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THE RESOLUTION PROFESSIONAL

RESEARCH JOURNAL OF INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI (IIIPI)

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

PREPARING FOR IBC 2.0

ABOUT IIIPI

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

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

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

OUR VISION

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

STRATEGIC PRIORITIES

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

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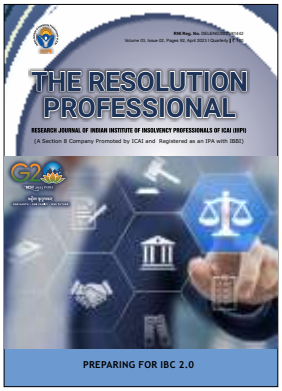

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CA. Aniket Sunil Talati
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The Institute of Chartered Accountants of India (ICAI)

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Message from Chairman, Editorial Board

CA. Aniket Sunil Talati
President, ICAI
Chairman, Editorial Board-IIIPI

Greetings!

Over the past six years, IBC remains a vital legislation, has meandered through many challenges and won accolades. The policy makers have responded timely to the needs for modifications in the IBC and related regulations to overcome hurdles and removed whatever had become obsolete in due course of time. This is evident from the fact that, so far, the Parliament has amended the IBC six times. Besides, the IBBI has also made about 84 amendments to its 18 regulations. Even today, a bill for introducing Cross Border Insolvency Framework is almost ready while process has been initiated to iron out a robust framework for Group Insolvency.

The IBC ecosystem has helped in improving the financial health of banking and corporate sectors of the country which is crucial for an emerging economy. Today, India is amongst the few countries in the world that have been able to reduce core debt of the corporate sector. As per the data released by Department of Economic Affairs in Monthly Economic Review, February 2023, India's corporate sector's core debt as a percentage of GDP stood at 87.7% in Q3 of 2022, which is much better than 157.3% of Advanced Economies (AEs). This achievement despite the Covid-19 pandemic and ongoing financial crisis, shows the resilience of Indian economy. Furthermore, the data released by the IBBI suggests that a total of 611 Corporate Debtors (CDs) were rescued under the IBC through resolution plans till December 2022, which realized 176% of the liquidation value of these CDs. The resolved CDs had assets valued at ₹1.44 lakh crore, while the CDs referred for liquidation had assets valued at ₹0.62 lakh crore when they were admitted into Corporate Insolvency Resolution Process (CIRP).

Indian Institute of Insolvency Professionals of ICAI (IIIPI) has always been a leading partner in furthering objectives of the insolvency ecosystem in the country. Since its foundation in 2016, IIIPI has continuously retained its position as the largest Insolvency Professional Agency (IPA) of India. Presently, about 63% of Insolvency Professionals (IPs) and 58% Insolvency Professional Entities (IPEs) are members of IIIPI. In addition to efficiently discharging its statutory role as a front-line regulator, IIIPI has contributed significantly to shaping and strengthening the IBC ecosystem by bringing various stakeholders together, facilitating interaction among them, and providing research-based inputs to policy makers, professional members, and other stakeholders.

I wish IIIPI the very best in continuing its journey of strengthening the IBC and realize the dream of making insolvency ecosystem of the country at par with the global standards. I hope you will enjoy reading and greatly benefit from this edition of *The Resolution Professional.*

Wish you all the best!

CA. Aniket S. Talati
President, ICAI
Director & Chairman, Editorial Board-IIIPI

Message from Chairman, Governing Board-IIIPI

Dr. Ashok Haldia
Chairman, Governing Board- IIIPI

Dear Member,

The IBC, 2016 has successfully waded through several challenges and won accolades. Now the need is being felt across the stakeholders to transform it from a basic insolvency regime, as it exists today, to an all-inclusive world class robust insolvency ecosystem. This future form of insolvency ecosystem in India has been envisioned as IBC 2.0. From this perspective, the ensuing FY 2023-24 is very crucial. The IBC Version 2 i.e., IBC 2.0 aims to increase the effectiveness of IBC by expediting the IBC processes and by maximizing the realisation value. Further, areas related to Cross Border Insolvency, Group Insolvency and Individual Insolvency will also be covered under IBC 2.0.

As a frontline regulator, IIIPI has been shouldering responsibilities by introducing out of the box initiatives for enhancing efficiency and efficacy of the Indian insolvency ecosystem in line to the IBC.2.0, such as Peer Review Framework, Mentorship Program, and collaborations with world class premier institutions/ universities in India and abroad. Furthering this objective, IIIPI has constituted a committee to shoulder the responsibilities in preparing for IBC 2.0.

Value maximization of the Corporate Debtor undergoing CIRP is one of the primary objectives of the IBC, 2016 which is very crucial for transformation of the insolvency ecosystem into IBC 2.0. Though looks simple, value maximization is itself a multifaced idea which includes value creation, value protection and value conservation among others. As per the data with IBBI, till December 2022, 847 Avoidance Transaction applications have been filed amounting to ₹2.82 lac crore out of which 143 cases have been settled and ₹0.05 lac crore clawed back, which is very less and is a major concern for all of us. Keeping these challenges of IPs in mind, IIIPI organized an International Conference (Virtual) on "Avoidance Transactions under IBC – Improving Outcomes" on March 29, 2023, in which Shri. Sudhaker Shukla, WTM-IBBI, Mr. Paul Bannister, Head-Policy, Insolvency Services, Government of the UK, enlightened the participants on importance of Avoidance under IBC regime. Besides, domain experts from India and abroad shared their views in the panel discussion. On this occasion, IIIPI also released a publication titled 'Avoidance Transactions – Improving Outcomes' which is based on the Report of Study Group constituted in this regard.

Inclusive Growth of Membership

The membership base of IIIPI includes 2,696 registered IPs and 22 Insolvency Professional Entities (IPEs). IIIPI has continuously maintained its position as the largest IPA of the country with members from diverse academic and professional backgrounds. In this short span of about six years, IIIPI has secured pan-India presence having significant representation from each and every region of the country. IBBI data shows that IIIPI has 981 registered IPs in the Northern Region, 777 in Western Region, 588 in Southern Region and 310 in Eastern Region of the country. This demographic plurality is indeed the primary asset and strength of IIIPI, aiding in success of the institute.

Recent Initiatives

Insolvency profession is a relatively new but highly multifaced and vibrant profession. Therefore, interdisciplinary research becomes critical. Furthering IIIPI's endeavour of providing high quality research insights to insolvency professionals, policy makers and other stakeholders of the IBC, the IIIPI-Board has recently provided go ahead for signing of research related MoU

(Memorandum of Understanding) with two premier institutions of the country IIM Ahmedabad (IIMA) and National Law University, Delhi (NLUD). Some of the recent initiatives are as follows:

- Three research proposals have been approved under "IIIPI Research Project Scheme" for FY 2023-24.
- MoU is being signed with IIMA for launch of Residential Management Development Program for IPs with a focus on managerial skill development.
- Alliance is being formalized with INSOL International-UK, for providing INSOL-UK's co-membership to IIIPI members at significantly concessional terms.
- As per suggestion made by the Chairman, IBBI in an open house by IIIPI, a list of about 80 areas received from all sections of the profession, where IPs are facing lack of clarity or need guidance was sent to him. Response received would be shared with the professionals.

So far, IIIPI has constituted 15 Study Groups out of which the Reports of 11 Study Groups have been published and are also available on IIIPI website. Presently, four following Study Groups are under progress:

- New roles and responsibilities of IPs across the entire value chain of stress asset management ecosystem.
- Usage of Taxonomy/XBRL as Technology Solution for IBC Processes.
- Contribution of IPs in timebound Resolution under IBC.
- Analysing reasons for delay during CIRP through Case Studies.

Capacity Building

During the previous Financial Year 2022-23, IIIPI conducted 42 Webinars, 12 EDPs (Executive Development Programs), 08 LIE Preparatory Virtual Classroom Programs, 06 PRECs, 02 Hybrid Seminars and 07 miscellaneous events for capacity building of insolvency professionals. We have also diversified our programs by involving various stakeholders of the IBC including Ministry of Corporate Affairs, IBBI, RBI, banks, academia, NCLT members, foreign experts, and industries.

Insolvency profession can be better termed as a profession of professions. Under the IBC, you have been bestowed with several crucial responsibilities such as taking over the business of corporate debtors, running the business, value maximization, tracing, and claw back value lost in PUFE transactions, resolution of the Corporate Debtor and implementation of the Resolution Plan among others. All these require huge practical knowledge and experience for which cooperation and active participation of all the stakeholders is crucial.

Members should use the facility of 'Discussion Forum', and 'Mentorship Portal' and come forward for peer review services. The Members according to their interest can write to IIIPI for participation in Study Group, Research Projects, and contribution in IIIPI Journal.

Given the emerging challenges in the current and proposed dispensations, there is a need for preparing IBC ecosystem for next phase of growth by anticipating future changes and imperative requirements. For the purpose, IIIPI has constituted a Board level committee of its directors to recommend measures in this regard. A survey is also being conducted to seek feedback/comments from IPs and other stakeholders. You are requested to provide valuable comments and aid the effort.

In the past over 2.5 years, *The Resolution Professional*, quarterly research journal of IIIPI, has established itself as a credible platform for dissemination of information and knowledge-sharing among the stakeholders of the IBC and developing a global world view among IPs. I hope you will enjoy reading this edition of the journal.

Wish you all the best.

Dr. Ashok Haldia
Chairman, Governing Board-IIIPI

From Editor's Desk

Dear Member,

During about six years since 2016 and with an active support of legislator, judiciary, and executive institutions of the country IBC ecosystem has scaled several hurdles successfully. These outcomes have enhanced the expectations of various stakeholders, which is indeed a welcome development. We at IIIPI get regular feedback from different stakeholders particularly insolvency professionals on a range of issues. This has casted upon us a responsibility to evolve further to face future challenges and support the transformation in the IBC regime. Keeping this vision in mind we have chosen 'Preparing for IBC 2.0' as the theme of The Resolution Professional for this financial year.

The present edition of *The Resolution Professional* starts with an Exclusive Interview of Shri Ashwini Kumar Tewari, Managing Director (Risk, Compliance & SARG), State Bank of India (SBI) in which he has shared his views on various aspects of the IBC Ecosystem including the legal framework, resolution, recovery, CoC, Bad Bank, PPIRP, etc.

We have also carried the *Key Takeaways from Addresses of Dignitaries in the International Conference (Virtual) on "Avoidance Transactions under IBC-Improving Outcomes"* held on *March 29, 2023.* Shri. Sudhaker Shukla, Whole Time Member (WTM), Insolvency and Bankruptcy Board of India (IBBI) graced the Conference as Chief Guest and Mr. Paul Bannister, Head-Policy, Insolvency Services, Government of UK was present as the Guest of Honour. Dr. Ashok Haldia, Chairman-IIIPI, delivered Welcome and Opening Address. On this occasion, a publication titled "Avoidance Transactions Under IBC 2016-Improving Outcomes" which is based on the report of a Study Group constituted in this regard by IIIPI was also released. The Inauguration Session was followed by Special Addresses and Panel Discussion wherein domain experts from India, the United Kingdom, Singapore, and Hong Kong shared their experiences and best practices related to Avoidance Transactions and Avoidance Proceedings in their respective jurisdictions.

Moreover, this edition has four research articles and Case Study on 'Resolution of Irevo Fiveriver Private Limited (IFPL)'.

In the opening article 'Invocation of Group Insolvency', the author presents a detailed analysis of various judgements on groups insolvency and sheds light on various efforts of policy makers to introduce a fully-fledged Group Insolvency Framework under the IBC. The second article 'Developing Jurisprudence on Section 12A of the IBC, 2016' analyses jurisprudence developing around the provision of withdrawal of CIRP under Section 12A of the IBC, 2016. In the third article 'Understanding Indian Insolvency Ecosystem' the author presents a thorough analysis on how various components of the insolvency framework in India sustain one another in meeting the main objectives of the Code. In the last article 'Changing Corporate Credit Culture under IBC', the author presents an analysis of the pros and cons of the IBC and makes recommendations to address the concerns of aggrieved stakeholders.

Besides, the journal also has its regular features, i.e., Legal Framework, IBC Case Laws, IBC News, Know Your Ethics (Background Guidance on Quality Control by Insolvency Professionals), IIIPI News, IIIPI's Publications, Media Coverage, Services 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

It's the Responsibility of all Stakeholders to Make Collaborative Effort to Reduce the Time Taken for Completion of Resolution Process of Stressed Assets and Prevent Significant Erosion of Value of the Assets: Shri Ashwini Kumar Tewari, MD, SBI

For Insolvency Professionals, it is required to maintain transparency in the process, ensuring that all stakeholders are appropriately informed. S/he also has to perform a balancing act of conducting the resolution process while taking care of the interests of all stakeholders of the CD.

Shri Ashwini Kumar Tewari
Managing Director (Risk, Compliance & SARG)
State Bank of India (SBI)

Shri Ashwini Kumar Tewari is presently the MD and Whole Time Director of SBI, handling the portfolio of Risk, Compliance and SARG from June 2022. In his role, he is focusing on early recognition of corporate stress and action thereon, establishing a Climate Risk Framework for the Bank including identification, funding etc. and activating stressed assets sale platform. Under his leadership, the Bank's rating in the RBI Audit has improved from High to Medium Risk. Earlier, he was handling the portfolio of MD-International Banking, Technology & Subsidiaries at SBI. In his banking career of about three decades, Shri Tewari has handled several assignments for SBI in India and abroad.

Trained as an Electrical Engineer, he is also a Certified Associate of Indian Institute of Bankers (CAIIB), and Certified Financial Planner (CFP). He has served on the Board of International Institute of Bankers, New York, and the Board of University of Washington Global Bankers Program.

*In an Exclusive Interview with **IIIPI** for **The Resolution Professional,** Shri Tewari expressed his views on various aspects of the IBC Ecosystem. **Read on to know more....***

IIIPI: IBC, 2016 has recently completed first six years of operation. How do you assess evolution of IBC so far towards resolution of stressed business in India and promoting ease of doing business?

Shri Tewari: Insolvency and Bankruptcy Code, 2016 (IBC/Code) aimed at providing a time-bound process for resolving insolvency in businesses and individuals and to improve the ease of doing business in India and boost investor confidence by providing a more predictable and transparent framework for resolving bankruptcy. IBC has pushed a lot of promoters into negotiating with the banks, which they did not do earlier.

It has been a mixed result in the last six years of the IBC. On the one hand, the code has been successful in resolving the insolvency of several large companies, such as Essar Steel, Bhushan Power and Steel, and Alok Industries, among others. The successful resolution of these cases has led to the injection of fresh capital and the revival of these companies, which has had a positive impact on the economy in terms of employment and other economic parameters.

Earlier, the average recovery rate was just around 26%. But, since the introduction of the IBC, recovery rates have varied from approximately 33% in 2021-2022 to as high as 49.6% in 2017-2018.

Another key objective of the IBC was to improve the recovery rate for creditors. Prior to the IBC, the recovery rate for creditors in insolvency cases was relatively low, with creditors often receiving only a small fraction of their outstanding claims. The average recovery rate was just around 26%. But, since the introduction of the IBC, recovery rates have varied from approximately 33% in 2021-2022 to as high as 49.6% in 2017-2018. This is a significant improvement and is a testament to the effectiveness of the IBC in improving the recovery rate for creditors.

On the other hand, the IBC has also faced several challenges mainly on account of slow pace of resolution.

Ministry of Corporate Affair's initiative to bring substantive changes in IBC, 2016 is a welcome move. Inviting comments from the public on proposed changes will provide perspective of all segments and stakeholders. Five years of IBC and experience of more than six thousand admitted cases are quite a lot to understand and identify the areas of improvement, viz. adhering to the timeline, large haircuts taken by financial creditors, increase in number of litigations hampering resolution process. In many cases submitted resolution plans are even lower than liquidation value, which is also an area of concern and needs attention.

IIIPI: While undertaking processes under IBC, wisdom of CoC is considered paramount. How has been SBI's experience on ground as a CoC member in addressing critical issues during IBC process?

Shri Tewari: The Insolvency and Bankruptcy Code, 2016, envisages a "creditor in control" regime where creditors shall exercise a control through insolvency professionals in the event of default in payments of loans or interest.

Committee of Creditors (CoC) is the tool to have that "control" over the functioning of the debtor in default against which Corporate Insolvency Resolution Process (CIRP) is initiated. Insolvency Resolution Professional (IRP) recommended by CoC and appointed by Adjudicating Authority takes over administrative control of the management of the corporate and takes decisions for the going concerns based on recommendations of CoC.

As all the members of the CoC have identical goal of maximizing the recovery in best possible period within given timeline under the Code. So, generally members are on same page and take collaborative decision benefitting Resolution Process.

The Code and the courts have left a wide ambit of commercial and business decisions to the CoC. The Resolution Professional (RP) chairing the meetings of the CoC serves as a means to address coordination issues in the CoC and ensures adherence to objective and timelines of the CIRP. CoC's decision with requisite voting share in relation to the Resolution Plan is sacrosanct. The approved plan as stamped by the court is binding on all stakeholders including the dissenting creditors. The choice of Resolution Planhas been placed under the ambit of the 'commercial wisdom' of the CoC and is unchallenged.

Considering the importance of the role to be played by the nominated representative of the Financial Creditor (FC) in CoC, SBI has well laid down guidelines for its officials representing the Bank in CoC. Our Bank has been nominating officials of sufficient seniority to CoC. Internal approval processes involve senior functionaries/ committees in decision making. Expertise and experience of our representatives and directions from senior functionaries, besides a robust legal department help in handling critical issues, assessment of resolution plans, handling litigations affecting the CIRP.

As such we are well placed as regards addressing critical issues during IBC process.

IIIPI: The framework for Insolvency of Personal Guarantors to CD has been in vogue for over 3 years now. The experience, however, has been mixed bag. What is your assessment of the same?

Shri Tewari: Although Insolvency of Personal Guarantor to Corporate Debtor (PG to CD) is in vogue for more than 3 years now, and almost 1,612 cases have been filed for Insolvency of personal guarantors, traction in this area requires much improvement. As per IBBI data as on December 31, 2022, although 1,612 cases have been filed with aggregate debt amount of ₹1.41 lakh crores, only 154 applications have so far been admitted and only 2 have yielded approval of repayment plan resulting in realization of ₹12 crores.

> **"As per IBBI data as on December 31, 2022, 1,612 cases amounting ₹1.41 lakh crores of debt have been filed but only 154 applications have so far been admitted and only 2 have yielded approval of repayment plan resulting in realization of ₹12 crores."**

SBI has filed more than 300 Personal Insolvency cases and none of the cases have reached repayment plan stage.

Evidently this area needs urgent attention of the stakeholders and the improvement in Adjudicating infrastructure is the need of the hour for faster disposal of the cases.

IIIPI: Prepack Insolvency Framework was introduced as a pre-emptive measure for resolving MSME stress especially in the backdrop of Covid pandemic. Usage/outcome thereof has been sub-optimal. What would be your views on the efficacy of PPIRP and on its viability getting extended?

Shri Tewari: Pre-Pack Insolvency Resolution Process (PPIRP) is a restructuring methodology that enables creditors and debtors to come to an informal agreement before submitting it for approval. It's a fact that PPIRP has not gained required traction in the market as very few cases were admitted under this mechanism.

Inherently this scheme has many benefits, viz. completion of initial steps of resolution process before approaching Adjudicating Authority, management control remains with the Corporate Debtor, Base Resolution Plan and availability of 'Swiss Challenge method' to make the best possible Resolution Plan. Additionally, CoC is also provided for under the scheme to resolve at any time after the Pre-Pack Insolvency commencement date to initiate CIRP.

However, PPIRP is only limited to MSME. The poor response may be attributed to the limited scope as promoters of the defaulting MSME may not be comfortable initiating PPIRP as it will involve monitoring of management of the affairs of CD by the appointed Resolution Professional, examination of avoidance transactions, power to CoC to resolve to vest the management of the Corporate Debtor with the Resolution Professional.

There can be hesitancy on the part of financial creditors also as haircut involved is a last resort in the case of CIRP, against a voluntary one in case of PPIRP. There might be fear among operating officials of Financial Creditors that such a decision might be subject to scrutiny by various authority at a later date.

> **"We feel that PPIRP shall be extended to other corporate also and an awareness drive also shall be undertaken by IBBI in association with organizations like FICCI, ASSOCHAM, etc."**

We feel that PPIRP shall be extended to other corporate also and an awareness drive also shall be undertaken by IBBI in association with organizations like FICCI, ASSOCHAM, etc.

IIIPI: The need has been felt for having a framework of "Code of Conduct for CoC members" under IBC. Though efforts seem to afoot in this regard, how do you visualize the need for and emerging scenario on this front?

Shri Tewari: Financial Creditors play a very significant role as they have larger stakes involved. FCs are equipped with the ability to decide on matters relating to commercial viability of the CD and display their willingness to take the risk of restructuring their debts in order to keep the CD a going concern. It may also be argued successfully that the FCs are better placed to assess the feasibility and viability of a Resolution Plan for the successful continuance of a CD as a going concern. And if a CD revives successfully, it can as well be reasonably assumed that other stakeholders like Operational Creditors would also equally benefit from the revival.

> **"While at a micro level, say on an individual bank level, we do not feel the need for a formal "Code of conduct for CoC"… However, on a larger scale, say at industry level, Code of Conduct for CoC may set out the guiding principles for the conduct of the CoC."**

While at a micro level, say on an individual bank level, we do not feel the need for a formal "Code of conduct for CoC", as at SBI, we have a robust system of nominating representatives, internal approval system through designated senior functionaries/Committees, robust legal department to support the CoC as and when required and a structured NCLT Department which acts as a Nodal Point to oversee the process, empanel Advocates and IRPs, appoint IRPs and acts as a conduit to suggest changes/modifications in IBC/ Regulation as and when required to IBBI/ IBA.

However, on a larger scale, say at industry level, Code of Conduct for CoC may set out the guiding principles for the conduct of the CoC and ensure that its commercial wisdom is largely confined to within the four walls of these guiding principles.

Some of the guiding principles may include intent statements on the following areas:

(a) demonstrable transparency in the conduct of the CoC especially regarding conflict-of interest issues.

(b) requirement for better due diligence of the RA as well as the CD;

(c) mechanism for resolution of deadlocks on matters where the CoC is unable to take decisions due to lack of requisite majority.

IIIPI: In the direction of resolving non-performing banking credit portfolio, a combination of NARCL (Bad Bank) and IDRCL is being touted as a major step. How do you see the development on this front emerging and inter-linkages, if any, with IBC regime?

Shri Tewari: NARCL is basically a Bad Bank created by the Central Government in the mould of an Asset Reconstruction Company (ARC). The ARC has been tasked with picking up bad loans worth ₹2 lakh crores. The organisation pays 15% of the value of the bad loan in cash, and the remaining 85% will be paid via Security Receipts (SR). The Government approved a ₹15,300 crore blanket guarantee for National Asset Reconstruction Company Ltd. (NARCL) during January 2023, clearing roadblocks for the keenly awaited transfer of doubtful advances. Government guaranteed securities receipts issued by NARCL, which will buy the bad loans from banks will be valid for five years, and condition precedent for invocation of guarantee will be resolution or liquidation.

The IDRCL is a service company or an operational entity, which will manage assets and loop in market professionals and turnaround experts. It is the IDRCL that will put a value on the NPA.

Last fiscal year, NARCL acquired outstanding loans worth ₹10,378 crores which included Jaypee Infratech, SSA International, and Helios Photo Voltaic Ltd. NARCL has also participated in resolution of SREI group accounts and declared as successful bidder.

However, there are some challenges also like low offer value and time taken in due diligence and negotiation which is higher as compared to time taken by other ARCs though it should improve over time.

Again, as 85% of the asset value is paid through security receipts guaranteed by Government, secondary market for SRs needs to be developed, so that lenders could trade their holdings, if desired.

IIIPI: What sort of guidance, would you like to share with Insolvency Professional, Creditors and other stakeholders to make IBC more robust in near future?

Shri Tewari: Principal objective of the IBC is revival of Corporate Debtor and to make it a going concern and every attempt should be made to revive it in a timebound manner with liquidation being the last resort.

However, out of more than four thousand CIRP cases closed up to December 2022, 45% is though commencement of liquidation. This is obviously a higher number but when compared to same data as up to December 2021, out of about three thousand accounts closed, 75% was through commencement of liquidation. Figures show improvement in line with the objective of the code, but more has to be achieved.

Average time taken for resolution is also quite high as compared to the maximum permitted limit. The higher time taken for resolution is mainly on account of associated litigation as with time, the average number of interlocutory applications (IAs) has increased, which is considered to impact realisable value of assets.

It's the responsibility of all stakeholders to make collaborative effort to reduce the time taken for completion of resolution process of stressed assets and prevent significant erosion of value of the assets.

> **"For Insolvency Professionals, it is required to maintain transparency in the process, ensuring that all stakeholders are appropriately informed.**

For Insolvency Professionals, it is required to maintain transparency in the process, ensuring that all stakeholders are appropriately informed. S/he also has to perform a balancing act of conducting the resolution process while taking care of the interests of all stakeholders of the CD. For this reason, the need for specialized professionals to conduct CIRPs is critical.

Financial Creditors need to increase focus on improving recovery rate, keep advance preparation for expected litigations, make all efforts to support Insolvency Professional in completing the process within given timeframe and iron out differences as regards distribution of offer amount.

Key Takeaways from Addresses of Dignitaries in the International Conference (Virtual) on "Avoidance Transactions under IBC-Improving Outcomes" on March 29, 2023

Indian Institute of Insolvency Professionals of ICAI (IIIPI) organized an International Conference (Virtual) on "Avoidance Transactions under IBC-Improving Outcomes" on Wednesday, 29th March 2023.

Shri. Sudhaker Shukla, Whole Time Member (WTM), Insolvency and Bankruptcy Board of India (IBBI) graced the Conference as Chief Guest and Mr. Paul Bannister, Head-Policy, Insolvency Services, Government of UK was present as the Guest of Honour. Dr. Ashok Haldia, Chairman-IIIPI, delivered Welcome and Opening Address. On this occasion, a publication titled "Avoidance Transactions Under IBC 2016-Improving Outcomes", which is based on the Report of a Study Group constituted in this regard by IIIPI was also released.

The Inauguration Session was followed by Special Addresses and Panel Discussion wherein domain experts from India, the United Kingdom, Singapore, and Hong Kong shared their experiences and best practices related to Avoidance Transactions and Avoidance Proceedings in their respective jurisdictions. Hereinbelow, we present highlights from addresses of dignitaries in this program.

Welcome and Opening Address
Dr. Ashok Haldia
Chairman, Governing Board-IIIPI

1. Avoidance Transactions are often held responsible for under-realization of values and delays in resolution of the Corporate Debtor.

2. With the support and confidence of over 63% Insolvency Professionals (IPs) of India, IIIPI has continuously maintained its status as the largest Insolvency Professional Agency (IPA) of the country. This also casts a responsibility upon IIIPI to ensure excellence, independence, and integrity of the entire IBC ecosystem in terms of what they deliver and how they deliver.

3. IIIPI is working closely with the IBBI and Insolvency Committee of ICAI, in providing to IPs the experiences and platform for Continuous

Professional Education (CPE) of the IPs. We have also provided a platform 'Discussion Forum' on our website to resolve their problems on a day-to-day basis where they can raise their individual issues and concerns. Besides, we organize Executive Development Programs (EDPs) where they can exchange their views and discuss issues and challenges freely with fellow IPs and distinguished faculties.

4. We have brought out more than 10 research publications based on the Study Groups constituted by IIIPI. These Study Groups conduct several rounds of deliberations among stakeholders including experts, experienced professionals and faculties. These reports also include recommendations to resolve the challenges in different areas of insolvency profession.

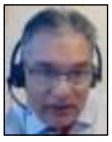
5. Besides adversely affecting value realization of the corporate debtors, Avoidance Transaction causes value deterioration due to litigation related delays. Low realization of value from Avoidance Applications filed by Resolution Professionals under the IBC, 2016 is also a matter of major concern among stakeholders.

6. We have requested the bankers including the IBA (Indian Banks' Association) to prepare a checklist for Avoidance Transactions.

7. ICAI has done exceptional work in the areas of forensic audit reports in terms of education to Chartered Accountants (CAs) and also in terms of bringing out Guidance and Standards. We will be in touch with IBBI and ICAI for improvement in streamlining the forensic audit under the IBC.

8. I believe the UK's experience in dealing with Avoidance Transactions can be of great help for India. If the professionals of the UK, Hong Kong and Singapore can work together a common procedure can be developed to deal with Avoidance Transactions across jurisdictions.

9. The publication titled "Avoidance Transactions Under IBC 2016-Improving Outcomes" released today is based on the report of a Study Group constituted by IIIPI in this regard. I am grateful to Mr. Sudhaker Shukla, WTM, IBBI who has also given input to this Report. The Draft Report was circulated among the professionals at large and suggestions were incorporated. The recommendations are largely related to improve the forensic audit process, improve template/ format of forensic audit and make it more effective and transparent. This is a collective and collaborative effort of the profession, and we hope that it will be useful for professionals and other stakeholders.



Guest of Honour
Mr. Paul Bannister
Head-Policy, Insolvency Services,
Government of the UK

1. Avoidance Transaction is a very complex and difficult topic. It is one of the core components of insolvency resolution that includes Personal Insolvency as well as Group Insolvency. Improving outcomes of Avoidance Transaction is probably one of the difficult areas because of the complexity. The need for investigation to track and trace Avoidance Transaction has made it very expensive.

2. The UK's system of dealing with Avoidance Transaction is very old dating back to year 1376 and replicated in several jurisdictions around the world. The creditors are generally victims of Avoidance Transaction and various rules, and important tools are recognized to investigate Avoidance Transaction in insolvency firms.

3. UK Framework identified six areas under Avoidance Transaction and holds office holder responsible for it *viz*. Undervalued, Preferential, Avoiding/ Floating Charges, Dispossession, Extortionate, and Fraudulent.

4. The UK government is also reviewing its framework for Avoidance Transactions to make it more effective.

5. The cost and time are very important and might have a negative impact on covering outcomes and even office holders may feel disincentivized to recover the amount if not financially justifiable.

6. The Office Holders of Insolvency Process need to be incentivized to go after Avoidance Transactions.

Chief Guest
Shri. Sudhaker Shukla
Whole Time Member (WTM)
Insolvency and Bankruptcy Board
of India (IBBI)

1. I hope the outcomes of today's conference would have everlasting impact on realization process which is wanting in absence of clear goals about how we treat the Avoidance Transactions.

2. Most have started to realize that there are only two types of companies – *firstly*, those who have breached and know it and *secondly*, those who have been breached but do not know. Thus, to trace and realize the transactions are very different. In doing so one must keep the intention of the doer in mind.

3. Creditors should be alert all the time as promoters have access to a balance sheet so are well informed about the financial condition of the company. If there is a large time-gap in initiation of the process, the erring management may be incentivized to put the value away.

4. In some cases the NCLTs have imposed an 'interim moratorium' and used 'inherent powers' put to prevent stakeholders from taking away assets of the CD. This jurisprudence may also be applied by Resolution Professionals to prevent Avoidance Transactions and value erosion.

5. In terms of value maximization and haircuts, the explicit factors are quality of assets and time value of assets. Delays in insolvency processes are inversely proportional to the outcomes, which is always troubling. The implicit factors are – treatment of guarantors and handling of twilight zones.

6. The provision of 'Fraudulent Transaction' in IBC is based on Section 242 of the UK Insolvency Act 1986. Besides, some ideas of Section 213 of this Act have been borrowed in the matters of Liquidation. The diversion of assets could also invoke criminal charges.

7. The landmark judgement in the case of *Jaypee Infratech* regarding the Avoidance Transaction has beautifully defined various aspects. There is need for a detailed discussion on duties and responsibilities of the Resolution Professional to trace and claw back value lost in Avoidance Transactions.

