

Study Group Report on Taxation and Company Law Compliances Under IBC - Best Practices

1. Executive Summary

The Insolvency and Bankruptcy Code, 2016 (the ‘Code’) has fundamentally reshaped India’s corporate distress resolution landscape. At the heart of this framework is the Insolvency Professional (IP), who is tasked with the monumental responsibility of navigating a company through the Corporate Insolvency Resolution Process (CIRP) or Liquidation. While the Code empowers the IP, it also mandates strict adherence to all other applicable laws, creating a complex and often conflicting compliance environment.

This report, prepared by the Study Group constituted by the Indian Institute of Insolvency Professionals of ICAI (IIPI), is the culmination of extensive research, stakeholder consultations, and an analysis of judicial precedents. It identifies the critical challenges faced by IPs across five key domains—Companies Act & SEBI Regulations, Income Tax, GST & Customs, Labour Laws, and Accounting & Auditing Standards—and proposes a clear framework of best practices and targeted legislative reforms to address them.

Key Findings: The Core Challenges

The Study Group’s analysis reveals a consistent pattern of systemic friction, legal ambiguity, and procedural hurdles that impede the efficiency of the insolvency process:

1. **Corporate & Securities Law:** The suspension of the Board of Directors creates a governance vacuum, making it impossible to comply with statutory requirements like holding Annual General Meetings (AGMs) and obtaining necessary approvals under the Companies Act, 2013. The existing MCA and SEBI filing portals are not designed for an IP-led governance structure, leading to significant procedural delays.
2. **Income Tax:** There is profound uncertainty regarding the taxability of transactions core to any resolution, such as the waiver of debt and the transfer of assets at distressed values. The risk of these transactions attracting significant tax liabilities (including Minimum Alternate Tax) on notional gains serves as a major deterrent to potential resolution applicants and erodes the value of the resolution.
3. **GST & Customs:** The GST framework’s rigidity poses significant challenges, including the potential for forced reversal of Input Tax Credit (ITC) due to non-payment of pre-CIRP dues, the denial of ITC to innocent customers of the insolvent entity, and procedural difficulties in managing GST registrations and refunds during the CIRP.
4. **Labour Laws:** While the Code protects the principal amounts of employee welfare dues like Provident Fund and Gratuity, significant ambiguity persists regarding the priority and treatment of interest and penalties on these dues. This, coupled with the challenges of managing ongoing contributions and terminal benefits, creates legal uncertainty and potential for inequitable treatment of creditors.
5. **Accounting & Auditing:** There is a complete absence of a dedicated accounting or auditing framework for insolvent companies in India. IPs and auditors are forced to apply traditional “going concern” principles to entities that are clearly not going concerns, leading to a disconnect between the financial statements and the economic reality, and a lack of transparent, comparable reporting.

Recommended Best Practices for Insolvency Professionals

To navigate these complexities, the report puts forth a comprehensive framework of Best Practices and Standard Operating Procedures (SOPs) for IPs. These practices emphasize a proactive and diligent approach, starting from Day 1 with the immediate securing of all corporate records and digital assets. The SOPs guide IPs in maintaining continuous and transparent communication with all regulatory bodies, ensuring current statutory compliances (such as TDS, GST, and PF deposits) are met as CIRP costs, and strategically structuring resolution plans to be tax-efficient and compliant. This framework is designed to mitigate risks, enhance transparency, and provide a clear roadmap for IPs to manage the corporate debtor's affairs in a legally compliant manner.

Summary of Key Recommendations

To address these challenges and create a more harmonised and efficient ecosystem, this report puts forth the following critical recommendations for consideration by the Government and relevant regulatory bodies:

1. Legislative Amendments for Tax Neutrality:

- Amend the Income Tax Act to provide explicit exemptions for transactions undertaken pursuant to an approved resolution plan. This includes exempting debt waivers from being taxed as income, providing a safe harbour from deeming provisions on undervalued asset transfers (Sec 56(2)(x), 50CA, etc.), and providing complete relief from MAT on notional profits arising from such transactions.
- Amend the tax law to protect innocent employees and customers from the double burden of undeposited TDS.

