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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.

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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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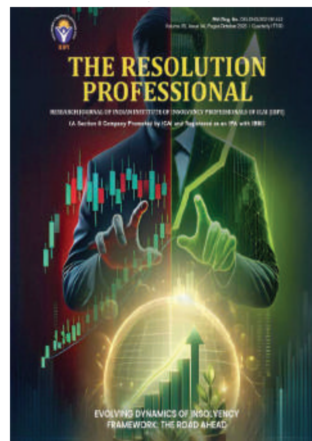

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From Chairman- Editorial Board

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

Dear Professional Colleagues,

Kosha Moolo Dandah — "The treasury is the root of Administration" — this timeless maxim of the great Indian polymath and strategist Kautilya resonates strongly within India's insolvency framework, wherein the first-order objective of the Insolvency and Bankruptcy Code, 2016 is resolution, the second-order objective is the maximization of the value of corporate debtor's asset value, and the third-order objective is promoting entrepreneurship, ensuring the availability of credit, and balancing the interests of stakeholders. To achieve these objectives, the Insolvency and Bankruptcy Code, 2016 has been amended six times, while the accompanying IBBI Regulations have undergone over 100 amendments.

As of September 2025, a total of 8,659 companies have been admitted for the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) with an impressive 78% of these cases already closed. The Code has successfully rescued 3,865 corporate debtors (CDs) of which, 1,300 were resolved through approved resolution plans, 1,342 through appeal/review/settlement, and 1,223 through withdrawal.

However, strict adherence to prescribed timelines in the insolvency process remains a significant challenge. Such delays tend to reduce asset value and, in turn, lower overall recoveries under the IBC. To address these challenges, the IBC (Amendment) Bill 2025 proposes key reforms including

- Time-bound completion of CIRP with stricter adherence to timelines
- Enhanced powers for the Committee of Creditors (CoC)
- Provisions for Group Insolvency, Cross-Border Insolvency among others.

Once passed by Parliament, we are confident that, this Bill will bring in much-needed reforms to the insolvency framework.

The IIIP of ICAI (IIIPI), the largest Insolvency Professional Agency (IPA) in India, has already launched an Executive Development Program (EDP) on Group Insolvency and Cross-Border Insolvency to equip its members with a competitive edge in the profession. Moreover, IIIPI has organized several programs to educate the members and stakeholders about the key aspects of the proposed amendments in IBC. In addition, IIIPI's innovative initiatives such as the Peer Review Mechanism, Mentorship Portal, and various collaborative programs with leading national and international organizations provide its members with invaluable exposure, enabling them to compete effectively at the global level.

The quarterly research journal *The Resolution Professional* has established itself as a trusted platform for stakeholders, featuring high-quality articles, case studies, practical perspectives, and informed opinions. By facilitating the exchange of ideas and experiences, the publication significantly contributes to strengthening the collective understanding of India's insolvency framework.

Over the past decade, India has made remarkable progress in its economy and business landscape. However, much remains to be done to realize the vision of a Developed India by 2047. It is now more crucial than ever for each of us to reflect on and maximize our contributions toward this goal, ensuring a prosperous future for all.

**"सपना एक देखोगे, मुश्किलें हज़ार आएँगी;
लेकिन वह मंज़र बहुत ख़ूबसूरत होगा,
जब कामयाबी शोर मचाएगी।"**

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

From Chairman- Governing Board

Dr. Ashok Kumar Mishra
Chairman, Governing Board- IIIPI

Dear Member,

The landscape of insolvency resolution in India continues to evolve rapidly. Recent court judgements, regulatory refinements, and increasing market complexity demand that insolvency professionals expand their technical capabilities while remaining anchored in the principles of fairness, transparency, and accountability. Given the significant economic and social consequences of their actions, it is imperative that they invest in continuous learning, adopt robust governance practices, and embrace interdisciplinary approaches that integrate legal acumen, financial insight, and investigative techniques.

The IBC (Amendment) Bill, 2025 is expected to bring a paradigm shift to India's insolvency regime by addressing existing challenges and introducing new provisions to bridge gaps in the legal framework. To facilitate informed deliberations on various aspects of the Bill, IIIPI recently organized two webinars and a survey to engage stakeholders and gather diverse perspectives on its potential impact. IIIPI along with ICAI is in the process of submitting feedback on the proposed provisions of IBC (Amendment) Bill to the Select Committee of Parliament. Recently, the Insolvency and Bankruptcy Board of India (IBBI), in association with three IPAs, has commenced a series of in-person intensive workshops spanning three days each which aim at enhancing the quality of knowhow and service delivery by experienced IPs. First such workshop was held in Delhi in the end of October 2025, and more programs shall be held across the country going forward. These initiatives reflect IIIPI's continued commitment to fostering dialogue, enhancing professional capacity, and contributing to the progressive evolution of the insolvency ecosystem in India.

The Supreme Court's landmark 'review' judgment in the Bhushan Power & Steel case, restoring the ₹19,700 crore resolution plan, marks a significant reinforcement of the IBC's resolution-centric jurisprudence. The Court underscored that a duly approved plan cannot be invalidated merely due to delays arising from circumstances beyond the successful bidder's control, thereby reaffirming that resolution—not liquidation—remains the ultimate objective of the Code. Furthermore, in *Mansi Brar Fernandes v. Shubha Sharma & Ors.* (2025), the Supreme Court cautioned against speculative investors misusing the insolvency process and underscored the need to protect genuine homebuyers.

The IBBI, in consultation with the Enforcement Directorate (ED), has formulated a standard undertaking to be submitted by the Insolvency Professional (IP) along with the application for restitution of assets of the corporate debtor attached by the ED under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA).

As IIIPI continues to support capacity building through training, research, and guidance, we reaffirm our commitment to elevating professional standards and fostering a resilient insolvency framework. I am grateful to the authors and reviewers for assembling a collection that balances doctrinal depth with pragmatic insight. The research articles, case study and perspectives make this edition of the IIIPI journal an indispensable resource for both seasoned practitioners and emerging professionals in the field of insolvency.

I wish you a happy reading.

With Regards

Dr. Ashok Kumar Mishra
Chairman
IIIPI

From Editor's Desk

Dear Member,

As India's insolvency regime enters a new phase of maturity, fresh reforms are poised to reshape the contours of corporate resolution processes. The proposed Insolvency and Bankruptcy Code (Amendment) Bill, 2025, together with the IBBI's recent regulatory changes aligning insolvency processes with the Prevention of Money Laundering Act (PMLA), reflects a strategic push toward greater efficiency, legal clarity and disciplined governance. Notably, the circular requires Insolvency Professionals to proactively approach the Special Court under Sections 8(7) or 8(8) of the PMLA for restitution of assets attached by the Enforcement Directorate, ensuring that value critical to resolution is unlocked timely. This enhanced compliance and recovery mechanism is expected to safeguard stakeholder interests while strengthening professional accountability.

IIIP of ICAI (IIIPI) always endeavours to ensure that The Resolution Professional reflects evolving regulatory developments and professional expectations, as these reforms enhance trust, transparency, and resilience in India's increasingly competitive and creditor-friendly insolvency ecosystem.

In this edition of The Resolution Professional, we are privileged to publish the address of Hon'ble Justice Ashok Bhushan, Former Judge, Supreme Court of India and Chairperson, National Company Law Appellate Tribunal, New Delhi, wherein he stated that "Over the years, this publication has emerged as a distinguished forum for scholarly discourse, analytical research, and critical examination of issues central to the insolvency regime. Its ability to engage practitioners, academics, policymakers, and members of the judiciary has elevated it to the stature of a reference resource. The depth of its articles, the diversity of perspectives it brings forth, and its commitment to intellectual integrity are genuinely commendable."

Moreover, this edition contains five research articles and a case study on the successful resolution of D.K. Realty (India) Pvt. Ltd. In the opening article "Project-Wise CIRP: A Key to Unlocking Real Estate Resolution Potential", the author critically examines developments relating to Project-Wise CIRP and Reverse CIRP, assessing their practical utility in resolving stressed real estate projects. The second article "Evolving Chemistry between IBC & PMLA" examines the evolving legal landscape shaped by divergent interpretations of tribunals and constitutional courts, navigating complex questions of statutory overlap and legislative intent. In the third article "Beyond the Waterfall: A Critical Review of Section 53 of the IBC in Global Context", the author, through a comparative study of insolvency regimes in USA, UK, and Singapore, identifies gaps in the Indian insolvency framework and recommends some crucial reforms. The fourth article "Mediation in Insolvency: A New Paradigm for Resolution under the IBC" advocates a phased introduction of mediation to address procedural bottlenecks and promote a "rescue culture," enabling to achieve amicable settlements at early stages, thereby reducing judicial dependence and enhancing the efficiencies. In the concluding article, "Bridging the Gap: Extending Moratorium Protection for Personal Guarantors Under IBC", the author recommends that, pending legislative change, IBBI guidance,

NCLT alerts, targeted Section 60(5) injunctions, and vigilant RPs' oversight can curb immediate harm.

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 from Justice Ashok Bhushan, Chairperson, NCLAT

Justice Ashok Bhushan
Former Judge, Supreme Court of India
Chairperson, National Company Law Appellate Tribunal (NCLAT), Delhi

It is with profound gratitude and a deep sense of honour that I accept your kind invitation to contribute a message to the forthcoming edition of the Indian Institute of Insolvency Professionals of ICAI (IIIPI's) peer-reviewed quarterly professional journal, 'The Resolution Professional'. I would like to begin by congratulating Shri Rahul Madan, Managing Director of IIIPI, and his entire team for coming up with yet another excellent edition of their professional journal.

I am delighted to convey my appreciation for the continued efforts of the IIIPI in nurturing and consolidating the insolvency profession in India. As the largest Insolvency Professional Agency operating under the aegis of the Insolvency and Bankruptcy Board of India (IBBI), IIIPI occupies a position of considerable responsibility. Its work reflects not merely the mandate of a regulatory institution but the broader vision of building a disciplined, competent, and ethically anchored cadre of professionals who collectively uphold the objectives of the Insolvency and Bankruptcy Code ("Code").

The advent of the Code marked a decisive shift in India's approach to commercial law—moving from a regime of prolonged pendency and asset erosion to one premised on predictability, time-bound processes, and a revival-oriented economic philosophy. The success of this transformation relies profoundly on the quality and integrity of Insolvency Professionals (IPs). They are not only facilitators of resolution but also custodians of fairness, transparency, and procedural propriety. They function in roles that demand independence, rigour, and the ability to balance diverse commercial and legal interests, often under significant pressure.

It is in this context that IIIPI's work assumes exceptional importance. Promoted by the respectable Institute of Chartered Accountants of India ("ICAI"), its initiatives in capacity building, continuous professional education, standard-setting, and research have meaningfully enhanced the architecture of the insolvency ecosystem. Particularly commendable is the Institute's focus on emerging domains—group insolvency, cross-border frameworks, valuation standards, behavioural dimensions of resolution, and the evolving jurisprudence shaped by the decisions of the National Company Law Tribunals, the National Company Law Appellate Tribunal, and the Supreme Court. By disseminating knowledge in these areas, IIIPI helps bridge the gap between statutory intent and practical implementation.

I am also pleased to note the consistent contribution of your journal, 'The Resolution Professional'. Over the years, this publication has emerged as a distinguished forum for scholarly discourse, analytical research, and critical examination of issues central to the insolvency regime. Its ability to engage practitioners, academics, policymakers, and members of the judiciary has elevated it to the stature of a reference resource. The depth of its articles, the diversity of perspectives it brings forth, and its commitment to intellectual integrity are genuinely commendable.

As India continues to strengthen its economic foundations and integrate more deeply with global financial systems, the insolvency framework will play an increasingly pivotal role in ensuring responsible lending, sustainable entrepreneurship, and economic resilience. Institutions like IIIPI, backed by the rich legacy of ICAI and guided by an eminent Governing Board comprising distinguished personalities from varied disciplines, are instrumental in shaping this journey.

I extend my warmest wishes to IIIPI for its ongoing endeavours. I trust that the Institute will continue to uphold the highest standards of professional conduct and thought leadership, contributing significantly to the maturation of the insolvency profession and thereby supporting the broader goals of fairness, economic efficiency, and rule of law.

May 'The Resolution Professional' continue to illuminate these pathways, fostering a cadre of IPs who are not merely professionals, but guardians of economic justice. I extend my sincerest felicitations to IIIPI on this milestone edition and reaffirm my steadfast support for your noble mission. Together, let us labour towards an insolvency regime that is as robust as it is compassionate, ensuring that every resolution story becomes a chapter of national resurgence.

With warm regards and best wishes for continued excellence.

Justice Ashok Bhushan
Chairperson, NCLAT, Delhi

Project-Wise CIRP: A Key to Unlocking Real Estate Resolution Potential

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The IBC (Amendment) Act, 2018 accorded homebuyers the status of financial creditors, enabling them to initiate the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the IBC against real estate developers. Over time, courts have evolved mechanisms such as Reverse CIRP and Project-Wise CIRP to safeguard homebuyers' interests. In February 2024, the IBBI amended the CIRP Regulations, allowing Resolution Professionals (RPs) to invite resolution plans for specific assets or projects of the Corporate Debtor. Despite these initiatives, significant legal and operational challenges persist. This article critically examines developments relating to Project-Wise CIRP and Reverse CIRP, assessing their practical utility in resolving stressed real estate projects. It also offers recommendations to formally embed Project-Wise CIRP and Reverse CIRP in the IBC and align them with related laws such as RERA. ***Read on to know more****...*

1. Introduction

The Real Estate Sector is a key player in the India's Gross Domestic Product (GDP) and job market, but it still struggles with serious problems. These issues include ongoing delays in project execution, insolvency, and fraud by developers. As a result, many stakeholders, especially homebuyers, suffer. They often find themselves without homes even after making significant financial investments. The Insolvency and Bankruptcy Code, 2016 (IBC/Code), though effective for corporate debt resolution, was not designed to address the unique complexities of real estate projects.

Over time, changing laws and policy efforts have created a more detailed approach within the IBC for handling insolvency cases in the real estate sector. A major change occurred pursuant to the Report of the Insolvency Law Committee dated March 26, 2018. The resulting amendment classified allottees of real estate projects as "financial creditors," thereby enabling them to initiate Corporate Insolvency Resolution Process (CIRP) proceedings under Section 7 of the IBC against the real estate developer. However, the standard CIRP mechanism has proven inadequate in the real estate context, where the objectives of financial creditors—primarily focused on loan recovery—are often at odds with those of homebuyers, who seek possession of residential units rather than financial returns.

In response to these challenges, Indian courts and tribunals have introduced innovative legal solution Project-wise CIRP, tailored

to real estate's unique requirements. The Project-wise CIRP model aims to treat each real estate project as an independent unit for insolvency resolution, thereby safeguarding the interests of allottees in specific projects without jeopardizing other projects of the developer. This approach has been instrumental in preventing systemic contagion across multiple projects of a single developer and ensuring that resolution efforts remain aligned with the expectations of homebuyers.

Despite these advancements, empirical data suggest that successful resolution through CIRP in the real estate sector remains relatively low. Several real estate companies in India have undergone insolvency proceedings, including well-known names such as Supertech Limited[1] . As per the Quarterly Newsletter for January-March, 2025[2] of Insolvency and Bankruptcy Board of India (IBBI), the Real Estate Sector contributes to about 22% of the cases of CIRP admission, which is the second highest after the manufacturing sector that contributes 37%. However, only about 16% of real estate insolvency cases have culminated in resolution plans, with a significant proportion either withdrawn i.e. 25% or pushed into liquidation i.e. 18%. The data indicates that real estate companies admitted into insolvency proceedings are more undergoing liquidation or withdrawal than achieving successful resolution. This trend reflects the inherent complexities and challenges in resolving real estate insolvencies, which often demand alternative or sector-specific approaches compared to other industries.

> **About 16% of real estate CIRP cases have resulted in approved resolution plans, while 25% have been withdrawn and 18% have proceeded to liquidation.**

In March 2023, the Ministry of Housing and Urban Affairs (MoHUA) created a committee led by Amitabh Kant[3] to deal with problems related to real estate projects that have been delayed for a long time. The committee found that the main issue was the lack of financial viability and suggested specific steps to improve the sustainability of these projects. Key recommendations include:

(a) Mandatory RERA registration of all projects;

(b) Execution of Registration/Sub-Lease Deeds for occupied units;

(c) Grant of occupancy/possession for substantially completed projects;

(d) State-led rehabilitation packages to support promoter-driven resolutions;

(e) Revival frameworks led by RERA and Administrators;

(f) Dedicated financing mechanisms for stalled projects;

(g) Invoking the IBC as a measure of last resort.

According to the committee's report, based on data from the Indian Banks' Association (IBA), around 4.12 lakh distressed residential units—worth ₹4.08 lakh crore—remain stalled, with 2.40 lakh units concentrated in the National Capital Region (NCR). Resolving even 75% of these could unlock nearly three lakh homes, offering critical relief to middle and lower-middle-class homebuyers and significantly boosting economic activity in the housing sector.

This article critically analyses the legal and institutional developments surrounding Project-wise CIRP and its practical relevance in streamlining resolution mechanisms for stressed real estate projects. Ultimately, the adoption of project-specific resolution models, supported by legislative clarity and regulatory oversight, may provide the balance needed between value maximization and protection of homebuyer interests—thus reaffirming the Code's objective of equitable and efficient resolution.

2. What is Project Wise Insolvency Resolution Process (PWIRP)?

PWIRP introduces a major change from the usual CIRP process, which typically treats the Corporate Debtor (CD) as one single, combined unit. Unlike the conventional method, PWIRP adopts a project-specific framework, wherein different components, assets, or divisions of a distressed real estate company are treated as separate projects, each with distinct objectives and tailored strategies. This approach allows for independent management of each project, enabling focused interventions and customized solutions suited to the specific challenges of individual projects. The idea is to avoid putting all the company's projects on hold and to make sure that other ongoing and financially healthy projects can continue without being disrupted.

When a real estate company faces insolvency, the insolvency process may apply in different ways based on the situation:

(i) **Default in Specific Projects:** If the company defaults in one or more specific real estate projects, the Adjudicating Authority (AA) may admit the company into CIRP but apply the process only to those defaulting projects.

1. *Ram Kishor Arora, Suspended Director of Supertech Ltd. vs. Union Bank of India and Anr.*, Company Appeal (AT) (Insolvency) No. 406 of 2022, decided on June 10, 2022.
2. *https://ibbi.gov.in/uploads/publication/912e97d4d9f96651386541fb7059203b.pdf*
3. *https://mohua.gov.in/upload/whatsnew/64e31f9e36e0creport.pdf*

(ii) **CIRP for Whole Company, Project-wise Action by CoC:** Sometimes, even if the default is not linked to any one project, the entire company enters CIRP. Later, the Committee of Creditors (CoC) may decide to handle insolvency project by project.

(iii) **Excluding Viable Projects from CIRP:** If some of the company's projects are financially sound and have unsold inventory that can generate value, the AA may consider excluding such projects from the CIRP framework to safeguard the interests of homebuyers and facilitate efficient repayment to lenders.

Regulation 36A(1A) of the IBBI Insolvency Resolution Process for Corporate Persons (CIRP) Regulations, introduced via the February 2024 amendment, allows the Resolution Professional (RP) to invite resolution plans for specific assets or projects of the CD. However, this does not amount to a separate PWIRP. The insolvency process remains unified for the CD, but the resolution plans can be asset specific or project specific.[4]

On 7th November 2024, the IBBI released a Discussion Paper[5] aimed at enhancing the legal framework that regulates the insolvency resolution processes of real estate projects under the IBC. In February 2025, recommendations in the discussion paper have been adopted by the IBBI through amendments to the IBBI (CIRP) Regulations, 2016[6] . It addressed certain key concerns which are given below:

a) **Possession to Homebuyers During CIRP:** Resolution Professionals (RPs) can now hand over possession of plots, apartments, or buildings to homebuyers during the resolution process itself, with CoC approval and once the homebuyer meets all obligations. This reduces delays in possession for distressed homebuyers.

b) **Appointment of Facilitators for Creditor Sub-Classes:** Facilitators can be appointed to assist sub-groups like homebuyers within large creditor classes. They facilitate communication between the authorised representative and the creditors and share information related to the process.

c) **Inclusion of Land Authorities in CoC Meetings:** CoCs may now invite local land authorities (e.g., NOIDA, HUDA) to their meetings.

d) **Mandatory Report on Development Rights:** Within 60 days of insolvency commencement date, RPs must submit a report detailing the status of approvals, permissions, and development rights for real estate projects. This helps creditors assess the project's viability effectively.

e) **Relaxations for Real Estate Allottees:** CoCs can now allow associations or groups of homebuyers to submit resolution plans by relaxing certain criteria like eligibility, performance security, and deposits.

f) **Monitoring Committee for Plan Implementation:** CoCs must consider forming a monitoring committee—comprising the RP, creditor representatives, and the successful resolution applicant—to oversee plan execution. This committee is required to submit quarterly updates to the Adjudicating Authority.

g) **Disclosure of MSME Status:** RPs must disclose whether the CD is registered as an MSME. This enables interested resolution applicants to access specific benefits and relaxations under the IBC meant for MSMEs.

3. Judicial Recognition and Evolving Jurisprudence around PWIRP

The legitimacy and practical necessity of PWIRP have gained considerable traction within Indian insolvency jurisprudence, particularly due to the complex and fragmented nature of the real estate sector. A notable endorsement of this approach can be found in the Supreme Court's ruling in *Indiabulls Asset Reconstruction Co. Ltd. vs. Ram Kishore Arora & Ors*[7]. In paragraph 10 of the judgment, the Court acknowledged the importance of avoiding disruptions to ongoing real estate projects by refusing to interfere with the NCLAT's direction for project-specific resolution. It observed that constituting a company-wide CoC could lead to greater inconvenience and irreparable harm, especially for homebuyers awaiting possession. The Court emphasized that, in stalled real estate projects, allowing the IRP to oversee progress—with the assistance of the ex-management where necessary—posed a lower risk of injustice. The judicial support for the project-wise CIRP model shows a sensible and balanced approach, aiming to protect the interests of homebuyers while also helping to revive housing projects more effectively.

However, a contrasting perspective emerged in the case of *N. Kumar, RP of M/s. Sheltrex Developers Pvt. Ltd. vs. M/s. Tata Capital Housing Finance Ltd.*[8], where the NCLT Chennai Bench held that Project-Wise CIRP cannot be applied uniformly. The

4. *https://ibbi.gov.in//uploads/legalframwork/88458173f47fbda03d775370a420f307.pdf*
5. *https://ibbi.gov.in/uploads/whatsnew/c7ddc802e5b2c4f073fa0d419813844a.pdf*
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Tribunal clarified that such an approach must be determined based on the specific facts and circumstances of each case and further emphasized that the IBC does not explicitly provide for Project-Wise CIRP.

Although courts have taken different views on the issue, the Amitabh Kant Committee Report firmly supports implementing Project-Wise CIRP in the real estate sector. It emphasizes that since every real estate project must already be registered individually under RERA, it would make both legal and administrative sense to adopt the same approach under the IBC. Such alignment would help streamline the insolvency process, ensure greater accountability, and offer more focused relief to affected homebuyers.

In the landmark ruling of *Flat Buyers Association Winter Hills-77 vs. Umang Realtech Pvt. Ltd. through IRP & Others*[9] , the NCLAT recognized the shortcomings of the traditional CIRP in addressing real estate insolvencies. The Appellate Authority observed that the existing IBC framework disproportionately benefits institutional secured creditors, while homebuyers—classified as unsecured creditors—often find themselves at a disadvantage. To remedy this imbalance, the NCLAT pioneered the concept of "Reverse CIRP," enabling construction to continue under the oversight of the Interim Resolution Professional (IRP), with the promoter retained for execution. This mechanism prioritizes the completion and delivery of homes to allottees over asset liquidation.

Together, these decisions reflect the evolving jurisprudence around insolvency in the real estate sector, reinforcing the need for project-wise frameworks and adaptive mechanisms that respond to the interests of all stakeholders, particularly vulnerable homebuyers.

4. Challenges Faced by Stakeholders

a) Challenges for IRP/RP/Liquidator

IRP, RP, and Liquidator face significant difficulties in real estate insolvency cases. There is no financial segregation between different projects of the same CD, making it extremely challenging to accurately collate claims and allocate assets and liabilities. Common operations across multiple projects and shared infrastructure further complicate the segregation process. Moreover, there are no clear guidelines under the IBC to assist professionals in managing project-wise CIRPs.

> **Amitabh Kant Committee emphasized that as every real estate project is mandatorily registered under RERA, it would make both legal and administrative sense to adopt the same approach under the IBC.**

b) Challenges for Statutory Authorities

Statutory authorities, such as municipal corporations and development authorities, often find themselves in a difficult position when a CD enters insolvency proceedings. Their claims are usually made against the company as a whole, rather than being linked to any one specific project. This creates confusion during CIRP, as it's unclear whether these authorities should file their claims on a project-wise basis or for the entire entity.

Many of these due to the demands like land-related charges, development fees, Provident Fund contributions, or taxes—are typically associated with the CD at the company level. The lack of clarity around how to submit such claims not only causes delays in the resolution process but also adds to the administrative burden. The situation is made worse by the absence of clear, structured guidelines for how statutory claims should be handled during insolvency.

c) Challenges for Creditors

In real estate insolvency, there are various categories of creditors such as homebuyers, land development authorities (who have been recognized as secured creditors in the Prabhjit Singh Soni[10] case) , statutory authorities like EPFO and tax authorities, and financial institutions including banks and NBFCs. When any project of a CD enters insolvency, all of these creditors submit their claims.If a comprehensive CoC is formulated, homebuyers, being unsecured creditors, may end up with lower voting rights, increasing the risk of injustice during negotiations on the Resolution Plan.

The judiciary has also recognized these disparities. In *Flat Buyers Association Winter Hills-77 vs. Umang Realtech Pvt. Ltd.* through IRP & Others, the Appellate Authority observed that the existing framework under the IBC tends to disproportionately favor institutional secured creditors such as banks and financial institutions. Although homebuyers are classified as financial creditors, they remain at a disadvantage due to their unsecured

9. *https://ibbi.gov.in//uploads/order/d70efb8cb431050862f08d0957ddc9e9.pdf*

10. *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni, AIR 2024 SC 1227.*

status, leading to conflicts within the CoC and friction during the resolution process. This conflict is further exacerbated when multiple projects of the same CD undergo CIRP separately, without a consistent legal approach toward the treatment of claims.

The implementation of the proposals outlined in the Discussion Paper is expected to significantly impact both homebuyers and developers. The effects will not be limited to those whose units are pending in a defaulting project but will also extend to homebuyers in other projects due to the cascading consequences of its default. The suggestion to allow possession of units on an "as is where is" basis gives allottees the choice between accepting an incomplete unit or receiving a payment with a haircut.

d) Challenges for AA

The AA also faces considerable challenges due to the absence of clear statutory guidelines regarding the insolvency resolution process in the real estate sector. There is a lack of clarity on whether the Authority should opt for Project-Wise CIRP, Reverse CIRP, or bring the entire Corporate Debtor (CD) into Insolvency. This ambiguity forces the AA to rely heavily on judicial discretion, leading to inconsistent approaches across different cases and contributing to further confusion and delays.

Real estate developers often raise finance by creating project-specific charges in favor of different lenders. When a financial institution initiates CIRP under Section 7 of the IBC, the entire company is typically brought under insolvency proceedings. However, when homebuyers initiate the process under Section 7 of the IBC, courts/tribunals have preferred mechanisms like Reverse CIRP or project-wise CIRP to specifically protect the interests of allottees and ensure the completion of individual projects without pushing the entire developer into liquidation.

Complications arise when, after one project is admitted into CIRP, homebuyers from another project of the same developer file fresh applications under Section 7 of the Code. This leads to serious procedural dilemmas such as whether there should be separate RPs for different projects or whether a single RP should manage multiple project-wise CIRPs within the same company. Currently, there is no clear legal or regulatory framework to guide such situations, which results in overlapping claims, confusion in the constitution of CoC, and significant delays in the resolution process. The AA is often left to decide between competing approaches without any standardized guideline, thereby adding layers of complexity to an already intricate insolvency process.

5. Case Study: Project-Wise Insolvency proceedings in Raheja Developers

Raheja Developers, a real estate company, has several ongoing real estate projects. One such project is Raheja Shilas Low Rise, where 94 homebuyers have been waiting for possession since 2012. After exhausting all possible remedies—including complaints to the Consumer Forum and filing grievances under RERA—these homebuyers turned to IBC as their last resort. They filed an application under Section 7 of the Code, which was admitted by the NCLT after due consideration.

However, the developer challenged the order before the NCLAT, which stayed the CIRP. The appellate tribunal directed the IRP to assist the existing management in securing the Occupation Certificate (OC), effectively pushing the case into a form of Reverse CIRP.

The IRP is also facing serious challenges during the claim collation process, as financial creditors, including banks, homebuyers of other projects, and operational creditors who provided services to the CD —have begun submitting their claims. Current laws and regulations remain silent on how such claims should be dealt with in a multi-project real estate insolvency.

Another significant hurdle is that financial statements and accounts are not maintained project-wise by the CD, making it extremely difficult to evaluate the financial viability and liabilities of individual projects. While the IBC envisions a time-bound resolution process aimed at maximizing asset value and balancing the interests of all stakeholders, its current framework is not adequately equipped to handle the unique complexities of the real estate sector. Despite homebuyers increasingly preferring the IBC route for relief, there is still no statutory framework or procedural clarity for undertaking PWIRP.

Financial statements and accounts are not maintained project-wise by the CD, making it extremely difficult to evaluate the financial viability and liabilities of individual projects.

6. Evaluating Legal and Practical Implications of Project-wise CIRP

(i) Legal Effect of Project-Wise Resolution Plan on CD's Residual Liability: A Resolution Plan that settles only partial claim of a creditor in relation to one project of CIRP does not fully discharge the CD from its remaining liability—so long as the underlying contract is with the CD as a whole and not limited to that specific project.

The Hon'ble Supreme Court in *BRS Ventures Investment Ltd. v. SREI Infrastructure Finance Ltd*[11]., clarified in paragraph 28(a) that partial payment under a Resolution Plan involving a guarantor does not extinguish the full liability of the principal borrower (i.e., the CD). Moreover, in paragraph 28(b), it was held that a Resolution Plan approved for a holding company cannot automatically extend to the liabilities or assets of its subsidiaries—emphasizing the principle of corporate distinctness.

