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

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



भारत 2023 INDIA

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ONE EARTH • ONE FAMILY • ONE FUTURE

PREPARING FOR IBC 2.0



ABOUT IIPI

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 (IIPI), 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.

IIPI 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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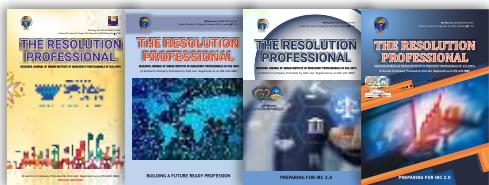
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Message from Chairman, Editorial Board



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

Dear Member,

At the outset, my warmest greetings to everyone as we step into the festive season. Let's rejoice in these moments of happiness and convey the message of optimism, harmony, and affection.

Today, India ranks as the fifth largest global economy emerged as a preferred destination for foreign investments. Among various reasons for this ascent, the effective enactment of the Insolvency and Bankruptcy Code (IBC) stands out prominently. It is indeed noteworthy that the IBC regime, a significant financial reform, has developed with time, increased investor's confidence and has thus promoted ease of doing business in the country. IBC has indeed proved to be a catalyst for economic growth and recovery, playing a pivotal role in strengthening the financial health of both the banking and corporate sector - a crucial element for any developing economy.

With seven years having been passed since the enactment of this code, the same has been amended several times, with a focus on improving the transparency and efficiency of the Corporate Insolvency Resolution Process (CIRP). Regular initiatives have been taken to strengthen the insolvency ecosystem and ensure resolution of stressed

corporates in a timely and effective manner. The effectiveness of the resolution process as envisaged in the code is evident in a research study conducted recently by IIM, Ahmedabad. As per this research, resolved firms have experienced a remarkable transformation in performance, as average sales have surged by 76% within three years of their resolution and total average assets increased by 50%, accompanied by a significant 130% rise in capital expenditure. Moreover, liquidity has also, registered 80% increase post resolution. These trends showcase the positive impact of resolution under IBC on the financial health and performance of these firms and in turn of the country's economy. The ratio of cases, under CIRP, resolved versus liquidated has improved from 0.21 in FY 2017-18 to 0.45 in FY 2022-23, indicating a positive trend in favour of resolutions rather than liquidations. On average, the resolution plans under the IBC have yielded 83.89% of fair value of the corporate debtors and an impressive 167% of the liquidation value.

IIIPI, being at the forefront of the insolvency profession since its inception, consistently leads in capacity building, research, policy recommendations, and the standardization of the profession. It has actively supported professionals through collaborations with industry and academia while also providing international exposure to them through partnerships and programs. As we continue to navigate the ever-evolving landscape, *The Resolution Professional*, (quarterly peer reviewed journal) remains a beacon of knowledge dissemination and scholarly discourse. Efforts of Indian Institute of Insolvency Professionals of ICAI (IIIPI) in providing a platform for the exchange of ideas and insights on the IBC through this journal are invaluable, for advancing the understanding of this crucial economic law. I hope that the journal would serve its purpose.

Wish you a happy reading.

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

Message from Chairman, Governing Board-IIPI



Dr. Ashok Haldia
Chairman, Governing Board- IIPI

Dear Member,

Coming November 25th, Indian Institute of Insolvency Professionals of ICAI (IIPI) will be celebrating 7th Foundation Day marking another year towards strengthening the IBC ecosystem further. During last couple of years, IIPI has introduced several firsts in India's insolvency regime such as Peer Review Mechanism, Mentorship Program, Co-Membership of INSOL International, Research Project Scheme, MoUs with premier institutions, Capacity Building programs, facilitating interaction across the stakeholders, etc., that have significantly enhanced the quality of insolvency profession.

Under the IBC regime, the banking sector in India has been witnessing resilience and vigour. According to the State Bank of India's economic research report – *Ecowrap*- published on August 22, 2023, asset quality of Public Sector Banks (PSBs) has improved significantly. As per the latest Financial Stability Report of Reserve Bank of India (RBI), the gross and net NPA ratio have fallen from a high of 11.5% and 6.1% in March 2018 to 3.9% and 1.0% in March 2023. Besides, the PSBs in India have improved on various parameters such as high capital adequacy of 15.53% CRAR (comparable to major economies of the world), healthy balance sheets supported

by a provision coverage of 90.68%). Thus, our banking system is well positioned to support the credit needs of the productive sectors of the growing economy, which is one of the primary objectives of the IBC, 2016.

Resolution of Real Estate Companies under IBC and/or RERA has emerged as a significant challenge of late. In this regard, IIPI is focussing on a three-tier approach to address concerns of various stakeholders, *firstly*, meetings with Real Estate Regulatory Authorities (RERA) across different states have been held, *secondly*, roundtable meetings have been held with IPs in Delhi and Mumbai, and *thirdly* a study group has been constituted on 'Improving Real Estate Resolutions under IBC and Coordination with RERA'. We shall be pursuing various suggestions received from these deliberations with the relevant stakeholders.

We are working on templates for managing avoidance transactions, in a better way, in active consultation with IBBI. Besides, we recently met senior officials of RBI, to appraise them of expectations of the professionals.

With an endeavour to facilitate discussions and sharing of ideas on various aspects of stressed assets market in the country, IIPI organized a Conference (Physical) on “Developing Market for Stressed Assets in India” on September 22, 2023, with Shri Ravi Mital, Chairperson-IBBI as Chief Guest. On this occasion, a publication “Contribution by Insolvency Professionals in Resolution under IBC” based on the report of a Study Group constituted by IIPI in this regard was also released. For wider dissemination, the key takeaways of the conference have been published in this edition.

IBBI through an amendment in IP Regulations on September 18, 2023, has further streamlined the process of enrolment and registration of IPs and IPEs. Furthermore, amendments in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations are aimed at addressing various issues causing frequent litigations during CIRP. The amended Regulations mandate the creditors to provide some additional documents along with CRIP

petition and due assistance and cooperation by the personnel of the CD to the IRP/RP. The amended Regulations have also extended the timeline to creditors to file their claims thereby resolving a highly contentious issue of claim rejection which were a major cause of litigation related delays. These reforms will certainly reduce burden on NCLTs and helpful for RPs in meeting timelines.

IBBI has recently issued a couple of 'Discussion Papers' proposing several amendments on range of issues related to streamlining CIRP and Liquidation process, Regulations on IPs/IPEs, and PG to CD Framework, among others. We hope these proposals, once implemented, shall further strengthen the insolvency ecosystem.

Capacity Building

Since its establishment in 2016, IIPI has been engaged in capacity building through various programs. We firmly believe and are committed to innovations in insolvency ecosystem by active engagement of various stakeholders.

IIPI has been fostering dialogues among various stakeholders for a better and cohesive ecosystem. Further several capacity building programs have been organized on non-conventional topics, like Understanding issues across taxation and other allied laws, Master class on Avoidance Transaction, industry specific knowhow, evolving jurisprudence, preparation/marketing of IM and resolution plan, etc.

IIPI's Research Projects Scheme is becoming increasingly popular among researchers across professional backgrounds. So far, we have approved five research projects, viz.:

- Reasons and Remedies for Under Utilization of PPIRP Framework

- Efficacy of Insolvency Law in India Vs. other countries
- Gap Identification and Conflict Resolution Between IBC and RERA: A Remedial Approach for Home Buyer
- Feasibility of Project-wise Resolution in Real Estate Insolvencies: Conceptualizing A Sectoral Approach
- Financial Solvency and Bankruptcy Analysis of Farmer Producer Companies in East India

Moreover, so far, IIPI has constituted 16 Study Groups out of which the Reports of 12 Study Groups have been published and are also available on IIPI website.