2. Harmonisation of GST and Labour Laws with IBC:

- Amend GST law to protect businesses from the denial or reversal of ITC due to the insolvency of

a counterparty and codify the special procedures for GST compliance during CIRP.

- Amend the IBC to clarify that only the principal amount of PF/ Gratuity dues are excluded from the liquidation estate, with interest and penalties being treated as operational debt, ensuring fairness to all creditors.

3. Streamlining Corporate Law Compliances:

Issue formal notifications under the Companies Act to exempt companies in CIRP from the requirement of holding AGMs and create a fast-track process for all corporate filings and actions required to implement a resolution plan.

4. Introduction of an Insolvency Accounting Framework:

The Institute of Chartered Accountants of India (ICAI) and the National Financial Reporting Authority (NFRA) should be directed to issue a specific Guidance Note or a new Accounting Standard for companies under insolvency, addressing the “going concern” dilemma and mandating clear, insolvency-specific disclosures.

5. Strengthening the IBC Framework:

Amend the Code itself to provide a clearer definition of the scope of the moratorium to include all statutory proceedings, and to legislatively settle the priority of statutory dues to prevent conflicting judicial interpretations.

By implementing these recommendations, the Government can significantly reduce legal uncertainty, lower the cost and time involved in the insolvency process, and create a more predictable and equitable environment. This will not only empower Insolvency Professionals to perform their duties more effectively but will also enhance investor confidence and ultimately strengthen the objectives of the Insolvency and Bankruptcy Code.

2. Introduction

2.1. Background

The Insolvency and Bankruptcy Code, 2016 (the ‘Code’) represents a paradigm shift in the economic legislation of India, aimed at consolidating the legal framework for the time-bound resolution of insolvency and bankruptcy. A critical pillar of this framework is the Insolvency Professional (IP), who assumes the role of a resolution professional (RP) or liquidator, steering the corporate debtor through the intricate processes of revival or liquidation. Recognising the multifarious and often onerous responsibilities cast upon IPs, the Indian Institute of Insolvency Professionals of ICAI (IIPI), the nation’s first and largest professional body of IPs, has been at the forefront of capacity building and knowledge dissemination. In furtherance of this objective, and acknowledging the persistent challenges faced by IPs in navigating the complex web of statutory compliances, the IIPI constituted this Study Group on ‘Taxation and Company law compliances under IBC – Best Practices’. This report is the culmination of the Study Group’s extensive research and deliberations.

2.2. The Compliance Challenge under the IBC

An IP, upon appointment, steps into the shoes of the management of the corporate debtor, with the powers of the Board of Directors vesting in them. They are tasked not only with preserving the assets of the corporate debtor and managing it as a going concern but also with ensuring compliance with all applicable laws. This duty is non-negotiable and is expressly mandated by the Code and the regulations framed thereunder. However, the practical discharge of this duty is fraught with significant challenges. The IP must interface with a multitude of statutory authorities governing direct and indirect taxes, corporate law, securities law, and labour laws. Each of these statutes has its own set of compliance requirements, which often do not seamlessly integrate with the unique circumstances of a company undergoing

insolvency. This creates a landscape of legal ambiguity, procedural friction, and systemic hurdles that can impede the primary objective of the Code—the timely and effective resolution of corporate distress. This report addresses this fundamental compliance challenge.

2.3. Objectives and Scope of the Report

The primary objective of this report is to identify the challenges faced by IPs during the Corporate Insolvency Resolution Process (CIRP) and Liquidation, and to recommend a clear and actionable framework of best practices. The scope of the Study Group’s work encompasses the following key areas of compliance:

- Compliances under the Companies Act, 2013, and SEBI Regulations
- Compliances under the Income Tax Act, 1961
- Compliances under GST and Customs Laws
- Compliances under key Labour Laws
- Compliances related to Accounting & Auditing Standards

In addition to recommending best practices for IPs, this report also puts forth specific, well-reasoned proposals for legislative and regulatory amendments aimed at creating a more harmonised and efficient compliance ecosystem for companies under insolvency.

