset sector under the IBC

Regulatory Issue	Current Problem	Recommended Change
FDI Approval Delays	Foreign investors need government approval in many sectors, causing delays.	Allow automatic FDI approval in all IBC cases except critical sectors.
FEMA Pricing & Valuation Restrictions	Strict pricing norms prevent market-driven valuation of distressed assets.	Exempt IBC cases from FEMA valuation norms and allow market-based pricing.

Section 29A Restrictions on Foreign Investors	Foreign funds with indirect exposure to NPAs face bidding restrictions.	Relax Section 29A restrictions for foreign investors without local NPA exposure.
Regulatory Clearance Delays (RBI, SEBI, CCI)	Multiple regulatory bodies cause long processing times for foreign investors.	Create a single-window approval system with a 30–60-day clearance timeline.
Foreign Investment in ARCs	Foreigners can invest in ARCs but face ownership and operational restrictions.	Allow 100% foreign ownership in ARCs with fewer operational restrictions.
Sectoral Restrictions in Stressed Asset Acquisitions	Some industries (e.g., telecom, defence) require special approvals, slowing IBC cases.	Grant automatic FDI approval for stressed asset acquisitions, overriding sector rules.
Lack of Cross-Border Insolvency Framework	No strong legal framework for foreign creditors to recover assets across borders.	Adopt UNCITRAL Model Law to make cross-border insolvency resolutions smoother.
Limited Investment Routes for Foreign Investors	Foreign investment in distressed assets is limited to direct takeovers and ARCs.	Introduce DIP Financing, Pre-Pack Insolvency, and Special Situation Funds (SSFs) for easier foreign investment.
ECB Liberalization for Distressed Asset Funding	Stringent All-in-cost (AIC) rate caps and minimum average maturity period (MAMP) requirements make ECBs less attractive for funding IBC resolutions.	Relax AIC restrictions and reduce MAMP for ECBs used in IBC cases, allowing greater flexibility for foreign investors in distressed asset financing.

9. Policy Recommendations and Future Outlook

While India has made significant progress in attracting FDI into the distressed asset sector under the IBC, several reforms can further enhance foreign investor participation. By addressing regulatory bottlenecks, simplifying investment processes, and strengthening investor protections, India can position itself as a global hub for distressed asset investments. Key recommendations are in Table-7.

India is at a critical juncture where foreign investments in distressed assets can significantly improve the effectiveness of the IBC framework. Looking ahead, several trends are expected to shape the future of FDI in insolvency resolutions:

a. Greater Global Investor Interest (global PE firms, hedge funds, and sovereign investors) in Indian Distressed Assets.

b. Expansion of Secondary Market for Stressed Assets with FDI backed ARCs, SSFs & AIFs.

c. Adoption of Cross-Border Insolvency framework.

d. Continued government policy support and reforms in insolvency laws to demonstrate improved recovery rates for creditors

> **India stands at the cusp of a major transformation in its insolvency resolution framework, and leveraging FDI effectively will be key to unlocking its full potential.**

Globally, Pre-Packaged Insolvency Mechanisms have demonstrated faster resolution and reduced litigation. While India currently limits Pre-Packs to MSMEs, expanding this framework to include larger corporate debtors can enable foreign investors to enter through negotiated plans, improving certainty and participation.

10. Way Forward

The IBC has transformed India's distressed asset resolution landscape, providing a structured and time-bound framework for corporate insolvencies. However, the availability of capital remains a key challenge in ensuring successful resolutions. Foreign Direct Investment (FDI) has emerged as a crucial solution, bringing in fresh capital, global expertise, and competitive bidding that significantly improve recovery rates and business revival.

Going forward

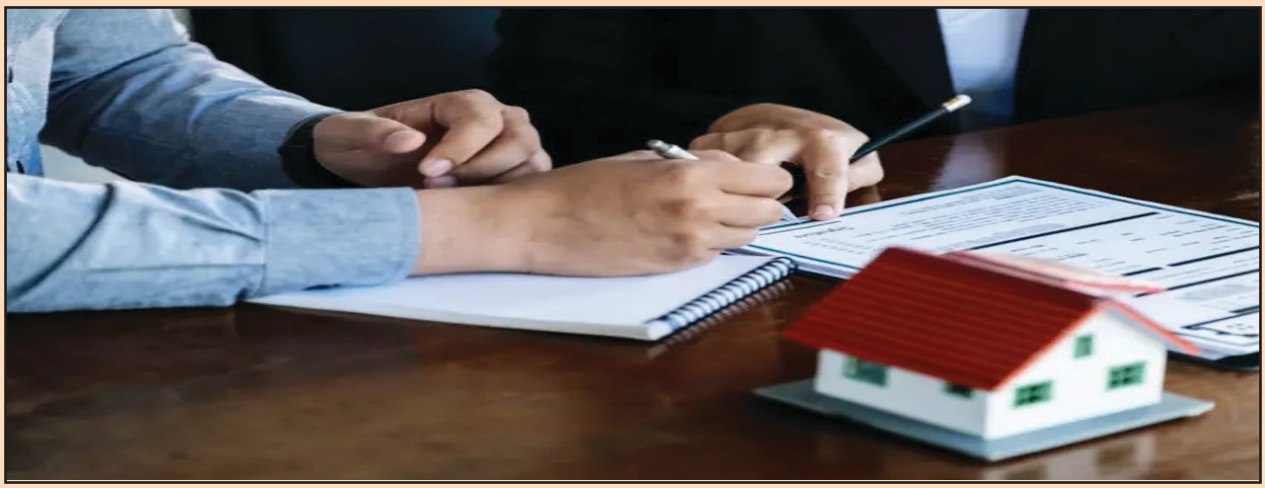
a. The role of FDI in IBC cases will continue to expand as India integrates global investment-friendly reforms.

b. The future will see greater participation from sovereign wealth funds, private equity firms, and distressed asset investors in India's insolvency market.

c. Continuous improvement in regulatory frameworks and Cross-Border Insolvency cooperation will further boost foreign investors' confidence.

India stands at the cusp of a major transformation in its insolvency resolution framework, and leveraging FDI effectively will be key to unlocking its full potential. In addition to structural and legal improvements, India must also account for macroeconomic realities. Currency risk, inflation volatility, and global interest rate trends directly impact foreign investors' decision-making in IBC transactions. Proactive monitoring and regulatory buffers are necessary to sustain investor confidence in a dynamic environment.

Homebuyers: Secured or Unsecured creditors under IBC, 2016



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The categorization of homebuyers as secured or unsecured financial creditors under the Insolvency and Bankruptcy Code, 2016 (IBC) has been a contested issue. However, under Section 55(6)(b) of the Transfer of Property Act, 1882 and various provisions of the Real Estate (Regulation and Development) Act 2016 (RERA), homebuyers seem to have been categorized as secured financial creditors. This categorization has also been upheld by courts under certain conditions. Moreover, NCLT in a recent judgement in the case of Snehanjali and S.B. Developers recognized homebuyers as secured financial creditors based on possession-linked security. After analyzing various provisions and related judgements pertaining to the Transfer of Property Act, 1882, RERA and IBC, the authors advocate for inclusion of homebuyers under the secured financial creditors.

Read on to know more…

1. Introduction

Ever since the Insolvency and Bankruptcy Code, 2016 (IBC/ Code) was enacted, the issues pertaining to real estate insolvency have taken a substantial consideration and time of the judiciary as well as the legislator. The insolvency framework on real estate corporates/projects as it stands presently has underwent many interpretations, discussions, deliberations, and analysis. The importance of it can be seen from the fact that out of the total companies getting admitted into Corporate Insolvency Resolution Process (CIRP) under the IBC, real estate companies account for 22%.[1]

The Code which has brought paradigm shift from "debtor in control" regime to "creditor in control" regime has also brought a positive change in the quantum of relief to the homebuyers in the real estate cases who previously only had the option to approach the Real Estate Regulatory Authority (RERA) under the Real Estate (Regulation and Development) Act, 2016 (RERA) and Consumer

1. The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India, April – June 2024 | Vol. 31 accessible at (https://ibbi.gov.in/uploads/publication/9bc46bf1e4b86dab3b0310cb8284cb74.pdf).

2. Section 2(zk) of The Real Estate (Regulation and Development) Act, 2016.

Redressal Commissions under the Consumer Protection Act, 2019 (previously Consumer Protection Act, 1986). Now, if the promoter[2] fails to adhere to his commitments to allottees/homebuyers, he might end up losing control over the company/project on admission of a CIRP application by the Adjudicating Authority (AA) of National Company Law Tribunal (NCLT) under Section 7 of the IBC. Thereafter, the control of the company/project goes into the hands of the Interim Resolution Professional (IRP) or the Resolution Professional (RP) who work under the guidance of the Committee of Creditors (CoC). The CoC in majority of the real estate insolvency cases comprises of lenders (banks) who are generally the secured creditors, homebuyers (as unsecured creditors, represented through Authorised Representatives) and operational creditors (if meeting the prescribed threshold).

2. Inclusion of Homebuyers as Financial Creditors under the IBC

Initially, the IBC did not have provision for treating homebuyers as financial creditors who were generally categorized as other creditors. However, the ordinance[3] (upheld in Chitra Sharma case) and subsequent amendment[5] (upheld in Pioneer Urban case), allottees were held to be treated as financial creditors as defined under Section 5(7). Vide the ordinance and amendment, an explanation was added in Section 5(8) (f) of the IBC which provided that the amounts raised by the allottees under real estate projects shall deemed to have commercial effect of borrowing thereby making it a financial debt. This was held by the Supreme Court[7] to be a clarificatory amendment who further stated it to have been a part of the main provision, i.e., Section 5(8) (f), with effect from the inception of the IBC.

Although the question pertaining to homebuyers being secured or unsecured was first raised in Chitra Sharma's case, but the same was left open to be decided later by the Court. However, the Apex Court in Pioneer Urban case has categorically held that homebuyers are unsecured financial creditors having vital interest in the amounts funded by them for completion of the project. Further, at every step of the project, certain amounts are to be paid by the allottees which are then utilised in constructing the flats/apartment. The nature of amount raised under the contract of homebuyers is actually for the purposes of raising finance (which in majority of the projects is to the tune of 50% of the total funding), thus the clarification regarding terming homebuyers as financial creditor was upheld by the Court. The Court compared allottees with the debenture holders and fixed deposit holders (who have advanced certain amount to the company) to categorize them under unsecured creditors having vital interest in the amount advanced for completion of the project.

"Supreme Court in Pioneer Urban case has categorically held that homebuyers are unsecured financial creditors having vital interest in the amounts funded by them for completion of the project."

However, the categorization of homebuyers as secured or unsecured does not have much relevance in the formation of the CoC but it has an impact on distribution of payouts and accordingly on the Resolution Plan or at the time of distribution of proceeds under liquidation. Further, letting real estate project into liquidation will not be of any interest to the homebuyers as disposal of assets will deprive them of their rights to own a home (if not done as liquidation as a going concern). Even if the project is liquidated, the categorization (of being secured or unsecured) becomes imperative as during liquidation the payout to creditors depends upon waterfall mechanism as prescribed under Section 53 of the IBC. Thus, it becomes important to reconsider if homebuyers are to be treated as secured or unsecured creditors under the Code.

In this regard, reference is made to the definition of secured creditor under the Code which states that "secured creditor means a creditor in favour of whom security interest is created".[8] Security Interest as per Section 3(31) means that a "right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person". [9]

3. Insolvency and Bankruptcy (Amendment) Ordinance, 2018.
4. Chitra Sharma & Ors. v. Union of India & Ors.
(Writ Petition (Civil) No. 744 of 2017.
5. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.
6. Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.
(Writ Petition (Civil) No. 43 of 2019.
7. Ibid.
8. Section 3(30) of the Insolvency and Bankruptcy Code, 2016.
9. Section 3(31) of the Insolvency and Bankruptcy Code, 2016.

3. Homebuyers under the Transfer of Property Act, 1882

It is imperative to highlight certain provisions of the law to state that the homebuyers can be categorized as secure creditors on the following basis:
That the charge gets created on the property of the seller (promoter's project in the present case) in favour of the buyer, to the extent of purchase money paid for delivery of the property and interest thereon as per Section 55(6)(b) of the Transfer of Property Act, 1882.

The said provision runs as follows:

(6) The buyer is entitled—
(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission."

As per the above provision of the Transfer of Property Act, which primarily deals with immovable property, if the buyer (allottee/homebuyer in the present case) has not improperly declined to accept the performance of the contract, he will be entitled for a charge over property for the purchase money and interest thereon. However, in the event the buyer properly declines to accept the performance of the contract, he will be entitled for a charge even for earnest money and the cost. Reference may be made to the case of Thomas George v. A.T. Joseph & Ors.10 wherein Kerala High Court has categorically held that "if the buyer improperly declines to accept delivery of the property as per the terms of the agreement, a charge will be created in favour of the buyer in respect of the property by operation of provision contained in Section 55(6)(b)".
Further, in the case of Ahemmedkutty Bran v. Sukumaran[11], the High Court of Kerala has observed that if the non-performance of the contract is on account of fault by the buyer and the seller or where both the parties are at default or where the seller is on default, the same would not lead to the conclusion that the buyer has improperly declined to accept delivery and thus, would be entitled for a charge over the property of the seller.

> **"Supreme Court in the case of State Tax Officer v. Rainbow Papers Ltd. recognized the charge created over the property of the CD under Section 48 of the Gujarat VAT, 2023 (statutory charge) in the IBC process."**

Hence, relying on Section 55(6)(b) along with the above judgements, it can fairly be said that a "statutory charge"[12] is being created on the immovable property as a consequence of agreement for sale[13] between the parties. Thus, a homebuyer has a charge over the property of the promoter in case the apartment[14] is not received timely.
Further, the Hon'ble Supreme Court in the case of State Tax Officer v. Rainbow Papers Limited[15] , which was upheld by Supreme Court in the case of Sanjay Kumar Agarwal v. State Tax Officer & Anr.[16] , recognized the charge created over the property of the Corporate Debtor by virtue of Section 48 of Gujarat Value Added Tax, 2003 (statutory charge) in the IBC process. The Apex Court did not differentiate between the statutory charge and a contractual charge and have observed that the definition of security interest under the IBC includes the statutory charge also thereby making tax department of the State a secured creditor under the IBC who shall be ranked equally with the workmen dues for twenty-four months period preceding the liquidation commencement date as per Section 53(1)(b).
This insinuates that a charge which is created by operation of law is to be considered a valid charge on the property and the charge holder as the secured creditor under the Code. As a closure, the decision on categorization of allotees/ homebuyers as unsecured creditors can be reconsidered in light of the above arguments.

4. Homebuyers under RERA

That the wide definition of security interest under the Code can incorporate the protection / security given to homebuyers under the RERA. As per Section[17] 18 of RERA, the allottees are entitled to a return of amount along with compensation and interest, in case if the promoter fails to adhere to the provisions of agreement for sale, i.e., the apartment is not constructed or is not able

10.2016 (1) KLJ 336.
11.RFA No. 349 of 2022.
12.K. Shanmugam and another v. C. Samiappan and Others, [2013 (6) CTC 28].
13.Section 2(c) of The Real Estate (Regulation and Development) Act, 2016.
14.Section 2(e) of The Real Estate (Regulation and Development) Act, 2016.
15.Civil Appeal No. 1661 of 2020.
16.Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020.

to provide possession of the apartment on the specified date or can withdraw from the project. Further, Section[18] 11 which provides for functions and duties of promoter, in its Clause (4) subclause (h) provides that the promoter shall not be eligible to create a mortgage or charge post the execution of an agreement to sale any apartment / plot / building. It also provides that if such a mortgage or charge is created, the same shall not affect the rights and interest of the allottee of such apartment / plot / building. Moreover, the provision to Section[19] 8 provides that in case the real estate authorities revoke the registration of the promoter under Section 7 of the Act, the association of allottees have the first right of refusal to carry out the remaining development works.

Considering the above provisions read with the definition of security interest as provided in the Code, it can be interpreted that the protection provided to the allottees under the RERA Act in the form of return of money with interest, right on the property over which developmental works were undertaken by not allowing promoter to sell or create a charge and the right of first refusal) in lieu of the consideration paid by them considerably brings them under the umbrella of secured creditors under the IBC.

5. Conclusion

Further, the definition of security interest as provided in the Code provides that it is a "right, title, interest or claim to a property". Also, the definition further provides that the security interest is for "performance of any obligation of any person". The homebuyers surely have the right/ interest/claim in the property considering the amount advanced by them in return for the flat/apartment which the developer/promoter is under obligation to provide.

To buttress further, reference is made to the NCLT order in the interim application (IA (I.B.C.) No. 3383/MB/2024 and IA (I.B.C.) No. 2284/MB/2024 in CP (IB) No. 1046/ MB/2023), in which the NCLT classified the homebuyers from "unsecured financial creditors" to "secured financial creditors". The NCLT upheld the reasoning of the RP in classifying homebuyers as secured financial creditors on the basis that the security interest (having possession of specific units) to the homebuyers has been created upon payment of consideration value. Though its earlier order in the same matter, the NCLT directed the RP to reconsider its previous classification of homebuyers as unsecured financial creditors and further directed to provide equal rights and status to both homebuyers and re-settlers. The

> **"The protection provided to the allottees under the RERA Act also brings them at par to the secured creditors under the IBC."**

AA observed that the re-settlers have entered into developmental agreements with the Corporate Debtor vide which the re-settlers have secured performance of certain obligations by the Corporate Debtor (which include construction and handling over of flats to the re-settlers). Thus, the NCLT held that re-settlers are to be considered as "secured other creditors" and homebuyers as "secured financial creditors".

Furthermore, on conjoint reading of Section 55(6)(b) of the Transfer of Property Act, 1882, above mentioned provisions of the RERA, definition of secured creditors (under Section 3(30) and security interest (under Section 3(31)) in the IBC, it is suggested that the allottees under a real estate project can be considered as secured creditors. Thus, bringing homebuyers under the secured creditors category will prioritize and protect homebuyers under both, during CIRP and liquidation. However, the same differs from the existing ruling of the Supreme Court in the case of Pioneer Urban. Hence, any specific observations/ directions from the judiciary or the legislature or the regulator on the above discussed aspects can clear the clouds on the subject matter considering the fact that the homebuyers actually fund the project similar to the banks (who having security are considered as secured creditors). Lastly, via the recent amendment[20] brought in by the Insolvency and Bankruptcy Board of India (BBI), Regulation 4E has been inserted in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) which obligates the RP to handover the possession of the plot, apartment, or building etc., agreed to be transferred to the allottee under the real estate project provided the allottee has requested for the same, has performed its part under the agreement and the same has been approved by the sixty-six percent of the CoC. This seems to be a welcoming step towards the categorization of homebuyers as secured creditors as they will be having control over their apartment, building etc. upon adhering to the requirements under the agreement, provided the same has been approved by the CoC.

[17] Section 18 of Real Estate (Regulation and Development) Act, 2016.
[18] Section 11 of Real Estate (Regulation and Development) Act, 2016.
[19] Section 8 of Real Estate (Regulation and Development) Act, 2016.
[20] Regulation 4E, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2025.

Challenges in the Personal Insolvency Resolution Process under the IBC

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This article examines the critical challenges faced in the Personal Insolvency Resolution Process (PIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC), particularly with respect to Personal Guarantors (PGs) to Corporate Debtor (CD). Despite the Code's time-bound framework, practical issues such as delay in obtaining details of PGs, incomplete Statements of Affairs, outdated limits on excluded assets, rigid voting thresholds for repayment plan approval etc. hinder resolution. The challenges inherent in the PIRP underscore the pressing need for thoughtful amendments and reforms. In this backdrop, the present article analyses various hurdles and recommends specific solutions to address them, which according to the author, will not only benefit individual PGs by affording them a fair chance to recover but will also safeguard the interests of creditors, ultimately fostering a more resilient financial ecosystem in the country.

Read on to know more…

1. Introduction

The Insolvency and Bankruptcy Code (IBC) represents a significant reform in the regulatory landscape of India particularly concerning insolvency resolution processes. Even after over eight years of implementation of the IBC, which is aimed at streamlining the resolution mechanism and provide a time-bound framework for addressing insolvency, challenges still persist, especially in the context of Insolvency resolution Process for Personal Guarantors (PGs) to Corporate Debtor (CD). This article aims to identify key issues that hinder the effective implementation of the IBC regarding personal insolvency in respect of PGs to CD and to recommend suggestions that could enhance the efficiency, fairness, and overall functionality of the insolvency resolution process for PGs to CD. Thus, the article contributes to the ongoing discourse surrounding insolvency reform in India and advocate for necessary amendments to the existing framework.

2. Contact Details of Person Guarantors (PGs)

(a) Challenge: Obtaining the contact details, specifically personal email IDs and mobile numbers of PGs, often

causes delays in completing the Individual Insolvency Resolution Process.

(b) Suggestion: The contact details of PGs should be included in the order itself by Adjudicating Authority (AA) while passing the order u/s 100 of IBC, 2016. This will mitigate delays in contacting PGs and enable timely retrieval of necessary information. Additionally, the AA may direct the counsel for PGs to provide such information to the Resolution Professional (RP) at the time of passing the order u/s 100 of the IBC, 2016.

3. Preparation of Statement of Affairs

(a) Challenge: The preparation of a Statement of Affairs (SoA) as per the Section 107(3) (b) of the IBC and Regulation 10 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate debtor) Regulations- 2019, is a critical component of the Insolvency Resolution Process for Personal Guarantors (PGs) under the IBC. Resolution Professionals (RPs) are required to provide a copy of the SoA along with the repayment plan while convening the meeting under Section 107. However, RPs often encounter significant challenges in compiling an accurate and comprehensive SoA due to incomplete or inadequate information provided by the PGs themselves. This lack of complete information can hinder the RP's ability to assess the true financial position of the PG and can also affect the creditors' understanding of the repayment plan. It can ultimately lead to lack of confidence in the Repayment Plan submitted by the PGs.

(b) Suggestion: To facilitate the efficient preparation of the SoA and to enhance the accuracy of the information submitted, it is essential to empower the RP with the authority to obtain necessary information from various government agencies. Specifically, the RP should be authorized to access records and data from tax authorities, development authorities, and other relevant agencies that hold pertinent information about the assets and liabilities of PGs. If deemed necessary, the RP may after seeking approval of the creditors, engage the services of professional/s to trace the assets held in the name of the PGs. This empowerment would enable RPs to effectively trace and verify the assets of PGs, ensuring that the SoA is as complete and accurate as possible. By having access to official records, RPs can corroborate the information provided by PGs and reduce the likelihood of discrepancies. Furthermore, this approach would streamline the process, improve transparency, and build greater trust among creditors and stakeholders, thereby enhancing the overall efficiency of the insolvency resolution framework.

"If deemed necessary, the RP may after seeking approval of the creditors, engage the services of professional/s to trace the assets held in the name of the PGs."

4. Limit of Excluded Assets

(a) Challenge: One of the prominent challenges within the Personal Insolvency Framework under the IBC relates to the excluded assets as defined in the Section 79 (14) (e) of the IBC as an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed. Further, these limits as specified in the Rule 5 of the Application to the AA for Personal Insolvency of the PG to CD Rules-2019, stands at ₹20 lakh for urban areas. However, this threshold is becoming increasingly inadequate in light of soaring property values in urban centres, where real estate prices often far exceed this limit. As a result, PGs may find themselves in unwarranted financial distress, as their assets that ought to qualify for exemption are instead subjected to the insolvency proceedings.

Additionally, there is considerable ambiguity surrounding the treatment of properties that are jointly owned by PGs and their family members. The absence of clear guidelines sometimes leads to confusion and disputes regarding the valuation and division of these assets during the insolvency resolution process, which can complicate the proceedings further.

(b) Suggestion: The exclusion limit for property value should be realistic and adjusted to reflect current market conditions. To effectively address these challenges, it is crucial to revisit and revise the exclusion limit for property value under the IBC so that it reflects realistic and contemporary market conditions. A thorough analysis of current property valuation trends in urban areas may help in arriving at a more appropriate exclusion limit that offers adequate protection to PGs while considering the rights of creditors.

Furthermore, clear guidelines be provided to delineate the treatment of jointly owned properties during insolvency proceedings. These guidelines should specify how the ownership stakes in jointly held assets are assessed and modalities for dealing of such assets for asset liquidation and the insolvency resolution process.

5. Late Claims Submission by Creditors

(a) Challenge: As per Section 102 (1) of the IBC, the Creditors are required to submit their claims within 21 days of the notice issuance. However, some creditors may not be aware of the notice, resulting in late claims. The current lack of provision in the IBC prevents the RP from admitting late claims, which complicates the PG's ability to submit a repayment plan, particularly when properties are mortgaged to those creditors.

(b) Suggestion: It is desirable to provide for allowing the RP, with prior approval of creditors, to admit late claims under specific circumstances, such as when creditors demonstrate genuine unawareness of the notice or unavoidable delays. This amendment would ensure that all legitimate claims are considered, promoting fairness in the insolvency resolution process. A relaxation of the submission timeline should also be considered, extending it by at least 60-90 days or until the repayment plan is submitted by the PG.

> **"It is desirable to provide for allowing the RP, with prior approval of creditors, to admit late claims under specific circumstances."**

6. Timeliness of Filing Report under `Section 106

(a) Challenge: The requirement for the RP to file a report under Section 106 (1) of IBC along with the repayment plan, within 21 days of the last submission date (i.e. within 51 days from the public announcement), often proves challenging. PGs seek time for submission of data and Repayment Plan necessitating the RP to approach the AA for extensions. Furthermore, without clear provisions in the IBC, some NCLT benches are reluctant to grant extensions.

(b) Suggestion: The Repayment Plan may be submitted by the RP within 120 days of the admission of the application under Section 100 of the IBC, thereby eliminating the need for RP to seek AA's approval for late submission of reports under Section 106, which arises due to the late submission of repayment plans by PGs.