The regular publication of IIPI's peer reviewed research journal- *The Resolution Professional*, is being acclaimed by various stakeholder of the IBC ecosystem as it provides a platform for sharing and disseminating high-quality research insights and intensive practical knowledge across stakeholders. In this short span, the journal has created a niche at the national and international level and is increasingly becoming popular among various stakeholders of the insolvency ecosystem. I am thankful to Shri Anand Kumar, Chairman-RERA, Delhi and Chandigarh, for sharing his wisdom on the topic. Besides, you will also get to read various research articles and a case study aimed at providing the first hand practical experience to the readers.

With these words, I thank all those who have been contributing articles and case studies for the journal and request you all to contribute actively for upcoming editions of *The Resolution Professional*.

I hope you will enjoy reading this edition of the journal.

Wish you all the best.

Dr. Ashok Haldia
Chairman, Governing Board-IIPI

From Editor's Desk

Dear Member,

The stressed assets market is an emerging sector in India. The roles for IPs are available across entire value chain of stressed assets and their unique capability and skill set make them more apt to address challenges faced by various stakeholders. This would make the insolvency profession more diversified and versatile.

With an objective to enhance the understanding of stressed assets market across stakeholders and promote sharing of ideas and perspectives among them, IIIPI organized a Conference (Physical) on “Developing Market for Stressed Assets in India” on September 22, 2023, wherein Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) graced the occasion as Chief Guest. For wider knowledge dissemination, we have covered 'Key Takeaways from Addresses of Dignitaries in the Conference' in the present edition of The Resolution Professional.

The resolution of corporate debtors pertaining to the Real Estate Sector has been posing challenges before the ecosystem due to its peculiar nature, for instance, involvement of large number of home buyers and the need for better coordination between IBC, 2016 and RERA provisions. In the present edition we are carrying an exclusive interview of Shri Anand Kumar, Chairman, Real Estate Regulatory Authority (RERA) – Delhi and Chandigarh, in which he has shared his views on various aspects of real estate resolution and also made suggestions to address the contentious issues faced by the stakeholders.

Moreover, this edition has four research articles and Case Study on Liquidation of M/s SR Foils & Tissue Limited (SRFTL). In the opening article ‘Application for Avoidance Transactions Under IBC’, the author traces the development of jurisprudence and various provisions related to the avoidance transactions under the IBC. He also highlights various difficulties related to avoidance transactions which lead to low recovery and makes some suggestions for improvement. The second article

‘Determining Eligibility of Resolution Applicant in View of Section 29A of IBC, 2016’ makes an attempt to explain the various provisions of Section 29 A, its relevance and the jurisprudence developing around it. In the third article ‘To Change, or Not to Change: The Unresolved Question in UK's Insolvency Regulation’ the author discusses the outlook in United Kingdom (UK) in respect of recent consultations held by Regulators on insolvency regulation. The fourth article, 'Insolvency Professional – The Entrepreneur' the author explains the various traits of an entrepreneur, crucial for an IP like securing assets, communication skills, timeliness, negotiation, confidentiality, data management, and optimal use of resources etc., in his professional responsibilities for managing the affairs of the Company and facilitating successful resolution of a corporate debtor.

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

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

Wish you a happy reading.

Editor



IPs, after taking over control of CD, need to work within RERA's purview and invariably comply with RERA's provisions: Shri Anand Kumar, Chairman-RERA, Delhi and Chandigarh

IBC provisions may be tweaked to allow the opinion of concerned RERA as sector regulator, in a time bound manner, by the NCLT (Adjudicating Authority), while admitting the application for initiating insolvency. This would take care of conflicts between two regulatory frameworks and allow RERA to complete the remedial measures, if any, as the first recourse.



Shri Anand Kumar

Chairman, Real Estate Regulatory Authority (RERA)
Delhi and Chandigarh

Shri Anand Kumar has been a career civil servant. He took over the charge of Chairman-RERA, Delhi and Chandigarh on November 05, 2021. Besides, he is also an active member of Compassionate Community.

Shri Kumar joined Indian Administrative Service (IAS) in the year 1984. He holds M. Phil. from the University of Delhi and MBA with honours from the University of Queensland, Australia. During his career, he has held many important positions in Tourism, Infrastructure, Industry, Biotechnology, Finance, Revenue, Elections and Governance sectors under the Central and State Governments. His major overseas assignments include managing relief campus for Indians on Iraq – Amman border during Kuwait-Iraq war (1990) and Chief Technical Adviser for Nigerian General Elections 2007 by UNDP. He designed international campaign 'Find What You Seek' that received First Golden Gate Award in Berlin and domestic campaign 'Go Beyond' while working as Joint Secretary, Ministry of Tourism, Government of India.

*In an Exclusive Interview with IIIPI for the Resolution Professional, Shri Anand Kumar shared his views on various issues, lying at interface between IBC and RERA related to resolution of distressed Real Estate projects/companies. **Read on to know more....***

IIIPI: What would be your key thoughts on measures that may be taken to improve the quality of outcomes for resolving real-estate projects, under IBC?

Shri Kumar: Currently resolution–success ratio of housing projects under IBC, is low as compared to other sectors. Though 21% of cases so far admitted in IBC pertain to real-estate sector, the proportion of real-estate cases in resolved cases is only 13%. Although the laws related to homebuyers have been tweaked a number of times, there are still certain lacunae which should be addressed. For instance, while homebuyers are considered financial creditors, the law does not state whether they are secured or unsecured creditors. They are still uncertain about the priority in which they would be repaid their dues. The law needs further strengthening in order to safeguard the rights of the homebuyers.

Several innovative judicial pronouncements have been made, to protect the interests of house allottees, given the unique nature of the real-estate sector. Recently in June 2022, Hon'ble NCLAT in the case of *M/s Supertech*, affirmed the concept of and allowed 'project-specific resolution' as against the company as a whole. This was necessitated because the default in one project, the entire company, comprising many projects including healthy ones, should not be subjected to insolvency process. Thus, the Code may be amended to provide for a specialised framework to deal with real-estate projects. I understand, efforts are already being made in this direction.

In any real-estate project and as provided in RERA, funds originally invested cannot be taken out towards other uses/projects, except to the extent of surplus generated in the project. During CIRP as going concern, RPs should be mindful of this requirement for compliance, while looking for past such transactions which should not have been made.

Constant capacity building of insolvency professionals is the key, to ensure quality of their services and optimum

outcomes of the IBC processes in a timebound manner. For instance, it has been observed in a few cases that valuation of real-estate projects/assets has been accepted at quite lower levels, without proper rationale. Ranking of professionals may be introduced based on their experience and exposure. Sectoral experience, for instance, to real-estate sector, can be critical for the purpose. This would allow the stakeholders to draw confidence while engaging the professional services.

While insolvency professionals should be adequately empowered, they need to be warned and quick action to be taken against them if they are found to be lacking in discharging their responsibilities. Such action should be sufficient enough to be a credible deterrent. Any adverse comment made in the context of judgements by adjudicating authorities like NCLT and RERA, may also trigger such action.

Ranking of IPs may be introduced based on their experience and exposure. Sectoral experience, for instance, to real-estate sector, can be critical for the purpose.

It is worth examining whether insolvency professionals should be treated as public servants, given the nature of their duties and public interest involved. Such dispensation may require certain checks and balances in order to balance the rights and responsibilities.

IIPI: *What are the incentives and disincentives for different stakeholders, which may impact the outcome of any resolution effort of real-estate projects?*

Shri Kumar: Builders or developers of distressed real-estate projects, in hindsight, being interested in generating returns may have indulged in siphoning off funds for other projects, leading to shortage of funds for completing the first project. On the other hand, house allottees look for cheaper investments and at times are lured by weak projects or enter into cash-based transactions, adding to the complexities on ground.