8. The response to the red flags which are being raised by the front-line regulator – IIIPI and the IBBI will give some credible results. If you dive deeper into the data, it will give the required results. Forensic Standards in India is still in nascent stage which needs to be developed into a robust framework.

9. In the matter of *Venus Recruiters Pvt. Ltd.*, the Division Bench has now clarified that CIRP and Avoidance Process are two distinct and independent processes, and also the Resolution Professional will not become *functus officio*.

10. Right now, the regime says that the Resolution Professional will have to form an opinion on Avoidance Transaction, but the Insolvency Law Committee (ILC) has said that this is not good enough we will have to amend Section 25 (2) to make it a responsibility and investigative power of the Resolution Professional for investigation in this regard. Further, to bring the regime at par with the international standards, the moratorium granted to PG needs to be adequately addressed and Section 101 and Section 104 are required to be amended.

11. Quality of reports being filed with the NCLTs needs to be improved. You will have to apply due diligence and be prudent.

12. The framework for Avoidance Transactions has been streamlined in India but there are still some grey areas for which the Ministry of Corporate Affairs (MCA) is working to sort out through amendments in near future. As per the data with IBBI, so far 847 Avoidance Transactions applications have been filed amounting to ₹2.82 lac crore out of which 143 cases have been settled and ₹0.05 lac crore has been clawed back, which is very less and a major concern for all of us.

Special Address
Shri. P. S. Prasad
Hon'ble Member (Judicial)
NCLT, Delhi

1. The reason behind the low recovery of Avoidance Transaction is that the applications are filed without judging whether there is an occasion for filing the PUFE transactions or not.

2. RPs should carefully go through the forensic audit report, conduct independent evaluation of the forensic report and make assessment of related documents before filing application to claw back PUFE transactions. Besides, every PUFE transaction should be supported by an internal note of the IRP/RP on whether or not the transaction in question

is a PUFE transaction. This will increase the chances of recovery. Here the exercise has to be done and more duty is cast upon the Resolution Professional.

3. In the matter of *TATA Steel BSL Ltd. Vs. Venus Recruiters Pvt. Ltd.* and *Jaypee Infratech Limited (JIL),* it is very clear the exercise that ought to be was not done. If the exercise was done more properly, the recovery would have improved.

4. Secondly, after filing the Avoidance Transaction application, the RP moves very fast to assail the same either for some consideration or no consideration or for future consideration. When you assail a debt of ₹100 to ₹10, you will definitely get less recovery. The assailment should be done only in those cases where the Resolution Professional is fully confident that recovery is not possible in the near future.

5. Among the PUFE transactions, Undervalued transactions are easy to recover. This is because you know where the value has gone and can easily trace and recover the value. Besides, evidence of preferential transactions can easily be traced in the Account Books of the Corporate Debtor. The Resolution Professional should invest some more time in identifying and tracing such transactions.

6. The institute should develop a 'Model Checklist for Avoidance Transactions" to be used by Resolution Professionals. This will give confidence to the NCLT to move faster in the matter of PUFE Transactions.

7. The RPs should take care in preparation of Information Memorandum (IM) and also in preparing 'Request for Resolution Plan'. If preparation of IM and Request for Resolution Plan is done with due care, the approval of the Resolution Plan becomes quite easy. The loopholes in preparing these documents give rise to several IAs (Interlocutory Application). I suggest the institute to develop separate checklists for preparation of IM and Request for Resolution Plan in consultation with the NCLT.

Special Address
CA. Rajesh Sharma
Former Hon'ble Member
NCLT

1. The promoters and sometimes senior management also have vested interests to conceal the information related to PUFE transactions. As the Resolution Professional is bound to complete the CIRP in time bound manner and resolve the Corporate Debtor, getting back the PUFE transactions is not his/her primarily responsibility. Similarly, the CoC members are also not much interested because bankers hardly conduct mandatory verification of stocks of debtors. Thus, in present circumstances under the IBC regime, almost no stakeholder is interested to claw back the PUFE transaction.

2. Forensic reports are also not very helpful in tracing the PUFE transactions because they are often filled with several disclaimers.

3. The first judgement in the matter of *Venus Recruiters Pvt. Ltd.* has made it mandatory to dispose of all the IAs before approval of the Resolution Plan. Thus, there was a ban in dealing with IAs after approval of the Resolution Plan. But the situation has changed after the judgement of the double bench.

4. Today, the question is who will pay the cost for pursuing Avoidance Transactions applications after approval of the Resolution Plan. Therefore, the recovery for such PUFE transaction applications becomes next to impossible.

Panel Discussion

Moderator: CA. Gyan Chandra Misra, Insolvency Professional, Chairman, CIBC-ICAI & Director, IIIPI

Panellists:

Ms. Kanika Kitchlu-Connolly, Insolvency Lawyer & Partner, TLT LLP, London

Ms. Veronica Chan, Solicitor, Tanner De Witt, Hong Kong

Ms. Shreya Prakash, Foreign Associate, BlackOak LLC, Singapore

CA. Sumit Binani, Insolvency Professional, IIIPI

CA. Anuj Jain, Insolvency Professional, IIIPI

1. In the past over six years, 847 Avoidance Applications amounting ₹2.82 lac crores have been filed till December 2023 out of which 143 applications involving amounts of ₹0.41 lac crore have been disposed of. However, the recoveries are merely ₹0.05 lac crore. The average time taken in disposing Avoidance Applications has been 323 days. Thus, Avoidance Transactions have tremendous potential in maximizing value in relation to the liquidation value and resolution value of the Corporate Debtors.

2. IBC, 2016 differentiates regarding Avoidance Transactions whether the counter party is 'Related Party' or 'Unrelated Third Party' of the Corporate Debtor. In the case of 'Related Party' any past transaction that occurred in the two-year period prior to the Insolvency Commencement Day (ICD), will be avoided while this period for 'Unrelated Third Party' is one year. The reason behind this differentiation is that the promoters are more likely to siphon off money/ value through the 'Related Party' over which they have control. The transactions which are made in the normal course of business are excluded from Avoidance Transactions.

3. IBC and related IBBI Regulations empower Resolution Professional and Liquidator to investigate into the Avoidance Transactions of the Corporate Debtor, form an opinion in a time bound manner, submit before CoC and file Avoidance Applications before the Adjudicating Authority.

4. The MSMEs applying for PPIRP are required to make a declaration that there has not been any PUFE transactions. This often acts as deterrent for MSMEs to apply for PPIRP. It is learnt that the Ministry of Corporate Affairs (MCA) is planning to delete or amend this provision.

5. The main objective of the Resolution Professional under the IBC is to resolve the Corporate Debtor in a time bound manner. Therefore, burdening the Resolution Professional with forensic audit and reports etc. may compromise the main purpose of the IBC. Therefore, this task may be given to 'other Professionals'. The role of Resolution Professional should be of a facilitator in terms of providing data. This will make the entire process more effective.

6. The recovery of about ₹5,000 crore Avoidance Transaction in the case of Jaypee Infratech Ltd (JIL) contributed significantly to value maximization and ultimately a better realization for creditors through Resolution Plan.

7. The first challenge on tracing the PUFE transaction lies in lack of data. Besides, the senior management of the Corporate Debtor is not willing to provide the data. There is often lack of segregation between quantification of accounts or incorrect accounts vs. actual loss of value.

8. IBC provides that lenders can also file PUFE applications against the Corporate Debtor but there is hardly any such incidence. Besides, the CoC is also not much interested in filing PUFE applications, and they leave it completely on Resolution Professional.

9. If the evidence is clinching, it becomes easy to get judicial orders to claw back the PUFE transactions that too in a speedy way.

10. If the beneficiary of PUFE transaction is willing to pay back, there is no guideline or provision for settlement. This involves a huge time in litigation and resources to claw back the amount/ value lost through PUFE transactions. Besides, it may also be kept in mind that not all PUFE beneficiaries are intentional.

11. All the PUFE transactions are not illegal. This is because some business practices such as transaction and guarantee with related party/parties, which are legal in normal condition, are considered PUFE if the Corporate Debtors undergoes IBC processes.

12. Worldwide and also in the UK, the promoters and senior management sometimes use Avoidance Transactions as part of their business strategy, which becomes difficult to realize.

13. The insolvency laws in Hong Kong are similar to the English Laws particularly in terms of the insolvency proceedings. Here unsecured creditors share equal treatment in liquidation or unsecured creditors equally share available assets and proceeds accordingly. The law recognizes three kinds of Avoidance Transactions namely Undervalued Transaction, Preferential Transaction and Fraudulent Transaction. As per the law, a Liquidator is appointed to look into each and every transaction of the company, which is dubious and determine whether they are Avoidance Transactions or not. If the company is able to prove on reasonable grounds that the transaction in question was in good faith and carried on in the larger interest of the business, it is not considered as Avoidance Transaction otherwise it might attract criminal liability.

14. Though Hong Kong has not adopted UNCITRAL Model Law, it is reflected in various provisions of its insolvency law including Avoidance Transactions. Article 23 provides an umbrella term to cover all the Avoidance Transactions.

15. The framework for Avoidance Transaction in Singapore is somehow similar to that of India. However, there are three special features in Avoidance Transaction of Singapore (a) third parties are welcome to fund recovery/ realization of Avoidance Transaction (b) courts are highly proactive and pronounce judgements in pretty short period of time which preserves the value of the company (c) PUFE transactions are actually complimented by other corporate insolvency tools. Thus, the process of tracking and tracing Avoidance Transaction starts much earlier.

16. Avoidance Transaction should not be filed just for the sake of filing. We all should accept that the market practice and profession is still evolving. As we gain knowledge and experience, these things will be streamlined. However, there is need to extend the look back period under the IBC, there should be some provision for funding litigations related to Avoidance Transaction, the options of mediation and settlement should also be explored.

17. It is important to empower the Insolvency Professional to go ahead to trace or assign the Avoidance Transactions with the approval of the CoC so that funding can be ensured to claw back the value. The lenders should put money and resources to claw back the value lost in Avoidance Transactions.

18. The panelists shared their practical experiences including the scope of mediation and arbitration in the context of Avoidance Transactions and other processes under the IBC.

19. Concluding the Panel Discussion, CA. Misra assured the panelists that their suggestions will be taken care of by the institute.

Vote of Thanks

CA. Rahul Madan,
MD-IIIPI

1. We certainly had incredibly insightful sessions, today. The legal framework under the IBC requires a professional to establish a fair and transparent conduct of Avoidance Process.

2. Though the outcomes are not encouraging enough, we may learn a lot from best practices abroad like the UK, Hong Kong, and Singapore.

3. The deliberations of the conference will go a long way in augmenting the framework for Avoidance Transaction. IIIPI will do the needful to pursue the suggestions with policy makers.

Invocation of Group Insolvency

The concept and practice of Group Insolvency in India has evolved through jurisprudence. In the absence of a legal framework for Group Insolvency, Adjudicating Authorities (AAs) have ordered CIRPs for the sister concerns of corporate debtors on a case-to-case basis to consolidate the CIRP proceedings of related CDs in greater interest of stakeholders. The jurisprudence of these cases became precedence for others. In this backdrop, the author deals with the Group Insolvency Framework after presenting a detail analysis of various judgements of NCLTs, NCLATs, Supreme Court in the light of related provisions of the Companies Act, 2013, Competition Act, 2002 (CCI) and IBC, 2016. Besides, the author also sheds light on various efforts of policy makers to introduce a fully-fledged Group Insolvency Framework under the IBC. ***Read on to Know More…***

Ms. Renuka Devi Rangaswamy
The author is an Insolvency Professional (IP) Member of IIIPI. She can be reached at renukameera91@gmail.com

1. Introduction

Insolvency and Bankruptcy Code, 2016 (IBC/Code) is in a rapid run to attain its goal. The judicial pronouncements by various benches of NCLTs and NCLATs on different issues are evolving jurisprudence around IBC. Accordingly, the IBBI and Ministry of Corporate Affairs (MCA) are constantly taking inputs from the jurisprudence and taking appropriate steps to amendment the Code.

The insolvency framework under IBC deals with consolidation and amendment of the laws relating to reorganization and insolvency resolution of corporate persons. IBC defines that the words and expressions used but not defined in the Code but defined in the Companies Act, 2013 shall have the same meaning assigned to them under the Companies Act. Vide Section 255 and Schedule-11 of the Code, the provisions in the Companies Act, 2013 dealing with the stressed / sick companies went into various changes. IBC is based on following major legislations:

(a) Companies Act, 2013: The Companies Act deals with consolidation and amendment of the law relating to companies. On enactment of the Code, Sections 253 to 269, 270 to 323 & 325 dealing with revival, rehabilitation, winding up of the sick companies has been omitted from the Act and dealt with exclusively under IBC.

(b) Applicability of The Companies Act, 2013 Under IBC, 2016: IBC deals with Section 230 to 234 of the Companies Act, 2013 for compromises, arrangements, amalgamations during the Corporate Insolvency Resolution Process (CIRP) and sale of the CD as a Going Concern during Liquidation Process. The specific provisions deal with the Companies Act, 2013 are the sections 5(26), 18(f), 36(1)(3), 60(1)(2)(3)(5) of the Code, Regulations 36B(6A),37, 39BA, 39C, of IBBI (IRP For CPs) Regulations 2016 and Regulations 2B, 32, 32A of IBBI (Liquidation Process) Regulations, 2016.

(c) NCLT and NCLAT : The NCLT and NCLAT have been constituted respectively under sections 408 and 410 of the Companies Act, 2013, which exclusively deals with the CDs under the Code. Specifically, under the sections 419, and 424, the NCLTs and NCLATs have been given powers to deal with the corporates under Companies Act, 2013 and IBC.

NCLT and NCLATs has vide powers under sections 5(1), 60, 61, 63, 64, 231, 238 of the Code and Rule-11 of the NCLT Rules-2016 and NCLAT Rules-2016 to deal with any matter arising out of the insolvency resolution of the CD under CIRP or Liquidation Process.

(d) The Competition Act, 2002 (CCI) & IBC, 2016: The CCI prevents practices having adverse effects on competition and deals with prohibition of certain agreements, abuse of dominant position and regulation of combinations. Under Section 410 of the Companies Act, 2013, appellate forum to deal with appeals under the Competition Act, 2002 is the NCLAT. IBC mandates CCI prior Approval under Section 31(4) of the Code in certain cases of approval of the Resolution Plan by the CoC.

On combined reading of all the above provisions, the NCLTs and the NCLATs have been vested with powers to deal with the Companies Act, 2013 and various processes under IBC, 2016. The NCLAT also deals with appeals connected to the Competition Act, 2002.

2. Working Group Report on Group Insolvency

The IBBI constituted a Working Group (WG) on January 17, 2019, to recommend a complete framework on Group Insolvency to facilitate insolvency resolution and liquidation of companies in a group. The WG opined that the mechanisms in other laws, such as the schemes of arrangement under the Companies Act, 2013 may be used to deal with the special issues arising in group insolvency cases. It has finally recommended that in the first phase, the framework for group insolvency may cover only domestic insolvency of companies in a corporate group defined to include holding, subsidiary and associate companies in the form of procedural coordination.

> **Working Group opined that the mechanisms in other laws, such as the schemes of arrangement under the Companies Act, 2013 may be used to deal with the special issues arising in group insolvency cases.**

3. Cross Border Insolvency Resolution Committee (CBIRC) Report on Group Insolvency

The CBIRC, constituted by the MCA, has submitted following recommendations on the basis of UNICITRAL Model Law for implementation of Group Insolvency:

a) In the Group Insolvency Framework under the Code, a broad and inclusive definition of 'group' should be provided so as to include a large number of CDs within its ambit. The definition of 'group' may be based on the criteria of control and significant ownership. This definition should be applicable to all entities that fall within the definition of a 'corporate debtor' under the Code, i.e., companies and limited liability partnerships.

b) The Group Insolvency Framework under the Code should only apply to CD in respect of whom a CIRP or Liquidation Process is ongoing through the procedural coordination mechanisms.

c) Jurisprudence evolved out of the orders passed by the NCLT, the NCLAT and the Supreme Court of India is to be taken as an input to incorporate in the Code.

4. Types of Group Insolvencies

Substantial Consolidated CIRP	Procedural Consolidated CIRP	Lifting of Corporate Veil for fair CIRP
(i) All Assets and Liabilities of all the CDs are merged. (ii) Single CoCs for all CDs (iii) All debts / dues owing to other CDs Eliminated. (iv) All the obligations and guarantees executed by one or more CDs deemed to be one obligations of all CDs. (v) Common CoCs to be formed. (vi) Single Resolution Professional (RP) (vii) Common CIRP Date	(i) Keeping both / all CDs assets separately. (ii) Separate CoCs for each CDs. (iii) Sharing information among the group CoCs. (iv) Common CIRP Date, (v) Appoint Single RP, (vi) Preparation of Information Memorandum by incorporating details connected to all the CDs, (vii) Calling for common EOI and issuing RFRP with Evaluation Matrix, (viii) Processing the Resolution Plan(s) received.	(i) Bring in the assets of the other entity which is not CIRP along with the CD's asset for the purpose of the CIRP, (ii) Separate CoCs for each CDs. (iii) Lifting / piercing corporate veil for the purpose of common benefit / avoid fraudulent businesses practices

5. Factors considered for invoking Group Insolvency

Substantial Consolidated CIRP	Procedural Consolidated CIRP	Lifting of Corporate Veil for fair CIRP
(i) Common control, (ii) Common directors, (iii) Common assets, (iv) Common liabilities, (v) Inter-dependence, (vi) Interlacing of finance, (vii) Pooling of resources, (viii) Co-existence for survival, (ix) Intricate Link of Subsidiaries, (x) Inter-Twined of Accounts, (xi) Inter-Looping of Debts, (xii) Singleness of Economics of Units, (xiii) Cross Shareholding, (xiv) Inter dependence due to intertwined consolidated accounts, (xv) Common pooling of resources. *Substantive consolidation allowed, only if extra-ordinary situation arises * In the Videocon matter, the Hon'ble NCLT excluded to include 2 CDs from the substantial consolidation for the purpose of CIRP but allowed to continue the individual CIRP due to the reason that both CDs can function independently.	(i) Interdependence of: (a) Technology, (b) Intellectual Property Rights (c) Infrastructures, (d) Operational Link, (e) Raw Materials supply, (f) Finance, (g) Horizontal operational link, (h) Vertical Operational Link, (ii) Holding and 100% subsidiary company relationship, (iii) One CD's resolution dependents on other CD's resolution. (iv) Necessity to lift the corporate veil.	(i) Necessity to lift the corporate veil to protect the interest of the stakeholders, (ii) Giving necessary directions based on individual cases, (iii) Pooling of assets, (iv) Procedural coordination (v) Initiation of CIRP of the Group Company, (vi) On the request of Reserve Bank of India (RBI)

6. Jurisdiction to Invoke the Specific Group Insolvency

Substantial Consolidated CIRP	Procedural Consolidated CIRP	Lifting of Corporate Veil for fair CIRP
(i) Majority of the CoCs of All CDs, (ii) Reserve Bank of India (iii) Supreme Court of India	(i) Resolution Professional, (ii) Operational Creditors, (iii) Committee of Creditors, (iv) NCLT & NCLAT, (v) Reserve Bank of India, (vi) Supreme Court of India.	(i) NCLT, (ii) NCLAT, (iii) Reserve Bank of India, (iv) Supreme Court of India.

7. Provisions of the Code for Invoking Group Insolvency

Even though there are no specific provisions for Group Insolvency in the Code till date, courts have passed orders for Group insolvency after detailed analysis on case-to-case basis. After the order of Group Insolvency for Videocon by NCLT, Mumbai, the IBC (Amendment) Act, 2019 dated August 16, 2019, clarified the definition of 'Resolution Plan' under Section 5(26) to include provisions of restructuring of CD including by way of merger, amalgamation, and demerger.

In continuation, CIRP Regulation inserted with Regulation 37 (m) w.e.f. September 16, 2022, permits that the Resolution Plan may contain sale of one or more assets of CD to one or more Successful Resolution Applicants (SRAs) submitting resolution plans for such assets; and manner of dealing with remaining assets. Further CIRP Regulation 39BA also inserted with provision for Assessment of Compromise or Arrangement while deciding to liquidate the CD u/s 33 and CoC to explore the compromise/ arrangements.

"Through the IBC (Amendment) Act, 2019 an explanation was inserted in Section 5 (26) which clarified that a Resolution Plan may include provisions for the restructuring of the Corporate Debtor, including by way of merger, amalgamation, and demerger."

Substantial Consolidated CIRP	Procedural Consolidated CIRP	Lifting of Corporate Veil for fair CIRP
(i) Based on U.K./U.S.A. courts which have dealt with the process of consolidation along with the jurisdiction authority by pronouncing that equity and fairness ought to be a yardstick by lifting the corporate veil. The benefits should outweigh the disadvantages and for that burden of proof laid on opposing substantial consolidation. (ii) AA's power u/r 11 and Section 60(5) of the Code, (iii) U/A 32 & 142 of Constitution of India by Hon'ble SCI.	(i) AA's power u/r 11 and Section 31(4) of the Code, Section 60(1)(2)(3)(5) of the Code, (ii) Section 5(26) of the Code & Regulation 37, 38, 39BA, 39C of CIRP Regulations and Companies Act, 2013. (iii) Section 424 of Companies Act, 2013. (iv) U/A 32 & 142 of Constitution of India by Hon'ble SCI.	(i) AA's power u/r 11 and Sec-60(5) of the Code, (ii) U/A 32 & 142 of Constitution of India by Hon'ble SCI.

8. Jurisprudence on Invoking Group Insolvencies

There are several judgements passed by NCLTs, NCLATs and the Supreme Court, which exclusively dealt with the interplay between the Companies Act and Group Insolvency under IBC for value maximization and resolution of CDs.

In the matter of *Sanghvi Movers Limited (OC) Vs M/s. Albanna Engineering (India) Pvt Ltd., & Ors*., NCLT, Kochin Bench held that assets and properties, including any claim, interest therein, of Albana Engineering LLC (Dubai), Holding Company, which is not in CIRP held through M/s., Albana Engineering (India) Pvt. Limited, WoS Company, Corporate Debtor will have said to be the property of the CD for the purpose of the CIRP.

NCLAT in the matter of *Y. Shivram Prasad Vs. S Dhanapal* in its decision observed that during the liquidation process the steps which are required to be taken by the liquidator include a scheme under Section 230 of the Companies Act, so as to ensure the revival and continuance of the CD. NCLAT took note of the fact that while passing the order under Section 230, the Adjudicating Authority (AA) would perform a dual role - one as the AA in the matter of liquidation under IBC and the other as a Tribunal for passing an order under Section 230 of the Companies Act. Following the decision of NCLAT, an amendment was made on July 25, 2019, to the Liquidation Process Regulations by the IBBI so as to refer to the process envisaged under Section 230 of the Companies Act.

In the matter of M/S., *Innoventive Industries Limited Vs ICICI Bank & Anr*, the Apex Court held that "the Code is an exhaustive Code on the subject matter of insolvency in relation to corporate entities, and is made under entry 9, List III in the 7th Schedule, S.No.9. Bankruptcy and Insolvency". Further, in the matter of *Arun Kumar Jagatramka Vs Jindal Steel and Power Ltd., & Anr*, the Supreme Court held that there are three modes in which a revival is contemplated under the provisions of IBC (a) Part-II, (b) Sec-32(e)(f) of Part-III and (c) the scheme of compromise or arrangement provided in Section 230 of the Act of 2013 under Part-III. Importantly the Apex court recorded that, "Section 230 of the Act of 2013 (Companies Act) is wider in its ambit in the sense that it is not confined only to a company in liquidation or to corporate debtor which is being wound up under Chapter III of IBC. Obviously, therefore, the rigors of IBC will not apply to proceedings under Section 230 of the Act of 2013 where the scheme of compromise or arrangement proposed is in relation to an entity which is not the subject of a proceeding under IBC".

The Apex Court, in the matter of *Chitra Sharma and Ors. Vs. Union of India and Ors*., passed order under Article 142 of the Constitution by lifting the corporate veil between the Jaiprakash Associates Limited (JAL) as holding company, and Jaypee Infratech Limited (JIL) as subsidiary company to protect the interest of home buyers. It further allowed the RBI's plea to initiate the CIRP against the holding company and to run the CIRP along with its subsidiary company.

> **"To protect the interest of homebuyers in the matter of Chitra Sharma Vs. Union of India, the Apex Court invoked Article 142 of the Constitution of India to lift the corporate veil between Jaiprakash Associates Limited (JAL) and Jaypee Infratech Limited (JIL)."**

CBIRC-II Report on Group Insolvency explained that adopting a purely single-entity approach in the insolvency of group members may be divergent from the economic realities of the group as viewed by stakeholders. Practically, one company's insolvency pushes the other group companies also into insolvency by virtue of having multiple cross borrowings, guarantees business inter-linkages, co-mingles of assets, dependency etc. among the group companies and creditors. The Code comprehensively deals with the insolvency of corporate debtors as separate entities, but it does not envisage a framework to either coordinate insolvency proceedings of corporate debtors belonging to a group or to have a common resolution for them. To address this, the AA under the Code and the Supreme Court have passed orders enabling coordination of insolvency proceedings of group members in some instances or have applied general principles of corporate law pertaining to piercing of the corporate veil to make group companies liable for each other.

It is necessary to bring to the reference of a recent Land Mark Judgement passed by the NCLAT, Chennai Bench in the matter of *Mr. Dinesh Kothari Vs., RP & CoC of Pondicherry Extraction Industries Private Limited & CoCs of the JKS Banyaan Private Limited*, dated February 23, 2023, wherein the court rejected the appeal to consolidate CIRP of three CDs stating that the CDs failed

Substantial Consolidated CIRP	Simultaneous/Procedural Consolidated CIRP	Lifting of Corporate Veil for fair CIRP
State Bank of India *Vs.* *Videocon Industries Limited & Ors.*	*Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Pvt. Ltd. (Principal Borrower) & 8 Other CDs- Corporate Guarantors)*	*Chitra Sharma Vs. Union of India,*
Order Passed by Hon'ble NCLT, Mumbai Bench	Order Passed by Hon'ble NCLAT, New Delhi.	Order Passed by the Hon'ble Supreme Court of India
TJSB Sahakari Bank Ltd.- F/C of AVAL & AVFL *Vs.* *Mr. Kshitiz Gupta & Ors.*	*Oase Asia Pacific Pte Ltd.- - (Against Consolidation) Vs. Axis Bank Ltd & Other FCs, including CDs in CIRP*	*M/s Sanghvi Movers Limited, OC Vs., M/s Albanna Engineering (India) CD & M/s Albanna Engineering LLC. Dubai*
Order Passed by Hon'ble NCLT, Mumbai Bench	Order Passed by Hon'ble NCLAT, New Delhi.	Order Passed by Hon'ble NCLT, Kochi Bench.
Jitender Arora, RP of M/s. Premia Projects Ltd., Vs., Tek Chand & M/s. Solitaire Infomedia Pvt. Ltd.,	*RP of Uttam Galva Metallics Ltd., & Uttam Value Steel Limited Vs. CoCs of Uttam Galva & Uttam Value Steel Limited*	*Bikram Chatterji and Ors. Vs. Union of India (UOI) and Ors*
Order Passed by Hon'ble NCLAT, New Delhi.	Order Passed by Hon'ble NCLT, Mumbai Bench	Order Passed by the Hon'ble Supreme Court of India
Mrs. Mamatha Vs. AMB Infrabuild Private Limited and Ors	*Radico Khaitan Ltd., Vs.* *1. BT & FC Pvt Ltd., and* *2. Bangalore Dehydration and Drying Equipment Company Pvt. Ltd & Ors.*	*Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Limited and Ors*
Order Passed by Hon'ble NCLAT, New Delhi.	Order Passed by Hon'ble NCLAT, New Delhi.	Order Passed by the Hon'ble Supreme Court of India
Reserve Bank of India Vs. SREI Infrastructure Finance Limited & SREI Equipment Finance Limited, CoCs of both SREIs	SMM Steel Re-rolling Mills Private Limited and Paragon Steels Private Limited	*ArcelorMittal India Private Limited Vs. Satish Kumar Gupta and Others [(2019) 2 SCC 1].* *(Lifting / Piercing of Corporate Veil)*
Order Passed by Hon'ble NCLT, Kolkatta Bench	Order Passed by Hon'ble NCLT, Chennai Bench	Order Passed by the Hon'ble Supreme Court of India

to meet the basic requirements for consolidation of CIRP, failed to satisfy requirements necessary for 'Consolidation'. No 'Assets' of a 'Corporate Debtor' can be sold as a 'standalone' unit and the sole CoC member with 100% voting rights rejected consolidation request.

9. Issues in Conducting Separate CIRPs

In some of the CIRP cases wherein the CDs have the operational structure that were inseparably linked to its subsidiary companies / joint ventures / holding companies / SPVs / Associate Companies. The order of CIRP without

understanding the nexus behind these business entities and looking through the narrow and single eye view caused irreparable losses for the CDs and connected entities.

Few such group companies that went under separate insolvency proceeding faced several difficulties such as KSK Mahanadi Power Company & KSK Water Infrastructures**,** Bhushan Steel Limited and Bhushan Energy Limited, Monnet Ispat & Energy Limited, and Monnet Power Company Limited, Adhunik Metaliks, Orissa Manganese & Mineral & Zion Steel Limited, HBN Homes Colonizers Pvt.Ltd., HBN Foods Limited & HBN Dairies and Allied Ltd.

CoCs are very conservative for adopting the Group Insolvencies under IBC. The reasons for not adopting procedural / substantial Group Insolvency are lenders' poor understanding of business linkages, inter-dependency, related party transactions, no risk-taking nature, lethargic attitude, narrow views, self-centric, risk in tracking multiple CIRPs, additional burden, unknown risks, determining right valuations, handling different RPs, CoCs and mere apprehension. Separate CIRPs also caused additional costs and delays in arranging valuers, filings, court fees, separate lawyers, CoC meetings, minutes, progress reports, multiple public announcements, EOI/ RFRP publications, separate data rooms, plan evaluation, approvals, multiple NCLT proceedings and other litigation.

In few cases, RPs of each group companies are behaving face off by acting east to west direction attitude to each other. Due to this attitude, the maximization and synergy value could not be achieved through Group Insolvency. The reasons for such attitudes among these RPs are they work towards maximizing the value for stakeholders in the context of his/her CD/CIRP and may not be keen to give way to promote group consolidation. On many occasions, RPs do not share information by bringing confidentiality issues. This causes delays in decision making especially when the running business is complicated and often, RPs get into claims and counter claims with each other particularly in the matter of parent company guarantees. RPs are also reluctant to coordinating CoC meetings between two or more CDs and most decisions are delayed as proceedings of one will determine the outcome in the other. There are provisions in IBC and its regulations to transfer certain assets, IPRs which are necessary for the

other group company in CIRP for its success. If one RP for both the CDs, these assets transfer for individual survival is possible. In few cases, the tussle between RPs reaches beyond the professional limits to shatter the entire CIRP and spoils the objective of IBC. In addition, each CD is required to pay fee for RPs and their administrative expenses. For this alone, procedural method of Group Insolvency is recommending for a single RP for all CDs.

Given that value maximization and continuation of business are key objectives of IBC, it is imperative to approach such CIRPs in a consolidated manner. Moreover, the negotiation power of the creditors through joint resolution is expected to be much stronger than standalone resolution.

However, the Resolution Applicants (RAs) maximize bid value to ensure that they get control of the entire business end-to-end for the successful Group Insolvency. When the group companies are under separate CIRPs, then the RA is required to submit separate plans for each CD. It increases, cost, compliance, and efforts without knowing the success of their plan to each CDs. If the RA gets success in all CDs, only the value maximization may achieve. However, if one CD's operation is linked with the other CD which is taken by different RAs, then entire CIRP of dependent CDs would lead to liquidation.