As a result, where the contract is not project-specific, a creditor retains the right to pursue recovery from the CD for unpaid dues arising from other projects, even if part of the claim has already been resolved under a Resolution Plan.

(ii) Entity Test under IBC-Validity of Project-wise CIRP/ Plans: Project-wise CIRP/plans, though permitted in certain real estate cases by NCLT/NCLAT, do not withstand the Entity Test under the Companies Act, 2013, LLP Act, 2008, or the IBC.

These statutes recognize a company or LLP as a single juristic entity—not a collection of independent projects. Under IBC, insolvency is initiated against the corporate debtor as a whole, not against individual business segments. In *Flat Buyers Association Winter Hills-77 v. Umang Realtech Pvt. Ltd.*, NCLAT allowed a project-wise CIRP to protect homebuyers' interests, but that remains an exception. Thus, unless each project is a separate incorporated entity, project-wise CIRP violates the core principle of single legal entity, making it legally untenable under the entity test.

(iii) Does IBC Amendment Alone Justify Project-Wise CIRP:

The amendment to the IBC enabling project-wise CIRP, while a progressive step to safeguard homebuyers' interests, does not by itself suffice, as it raises significant concerns under contract act and statutory interpretation. Contracts are executed with the CD as a whole, not project-wise entities, and fragmenting insolvency may impair privity and obligations. Moreover, "person" under Section 3(23) of IBC and other statutes does not recognize a real estate project as a separate legal person. Without harmonizing these definitions legislatively or judicially, the amendment risks inconsistency and legal uncertainty, necessitating a comprehensive legal framework.

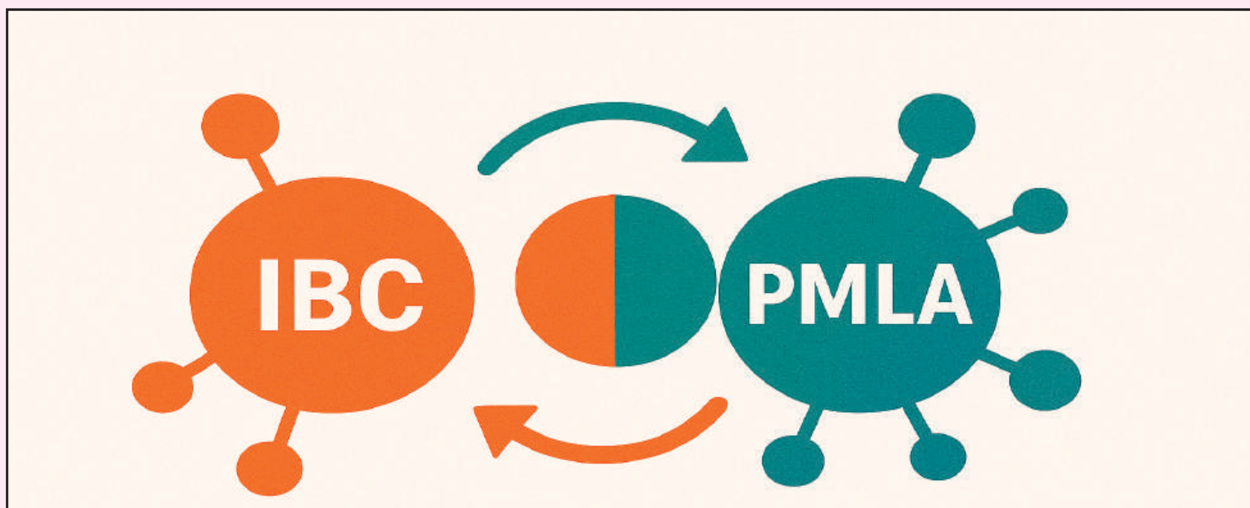
(iv) Differentiating Project Performance and Fund Movements in Real Estate Business CD- Legal and Accounting Perspectives: In a real estate CD, distinguishing whether a project is performing well or approaching insolvency requires a detailed financial and operational analysis aligned with the business nature. Each project typically has its own Profit & Loss (P&L) statement and Balance Sheet (B/S), enabling management to assess individual project viability.

7. Conclusion

Project-wise insolvency marks a significant and practical shift in India's approach to resolving distress in the real estate sector. By allowing insolvency proceedings to be handled at the individual project level, it ensures that relief reaches the affected homebuyers more directly and increases the chances of reviving stalled developments. Recent regulatory changes, including the February 2024 amendments to the CIRP framework, reflect growing recognition of this need. However, the lack of formal legal backing under the IBC remains a major gap, often leading to uncertainty in implementation. To truly make this approach effective, it is crucial to formally incorporate project-wise resolution within the IBC and harmonize it with laws like RERA. A dedicated legal framework—backed by coordinated regulatory action and a pragmatic judicial approach—will be key to protecting stakeholders' interests and rebuilding trust in the insolvency process.

11. https://ibbi.gov.in/uploads/order/4688087e4e8ccbbc67df12eca3134f29.pdf

Evolving Chemistry between IBC & PMLA



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The intersection of the Insolvency and Bankruptcy Code, 2016 (IBC), and the Prevention of Money Laundering Act, 2002 (PMLA) has generated significant jurisprudential debate. Central controversies include whether the moratorium under the IBC bars the Enforcement Directorate's (ED) attachment proceedings, whether the NCLT can direct the ED to release attached assets, and how the non obstante clauses in both statutes interact—particularly whether the immunity granted under Section 32A of the IBC overrides PMLA proceedings. Recent rulings, notably the Supreme Court's verdict in Kalyani Transco, have sought to delineate jurisdictional boundaries, reaffirming that while the IBC aims at economic revival, it does not supersede the enforcement framework of the PMLA. This article examines the evolving legal landscape shaped by divergent interpretations of tribunals and constitutional courts, navigating complex questions of statutory overlap and legislative intent. ***Read on to know more**...*

1. Introduction

The two litigations that have been making a huge impact on the financial landscape of our country in recent years are the Insolvency & Bankruptcy Code, 2016 (IBC) and the Prevention of Money Laundering Act, 2002 (PMLA). On one hand, IBC is a young legislation, less than a decade old, still evolving and not fully notified and on the other hand PMLA, though enacted almost 25 years ago, has gained momentum in recent years.

IBC was enacted to provide a consolidated framework for reorganization, insolvency resolution and liquidation of corporate persons, partnership firms and individuals in debt, as to maximize the value of assets. Though provisions of Chapter III, pertaining to insolvency and bankruptcy of individuals and partnership firms, have not been notified yet (except for Personal Guarantor to Corporate Debtors), it has already made a mark in redefining debtor and creditor relationships and has had a profound positive impact on health of our banking sector. As per the RBI's report, IBC accounts for 48% of all recoveries made by banks in financial year 2023-24.

On the other hand, the PMLA was introduced to combat money laundering and related offenses in India. It aimed to prevent the legalizing of income or profits derived from illegal activities like smuggling, narcotics, organ trade, child trafficking, etc., and to enable the confiscation of property derived from such proceeds of crime. It is administered through Directorate of Enforcement

(ED), which is empowered to provisionally attach assets derived from or involved in money laundering and investigating the matter.

Legal interpretation issues arises when a person gets into the ambit of both these acts together mainly, because both these legislatures are specialized laws with distinct objectives but include non-obstante clauses (Under section 71 of PMLA and Section 238 of IBC), which ensure that the provisions of these statutes take precedence over any other conflicting laws. The courts in India, to the level of Supreme Court, have been actively involved in sorting issues when they intersect each other during insolvency proceedings. Though, initially there have been conflicting decisions at various levels, but gradually issues have been gaining clarity as in recent judgements, courts have interpreted these legislations so as to harmonize them, ensuring that the objectives of each one are met without undermining the other.

2. Major Issues

Two critical provisions of the IBC — Section 14, which imposes a moratorium during the CIRP, and Section 32A, which provides immunity to the Corporate Debtor (CD) and its assets following the approval of a Resolution Plan — have been central to judicial and academic debate, raising certain thought-provoking questions of legislative primacy and jurisdictional supremacy between IBC & PMLA like:

(i) Which statute prevails when conflicting mandates arise as non-obstante clause exist in both?

(ii) What would be effect of Moratorium under Section 14 on attachment of properties under PMLA?

(iii) Whether PMLA is a civil or criminal proceeding?

(iv) Does NCLT/ NCLAT has jurisdiction to direct ED?

(v) Does Section 32A effectively provide a complete shield to the corporate debtor's assets against PMLA attachment after resolution?

2.1. The Non-Obstante Clauses: A Statutory Conflict:

Both statutes wield potent non-obstante clauses, which are reproduced below:

- **Section 238 of IBC:** "The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law…"
- **Section 71 of PMLA:** "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law…"

This dual supremacy creates a legislative stalemate, compelling courts to reconcile competing mandates using principles such as *lex specialis derogat legi generali* (special law overrides general law), year of enactment and purposive construction to harmonize the statutes. As none of the statute can be categorised as general law, the first principle becomes infructuous here. As regards the order of enactment, in cases where there is a conflict between two statutes containing non-obstante clauses, the one which has been enactment later would prevail as has been held in numerous cases like in *Maruti Udyog Vs. Ram Lal*[1] where the Supreme Court observed that:

> **As none of the statute can be categorised as general law, the principle of *lex specialis derogat legi generali* (special law overrides general law) becomes infructuous here.**

"It is well settled that when both statutes containing non obstante clauses are special statutes, an endeavour should be made to give effect to both of them. In case of conflict, the later shall prevail"

Not only the year of enactment of a statute is important in such cases, date of subsequent amendments in an existing statute have also been recognised to be viewed as later act, for determining the overriding effect of an Act as was held in *Bank of India Vs. Ketan Parekh*[2], by the Supreme Court.

However, it is pertinent to note that this rule is not universally applied and may not always constitute the solitary principle of interpretation, and much would also depend on the intent and scope of the two intersecting statutes. Delhi High Court in *Rajiv Chakraborty Resolution Professional of EIEL v. Directorate of Enforcement*[3] (2022) clearly stated that:

"When faced with a situation where both the special legislations incorporate non obstante clauses, it becomes the duty of the Court to discern the true intent and scope of the two legislations…." (Para 108)

So, the ultimate test, while giving effect to intersecting provisions of the two statutes, would be "the intent and scope of the statute" or "intent of incorporating a particular provision in the statute" and the same need to be examined.

2.2. Moratorium (IBC) Vs. Attachment (PMLA)

Section 14 of the IBC provides for a moratorium on the initiation or continuation of legal proceedings, execution of any judgment or order, and the transfer or disposal of any assets of the CD

1. *AIR 2005 SUPREME COURT 85*
2. *(2008) 8 SCC 148*
3. *W.P.(C) 9531/2020;*

during Corporate Insolvency Resolution Process (CIRP).

Whereas under sections 5 and 8 of the PMLA, the ED is empowered to provisionally attach any property which is believed to be "proceeds of crime." After attachment, the matter is adjudicated by the Adjudicating Authority (AA) under Section 8 of the PMLA, potentially resulting in either confirmation and ultimate confiscation of the attached property to the Central Government or release of the property.

Now the question arises that, can ED attach properties of CD, which is under CIRP, or continue to attach properties of corporate debtor on initiation of CIRP which it had attached prior to initiation of such proceedings. Though there were some contrary views initially, position has now gained some clarity.

NCLAT in *Varrsana Ispat Limited v. Deputy Director, Directorate of Enforcement*[4] (2018) and also in *Rotomac Global Pvt. Ltd. v. Deputy Director* (2019)[5] held that the attachment of assets under the PMLA relates to 'proceeds of crime' and Section 14 of the IBC is not applicable to such criminal proceedings. In Varrsanna Ispat, it was further held that since the assets were attached prior to CIRP initiation, no benefit can be derived out of Section 14 of the IBC, as the notice of attachment was already available to the relevant stakeholders. Citing its decision in Varrsanna Ispat, the NCLAT, also upheld the ED's attachment in case of Rotomac Global, even though attachment order in this case was after the CIRP commencement date.

> **Citing its decision in *Varrsanna Ispat*, the NCLAT, upheld the ED's attachment in case of *Rotomac Global*, even though the order of attachment was issued after initiation of CIRP.**

Similarly, in *Nitin Jain Liquidator PSL Ltd. v. Enforcement Directorate*[6] (2021), the High Court Of Delhi has held that the moratorium under Section 14 cannot come in the way of the statutory authority conferred on the ED by PMLA as doing so would defeat the objective of PMLA and provide an escape route for CD alleged to be holding proceed of crime. Court further observed that:

Para 146: "….After all, a person indulging in money-laundering cannot be permitted to avail of the proceeds of crime to get a discharge for his civil liability towards his creditors for the simple reason such assets are not lawfully his to claim".

> **There have also been contradictory views as regards classification of PMLA proceeding as civil or criminal to determine the applicability of moratorium.**

A contrary view however was taken by NCLAT in Directorate of Enforcement Vs Manoj Kumar Agarwal & Others[7], (2021) where a provisional attachment order (PAO) was passed after the moratorium came into effect, NCLAT held that considering the aim and object of the IBC, it would be impermissible for the authorities under the PMLA to exercise the powers of attachment once the moratorium has come into effect. However, para 42 of the order clearly stated that, even if a property has been attached under the PMLA, and if CIRP is initiated, the property should become available to fulfil objects of the IBC.

However, now the series of judgements, like a larger three member bench judgement of NCLAT in *Kiran Shah, RP of KSL and Industries Ltd. v. Enforcement Directorate*[8], (2022), Delhi High Court in *Rajiv Chakraborty RP of EIEL v. Directorate of Enforcement*[9] (2020) and validation of NCLAT judgement of *Varrsana Ispat Limited v. Deputy Director, Directorate of Enforcement* by Supreme Court[10] (2019), has eventually settled the issue that the power to attach under Sections 5 and 8 of the PMLA, would not be effected by moratorium under Section 14 of the IBC as the provisional attachment of properties, does not result in extinguishment or effacement of property rights and would not violate the primary objectives of Section 14 of the IBC, which is to protect the assets of CD during the pendency of CIRP. The rationale behind this is that attachment by ED is just to prevent alienation of the property by the accused and does not create any kind of debt on CD or confer any title of the property involved, in the favor of ED or Central Government. It simply enables authorities under the PMLA to restrain any further transactions of the property related to suspected proceeds of crime, till the trial under PMLA is concluded.

In many of the above-mentioned cases there have also been contradictory views as regards classification of PMLA proceeding as civil or criminal to determine the applicability of moratorium. In some cases, proceedings under PMLA have been regarded as civil proceedings as they deal with attachment of property, whereas in other cases they have been regarded as criminal proceedings as they deal with proceeds of crime. For instance, as per para 171 in matter *M/s Kaushalya Infrastructure Development Corporation*

4. *Company Appeal (AT)(Insolvency) No. 493 of 2018*
5. Company Appeal (AT) (Insolvency) No. 140 of 2019
6. *W.P.(C) 3261/2021*
7. *CA (AT)(IBC) No. 575 of 2019*
8. *CA (AT)(IBC) No. 817 of 2021*
9. *W.P.(C) No. 9531 of 2020- Delhi High Court*
10. *Varrsana Ispat Limited v. Deputy Director, Directorate of Enforcement*

Limited v. UOI[11], the Jharkhand High Court has held that "The process of attachment (leading to confiscation) of proceeds of crime under PMLA is in the nature of civil sanction which runs parallel to investigation and criminal action vis-a-vis the offence of money-laundering."

2.3. Section 32A: A shield protecting attachment

Inserted by the IBC (Amendment) Act, 2020, Section 32A represents a legislative breakthrough, providing crucial safeguards for corporate debtors and new management, post-resolution or liquidation for criminal offences committed by the CD under old management, thereby encouraging resolution and revival of distressed companies. Section 32A provides that:

(a) **Once the resolution plan is approved by the NCLT or assets are sold as liquidation estate, Sub-section (1)** precludes prosecution of the CD for offences committed prior to the commencement of the CIRP, conditional on a bona fide change of management unconnected with previous promoters. However, the immunity does not extend to the erstwhile promoters, directors, officers, or persons in control of the CD who were directly or indirectly involved in the offence and such persons can still be prosecuted and held liable.

(b) **Sub-section (2)** bars attachment, confiscation, or retention of the CD's property under any law, for an offence committed prior to the commencement of the CIRP, on approval of Resolution Plan or sale of liquidation asset provided there is a change of control of management.

(c) **Sub-section (3) of 32A states that** agencies can continue investigation or inquiry against the CD for prior offences even after resolution and CD and any person, who may be required should provide assistance to investigating agencies.

It would be pertinent to comprehend that this section was introduced in response to practical difficulties faced by resolution applicants, due to pending criminal investigations and attachments. Investors were reluctant to bid for companies whose assets were embroiled in criminal proceedings, thereby undermining the IBC's objective of timely and effective resolution. Apprehensions regarding misuse of IBC proceeding section, to escape the consequences of criminal offense were also kept in mind while drafting the section.

The insertion of Section 32A was challenged on constitutional grounds that it violates Articles 14 (equality), 19 (freedom of speech and expression), 21 (protection of life and personal liberty), and 300A (protection against deprivation of property) of the Constitution. It was argued that it unfairly grants immunity to the CD while potentially allowing those who committed offenses to escape liability. However, the Supreme Court, in *Manish Kumar v. Union of India*[12], upheld the constitutional validity of Section 32A, emphasizing the need to provide a clean slate for successful resolution applicants. It held that that immunity is not universal, as it is conditional upon a genuine change of management or control of CD wherein the new management has no involvement in prior offences. Moreover, it was also emphasized that the clean slate is only in respect to the corporate entity post resolution or sale in liquidation, whereas the individuals responsible for mis-ventures, would continue to be prosecuted in their individual capacities. The court observed — "the provision is not an escape route for the wrongdoer but a mechanism to save a corporate debtor which may still be a viable economic entity."

Now, there are plethora of decisions by various High Courts on similar lines, some of which are discussed below:

The Delhi High, in *Rajiv Chakraborty v. ED* (2020), gave a reasoned analysis as to why 32A would override attachment by ED under PMLA.

The Delhi High, in *Rajiv Chakraborty v. ED* (supra), gave a reasoned analysis as to why 32A would override attachment by ED under PMLA. It stated that attachment does not result in extinguishment or effacement of property rights and is done only to prevent alienations. Any right over the said property does not vest over the ED or Central Government, just on provisional attachment. It also held that since Section 32A, which was introduced by Amendment Act in 2020, with retrospective effect from December 28, 2019, it would have over-riding effect over PMLA by the virtue of being the later act and thus govern the extent to which the non obstante clause enshrined in the IBC.

Even before the aforesaid amendment was done, the Delhi High Court in *Directorate of Enforcement v. Axis Bank*[13], had held that the attachment of property does not make the government/ its authority a "creditor". Also, the value of property attached cannot be termed as "debt" due or payable to the government. Therefore, any person who is a bona fide purchaser can always approach the AA under PMLA for release of the attached property.

It is pertinent to note that, in a recently passed judgement in matter of *Anil Kohli v. Directorate of Enforcement*[14], NCLAT New Delhi, has held that the Section 32A of the IBC was introduced in 2020 and the immunity it provides to the CD from prosecution and property attachment, is conditional and prospective and hence Section 32A is inapplicable in the scenarios where the property was already under valid legal attachment. In this case

11. *W.P. (Cr.) No. 226 of 2021*
12. *(2021) ibclaw.in 16 SC*
13. *CRL.A. 143/2018 and Crl.M.A. 2262/2018*
14. Company Appeal (AT) (Ins.) No. 389 of 2018

the Resolution Plan was approved in November 2019, before introduction of Section 32A.

Amidst the above conflicting jurisdictional mandates, many a times there has also been debate whether NCLT or NCLAT, which are quasi-judicial authorities created under sections 408 and 410 of the Companies Act, 2013, can give directions to ED, a statutory authority under PMLA. Though in many cases initially, various NCLTs & NCLAT issued directions to ED to de-attach the assets, the higher courts now are of unanimous view that such

> **These judgments have contributed to jurisprudence that is expected to facilitate timely resolution and effective implementation of distressed assets.**

actions of NCLT/NCLAT are beyond their jurisdiction. Both, the Delhi High Court in Nitin Jain case (supra) and the Supreme Court in Kalyani Transco (supra) held that the NCLT/NCLAT cannot judicially review or nullify provisional attachments made by the ED under the PMLA. They emphasized that such powers lie exclusively with the PMLA's own adjudicating authorities—not with insolvency tribunals as PMLA is a public law. Extracts of Para 27 of SC's order passed on July 25, 2025 in matter of Kalyani Transco (supra) is as below:

"…it is pertinent to note that the NCLT and NCLAT are constituted under Section 408 and 410 of the Companies Act, 2013 and not under the IBC. The jurisdiction and powers of the NCLT and NCLAT are well circumscribed under Section 31 and Section 60 so far as NCLT is concerned, and under Section 61 of IBC so far as the NCLAT is concerned. Neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law".

3. Conclusion

As stated, IBC is still evolving and the interplay between IBC and various other Acts are bound to happen. The higher courts have taken decisions after thorough examination of conflicting legislations including their intent and overall objectives of their enactment and have made efforts to harmonize Acts wherein neither has been held superior to others. The initial ambiguity has led to litigations and delays in implementing resolution plans, which is detrimental for all stakeholders and results in loss of value of assets of CD. In June this year, according to media reports, the Enforcement Directorate (ED) has cleared the transfer of Vadraj Cement's ₹952-crore plant to the successful resolution applicant (SRA), Nuvoco Vistas—a Nirma Group company—following a money laundering probe in the IL&FS case. Thus, upholding the legitimacy of ownership under the approved Resolution Plan which also harmonizes with provisions of Sections 8(7) and 8(8) of PMLA and Rule 3A of the PML (Restoration of Property) Rules, 2016, authorizing the handover to the proceeds of crime to rightful claimants. Very recently, on 4th November 2025, IBBI has issued a Circular, advising Insolvency Professionals to file an application before the Special Court under sections 8(7) or 8(8) of the PMLA for restitution of assets of the corporate debtor that are under attachment by the ED. To facilitate expediate disposal of such application, IBBI in consultation with ED, has also formulated an undertaking to be given by IPs along with the application. The undertaking requires that the reinstituted assets will not be transferred or sold to any person covered under Section 32A(2)(i) or (ii) of the IBC or named in ECIR. It also mandates IPs to make full disclosure of all properties under ED's attachment in the Information Memorandum or auction notice. The recent judgements and this circular is expected to facilitate timely and effective resolution of distressed assets, thereby enhancing their value and increasing recoveries for creditors.

Beyond the Waterfall: A Critical Review of Section 53 of the IBC in Global Context

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The Insolvency and Bankruptcy Code (IBC), 2016 marked a major shift in India's insolvency regime, creating a consolidated framework to resolve distressed assets by drawing on existing laws and global best practices. Yet, ambiguities persist, particularly in Section 53, which outlines the distribution priority of liquidation proceeds commonly referred to as 'waterfall mechanism.' This article highlights the absence of clarity on inter se prioritisation among secured creditors with differential charges and the uncertain enforceability of contractual subordination agreements. It also critiques the unequal treatment of financial and operational creditors. Through a comparative study of insolvency regimes in the United States of America (USA), the United Kingdom, and Singapore, the article identifies gaps in the Indian insolvency framework and recommends some crucial reforms. ***Read on to know more…***

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) marked a revolutionary step in India's approach to insolvency resolution. Consolidating scattered laws and expediting the resolution process, the Code aimed at improving the ease of doing business and strengthening creditor rights. One of the most critical components of the Code is Section 53, which lays down the waterfall mechanism for the distribution of assets upon liquidation. However, its rigidity, lack of recognition for contractual arrangements such as inter-creditor agreements, and ambiguous treatment of creditor classes raise several concerns. The absence of explicit recognition for inter *se* prioritization among secured creditors, especially those with differential charges, is a significant lacuna, particularly given the sophisticated structures prevalent in modern finance. This article examines these issues, compares Section 53 with global insolvency frameworks, and proposes reforms to enhance its efficacy.

2. Statement of Problem

Section 53 of the IBC lays down the waterfall mechanism for the distribution of proceeds during liquidation. While it attempts to provide clarity and order to the priority of claims, several key issues have arisen due to ambiguities in inter se prioritization, i.e., the relative positioning of different classes of creditors within the

same tier or across adjacent tiers. The waterfall is structured as follows:

(a) Insolvency resolution process costs and liquidation costs

(b) Secured creditors (who relinquish their security) and workmen's dues

(c) Wages and unpaid dues to employees (other than workmen)

(d) Financial debts owed to unsecured creditors

(e) Government dues and remaining secured creditors (who enforced their security outside the liquidation estate)

(f) Any remaining debts and dues

(g) Preference shareholders

(h) Equity shareholders or partners

While the structure appears straightforward, its implementation has triggered legal and practical complexities. The clause failed to accommodate contractual arrangements among creditors and disregards contractual autonomy, a principle well-enshrined in private law. The principal problems stemming from this ambiguity include:

2.1. Unclear Ranking within Broad Creditor Categories:

Section 53 groups creditors into broad categories (e.g., secured creditors, workmen's dues, unsecured creditors), but fails to clarify the inter se prioritization within these categories. For instance, secured creditors holding differential charges, such as first and second charge holders, are treated equally under the IBC, disregarding contractual hierarchies established in financing agreements. This equal treatment overlooks the commercial expectations of creditors who negotiated specific charge rankings, leading to perceived inequity and discouraging complex financing structures.

2.2. Conflict Between Secured Creditors and Workmen's Dues:

Secured creditors who relinquish their security interest rank *pari passu* with workmen's dues for the preceding 24 months under Section 53(1)(b). In cases of insufficient assets, Regulation 21A of the IBBI Liquidation Process Regulations, 2016, mandates that secured creditors who enforce their security independently must contribute to liquidation costs and workmen's dues as they would have shared had they relinquished their security, within 90 days from the liquidation commencement date. However, the IBC does not provide clear guidance on proportional distribution when assets are inadequate, creating practical challenges and potential disputes between these creditor classes.

2.3. Priority of Government Dues vs. Operational Creditors:

Despite the legislative intent to de-prioritize government dues, practical interpretation often blurs their positioning relative to operational creditors. Courts have occasionally adopted inconsistent reasoning, contributing to uncertainty.

2.4. Absence of Clarity on Inter-Creditor Agreements:

The Code does not explicitly address the enforceability of contractual arrangements, such as inter-creditor agreements or subordination agreements, which establish relative priorities among creditors (e.g., senior vs. subordinated debt or charge rankings in syndicated loans or bond issuances). This silence leads to confusion when parties seek to enforce such agreements, undermining contractual autonomy and increasing litigation risk.

"The IBC does not provide clear guidance on proportional distribution when assets are inadequate, creating practical challenges and potential disputes."

2.5. Judicial Inconsistency and Delays:

The lack of statutory clarity has led to increased judicial interpretation, resulting in inconsistent rulings by tribunals and courts. This not only causes delays in resolution but also undermines the predictability and efficiency that the IBC aims to promote.

2.6. Discouragement of Credit and Investment:

Investors and financial institutions rely on predictability in insolvency outcomes. The uncertainties around inter se prioritization, particularly for secured creditors with differential charges, discourage both domestic and foreign creditors from extending credit, especially unsecured or subordinated debt.

2.7. Comparative Deficiency:

In comparison to insolvency regimes in jurisdictions such as the United States (under Chapter 7), the United Kingdom (under the Insolvency Act), and Singapore, the IBC lacks a detailed, nuanced approach to claim prioritization, making it less robust in handling complex creditor hierarchies.

3. Literature Review

The Indian Insolvency and Bankruptcy Code (2016) has been extensively discussed in academic and policy-oriented literature since its enactment. Section 53, which prescribes the distribution waterfall during liquidation, has drawn significant scholarly attention for its perceived vagueness and structural rigidity in the prioritization of claims.

1. Shubho Roy et al., *India's Insolvency Code: A Brief Critique*, National Law School Journal, 2018.

2. Ravi Rajan, IBC and the Challenge of Prioritization, Journal of Corporate Law & Policy, 2020.

3.1. Academic Commentary on the Waterfall Mechanism: Several scholars have critiqued the lack of specificity in Section 53 regarding inter se prioritization. *Shubho Roy and* ***others***[1] *(2018)* argue that the Code inadequately distinguishes between sub-classes within broader creditor groups, such as senior versus subordinated debt or differential charges among secured creditors. This leads to disproportionate outcomes and potential disputes during liquidation. *Ravi* ***Rajan***[2] *(2020)* notes that the binary approach adopted by the IBC—secured vs. unsecured, operational vs. financial—does not reflect the complexity of modern debt instruments and contractual arrangements between parties. The resulting uniformity often fails to achieve equity among creditors of similar standing.

3.2. Policy Reports and Institutional Analysis:

Reports by the Insolvency Law Committee (ILC), particularly the 2020 and 2022 iterations, have acknowledged the problem of inadequate clarity in Section 53 but stopped short of recommending specific statutory amendments. The ILC has instead encouraged reliance on judicial precedents and the adjudicatory process, which has led to inconsistency and legal uncertainty. The Vidhi Centre for Legal Policy (2019) has recommended that India incorporate a more layered priority system, akin to the U.S. Bankruptcy Code, which allows for detailed classification and differential treatment within creditor groups. Their research underscores that India's current framework could deter credit flows due to unclear payout expectations.

3.3. Judicial Interpretation and Its Limitations:

Case law analysis reveals a lack of uniformity in interpreting the relative rights of claimants. In *SBI v. Anuj Bajpai* (2019) and *Punjab National Bank (PNB) v. Kiran Shah* (2021), the National Company Law Appellate Tribunal (NCLAT) took diverging positions on the enforceability of inter-creditor agreements and the rights of dissenting financial creditors. Legal scholars like **Anirudh Burman**[3] (Brookings India, 2021) argue that the judiciary's role in filling legislative gaps has led to an ad hoc evolution of the law, further complicating the insolvency landscape and undermining predictability in creditor recoveries.