7. Compliance with Provisions of the IBC regarding submission of Repayment Plan

(a) Challenge: One of the significant challenges in the insolvency resolution process for PGs under the IBC is the compliance with provisions relating to the submission of repayment plan. The AA expects the RP to provide substantial assistance to PGs in preparing repayment plan that align with various IBC requirements. Despite this expectation, many PGs display reluctance or hesitation in submitting their plans within the stipulated timelines. This reluctance can stem from several factors, including a lack of understanding about requirements, insufficient data or documentation, or simply a tendency to defer responsibility to the RP. Consequently, these delays can prolong the resolution process, hinder effective communication with creditors, and create additional complications in managing claims.

(b) Suggestion: To address these challenges, it is suggested that standardized proformas be designed for PGs to use when preparing their repayment plans. These proformas would serve as structured templates, guiding PGs through the necessary components and requirements that need to be included in their plans. By providing a clear and consistent format, these standardized proformas would not only simplify the process for PGs but also minimize the potential for errors or omissions that could arise from inconsistent submissions. Furthermore, such templates would encourage PGs to take ownership of their submissions while reinforcing the importance of adhering to IBC provisions.

8. Voting Percentage for Repayment Plan Approval

(a) Challenge: In the current framework under the IBC, the approval of a repayment plan requires a significant consensus—specifically, three-fourths (75%) of the creditors needs to agree on the proposed plan as stated in Section 111 of the IBC. This high threshold poses considerable challenges in practice.

It often leads to lengthy negotiations and can frustrate the resolution process, especially when dealing with a diverse group of creditors who may have varying interests and priorities. The stringent requirement can inadvertently empower a minority of creditors to stall the approval process, making it difficult for PGs to finalize their repayment plans and exacerbating delays within the insolvency resolution timeline. This can ultimately undermine the overarching goal of the IBC, which is to facilitate timely and efficient resolution of insolvency cases.

(b) Suggestion: To enhance the efficiency of the repayment plan approval process, it is recommended that the voting percentage required for approval be decreased to 66%. Lowering the voting requirement would create a more manageable consensus among creditors, thereby facilitating quicker approvals and allowing the PGs to proceed with their repayment plans without undue delays. This adjustment would not only streamline the approval process but also reduce friction among creditors, encouraging a more collaborative approach toward reaching consensus. Furthermore, by making the process more flexible, it aligns with the IBC's intent to provide a time-bound resolution framework, ultimately benefiting both creditors and PGs. A voting threshold of 66% would still ensure that a majority support exists for the repayment plan, while also recognizing the reality of the diverse interests involved in the process.

9. Evaluation of Repayment Plans by Creditors

(a) Challenge: A significant challenge in the evaluation of repayment plans submitted by PGs under the IBC is that creditors frequently assess these plans solely against their respective individual claims. This narrow focus can lead to an incomplete understanding of the PG's overall financial situation and may result in rejection of repayment plans that could otherwise be viable. By not considering the overall net worth of PGs, creditors miss important context that could inform their decision-making and ultimately hinder the resolution process. This practice can create an environment where creditors are less inclined to approve repayment plans, prolonging insolvency proceedings and exacerbating financial difficulties for PGs.

(b) Suggestion: To address this issue, it is essential to encourage creditors to evaluate repayment plans with a broader perspective that includes the PG's net worth as recorded in bank records, along with their current financial standing at the time of evaluation. This comprehensive assessment would provide creditors with a clearer picture of the PG's ability to repay debts and the feasibility of long-term repayment plans. Additionally, it is crucial for financial institutions, particularly banks, to develop tailored policies for cases involving PGs that are distinct from those applied in Corporate Insolvency Resolution Process (CIRP) cases. Such policies should recognize the unique nature of personal insolvency, offer flexibility and understand based on individual circumstances rather than merely applying standardized corporate protocols. By fostering an approach that assesses repayment plans against the full financial profile of PGs, creditors can make more informed and fair decisions regarding repayment plan approvals. This shift toward a holistic evaluation can promote collaboration and ensure a more balanced resolution process for all parties involved, ultimately enhancing the effectiveness of the insolvency framework under the IBC.

10. Determination of the RP's Fee

(a) Challenge: The fee for the RP is determined by a single creditor banker at the time of appointment. This fee may not accurately reflect the subsequent workload or additional responsibilities, particularly after an order is passed under Section 100 of the IBC. As the RP invites and verifies claims from additional creditors, entities often hesitate to increase the RP's fee and even linking it to the repayment plan. Furthermore, RPs face challenges in getting reimbursements to the expenses they incur during the process.

(b) Suggestion: The minimum fee for the RP be fixed in the IBBI (Insolvency resolution Process for Personal Guarantors to Corporate debtors) Regulations- 2019, based on the total claims admitted. This would ensure fair compensation for the RP and align their remuneration with the complexity and volume of their work.

11. Stringent Timeline to Complete the entire Personal Insolvency Resolution Process (PIRP)

(a) Challenge: One of the significant challenges faced

in the PIRP under the IBC is the stringent timeline mandated for the completion of the process, which is set at 120 days. This timeline sometime proves to be excessively tight, especially considering various factors that can impede progress. Issues such as lack of cooperation from PGs, delays in the submission of required documents or information to prepare the SoA and the time taken by PGs to prepare and submit their repayment plans can significantly hinder the RP's ability to adhere to the prescribed timelines. This pressure can lead to insufficiently considered decisions, rushed negotiations with creditors, and ultimately impact the effectiveness and fairness of the resolution process. Moreover, the complexity of individual cases can further complicate matters, as some PGs may have multifaceted financial situations requiring more time for thorough assessment and stakeholder engagement. Rushed timelines may also elevate stress levels among PGs and creditors, thus creating an environment that is not conducive to amicable negotiations.

(b) Suggestion: To ensure a more effective and fair resolution process, it is recommended that the timeline for completing the PIRP be revised to allow for more reasonable timeframes. Extending the current 120-day limit to accommodate the complexities involved in personal insolvency cases would enable RPs to manage the process more effectively. A revised timeline would allow adequate opportunities for comprehensive data collection, thorough discussions between PGs and creditors, and the opportunity to explore potential arrangements that could satisfy all parties involved. This approach would not only enhance the quality of the resolution outcomes but also promote a greater sense of collaboration and understanding among stakeholders. By ensuring that timelines are realistic and reflective of the intricacies of personal insolvency cases, the IBC can better achieve its objectives of providing a fair and efficient resolution framework for PGs.

12. No Provision in IBC for Extension of PIRP Timeline

(a) Challenge: There is currently no specific provision in the IBC that allows an extension of the timeline to complete the PPIRP process. It has become common practice for PGs to delay the submission of repayment plan. Further, creditors also take time to decide and vote on repayment plan. This can create complications in adhering to the prescribed 120-day timeline. Without clear Regulations for extending the timeline, RPs often face difficulties in obtaining necessary extensions from the NCLT. This lack of clarity can lead to unnecessary legal hurdles and additional delays, ultimately creating a bottleneck in the resolution process. The pressure to conform to a rigid timeline may compromise the thoroughness of negotiations and evaluations, making it challenging for RPs to effectively manage the interests of both PGs and creditors. Addressing this issue is crucial for fostering a more flexible and accommodating insolvency resolution environment that recognizes the complexities of individual cases and the need for adequate time to reach a fair resolution.

(b) Suggestion: To address these challenges and enhance the overall efficiency of the PIRP, it is suggested that the Regulations under the IBC be amended to include a provision that allows for the extension of the timeline up to 180 days. This amendment should delineate specific circumstances under which extensions can be granted and outline the process for obtaining such extensions. By introducing a formalized mechanism for extending the PIRP timeline, the IBC can provide greater clarity and flexibility to RPs.

13. Conclusion

The challenges inherent in the PIRP under the IBC regime underscore the pressing need for thoughtful amendments and reforms to develop a more equitable and efficient system. By proactively addressing critical issues such as evaluation of repayment plans by creditors, the voting percentage for approval of Repayment Plan and the establishment of clear provisions for extensions, we can significantly enhance the insolvency resolution ecosystem. These proposed suggestions are aimed to promote fairness and transparency throughout the process and also to ensure that the legitimate claims of creditors are duly acknowledged while providing PGs a genuine opportunity to fulfil their financial obligations. As the IBC evolves, it is paramount for all stakeholders including regulatory authorities, legal practitioners, and financial institutions, to collaborate effectively to strengthen the Personal Insolvency Framework under the IBC.

A balanced approach to PIRP in India will not only benefit individual PGs by affording them a fair chance to recover but will also safeguard the interests of creditors, ultimately fostering a more stable financial ecosystem.

Limitation and Individual Insolvency under the IBC: Challenges and Evolving Jurisprudence

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The interplay between the Limitation Act-1963, and the Insolvency and Bankruptcy Code, 2016 (IBC) has been a subject of significant judicial scrutiny in India. While much has been adjudicated about the Limitation Act's applicability in corporate insolvency, its role in individual insolvency proceedings remains relatively unexplored. However, legal loopholes and judicial inconsistencies in interpreting the acknowledgment of debt, particularly in cases involving personal guarantors, create uncertainty regarding the enforceability of personal guarantees which may expose financial institutions to undue risks, potentially weakening the effectiveness of personal guarantees as a security mechanism. This article presents a thorough analysis of various legal provisions and related jurisprudence on applicability of limitation law to individual insolvency proceedings. Besides, the author has also made some crucial recommendations to ensure consistency in applying limitation laws across insolvency proceedings. ***Read on to know more…***

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC), was enacted to consolidate and amend laws governing insolvency resolution for corporate entities, partnership firms, and individuals. While corporate insolvency and liquidation processes under Part II of the IBC have been extensively litigated and interpreted, individual insolvency process under Part III remain underutilized and often misinterpreted. The applicability of the Limitation Act-1963, to individual insolvency applications and proceedings present multiple interpretational challenges. This article explores the legislative framework, judicial decisions, and policy implications regarding the applicability of the Limitation Act in the cases of individual insolvency.

2. Legislative Framework and Applicability of the Limitation Act to Individual Insolvency

(a) The Role of Section 238A of IBC: The insertion of Section 238A in the IBC through the IBC (Second Amendment) Act, 2018, clarified the applicability of the Limitation Act, 1963. The section reads, "The provisions of the Limitation Act, 1963, shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal, or the Debt Recovery Appellate Tribunal, as the case may be".
This provision removed earlier ambiguities and aligned IBC proceedings, including individual insolvency matters, with the general principles of limitation law.

(b) Limitation Period for filing Individual Insolvency Applications: Individual insolvency applications can be filed under Section 94 (by the debtor) and Section 95 (by a creditor or resolution professional). The Limitation Act's residuary provision, Article 137, prescribes a three-year limitation period for such applications, running from the date when the right to apply accrues.

> **Supreme Court in the case of B.K. Educational Services (P) Ltd. (2018) held that the limitation period for applications under Sections 7 and 9 of IBC starts from the date of default.**

A key question arises regarding when the right to apply accrues in individual insolvency cases. The Supreme Court in the matter of B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates[1] (2018) held that the limitation period for applications under Sections 7 and 9 of IBC starts from the date of default. As per the judgement, "the right to sue", accrues when a default occurs and the Limitation Act has in fact been applied from the inception of the IBC. Thus, inference could be drawn that, the same principle would apply to individual insolvency cases, where default is a prerequisite.

(c) Extension of Limitation under Sections 5, 14, and 18 of the Limitation Act

(i) Section 5: Delay Condonation – Courts have applied Section 5 of the Limitation Act to insolvency proceedings in exceptional circumstances where the applicant can show sufficient cause for delay.

(ii) Section 14: Exclusion of Time Spent in Other Proceedings – This provision protects applicants who initially approached the wrong forum by allowing exclusion of such time in computing limitation.

(iii) Section 18: Acknowledgment of Debt – The Supreme Court in Laxmi Pat Surana v. Union Bank of India[2] (2021) confirmed that an acknowledgment of debt in writing before expiry of limitation resets the limitation period. This ruling is significant for personal guarantors and individual debtors.

3. Judicial Interpretations on Limitation and Individual Insolvency

(a) B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates (2018): The Supreme Court ruled that the Limitation Act applies to applications filed under Sections 7 and 9 of the IBC from the very inception of the Code. It clarified that Article 137 of the Limitation Act governs such applications, prescribing a three-year limitation period from the date of default. This judgment established the fundamental principles for applying limitation provisions under the IBC.

(b) Gaurav Hargovindbhai Dave v. Asset Reconstruction Company[3] (India) Ltd. (2019): The Apex Court reiterated that Article 137 of the Limitation Act governs Section 7 applications under the IBC, with the limitation period starting from the date of default. It firmly stated that the three-year limitation period under Article 137 applies to the IBC proceedings, dismissing the argument for a 12-year period under Article 62 of the Limitation Act. This decision reinforced uniformity by bringing IBC cases in line with other statutory applications subject to the three-year limitation framework.

(c) Jignesh Shah & Anr. v. Union of India[4] (2019): The Supreme Court ruled that winding-up petitions transferred to the IBC proceedings must comply with the prescribed limitation period, preventing the indefinite revival of time-barred debts. It clarified that the limitation period begins from the date of default, not from the date of filing the winding-up petition. This judgment reaffirmed that limitation laws cannot be bypassed through procedural strategies. Furthermore, the Court emphasized that the limitation period starts from the day the default occurs, specifically when the company becomes unable to pay its debts.

> **Supreme Court in the case of Jignesh Shah & Anr. v. Union of India (2019) reaffirmed that limitation laws cannot be bypassed through procedural strategies.**

[1] Civil Appeal No. 23988 of 2017 (SC)
[2] Civil Appeal No. 2734 of 2020 (SC)
[3] Civil Appeal No. 4952 of 2019 (SC)
[4] Writ Petition (Civil) No.455 of 2019 (SC)

(d) Laxmi Pat Surana v. Union Bank of India[5] (2021): The Supreme Court has conclusively determined the applicability of Section 18 of the Limitation Act to insolvency proceedings under the IBC. The Apex Court ruled that Section 18 of the Limitation Act is applicable, allowing for an extension of the limitation period for filing an application under Section 7 of the IBC.

(e) Sesh Nath Singh v. Baidyabati Sheoraphuli Cooperative Bank Ltd[6]. (2021): The Supreme Court upheld the applicability of Section 14 of the Limitation Act in cases of the IBC, permitting the exclusion of time spent in other forums while calculating the limitation period. It clarified that Section 14 allows the exclusion of time spent in bona fide proceedings before a court that lacked jurisdiction, ensuring that genuine claimants are not unjustly barred due to procedural technicalities. The Court further ruled that the period from the issuance of notice under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (SARFAESI) Act - 2002, until the court's decision can be excluded while computing the limitation period under the IBC. This judgment safeguards claimants from losing their legal rights due to procedural delays.

(f) Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr[7]. (2021): The Supreme Court held that an acknowledgment of debt in financial statements extends the limitation period, underscoring the importance of written acknowledgments in insolvency proceedings. It ruled that the inclusion of debt in the balance sheet of a corporate debtor constitutes an acknowledgment under Section 18 of the Limitation Act, thereby extending the limitation period. This decision reaffirmed the principle that a debtor's admission of liability can reset the limitation period, thereby ensuring that valid claims are not dismissed due to technical time constraints.

(g) Vashdeo R Bhojwani v. Abhyudaya Co-Operative Bank Ltd[8]. (2019): The Supreme Court established that the issuance of a recovery certificate does not prolong the limitation period, emphasizing the principle of limitation finality. It held that the right to sue arises upon issuance of the certificate but does not restart or extend the limitation period. This ruling prevents creditors from perpetually reviving claims through administrative mechanisms, ensuring adherence to statutory limitation constraints.

(h) Sagar Sharma & Anr v. Phoenix Arc Pvt. Ltd[9]. (2019): The Supreme Court reaffirmed that the enactment date of the IBC cannot be considered as the starting point for the limitation period and that only Article 137 of the Limitation Act is applicable. This ruling provided further clarity on the correct interpretation and application of limitation principles under the IBC.

(i) Babulal Vardhaji Gurjar v. JM Financial Asset Reconstruction Co. Ltd[10]. (2020): The Court clarified that mortgage-backed claims under the IBC are subject to a three-year limitation period, rejecting the contention that a 12-year period applies. This judgement established uniformity in the application of limitation laws to both secured and unsecured claims thereby ensuring consistency in insolvency proceedings.

(j) State Bank of India v. Gourishankar Poddar and Anr[11]. (2025): The NCLAT ruled that the liability of the Corporate Debtor and the guarantor is simultaneous, meaning the guarantor's obligation arises after the Corporate Debtor's defaults on the payment of dues. It further held that any acknowledgment of the debt by the principal borrower also serves as an acknowledgment by the guarantor under the Limitation Act. The limitation period against the guarantor begins only when a formal demand is made specifically against them. Moreover, if the principal borrower continues making payments, and no demand is raised against the guarantor, the limitation period will not commence.

"The NCLAT, in the case of State Bank of India v. Gourishankar Poddar & Anr. (2025), ruled that liability of the Corporate Debtor and the guarantor is simultaneous."

(k) Central Bank of India v. Mr. K. Shashidhar and Anr[12] (2025): The NCLT Hyderabad Bench ruled that when a principal borrower acknowledges its liability either by signing a letter of acknowledgment or by recognizing the debt in its balance sheet after the declaration of the account as an NPA but before the expiration of the initial three-year limitation period, the limitation period gets extended under Section 18 of the Limitation Act. Consequently, any successive acknowledgment by the principal borrower leads to a renewed limitation period, and the Personal Guarantor cannot be exempted from this extended liability.

(l) Jammu and Kashmir Bank Ltd. v. Mr. Kanumuru Raghu Rama Krishna Raju (2024): In this case, the date

[5] Civil Appeal No. 2734 of 2020 (SC)
[6] Civil Appeal No. 9198 of 2019 (SC)
[7] Civil Appeal No.323 of 2021 (SC)
[8] Civil Appeal No. 11020 of 2018 (SC)
[9] Civil Appeal No. 7673 of 2019 (SC)
[10] Civil Appeal No. 6347 of 2019 (SC)
[11] C.P.(IB)/203/HYD/2021-IA(I.B.C)/1250/HYD/2022and IA(I.B.C)/492/HYD/2021
[12] C.P. (IB)/54/HYD/2022

of default by the Principal Borrower was December 31, 2014, and the demand notice for invoking the guarantee was issued on July 09, 2021, the NCLT Hyderabad Bench ruled as follows:

(i) Equal Legal Standing of Personal Guarantor and Corporate Debtor: The Personal Guarantor must be treated on the same legal footing as the Corporate Debtor since their liabilities are co-extensive under the law. Consequently, the provisions of the Limitation Act should apply uniformly to both the Corporate Debtor and the Personal Guarantor. This means the limitation period for both begins from the same default date.

(ii) Bar on Limitation: As the Principal Borrower (Corporate Debtor) defaulted on December 31, 2014, the limitation period commenced from that date. However, the demand notice invoking the Personal Guarantee was issued much later, on July 09, 2021, far beyond the prescribed three-year limitation period. Therefore, the application was deemed time-barred and could not be entertained.

4. Unresolved Questions in Judicial Interpretation

Despite several judicial pronouncements, some regarding the interpretation and application of limitation laws in individual insolvency cases. Some of the key unresolved issues include:

(a) Commencement of Limitation Period: There remains a lack of definitive clarity on whether the limitation period begins from the date of default or from the date when the creditor becomes aware of the default. As highlighted in case laws referred to in Point no (j) and (l), there appear inconsistencies on commencement of limitation period. The NCLAT judgement opines "the limitation period against the guarantor begins only when a formal demand is made specifically against them" whereas as per judgement by NCLT Hyderabad it is stated that the liabilities of Personal Guarantor and its Corporate Debtor are co-extensive under the law. Consequently, the provisions of the Limitation Act should apply uniformly to both the Personal Guarantor and its Corporate Debtor. It means the limitation period for both begins from the same default date". Thus, lack of definitive clarity holds significant implications for the enforceability of claims under the IBC.

(b) Applicability of Section 14 of the Limitation Act: While Section 14, which allows exclusion of the time spent in bona fide legal proceedings, has been consistently applied in corporate insolvency cases, its applicability in individual insolvency proceedings remains inconsistent and requires further judicial interpretation.

> **The interplay between limitation provisions under the IBC and other debt recovery statutes, remains an area where judicial clarity is needed.**

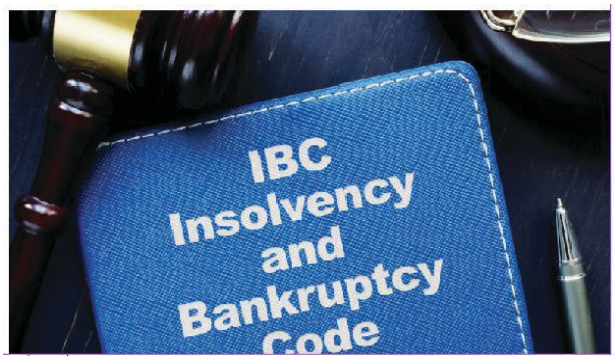
(c) Scope of Section 18 – Acknowledgment of Debt: The extent to which an acknowledgment of debt under Section 18 of the Limitation Act can be applied in cases involving personal guarantors and joint debtors continues to pose interpretational challenges, particularly regarding its impact on extending limitation periods.

(d) Overlap with other Debt Recovery Mechanisms: The interplay between limitation provisions under the IBC and other debt recovery statutes, such as the SARFAESI Act and the Recovery of Debts and Bankruptcy Act (RDBA), remains an area where judicial clarity is needed. Determining the precedence and harmonization of these laws is crucial for ensuring consistency in debt resolution frameworks.

Addressing these unresolved issues through comprehensive judicial interpretation will be instrumental in bringing certainty to limitation laws within the realm of individual insolvency, to provide resolution of ambiguities and to avoid unnecessary litigation.

5. Impact of Limitation Laws

(a) Impact on Financial Creditors and Operational Creditors: The application of limitation laws in individual insolvency proceedings has significant consequences for both financial creditors and operational creditors, influencing their ability to recover outstanding debts and enforce legal claims effectively:



(i) Financial Creditors: For financial creditors, including banks and financial institutions, strict adherence to limitation period is critical to ensuring timely filings under Sections 95 and 97 of the IBC. The acknowledgment of debt under Section 18 of the Limitation Act serves as an essential mechanism to extend the limitation period, providing creditors with a legal avenue to sustain their claims. However, judicial inconsistencies in interpreting the acknowledgment of debt, particularly in cases involving personal guarantors, create uncertainty regarding the enforceability of personal guarantees. This lack of clarity may expose financial institutions to undue risks, potentially weakening the effectiveness of personal guarantees as a security mechanism.

(ii) Operational Creditors: Unlike financial creditors, operational creditors such as suppliers, vendors, and service providers, often lack access to formal acknowledgments of debt, making it significantly more challenging for them to extend limitation periods. The inconsistent judicial application of Section 14 of the Limitation Act, which allows the exclusion of time spent in bona fide legal proceedings, further complicates their ability to recover dues. Since operational creditors frequently deal with informal agreements and delayed payments, the absence of clear legal precedents on limitation laws in individual insolvency matters puts them at a disadvantage compared to financial creditors.

(b) General Impact: The strict enforcement of limitation laws ensures that stale claims are not revived indefinitely, thereby promoting procedural efficiency in insolvency proceedings. However, courts have shown flexibility in condoning delays, particularly in cases where substantive justice necessitates an equitable approach. Given the existing judicial uncertainties, policymakers may need to introduce clearer legislative provisions to strike a balance between creditor rights and procedural efficiency. A more structured framework would help mitigate litigation risks and create a more predictable insolvency regime, ensuring fair and timely resolution of debts for both financial and operational creditors.

6. Policy Recommendations and Conclusion

While the introduction of Section 238A of the IBC largely resolved the issue of applicability of the Limitation Act to insolvency cases, several interpretational challenges persist. Courts continue to refine their understanding of limitation laws in the context of applications under Sections 94 and 95 of the IBC, particularly concerning what constitutes a default and the precise moment at which the limitation period begins. However, conflicting judicial interpretations and gaps in jurisprudence create uncertainty leading to prolonged litigation and inconsistent enforcement. The following recommendations would be helpful in removing the inconsistency and ensuring hassle free functioning of the process:

(a) Clarification on the Commencement of the Limitation Period: The government or judiciary should provide definitive guidance on whether the limitation period begins on the date of default or when the creditor becomes aware of the default? This will ensure consistency in applying limitation laws across insolvency proceedings.

(b) Codification of Jurisprudence on Limitation: To avoid conflicting interpretations as referred to in unresolved questions, key judicial precedents on limitation should be formally codified through an amendment to the IBC. This would provide greater certainty for creditors and debtors alike, reducing dependency on case-specific adjudication.

(c) Judicial Training for Specialized Tribunals: Given the complexities involved in interpreting limitation principles, specialized training should be mandated for members of the NCLTs and Debt Recovery Tribunals (DRTs). A standardized approach to limitation laws will enhance procedural efficiency and reduce inconsistencies in judicial decisions.

To avoid conflicting interpretations as referred to in unresolved questions, key judicial precedents on limitation should be formally codified through an amendment to the IBC.

The interplay between the Limitation Act and individual insolvency proceedings remains an evolving area of law. Continued judicial and legislative efforts will be essential in ensuring that the IBC functions as a time-bound and efficient mechanism for debt resolution, balancing the rights of creditors and debtors alike. While legislative amendments and judicial precedents have established the applicability of limitation laws under the IBC, persistent challenges demand further legal clarity and refinement. A well-defined limitation framework will not only enhance procedural efficiency and reduce litigation but also reinforce the core objective of the IBC—to facilitate timely and effective debt resolution. Future developments in this area will play a crucial role in shaping the evolving of insolvency laws in India.