Though the law has clarified the status of the house allottees in a real estate project as FCs, making them a part of the CoC, the house allottees are interested in getting possession of their houses, unlike other financial creditors who are looking for recovery of their dues. Hence, there is an inherent misalignment between the interests of such allottees and that of other FCs (like banks) who would

The house allottees are interested in getting possession of their houses, unlike other financial creditors who are looking for recovery of their dues with or without haircuts or go in for liquidation of the CD.

accept repayments, with or without haircuts, or go in for liquidation of the CD. This distinction is important and should prompt a policy response accordingly in a predictable and consistent manner. Upon initiation of IBC process and approval of Resolution Plan, smaller creditors including house allottees may get haircuts without much control in their hand. House allottees, particularly, suffer a lot.

The complexities arising due to incentives and disincentives as above, need to be kept in mind while taking or calibrating any policy action on this front. The other expectations of house-allottees, where more needs to be done, includes fair representation of house-allottees during decision-making process of CoC, and two-way communication with them on important matters.

IIPI: *Though RERA Act provides a sector specific regulatory framework including resolving delays, IBC on the other hand works as a comprehensive code for resolving insolvency in a sector-agonistic manner. How do you see the need and scope for mutual coordination among these two frameworks for quicker turnaround of stressed corporate debtors in Real-Estate sector?*

Shri Kumar: Given the overarching public interest, mutual recognition of IBC and RERA dispensations within respective laws identifying clear rights and responsibilities of stakeholders (viz. House-allottees, Lenders, and Corporate Debtor represented by IRP/RP) is the need of the hour for ensuring effective and efficient delivery. There should be deliberation and debate on this subject, among stakeholders for generating well-rounded feedback.

Currently there appears to be weak coordination/harmony between RERA and IBC frameworks. At the time of admission of insolvency application initiated by any lender or OC, there is no provision for hearing the pleas (by NCLT) of house allottees. Therefore, such process is often misused by existing management to avoid liabilities. If under IBC, the ownership/control of the housing-project changes hand to new owner, the registration (of project)

under RERA does not automatically move along with this change and has to be reapplied.

House allottees should be encouraged to use alternative remedies, for instance, RERA first rather IBC first. IBC should be only a last resort.

IPs, after taking over control of CD, need to work within RERA's purview and invariably comply with RERA's provisions.

There are several real-estate projects that are set up as cooperative societies. It needs to be clarified whether such societies, if distressed, can be subjected to the Corporate Insolvency Resolution Process (CIRP) under IBC.

IBC provisions may be tweaked to allow the concerned RERA's opinion as sector regulator, in a time bound manner, by the NCLT (Adjudicating Authority), while admitting the application for initiating insolvency. This would take care of conflicts between two regulatory

frameworks and allow RERA to complete the remedial measures, if any, as the first recourse.

There are several real-estate projects that are set up as cooperative societies. It needs to be clarified whether such societies, if distressed, can be subjected to the Corporate Insolvency Resolution Process (CIRP) under IBC.

The diversion of funds by the CD/promoters is probably the most common phenomenon across real-estate CIRPs. House allottees remain oblivious and end up losing control of their rights in such projects. RERA as a sectoral regulator may be aware of any such trend in advance. In some of such cases, RERA may possibly be allowed to initiate insolvency, on behalf of house allottees.

Rights of house allottees should be strengthened to be able to steer the CIRP process including, by allowing them to take control of distressed CD themselves, as an association for developing and completing construction, etc.



Key Takeaways from Addresses of Dignitaries in the Conference (Physical) on “Developing Market for Stressed Assets in India” organized by Indian Institute of Insolvency Professionals of ICAI (IIPI) in New Delhi on 22nd September 2023.

Indian Institute of Insolvency Professionals of ICAI (IIPI), with an aim to facilitate discussions and sharing of ideas on various aspects of stressed assets market in the country, organized a Conference (Physical) on “Developing Market for Stressed Assets in India” on September 22, 2023.

Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) graced the occasion as Chief Guest while Shri Akhil Gupta, Vice Chairman-Bharti Enterprises Ltd., CA. G. C. Mishra, Chairman, Committee on IBC-ICAI were present as Guests of Honour and shared their ideas on various aspects of the stressed assets market with insolvency professionals, lawyers, bankers, government officials, and corporate representatives. On this occasion, a publication titled “Contribution by Insolvency Professionals in Resolution under IBC” based on the report of a Study Group constituted by IIPI in this regard was also released.



The Inaugural Session was followed up with Special Addresses by CA. Subodh Kumar Agrawal, Past President-ICAI and Prof. Balagopal Gopalakrishnan, IIM, Ahmedabad. Besides, there was a “Panel Discussion” in which panellists exchanged ideas on stressed assets related issues. For wider dissemination of this intellectual discourse, we are publishing the key takeaways of the Conference in this edition. The key takeaways from addresses of dignitaries in this program, are presented below:



Welcome and Opening Address

Dr. Ashok Haldia

Chairman, Governing Board-IIPI

1. The ultimate objective of the IBC, 2016 is to reduce stress in the industries. Therefore, the role of insolvency ecosystem is not only limited to reduce delays and ensure more realization but also to avoid the stress in the industries so that the cases coming for CIRP are minimized.
2. The focus of IBC 2.0 is not only CIRP but also beyond it. Because of the IBC, settlement cases in the banks have increased. Therefore, the role of IBC and the IP in resolution of the stressed assets has become quite important.
3. We have implemented the mechanism of 'Peer Review'. Initially, for becoming a peer-reviewer, it was required for IPs to have handled 5 assignments but now it has been lowered to 3 assignments. After the learning curve is over, we will display the results

of Peer Review on IIIPI website that will be helpful in finding the right IPs thereby instilling a healthy competition.

4. We have worked out a framework on how to reduce the time and streamline the process of dealing with Avoidance Transactions. We are planning further deliberations with IBBI officials on this issue. Besides, we are working to streamline various processes at interface of NCLTs and IPs.
5. The concerns about the real estate are highly contentious. We are in touch with RERAs of various states and also held several interactions with IPs. IIIPI has set up a group of stakeholders on finding out ways to streamline the law relating to real estate and the role of RERA.
6. We have recently conducted a survey on the role/intervention of enforcement agencies during the CIRP. Presently, the cost involved in dealing with enforcement agencies is not the part of CIRP cost and that needs to be addressed.
7. We feel that the good works and achievements of the IPs needs to be highlighted. In this context, IIIPI has

brought out a publication titled “Contribution by Insolvency Professionals in Resolution under IBC” which highlights, the role of IPs right from the incipient stage to its final resolution.

8. The awareness level of CoC members may have improved over the period of time but a lot is required to be done for awareness of the CoC members in order to expedite decision making and reduce delays. We are also pursuing with the officials of the Reserve Bank of India (RBI) regarding Code of Conduct for CoC.
9. Another issue which IPs are facing is the suspension of the AFAs at the stage of issuance of SCN. Issuing 'show cause notices' in all and sundry cases such as 'non-furnishing of half yearly returns' needs to be worked out. If any case is decided under disciplinary proceedings, such action may be warranted but possibly not before such decision.
10. IPs need to see their role much beyond CIRP for developing markets for stressed assets. There is no dearth of opportunities and the ecosystem has been continuously improving.



Guest of Honour
CA. G. C. Misra
Chairman
Committee on IBC-ICAI

1. This Conference certainly provides a food for thought on how the stressed assets market has been developing in India and what will be the future of it.
2. In the current scenario the stressed assets have become one of the biggest opportunities for the investors. This is a win-win situation for both the bankers and investors.

3. Several changes have taken place and now the entire ecosystem is witnessing a situation wherein stressed assets are being catered to by various intermediaries as well like ARCs and AIFs etc.
4. India is one of the fastest growing economies in the world. The IBC is certainly playing a vital role in the economy. In the coming years, the stressed assets market will grow leaps and bounds.
5. I am sure the Conference will certainly enrich all the professionals not only to discuss the new ideas but also to join hands in the coming days. I am sure, IIIPI shall organize more such conferences in the future.