It is interesting to go through the study[1] on "Procedural and Substantive Aspects of Group Insolvency: Learnings from Practical Experiences" by Indian Institute of Insolvency Professionals of ICAI (IIIPI), dated, March 2021. It emphasizes that value can be destroyed unless the CDs with inter-linkages are subjected to consolidation, across

[1.] Procedural And Substantive Aspects of Group Insolvency: Learnings From Practical Experiences, Study by Indian Institute of Insolvency Professionals of ICAI (IIIPI), March 2021 (https://www.iiipicai.in/wp-content/uploads/2021/04/PROCEDURAL-AND-SUBSTANTIVE-ASPECTS-OF-GROUP-INSOLVENCY.pdf)

the stages of appointment of RP, AA, CoC and RA. Else, significant value, time and efforts are wasted aligning different stakeholders and in endless litigation, as has been seen in a few cases. Given that value maximization and continuation of business are key objectives of IBC, it is imperative to approach such CIRPs in a consolidated manner. Moreover, the negotiation power of the creditors through joint resolution is expected to be much stronger than standalone resolution. The Study underlines the benefits of having a Procedural Group Insolvency Framework in the initial stage for maximization/ preservation of value of business or assets, timely resolution of distressed business in an orderly manner and balancing the interests of various stakeholders.

10. Actions by IBBI

In an article in quarterly Newsletter[2] of IBBI for Oct.-Dec 2022 "Group Insolvency: Harnessing Synergies" IBBI Chairman Mr. Ravi Mital has narrated the importance of Group Insolvency in the present global and domestic macro business environment and underlined the consequences of a company's default adversely affecting other companies of the group. Though the Code does not explicitly provide for dealing with Group Insolvency cases, AA attempted to consolidate the proceedings of such CDs where special issues arose from their interconnections with other group companies for the reason of higher possibility of revival and better value realization like the cases in Videocon, Era Infrastructure, Lanco, Educomp, Amtek, Jaypee, Adel Landmarks and other cases, argues Mital.

Chairman has quoted the Reserve Bank of India's (RBI), "Report on Trend and Progress of Banking in India 2021-2022", where it is captioned that the default of one borrower is likely to spur cross defaults by the group companies due to cross obligations and credit risk mitigation coverage by parent and group companies. The Group Insolvency Framework, in which the resolution of borrowers belonging to the same corporate group if undertaken together could help in improving the efficacy of IBC. The WG and CBIRC have provided a blueprint of the Group Insolvency Framework in India. In this line, MCA has floated a consultation paper about Group Insolvency for the domestic companies to be included in the Code.

11. Conclusion

Some of the major guidelines provided by IIIPI in its Study Group regarding procedural coordination in Group Insolvency are as follows:

(a) Procedure to identify the entities forming part of the Group for Insolvency Resolution Process under the Code,

(b) If one entity admitted into CIRP but other entity is not admitted in CIRP but if the Group entities are having strong interlinkages business model and management, with the intervention of AA, Procedural Group Insolvency may be initiated. If necessary, in some cases the substantial consolidated Group Insolvency may be ordered by AA.

"The amendments required in the Code is to the extent of substantial consolidation of the group companies by pooling assets and liabilities of all companies into single book for the benefit of stakeholders."

(c) The Creditors of the Group companies should carry out the review of group operations to finalise entities deemed to fit for inclusion in Group Insolvency process.

(d) Specific forms and procedure under Section 7, 9 and 10 of the Code for filing application under IBC for Group Insolvency initiation to be introduced in the Code.

(e) The AA to accept the Group Insolvency initiation applications and also allow inclusion of further entities if deemed appropriate by creditors within finite timeline.

(f) The AAs support in facilitating effective administration of the proceedings in respect of appointment of IPs, insolvency process across group entities involved, conduct of hearing and approval of applications etc.

(g) Appointment of one or more RPs for larger Group Insolvency matters, while appointing one lead RP,

[2] Insolvency and Bankruptcy News, IBBI, Oct. – Dec. 2022, p. 3.

who should be in control of the parent / main company, besides managing the Group Insolvency process.

(h) The CoCs of all group entities to be constituted covering the FCs of all group entities and their inter-se voting power may be computed after taking into account their respective share(s) across group entities.

(i) Appointment of valuers to provide the valuation of business assets for the group as well for individual entities.

(j) All the public announcements, IM, RFRP, EM etc., to be presented on a group basis.

(k) The RAs should be invited to bid for entire group only. RAs may be given flexibility to sell off any unrelated businesses of group entities.

In the nutshell, the provisions of the Companies Act, 2013, Competition Act, 2002, IBC, 2016, Work Group Report-2019, CBIRC Report 2021, jurisprudences all proves that there are already provisions for the procedural coordination to conduct the consolidated/ simultaneous CIRP of group companies. The amendments required in the Code is to the extent of substantial consolidation of the group companies by pooling assets and liabilities of all companies into single book for the benefit of stakeholders.

Developing Jurisprudence on Section 12A of the IBC, 2016

On July 24, 2017, the Supreme Court ordered withdrawal of CIRP in the matter of 'Lokhandwala Kataria Construction Private Limited Vs. Nisus Finance and Investment Managers LLP (2017)' on the basis of 'consent terms' between both the parties. Subsequently, the Insolvency Law Committee, in its Report in March 2018 recommended the inclusion of a provision for withdrawal application. Accordingly, the IBC, 2016 was amended by the Parliament and Section 12 A was inserted. Thereafter, IBBI framed related Regulations. In the course of time, the provision of withdrawal has become one of the flagship provisions of the IBC. In this article, the author presents a detailed account of the jurisprudence developing around the withdrawal. ***Read on to know more…***

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1. Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code, 2016 (Code) provides the procedure for initiation of Corporate Insolvency Resolution Process (CIRP) against a Corporate Debtor (CD) which is in default in terms of making payment to its creditors. The Adjudicating Authority (AA), if it is satisfied that the application is complete in all aspects and there is no disciplinary case pending against the Interim Resolution Professional (IRP), admits the application and ordered commencement of CIRP.

2. Withdrawal of CIRP

(a) Withdrawal before Admission

Initially there was no specific provision for withdrawal of CIRP application. Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016 provides that the AA may permit withdrawal of the application on a request made by the applicant before its admission. As such the application could be withdrawn only before the admission of the application by the AA and not after admission.

(b) Withdrawal after Admission

Originally, there was no provision to allow the withdrawal of application after initiation of CIRP under the IBC, 2016.

The Supreme Court in the matter of *Lokhandwala Kataria Construction Private Limited Vs. Nisus Finance and Investment Managers*[1] *LLP* (2017) allowed withdrawal of CIRP application on the basis of 'consent terms' between both the parties. Thereafter, the Insolvency Law Committee, in its Report in March 2018 recommended for a provision of withdrawal of CIRP in order to cater to exceptional circumstances warranting withdrawal of an application for CIRP post-admission provided the CoC approves such action by ninety per cent of voting share.

"The applicant shall submit the withdrawal application under Section 12A to the IRP/RP in 'Form – FA' before the issue of invitation for Expression of Interest."

Subsequently, Section 12 A was inserted in the Code through the Amendment Act, 2018 by the Parliament w.e.f. June 06, 2018. This section provides that the AA may allow the withdrawal of CIRP on an application made by the applicant with the approval of 90% voting share of the Committee of Creditors (CoC). Accordingly, Rule 30A was inserted[2] in IBBI (CIRP) Regulation 2018, which provides the procedure for withdrawal of application by the creditor that filed the application before AA for initiation of CIRP. The procedure for withdrawal of CIRP application is as follows:

(a) The applicant shall submit the withdrawal application under Section 12A to the IRP/RP in 'Form – FA' before the issue of invitation for Expression of Interest (EOI).

(b) The application shall be accompanied by a bank guarantee towards the estimated cost of expenditure incurred by the IRP/RP till the date of filing the application.

(c) The IRP/RP shall put the application before the CoC for its consideration and approval.

(d) The CoC shall consider the said application within seven days of its constitution or seven days of receipt of the application, whichever is later.

(e) Withdrawal Application must be approved by 90% voting share of the CoC.

(f) On getting the approval by the CoC, the IRP/RP shall submit the application on behalf of the applicant before the AA within three days from the date of approval by the CoC.

(g) The AA may, by order, approve the application submitted for its withdrawal.

The Regulation 30A was substituted by a new Regulation vide Notification No. IBBI/2019-20/GN/REG048, dated July 25, 2019, which provides two types of withdrawals – *firstly*, withdrawal before the constitution of the CoC; and *secondly*, withdrawal after the constitution of CoC.

3. Withdrawal Application before constitution of CoC

In case of withdrawal before the constitution of CoC, the application shall be made through the IRP in 'Form –FA', accompanied by a bank guarantee towards estimated expenses incurred on or by the IRP till the date of filing of the application. The IRP shall submit the application to the AA on behalf of the applicant, within three days of its receipt. The AA may approve the application.

If the application is approved by AA, the applicant shall deposit an amount in the bank account of the corporate debtor, towards the actual expenses incurred by the IRP/RP till the date of approval by the AA, within three days of such approval. If the applicant fails to deposit this amount, the bank guarantee received shall be invoked, without prejudice to any other action permissible against the applicant under the Code.

Allowing the withdrawal of CIRP application in the matter of *Piramal Capital & Housing Finance Limited Vs. Dinanatha Developers Private Limited*[3], the NCLT held that the AA allowed the applicant to withdraw the application since the FC is no more interested to prosecute the matter and to prolong the matter further. Similarly, in the matter of *Chandresh Cables Limited Vs. BGR Energy Systems Limited*[4], the AA observed that on the filing of withdrawal application nothing survives for adjudication and therefore the application was dismissed as withdrawn. Furthermore, in the matter of *Sanfield India Limited Vs. Varaha Infra Limited*[5] the AA observed "the operational

[1] LLP Civil Appeal No. 9279 of 2017, Supreme Court dated July 24, 2017.
[2] Notification No. IBBI/2018-19/GN/REG031, July 03, 2018.
[3] IA 40/2023 in CP (IB) 113/(MB)/2022, NCLT, Mumbai Bench.
[4] CP (IB) No. 61/9/AMR/2021, December 20, 2022, NCLT, Amaravathi Bench.
[5] CP No. (IB)-200/9/JPR/2020, NCLT, Jaipur Bench.

creditor has agreed that it has received all the amount from the CD and the matter has been settled between the parties. The AA granted permission for withdrawal of the application".

4. Carrying out CIRP during pendency of Withdrawal Application

In the matter of *Shri Alok Kaushik, RP of Cheema Spintex Ltd Vs. Cheema Spintex Limited and Ors*[6]. the NCLAT held that since the Section 12A application was filed by the IRP before the AA, well before the constitution of the CoC, the IRP's continuance with the CIRP without making adequate efforts to seek pointed clarification from the AA on whether to proceed with the CIRP or not, does not reflect well on his conduct.

In the matter of *Cheema Spintex Ltd* (2022), the NCLAT held that without seeking clear guidance from AA on CIRP modalities during pendency of withdrawal application, IRP/RP should not proceed with the CIRP in full throttle.

It observed that the IRP cannot afford to be unmindful of the fact that he is the driving force and the nerve-center in the resolution process and is expected to assist in the CIRP in a fair and objective manner in the best interest of all stakeholders. Simply by registering presence on each date of hearing before the AA without seeking clear guidance on CIRP modalities cannot become a sufficient ground for the IRP to proceed with the CIRP in full throttle.

5. Application after constitution of CoC

Post-constitution of the CoC, if a withdrawal application is filed after the issue of invitation for EOI under Regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation. The IRP/RP shall submit the withdrawal application before the CoC. The CoC shall consider the application within seven days of receipt of the application from the IRP/RP. The withdrawal application is to be approved by 90 % vote share of the CoC.

After approval of the withdrawal application by the CoC the RP shall submit such application along with the approval of the CoC to the AA on behalf of the applicant, within three days of such approval. The AA may approve the withdrawal application. After that the applicant shall deposit an amount in the bank account of the CD within three days of such approval, towards the actual expenses incurred by the IRP/RP till the date of approval by the AA, as determined by the IRP/RP. If the applicant fails to do so, the bank guarantee received shall be invoked without prejudice to any other action permissible against the applicant under the Code.

If the settlement is for the future period, the AA may indicate in its order. In case there is no payment as per the settlement, the creditor has liberty to revive CIRP against the CD. In the matter of *Rajiv Garg Vs. Tulsiani Constructions and Developers Private Limited*[7] the CIRP was initiated against the CD on October 07, 2022. Appeal was filed by the CD against this order before the NCLAT. NCLAT vide its order directed not to constitute the CoC.

In the meantime, a settlement agreement was reached between the CD and the creditor on November 07, 2022. Subsequently, the withdrawal application was filed along with the settlement deed by the IRP on behalf of the applicant before AA. The IRP confirmed before the AA that he has received all the costs.

The AA observed that all the compliances for the withdrawal application have been complied with. The AA partly allowed the application only in respect of withdrawal of application and it did not go through the terms of settlement reached between the parties. The AA dismissed the application (IB) No. 1012/(PB)/2020, as withdrawn without any liberty to the applicant file fresh application.

6. Withdrawal application cannot be rejected

The Supreme Court in the matter of *Vallal RCK Vs. Siva Industries & Holdings Limited and Ors*[8]. (2022), delivered a path breaking judgement regarding withdrawal application. In this case, IDBI Bank Limited had filed an application under Section 7 of the Code for initiation of CIRP against the CD. The AA, vide its order dated July 04, 2019, admitted the application. During CIRP, the RP presented a Resolution Plan before the CoC. The said Resolution Plan received only 60.90% share of the votes hence could not be approved. Therefore, the RP filed an application before the AA seeking initiation of liquidation proceedings.

Meanwhile, the promoter of the CD filed an application before the AA for settlement under Section 60(5) of the

[6] CA (AT) (Insolvency) No.896/of 2022, NCLAT.
[7] IA 5490/2022 in CP (IB) No. 1012 (PB)/2022- PB, ND.
[8] Supreme Court, 2022 (6) TMI 173.

Code. In the said application he offered a one-time settlement plan and prayed the AA to direct the CoC to consider the terms of the settlement plan. The said settlement plan was discussed in various meetings of the CoC. The settlement plan received only 70.63% of votes. Subsequently, one of the Financial Creditors viz. International Assets Reconstruction Company Limited, having a voting share of 23.60%, decided to approve the settlement plan due to which the settlement plan was approved by the CoC with 94.23% votes.

Therefore, the RP filed an application before the AA seeking withdrawal of the application in view of the approval of the settlement plan by the CoC. The AA rejected the application for withdrawal and opined that the settlement plan was not a settlement 'simpliciter' under Section 12A of the Code but a 'Business Restructuring Plan'. The AA in its order initiated the liquidation process against the CD. Aggrieved against both the orders of the AA, the appellant filed an appeal before the NCLAT. The NCLAT dismissed the appeal filed by the appellant. The appellant filed an appeal before the Supreme Court.

The Supreme Court analyzed the provisions of the Code in relation to withdrawal and observed that the decision of the CoC was taken after the members of the CoC had due deliberation to consider the pros and cons of the settlement plan and took a decision exercising their commercial wisdom. The Apex Court held that neither NCLT nor the NCLAT was justified in not giving due weightage to the commercial wisdom of CoC. The need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the Code. The Supreme Court set aside the order of NCLAT and allowed withdrawal application.

7. Application by Assignee

Regulation 28 provides that a creditor can assign or transfer the debt due to that creditor to another person during the CIRP. Both parties shall provide the IRP/RP the terms of such assignment or transfer and the identity of the assignee or transferee. The RP shall notify each participant and the AA of any resultant change in the committee within two days of such change. Whether such assignee can file an application for withdrawal of application?

In the matter of *Janata Sahakari Bank Limited Vs. Oaisis Alcohol Limited*[9], the applicant filed an application on August 04, 2020, to initiate CIRP against the Oasis Alcohol Limited. The said application was admitted. The IRP made a public announcement calling for claims from the creditors of the CD. The last date for verification of claims was August 26, 2020. On August 21, 2020, the petitioner unconditionally and irrevocably assigned the loans together with the underlying security interest with respect to the CD to the Applicant in terms of Section 5(1) of SARFAESI Act, 2002.

In the matter of *Janata Sahakari Bank Limited Vs. Oaisis Alcohol Limited (2020)*, NCLT Mumbai held that the application filed by the Creditor Assignee is maintainable.

The FC *vide* its letter dated August 21, 2020, informed the IRP along with copy of Assignment Agreement and intimated the identity of the Assignee as per Regulation 28 along with Form FA for withdrawal of application, since the FC wanted to withdraw the application, along with fee of ₹3 lakhs to CIRP. The said application was agitated on the ground that the Assignment Agreement between the FC and the applicant is insufficiently stamped which makes the same unenforceable in law. The applicant contended that the withdrawal application was given before the Constitution of CoC. The allegation of the applicant is that in spite of that submission of 'Form-FA' by Assignee, the RP deliberately neglected to file an Application for withdrawal under section 12 A of the Code. The AA held that even after the knowledge of assignment, the RP did not file an application under Section 12A read with Regulation 30A, which is arbitrary

[9] IA 1198/2020 in CP (IB) No. 3049/MB-IV/2019, NCLT, Mumbai Bench.

and in violation of statutory regulations. It was held that the application filed by the Creditor Assignee is maintainable. This is a fit case for allowing the withdrawal of CIRP as per Regulation 30A.

8. Withdrawal after approval of Resolution Plan

Once the Resolution Plan was approved by the CoC, no withdrawal application can be filed. In the matter of *Hem Singh Bharana Vs. Pawan Doot Estate Private Limited*[10] *and Ors.,* the AA admitted an application for initiation of CIRP against the CD on May 10, 2019. Only one Resolution Plan was received and the same was approved by CoC with 100% votes. On January 18, 2020, the Letter of Intent was issued by the RP to the Successful Resolution Applicant (SRA). The same was unconditionally accepted by SRA and the performance guarantee was deposited on February 02, 2020. Subsequently, the RP filed an application - 'IA1077/2020' - before the AA for the approval of the Resolution Plan. Meanwhile, on September 25, 2022, an ex-promoter of CD filed an application before the AA with the prayer to keep in abeyance of 'IA 1077/ 2022', which was rejected by the AA.

Once the Resolution Plan is approved by the CoC, no withdrawal application can be filed, held the NCLAT in the matter of *Hem Singh Bharana Vs. Pawan Doot Estate Private Limited and Ors.* (2022).

The appellant filed an appeal before the NCLAT and submitted a settlement proposal which was duly approved by the CoC. The appellant contended that there is no impediment in CoC in accepting the settlement proposal under Section 12A, which is a better plan than the approved Resolution Plan. The RP has erred in not submitting the proposal before the CoC. However, the RP contended that once the Resolution Plan is approved there is no occasion to entertain any settlement proposal.

The Resolution Plan, approved by the CoC, is binding on it and other stakeholders. The NCLAT held that the AA has not committed any error in rejecting the interim application filed by the appellant.

9. Compliances after the withdrawal order

The IRP/RP shall forward the copy of the order to the IBBI, Insolvency Professional Agency (IPA) and to the Registrar of Companies that will change the status of the company. The RP shall hand over the charge and assets of the CD to its promoters/ Board of Directors.

Table 1: Reasons for withdrawal of CIRP cases till Dec. 2002

Reason for withdrawal	No. of cases withdrawn
Full settlement with the applicant	306
Full settlement with other creditors	55
Agreement to settle in future	43
Other Settlements with creditors	210
Others	179

Source: *Quarterly Newsletter of IBBI, Oct.- December 2022.*

Table 2: Amount distributed by means of withdrawal of CIRP cases till Dec. 2022

Amount distributed by withdrawal	Percentage
Less than ₹ 1 crore	54%
More than ₹ 1 crore but less than ₹ 10 crore	24%
More than ₹ 10 crores but less than ₹ 50 crore	13%
More than ₹ 50 crore but less than ₹ 100 crore	4%
More than ₹ 100 crore but less than ₹ 1000 crore	4%
More than ₹ 1000 crore	1%

Source: *Quarterly Newsletter of IBBI, Oct.- December 2022.*

10. Conclusion

As per the recent data released by the IBBI[11], till December 2022, a total of 793 CIRPs have been withdrawn. Among these withdrawals the number of withdrawals by Financial Creditor is 216; the number of withdrawals by Operational Creditor is 570 and the number of withdrawals by the Corporate Debtor is 07.

The main objective of the Code is the resolution of the CD. It prescribes the procedure for the revival of the CD. If the dues are settled even after the filing of application, the CD will survive and fulfils the objectives of the Code. Therefore, the withdrawal by settlement as agreed to between the parties may be encouraged for the revival of CD.

[10] Company Appeal (AT)(Insolvency) No. 1481/2022, NCLAT, New Delhi.
[11] The Quarterly Newsletter by IBBI, Oct. – December 2022.

Understanding Indian Insolvency Ecosystem

Since its enactment in 2016, the Insolvency and Bankruptcy Code (IBC) has been evolving and addressed several problems of businesses, some of which were considered invincible six years ago. In the process, the Code has developed an ecosystem of rescuing corporate lives from financial crisis thereby bringing the stressed assets back into the economy, saving jobs and recovering NPAs of banks. In this article, the author presents a thorough analysis on how various components of the insolvency framework in India sustain one another in meeting the main objectives of the Code i.e., resolution, maximization of value of assets of the Corporate Debtor (CD), and promoting entrepreneurship, availability of credit and balancing the interests of various stakeholders.

Read on to know more…

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1. Introduction

In an open economy, the insolvency process is well established to support ease of doing business and exits. With each transaction, it gains depth, maturity, and richness. India's bankruptcy law is not an exception. Since it was enacted, till 30th September 2022, the Insolvency and Bankruptcy Code, 2016 (IBC/Code) has undergone six amendments along with 84 amendments to its 18 regulations to improve the procedures and advance its goals in line with the rapidly changing market realities. To facilitate the execution of procedures under the Code, the regulatory framework has also undergone several revisions. The Adjudicating Authority, the Appellate Authority, the High Courts, and the Supreme Court have all issued landmark decisions and judgments that explain various conceptual concerns, resolve controversial situations, and address the grey areas.

2. Brief History and Rationale behind IBC, 2016

Between the early 2000s and 2008 public sector banks lent extensively to corporates. However, the profits of various organizations swindled away due to different reasons including economic slowdown. This in turn negatively

impacted the ability of these companies to pay back their loans. There was no effective mechanism to resolve such cases within a reasonable time frame.

The bankruptcy code is a one-stop solution for resolving insolvencies which previously was a long process that did not offer an economically viable arrangement. The code aims to safeguard the interests of small financial investors and make the method involved with carrying on the work less cumbersome. Beforehand, in India there were various regulations used to manage bankruptcy and liquidation, these regulations were as follows:

(a) Presidency Towns Insolvency Act, 1909

(b) Provincial Insolvency Act, 1920

(c) Sick Industrial Companies (Special Provisions) Act, 1985

(d) Recovery of Debts Due to Banks and Financial Institutions Act, 1993

(e) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

For the purpose of making single window clearance, some of the Acts mentioned above were repealed & some Acts were amended to get them aligned with The Insolvency and Bankruptcy Code, 2016 (IBC).

3. Genesis of the Code

IBC is the law that seeks to consolidate the laws relating to insolvency and bankruptcy resolution for corporates, Limited Liability Partnership (LLP), Partnership Firms, Individuals, and other Body Corporates as may be notified by the Central Government from time to time. The Insolvency and Bankruptcy Code, 2016 was passed –

(a) By Lok Sabha on 5th May 2016 and,

(b) By Rajya Sabha on 11th May 2016.

The Code received the assent of the President of India on May 28, 2016 and certain provisions of it are to come into force on later dates. The said Code has 255 sections and 12 Schedules.

3.1. Why is it called a Code, not an Act?

IBC 2016 is a combination of existing multiple laws applicable to the subject of insolvency & bankruptcy. This is the reason; it is called a Code, not an Act.

The basic objective of IBC is "An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India (IBBI). And for matters connected therewith and incidental thereto."

3.2. Objectives of the IBC

Under an initiative of Ease of doing business, India took many actions and IBC is one of the most influential tools used.

(a) To make a single window clearance system.

(b) To Support the corporate insolvency process in a time-bound manner.

(c) To boost the object of competitive business culture in India.

(d) To provide timely relief to the creditor community.

(e) To build the trust of foreign investors & creditors.

(f) To reduce the burden of High Courts & other civil courts.

(g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body.

(h) Maximization of the value of assets of corporate persons.

(i) To revive the company in a time-bound manner.

3.3. Adjudicating Authorities (AA) after IBC, 2016

For Companies & Other Body Corporates

Hon'ble Supreme Court of India

↑

National Company Law Appellate Tribunal (NCLAT)

↑

National Company Law Tribunal (NCLT)

For Individuals, Firms & HUFs

Hon'ble Supreme Court of India

↑

Debt Recovery Appellate Tribunal (DRAT)

↑

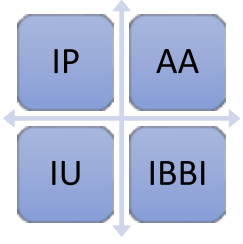
Debt Recovery Tribunal (DRT)

Insolvency Process

For Individuals & HUF it is known as **Bankruptcy**.

For Companies & Body Corporates it is known as **Corporate Insolvency**.

4. Four Pillars of the IBC Ecosystem in India



A key pillar of the insolvency ecosystem is the sector regulator, namely, the Insolvency and Bankruptcy Board of India (IBBI). It is responsible for professionalizing insolvency services through the regulation and development of service providers, namely, insolvency professionals, insolvency professional agencies, insolvency professional entities, information utilities, registered valuers, and its organizations. The IBBI has made an effort to make sure that the service providers are technically proficient, fit and suitable, and motivated to uphold the highest standards of ethics and professionalism. The IBBI has been carrying out a variety of activities for the capacity building of service providers in order to fulfill this responsibility, as well as closely observing their behavior and output.

4.1. The time specified under the Code to complete the Corporate Insolvency & resolution process (CIRP)

Section 12 of the Code provides timelines for the completion of the CIRP within a period of 180 days plus 90 days further extension. Thus, CIRP must be completed in a maximum of 270 days from the Insolvency Commencement Date. It further provides for CIRP to be mandatorily completed within 330 days (including the extension granted and time taken in legal proceedings if any).

4.2. Recovery Rate for Lenders under IBC

While there have been substantial haircuts for lenders, generally in IBC cases also, it still compares well with the pace and amount of recovery in erstwhile legislative processes.

4.3. The minimum amount of default

Initially the threshold limit of initiating the Insolvency process was ₹ 1,00,000/- (One Lakh Indian Rupees) which was increased to ₹1,00,00,000/- (One Crore Indian Rupees) w.e.f. March 24, 2020.

Currently the threshold amount of default to apply for the corporate insolvency resolution process under the code is ₹1,00,00,000/- (One Crore Indian Rupees). For Pre-Packaged Insolvency Resolution Process (PPIRP) threshold limit default is ₹10,00,000/- (Indian Rupees Ten Lakhs Only).

5. Corporate Insolvency & Resolution Process (CIRP)

The CIRP involves following steps:

(a) Application by corporate/operational creditors along with copy of demand notice or record of

default submitted with information utility as the case may be.

(b) Acceptance/Rejection of application by NCLT

(c) If accepted - NCLT will declare moratorium

(d) Notice of Acceptance/Rejection

(e) Public announcement

(f) Appointment of interim resolution professional

(g) Constitution of committee of creditors by Interim Resolution Professional (IRP)

(h) Appointment of Resolution Professional (RP)

(I) Preparation of Information Memorandum

(j) Submission of resolution plan by Resolution Applicants (RAs)

(k) Approval of Resolution Plan by CoC

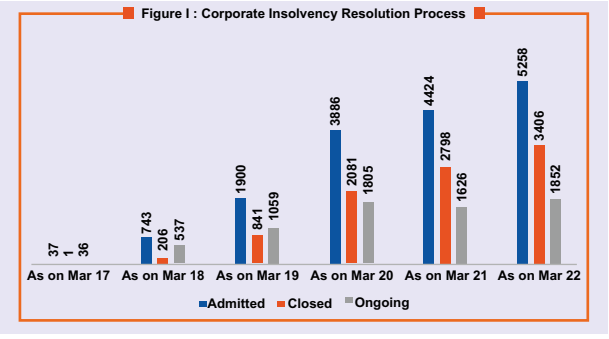
(i) Approval of resolution plan by NCLT

(m) After approval of NCLT order of moratorium shall cease to have effect

(n) Implementation of Resolution Plan

(o) The following graph depicts the progress in CIRP process under IBC –

Graph 1: Progress in CIRP process under IBC till March 2022



Soaurce: *Insolvency and Bankruptcy Board of India (ibbi.gov.in)*

6. IBBI as a Sector Regulator

The IBBI conducts its quasi-legislative, executive, and quasi-judicial functions simultaneously. It also seeks to develop the profession and the level of transactions. It is a key pillar of the ecosystem and regulator for implementing the IBC.

Power and Function of IBBI

- promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code.
- Specify the minimum eligibility requirements for registration of insolvency professional agencies,insolvency professionals and information utilities.
- Monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions
- Specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders agencies and information utilities and pass orders
- Conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals
- Perform such other functionas may be prescribed

7. Insolvency Professional (IP)

The Code provides for IPs to act as an intermediary in the insolvency resolution process. Insolvency professionals are a class of regulated but private professionals having minimum standards of professional and ethical conduct.

Section 3(19) of the Code defines an "insolvency professional" as an individual enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207. The IP is assigned a key role in the following processes of IBC:

(a) A fresh start order process under Chapter II of Part III

(b) Individual Insolvency resolution process under Chapter III of Part III

(c) Individual Bankruptcy process under Chapter IV of Part III, and (e) liquidation of a Corporate Debtor firm under Chapter III of Part II

(d) CIRP under Chapter II of Part II.

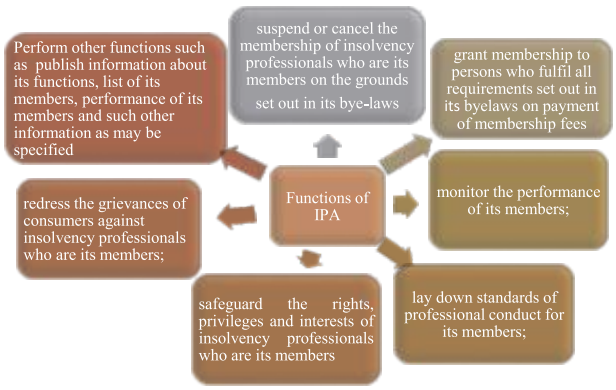
As of February 2023, there are 4258 Insolvency Professionals (IP) and 149 Insolvency Professional Agencies (IPEs) registered with IBBI[1].

8. Insolvency Professional Agency (IPA)

Section 3(20) of the Code defines IPA as any person registered with the Board under Section 201 as an Insolvency Professional Agency[2]. IPA are designated to regulate IP. These agencies enroll IPs and enforce a code of conduct for their functioning. In exercise of the powers conferred by the IBC, 2016, the IBBI has framed the following regulations to regulate the working of IPAs:

(i) The Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 and

(ii) The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.



There are only 3 IPA in India through which the above functions are performed:

(i) Indian Institute of Insolvency Professionals of India (IIIPICAI)

(ii) Institute of Insolvency Professionals (ICSIIIP)

(iii) Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI)

(a) Continuing Professional Education (CPE)

In consultation with the all three IPAs, the IBBI issued (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019. Accordingly, Insolvency Professional (IP) is expected to continuously upgrade knowledge through Continuing Professional Education (CPE) to remain relevant and provide value added services. All IPEs are very strict about CPE and the same is checked while granting renewal of AUTHORISATION FOR ASSIGNMENT (AFA) for respective IP. IP Regulations accordingly provide that an IP shall undergo CPE to keep his registration valid (AFA) and unless requisite CPEs are earned, IPA are not allowing to renew AFA.