From Rules to Analytics: A Comprehensive Review and Interplay of IBC in Bank Fund Management

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Banking plays a pivotal role in the IBC as it serves as the primary source of funding for businesses and is a key stakeholder in the resolution of corporate debtors. Therefore, a robust system for bank fund management is crucial for ensuring availability of credit, promoting entrepreneurship and resolution process. The present article provides an in-depth exploration of the evolution of various scientific approaches to bank fund management, tracing the progression from traditional practices to sophisticated data-driven methodologies, which will be useful for Insolvency Professionals and other stakeholders of the IBC. Besides, it offers a critical evaluation of the practical application of these models in formulating effective banking strategies.
Read on to know more…

1. Introduction

The management of bank funds has undergone a dramatic transformation over time. Initially, banking decisions were largely guided by experience, regulatory requirements, and prevailing economic conditions. However, the increasing complexity of financial markets and the advent of sophisticated analytical tools have spurred the integration of econometric and operational research methodologies into bank fund management.

This shift has facilitated a more structured and data-driven approach to optimize bank portfolios, moving away from reactive responses to proactive strategies. This article provides a comprehensive overview of the theoretical and empirical advancements in this dynamic field, categorizing key research contributions into five principal approaches, their applications in the Indian context and futuristic overview.

2. Approaches to the Management of Bank Portfolios:

(a) Traditional Approach
(b) The Explanatory Approach
(c) The Inventory Theoretical Approach
(d) Optimization using Preference Functions
(e) Optimization using Operations Research Techniques

(a)Traditional Approach

Early attempts to formalize bank fund management led to the development of several influential, albeit simplified, theories. One of the earliest structured theories was proposed by Roland Robinson[1] (1962), who emphasized the dual, often conflicting, objectives of safety and profitability. His hierarchical rule established a sequential approach to fund allocation, prioritizing:

i. Meeting legal reserve requirements mandated by the central bank.

ii. Allocating funds to secondary liquid assets, providing a buffer against unforeseen withdrawals.

iii. Satisfying customer credit demands, the core business of lending.

iv. Investing in long-term securities as a residual decision, after fulfilling the more immediate needs.

While Roland Robinson's framework provided a basic understanding of liquidity management, it largely overlooked the crucial influence of interest rates on portfolio selection.

While this framework provided a basic understanding of liquidity management, it largely overlooked the crucial influence of interest rates on portfolio selection, thereby limiting its applicability in the face of fluctuating market conditions. Delong[2] (1966) introduced the "coated funds approach,", which is a more nuanced model that suggested investments should be strategically aligned with the specific sources of funds. This model recognized the varying liquidity requirements associated with different funding sources, allowing for a more refined balancing of profitability and liquidity.

(b)The Explanatory Approach

As financial markets evolved, researchers sought to develop more robust models that could explain the factors driving banks' fund allocation decisions. This led to the emergence of the explanatory approach, which aimed to quantify the relationships between various economic variables and bank portfolio choices. Meigs[3] (1962) and Hodgman[4] (1963) made significant contributions by developing models that incorporated reserve behaviour (the practice of banks wherein they manage reserves actively based on expectations, liquidity needs and regulatory environments instead of assuming a fixed reserve ratio) and the importance of maintaining strong customer relationships, respectively. Their findings challenged the notion that banks passively responded to regulatory constraints and demonstrated that banks actively manage their portfolios to balance risk, return, and liquidity.

Goldfeld[5] (1966) further advanced this approach by classifying banks into city member and country member banks, recognizing the heterogeneity within the banking sector. His research revealed that asset allocation strategies often differed significantly based on regional economic dynamics. Goldfeld's model incorporated investment and consumption behaviour, effectively linking financial market conditions to portfolio adjustments. Brechling and Clayton[6] (1965), focusing on British banks, provided further refinement by distinguishing between liquid assets, investments, and customer advances. Their regression-based empirical analysis offered valuable insights into how banks respond to monetary policies and navigate economic cycles.

(c) The Inventory Theoretic Approach

The inventory-theoretic approach, with its roots in the work of Edgeworth[7] (1888), provides a framework for understanding how banks manage their liquid assets, analogous to how businesses manage their inventory. Porter[8] (1961) formally applied operational gaming principles to bank fund management, suggesting that banks should strive to maximize profits while simultaneously maintaining adequate liquidity buffers to absorb random deposit fluctuations. This approach acknowledges the inherent uncertainty in deposit flows and the need for banks to hold liquid assets to meet unexpected withdrawals.

Morrison[9] (1966) and Poole[10] (1969) expanded on Porter's work by introducing stochastic models that integrated

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[3] Meigs, W. B. (1962). *Free reserves and the money supply*. University of Chicago Press.
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[7] Edgeworth, F. Y. (1888). The mathematical theory of banking. *Journal of the Royal Statistical Society*.
8.Porter, R. D. (1961). A model of bank portfolio selection. *Federal Reserve Bulletin*.
[9] Morrison, G. W. (1966). Reserve management and the theory of optimal bank portfolios. *Journal of Political Economy*.
[10] Poole, W. (1969). Commercial bank reserve management in a stochastic model: Implications for monetary policy. *Journal of Finance, 24*(5), 769–791.

cash reserve management with expected loan demand fluctuations. These models explicitly incorporated the role of uncertainty in shaping bank portfolio decisions, providing a probabilistic framework for determining optimal reserve allocations. The inventory-theoretic approach emphasizes the trade-off between the opportunity cost of holding liquid assets and the risk of running short of funds.

> **A significant advancement in bank fund management approach came with the introduction of utility-based preference functions.**

(d) Optimization using Preference Functions

A significant advancement in bank fund management approach came with the introduction of utility-based preference functions. Kane and Malkiel[11] (1968) argued that banks, like individuals, seek to maximize expected utility rather than simply focusing on maximizing returns. Their model differentiated between standard loan accounts and optimal loan level (L*), which, despite their inherent volatility, exhibit risk-reducing characteristics within the overall portfolio. This insight highlighted the importance of considering the diversification benefits of different asset classes.

Parkin, Gray, and Barrett[12] (1970) further developed this methodology by incorporating explicit utility functions, enabling more precise modelling of risk-adjusted portfolio selection. Their empirical analysis provided strong support for the hypothesis that banks aim to maximize long-term utility, reflecting a preference for sustainable profitability over short-term gains. This approach allows for a more nuanced understanding on how banks' balance the risk and return in their portfolio decisions.

(e) Optimization using Operations Research Techniques

The development of powerful computational techniques opened up new possibilities for optimizing banks' portfolios. Operational research techniques, such as linear programming, dynamic programming, and stochastic programming, provided banks with the tools to solve complex optimization problems involving numerous constraints and variables. Chambers and Charnes[13] (1961) were pioneers in applying deterministic linear programming to bank fund allocation, while Cohen and Hammer[14] (1967) introduced dynamic modelling techniques that incorporated capital adequacy constraints, a crucial aspect of bank regulation.

Chen[15] (1974) and Crane[16] (1971) further refined these methods by integrating wealth maximization frameworks and stochastic programming. Their models demonstrated how banks could achieve optimal asset allocation through the use of predictive analytics and probabilistic forecasting. These advanced techniques allowed banks to consider a wide range of scenarios and optimize their portfolios, accordingly.

2. Application in the Indian Context

Research on bank fund management has also flourished in the Indian context. Siddharthan and Kushro[17] (1975) developed econometric models specifically tailored to the unique characteristics of the Indian financial system. Chitre[18] (1978) conducted empirical research to validate inventory-theoretic models using Indian banking data, highlighting the specific constraints and regulatory challenges faced by Indian banks. These studies underscore the importance of adapting general approaches to the specific institutional and economic context of different countries.

3. IBC and Bank Fund Management

Banking is a crucial segment in the insolvency law, we can say that the resolution of the big companies going bankrupt is decided by the Committee of Creditors (CoC), who are representatives of banks, hence studies in this segment and fund management of banks is indirectly related to the economy.

Bank fund management involves the strategic handling of a banks' financial resources to ensure efficient utilization, maximize returns, and mitigate risks. This typically

[11] Kane, E. J., & Malkiel, B. G. (1968). Bank portfolio allocation, deposit variability, and the availability doctrine. Quarterly Journal of Economics, 82(1), 113–135.
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[15] Chen, A. H. (1974). Bank portfolio selection: A stochastic programming approach. Journal of Finance, 29(4), 1105–1118.
[16] Crane, D. B. (1971). A stochastic programming model for commercial bank bond portfolios. Management Science, 17(11), B658–B673.
[17] Siddharthan, N. S., & Kushro, D. P. (1975). Fund management in Indian commercial banks: An econometric approach. Indian Journal of Economics.
[18] Chitre, V. S. (1978). Application of inventory-theoretic models to Indian commercial banks. Indian Economic Journal.

includes managing liquidity, investment portfolios, and capital to support banks' operations and regulatory requirements. The Insolvency and Bankruptcy Code (IBC), enacted in 2016, plays a crucial role in bank

> **Banking is a crucial segment in the insolvency law. Hence studies in this segment and fund management of banks are crucial to the economy.**

fund management by providing a structured framework for dealing with corporate insolvency and bankruptcy processes. Here's how they are linked:

(a) Risk Assessment: Under the IBC, financial institutions are required to assess the risk associated with their loans more effectively. A better understanding of potential defaults can improve fund management strategies.

(b) Recovery Processes: The IBC streamlines the process for recovering dues from defaulting borrowers, which can enhance banks' liquidity and financial health. Effective fund management must take into account the likelihood of recovery and timing.

(c) Capital Allocation: The IBC encourages banks to allocate capital towards more productive assets by encouraging resolution of stressed assets, thereby optimizing the overall fund management strategy.

(d) Regulatory Compliance: Banks must comply with the IBC regulations, which can influence their fund management approaches, especially in terms of maintaining capital adequacy and provisioning for bad debts.

(e) Investment Decisions: Knowledge of the IBC's impact on borrowers' behaviour can influence banks' investment strategies and their risk appetite, affecting how they manage and diversify their funds.

In essence, sound bank fund management practices are vital for navigating the implications of the IBC, as they can significantly affect a bank's stability, profitability, and compliance with regulatory frameworks. Banking plays a pivotal role in the IBC as it serves as a primary source of funding for businesses and a key stakeholder in the insolvency process. Here are several ways in which banking is crucial in the context of the IBC:

(a) Credit Provision: Banks are significant lenders to corporations, providing the necessary finance for operations and expansion. When companies default on these loans, the IBC provides a mechanism for banks to recover their outstanding dues through a structured resolution process.

(b) Role as Financial Creditor: Under the IBC, banks are classified as financial creditors, which gives them specific rights and powers in the insolvency proceedings. They have a say in the CoC and can influence the decisions regarding the Resolution Plan.

(c) Claim Representation: Banks can file claims for the amounts owed to them during the Corporate

> **By providing a clear insolvency framework, the IBC helps mitigate risks associated with lending, thereby ensuring credit flow in the market.**

Insolvency Resolution Process (CIRP). This ensures that their interests are protected, and they have an opportunity to recover funds.

(d) Facilitating Restructuring: The IBC encourages the restructuring of stressed assets, allowing banks to negotiate resolutions that can help turn around financially troubled companies, thereby potentially preserving jobs and economic value.

(e) Impact on NPA Management: The IBC seeks to address the issue of Non-Performing Assets (NPAs) in the banking sector, encouraging timely resolution of defaults. This can help banks maintain healthier balance sheets and improve overall financial stability.

(f) Risk Mitigation: By providing a clear framework for bankruptcy resolution, the IBC helps mitigate risks associated with lending, making banks more willing to provide credit, which in turn supports economic growth.

(g) Transparency and Speed: The IBC aims to expedite the resolution process and provide better transparency, thereby enabling banks to make informed decisions regarding their lending practices and fund management strategies.

Overall, the interaction between banking and the IBC is

critical for ensuring that the financial ecosystem operates smoothly, reducing the impact of corporate defaults, and contributing to the overall stability of the economy.

4. Conclusion and Future Research Directions

The evolution of bank fund management approaches has significantly enhanced decision-making within financial institutions. While traditional approaches primarily emphasized liquidity management, modern frameworks incorporate risk-return trade-offs, dynamic economic conditions, and the complexities of modern financial markets. The increasing availability of data and the development of advanced analytical tools have empowered banks to make more informed and strategic decisions.

Looking ahead, several promising avenues for future research warrant exploration:

(a) The Impact of AI and Machine Learning: The application of Artificial Intelligence and Machine Learning techniques have the potential to revolutionize bank fund management. These technologies can be used to analyse vast amounts of data, identify patterns, and develop predictive models that can improve portfolio optimization, risk management, and customer service.

(b) The Role of Digital Banking: The rise of digital banking is transforming liquidity management and creating new opportunities as well as challenges for banks. Real-time payment systems, mobile banking, and other digital platforms are changing the way customers interact with banks, requiring banks to adapt their liquidity management strategies.

(c) The Application of Behavioural Finance Principles: Integrating behavioural finance principles into portfolio selection can provide a more realistic understanding of bank decision-making. Recognizing the influence of cognitive biases and psychological factors can lead to the development of more robust models that better capture the complexities of human behaviour in financial markets.

There is a great need for the banks to adopt sound fund management practices to navigate challenges such as credit risk, market fluctuations, and regulatory changes.

As banking systems continue to evolve, the integration of advanced analytics, automation, and a deep understanding of human behaviour will be crucial for optimizing asset allocation, enhancing financial stability, and ensuring the long-term success of banking institutions. Further research in these areas will be essential for navigating the challenges and capitalizing on the opportunities presented by rapidly changing financial landscape.

There is a great need for the banks to adopt sound fund management practices to navigate challenges such as credit risk, market fluctuations, and regulatory changes. An effective fund management contributes to a bank's resilience and can improve profitability. The evolving landscape of banking fund management, including the impact of technology, changing regulatory environments, and the importance of sustainable practices are some key aspects of the growth in our economy. The effective fund management practices are essential for ensuring financial health, protecting stakeholders, and supporting economic growth of the country.

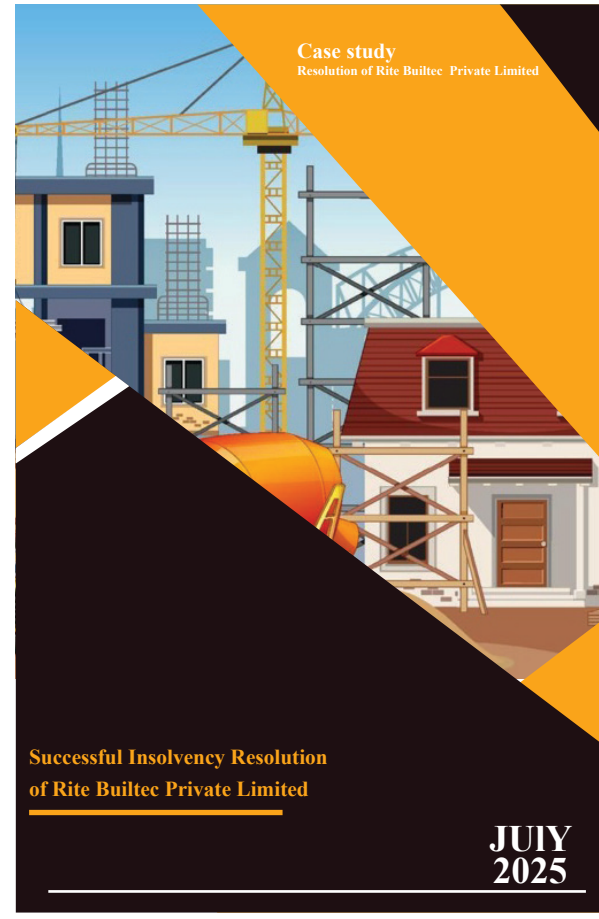
Successful Insolvency Resolution of Rite Builtec Private Limited

Rite Builtec Private Ltd., the Corporate Debtor (CD), along with Rite Developers Private Ltd. (Co-Borrower) secured ₹60 Crores credit facility in 2018 from Piramal Capital & Housing Finance Ltd. (PCHFL), erstwhile DHFL, for development of Mahakali Nagar CHS Slum Project in Mumbai. However, the CD soon landed into a financial crisis which led to the commencement of its CIRP via an NCLT order dated August 25, 2023.

The multiplicity of stakeholders including over 750 slum dwellers were main hurdles in the successful resolution of the CD. However, transparent dialogue and proactive engagement by the RP were instrumental in addressing concerns, mitigating conflicts, and maintaining trust of stakeholders. Finally, the CD was revolved through a Resolution Plan amounting ₹37 crores plus rent to be paid to the eligible slum dwellers as determined by the Slum Redevelopment Authority (SRA), Mumbai. Thus, the value of Resolution Plan is over 150% of the liquidation value of the CD, which would be even higher if the rent to be paid by the SRA to the eligible slum dwellers is considered. In addition to that the transaction audit uncovered PUFE transactions exceeding ₹60 Crores, which, if clawed back would further enhance the recovery.

In the present case study, Mr. Amit Karia, the RP of the CD, has highlighted the challenges faced during the resolution of Rite Builtec Private Ltd and the measures he adopted to conclude the resolution.

Read on to know more…



1. Introduction

Rite Builtec Private Ltd. (Rite Builtec) is a company incorporated under the Companies Act, 1956, with specialization in residential construction and real estate development. The company focused on redevelopment projects of Slum Rehabilitation Authority, Mumbai (Authority).

Rite Builtec, the Corporate Debtor (CD), along with its parent company Rite Developers Private Ltd. (Co-Borrower / Rite Developers), sought financial assistance from the lender Piramal Capital & Housing Finance Ltd. (PCHFL), formerly, Dewan Housing Finance Corporation Ltd. (DHFL) to develop a Slum Rehabilitation Project namely "Mahakali Nagar CHS Slum Project" (the Project) at Magathane, Devipada, Borivali, Mumbai (Maharashtra). While Rite Developers had multiple projects across Mumbai's western suburbs - including Rite Aspire, Rite Celesta, Rite Skyluxe, Rite Divine, Rite Advent, Rite Bliss, Rite Luxuria, Rite Perinto, and

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others while Mahakali Nagar CHS Slum Project under the Authority was the sole project of Rite Builtec.

To fund the project, the company secured ₹60 Crores credit facility, of which ₹52.25 Crores were disbursed. However, financial distress emerged when the company defaulted on its first payment on July 11, 2018, failing to pay the pre-equated monthly instalment (PEMI) interest. Subsequent defaults followed, with non-payment of monthly interest from April 2019 onwards. As a result, PCHFL in its capacity of financial creditor filed a petition under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) before the NCLT, Mumbai. The Adjudicating Authority (AA) admitted Rite Builtec into the Corporate Insolvency Resolution Process (CIRP) on August 25, 2023.

2. Reasons that lead to initiation of CIRP

The reasons that lead to financial crisis of the CD and initiation of the CIRP are as under:

(a) Failure to Pay Monthly Interest & Principal: The CD defaulted on its loan obligations starting in July 2018, initially failing to pay the PEMI interest. From April 2019 onwards, there were continuous defaults on monthly interest payments, leading to a severe financial crisis.

(b) Project Delays & Execution Challenges: Project faced significant execution delays, affecting both revenue generation and financial viability.

(c) Denial of Additional Funding: The lender, PCHFL, refused further disbursements due to non-compliance with loan terms. Key reasons for this decision included:

(i) Misuse of Loan Funds: The CD failed to utilize the sanctioned loan amount for project development.

(ii) Diversion of Funds: Financial transactions revealed the diversion of funds to related parties, raising concerns over financial mismanagement.

(iii) Non-Maintenance of Escrow Account: A mandatory escrow account for fund management was not maintained, which violated key loan conditions.

(iv) Unauthorized Loan Repayments: The company repaid unsecured loans without obtaining prior approval from its lenders thereby breaching financial agreements.

(d) Preferential, Undervalued, Fraudulent, and Extortionate (PUFE) Transactions: The transaction audit uncovered PUFE transactions exceeding ₹60 Crores, which severely impacted the company's financial position. These transactions involved related-party dealings, fund siphoning, and mismanagement, leading to a significant liquidity crunch.

Additionally, Rite Developers Private Ltd., the parent company of Rite Builtec, was found to have over 60 bank accounts with multiple banks and was also undergoing CIRP with admitted debts exceeding ₹1,500 Crores.
The final Transaction Audit Report presented conclusive evidence of financial misconduct, highlighting:

(i) Fraudulent diversion of loan funds.
(ii) Preferential transactions favouring specific creditors and related parties.
(iii) Multiple violations of the provisions of the IBC.

> **"The findings of the Transaction Audit Report became key legal evidence in proceedings against the former directors and associated entities, further strengthening the case for financial mismanagement and insolvency."**

The findings of the Transaction Audit Report became key legal evidence in proceedings against the former directors and associated entities, further strengthening the case for financial mismanagement and insolvency.

3. Challenges during the CIRP

(a) Violation of Moratorium by Suspended Directors: The suspended directors of Rite Builtec continued to conduct unauthorized transactions through the bank accounts of the CD even after CIRP was initiated, till the debit freeze was imposed & the change of signatory was updated by the banks. Despite the moratorium, funds were diverted, complicating the financial situation and raising legal concerns. Urgent applications had to be filed by the Resolution Professional (RP) with the AA.

(b) Non-existent registered office: The registered office

of the CD as per the records of Ministry of Corporate Affairs (MCA) was non-existent. The premises were owned and occupied by some other entity, unrelated to the CD.

(c) Absence of Essential Financial Records: The company's books of accounts, balance sheets, and financial records & registers were missing and not even a single document was received from the erstwhile management. The Section 19(2) application against the suspended directors did not help in any manner. The RP faced challenges in reconciling debts and verifying creditor claims due to the lack of proper documentation. The CIRP was run by the RP with no books, registers, records, documents at all, except those publicly available.

(d) Difficulty in valuation of 'Land and Building': Though the registered valuers were appointed within the timelines prescribed under the IBC, but in the absence of project related documents, there was a lot of difficulty in undertaking the valuation exercise in relation to the project of the CD. The RP had to explain and convince the Committee of Creditors (CoC) to grant the approval for a third-party agency to be appointed to do the project appraisal and share the detailed project appraisal report, which was then provided to the registered valuers as a base for their valuation exercise. The appraisal evaluated the financial viability, regulatory compliance, construction timelines, and the overall infrastructure impact. Multiple site visits were conducted with the team of the project appraisal agency, based on which the report was prepared & submitted.

> **The CIRP commenced on August 25, 2023, but on an appeal filed by the suspended directors, the NCLAT imposed a stay on September 14, which continued for almost two months.**

(e) NCLAT-Imposed Stay on CIRP: The CIRP commenced on August 25, 2023, but due to an appeal filed by the suspended directors, the National Company Law Appellate Tribunal (NCLAT) imposed a stay on September 14, 2023, which continued for almost two months up to November 06, 2023. This led to significant delays in conducting the resolution process. Post vacation of the court-stay and dismissal of the appeal, the CoC was constituted and the first CoC meeting was held in November 2023. On November 23, 2023, the Interim Resolution Professional (IRP) was confirmed as the Resolution Professional (RP) by the CoC. Subsequently, an application was filed before the NCLT, Mumbai for exclusion of the time lost due to stay imposed by the NCLAT. The NCLT allowed the exclusion of 54 days from the CIRP of the CD.

(f) Agitated Slum Dwellers' Intrusion & Protests: The stalled project at Devipada had been incomplete for around 15 years, leaving 750+ slum dwellers in the lurch. Some of these affected slum dwellers stormed into the RP's office, demanding clarification on their pending homes and unpaid rent compensation. The RP had to engage with local authorities and law enforcement agencies to ensure the safety of office staff and maintain order while addressing the grievances of slum dwellers. Subsequently, a series of meetings were held regularly with the slum dwellers at the project site to bring a humane touch to the process by explaining them the various steps of the process in simple terms and assured to keep them informed at each stage.

(g) Threats from Local and Other Interest Groups: Various local groups and vested interest parties began interfering with the resolution process, seeking control over the project. The RP faced direct threats and acts of intimidation, resulting in a hostile and unsafe working environment. To safeguard the process and ensure that the RP could discharge his duties without external pressure, the matter was brought to the attention of local police authorities. Following visits to the concerned police stations and necessary briefings, the police authorities were requested to maintain order and provide necessary protection.

(h) Unauthorized Constructions at the Project Site: In the first week of September 2024, several illegal structures were erected at the project site. The CoC was promptly informed via email, accompanied by images of the structures. On September 20, 2024, the RP visited the local police station and the Authority to report these developments and request necessary actions against the illegal constructions. There was no security deployment at the project site, since there

were no funds available with the RP and the CoC did not grant the necessary approvals for security deployment. Even the resolution for raising interim finance was discussed in detail but ultimately rejected by the CoC.

> **Assignment of debt by PCHFL in favour of Omkara Assets Reconstruction Private Ltd. led to reconstitution of the CoC to reflect the change in creditor composition.**

(i) **Frivolous Applications Filed by Vested Interests:** Entities with hidden agendas filed baseless applications before the AA especially when the resolution plan application was about to be reserved for orders. These attempts were apparently made to derail the CIRP and delay the approval of the resolution plan.

(j) **Assignment of Debt by the sole CoC member:** There was assignment of debt by PCHFL in favour of Omkara Assets Reconstruction Private Ltd. (OARPL) The assignment agreement was executed on February 13, 2024, but the RP was informed about the same on February 26, 2024, by the assignor & assignee. This transfer of debt ownership led to complexities in the resolution process, impacting the composition and decision-making of the CoC. This transition led to reconstitution of the CoC to reflect the change in creditor composition. The necessary application was filed by the RP with the AA to bring on record the revised list of creditors and reconstitution of the CoC.

\4. Synopsis of the project

The Mahakali Nagar CHS Slum Project (the project) has been Authority's redevelopment project located in Devipada. It involved a Joint Development Agreement between the CD and two other developers, M/s Amogh Enterprises and M/s GSP Developers. The total plot area comprises 9,675.20 square meters of privately owned land, along with an additional 3,000 square meters of land under Maharashtra Housing and Area Development Authority (MHADA). This land has been earmarked for Authority for redevelopment project, aimed at providing housing to displaced residents while also allowing for commercial and residential development. The development is planned as per Regulation 33(10) of the DCPR 2034, facilitating both rehabilitation housing for slum dwellers and saleable residential units. The project requires approvals from Authority, MHADA, Municipal Corporation of Greater Mumbai (MCGM), Maharashtra Pollution Control Board (MPCB), Chief Fire Officer (CFO), Airport Authority of India (AAI), and State Environment Impact Assessment Authority (SEIAA), among others. Certain approvals, including environmental clearance and building layout plans, are still pending.