Guest of Honour
Shri Akhil Gupta
Vice-Chairman
Bharti Enterprises Ltd.

1. The topic of today's conference is extremely important but before I talk about the stressed assets,

let me congratulate the insolvency professionals for the vital role they are playing for the success of the IBC. I also complement IIIPI for playing steller role in development of the insolvency ecosystem.

2. Introduction of the IBC has been one of the most important economic and commercial

transformations during the last decade. This is because it has changed the attitudes of several promoters in the country who believed in the syndrome of 'too big to fail' or 'the bigger defaulter you are, the safer you are'.

3. I take this opportunity to congratulate IBBI for the wonderful work they are doing. A lot has been done to streamline the process, most of which were done under the Chairmanship of Dr. M. S. Sahoo and Sh. Ravi Mital.
4. Besides bringing financial discipline in promoters, a very important role of the IBC is to make sure that there is market for distressed assets so that massive capital deployed in these companies, jobs, and

interest of all other stakeholders can be protected to the extent possible.

5. It is our duty to see that IBC fulfils the purpose of making sure that these distressed companies can be revived as going concern once again. Liquidation of a company should definitely be the last option. Therefore, there is need of a robust market for stressed assets where a potential buyer comfortably and quickly takes charge of the company on a clean slate after paying up agreed compensation to the creditors.
6. It is the right time to extend Prepack Insolvency to all cases that are covered under the IBC. If implemented properly, it would be a very significant step for developing the market for stressed assets in India.



Chief Guest
Shri Ravi Mital
 Chairperson
 Insolvency and Bankruptcy
 Board of India (IBBI)

1. Any businessman or venture capitalist will invest in a corporate debtor only if s/he is fairly certain about some profit. Recently, I shared some outcomes of the study conducted by IIM Ahmedabad (IIMA) on resolved companies, with a venture capitalist. He was surprised to know that those companies were doing well post-resolution.
2. IPs should revisit the corporate debtors, which they had resolved under the IBC, after 4 to 5 years and prepare "success stories" for publication. This will be helpful in creating a positive environment for investment in stressed assets. In its study, IIMA has calculated average performance of resolved companies but there will be companies with exceptionally good performance as well.
3. To liquidate a financially stressed company under the previous regime through high court, was a herculean task which used to take 10-15 years or more. If IBC can do something in two years, which was earlier not possible in over 5 years, it is certainly much better outcome.
4. There are cases which got admitted in 20 to 25 days but there are also cases which took 800 to 900 days.

Further, there are cases which were resolved in less than 180 days and we also have cases which are lying since 500 days. This is happening under the same set of rules and regulations. We should join hands to deal with this issue.

5. We have recently amended the Regulations to allow creditors more time to file their claims. Now the RP can compile all the claims received after due date and put them before the NCLT for consideration in one go. This will certainly reduce litigations and minimise delays.
6. Presently, the recovery rate under the IBC is about 32% which is better than all the previous regimes but there is still scope for improvement. I request you all to deliberate on 'discussion papers' issued by IBBI and provide us your suggestions for further reforms.
7. The IPs should compile the instances of delays and litigations and find out ways to minimize them. If delays are reduced, venture capitalists will be encouraged to invest in stressed assets.
8. IPs should make every possible effort to improve the insolvency ecosystem in the country which will ultimately increase the confidence of prospective bidders in the stressed assets and ensure better resolution of the corporate debtors.
9. At the end, I would like to say that IBC is the best mechanism ever. We should work for reducing delays, which would create a thriving market for stressed assets.



Special Address
CA. Subodh Kumar Agrawal
 Insolvency Professional
 Past President, ICAI

1. There are several challenges in the ecosystem. The infrastructure at the Hon'ble NCLT benches including the number of judicial and technical members require attention for reducing the delays.
2. Disposal of applications under Section 19(2), related to necessary directions to the promoters to cooperate with the IRP/RP remain pending for long, which defeats the real purpose of the provision.
3. For liquidation of a company, the Liquidator is required to prepare the list of stakeholder in 75 days and constitute the committee in 60 days, which is a tedious task as until the full list is prepared the process of constituting committee can not be initiated. Other practical issues include requirement to estimate liquidation cost in 90 days, banks at times not coming forward to pay the liquidation cost even after legal pronouncements on the matter.
4. Several successful resolution applicants (investors) need to wait for a long time before taking over the corporae debtor due to persisting litigation.
5. The businesses coming into liquidation are generally unproductive. If these are sold as going concern, it means the assets of the company or their trade marks have some value. Thus going concern sale is always better than that in piece-meal.
6. IPs have made huge contribution in the success of the IBC. I request you all go through the publication 'Contribution by Insolvency Professionals in Resolution under IBC' and provide your suggestions, if any.



Special Address
Prof. Balagopal Gopalakrishnan
 IIM, Ahmedabad (IIMA)

1. IIMA has recently conducted a study on “Effectiveness of Resolution Process: Firm outcomes in the post-IBC period”. The study looks at the performance of the firms before and after the resolution process to understand if the firms have been able to find their feet in the market.
2. Our findings showed that the average recovery rate, after adjustments, was approximately 28% at the combined level. We also conducted surveys with the management of the resolved firms with an objective to validate our empirical findings and triangulate them with the responses and perceptions of the management.
3. In this analysis, we observe that in three years since resolution, the average sales of the firms that underwent the resolution process have increased by about 76%. This significant recovery reflects an upsurge in their activity levels.
4. Findings indicate a significant increase in the profitability of these firms post resolution. Looking at the net margin, there is a noteworthy reversal, with resolved firms narrowing the gap between performing firms.
5. We observed 50% increase in the average employee expenses of the resolved firms. Looking at total employee strength, we also noted a significant reversal, with these firms essentially reaching their pre-CIRP period employee strength numbers.
6. Capex has surged by around 130%, signifying that these firms are actively capitalizing on new opportunities and investing in assets that promise future growth.
7. Over the three years since resolution, total market capitalization has increased from ₹2,00,000 crores to roughly ₹6,00,000 crores. This reflects the market's confidence in new management and the potential for future growth opportunities.

Panel Discussion

Coordinator: CA. Rahul Madan, MD-IIIPCI

Panellists:

- Shri R.R Jha, Director- Projects, Power Finance Corporation Ltd.
- Shri Raj Kumar Bansal, MD & CEO- Edelweiss ARC
- Shri Shiva Kumar Sharma, Senior Advisor- Indian Banking Association
- Adv. Girish Rawat, Partner, M/s Luthra & Luthra Law Offices
- CA. Shailendra Ajmera, Insolvency Professional
- Shri Abhilash Lal, Insolvency Professional

1. The 'resolution plan backed/participated by lender' is an emerging area which is yielding better realization for stressed assets. This idea has been explored in the power sector when the asset's perceived value is lower than its inherent worth and has resulted in successful recoveries.
2. The ARC industry has played a significant role, buying about ₹ 3,00,000 crores in debt and investing around ₹ 40,000 crores that has helped the banks and NBFCs in combating the menace of gross NPAs. However, the ARC industry, which essentially performs warehousing functions, is still facing challenges due to resource constraints.
3. NARCL promoted by the Central Government and banks themselves, should help resolve the NPAs in the corporate sector due to delays and/or lower value recoveries in the IBC.
4. We have seen a significant reduction in stress levels within the banking system. From a banker's standpoint, it is essential to manage the risks associated with these stressed assets and explore the resolution opportunities they offer. This is a critical shift in perspective.
5. Now, NPAs are being viewed as opportunity. Looking at the composition of stressed assets today, we can see a shift toward more diversified exposure, including retail, MSME, and mid-corporate segments. The dynamics of stressed assets portfolio require a comprehensive approach to resolution rather than mere recovery.