3.4. International Comparative Literature:

Comparative legal scholarship frequently highlights that India's approach is far less nuanced than jurisdictions with mature insolvency regimes. For example, in the U.S., Chapter 7 allows detailed claim prioritization and respects contractual subordination, creating a more creditor-sensitive system. Studies by UNCITRAL and the World Bank (2020) also suggest that a good insolvency regime should balance certainty with flexibility—something India's rigid Section 53 fails to achieve.

4. Comparative Analysis

A comparative examination of insolvency frameworks across jurisdictions reveals that India's Section 53, while a step forward in codifying creditor priorities, lacks the granularity, adaptability, and contractual respect evident in more developed insolvency regimes. This section assesses key differences with selected jurisdictions—primarily the United States, the United Kingdom, and Singapore—to highlight the structural limitations of India's liquidation waterfall.

4.1. United States of America (USA): Chapter 7 of the U.S. Bankruptcy Code

The U.S. system under Chapter 7, which governs liquidation, provides a more sophisticated approach to creditor prioritization compared to India's IBC:

(a) **Detailed Priority Structure**: Chapter 7 under Section 507 classifies claims into several tiers (e.g., secured creditors, administrative expenses, wage claims, tax claims, unsecured creditors). Secured creditors are paid up to the value of their collateral, with any surplus distributed to priority claimants (e.g., administrative expenses, followed by wage claims). In asset-deficient cases, workmen and employees may receive nothing, unlike India's prioritization of workmen's dues under Section 53(1)(b).

(b) **Respect for Contractual Subordination**: Under Section 510(a), contractual subordination agreements are enforceable, allowing creditors to negotiate claim rankings, including distinctions between first and second charge holders.

> **In *SBI v. Anuj Bajpai* (2019) and *PNB v. Kiran Shah* (2021), the NCLAT took diverging positions on the enforceability of inter-creditor agreements and the rights of dissenting financial creditors.**

(c) **Administrative Expenses**: Expenses such as filing fees, court fees, and trustee fees rank below secured creditors, contrasting with India's prioritization of insolvency resolution costs under Section 53(1)(a).

(d) **Judicial Flexibility**: Courts have discretion to ensure equitable distribution, contrasting with the IBC's rigid waterfall.

Implication for India: Section 53 lacks the depth of classification and statutory enforceability of contractual subordination agreements, such as those distinguishing first and second charge holders. The absence of a mechanism akin to debtor-in-possession

3. Anirudh Burman, *Insolvency in India: The Bottlenecks*, Brookings India Working Paper, 2021.

(DIP) financing, available in Chapter 11, further limits incentives for rescue financing.

4.2. United Kingdom's Insolvency Act, 1986: The UK system provides a clearer and more established creditor hierarchy:

(a) **Statutory Waterfall with Sub-Categories**: The Insolvency Act outlines a hierarchical structure similar to India's but includes a "prescribed part" for unsecured creditors, thereby protecting their interests even in asset-light liquidations.

(b) **Preferential Claims**: Specific categories such as employee wages and certain tax dues are designated as "preferential" and prioritized above floating charge holders.

(c) **Fixed vs. Floating Charge Distinction**: The UK recognizes and separates fixed and floating charges, with differential treatment, which is not clearly defined in the IBC.

(d) **Company Voluntary Arrangements (CVAs)**: These offer flexible, court-sanctioned compromises with creditors, where priority structures can be temporarily overridden with creditor approval.

Implication for India: The IBC does not differentiate between types of security interests with the same precision. Nor does it accommodate mechanisms like CVAs that allow negotiated departures from rigid liquidation rules.

4.3. Singapore's Insolvency, Restructuring and Dissolution Act, 2018: Singapore's modern insolvency regime borrows from both U.S. and UK models but tailors them to ensure creditor confidence and restructuring efficiency.

(a) **Contractual Flexibility**: The Act explicitly permits subordination and allows class-based treatment of claims during schemes of arrangement.

(b) **Super-Priority Financing**: Singapore provides statutory support for rescue financing, similar to the U.S. DIP model.

(c) **Scheme of Arrangement**: Flexible restructuring schemes can override statutory order with majority creditor consent and court approval.

(d) **Creditor Classes and Voting Rights**: The law mandates separation of creditors into classes for voting purposes, a distinction absent in India's liquidation context.

Implication for India: India's IBC provides no express statutory mechanism for prioritizing rescue credit or modifying class treatment during liquidation. Singapore's flexible class-based system contrasts sharply with the rigid uniformity of Section 53.

5. What an Existing Statutory Provision Impacts

While Section 53 of the IBC was a landmark development intended to bring predictability and fairness to the liquidation process, a closer analysis reveals several critical shortcomings—both structural and interpretive—in the way the provision handles the prioritization of claims.

5.1. Rigid and Oversimplified Waterfall: Section 53 offers a linear and rigid hierarchy that treats all creditors within a class equally, disregarding the commercial realities of differently structured financial instruments, such as differential charges (e.g., first vs. second charge holders) among secured creditors. In most liquidation cases, assets are insufficient to settle claims beyond secured creditors and workmen's dues under Section 53(1)(b), halting the waterfall and exacerbating the impact of this rigidity on other creditor classes.

5.2. Absence of Intra-Class Differentiation: The IBC does not distinguish between:

(a) Secured creditors with different types or priorities of collateral (e.g., first vs. second charge holders).

(b) Senior and subordinated unsecured creditors.

(c) Operational creditors with ongoing supply roles versus one-time service providers.

This absence of intra-class prioritization erodes the fairness and commercial logic of distributions, particularly in asset-scarce liquidations where secured creditors and workmen's dues dominate.

> **The UK recognizes and separates fixed and floating charges, with differential treatment, which is not clearly defined in the IBC.**

5.3. Weak Enforcement of Inter-Creditor Agreements: Inter-creditor agreements and subordination agreements, which are critical in modern finance for establishing priorities (e.g., senior vs. subordinated debt or charge rankings in syndicated loans or bond issuances), lack consistent enforcement under the IBC. The absence of statutory backing creates legal ambiguity and increases litigation risk, undermining the commercial intent of such agreements.

5.4. Judicial Activism filling Legislative Gaps: In the absence of statutory clarity, Indian tribunals and courts have interpreted Section 53 on a case-by-case basis. While this has resolved individual disputes, it has led to legal uncertainty, forum shopping, and inconsistent jurisprudence, defeating the IBC's goal of providing a time-bound and predictable resolution framework.

5.5. Disincentive to Lending and Rescue Finance: The lack of clear statutory protection to rescue financiers, such as priority status for post-commencement financing, discourages lenders from supporting distressed entities. Additionally, the equal treatment of secured creditors with differential charges reduces

incentives for senior lending, particularly in complex financing structures, further exacerbating credit constraints in asset-deficient scenarios.

6. Recommendations

To make Section 53 more effective and aligned with international standards, a range of legislative, judicial, and policy reforms are recommended:

6.1. Introduce Statutory Recognition of Contractual Subordination: Amend Section 53 to recognize and enforce **contractual subordination agreements**, such as those in inter-creditor agreements or bond issuances, as is done in the U.S. under Section 510(a) of the Bankruptcy Code. This will honour creditors' intent and promote commercial certainty.

> **The lack of clear statutory protection to rescue financiers, such as priority status for post-commencement financing, discourages lenders from supporting distressed entities.**

6.2. Incorporate Intra-Class Prioritization Mechanisms: Enable further classification within major creditor groups (e.g., first vs. second charge holders, senior vs. subordinated unsecured debt) based on contractual terms and commercial risk. This could be achieved by issuing regulations under Section 240 of the IBC to address the frequent asset insufficiency in liquidations, ensuring fairer distributions for secured creditors.

6.3. Legislate for Super-Priority Rescue Finance: Introduce provisions for priority repayment to rescue financiers, akin to DIP financing in the U.S. or rescue finance in Singapore and the UK, to incentivize turnaround capital, especially in asset-scarce scenarios.

6.4. Clarify the Priority of Government Dues: Explicitly demarcate the non-preferential nature of statutory dues in Section 53 to avoid litigation and judicial confusion, ensuring consistency with the legislative intent to de-prioritize government dues.

6.5. Encourage the Use of Inter-Creditor Agreements: Regulatory bodies such as the RBI and IBBI should promote

> **As India aims to be a robust investment destination, reforming Section 53 is not merely desirable—it is imperative.**

standard inter-creditor frameworks that integrate seamlessly into insolvency proceedings, minimizing disputes during distribution and respecting charge priorities among secured creditors.

6.6. Adopt a Principles-Based Approach

Adopt a principles-based framework similar to UNCITRAL's Legislative Guide on Insolvency Law, providing guidance on distributions based on fairness, commercial reasonableness, and creditor expectations, particularly for secured creditors in asset-deficient cases.

7. Conclusion

Section 53 of the IBC marked an important milestone in streamlining the liquidation process and codifying the order of creditor payments. However, in its current form, the provision suffers from significant conceptual and operational weaknesses. Its rigid categorization, lack of recognition for intra-class distinctions (e.g., differential charges among secured creditors), and failure to enforce inter-creditor and subordination agreements contribute to legal ambiguity and economic inefficiency. In most liquidations, insufficient assets halt the waterfall at secured creditors and workmen's dues, exacerbating these issues.

Through a comparative lens, it is evident that mature insolvency jurisdictions have adopted more nuanced approaches to creditor prioritization, often emphasizing contractual freedom, class-based structuring, and incentives for rescue financing. India's current framework, while evolving, remains overly formalistic and ill-equipped to manage the complexities of modern debt structures. Addressing these deficiencies requires a combination of statutory reform, regulatory clarification, and jurisprudential consistency. Recognizing contractual subordination, introducing intra-class differentiation, and encouraging inter-creditor cooperation are necessary to make the IBC more commercially viable and globally competitive. As India aims to be a robust investment destination, reforming Section 53 is not merely desirable—it is imperative.

Mediation in Insolvency: A New Paradigm for Resolution under the IBC

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Mediation is emerging as a promising mechanism for dispute resolution in India, receiving significant impetus with the enactment of the Mediation Act, 2023. However, the absence of a structured framework for applying mediation to disputes arising during the insolvency process under the Insolvency and Bankruptcy Code (IBC) or prior to the admission of a Corporate Insolvency Resolution Process (CIRP) application remains a major gap. Drawing on the provisions of the Mediation Act, 2023 and the recommendations of the IBBI Expert Committee's January 2024 report, this article explores the potential integration of mediation within India's insolvency framework. It advocates a phased introduction of mediation to address procedural bottlenecks and promote a "rescue culture," enabling to achieve amicable settlements at early stages, thereby reducing judicial dependence and enhancing the overall efficiency of the insolvency process. ***Read on to know more…***

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) establishes a comprehensive legal framework for the resolution and liquidation of companies, firms, and individuals facing insolvency. The primary objective of the IBC is to provide a mechanism for the resolution of insolvent entities, with these insolvency proceedings being overseen by the National Company Law Tribunal (NCLT).

However, NCLT Benches are currently overwhelmed with an increasing number of Corporate Insolvency Resolution Process (CIRP) applications, which include those involving corporate debtors and personal guarantors. Not all these cases, however, require judicial intervention; many could be resolved through out-of-court settlements or alternative dispute resolution mechanisms. While mediation has been occasionally used in the context of the IBC, the Code lacks a clear, dedicated provision for using mediation as a formal dispute resolution tool in insolvency cases.

Mediation is a type of Alternative Dispute Resolution (ADR) where a neutral third party helps the disputing parties resolve their issues. The mediator does not impose a decision but instead facilitates discussions to guide the parties toward a mutually agreeable settlement.

2. Distinction between Arbitration and Mediation

Both arbitration and mediation are ADR processes designed to resolve disputes outside the judicial system. However, they differ significantly in their procedures and outcomes:

(a) Arbitration is a more formal process in which the arbitrator makes a final decision on the dispute, similar to a court ruling. The arbitral award is binding and enforceable.

(b) Mediation, on the other hand, is less formal. In this process, the mediator assists the parties in negotiating a settlement. The mediator does not have the authority to make decisions for the parties, and the outcome is only binding if both parties voluntarily agree to the settlement terms.

Mediation tends to be more cost-effective and time-efficient compared to arbitration, and it is often used when the parties want to preserve their business relationships. By emphasizing cooperation rather than conflict, mediation can be particularly beneficial in situations where ongoing relationships are important.

“Mediation tends to be more cost-effective and time-efficient compared to arbitration, and it is often used when the parties want to preserve their business relationships.”

3. Mediation under the IBC process

The Mediation Act 2023 defines Mediation[1] as:

“Mediation” refers to a process—whether termed as mediation, pre-litigation mediation, online mediation, community mediation, conciliation, or any similar expression—through which parties seek to amicably resolve their dispute with the help of a neutral third party, known as a mediator. The mediator facilitates discussions but lacks the authority to impose a binding resolution on the disputing parties.

Mediation proceedings are distinct for their voluntary nature and lead to a binding outcome when the disputing parties, aided by a neutral third-party mediator, collaborate to reach a mutually agreed-upon settlement.

The Insolvency and Bankruptcy Board of India (IBBI) established an expert committee[2] (Committee) tasked with submitting a report on the use of mediation within the framework of the IBC. The Committee submitted its report titled “Framework for the Use of Mediation in the Insolvency and Bankruptcy Code, 2016” in January 2024. In this report, the Committee explores the role of mediation in insolvency proceedings in jurisdictions such as the USA, Singapore, UK, and China. It also emphasizes the benefits that India could reap by ratifying the Singapore Convention on Mediation, which would offer a more streamlined process for the enforcement of mediated settlement agreements.

The Committee highlighted that mediation has already found a place in the Indian legal system, with the Mediation Act, 2023 strengthening its foundation. However, it also noted that IBC does not currently mandate the use of mediation in its proceedings. The Committee identified two primary models for insolvency mediation in India:

(i) Voluntary and Consensual Reference to Mediation: In this model, courts refer disputes to mediation only with the consent of the parties involved.

(ii) Mandatory Mediation: This model requires parties to attempt mediation before initiating legal proceedings or filing suits.

The Committee concluded that while the Mediation Act, 2023 is a significant step forward for mediation, it cannot be directly applied to IBC proceedings. Instead, a specially tailored mechanism would need to be developed to align with the unique characteristics of the insolvency regime in India. The report mentions that mediation can be used to resolve disputes and facilitate consensus among stakeholders at various stages of CIRP and has also provided recommendations on how mediation can ideally be integrated along every phase of CIRP. It suggests that mediation can serve as an effective dispute resolution mechanism at various stages of the CIRP. The Committee has outlined distinct phases where mediation could be appropriately integrated:

(a) **Pre-Commencement Stage:** At this stage, mediation should be governed by the Mediation Act, 2023, as the framework of the IBC is activated only upon initiation of CIRP. The Committee recommends that the NCLT provide credit ors the option to offer mediation to resolve disputes. Mediation may also be initiated by mutual consent of parties, with specific intimation to the NCLT. A provision should be introduced to ensure that the mediator’s mandate automatically terminates within 30 days of the reference or upon admission of the CIRP by the NCLT, whichever occurs earlier.

“Mediator’s mandate should automatically terminate within 30 days of the reference or upon admission of CIRP by NCLT, whichever is earlier, recommended IBBI Expert Committee.”

1. The Mediation Act 2023. (https://legalaffairs.gov.in/sites/default/files/MediationAct2023.pdf)

2. Report of the expert committee on “Framework for use of Mediation in Insolvency and Bankruptcy Code 2016” dated January 31, 2024. (https://ibbi.gov.in/uploads/ whatsnew/1256aa8a9e2c89bd09d8186dae2e6019.pdf)

(b) Post-Commencement Stage: A cautious approach is required for referring disputes to mediation during the CIRP. The Committee has identified several scenarios where mediation may prove beneficial, such as:

(i) Handover of control of the Corporate Debtor and related information required by the Resolution Professional (RP).

(ii) Disputes among creditors at the level of the Committee of Creditors (CoC).

(iii) Interlocutory Applications.

(iv) Ownership disputes concerning assets; and

(v) Avoidance proceedings.

The Committee emphasized that mediation for such matters should be voluntary, time-bound, and conducted parallel to statutory timelines under the IBC, ensuring it does not impair the rights of third parties or undermine the commercial wisdom of the CoC. Mediated Settlement Agreements (MSAs) reached during CIRP should be confirmed by the NCLT. To ensure transparency and due process, the salient features of the MSA should be disclosed to the public and stakeholders before NCLT's confirmation.

(c) Resolution Plan Stage:

During the resolution plan approval stage, mediation may be used to build consensus among stakeholders, reduce resistance on matters that lend themselves to amicable settlement., and foster cordial relations with existing stakeholders. However, recognizing the complexity arising from the involvement of multiple parties, the Committee recommends that NCLTs offer parties the option to resolve disputes via mediation, with referrals made only upon the consent of all parties, if deemed fit by the NCLT.

(d) Implementation of Resolution Plan Stage

In cases where disputes or issues arise during the implementation of the approved Resolution Plan by the Successful Resolution Applicant (SRA), the Committee recommends that mediation should be pursued before approaching the NCLT. It further suggests that a mediation clause of this nature may be incorporated into the Resolution Plan at the time of its finalization, if deemed appropriate.

(e) Liquidation Stage

The Committee noted that mediation's utility at the liquidation stage is minimal, as most disputes would have been adjudicated by this point. It observed that introducing mediation at this stage may cause further erosion in the enterprise's value and impede the Code's objective of value maximization. Consequently, the Committee recommended that mediation at the liquidation stage should not be introduced during the initial phase of implementation.

4. Mediation in Individual Insolvency

The individual insolvencies seem to be the best cases for mediation. Sections 94 to 120 of the IBC govern the insolvency resolution process of individuals. For the first phase of implementing insolvency mediation, these proceedings are also appropriate cases where voluntary mediation may be considered prior to admission, but after submission of the Resolution Professional's (RP's) report. The Supreme Court of India has held that the RP's report is a facilitative fact collection process, after submission of which the adjudicatory process begins. Once the report has been filed under Section 99 of the IBC, the parties are amenable to settle the matter out of court within the statutory timelines under Part III of the IBC.

> **The IBBI Expert Committee is of the considered view that, at present, it would be appropriate to introduce mediation in the insolvency resolution process for individuals.**

The Committee is of the considered view that, at present, it would be appropriate to introduce mediation in the insolvency resolution process for individuals. In these, the personal element of 'debtor' is involved and helps to bring in individual decision making to the table leading to efficient resolution. Further, there are a low number of other stakeholders involved and the capacity of the individual to take decisions is largely independent, which presents a high likelihood of mediation being successful in cases of individual insolvency.

With respect to the framework for implementing mediation in individual insolvency cases, the Committee recommends that, in the first phase, mediation be made voluntary at both the pre-institution and post-filing stages. Such mediation may be conducted parallel to the procedure established under the Code by a skilled mediator, particularly in matters involving technical issues or resolution of personal estate disputes.

4.1. Recommendations of Committee for Insolvency Mediation Framework under the IBC:

The Committee recommended introduction of mediation as a method to resolve disputes relating to arbitration in a cost effective and timely manner in alignment with objectives of the IBC. It suggests implementing mediation in a phased manner, starting with voluntary mediation, and incorporating feedback and learnings from the process.

The Committee identified and recommended four key factors for designing and using mediation under IBC:

(a) the possibility and effectiveness of mediation at different stages of insolvency resolution,

(b) the impact on the statutory timelines under the Code,

(c) the possibility of parallel mediation and insolvency proceedings, and

(d) the impact on third party rights and due process.

5. Qualifications and Experience of the Mediators

The Mediation Act 2023 defines Mediator as follows:

A "mediator" refers to an individual appointed—either by the parties involved or by a mediation service provider—to conduct the mediation process, and also includes any person registered as a mediator with the Council.

Chapter IV of the Mediation Act 2023 deals with provisions relating to appointment of the Mediators. Qualified and experienced mediators are crucial for effective resolution of insolvency-related disputes, as they help cultivate a rescue mechanism that builds trust among the disputing parties, stakeholders, and judicial authorities. To maintain public confidence in the mediation framework, mediators must uphold strict ethical standards and promote transparency while embodying the "4Cs"—control, certainty, confidentiality, and closure. A robust ADR mechanism must incorporate safeguards against corruption and enforce ethical guidelines to protect existing legal values and principles.

In India, disputes under the IBC often involve technical and complex issues. The Committee recommends expanding the mediator pool to include:

(a) retired judges or members of the NCLT and NCLAT.

(b) senior advocates or legal practitioners with a track record of at least ten (10) successful insolvency cases.

(c) former senior officials from financial regulatory bodies like the IBBI or senior officers from scheduled commercial banks; and

(d) Insolvency Professionals with a minimum of ten (10) years' experience.

The Committee further suggests establishing a Code of Ethics for Mediators, setting forth minimum professional standards that mediators must comply with. This Code of Ethics will regulate mediators' conduct and ensure that their duties are carried out in alignment with high standards of professional ethics.

6. Conclusion

Under the insolvency framework in several foreign jurisdictions, court-driven processes are typically invoked only after all alternative dispute resolution mechanisms—such as mediation, negotiation, and arbitration—have been exhausted. However, this

To address existing bottlenecks and improve the efficacy of the insolvency process, mediation should be introduced in a phased, stage-based manner within the IBC regime.

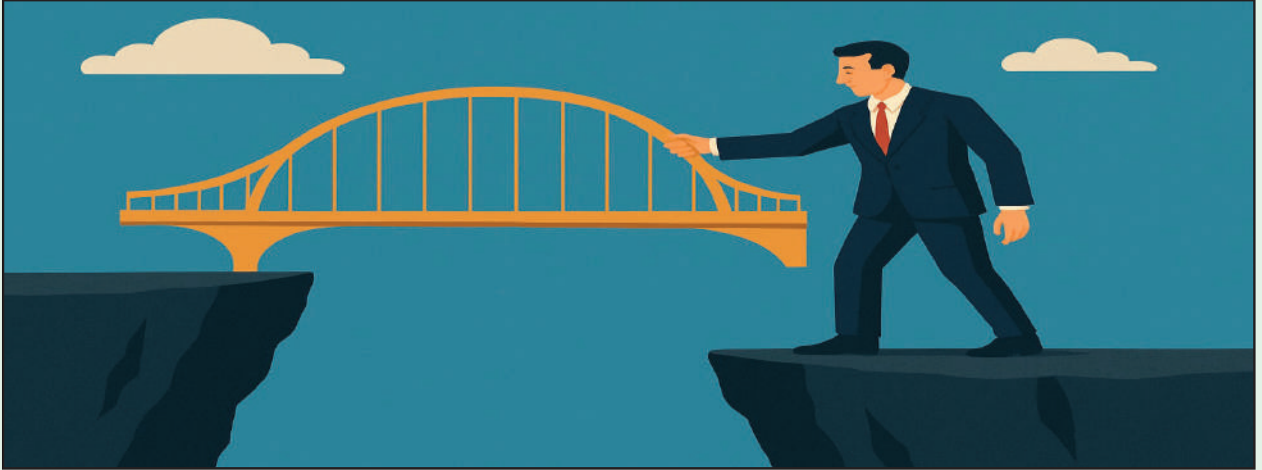
practice is not yet embedded within the IBC regime. Under the current framework of the IBC, there is no structured requirement to explore alternative dispute resolution prior to initiating formal insolvency proceedings.

To address existing bottlenecks and improve the efficacy of the insolvency process, mediation should be introduced in a phased, stage-based manner within the IBC regime. The insolvency mediation framework should not merely be perceived as a supplemental dispute resolution mechanism but rather as a strategic tool for cultivating a new "rescue culture." This culture would provide debtors and creditors with a structured opportunity to amicably resolve disputes at the earliest possible stage—preferably without the need for intervention by the NCLT.

Even after the commencement of insolvency proceedings, mediation should be encouraged at various stages, carefully aligned with the statutory timelines of the IBC. This would allow for disputes to be addressed expeditiously and amicably, reducing the burden on adjudicatory authorities and facilitating quicker resolutions.

This paradigm shift toward a rescue culture would emphasize the empowerment and autonomy of various stakeholders. Presently, much of this control is exercised by the NCLTs. By introducing mediation as a core component of the insolvency framework, the process can evolve toward a more collaborative and efficient system, enhancing outcomes for all stakeholders involved.

Bridging the Gap: Extending Moratorium Protection for Personal Guarantors Under IBC



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The statutory moratorium under Section 101 of the IBC protects personal guarantors for only 180 days or until a repayment plan is approved. However, judicial extensions of the resolution timeline do not extend this protection, leaving guarantors vulnerable to fragmented creditor action and weakening the collective insolvency process. Drawing from recent case laws and comparative frameworks, this article examines the emerging jurisprudence on the moratorium gap, analyzes post-2024 legal developments, and evaluates international practices. It further proposes a model amendment that automatically aligns the moratorium period with any judicial extension of the resolution process, ensuring procedural coherence and creditor parity while maintaining the delicate balance between debtor protection and creditor rights. The author recommends that, pending legislative change, IBBI guidance, NCLT alerts, targeted Section 60(5) injunctions, and vigilant RP oversight can curb immediate harm. ***Read on to know more…***

1. Introduction

The enactment of the Insolvency and Bankruptcy Code (IBC/ the Code) in 2016 marked a significant transformation in India's insolvency landscape, introducing a consolidated framework to resolve financial distress across corporate and individual domains. A notable evolution under this framework is the inclusion of personal guarantors within its scope, governed by Part III of the Code. This inclusion, affirmed by the Supreme Court in the case of *Lalit Kumar Jain v. Union of India & Ors*[1], established that the liability of personal guarantors is independent yet coextensive under the Indian Contract Act, 1872. It further underscored that the insolvency of a Corporate Debtor (CD) does not automatically discharge the guarantor's obligations.

However, this framework is not without its shortcomings. A critical procedural gap emerges when the resolution process for personal guarantors is judicially extended under Rule 11 read with Rule 15 of the NCLT Rules, 2016, but the statutory moratorium under Section 101 does not automatically continue. This disconnect exposes personal guarantors to recovery actions, undermining the very objective of the resolution process.

1. *Lalit Kumar Jain v. Union of India & Ors*

2. Statutory Architecture Timelines

Particulars	Deadline
Admission (u/s 100)	Day 0
RP circulates admission order, RP report & application to creditors	Within 7 days of admission
Public notice: invite claims	Within 7 days of admission
Claims submission by creditors	≤ 21 days from public notice
List of creditors: names, amounts, security details	≤ 30 days from public notice
RP's repayment-plan report (u/s 102)	≤ 21 days from the last date of submission of claims
Creditor meeting: notice 14–28 days; hold within that window	After RP's report
File approved plan (u/s 106/112)	≤ 120 days of admission — **extendable at NCLT's discretion**
Circulate filed plan & docs to guarantor/creditors	Within 3 days of filing
Statutory moratorium (u/s 101)	Day 0 – Day 180 **(fixed)**

3. Sections 101 & 106: the mis-aligned clock

The issue of timing mismatch remains to be addressed, offering scope for aligning the 180-day moratorium with creditor actions more effectively. The Supreme Court, while issuing notice in the case of *Mukund Choudhary v. Union of India & Ors*[2], underscored the risk: "…if the moratorium period comes to an end, one creditor may seek to take a march over the others and that would be contrary to the entire object and purpose of the insolvency regime". This judicial observation highlights the urgency of closing the statutory gap before the courts are flooded with piecemeal enforcement actions.

> **The issue of timing mismatch remains to be addressed, offering scope for aligning the 180-day moratorium with creditor actions more effectively.**

(a) **Section 101: Moratorium for Personal Guarantors:** Section 101 of the IBC governs the imposition of a statutory moratorium specific to personal guarantors. This moratorium is triggered upon the admission of an insolvency application under Section 100 of the IBC and is designed to temporarily halt any legal action or recovery proceedings against the personal guarantor's assets. Its scope is explicitly defined by the statute:

(i) **Commencement:** The moratorium is effective from the date of admission of the insolvency application.

(ii) **Duration:** It extends for a period of 180 days or until the Adjudicating Authority (AA) approves the repayment plan under Section 114, whichever is earlier.

While this provision is intended to protect personal guarantors, the rigid 180-day limitation introduces a structural concern. Once the specified period lapses, the moratorium ceases automatically, leaving the personal guarantor exposed to creditor actions, even if the resolution process is ongoing. This disconnects between the protection period, and the resolution timeline forms the core of the procedural gap.

(b) **Section 106: Submission of Repayment Plan by the Resolution Professional (RP):** Section 106 of the IBC governs the submission of the repayment plan by the RP. It mandates that the RP to submit the repayment plan, along with a report on the plan, to the AA within 21 days from the last date of submission of claims under Section 102. This provision is designed to ensure that the resolution process is conducted efficiently.

However, there is a critical disconnect between the timeline for the moratorium under Section 101 and the timeline for the submission of the repayment plan under Section 106. The repayment plan is expected to be submitted within 120 days of the commencement of the resolution process. Yet, the moratorium under Section 101 is limited to 180 days. This means that:

(i) If the resolution process continues beyond 180 days, the moratorium ceases, leaving the personal guarantor exposed to creditor actions.

(ii) The submission of the repayment plan and its approval process may extend beyond the 180-day moratorium period, creating a period where the guarantor is unprotected.

(iii) There is no statutory mechanism for extending the moratorium in line with the extended resolution process, creating a procedural gap.

2. *Supreme court order dated 14.02.2025 in Mukund Choudhary V. Union of India & Ors, W.P. (C) No. 114/2025 C.A. No. 1576/2025*

4. NCLT/NCLAT authority to extend the process but not the moratorium

While the resolution period for personal guarantor insolvency may be extended under Rule 11 read with Rule 15 of the NCLT Rules, 2016, there is no corresponding provision in the IBC to extend the statutory moratorium under Section 101.

- Rule 11 (Inherent Powers): Empowers the NCLT to pass any order necessary for the ends of justice or to prevent abuse of process.

Even if the AA extends the resolution period under Rule 11, the moratorium under Section 101 does not automatically continue.

- Rule 15 (General Powers): Grants the NCLT procedural flexibility, including the ability to extend the resolution period.