4.1 Complicated History of the Project

The project has undergone a complex and lengthy legal process, involving multiple developers, agreements, and approvals. Initially, on May 9, 2005, a Development Agreement was signed between M/s Nagji Motiji & Co. (Landowners) and M/s Amogh Enterprises (Developers), granting development rights. This was followed by a Joint Venture Agreement on February 6, 2010, between M/s Amogh Enterprises and M/s Nirman Developers, effectively adding a co-developer. To confirm these arrangements, a Deed of Confirmation was executed on the same day among M/s Nagji Motiji & Co., M/s Amogh Enterprises, and M/s Nirman Developers.

Following these legal agreements, the project obtained official approvals. The Authority issued an original Letter of Intent (LoI) on December 16, 2010, in favour of Architect Sanjay Neve, M/s Amogh Enterprises, and the Mahakali Nagar Co-Operative Housing Society Ltd. Shortly thereafter, the housing society was officially registered on October 4, 2011, under the Maharashtra Co-Operative Societies Act, 1960. In the following months, M/s Amogh Enterprises secured an Intimation of Approval (IOA) from the Authority on November 24, 2011, and "Consent to Establish" from the Maharashtra Pollution Control Board (MPCB) on December 1, 2011, allowing the project to move forward.

Over time, the project saw the entry of additional developers. On January 28, 2013, a Joint Venture Agreement was signed between M/s Amogh Enterprises and M/s GSP Developers, introducing another partner. This led to a Revised Letter of Intent (LoI) being issued on July 8, 2015, in favor of the original developers and the housing society. By August 3, 2016, a Memorandum of Understanding (MOU) was executed between M/s Amogh Enterprises, M/s GSP Developers, and Rite Developers Private Ltd., bringing in yet another development entity.

However, a year later, on August 3, 2017, a supplementary MOU was signed in which Rite Developers Private Ltd. exited, and Rite Builtec Private Ltd. stepped in as the new developer.

Subsequently, General Body of the housing society passed a resolution on September 10, 2017, formally appointing Rite Builtec as the project's new developer. However, the legal restructuring continued. On March 31, 2018, a Cancellation Deed was executed between M/s Nagji Motiji & Co., M/s Amogh Enterprises, and M/s Nirman Developers, effectively terminating their earlier agreements. That same day, a Deed of Conveyance cum Joint Development Agreement was signed, officially transferring the development rights from M/s Nagji Motiji & Co. to Rite Builtec Private Ltd., with M/s Amogh Enterprises and M/s GSP Developers listed as confirming parties.

Despite these transitions, legal challenges persisted. On June 15, 2020, an order was passed under Section 13(2) of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 against M/s Amogh Enterprises. An order Section 13(2) order under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, is an order issued by the Chief Executive Officer (CEO) of the Authority when a slum redevelopment project is not being carried out as per the approved scheme or within the specified time. It allows the Authority to intervene and redevelop the land, potentially terminating the original developer and appointing a new one to ensure timely project completion. Thus, the order marked the end of M/s Amogh Enterprises' involvement in the project, leaving 'Rite Builtec Private Ltd.' as the sole developer.

The legal battles, regulatory hurdles, and multiple shifts regarding control on development on this project, highlight the complexities associated with slum redevelopment projects in Mumbai, where land ownership, legal rights, and project execution often undergo extensive negotiations before reaching finalization.

5. Claims filed and Admitted Claims

The RP received the total claim amounting about ₹172 crores out of which approximately ₹153 crores were admitted which comprised of Secured Financial Creditors (SFCs), Operational Creditors (OCs) and Other Creditors.

The "Other Creditors" involved the unpaid rent arrears due and payable to the eligible slum dwellers of the project. Since very limited information was available, the RP admitted the amount to the extent of ₹14,500 per month for 551 eligible slum dwellers (out of total 750+ slum dwellers) for the period of 52 months and 24 days for which the rent was unpaid on the part of the CD. The claim was admitted as 'Contingent Claim' and under the head 'Other Creditors'.

> **The RP received the total claim amounting about ₹172 crores out of which approximately ₹153 crores were admitted.**

The determination of the eligibility of slum dwellers to receive rent falls within the purview of the Authority. The initial number of eligible beneficiaries was derived from the original Letter of Intent (LoI) issued in connection with the project. Upon issuance of a fresh Letter of Intent (LoI) and the appointment of a new developer, the Authority is expected to undertake a re-verification process to determine the final number of eligible slum dwellers. Given that only limited documentation was available in support of the claim, the RP, exercising abundant caution. Besides, a disclaimer was used in the email acknowledging the claim that "admission of the above amount of claim by the RP does not guarantee

Table 1: Claims received and Admitted by the RP

Category of Claimants	Claims Received in ₹	Claims Admitted in ₹
Secured Financial Creditors (SFCs)	1,05,36,59,153	1,05,36,59,153
Operational Creditors (OCs)	5,62,80,240	5,62,80,240
Other Creditors	61,00,00,000	42,16,39,419
Total	171,99,39,393	153,15,78,812

or imply that the amount would be paid to the eligible members. The actual payment depends upon whether there is any resolution plan by the resolution applicant, which is approved by the Committee of Creditors & then by the Hon'ble NCLT, Mumbai. Hence, the payment & the quantum thereof is contingent in nature."

6. Expressions of Interest (EoI) and Approval of Resolution Plan

During the CIRP of Rite Builte, multiple "Form G" publications were required due to various challenges faced in attracting viable resolution applicants. The first "Form G" was issued on January 10, 2024, inviting Expressions of Interest (EoI) from Potential Resolution Applicants (PRAs). However, due to limited response and delay in process, a first addendum was issued on January 29, 2024, followed by a second addendum on March 1, 2024, extending deadlines and modifying eligibility criteria to encourage broader participation. Despite these efforts, the initial round of resolution plans was found to be unsatisfactory, leading to the rejection by the CoC of two resolution plans in July 2024 - one from "Oberoi Realty Ltd." and the other one from "Ashdan Properties Private Ltd.". Consequently, a fresh "Form G" was issued on July 10, 2024, initiating a second round of invitation for resolution plans. This reissuance resulted in the participation of several resolution applicants, with final time to submit revised resolution plans being given to five resolution applicants out of which three resolution applicants submitted their revised proposals while one of them continued with his originally submitted plan. Subsequently, one resolution applicant withdrew from the process and accordingly, three resolution plans were put for voting before the CoC. They are as under:

a. Romell Real Estate Private Ltd.

b. LJK Construction India Private Ltd. in consortium with Evanka Construction India Private Ltd. and Arpit Rastogi.

c. Aspect Global Ventures Private Ltd.

6.1. Key Parameters of the Evaluation Matrix

A detailed discussion ensued in the CoC meeting for voting on resolution plans, including the following key parameters of the Evaluation Matrix:

a. Upfront Cash Payment to the SFCs.

b. Tenure of upfront cash payment to the SFCs.

c. Fresh fund in the form of equity / quasi-equity proposed for improvement of business operation within the first 12 months after approval of resolution plan by the NCLT.

d. Net Present Value of future cash recovery to the SFCs.

e. Payment to other stakeholders such as Operational Creditors, Other Creditors, Government Dues, Employees, Workmen etc.

f. Financial strength of Resolution Applicant / Group (Applicant Net Worth, Group Net Worth, revenue of the Group and EBIDTA of the Group), Experience of Resolution Applicant.

g. Group in Real Estate Sector in which CD is engaged, tenure of completion of development.

6.2. Voting on Resolution Plan

Eventually, the CoC voted in favour of the Resolution Plan submitted by "Aspect Global Ventures Private Ltd." which obtained a scoring of 84 marks out of 100, against 48 marks and 32 marks of the other two resolution plans. The resolution applicant Aspect Global Ventures Private Ltd. was declared as the Successful Resolution Applicant (SRA), and a Letter of Intent (LoI) was issued by the RP, immediately post declaration of the voting result.

The Resolution Plan was approved unanimously by the CoC with 100% voting share. The resolution applicant had confirmed its eligibility under Section 29A of the IBC, ensuring compliance with all statutory requirements. An external agency, appointed with the CoC's approval, also conducted a due diligence exercise to verify and confirm the applicant's eligibility. The electronic voting results on the Resolution Plan were published on October 21, 2024, and the application for approval of Resolution Plan was promptly filed with the NCLT on October 23, 2024, which received AA's approval on January 16, 2025. The RP went out of the way to ensure that valuable time in the process is saved, and the entity is revived without any further delay.

The Application for approval of Resolution Plan filed by the RP on October 23, 2024, was heard at length by the AA across five hearings including clarification sought. Thereafter, the Plan approval application was 'Reserved for Orders'. The final order for approval of the Resolution Plan application was passed on January 16, 2025, whereas the order copy was received on January 17, 2025.

Table 2: Relevant timelines relating to the approval of Resolution Plan

Sr.	Particulars	Date
1	Date of the 14th (Fourteenth) CoC meeting (for voting on resolution plans)	16.10.2024
2	Date of circulation of minutes of the meeting	16.10.2024
3	E-Voting Start Date	16.10.2024
4	E-Voting End Date	21.10.2024
5	Issue of Letter of Intent to the SRA by the RP	21.10.2024
6	Receipt of Countersigned LoI and Performance Security from the SRA	23.10.2024
7	Filing of the Application before NCLT for approval of resolution plan by the RP	23.10.2024

7. Outlay under the Resolution Plan and Implementation

As per the approved Resolution Plan, the total resolution amount stood at ₹37 crores plus amounts payable to the eligible slum dwellers of project, as may be determined by the Authority. The specific amount of such rent arrears has not been included within the Resolution Plan as it remains currently undetermined and shall be finalized by the Authority.

> **"The resolution plan value is more than 150% of the liquidation value, which would be even higher if the rent to be paid by the SRA to the eligible slum dwellers is considered."**

The fair value of the CD (for land and building with securities or financial assets) had been estimated at ₹38.89 crores, while its liquidation value was ₹24.42 crores. Hence, the Resolution Plan value is more than 150% of the liquidation value, which would be even higher if the rent to be paid by the SRA to the eligible slum dwellers is considered. The SFC, being the sole member of the CoC, was offered a total consideration of ₹36 crores under the Resolution Plan. Of this, an upfront amount of ₹3.50 crores was deposited by the SRA as "Performance Security Deposit" in form of refundable "Fixed Deposit" which was to be paid to the CoC post approval of the Resolution Plan by the AA. In the event the Resolution Plan was rejected, the secured deposit would be refunded back to the Resolution Applicant. The remaining balance of ₹32.50 crores was to be paid upon the approval of the Resolution Plan by the AA.

The implementation of the Resolution Plan followed a structured timeline. Upon the AA's approval, a Monitoring Committee was formed within 15 days, which comprised of One Representative of the CoC / SFC, Two Representatives of the SRA, and Erstwhile RP as the Managing Agent. The operations of the CD were handed over to the Monitoring Committee and, to ensure the effective implementation of the resolution plan, the committee was tasked with overseeing its execution and submitting quarterly reports. The SRA subsequently infused the balance amount, in addition to the earlier deposit of ₹3.50 crores. The balance amount was allocated towards the CIRP costs and other financial outlays as stipulated in the Resolution Plan. Following this, the CD's Board of Directors was reconstituted, and

a selective capital reduction was implemented in accordance with the approved Plan.

The approval order stated that the Plan complied with Section 30(2) of the IBC, and Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations. The AA had emphasized that the statutory obligations of the CD remained unaffected, and all claims not included in the Resolution Plan stood extinguished. The moratorium under Section 14 of the IBC ceased to be in effect from the approval date.

8. Issue relating to Rent Arrears due to slum dwellers

A significant issue raised during the AA's review and consideration was the payment of rent arrears to the slum dwellers, a condition imposed by the Authority in its original Letter of Intent (LoI). Since the Resolution Plan was silent on this matter, the AA first directed the RP to submit an additional affidavit having an undertaking by the SRA to unconditionally pay the amount as may be determined by the Authority. After the needful was done, the AA had taken the undertaking on record and reserved the Plan application for order. Subsequently, the matter was called for clarification, and the RP was directed to get an addendum to the Resolution Plan from the SRA, get it approved by the CoC and then file with the AA. Consequently, an addendum to the Resolution Plan was approved in the 16th CoC meeting on January 8, 2025, confirming that the SRA would be responsible for settling the outstanding rent arrears, as and when determined by the Authority. It was also undertaken by the SRA that they shall unconditionally pay the amount as determined and directed by the Authority within the time specified by the Authority or 90 days of the determination, whichever is earlier. In this manner, the AA attempted to reconcile the objectives of the IBC and a welfare legislation like the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

9. Conclusion

The successful resolution of Rite Builtec reaffirms the effectiveness of India's insolvency framework in balancing creditor interests with economic revival. The resolution underscores the critical role of open and constant communication by the RP with various stakeholders in navigating the complexities of the CIRP. Throughout the process, the RP had to engage with multiple stakeholders, including financial creditors, operational creditors, regulatory authorities, slum dwellers, the Authority and local interest groups. Transparent dialogue and proactive engagement were instrumental in addressing concerns, mitigating conflicts, and maintaining trust in the resolution process.

Legal Framework

CIRCULARS

IBBI launched Revised Forms for CIRP

IBBI, through a Circular dated May 26, 2025, has introduced a revised framework of forms for monitoring Corporate Insolvency Resolution Process (CIRP). Under the revised framework, the existing nine forms have been consolidated into five forms. "This consolidation has been achieved by removing duplications, streamlining data requirements, and leveraging technology for auto-population of information already available on portal," said the IBBI. These new forms have been made available on IBBI's website since June 01, 2025, and the existing forms were discontinued. The IBBI has also decided not to levy penalty on IPs during the initiation quarter (July – September 2025) to familiarize themselves with the new forms and resolve technical issue(s) that may arise, if any.

Source: *Circular No. IBBI/CIRP/85/2025, May 26, 2025.*

IBBI makes the use of Baanknet (formerly eBKray) Auction Platform for Liquidation, mandatory from April 01, 2025

Through a Circular dated March 28, 2025, the Insolvency and Bankruptcy Board of India (IBBI) has said that (i) all IPs shall exclusively use the Baanknet auction platform for conducting auctions for the sale of assets during the liquidation process where an auction notice is issued on or after 1st April 2025. (ii) All IPs shall clearly mention in the auction notice that: Prospective bidders shall submit the requisite documents, including a declaration of eligibility under Section 29A of the IBC through the electronic auction platform; Prospective bidders shall deposit the Earnest Money Deposit (EMD) through the Baanknet auction platform; It shall also be specified that if the bidder is found ineligible, EMD shall be forfeited.

Source: *Circular No. IBBI/LIQ/84/2025, March 28, 2025.*

REGULATIONS

IBBI introduces stricter disclosure of Avoidance Transactions

The Insolvency and Bankruptcy Board of India (IBBI) through IBBI (CIRP) (Fifth Amendment) Regulations, 2025 dated July 04, 2025, has inserted provisions for stricter disclosure of "Avoidance Transactions" and restricted their post-facto inclusion in resolution plans if not disclosed previously in the information memorandum.

In the IBBI (CIRP) Regulations, 2016 (principal regulations), in Regulation 36, (i) in sub-regulation (1),

after the words "insolvency commencement date", the words and mark ", and its subsequent updates thereof", shall be inserted. (ii) in sub-regulation (2), after clause (h), the following clause shall be inserted, namely: - "(ha) details of all identified avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code and subsequent filings before Adjudicating Authority, as referred under sub-regulation (3A) of regulation 35A;" In the principal regulations, in Regulation 38, after sub-regulation (2), the following sub-regulation shall be inserted, namely: - "(2A) A resolution plan shall not provide for assignment of any avoidance transactions under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code that were not: (a) disclosed in the information memorandum; and (b) intimated to all prospective resolution applicants under sub-regulation (3A) of regulation 35A before the last date for submission of resolution plans.

Source: *Gazette Notification, F. No. IBBI/2025-26/GN/REG128, dated July 04, 2025.*

IBBI amends Regulations to facilitate part-wise Resolution of Corporate Debtor

Insolvency and Bankruptcy Board of India (BBI) has notified IBBI (CIRP) (Fourth Amendment) Regulations 2025 through a Notification dated May 26, 2025. This amendment has introduced crucial changes in Regulations 18, 36A, 36 B, 38, and 39.

As per the newly inserted Regulation 18 (5), the Committee of Creditors (CoC) has been empowered to direct the Resolution Professional to invite the providers of interim finance to attend as observers without voting rights, such meeting(s) of the committee, as the committee may decide. This provision is aimed at providing more information to the providers of interim finance regarding the Corporate Debtor (CD) thereby helping it with informed decision making. Furthermore, sub-regulation (1 A) has been inserted after Regulation 36 A (1) which

makes a provision for partwise sale of the CD. It says, "The Resolution Professional may, with the approval of the CoC, invite expression of interest for submission of resolution plans for the CD as a whole, or for sale of one or more of assets of the CD, or for both". However, sub-regulation (6A) of Regulation 36B has been omitted. It also inserts a proviso in Regulation 38 (1) (b) to clarify the payment plan for dissenting financial creditors. As per this amended proviso "where a Resolution Plan provides for payment in stages, the financial creditors who did not vote in favour of the Resolution Plan shall be paid at least pro rata and in priority over financial creditors who voted in favour of the plan, in each stage".

Source: *Gazette Notification, F. No. IBBI/2025-26/GN/REG127, dated May 26, 2025.*

IBBI notified amendments in IBBI (CIRP) Regulations

The IBBI (CIRP) (Third Amendment) Regulations, 2025 dated May 19, 2025, will come into effect from June 01, 2025. Through this amendment, the IBBI has substituted Regulation 40B "Filing of Forms". "The interim resolution professional or resolution professional, as the case may be, shall file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each form," said IBBI in the substituted Regulation 40 B. "The Board shall make available the Forms referred in sub-regulation (1) on the electronic platform and may modify them from time to time," it added. The Board may take action against the IRP or RP for failure to filing, inaccurate or incomplete filing or delays in filing.

Source: *Gazette Notification, No. IBBI/2025-26/GN/REG126, dated May 19, 2025.*

IBBI introduced Regulation on Non-Submission of Repayment Plan by Personal Guarantors

IBBI through an amendment namely IBBI (Insolvency Resolution Process for PGs to CDs) (Amendment) Regulations, 2025 dated May 19, 2025, has introduced a new Regulation 17 B which states "Non-submission of repayment plan where no repayment plan has been prepared by the debtor under section 105 of the Code, the resolution professional shall file an application, with the approval of creditors, before the Adjudicating Authority intimating the non-submission of a repayment plan and seek appropriate directions."

Source: *Gazette Notification, F. No. IBBI/2025-26/GN/REG125, dated May 19, 2025.*

Amendment in IBBI (IPs) Regulations

The Insolvency and Bankruptcy Board of India (IBBI) has issued a Notification dated April 03, 2025, titled BBI (Insolvency Professionals) (Amendment) Regulations, 2025. As per this amendment, in the IBBI (Insolvency Professionals) Regulations, 2016, in Regulation 5, in clause (a), for the word "twelve", the words and the mark "twenty-four" shall be substituted. This amendment has been made by the IBBI in exercise of the powers conferred to it by sections 196 and 207 read with section 240 of the IBC, 2016.

Source: *Gazette Notification, F. No. IBBI/2025-26/GN/REG123, dated April 03, 2025.*

IBBI Amends "Form H" under Schedule I of IBBI (CIRP) Regulations 2016

Through a Gazette Notification dated April 03, 2025, the IBBI has substituted "Form H" in IBBI (CIRP) Regulations, 2016 in Schedule -I, with "Form H Compliance Certificate". These amendments have been made in exercise of the powers conferred to the IBBI by clause (t) of sub-section (1) of section 196 read with Section 240 of the Insolvency and Bankruptcy Code, 2016. The amended Form comprised of details of the CIRP, reasons for not filing application for approval of Resolution Plan within 180 days of CIRP initiation, details of documents related to Successful Resolution Applicant (SRA), details of implementation of the Resolution Plan, Realizable Amount etc.

Source: *Gazette Notification, F. No. IBBI/2025-26/GN/REG124, dated April 03, 2025.*

PRESS RELEASES

IIIPI Releases Report on Developing Market for Stressed Assets in India

IIIPI has released a Study Group Report titled "Developing Market for Stressed Assets in India" during a web-conference attended by key dignitaries including Shri Atul Kumar Goel, Chief Executive of IBA and former MD of PNB. Prepared under the chairmanship of CA. Dhinal Shah, the report highlights the low-resolution rate under IBC compared to liquidations, citing the lack of a developed market for stressed assets as a major hurdle. The report recommends key reforms such as amendments in IBC and easing RERA norms during CIRP, cross-border and group insolvency frameworks etc. Dr. A.K. Mishra-Chairman IIIPI stressed the need for greater institutional and academic support to strengthen India's stressed asset market.

Source: *IIIPI Press Release, May 02, 2025.*

IBC Case Laws

Supreme Court of India

Kalyani Transco vs. M/s. Bhushan Power and Steel Ltd. & Ors. Civil Appeal No. 1808 of 2020, Date of Supreme Court Judgement: May 02, 2025.

Facts of the Case

This batch of appeals arose from the common impugned judgment and order dated 17.02.2020 passed by the Appellate Tribunal (NCLAT), concerning the Corporate Insolvency Resolution Process (CIRP) of M/s Bhushan Power and Steel Ltd. (BPSL)/CD. The lead appeal was filed by Kalyani Transco (hereinafter referred as Appellant), an operational creditor of CD, challenging the approval of the Resolution Plan submitted by JSW Steel Limited (hereinafter referred to as "JSW") and accepted by the Committee of Creditors (CoC) and the Adjudicating Authority/AA. Pursuant to the Reserve Bank of India's circular dated 13.06.2017 identifying the "dirty dozen" accounts, the CD was subjected to CIRP initiated by Punjab National Bank. The AA admitted the petition on 26.07.2017. Claims amounting to ₹4,72,04,51,78,073.88 were admitted for financial creditors and ₹6,21,37,61,735 for operational creditors. JSW, Tata Steel, and Liberty House submitted resolution plans. After multiple rounds of negotiations, JSW's revised and consolidated plan was approved by the CoC in October 2018 and subsequently by the AA on 05.09.2019, subject to conditions specified in para 128 of its judgment. Meanwhile, the Directorate of Enforcement (ED) passed a Provisional Attachment Order (PAO) on 10.10.2019 under Section 5 of the PMLA attaching the assets of the CD.

This was challenged by JSW and the CoC. The Appellate Tribunal stayed the PAO and declared the attachment illegal in its final order dated 17.02.2020. Several appeals were filed before the Supreme Court, including by Appellant, other operational creditors, and the State of Odisha, questioning the legality of the Appellate Tribunal's judgment, procedural irregularities in the approval of the Resolution Plan, and maintainability of JSW's appeal under Section 61 of the IBC.

Supreme Court's Observations

The Apex Court noted several procedural irregularities and raised substantial concerns about the maintainability and legality of the proceedings. The Apex Court reaffirmed that operational creditors and former promoters are "persons aggrieved" under Section 62 of the IBC and hence entitled to file appeals.

It referenced Glas Trust Company LLC v. Byju Raveendran & Ors. to confirm that insolvency proceedings

are collective in nature and open to all stakeholders. The Apex Court found that the appeal filed by JSW before the Appellate tribunal under Section 61 of the IBC was not maintainable as none of the conditions under Section 61(3) existed. Despite the Resolution Plan being approved by the AA, JSW had appealed against certain conditions, which were not permitted under the IBC scheme. The Appellate tribunal erred in entertaining and allowing this appeal. The Supreme Court pointed to serious lapses in disclosure by JSW, particularly regarding its Joint Venture Agreement with CD and Jai Balaji dated 05.03.2008. The Resolution Professional had failed to file the mandatory compliance certificate (Form H), and the contents of the affidavit concerning JSW's eligibility were neither verified nor disclosed. This raised doubts over JSW's eligibility under Section 29A of the IBC. The Appellate tribunal had declared the ED's Provisional Attachment Order (PAO) dated 10.10.2019 as illegal. The Supreme Court clarified that AA and Appellate tribunal, being forums under the Companies Act, cannot exercise judicial review over statutory authorities like ED under PMLA. It cited Embassy Property Developments Pvt. Ltd. v. State of Karnataka to state that such review lies outside their jurisdiction. Although JSW offered to deposit ₹19,350 crore in an escrow account and eventually implemented the plan, the Supreme Court emphasized that noncompliance with statutory provisions during the approval process could not be overlooked, especially when it relates to eligibility and disclosure norms

Order: The judgments dated 05.09.2019 (AA) and 17.02.2020 (Appellate tribunal) are quashed and set aside and the Resolution Plan of JSW, approved by the CoC, stands rejected for non-compliance with Section 30(2) read with Section 31(2) of the IBC. The Apex court directed the AA to initiate liquidation proceedings against the CD as per u/s 33(1) of the IBC and Article 142 of the Constitution of India and further said that the payments made by JSW to creditors and any equity infused shall

be dealt with as per the statement of the CoC's counsel recorded in the order dated 06.03.2020. The issue of EBITDA is left open as the Resolution Plan stands rejected.

Case Review: Civil Appeal Nos. 1808, 2192–2193, 2225 & 3020 of 2020, including 6390 of 2021 are allowed to the extent stated above and Civil Appeal Nos. 3784 of 2020 and 668 of 2021 (State of Odisha) are disposed of without expressing any opinion on the merits of the claims, pending applications, if any, are also disposed of.

VISA Coke Ltd. vs. M/S Mesco Kalinga Steel Ltd. Civil Appeal No. 357 of 2025, Date of Supreme Court Judgement: April 29, 2025.