(b) Different Roles of Insolvency Professional (IP) Under IBC

(i) **To act as an Officer of the Court/NCLT:** The Insolvency Professional when appointed by an order of NCLT, his roles become as Officer of Court. He becomes a major interface between NCLT, Corporate Debtors and other Stakeholders.

(ii) **To act as an Interim Resolution Professional:** Section 16(3)(a) of the Code requires the Adjudicating Authority (AA) to make a reference to the Board for recommendation of an IP, who may act as an IRP where an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The Board is required under section 16(4) of the Code to recommend the name of an IP against whom no disciplinary proceedings are pending, within ten days of the receipt of the reference from the AA.

(iii) **To act as a Resolution Professional:** The Board is also required under the Code to recommend the name of an IP for appointment as Resolution Professional (RP) or Bankruptcy Trustee (BT) as and when a request is made by Adjudicating Authority.

(iv) **To act as a Liquidator:** Resolution Professional can act as a Liquidator of the Company or if the company wants to appoint any other eligible person as a liquidator they can appoint. Liquidator handles the fund distribution process after setting aside money required to pay the cost of liquidation.

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1. Final Panel of IPs prepared in accordance with 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2022', for appointment as IRP, Liquidator, RP and BT, for the period January 1, 2023, to June 30, 2023 along with Corrigendum dated February 14, 2023. https://ibbi.gov.in/uploads/whatsnew/6e91eb06da9e4799e81539432a412f76.pdf
2. The Insolvency and Bankruptcy Code, 2016 (Upto 12.08.2021) https://ibbi.gov.in//uploads/legalframwork/2022-04-28-181717-r28jw-af0143991dbbd963f47def187e86517f.pdf

(v) **To act as a consultant on Resolution Plan:** The Insolvency Professionals also act as a consultant to prepare and to proceed further with the resolution plan of the company.

9. Adjudicating Authority (AA)

Section 5(1) of the Code provides that the "Adjudicating Authority" for Insolvency resolution and liquidation for corporate persons means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013.

Section 60(5) of the Code further provides that notwithstanding anything to the contrary contained in any other Law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of–

(a) any application or proceeding by or against the corporate debtor or corporate person.

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Section 179(1) of the Code provides that subject to the provisions of Section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and partnership firms shall be the DRT having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person. Section 179(2) of the Code further provides that the Debt Recovery Tribunal shall, have jurisdiction to entertain or dispose of–

(a) any suit or proceeding by or against the individual debtor;

(b) any claim made by or against the individual debtor;

(c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.

10. Information Utility (IU)

There is only a single IU present in India i.e., National E-Governance Services Limited (NeSL). The primary role of NeSL is to serve as a repository of legal evidence holding the information pertaining to any debt/claim, as submitted by the financial or operational creditor and verified and authenticated by the parties to the debt.

10.1. NeSL works towards

(a) Time-bound resolution by giving creditors and adjudicating authority verifiable information that doesn't need additional validation.

(b) When any creditor files a default complaint against a debtor, the related debtors are notified.

(c) Reducing the informational imbalance between the parties to a debt.

(d) A statement of the debt's outstanding balance that both parties have agreed to.

(e) By utilizing information technology, assist all IBC ecosystem stakeholders.

10.2. Function of IU

(a) accepting electronic submission of financial information in such form and manner as may be specified,

(b) safely and accurately recording financial information

(c) authenticating and verifying the financial information submitted

(d) When the CoC is formed, information from IUs may be used to determine all creditors of the debtor, which in turn will help to constitute the CoC.

(e) The information can be used as evidence by creditors who file claims with the IP.

(f) a secured creditor can realize its security interest outside the liquidation process provided the security is verified by the liquidator. The liquidator may verify the security from records in the IU.

10.3. Insolvency Professional Entity (IPE)

Regulation 12(1) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016,

provides for an IPE to be recognised as such if its primary goal is to provide support services to the insolvency professionals,

According to Section 206 of the Insolvency and Bankruptcy Code of 2016 (Code), no one may provide their services as an IP unless they are:

(a) Registered with the Insolvency and Bankruptcy Board of India and

(b) Enrolled as a member of an Insolvency Professional Agency (IPA) and registered with (IBBI). Therefore, no one else can provide services as an IP other than a person who has registered as an IP with the IBBI. Now an IPE can also be an IP.

11. Avoidance of Transactions

The following types of avoidance transaction are recognized by the IBC. These are collectively referred to as the PUFE transactions in the scheme of the IBC.

(a) Preferential Transactions (Section 43 to 44 of IBC)

(b) Undervalued Transactions (Section 45 to 48 of IBC)

(c) Extortionate Transactions (Section 50 and 51 of IBC)

(d) Fraudulent or Wrongful Trading Transactions (Section 66 of IBC)

12. Conclusion

IBC has been a significant economic reform. IBC has gradually addressed the bottlenecks in the recovery of stressed assets and resolution timelines.

A major benefit is that it has considerably improved credit discipline and transformed the power dynamics in favour of creditors rather than borrowers. It has also served as a corrective action to the fraud incidents in the Indian corporate and banking sectors. The slower growth of new non-performing assets in the Indian banking sector is a result of this.

In addition to the above-mentioned modifications, the IBC has significantly improved the country's business environment and ease of doing business index.

Changing Corporate Credit Culture under IBC

IBC, 2016 provides a graded response to financial distress of the Corporate Debtor so that the business is run by efficient and performing entrepreneurs. Thus, early diagnosis of financial distress becomes very crucial for which it uses 'default' as an indicator. If promoters can settle the default, CIRP can be discontinued otherwise it moves on to next stage. However, in practice the process is not so straight for economy of the country. The suppliers and vendors of the CD, which act as its lifeline and are generally MSMEs, are often at the receiving end. In this article, the author presents an analysis of the pros and cons of the IBC and makes recommendations to address the concerns of aggrieved stakeholders. ***Read on to know more…***

Siddheshwar Shukla
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1. Introduction

You may remember the sufferings of the female lead actress Radha in 1957 epic film – *Mother India*. Why has she suffered? Her husband had borrowed money from a lender for their marriage with a good intention to return it. However, as the crop did not yield expected income, he failed repay the loan. Their inability to repay the loan coupled with greed of the lender and accident of her husband, nothing of which could have been predicted at the time of borrowing, proved disastrous for the family. This story is based on a face-to-face relationship between a lender and his debtor wherein the latter became incapable of returning the money despite his best efforts and the greedy lender rained havoc on them.

However, the relationship between a creditor and debtor becomes highly complex in a corporate setting wherein both creditors and debtors follow a complex corporate culture. It may range from creditor exploiting debtor for repayment of debt to debtor wilfully or tactically avoiding repaying the loan. As the people dealing on behalf of both, financial creditors (banks or financial institutions) as well as the debtors (corporates) are temporary, there may be connivance between them for loans to get commission and

move away leaving the corporate in debt or defunct thereby banks losing the loaned amount forever which is registered by them as NPA (Non-Performing Asset). However, the availability of credit is central to promoting entrepreneurship thereby ensuring industrial growth which is crucial for any economy. This creates the need for a robust banking system for the financial well-being of any economy in the contemporary world.

Banks and other financial institutions collect savings from people and organizations and invest it into big business through various means such as directly lending to corporates and investing in share markets etc. The corporate credit culture comprises all those principals, policies, experience, credit management, strategies, rules & regulations, and risk management etc., which define the lending environment and determine the lending behaviour acceptable to financial creditors. Underlining the scope of credit culture, Y. V. Reddy[1], former Governor, Reserve Bank of India (RBI) said, "the whole issue of credit culture and credit system should encompass the legal and institutional aspect of the policy environment, the way the saver or depositor and the borrower – both small and big are treated and the way banks position themselves to face these challenges".

The sole objective of this entire corporate credit culture is to ensure flow of credit from financial creditors to corporates and servicing of loan by the debtor with interest rate as per the mutually agreed timeline. What will happen if corporate creditors are unable to repay the loan, which is in thousands of crores, due to business failure or greed or any other reason?

2. IBC's Intervention into Corporate Credit Culture

To fulfil its objectives, IBC provides various insolvency and bankruptcy frameworks wherein the financial creditors get control of the corporate debtors immediately with the commencement of Corporate Insolvency Resolution Process (CIRP). Early detection of default lies at the heart of IBC processes. Therefore, the existence of default is considered as the benchmark for initiation of insolvency processes under the IBC.

"Early detection of default lies at the heart of IBC processes. Therefore, the existence of default is considered as the benchmark for initiation of insolvency processes under the IBC."

However, if during the CIRP process, the promoter/s of the Corporate Debtor (CD) clears the default, Section 12A of IBC, 2016 provides a provision to withdraw the CIRP application. This provision reveals that the purpose of the IBC is not to dethrone the promoters from the CD but to ensure that the business remains in the hands of efficient and performing entrepreneurs who can repay the loan availed from financial institutions thereby contribute to economic development of the country. Otherwise, the business is considered as failed one and promoters are replaced with more efficient and performing entrepreneurs through a resolution plan following a competitive bidding process. However, if the business is not viable, it is liquidated for release of resources back into the economy.

3. Controlling the Menace of Wilful Defaulters

Before the introduction of liberalization and privatization in 1991, the Indian economy was a closed economy wherein entry into the business was restricted through various licenses and permits. Besides, the expansion of existing business was also controlled by the government through various licenses which is often referred as Licence-Permit-Quota Raj. The various economic and market reforms introduced in the early 1990s ensured availability of credit thereby ensuring free entry of entrepreneurs into the Indian market. However, these reforms soon created the need for another set of reforms to ensure serving of loan by corporate debtors.

[1] Reddy, Y.V. (2004). Credit Policy, Systems and Culture, *Reserve Bank of India Bulletin*, March, p. 311. (https://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/53086.pdf

In 1999, RBI introduced the concept of 'wilful defaulters' through 'Master Circular on Wilful Defaulters' presumably to separate promoters who were gaming the system from those who were really facing financial crisis due to one reason or the other. Master Circular's guidelines (as amended till June 30, 2015) to identify 'wilful defaults' included diversion of funds, siphoning of funds, disposal and/ or removal of movable and immovable property from the CD and track record of borrower. "The default to be categorised as wilful must be intentional, deliberate and calculated," read the guidelines[2].

The number of 'wilful defaulters' in India was 2,469 in FY 2014-15 which drastically dropped to 1254 in FY 2015-16 due to various economic reforms introduced by the Central Government. After introduction of the IBC, 2016, this further dropped to 667 cases in FY 2016-17. This list further decreased to its all-time low to 597 cases in FY 2019-20 but increased to 1063 cases in FY 2020-21 mainly due to economic slowdown caused by Covid-19 pandemic. Thus, the list of 'wilful defaulters' decreased by about 56% in 2020-21 in comparison to FY 2014-15. In this period from 2014 to 2021, the public and private banks collectively recovered about ₹8.01 lakh crore which were classified as NPA and written off loan accounts of wilful defaulters[3]. Though there may be several factors for decrease in the list of 'wilful defaulters' such strict compliance of financial rules and actions by government agencies particularly Enforcement Directorate, IBC also played a role in financial discipline among the borrowers in the country.

4. Rescuing Corporates Midway- Withdrawal Under Section 12 A

'Your last chance! Clear defaults and get back your business' this message also successfully delivered to promoters while business lies in control of creditors through CoC facilitated by Interim Resolution Professional (IRP) or Resolution Professional (RP). According to the data with IBBI[4], out of 4,199 cases which were closed by December 2022, 793 were withdrawn and another 611 have been closed on appeal or review or settled. The number of withdrawn and settled cases clearly indicates that the promoters somehow managed to repay the loan to the satisfaction of creditors and got back control of their companies.

"The number of withdrawn and settled cases clearly indicates that the promoters somehow managed to repay the loan to the satisfaction of creditors and got back control of their companies."

Though Section 12 A has no mention of any time limit for withdrawal of cases, Regulation 30 A (1) of IBBI (CIRP) Regulations 2016 permits withdrawal at two stages (a) before constitution of CoC and (b) before issue of Expression of Interest for Resolution Plan. However, in the matter of *Satyanarayan Malu Vs. SBM Paper Mills Ltd*[5]. (2018), the withdrawal was allowed by NCLT during liquidation process as this most viable option at hand for CD.

5. If Promoters Unable to Get Back Control of the CD

When promotors are not able to get back control of their company, the IBC mandates to search for new entrepreneur/s to run the business. To ensure the CD gets the most capable entrepreneur, the IBC mandates for value maximization before inviting bids for sale through resolution plan. This is done to ensure creditors get back their maximum possible investment/ credit from the CD and the business is saved in the best interest of the economy for it is also linked with the jobs of hundreds and thousands of people. If sale through Resolution Plan becomes impossible, NCLT orders initiation of Liquidation. Here too, the priority is to sale the CD as 'Going Concern'. Liquidation, which is considered as death or dismantling of the CD is always considered as the last option under the IBC. As per the data released by IBBI (IBBI Newsletter, July-Sept. 2022), the performance of IBC at this stage is as follows:

a) Till September 2022, 553 CDs were rescued through resolution plans, ₹2.43 lakh crore, which is around178% of the liquidation value of these CDs.

b) Of the 553 CDs rescued under the Code, 97 had admitted claims of more than ₹1,000 crore. Till June

[2] Master Circular on 'Wilful Defaulters', Reserve Bank of India, June 30, 2015. (https://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9907#21)

[3] The Times of India (2022). Wilful default cases down by over 50% in last eight years: Government Data, March 24 (https://timesofindia.indiatimes.com/business/india-business/wilful-default-cases-down-by-over-50-in-last-eight-years-govt-data/articleshow/90409785.cms).

[4] IBBI Quarterly Newsletter for Jul-September 2022.

[5] IBC Laws (https://ibclaw.in/withdrawal-of-cirp-proceeding-pursuant-to-settlement-under-insolvency-and-bankruptcy-code-2016-by-advocate-shivam-jaiswal/)

2022, 91 such CDs have yielded resolution plans with realisable value of ₹2.17 lakh crore i.e., 184.81% of the liquidation value.

c) Till September 30, 2022, 18 CDs were closed by sale as a going concern under liquidation process, which realised ₹600.84 crore against liquidation value of ₹527.69 crore.

d) Furthermore, 1,807 CDs were referred for Liquidation out of which 429 CDs were completed liquidated and assets valued ₹3,306.24 crore were released back into the economy.

6. IBC's Impact on Corporate Credit Culture in India

The insolvency frameworks introduced under the IBC has conveyed the message among debtors that gone are the days when non-paying the loan of banks was considered a luxury. If the promoters don't payback, they shall lose control of the company. The practice of litigation to delay payment of outstanding dues and recoveries by banks and financial institutions under Debt Recovery Tribunal (DRT) have become a matter of past. Under the IBC regime, lenders have a better and faster option of getting their dues from debtors and if required, can take control of the corporate debtor. This has improved corporate credit culture in India and improved financial well being of banks. According to the recent data[6] Gross NPAs of banks have reduced to ₹7.73 lakh crore as of December 31, 2021, against ₹10.36 crore as of March 31, 2018.

Though recovery is not objective of the IBC, it has proved a better framework for recovery of stressed debt than any previous regime. According to former IBBI Chairperson Dr. M. S. Sahoo "Recovery is neither an objective of the IBC nor even one of the intended benefits[7]" of the IBC, 2026. According to an estimate in 2019, over ₹5 lakh crores have been the direct and indirect realization on account of the IBC. Out of the total estimated amount about ₹2 lakh crore has been recovered before the cases were admitted for resolution under the Code, while recovery through resolution plans is pegged at over ₹1 lakh crore[8].

According to the recent data released by the IBBI till December 2022, the IBC has rescued 2298 CDs (611 through resolution plans, 894 through appeal or review or settlement and 793 through withdrawal). Besides, 1901 CDs were referred for liquidation. The resolved CDs had assets valued at ₹1.44 lakh crore, while the CDs referred for liquidation had assets valued at ₹0.62 lakh crore when they were admitted to CIRP. Thus, in value terms, around 70% of distressed assets were resolved. Of the CDs sent for liquidation, three-fourth were either sick or defunct and of the firms resolved, one-third were either sick or defunct. Furthermore, the realisable value of the assets available with the 611 CDs rescued, when they entered the CIRP, was only ₹1.44 lakh crore, though they owed ₹8.32 lakh crore to creditors. The Resolution Plans realised ₹2.53 lakh crore, which is around 176% of the liquidation value of these CDs. Any other option of recovery or liquidation would have recovered at best ₹100 minus the cost of recovery/liquidation, while the creditors recovered ₹176 under the Code. The excess recovery of ₹76 is a bonus from the IBC[9]. Besides this direct benefit, the benefits of IBC in terms of economic growth of the country and job creation are huge. This is because any of the recovery-based framework would have caused death/ shut down of some of the corporates leading to job loss, increased unemployment, and social unrest in the country.

> **"Till December 2022, 611 CDs were recovered through resolution plans that realised ₹2.53 lakh crore, which is around 176% of the liquidation value of these CDs."**

The detection of default, which is closely followed up by enforcement agencies of the country has boosted the

[6] The New Indian Express (2021). 'NPAs down to Rs 7.7 trn due to transparent recognition of stressed assets', March 29 (https://www.newindianexpress.com/business/2022/mar/29/gross-npas-down-to-rs-773-lakh-crore-due-to-transparent-recognition-of-stressed-assets-sitharaman-2435581.html).

[7] Times of India (2021), 'Insolvency law's aim is biz rejig, not recovery', July 05, 2021 (https://ibbi.gov.in/uploads/resources/dd1ba1872df91985ed1ca4cde2dfe669.pdf)

[8] Times of India (2019), 'Dues recovery is not aim of insolvency law', April 01 (https://timesofindia.indiatimes.com/business/india-business/dues-recovery-is-not-aim-of-insolvency-law/articleshow/68662693.cms)

[9] IBBI Newsletter, July-September 2022, p. 19-20.

confidence of investors in the Indian economy which is reflected in the form of Foreign Direct Investment (FDI) and Industrial Growth. As per the government data, the FDI inflows[10] in India has touched a record $83.57 billion in FY21-22. Despite the recent ups and downs, Asian Development Bank (ADB) has predicted[11] 7 per cent GDP growth rate for India in FY 2022-23 and 7.2 per cent in FY 2023-24, which is much higher than Asia's predicted growth of about 4 per cent. These positive sings in Indian economy are due to improvement in the banking system which is a reflection of improving corporate credit culture.

Another evidence of IBC's influence on corporate credit culture comes from number of cases which were settled before commencement of CIRP. According to IBC Newsletter (July-Sept. 2022), till September 2022, at least 23,417 CIRP applications having underlying default of ₹7.31 lakh crore were resolved before their admission by respective NCLTs. This means the defaults of corporate debtors were detected by creditors, but they were settled to avoid CIRP, which involves immediate removal of promoters and hands over the control of the CD to Committee of Creditors (CoC). The number of cases settled before admission of CIRP petitions is about 4 times of 5,893 corporate debtors, which were admitted into CIRP in the same period. In absence of IBC, 2016 a significant number of these corporates would have contributed to the increasing list of wilful defaulters. The fear of losing control on business has sent a right message among the promoters and contributed positively to corporate credit culture.

7. How Corporates can Avoid Financial Distress?

There may be several reasons for a business distress of a corporate some of which can be managed while some other cannot be avoided at all. For instance, a company like Moser Baer India Limited (MBIL), which was manufacturing Optical Storage Media (OSM) devices like CDs, DVDs, and Solid-State Media etc., had no scope of survival as due to technological development its marked dried up completely. Finally, it was liquidated.

However, some of the financial distress scenarios can be avoided by better risk management and maintaining adequate cash flow culture. As distressed assets have a life cycle, the value of company gradually declines with time if distress is not addressed. Therefore, early identification of distress and bringing it before the Adjudicating Authority (NCLT) through CIRP application is very crucial in asset realization. Besides, controlling the menace of PUFE transactions could save several corporates from going into financial distress.

> **Early identification of distress and bringing it before the Adjudicating Authority (NCLT) through CIRP application is very crucial in asset realization.**

According to the IBBI data, till June 2022, 786 applications were filed to claw back ₹2,21,104 crore lost through PUFE transactions during the relevant period. If this value was not lost, several of them would not have got into CIRP in the first place. Furthermore, CDs, which ended up with resolution plans through CIRP, had lost ₹41,667 crore through PUFE transactions, accounting for about 4.98% of the amounts claimed against them. In contrast, the CDs that ended up with liquidations had lost ₹1,21,121 crore through PUFE transactions, which accounts for 15.43% of the amounts claimed against them. Data also indicate that CDs getting rescued through CIRP are typically left with assets valued at 17% of the claims when they entered into CIRP. The CDs getting liquidated through CIRP had lost 15% of the claims through irregular transactions and were left with assets valued at 5% of the claims by the time they entered into CIRP. If there was no irregular transaction, these CDs would be left with assets valued at 20% of claims[12]. In that case, all of them would be rescued through resolution plans which means better recovery for creditors.

Better supply chain management is another crucial issue. The corporates – small or big, flourish due to a robust management and delicate balance between revenue, expenditure and investment for improvement. A dynamic and vibrant system of supply for raw material as well as human resource plays a crucial role in maintaining this balance and maintain robust cash flow culture in the company.

[10] Ministry of Commerce and Industry (https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1826946)

[11] Rediff.com (2022), ADB keeps India's GDP growth unchanged at 7%, December 14 (https://www.rediff.com/money/report/adb-keeps-indias-gdp-growth-unchanged-at-7/20221214.htm)

[12] Sahoo, M. S. (2022), PUFE Transactions, *The Resolution Professional*, p. 14-18.

8. Conclusion and Agenda for Discussion

Today, creditors have various options such as bilateral discussions, settlement, restructuring and CIRP to enforce financial discipline on debtors and secure their investment. The Ministry of Corporate Affairs (MCA) is reportedly working to extend Pre-Packaged Insolvency Resolution Process (PPIRP) for big corporates, which will be another option for creditors to ensure safety of their investments. It has created an entirely new profession i.e., Insolvency Profession wherein professionals of various backgrounds including CA, CS, ICWA, Law, Management etc., are drawn to spearhead various processes under the IBC. Besides, IBC has given rise to a new industry i.e., Distressed Financing. Because of the protection provided to the debtors by the IBC, creditors are coming forward to provide funding to promoters of distressed corporate debtors who have good business prospects.

Though IBC processes are faster than any other previous framework, not meeting timelines prescribed under the Code has been a major concern of stakeholders. According to the recent data with IBBI, 71% of cases were pending for more than 270 days. As the value of corporate debtors deteriorates if the cases are dragged longer, the interest of creditors is also adversely affected and leads to higher haircut which is another major concern of stakeholders. Timeline, haircuts, and value maximization are interrelated. Therefore, an integrated and holistic approach of various stakeholders will be required to enhance effectiveness of the IBC.

Resolution of Ireo Fiveriver Private Limited (IFPL)

The CIRP of IFPL is a complex case of Group Insolvency as it involved 10 more group companies in addition to the CD. On application of an Operational Creditor (OC), the NCLT, New Delhi ordered CIRP of the CD on December 13, 2018.

The primary challenge in this case was that there was no real asset in name of the CD, and it was merely holding JDA's (Joint Development Agreements) with certain companies which were the actual land holding companies. Besides, the real estate project was apparently in conflict with some laws such as FEMA, and Land Ceiling Act etc. The RP not only addressed these issues but also was able to capture balance of the 25% land documents (title deeds etc.) from the landowning companies and promoters of the CD and gave them in the safe custody of the financial creditors. He finally managed a feasible Resolution Plan for the CD.

The present case study, sponsored by IIIPI, has been developed by Mr. Jain. In this study, he has provided a first-hand step by step guide to rescue a corporate life.

Read on to know more...

1. Commencement of CIRP

Worxpace Consulting Pvt. Ltd., an Operational Creditor of M/s Ireo Fiveriver Private Limited (IFPL), the Corporate Debtor (CD), filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) at National Company Law Tribunal (NCLT), New Delhi for initiating its Corporate Insolvency Resolution Process (CIRP). The Adjudicating Authority (AA) through an order on December 13, 2018, admitted the petition and appointed Interim Resolution Professional (IRP) for the CD.

The CD had planned to develop a sole real estate project (Project) at Sector 3, 4 & 4A of Kalka-Pinjore Urban Complex, District Panchkula in Haryana. The project comprised of Plotted Development, Group Housing Towers, Villas, Independent Floors, Commercial Development, and Institutional area. As per the land records provided to the RP, the Project was planned on 198.801 acres of land for which license was obtained from Department of Town and Country Planning (DTCP) in the

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name of Magnolia Propbuild Pvt. Ltd. and other land-owning companies. The CD had singed Joint Development Agreements (JDAs) with those land-owning companies. However, some land was disputed and possession of 177.27 acres of land was available. The proposed area breakup of the Project is given in the Table 1.

Table 1: The proposed area breakup of the Project

S.No.	Items	Area
1.	Plotted Development	56.00 Acres
2.	Group Housing 1	14.81 Acres
3.	Group Housing	224.94 Acres
4.	Commercial	03.18 Acres
5.	Institutional	11.55 Acres
6.	Roads, utility, parks others	~66.79 Acres
	TOTAL	177.27 Acres

2. Appointment of Resolution Professional

The IRP appointed by the Adjudicating Authority (AA) was not appointed as RP. Eventually after 270 days the Committee of Creditors (CoC) by way of a resolution replaced the IRP and Mr K. V. Jain was appointed as the RP of CD with 100% votes of the CoC. The RP applied for further extension of time for CIRP, which was allowed by NCLT vide an order dated November 25, 2019, for 90 days i.e., from November 09, 2019, to January 08, 2020.

> **The project comprised of Plotted Development, Group Housing Towers, Villas, Independent Floors, Commercial Development, and Institutional area. However, the land of the Project was not in the name the CD.**

After taking over the charge, RP found that there was no real asset in name of the CD, and it was merely holding JDA's (Joint Development Agreements) with certain companies which were the actual land holding companies. As per the account books of the CD, it was brought to the knowledge of the RP that the Ireo Group is having an overseas fund from where it received funds in the accounts of CD. In fact, the funds were sent by Mauritius based Company named Camixo Ltd., which IREO Group used to call Group Fund Co., and from that Camixo Ltd. fund was received by Ireo Five River P. Ltd.

3. Claims Admitted by the RP

HDFC Ltd., a Non-Banking Financial Creditor (NBFC), and Axis Bank were major financial creditors. The CD had sold various plots and flats in 'Plotted Development' and high-rise towers, which it had intended to develop and sold (partially) thereby creating 'Class Creditors' in the form of homebuyers. A list of creditors with claims received and admitted as on Insolvency Commencement Date (ICD) i.e., December 13, 2018, as received by the RP in response to the public announcement as per Information Memorandum (IM) is provided in Table – 3.

Table-3: Claims Received and Admitted by the RP

Nature of creditor	Amount Claimed (₹ Crore)	Amount Admitted (₹ Crore)
Financial Creditors		
HDFC Limited – Secured	192.04	192.04
Axis Bank Limited – Bank Guarantee	65.13	62.50
Allottees (who filed claims)	178.24	149.20
Allottees (who did not file their claims and their claims are admitted on NCLT Directions)	0.00	92.97
IREO Grace Realtech Pvt. Ltd.	136.12	0.00
Commander Realty Pvt. Ltd.	7.53	0.00
IREO Pvt. Ltd.	4.21	0.00
Puma Relators Pvt. Ltd.	--	6.23
Sub Total- A	**583.27**	**502.94**
Operational Creditor (Other than Workmen and Employee and Statutory Dues)	56.08	0.33
Operational Creditor *(Workmen & Employee)*	0.00	0.00
Operational Creditor (*Statutory Dues*)	0.00	0.00
Sub Total- B	**56.0**	**80.33**
Total A+B	**639.35**	**503.27**

4. Challenges faced during CIRP

Though Land Celling Act is applicable in the State of Haryana, the CD would not have purchased the large chunk of agriculture land in its name. Besides, another problem which RP could foresee was buying agriculture

land in the name of CD through Foreign Direct Investment (FDI) and holding it till the Change of Land Usage, which might have violated the provisions of Foreign Exchange Management Act, 1999 (FEMA).

On further checking of account books, it was revealed that the CD transferred funds to certain companies as ICD's (Inter Corporate Deposit) which in turn bought agriculture land from farmers and applied to DTCP for grant of licence to develop it as a colony for which JDAs were being executed between land-owning licence holder companies and the CD. These JDAs authorised the CD to develop the colony and also gave it the right to sell the same.

RP realised JDAs were the only assets in the hands of the CD. However, almost 75% of the land bank under the said project was mortgaged to the two FCs of the CD. After several rounds of discussions between the RP and his team, it was decided to pitch the resolution of the CD either by merger or complete shift of ownership of land-owning companies along with the CD in the Terms of Reference (TOR) for Expression of Interest (EOI) of Resolution Plan.

Another problem which RP could foresee was buying agriculture land in the name of CD through FDI and holding it till the Change of Land Usage, which might have violated the provisions of FEMA.

Another challenge came before the RP was to satisfy the valuers as to the valuation of the project where there was no real asset in the name of the CD. They were appraised about the situation and explained the possible way through which the asset would eventually flow on the resolution, so they conducted the valuation of JDA's as 'Intangible Asset' of the CD. Another major challenge before the RP was huge number of unsatisfied homebuyers (Class Creditors) who had lost faith in the CIRP process due to inactivity for almost 270 days. So, to restore their faith, the RP took immediate steps and created a dedicated response team in his office to resolve queries of homebuyers and stakeholders on real time basis. Another step taken by RP to restore their faith in IBC's efficacy was to allow representatives of the Homebuyers' Association in the CoC meetings along with their Authorised Representative (ARs) but homebuyers were advised not to speak in the CoC meetings although they were allowed to raise their concerns in the meeting through AR. This eventually created faith of the homebuyers in the process.

Now the other challenges before the RP were various provisions of DTCP and Real Estate Regulatory Authority

To restore confidence of homebuyers, the RP took immediate steps and created a dedicated response team in his office to resolve the queries of homebuyers and other stakeholders on real time basis.

(RERA). DTCP had huge receivable in the form of various dues pending against the land-owning companies due to non-fulfilment of the licence conditions and it was very difficult for the RP to convince the DTCP, which is a government body, to file claim under CIRP of the CD since licences were granted in the name of ten more land owning companies which were not directly part of the CIRP. After many efforts, the RP was able to convince the government officials to file their claims on the basis of JDAs and the land bank which was part of CIRP.

Besides the above, following steps were taken to streamline the CIRP process:

(a) The Class Creditors of the CD obtained stay from Hon'ble High Court against 10 Group companies from alienating its assets. It was difficult task to satisfy/ convince Prospective Resolution Applicants (PRAs) and even to Hon'ble High Court to allow the resolution of the CD in view of this order.

An application under Section 66 against the management of the 10 group companies was filed to ensure their cooperation.

(b) RP impressed upon the group managements to co-operate in the resolution process of the CD, and to confirm before CoC of the CD that they all are willing to sign the new JDA's once a Successful Resolution Applicant (SRA) is finalised by CoC with due process.

(c) RP obtained all the title deeds of the land bank which were not mortgaged with the FCs from 10 group companies.