However, these rules cannot override the clear statutory language of Section 101, which rigidly limits the moratorium to 180 days. This means that even if the AA extends the resolution period under Rule 11, the moratorium under Section 101 does not automatically continue. The absence of a statutory link between the extension of the resolution period and the continuation of the moratorium under Section 101 of the IBC gives rise to several practical challenges, each of which directly undermines the protective framework intended for personal guarantors:

(a) **Exposure of Personal Guarantors to Creditor Actions:** Once the moratorium period under Section 101 expires, personal guarantors are left unprotected, even if the resolution process is still underway. Creditors, recognizing this vulnerability, may initiate or resume independent recovery actions, including litigation, asset attachment, and enforcement measures. This exposes the guarantor to a multiplicity of legal proceedings, fragmenting the resolution process.

(b) **Fragmentation of the Resolution Process:** The continuation of the resolution process without the accompanying protection of the moratorium disrupts the collective nature of the insolvency framework. While the repayment plan is still being negotiated or considered, creditors may bypass the resolution process and pursue their individual claims, leading to parallel recovery actions. This not only burdens the personal guarantor but also undermines the integrity of the structured resolution process.

(c) **Undermining the Protective Objective of the Moratorium:** The fundamental purpose of the moratorium under Section 101 is to provide temporary relief to personal guarantors, ensuring that they are insulated from enforcement actions while the resolution process is ongoing. However, the inability to extend the moratorium in line with the extended resolution period directly contradicts this objective. The guarantor is left vulnerable to:

(i) **Asset Seizure:** Creditors may initiate proceedings for attachment or sale of the guarantor's assets, disrupting their financial stability.

(ii) **Multiple Litigations:** Guarantors may become embroiled in multiple legal proceedings across various forums, even as the repayment plan is being negotiated.

(iii) **Enforcement Actions:** Creditors may pursue independent enforcement measures, including garnishment of bank accounts or sale of secured assets.

(d) **Inconsistent Protection Compared to Corporate Insolvency:** Under the IBC, corporate debtors benefit from an automatically extended moratorium under Section 14 whenever the resolution period is extended. This ensures that the CD remains protected throughout the resolution process. In contrast, personal guarantors are denied similar protection, despite being integral to the resolution process. This disparity not only creates an imbalance but also exposes personal guarantors to undue hardship.

When personal guarantors are exposed to creditors' actions despite being part of a formal resolution process, the credibility of the IBC's protective framework is called into question.

(e) **Increased Litigation and Procedural Complexity:** The disconnect between the moratorium period and the resolution timeline leads to increased litigation. Personal guarantors, seeking continued protection, are compelled to approach judicial forums for relief, while creditors seek to enforce their claims. This not only burdens the judicial system but also delays the resolution process.

(f) **Loss of Stakeholder Confidence in the Resolution Process:** The procedural gap undermines the confidence of stakeholders, particularly personal guarantors, in the efficacy of the insolvency framework. When personal guarantors are exposed to creditor actions despite being part of a formal

resolution process, the credibility of the IBC's protective framework is called into question.

5. The Structural Gap: How Can the Resolution Process Continue when the Moratorium Ends?

The core problem is that the moratorium under Section 101 is designed to provide temporary protection to the personal guarantor, but it is not synchronized with the resolution process timeline. This creates a structural gap where:

(i) The resolution process may be extended under Rule 11 and Rule 15 of the NCLT Rules, but the moratorium cannot be extended beyond 180 days.

(ii) The personal guarantor, who is supposed to be protected by the moratorium, is left vulnerable to creditor actions even as the repayment plan is being negotiated.

(iii) Creditors may choose to bypass the resolution process and enforce their claims independently, undermining the collective nature of the resolution.

6. Recent Jurisprudence: From NCLT to the Supreme Court

Date	Forum	Case	Key Holding	Implication
04 Dec 2024	NCLT Delhi	*Anil Kumar v. Mukund Choudhary*	Extended PIRP timeline but declined to extend the Section 101 moratorium, citing the statutory 180day cap.	Demonstrates tribunal's strict textual approach, leaving guarantor unprotected mid-process.
22 Jan 2025	NCLAT	*Anil Kumar v. Mukund* ***Choudhary***[3] (CA (AT) (Ins.) 38/2025)	Upheld NCLT order; ruled that the 180-day moratorium is "mandatory, not directory," and cannot be stretched by judicial interpretation.	Confirms the procedural gap and cements precedent against extension.
14 Feb 2025	Supreme Court	*Mukund Choudhary* V. Union of India & Ors.Writ Petition no (114/2025) (Civil Appeal 1576/2025)	Affirmed validity of Section 101; acknowledged risk once moratorium lapses; granted liberty to seek ad-hoc protection from NCLT but declined blanket extension.	Recognizes the gap, signaling need for legislative or structured judicial remedy.

7. Comparative Jurisdictional Insights: USA, UK, Australia, and Singapore

Jurisdiction	Moratorium Trigger	Extension Mechanism	Lessons for India
United States[4]: Chapter 13	Automatic stay till plan confirmation (11 USC Sec 362, Sec 1327).	Court may extend/shorten on cause; stay ends only on dismissal/closure.	Flexibility tied to process, not fixed days.
United Kingdom[5]: Individual Voluntary Arrangement (IVA)	Interim order (Insolvency Act 1986 Sec 252) leads to moratorium until creditors' meeting; if IVA approved, moratorium continues.	Court retains discretion to re-impose stay.	Demonstrates link between process phases and protection period.
Australia[6]: Bankruptcy Act 1966, Part IX	Debt agreement proposal triggers stay until acceptance/rejection; if accepted, stay subsists through agreement.	Administrator may apply for further relief.	Shows statutory synchronization.
Singapore[7]: Insolvency, Restructuring and Dissolution Act 2018	Court may grant moratorium extensions via bespoke orders.	Model for judicially managed rolling stays.	

Key takeaway: Mature systems tether the stay to milestones, ensuring seamless creditor standstill.

3. *NCLAT Order dated 22.01.2025 in Anil Kumar v. Mukund Choudhary, Company Appeal (AT) (Insolvency) No. 38 of 2025*
4. *United States Code, Title 11 (Bankruptcy), Sec 362, 1327 (2024 ed.).*
5. *Insolvency Act 1986 (UK), Sec 252.*
6. *Bankruptcy Act 1966 (Cth) pt IX, ss 185C, 185H (Australia).*
7. *Insolvency, Restructuring and Dissolution Act 2018 (Singapore), ss 64-66.*

8. Proposed Solutions: Harmonizing the Moratorium with the Resolution Period

Section 101 freezes creditors' action against a personal guarantor for a fixed 180-day period. Yet, repayment-plan negotiations often run longer because the AA may, in its case-management discretion, grant the RP additional time to finalize the Plan. When the moratorium lapses first, creditors can restart enforcement in a piecemeal fashion, splintering the collective process and breaking parity with corporate debtors, whose stay under Section 14 lasts for the entire resolution period. Because the moratorium's lifespan is set by statute, neither the AA nor the courts can lawfully enlarge it without fresh legislative authority.

> **A targeted amendment to Section 101 that automatically links the moratorium to any court-approved extension of the repayment-plan timeline is the only durable cure.**

(a) Statutory Solution — Pros and Cons of Automatic Extension Clause: A targeted amendment to Section 101 that automatically links the moratorium to any court-approved extension of the repayment-plan timeline is the only durable cure.

(i) Pros: Such an amendment would:

- eliminate the need for repetitive moratorium applications, reducing both litigation burden and docket congestion.
- place personal guarantors on the same footing as corporate debtors, thereby harmonizing expectations across the insolvency ecosystem; and
- create predictable timeframes that foster stakeholder confidence and encourage voluntary settlements.

(ii) **Cons and Safeguards:** Creditors worry an open-ended stay could indefinitely delay recovery, and guarantors might misuse extended protection to avoid cooperation. These risks can be addressed by requiring the RP to certify the guarantor's cooperation and to file regular progress reports with every extension request. With such transparency mechanisms in place, efficiency and fairness gains clearly outweigh residual downsides.

(b) Drafting Recommendation:

"Section 101(2A) — Notwithstanding anything contained in sub-section (2), where the Adjudicating Authority—whether in exercise of its powers under Rule 15 of the National Company Law Tribunal Rules, 2016 or otherwise—extends the time for completion of the repayment plan, the moratorium declared under that sub-section shall, ipso facto, stand extended for a period co-terminous with such extended time and no separate order shall be required.

Section 101(2A). — Notwithstanding subsection (2), where the Adjudicating Authority, whether under Rule 15 of the National Company Law Tribunal Rules, 2016 or otherwise, grants an extension of time for completion of the repayment plan, the moratorium under this section shall automatically stand extended for the same period. No separate order of extension shall be required.

(c) Interim Relief within Statutory Bounds:

Although benches cannot lengthen the moratorium, they can, under Section 60(5) and Rule 11, issue narrowly-tailored injunctions where specific enforcement would clearly torpedo a still-viable repayment plan. Such orders respect the statutory cap, remain reviewable, and buy the process breathing space until Parliament acts.

(d) Best-Practice Guidance for Resolution Professionals: From day one, RPs should calendar the 180-day deadline, notify creditors well in advance, and, where feasible, secure voluntary standstill agreements. Extension motions should: (i) seek additional plan time; (ii) include a prayer acknowledging moratorium continuity once the law is amended; and (iii) attach evidence of creditor engagement, guarantor cooperation, and concrete progress milestones. Continuous monitoring of creditor filings (SARFAESI, DRT, civil suits) and swift interlocutory applications against rogue enforcement remain essential.

(e) Legislative Versus Administrative Pathways: A statutory amendment delivers certainty and permanence but takes parliamentary time. Interim administrative measures—IBBI guidance, registry alerts, and focused injunctions—offer immediate, lawful stopgaps without infringing the separation of powers. Combined with diligent RP practice, they can keep the process intact until the permanent fix is enacted.

> Until Parliament enacts the change, IBBI guidance, NCLT alerts, targeted Section 60(5) injunctions, and vigilant RP oversight can curb immediate harm.

(f) **Integrative Conclusion:** Only Parliament can legally fuse the moratorium to an extended repayment-plan period. A succinct Section 101(2A) achieves that objective while preserving transparency safeguards through the RP progress reporting. Until the amendment passes, carefully crafted injunctions and regulatory guidance can maintain functional alignment between the resolution timeline and creditor standstill, protecting value and ensuring fair treatment for all stakeholders.

9. Conclusion

The Section 101 moratorium is the anchor that shields personal guarantors while a repayment plan is being negotiated. Yet its fixed 180-day limit, set against extension-prone resolution timelines, leaves guarantors vulnerable to fragmented creditor enforcement and undermines the collective character of the process. The only durable solution is a targeted statutory amendment that automatically aligns the moratorium with any court-sanctioned extension of the repayment-plan period. Until Parliament enacts that change, interim administrative measures—IBBI guidance, NCLT registry alerts, and focused injunctions under Section 60(5)—together with diligent Resolution-Professional oversight, can mitigate immediate harm. Closing this structural gap will restore doctrinal coherence, protect guarantor rights, and reinforce market confidence in the Insolvency and Bankruptcy Code.

Resolution of D.K. Realty (India) Private Limited: A Triumph of the IBC Framework for a Slum Rehabilitation Authority (SRA) Project

This resolution is unique as it was initiated and steered by homebuyers through their duly registered association, which not only acted as petitioning financial creditors but also submitted and implemented the Resolution Plan.

D. K. Realty, a Mumbai-based real estate company, had envisioned a large-scale residential project named "LIVSMART" on 18,564 square meters of land in Kurla (West), Mumbai. Construction came to a halt in 2017, prompting the homebuyers to file a CIRP application, which was admitted by the NCLT on November 15, 2022. AAA Insolvency Professionals LLP, acting as RP, undertook the challenging task of reviving the project amid significant hurdles, including the absence of directors, employees, and key records, and alleged fund diversion linked to the DHFL investigation.

The LIVSMART Welfare Association, in collaboration with a reputed developer, submitted a Resolution Plan amounting to ₹161 crore, ensuring the delivery of completed homes to more than 600 allottees within a defined timeframe, without any additional financial burden. The CoC approved the plan with a 100% voting share. The case exemplifies the IBC's effectiveness in resolving distressed real estate projects while balancing the interests of all stakeholders and restoring confidence among homebuyers.

In the present case study, Mr. Anil Goel and Mr. Ankit Goel, who represented the RP on different times, have highlighted the challenges faced during the resolution of DK Reality and the measures he adopted for successful resolution. ***Read on to know more…***

Anil Goel & Ankit Goel

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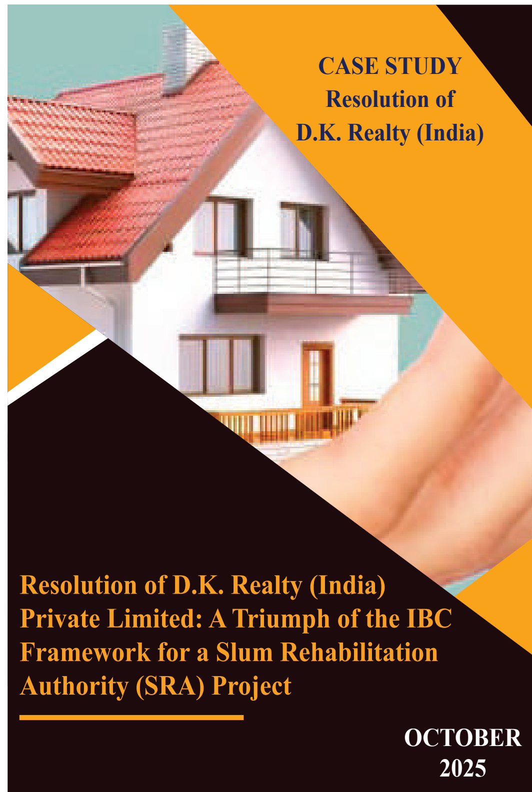

1. Introduction

D.K. Realty (India) Private Limited, also known as Dheeraj Realty (hereinafter referred to as "DK Realty" or "the Corporate Debtor"), is a Mumbai-based real estate development company incorporated in 2012. The Corporate Debtor (CD) envisioned a large-scale residential project named "LIVSMART," proposed to be developed on a strategically located land parcel measuring 18,564 square meters in Kurla (West), Mumbai. The development plan encompassed 28 residential towers, comprising 1,694 housing units and 9 commercial establishments, positioning the project as a major urban housing initiative.

The site previously housed the manufacturing facility of Premier Automobiles Limited, renowned for producing the iconic Premier Padmini. The Premier Padmini, a four-seat saloon manufactured in India from 1964 to 2001, became a cultural symbol—particularly in Mumbai, where it dominated the taxi fleet for decades. This industrial land was later approved for redevelopment into a residential complex under the Slum Rehabilitation Authority (SRA) scheme, with an obligation to construct thousands of flats, Balwadis, and society offices for the rehabilitation of families living in Mumbai's slums.

DK Realty acquired development rights for the said land from Housing Development and Infrastructure Limited (HDIL) for a consideration of approximately ₹656.07 crore. Further, to fund the construction and project execution, DK Realty secured an additional financial assistance amounting to nearly ₹300 crore from Dewan Housing Finance Corporation Limited (DHFL). However, the execution of the LIVSMART project came to a standstill around 2017, primarily due to allegations of financial mismanagement, diversion of project funds, and serious operational inefficiencies. Consequently, the project remained incomplete for several years, leaving hundreds of homebuyers aggrieved and in a state of prolonged uncertainty.

The project, which was once considered a landmark affordable housing development in central Mumbai, had nearly 7.43 lakh sq. ft. of saleable carpet area and over 11.5 lakh sq. ft. of super built-up area. Despite a high level of booking and advances collected from allottees, progress on site was abandoned for years. Financial linkages between DK Realty and DHFL, which was under separate investigation for financial irregularities, further complicated fund tracing and title ownership issues. HDIL, as the original holder of the development rights, had also been entangled in legal and enforcement proceedings and admitted for CIRP Application on August 20, 2019, thereby affecting project legitimacy.

Faced with an indefinite delay and lack of redress, a group of homebuyers invoked the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). Pursuant to their application, the Corporate Insolvency Resolution Process (CIRP) was admitted against DK Realty on November 15, 2022, by the National Company Law Tribunal (NCLT), Mumbai Bench.

"Faced with an indefinite delay and lack of redress, a group of homebuyers invoked the provisions of Section 7 of the IBC."

This case marks a watershed moment where homebuyers, acting collectively through a welfare association, successfully navigated the IBC process to protect their investments, rebuild a long-stalled project, and re-instill public trust in the insolvency resolution mechanism for the real estate sector.

2. Background of the Company and Project

Incorporated on August 25, 2012, DK Realty was established with the purpose of developing residential real estate in Mumbai. The company's flagship project, LIVSMART, aimed to provide high-quality housing with advanced amenities. The land for this project, located at Premier Road, Club Complex, Kurla West, Mumbai, was originally developed by HDIL as an SRA project, which transferred a part of development rights to DK Realty under an agreement dated December 11, 2015. The agreement granted DK Realty:

(a) Floor Space Index (FSI) of 85,000 square meters, giving exclusive rights to develop, construct, and sell buildings on the plot.

(b) Three basements for parking and utility spaces, along with provisions for constructing 14 residential floors per building.

(c) Exclusive rights to sell, lease, or transfer units, ensuring the company's financial returns from the project.

The project promised modern urban living spaces with strategic location advantages, aiming to cater to middle-class families. However, the project's financial and operational challenges derailed its progress.

3. Collapse of the Project

Despite its promising inception, construction of the LIVSMART project stalled due to severe financial mismanagement, alleged fund diversion, and a lack of operational oversight. The following issues contributed to the project's downfall:

(a) Financial Irregularities:

i. DK Realty borrowed ₹968 crore from DHFL for acquiring development rights from HDIL and for construction but failed to channel the funds effectively towards construction.

ii. Investigations revealed significant fund diversion to associated entities, further depleting resources.

(b) Operational Negligence:

i. The absence of robust project management practices resulted in delays and cost overruns.

ii. Construction progress was minimal despite substantial funds being disbursed.

(c) External Challenges:

i. HDIL, which had received development rights from Slum Rehabilitation Authority, entered insolvency proceedings, adding complexities to DK Realty's financial and legal position.

ii. The project faced regulatory delays due to lapses in approvals and compliance with statutory requirements.

(d) Stakeholder Impact:

Over 600 homebuyers, who booked flats and made substantial payments to DK Realty, were left in distress, with no clarity on project completion timelines or refund mechanisms.

Creditors faced substantial losses, with no immediate prospects for recovery.

> **By the time CIRP commenced on November 15, 2022, DK Realty's assets had deteriorated, and all operations, including construction, had remained stalled since 2017.**

By the time the CIRP was initiated on November 15, 2022, DK Realty's assets had significantly deteriorated, and the company had ceased all operations, with construction activities remaining stalled since 2017. On commencement of CIRP, the NCLT appointed AAA Insolvency Professionals LLP, an Insolvency Professional Entity (IPE) registered with the Insolvency and Bankruptcy Board of India (IBBI) as an Insolvency Professional (IP), to act as the Interim Resolution Professional (IRP), that was subsequently confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC). AAA Insolvency Professionals LLP (hereinafter, the RP) was represented by Mr. Anil Goel and Mr. Ankit Goel, both registered as Insolvency Professionals (IPs) with the IBBI, at different stages of the process.

4. Challenges faced during the CIRP

The CIRP of D. K. Realty was one of the most complex real estate resolutions under the IBC, owing to the scale of the project, absence of internal management and regulatory entanglements. Upon commencement of the CIRP, the Resolution Professional (RP) was confronted with an abandoned project site, entirely devoid of physical staff or representatives of the corporate management. The directors and key managerial personnel of the CD were found to be absconding, and multiple attempts to establish communication—including the issuance of statutory notices, letters, and electronic correspondences—proved futile, as no responses were received.

Furthermore, no employee was available to assist in locating the statutory, technical, or financial records. All physical and digital records at the registered office were either absent or abandoned. Even critical ledgers and agreements, including those with homebuyers and vendors, were missing. The RP was forced to rely entirely on third-party sources like statutory auditors, RERA (Real Estate Regulatory Authority) filings, and information obtained from the Central Bureau of Investigation (CBI), which had seized certain financial data in connection with the DHFL fund diversion case.

Due to the complete breakdown of institutional infrastructure, RP had to recreate the corporate memory from scratch—contacting former vendors, tracking public databases, and even visiting the project site to collect firsthand intelligence. The site itself was unguarded, and illegal occupants and hawkers had entered the partially constructed premises. With the CoC's approval, immediately arranged for round-the-clock security deployment to safeguard the remaining physical assets.

Amidst these hurdles, the RP had to verify over 500 homebuyer claims filed via NeSL and direct submissions, reconcile discrepancies without official books, and liaise with public authorities to obtain compliance records such as GST, PAN, bank account details, and Tally data from 2015–2019. Despite multiple setbacks, the CIRP was conducted in a litigation-free, efficient, and transparent manner, showcasing the capabilities of a professionally driven resolution process.

The CIRP for DK Realty presented numerous challenges, including:

(a) Absence of Management and Records:

i. The directors, shareholders, and employees were untraceable, leaving no institutional memory to assist in the resolution process.

ii. Essential records, including financial statements and customer data, were unavailable at the registered office.

(b) Allegations of Fund Diversion:

i. Investigations linked to DHFL revealed that a substantial portion of the borrowed funds had been diverted to related parties, raising questions of fraud.

ii. Records confiscated by the CBI further complicated access to critical information.

> **Investigations linked to DHFL revealed that a substantial portion of the borrowed funds had been diverted to related parties, raising questions of fraud.**

(c) Regulatory and Legal Barriers:

i. Approvals and licenses from RERA and other regulatory bodies were either expired or missing, delaying the restart of construction.

ii. Legal disputes over land title and compliance obligations of SRA added to the complexities. The land was conveyed

in the name of SRA and only FSI was sold to the CD. Therefore, in the case of liquidation, the CD would not have any asset.

(d) Stakeholder Management:

i. The CoC, comprising financial creditors, and homebuyers, required consistent engagement and updates to maintain trust.

ii. Over 500 homebuyers, represented by an authorized representative, demanded immediate clarity on project delivery timelines.

(e) Technical and Financial Assessments:

i. Structural assessments identified deficiencies in the partially completed buildings, necessitating additional investments for rectification, structural stability and retro-fitting measures such as carbon fiber wrapping for beam-column junctions, epoxy injection grouting to address concrete cracks, steel jacketing for columns with reduced load-bearing capacity, and water-proofing of basement and podium areas.

ii. Financial viability was difficult to establish without complete records, requiring extensive reconstruction of accounts.

(f) NCLT Order Dated June 21, 2023: Re-publication of Form G in the CIRP of DK Realty: On June 21, 2023, the NCLT, Mumbai Bench, passed a significant order in the ongoing CIRP of D.K. Realty. Recognizing the complexities and procedural impediments in the earlier stages of the resolution process, the Tribunal permitted to re-publish Form G for the third time, thereby inviting fresh Expressions of Interest (EOIs) from prospective resolution applicants (PRAs).

The NCLT also directed the Government of Maharashtra and its concerned authorities, such as the Slum Rehabilitation Authority (SRA) and RERA, to expedite the provision of certified copies of approvals, licenses, and NOCs. These actions removed significant bottlenecks in the resolution process and enabled the RP to enhance the project's feasibility for PRAs.

This order underscored the judiciary's proactive role in facilitating the resolution process, ensuring procedural compliance, and safeguarding stakeholder interests.

5. Role of the RP

Despite overwhelming challenges, the RP undertook several critical initiatives to drive the resolution process:

(a) Data Reconstruction:

i. Collaborated with statutory auditors, chartered accountants, and consultants to retrieve scattered financial records.

ii. Accessed public platforms such as the Ministry of Corporate Affairs (MCA), RERA, and income tax portals to gather additional information.

iii. Retrieved documents from the CBI, which had seized records during investigations into DHFL.

(b) Recovery of Funds Held in HDFC Bank:

i. Discovered and recovered funds held in a dormant HDFC Bank account, bolstering liquidity for CIRP costs.

ii. Secured court orders to unlock the funds in HDFC Bank account ensuring the funds were transferred into the CIRP account.

(c) Engagement with Authorities:

i. Filed applications with the NCLT to secure co-operation from regulatory bodies, including RERA and SRA.

ii. Worked closely with statutory authorities to understand the process to regularize pending approvals and licenses for guiding the prospective resolution applicants.

> **The RP engaged homebuyers through their authorized representative and observers taken from the Association of Allottees to address grievances and align expectations.**

(d) Stakeholder Communication:

i. Conducted regular CoC meetings to ensure transparency and seek necessary approvals.

ii. Engaged homebuyers through their authorized representative and observers taken from the Association of Allottees to address grievances and align expectations.

(e) Marketing the Real Estate Project:

i. Re-issued Form G for EOIs multiple times, resulting in active interest from PRAs.

ii. Engaged technical consultants to ensure potential applicants had complete clarity about project viability and regulatory compliance.

6. Resolution Plan

In the first two releases of Form G, no market interest was received due to lack of adequate information. The order of NCLT directing all Real Estate Authorities of Maharashtra to provide the copies of all sanctions, licenses and approvals kick started the resolution. The RP then engaged a consultant to obtain all the copies and documents which were required by the prospective resolution applicants for their due diligence. In total eight investors and builders expressed interest and submitted EOI along with ₹1 Crore of EMD each. The PRAs included all known builders of Maharashtra and from other cities. Due diligence was done by all in detail, but the fear of pending SRA obligation kept them away and only two resolution plans were received, out of which one was from Association of Allottees. The resolution plan submitted by LIVSMART Welfare Association, representing the homebuyers, was ultimately approved by the CoC, consisting predominantly of secured financial creditors and homebuyers, approved the Plan with a 100% voting share.

The Key highlights of the approved resolution plan are as follows:

(a) Financial Proposal:

i. Total Plan value was ₹161 Crores, comprising ₹160 Crores towards financial creditors out of which ₹25 crore as upfront payment to creditors and ₹1 Crore towards operational creditors.

ii. Allocation of funds for completing the remaining construction and Admitted Allottees being offered duly completed units/ flats booked by them along with the amenities and internal specifications without any additional cost despite escalation in the construction cost since last 7 years.

iii. A builder /Contractor was also engaged who agreed to invest funds also as per requirement and all the financial projections were made and approved by CoC with detailed due diligence.

(b) Implementation of Framework:

i. Collaboration with reputed contractor to ensure quality construction within stipulated timelines.

ii. Milestone-based tracking systems to monitor progress.

iii. The implementation has started by way of payment of first tranche of ₹25 Crores to secured financial creditors, full payment of CIRP Cost, full payment of operational creditors and commencement of construction at project site.

(c) Relief for Homebuyers:

i. Clear roadmaps for the delivery of units to admitted allottees.

ii. Mechanisms for addressing grievances and ensuring compliance with RERA guidelines.

(d) Regulatory Compliance:

i. Renewal of licenses and clearances was awaited from various real estate authorities, but work had already started at the site under Section 31(4) of the Insolvency and Bankruptcy Code, 2016.

7. Impact of the Resolution

The successful resolution of DK Realty had significant positive outcomes:

(a) Revitalization of the Project: Construction resumed under strict monitoring, restoring confidence among stakeholders.

(b) Relief for Stakeholders:

i. Over 600 homebuyers now have a clear timeline for project completion (the claimants increased later and condonation for delayed submission of claims by them was obtained under 13(1C)(b)(ii) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

ii. Creditors received partial recovery of dues, mitigating financial losses.

(c) Precedent for Future Cases: The case demonstrates the IBC's potential to resolve distressed real estate projects while balancing stakeholder interests.

> **"Over 600 homebuyers now have a clear timeline for project completion, while creditors have received partial recovery of their dues, thereby mitigating financial losses."**

8. Lessons Learned

The revival of DK Realty provides several key insights:

(a) Effective Role of the CoC in Driving Resolution: The CoC, comprising primarily of secured financial creditors and homebuyers in the form of a financial creditors' class, demonstrated the power of collective decision-making. Transparent discussions and timely voting on key agenda items ensured the CIRP moved forward without undue delay, making the resolution efficient and representative of stakeholder interests.

(b) Significance of Class Representation and Observers: Appointment of an Authorized Representative (AR)

under Section 21(6A) ensured that the large class of homebuyers was effectively heard and represented in the CoC. Additionally, the voluntary nomination of observers from among the allottees promoted transparency, communication, and trust in the process.

(c) **Transparency in Claim Collation and Verification:** With no co-operation from the promoters and no books of account available, the RP adopted a transparent and participative approach by relying on claimants' documents, NeSL filings, RERA records, and third-party audit reports. This demonstrates how the CIRP can proceed even amidst significant data gaps if managed diligently.

(d) **Community-Driven Resolution through Welfare Association:** The LIV Smart Welfare Association, as a resolution applicant, embodied a unique model where aggrieved allottees took charge of their project's revival. Their proactive participation and submission of a compliant resolution plan were instrumental in ensuring that homebuyers' interests were protected while achieving commercial feasibility.

(e) **CoC's Commercial Wisdom and Judicial Endorsement:** The Resolution Plan received overwhelming approval from the CoC, reaffirming its balanced approach toward financial recovery and project revival. The NCLT's endorsement of the plan reaffirmed the judicial deference to the commercial wisdom of creditors under Section 30(4) of IBC.

(f) **Legal Strategy and Regulatory Coordination during CIRP:** The RP's correspondence with regulators like RERA, SRA, GST Department, and ROC during the CIRP ensured that legal hurdles and legacy liabilities were addressed or accounted for in the Resolution Plan. This demonstrates that proactive legal engagement during CIRP can help reduce post-resolution litigation risks.

(g) **Judicial Support in Absentee Promoter Cases:** The ex-parte admission of the CIRP due to non-appearance of promoters, and the Tribunal's swift approval of the Resolution Plan, reinforce the judiciary's supportive role in enabling resolution where promoters are defunct or non-cooperative.

9. Lessons for Revival of stalled Real Estate Projects

The success of this case, despite near-total promoter abdication and asset-level complexity, provides a practical roadmap for reviving similarly placed real estate projects. It emphasizes the importance of stakeholder unity, committed RP, and an empowered CoC.

(a) **Real Estate CIRP as a Tool for Consumer Justice**: The outcome of this CIRP affirms that the IBC can be used not just for recovery but also for consumer redressal. The allottees, who were both victims and financial creditors, found a resolution platform that was structured, time-bound, and legally enforceable.

(b) **Lessons for Policymakers and Sectoral Reform:** The case illustrates how the legal framework under the IBC, when combined with judicial efficiency and community action, can address systemic real estate distress. It paves the way for further policy support for homebuyer-led insolvency proceedings and faster approvals of consumer-backed plans.