Facts of the Case

The present appeal was filed by VISA Coke Ltd. (hereinafter referred as Appellant/Operational Creditor) challenging the final order dated 03.10.24 passed by the Appellate Tribunal. The Appellate Tribunal had dismissed the Appellant's appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the order dated 24.01.23 of the Adjudicating Authority, which had rejected the Appellant's Section 9 application seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s MESCO Kalinga Steel Limited (hereinafter referred as Respondent/Corporate Debtor). The Appellant a manufacturer and seller of Low Ash Metallurgical Coke (LAM Coke), had entered into a supply contract with the Respondent on 11.10.19. Despite amendments extending delivery timelines, a part of the supply (1700 MT) was delivered on credit based on the Respondent's assurance of opening a Letter of Credit, which never materialized. The respondent acknowledged the debt through email on 25.11.2019. Since no payment was made, the appellant issued a demand notice dated 31.03.2021 in Form 3 under Section 8 of the IBC to the respondent's Key Managerial Personnel (KMP) at the registered office address, demanding payment of ₹4,19,77,245.17 (principal plus penal interest at 15%). The respondent neither replied nor paid the dues. Consequently, the appellant filed a Section 9 petition before the AA, which was dismissed on the ground that the statutory demand notice had not been addressed directly to the Corporate Debtor but only to its KMP, rendering the notice invalid. The NCLAT upheld this reasoning. Aggrieved by this order the appellant approached the Supreme Court.

The main issue raised before the Apex Court is:

(i) Whether the notice dated 31.03.21, served on the KMPs of the CD at its registered office, satisfied the requirements under Section 8 of the IBC and Rule 5(2) of the AA Rules, 2016.

Supreme Court's Observations

The Apex Court emphasized that the IBC mandates service of a demand notice on the CD, but this may be done via its KMPs at the registered office. The Apex court found that the subject and contents of the notice issued by the Appellant clearly identified the CD as the entity being addressed, and the KMPs were merely the addressees in their official capacity. The demand notice complied with the form and purpose prescribed under the IBC. Relying on precedents including Rajneesh Aggarwal v. Amit J. Bhalla, K.B. Polychem (India) Ltd. v. Kaygee Shoetech Pvt. Ltd., and Shubham Jain v. Gagan Ferrotech Ltd., the Apex Court held that service on the KMP at the registered address amounts to valid service on the CD. Furthermore, The Apex court criticized the AA and Appellate Tribunal for adopting a hyper-technical view, which defeated substantive justice. The Apex Court observed that the procedural irregularity alleged did not prejudice the CD, who was fully aware of the demand and even attempted settlement during the pendency of proceedings. Regarding the issue of default, the Apex Court noted that the AA and Appellate Tribunal had not delved into the question of whether the contract was novated or whether a default had occurred. The Apex Court clarified that this issue, being a mixed question of law and fact, required detailed consideration and should be decided by the AA upon remand.

Order: The Supreme Court set aside the orders of the AA and the Appellate Tribunal and remanded the matter to the AA for fresh consideration of the Section 9 petition on merits. The AA was directed to decide the petition after giving reasonable opportunity to both parties, without being influenced by its earlier observations. No order as to costs was made.

Case Review: *Appeal Allowed.*

Piramal Capital And Housing Finance Ltd. Vs. 63 Moons nologies Ltd. & OTechthers Civil Appeal No. 1632-1634 of 2022, Date of Supreme Court's Judgement: April 01, 2025.

Facts of the Case

The present appeal has been filed by Piramal Capital and Housing Ltd. (Piramal Capital), which is Successful Resolution Applicant (SRA) of the Dewan Housing Finance Corporation Ltd. (DHFL), challenging the common judgment and order dated 27.01.2022 passed by the NCLAT only to the extent that it modified the Resolution Plan (RP) by holding that the RP who permitted the SRA to appropriate recoveries, if any, from Avoidance applications filed under Section 66 of the IBC ought to be set aside and the Resolution Plan be sent back to the

Committee of Creditors (CoC) for reconsideration on that aspect. On an application filed by the Reserve Bank of India (RBI), the NCLT via an order dated 03.12.2019 initiated commencement of Corporate Insolvency Resolution Process (CIRP) of DHFL and confirmed the appointment of Administrator to perform all functions of the Resolution Professional under the IBC. Subsequently, the Administrator received the claims wort ₹82,247 Crores. He also appointed a firm for unearthing particulars of preferential, undervalued, fraudulent, and extortionate (PUFE) transactions entered by DHFL. The firm reported PUFE amounting ₹45,050/ Crores. Meanwhile, the Resolution Plan of Piramal Capital amounting ₹37,250 Crores was approved by the CoC with 93.65% to which Authorized Representative of 77 financial creditors including the 63 Moons Technologies Ltd. (63 Moons), the Respondent, voted in favour. The Resolution Plan mentioned a notion value of ₹1 against PUFE transactions. However, when the Plan was submitted for approval of the NCLT, 63 Moons challenged the provisions of the Plan

which provided that Section 66 (PUFE) Recoveries will go to the benefit of the SRA. The Adjudicating Authority rejected the petition of 63 Moons on the grounds that 77 financial creditors decided in its commercial wisdom to give away the Section 66 Recoveries to the SRA after a hard Bargain in exchange for a lump sum resolution amount of ₹37,250 Crores. Aggrieved with this order 63 Moons filed an appeal in the NCLAT which was allowed. This arises the preset appeal before the Apex Court.

Supreme Court's Observations

Relying on Supreme Court judgements in the cases of Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta and Others, (2019), Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. and Another (2022) and M.K. Rajagopalan v. Dr. Periasamy Palani Gounder and Another (2024), the Apex Court held that the legislature has given paramount importance to the "commercial wisdom" of CoC, and that the scope of the judicial review by the Adjudicating Authority (NCLT) is limited to the extent provided under Section 31, and that of the Appellate Authority (NCLAT) is limited to the extent provided under sub-section (3) of Section 61 of the IBC. Furthermore, the Court held that if the finality and binding force is not provided to the votes cast by the Authorized Representatives of a class of Financial Creditors, a plan of resolution involving large number of parties may never fructify. In the instant case, the vote cast by the Authorized Representative on behalf of the class of Financial Creditors he represented was binding on the 63 Moons and other Appellants before the NCLAT, and therefore they were stopped from raising any objection before the NCLT or NCLAT against the RP approved by the requisite majority of CoC. Regarding the notional value of ₹1 ascribed to Section 66 Applications under the Resolution Plan, the Apex Court held that it was made in response to the provision of RFRP issued by the Administrator. The NCLAT therefore has clearly transgressed its jurisdiction under Section 61 IBC, by interfering with the clause pertaining to the treatment to the recoveries from the Fraudulent and Wrongful trading under Section 66.

Order: The Supreme Court set aside the NCLAT order dated 27.01.2022 and upheld the order of NCLT dated 07.06.2021 granting its approval to the Resolution Plan. It also ordered the NCLT to decide all the Avoidance Applications separately. The recoveries/benefits that may follow from such Applications shall be appropriated in favour of the CoC in case of Avoidance Applications under Section 43, 45 and 50, and in favour of SRA in case of Applications under Section 66 of IBC.

Case Review: *Appeal Allowed.*

Vaibhav Goel & Anr. vs. Deputy Commissioner of Income Tax & Anr. Civil Appeal No. 49 of 2022, Date of Supreme Court's Judgement: March 20, 2025

Facts of the Case

The present appeal was filed jointly by resolution applicants (hereinafter, Applicants), who submitted a Resolution Plan for M/s Tehri Iron and Steel Casting Ltd. (Corporate Debtor or CD) dated January 21, 2019, urging the Supreme Court for declaring that the tax demands made by Deputy Commissioner of Income Tax (Respondent No. 1) pertaining to assessment years 2012-13 and 2013-14 should be declared invalid. The Appellants had submitted a Resolution Plan for the CD dated January 21, 2019, which was approved by the NCLT vide its order dated May 21, 2019. The Resolution Plan has mentioned "Contingent Liabilities" of the Respondent No. 1 amounting ₹16,85,79,469/- for the assessment year 2014-15 based on the demand dated 18th December 2017 which was rectified under Section 154 of the Income Tax Act, 1961. After approval of the Resolution Plan, Respondent No. 1 issued demand notices under the IT Act concerning assessment years 2012- 13 and 2013-14, respectively, in respect of the CD. These demands were not submitted before the Resolution Professional during the CIRP. The Monitoring Professional (Respondent No. 2) wrote a letter to the Respondent No. 1 contending that these demands were unsustainable in law. Subsequently, the Respondent No. 2 applied before the NCLT for declaring that the demands made by the Respondent No. 1 pertaining to assessment years 2012-13 and 2013-14 were invalid on the grounds that no claim in respect thereof was made before the Resolution Professional until

the Resolution Plan approved by the order dated May 21, 2019. However, the NCLT dismissed the application and imposed a cost of ₹1 lakh against the appellants and the second respondent. The NCLAT also dismissed the appeal via the impingement judgement dated November 25, 2021. The aggrieved appellants approached the Supreme Court.

Supreme Court's Observations

The Supreme Court observed that the Respondent No. 1 did not make any claim regarding Income Tax dues of the CD for the assessment year 2012-13 and 2013-14. The Applicants, therefore, proposed to pay all Statutory Liabilities as were appearing in the balance sheet of the CD.

It was also observed that the Income Tax liabilities for the assessment years 2012-13 and 2013-14 have not been shown as contingent liabilities under the Resolution Plan. Placing reliance on the Supreme Court judgement in the case of Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. (2021), the court said that once a Resolution Plan is duly approved by the Adjudicating Authority under Section 31 (1), the claims as provided in the Resolution Plan shall stand frozen and will be binding on the CD and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. Furthermore, the amendment to Section 31 of the IBC in 2019 is clarificatory and declaratory in nature and therefore will be effective from the date on which the IBC has come into effect. Thus, all the dues including the statutory dues owed to the Central Government, if not a part of the Resolution Plan, shall stand extinguished and no proceedings could not continue in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the IBC. Therefore, the additional demands made by the Respondent No. 1 will operate as roadblocks in implementing the approved Resolution Plan, and appellants will not be able to restart the operations of the CD on a clean slate.

Order: The demands raised by the Respondent No. 1 against the CD in respect of the assessment years 2012-13 and 2013-14 are invalid and can not be enforced. The orders of NCLT and NCLAT are set aside.

Case Review: *Appeal Allowed.*

National Company Law Appellate Tribunal (NCLAT)

Mr. Sunil Gutte Vs. Mr. Avil Menezes, DPRS Infra Developers Pvt. Ltd., Rayon Infrastructure Pvt. Ltd, Navneesh Traders Pvt. Ltd., Shreehari Associates Pvt. Ltd. & Mr. Harshavardhan Kaushik, Company Appeal (AT) (Insolvency) No. 515 of 2025, Date of NCLAT Judgement: May 30, 2025.

Facts of the Case

The present appeal was filed u/s 61 of the Insolvency and Bankruptcy Code, 2016 by Mr. Sunil Gutte, Promoter and Suspended Director of M/s Sunil Hitech Engineers Ltd./ C/D (hereinafter referred as 'Appellant'), challenging the order dated 04.02.25 passed by the Adjudicating Authority. The AA had allowed M.A. No. 1833 of 2019 filed by the Resolution Professional (hereinafter referred as 'Respondent No. 1') and set aside certain transactions made by the Appellant and Respondent No. 6 (CFO of the CD) with Respondents Nos. 2 to 5, declaring them in violation of the moratorium u/s 14 of the IBC. These transactions, amounting to ₹11.01 crore, were made post-commencement of CIRP which had been admitted on 07.09.18, and the moratorium declared effective from 10.09.18. The Respondent no. 1 discovered that unauthorized payments had been made to Respondents Nos. 2 to 5 in two phases first between 10.09.18 and 14.09.18 (nine RTGS transactions), and second between 06.10.18 and 08.10.18 (three cheque encashments). These payments were made from the CD's HDFC Bank account, not from the designated account under the IRP's control. The Appellant argued that the payments were necessary to run the company as a going concern and that the cheques were dated prior to the moratorium. The Respondent no. 1 contended that all such payments were in clear breach of the moratorium provisions, made without IRP's approval, and therefore sought reversal of the transactions.

The AA held that the Appellant and Respondents Nos. 2 to 6 were jointly and severally liable to refund the amounts, and the matter was also directed to IBBI for consideration under Section 74(1) of IBC. Aggrieved by this, the Appellant approached the Appellate Tribunal. The main issues raised before the Appellate Tribunal is whether the payments made by the Appellant after commencement of CIRP constituted a breach of the provisions of moratorium and whether there was any infirmity in the impugned

order directing the reversal of the impugned transactions by the Appellant and Respondent No. 2 to 6 to the assets of the CD.

NCLAT's Observations

The Appellate Tribunal noted that as per Section 5(12) of the IBC, the insolvency commencement date is the date of admission of a CIRP application. Section 14(1)(b) mandates a moratorium on transferring or disposing of any assets of the CD post-admission. It observed that 9 out of the 12 impugned transactions occurred via RTGS between 10.09.18 and 14.09.18, i.e., after the effective date of moratorium. Although the remaining three cheque transactions were dated before the moratorium, they were encashed only afterward. The Appellate Tribunal held that the IRP had not authorized these payments and that the suspended management acted in violation of the moratorium provision. It further emphasized that the objective of Section 14 is to maintain the status quo of the CD' assets during CIRP, and even a well-intentioned payment by the suspended management cannot override statutory prohibitions.

The Tribunal rejected the Appellant's argument that these payments were in the ordinary course of business and essential for maintaining the going concern status of the CD. It cited that any such post-CIRP payments must be made under IRP supervision and authorization. With regard to the three cheque transactions, the Tribunal relied on its earlier ruling in SREI Equipment Finance Ltd. v.

Amit Gupta (2019), holding that even if the cheque is dated before moratorium, its encashment after moratorium breaches the law. The Appellant's reliance on the Pratim Bayal case (2013) was rejected, as the facts were distinguishable and no credible evidence was provided regarding the actual handover date of the cheques. The Tribunal also rejected the argument of discriminatory treatment, stating that parity cannot be claimed in illegal acts and any oversight by the Respondent no. 1 in other cases does not justify non-compliance in the instant case.

Order: The Appellate Tribunal dismissed the appeal and upheld the AA's order, holding that an amount of ₹11.01 crore had been illegally transferred from the CD's account to Respondent Nos. 2 to 5 in violation of the moratorium. The Appellant and Respondent Nos. 2 to 6 were held jointly and severally liable to refund the said amount within 30 days. The matter was rightly referred to IBBI for action under Section 74(1) of IBC. However, liberty was granted to Respondent Nos. 2 to 5 to file their claims before the RP/Liquidator.

Case Review: The Appeal is dismissed with no order as to costs.

Mr. Ramprasad Vishvanath Gupta Vs. Mr. Dinesh Kumar Deora, Kotak Mahindra Investments Ltd. & M/s Neel Builders & Developers, Company Appeal (AT) (Insolvency) No. 442, 474 & 559 of 2025, Date of NCLAT Judgement: May 21, 2025.

Facts of the Case

The present Appeal Nos. 442, 474, and 559 of 2025 were filed by Mr. Ramprasad Vishvanath Gupta, a homebuyer (hereinafter referred to as the 'Appellant'), challenging three separate orders passed by the Adjudicating Authority (AA) dated 24.01.2025, 28.01.25, and 12.02.25 in the Corporate Insolvency Resolution Process (CIRP) of M/s Snehanjali and S.B. Developers Private Limited. The CIRP commenced on 07.03.24 based on an application filed by Mr. Santosh Ananda Shetty and 66 other homebuyers, classified as Financial Creditors in class. Following admission, a public announcement was made, and the CoC was constituted on 26.03.24 and later reconstituted. Transaction Auditor and Registered Valuers were appointed, and Form G was published inviting EOIs. After receiving multiple EOIs, the Resolution Professional (RP) issued the Request for Resolution Plan (RFRP), with the last date of submission extended beyond 20.07.24. In the 6th CoC meeting on 25.09.24, four resolution plans were opened.

The Resolution Plan submitted by La Mer Developers Ltd. and Neel Builders & Developers was approved with 83.46% voting share, and a Letter of Intent was issued on 12.10.24. The RP filed IA No. 102/MB/2024 for approval of the Resolution Plan. Meanwhile, the Appellant filed IA No. 22/MB/2025 u/s 43 of the IBC seeking declaration of certain transactions as preferential; IA No. 24/MB/2025 challenging the Resolution Plan; and IA No. 269/MB/2025 along with four other homebuyers under Section 60(5) of the IBC, seeking quashing of RFRP conditions, replacement of RP and AR, and disclosure of Zoom recordings and e-voting details. All were rejected by the AA. By order dated 24.01.25, the AA dismissed IA No. 22/MB/2025 holding that a homebuyer lacks authority under Section 43 and imposed a cost of ₹50,000/-. On 28.01.25, IA No. 24/MB/2025 was rejected, noting that the Appellant, holding only 2.14% of voting share among approximately 600 homebuyers, lacked locus to challenge the CoC-approved Resolution Plan. On 12.02.25, the plan was approved as compliant with Section 30(2) of the IBC, providing for delivery of units to all 297-unit holders including non-claimants. Aggrieved by these orders, the Appellant approached the Appellate Tribunal alleging procedural irregularities, statutory violations, fraudulent conduct, and collusion between the RP and SRA, along with repeated prayers for rejection of the Resolution Plan

and replacement of professionals involved in the CIRP.

NCLAT's Observations

The Appellant, a single homebuyer, challenged three orders of the AA rejecting his applications u/s 43 of IBC objecting to, and approving the Resolution Plan of La Mer Developers Ltd. and Neel Builders & Developers. He alleged procedural impropriety, collusion, and sought deletion of the ₹50,000/- cost imposed. The Respondents argued he lacked locus, holding only 2.14% voting share, as the plan was approved with 83.46% CoC votes, citing Jaypee Kensington (2022) 1 SCC 401, which bars individual homebuyers from challenging a majority-approved Resolution Plan. The Appellate Tribunal noted that similar reliefs had already been rejected in IA No. 269/MB/2025 and not challenged, rendering the allegations against the RP and AR not open to reconsideration. Referring to the same judgment, the Appellate Tribunal reiterated that dissent by a few cannot override the majority, and the principle of democratic decision-making within a creditor class must prevail. Regarding the application u/s 43 filed by the Appellant, the Appellate Tribunal concurred with the AA that only the RP or Liquidator is empowered under the statute to file such applications.

While upholding the rejection of the application, the Appellate Tribunal deleted the cost of ₹50,000/- imposed on the Appellant. In respect of the challenge to the Resolution Plan, the Appellate Tribunal affirmed the AA's view that individual homebuyers, despite divergent opinions, are bound by the class vote exercised by the AR. The Appellate Tribunal relied on K. Sashidhar v. Indian Overseas Bank, Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, and Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss ARC, emphasizing that the AA has no power to interfere with the CoC's commercial wisdom once the plan satisfies Section 30(2). It was further observed that the approved Resolution Plan provided for delivery of units to all 297-unit holders and complied with legal requirements.

Order: The Appellate Tribunal reinforces the principle that collective decisions taken by the CoC's, especially in the case of financial creditors in class (like homebuyers), bind all members, and individual objections post-approval of the Resolution Plan are unsustainable. The Appellate Tribunal also clarifies the statutory scheme regarding who can initiate avoidance transactions under Section 43 of the IBC.

Case Review: The Appellate Tribunal dismissed all three appeals. However, the cost of ₹50,000/- imposed by the NCLT in IA No. 22/MB/2025 was set aside. The rest of the findings and decisions of the AA were upheld.

Indian Bank Vs. Anjanee Kumar Lakhotia, State Bank of India, and Roshan Lal, Company Appeal (AT) (Insolvency) No. 458 of 2025, Date of NCLAT Judgement: May 21, 2025.

Facts of the Case

The appeal was filed by Indian Bank (hereinafter referred as 'Appellant') against the order dated 24.01.25 passed by the Adjudicating Authority/AA which had rejected its application under Section 95(1) of the IBC for initiating corporate insolvency resolution process (CIRP) against the Personal Guarantor, Mr. Anjanee Kumar Lakhotia, suspended Director of M/s MBL Infrastructure Ltd, State bank of India, and Roshan Lal Jain/RP (hereinafter referred as Respondent no: 1,2,3) respectively. The case originated from financial facilities extended by a consortium of banks led by Respondent No. 2, with a deed of guarantee executed by Respondent 1 on 17.02.16 in favour of the lead bank. The CD's accounts were declared NPA on 21.12.16 and admitted to CIRP on 30.03.17 by AA. The Appellant filed its claim and was part of the CoC. The RP submitted a Resolution Plan dated 22.11.17, approved by CoC with 78.50% vote share and by AA on 18.04.18. This plan was upheld by the Hon'ble Supreme Court on 18.01.22 in Civil Appeal No. 8411 of 2019, noting infusion of ₹63 crores and the CD's status as an ongoing concern. To implement the approved Plan, a new Deed of Guarantee dated 04.07.24 was executed by the RP in favour of SBICAP Trustee Company Ltd. The Appellant, being a dissenting financial creditor, did not support the Resolution Plan and was entitled to receive liquidation value. It filed the present Section 95(1) application, opposed by Respondent No. 2, which led the new working capital consortium. The Respondent No. 2 argued that the debt was restructured via the Resolution Plan and a new personal guarantee was executed. It contended that a dissenting creditor could not initiate personal insolvency against a guarantor who submitted and implemented the courtapproved Resolution Plan.

The AA observed that post-approval, the loan was effectively restructured and the original guarantee dated 17.02.16 was extinguished. The new guarantee dated 04.07.24 was executed along with other documents including the Working Capital Consortium Agreement, Security Trustee Agreement, Debenture Trust Deed, and Inter-se Agreement. These documents formed part of the implementation mechanism of the approved Resolution Plan. The tribunal noted that the assets and liabilities of the Personal Guarantor, including his net worth of

₹18.37 crores as on 31.03.17, were already factored into the Resolution Plan. Therefore, the fresh Section 95 application was deemed not maintainable.

NCLAT's Observations

The Appellate Tribunal held that although the general proposition laid down by the Hon'ble Supreme Court in Lalit Kumar Jain v. Union of India (2021) was that the approval of a Resolution Plan does not ipso facto extinguish a personal guarantee, the facts of the present case were distinguishable. Here, it was the Personal Guarantor himself who had submitted and implemented the Resolution Plan. The Plan included a fresh personal guarantee, which replaced the earlier one. The restructuring, security extinguishment, and other components of the Plan were acknowledged by the Supreme Court and Appellate tribunal in earlier rounds of litigation.

The Appellate Tribunal further referred to the Resolution Applicant's letter dated 22.11.17 to the Respondent no. 3, where amendments, restructuring of debts, modification of security interests, and issuance of securities for claims were detailed, reinforcing that all prior securities, including the personal guarantee, had been subsumed under the new structure. Thus, relying on the extinguished guarantee for initiating personal insolvency under Section 95 was impermissible. The Court reiterated that approval of a Resolution Plan does not ipso facto extinguish a guarantee, but where a new guarantee is executed under a Plan approved by all statutory forums including the Supreme Court, the previous guarantee ceases to exist.

Order: The Appellate Tribunal upheld the findings of the AA and concluded that the application under Section 95(1) filed by the Appellant was not maintainable. The Tribunal held that no grounds were made out to interfere with the impugned order dated 24.01.25 passed by AA.

Case Review: *Appeal Dismissed.*

Consortium of Ms. Karishma Jain, M/s. Jupiter City Developers (I) Ltd., & M/s. Adwaita Navigations Pvt. Ltd. Vs. NSE, BSE, CDSL, NSDL & Mr. Vijay Pitamber Lulla, I.A (IBC) No. 1726 of 2024 in C.P (IB) No.16/7/HDB/2023, Date of NCLAT Judgement: May 02, 2025.

Facts of the Case

The instant application, I.A. No. 1726 of 2024 in CP (IB) No. 16/7/HDB/2023, was filed before the Adjudicating Authority/AA, by the Consortium of Ms. Karishma Jain, M/s. Jupiter City Developers (India) Ltd., and M/s. Adwaita Navigations Pvt. Ltd., acting as the Successful Resolution Applicant/SRA (hereinafter referred as Applicant) for M/s. XL Energy Ltd., a corporate debtor/CD, against National Stock Exchange of India Limited , Bombay stock exchange & Central depository Service India Ltd., National Securities depositories Ltd. & Mr. Vijay Pitamber Lulla (hereinafter referred as 'Respondent No. 1,2,3,4,5 respectively). The application sought directions for the relisting of equity shares of the CD and activation of its credentials necessary for implementing the Resolution Plan approved on 19.04.2024. XL Energy Ltd., a formerly listed company, was delisted by the NSE due to non-compliance with SEBI (LODR) Regulations, 2015, and non-payment of fines. The delisting order was passed on 19.07.2021 under the SEBI Delisting Regulations, 2009. Later, CIRP was initiated against the CD on 27.03.2023 based on a petition filed by Invent Assets Securitisation and Reconstruction Pvt. Ltd., and Mr. Vijay Pitamber Lulla was appointed as the RP. The SRA's Resolution Plan, approved by the CoC with 73.68% voting, proposed the relisting of the CD as an integral part of revival. The request for relisting was denied by NSE citing Regulation 40(1)(b) of the SEBI Delisting Regulations, 2021, which bars relisting within 10 years of delisting. The application was filed under Section 32A and 60(5) of IBC read with Rule 11 of NCLT Rules, 2016, arguing that the denial of relisting contradicts the clean slate principle under IBC and Section 238, which provides overriding effect to IBC.

NCLAT's Observations

The Tribunal noted that XL Energy Ltd. was listed with NSE from 28.12.2006 until trading was suspended on 09.01.2020 due to non-compliance with Regulation 31 of the SEBI LODR Regulations and non-payment of fines. Despite notices, the CD failed to respond, leading to delisting on 19.07.2021 under SEBI Delisting Regulations, 2009.