5. Precedents in India for Group insolvency

The case of *State Bank of India Vs. Videocon Industries Ltd.* (VIL) is the landmark judgement for Group Insolvency jurisprudence in India. In this case, the NCLT Mumbai passed an order for consolidation of CIRP against 13 (out of 15) companies of Videocon, relying on principles laid down by US and UK courts. This order was passed in:

(a) MA 1306/2018 in CP No. 02/2018, CP No. 01/2018, CP No. 543/2018, CP No. 507/2018, CP No.

509/2018, CP No. 511/2018, CP No. 508/2018, CP No. 512/2018, CP No. 510/2018, CP No. 528/2018, CP No. 563/2018, CP No. 560/2018, CP No. 562/2018, CP No. 559/2018, CP No. 564/2018

(b) MA 1416/2018 in CP No. 02/2018 &

(c) MA 393/2019 & MA 115/2019 in CP No. 543/2018 &

(d) MA 1574/2019 in CP No. 01/2018 &

(e) MA 774 /2019 in CP No. 543/2018 &

(f) MA 778/2019 in CP No. 559/2018 &

(g) MA 1583/2018 IN CP No. 559/2018 dt 8th August 2019

Further, following paras of NCLT's judgement in MA No. 2385/2019 dated February 12, 2020, are worth mentioning in reference to Group Insolvency:

(a) Para 103: Now we try to answer the question that whether "consolidation" in this case meets the criteria of consolidation as propounded in the Judgment of this Bench of 8-8-2019 by which "consolidation" of 13 Videocon Group Companies were done for the purpose of CIRP. Each of these parameters and whether the same is fulfilled or not is detailed below: -

(i) **Common control:** There is no dispute about the control of Respondent No.1/VIL on all decisions of Respondent Nos.2 to 5. It is also not denied that Respondent Nos. 2 to 5 were/are the Special Purpose Vehicles created by the Respondent No. 1/VIL. It is also not seriously disputed that the Respondent Nos.2 to 5 were acting like an agent and/or extended arm of the Respondent No. 1/VIL.

(ii) **Common directors:** The family members of V.N. Dhoot are Directors in Respondent Nos.2 to 5 Companies, as was there for the 12 consolidated Companies;

(iii) **Common assets:** As stated in the preceding paragraphs we have already held that Lenders of LOC/SBLC Agreement as well as Rupee Facility Agreement (RTL Agreement) have always treated the Videocon Group, as a Single Economic Entity, which included the 13 Obligor Co-obligor companies as well as Respondent Nos. 2 to 5. Further, as stated hereinbefore the Lenders have treated the assets of the Videocon Group may it be in CHA assets, Telecom assets and/or foreign oil and gas assets as common assets for granting of the facility amount.

(iv) **Common liabilities:** The clauses of the SBLC Facility Agreements and the VTL and RTL Facility Agreements have demonstrated that the security available for satisfaction of the debts are common securities belonging to various entities in the Videocon group, as was there for the 12 consolidated Companies;

(v) **Inter-dependence:** As already discussed and held hereinbefore the Lenders have treated the foreign oil and gas assets and businesses dependent with the CHA business by way of putting various restrictions and cross defaults in respective funding Agreements to CHA and foreign oil and gas business. That apart the executed documents, the acquisition documents do indicate the Respondent Nos.2 to 5 were never independent and financially sound to acquire and maintain the properties but, it is admitted that all the time Respondent Nos. 2 to 5 were dependent on Respondent No. 1/VIL. Similarly, the funding arrangements also envisaged that for the CHA business funding foreign oil and gas assets shall have second charge and *vice -versa*.

(vi) **Interlacing of finance:** In view of the aforesaid discussion and reference to the specific clauses in Rupee Facility Agreements on one hand, (for the default of which the 15 Videocon Group Companies are referred to the ongoing CIRP), clearly establishes the substantial right, security and interest qua the foreign oil and gas assets, properties, including interest therein is secured in favour of the Rupee Lenders under the various terms of the RTL Agreement. Whereas on the other hand, the LOC/SBLC Lenders i.e. lenders of Respondent Nos.2 to 5 for the foreign oil and gas business, have also secured the rights and interest in Respondent No. 1/VIL and has put various restrictions in its favour in relation to the non-disposal of the pledge shares of Respondent Nos.2 to 5 by

Respondent No. 1/VIL as well as have also taken the other securities including the security of the Videocon Brand which belongs to one of the Companies i.e. C.E. India Limited which is already part of the ongoing CIRP. Beside this the reference to various clauses of the RTL Agreements as well as LOC/SBLC Agreements do clearly show that there was interlacing finance arrangements.

(vii) **Pooling of resources:** It has not been denied and admitted that Respondent Nos. 2 to 5 were financed from the resources of Respondent No. 1/VIL with the security to the Lenders for this finance and on the other hand for CHA business the resources of foreign oil and gas assets was given as a second charge. As such, for the sanction of the facility limits either for CHA business or foreign oil and gas business security of each other's assets was offered. Not only this, but the surplus flow arrangement from each other's business also agreed to be shared by the Lenders. Further, it is apparent that there was common Board of Directors, Promoters, pooling of human resources, liaising and funding. Undisputedly, the directors are commonly using their contacts and relationship to run all the subsidiaries for which common office staff, accountants, and other human resources are mobilized to manage the affairs collectively. Further, common arrangement of capital/funds is an accepted position in Videocon group, as was there for the 12 consolidated Companies.

(viii) **Coexistence for survival:** The Respondent Nos.2 to 5 were/are completely dependent on Respondent No. 1/VIL and it is admitted that these companies did not have any separate financial capability to serve the cash calls. Admittedly, the funding was done on the basis of the responsibility and guarantee taken by the parent company.

(ix) **Intricate link of subsidiaries:** The Respondent Nos.2 to 5 were incorporated subsequent to acquisition of the assets, the shareholding pattern, the control on these Respondents was/is common and admittedly never was independent but, there is intricate link amongst them. Further, the loan documents and security arrangement mentioned therein clearly establish the intricate link between them and Respondent No. 1/VIL.

(x) **Intertwined accounts:** The accounts of Respondent Nos. 2 to 5 were completely under control of the Respondent No. 1/VIL and each other Lenders have taken the charge on the proceedings of each other's account, which itself shows the accounts were intertwined.

(xi) **Inter-looping of debts:** As stated hereinbefore, we have already held that the accounts were intertwined, and creditors of CHA business and oil and gas business have already created inter-looping of the debts in favour of each other's debt.

(xii) **Singleness of economics of units:** As discussed above in the preceding paragraphs thereby referring to various specific clauses clearly shows that the Lenders have treated the Respondent Nos. 1 to 5 as one single economic unit, irrespective of the different businesses and assets, properties. The same is fortified from the various securities and restrictions mentioned in the loan documents. The foreign oil and gas assets acquisition documents also support the said fact.

(xiii) **Common Financial Creditors:** As per two financing agreements viz., SBLC Facility Agreement and the RTL & VTL Facility Agreements, the lenders are members of a 'consortium of banks' which is common for all. Because the impugned Insolvency Petitions were filed by SBI for itself and also on behalf of the said Joint Lenders Forum, already listed above, the names of all the banks forming consortium thus substantiate the fact that the financial creditors are common for Respondent No. 1 and Respondent No. 2, as was there for the 12 consolidated Companies.

(b) Para 104: It can be clearly seen from the above that all the 13 parameters which were enunciated in the Order dated August 8, 2019, in the consolidation of 13 Videocon Group Companies are fully met and satisfied in this case also.

(c) **Para 105:** We are of the view that in case the said assets are not considered to be assets of single economic entity and/or of the Respondent No. 1/VIL, then, by no stretch of imagination, the effective resolution of ongoing CIRP of any of the 13 Companies as well as the CIRP VOVL would meet to the objective envisaged under the IBC and they shall be forced towards the liquidation despite having sufficient means and assets to resolve the debt of all corporate persons.

(d) **Para 106**: In other words, there shall be compromise rather the rights and interest of important stakeholders like Operational Creditors, employees etc. shall be jeopardized to the greater extent as looking at the cross creation of the security interest in relation to the assets of each of the VIL Group Companies would not be able to independently meet with the claims lodged by all the creditors.

Relying on VIL judgement, the NCLT, Mumbai in *Axis Bank Ltd.* Vs. *Lavasa Corpn. Ltd.* MA No. 3664 of 2019, dated February 26, 2020, also allowed for Group Insolvency. Although precedents are there but India needs Group Insolvency laws in place along with multi countries insolvency treaties and guidelines.

6. Value Maximization

In the meantime, RP was able to get balance of the 25% land documents (title deeds etc) from the landowning companies and promoters of the CD and gave them in the safe custody of the financial creditors.

All 'title deeds' were lying in the custody of HDFC Ltd. only, however, they were mortgaged to Axis bank & HDFC Ltd., so remaining 'title deeds' collected by RP were handed over to HDFC Ltd. for safe custody.

7. Resolution of the CD

Now other challenge with RP was to satisfy/ convince the Prospective Resolution Applicants (PRAs) about the existence of the intangible asset by way of various JDA's in the hands of the CD and the land bank being physically held in other ten companies but mortgaged to the FCs of the CD.

After initial hiccups, seven PRAs responded to EOI. The RP and his team had a series of meetings with them and explained the strategy being adopted by the RP to address the situation. Finally, RP received two resolution plans. After vetting, the resolution plans of two PRAs – were presented before the CoC for voting. Finally, the CoC approved a Resolution Plan which was subsequently approved by the AA on August 06, 2021. The Successful Resolution Applicant (SRA) has offered ₹220 crores to two FCs and possession of plots according to different options exercised by home buyers or refund of money.

The Successful Resolution Applicant (SRA) has offered ₹220 crores to two FCs and possession of plots according to different options exercised by home buyers or refund of money.

The Resolution Plan is being successfully implemented and in its final stage of implementation. The Bank and NBFC have been paid while homebuyers have been offered their share as per the Resolution Plan.

8. Takeaways from the CIRP of IFPL

(a) Case for Joint Resolution

(i) The assets of the 10 group companies were exclusively purchased for the business of the CD under CIRP.

(ii) The management and deployment of staff was common, the Key Managerial Personnel (KMP) of the group companies appointed were the employees of one group only.

(iii) The affairs of the 11 companies were so entangled that joint resolution benefitted all creditors. Separating assets might have been prohibitive and hurt all creditors.

(iv) The expenses of the 10 subsidiaries after default was being met by parent as the assets owned by the subsidiaries were exclusively used by CD.

(v) The assets of the 10 group companies were exclusively charged with bankers of the CD for CD's exposure only.

(vi) 10 group companies were not having any other liability other than loan from CD.

(b) Options For Joint Resolution?

(i) Substantive consolidation,

(ii) Amalgamation of subsidiaries during CIRP before Resolution of the CD,

(iii) Amalgamation/consolidation of assets of subsidiaries through Resolution Plan submitted for revival of CD by Resolution Applicants.

(iv) All 10 group companies were willing to sign the exclusive JDA with incoming Resolution Applicant (RA) of the CD.

(c) Challenges Ahead

(i) No framework exists for substantive consolidation mechanism. The same has to be opted for by creditors by making an application for consolidation before Hon'ble NCLT or it can be applied directly by NCLT as was done in some previous cases like Videocon.

(ii) The CD is already undergoing CIRP for the past 9 months and the 10 Group companies have not defaulted so can't be admitted into CIRP. For a substantive consolidation to be effective, the first step is that the 10 Group companies should be admitted under CIRP.

(iii) In the instant case, a separate consolidation application needs to be filed by the 10 Group companies and to be agreed by the CoC of the CD which is undergoing CIRP.

(iv) CIRP is a time bound process. A substantive consolidation would require resetting of the clock for consolidated resolution plan of all the 11 companies which may result in delay in the revival of the CD. However, this delay should get compensated by the benefits in terms of value maximization through consolidation.

(v) Amalgamation of subsidiaries during CIRP before Resolution of CD shall require approval of the NCLT. Prior to the same, it shall also require approval of the different class of creditors and shareholders of the 10 group companies, which may take some time and may not coincide with the CIRP timelines and deadlines of CD. Provisions of the Companies Act, 2013 shall be applicable.

(vi) Amalgamation/Consolidation of Assets of subsidiaries through Resolution Plan submitted for revival of CD by the Resolution Applicant shall also require approval of the different class of creditors and shareholders of the 10 group companies before submission of the relevant resolution plan.

(vii) Balancing of all the different class of creditors shall be required.

(viii) Adequate legal framework for amalgamation of companies under IBC is also required for a seamless process so that benefits equally apply to all the group entities i.e., parents and its subsidiaries /SPV's.

9. What would have fast tracked the above Process - Suggestive Steps

The experiences of RP and his team in conducting CIRP of IFPL may be crucial for Resolution Professionals (RPs) dealing/ will deal with similar cases. Followings are some important suggestions for smooth Resolution in the matters of Group Insolvency.

(i) If not a Group Insolvency Framework, at this stage, a suitable provision in the IBC should be made for initiating consolidation application by the lenders or by the RP of one of the group companies in case of joint assets.

"The RP should be given the responsibility in these types of situations, after he verifies the interrelated dependencies of the so-called group companies, he should place it before the CoC."

(ii) The RP should be given the responsibility in these types of situations, after he verifies the interrelated dependencies of the so-called group companies, he should place it before CoC. Subsequently, the RP, with due approval of CoC, should submit it with the AA within a specified time frame, and Hon'ble AA to pass the appropriate order in this regard on priority basis to initiate/ commence the CIRP of the group companies or entities provided they fall within any definition of section 5(24) or 5 (24A) or as per Chapter X of Income Tax Act, 1961.

(iii) The jurisdiction of AA should be that of the Main CD from where the first CIRP has started. It means that even if the other group companies are from other jurisdictional Registrar of Companies (ROCs) their proceedings should be before the same Bench which is handling the Main CD insolvency.

(iv) There can be single RP for the group companies, to reduce the inter CoC conflicts and to promote uni-directional Resolution approach.

(v) In case where the operations of the group companies are diverse and complicated and scattered then a central RP should be appointed to whom the different RPs should report and coordinate for a uni-directional effort for Resolution.

(vi) There can be Main CoC with one or more (or they can be in accordance with the Debt share to the Group) elected members nominated from Sub CoC's.

(vii) All CoC's should function in accordance with the policy framework to be decided by the main CoC in its 2nd meeting.

Hon'ble Apex Court's judgement in the case of *Victory Iron Works Ltd. Vs. Jitendra Lohia Civil* Appeal Nos. 1743,1782 of 2021 dated March 14, 2023, may be referred where there is group insolvency and assets are held in between various corporates. The key takeaways of this judgement are as under:

(a) Development rights in property created in favour of the Corporate Debtor constitute "property" within the meaning of the expression under Section 3(27) of IBC and "asset" within the meaning of section 25(2)(a) of IBC.

(b) The Explanation under Section 18 begins with a caveat namely "for the purposes of this Section". Therefore, the exclusion of assets owned by a third-party, but in the possession of the Corporate Debtor held under contractual arrangements, from the definition of the expression "assets", is limited to Section 18. In other words, the Explanation under Section 18 does not extend to Section 25. Therefore, the Explanation under Section 18 will not provide an escape route for the appellants. In any case, the bundle of rights and interests created in favour of the Corporate Debtor may even be tantamount to creation of an implied agency under Chapter-X of the Indian Contract Act, 1872 and such agency may not even be amenable to termination in view of Section 202 of the said Act since the creation of the same in favour of the Corporate Debtor was coupled with flow of consideration.

(c) Two applications were filed before NCLT. One was by the Resolution Professional and the other was by Victory. A careful look at the application filed by Victory in C.A. (IB) No.146 of 2020 would show that there was no whisper about Victory occupying any land in excess of what they were permitted to occupy under the Leave and License Agreement. Under the Leave and License Agreement, Victory was allowed to occupy only 10000 sq. ft. of land, upon payment of a monthly license fee of ₹5,000/-. If at all, a vague averment was made in paragraph VII (c) of their application to the effect that inasmuch as the Corporate Debtor was unable to commence any development activity in the subject land, the owner and the developer, with their full consent, had decided to allow the applicant to run its business in the usual course from the subject land, because the subject land could not have been left vacant for any substantial period of time. The fact that there were security guards posted in the property is borne out by records. This is why NCLT as well as NCLAT have done a delicate act of balancing, by protecting the interests of Victory to the extent of the land permitted to be occupied. In fact, Victory does not even have the status of a lessee but is only a licensee. A license does not create any interest in the immovable property. Therefore, NCLT as well as NCLAT were right in holding that the possession of the Corporate Debtor, of the property needs to be protected. This is why a direction under Regulation 30 had been issued to the local district administration.

Legal Framework

Here are some important amendments, rules, regulations, circulars, notifications, and press releases related to the IBC Ecosystem in India.

CIRCULAR

IBBI revised format for serving a copy of the application for initiating CIRP against CD

In exercise of the powers under clause (k) of sub-section (1) of Section 196 of the IBC, 2016, IBBI (Board) has revised the format of application to ensure filing of authentic information with the Board and further enable the Board to share information relating to the application for initiation of CIRP with the IU efficiently. The Board has also provided a step-by-step guide for submission of the application. On submission of the application online, the applicant shall get an acknowledgment. According to Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as amended vide notification No. G.S.R. 583(E) dated September 24, 2020 published in the Gazette of India, Part II, Section 3, Sub-section (i), No. 474 dated September 24, 2020 obligates an applicant to provide a copy of the application for initiating corporate insolvency resolution process (CIRP) against a corporate debtor, inter alia, to the Board, before filing the same with the Adjudicating Authority. The applicants are encouraged to avail of this facility.

Source: *Circular No. IBBI/LAD/58/2023 dated Mach 04, 2023*

NOTIFICATION

IBBI gets exemption from Income Tax

The Central Government has provided exemption to the Insolvency and Bankruptcy Board of India (IBBI) from income tax on all its earnings from FY2022-23 to FY 2026-27. Through a Gazette Notification dated March 01, 2023, the Government in exercise of the powers conferred by clause (46) of Section 10 of the Income-tax Act, 1961 (43 of 1961) has provided exemptions in respect of the following specified income arising to IBBI, namely:

(a) Grants-in-aid received from Central Government;

(b) Fees received under the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(c) Fines collected under the Insolvency and Bankruptcy Code, 2016 (31 of 2016); and

(d) Interest income accrued on (a), (b) and (c) above.

However, this exemption has been provided on the conditions that IBBI (a) shall not engage in any commercial activity; (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

Source: *Notification No. 09/2023/F.No.300196/39/2021-ITA-I dated March 01. 2023*

PRESS RELEASE

Good research on the subject of insolvency is crucial in the context of assisting the judiciary in resolving insolvency cases: NCLT President

Research on insolvency is also important for identifying gaps in the law and areas where the law may be in need of reform, said Hon'ble Mr. Ramalingam Sudhakar, President NCLT in his inaugural address of 2nd International Research Conference on IBC on February 23, 2023.

The conference was organized by the IBBI, jointly with IIM, Bangalore from 23rd to 25th February 2023. In the end, he thanked IIM Bangalore and appreciated the efforts of IBBI for this initiative of organizing the Conference and bringing together diverse minds of knowledgeable professionals. Hon'ble Justice Kannan Ramesh, Judge, Appellate Division, Supreme Court of Singapore and Judge, Singapore International Commercial Court; Mr. Chandru K. Iyer, Hon'ble British Deputy High Commissioner; Mr. Ravi Mital, Chairperson, IBBI delivered special addresses in the inaugural session of the Conference. The inaugural session was physically attended by over 200 participants.

Source: *Press Release No. IBBI/PR/2023/02, dated February 23, 2023.*

IBC Case Laws

Supreme Court of India

Victory Iron Works Ltd. Vs. Jitendra Lohia & Anr. Civil Appeal No.1743 OF 2021. Date of Supreme Court Judgement March 14, 2023.

Facts of the Case

This appeal was preferred by M/s Victory Iron Works Ltd. (Appellant) before the Supreme Court after being aggrieved by the impugned order passed by NCLAT dated April 08, 2021.

M/s Sesa International Ltd., a financial creditor, filed an application of CIRP u/s 7 of IBC against Avani Towers Private Limited (Corporate Debtor/CD), which was admitted for CIRP by the Adjudicating Authority (AA) dated October 15, 2019. Energy Properties, in its capacity as an 'ostensible owner' purchased land of 10.19 acres from UCO bank which was funded by the CD under a MoU dated January 24, 2008. The CD also entered into an agreement with Energy Properties dated June 16, 2008, for the joint development of the said property wherein exclusive rights regarding the development of the property were handed over to the CD. Thereafter, the CD executed a Leave and License Agreement dated August 19, 2011, under which a license was granted for the use of 10,000 sq. ft. land out of 10.19 acres to M/s Victory Iron Works Ltd (Appellant).

The suspended Board of Directors of the CD informed the RP that 'Energy Properties' was forcefully removing the security guards from the property. Therefore, RP filed an application before the AA under Section 25 of IBC read with Regulation 30 of IBBI (CIRP) Regulations, 2016 seeking appropriate action. After that, the AA directed the Appellant and Energy Properties not to obstruct the possession and activities of the RP and also held at the same time that the order would not prevent the appellant from carrying on their activities in the portion of the land given to them under the Leave and License Agreement.

Aggrieved by the said order of the AA, Appeals were filed, by the Appellant and Energy Properties, before the NCLAT and the same were dismissed. But NCLAT also confirmed the decision of NCLT that the Appellant could use that part of the land on which it had licensed right. However, the Appellant wanted the entire land and

opposed the RP's claim that "development rights are held by the CD that forms it an intangible asset of the CD and must be protected" and argued that AA does not have the power under the IBC to evict a licensee in possession of the property.

Namely, two issues raised before the Supreme Court, *firstly*, what is the nature of the interest that the CD has over the property in question? *Secondly*, whether the jurisdiction exercised by the AA and Appellate Tribunal is vested in them or not?

Supreme Court Observations

The Supreme Court observed that a bundle of rights arising from the MoUs and various agreements entered into by the CD related to the property in question constitute an 'asset' in common parlance denotes 'property of any kind' within the meaning of Section 18(f) and Section 25(2)(a) of IBC. The Court relied on a previous judgement of the Apex Court in the matter of *Sushil Kumar Aggarwal Vs. Meenakshi Sadhu & Ors*. (2019) to conclude that some of this bundle of rights and interests partake the character and shades of ownership rights. Therefore, the RP is duty-bound to include the property in question in CIRP, take custody, and control of the same.

In addressing the second issue, the Supreme Court cited its judgment in *Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority & Anr*. (2020), stating that there is no record of the Appellant occupying any land in excess of what was permitted under the Lease and License Agreement. Therefore, the AA, as well as the Appellate Authority, was right in exercising their jurisdiction.

Order: The impugned orders do not call for any interference.

Case Review: *Appeals Dismissed.*

M/s Shekhar Resorts Limited Vs. Union of India & Ors. Civil Appeal No. 8957 of 2022. Date of Supreme Court Judgement: January 05, 2023.

Facts of the Case

M/s Shekhar Resorts Limited (Appellant) has preferred the appeal before the Supreme Court after the High Court dismissed the writ petition through impugned order dated June 24, 2021.

The Appellant was engaged in providing hospitality services and was registered with the Service Tax Department. The Service Tax Department conducted an investigation evasion of service tax by the appellant and issued the show cause notice demanding payment of dues. Meanwhile, the financial creditors of the appellant submitted application under Section 7 of IBC and the AA vide its order dated September 11, 2018, admitted the application, and declared moratorium under Section 14 of IBC. The CoC approved the resolution plan on June 04, 2019.

On September 01, 2019, "*Sabka Vishwas* (Legacy Dispute Resolution) Scheme, 2019' under section 125 of the Finance Act 2019 was introduced. The Appellant (through its RP) submitted an application (Form No.1) within the prescribed period and thereafter the Designated Committee issued Form No.3 to the Appellant determining the amount of ₹1,24,28,500 as due and payable under the scheme. The AA approved the Resolution Plan on July 24, 2020, and subsequently, the appellant expressed its willingness to pay the full amount as ascertained by the Designated Committee but the same was rejected by the Joint Commissioner on the ground that the last date of payment was June 30, 2020. The Appellant filed the writ application in High Court but the same was dismissed on the ground that (i) High Court shall not issue direction contrary to the scheme; (ii) the relief sought cannot be granted as the Designated Committee is not existing.

The Appellant citing the judgements in *Principal Commissioner of Income Tax Vs. Monnet Ispat & Energy Ltd.* and *Union of India Vs. Asish Agarwal*, contended that High Court has seriously erred in dismissing the writ petition as even after June 30, 2020, as per the instructions issued by the CBEC, the respective Designated Committees continued to function and process the declarations manually. The Appellant asserted that he bonafidely could not deposit the settlement due, on or before June 30, 2020, by virtue of the moratorium period which ended on July 24, 2020. Further, as per the Resolution Plan, the Applicant was required to deposit all statutory dues within 6 months from the effective date into an escrow account. Effective date being July 24, 2020, Service Tax dues along with other statutory dues were deposited in an escrow account on January 08, 2021, i.e., before the expiry of the period of six months. The question raised before the Appellate Tribunal is that whether the appellant can be punished for no fault of its own and be denied the relief even though it was impossible to deposit the settlement amount during the moratorium?

Supreme Court Observations

Citing the judgement of *Calcutta Iron Merchants' Association Vs. Commissioner of Commercial Taxes* and *Gyanichand Vs. State of Andhra Pradesh* the Supreme Court held that no law could compel a person to do the impossible. It would be unfair on the part of the court to give a direction to do something impossible and if a person fails to do so, he cannot be held guilty. Even if the appellant wanted to deposit the settlement amount within the stipulated time, it could not do so in view of the bar under the IBC. The Supreme Court held that to some extent the High Court is right as, while exercising the powers under Article 226 of the Constitution of India, it cannot extend the Scheme. However, the present case is not about extending the scheme, it is about taking remedial measures as the appellant was unable to make the payment due to the legal impediment and the bar in view of the provisions of the IBC. Further, in reference to the ground given that Designated Committees are not in existence, the Supreme Court held that it is required to be noted that the CBCE has issued a circular that in a case where the Court have passed an order setting aside the rejection of the claim under the Scheme after June 30, 2020, the applications can be processed manually.

The Supreme Court stated that as the Appellant has submitted the Form No.1 within the stipulated time and Form No. 3 has been issued, the High Court has erred in refusing to grant any relief to the Appellant.

Order: The Impugned Order is quashed and set aside and the payment of ₹1,24,28,500/- already deposited by the

appellant be appropriated towards settlement dues under "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019" and the Appellant be issued discharge certificate.

Case Review: *Appeal Allowed.*

National Company Law Appellate Tribunal (NCLAT)

M/s. SMS Foundation & Investment LLP. Vs. J. John Ohilvi Company Appeal (AT) (CH) (INS) No. 41 of 2023. Date of NCLAT's Judgements: March 07, 2023

Facts of the Case

The current Appeal is filed by the M/s SMS Foundation & Investment LLP (Appellant) after being aggrieved by the impugned order dated October 11, 2022 passed by AA.

The AA rejected the Appellant claim to consider him as 'Financial Creditor' because of the fact that the Appellant fall under the category of Shareholder. The Appellant contended that the order was never pronounced by the AA.

The Appellant stated that the order was available online on November 21, 2022, and he received the certified copy of the order on November 24, 2022. The Appellant filed the appeal through e-filing portal on December 23, 2022, but due to serious medical issues and the closure of the Tribunal on account of holidays the Appellant filed the Hard Copies of the appeal on December 28, 2022, and therefore, he had filed the instant 'Condonation of Delay' through IA in the current appeal to avoid any discrepancy.

The Appellant relying on the judgment in *Balaji Baliram Mupade & Anrs Vs. The State of Maharashtra & Ors.* pleaded that the delay of five days in physical filing of the hard copies may be condoned and the appeal may be allowed.

The RP of M/s Harsha Exito Engineering Pvt. (Respondent) citing the judgement in V. *Nagaranjan Vs. SKS Ispat and Power Ltd.* sought the dismissal of the appeal on the ground that the Appellant had knowledge of the order dated 11.10.2022 and the limitation period started from that date.

NCLAT Observations

The Appellate Tribunal placing their reliance on the judgment given by Hon'ble Supreme Court in *Central Bank of India Vs. Vrajlal Kapurchand Gandhi & Anr.* held that the order in question is a matter of 'Judicial Record' of the AA and the contra stand taken on behalf of the Appellant is not accepted.

The Appellate Tribunal further stated that the Appellant cannot have any grievance as the impugned order was pronounced in Open Court in the presence of authorized representative of the appellant. There is sufficient compliance of Rule 150(1) of the NCLT Rules, 2016 and hence the limitation will be counted from October 11, 2022.

The Appellate Tribunal observed that the 45 days period lapsed on November 25, 2022 and E-filling of the Appeal papers were made by appellant on December 23, 2022, i.e. on 73rd day counted from impugned order dated October 11, 2022, after deducting 45 days from Outer Limit period, there is a delay of '28 days' and there is no power enjoined upon the Appellate Tribunal to condone the delay beyond the prescribed period as per Section 61 of IBC 2016.

Order: The 'Condone Delay Application' filed by the appellant is not entertained and the same stand rejected.

Case Review: *Appeal Dismissed.*

Principal Commissioner of Income Tax & Ors. Vs. Assam Company India Ltd (ACIL) Company Appeal (AT) (Insolvency) No. 243 of 2022. Date of NCLAT's Judgement: February 07, 2023.

Facts of the Case

An appeal is filed by the Principal Commissioner of Income-tax & Ors. (Appellant) after being aggrieved by the order dated January 20, 2021, passed by the AA.

CIRP Application was filed against M/s Assam Company India Limited (Respondent) by its financial creditor M/s Seri Infrastructure Pvt. Ltd. The AA admitted the application on October 26, 2017, and appointed an RP. On November 14, 2017, the Appellants placed a demand of income tax before RP for the assessment year 2013-14 and 2014-15 totalling to ₹16,20,25,953/. The RP informed the Appellant that the claim can't be admitted since an appeal regarding both the assessment year was pending before Commissioner of Income Tax (A) and the new promoter of the Respondent will pay the demand after the decision of CIT(A) under the statutory liability.

Subsequently, RP informed Appellant that AA may consider payment of ₹1,97,92,084/ (being 15% of the outstanding due) and the balance amount being considered as "contingent liability" will be payable by the Respondent upon final outcome of the appeal. As per AA's Order dated September 20, 2018, the Appellant received the payment of ₹1,20,23,691/- as a tranche payment against dues. Meanwhile appeal of both Assessment year 2013-14, 2014-15 was dismissed by CIT(A) vide order dated January 16, 2019, and the demand for ₹13,41,75,287/- stood outstanding. The Appellant on September 20, 2018, filed an application for review of the AA's order seeking clarification and for necessary directions to the RP for submission of the revised resolution plan incorporating the entire amount alleged to be due to the Appellants. The AA vide its order dated October 22, 2019, stated that the earlier intimation of the RP is to be read with the Resolution Plan and the appellants have a right to lay its claim before the new promoter of the Respondent Company.

The Appellants demanded the total outstanding dues with interest from the respondent but since there was no compliance of the demand notice, bank attachment in (i)Allahabad Bank Dibrugarh Branch, and (ii) Allahabad Bank, Industrial Finance Bank, Kolkata were carried for remittance of outstanding amount. It was found that the accounts were marked debit freeze. Meanwhile the Respondent approached the ITAT and obtained the stay on demand for three months. Simultaneously, the Respondent filed an application before AA under Section 60(5)(c) of the IBC stating that the claims of the Appellants cannot be entertained after 15 months of the approval of the Resolution Plan and therefore the Appellants vide order dated January 20, 2021 were directed to withdraw the attachment.