6. We are at a stage where we need to create a market for stressed assets. IIIPI's initiative is a welcome step in this direction, and ongoing discussions will hopefully lead to a framework for creating such a market. Each stressed asset should be examined carefully for which appropriate tool should be chosen such as SARFAESI, DRT, additional funding, restructuring under RBI guidelines, or IBC.
7. We need to prepare a blueprint that establishes interconnectivity between various aspects of overseas investment into stressed assets in India. Unless we create this specialized framework, facilitating stressed assets on case to case basis may lead to fragmented and ineffective efforts.
8. Real estate has its own complexities, and the IBC may not perform as effectively in this sector. Therefore, it becomes crucial for lenders to assess the specific nature of the stressed asset and the sector it belongs to when choosing the most appropriate resolution method.
9. IBC's legal framework places us in a creditor-in-possession model. However, the administrator in the UK has more authority, and legal challenges to their power are limited. In India, any stakeholder, including resolution applicants or promoters, can run to the court on various grounds.
10. In international scenarios, options like mediation, pre-pack, out-of-court settlement, voluntary arrangement, and restructuring are available to minimize court involvement. We should also tailor-made these options for Indian scenario and implement them to reduce burden on NCLTs.
11. In building a successful market for stressed assets, it's crucial to ensure the presence of sufficient number of buyers. Inviting multiple bidders is key to achieving competitive prices as it ensures healthy competition among them.
12. The IBC law is prescriptive, providing formats for various processes, from advertisements to investment memorandum which should be viewed as the minimum requirement. To make IBC more effective, we need to build upon this foundation. Empathizing with potential buyers and identifying the comparative advantages that the corporate debtor can offer are essential.
13. The Form G, though required by law, doesn't go far in attracting potential investors. Thinking 'out of the box' is necessary. Activating contacts, creative approach in soliciting potential buyers, proactively reaching out investors, transparency and honesty are vital for resolution of stressed assets.



Vote of Thanks
Rahul Madan
 Managing Director, IIIPI

1. Over the last seven years, the IBC has emerged as a game changing legislation in the context of resolving stressed assets in a time bound manner, which creates, preserves and maximises value.
2. If we look at a broader horizon, the IBC lies at the center of a jigsaw puzzle namely stressed resolution market in India. Besides, there are many other pieces such as DRT Framework, SARFAESI Framework, Corporate Debt Restructuring, Settlements outside IBC under RBI and respective banks's guidelines. We have to look at these a holistic manner and that
3. was the thought when we set out to organize this conference.
3. We have come out with a report highlighting the role of IPs across entire value chain of stressed assets' resolution which is available on IIIPI's website.
4. Today's conference is aimed at removing asymmetry of information to the stakeholders and also improving reach to the investor class because without the removal of information asymmetry the market can not develop further.
5. Hearty thanks to the dignitaries for sharing the words of wisdom that will go a long way in carving out the direction for the future.

Application for Avoidance Transactions Under IBC



*Section 46 of the IBC mandates the RP or Liquidator to look back for avoidance transaction of the Corporate Debtor for a period of one year from the Insolvency Commencement Date (ICD). This look back period is two years in case of related party transactions. However, no separate time period is provided for this activity and the RP/ Liquidator is required to conduct this activity during the CIRP. In the present article, the author traces the development of jurisprudence and various provisions related to the avoidance transactions under the IBC. He also highlights various difficulties related to avoidance transactions which leads to low recovery and makes suggestions for improvement including assigning this responsibility to any other professional and settlement among others. **Read on to know more...***



P. T. Joy

The author is an Insolvency Professional (IP) Member of IIPCI. He can be reached at joyptca@yahoo.co.in

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) is brought in as a measure to revive companies which are defaulting in repayment of debts and accordingly failing. In the process of revival, maximization of value of assets of the Corporate Debtor (CD) is another objective sought to be achieved by the IBC. During the course of running the Corporate Insolvency Resolution Process (CIRP) of the CD, on forming an opinion by himself, the RP is duty bound to initiate a transaction audit/forensic audit of the books of accounts and records of the CD and draw conclusions on his own from such reports and accordingly file application for avoidance transactions to the Adjudicating Authority (AA). As stated under the CIRP Regulations of IBBI, forming an opinion on the matter of avoidable transactions in the case of the CD is individually done by the Resolution Professional (RP), but practically the RP may be getting or receiving various inputs from many stake holders during the CIRP of the CD. Subsequent to conductance of the transaction audit, filing of application to the AA for appropriate relief or reversal of avoidance transactions as part of the CIRP under the IBC and CIRP Regulations has been a daunting task for the RP.

This is always an additional task which the RP has to shoulder along with the primary task of running the CIRP, which involves engaging external professionals like forensic auditor, lawyers etc. and making his own studies and analysis of the transaction audit report/forensic audit report and the findings therein. The time limits within which the above procedure has to be done are referred under sub regulations of CIRP Regulation 35A which states the time limits at three levels:

- (i) An opinion has to be formed by the RP within 75 days from the Insolvency Commencement Date (ICD) as to whether there are transactions as referred under sections 43, 45, 50 or 66 have taken place in the case of the CD during the past period prior to the ICD.
- (ii) Further to forming an opinion as stated above, the RP may initiate a transaction audit/forensic audit of the books of accounts and records of the CD and subsequently determine within 115 days from the ICD about the presence of the transactions, as stated above, under sections 43, 45, 50 or 66.
- (iii) Once a determination is made about the occurrence of the said transactions based on the forensic audit report and RP's own evaluation and study of the matter, he shall apply to the AA for appropriate relief within 130 days¹ from the ICD. The RP is also duty bound to share a copy of the Application made to the AA with the Prospective Resolution Applicant (PRA) so that it can be considered and factored in by the PRA while submitting the Resolution Plan.

Forming an opinion as referred in the first sub-regulation of Regulation 35A is a subjective statement and there are no quantitative parameters prescribed for this. Determination by the RP that such transactions have actually taken place so that a reversal of such transactions is required can be based on Transaction Audit / Forensic Audit Report. Mere receipt of the said audit report cannot be the sole reason for the RP to determine such transactions, but it can be based on his independent evaluation of the said reports.

After determination of the transactions, a period of 15 days is available to the RP to submit application to the AA for reversal of such transactions. The author is of the opinion

Forming an opinion as referred in the first sub-regulation of Regulation 35A is a subjective statement and there are no quantitative parameters prescribed for this.

that for determining the existence of the said transactions, on receipt of the forensic audit report, the RP can also do further deliberations with the forensic auditor and legal consultations with lawyers as necessary. All these actions and documentations on the same can buttress the application for avoidance of transactions while it is being adjudicated by the AA. For doing all these actions no separate time period is available to the RP and it is within the period of CIRP. The time lines as referred under sub regulations of Regulation 35A are not available to the RP outside the CIRP period. As per the said regulations the time available to the RP for filing of avoidance application subsequent to determination of the occurrence of the transactions is only 15 days (130 days-115 days), which appears to be too short a period for doing such a voluminous task.

The filing of the application for avoidance transactions and its adjudication shall not affect the proceedings of the CIRP. This is very clearly envisaged under Section 26 of the IBC, meaning thereby the CIRP and application for avoidance transactions can be two separate processes and the latter can survive even after conclusion of the former. However, this cannot be generalised for all situations, but has to be viewed on a case to case basis. The decisions rendered in three recent judgements upheld the point that CIRP and application for avoidance transactions are separate and distinct processes. The first one is time bound whereas the time lines of the first one are not applicable to the second one. The three judgements stated above are:

1. *Tata Steel BSL Ltd Vs Venus Recruiters Ltd*² (2023)
2. *Aditya Kumar Tibrewal RP Vs Om Prakash Pandey*³ (2022)
3. *Jagdish Kumar Parulkar Vs Vinod Agarwal*⁴ (2023)

¹ Substituted by Notification No. IBBI/2022-23/GN/REG093, dated 16th September 2022 (w.e.f. 16-09-2022). Before substitution it was 135 days.