It reiterated that a Resolution Plan approved under Section 31(1) of the IBC binds all stakeholders, including statutory authorities. Citing Essar Steel India Ltd. v. Satish Kumar Gupta and Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, the Tribunal emphasized that a Resolution Plan grants the CD a "clean slate" and that no stakeholder may impose conditions inconsistent with the Plan. Relisting was held to be an integral part of the approved Resolution Plan, critical for revival. Denial by NSE citing Regulation 40(1)(b) of the SEBI Delisting Regulations, 2021, ignored the overriding provisions of Sections 32A and 238 of IBC. The Tribunal clarified its jurisdiction under Section 60(5)(c) of IBC to adjudicate matters relating to CIRP and Plan implementation, referencing State Bank of India v. Consortium of Mr. Murari Lal Jal and Mr. Florian Frsitsch and Ghanashyam Mishra and Sons Private Limited v.

Edelweiss Asset Reconstruction Company Limited, and Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. decisions.

Further, Regulation 40(2)(a) read with 40(3) of the 2021 SEBI Regulations permits relisting pursuant to a Resolution Plan. Since the delisting was due to the acts of the erstwhile management, and not the new SRA, the denial of relisting amounted to mechanical rejection, contrary to the clean slate principle. The Tribunal reaffirmed that past regulatory dues extinguished upon Plan approval cannot be enforced against new management. Section 238 grants IBC overriding effect in case of inconsistencies with other laws. As such, Respondent No. 1's reliance on Regulation 40(1)(b) to deny relisting was contrary to the IBC's objectives and the SEBI Regulations themselves, which allow exemptions in such cases.

Order: The AA allowed the application and issued directions to Respondents Nos. 1 to 4 to facilitate relisting of the CD's shares within 30 days from receipt of the order.

Case Review: Application allowed.

National Company Law Tribunal (NCLT)

State Tax Officer vs. Vinod Tarachand Agrawal (IRP for M/s Jay Formulations Limited & Ors), M/s Jay Formulations Private Limited and Shri Vishal Shah (SRA) M/s Aquatic Remedies Limited, IA/435 (AHM) 2025 in CP (IB) No. 123/NCLT/AHM/2022, Date of NCLT Order: 05th May 2025.

Facts of the Case

The present application was filed under Section 60(5) of the IBC, 2016 read with the relevant provisions of the IBBI Regulations, 2016 and Rule 11 of the NCLT Rules, 2016. The application was filed by the State Tax Officer of the State Tax Department (hereinafter referred as "the Applicant") against the Resolution Professional, Corporate debtor & SRA (hereinafter referred as Respondent No. 1, 2 & 3 respectively) seeking recognition of its claim as that of a 'Secured Creditor'. The Applicant was aggrieved by the failure of the CD to discharge its statutory tax liabilities for multiple financial years. Specifically, the CD defaulted in payment of tax dues under the GVAT Act and the CST Act for the Financial Year 2014–15, amounting to ₹1,82,47,705/-, and further defaulted under the GST Act, 2017 for the financial years 2017–18 to 2020, with dues aggregating to approximately ₹81 lakhs. Cumulatively, the Applicant sought recognition of dues amounting to ₹2,00,15,482/- comprising ₹1.82 crore under GVAT, ₹1.65 crore under CST, and ₹9.75 crore under GST. To recover these dues, the department had issued several attachments to the bank accounts of the CD, followed by continued appeals to the office of the Deputy Commissioner, Division 1, Ahmedabad. In many such instances, the authorities granted interim stays, preventing effective recovery. Despite the department's repeated assertion that these tax dues constitute a statutory charge, and therefore should be treated as secured debt, the RP only partially admitted the claim and classified the Applicant as an 'Operational Creditor'.

The list of stakeholders prepared and submitted by the RP accordingly reflected the Applicant's status as an operational creditor, not a secured creditor. Aggrieved by this treatment, the Applicant made a special civil application before the Hon'ble High Court of Gujarat. In its pleadings, the Appellant emphasized that statutory tax dues, by virtue of provisions under the GVAT Act and relevant case law, create a charge on the assets of the CD, thereby qualifying the Department as a 'Secured Creditor'. The Applicant placed heavy reliance on the landmark judgment of the Hon'ble Supreme Court in the matter of State Tax Officer v. Rainbow Papers Ltd.

NCLT's Observations

The AA acknowledged that the GVAT dues constituted a statutory charge under Section 48 of the Gujarat Value Added Tax (GVAT) Act, a position upheld by the Hon'ble Supreme Court in State Tax Officer v. Rainbow Papers Ltd.. However, the AA made a clear distinction in the treatment of CST and GST dues. The AA further emphasised that unlike GVAT, CST and GST dues do not create any statutory charge and, therefore, do not qualify as secured debt. Instead such dues fall under Section 53(1)(e)(i) of the Insolvency and Bankruptcy Code (IBC), which categorizes them as government dues ranking lower in priority during distribution of assets. In reaching this conclusion for CST dues, the AA relied on the precedent set in Paschimanchal Vidyut Vitran Nigam Ltd., affirming that these are merely government dues without secured status. With respect to GST, the AA specifically referred to Section 82 of the Central Goods and Services Tax (CGST) Act, clarifying that although it speaks of a first charge, it is expressly made subject to the provisions of the IBC. Consequently, the AA held that in case of any conflict, the IBC would prevail over the GST Act, reinforcing the supremacy of the Code in insolvency proceedings.

Order:

(a) Allowed: GVAT dues of ₹15,90,276 are to be treated as secured debt under Section 53(1)(b)(ii) of IBC.

(b) Rejected: CST dues of ₹1,65,87,840 and GST dues (₹8,30,90,029 and ₹81,20,284) are not considered secured creditors claim and treated under Section

53(1)(e)(i) as government dues. The AA rejected the claim that the RP erred in rejecting CST and GST dues as secured.

Case Review: The case was partly allowed and IA No. 435 of 2025 in CP(IB) 123 (AHM) 2022 is disposed of accordingly.

Sandeep Mahajan Vs. Mr. Nayan Thakrashi Shah, Mr. Nayan Ashok Bheda, & Mr. Sachin Manohar, Deshmukh, I.A. No. 5026/2023 in C.P. NO. 800(IB)/MB/2022, Date of NCLT Judgement: May 02, 2025.

Facts of the Case

In the Corporate Insolvency Resolution Process (CIRP) of Neptune Ventures and Developers Pvt. Ltd. (Corporate Debtor), the IRP (hereinafter referred as 'Appellant') filed an IA under Section 14(1) read with Section 68(i)(b) of the Insolvency and Bankruptcy Code (IBC), 2016, seeking directions against Mr. Nayan Thakrashi Shah, Mr. Nayan Ashok Bheda, and Mr. Sachin Manohar suspended directors of the CD (hereinafter referred as 'Respondents'). The Appellant sought refund of ₹5,91,41,405/-, which was transferred from three bank accounts of the corporate debtor—HDFC Bank and two Axis Bank accounts—after the CIRP commenced on 17.07.2023, alleging violation

of the moratorium under Section 14. The IRP submitted that the management failed to cooperate in providing vital information such as assets, financial records, and property keys, and that unauthorized transactions were carried out post-moratorium. Emails dated 18.09.2023 and 24.09.2023 were sent requesting reversal of these amounts, but the Respondents (suspended directors) did not comply.

The Respondents, in a common affidavit, claimed that the instruments (cheques, manager's cheques, demand drafts, fund transfers) were issued before the insolvency commencement date and thus did not violate the moratorium. They stated the payments were for legitimate dues of homebuyers and operational creditors to avoid litigation and denied any fraudulent intent or wrongful gain. They also cited lack of access to company records as the reason for not submitting the original instruments. In his rejoinder, the IRP refuted these claims, asserting that the instruments were processed and debited only after 17.07.2023, thereby breaching the moratorium. He further noted that the Respondents failed to provide proof of contractual obligations or that the transactions occurred in the ordinary course of business. He also alleged deliberate misrepresentation and falsification of records, invoking Section 68(i)(b) of the Code.

The main issue raised before AA is:

(i) Whether there is breach of moratorium by the respondents and the monies so debited in the bank accounts of the CD after declaration of moratorium, without the authority of the IRP are required to be restored back to the CD.

NCLT's Observations

The Tribunal perused the bank account statements, pleadings, and documents. It noted that as per Section 17 of the IBC, once the IRP is appointed, the management of the CD vests with him and the suspended board must cooperate and disclose all relevant information. In this case, the Respondents failed to respond to IRP's emails and withheld critical financial details. The Tribunal held that the defense of the respondents that payments were made to homebuyers and operational creditors is immaterial, since any transaction after declaration of moratorium without the IRP's approval violates Section 14. The records revealed that most transactions particularly from the HDFC Bank account were effected on or after 18.07.2023, either via Manager's Cheques (MCs), Fund Transfers (FT-DR), or electronic RTGS, none of which were proven to be initiated before the CIRP. The account balance as on 14.07.2023 was only ₹14,43,886.71/-, and massive inflows and outflows occurred post-moratorium. Cheques were issued and cancelled to prioritize select parties, indicating use of discretion in violation of the Code. Notably, the Tribunal emphasized that the Respondents' submissions lacked evidentiary support.

They failed to show that payments were made under ECS mandate, auto-debit instructions, or valid pre-CIRP obligations. The claim that SAP software holding records had crashed was found unconvincing. Payments made via RTGS and electronic transfer on 18.07.2023 and later clearly established post-CIRP disbursal. The only transaction that was considered a CIRP cost was ₹64,541 paid to Vodafone Idea Ltd. for telephone/internet usage. All other payments, totalling ₹6,02,73,500/-, were declared unauthorized and violative of Section 14 of the IBC.

Order: The Tribunal concluded that there was a clear breach of the moratorium under Section 14 of the IBC, and that the transactions were executed without authority. Accordingly, it directed the suspended directors to jointly and severally repay ₹6,02,73,500/- along with interest at 9% per annum, calculated from the date of unauthorized transfers till the actual date of repayment. The payment was ordered to be completed within two months from the date of the order.

Case Review: *Interlocutory Application was allowed.*

IBC News

IBC cannot override PMLA: NCLAT

The Appellate Tribunal has held that if there is any attachment by the Enforcement Directorate (ED) under the Prevention of Money Laundering Act (PMLA), which is validly made and confirmed, it cannot be undone under the IBC. Under Section 14 of the IBC, a moratorium is applied on assets of the Corporate Debtor (CD) for the purpose of resolution. However, if the property is alleged to be "proceeds of crime" and is already under adjudication by the competent authority under a penal statute, such property cannot be deemed to be part of the freely available resolution estate, said the National Company Law Appellate Tribunal (NCLAT). "ED does not act as a creditor, but as a public enforcement agency," said NCLAT.

Source: *Business Standard, July 06, 2025.*

https://www.business-standard.com/india-news/insolvency-law-cannot-override-pmla-ed-attachment-to-stay-says-nclat-125070600202_1.html

NCLT Approves Adani Properties' Resolution Plans for Two HDIL Projects

The NCLT Mumbai Bench has approved Adani Properties' resolution plans for two verticals of bankrupt Housing Development and Infrastructure Ltd. (HDIL): Project BKC (Vertical V) and Shahad Maharal Lands (Vertical IX). Both plans were cleared under Section 31 of the Insolvency and Bankruptcy Code 2016, with the Committee of Creditors (CoC) approving them by 66.084% vote. For Project BKC, the plan value is ₹3 crore, with a ₹2.83 crore payout to financial creditors and minimal allocations to other stakeholders. For Shahad Maharal Lands, the plan has offered a payout of ₹90 crore, which was below liquidation value but deemed feasible and compliant by the CoC.

Source: *Scconline.com, July 03, 2025.*

https://www.scconline.com/blog/post/2025/07/03/nclt-approves-adani-properties-acquisition-two-hdil-assets/

No party can alter the record of the court without its permission: NCLAT

Allowing an appeal in connection with the ongoing proceedings against Infrastructure Leasing and Financial Services Ltd. (IL&FS), the NCLAT held that the entitlement to amend the petition does not empower a party to bypass procedural requirements and added that no party can alter the record of the court without its permission. Citing Rule 155 of the NCLT Rules, 2016

and Supreme Court precedent in the case of Gurdial Singh & Ors. vs. Raj Kumar Aneja, the NCLAT asserted that all necessary amendments must be carried out only with the Tribunal's express leave, particularly when they alter substantive reliefs. The case pertains to the Ministry of Corporate Affairs' (MCA) unilateral amendment to Company Petition No. 3638/2018, specifically the inclusion of a new prayer clause (e), was allegedly carried out without the leave of the Tribunal.

Source: *Taxscan.in, June 16, 2025.*

https://www.taxscan.in/top-stories/nclat-allows-deloittes-appeal-strikes-down-nclt-order-in-ilfs-case-over-unauthorised-amendment-1421850

NCLT approved ₹ 83.40 cr Resolution Plan for Astral Steritech

The Committee of Creditors (CoC) of Astral Steritech Pvt. Ltd. has already approved the Resolution Plan submitted by Asons Pharmaceuticals Pvt. Ltd. with a significant majority of 93.46%. The approved resolution amount stands at ₹83.40 crore while its fair value and liquidation value were respectively ~₹88.77 crore and ~₹61.46 crore. The plan is reportedly designed to ensure the continuation of Astral Steritech Pvt. Ltd. as a going concern, aligning with the objectives of the IBC. As per the Resolution Plan, a Monitoring Committee will be constituted to oversee its implementation.

Source: *InsolvencyTracker.in, June 09, 2025.*

https://insolvencytracker.in/2025/06/09/resolution-of-astral-steritech-cirp/

CCI gives a nod to INSCO's Resolution Plan for Hindustan National Glass & Industries Ltd.

In its petition against Independent Sugar Corporation Ltd. (INSCO), AGI Greenpac has alleged that INSCO had made false statements or suppressed material facts in its merger filing. However, the Competition Commission of

India (CCI) did not find any material to establish "willful suppression or misrepresentation" by INSCO.

"Based on material available on record, the Commission is of the view that no case for any false statement and/or willful concealment or suppression of material facts is made out against INSCO as regards the contents of the notice," said CCI. The Commission reportedly added that the reference made by AGI was disposed of and no further communication in this regard would be entertained by the CCI. After the disposal of this matter by the CCI, the NCLT is expected to approve the Resolution Plan of INSCO for Hindustan National Glass & Industries Ltd. (HNGIL) by the end of June or early July. Separately, the Supreme Court of India, published on May 30, 2025, dismissed review petitions filed by AGI Greenpac and Exclusive Capital, a minority member of HNGIL's Committee of Creditors. The Apex court reaffirmed its earlier judgment dated Jan. 29, 2025, which had set aside AGI Greenpac's Resolution Plan on grounds of legal and procedural non-compliance.

Source: *Financial Express, June 07, 2025.*

https://www.financialexpress.com/business/brandwagon-cci-dismisses-agi-greenpacs-complaint-against-insco-supreme-court-upholds-inscos-resolution-plan-for-hngil-3872082/

NCLT approved resolution plans of over 67,000 crores in FY 2024-25 under the IBC

According to media reports, the Adjudicating Authorities across NCLT Benches in the country have approved 284 resolution plans in FY 2024- 25 under the Insolvency and Bankruptcy Code, 2016 (IBC). These resolution plans collectively amount to ₹67,176 crores, which is about 42% higher than the ₹47,206 crores resolved through 275 resolution plans in 2023-2024. This is the second highest amount realized through the IBC after ₹1,19,993 crores realized in FY2018-19 from 81 cases.

"Higher levels of recoveries generally indicate that the code is generally better compared to other methods for resolution. However, we should also keep in mind that the data can be skewed by a few high value recoveries," said the media report citing a research report.

Source: *The Hindu, May 15, 2025.*

https://www.thehindu.com/news/national/tamil-nadu/nclt-gave-nod-for-resolution-plans-to-the-tune-of-over-67000-crore-in-fy2024-25-under-bankruptcy-law/article69579991.ece

Insolvency Resolutions Exceed Liquidations

Insolvency and Bankruptcy Board of India (IBBI) has reportedly said that the IBC has resulted in two cases being resolved for every one case that goes into liquidation. However, in 2017-18 for every one resolution, five companies went into liquidation.

This improvement is partly because the legacy cases related to liquidation have come down and also due to better quality of assets when they are admitted for Corporate Insolvency Resolution Process (CIRP), said the IBBI. "Since the law was enacted 30,310 cases with underlying default of ₹13.8 lakh crore were settled pre-admission. Postadmission, the IBC resolved 1,194 cases through resolution plans, 2,430 cases were closed through settlement, withdrawals and appeal, while 978 liquidations," said IBBI. The IBBI also informed about various initiatives being taken to improve the outcomes of the IBC which include monitoring of cases pending for admission and ongoing CIRPs. Besides, IBBI has revised its mechanisms for real-time sharing of information, regarding applications for the initiation of CIRP with the information utility. There is also marked improvement in the number of cases being disposed of. However, the time taken to complete the insolvency process is still a matter of concern, said media reports. According to the IBBI data, the time taken in resolution process is 597 days, which is more than twice the extended deadline of 270 days provided under the IBC.

Source: *The Times of India, May 22, 2025.*

https://timesofindia.indiatimes.com/business/india-business/now-insolvency-resolutions-exceed-liquidations/articleshow/121325791.cms

There has been a 3.3% reduction in the cost of debt for distressed firms since the IBC was adopted: IIM Bangalore

In a study reportedly conducted by the Indian Institute of Management (IIM), Bangalore, it has been revealed that there has been a 3.3% reduction in the cost of debt for distressed firms compared to non-distressed ones since the Insolvency and Bankruptcy Code, 2016 (IBC) was adopted. Citing this study, the IBBI has said that the IBC has prompted borrowers to adhere to loan payment schedules. Creditors have become more willing to lend to distressed firms at lower interest rates since the IBC was adopted, showing they are more confident of recovering dues in case of a default, said IBBI. In another study, according to IBBI, the companies resolved under the IBC witnessed a 50% increase in the average employee cost in the three years indicating IBC contribution to preserving and adding jobs.

Source: *Mint, May 21, 2025.*

https://www.livemint.com/news/india/ibc-impact-insolvency-and-bankruptcy-code-ravi-mital-debt-resolution-india-ibbi-update-distressed-firms-india-11747811499757.html

Supreme Court Upholds Investor Protection Over Secured Creditors in NSEL Scam Case

In a landmark judgment dated May 15, 2025, the Supreme Court of India ruled that secured creditors cannot claim priority over properties attached under the Maharashtra Protection of Interest of Depositors (MPID) Act in the National Spot Exchange Ltd. (NSEL) case. The verdict affirms the orders passed by the Supreme Court Committee on August 10, 2023, and January 8, 2024, which held that such attached properties would be available for executing investor decrees despite moratorium provisions under the Insolvency and Bankruptcy Code (IBC).

The Court concluded that assets attached under the MPID Act and Prevention of Money Laundering Act (PMLA) are beyond the reach of secured creditors, even under provisions of the SARFAESI Act and the RDB Act. It also found no inconsistency between the MPID Act and the IBC, thereby rejecting the applicability of Section 238 of the IBC in this context. Notably, the Apex Court clarified that federal legislative powers allow the State-enacted MPID Act to prevail in such matters within its domain. The ruling stems from efforts to recover 5,600 crores defrauded by over 13,000 investors due to the NSEL scam. The judgment reaffirms the Supreme Court's commitment to investor protection and provides clarity on the balance between insolvency law and state-enforced depositor safeguard mechanisms.

Source: *IBCLaw.in, May 16, 2025.*

https://ibclaw.in/national-spot-exchange-ltd-vs-union-of-india-and-ors-supreme-court/

Supreme Court struck down JSW Steel's ₹19,700-crore Resolution Plan, ordered Liquidation

The Apex Court cited two key reasons for its decision - use of a mix of equity and optionally convertible debentures (OCDs) to complete the takeover, which should have been executed solely through equity, and its failure to implement the Plan within the timeframe mandated under insolvency law. Declaring the Resolution Plan of JSW Steel for Bhushan Power and Steel Ltd (BPSL) as illegal, the Court said it should not have been accepted in the first place. The resolution of BPSL has been one of India's largest insolvency proceedings, but the deal has been under legal scrutiny for years. After the resolution, JSW Steel, the Successful Resolution Applicant (SRA) faced multiple legal hurdles, especially after the Enforcement Directorate in 2020 named BPSL and its former chairman and managing director in a ₹47,204 crore bank frauds and money laundering case.

Earlier this year, the Delhi High Court quashed the money laundering proceedings against BPSL, offering some relief to the company. However, the Supreme Court's order has reportedly paved the way for BPSL's liquidation, bringing fresh uncertainty to its employees, creditors, and potential acquirers. "The judgment reinforces the core principles of the Insolvency and Bankruptcy Code (IBC), which emphasize transparency, fairness, and timely execution of resolution plans," an expert reportedly said to media.

Source: *CNBCTV18.COM, May 02, 2025.*

https://www.cnbctv18.com/business/companies/jsw-steel-bhushan-power-case-resolutions-plan-supreme-court-orders-liquidation-19597922.htm

CoC approved Resolution Plan for Colour Roof (India) Limited

The Committee of Creditors (CoC) for Colour Roof (India) Ltd., the Corporate Debtor (CD), has approved the Resolution Plan submitted by JSW Steel's subsidiary JSW Steel Coated Products Ltd. (JSWSCPL) from a pool of 24 eligible prospective resolution applicants (PRAs). The CD entered the CIRP on an insolvency application filed by Phoenix Arc Private Limited under Section 7 of the IBC for an outstanding amount of ₹23.41 crore under an inland bill purchase account facility.

Source: *The Times of India, March 29, 2025.*

https://legal.economictimes.indiatimes.com/news/corporate-business/jsw-steel-coated-products-wins-bid-for-colour-roof-india/120626128

Arbitral award passed by MSME Facilitation Council after the approval of Resolution Plan is unenforceable: Supreme Court

The Apex Court has clarified that once a Resolution Plan is approved by the Adjudicating Authority (NCLT), all claims not included in the Resolution Plan are extinguished, and no person is entitled to initiate or continue proceedings for such claims which are not part of the Resolution Plan.

"Upon approval of the Resolution Plan by the NCLT, the claim of the respondent being outside the purview of the Resolution Plan stood extinguished. Therefore, the award dated 06.07.2018 is incapable of being executed," said the Court in the case of Electrosteel Steels Ltd. v. Ispat Carrier Private Ltd. The Court set aside execution proceedings initiated against the MSME. The CIRP against Electrosteel Steels Ltd. (Corporate Debtor) was initiated on an application filed by Ispat Carrier Pvt. Ltd. In this case, the Resolution Plan submitted by Vedanta Limited for Electrosteel Steels Ltd. was approved by the Adjudicating Authority in April 2018. Meanwhile,

the West Bengal MSMEs Facilitation Council passed an arbitral award in favor of Ispat Carrier dated July 06, 2018. "A successful resolution applicant cannot be faced with undecided claims after the Resolution Plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant," the Court emphasized and set aside the order of the High Court. The Supreme Court also clarified that the Council did not have the jurisdiction to arbitrate on the said claim.

Source: *Bar & Bench, April 22, 2025.*

https://www.barandbench.com/amp/story/news/litigation/arbitral-award-unenforceable-when-claims-not-part-insolvency-resolution-plan-supreme-court

Funds recovered from the Fraudulent Transactions will go to Successful Resolution Applicant, ruled Supreme Court

The Supreme Court has ruled that ₹45,000 crore in recoveries from "avoidable" and "fraudulent" transactions at DHFL will go to Piramal Group, the Successful Resolution Applicant (SRA) but not the creditors of the DHFL. The court also upheld the Resolution Plan, which assigned a nominal value of ₹1 to these recoveries. Besides, the Court clarified that the resolution plan complied with regulations under the Reserve Bank of India Act, 1934, and the National Housing Bank (NHB) Act, 1987.

Corporate Insolvency Resolution Process (CIRP) of DHFL, a housing finance company, was initiated by the Reserve Bank of India (RBI) in 2019 after it after defaulted on repayment of an overseas loan to the State Bank of India (SBI) and other creditors. The total dues claimed against the company were about ₹87,905.6 crore. The Committee of Creditors (CoC) which approved the Resolution Plan submitted by the Piramal Group assigned a nominal value of ₹1 to potential recoveries from fraudulent transactions under Section 66 of the Insolvency and Bankruptcy Code, 2016 (IBC). This provided the Piramal Group complete rights on future recoveries under the PUFE transactions. On an appeal by 63 Moons Technologies Ltd, which held non-convertible debentures worth over ₹200 crore issued by DHFL, and other creditors, NCLAT ordered that proceeds from fraudulent transactions should be distributed among creditors which were challenged by SRA in in the Supreme Court.

Source: *LiveMint.com, April 01, 2025.*

https://www.livemint.com/companies/supreme-court-piramal-capital-resolution-plan-dhfl-proceeds-of-funds-recovered-63-moons-nclat-nclt-rbi-nhb-11743504571574.html

Delhi High Court rules out prosecution of the CD after approval of the Resolution Plan by NCLT

Delhi High Court has held that once a resolution plan is approved by the NCLT and a change in management occurs, the corporate debtor cannot be prosecuted for offences committed prior to commencement of the Corporate Insolvency Resolution Process (CIRP). The Court also quashed a complaint filed by the Enforcement Directorate (ED) against Bhushan Power & Steel Limited (BPSL), for money laundering related to bank fraud of ₹470 billion ($5.4 billion).

In this case, while BPSL, the Corporate Debtor (CD) was undergoing through CIRP, the Central Bureau of Investigations (CBI) registered criminal cases against BPSL for corruption, cheating and forgery. Subsequently, the Enforcement Directorate (ED) registered a complaint against BPSL under laws for the prevention of money laundering. Meanwhile, the Resolution Plan was approved by NCLT. On an appeal, the NCLAT ordered the ED to release the assets of the CD. During the process, an amendment was introduced to the insolvency law through ordinance that extended protection to CDs from criminal proceedings once a Resolution Plan is approved. The court quashed ED's proceedings against the CD for offenses committed before the commencement of the CIRP. However, it clarified that erstwhile promoters, directors and key managerial persons responsible for offences committed before commencement of the CIRP initiation do not receive any protection.