NCLAT Observations

The Appellate Tribunal referring to the judgement of Supreme Court in *State Tax Officer (1) Vs. Rainbow Papers Limited*, held that the dues of the Appellants are 'Government dues' and they are Secured Creditors. Impugned order of the AA failed to consider that these dues are of the Revenue Department and if not paid, the Appellants would be in great difficulty and grave injustice would be caused to the Revenue Department and a huge loss to the public exchequer. AA has erred in stating that the Appellants claims cannot be entertained after 15 months of the approval of the Resolution Plan as the Appellant have made the recovery of the outstanding demand on November 14, 2017 which is prior in time to the resolution plan being approved on September 20, 2018.

Order: The impugned order dated January 20, 2021 passed by the AA is hereby set aside and the matter is remitted back to the AA with a request to hear the parties.

Case Review: *Appeal disposed of.*

Ashish Gupta Vs. Delagua Health India Pvt. Ltd. & Ors. Company Appeal (AT) (Ins.) No. 17 of 2022. Date of NCLAT's Judgements: February 01, 2023.

Facts of the Case

An Appeal has been filed by Mr. Ashish Gupta (Appellant) after being aggrieved by the AA order dated October 11, 2021, wherein the AA dismissed its petition u/s 9 of IBC by holding it to be a collusive petition without giving any reasons. The Appellant was working as a Director of Delagua Health India Pvt. Ltd (Corporate Debtor/ CD) since February 11, 2014, and tendered his resignation on July 02, 2017. The Appellant sent a Demand Notice to the CD for clearing his estimated salary of ₹40,50,000 but since no response was received from the CD, the Appellant filed the petition u/s 9 of the IBC.

Meanwhile, Delagua Health Limited (Grand Bahamas) and Delagua Water Testing Limited, (collectively hereinafter as "Respondent"), holding 98.98% stake in CD filed an intervening application. The Appellant citing the judgement in *Pratap Technocrats (p) Ltd Vs. Monitoring Committee of Reliance Infratel Ltd.* contended that IBC does not provide for equity jurisdiction and the Respondent filed the intervening application even though they did not have any locus in the matter.

The Respondent submitted that Appellant and Respondent had signed a Consultancy Agreement on November 04, 2013, for assisting the Respondent in setting up an entity in India. After incorporation of the company i.e., CD, the Appellant along with Mr. K.K. Vashishtha were appointed as the Directors. The Respondent asserted that both the Directors resigned on same day and acted in collusion to serve Section 8 notice with an ulterior motive. The Respondent stated that the Appellant still had the control over all modes of communications related to CD and

hence demand notice never actually got served. The Respondent submitted that the Section 9 Application is not maintainable and contended that the Appellant violated clauses of the Consultancy Agreement by engaging himself in the activities of a competing entity thus causing loss to the CD. Further, the Respondent claimed that the Appellant had made excess withdrawals of ₹19,33,418/- from the accounts of the CD purportedly on account of tour and travelling without submitting the supporting documents. The question raised before the Appellate Tribunal is: - (a) Petition filed before AA u/s 9 of code is collusive petition or not? (b) Whether the Respondent are entitled to defend the interests of CD? (c) Whether there is any pre-existing dispute surrounding the operational debt.

NCLAT Observations

The Appellate Tribunal held that in-spite of having full knowledge of the fact that Mr. K.K. Vashishtha had already resigned from the post of director, the Appellant addressed the demand notice to him which puts question marks on the bona-fide of the Appellant. Appellate Tribunal further stated that it is a well settled canon of natural justice that anything which eludes or frustrates the recipient of justice should be avoided and reasonable opportunity of hearing be allowed to advance the cause of justice. The Respondent, being the majority shareholders holding 98.98%, deserves a chance to safeguard the rights and interests of the CD and therefore, the submission filed by Respondent deserves to be considered on merit. While citing the Judgement of *M/s Brand Realty Services Ltd. Vs. M/s Sir John Bakeries India Pvt. Ltd*. the Appellate Tribunal upheld that it is a settled principle of law that even in absence of notice of dispute, the AA can reject the Section 9 Application if there is a record of dispute. Excess cash withdrawals from company's account by the Appellant on account of tour and travelling without any valid proof proves that the claim by the Appellant is disputed.

Order: Appellate Tribunal held that the AA has rightly dismissed the Section 9 application of the Appellant and that the impugned order does not warrant any interference as there is no merit in appeal.

Case Review: *Appeal dismissed.*

Jindal Stainless Ltd.Vs. Mr. Shailendra Ajmera, RP of Mittal Corp Ltd. & Ors. Comp. App. (AT) (Ins.) No. 1058 of 2022. Date of NCLAT's Judgement: January 18, 2023.

Facts of the Case

CIRP was initiated against Mittal Corp Limited, and an RP was appointed by the AA via order dated November 10, 2021. The RP received six resolution plans including the plans submitted by the Jindal Stainless Ltd. (Appellant) and by Shyam Sel and Power Ltd (Respondent). The CoC in 12th meeting held on July 07, 2022, decided to undertake a Challenge Process to give an opportunity to the Resolution Applicants to improve their plans. After receipt of the unconditional acceptance, Challenge Process was conducted in the 13th CoC meeting wherein all the Resolution Applicants were notified that the signed and compliance Resolution Plan must be submitted by July 18, 2022. Overall, four plans (including plans of the Appellant and Respondent) were submitted by the due date. On July 19, 2022, the Respondent sent an e-mail to the RP stating that it is willing to submit the entire NPV offered as upfront payment within 30 days. On July 29, 2022, Respondent sent another email further improving his offer.

The CoC in the 17th meeting held on August 03, 2022, resolved to put all four plans to vote. Voting was to commence from August 05, 2022, till August 26, 2022, meanwhile the Respondent filed an Interlocutory Application before the AA seeking a direction that RP should consider its offer dated July 29, 2022, and place the same before the CoC. The AA allowed the appeal and directed CoC to consider the revised resolution plan of the respondent. The RP in pursuance of the order passed by the AA stopped the voting process. The Appellant submitted that AA committed error in issuing the impugned direction. The adoption of Challenge Process by the CoC is in accordance with Regulation 39(1A) (b) and after going through the Challenge Process, the Respondent cannot be permitted to revise its plan. The Appellant contended that the CIRP has to be completed in the timeline and any interdiction by the AA, as has been done by the impugned order, is bound to delay the completion of the process which is not object and purpose of the IBC. The Respondent submitted that the object of the Code is maximisation of the assets of the CD and the AA has rightly issued direction to the RP to place the revised offer. Further, the Respondent submitted that Regulation 39 (1A) is only

directory and the CoC has full jurisdiction to permit the resolution applicants to further revise the resolution plan.

The question raised before the Appellate Tribunal is that whether direction given to CoC by AA regarding acceptance of revised resolution plan after the completion of Challenge Process is accepted or not?

NCLAT Observations

The Appellate Authority citing the judgment of the Supreme Court in *Ngaitlang Dhar Vs. Panna Pragati Infrastructure Private Limited & Ors.* held that after the adoption of the Challenge Method, a Resolution Applicant cannot be allowed to submit a revised plan. The timeline in the IBC has its salutary value and it is the wisdom of the CoC to vote on the Resolution Plan after completion of Challenge Process and not to consider any negotiation or further modification of the plan. The Appellate Authority held that the AA should not have been interfered with the voting on the resolution plan without any valid reason. As result of the order of the AA the process of voting, which was already commenced on August 07, 2022, was abandoned by the RP.

Order: The Appellate Authority set aside the order passed by the AA dated August 11, 2022. Further, the RP is directed to initiate fresh voting process on the resolution plans received in the process. The CIRP is extended till February 28, 2023 by which date the RP may file an appropriate application before the AA bringing relevant facts and development in the CIRP on record.

Case Review: *Appeal disposed off.*

Wave Megacity Centre Private Limited Vs. Rakesh Taneja & Ors. Company Appeal (AT) (Insolvency) No. 918 of 2022. Date of NCLAT's Judgement: January 05, 2023.

Facts of the Case

An appeal is filed by the Wave Megacity Centre Private Limited "Wave Megacity", the Corporate Debtor (Appellant) at NCLAT after aggrieved by order dated June 06, 2022, passed by National Company Law Tribunal, New Delhi. A Lease Deed dated September 02, 2011, was signed between Noida Authority and Wave Megacity Ltd. in respect of Plot No.CC001, measuring 618,952.75 sq. mtrs. situated at sector 25A and sector 32, NOIDA for a period of 90 years.

After the allotment, the Appellant launched multiple residential and commercial projects on the Project land in 2011- 12 in the parent's name "Wave Mega City Centre. The possession of the Units in the Residential Project was promised to be handed over to the Homebuyers by 2016, for which Appellant had taken 90% consideration from majority of Homebuyers before 2016 itself. The Appellant did not complete the construction nor handed over the possession and from 2017 onwards, the construction of the Project was stopped. Meanwhile State government announced the Project Settlement Policy (PSP) in the year 2016 allowing developers/ builders to return Project land if they were unable to construct upon.

Under the said project, the Appellant surrendered the area of 454,131.62 sq. mtrs. The Area of 56,400 sq. mtrs was allotted to the Wave Megacity in consideration of the various payments made until the year 2017 and the Area of 1,08,421.13 sq. mtrs was allotted to Wave Megacity at the prevailing rate of year 2017, i.e., ₹1,60,000/- per sq. mtrs. Noida authority issued various demand notices to appellant for clearing the dues, however appellant challenged those notices. Meanwhile the CD filed an Application under Section 10 of the Code dated March 25, 2021, praying for initiation of CIRP on the ground of default on its part. However, several Intervention Applications were filed raising objection to the main Company Petition by the Homebuyers and the Noida Authority, pleading that Petition under Section 10 by the CD has been filed fraudulently and with malicious intent for the purpose other than for resolution of insolvency.

NCLAT Observations

The Appellate Tribunal observed that the resignation of Directors (being directors from day 1 in the company) just few months before filing of Section 10 Application and claiming dues as Financial Creditor in Section 10 application fully proves the malicious intention of the Corporate Debtor. The Adjudicating Authority noted that there is total 285 cases pending against the Corporate Debtor, involving an amount of more than ₹253 crores. Thus, it indicates that dominant purpose and object of filing Section 10 Application was to save the Corporate Debtor from liabilities, responsibilities, and prosecution.

The NCLAT referred to Hon'ble Supreme Court judgement in *Ramjas Foundation and Anr. Vs. Union of India and Ors.* "That a person is not entitled to any relief, if

he has not come to the Court with clean hand." The Court could not find any error in rejection of Section 10 Application by AA.

Order: The Appellate Tribunal was satisfied that Adjudicating Authority did not commit any error in allowing Section 65 Applications and rejecting the Section 10 Application because initiation of proceedings under Section 10 was done fraudulently and maliciously for purpose other than resolution.

Case Review: *Appeal dismissed.*

Edelweiss Asset Reconstruction Company Ltd. Vs. Perfect Engine Components Pvt. Ltd. Company Appeal (AT) (Ins.) No. 840 of 2021. Date of NCLAT's Judgement: December 22, 2022.

Facts of the Case

Edelweiss Asset reconstruction Company Limited (Appellant) preferred the appeal under Section 61 of IBC against the AA's order wherein their Section 7 application against Perfect Engine Components Pvt Ltd. (Respondent) was dismissed. The Respondent had outstanding liability of ₹62,96,33,561.36 towards SBI, which the latter transferred to the Appellant by executing Assignment Agreement. The AA was of view that the cause of action arose on March 31, 2009/June 28, 2012 but the petition was filed on March 08, 2020 which is beyond three years and therefore the same was barred by Limitation Act, 1963.

The Appellant contended that, though the date of Respondent being NPA is June 06, 2009, the letter of acknowledgement letter dated March 31, 2010, to March 31, 2012, should be taken into consideration together with the Demand Notice dated June 06, 2012 issued under Section 13(2) of SARFAESI Act, 2002 to the Respondent by SBI. The Appellant asserted that the Respondent acknowledged its liability by signing the Restructuring Package sanctioned by the Appellant, firstly on November 07, 2014, and secondly on June 30, 2017. Later, Both the Restructuring was cancelled due to various default by the Respondent and consequently Recovery Certificate was issued by DRT Pune in favour of the Appellant on November 22, 2016, and secondly on July 26, 2017. It was further highlighted that the Respondent has acknowledged the liability in the Balance Sheets from FY 2014-15 to FY 2018-19.

The Appellant contended that the sale notice was issued on December 06, 2019, against which reply was filed by the Respondent on January 31, 2020. Subsequently, the Section 7 application was filed on August 07, 2020 and therefore the application is well within the period of Limitation. Citing the judgements in *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr*. and *Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr.* the Appellant stated that the AA has erroneously dismissed the application.

The Respondent citing the judgements in *Innoventive Industries Ltd. Vs. ICICI Bank & Anr.* and, *Reliance Asset Reconstruction Co. Ltd. Vs. Hotel Pooja International (P) Ltd*. stated that 'letter of acknowledgements' between March 31, 2010 and March 31, 2012 cannot be relied upon as there is no evidence on record to show that they were signed prior to the expiry of the three years Limitation from 2009. Further, there is absolutely no 'default' and that the Appellant originally was acting as an intermediary in working out a proposal of OTS to be offered by SBI and hence was aware of the financial condition of the 'Corporate Debtor.

The question raised before the Appellate Tribunal is that the whether the AA was justified in dismissing the Application filed under Section 7 of the Code as 'barred by Limitation' and also holding that there was no 'default'.

NCLAT's Observations

The Appellate Tribunal referring to the *Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr.* was of view that an offer of one-time settlement of a live claim, made within the period of limitation, should also be construed as an acknowledgment to attract Section 18 of the Limitation Act. Moreover, a judgment or decree for money or the issuance of a certificate of recovery in favor of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7, within three years from the date of the judgment or decree for money or the issuance of a certificate of recovery if the dues of the corporate debtor to the financial debtor remains unpaid.

Referring to the *Laxmi Pat Surana Vs. Union Bank of India & Anr.* case the Appellate Tribunal held that Section 7 of IBC comes into play when the corporate debtor commits "default". Section 7 consciously uses the

expression "default" — not the date of notifying the loan account of the corporate person as NPA. Section 18 of the Limitation Act would come into play every time when the Corporate Debtor acknowledge their liability to pay the debt.

The Appellate Tribunal held that record shows that the Respondent has been consistently acknowledging its 'debt' from March 31, 2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/ 'Financial Creditor' for Restructuring, apart from the liability being shown in the Balance Sheets. Therefore, Section 7 Application is not 'barred by Limitation', and that there is a 'debt' and 'default'.

Order: The impugned order dated August 10, 2021, is set aside and the AA is directed to proceed in accordance with law.

Case Review: *Appeal Allowed.*

High Court

TATA Steel BSL Limited Vs. Venus Recruiter Private Limited & ORS LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021 LPA 43/2021, and C.M. Nos. 3196/2021 & 3198/2021. Date of High Court Judgement: January 13, 2023.

Facts of the Case

The present LPA, no. 37 & 43 of 2021 have been filed by Tata Steel BSL Ltd. and the Union of India (Appellants) against the order passed by Ld. Single Judge High court in favour of M/s Venus Recruiter Pvt. Ltd (Respondent).

Due to default in repayment of its credit facilities, SBI filed a petition under Section 7 of the IBC before the AA seeking initiation of CIRP of M/s Bhushan Steel Limited (CD). The AA admitted CD to CIRP and appointed an RP. On March 20, 2018, the CoC approved the resolution plan proposed by Tata Steel Ltd and accordingly the RP filed the resolution plan with AA on March 28, 2018. Before the approval of the AA, Forensic Auditor of CD, submitted a report to the RP intimating several suspect transactions. One of the suspected transactions was between the Respondent and CD for supply of manpower which inter-alia contained a clause stipulating payment of 10% service charge to Respondent in lieu of the manpower supplied. The allegation was that 10% service charge was paid in lieu of manpower supply could have been preferential in nature.

On April 09, 2018, the RP filed an avoidance application u/s 25(2)(j),43,51,66 of IBC before AA. On May 15, 2018, the AA approved the Resolution Plan of Tata Steel and the new management being Tata Steel BSL Ltd assumed control. Later, The AA admitted the Avoidance Transaction Application and issued notices to the respondent companies for making them party to the application. Aggrieved by the Order of the NCLT, Respondent filed writ petition before the Ld. Single Judge High court seeking relief borne out of avoidance application. The Hon'ble judge of the High Court observed that RP becomes functus officio after resolution of the corporate debtor that's why avoidance application is "as void and non-est since CIRP had concluded".

The question raised before the High court (Divisional bench) are:- (a) Whether an alternate efficacious remedy existed before the NCLAT? (b) Whether avoidance applications survive CIRP in cases where Resolution Plans are unable to account for such applications? (c) If avoidance applications survive CIRP in such cases, who pursues them? Whether RP is rendered functus officio upon conclusion of CIRP?

High Court's Observations

The Hon'ble High court (Divisional bench) referring to the judgement of the Apex court in *Innoventive Industries Ltd Vs. ICICI Bank*, *Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta*" ,and *Titaghur Paper Mills Co. Ltd Vs. State of Orissa* held that the phrase "arising out of" or "in relation to" as situated under Section 60(5)(c) of the IBC is of a wide import and it is only appropriate that such applications are heard and adjudicated by the AA, i.e., the NCLT or the NCLAT.

CIRP and avoidance applications, are, by their very nature, a separate set of proceedings and adjudication of an avoidance application is independent of the resolution of the CD and can survive CIRP. The Court stated that the money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements and therefore, the Adjudicating Authority will continue to hear the application. The High Court further held that the RP will not be functus officio with respect to adjudication of avoidance applications. The method and manner of the

RP's remuneration ought to be decided by the Adjudicating Authority itself. The amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. The benefit arising out of the adjudication of the avoidance application should be made available to the creditors who are primarily financial institutions.

Order: The impugned Judgment is set aside. The NCLT is directed to proceed ahead with the hearing of avoidance application. In accordance with Sections 44 to 51 of the IBC, 2016, the amount which is recovered can be distributed amongst the secure creditors in accordance with law as determined by the NCLT.

Case Review: *Appeals disposed of, along with pending application(s), if any.*

National Company Law Tribunal (NCLT)

R. Venkatakrishnan (Liquidator) Vs. GC Logistics India Pvt. Ltd. and Others IA (IBC)/ 1018 (CHE)/2022 IN CP/759/(IB)/CB/2018. Date of Judgement: February 19, 2023.

Facts of the Case

Phoenix ARC Private Ltd. in its capacity of Financial Creditor filed an application under Section 7 of the IBC in the year 2018 to initiate CIRP of St. John Freight Systems Ltd. (hereinafter "CD"). The same was admitted by NCLT Chennai through an order dated December 10, 2018. However, as the CD could not be resolved through a Resolution Plan, the AA issued an order for Liquidation of the company on November 26, 2019.

The promoters of the CD approached NCLAT against the Liquidation. Though the Liquidation order was stayed, the NCLAT finally dismissed the appeal stating that there is no merit in the appeal. Subsequently, the first meeting of Stakeholders Consultation Committee ("SCC") was held for sale of the CD as a Going Concern. In the meeting discussions were made on three proposals but none of the three proposals could receive required percentage of votes. Consequently, all the three proposals were rejected, and a fresh Expression of Interest (EOI) was published. The SCC considered the bids received in the second EOI and rejected all of them. Later, an offer letter from Global Corp's Logistics LLC was received and pursuant to it the SCC filed an application with the AA to approve Swiss Challenge Method with Global Corp's Logistics LLC offer as base price. After receiving the approval of the AA, the Liquidator conducted the Swiss Challenge, and all the documents were presented before the AA for approval of Sale of the CD Going Concern'. Mr. Karthikeyan, proprietor of M.S.K. Lorry Booking Office, being Operational Creditor of the CD, objected to the sale of CD as going concern and filed petition under section 60(5) of IBC.

NCLT's Observations

Citing the judgement of the NCLAT in */s Visisth Services Ltd vs. Mr. S.V. Ramani* the AA held that that the proposal for sale of CD as a Going Concern was in conformity to Regulation 32A of IBBI (Liquidation Process) Regulations, 2016. The AA was of view that considering the business nature, MSME Status and the employees of the CD, it is necessary to pave way for the smooth revival.

Further, the AA put on record the submission of Liquidator that the proposed sale of CD as a Going Concern represents the best prospect of revival of the CD which will continue to provide gainful employment to 320 direct employees and 220 indirect/ contract/ seasonal employees. The sale of the company as a Going Concern represents the best option for maximization of value as opposed to selling the assets of the CD.

Order: AA approved the sale of the CD as a Going Concern and ordered that the CD shall not be dissolved. Besides, the AA ordered that the status of the Corporate Debtor be changed from "in liquidation" to "Active" in records of the Registrar of Companies. Besides, other required reliefs were also granted to the applicant.

Case Review: *Application Admitted. Other IAs disposed of.*

IBC News

Initiation of CIRP to recover debt would not absolve accused from criminal liability in cheque dishonour cases: Supreme Court

The Supreme Court of India has clarified that the proceedings under Section 138 of the Negotiable Instruments (NI) Act are not recovery or suit proceedings, but penal in character. The three judges' bench also rejected the argument that process under the IBC whether under Section 31 or Sections 38 to 41 which can extinguish the debt would *ipso facto* apply to the extinguishment of the criminal proceedings.

This means that the criminal liability and fines imposed on individuals who dishonour a negotiable instrument are intended not only to recover the debt owed but also to penalize the person for affecting trade by not honoring the instrument. The judgement came in the matter of *Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd.* (2023) wherein the Appellant (Promoter) argued that once the debt was extinguished under the IBC, the basis of Section 138 of the NI Act disappeared. The Apex Court denied intervening in the Delhi High Court's order that had refused to set aside a magistrate order rejecting the discharge application of the Appellant in a ₹30 crore default case. The Apex Court observed that the scope of proceedings under the NI Act and IBC are different and do not intercede with each other. It was further clarified that the clauses in the concerned resolution plan only extinguished the liability of the Corporate Debtor, and not the individual accused.

Source: *Bar & Bench, March 17, 2023*

https://www.barandbench.com/news/litigation/cheque-bounce-cases-not-civil-proceedings-no-discharge-insolvency-supreme-court

NCLT Approves GAIL's Resolution Plan for JBF Petrochemicals

NCLT, Mumbai has approved GAIL India's Resolution Plan worth ₹2,079 crore for JBF Petrochemicals, which owed ₹7,918 crore to a consortium of creditors led by IDBI Bank. The Resolution Plan offers a 43.23% recovery to secured lenders and a recovery of 5.7% and 6.9% for unsecured creditors and operational creditors, respectively. With this deal, GAIL became the second PSU after Indian Oil Corporation (IOC) to take over a bankrupt

private sector company through the IBC. JBF Petrochemicals' plant in Karnataka, which was commissioned in 2017, stopped operations after the company defaulted on its loans in the same year.

Source: *Business Standard, March 14*, 2023

https://www.business-standard.com/article/companies/nclt-approves-gail-s-rs-2-079-cr-resolution-plan-for-jbf-petrochemicals-123031401341_1.html

Welspun-led consortium gets NCLT nod to acquire Sintex BAPL through Resolution Plan

Welspun is acquiring Sintex-BAPL through a consortium of its subsidiary, Propel Plastic Products, and a related party Plastauto Pvt Ltd. Its resolution plan was approved by the committee of creditors in February with a 74.26% vote. The Company had an outstanding dues of about ₹3,266 crore. Sintex BAPL was declared insolvent and entered the insolvency resolution process under IBC in December 2020. Two bidders, JM Financial Asset Reconstruction Co. Ltd. and a consortium made up of Welspun's Propel Plastic Products Pvt. Ltd. and Plastauto Pvt Ltd had submitted resolution plans.

Source: *The Hindu Businessline, March 17, 2023*

https://www.thehindubusinessline.com/companies/nclt-approves-welspun-corps-resolution-plan-for-sintex-bapl/article66631561.ece

There is no legal disability for the Liquidator in exercising any of the methods of sale stipulated under Regulation 32: NCLT

NCLT, New Delhi Bench has held that the Regulation 32 of Liquidation Regulations itself provides requisite flexibility in choosing the methods of sale during the auctions after the first auction, and there is no requirement in law seeking permission of the AA. The Bench clarified that the Liquidator is under no obligation to seek permission of the AA for choosing the method of sale.

This judgement came in the matter of *Mr. Surinder Manchanda Vs. Nolsar International Limited*. In this case,

the corporate debtor could not be sold as a going concern in the first round of bidding. After conducting several rounds of bidding, the Liquidator found a willing buyer. Thereafter, he sought the indulgence of the AA because, according to him, Regulation 32A (4) of the IBBI (Liquidation Process) Regulations, 2016 puts a bar on sale of the corporate debtor as a going concern in subsequent auctions.

Source: *Livelaw.in, March 09, 2023*

https://www.livelaw.in/news-updates/no-bar-on-sale-of-corporate-debtor-as-a-going-concern-after-first-auction-permission-of-aa-not-required-nclt-delhi-223361

Suraksha Group's Resolution Plan got NCLT approval to takeover Jaypee Infratech Ltd.

The Resolution Plan of Suraksha Realty Ltd. and Lakshdeep Investments and Finance Pvt Ltd. has recently received the approval of NCLT, New Delhi. This order came as a big relief to about 20,000 homebuyers who had invested their hard-earned money to get a home in the National Capital Region (NCR).

As per the Resolution Plan, the Successful Resolution Applicant (SRA) is liable to infuse ₹125 crore as equity and ₹125 crore debt in Jaypee Infratech within 90 days of the approval date. Furthermore, the SRA will arrange loan/credit facility of ₹3,000 crore within 90 days of the approval date, to be utilized as and when required, on need basis for completion of the projects. Besides, Jaypee Infratech Ltd (JIL) will be delisted and public shareholders will be given an aggregate exit at a price of ₹0.14 crore. The institutional financial creditors (banks) will get "zero coupon Non-Convertible Debentures (CSDS)" amounting ₹1,280 crore and 2,550 acres land worth ₹6,457 crore (fair market value).

Suraksha Group was declared SRA with 98.66% of votes in the fourth round of the bidding process. In addition to about 12 banks, homebuyers had also exercised their voting rights through their representatives. The state owned NBCC, that stood second, got 0.12% less votes than Suraksha Group in the CoC meeting.

Source: *The Economic Times, March 09, 2023.*

https://economictimes.indiatimes.com/industry/services/property-/-cstruction/jaypee-infra-insolvency-suraksha-group-to-infuse-rs-250-crore-arrange-rs-3000-crore-loan-to-complete-20000-flats/articleshow/98522473.cms

RP detected ₹14,809 cr. PUFE transaction in Future Retail

Future Retail Ltd. (FRL), which is undergoing CIRP, has submitted that the RP of the Corporate Debtor has filed an application before NCLT Mumbai against director/ erstwhile directors of the company under Section 66(2) and Section 67 read with Section 60 (5) of the IBC. In this application, the RP has sought direction from AA against the respondents to the said application to contribute the PUFE amount to FRL. The CIRP of FRL was initiated in June 2022 on an application by Bank of India alleging a default of ₹856 crores. Sor far, the RP has received claims of ~₹ 19,000 crore from financial creditors.

Source: *The Indian Express, March 12, 2023*

https://www.newindianexpress.com/business/2023/mar/12/resolution-professional-alleges-detection-of-rs-14809-crore-false-transactions-offuture-retail-2555202.html

It is equally important for the creditors to play a catalytic role in CIRP given the present regime of creditor-driven IBC: NCLAT

"Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified," observed NCLAT, New Delhi. "The rigours of similar standards of discipline should also apply on the creditors," said the Court and directed the Operational Creditor to reimburse a rational amount of fee to the IRP.

These observations were put on record by the NCLAT after it was discovered that CIRP process was hindered due to want of cooperation and participation from the creditors but only IRP was being blamed for all this. The Court further observed that M/s Shri Guru Containers, which as an Operational Creditor had filed CIRP application against the CD, did not seem interested in resolution process. The conduct of the Operational Creditor in the present case is deprecatory in that once the CIRP process had commenced, the Operational Creditor went into a sleeping mode. It was further noticed by the Court that Operational Creditor has failed to substantiate any lapses or deficiency in the performance of duties by the IRP including the non-constitution of CoC. The Court further noticed that as a substantial portion of the period was hit by the lockdown arising out of the Covid outbreak, the IRP should get a rational amount of fee. Finally, the Court fixed a rational

amount of fee and ordered the Operational Creditor to pay the same to IRP.

Source: *Company Appeal (AT) (Insolvency) No.106 of 2023*

https://ibbi.gov.in//uploads/order/769a7073866743186 87baf27d57b940.pdf

NCLAT allowed CoC to go for second round of e-auction of Reliance Capital

Allowing the second round of auction, NCLAT held that decision of the CoC taken on January 6, 2023, to undertake an extended challenge mechanism is not violative of Regulation 39(1A) of CIRP. It held that the CoC is fully empowered as per the clauses of RFRP to further negotiate with one or more resolution applicants, even after completion of challenge mechanism dated Dec. 2022. NCLAT also asked the CoC to fix a date after two weeks for holding the revised challenge mechanism. Initially, Torrent stood as the highest bidder, but CoC called for second round of auction after a late bid by IIHL.

Source: *The Indian Express, March 03, 2023*

https://indianexpress.com/article/cities/mumbai/nclat-clears-second-auction-for-rcap-8476411/

Reduced Consumptions responsible for rise in Swedish Bankruptcy

Sweden has witnessed an increase in the number of bankruptcies by 11% in the month of February this year compared to 2022. According to the credit reference agency UC, retailers and the motor vehicle trade were the hardest hit by defaults last month. "It is still hard to be too optimistic, as more rate increases are expected and inflation isn't slowing at the pace that we would like to see," said UC economist Johanna Blome. The largest Swedish company that filed for bankruptcy in February was air carrier Air Leap, with annual sales of 278 million kronor ($27 million).

Source: *BNN Bloomberg, March 01, 2023*

https://www.bnnbloomberg.ca/swedish-bankruptcies-rise-as-lower-consumption-hits-retailers-1.1889601

Sugarcane Farmers demand voice in CIRP of Bajaj Hindusthan Sugar

According to media reports, Agragami Kissan Samiti, a farmers' body in Uttar Pradesh has filed a petition before the Adjudicating Authority (NCLT) claiming famers had supplied sugarcane to the company and have outstanding dues which have not been paid. Under IBC, 2016, the farmers are treated as operational creditors, who have no voice in the CoC. Bajaj Hindusthan Sugar, helmed by Mr. Kushagra Bajaj, is the largest sugar manufacturer in India. The CIRP against company has been initiated by SBI over dues of about ₹5,000 crores.

Source: *The Economic Times, February 21, 2023*

https://economictimes.indiatimes.com/news/economy/agriculture/farmers-move-nclt-over-bajaj-sugar-insolvency-process/articleshow/98104031.cms?from=mdr

Commercial Wisdom of CoC and its ability to negotiate with the Resolution Applicant has resulted in Value Maximization

Through negotiations, the CoC has been successful in getting significantly higher value over and above the initial proposal made by the highest bidder in the Resolution Plan. According to a media report, there are several examples for the success of CoC's commercial wisdom and the ability to renegotiate to get a better deal for the stakeholders of a corporate debtor. In the case of DHFL, the highest bidder Piramal Group had made an offer of ₹15,000 crores. However, after negotiations, revision/ fresh plans the final deal was struck at ₹ 37,250 crores, which is ₹ 22,250 crores more than the initial offer. Similarly, the initial offer for SREI Group was ₹ 3,402 crores but the final deal was made at ₹ 14,867 crores.

Source: *Moneylife.in, February 20, 2023*

https://www.moneylife.in/article/cocs-ability-to-negotiate-commercial-wisdom-gets-higher-value-for-stakeholders/69893.html

Bankruptcies across the European Union have soared to Record Levels

According to the latest report by Eurostat, bankruptcies in the Q3 of FY 23 rose 26.8% relative to Q3 of FY22. All economic sectors have registered a rise in bankruptcies: the largest increases were noted in the transportation and storage sector (72.2%), accommodation and food services (+39.4%), and education, health, and social activities (+29.5%). The data implies that bankruptcies within the EU region increased in all four quarters of 2022 and are now at their highest levels since Eurostat began collecting insolvency records in 2015.