² [ibclaw.in 09 HC](#)

³ [ibclaw.in 278 NCLAT](#)

⁴ [ibclaw.in 132 NCLAT](#)

2. Locus of the Applicant after Plan Approval

The judgement rendered by the Delhi High Court in *Tata Steel BSL Ltd Vs Venus Recruiters Ltd (2023)* is capable of settling down all the possible questions as to the running of the CIRP and proceedings of the application for avoidance transactions. The judgement confirmed that CIRP is objective in nature and time bound whereas the filing of application for avoidance transactions requires discovery of suspected transactions falling under sections 43, 45, 50 and 66 of IBC. Therefore, the adjudication of the application for avoidance transactions is to be distinct and separate from the resolution of the CD.

Presently, the IBC states that the resolution plans should provide for treatment of avoidance applications if these are pending at the time of submission of the Resolution Plan by the Resolution Applicant.

Presently the IBC states that the resolution plans should provide for treatment of avoidance applications if these are pending at the time of submission of the Resolution Plan by the Resolution Applicant. This is referred under CIRP Regulations 38(2)(d). However, the application for avoidance transactions will not be infructuous due to the reason that it is filed subsequent to submission of the resolution plans and resolution plans could not account for such avoidance applications. There may be cogent reasons which delayed the filing of the avoidance application. If the avoidance applications filed, subsequent to the filing resolution plans with the AA, are interpreted as infructuous it will only unjustifiably enable the beneficiaries of suspected transactions to walk away scot-free. Most of the time money borrowed from creditors will be public money and private parties should not be permitted to unduly appropriate such money. In those case where the application for avoidance transactions is submitted by the RP but these are not accounted for by the Resolution Applicant in his approved Plan, the benefit from adjudication of such avoidance applications cannot be imparted to the Successful Resolution Applicant (SRA). Such benefit can be given to the creditors of the CD, as in many of the cases the creditors, who are often financial institutions, undergo a hair cut in settlement of their dues for the resolution of the CD. The judgement of the Delhi HC also stated that the RP will not be *functus officio*, for the purpose of adjudication of the avoidance

applications, in such of the cases where it is not accounted for in the resolution plans and is continued subsequent to the approval of the Resolution Plan. The remuneration of the RP for pursuing such applications can be decided by the AA.

3. Timelines for Application: Mandatory or Directory?

The conclusion in the judgement in *Aditya Kumar Tibrewal RP Vs Om Prakash Pandey (2022)*, reiterates that the time limits under CIRP regulation 35A are directive in nature. These time limits cannot be generalised for all the cases but will depend upon the facts and situations of each case. Avoidance applications cannot be simply rejected due to the reason that they are filed beyond the time limits of Regulation 35A. If there are existence of genuine reasons and situations by which the filing of the avoidance application is delayed and filed beyond the time limits, such applications can be entertained and admitted.

4. Look Back Period

Always a question confronted at the adjudication level of the avoidance applications is the look back period that can be covered by a Transaction Audit Report and accordingly in the Applications for avoidance transactions. This time limit is referred under Section 46 of the IBC which states that for avoiding an undervalued transaction the RP or Liquidator has to demonstrate that such transaction is made with a party within one year backwards from the ICD and if it is with a related party the above period of one year will be replaced by two years.

NCLAT-Chennai Bench, in the case of *Thomas George v. K. Easwara Pillai (2021)* upheld that restricting the number of years of look period for fraudulent transactions will be unjustifiable and unreasonably benefit the perpetrators under the shelter of restricted period.

Therefore, it is indirectly evident from Section 46 that the time limits referred therein are applicable only for transactions covered by sections 43 & 45 and these time limits are not applicable for transactions covered by sections 49 and 66, for such transactions the look back period can be any number of years. An avoidance application where in fraudulent transactions are involved cannot be rejected by the AA on the ground that the period covered is beyond the time limits mentioned under Section 46. Restricting the number of years of look period for

fraudulent transactions will be unjustifiable and will unreasonably enable the perpetrators of such transactions to find shelter under such restriction of the period. This point is upheld by the Hon'ble NCLAT, Chennai in the matter of *Thomas George v. K. Easwara Pillai and Others*⁵.

In the case of *Jagdish Kumar Parulkar Vs Vinod Agarwal (2023)*, NCLAT-Principal Bench reiterated that the time limits under CIRP regulation 35A are only directive in nature and no avoidance application can be dismissed on the sole ground of delay beyond the time specifications of the said regulation. If there are justifiable reasons and situations for filing the application beyond the time limits, such applications are maintainable. After evaluation and analysis of the Transaction Audit Report (TAR) the RP has to draw conclusions of his own and document it so that it can be demonstrated to the AA accordingly.

The above narrated three case laws converge to a settled position of law under IBC regarding the application for avoidance transactions as under:

- (a) The timelines mentioned under Regulation 35A are directory and not mandatory. Applications shall not be rejected merely on the ground of delay but should be viewed based on facts of each case,
- (b) Filing of application for avoidance transactions and adjudication of the same can survive CIRP which is also referred under Section 26 of the IBC.
- (c) The time limits of look back period mentioned under Section 46 are applicable only to transactions covered under sections 43 and 45. The look back period is not restricted in the case of transactions covered under sections 49 and 66 of the IBC.

As per various reports published, as of January 2023 claims of more than two lakh crores of rupees (₹ 2.3 trillion) filed as avoidance applications are pending at various NCLTs under the IBC in India but the pace of recovery of the same is very low and yet to pick up. Data shows that avoidance applications are filed in 809 cases, wherein a total value of transactions of ₹ 2.3 trillion is involved. Decisions have been rendered by the NCLTs only in 98 cases involving around ₹18100 crores while a dimly low amount of ₹64 crores recovery could be made.

⁵ *Company Appeal (At)(Ch) (Insolvency) No. 293 of 2021.*

If tasks related to avoidance transactions can be separated from the RP, and entrusted to another professional, the RP can effectively concentrate on bringing a resolution for the CD and accordingly revive it.

Efficiency and legal proficiency of the RPs who are pursuing the avoidance applications and speed at which these are disposed of by the adjudicating authorities are the primary reasons for faster or slower recovery from such applications. Prolonged litigations and appeals at the appellate forum or judicial authorities are the further reasons for the delayed and lower recovery. At times in the IBC eco system when the average CIRP period itself is more than 600 days, in place of the prescribed period of maximum 330 days, evaluation of the books of accounts and records of the CD, conducting a Transaction Audit, determination of the dubious transactions by the ex-management, framing and filing of avoidance applications are all invariably additional tasks and responsibilities cast upon the RP under the IBC. If these tasks can be separated from the RP, and entrusted to another professional, the RP can effectively concentrate on bringing a resolution for the CD and accordingly revive it. This can also facilitate early filing of applications and faster recovery of proceeds of avoidance applications. But all these require amendment of the concerned provisions of the IBC and the related regulations.

Something that is making the task of doing TAR and filing of application for avoidance transactions more difficult is that most of the companies coming under CIRP are not maintaining up-to-date books of accounts or books of accounts maintained by them are incomplete and cannot be relied upon. Even after filing an application under Section 19(2) of the IBC, for directions from the AA to the ex-management for cooperation to the RP, there are many cases where even after orders from AA, the ex-



management continues non-cooperation or doing delay tactics. The IP has to overcome all these factual realities and challenges to take the adjudication of the avoidance application to a logical conclusion. All these could be the reasons for the very low recovery rate of proceeds of the avoidance applications.