10. Conclusion

The resolution of D.K. Realty stands as a landmark achievement in India's insolvency regime. Through the dedicated efforts of the RP and the collaborative spirit of stakeholders, a stalled project was revived, delivering justice to homebuyers and creditors alike. This case exemplifies IBC's role as a powerful tool for resolving distressed assets and restoring faith in the real estate sector.

Moreover, this case underscores the effectiveness of the IBC mechanism even in the most challenging circumstances—where records were lost, management had abdicated responsibility, and the project was deeply mired in legal and regulatory entanglements. The need to reconstruct records from third-party sources, secure cooperation from investigative agencies, and coordinate with multiple authorities such as RERA, SRA, and NCLT underscores the resilience and resourcefulness required for effective insolvency resolution in the modern context.

The successful culmination of the CIRP, achieved without major litigation and with significant stakeholder consensus, demonstrates the strength of transparent processes, proactive engagement, and professional competence. The inclusion of homebuyers through their association, and their emergence as the Successful Resolution Applicant, is also a notable shift toward inclusive resolution models under the IBC.

From a broader perspective, the revival of the LIVSMART project offers renewed hope to countless homebuyers affected by stalled housing projects across the country. It provides a replicable template for other real estate insolvency cases, where timely regulatory support, stakeholder co-operation, and judicial supervision can lead to successful outcomes.

In essence, the D.K. Realty resolution not only brings closure to a long-pending dispute but also affirms the judiciary's and regulator's commitment to safeguarding consumer interest and promoting economic rehabilitation through structured insolvency processes. It is a true testament to what the IBC can accomplish when leveraged effectively.

Legal Framework

CIRCULARS

IBBI issued "Standard Undertaking" for Restitution of Assets attached Under PMLA during Insolvency Proceedings

The Insolvency and Bankruptcy Board of India (IBBI) has issued a circular addressing cases where the assets of a corporate debtor are attached by the Enforcement Directorate (ED) under the Prevention of Money Laundering Act, 2002 (PMLA). To enhance value realization, Insolvency Professionals (IPs) have been advised to seek restitution of such assets by filing applications before the Special Court under Sections 8(7) or 8(8) of the PMLA, accompanied by a standard undertaking formulated in consultation with the ED.

"It is hereby advised that in cases where assets of the corporate debtor are attached by the ED under the provisions under PMLA, the Insolvency Professional may file an application before the Special Court under sections 8(7) or 8(8) of the PMLA for restitution of such assets," said IBBI in a Circular dated November 04, 2025. "Further, with a view to facilitate the expeditious disposal of such applications by the Special Courts, the IBBI, in consultation with the ED, has formulated a standard undertaking to be furnished by the Insolvency Professional along with the application for restitution of assets. The said undertaking is annexed hereto with this Circular," added the IBBI. As per the Annexure, the IPs will be required to submit the undertakings regarding - Usage of Restituted Assets, Periodic Reporting, Disclosures in the Insolvency Process, Cooperation with ED, and Document Production. The obligations under this Undertaking shall remain effective until the approval of the resolution plan / dissolution order (as applicable) by the Adjudicating Authority.

Source: *Circular No. IBBI/CIRP/87/2025, dated November 04, 2025.*

FACILITATION

IBBI amends CPE Guidelines

As per the amendments to the IBBI (Continuing Professional Education for Insolvency Professionals) Guidelines, an IP shall undertake a minimum of 30 credit hours of CPE each calendar year. Provided that an IP is not required to undertake any CPE in the calendar year in which he is registered. Illustration: An IP registered as on 30th June 2025 shall undertake CPE for at least 30 credit hours in a calendar year, namely, 2026, 2027, 2028, 2029 and so on. Furthermore, an IP shall undertake CPE even when his registration is suspended, or he has ceased to have an authorisation for assignment, said IBBI.

DISCUSSION PAPERS

IBBI Seeks Feedback on Revising Assignment Caps for IPs

The Insolvency and Bankruptcy Board of India (IBBI) has issued a Discussion Paper dated August 12, 2025, seeking feedback on stakeholders to review the limit on number of assignments being handled by Insolvency Professionals (IPs).

"It is proposed that the existing assignment ceiling of 10 assignments in the capacity of RP shall also be extended to include assignments undertaken in the capacity of IRP and Liquidator of which no more than 03 shall involve admitted claims exceeding ₹1000 crore," said IBBI in the Discussion Paper. The proposed amendments to IP Regulations, 2016 also prohibits IPs who are currently handling more than 10 assignments as IRP, RP, or Liquidator from accepting any new assignments until their active cases fall below the limit of 10. In July 2021, IBBI introduced a limit of 10 assignments for RPs.

Source: *Discussion paper on Review of Limit on Number of Assignments being handled by IPs dated August 12, 2025.*

IBBI proposes to delete Clause 6 from the Code of Conduct for IPs to avoid duplicity

Inviting comments and suggestions for retaining Clause 6 from the Code of Conduct for Insolvency Professionals (IPs) in a Discussion Paper dated August 12, 2025, the IBBI said that the proposal to delete Clause 6 stems from the argument that its provisions are already comprehensively captured in the IBBI (Liquidation Process) Regulations, 2016, and the IBBI (Bankruptcy Process for Personal Guarantors) Regulations, 2019. The problem, therefore, is the perceived duplication of the prohibition. Comments may be submitted electronically by September 01, 2025. After considering the comments, the IBBI

proposes to make regulations under section 196 of the IBC.

Source: *Discussion paper on deletion of Clause 6 from the Code of Conduct for Insolvency Professionals, dated August 12, 2025.*

IBBI proposes making it mandatory to record the CoC's deliberations on Section 29A eligibility of the Resolution Applicants

In a Discussion Paper dated August 06, 2025, the Insolvency and Bankruptcy Board of India (IBBI) has proposed several measures to enhance integrity of the Corporate Insolvency Resolution Process (CIRP) including recording of CoC's deliberation on Resolution Applicants (RA's) eligibility under section 29A, enhanced disclosures in Resolution Plans regarding section 32A, and invitation and submission of Resolution Plan (s) through electronic platform.

According to the IBBI, the recording of the CoC's deliberation on Section 29A eligibility of the resolution applicant by the Resolution Professional (RP) can strengthen the process in several respects. "Firstly, it will encourage CoC members to engage more deeply in the due diligence process, including seeking additional information or clarification from the RP or the resolution applicant, where necessary. Secondly, such a framework would reduce potential litigation on eligibility-related issues under section 29A. Moreover, an explicit record of the CoC's deliberation would enhance transparency. Lastly, deliberation with the CoC would further uphold the legislative intent of the Code by promoting fair and lawful participation in the resolution process, consistent with the spirit of law under section 29A.," said IBBI in the Discussion Paper. Furthermore, it is proposed to amend the CIRP Regulations to empower the IBBI to notify an online portal for activities, in relation to invitation and submission of resolution plans.

Source: *Discussion Paper – Measures to enhance integrity of the Corporate Insolvency Resolution Process (CIRP) dated August 06, 2025.*

Indian Institute of Insolvency Professionals of ICAI
(Company formed by ICAI as per Section 8 of the Companies Act 2013)
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IBC Case Laws

Supreme Court of India

Sincere Securities Pvt. Ltd. & Ors. vs. Chandrakant Khemka & Ors. Civil Appeal No. 12812 of 2024, Date of Supreme Court Judgment: 05 August 2025.

Facts of the Case

The present Civil Appeal No. 12812 of 2024, u/s 62 of the Insolvency and Bankruptcy Code, 2016 (IBC), challenges the order dated 12.11.2024 of the National Company Law Appellate Tribunal (NCLAT), which allowed Company Appeal (AT) (Insolvency) No. 1064 of 2023 filed by Chandrakant Khemka (hereinafter referred as 'Respondent No. 1') and set aside the order dated 07.08.2023 of the National Company Law Tribunal (NCLT), Kolkata Bench in CP(IB) No. 1377/KB/2020, whereby possession of the disputed property was directed to be delivered to the appellants.

On 13.02.2019, Nandini Impex Pvt. Ltd. (later a Corporate Debtor under IBC), represented by Respondent No. 1, executed a Memorandum of Understanding (MoU) with Noble Dealcom Pvt. Ltd. along with Jodhpur Properties and Finance Pvt. Ltd. (Appellant Nos. 2 and 3) for financial assistance of ₹3 crores, secured by depositing title deeds of the rear portion of the ground floor of White House, Rani Jhansi Road, New Delhi. Another MoU dated 15.02.2019 was executed with Sincere Securities Pvt. Ltd. (Appellant No. 1) for a ₹3 crore loan, secured by title deeds of the front portion. Upon default, conveyance deeds dated 27.02.2020 transferred ownership of both portions to the appellants, but simultaneous Leave and License Agreements allowed Nandini Impex to retain possession at ₹6 lakhs monthly rent per portion. Following default in rent payments, the appellants terminated the agreements on 08.05.2020 and filed eviction suits. Meanwhile, UCO Bank (Respondent No. 3) filed a Section 7 IBC petition, admitted on 20.09.2022, initiating the Corporate Insolvency Resolution Process (CIRP), with the Respondent No. 3 as sole member of the Committee of Creditors (CoC). The appellants, as operational creditors, filed claims which were fully admitted.

On 06.04.2023, after the Resolution Professional's report, the CoC decided that the property was unnecessary and financially burdensome and requested its return to the appellants. Respondent No. 1 objected, leading to interlocutory applications before the NCLT, which on 07.08.2023 directed return of possession. On appeal, the NCLAT held that Section 14(1)(d) IBC barred recovery of property from the CD during CIRP and remanded the matter. The Supreme Court recorded that both the Resolution Professional including the new RP, and the CoC supported returning the property due to high rental costs and limited operations, while Respondent No. 1 alone opposed it without offering to bear the cost.

Supreme Court's Observations

The Supreme Court emphasized that the "commercial wisdom" of the Committee of Creditors (CoC) holds paramount status during the (CIRP) and is non-justiciable. Referring to *K. Sashidhar v. Indian Overseas Bank* (2019) 12 SCC 150, it reiterated that once the CoC, after due deliberation, takes a collective business decision, the AA cannot question or evaluate its justness. The IBC framework was designed for a time-bound resolution process, replacing the earlier regime that allowed indefinite protection to debtors, and to accord primacy to informed, expertbacked decisions of financial creditors. In this case, UCO Bank, the sole CoC member, decided that retaining the property was not in the CIRP's interest due to its high rental cost and the CD's limited operations. Both the then RP and the new RP, supported this view, with the latter confirming by affidavit that retention was neither feasible nor necessary. The Apex Court noted that this was not a unilateral recovery attempt by the owner barred under Section 14(1)(d) IBC, but a decision by the CoC and the RP to return the property to avoid substantial financial burden. All stakeholders except Respondent No. 1, agreed to the return. His claim that rent would be secured under IBC provisions was found untenable, especially as he was unwilling to bear the costs. The Court held that his opposition appeared intended to stall the process for reasons unconnected to the CIRP, and there was no justification for the NCLAT's remand order. The CoC's decision, rooted in its commercial wisdom, was entitled to full respect and required immediate implementation.

Order: The Supreme Court set aside the NCLAT's order dated 12.11.2024 and restored the NCLT's order dated 07.08.2023 directing return of possession to the appellants. The RP was directed to implement the order expeditiously.

Case Review: *Appeal Allowed.*

IL & FS Financial Services Ltd. vs. Adhunik Meghalaya Steels Pvt. Ltd. Civil Appeal No. 5787 of 202, Date of Supreme Court Judgement: 29 July 2025

Facts of the Case

The present Civil Appeal No. 5787 of 2025 was filed by M/s IL & FS Financial Services Ltd. (hereinafter referred as Appellant) against M/s Adhunik Meghalaya Steels Pvt. Ltd. (hereinafter referred as Respondent) before the Hon'ble Supreme Court of India challenging the dismissal of a Section 7 application by Adjudicating Authority which was also upheld by the Appellate Tribunal on the ground that the application was barred by limitation under the Insolvency and Bankruptcy Code, 2016 (IBC).

The appellant had granted a term loan facility of ₹30 crores to the respondent under a Loan Agreement dated 27.02.15, secured by pledge of 8,10,804 shares of the respondent on 01.03.18, the loan account was classified as a Non-Performing Asset (NPA), and a recall notice was issued on 10.08.18. The default amount was ₹55,45,97,395/- at the time of filing the Section 7 application on 15.01.24. The appellant relied on acknowledgment of debt in the respondent's audited financial statements from 2015 to 2019-20, with the 2019-20 balance sheet signed on 12.08.20.

The appellant argued that the balance sheet entries constituted valid acknowledgment under Section 18 of the Limitation Act, thereby extending the limitation. Further, by excluding the period from 15.03.20 to 28.02.22 as per the Supreme Court's order dated 10.01.22 in Suo Moto Writ Petition (C) No. 3 of 2020, the limitation period extended to 27.02.25, making the application timely.

The respondent contended that the balance sheet did not mention the appellant's name or the pledged shares and, hence, could not be treated as acknowledgment of debt. The AA held that the application was barred as it should have been filed before 30.05.22. The Appellate Tribunal concurred, ruling that limitation commenced from the date of signing the balance sheet, i.e., 12.08.20, and that Para 5(III) of the 10.01.22 order governed the case, thereby rejecting the application.

Supreme Court's Observations

The Hon'ble Supreme Court extensively discussed the legal position regarding acknowledgment of debt under Section 18 of the Limitation Act and affirmed its applicability to IBC proceedings as per Section 238A. Referring to earlier judgments including *Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria* (1961), *Lakshmirattan Cotton Mills v. Aluminium Corporation* (1971), and *Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal* (2021), the Court reiterated that entries in balance sheets could constitute acknowledgment of debt depending on context, tenor, and surrounding circumstances.

The Court noted that the 2019-20 balance sheet, although it did not explicitly name the appellant, showed consistent entries of secured borrowings and cash flow patterns matching prior years. The Court found that the balance sheet reflected a subsisting liability and jural relationship between the parties, especially when viewed along with previous years' financial statements. It ruled that the absence of the creditor's name does not negate acknowledgment when the entries are traceable and consistent with past records.

Importantly, the Court held that Para 5(I), not Para 5(III), of the 10.01.22 Supreme Court order applied to this case. Since the acknowledgment occurred on 12.08.20, within the original limitation period (expiring 11.08.23), the entire period from 15.03.20 to 28.02.22 must be excluded. This made the application, filed on 15.01.24, well within limitation

Order: The Supreme Court set aside the judgments of the AA dated 16.05.24 and Appellate Tribunal dated 25.03.25 and held that the Section 7 application was filed within limitation. The matter was remitted to the AA to proceed in accordance with law, treating the application as maintainable.

Case Review: *The appeal is allowed. No order as to costs.*

HIGH COURT

M/s Mohota Industries Ltd. vs. Smt. Vibha w/o Mayank Agrawal Civil Revision Application No.42/2024, Date of Bombay High Court (Nagpur Bench) Judgement: 09th June 2025

Facts of the Case

The Civil Revision Application No. 42/2024 was filed by M/s Mohota Industries Ltd.(hereinafter referred as 'Applicant') against Smt. Vibha Agarwal (hereinafter referred as 'Respondent') challenging the order dated 23.11.23 passed by the Joint Civil Judge, Junior Division, whereby the trial court rejected the Applicant's application at Exh. 24 seeking rejection of plaint under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code.

The Respondent had leased out a property measuring 42,000 sq. meters situated at Survey No.14/2 (kh), Mouza Burkoni, District Wardha to the Applicant company via a lease deed dated 28.03.07. The lease was subsequently terminated by notice dated 01.06.21, and the Applicant was asked to vacate the suit property. The

Respondent instituted Regular Civil Suit before the Civil Judge Junior Division, seeking declaration, recovery of possession, eviction, permanent injunction, and arrears of rent with regards to the property. The applicant-company was undergoing the CIRP u/s 9 of the IBC 2016, admitted by the Adjudicating Authority vide order dated 30.08.21, which imposed a moratorium under Section 14 of the Code. The order explicitly barred institution or continuation of any suits or proceedings, including recovery of possession of any property occupied by the CD. Despite the subsistence of moratorium, the Respondent filed the civil suit on 21.01.22. The Applicant contended that only 145 days had passed from the CIRP commencement when the suit was instituted and hence, the suit was barred by Section 14(1)(a) of the Code. The moratorium was in effect until the Resolution Plan was approved by AA on 19.05.23.

The trial court rejected the Applicant's application on the ground that the CIRP period of 180 days had lapsed before the filing of the suit. It concluded that since the moratorium was no longer in effect, the suit was not barred and could be adjudicated. The Applicant however argued that the very institution of the suit during the subsistence of the moratorium rendered it non-est, and thus the plaint was liable to be rejected. The Applicant further submitted that the claim relating to the lease ought to have been raised before the RP during the insolvency process as an operational debt, and civil courts had no jurisdiction to entertain such claims under Section 63 of the IBC.

High Court's Observations

The Hon'ble high court held that the institution of the suit during the moratorium period was void ab initio under Section 14(1)(a) of the IBC. The Hon'ble high Court further noted that the AA's order initiating CIRP on 30.08.21 explicitly imposed a moratorium against institution or continuation of proceedings against the CD, including any suit for recovery or possession by a landlord. The suit filed by the respondent on 21.01.22 clearly fell within this prohibited period. The Hon'ble high Court emphasized the overriding effect of the IBC under Section 238 and the exclusive jurisdiction of the AA under Section 63 for matters relating to CIRP.

Relying on several Supreme Court decisions, including *Alchemist Asset Reconstruction Co. v. Hotel Gaudavan Pvt. Ltd., Anand Rao Korada v. Varsha Fabrics Pvt. Ltd., Electrosteel Steels Ltd. v. ISPAT Carrier Pvt. Ltd.*, and Appellate Tribunal's decisions like *Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd.*, the Court reiterated that any claim, including those relating to rent or possession, if not submitted to the RP as per the CIRP timeline, cannot be pursued separately. The Respondent should have filed a claim with the RP as an operational creditor. The Hon'ble Court also clarified that the plaint cannot be saved merely because a part of the claim sought declaration or arrears of rent, as the moratorium applied to all such proceedings. The Respondent's reliance on decisions like Embassy Property Development was held to be misplaced, as the present case involved no public law element.

Order: The High Court allowed the Civil Revision Application, quashing and setting aside the impugned order dated 23.11.23. The plaint in Regular Civil Suit No. 23 of 2022 was rejected under Order 7 Rule 11 read with Section 151 CPC, holding it barred by Section 14(1) (a) of the IBC.

Case Review: *The Revision Application is disposed of, and the plaint was rejected. No order as to costs.*

National Company Law Appellate Tribunal (NCLAT)

Mr. Harry Dhaul Vs. Regional PF Commr. - II, with Regional PF Commr., Delhi vs. Harry Dhaul and Ors. C.P. (IB) No. 2520/MB/V/201, Date of NCLAT Judgement:18 Sept. 2025.

Facts of the Case

The present appeal has been filed by Mr. Harry Dhaul, the Successful Resolution Applicant (SRA), against the Monitoring Committee of Global Energy Pvt. Ltd., challenging the common impugned order dated 03.07.2024 passed by the Adjudicating Authority (NCLT, Mumbai Bench) approving the Resolution Plan under I.A No. 2475 of 2023 in CP(IB) No. 2520/MB/V/2018. The SRA and the Employees Provident Fund Organization (EPFO) have filed cross appeals disputing the treatment of EPFO dues under the approved Resolution Plan.

The Corporate Debtor was admitted into CIRP on 02.12.2019, with claims invited by 22.06.2022. The EPFO failed to file its claim within the prescribed period and only submitted it on 06.03.2023, which was rejected by the Resolution Professional (RP). Despite the CoC approving the Resolution Plan on 23.03.2023, the EPFO contested the rejection via I.A No. 2332 of 2023, resulting in a direction to the RP to consider the claim lawfully.

The SRA subsequently undertook payment of EPFO, and the Resolution Plan was approved on 03.07.2024. Both parties have appealed against the treatment of EPFO dues. The SRA challenged the Adjudicating Authority's jurisdiction in admitting EPFO claims based on assessments conducted during the moratorium period, rendering such claims invalid as per the Tribunal's ruling in *EPFO vs. Jaykumar Pesumal Arlani*. Further, the AEOR report underlying EPFO's claims allegedly lacks correlation with identifiable beneficiaries and is premised on a non-existent establishment, rendering the claims unenforceable.

The SRA contends that its affidavit undertaking to pay was induced by misrepresentation since no Section 7A adjudication order existed, and that post-CoC approval admission of claims and modifications to the plan violated the CoC's commercial wisdom and the IBC framework.

The EPFO counters that it is entitled to the full claim amounting to ₹1,33,19,135/- including interest and damages as per the EPF Act, noting that the claim was submitted prior to CoC approval and was rightly directed to be considered by the Adjudicating Authority. EPFO asserts that the RP admitted the claim accordingly, and the SRA, having submitted multiple affidavits undertaking payment, cannot evade liability. Further, EPFO challenges the classification of ₹55,52,007/- as "tentative dues" under the Mamta Binani judgment, asserting its inapplicability and emphasizing that provident fund dues must be paid in priority. EPFO prays for setting aside the impugned order dated 03.07.2024.

NCLAT's Observations

The issue before the Tribunal is whether the EPFO could lawfully continue assessment proceedings under Sections 7A, 7Q, and 14B of the EPF Act after the imposition of moratorium under Section 14 of the IBC, and whether any claim based on such assessments conducted during the moratorium could be admitted by the Adjudicating Authority. The Tribunal relied on its earlier decision in CA Pankaj Shah Vs EPFO (2025) and the Supreme Court judgment in Rajendra K. Bhutta Vs Maharashtra Housing and Area Development Authority (2020) 13 SCC 208, which establish that the moratorium imposes a statutory freeze on actions affecting the corporate debtor, designed to allow the resolution process to proceed unhindered and protect the debtor's assets during the insolvency process.

The Supreme Court in Rajendra K. Bhutta clarified that once the moratorium is imposed under Section 14 of the IBC, all proceedings, including recovery and assessment, against the corporate debtor are stayed to prevent depletion of assets and preserve value for all stakeholders. This freeze applies broadly to suits and proceedings affecting the corporate debtor's assets, as outlined in Section 14(1). While some submissions argued that assessment proceedings could continue during moratorium, the Tribunal emphasized that such proceedings are prohibited to ensure the debtor's revival and continuation, consistent with the protective intent of the Code as affirmed in *Swiss Ribbons (P) Ltd. v. Union of India* and *P. Mohanraj v. Shah Brothers ISPAT Pvt. Ltd*. Thus, orders of assessment passed during moratorium are impermissible, and claims based thereon cannot be admitted in the CIRP.

Order: The Tribunal held that assessment proceedings by the EPFO cannot be initiated or continued after the moratorium under Section 14(1) of the IBC, rendering any claims based on such assessments during the moratorium period unenforceable. While assessment may continue post-liquidation under Section 33(5), this does not apply during the moratorium. Applying this principle, the Tribunal found the EPFO's claim based on assessments conducted postmoratorium invalid, and despite the Resolution Applicant's affidavit undertaking to pay, set aside the Adjudicating Authority's order admitting these claims under Sections 7A, 14B, and 7Q, dismissing the EPFO's appeal and allowing the Resolution Applicant's appeal.

Case Review: *Appeal filed by SRA is allowed while appeal filed by EPFO is dismissed.*

Anil Singh vs. SREI Equipment Finance Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 1069 of 2025, Date of NCLAT Judgement: 25 August 2025

Facts of the Case

The present appeal, was filed by Anil Singh (hereinafter referred as "Appellant") challenging the order dated 10.06.2025 passed by the Adjudicating Authority whereby the Intervention Petition (IBC)/1/GB/2024, filed in Section 7 proceedings initiated by SREI Equipment Finance Ltd. (hereinafter referred as 'Respondent No.1') against Kitply Industries Ltd./CD (hereinafter referred as Respondent No.2) was rejected.

Respondent No.1 had filed a Section 7 application on 04.05.2024 against the CD, which had previously undergone CIRP initiated by IDBI Bank Ltd., wherein a Resolution Plan was approved on 01.05.2018. The CD was taken over by Plytinum Marketing Ltd., for this a Special Purpose Vehicle formed and owned by Respondent no. 1. The Appellant, representing 130 workers of CD, filed the Intervention Petition under Section 65 of the IBC read with Rule 11 of the NCLT Rules, 2016, seeking dismissal of the Section 7 application on grounds of fraudulent and collusive initiation of CIRP.

The Appellant alleged that the loan claimed to be availed by the CD from Respondent No.1 was a part of fraudulent circular transactions. It was contended that the loans shown as disbursed from SEFL and SIFL (both related to the same parent) were routed back to SIFL on the same day, and the Appellant relied on the pending Section 66 application filed by the Administrator of Respondent No.1 which sought avoidance of such transactions. The AA rejected the intervention stating that only the Financial Creditor and the CD are necessary parties at the admission stage under Section 7 and those third parties, including workmen, do not have locus standi to raise objections regarding the fraudulent nature of transactions. Consequently, the Intervention Petition

was dismissed, prompting the Appellant to file this appeal before the NCLAT.

NCLAT's Observations

The NCLAT observed that the Appellant's petition was not merely for intervention but specifically invoked Section 65 of the IBC, which deals with penalties for fraudulent or malicious initiation of proceedings. The Tribunal noted that although the AA had referenced the petition under Section 60(5) read with Rule 11 of the NCLT Rules, it failed to recognize that it was also squarely a Section 65 application.

The Bench held that the AA erred in not adjudicating the serious allegations of fraudulent and collusive CIRP initiation on merits. The Appellant had submitted credible allegations and documentation supported by 129 other workmen of the CD, challenging the legitimacy of the financial debt claimed by Respondent No.1. The Appellant argued that transactions were circular in nature and only ₹1 crore was actually infused into CD, while the rest of the money was allegedly routed back fraudulently.

NCLAT distinguished the case from *Deb Kumar Majumdar v. SBI*, stating that while third-party interventions are generally not permitted at the admission stage, this rule does not apply when a stakeholder files an application under Section 65 citing fraudulent conduct. Citing *Beacon Trusteeship Ltd. v. Earthcon Infracon Pvt. Ltd*., the Tribunal reaffirmed that any allegation of fraudulent CIRP initiation must be examined by the AA before admitting the application under Section 7.

The Appellate Tribunal also referred to its earlier judgments, including *Airwill Intellicity Social Welfare Society v. Ascot Projects Pvt. Ltd*. and *Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd*., which emphasized that Section 65 applications can be entertained even before admission of Section 7/9 petitions and that stakeholders, including workmen, have locus if they raise bonafide allegations of fraud or collusion.

Order: The NCLAT set aside the order dated 10.06.2025 passed by the AA. The Intervention Petition (IBC)/1/GB/2024 filed by the Appellant and 129 other workmen were revived with a direction to the AA to hear and decide it on merits. It further directed that the Section 65 application can be heard simultaneously with the main Section 7 petition. The Tribunal did not express any opinion on the merits of the allegations and clarified that the decision must be taken independently by the AA.

Case Review: *The Appeal was disposed of.*

Masyc Projects Pvt. Ltd. vs. RP of Vadraj Cement Ltd. & Ors., C.R. Patel vs. Vadraj Cement Ltd., and Tushar Engineering vs. Vadraj Cement Ltd. Company Appeal (AT) (Insolvency) No. 831, 855, 856 of 2025, Date of NCLAT Judgement: 12th August 2025

Facts of the Case

The present appeals, Nos. 831, 855 and 856 of 2025, arise out of a common order dated 01.04.2025 passed by the Adjudicating Authority (AA) in I.A. Plan No. 11 of 2025 in CP(IB) No. 3528 (MB) of 2018. By this order the AA approved the Resolution Plan submitted by Nuvoco Vistas Corporation Ltd. the Successful Resolution Applicant (SRA), filed by Resolution Professional (RP) of Vadraj Cement Ltd./CD.

The appellants, who had filed claims in the CIRP process of CD as operational creditors, were proposed NIL payment under the approved Resolution Plan. The appellant in Appeal No. 831/2025, had filed a claim of ₹16,75,11,300/-, which was admitted to the extent of ₹16,72,07,044/- based on a consent award dated 10.09.2013 by an Arbitral Tribunal appointed by the Bombay High Court. In Appeal No. 855/2025, Chhotubhai Ramubhai Patel filed a claim of ₹2,99,87,605/- as an operational creditor for supply of equipment on hire basis, while in Appeal No. 856/2025, Tushar Engineering, represented through Chhotubhai Ramubhai Patel (HUF), filed a claim of ₹1,09,74,486/- for operational dues on account of equipment supplied on hire basis. All these claims were admitted by the RP and reflected in the list of creditors under operational creditors.

The Committee of Creditors (CoC), with 100% voting share, approved the Resolution Plan on 01.04.2025, which proposed NIL payout to operational creditors (other than employees, workmen, and government dues). The AA approved the Resolution Plan, and aggrieved by this, the appellants preferred these appeals before NCLAT.

NCLAT's Observations

The Appellants argued that the AA erred in approving the Resolution Plan without duly considering the claims of operational creditors. They relied on Regulation 38(1A) of the CIRP Regulations, 2016, contending that although their claims were admitted, the Plan arbitrarily proposed NIL payment and failed to balance stakeholder interests, citing cases of Hammond Power Solutions (2019), and Essar Steel (2020).

The Respondents maintained that NIL payment was justified under Section 30(2)(b) of the IBC since the liquidation value for operational creditors was NIL. As even secured financial creditors could not be fully discharged, operational creditors were not entitled to any payment. They emphasized that the Plan

was approved unanimously by the CoC, and under K. Sashidhar (2019) and Essar Steel, CoC's commercial wisdom cannot be interfered with unless statutory provisions are breached.

The Tribunal observed that Section 30(2)(b), as amended in 2019, requires operational creditors to receive not less than liquidation value. Since their liquidation value was NIL, the Plan met statutory requirements. The AA had considered all classes of creditors, and under heading "F," it recorded that operational creditors with admitted claims of ₹77,65,00,755/- would stand discharged without payment. Although harsh, the Code does not mandate payment where liquidation value is NIL.