Source: *The Brussels Times, February 19, 2023*

https://www.brusselstimes.com/economics/374152/breaking-point-bankruptcies-in-eu-reach-historic-highs

An application under Section 9 of IBC is not akin to a suit within the meaning of Section 69(2) of Indian Partnership Act: NCLAT

NCLAT Principal Bench has held that the bar provided under Section 69(2) of Indian Partnership Act, 1932, which prohibits a suit instituted by an unregistered partnership cannot be invoked against an application filed under Section 9 of IBC, 2016. This judgement has come in the matter of *Rourkela Steel Syndicate Vs. Metistech Fabricators Pvt. Ltd.* wherein the CIRP application of the Operational Creditor was rejected for violating provisions under Section 69 (2) of the Indian Partnership Act, 1932.

Placing reliance on judgement given by Supreme court in *B.K. Educational Services (P) Ltd Vs. Parag Gupta and Associates*, (2019 11 SCC 633), wherein it was held that Section 5 of Limitation Act, 1963 is fully applicable to applications under Section 7 & 9 of IBC. Appellate Tribunal said that since Section 5 of Limitation Act is not applicable to a suit; this indicates that applications under Section 7 & 9 are not a suit. The Appellate Tribunal also observed that the precedence relied by the AA regarding bar of Section 69 (2) is not attracted in the present case since the application under Section 9 cannot be treated as a suit.

Source: *Livelaw.in, February 14, 2023*

https://www.livelaw.in/news-updates/section-9-ibc-application-not-a-suit-hence-bar-us-692-of-partnership-act-not-attracted-nclat-delhi-221535

IBC prevails over all Acts Including Income Tax Act, rules Income Tax Appellate Tribunal (ITAT)

The Delhi bench of ITAT, in the case of ACIT Vs. ABW Infrastructure has held that IBC has an overriding effect on all other acts including Income tax act as per amended Section 178(6) of the Income tax Act effective from November 01, 2016. The Tribunal observed that in the view of the moratorium period declared by NCLT, all proceedings against Corporate Debtor in any court of law, or tribunal, etc. can't continue. The ITAT granted the assessee and Revenue the right to seek remedial measures in accordance with the law when the moratorium period expires.

Source: *Livelaw.in, February 14, 2023*

https://www.livelaw.in/news-updates/ibc-overriding-effect-income-tax-act-itat-221940#:~:text=The%20Delhi%20Bench%20of%20the,effective%20from%20November%201%2C%202016

Companies admitted under Liquidation had values less than 8% of their Outstanding Debt

The recent data released by the Insolvency and Bankruptcy Board of India (IBBI) has revealed that till December 2022, liquidation orders were issued against 1901 Corporate Debtors (CDs), out of which 76% were either BIFR (Board of Industrial and Financial Reconstruction) and/ or defunct. These cases had assets which had been valued at less than 8 per cent of the outstanding debt. The erosion of values was one of the main reasons behind haircuts. According to the data, after slowing in the pandemic period of FY21 and FY22, the number of CIRP cases increased by 25% year-over-years in Q3FY23. However, despite the increase, the number of cases admitted under CIRP continued to be lower compared to earlier quarters in FY19/20. The overall recovery rate in insolvency cases till Q3FY23 was 30.4 per cent implying a haircut of approximately 70 per cent. The distribution of cases across sectors continues to remain broadly similar, compared to earlier periods given the extended resolution timelines.

Source: *Moneylife.in, February 20, 2023.*

https://www.moneylife.in/article/creditors-face-70-percentage-haircut-in-insolvency-cases-report/69901.html

Company insolvencies in England and Wales hit 1,671 over the first month of 2023

Compared to the same month last year, more businesses declared bankruptcy in January, according to government statistics. The Insolvency Service reported that 1,671 businesses in England and Wales went bankrupt in the first month of 2023. It was 11% higher than pre-pandemic levels from 2020 and marked an increase of 7% from January 2022. According to experts, the rise indicated that increasing borrowing costs and ongoing high levels of inflation were having a negative impact on firms.

Source: *Independent.co.in, dated February 14, 2023.*

https://www.independent.co.uk/business/company-insolvencies-jump-7-yearonyear-in-january-b2281910.html

Workmen and Employees are entitled to payment of full amount of PF and Gratuity till the date of commencement of CIRP: NCLAT

The Appellate Tribunal (NCLAT) has held that non-payment of Provident Fund (PF) and Gratuity dues or allotment of partial amount for the same by any Successful

Resolution Applicant (SRA) will be considered as violation of the norms laid down under IBC, 2016 as well as the breach of provisions under Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) and the Payment of Gratuity Act, 1972 (PF Act).

This judgement came in the matter of Hindustan Newsprint Limited (HNL) wherein the workers and employees have argued that the approved Resolution Plan was in contravention of the IBC as it ignored the EPF and Gratuity Acts. However, the SRA contended that the IBC clearly stated that stakeholders could not raise subsequent claims if those were not a part of the originally approved Resolution Plan. However, the NCLAT relied upon a recent judgement of the Supreme Court in the matter of Jet Airways wherein the Apex Court had directed the Airline to pay the PF and Gratuity dues in full to its employees. NCLAT observed that the Adjudicating Authority (NCLT) has the power to intervene if the Resolution Plan breached any provisions of the IBC. The amount was to be paid by the SRA consequent to the approval of the Resolution Plan.

Source: *Legaleraonline.com, February 09, 2023*

https://www.legaleraonline.com/news/nclat-non-payment-of-full-pf-and-gratuity-dues-to-employees-violative-of-ibc-852552

Canada's major Real Estate Firm of Vancouver files for Insolvency

The Company which primarily pursues condominium projects informs the media that they will work on their financial reconstruction and advances its operations if the court permits their request of protection. Since being active with acquiring properties a decade ago, the developer has amassed a significant portfolio, with 16 active real estate projects — all located within Vancouver — are now in possible risk. Many of these projects are located within the Cambie Street Corridor, including near Oakridge.

Source: *Dailyhive.com, February 09*

https://dailyhive.com/vancouver/coromandel-properties-insolvency-protection-vancouver

Implementation of IBC marked the beginning of a new era that completely overhauled India's insolvency regime: Justice S. K. Kaul

The Supreme Court Judge, Justice Sanjay Kishan Kaul has said that in the early years of the IBC's implementation, there were complex questions that required authoritative and conclusive answers. But this provided an opportunity not only to the judiciary, but all the professionals to contribute towards laying an infallible foundation. He was speaking at Insolvency Law Academy's inaugural conference on the topic "Emerging Global Insolvency Horizon: Indian Footprint and Front View" on February 05, 2023.

"In my opinion, the IBC has also had a big role to play in India's new Startup culture by creating a conducive environment for budding entrepreneurs," said Justice Kaul. He called upon the panellists to find out solutions for bringing diversity into the process of insolvency, along with greater inclusivity. Besides, he highlighted the need to ensure an effective, quick, and least cumbersome process for homebuyers under the IBC regime. He further added that the IBC was enacted in 2016 primarily to serve two purposes - first, to ensure that debtors take sound and practical decisions and second, to give financially ailing corporate entities a chance to rehabilitate and continue their business. He also highlighted the role of Alternative Resolution in reducing the burden on NCLT and NCLATs, and also to provide speedy and cost-effective solution to creditors.

Source: *The Economic Times, February 05, 2023*

https://economictimes.indiatimes.com/tech/startups/insolvency-and-bankruptcy-code-had-big-role-in-indias-startup-culture-justice-sk-kaul/articleshow/97616525.cms

Economic Survey predicts better recovery under IBC

"The rate of recovery from the resolution of stressed accounts through the (IBC) could improve as economic recovery becomes broader based," said the Economic Survey. The survey has cited the RBI data which shows that the total amount recovered by banks under IBC at the end of the last fiscal year ending March 2022, stood at Rs.47,421 crore was the highest compared to other channels such as Lok Adalat's, SARFAESI Act and Debt Recovery Tribunals (DRTs). The survey has highlighted the behavioural change effectuated by the IBC among debtors.

Source: *The Economic Times, February 01, 2023*

https://economictimes.indiatimes.com/news/economy/policy/ibc-recovery-to-improve-as-economic-recovery-picks-up-economic-survey/articleshow/97493839.cms?from=mdr

Union Budget decriminalized Section 276A of the IT Act

The Union Budget 2023 has decriminalized section 276A of the Income Tax (IT) Act which enabled criminal prosecution of a liquidator for failing to give notice of his/her appointment within 30 days or set aside amount or part with assets without notifying an officer. Therefore, liquidators will not be required to comply with the IT Act. This move of the government is expected to reduce the burden of legal compliances on the liquidators and they can perform their functions without any baggage and biases.

Furthermore, the Finance Minister Smt. Nirmala Sitharaman has proposed that no fresh prosecution shall be launched against a liquidator who fails to give notice or set aside the amount as required under the IBC law sub-section (1) of section 178 after April 01, 2023. Besides, during the Budget speech, she announced reduction of 39,000 compliances and decriminalized over 3,400 other provisions.

Source: *Livemint.com, February 03, 2023*

https://www.livemint.com/news/india/bankruptcy-resolutions-expected-to-soar-after-budget-spells-relief-for-rps-11675433341844.html

No relief to Jalan Karlrock consortium from SC on payment of PF & Gratuity Dues to Jet Airways' employees

The Supreme Court has observed that anyone stepping in to bail out the airline would know there were overriding labour dues. "There has to be a finality. We will not interfere," said the Court. After this judgement, Jalan Karlrock Consortium, which is successful bidder for Jet Airways through Resolution Plan, will be required to pay Provident Fund (PF) and Gratuity dues to the former employees of the debt-laden airline. According to estimates the total payable amount is about Rs. 200 crores. The consortium had moved the Supreme Court earlier this month, challenging the NCLAT order of October 21, 2022, which had directed it to pay PF and Gratuity to grounded airline's employees till the date of CIRP commencement in June 2019.

Source: *Business Standard, January 30, 2023*

https://www.business-standard.com/article/companies/jet-airways-employees-dues-sc-refuses-to-entertain-jalan-kalrock-appeal-123013001171_1.html

Swedish bankruptcies soared to the highest level in at least a decade in January 2023

Bankruptcy filings in Sweden have increased by 47% from a year earlier in January, to 622, according to credit reference agency UC. The data highlights the effects of Sweden's worst housing-price slump in three decades, which has contributed to a surge in defaults in the construction sector, with 130 builders filing for bankruptcy last month. During fall, the bankruptcy filings were from retail, hotels, and restaurants but now largest increase is happening in sectors that are closely connected to industry and longer-term investments.

Source: *Bloomberg.com, February 01, 2023*

https://www.bloomberg.com/news/articles/2023-02-01/swedish-bankruptcies-at-highest-level-in-a-decade-in-january?leadSource=uverify%20wall

CBIRC suggests keeping FSPs like Banks outside the ambit of Group Insolvency Framework

The Cross Border Insolvency Rules/Regulations Committee (CBIRC) has suggested that a Corporate Group Insolvency Framework under the IBC, 2016 should apply to only bankrupt entities that are already undergoing resolution or liquidation process, and not to the solvent firms of the group. However, Financial Service Providers (FSPs) like banks would be outside the ambit of the Group Insolvency Framework. This is the second part of CBIRC's Report on enterprise group insolvency which is based on UNCITRAL Model Law.

"A Group Insolvency Framework should be laid down under the Code that is voluntary, flexible and enabling in nature," said the CBIRC headed by Mr. K. P. Krishnan. The Committee has also recommended that the Group Insolvency Framework be adopted in phases and that rules for initiating domestic group insolvency be enacted first. The Report was submitted to the Secretary, Ministry of Corporate Affairs (MCA), Government of India on December 10, 2021, but has now been made public.

Source: *Financial Express, January 20, 2023*

https://www.financialexpress.com/industry/panel-suggests-limiting-group-insolvency-to-bankrupt-entities/2954287/

NCLAT denied reviving Section 9 Application on alleged breach of Settlement Agreement

Operational Creditors (OC) had filed Section 9 Application to initiative CIRP of the CD way back in 2017.

However, the parties entered a settlement agreement. Accordingly, the petition was withdrawn, and the CD paid ~₹1.74 Crore against principal amount and ₹16 lakhs as interest. However, both the parties entered a dispute on calculation on the interest. OC again preferred a Section 9 Application against the CD claiming a debt of ~₹1.28 crore, which was rejected by NCLT. OC argued that liberty was granted in the settlement agreement that in event any breach is committed, the Application be revived. "We sincerely feel that the OC has been using the IBC proceeding for recovery of disputed amount and which is not object of IBC, 2016," said NCLAT.

Source: Company Appeal (AT) (Insolvency) No. 36 of 2023, January 17, 2023

https://www.livelaw.in/pdf_upload/permali-nclat-454761.pdf

USA's Genesis Global Holdco LLC filed for Bankruptcy

The Company, plus subsidiaries Genesis Global Capital LLC and Genesis Asia Pacific Pte, filed for Chapter 11 protection on January 20 in the Southern District of New York, reported media. Genesis Global Capital listed the same range, $1 billion to $10 billion, for both assets and liabilities as well as over 100,000 creditors -- the top 50 unsecured claims amount to about $3.4 billion. This is the latest Company to collapse in the aftermath of the FTX exchange's swift downfall and last year's rout in digital assets. The company intends to use $150 million of cash on hand to fund itself in bankruptcy.

Source: *Bloomberg.com, January 20, 2023*

https://www.bloomberg.com/news/articles/2023-01-20/crypto-lender-genesis-files-for-bankruptcy-as-crisis-spreads?leadSource=uverify%20wall

"Sufficient Cause" is the Cause for which a Party could not be blamed: Supreme Court

In reference to Section 5 of the Limitation Act- 1963, the Apex Court has ruled that 'sufficient cause' in the only criterion for condoning delay in filing CIRP petition against Corporate Debtor and defined the meaning of the term 'sufficient cause'. This judgement came on January 04, 2023, in the matter of *Sabarmati Gas Ltd. Vs. Shah Alloys Ltd.* (CA 1669 of 2020). Sabarmati Gas Ltd. (Operational Creditor) has filed a CIRP petition against Shah Alloys Ltd. (Company) which was rejected by the NCLT on two grounds – the petition was barred by limitation and 'pre-existing dispute'. As NCLAT also upheld the decision of NCLT, Sabarmati Gas Ltd. approached the Apex Court. The question before the Court was whether in computation of the period of limitation in regard to an application filed under Section 9 of the IBC during which the Operational Creditor's right to proceed against the CD remain suspended by virtue of Section 22 (1) of the SICA can be excluded, as per Section 22 (5) of SICA? Apex Court accepted the argument of Operational Creditor that it had sufficient cause for not filing CIRP petition. Therefore, the NCLT should have considered the claim of the Operational Creditor for condonation of the delay, said the Court. However, the Supreme Court dismissed the appeal on the ground of pre-existing dispute among parties.

Source: *Livelaw.in, January 05, 2023*

https://www.livelaw.in/top-stories/supreme-court-section-5-limitation-sufficient-cause-sabarmati-gas-limited-vs-shah-alloys-limited-2023-livelaw-sc-9-218128

Covid pandemic and economic slowdown pushed USA's Bed Bath & Beyond Inc. towards Bankruptcy

Bed Bath & Beyond said last week it was exploring options, including bankruptcy, after years of weakening sales. It took on $375 million in financing in August but failed this month to convince bondholders to swap out their investments for new debt. Last year, the company said it would close 150 stores and lay off 20% of its corporate and supply chain workforce among other cost-saving measures. The company said it had started cost cuts of about $80 million to $100 million across the business.

Source: *Reuters.com, January 11, 2023*

https://www.reuters.com/business/retail-consumer/bed-bath-beyond-reports-quarterly-loss-bankruptcy-threat-looms-2023-01-10/

Corporate Debtors Undergoing IBC proceedings are Liable to Pay Only Reduced GST

The Central Board of Indirect Taxes and Customs (CBIC) has said that if any government dues including Central GST demand has been reduced following IBC proceedings, then the Commissioner concerned will issue an intimation to the taxpayer and also the authority with whom the recovery is pending, intimating the reduction in demand. This clarification has come as a great relief to corporate debtors as they can't be forced to cough more than the 'reduced amount'. The Circular was issued after the 48th meeting of the GST Council, held on December

20, 2022, recommended that a Circular should be issued for clarifying the treatment of statutory dues under GST law for taxpayers for whom the proceedings have been finalized under the IBC. According to the Circular, under the CGST Act, the commissioners are empowered to reduce the number of dues to be recovered in case of an appeal or "other proceedings". As "other proceedings" is not defined in the Act, the CBIC said, "Adjudicating authorities and appellate authorities under the IBC, 2016 are quasi-judicial authorities constituted to deal with civil disputes pertaining to IBC… As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Sec. 84 of CGST Act."

Source: *The Times of India,* December 29, 2022

https://timesofindia.indiatimes.com/business/india-business/cbic-to-taxmen-reduce-gst-demand-for-insolvency-cases/articleshow/96582415.cms

Background Guidance on Quality Control by Insolvency Professionals

(…Continue from previous edition)

30. The continuing competence of the personnel depends to a significant extent on an appropriate level of continuing professional development so that personnel maintain and also enhance their knowledge and capabilities. The IP therefore emphasizes in its policies and procedures, the need for continuing training for all levels of personnel and provides the necessary training resources and assistance to enable personnel to develop and maintain the required capabilities and competence. Where internal technical and training resources are unavailable, or for any other reason, the IP may use a suitably qualified external person for that purpose.

31. The performance evaluation, compensation and promotion procedures give due recognition and reward to the development and maintenance of competence and commitment to ethical principles. In particular, the IP:

    a. Makes personnel aware of the expectations regarding performance and ethical principles;

    b. Provides personnel with evaluation of, and counselling on, performance, progress and career development; and

    c. Helps personnel understand that advancement to positions of greater responsibility depends, among other things, upon performance quality and adherence to ethical principles, and that failure to comply with the policies and procedures may result in disciplinary action.

32. The size and circumstances of the IP will influence the structure of the performance evaluation process. Smaller IPs, in particular, may employ less-formal methods of evaluating the performance of his personnel.

33. The technological solutions may range across facilities of Records of Default (ROD) from Information Utility (IU), Virtual Data Room (VDR), e-Voting, e-Auction, Insolvency case management, invitation/evaluation of resolution plans, audio/video recordings of meetings/proceedings, e-filing of petitions, data storage services, etc.

34. The size and circumstances of the IP will influence the degree of the adoption of technological solutions.

Assignment of Engagement Teams

35. **The IP should assign responsibility for each engagement to an engagement team. The IP should establish policies and procedures requiring that:**

    a. The identity and role of the engagement team are communicated to key members of the Corporate Debtor;

    b. The engagement team has the appropriate capabilities, competence, authority and time to perform the role; and

    c. The responsibilities of the engagement team are clearly defined and communicated to that team head.

36. Policies and procedures include systems to monitor the workload and availability of IPs so as to enable these individuals to have sufficient time to adequately discharge their responsibilities.

37. The IP should also assign appropriate staff with the necessary capabilities, competence, and time to perform engagements in accordance with professional standards, best-practices, regulatory and legal requirements.

38. The IP establishes procedures to assess its staff's capabilities and competence. The capabilities and competence considered when assigning engagement teams, and in determining the level of supervision required, include the followings:

    a. An understanding of, and practical experience with, engagements of a similar nature and complexity through appropriate training and participation.

    b. An understanding of professional standards, best practices, regulatory and legal requirements.

c. Appropriate technical knowledge, including knowledge of relevant information technology.

d. Knowledge of the relevant industries in which the clients operate.

e. Ability to apply professional judgment.

f. An understanding of the IP's quality control policies and procedures.

ENGAGEMENT PERFORMANCE

39. The IP should establish policies and procedures designed to provide it with reasonable assurance that engagements are performed in accordance with professional standards, best-practices, regulatory and legal requirements and as per the Code, Rules and Regulations in this regard.

40. Through its policies and procedures, the IP seeks to establish consistency in the quality of engagement performance. This is often accomplished through written or electronic manuals, software tools or other forms of standardized documentation, and industry or subject matter-specific guidance materials. The matters addressed include the following:

a. How are engagement teams briefed on the engagement to obtain an understanding of the objectives of their work?

b. Processes for complying with applicable engagement standards.

c. Processes of engagement supervision, staff training and coaching.

d. Methods of reviewing the work performed, the significant judgments made.

e. Appropriate documentation of the work performed and of the timing and extent of the review.

f. Processes to keep all policies and procedures updated.

41. It is important that all members of the engagement team understand the objectives of the work they are to perform. Appropriate team-working and training are necessary to assist less experienced members of the engagement team to clearly understand the objectives of the assigned work.

42. Supervision includes the following:

a. Tracking the progress of the engagement.

b. Considering the capabilities and competence of individual members of the engagement team, whether they have sufficient time to carry out their work, whether they understand their instructions and whether the work is being carried out in accordance with the planned approach to the engagement.

c. Addressing significant issues arising during the engagement, considering their significance, and appropriately modifying the planned approach appropriately.

d. Identifying matters for consultation or consideration by more experienced engagement team members during the engagement.

43. Responsibilities for review are determined on the basis that more experienced engagement team members, including the IP concerned, review work performed by less experienced team members. Reviewers consider whether:

a. The work has been performed in accordance with professional standards, best practices, regulatory and legal requirements;

b. Significant matters have been raised for further consideration;

c. Appropriate consultations have taken place and the resulting conclusions have been documented and implemented;

d. There is a need to revise the nature, timing and extent of work performed,

e. The work performed supports the conclusions reached and is appropriately documented,

f. The evidence obtained is sufficient and appropriate to support the action taken; and

g. The objectives of the engagement procedures have been achieved.

Consultation

44. The IP should establish policies and procedures designed to provide it with reasonable assurance that:

a. Appropriate consultation takes place on difficult or contentious matters;

b. Sufficient resources are available to enable appropriate consultation to take place;

c. The nature and scope of such consultations are documented; and

d. Conclusions resulting from consultations are documented and implemented.

45. Consultation includes discussion, at the appropriate professional level, with individuals within or outside the IP's team who have specialized expertise, to resolve a difficult or contentious matter.

46. Consultation uses appropriate research resources as well as the collective experience and technical expertise of the IP. Consultation helps to promote quality and improves the application of professional judgment. The IP seeks to establish a culture in which consultation is recognized as a strength and encourages personnel to consult on difficult or contentious matters.

47. Effective consultation with other professionals requires that those consulted be given all the relevant facts that will enable them to provide informed advice on technical, ethical or other matters. Consultation procedures require consultation with those having appropriate knowledge, seniority and experience on significant technical, ethical and other matters, and appropriate documentation and implementation of conclusions resulting from consultations.

48. An IP needing to consult externally, for example, an IP without appropriate internal resources, may take advantage of advisory services provided by (a) other IP, or (b) or consultants (c) professional and regulatory bodies. Before contracting for such services, the IP considers whether the external provider is suitably qualified for that purpose.

49. The documentation of consultations with other professionals that involve difficult or contentious matters is agreed by both the individual seeking consultation and the individual consulted. The documentation is sufficiently complete and detailed to enable an understanding of:

a. The issue on which consultation was sought; and

b. The results of the consultation, including any decisions taken, the basis for those decisions and how they were implemented.

Differences of Opinion

50. The IP should establish policies and procedures for dealing with and resolving differences of opinion within the engagement team, with those consulted and, where applicable, between the IP and the engagement quality control reviewer. Conclusions reached should be documented and implemented.

51. Such procedures encourage identification of differences of opinion at an early stage, provide clear guidelines as to the successive steps to be taken thereafter, and require documentation regarding the resolution of the differences and the implementation of the conclusions reached.

52. An IP using a suitably qualified external person(s) to conduct an engagement quality control review recognizes that differences of opinion can occur and establishes procedures to resolve such differences, for example, by consulting with another practitioner or IP, or a professional or regulatory body

Engagement Quality Control Review

53. The IP should establish policies and procedures requiring, for appropriate engagements, an engagement quality control review that provides an objective evaluation of the significant judgments made by the engagement team and the conclusions reached. Such policies and procedures should:

a. Set out criteria against which all engagements should be evaluated to determine whether an engagement quality control review should be performed; and

b. Require an engagement quality control review for all engagements meeting the criteria established in compliance with subparagraph (a).

54. The IP's policies and procedures should require the completion of the engagement quality control review before the report is issued.

55. The peer-review mechanism is to be considered for adoption, wherever provided by IBBI and/or IPA.

56. The IP should establish policies and procedures setting out:

a. The nature, timing and extent of an engagement quality control review;

b. Criteria for the eligibility of engagement quality control reviewers; and

c. Documentation requirements for an engagement quality control review.

Nature, Timing and Extent of the Engagement Quality Control Review

57. An engagement quality control review ordinarily involves discussion with the IP personnel, a review of the decisions taken and, in particular, consideration of whether the decision taken is appropriate. It also involves a review of selected working papers relating to the significant judgments that the engagement team made and the conclusions they reached. The extent of the review depends on the complexity of the engagement and the risk that the decision taken might not be appropriate in the circumstances. The review does not reduce the responsibilities of the IP concerned.

58. An engagement quality control review includes considering the followings:

a. Evaluation of the IP's and its team's independence in relation to the specific engagement.

b. Significant risks identified during the engagement and the responses to those risks.

c. Judgments made, particularly with respect to materiality and significant risks.

d. Whether appropriate consultation has taken place on matters involving differences of opinion or other difficult or contentious matters, and the conclusions arising from those consultations.

e. The matters to be communicated to management and those charged with governance and, where applicable, other parties such as regulatory bodies.

f. Whether working papers selected for review reflect the work performed in relation to the significant judgments and support the conclusions reached.

g. The appropriateness of the decision taken/ conclusions arrived.

59. The engagement quality control reviewer conducts the review in a timely manner at appropriate stages during the engagement so that significant matters may be promptly resolved to the reviewer's satisfaction before a decision is taken.

60. Where the engagement quality control reviewer makes recommendations that the concerned IP does not accept, and the matter is not resolved to the reviewer's satisfaction, the decision should not be taken until the matter is resolved by following the IP's procedures for dealing with differences of opinion.

Criteria for the Eligibility of Engagement of Quality Control Reviewers

61. The IP's policies and procedures should address the appointment of engagement quality control reviewers and establish their eligibility through:

a. The technical qualifications required to perform the role, including the necessary experience and authority; and

b. The degree to which an engagement quality control reviewer can be consulted on the engagement without compromising the reviewer's objectivity.

62. The IP's policies and procedures on the technical qualifications of engagement quality control reviewers address the technical expertise, experience, and authority necessary to perform the role. What constitutes sufficient and appropriate technical expertise, experience and authority depends on the circumstances of the engagement.

63. The IP's policies and procedures are designed to maintain the objectivity of the engagement quality control reviewer. For example, the engagement quality control reviewer:

a. Is not selected by the IP;

b. Does not otherwise participate in the engagement during the period of review;

c. Does not make decisions for the engagement team; and

d. Is not subject to other considerations that would threaten the reviewer's objectivity.

64. The concerned IP may consult the engagement quality control reviewer during the engagement. Such consultation need not compromise the engagement quality control reviewer's eligibility to perform the role. Where the nature and extent of the consultations become significant, however, care is taken by both the engagement team and the reviewer to maintain the reviewer's objectivity. Where this is not possible, another individual within the IP or a suitably qualified external person is appointed to take on the role of either the engagement quality control reviewer or the person to be consulted on the engagement. The IP's policies provide for the replacement of the engagement quality control reviewer where the ability to perform an objective review may be impaired.

65. Suitably qualified external persons may be contracted where sole practitioners or small IPs identify engagements requiring engagement quality control reviews. Alternatively, some sole practitioners or small IPs may wish to use other IPs to facilitate engagement quality control reviews. The peer-review mechanism is to be considered for adoption, wherever provided by IBBI and/or IPA. Where the IP contracts suitably qualified external persons, the IP follows the requirements and guidance in *paragraph 47.*

Documentation of the Engagement Quality Control Review

66. Policies and procedures on documentation of the engagement quality control review should require that:

a. The procedures required by the IP's policies on engagement quality control review have been performed;

b. The engagement quality control review has been completed before the report is issued; and

c. The reviewer is not aware of any unresolved matters that would cause the reviewer to believe that the significant judgments the engagement team made and the conclusions they reached were not appropriate.

Engagement Documentation

Completion of the Assembly of Final Engagement Files

67. The IP should establish policies and procedures for engagement teams to complete the assembly of final engagement files on a timely basis after the engagement reports have been finalized.

68. Law or regulation may prescribe the time limits by which the assembly of final engagement files for specific types of engagement should be completed. Where no such time limits are prescribed in law or regulation, the IP establishes time limits appropriate to the nature of the engagements that reflect the need to complete the assembly of final engagement files on a timely basis.

Confidentiality, Safe Custody, Integrity, Accessibility and Retrievability of Engagement Documentation

69. The IP should establish policies and procedures designed to maintain the confidentiality, safe custody, integrity, accessibility and retrievability of engagement documentation.

70. Relevant ethical requirements establish an obligation for the IP's personnel to observe at all times the confidentiality of information contained in engagement documentation, unless specific client authority has been given to disclose information, or there is a legal or professional duty to do so. Specific laws or regulations may impose additional obligations on the IP's personnel to maintain client confidentiality, particularly where data of a personal nature are concerned.

71. Whether engagement documentation is in paper, electronic or other media, the integrity, accessibility or retrievability of the underlying data may be compromised if the documentation could be altered, added to or deleted without the IP's knowledge, or if it could be permanently lost or damaged. Accordingly, the IP designs and implements appropriate controls for engagement documentation to:

a. Enable the determination of when and by whom engagement documentation was created, changed or reviewed;

b. Protect the integrity of the information at all stages of the engagement, especially when the information is shared within the engagement team or transmitted to other parties via the Internet;

c. Prevent unauthorized changes to the engagement documentation; and

d. Allow access to the engagement documentation by the engagement team and other authorized parties as necessary to properly discharge their responsibilities.

72. Controls that the IP may design and implement to maintain the confidentiality, safe custody, integrity, accessibility and retrievability of engagement documentation include, for example:

a. The use of a password among engagement team members to restrict access to electronic engagement documentation to authorized users.

b. Appropriate back-up routines for electronic engagement documentation at appropriate stages during the engagement.

c. Procedures for properly distributing engagement documentation to the team members at the start of engagement, processing it during engagement, and collating it at the end of engagement.

d. Procedures for restricting access to, and enabling proper distribution and confidential storage of, hardcopy engagement documentation.

73. For practical reasons, original paper documentation may be electronically scanned for inclusion in engagement files. In that case, the IP implements appropriate procedures requiring engagement teams to:

a. Generate scanned copies that reflect the entire content of the original paper documentation, including manual signatures, cross-references and annotations;

b. Integrate the scanned copies into the engagement files, including indexing and signing off on the scanned copies as necessary; and

c. Enable the scanned copies to be retrieved and printed as necessary.

74. The IP considers whether to retain original paper documentation that has been scanned for legal, regulatory, or other reasons.

Retention of Engagement Documentation

75. The IP should establish policies and procedures for the retention of engagement documentation for a period sufficient to meet the needs of the IP or as required by law or regulation.

76. The needs of the IP for retention of engagement documentation, and the period of such retention, will vary with the nature of the engagement and the IP's circumstances, for example, whether the engagement documentation is needed to provide a record of matters of continuing significance to future engagements. The retention period may also depend on other factors, such as whether local law or regulation prescribes specific retention periods for certain types of engagements, or whether there are generally accepted retention periods in the jurisdiction in the absence of specific legal or regulatory requirements. In general, the retention period is eight years for digital records and three years for physical records in the context of insolvency assignment/engagement.