Source: *Law Asia, 07th April 2025.*

https://law.asia/corporate-debtor-prosecution-protection/

Developers cannot use Insolvency Laws to avoid completing slum rehabilitation projects: Bombay High Court

The Bombay High Court has held that the developer cannot use the IBC as a tool to escape the consequences of failure to execute a slum rehabilitation scheme and can be removed by the Slum Rehabilitation Authority (SRA). It further clarified that builder's appointment can be terminated despite a Resolution Plan (RP) in place under the IBC proceedings, except it cannot be done to recover "prior debts". The SRA in August 2024, terminated the appointment of Anudan Properties Pvt. Ltd. due to "over prolonged failure to pay transit rent" as a developer of a slum rehab project in Thane (Mumbai).

Source: *The Times of India, March 29, 2025.*

https://timesofindia.indiatimes.com/city/mumbai/bombay-high-court-rules-developer-cannot-use-insolvency-law-to-avoid-slum-rehabilitation-obligations/articleshow/119690329.cms

Singapore Court grants recognition to an Indian company's CIRP

In this case, NCLT Mumbai, under the provisions of the IBC, had ordered commencement of CIRP against Compuage Infocom Limited (CIL), an Indian incorporated company specializing in IT distribution, with a branch office in Singapore and a Singapore incorporated subsidiary. The RP sought recognition of CIRP against CIL in Singapore as per the UNCITRAL Model Law, which is applicable to Singapore. However, the Singapore bank indicated that it would only provide the requested documents if the NCLT's orders were recognized. The Singapore Court, after rigorous analysis of related provisions of the IBC, concluded that the CIRP qualifies as a "foreign proceeding" under the UNCITRAL Model Law.

Source: *Bar & Bench, April 01, 2025.*

https://www.barandbench.com/view-point/singapore-court-recognition-indian-company-cirp-first-time-key-takeaways

Resolution Plan would be binding on a stakeholder even if it was not a party to the proceedings before the NCLT: Supreme Court

The Supreme Court has ruled that even if a stakeholder (s) does not raise claims before the Interim Resolution Professional (IRP) /Resolution Professional (RP), the Resolution Plan as approved by the NCLT would still be binding on them.

"No doubt that even if any stakeholder is not a party to the proceedings before the NCLT and if such stakeholder does not raise his claim before the interim resolution professional/resolution professional, the resolution plan as approved by the NCLT would still be binding on him," said the Supreme Court. This judgement was delivered on a plea by JSW Ispat Special Products Ltd (now JSW Steel Ltd and petitioner) alleging that officers of the Commercial Tax Department of the State of Chhattisgarh (respondents) had disobeyed the Supreme Court judgment in the matter of Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. and others. The bench observed that once a Resolution Plan is approved, the resolution applicant starts on a clean slate and thus cannot be flung with surprise claims. The Court also observed that in spite of public notice, neither the State of Chhattisgarh nor its authorities raised any claim before the CoC. Therefore, the demand notices of the respondents to the tune of ₹2.66 crore under the Chhattisgarh Value Added Tax Act, 2005, ₹1.08 crore under the Central Sales Tax Act, 1956, and ₹61 lakh under the Entry Tax Act, 1957, were termed illegal and quashed.

Source: *Business Standard, March 27, 2025.*

https://www.business-standard.com/finance/news/resolution-plan-binding-even-if-stakeholder-not-party-to-nclt-case-sc-125032701261_1.html

International Development on Insolvency Law

From Around the World

French uranium miner Orano's Niger uranium mine on verge of bankruptcy

According to media reports, the main reason behind the financial stress of the company has been export restrictions imposed by Niger's military government. Orano has majority-owned joint venture with Niger, SOMAIR. Last year, Orano was forced to suspend production at SOMAIR after authorities halted exports. Niger's government seized the operation in December and announced plans to nationalize it last month, joining a wave of West African governments seeking greater control of natural resources from foreign companies. Niger is the world's seventh-largest uranium producer. The country accounted for about 15% of Orano's uranium supply when its local unit operated at full capacity.

For More Details, Please Visit: *https://www.reuters.com/business/energy/frances-orano-says-its-niger-uranium-mine-verge-bankruptcy-2025-07-02/*

India's largest solar glass panel maker Borosil Renewables' German subsidiary GMB files for insolvency

According to media reports the company has cited 'deteriorating market conditions' in the European solar manufacturing ecosystem as the main reason for insolvency. "The decision follows a prolonged period of deteriorating market conditions in the European solar manufacturing ecosystem and reflects the company's intent to sharpen strategic focus on the rapidly growing Indian solar sector," said the company in a media statement. "Borosil will no longer account for GMB's financial losses, which had amounted to approximately ₹9 crore per month," it added. The exposure to the German subsidiary stands at Euro 35.30 million as of March 2025.

For More Details, Please Visit: *https://www.moneycontrol.com/news/business/markets/borosil-renewables-loss-making-german-arm-files-for-insolvency-focus-on-building-scale-in-india-13236384.html*

Chinese EV maker Neta's Parent Hozon Auto enters bankruptcy amid financial crises

Zhejiang Hozon New Energy Automobile (Hozon Auto), the parent company of Chinese EV brand Neta, has entered bankruptcy proceedings on June 19, following a

petition by Shanghai Yuxing Advertising Co. over unpaid dues. A court has accepted the case and appointed an administrator, with filings showing the process began last month. Several Neta showrooms in Shanghai have closed. In Thailand, Neta claimed the process is government-led, but a supplier disputed this, citing layoffs and dealer losses. Since late 2023, Hozon has faced wage defaults, production halts, and the exit of CEO Zhang Yong. The company now faces debts near 10 billion yuan ($1.39 billion).

For More Details, Please Visit: *https://www.nationthailand.com/business/automobile/40051576*

23andMe's founder Anne Wojcicki wins bid for bankrupt DNA testing firm

Anne Wojcicki is set to regain control of 23andMe after a $305 million bid from a nonprofit she controls topped Regeneron Pharmaceuticals' offer for the DNA-testing company in a bankruptcy auction, said media reports. Last month, Regeneron agreed to buy the firm for $256 million, topping a $146 million bid from Wojcicki and the non-profit TTAM Research Institute. Once a trailblazer in ancestry DNA testing, 23andMe filed for bankruptcy in March.

For More Details, Please Visit: *https://www.reuters.com/business/healthcare-pharmaceuticals/23andmes-founder-anne-wojcicki-wins-bid-dna-testing-firm-2025-06-13/*

Microsoft's subsidiary in Russia to file for Bankruptcy

According to a media report, this development came after Russian President said last week that foreign service providers like Microsoft and Zoom should be "throttled" in Russia to make way for domestic software solutions. Microsoft continued providing key services in Russia after Moscow's February 2022 invasion of Ukraine, but in June 2022, it said it was significantly scaling down its operations due to changes to the economic outlook and the impact on its business there. The U.S. tech giant had already removed Russian state-owned media outlet RT's mobile apps from the Windows App store and banned advertisements on Russian state-sponsored media in the days after the invasion.

For More Details, Please Visit: *https://www.reuters.com/technology/microsoft-unit-russia-file-bankruptcy-database-shows-2025-05-30/*

USA court grants approval to Rite Aid to close stores and sell most of its pharmacy assets

Rite Aid, the US pharmacy chain, can now sell most of its pharmacy assets in separate transactions to CVS, Walgreens, Albertsons, Kroger and Giant Eagle, among others. The company, which operates about 1,200 medical stores and has some 8 million customers, filed for bankruptcy earlier this month for the second time in two years. Its retail business was performing poorly due to decreased drug sales margins. Rite Aid has buyers for customer files at 810 of its stores but failed to locate buyers for the files at 200 others. CVS is the largest buyer and has also agreed to acquire 64 store locations in addition to taking over prescriptions for Rite Aid customers at 650 other locations.

For More Details, Please Visit: *https://www.reuters.com/business/healthcare-pharmaceuticals/court-approves-fire-sale-most-rite-aids-pharmacy-assets-2025-05-21/*

Belgium Records Over 10,000 Job Losses Due to Bankruptcies in Early 2025

In the first four months of 2025, Belgium recorded 10,936 job losses due to 3,968 company bankruptcies, according to data from the national statistics agency, Statbel. April alone witnessed 982 bankruptcies a 6.2% increase from the same month last year marking the highest April figure since 2013. The hospitality sector was the hardest hit, with 2,396 jobs lost, followed by construction (1,816) and transport (1,198). Although the overall job losses are slightly lower than the 11,520 recorded during the same period in 2024, that year included the collapse of major bus manufacturer Van Hool, which accounted for over 1,500 jobs. The data highlights persistent economic stress across key industries, signaling the urgent need for policy measures to support struggling sectors.

For More Details, Please Visit: *https://globalinsolvency.com/headlines/germany-sees-highest-spike-bankruptcies-20-years*

Germany Records Highest Corporate Insolvencies in 20 Years: IWH Report

Germany saw 1,626 corporate and partnership insolvencies in April, the highest in 20 years, according to the Halle Institute for Economic Research (IWH). This marks an 11% rise from March and 21% from April 2024, surpassing even the 2008–09 financial crisis levels. IWH attributed the surge to an unusually high number of small insolvency cases. While a decline is expected if this trend normalizes, IWH's Steffen Müller emphasized that corporate insolvencies will likely remain higher than last year in the near term. **For More Details, Please Visit:** *https://globalinsolvency.com/headlines/germany-sees-highest-spike-bankruptcies-20-years*

Novo Energy Cuts Jobs after Northvolt Insolvency

Gothenburg, Sweden — Novo Energy, the battery venture initially co-owned by Volvo Cars and bankrupt Northvolt, is cutting 50% of its workforce amid cost pressures following Northvolt's insolvency in March. The layoffs affect 150 more employees, following a 30% reduction in January. Volvo Cars, set to take full control of Novo for a nominal sum, has made major investments, and no battery equipment has been installed at the nearly completed Gothenburg plant. **For More Details, Please Visit:** *https://www.reuters.com/business/world-at-work/volvo-cars-battery-company-novo-energy-cut-workforce-by-50-2025-05-05/*

Personal bankruptcy filings to surge in America: Report

According to data from LegalShield, a provider of consumer legal services, personal bankruptcy inquiries surged in the first three months of 2025. The number of Americans considering bankruptcy is soaring to its highest level since just before the pandemic, a potentially alarming sign as clouds gathers over the economy, said a media report. "Quarterly filings from the U.S. courts will come out soon, and I'd expect to see a quarter-over-quarter increase in personal bankruptcy filings from the end of 2024 to the beginning of 2025," said LegalShield in a media statement.

For More Details, Please Visit: *https://www.cbsnews.com/news/chapter-7-bankuptcy-file-consumer-debt/*

Best Practices - Meetings of Committee of Creditors Under CIRP and Stakeholder's Consultation Committee Under Liquidation Process

(.....Continue from the previous edition)

7.3 Voting through electronic means

a) The resolution professional shall provide each member of the committee with the means to exercise its vote by either electronic means or through electronic voting system in accordance with the relevant provisions of CIRP Regulations.

b) The expressions ''voting by electronic means'' or ''electronic voting system'' means a "secured system" based process of display of electronic ballots, recording of votes of the members of the committee and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.

Note: The IRP/RP shall not seek voting through emails.

c) The expression ''secured system'' means computer hardware, software, and procedure that –:

- are reasonably secure from unauthorized access and misuse;
- provide a reasonable level of reliability and correct operation;
- are reasonably suited to perform the intended functions; and
- adhere to generally accepted security procedures.

d) The authorised representative shall exercise the votes either by electronic means or through electronic voting system as per the voting instructions received by him from the creditors in the class pursuant to sub-regulation (6) of regulation 25 of CIRP Regulations.

e) At the end of the voting period, the voting portal shall forthwith be blocked.

f) At the conclusion of a vote held under this Regulation, the resolution professional shall announce and make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the committee who voted for or against the decision or abstained from voting.

g) The Resolution Professional shall circulate a copy of the written record made under clause above to all participants by electronic means within twenty-four hours of the conclusion of the voting.

8. Minutes of the meeting

a) "Minutes" are an official written record of a meeting's proceedings that can be found in hard copy or electronic format. Their main function is to document the decisions and conversations that took place during the meeting.

b) The Interim Resolution Professional/Resolution Professional shall keep and preserve minutes of all meetings of COC as per the record retention schedule advised by IBBI from time to time.

c) Minutes shall be written in clear and simple language. Minutes shall ideally be drafted in third person and past tense. Resolutions shall however be placed in the present tense.

Illustartions:

Example 1: Drafting in Third Person and Past Tense (General Minutes)

Meeting Discussion:

- The Committee discussed the proposed budget for the upcoming fiscal year.
- Mr. X presented the financial report for the previous quarter.
- The members agreed to review the budget proposal in the next meeting.

Minutes:

- The Committee discussed the proposed budget for the upcoming fiscal year.
- Mr. X presented the financial report for the previous quarter.
- It was agreed that the budget proposal would be reviewed in the next meeting.

Example 2: Drafting Resolutions in Present Tense

Resolution Passed:

- Resolved that the budget for the fiscal year 2024-2025 is approved.

Minutes:

- The Committee resolved that the budget for the fiscal year 2024-2025 is approved.

Example 3: Combination of Both

Meeting Discussion:

- The Chairperson welcomed all the members and called the meeting to order.
- The previous meeting's minutes were reviewed and approved by the Committee.
- A resolution was proposed to increase the marketing budget by 15%.

Minutes:

- The Chairperson welcomed all the members and called the meeting to order.
- The Committee reviewed and approved the minutes of the previous meeting.
- Resolved that the marketing budget is increased by 15%.

These examples align with the requirement to use clear and simple language, draft minutes in the third person and past tense, and phrase resolutions in the present tense.

d) Each of the items in the Minutes shall ideally be specifically identified with Agenda item and paragraph number. The paragraph can be numbered in a manner such that it contains the Meeting Number followed by Agenda Item Number.

e) The Resolution Professional has to circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the meeting.

f) IRP/RP shall keep Minutes of all the meeting of Committee of Creditors and such Minutes may also be maintained in electronic form with Timestamp.

g) If the Minutes are maintained in electronic form, the Chairman shall sign the minutes digitally.

h) The Interim Resolution Professional/Resolution Professional will however follow a uniform and consistent form of maintaining the minutes.

i) The minutes of all meetings of a particular CIRP will be bound together at the end of the period of CIRP, for safekeeping by the Resolution Professional.

j) Where any earlier Resolution (s) or decision is superseded or modified, Minutes shall contain a reference to such earlier Resolution (s) or decision with reason and rationale for the changes to be clearly recorded.

k) In respect of a Meeting convened but adjourned for want of quorum, a statement to that effect shall be recorded by the Chairman in the Minutes. In case a Meeting is held after being adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting.

l) The Chairman shall put initial on each page of the Minutes and sign the last page mentioning date and place.

m) Minutes shall not be tampered with in any manner after being finalised post gathering comments from the members of the Committee and must always be circulated in pdf form in order to avoid any tampering.

n) There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

o) Minutes shall be kept at the office of Resolution Professional, from where he conducts the CIRP.

p) In case Authorised Representative is appointed, it shall be the duty of the authorized representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor/ class of creditors he represents.

8.1. Contents of Minutes

The IRP/RP must ensure that he/she maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of its decisions and actions.

A. General Contents

i. Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement of the Meeting. Time of concluding the meeting will also be there in the minutes after vote of thanks.

ii. ii. In respect of a meeting adjourned for want of Quorum, a statement to that effect by the Resolution Professional shall be recorded in the Minutes.

iii. iii. Minutes shall record the names of the members of COC present physically or through electronic mode, the IRP/RP, members of suspended Board of Directors, authorized representatives, other participants and invitees, if any, including invitees for specific items.

iv. iv. The names of the participants shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the Resolution Professional.

v. v. The capacity in which an invitee attends the meeting and where applicable, the name of such invitee and the relation, if any, of that invitee to the company shall also be recorded.

B. Specific Contents

Minutes shall inter-alia contain the following:

(i) Record of the Chairman of the Meeting alongwith opening remarks

(ii) Record of the Adequate Quorum.

(iii) Mode and Manner in which the meeting was held.

(iv) Minutes shall specifically disclose the particulars of the participants who attended the meeting in person, through video conferencing or other audio and visual means.

(v) In case of a member of COC participating through electronic mode, his particulars, and wherever required, the location from where he participated.

(vi) Details of the minutes of the earlier meeting, if any sent. Confirming if any changes or clarifications are needed and then taking on record the Minutes of the earlier meeting of the Committee of Creditors.

(vii) If any representative of the Committee of Creditors left in the middle of the meeting, then record the agenda items in which he/she did not participate.

(viii) List of items noted /voted, and Resolutions as passed in the meeting along with names of the participants and details of voting.

(ix) The insolvency professional shall place in each meeting of the committee, the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process costs.

(x) Views of members of suspended Board of Directors of Corporate Debtor/operational creditors and other participants - The views of the members of suspended Board of Directors/operational creditors and other participants may be recorded in the minutes.

(xi) Views of Dissenting financial creditors - The views of Dissenting financial creditors must be recorded in the minutes.

(xii) Details of financial creditors who abstained from voting or not participated in the meeting.

(xiii) Details of financial creditors who voted in favour of or against the Resolution.

(xiv) Apart from the resolution or the decision, the minutes shall mention the brief background of all proposals and summaries of the deliberations thereof. In the case of major decisions, the rationale thereof shall also be mentioned.

(xv) The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

(xvi) IRP/RP should give his/her independent opinion on each matter voted, based on the facts of the matter voted on. This should form part of the meeting. This will ensure that justification for the decision is available at a later date, along with related records, for analysis/verification.

(xvii) Fees to be paid to IRP/RP.

(xviii) Regulatory fees payable to IBBI

(xix) Actions taken, operations, cash flow , custody and control of assets.

(xx) Status and update on Litigations by/against CD

(xxi) Statutory compliances status and update (xxii) Additional agenda items tabled at the meeting.

(xxii) Vote of Thanks

Note: When the agenda for the Resolution Plan is presented to the CoC for approval, the IRP/RP must also include the following items on the agenda as alternate of rejection. This ensures that, in the event of the Resolution Plan's rejection, the IRP/RP will not need to convene another meeting to seek approval for liquidation. The following items may be included:

- Regulation 39B. Meeting liquidation costs.
- Regulation 39BA. Assessment of Compromise or Arrangement.
- Regulation 39C. Assessment of sale as a going concern.
- Regulation 39D. Fee of the liquidator.

(to be continued…)

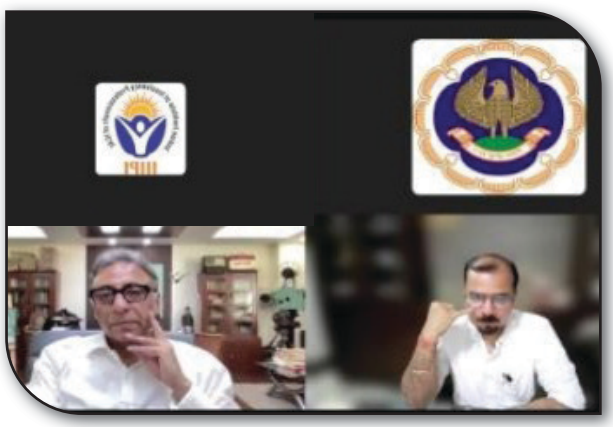
IIIPI News

The 24th Batch of EDP on "Managing Corporate Debtors as Going Concern under CIRP" conducted online by IIIPI from 25th to 29th March 2025.

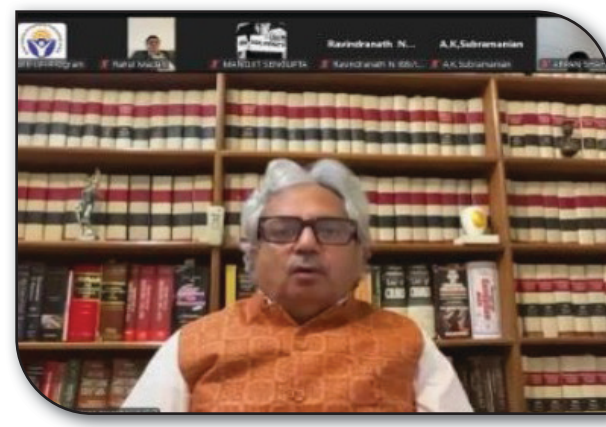
Webinar on "Emerging Jurisprudence- Recent Case Laws" organized online by IIIPI on April 04, 2025.

Webinar on "Interface with Banking Laws & conducting CoC meetings" organized by IIIPI on April 11, 2025.

The 14th batch of EDP (virtual) on "Mastering Avoidance/ PUFE Forensics under IBC" conducted by IIIPI from 15th to 17th April 2025.

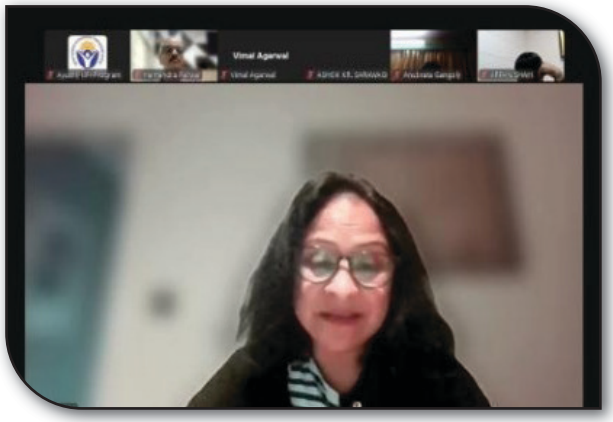


Webinar on "Mediation under IBC- The Way Forward" organized by IIIPI on April 17, 2025.



Shri Rohit Kapoor, former Member, NCLT addressing One Day Virtual Workshop on "Group and Cross-Border Insolvency" organized by IIIPI on April 26, 2025.

IIIPI News



Ms. Neeti Sikha addressing One Day Virtual Workshop on "Group and CrossBorder Insolvency" organized by IIIPI on April 26, 2025.

IIIPI organizes Webinar on "Valuation under IBC- Best Practices" on May 09, 2025.

IIIPI organizes Webinar on "Role of IPs in Restructuring and Turnaround" on May 16, 2025.

Webinar on "Recent SC Judgement in JSW Steel-Bhushan Power CIRP" organized by IIIPI on May 13, 2025.

Workshop on "Managing Corporate Debtors as Going Concern under CIRP" organized by IIIPI on May 24, 2025.

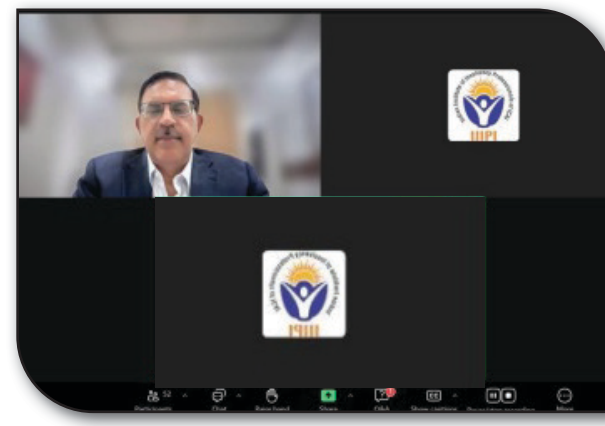
LIE Preparatory Classroom (Virtual) Program, 29th Batch, organized by IIIPI from 27th to 31st May 2025.

IIIPI News

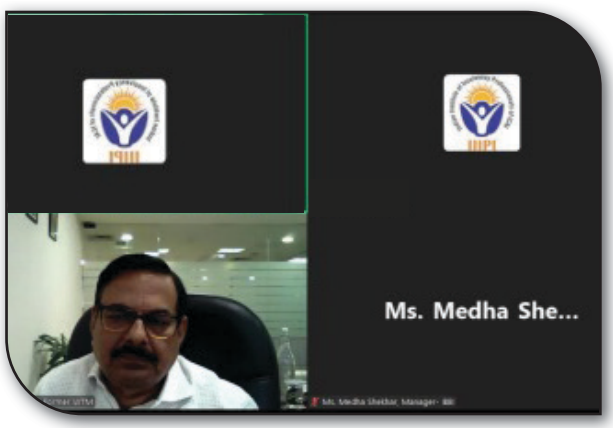
The 3rd Batch of EDP on Cross Border Insolvency conducted by IIIPI in online mode from 9th July 2025 to 10th July 2025.

Webinar on "Liquidation and Voluntary Liquidation under IBC: Best Practices" organized by IIIPI on June 06, 2025.

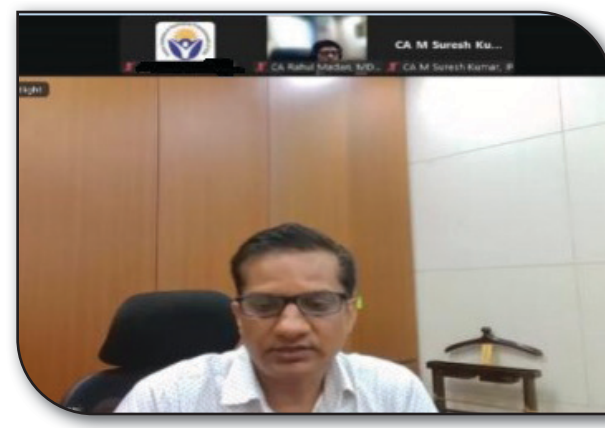
One-Day Virtual Workshop on "Group and Cross-Border Insolvency" for IPs and RVs organized by IIIPI on June 14, 2025.



Webinar on "Evolving Jurisprudence – Recent Case laws" organized by IIIPI on June 20, 2025.