Referring to Swiss Ribbons (2019) and Essar Steel (2020), the Tribunal reiterated that financial and operational creditors are not similarly placed, and operational creditors are entitled only to liquidation value. While acknowledging Hammond Power, where plans were rejected for lack of reasoning, the present case was distinguished as the Plan expressly dealt with operational creditors, though proposing NIL payment. It further noted that non-payment is harsh, as observed in Damodar Valley Corporation, but any change lies with Parliament and the IBBI. Since the CoC approved the plan with 100% voting and no breach of statutory provisions was shown, the NCLAT declined interference.

Order: The NCLAT held that there was no ground to interfere with the order of the AA approving the Resolution Plan of Vadraj Cement Ltd. Accordingly, all the appeals were dismissed, and the Resolution Plan as approved by the AA was upheld.

Case Review: *All the appeals are dismissed.*

Mr. Anil Kohli, RP for Dunar Foods Ltd. vs. ED & Shri Amit Gupta, SRA Company Appeal (AT) (Ins.) No. 389 of 2018 Date of NCLAT Order: 03rd July 2025

Facts of the Case

The Present appeal was filed u/s 61(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) by the Resolution Professional (RP) of Dunar Foods Ltd./Corporate Debtor (hereinafter referred as 'Appellant') arising out of the impugned order dated 21.05.18 passed by the Adjudicating Authority (AA), against Directorate of Enforcement (ED) & Mr. Amit Gupta, Successful Resolution Applicant (SRA) (hereinafter referred as Respondent no.1 & 2) respectively. The RP challenged the refusal order of the AA to direct the Respondent no. 1 to release the provisionally attached properties of the CD.

The CD engaged in the business of processing and exporting basmati rice, had defaulted in repayments to a consortium of banks led by SBI, amounting ₹758.73 crore leading to the initiation of CIRP u/s 7 of IBC on 22.12.17. A moratorium u/s 14 came into effect from the same date. Four days later, on 26.12.17, the Respondent no. 1 passed a Provisional Attachment Order (PAO) u/s 5(1) of the PMLA, attaching assets worth ₹177.33 crore, alleging the money to be proceeds of crime traced through an investigation against M/s PD Agroprocessors Pvt. Ltd., an associate concern of the CD. The Appellant sent representations to Respondent no. 1 requesting de-attachment citing moratorium u/s 14 and overriding effect u/s 238, but received no relief. Subsequently, the Appellant approached the AA through MA No. 129/2018, seeking quashing of the PAO and release of assets, contending that the attachment obstructed CIRP and resolution prospects. The AA dismissed the plea, holding that PMLA proceedings are distinct, and the action of Respondent no. 1 does not fall under the purview of Section 14 moratorium.

Aggrieved by this, the Appellant filed the present appeal before the NCLAT reiterating that continuation of attachment is in violation of moratorium and frustrates the object of value maximization under IBC. He also placed reliance on Section 32A introduced by way of amendment in 2020 and several Supreme Court rulings to support his claim.

The main issues raised before the Appellate Tribunal are:

(i) Whether the attachment under PMLA violates the Moratorium under Section 14 of the IBC?

(ii) Whether Section 238 of the IBC overrides PMLA in case of any inconsistency?

(iii) Whether the NCLT/NCLAT possess jurisdiction to issue directions concerning attachment orders passed and confirmed under PMLA?

NCLAT's Observations

On the first issue, the Tribunal held that although the PAO was issued post-CIRP initiation, the PMLA proceedings were based on an earlier ECIR registered in 2013, and the attached properties were allegedly proceeds of crime. As such, the Moratorium under Section 14, which protects lawful assets for resolution, would not apply to assets already under the adjudicatory process of PMLA.

On the second issue, the Appellate Tribunal noted that while Section 238 of the IBC contains a non-obstante clause granting it overriding effect over inconsistent laws, such an override can only apply where both laws operate in the same domain and are irreconcilably inconsistent. The IBC is an economic legislation aimed at resolution of distressed companies, whereas PMLA is a penal statute dealing with confiscation of criminal proceeds. These legislations operate in different fields. Consequently, the NCLAT found no direct inconsistency that would warrant overriding of PMLA by IBC. NCLAT also cited Delhi High Court judgement in the case of Deputy Director, ED vs Axis bank, 2019

wherein it was held that "tainted assets cannot be considered part of the resolution estate under the IBC". Furthermore, Section 32A, which provides immunity to CD's post-resolution, could not be invoked in the present case, as the ED's attachment was pre-resolution and already confirmed before the resolution plan was approved.

On the third issue of jurisdiction, the Tribunal referred to the Supreme Court's ruling in *Kalyani Transco v. Bhushan Power and Steel Ltd*. (2020), which clarified that AA and Appellate Tribunal lack jurisdiction to review or interfere with attachment orders passed by statutory authorities under the PMLA. It emphasized that challenges to PMLA attachments must be addressed before the Appellate Tribunal under the PMLA framework and not through insolvency forums.

Order: The Appellate Tribunal, after analyzing all submissions and considering binding precedents, held that the provisional attachment under PMLA did not violate the Section 14 moratorium of IBC, and Section 238 of IBC does not override valid attachments under PMLA. It further held that the AA and Appellate Tribunal have no jurisdiction to direct release of such attached properties.

Case Review: *The appeal was dismissed.*

National Company Law Tribunal (NCLT)

Vidya Devi Chowdhury Vs. Vimla Fuels & Metals Limited C.P. (IB) No. 211/9/AHM/2025, Date of NCLT Judgement: 06 October 2025.

Facts of the Case

This Company Petition is filed by the Applicant, Ms. Vidya Devi Chowdhury, Proprietor of BDHCCI Coal Coke Minerals and Metal Enterprises, (hereinafter referred to as 'Operational Creditor'/OC) against the Respondent- Vimla Fuels and Metals Limited (hereinafter referred to as 'Corporate Debtor'/CD) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiation of Corporate Insolvency Resolution Process (CIRP for having defaulted in payment of the outstanding operational debt of ₹1,43,93,688/- including interest.

The OC alleged that they had been engaged in a commercial relationship with the CD for approximately 6-7 years, built on mutual trust and industry practices prevalent in the coal and coke sector, where suppliers often require advance payments to secure raw materials and manage production cycles. The OC would typically make advance payments to the CD, who, in turn, would supply LAM Coke within a stipulated period of two months based on mutually agreed conditions. However, when the CD failed to supply LAM Coke equivalent to approximately 375 tonnes, the OC issued a statutory demand notice under Section 8 of the IBC. The OC argued that the CD's acknowledgement of debt, no notice of dispute, and default on supplies to its sister concerns against the advance payments as ground to admit the insolvency petition.

Conversely, the CD contended that the petition suffers from suppression veri and suggestio falsi highlighting the concerns, firstly, that the claim does not constitute an "operational debt" under Section 5(21) of the IBC but mere advances without direct linkage to the provision of goods and services. Secondly, the CD contended that the demand notice is invalid, as it was issued by an advocate without the power of attorney. Labelling the advance payments made by the OC as "borrowed" amounts, the current petition is a tool for recovery rather than genuine insolvency resolution, and therefore contrary to the spirit of the IBC.

The Tribunal decided to adjudicate the matter on five legal questions—whether the claimed amount qualifies as an operational debt, whether it exceeds the statutory threshold, the validity of the demand notice under Section 8, the existence of any pre-existing dispute, and whether the petition was filed within the limitation period.

NCLT's Observations

After duly hearing both the parties, the NCLT firstly analyzed whether the claimed amount qualifies as an "operational debt" per Section 5(21) of the IBC. Relying on the documents presented, the longstanding relationship and industry practice, the NCLT found that the claimed amount was in fact an operational debt in accordance with the IBC. Thereafter, to satisfy the threshold of ₹1 crore set by Section 4 of the IBC, the NCLT noted that the balance sheet entries and undisputed communications between parties confirm the OC's principal debt of ₹1,18,46,827/- duly meets the said threshold. Regarding the validity of the demand notice issued by the OC, the NCLT relied on the Supreme Court judgement in the case of *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd*, (2017), wherein it was held that that a notice sent on behalf of an operational creditor by a lawyer would be in order. Since the notice was in compliance with Form 3 along with all details and was served properly, it is valid. Lastly, the NCLT noted that the absence of any pre-existing dispute, the preclusion of any bona fide challenge, and the filing of the petition within the limitation period satisfy the legal requirements and the statutory mandate for its admission.

Order: Accordingly, in light of the above facts and circumstances, the NCLT admitted the CD in CIRP as per Section 9(5) of the IBC. As a consequence, thereof, an Interim Resolution Professional (IRP) was appointed, and a moratorium issued under Section 14.
Case Review: *CIRP application was admitted.*

Gagandeep Dudh Sankalan Kendra Vs. Kute Sons Dairys Limited C.P. (IB)/161/MB/202,5 Date of NCLT Judgement: 15 September 2025

Facts of the Case

The present application was filed by Mr. Pramod Anandrao Gawade, Sole Proprietor of M/s Gagandeep Dudh Sankalan Kendra, (hereinafter referred as 'the Operational Creditor') against M/s Kute Sons Dairys Limited, (hereinafter referred as 'the Corporate Debtor (CD)') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP). The Applicant claims a default amount of Rs. 1,55,84,847/- with a default date of 03.05.2024

The Applicant, engaged in supplying milk, has been regularly providing goods to the Corporate Debtor (CD), which is involved in dairy product manufacturing. The Applicant had 26 post-dated cheques from the CD, totaling ₹1,30,00,000/-, issued between 15.01.2024 and 26.03.2024, which were dishonored despite being recorded as cleared in the CD's ledger. Additionally, Milk Supply Bills issued by the CD incorrectly reflect full payments for goods supplied, although the Applicant has only received partial payments, with some ledger entries showing payments that were never received. The CD acknowledged the outstanding debt in a letter dated 18.04.2024, promising repayment within 15 days, but failed to do so. A Demand Notice was issued on 23.10.2024, which was refused by the CD. The Applicant, having filed its Income Tax Return for the FY 2023-2024, claimed the default amount and considered 09.11.2024 as the date of default due to the CD's failure to settle the dues. Furthermore, the Applicant filed multiple affidavits to clarify that the correct date of default is 03.05.2024, correcting earlier typographical errors where they were mistakenly stated as 09.11.2024, and submitted an amended Form 5 along with a CA certificate confirming outstanding dues.

The Applicant claims that cheques issued by the CD to secure payment were dishonoured, yet the CD's ledger falsely records them as paid. Despite partial payments, the CD's records inaccurately show full settlements, supported by the Applicant's bank statements and a Chartered Accountant's certificate. The CD contests the claim, arguing the Applicant failed to provide crucial documents such as invoices and delivery notes, and highlights discrepancies in ledgers, leading to a pre-existing dispute. The CD further disputes the date of default, the acknowledgment of debt, and the statutory threshold required for maintaining the application, citing several judgments, including *SFO Technologies Pvt. Ltd. v. Vanu India Pvt. Ltd.* and *Sabarmati Gas Ltd. v. Shah Alloys Ltd.*, among others.

NCLT's Observations

After reviewing the documents and hearing both parties, the Tribunal found that the Applicant had been regularly supplying milk to the CD from 2019 to 2024 and held 26 post-dated cheques issued by the CD's group company, M/s Tirumalla Trademarts India Pvt. Ltd., to secure payment. The CD failed to file its reply by the deadline and was set ex-parte on 07.05.2025. The Applicant's claim that the CD's ledger falsely recorded payments based on dishonoured cheques was supported by bank statements and a Chartered Accountant's certificate. The Tribunal found the CD's dispute unsubstantiated, stating that vague, after-the-fact disputes cannot be considered "pre-existing" under Section 8(2)(a) of the IBC.

Further, the Tribunal dismissed the CD's argument about the statutory threshold of ₹ 1 crore, as the Applicant's own ledger and documents proved the debt exceeded the threshold. The CD's reliance on its inaccurate ledger was found to be unreliable. The Tribunal also clarified that the date of default was properly established as 03.05.2024, based on a consistent course of dealings and the Applicant's affidavits. Additionally, the Tribunal held that minor clerical errors, such as the misnaming of the CD, were not fatal to the Application. As a result, the Application was admitted under Section 9 of the IBC, 2016.

Order: The Tribunal has admitted the CIRP application filed by Gagandeep Dudh Sankalan Kendra (OC) against Kute Sons Dairys Limited (CD) under Section 9 of the IBC, 2016. A moratorium has been imposed, halting legal actions, asset transfers, and recoveries against the CD. The OC is required to deposit Rs. 3,00,000 to cover the initial CIRP costs, which will be repaid from the Committee of Creditors' funds.

Case Review: *CIRP Application allowed.*

Canara Bank vs. M/s. S. S. Aluminium Pvt. Ltd. C.P (IB) No.18/CB/2024 Date of NCLT Judgement: 09 September 2025.

Facts of the Case

The present application was filed by Canara Bank (hereinafter referred as 'Petitioner/Financial Creditor') against S.S. Aluminium Pvt. Ltd. (hereinafter referred as 'Respondent/Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The Financial Creditor had sanctioned various credit facilities for the modernisation and expansion of the Corporate Debtor's aluminium extrusion unit at Haldiapada. These included a Cash Credit limit of Rs. 3,50,00,000 and Term Loan-I of Rs.

5,44,00,000. Later, an additional Term Loan-II of Rs. 88,64,000 was sanctioned on 11.07.2015, followed by an enhancement in the Cash Credit facility to Rs. 5,00,00,000 on 23.03.2016. Further, a Bank Guarantee of Rs. 50,00,000 was issued in favour of M/s National Small Industries Corporation Ltd., which was invoked for Rs. 53,99,430(including interest), and this amount was debited from the respondent's Cash Credit account.

On 29.06.2019, a Debt Restructuring Agreement was executed, and further facilities were sanctioned — including Term LoanIII of Rs. 17,33,000 and a Working Capital Term Loan of Rs. 1,50,00,000. Additionally, the Financial Creditor sanctioned a Covid Funded Interest Term Loan of Rs. 34,32,390 and Rs. 2,00,00,000 under the GECL scheme. Despite these accommodations, the Corporate Debtor defaulted in payment of instalments and interest. The loan accounts were declared NonPerforming Assets (NPA), and a Loan Recall Notice was issued on 04.11.2021, demanding repayment of Rs. 13,48,00,000. Recovery action under the SARFAESI Act was initiated with notices under Sections 13(2) and 13(4). Subsequent auction attempts failed due to lack of bidders. The Bank also filed writ petitions before the Hon'ble High Court of Orissa seeking directions for registration of the Sale Certificate and disposal of pending SARFAESI applications.

The respondent, in its reply and written submissions, has challenged the Section 7 application, citing discrepancies in loan details. It questioned the issuance of two Section 13(2) SARFAESI notices on different dates, creating ambiguity about the date of default and NPA. Allegations of fraud have been made, including forgery of the mortgagor's signature. The respondent disputes the loan amount and claims protection under Section 10-A of the IBC and the Limitation Act, 1963. It also asserts that its MSME status required compliance with the statutory revival framework which was not followed.

NCLT's Observations

The Tribunal observed that the primary issue was whether the debt extended by the financial creditor qualified as a financial debt and whether the respondent had defaulted. Despite the respondent's FIR alleging fraud, this could not serve as grounds to reject the application under Section 7 of the IBC, 2016, as a pre-existing dispute does not bar the admission of such an application. The tribunal noted that the respondent's default was established through loan account statements and an acknowledgment of debt, with no dispute raised by the respondent during the proceedings. The default occurred after the Section 10A period, and thus, the application was not affected by this provision.

The respondent's late claim of MSMEs status was rejected as it was introduced only in the written submissions without supporting evidence. Additionally, the tribunal found no merit in the respondent's argument about discrepancies in the SARFAESI notices, as the respondent had previously acknowledged the debt through multiple One-Time Settlement proposals. Consequently, the tribunal concluded that the respondent had defaulted on a debt exceeding Rs. 1 crore and that the application was filed within the limitation period, making it admissible.

The NCLT rejected the respondent's argument regarding the default occurring during the Section 10A period, referring to the NCLAT judgment in *NuFuture Digital (India) Ltd. v. Axis Trustee Services Ltd*. (2023). It was held that any default occurring after the Section 10A period should not be considered for exclusion. In this case, the loan account statement showed that the default happened after the Section 10A period, with the NPA date being 11.05.2021. Therefore, the default did not fall within the Section 10A timeframe, and the application was not barred by this provision of the IBC.

Order: The Adjudicating Authority ordered the initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016. A moratorium is declared, prohibiting various actions against the Corporate Debtor. The IRP is directed to make public announcements, protect the assets, and ensure smooth conduct of the CIRP, with periodic reports to be submitted to the Adjudicating Authority.

Case Review: *CIRP Application allowed.*

IBC News

Liability of personal guarantors continues even after liquidation of the company: Delhi High Court

Clarifying the extent of liability under the Insolvency and Bankruptcy Code, 2016 (IBC), the Delhi High Court held that personal guarantors cannot be shielded by the National Company Law Tribunal (NCLT) once a company enters liquidation, as their obligations are independent and survive the winding-up of the principal debtor. The Court emphasized that the Company Court's jurisdiction ceases after liquidation, and it cannot restrain creditors from proceeding against guarantors for recovery.

The judgment reaffirmed that, under Sections 128 and 134 of the Indian Contract Act, 1872, a guarantor's liability is co-extensive with that of the principal debtor, unless otherwise contractually limited. The Court dismissed the guarantors' contention that issues such as valuation disputes or grievances relating to one-time settlements (OTS) could bar recovery, holding that such objections cannot dilute the binding nature of a contract of guarantee.

The ruling strengthens the IBC's principle of creditor autonomy and accountability, aligning with precedents that recognize the independent liability of guarantors even after a company's liquidation or approval of the Resolution Plan. By doing so, the Court reaffirmed the sanctity of guaranteed contracts and the limited post-liquidation jurisdiction of NCLTs within the insolvency ecosystem. The Court upheld the Single Judge's 21 December 2023 order dismissing the guarantors' plea to restrain IDBI Bank from recovering ₹252.53 crores under their personal guarantees.

Source: Raw Law, *October 10, 2025.*

https://rawlaw.in/delhi-high-court-company-court-cannot-shield-guarantors-after-winding-up-liability-of-personal-guarantors-is-independent-and-continues-even-after-liquidation/

IBBI for mandatory use of AI in the insolvency resolution process

The Insolvency and Bankruptcy Board of India (IBBI) is considering requiring Resolution Professionals to mandatorily adopt AI agents in the insolvency process. These AI tools would aid in fraud detection, like uncovering undervalued or fraudulent transactions, compliance automation, anomaly identification, document processing, and forecasting recovery outcomes. The move seeks to enhance efficiency, transparency, and accuracy in resolving insolvency cases piling up before tribunals.

Source: *Financial Express, October 2, 2025.*

https://www.financialexpress.com/business/industry/ibbi-moots-mandatory-use-of-ai-in-insolvency-resolution/3996649/

Select Committee Constituted on the IBC (Amendment) Bill, 2025

Shri Baijayant Panda has been appointed Chairperson of the Select Committee of the Lok Sabha on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025. The committee includes 23 other MPs from various political parties. The Bill, introduced by Union Finance Minister Nirmala Sitharaman on August 13, 2025, seeks to streamline the insolvency resolution process, reduce delays, and enhance governance. It proposes key structural and procedural reforms to strengthen the Insolvency and Bankruptcy Code, 2016, and has been referred for detailed examination.

Source: *ANI News, October 1, 2025.*

https://www.aninews.in/news/national/general-news/baijayant-pandato-chair-select-committee-on-ibcamendment-bill20251001204637 /

CJI led Bench of Supreme Court Restores JSW Steel's ₹19,000-Crore Acquisition of BPSL

The Supreme Court has cleared steel giant JSW Steel Ltd's ₹19,000-crore acquisition of Bhushan Power and Steel Ltd (BPSL) under the CIRP, overturning its earlier May order that had mandated liquidation of the debt-ridden company. The bench comprising three judges including the Chief Justice of India, reinstated the February 17, 2020, ruling of the NCLAT, which had approved JSW's Resolution Plan. JSW had completed the acquisition in March 2021 under the IBC.

"The corporate debtor (Bhushan Steel) in the present case was running into substantial losses which has now become a profit-making entity earning substantial profits," said Justic B R Gavai, the Chief Justic of India. He added, "As such, the very purpose

for which the IBC was enacted – namely, to ensure that the corporate debtor continues as a going concern – has not only been achieved, but the corporate debtor has been transformed from a loss-making to a profit-making entity." The bench further reasoned, "If we permit the claim not to be part of the Resolution Plan, which has been approved by the CoC and the NCLT, to be raised at such a belated stage, it could open a Pandora's Box, and the very purpose of the IBC providing sanctity to the finality of the Resolution Plan duly approved would stand vitiated." Earlier, on May 2 this year, two judges Bench of the Supreme Court had annulled the NCLAT order citing non-conformity of the plan with IBC provisions and had directed liquidation.

Source: *Financial Express, September 27, 2025.*

https://www.financialexpress.com/business/industry/ibbi-moots-mandatory-use-of-ai-in-insolvency-resolution/3996649/lite/

INSCO completes acquisition of Hindustan National Glass & Industries under IBC process

Independent Sugar Corporation Limited (INSCO), part of Uganda's Madhvani Group, has completed the ₹2,250-crore acquisition of Hindustan National Glass & Industries Ltd (HNGIL) under the IBC process. The NCLT approved the plan on August 14, 2025, with subsequent clearances from RBI and CCI. Backed by Cerberus Capital and IFC, INSCO will pay ₹1,901.55 crore upfront and ₹356.28 crore over three years. With a 96.16% CoC approval, the transition ends seven years of litigation, ushering a new chapter for HNGIL.

Source: The Hindu, September 27*, 2025.*

https://www.thehindu.com/business/insco-completes-acquisition-of-hindustan-national-glass-industries-under-ibc-process/article70101535.ece

DFS Flags NCLT Bench Crunch Behind Rising IBC Cases

The Department of Financial Services (DFS) has reportedly written to the Ministry of Corporate Affairs (MCA), flagging concerns over the limited number of National Company Law Tribunal (NCLT) benches, which it said is causing a mounting backlog of Insolvency and Bankruptcy Code (IBC) cases. Media reports suggest DFS stressed the urgent need for additional benches, noting that the proposed IBC Bill has not adequately addressed this issue. Nearly 15,000 cases remain pending, raising fears of prolonged insolvency proceedings, asset erosion, and delayed creditor recoveries. One of the sharpest criticisms of the IBC has been resolution delays, which significantly reduce asset value and hinder corporate revival as going concerns.

Source: *Business Standard, September 24, 2025.*

https://www.business-standard.com/finance/news/limited-nclt-benches-stall-ibc-cases-delays-threaten-insolvency-resolution-125092201028_1.html

Insolvency Proceedings in Real Estate Should Primarily Be Project Specific: SC

The Supreme Court has held that insolvency proceedings involving real estate companies should ordinarily be limited to specific projects rather than the entire corporate entity, except in cases where compelling reasons justify a broader scope. This ruling seeks to safeguard the interests of genuine homebuyers while ensuring greater clarity in insolvency processes under the IBC. This judgment arose from appeals involving two real estate firms, Gayatri Infra Planner Pvt. Ltd. and Antriksh Infratech Pvt. Ltd., where investors had entered into agreements with buy-back and refund clauses and subsequently sought to initiate CIRP under Section 7 of the IBC after those terms were not fulfilled.

Source: IndiaLegal, *September 13, 2025.*

https://indialegallive.com/constitutional-law-news/courts-news/supreme-court-insolvency-proceedings-in-real-estate-should-primarily-be-project-specific

Vedanta Emerges top Bidder with ₹12,505 Crore Offer for JAL

Vedanta Ltd has reportedly placed the highest bid of ₹12,505 crore to acquire Jaiprakash Associates Ltd (JAL) under the Corporate Insolvency Resolution Process (CIRP) of the Insolvency and Bankruptcy Code, 2016 (IBC). According to media reports, the mining and resources conglomerate has proposed an upfront payment of about ₹4,000 crore, to be made post-approval by the National Company Law Tribunal (NCLT). The balance will be disbursed over a staggered period of five to six years, reflecting a phased financial commitment. JAL, once a diversified player with businesses in cement, real estate, power, EPC, and hospitality, has been burdened with dues exceeding ₹55,371.21 crore. Vedanta's interest lies not just in financial recovery but also in operational synergies. By acquiring JAL's cement and power assets along with its limestone and coal mines, Vedanta, according to media reports, can integrate these into its existing strengths in metals, mining, and energy, thereby reducing input costs and strengthening its overall portfolio. The bid also highlights Vedanta's competitive positioning, having outpaced major contenders including Adani Group, Dalmia, Jindal Power, and PNC Infratech. While the Committee of Creditors (CoC) has identified Vedanta as the highest bidder, the proposal awaits formal approval and subsequent NCLT clearance, a process expected to take several months. If cleared, the acquisition could provide creditors with structured recovery and give Vedanta a powerful platform for future expansion.

Source: *ETNow, Sep 7, 2025.*

https://www.etnownews.com/companies/vedanta-offers-rs-4000-crore-upfront-balance-in-5-6-years-for-jal-resolution-plan-report-article-152698995

IBC has transformed the approach towards corporate distress: Supreme Court Judge

Speaking in at book launch event, Justice N. Kotiswar Singh said "IBC resolution process is not of liquidation but of resurrection. It was needed because earlier processes were in fragments. IBC prevents forum shopping also, delay has also been prevented to a great extent". According to a media report, he compared the IBC with a hospital and said, "I consider this entire process to be a specialist hospital. You see reflection of all this in IBC. When a company is going down, the immediate response is for them to rush to NCLT. Professionals will diagnose what is to be done. It provides an organic systematic platform". He emphasised that the IBC had immense impact on employees and urged law students to develop technical proficiency alongside legal knowledge.

Source: *BarandBench, September 01, 2025*

https://www.barandbench.com/news/ibc-is-a-specialist-hospital-for-distressed-companies-supreme-court-justice-n-kotiswar-singh

AA can consider Section 65 intervention pleas on merits during Section 7 hearings: NCLAT

Citing the Supreme Court judgment in *Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. & Anr*. (2020), the Appellate Tribunal has held that it is open to the Adjudicating Authority to consider the application under Section 65 on merits, even at the time of hearing the Section 7 application. The appeal was filed by Anil Singh, representing 130 workers, against the order dated June 10, 2025, wherein the NCLT had dismissed their petition for lack of locus standi. The workers had alleged that the Section 7 application filed by SREI Equipment Finance Ltd. (SEFL) against Kitply was fraudulent and collusive, constituting a circular transaction intended to benefit related parties. They sought dismissal of the petition under Section 65 of the IBC, which penalizes malicious or fraudulent initiation of insolvency proceedings. The NCLAT held that since 130 workers, undeniably stakeholders of the CD, had raised allegations of fraudulent initiation, their application deserved consideration on merits. The Appellate Tribunal observed that rejecting the plea solely on the ground of lack of locus was unsustainable, especially in light of Supreme Court rulings emphasizing scrutiny u/s 65 when fraud is alleged. Accordingly, the appellate tribunal revived the workers' intervention petition and directed the NCLT to hear it along with the main Section 7 proceedings against Kitply Industries. The NCLAT clarified that it was not commenting on the merits of the fraud allegations and left the matter to the AA for a decision in accordance with law.

Source: *IBCLaw.in*, August 26, *2025.*

https://ibclaw.in/anil-singh-vs-srei-equipment-finance-ltd-and-anr-nclat-new-delhi/

Finance Minister Ms. Nirmala Sitharaman introduced IBC Amendment Bill in Lok Sabha

The Apex Court has clarified that once a Resolution Plan is approved by the Adjudicating According to media reports, the IBC Amendment Bill-2025, which was introduced in the Lok Sabha on 12th August, includes frameworks on Group Insolvency, Cross-Border Insolvency, and Pre-Packaged Insolvency for large corporations. The Bill has been reportedly referred to the select committee for further deliberations.

"The proposed amendments aim to reduce delays, maximise value for all stakeholders, and improve governance of all processes under the Code," said Ms. Nirmala Sitharaman, Union Finance Minister in the Lok Sabha. The Group Insolvency Framework seeks to address the complexities of multi-entity corporate structures, minimising value erosion from fragmented proceedings and enabling creditors to benefit from coordinated decision-making. It is also proposed in the Bill that the central government may prescribe the terms and conditions for handling insolvency proceedings against two or more corporate debtors within a group. The cross-border insolvency framework is expected to protect stakeholder interests in both domestic and foreign proceedings, boost investor confidence, and align India's framework with international best practices. The expansion of the pre-packaged insolvency framework to larger corporates, coupled with enhanced decision-making powers vested in the CoC, is intended to expedite resolutions and reduce undue dependence on adjudicatory forums for operational approvals, said insolvency experts. The Insolvency and Bankruptcy Code (IBC) is undergoing its seventh amendment since its enactment.

Source: *Business Standard, August 12, 2025.*

https://www.business-standard.com/india-news/ibc-amendment-bill-introduced-in-lok-sabha-125081201653_1.htm l

Prevent parallel disciplinary actions against IPs: IBBI's Expert Panel

An expert committee under the Insolvency and Bankruptcy Board of India (IBBI) has reportedly recommended new rules to prevent duplicate disciplinary actions against insolvency

professionals (IPs). The committee highlighted that both the IBBI and insolvency professional agencies (IPAs) sometimes initiate parallel proceedings for the same violations. To address this, it proposed regular data sharing and periodic review meetings between the IBBI and IPAs to ensure coordinated action and avoid redundancy.

The new norms are expected to make the disciplinary process fairer and more transparent, potentially serving as a model for collaborative regulation within the insolvency ecosystem, said a media report. Currently, both the IBBI and IPAs can initiative disciplinary action against IPs.

Source: *Financial Express, August 10, 2025.*

https://www.financialexpress.com/business/industry-ibbi-suggests-guidelines-toavoid-dual-proceedings-3942261/

BluSmart Mobility Admitted to Insolvency over Loan Default

The NCLT Ahmedabad has admitted BluSmart Mobility into CIRP over a default of ₹1.28 crore on non-convertible debentures issued in April 2023. The case was filed by Catalyst Trusteeship Ltd, the debenture trustee, after BluSmart failed to repay instalments due in early 2025. The tribunal rejected BluSmart's objections, citing a clear admission of default by co-founder Anmol Singh Jaggi. This comes amid a larger financial crisis within the Gensol Group, with Gensol Engineering and Gensol EV leasing already under CIRP and facing SEBI scrutiny for fund diversion. Experts say the case may set a precedent for Group Insolvency in India, given the financial links among the entities. The dispute with the financial creditor began after BluSmart Mobility raised ₹15 crore through 15 non-convertible debentures on 20 April 2023, with Catalyst Trusteeship as the debenture trustee. BluSmart was to start repaying the principal from 30 April 2023 but unilaterally deferred it to 31 May.