2.4. Methodology of the Study

The findings and recommendations contained in this report are the result of a comprehensive and multi-pronged research methodology undertaken by the Study Group. The process involved:

- Extensive Deliberations: The members of the Study Group held numerous meetings to deliberate on the practical challenges and legal ambiguities faced in each area of compliance.
- Stakeholder Consultation: A detailed questionnaire

was formulated in a Google Form and circulated by IIIPI to a wide base of Insolvency Professionals across India. The extensive feedback and real-world concerns received were systematically collated and analysed.

- **Evaluation of Case Studies:** The Group evaluated numerous case studies of companies that have undergone CIRP and liquidation to understand the practical application of the laws and the specific hurdles encountered.
- **Interpretation of Judicial Pronouncements:** The report is informed by a thorough analysis of relevant judgments from the Hon'ble Supreme Court, various High Courts, the National Company Law Appellate Tribunal (NCLAT), and the National Company Law Tribunal (NCLT), which have shaped the jurisprudence on the interplay between the IBC and other statutes.
- **Review of Existing Literature:** The Study Group also reviewed existing research papers, articles, and regulatory circulars on the subject to ensure a comprehensive understanding of the issues.

This rigorous methodology ensures that the report is grounded in both legal scholarship and the extensive practical experience of insolvency professionals operating in the field.

3. The IP's Statutory Imperative for Compliance

Upon the commencement of a Corporate Insolvency Resolution Process (CIRP), a fundamental shift occurs in the governance of the corporate debtor. The powers of its board of directors are suspended, and the management of its affairs vests entirely in the hands of the appointed Interim Resolution Professional (IRP) or Resolution Professional (RP), hereinafter collectively referred to as the Insolvency Professional (IP). In this capacity, the IP assumes a role that is, de facto, that of a chief executive officer and, de jure, that of a trustee for all stakeholders. This transition is not merely a change in management but the imposition of a comprehensive statutory duty upon the IP to navigate the corporate

debtor through the complexities of the Insolvency and Bankruptcy Code, 2016 (the 'Code').

A central, and often onerous, aspect of this responsibility is the unwavering duty to ensure that the corporate debtor, under the stewardship of the IP, adheres to all applicable laws of the land. This duty is not ancillary; it is a core tenet of the IP's role, mandated expressly by the Code and the regulations framed thereunder. The legislative intent is clear: the insolvency process, while providing a moratorium and a pathway to resolution, does not create a law-free zone. The corporate debtor remains an entity subject to its legal and statutory obligations, and the responsibility for ensuring compliance is unequivocally placed upon the IP.

This statutory imperative is primarily enshrined in the following provisions:

1. **Section 25 of the Insolvency and Bankruptcy Code, 2016:** This section outlines the duties of the Resolution Professional.
 - Section 25(1) stipulates that, "It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor." The preservation of a business as a "going concern" inherently includes ensuring its operations are lawful and compliant with all statutory requirements.
 - Section 25(2)(b) further mandates that the RP shall, for the purposes of managing the operations of the corporate debtor, "represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings." This duty extends to representing the corporate debtor before all statutory and regulatory authorities, such as the Income Tax Department, GST authorities, the Registrar of Companies, and others.
2. **IBBI (Insolvency Professionals) Regulations, 2016:** The Code of Conduct, detailed in the First Schedule to these regulations, further crystallizes this responsibility.

- Clause 27A of the First Schedule to the IBBI (Insolvency Professionals) Regulations, 2016 imposes a direct obligation on the IP, stating, “An insolvency professional shall, while undertaking any assignment or conducting any process under the Code, exercise reasonable care and diligence and take all necessary steps to ensure that the entity is in compliance with the applicable laws.”
- Clause 27B reinforces this duty by introducing a pecuniary consequence for non-compliance. It provides that an IP cannot include any loss or penalty incurred on account of non-compliance with any applicable law in the insolvency resolution process cost or liquidation cost. This effectively means that the financial burden of non-

compliance may fall upon the IP, underscoring the gravity of this duty.

Therefore, the legal framework establishes an unambiguous mandate. The IP is not merely an administrator of assets but a custodian of the corporate debtor’s legal integrity. This statutory imperative forms the critical backdrop against which the challenges of compliance under various laws—including the Companies Act, taxation statutes, and labour laws—must be analysed. The subsequent sections of this report delve into the specific practical and legal impediments faced by IPs in discharging this fundamental duty.

(to be continued...)

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