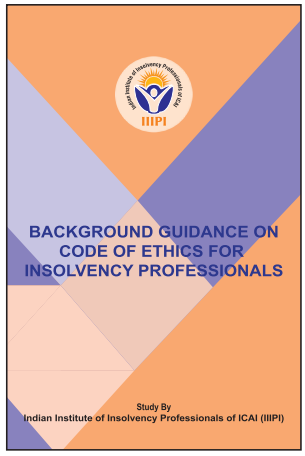
"Mediation under IBC – The way forward"- A webinar organized by IIIPI on June 27, 2025.

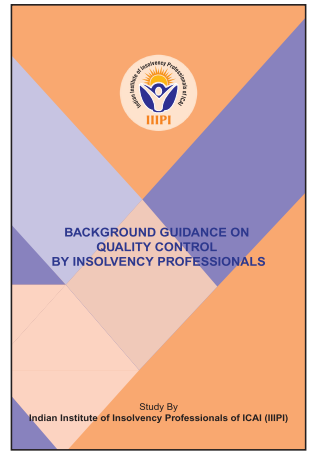


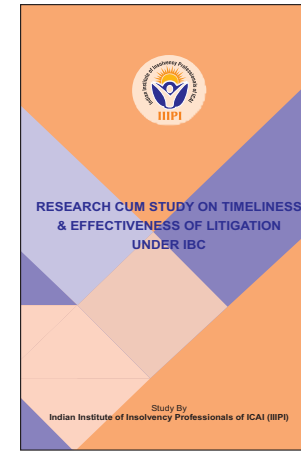
Webinar on "Recent Regulatory Amendments- CIRP & Liquidation" conducted by IIIPI on July 04, 2025.

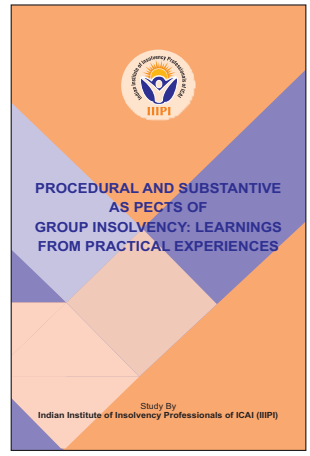
IIIPI's PUBLICATIONS

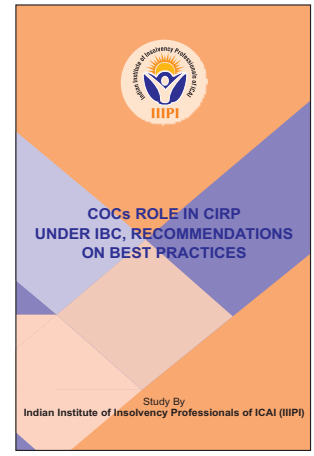
IIIPI has published several research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

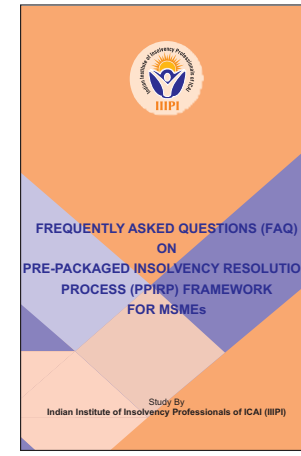


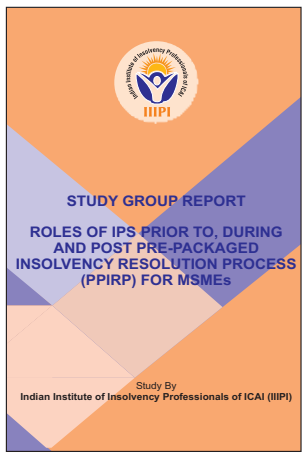


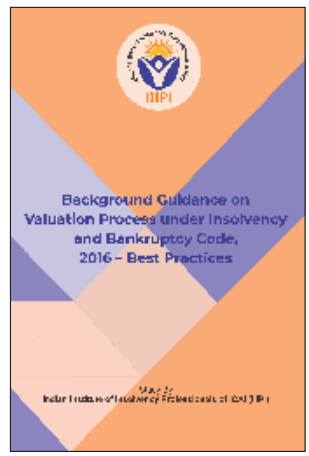


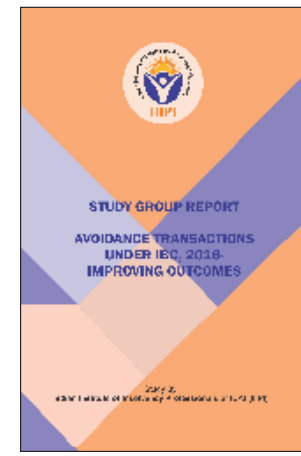


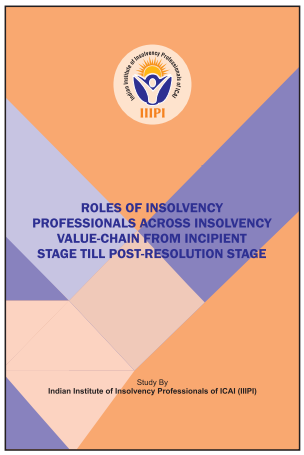


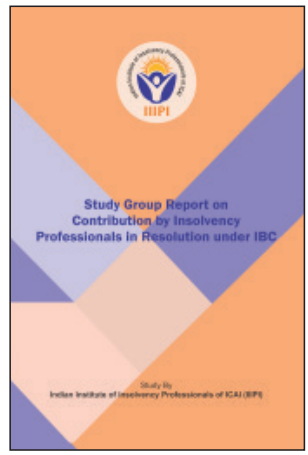


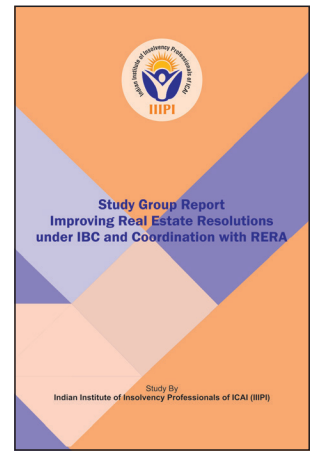


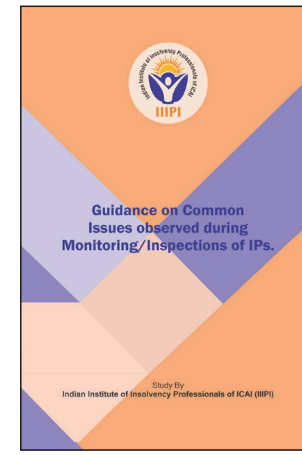


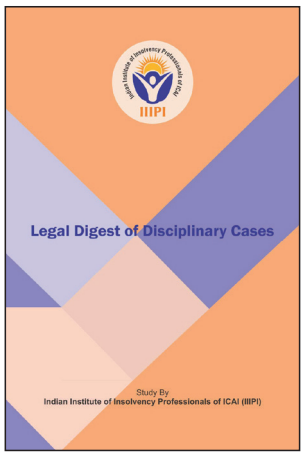


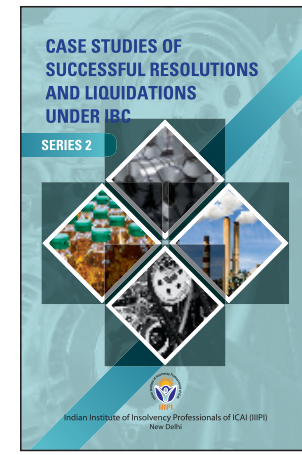


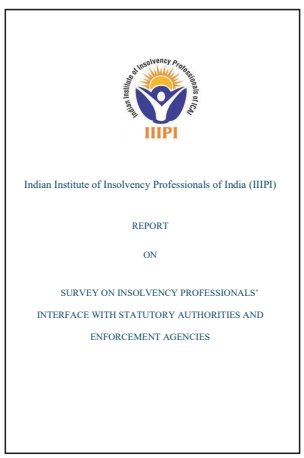


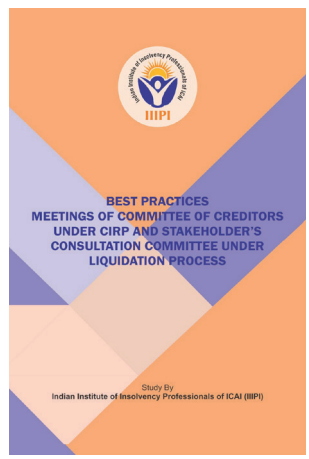






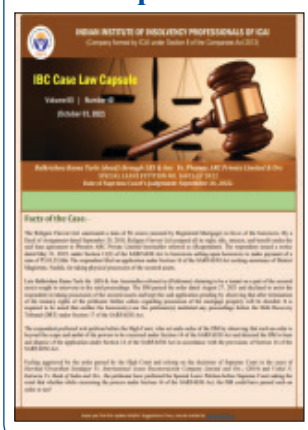






Weekly Publications

IBC Case Laws Capsules



IIIPI Newsletter

Media Coverage

Help Us to Serve You Better

Guidance on Common Issues Observed by IIIPI During Monitoring/Inspections of IPs

(…..*Continued from the previous edition*)

1.13 Observations related to Managing the operations of the CD:

Observation	Relevant Provisions of Law	Remarks
i.It has been observed that the admission order of CIRP was received late by the IP and during that time suspended board of management made bank transactions. It reflects that the operations were still being managed by the suspended board of management. ii. It has been observed that in the absence of any detailed scope provided/maintained for the responsibilities of the CEO continuing during the CIRP period on a salary basis, it appears the role of the CEO during CIRP was the same as before Pre- CIRP without changing the authority to himself. It seems there is dereliction of duty by RP in managing the affairs of the CD. iii. No change in signatory of accounts to IRP/RP himself and allowing the previous Management/ KMP to remain the signatory iv. Authorizing IRP/RP'S team member to be one of the signatory for bank transactions on his behalf without obtaining any delegation of Authority U/S 28 from COC. v. Non placement of the agenda on operational status of the CD , Non placement of Reports, cash flow etc for the operations of the CD vi. IP was not continuing till order of withdrawal/ settlement.	i. Section 14, 17(1) and Section 19(1) of the Code	i. Insolvency professionals (IPs) shoulder significant responsibilities during the moratorium. Cooperation from the suspended Directors and Key Managerial Personnel (KMP) is essential for managing the operations and maintaining the going concern status of the Corporate Debtor (CD). The IP is tasked with assuming control of assets and operations as mandated by the Code. ii.The IP shall present the operational status in every Committee of Creditors (CoC) meeting and place an agenda for the approval of operational costs before the CoC at each meeting. Additionally, the IP shall record the minutes, providing a summary of the decisions made with the approval of the CoC, especially those regarding major items mentioned in Section 28. The IP must always be able to demonstrate, through written contemporaneous records, all decisions taken, the reasons for those decisions, and the supporting information and evidence. iii.Instances where the IP delegates authority for pivotal tasks, such as managing the affairs by the KMPs, ***substantially*** raise concerns of outsourcing, thereby compromising the IP's crucial role. Secondly, the continuity of KMP tasks in the same capacity as before the initiation of Corporate Insolvency Resolution Process (CIRP) without documented evidence of IP oversight risks diluting decision-making authority. This not only signifies a dereliction of duty but also raises ***substantive*** concerns regarding the management of the corporate debtor's affairs.

1.14 Observations related to Model Timelines:

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that the IPs do not adhere with the timelines prescribed under the Code and regulations. For example: publication of public announcement, circulation of notices, minutes, invitation for expression of interest by prospective resolution applicants, appointment of valuers, determination of preferential, undervalued, fraudulent, and extortionate transactions, preparation and submission of IM to CoC etc. are largely being delayed by the IPs. ii. It has been observed that IP calculate the timelines from the date of receipt of order, however the same is to be calculated from the date of order i.e. ICD. iii. It has been observed timelines for filing CIRP-1 to CIRP-6 were not met or not filed. iv. CIRP-7 is not filed for activities defined in Regulation 40B(1A) of IBBI (CIRP) Regulations, 2016 and in cases where it is filed, all events are not captured or filing in every 30 days till completion of Activity is not done. v. It has been observed that CIRP-8 is not filed by the IPs. vi. It has been observed that the disclosures are not filed on timely basis or disclosed with wrong or incomplete information. While submitting relationship disclosures for registered valuers, disclosures are made in the joint names of valuers appointed, it is required to file disclosure for each valuer separately. While filing relationship disclosure of CoC, name of the creditors is not mentioned. vii. Failure to inform the COC about the various timelines and to present the appropriate agenda as prescribed. Additionally, the reasons for any deviations are not documented in the minutes with supporting documents	• Regulation 40A, 40B of IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 • Clause 8A, 8B & 8C of Schedule I of IBBI (IP) Regulations, 2016 • Circular No. IBBI/IP/ 013 dated 12th June, 2018	**i.** ***Delays in Model timelines may have substantive impact on the conclusion of the assignments as IBC envisage a timebound process*** ii.IPs must timely and correctly file the disclosures adhering to regulatory requirements. Time is the essence of IBC, therefore, IP must ensure the timelines mentioned under the Code and Regulations.

1.15. Observations related to filing of Application with Adjudicating Authorities:

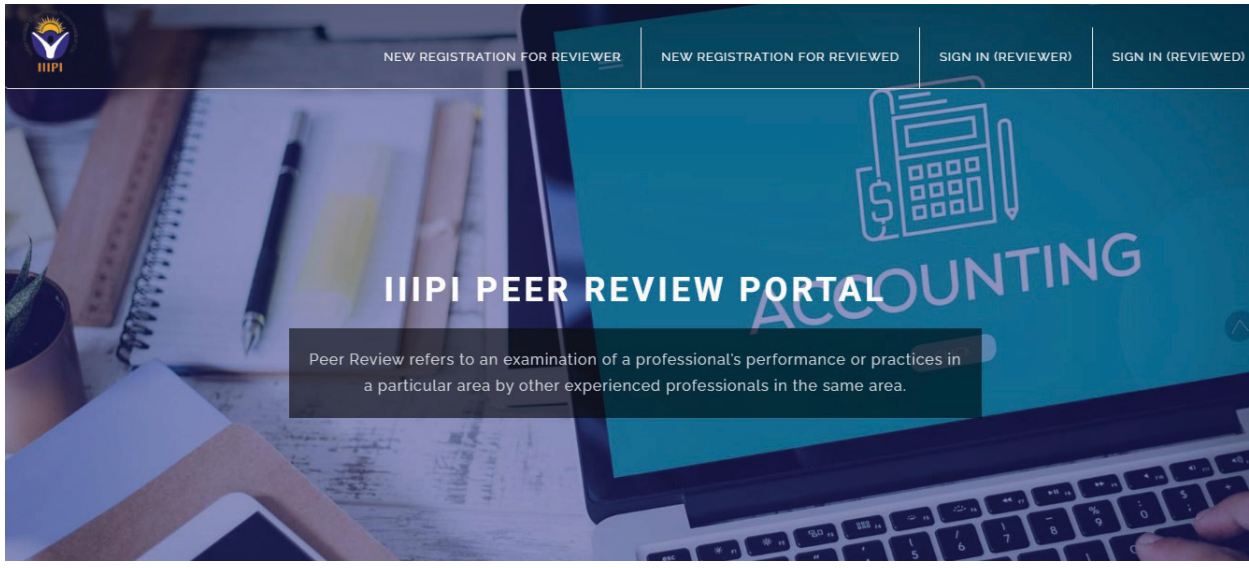
Observations	Relevant Provisions of Law	Remarks
i. It has been observed that instead of filing list of creditors, report certifying constitution of committee with Adjudicating Authority, appointment of RP the same was sent over an email to NCLT. ii. Delay in filing of application for withdrawal before AA was observed. iii. It has been observed that IP faces noncooperation from CD but did not prefer timely application before AA under Section 19(2) to seek directions, cases are there iv. Delay in filing of application by IP for seeking an extension from AA. v. It has been observed that wherever IP faced circumstances not defined in law, IP did not approach AA to seek necessary directions.	• Section 12, 19(2) and 60(2) of the Code. • Regulation 13(2)(d), 17 (1) and 30A of IBBI (CIRP) Regulations 2016.	**i.** ***Procedurally,*** deviations such as intimating the crucial information/ documents via email only to NCLT instead of formal filing raise concerns about adherence to statutory protocols. ii. Delays in filing withdrawal applications, seeking necessary directions in cases of non-cooperation, or obtaining extensions signify a failure to navigate legal frameworks effectively and may have a ***substantive impact.*** iii. IPs must prioritize procedural diligence, promptly seeking AA intervention when faced with uncharted circumstances.

(to be continued…)

List of Successful Peer Reviewed IPs of IIIPI

Pursuant to the recommendations of the IIIPI constituted Study Group on "Framework for Quality Control and Assurance Mechanism", IIIPI prepared a 'Peer Review Policy' for Insolvency Professionals (IPs) affiliated with the institute. Subsequently, a peer review mechanism was developed, and an online Peer Review Portal was launched on 07th July 2022 on the website of IIIPI. Furthermore, as per the decision of the Monitoring Committee of IIIPI dated 06th September 2023, the scope of peer review has also been extended to cover support services provided by Insolvency Professional Entities (IPEs) which are enrolled as IIIPI's members as juristic IPs. The complete list of "Successful Peer Reviewed IPs of IIIPI" is available on IIIPI website (https://pr.iiipicai.in/compleated-peer-review-process/compleated-peer-review.php). The details of the Insolvency Professionals (IPs) who have successfully completed the Peer Review since the publication of Junuary 2025 edition of *The Resolution Professional* are as follows:

Sr. No.	Name of Insolvency Professional	Registration No.	Date of Completion of Peer Review	Date of Validity of Peer Review Certificate
1.	Nimai Gautam Shah	IP/P-00154	2025-05-20	2028-05-20
2.	Chirag Rajendrakumar Shah	IBBI/IPA-001/IP-P01169/2018-2019/11837	2025-03-12	2028-03-12
3.	Vineeta Maheshwari	IBBI/IPA-001/IP-P00185/2017-18/10364	2025-02-13	2028-02-13
4.	Prashant Agrawal	IBBI/IPA-001/IP-P00053/2017-18/10127	2024-12-19	2027-12-19
5.	Rajender Kumar Jain	IBBI/IPA-001/IP-P00543/2017-2018/10968	2024-11-29	2027-11-29
6.	Divyesh Desai	IBBI/IPA-001/IP-P00169/2017-18/10338	2024-10-09	2027-10-09



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6	Change of Address/e-mail/contact number/any other required changes	iiipi.updation@icai.in
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9	Monitoring (For reporting compliances on CIRP forms, Relationship, fees and cost disclosures, Half yearly returns)	ip_monitoring@icai.in iiipi_monitoring@icai.in iiipi.helpdesk@icai.in
10	Publication	iiipi.pub@icai.in
11	Accounts	cfo.iiipi@icai.in
12	Human Resources	iiipi.hr@icai.in
13	Membership Surrender	iiipi.surrender@icai.in
14	Research Department	iiipi.research@icai.in

FEEDBACK

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We firmly believe in innovations in communication approaches and strategies to present complicated information of insolvency ecosystem in a highly simplified and interesting manner to our readers.

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Editor
The Resolution Professional

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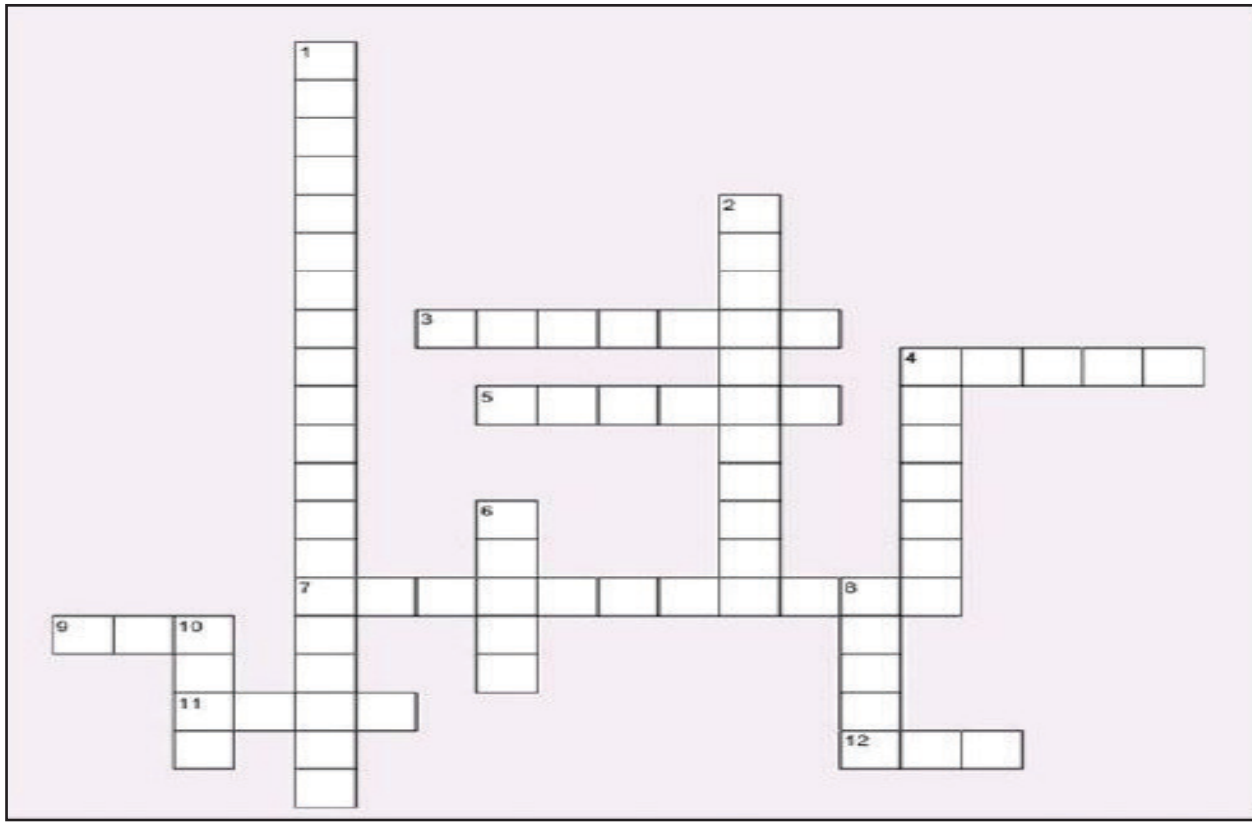
IBC Crossword



Across

3: Supreme Court in the case of *State Tax Officer v. Rainbow Papers Ltd.* (2022) ruled that government dues will qualify as ___ debt us 53 of the IBC.

4: An OC (excluding workmen employees) must submit proof of claim to the liquidator in _____ of Schedule II of IBBI (Liquidation Process) Regulations, 2016, in person, by post, or electronically.

5: As Per Section ___ of IBBI (Insolvency resolution process of Corporate persons) Regulations 2016 service of notice can be sent to the participant by electronic mean.

7: _____% of the total CIRPs admitted till March 2025 were related from Manufacturing Sector.

9: The RP shall examine the application made u/s 80 for fresh start process, with in ___days of his appointment.

11: Sub-regulation___ of Regulation 38 mandates disclosure of avoidance transactions in the IM to all prospective resolution applicants.

12: A Written communication under rule 9 of the Insolvency and Bankruptcy (Application to AA rule 2016) by Interim RP Should be done Via Form____

Down

1: NCLT approved _____ Resolution Plans in FY 2024-25.

2: The liquidator shall submit a Preliminary Report to the AA within _____ days from the liquidation commencement date.

4: _____year is the time limit after which unclaimed amounts in the Companies Liquidation Account are transferred to the Central Government's General Revenue Account.

6: Punishment for providing false information in application made by CD as per section 77 shall not be less than ____years.

8: The registers and books of account related to the CD shall be preserved for ___ years by the Liquidator after its dissolution.

10: Hozon Auto the parent company of Chinese EV brand _____ enters bankruptcy amid financial crises on 19th June this year.

Answer key: IBC Cross word, April 2025

1. CCI
2. Fiftyone
3. Sixty
4. TwentyFive
5. AUA
6. Five
7. Sixty Six
8. Forty Five
9. Three
10. Twelve A
1. Eleven
12. Eleven

GUIDELINES FOR ARTICLE SUBMISSION

THE RESOLUTION PROFESSIONAL, quarterly peer-reviewed refereed research journal of Indian Institute of Insolvency Professionals of ICAI (IIIPI), with RNI Registration Number DELENG/2021/81442/ invites research-based articles for its upcoming editions on a rolling stock basis. The contributors/authors can send their article/s manuscripts for publications in The Resolution Professional as per their convenience at iiipi.journal@icai.in. The same will be considered for publication in the upcoming edition of the journal, subject to approval by the Editorial Board. The articles sent for publication in the journal should conform to the following parameters:

- The article should be of 2,500-3,000 words and cover a subject with relevance to IBC and the practice of insolvency while a case study should be around 5,000 words.
- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
- The article should:
  - Contribute towards development of practice of Insolvency Professionals and enhance their ability to meet the challenges of competition, globalisation, or technology, etc.
  - Be helpful to professionals as a guide in new initiatives and procedures, etc.
  - Should be topical and should discuss a matter of current interest to the professionals/readers.
  - Should have the potential to stimulate a healthy debate among professionals.
  - Should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of. It may also preferably highlight the emerging professional areas of relevance.
  - Should be technically correct and sound.
  - Headline of the article should be clear, short, catchy and interesting, written with the purpose of drawing attention of the readers. The sub-headings should preferably within 20 words.
  - Should be accompanied with abstract of 150-200 words. The tables and graphs should be properly numbered with headlines, and referred with their numbers in the text. The use of words such as below table, above table or following graph etc., should be avoided.
  - Authors may use citations as per need but one citation/ quote should have about 40 words only. Lengthy citations and copy paste must be avoided.
  - Plagiarism (including references) should be below 10%.
  - The authors must provide the list of references at the end of article.
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