5. Possibility of a Settlement Mechanism

As explained in the previous paragraphs, getting the TAR done, filing applications of avoidance transactions and conductance of cases relating to these applications are always an additional daunting task on the IPs in the CIRP. So far it has proved to be costly, time consuming and leads to less recovery than what is applied for. Once avoidance application is admitted by the AA and under its consideration an option for settlement of the same by remitting a lump sum amount or other mechanisms, as accepted by the AA, can be thought of by the government and regulators. Fraudulent transactions for which criminal actions can be invoked can be kept out of the settlement mechanism. To this extent it needs introduction of new sections or chapter in the IBC. Enormous amount of time, cost and efforts could be saved if such an option is

available under the Code. A settlement mechanism under the IBC will considerably off load the cases of avoidance applications piled at various NCLTs and perennial litigation delays can be reduced. In some of the cases the RP is arrayed as a party in the further litigations on avoidance applications which happens subsequent to the approval of the resolution plans, or the CD is ordered for liquidation. A settlement mechanism can bring a solution to the litigation difficulties faced by the IPs post the resolution of the CD.

A settlement mechanism under the IBC will considerably off load the cases of avoidance applications piled at various NCLTs and perennial litigation delays can be reduced.

Early recovery and realisation of amounts entangled in avoidance petitions and its adjudication can bring more funds into the public financial institutions and banks that are often secured financial creditors in the CIRP and funds advanced to the CD by these institutions are public money. Thus, amounts recovered early through any settlement or amnesty mechanisms will protect the public interest of our nation also.



Determining Eligibility of Resolution Applicant in View of Section 29A of IBC, 2016



*Resolution of the Corporate Debtor through CIRP is one of the principal objectives of the IBC, 2016. Under this legislation the responsibility of inviting investors or prospective resolution applicants (PRAs) has been entrusted upon Resolution Professional. Initially, any person/company could come as a PRA as there was no criteria prescribed in the Code. However, just after few resolutions, it was realized that this was a big lacuna in the Code, as defaulting promoters, and management, who either directly or through related entities, were able to buy back their companies at discounted prices. This led to the introduction of Section 29 A through an amendment. This article is an attempt to explain the various provisions of Section 29 A, its relevance and the jurisprudence developing around it. **Read on to know more...***



Rashmi Agarwalla

The author is an Insolvency Professional (IP) Member of IIPPI. She can be reached at rashmivika10@yahoo.co.in

1. Introduction

Enactment of the Insolvency and Bankruptcy Code, 2016 (IBC/the Code), introduced a comprehensive legal framework to deal with increasing defaults in repayments of debts, in a manner where interests of all the stakeholders are balanced. Though the IBC stipulates provisions both for resolution & liquidation for an ailing corporate entity, the first initiative should always be to revive the insolvent enterprise by undertaking Corporate Insolvency Resolution Process (CIRP), a process envisaged under Chapter 2 of the Part II of the Code. In this process, an Insolvency Professional is appointed as Interim Resolution Professional (IRP)/ Resolution Professional (RP). The RP is required to invite Prospective Resolution Applicants (PRA) to come forward and submit resolution plans. Originally, under the Code, any person could come as PRA and the Code did not prescribe any basis or criteria for selection of the resolution applicant. However, just after few resolutions, it was realized that this was a big lacuna in the Code, as defaulting promoters and management, who either directly or through related entities, were able to buy back their companies at

discounted prices. Moreover, it was also felt that allowing people who are willful defaulters in other companies or has account NPAs for more than a year or have not complied with laws in the past or have been involved in undesirable activities, to acquire a failing company, involving haircut by creditors, would be highly inappropriate.

Sensing the above alimonies, the Insolvency and Bankruptcy Code (Amendment) Ordinance was promulgated on November 23, 2017, which was later replaced by the Insolvency and Bankruptcy Code (Amendment) Act, 2017 dated January 19, 2018. There are all together 10 clauses in the said Amendment Act, the most important being Clause 5, which introduced a new Section 29A to the Code, which enumerates person who are ineligible to submit Resolution Plan for revival of an insolvent entity under the Code.

Just after few resolutions, it was realized that this was a big lacuna in the Code, as defaulting promoters and management, who either directly or through related entities, were able to buy back their companies at discounted prices.

2. Layers of Ineligibility under Section 29A

On meticulous study of Section 29A, it is observed that the reach of Section 29A extends to four layers which are:

- a) Ineligibility of person being a *resolution applicant*, itself
- b) Ineligibility of “*connected person*” to the resolution applicant
- c) Ineligibility of “*related party*” of connected persons; and
- d) Ineligibility of a person “*acting jointly or in concert with*” a person suffering from any of the above ineligibility.

It would be pertinent to apprehend the above terms before going to the 10 restrictive clauses from (a) to (j) of Section 29A.

(a) **Resolution Applicant:** Originally, clause 25 of Section 5 of the Code defined a resolution applicant as a person who submits a Resolution Plan to an Insolvency Professional. However, after series of amendments, a resolution applicant is now a person who individually or

jointly with any other person, submits a Resolution Plan in response to the invite by Resolution Professional in compliance of eligibility as stipulated by RP in consultation with Committee of the Creditors (CoC) as per Sec 25 (2) (h) of the Code.

(b) **Connected Person:** The word “connected persons” appear in clause (j) of Section 29A. Connected persons” have been defined so as to include three categories –

- (i) Any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) Any person who shall be the promoter or in management or control of the business of the Corporate Debtor during the implementation of The Resolution Plan; or
- (iii) The holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii) above.

However, clause (iii) above is not applicable to a resolution applicant where such applicant is a financial entity and is not a related party of the Corporate Debtor. Also, the scope of “holding company, subsidiary company, and associate company”, does not include the financial entities like scheduled banks, Asset Reconstruction Company, Alternate Investment Fund, Foreign Banks, etc. regulated by bodies like SEBI, RBI, etc., that have become related party of the Corporate Debtor solely on account of conversion or substitution of debt prior to the Insolvency Commencement Date, and are hence eligible to submit the Resolution Plan.

(c) **Related Parties:** Section 5 (24) of the Code provides for the definition of the related party of the Corporate Debtor. The list of 'related party' to the Corporate Debtor includes directors, partners or key managerial persons and their relatives also. The definition is from the perspective of Corporate Debtor only. Further, the definition under Section 2 (76) of the Companies Act, 2013 becomes relevant in determining related parties in case resolution applicant or any person connected to it is a corporate entity.

(d) **Person Acting Jointly or in Concert:** *The expression 'acting jointly or in concert' is nowhere defined in the Code.* Therefore, the definition of person acting in concert

(PAC) will have to be borrowed from the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (Takeover Code) that defines PAC as persons who have the common objective or purpose of acquisition of shares or voting rights in, or exercising control over a company pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in or exercise of control of the company. It also provides an inclusive list of persons, who would be deemed to be a PAC, unless the contrary is established.

In general parlance, acting jointly signifies two or more persons acting together as a group. In the case of *Arcelor Mittal India (P.) Ltd. v. Satish Kumar Gupta*¹, the Supreme Court clarified that the expression “acting jointly” in the opening sentence of Section 29A should not be confined to “joint venture agreements” but has got broader connotation.

3. Clause wise analysis of Section 29A

There are altogether 10 clauses (a) to (j) in Section 29A. It is important to note that as per the Section 25(2)(h) the Resolution Professional is primarily responsible to ensure that the resolution applicant meets the criteria both as determined by Resolution Professional (RP) in consultation with the Committee of Creditors (CoC) and those specified in Section 29A of the Code. The Section 29A states that a person shall not be eligible to submit a Resolution Plan, if such person, its promoter or director, their relative or connected person or any other person acting jointly or in concert with such person falls under any of the clauses discussed below:

There are altogether 10 clauses (a) to (j) in Section 29A. As per Section 25(2)(h), the RP is primarily responsible to ensure that the Resolution Applicant meets the criteria both as determined by RP in consultation with the CoC and those specified under the Code.