Source: *Livemint, July 29, 2025.*

https://www.livemint.com/news/blusmart-follows-gensol-group-firms-into-insolvency-after-1-28-cr-default-moratorium-sebi-notices-nclt-videocon-11753793467639.html

Bad Loans worth ₹12 lakh crore were resolved under the IBC regime in 9 years: Report

According to an analysis by CRISIL Market Intelligence, the IBC has directly resolved about ₹12 lakh crore debt through nearly 1,200 cases of stressed borrowers. In addition to resolutions, the report pointed out that nearly 30,000 cases involving around ₹14 lakh crore of debt were settled even before formal admission to the NCLT. This indicates that the IBC has acted as a strong deterrent, pushing borrowers to settle dues early to avoid commencement of CIRP against their companies.

The report further concludes that the IBC has brought a major shift in the approach to debt resolution in India, moving from a debtor-in-control system to a creditor-in-control framework, which distinguishes it from earlier mechanisms like the Debt Recovery Tribunal (DRT), Lok Adalat, and the SARFAESI Act. As per this report, since 2016, total resolved debt through various mechanisms has touched ₹48 lakh crore. Of this, IBC has shown the highest recovery rate of around 30-35 per cent, compared to 22 per cent for SARFAESI, 7 per cent for DRT, and 3 per cent for Lok Adalat. Besides, the flexibility under IBC to change management and restructure debt has also helped, especially in reviving viable businesses. In the past three years alone, about 60 per cent of approvals for resolution plans were completed, although they accounted for only 40 per cent of total debt, said the report. The report has also highlighted some challenges, particularly the delay in resolution timelines

Source: *Economic Times, July 23, 2025.*

https://economictimes.indiatimes.com/industry/banking/finance/banking/ibc-helped-resolve-bad-loans-of-over-rs-12-lakh-crore-in-9-years-but-resolution-time-doubled-crisil/articleshow/122854979.cms?from=mdr

Investment under the reseller agreement is not financial debt under the IBC: NCLAT

Dismissing an appeal for inclusion of an investor's dues under "financial debt", the NCLAT, Delhi Bench held that the investment under the reseller agreement lacks 'financial debt' ingredients under the IBC. This judgement came in case, wherein the Appellant, on behalf of his proprietorship concern, entered into a Reseller Agreement with the Corporate Debtor, whereby the appellant made a capital investment of ₹20,00,000 with a clear stipulation under Clause 4(m) of the Agreement that the respondent would pay an assured return of 7% per month on the said investment after an initial lock-in period of three months, during which no return was to be paid. The investment was later increased to ₹1 crore and the assured return gradually hiked up to 12%. NCLT Allahabad ruled that the Appellant was not a "financial creditor" under the IBC on which appeal was filed before the Appellate Tribunal.

Source: *Taxscan, July 13, 2025.*

https://www.taxscan.in/top-stories/nclat-holds-investment-under-reseller-agreement-lacks-financial-debt-ingredients-and-dismisses-s-plea-as-abuse-of-cirp-process-142773

International Development on Insolvency Law

From Around the World

Verijet files for Chapter 7 bankruptcy following CEO's death, owes $10.5M to customers

Zhejiang Hozon New Energy Automobile (Hozon Auto), the parent company of Chinese EV US private jet operator Verijet, the 13th-largest in the country, has filed for Chapter 7 bankruptcy after the sudden death of its CEO, halting all operations. The company owes $10.5 million to customers who bought prepaid "jet cards," with total liabilities of about $38.7 million against assets worth only $2.5 million. The filing indicates complete liquidation instead of restructuring. Verijet, once hailed for using AI-driven flight planning and carbon-neutral aircraft, struggled with financial instability and leadership loss before shutting down operations entirely

For More Details, Please Visit: *https://www.financialexpress.com/world-news/us-news/13th-largest-us-private-jet-operator-verijet-files-for-bankruptcy-after-ceos-death-owes-10-5m-to-customers/4008525/*

US auto bankruptcies show rising credit pain in low-income households

USA's Auto-parts maker First Brands has reportedly filed for bankruptcy protection, following the recent bankruptcy of subprime auto lender Tricolor Holdings. According to media reports, while both companies had idiosyncratic reasons for their collapse, they have stoked fears of broader stress. First Brands struggled after a failed effort to refinance its debt earlier this year, which stalled when investors asked for a closer look at its books, said media reports. Signs of strain are reportedly emerging in U.S. credit markets tied to auto debt. Spreads on the ICE BofA AA-BBB US Fixed Rate Automobile ABS Index, a measure of the extra yield investors demand over treasuries to hold those bonds, have widened by more than 20 basis points this month.

For More Details, Please Visit: *https://www.reuters.com/business/autos-transportation/us-auto-bankruptcies-show-rising-credit-pain-low-income-households-2025-09-30/*

USA based Auto parts maker - First Brands Files for Chapter 11 Bankruptcy

The Chapter 11 bankruptcy has been filed in USA's Southern District of Texas. The company is reported burdened with over $10 billion in liabilities against assets of more than $1 billion. The company, carrying $6 billion debt from aggressive acquisitions, secured $1.1 billion in debtor-in-possession financing to sustain operations, said media reports. Its well-known aftermarket brands include FRAM filters, TRICO wipers, and Raybestos brakes. Despite U.S. filings, global operations are expected to continue without disruption.

For More Details, Please Visit: *https://www.reuters.com/markets/us/auto-parts-maker-first-brands-files-bankruptcy-protection-2025-09-29/*

German Auto Supplier Kiekert Files for Insolvency: Reports

German auto supplier Kiekert has filed for insolvency, according to a court document reviewed by Reuters. The proceedings involve its two main entities—Kiekert AG and Kiekert Holding GmbH—with Joachim Exner appointed interim administrator. Known for its automotive locking systems, Kiekert employs around 4,500 people across 11 sites worldwide. The company has yet to comment on the development. Germany's auto sector is under strain from weakening demand, rising energy costs, and the expensive shift to electric vehicles..

For More Details, Please Visit: *https://www.globalbankingandfinance.com/KIEKERT-BANKRUPTCY-02f6ea98-5624-4192-9494-f857343e67fb*

USA's Auto Dealer Tricolor Files for Bankruptcy

Texas-based auto dealer Tricolor has reportedly filed for Chapter 7 bankruptcy in a Texas court, moving to liquidate its

business. According to media reports, Fifth Third Bank, one of its key financial creditors, said it had uncovered alleged external fraudulent activity involving the company. Tricolor, the thirdlargest used auto retailer in Texas and California, has disclosed over $1 billion in assets and more than $1 billion in liabilities, with over 25,000 creditors. According to media reports other banks like JPMorgan could also face losses in the car dealer's bankruptcy..

For More Details, Please Visit: *https://www.reuters.com/legal/litigation/auto-dealer-tricolor-files-bankruptcy-moves-liquidate-2025-09-10/*

SIAC Launches First Global Insolvency Arbitration Protocol

The Singapore International Arbitration Centre (SIAC) has introduced the Restructuring and Insolvency Arbitration Protocol, the first framework of its kind worldwide. Developed with inputs from judges, insolvency experts, and arbitration practitioners, the protocol adapts the SIAC Rules 2025 for disputes arising from restructuring, debt adjustment, and insolvency. With this initiative, SIAC strengthens Singapore's position as a global hub for complex dispute resolution, bridging arbitration and insolvency to better serve the needs of creditors, debtors, and practitioners.

For More Details, Please Visit: *https://www.pinsentmasons.com/out-law/news/siac-arbitration-protocol*

Vienna's Art forum closes Amid Signa's Insolvency

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. The institute uses early indicators, analyzing insolvency announcements and linking them to company balance sheets for monthly tracking.

For More Details, Please Visit: *https://aviation.direct/en/Vienna-Art-Forum-closes-due-to-Signa-insolvency#google_vignette*

Liquidators of China Evergrande sold assets worth $255 million

Liquidators of China Evergrande Group, the country's largest property developer, have reportedly sold about $255 million worth of assets over the past 18 months and assumed control of more than 100 subsidiaries. Media reports describe it as China's largest debt liquidation process, with creditors filing claims of $45 billion against liabilities of $27.5 billion in 2022. The liquidation of the world's most indebted property developer has proved challenging as the majority of Evergrande's units and assets are onshore and many of them have been seized by creditors. Given the scale and complexity of the company, Evergrande's liquidation could take more than a decade to complete, according to offshore investors, according to media reports.

For More Details, Please Visit: *https://www.reuters.com/markets/asia/china-evergrande-liquidators-say-255-million-assets-have-been-sold-2025-08-12/*

Jewelry retailer Claire's files for bankruptcy for the second time in the US Court

It is the second bankruptcy filing after 2018, with a plan to close hundreds of stores and find a buyer for about 800 remaining locations. The U.S.-based company has $690 million in debt, and it has suffered in recent years from increased competition, high rent costs, and new tariffs on imports from supplier nations like China, Thailand and Vietnam, said media reports. The company has also struggled to maintain its supply chain and profitability in the face of President Donald Trump's tariff policy.

For More Details, Please Visit: *https://www.reuters.com/markets/us/jewelry-retailer-claires-files-bankruptcy-second-time-2025-08-06/*

Vertical Future Up for Sale Amid Insolvency

UK-based vertical farming startup "Vertical Future" is up for sale after posting over £10 million in pre-tax losses. Despite raising £37 million and earning accolades like being named the top CEA company by FoodTech500, the company struggled to secure fresh funding. Known for its in-house automation systems and a £1.5 million UK Space Agency grant, Vertical Future cited a tough capital environment for its downfall. It now joins other failed indoor agristartups like InFarm and Freight Farms, though

For More Details, Please Visit: *https://www.verticalfarmdaily.com/article/9754495/vertical-future-posts-ps10m-loss-seeks-buyer-as-insolvency-looms/*

Pepco's German unit files for insolvency to restructure stores

Pepco Group's German unit has filed for insolvency proceedings as it seeks to revamp its loss-making store network in the Germany. According to media reports, Pepco Germany has filed for the proceedings at a Berlin court. The unit operates 64 stores and employs around 500 people. All stores will remain open until

further notice. Pepco said its German network had experienced challenges since entering the market in 2022 and is currently making losses. The variety discount retailer's parent company has pledged its support for the restructuring process and to provide financing, said media reports.

For More Details, Please Visit: *https://www.reuters.com/markets/europe/pepcos-german-unit-files-insolvency-restructure-stores-2025-07-24/*

US court approved Steward Health Care's proposal to repay creditors with the proceeds of lawsuits

Bankruptcy Judge has reportedly allowed the company to proceed with a liquidation plan that aims to repay its creditors with the proceeds of lawsuits against its former owners and insiders. Those expenses must be paid in full before a Chapter 11 plan can take effect, and Steward expects to be able to fully repay those costs by mid-2027. Steward, once the largest privately owned health network in the U.S., filed for Chapter 11 with $9 billion in debt, after its former private equity owner sold the land under its hospitals while embarking on an aggressive expansion strategy across 10 U.S. states.

For More Details, Please Visit: *https://www.reuters.com/legal/litigation/steward-health-gets-green-light-repay-creditors-with-litigation-proceeds-2025-07-16/*

Germany's iconic skyscraper put up for sale under Insolvency

The 186 m (610.24 ft) Trianon building, which is in Germany's financial capital of Frankfurt, houses part of Germany's central bank, the Bundesbank, is now on the market with advisers mandated to handle the sale, said media reports. The tower, described as an "essential part of the Frankfurt skyline", last sold for 670 million euros ($784 million) in 2018. It is likely to fetch considerably less than in 2018, following the biggest downturn in the German office market for a generation. The building also comes with around 370 million euros in debt, said the media

For More Details, Please Visit: *https://www.reuters.com/business/finance/german-tower-that-became-casualty-property-crisis-put-up-sale-2025-07-10/*

Indian Institute of Insolvency Professionals of ICAI
(Company formed by ICAI as per Section 8 of the Companies Act 2013)

EXECUTIVE DEVELOPMENT PROGRAM
CROSS BORDER INSOLVENCY
(For IPs)

HIGHLIGHTS

UNCITRAL MODEL LAW
CBIRC RECOMENDATION
CASE STUDIES
CROSS-COUNTRY COMPARISON
LANDMARK JUDGEMENTS

CPE: 8 Hours
Duration: 14 Hours (over 2 days)
Mode: Online
Limited Seats

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

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

8.2 Recording of Minutes

a) Minutes shall contain a fair and correct summary of the proceedings of the meeting.

b) The Interim Resolution Professional/Resolution Professional shall record the proceedings of the meetings.

c) The Interim Resolution Professional/Resolution Professional may exclude from the minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

d) Minutes shall be written in clear, concise and plain language.

e) Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

f) Minutes need not be an exact transcript of the proceedings at the meeting.

g) Where any earlier Resolution(s) or decision is superseded or modified, minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.

8.3 Signing and Dating of Minutes

a) Minutes of the meeting of the COC shall be signed and dated by the Interim Resolution Professional/Resolution Professional.

b) The Resolution Professional shall put initial on each page of the minutes, sign the last page and append to such signature the date and the place where he has signed the minutes.

c) Any blank space in a page between the conclusion of the minutes and signature of the Resolution Professional shall be scored out.

8.4 Circulation of Minutes

The resolution professional shall-:

a) Circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and

b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open, from the circulation of the minutes, for such time as decided by the committee which shall not be less than twenty-four hours and shall not exceed seven days:

> ***Case Citation:*** *NCLAT (10.06.2019) in IDBI Bank Limited v. Mr. Anuj Jain, IRP, Jaypee Infratech Ltd. and Anr. (Company Appeal (AT)(Ins) No. 536 of 2019) held that; "We make it clear that if any of the 'Financial Creditor' remains absent from voting, their voting percentage should not be counted for the purpose of counting the voting shares, as held by this Appellate Tribunal in 'Tata Steel Ltd. vs. Liberty House Group Pte. Limited & Ors.'"*
>
> *The High Court of Gujarat in Arvind Mills Ltd. has held that a bare attempt to vote by depositing blank ballot containing any writing is not effective and cannot be included in the total count. Only those ballots that express voters preference can be counted. The requirement contemplates only two preferences: one affirmative and the other negative. To adopt any other rule would be to say that three ballots were contemplated– one affirmative, one negative, and another neither affirmative nor negative but forming a new class into which all ballots void for any reason must go. In the matter of Kirloskar Electric Co. Ltd., the Karnataka High Court held that a member present and voting may remain neutral, indifferent, unbiased, or impartial- not engaged on either side. One is not supposed to write anything except putting 'yes' or 'no' either in favour of or against the proposition. A vote cast without indicating the mind of the voter either for or against the resolution is no voting at all. So, in construing whether a resolution is passed by three- fourths majority present and voting, what is to be considered in calculating the majority is not the number of persons present and voting, but the number of valid votes polled in such meeting. The number of valid votes includes only votes indicating the mind of the voter for or against the resolution.*

Note: The IRP/RP may seek directions from the Adjudicating Authority (AA) if encounter any challenges or difficulties

in dealing with the Committee of Creditors (CoC). In such instances, obtaining guidance from the AA can ensure that the insolvency process proceeds in accordance with the applicable laws and regulations, while also safeguarding the interests of all stakeholders involved.

c) The authorised representative shall circulate the minutes of the meeting received to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

d) The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of the IBC Code.

e) No creditor, whether secured or unsecured, irrespective of its voting power or share, or no pool of creditors such as Joint Lenders' Forum is a substitute of the CoC. A Resolution Professional cannot take directions of a creditor having significant voting power or a pool of creditors.

Kindly note as per Regulation 16A of IBBI (CIRP) Regulations 2016, recording of minutes by AR shall apply mutatis mutandis.

IV. Meeting of the Stakeholders Consultation Committee

a) The establishment and operation of the Stakeholders Consultation Committee (SCC) in the liquidation process is similar to the constitution of the Committee of Creditors (CoC) under the Corporate Insolvency Resolution Process (CIRP).

b) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy. The committee of creditors under section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee as per Regulation 31(1).

c) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim.

d) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.

e) The liquidator shall convene the first meeting of the consultation committee within seven days of the liquidation commencement date and may convene other meetings, if he considers necessary, on a request received from one or more members of the consultation committee: *Provided that* when a request is received by the liquidator from members, individually or collectively, having at least thirty three percent of the total voting rights, the liquidator shall mandatorily convene the meeting.

f) The consultation committee shall advise the liquidator, by vote of not less than sixty-six percent of the representatives of the consultation committee.

g) The advice of the consultation committee shall not be binding on the liquidator: Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report.

Save as otherwise provided under Chapter III of Part II of the Code and the Liquidation Regulations, the provisions of regulations 18 to 26 of Chapter VI and Chapter VII of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall apply mutatis mutandis to meetings of the consultation committee under liquidation proceedings.

1. Convening a Meeting of Stakeholders Consultation Committee

a. The first meeting of stakeholders' consultation committee shall be held within seven days of liquidation commencement date. The liquidator appointed by the Adjudicating Authority shall summon the Committee of Creditors to the first SCC meeting and the CoC shall act as the SCC till the SCC is constituted by the liquidator i.e., within 60 days of liquidation commencement date.

b. The liquidator should notify the CoC of the SCC meetings and their role till the SCC is constituted, via email communications followed by phone calls to ensure there's maximum participation and the role of the CoC in such meetings is abundantly clear.

c. The liquidator shall summon a meeting of SCC as and when he considers necessary or when a request is made by a stakeholder. However, the liquidator shall conduct SCC meetings regularly i.e., either monthly/ quarterly

(with the approval of SCC) as the liquidator and SCC may deem appropriate to keep the stakeholders updated on the liquidation process and maintain transparency throughout the process, however as a best practice the Liquidator may attempt to conduct Meeting within 45 days.

2. Constitution of the Stakeholders Consultation Committee

a. The liquidator shall constitute the SCC within 60 days of liquidation commencement date that shall comprise of a representative from each class of creditor. Each class of creditors shall elect their representative who will be a part of the SCC, in the case they fail to elect a representative, such representatives shall be selected by a majority of voting share of the class, present and voting.

b. The liquidator shall send a notice to all creditors intimating them about the process of selecting a representative. The SCC should be involved at every stage of selecting a representative, from sending a notice till the election of a representative the liquidator should facilitate the process. This will ensure that the representatives are elected in a transparent and fair manner.

c. The liquidator can facilitate the process by holding an SCC meeting with a specific agenda of appointing representatives. With respect to the voting/ selecting the representative, the liquidator can use the same portal that is used by the SCC to vote on liquidation matters to simplify the process of appointment.

d. This is an ongoing activity as new claims are received throughout the process and all creditors must be at consensus with the elected representative, therefore, the SCC & liquidator should continuously facilitate the process as and when new claimants are added to the claims' list.

3. Notice of the Meeting

3.1 Serving of Notice

a. The liquidator shall serve a notice of at least 5 days for conducting an SCC meeting. The notice shall be served via electronic means along with a detailed agenda and a briefing note for the meeting.

b. The liquidator should take confirmation from stakeholders on their attendance prior to the meeting to ensure that the quorum is achieved for the meeting and the notice should be served way in advance, to the extent possible, so that the stakeholders can make themselves available for the meetings.

c. The liquidator shall keep a record of transmission of the notice sent to each recipient and in case of any failed transmission to any stakeholder, confirm their presence via phone call.

d. The liquidator shall also keep a check on the responses on the meeting invites sent via email. In case a stakeholder has declined an invite, the liquidator in consultation with stakeholders can decide on a different day or time for that meeting, if the agenda is important and requires extensive deliberation among the stakeholders.

3.2 Contents of the Notice

a. The notice must contain the date, time, mode of the meeting and venue. In case the meeting is being conducted physically, an option of audio-visual means must be given to stakeholders who cannot be present inperson. Link for such an audio-visual means must be provided along with the notice and the liquidator should do a technical demo of the link to avoid glitches and issues at the last minute.

b. The notice shall include the following:

- A list of agendas to be discussed;
- A list of matters to be voted upon; and
- A detailed discussion document covering the matters that will be discussed.

Note: To include minutes of previous SCC meeting, the Liquidator shall comply with the point no.8

c. The notice shall clearly specify the items to be discussed and items to be voted upon to avoid confusion. Each item of business that needs approval shall be supported by a note outlining the material facts of the matter.

4. Quorum

The liquidator shall determine the quorum before commencement of the meeting. The quorum shall be present during commencement of the meeting as well as transacting business. The meeting shall be quorate if the committee representing at least thirty percent of the voting rights are present either in person or by video conferencing or other audio- visual means.

5. Attendance Records

a. The liquidator shall take a roll call and mark the attendance of the stakeholders attending the meeting.

b. In case of a physical meeting, an attendance sheet bearing name, type of creditor, bank/ institution, contact number, email ID and signature, shall be circulated in the meeting for stakeholders to record their attendance.

c. The attendance sheet must contain the number of the SCC meeting and date of the meeting.

d. The liquidator shall preserve the attendance sheet for records and provide it to the regulator for compliance purposes.

6. Conduct of the SCC Meeting

a. All SCC meetings shall be chaired by the liquidator appointed by the committee of creditors of a corporate debtor and the adjudicating authority.

b. The liquidator shall take a roll call and each participant shall state the following:

- His/ her name.
- The class of creditors he is representing.
- The bank/ institution he represents

c. The liquidator shall ensure that the required quorum is present throughout the meeting.

d. In each SCC meeting the liquidator shall confirm minutes of the previous SCC meeting from the stakeholders. In case any of the stakeholders has comments or queries with respect to the minutes of the previous SCC meeting, the liquidator shall address the same and revise the minutes accordingly.

e. The liquidator shall obtain a confidentiality undertaking from the stakeholders before sharing sensitive information such as the valuation of the assets, mode of sale, etc. in the SCC meeting.

f. The liquidator shall provide an asset memorandum to all the stakeholders. The details of valuation are to be disclosed to every member of the SCC on receiving a confidentiality undertaking.

g. The liquidator shall ensure that minutes are prepared in relation to every SCC meeting.

7. Voting by the Committee

a. The liquidator shall record vote of the stakeholders on every important matter where approvals are required such as appointment of professionals.

b. The authorized representative from each class of creditors shall cast a vote on behalf of that class of creditors.

c. At the conclusion of voting the liquidator shall prepare a document where details of the resolution passed with the voting results against each matter will be stipulated. The liquidator shall circulate the voting results with the stakeholders via electronic means.

d. The voting share of each stakeholder will be in proportion to his claim amount.

7.1 Voting by electronic means

a. The liquidator shall provide each member of the committee means to exercise its vote by electronic means.

b. The authorized representative shall exercise the votes by electronic means as per the voting instructions received by him from the creditors in the class.

c. At the conclusion of voting, the liquidator shall make a written record of the decisions taken on relevant agenda items along with the names of the members who have voted for or against the agenda.

d. The liquidator shall circulate the written record with the members of the committee for their reference.

e. In case of technical issues faced by the stakeholders in casting their vote, the liquidator shall provide necessary guidance and grievance mechanism to the stakeholders.

f. The voting lines shall be on for a reasonable amount of time so that the stakeholders can deliberate on the vote to be casted and take an informed decision.

8. Minutes of the Meeting

a. The liquidator shall make the minutes available to a stakeholder in either electronic or physical form, on receipt of :

- an application in writing;
- costs of making such reports and minutes available to it; and
- an undertaking from the stakeholder that it shall maintain confidentiality of such reports and minutes and shall not use these to cause an undue gain or undue loss to itself or any other .

b. Where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report

c. In case of any queries/ suggestions made by stakeholders the liquidator shall modify the minutes and get it considered and approved in next SCC Meeting..

d. The liquidator shall keep a record of the minutes of all the SCC meetings and provide it to the regulator on completion of the liquidation process.

8.1 Contents of the Minutes

a. The minutes shall contain the date of the meeting, number of

the meeting, name of the corporate debtor, classes of creditors, names of all the participants, mode of conduct of the meeting, time and venue of the meeting.

b. Minutes should specify the names of all participants and the capacity in which they are attending the meeting.

c. The views given by each participant on agenda items must be recorded along with the final decision taken on the matter under discussion.

d. Apart from the resolution/ decision taken, the minutes shall record a background of proposals and summarize the deliberations thereof.

e. The liquidator shall provide his independent opinion on each agenda item and record it in the minutes. This will ensure that justification for the decision is available at a later stage.

8.2 Signing and Dating of the Minutes

a. The minutes of the SCC meetings shall be dated and signed by the liquidator.

b. The liquidator shall initial each page of the minutes and sign the last page and append to such signature the date and place where he has signed the minutes.

Annexure A

GUIDELINES FOR COMMITTEE OF CREDITORS

Introduction

1. Under the Insolvency and Bankruptcy Code, 2016, the commercial wisdom of the Committee of Creditors (CoC) drives the procedures to attain the objective of value maximization of the distressed assets.

2. The members of the CoC largely represent financial creditors and most of them are under regulatory oversight of the financial sector regulators other than Insolvency and Bankruptcy Board of India (IBBI).

3. Nevertheless, to foster more effective and time bound decision making by the CoC members, these self-regulating guidelines are being issued, to stem the value erosion, through curtailment of procedural delays and enhancement of transparency and coordinated approach of decision making by the members of the CoC.

4. The guidelines would help in resolution under the Code in a time bound manner in the interest of maximisation of value of the assets of the corporate debtor.

5. **Short title and commencement:** (a) These guidelines may be called the Guidelines for Committee of Creditors. (b) These Guidelines shall come into immediate effect.

6. **Guidelines**

A member of the CoC shall: -

Objectivity and Integrity

(a) follow relevant provisions of the Code and regulations, in letter and spirit, while performing their roles and functions.

(b) maintain integrity in discharging their roles and functions as envisioned under the Code.

(c) maintain objectivity during the decision-making process.

(d) foster informed decision making and share with the CoC/ Insolvency Professional any relevant information relating to transactions, guarantees, recoveries, claims, etc. relating to the corporate debtor.

Independence and impartiality

(e) disclose to the CoC/ Insolvency Professional the details of any existing or potential conflict of interest arising due to pecuniary, personal or professional relationship with any stakeholder, immediately on becoming aware of it

Professional competence and participation

(f) keep themselves updated with the provisions of the Code, rules and regulations and the role and responsibilities assigned thereunder.

(g) nominate representative with proper authorisation and sufficient mandate to effectively participate in meetings. The nominated representative may endeavour to obtain approval of the competent authority, if required, at the earliest.

(h) participate actively, constructively and effectively in deliberations and decision making of the CoC.

Co-operation, supervision and timeliness

(i) supervise and facilitate the Insolvency Professional in discharging his duties under the Code.

(j) facilitate expeditious appointment of various professionals within the timelines prescribed under the Code and regulations.

(k) endeavour to resolve any inter-se disputes between the members, particularly in relation to claims, preferably, through dialogue, or other nonadversarial means, with a view to avoid litigation to the extent possible.

Confidentiality

(l) ensure at all times complete adherence to the undertaking

regarding confidentiality of information.

Costs

(m) take necessary measures to ensure that the insolvency resolution process cost is reasonable.

(n) expeditiously decide on all the expenses to be incurred by the Insolvency Professional including the going concern expenses of the corporate debtor and his fee.

(o) prudently fix the fee payable to the liquidator while deciding to liquidate the corporate debtor.

Meeting of the CoC

(p) regularly monitor the activities of the Insolvency Professional and seek rationale of decisions/actions taken by him.

(q) diligently recommend for the inclusion or otherwise of the belated claims collated by the Insolvency Professional and categorised as acceptable, in the list of creditors and its treatment in the resolution plan, if any.

(r) actively participate in the presentation of valuation methodologies made by the Registered Valuers.

(s) ensure the conduct of the meeting at regular intervals as specified in the regulations.

Sharing of information

(t) proactively share the latest financial statements, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc. and other relevant information available, with the Insolvency Professional to enable efficient conduct of the process.

(u) seek details of all litigation filed against or by the corporate debtor from Insolvency Professional and recommend necessary actions to Insolvency Professional to safeguard the interest of the corporate debtor.

Feasibility and viability of corporate debtor

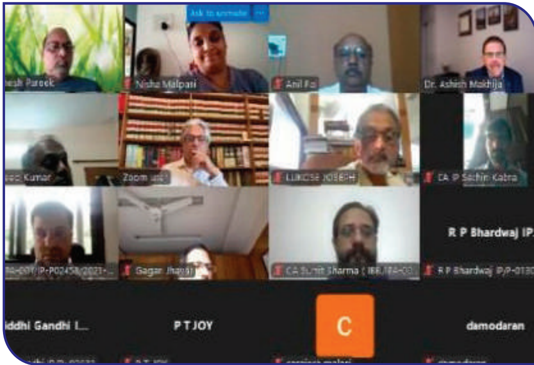
(v) carefully review and assess the information memorandum prepared by Insolvency Professional and offer additional insights.

(w) duly contribute to the preparation of the marketing strategy by the Insolvency Professional and may also take measures for marketing of the assets of the corporate debtor, if necessary.

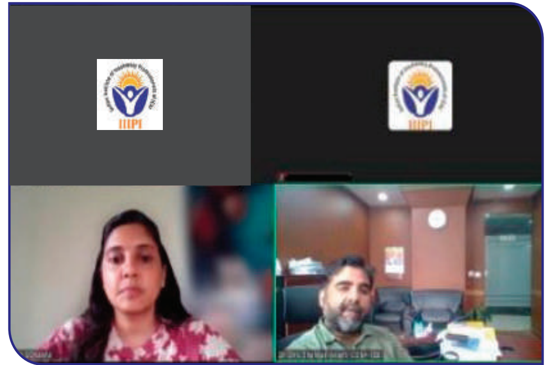
(x) ensure that all resolution plans as received by Insolvency Professional are placed before CoC.

(y) suitably consider the requirement of a monitoring committee for the implementation of the resolution plan.