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

78. Procedures that the IP adopts for retention of engagement documentation include those that:

a. Enable the retrieval of, and access to, the engagement documentation during the retention period, particularly in the case of electronic documentation since the underlying technology may be upgraded or changed over time.

b. Provide, where necessary, a record of changes made to engagement documentation after the engagement files have been completed.

c. Enable authorized external parties to access and review specific engagement documentation for quality control or other purposes.

Ownership of Engagement Documentation

79. Unless otherwise specified by law or regulation, engagement documentation is the property of the IP. The IP may, at its discretion, make portions of, or extracts from, engagement documentation available to stakeholders, provided such disclosure does not undermine the validity of the work performed, or, in the case of assurance engagements, the independence of the IP or its personnel.

MONITORING

80. The IP should establish policies and procedures designed to provide it with reasonable assurance that the policies and procedures relating to the system of quality control are relevant, adequate, operating effectively and complied with in practice. Such policies and procedures should include an ongoing consideration and evaluation of the IP's system of quality control, including a periodic inspection of a selection of completed engagements.

81. The purpose of monitoring compliance with quality control policies and procedures is to provide an evaluation of:

a. Adherence to professional standards, best-practices, regulatory and legal requirements;

b. Whether the quality control system has been appropriately designed and effectively implemented; and

c. Whether the IP's quality control policies and procedures have been appropriately applied, so that reports that are issued by the IP concerned are appropriate in the circumstances.

82. The IP entrusts responsibility for the monitoring process to a partner or partners or other persons with sufficient and appropriate experience and authority in the IP to assume that responsibility. Monitoring of the IP's system of quality control is performed by competent individuals and covers both the appropriateness of the design and the effectiveness of the operation of the system of quality control.

83. Ongoing consideration and evaluation of the system of quality control includes matters such as the followings:

a. Analysis of:

i. New developments in professional standards, best-practices, regulatory and legal requirements, and how they are reflected in the IP's policies and procedures where appropriate;

ii. Written confirmation of compliance with policies and procedures on independence;

iii. Continuing professional development, including training; and

iv. Decisions related to acceptance and continuance of client relationships and specific engagements.

b. Determination of corrective actions to be taken and improvements to be made in the system, including the provision of feedback into the IP's policies and procedures relating to education and training.

c. Communication to appropriate personnel of weaknesses identified in the system, in the level of understanding of the system, or compliance with it.

d. Follow-up by appropriate personnel so that necessary modifications are promptly made to the quality control policies and procedures.

84. The inspection of a selection of completed engagements is ordinarily performed on a cyclical basis. The manner in which the inspection cycle is organized, including the timing of selection of individual engagements, depends on many factors, including the followings:

a. The size of the corporate debtor.

b. The number and geographical location of offices.

c. The results of previous monitoring procedures.

d. The degree of authority both personnel and offices have (for example, whether individual offices are authorized to conduct their own inspections or whether only the head office may conduct them).

e. The nature and complexity of the IP's practice and organization.

f. The risks associated with the IP's clients and specific engagements.

85. The inspection process includes the selection of individual engagements, some of which may be selected without prior notification to the engagement team. Those inspecting the engagements are not involved in performing the engagement or the engagement quality control review. In determining the scope of the inspections, the IP may take into account the scope or conclusions of an independent external inspection program. However, an independent external inspection program does not act as a substitute for the IP's own internal monitoring program.

86. Small IPs and sole practitioners may wish to use a suitably qualified external person or another IP to carry out engagement inspections and other monitoring procedures. Alternatively, they may wish to establish arrangements to share resources with other appropriate organizations to facilitate monitoring activities.

87. The IP should evaluate the effect of deficiencies noted as a result of the monitoring process and should determine whether they are either:

a. Instances that do not necessarily indicate that the IP's system of quality control is insufficient to provide it with reasonable assurance that it complies with professional standards, best-practices, regulatory and legal requirements, and that conclusions arrived are appropriate in the circumstances; or

b. Systemic, repetitive or other significant deficiencies that require prompt corrective action.

88. The IP should communicate to relevant team members and other appropriate personnel deficiencies noted as a result of the monitoring process and recommendations for appropriate remedial action.

89. The IP's evaluation of each type of deficiency should result in recommendations for one or more of the followings:

a. Taking appropriate remedial action in relation to an individual engagement or member of personnel;

b. The communication of the findings to those responsible for training and professional development;

c. Changes to the quality control policies and procedures; and

d. Disciplinary action against those who fail to comply with the policies and procedures of the IP, especially those who do so repeatedly.

90. Where the results of the monitoring procedures indicate that conclusion arrived may be inappropriate or that procedures were omitted during the performance of the engagement, the IP should determine what further action is appropriate to comply with relevant professional standards, best-practices, regulatory and legal requirements. It should also consider obtaining legal advice.

91. At least annually, the IP should communicate the results of the monitoring of its quality control system to its team. Such communication should enable the IP and these individuals to take prompt and appropriate action where necessary in accordance with their defined roles and responsibilities. Information communicated should include the followings:

a. A description of the monitoring procedures performed.

b. The conclusions drawn from the monitoring procedures.

c. Where relevant, a description of systemic, repetitive or other significant deficiencies and of the actions taken to resolve or amend those deficiencies.

92. The reporting of identified deficiencies to individuals other than the relevant team members ordinarily does not include an identification of the specific engagements concerned, unless such identification is necessary for the proper discharge of the responsibilities of the individuals other than the relevant team members.

Complaints and Allegations

93. The IP should establish policies and procedures designed to provide it with reasonable assurance that it deals appropriately with:

a. Complaints and allegations that the work performed by the IP fails to comply with professional standards, best-practices, regulatory and legal requirements; and

b. Allegations of non-compliance with the IP's system of quality control.

94. Complaints and allegations (which do not include those that are clearly frivolous) may originate from within or outside the IP organisation. They may be made by personnel or external stakeholders. They may be received by engagement team members or other IP personnel.

95. As part of this process, the IP establishes clearly defined channels for personnel to raise any concerns in a manner that enables them to come forward without fear of reprisals.

96. The IP investigates such complaints and allegations in accordance with established policies and procedures. The investigation is supervised by a partner with sufficient and appropriate experience and authority within the IPs organisation but who is not otherwise involved in the engagement, and includes involving legal counsel as necessary. Small IPs and sole practitioners may use the services of a suitably qualified external person or another IP to carry out the investigation. Complaints, allegations and the responses to them are documented.

97. Where the results of the investigations indicate deficiencies in the design or operation of the IP's quality control policies and procedures, or non-compliance with the IP's system of quality control by an individual or individuals, the IP takes appropriate action as discussed in *paragraph 51.*

Documentation

98. The IP should establish policies and procedures requiring appropriate documentation to provide evidence of the operation of each element of its system of quality control.

99. How such matters are documented is the IP's decision. For example, large IPs may use electronic databases to document matters such as independence confirmations, performance evaluations and the results of monitoring inspections. Smaller IPs may use more simpler and informal methods such as manual notes, checklists, and forms.

100. Factors to be considered when determining the form and content of documentation evidencing the operation of each of the elements of the system of quality control include the followings:

a. The size of the IP and the number of offices.

b. The degree of authority both personnel and offices have.

c. The nature and complexity of the IP's practice and organization.

101. The IP retains this documentation for a period of time sufficient to permit those performing monitoring procedures to evaluate the IP's compliance with its system of quality control, or for a longer period if required by law or regulation.

(The End)

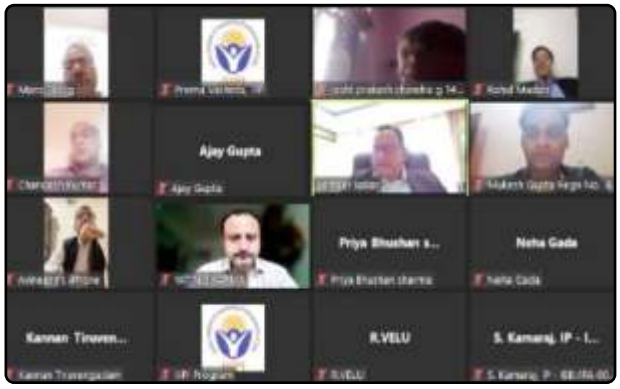
IIIPI News

Webinar on "Contribution of Women IPs under IBC: Potential Issues and Challenges" organized by IIIPI on the occasion of International Women's Day on March 06, 2023.

Webinar on "Value Maximization Strategies Under IBC" organized by IIIPI on March 10, 2023.

Webinar on "Liquidation Process – Grey Areas & Best Practices" organized by IIIPI on January 13, 2023.

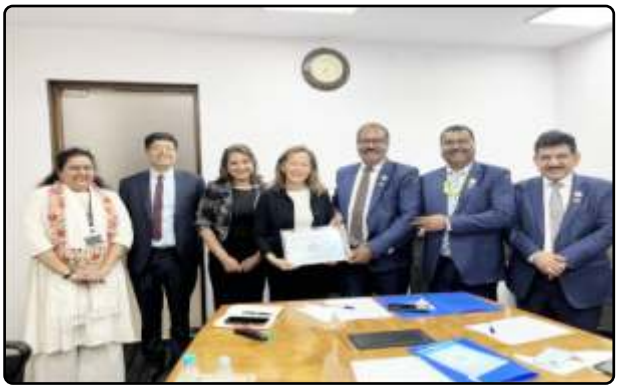
Webinar on "Valuation under IBC- Guidance for IPs" organized by IIIPI on February 03, 2023.



Inaugural Session of the 06th Batch of EDP (For IPs) on 'Mastering Legal Skills, Pleading and Court Processes Under IBC (Online)' organized by IIIPI from 22nd to 25th February 2023.

IIIPI jointly with IIP-ICSI and IPA of ICMA organized a Webinar on "Recent Amendments Relating to Regulatory Fee" on January 30, 2023.

IIIPI News



Meeting with Regional Head Asia, INSOL held on February 03, 2023, at ICAI Headquarters, Delhi.

Webinar on "Proposed Amendments in IBC" organized by IIIPI on February 10, 2023.

Webinar on "Guidance on Individual Insolvency-Best Practices" organized by IIIPI on February 17, 2023.

Webinar on "Evolving Jurisprudence under IBC-Recent Judgements" conducted by IIIPI on March 03, 2023.

IIIPI's 6th Batch of Executive Development Program (For IPs) Mastering "Avoidance/PUFE Forensics" Under IBC (Online) from 23rd to 25th January 2023.

Webinar on "Common Issues on Monitoring/Inspection & and Peer Review & Mentorship Frameworks" organized by IIIPI on January 09, 2023.

IIIPI News

IIIPI signs MoU with IIM Ahmedabad to commence 'Management Development Program' for Insolvency Professionals

Indian Institute of Insolvency Professionals of ICAI (IIIPI), the largest Insolvency Professional Agency (IPA), has joined hands with country's leading management institute – Indian Institute of Management, Ahmedabad (IIMA) to commence first ever residential "Management Development Program for Insolvency Professionals" in India. Both the institutes have signed a Memorandum of Understanding (MoU) to this effect recently. The process of announcing the first batch of program and shortlisting candidates among the professional members of IIIPI, is underway.

The said 'Management Development Program' (Residential) for IIIPI's members shall focus on building leadership and managerial capacity of professionals in the context of managing distressed corporate debtors as de facto CEO under the provisions of IBC. The program shall be a five (5) days residential program to be conducted at the campus of IIM, Ahmedabad.

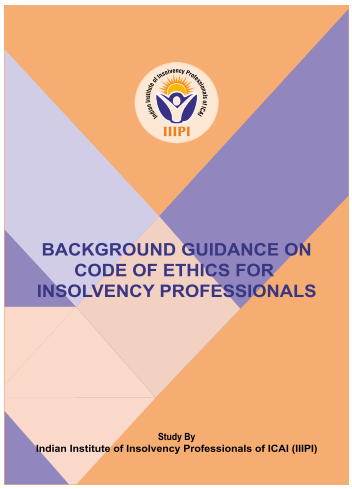
IIIPI signs MoU with NLU Delhi to sponsor Doctoral Research on IBC

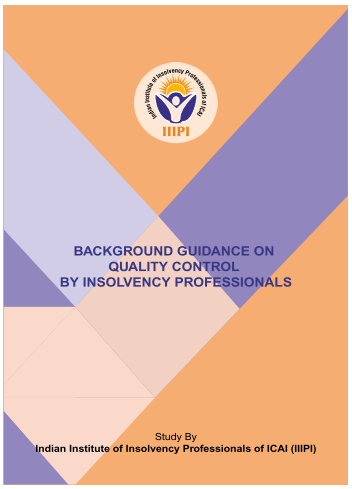
With an objective to promote high quality research in the field of insolvency and bankruptcy, Indian Institute of Insolvency Professionals of ICAI (IIIPI) has signed a Memorandum of Understanding (MoU) with National Law University, Delhi (NLUD) to sponsor PhD seat in the domain of the Insolvency and Bankruptcy Code, 2016 (IBC). The MoU has been signed between the two institutions very recently for implementation by NLUD for next academic year.

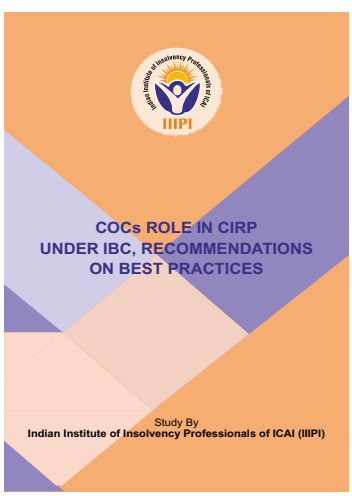
As per the MoU, the main topic and sub-topics of research will be decided by NLU's Doctoral Committee in consultation with IIIPI under the guidelines of the University Grants Commission (UGC). The PhD sponsorship will be dispensed in stages over three years' period of the PhD program. NLUD shall be responsible to select appropriate candidate for the PhD program as per the UGC guidelines of entrance exam test and *viva-voice*. There will also be a mechanism for checking (evaluation) and reporting of the progress of research work, intermittently. On successful completion of the program, NLUD will award a degree of PhD to the scholar and IIIPI shall publish the research work.

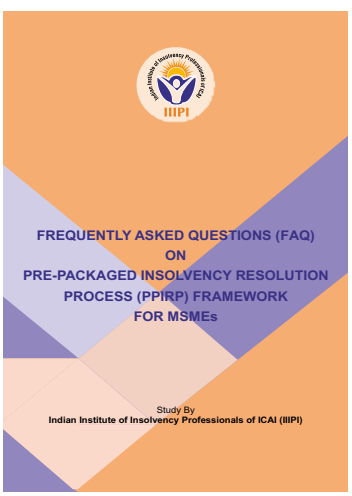
IIIPI's PUBLICATIONS

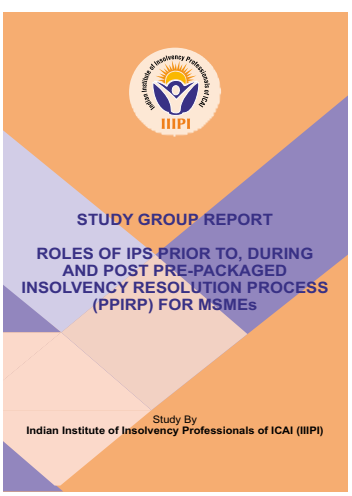
IIIPI has published nine research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

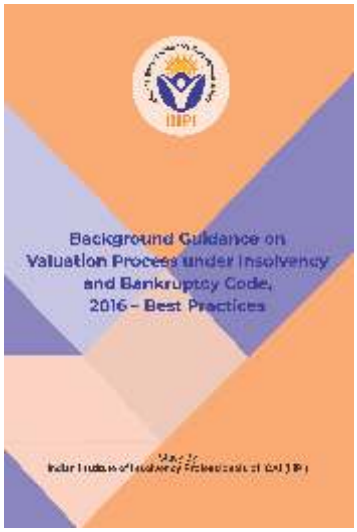


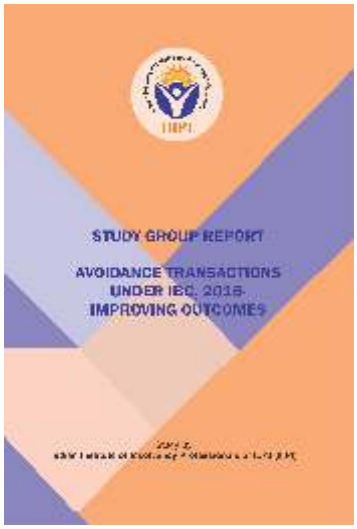


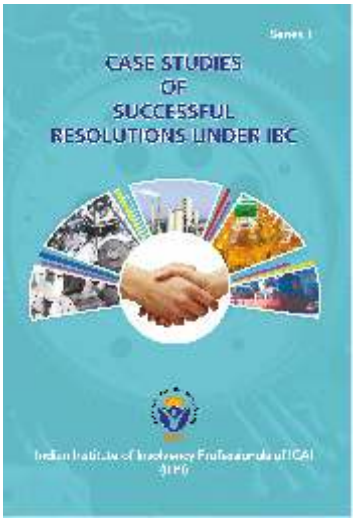












Weekly Publications

IIIPI Newsletter is an initiative of the IIIPI to provide weekly updates to IPs on IBC regime in India and relevant international news on insolvency and bankruptcy while IBC Case Law Capsules provide summary of pathbreaking judgements from the Supreme Court, High Courts, NCLATs and NCLTs.

IIIPI Newsletter

IBC Case Laws Capsules

Media Coverage

IIIPI Panel Lays Out Norms for RPs in MSME Pre-pack

Personal guarantees likely to be made top priority for RPs under the resolution scheme

IBC has brought change in attitude of lenders, borrowers: Goyal

Goyal said IBC is a game changing reform compared to the past, when resolution would take probably decades

Press Trust of India | New Delhi

Last Updated at November 25, 2021 18:04 IST

'IBC Altered Attitude of Lenders, Borrowers'

Our Bureau

'Model cross-border insolvency law almost ready'

NEWS

Let's promote mediation as a way to resolve IBC delays

Yadav calls for expansion of pre-pack insolvency regime

Says all corporate debtors must be allowed to use it

BusinessLine

Hindustan Times

Piyush Goyal calls Insolvency and Bankruptcy Code 'gamechanger reform'

BQ PRIME

Powered by Bloomberg

Framework For Avoidance Transactions Streamlined, Says IBBI Member

The Insolvency and Bankruptcy Board of India is a key institution under the Insolvency and Bankruptcy Code.

PTI

29 Mar 2023, 11:41 PM IST

Insolvency and Bankruptcy Board of India Whole-Time Member Sudhaker Shukla on Wednesday said the framework for avoidance transactions has been streamlined and some grey areas will be sorted out by the corporate affairs ministry through amendments to norms in the near future.

The IBBI is a key institution under the Insolvency and Bankruptcy Code.

Shukla was speaking at the virtual conference on 'Avoidance Transactions under IBC-Improving Outcomes' organised by the Indian Institute of Insolvency Professionals of ICAI.

According to a release issued by IIIPI, Shukla highlighted the role of insolvency professionals in tracing avoidance transactions of the corporate debtor and its importance in the value realisation of the debtor during resolution or liquidation.

The framework for avoidance transactions has been streamlined in India but there are still some grey areas for which the ministry is working to sort out through amendments in the near future, he was quoted as saying in the release.

Among others, Paul Bannister, Head-Policy, Insolvency Services, Government of UK and Patibandla Satyanarayana Prasad, Member (Judicial) at the National Company Law Tribunal participated in the conference.

"In our world, whether it's valuation, whether i we are speeding up the resolution of bad loans, can play a big role. And I would urge IIIPI to f kind of tools we can develop for our professio them in their work," Goyal added.

He also said what IIIPI is doing is national ser the faith in entrepreneurship and businesses.

To shield businesses from distress in the COV government took the proactive measure to su proceedings arising from defaults during Mar 2021, the minister added.

Services

Indian Institute of Insolvency Professionals of ICAI (IIIPI)

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NOIDA, UP – 201309

Office Hours: 09:30 AM to 06:00 PM (Monday to Friday), except closed on holidays

Contact Details

0120-2990080 / 81 / 82 / 83
0120-2975680 / 81 / 82 / 83

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3	Grievance/ Complaint	ipgrievance@icai.in
4	Program	ipprogram@icai.in
5	Monitoring	ip_monitoring@icai.in iiipi_monitoring@icai.in
6	Publication	iiipi.pub@icai.in
7	Authorization for Assignment	ip.afa@icai.in
8	CPE	iiipi.cpe@icai.in
9	Change of Address/ e-mail/contact number/any other required changes	iiipi.updation@icai.in

FEEDBACK

Dear Reader,

The Resolution Professional is aimed at providing a platform for dissemination of information and knowledge on evolving ecosystem of insolvency and bankruptcy profession and developing a global world view among practicing and aspiring insolvency professionals in India.

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.

We welcome your feedback on the current issue and the suggestions for further improvement. Please write to us at iiipi.journal@icai.in

Editor

The Resolution Professional

Help Us to Serve You Better

Common Issues in 'Enrolment/ Registration Form with Application for Pre-Registration Educational Course (PREC)'

1. All the required educational documents to be enclosed.
2. Scanned copies should be clear i.e., important portions must not be cut, blurred, or blackened.
3. Appropriate experience certificates to be enclosed.
4. Certificate of Practice (COP) and 'Employment Clash' not updated at ICAI records.
5. Fetching Credit Information Bureau (India) Ltd. (CIBIL) clarification (overdue and low score).
6. Name clarification for difference of name in KYC documents and educational qualification documents.
7. Simultaneously holding Executive Directorship status along with COP.
8. ITR acknowledgement.

Common Issues in 'Enrolment/ Registration Form with Application for IPE as Juristic IPs'

1. All details of Whole Time Directors/Directors/ Partners to be mentioned.
2. The constitutional document need be in line with the recent amended regulations.
3. Proof of compliance done with Registrar of Companies. (Eg., FORM MGT -14; LLP FORM- 3 & CHALLAN RECEIPT)
4. All the required documents to be enclosed. (Eg., FORM F; FORM H; List of Directors Shareholding; Net Worth)

5. Scanned copies to be clear i.e., important portions must not be cut, blurred, or blackened.
6. Fetching CIBIL clarification (overdue and low score).
7. ITR/ CIBIL acknowledgement copy to be received for all the partners.

Common Issues in 'Authorization for Assignment' (AFA)

1. Filing wrong Enrolment No. and Enrolment date in the AFA application.
2. IBBI Professional Fee (Form E) to be paid.
3. IIIPI Annual membership fees to be paid by the member.
4. Minimum 60 CPE hour to be attained in each rolling block of three calendar years.
5. IPAs are required to dispose AFA applications in 15 days.

Book your Advertisements in IIIPI's journal The Resolution Professional

Dear Member,

The Resolution Professional, quarterly research journal of IIIPI, is the first-ever peer-review refereed research journal of its kind with a focus on the insolvency ecosystem in India. The journal is aimed at providing a platform for dissemination of information and knowledge-sharing on the IBC ecosystem and developing a global world view among Insolvency Professionals (IPs). It carries Articles, Case Studies, Key Takeaways from Important Events, Code of Ethics, Legal Framework, IBC Case Laws, IBC News, Know Your Ethics, IIIPI News, IIIPI's Publications, Media Coverage, Services and Crossword, etc.

The soft copies of the journal are emailed to over 4 lakh recipients including all the IPs, Chartered Accountants (CAs), Ministries, MCA, NCLATs, NCLTs, IBBI, ICAI's Indian and offshore offices, State Governments, Universities, Management Institutions, PSUs, industry bodies, lawyers, media, foreign professional bodies and much more. Besides, about 1,000 physical copies are also circulated among dignitaries and subscribers.

The soft copies of the journal are also available free of cost on IIIPI website in three different formats (a) Flip Book (b) HTML Highlights, (c) IIIPI e-Journal PDF Downloads and, (d) Full PDF.

We trust, this audience base will be helpful for you to increase your reach for various purposes while discharging your responsibilities as an IRP, RP, Liquidator or Bankruptcy Trustee under the IBC, 2016. Accordingly, you can book your Classified Advertisements under the following categories:

- Advertisement for recruiting staff in the IP's own office.
- Advertisement inserted on behalf of the Corporate Debtor (CD) requiring staff/ professionals or wishing to acquire or dispose of business or property.
- Advertisement for the sale of a business or property by an IP acting in a professional capacity as Interim Resolution Professional (IRP), Resolution Professional (RP), Bankruptcy Trustee, Liquidator, or Administrator or any other capacity/ ies notified by IBBI.
- Change in the Address, contact number and email id.

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Box Highlights: ₹200 extra.

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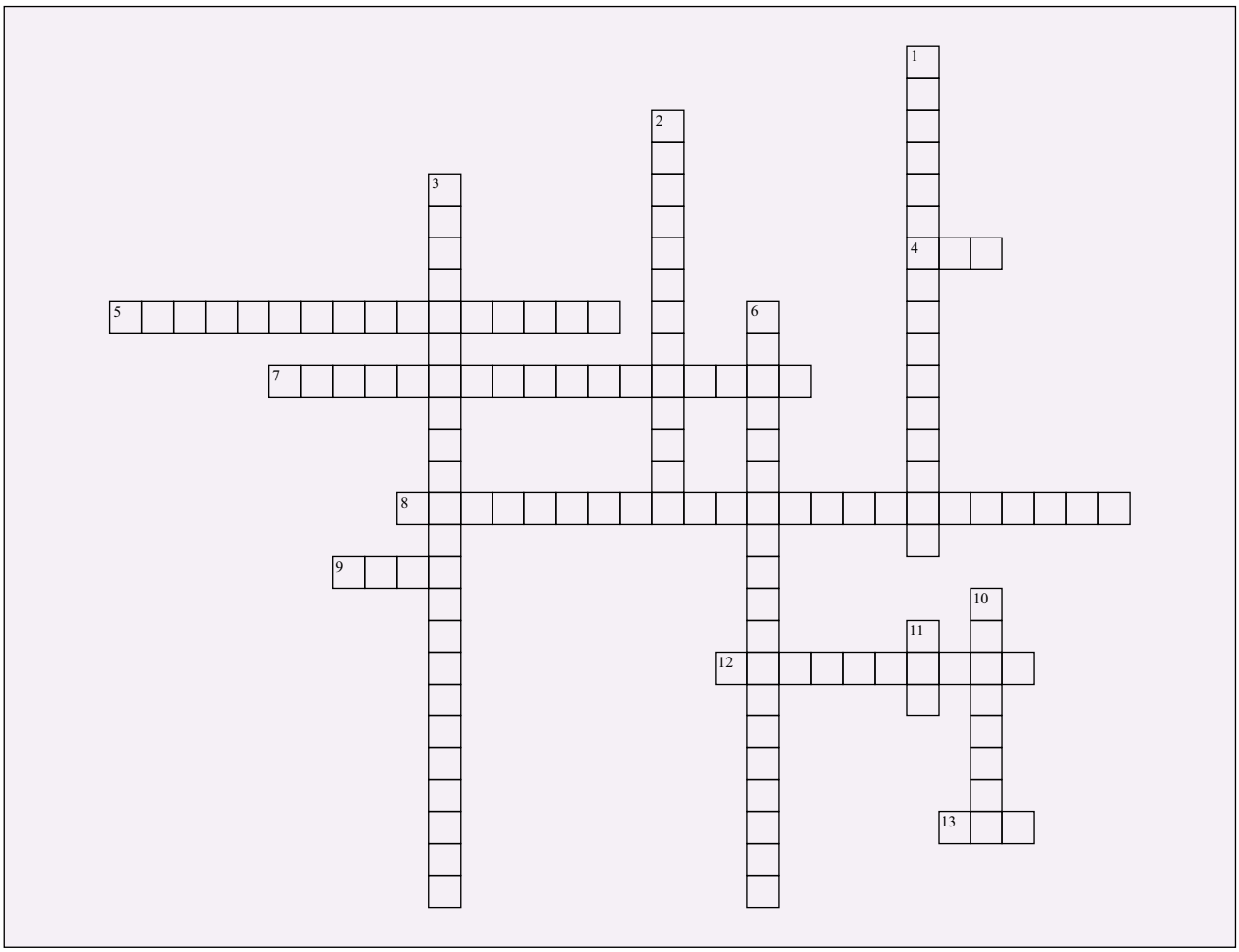
The content of display advertisements should be broadly related to stakeholders of the insolvency profession.

The booking of Advertisements for July 2023 edition is open. Please send us your request with content (text and creatives etc.) at iiipi.journal@icai.in at the earliest. The advertisements will be published after approval of the Competent Authority.

IBC Crossword



Across

4. _____ decides applications from the banks and financial institutions for recovery of debts due to them.
5. The moratorium period under the Fresh Start Order process lasts for_____ days.
7. _____ prepares the list of creditors after the passing of the bankruptcy order.
8. Total no. of_____ CIRP cases have been withdrawn under Section 12A of IBC till December 2022.
9. The maximum possible grant under IIIPI Research Project Scheme is up to_____ lakh Rupees per Research Project.
12. Section_____ talks about the Duties and powers of RP during Pre-Packaged Insolvency Resolution Process.
13. An appeal may be filed to the Supreme Court against an order of the NCLAT on a question of _____arising out of such order.

Down

1. The Pre-Packaged Insolvency Resolution Process shall be completed within a period of_____ days.
2. A debtor may apply for a Fresh Start to the Adjudicating Authority if the gross annual income of the debtor does not exceed_____.
3. Realisation by claimants from Jyoti Structures has been_____% of liquidation value.
6. Section_____ talks about the punishment for false information, concealment, etc., by bankrupt.
10. NCLT approved the_____ group's bid to buy Jaypee Infratech Ltd.
11. The_____ decides the fees payable to a liquidator under the IBBI (Liquidation Process) Regulations, 2016.

Answer Key: IBC Crossword, January 2023

1. One Crore
2. Creditor-in-control
3. Progress Report
4. Rainbow Papers Limited
5. Fourteen
6. IBBI
7. Two Lakh
8. Ten Lakh
9. Sixty
10. Bankruptcy trustee
11. Ten
12. Financial Debt

GUIDELINES FOR ARTICLE SUBMISSION

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

- The article should be of 2,500-3,000 words and cover a subject with relevance to IBC and the practice of insolvency.
- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
- The article should:
  - Contribute towards development of practice of Insolvency Professionals and enhance their ability to meet the challenges of competition, globalisation, or technology, etc.
  - Be helpful to professionals as a guide in new initiatives and procedures, etc.
  - Should be topical and should discuss a matter of current interest to the professionals/readers.
  - Should have the potential to stimulate a healthy debate among professionals.
  - Should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of. It may also preferably highlight the emerging professional areas of relevance.
  - Should be technically correct and sound.
  - Headline of the article should be clear, short, catchy and interesting, written with the purpose of drawing attention of the readers. The sub-headings should preferably within 20 words.
  - Should be accompanied with abstract of 150-200 words. The tables and graphs should be properly numbered with headlines, and referred with their numbers in the text. The use of words such as below table, above table or following graph etc., should be avoided.
  - Authors may use citations as per need but one citation/ quote should have about 40 words only. Lengthy citations and copy paste must be avoided.
  - The authors must provide the list of references at the end of article.
  - A brief profile of the author, e-mail ID, postal address and contact number along with his passport size photograph and declaration confirming the originality of the article as mentioned above should be enclosed along with the article.
  - The article can be sent by e-mail at **iiipi.journal@icai.in**
  - In case the article is found suitable for publication, the same shall be communicated to the author/s at the earliest.

NOTE: IIIPI has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal. The copyright for the article(s) published in the Journal will vest with IIIPI.

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