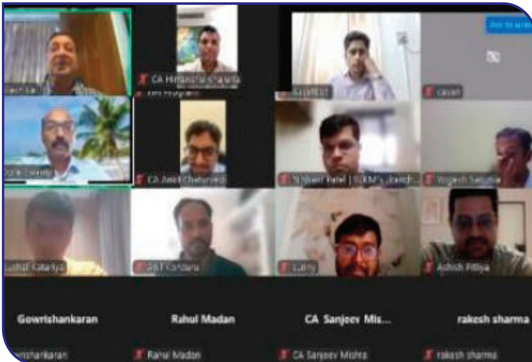
IIIPI News



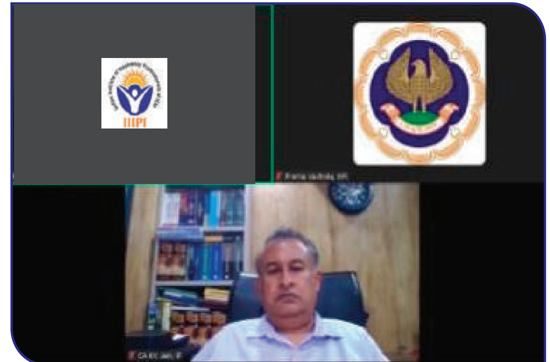
One-Day Virtual Workshop on Mastering Legal Skills, Pleading & Court Processes under IBC conducted by IIIPI on 12th July 2025.



Webinar on "Ethics & Quality Control for IPs" conducted by IIIPI on July 18, 2025.

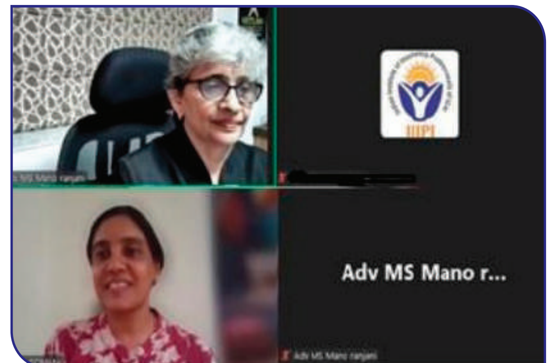


Limited Insolvency Examination Preparatory Classroom (Virtual) Program conducted by IIIPI from 21st to 25th July 2025.



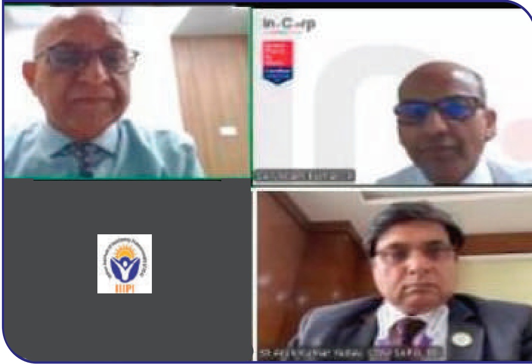
Webinar on "Real Estate Resolutions- Best Practices" conducted by IIIPI on 25th July 2025.

16th Batch of EDP (For IPs) on Mastering "Avoidance/PUFE Forensics" Under IBC (Online) organised by IIIPI from 29th July 2025 to 31st July 2025.

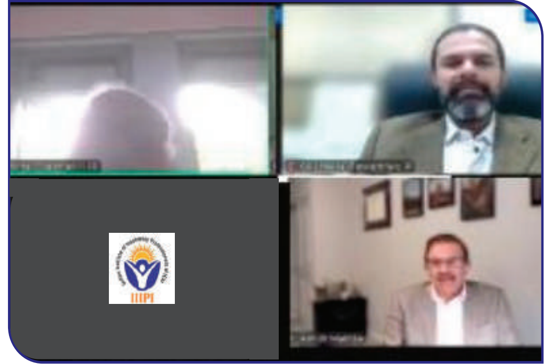


IIIPI Conducted a webinar on '"Value Maximization under CIRP and Liquidation" on 1st August 2025.

IIIPI News



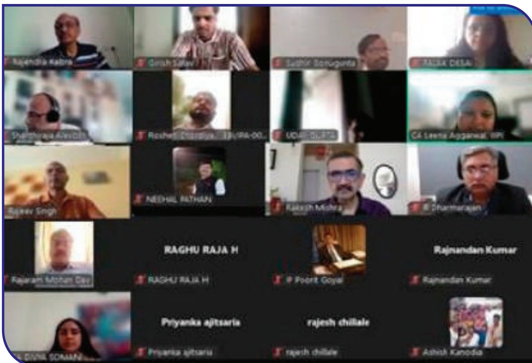
Webinar on "Conducting CoC meetings- Best Practices" organized by IIIPI on August 08, 2025.



Webinar on "IBC Amendment Bill 2025 Debate" conducted by IIIPI on 17th August 2025.

Webinar on "IBCs interface with Corporate & Taxation Laws" organized by IIIPI on August 14, 2025.

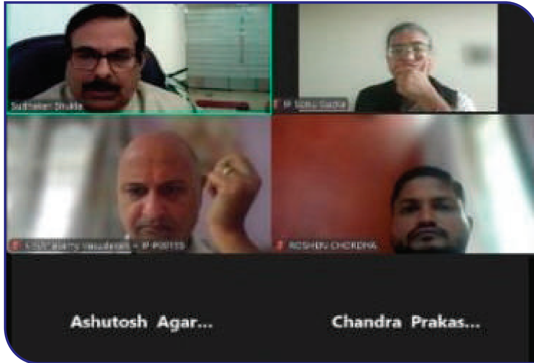
The fourth batch of the Executive Development Programme on Group Insolvency was conducted by IIIPI in online mode from August 19 to 20, 2025.



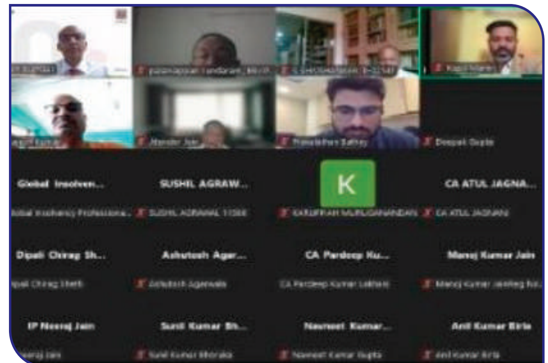
IIIPI organized a one-day virtual workshop on Avoidance/PUFE Forensics under the IBC on August 23, 2025.

Webinar on "IBC Amendment Bill 2025-Debate (PART 2)" conducted by IIIPI on August 22, 2025.

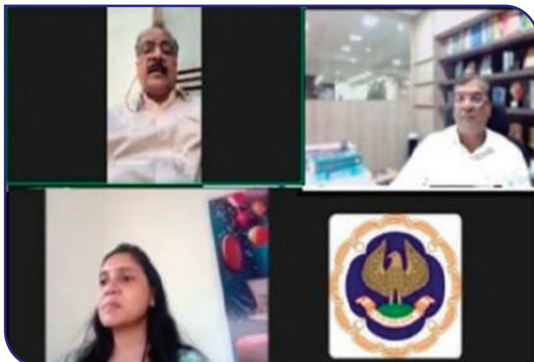
IIIPI News



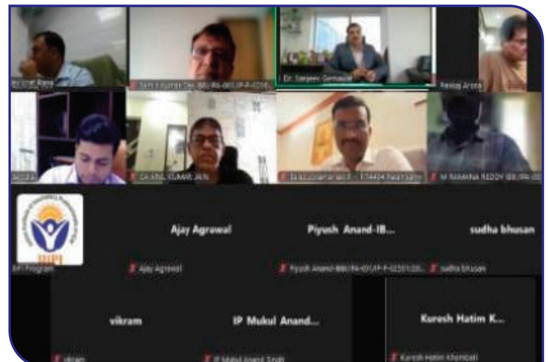
The 4th Batch of the EDP on Cross-Border Insolvency, organized by IIIPI from 17th to 18th September 2025.



Workshop on “Managing Corporate Debtors as Going Concern under CIRP” organized by IIIPI on 13th September 2025.



Webinar on “Guidance on Ethics and Quality Control” conducted by IIIPI on 10th October 2025.

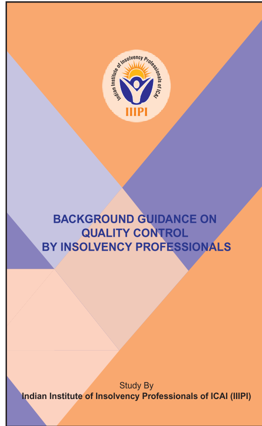


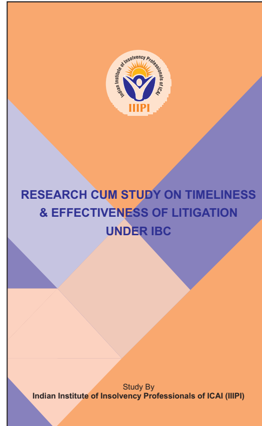
The 25th Batch of EDP on “Managing Corporate Debtors as Going Concern under CIRP” conducted by IIIPI from 6th - 10th October 2025.

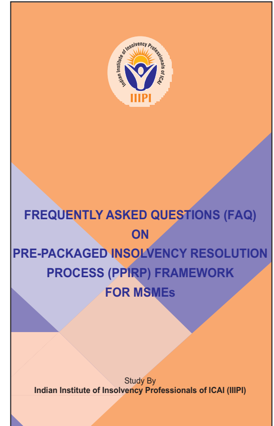
3-Day Physical Training Program for IPs, conducted by IBBI and all three IPAs from Oct 31–Nov. 02, 2025, in Delhi, managed by IIIPI.

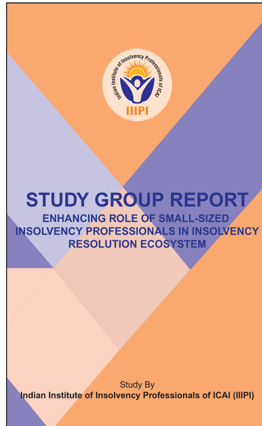
IIIPI's PUBLICATIONS

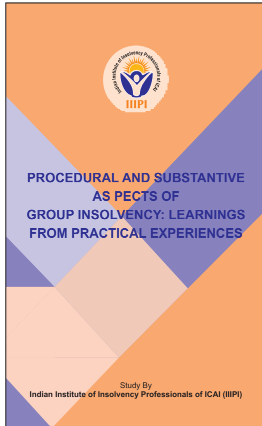
IIIPI has published several research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

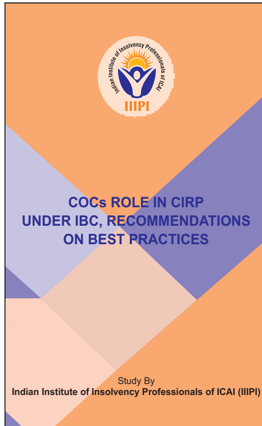


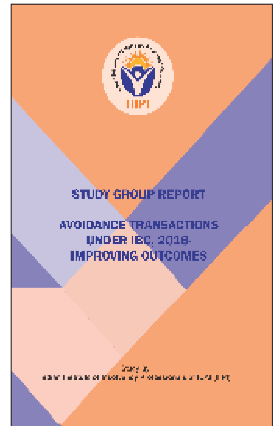


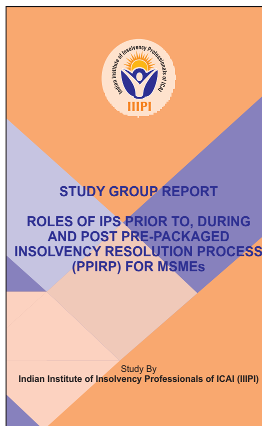


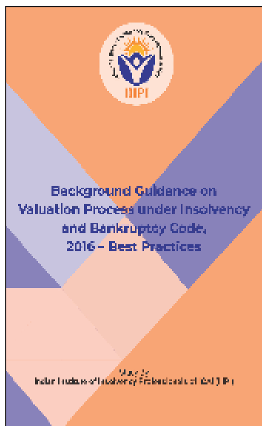


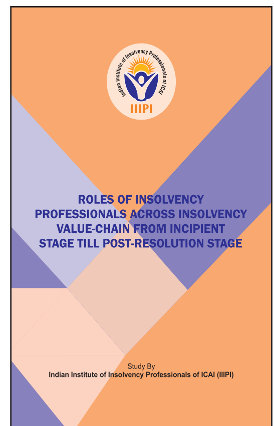












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Study Group Report on Contribution by Insolvency Professionals in Resolution under IBC

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Taxation reforms can help streamline insolvency resolution process: IIIPI study

PTI Last Updated: Aug 26, 2025, 04:24:00 PM IST

Synopsis

A report by the Indian Institute of Insolvency Professionals of ICAI (IIIPI) has recommended tax, insolvency, and procedural reforms to improve the insolvency resolution process. Key suggestions include granting tax-neutral status to resolution plans, exempting debt waivers from tax, clarifying treatment of losses and minimum alternate tax, and easing GST rules by allowing seamless input tax credit transfer and waiving legacy liabilities.

A comprehensive set of reforms across taxation, insolvency and procedural frameworks can help streamline the insolvency resolution process, according to a report prepared by IIIPI.

The report by the study group of the Indian Institute of Insolvency Professionals of ICAI has suggested aligning the Income Tax Act with the Insolvency and Bankruptcy Code (IBC) by granting tax-neutral treatment to resolution plans and exempting debt waivers from tax liabilities.

Another suggestion is to ensure clarity on treatment of brought-forward losses and minimum alternate tax provisions, IIIPI said in a release, citing the report.

IIIPI is promoted by the Institute of Chartered Accountants of India (ICAI).

"In the sphere of Goods and Services Tax (GST), the study group recommends enabling seamless input tax credit transfer during corporate insolvency, exempting resolution applicants from legacy GST liabilities, and simplifying compliance requirements during the resolution process to encourage participation and revive stressed entities effectively," the release said.

Meanwhile, the government, on August 12, introduced a bill in the Lok Sabha to amend the IBC, proposing a raft of changes, including provisions to reduce the time taken for admission of insolvency resolution applications, an out-of-court mechanism to address genuine business failures, as well as group and cross-border insolvency frameworks.

The IBC, which came into force in 2016, has been amended six times so far, and the last amendment was made in 2021. It provides for a market-linked and time-bound resolution of stressed assets.

NDTV | Profit

Taxation Reforms Can Help Streamline Insolvency Resolution Process: IIIPI Study

The IBC, which came into force in 2016, has been amended six times so far, and the last amendment was made in 2021.

PTI 26 Aug 2025, 07:41 PM IST

A comprehensive set of reforms across taxation, insolvency and procedural frameworks can help streamline the insolvency resolution process, according to a report prepared by Indian Institute of Insolvency Professionals.

The report by the study group of the Indian Institute of Insolvency Professionals of Institute of Chartered Accountants of India has suggested aligning the Income Tax Act with the Insolvency and Bankruptcy Code by granting tax-neutral treatment to resolution plans and exempting debt waivers from tax liabilities.

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OUTLOOK BUSINESS
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Taxation Reforms Can Help Streamline Insolvency Resolution Process: IIIPI Study

The report by the study group of the Indian Institute of Insolvency Professionals of ICAI has suggested aligning the Income Tax Act with the Insolvency and Bankruptcy Code

PTI/ Updated on: 26 August 2025 5:44 pm

Summary of this article

- IIIPI report suggests reforms in taxation, insolvency, and procedural frameworks to improve insolvency resolution.
- Recommends aligning Income Tax Act with IBC by making resolution plans tax-neutral and exempting debt waivers from tax.
- Calls for clarity on treatment of brought-forward losses and minimum alternate tax provisions.
- Suggests seamless GST input tax credit transfer during insolvency, exemption

A comprehensive set of reforms across taxation, insolvency and procedural frameworks can help streamline the insolvency resolution process, according to a report prepared by IIIPI.

The report by the study group of the Indian Institute of Insolvency Professionals of ICAI has suggested aligning the Income Tax Act with the Insolvency and Bankruptcy Code (IBC) by granting tax-neutral treatment to resolution plans and exempting debt waivers from tax liabilities.

IIIPI is promoted by the Institute of Chartered Accountants of India (ICAI).

BW BUSINESSWORLD
Tuesday | Nov 18 2025 | 05:15:07 PM

Tax Reforms To Boost Insolvency Resolution: IIIPI Report

Report urges tax-neutral resolution plans, also called for clearer guidelines on the treatment of brought forward losses

Online Bureau/ Aug 26, 2025

The Indian Institute of Insolvency Professionals of ICAI (IIIPI) recently released a report recommending key reforms in taxation, insolvency, and procedural areas to strengthen the insolvency resolution process.

The report advocates granting tax-neutral status to resolution plans and exempting debt waivers from tax liabilities by aligning provisions of the Income Tax Act with the Insolvency and Bankruptcy Code (IBC). It also called for clearer guidelines on the treatment of brought-forward losses and minimum alternate tax provisions to reduce ambiguity. Regarding the Goods and Services Tax (GST), the report suggests facilitating seamless input tax credit transfers during corporate insolvency, exempting resolution applicants from legacy GST liabilities, and simplifying compliance norms to encourage broader participation in resolution proceedings.

Centre proposed 'next-generation' GST system. Under the plan, GST would be streamlined into two primary slabs of 5 per cent and 18 per cent, with a special 40 per cent rate applied to about 5–7 demerit goods, including pan masala, tobacco and online gaming. At present, GST is charged at 5, 12, 18 and 28 per cent. Essential and food items are mostly taxed at nil or 5 per cent, while luxury and sin goods fall under the 28 per cent category, along with an additional cess.

The GST Council is scheduled to meet on September 18–19 to decide on the proposal.

These recommendations come amid the government's introduction on 12 August of a bill in the Lok Sabha to amend the IBC. The proposed amendments include measures to shorten the admission time for insolvency resolution applications, introduce an out-of-court framework for genuine business failures, and address group and cross-border insolvencies.

Help Us to Serve You Better

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

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

1.16. Observations related to Appointment of Professionals- Independence/Arm Length/Reasonableness of Fees.

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that IP delegated its authority to a professional to take custody of an asset at another location, considering it a nonengagement/ appointment. nor any relationship disclosure was filed by the IP. Therefore, the independence of IP and armslength basis could not be ascertained. ii. It has been observed that an engagement letter was not issued/maintained by the IP for the appointment of professionals. iii. It has been observed that combine fee is payable to professionals appointed like registered valuers. Also, the same is also not bifurcated in the engagement letter issued. iv. It has been observed that no quotation was sought for the appointment of a professional, therefore arm's length basis and reasonableness of fee cannot be ascertained. v. Relationship disclosure for appointment of professional is either not filed or incorrectly filed. vi. It has been observed that IP appointed IPE at 18 times more fee than IP, the reasonableness of the fee cannot be ascertained as IPE only provided support services to IP. vii. It has been observed that the appointment of professionals was done by CoC during the CIRP instead of IP. As a result, the independence of the IP cannot be ensured. For example, if the CoC directly hires a valuation expert or legal advisor without the involvement of the IP, it raises concerns about the impartiality of the process, as the IP's independence in overseeing and managing the CIRP may be compromised. viii. It has been observed that invoice raised by professional appointed is in name of another company/ nonregistered entity. Therefore, the arm's length basis and independence of IP may take a hit. ix. It has been observed that IP had appointed two professionals with overlapping of scope of work.	• Regulation 27 of IBBI (CIRP) Regulations. • Clause 8B & 8C of Schedule I of IBBI (IP) Regulations 2016.	i. Appointment of professionals may have critical lapses with both procedural and substantive implications, casting doubt on the independence and integrity of the insolvency professional (IP). ii. ***Procedurally***, failures to issue engagement letters, seek quotations, and maintain relationship disclosures undermine transparency and regulatory compliance. Additionally, delegating authority without proper appointments or disclosures raises concerns about procedural oversight and independence. iii. Combining various non-compliances issues such as combined fees, overlapping scopes, and exorbitant payments to professionals without justification compromise the arm's length basis and reasonableness of expenditures may have a ***substantive impact.***

x. It is observed that the scope specified in the engagement letter issued by the insolvency professional to the professionals appointed contains the scope of work which reflects the delegation of duties rather than assistance wherein the Independence of IP cannot be ascertained. For example : The appointed professional carries out their work independently, with no feedback loop to the IP, and the IP adopts the Professional's findings without any documented independent review. This situation could be considered outsourcing, as there's no proof that the IP remained in control of the process. xi. It has been observed that IP appointed various law firms and advocates by paying them exorbitant fees when a law firm was already appointed for legal assistance at exorbitant cost.		

1.17 Observations related to IPs responsibilities related to PUFE Transactions:

Observations	Relevant Provisions of Law	Remarks
i. Delay in the determination of PUFE transactions. ii. Undue delay in filing application with AA after the same was apprised in the COC meeting to all members. iii. Non-filing of CIRP-8 on the IBBI website for intimating details of his opinion and determination under Regulation 35A. iv. Non reviewing the report submitted by professional appointed for determine the application and after approval of resolution plan by COC filing additional transactions with AA by explaining the reasons that the IP was occupied by other activities that did not review the report and on review subsequent transactions were observed by the RP. v. Non-determination of transactions in the absence of non-ratification of fees for the professional to be appointed for determine such transactions vi. Appointing the related party as a professional to determine the transaction Undue delay in filing application with AA after discussion made with COC.	• Section 25(2)(j) of the Code •Regulation 35A, 40A and 40B of IBBI (CIRP) Regulations.	i. Firstly, delays in filing and determining Preferential Undervalued or Fraudulent Transactions (PUFE) hinder timely resolution and may jeopardize creditor interests. ii. Secondly, the non-filing of CIRP-8 on the IBBI website deprives stakeholders of crucial information regarding the IP's opinions and determinations, undermining transparency and regulatory compliance. iii. These ***procedural lapses*** may impede the efficient functioning of the insolvency process.

1.18 Observations related to fees:

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that IP had jointly charged fees for IP and IPE both appointed and mentioned the % of sharing in the minutes of the COC meeting. ii. IP have charged an unreasonable fee from the operational creditor, the fee charged by the IP was more than the amount claimed by the OC. iii. Regulatory fees- Calculated wrongly/ not ratified by the CoC. iv. Minimum fees not claimed by IP. v. IPE fees for support services are many times more than IP and no assessment of fees wrt team size and work done by IPE was recorded. vi. Withdrawal of IRP fees from the CD account without the same being approved by the COC.	• Regulation 33, 34 and 34A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. • Clause 25, 26 and 26A of Schedule I of IBBI (IP) Regulations 2016. • Circular No. IBBI/IP/ 013 dated 12th June 2018.	i. Firstly, the charging of fees jointly for both the insolvency professional (IP) and the Insolvency Professional Entity (IPE) raises procedural questions about transparency and fair allocation. Subsequently, charging unreasonable fees from operational creditors, exceeding the amounts claimed by them, suggests ***substantive issues*** regarding fairness and regulatory compliance. ii. Additionally, miscalculations or nonratification of regulatory fees by the Committee of Creditors (CoC) signify procedural lapses, undermining regulatory compliance. iii. Furthermore, failure to claim minimum fees and excessive IPE fees for support services without proper assessment highlight both procedural irregularities and substantive discrepancies, warranting immediate attention to ensure fairness and transparency in fee structures within the insolvency framework.

1.19 Observations wrt non-adherence/non- compliance to directions from AA:

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that the IP have failed to comply with the directions of the AA specifically mentioned in the order eg: to provide consent, Public Announcement is a specific newspaper, to follow the process of withdrawal as per Regulations, stay on the constitution of COC, uplifting the stay and directed to constitute COC etc.	• Directions are given by the AA/NCLT under Rule 11 of NCLT Rules as well as based on the Principle of Natural Justice and /or in the interest of justice for achieving the intent of the Code.	i. Given the judicial nature of proceedings before the AA, its directives carry the weight of court orders. Failure to adhere to these directives constitutes contempt of court, underscoring the seriousness of compliance obligations. ii. Disregarding the order of AA, may lead to jeopardize the CIRP and consequently impact the interests of stakeholders. iii. Compliance with AA directives is imperative not only to facilitate the smooth conduct of CIRP but also to uphold the integrity and authority of the judicial process.

1.20 Observations related to Preservation of Records

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that the IP failed to comply with the timeline's requirement for the preservation of the record. ii. The IP confirmed the preservation of the record, however when documents were called for inspection unable to retrieve the same for the service provider iii. It has been observed that IP did not provide the documents for Inspections iv. The IP did not maintain the written contemporaneous records for all his decisions, communication with stakeholders.	•Regulation 39A of IBBI (CIRP) Regulations 2016 •Clause 16 of Schedule I of IBBI (IP) Regulations 2016	i. Failure to provide records upon request by the IPA/IBBI constitutes a substantial lapse. Similarly, preserving records but being unable to retrieve them is considered non-preservation of records. ii. The IP must ensure the preservation of all records as per the list suggested in the Regulations.

1.21 Suggested List of Documents requisite at the time of Inspection of CIRP Assignments.

S.No.	Particulars
Admission related Documents	
1	Copy of written consent given by IP to act as IRP / RP (Proof of submission of IP-1)
2	Application filed with the AA.
3	AA order admitting the application.
4	AA order appointing the Interim Resolution Professional.
5	Form A (Public Announcement) under CIRP Regulations, 2016.
6	Form AB (Written consent to act as AR) under CIRP Regulations, 2016.
7	Cost and relationship disclosure made to IPA.
8	Form FA (Application for withdrawal of CIRP) under CIRP Regulations, 2016, if any.
9	Intimation sent to commencement of CIRP to financial institutions and statutory authorities as applicable and circulation mails and receiving thereof.
Constitution of CoC related Documents	
1	List of creditors along with the details of the claims submitted with the AA.
2	Copy of claim forms and related documents submitted by creditors (like working sheet for claim verification and supporting documents for the working sheet)
3	Copy of the communication records stating the delay provided by the Creditors who submitted claim after 90 days from the insolvency commencement date. (As per Notification No. IBBI/2023-24/GN/REG106, dated 18th September 2023 (w.e.f 18-09-2023).
4	Application to AA for condonation of delay and adjudication of such claims (As per Notification No. IBBI/2023-24/GN/REG106, dated 18th September 2023 (w.e.f 18-09-2023).
5	Report certifying constitution of the committee of creditors.
6	Latest Audited financial statements of CD.

(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 January 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.	Chirag Rajendrakumar Shah	IBBI/IPA-001/IP-P01169/2018-2019/11837	2025-03-12	2028-03-12
2.	Vineeta Maheshwari	IBBI/IPA-001/IP-P00185/2017-18/10364	2025-02-13	2028-02-13
3.	Prashant Agrawal	IBBI/IPA-001/IP-P00053/2017-18/10127	2024-12-19	2027-12-19
4.	Rajender Kumar Jain	IBBI/IPA-001/IP-P00543/2017-2018/10968	2024-11-29	2027-11-29
5	Divyesh Desai	IBBI/IPA-001/IP-P00169/2017-18/10338	2024-10-09	2027-10-09

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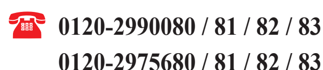

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Sl No	Department	Email Id
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3	Program	ipprogram@icai.in
4	Authorization for Assignment	ip.afa@icai.in
5	CPE	iiipi.cpe@icai.in
6	Change of Address/e-mail/contact number/any other required changes	iiipi.updation@icai.in
7	Grievance/Complaint	ipgrievance@icai.in
8	Disciplinary /Legal	iiipi.legal@icai.in iiipi.dc@icai.in
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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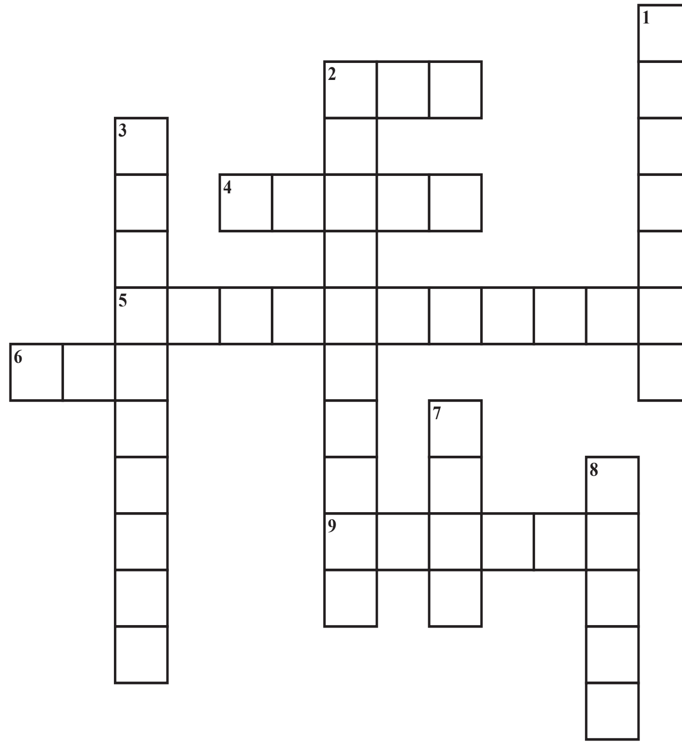
IBC Crossword



Across

[2] Who decides the fees payable to the liquidator under IBBI regulations?

[4] What type of equity shares issued to directors and employees for their know-how and contribution under the Companies Act, 2013?

[5] What percentage of voting share is required to extend the time of fast track CIRP?

[6] _____number of Preceeding Years records of business and financial operations to be compiled by the IP.

[9] The period of limitation for suits relating to possession of immovable property is ____ years

Down

[1] What is the minimum numerical threshold for homebuyers to initiate insolvency?

[2] Resolution applicants gets a fresh start, free from past liabilities under which Doctrine?

[3] Which corporate defense strategy deters hostile takeovers by making the target company less attractive to acquirers?

[7] As per the Arbitration and Conciliation Act, 1996, the number of arbitrators cannot be ____?

[8] In ____ days the company must extinguish shares from the last day of completion of buyback under Companies Act.

Answer Key: IBC Crossword, July 2025

1. 284
2. Seventy Five
3. Secured
4. Form C
5. Twenty
6. Three
7. Thirty Two
8. Eight
9. 10
10. NETA
11. 2A
12. Two

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:

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- 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.
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