(a) is an undischarged insolvent

The term 'undischarged insolvent' means a person or a company that is still going through insolvency

proceedings either under the current IBC regime or under earlier insolvency laws.

Verification: In case resolution applicant is a corporate, the status whether the applicant is un-discharged insolvent or not can be verified by checking companies details at MCA website because as soon as Insolvency Professional is appointed, he has to file INC 28, after which its status changes to under CIRP. Information can be checked also on IBBI site. For resolution applicants who are individuals there is no central database as of now and hence RP has to largely rely on Google search and search on NCLT/DRT database, besides taking a declaration from the applicant itself.

(b) is a willful defaulter

As per the Master Circular issued by RBI in 2015 (under the Banking Regulation Act, 1949), A 'Willful Defaulter' is any “unit” which defaults in meeting payment/ repayment to its lender and meets any of the criteria below:

- i. when it does not meet his obligations even when he can do so,
- ii. when it does not utilize the funds for a specific purpose they have been availed for,
- iii. when it siphons the funds neither for the purpose, they were availed for nor have it in another form of assets,
- iv. when it had disposed of the property or assets which were given for securing the loan without the knowledge of the lender.

Verification: For verifying whether the resolution applicant is willful defaulter, RP can rely upon the list of willful defaulters published by RBI time to time. Various banks also publish their list of willful defaulters, which can be consolidated, and relevant searches can be made. Further, the website of CIBIL may also be verified for finding out list of willful defaulters.

(c) Has an NPA Account

Where a resolution applicant itself (or its promoter or director, or its connected person, relative or person acting jointly or in concert), has an account or is a promoter or director of a company that has an account that is classified as Non Performing Asset (NPA), in accordance with the guidelines of the Reserve Bank of India (RBI) issued under the Banking Regulation Act, 1949 or any other

¹ *Arcelor Mittal India (P.) Ltd. v. Satish Kumar Gupta (2019), Civil Appeal No. 8766-67 OF 2019, Supreme Court of India.*

financial sector regulator, it is ineligible to give a Resolution Plan under this clause of Sector 29A, provided on CIRP commencement date one year has elapsed from its classification as NPA.

However, an exception has been carved out for resolution applicants that are financial entities not related to Corporate Debtor and MSME's.

Initially there was ambiguity as regards to at which date the NPA status is to be checked. Therefore, it was clarified through amendment in the clause, that to be ineligible the account should be NPA at the time of submission of the resolution plan. Often the resolution applicant may have more than one accounts that are NPA, in such cases for the period of one year should be seen from the date of first NPA account. Moreover, there are circumstances where an account is declared NPA from retrospective effect, in such cases date of declaration is to be considered for computation of one year and not the date from which the NPA status is effective.

There are certain exemptions provided in this clause. Often a person is unable to pay interest or principal of a loan due to certain temporary liquidity crunch and its account/s is classified as NPA. The Code provides a carve out by stating that, such a person can submit Resolution Plan, if such person makes payment of all overdue amounts with interest thereon and charges relating to NPA accounts before submission of Resolution Plan.

Besides, if a resolution applicant has an NPA account, pursuant to a prior Resolution Plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such Resolution Plan.

If a resolution applicant has an NPA account, pursuant to a prior Resolution Plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such Resolution Plan.

(d) Convicted Criminal

This clause makes a resolution applicant ineligible to present a Resolution Plan, where a resolution applicant has been convicted for any offence punishable with imprisonment either for two years or more under any Act

specified under the Twelfth Schedule of the Code or for seven years or more under any law for the time being in force. The Twelfth Schedule of the Code enlists 25 acts and empowers the Central Government to specify further laws as it may deem fit. The list covers most of the financial acts like the Companies Act, LLP Act, PMLA, Black Money Act, Income Tax Act, GST Laws, Custom Laws, pollution control norms, IBC, etc. It may be noted that the ineligibility will arise irrespective of the fact whether the conviction has occurred under Indian Laws or Foreign Laws. However, there would be no disqualification if at least two years has elapsed from his release from imprisonment. Moreover, this clause will not apply to connected person being the holding company, subsidiary company, associate company or related party of the promoter or directors of RA.

(e) Disqualified Director

This clause makes resolution applicant ineligible to present a Resolution Plan if its director or promoter is disqualified from acting as Director as per the provisions of the Companies Act, 2013. Section 164 of the Companies Act deals with the disqualification of a director. However, these disqualifications will not apply to connected person being related party of the promoter or directors of resolution applicant.

(f) Prohibition by Securities and Exchange Board of India (SEBI)

A person becomes ineligible to submit Resolutions Plan if it or its connected person is prohibited by the SEBI of India from trading in securities or accessing the securities markets. For determining the criteria owing to which an entity/ person is debarred from trading in securities or assessing the security market, one needs to comprehend the 'Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003', specially Regulation 3 & 4 of the abovesaid Regulations which lists dealings that are prohibited in security market and dealings that are considered manipulative, fraudulent, or an unfair trade practice.

(g) This clause makes resolution applicant ineligible to present a Resolution Plan if it itself or its director or promoter or any of their connected persons is or has been a promoter or in the management or control of a Corporate

Debtor in which a preferential transaction (u/s 43 of IBC), undervalued transaction (u/s 45 of IBC), extortionate credit transaction (u/s 50 of IBC) or fraudulent transaction (u/s 49 of IBC) has taken place and an order has been passed by the Adjudicating Authority (i.e. NCLT) under the Code. A doubt may arise as to what if the order passed by Adjudicating Authority, as mentioned above, is in appeal. As per the basic reading of the Code, still the ineligibility would apply. However, the ineligibility would not apply in case the above-mentioned transactions have taken place prior to the acquisition of the Corporate Debtor by the resolution applicant and such resolution applicant has not otherwise contributed to these kinds of transactions.

(h) Where a resolution applicant itself or any of its promoter or director, or its connected person, relative or person acting jointly or in concert, has failed to honor the guarantee, fully or partly, executed by it in favor of any Corporate Debtor undergoing proceedings under IBC, it is considered as ineligible to present a Resolution Plan under this clause. It is amply clear from the bare reading of the clause, that if the guarantee is invoked, otherwise than in respect to a Corporate Debtor facing proceedings under IBC, there would be no ineligibility under this clause. Also, as held in *RBL Bank Ltd. v. MBL Infrastructures Ltd.*², there is no intent of the Government to debar all the promoters, only for the reason for issuing a guarantee which is enforceable, unless such guarantee has been invoked and not paid for, or the guarantor suffers from any other antecedent listed in Section 29(a) to (g). MSME's are exempted from ineligibility under this clause, rational for which is discussed separately.

(i) Where a resolution applicant itself or any of its promoter, director, connected person, relative or person acting jointly or in concert, meets any of the ineligibility criteria as stated above, as per any law existing outside India, it would render him ineligible to submit Resolution Plan.

(j) Finally, this clause is applicable to connected persons and makes connected persons of any of the person who meets any of the ineligibility criteria discussed in (a) to (i), also ineligible to present a Resolution Plan. The term

connected person has been defined and discussed in one of the preceding paragraphs. Resolution Professional should insist a comprehensive list of connected persons from every prospective resolution applicant with PAN and DIN.

Resolution Professional should insist on a comprehensive list of connected persons from every prospective resolution applicant with PAN and DIN.

4. Section 29A and MSMEs

The Section 29A as originally conceived was regarded as too rigid, as only few could meet the criteria laid down and it was argued that it was detrimental for resolution process, especially for Micro, Small or Medium Enterprises (MSMEs), where it is very difficult to find interested resolution applicant other than the promoters themselves. So, the Central Government introduced certain exemptions from the applicability of the provisions of Section 29A as regards MSMEs, by introducing Section 240A which specifically dispensed the applicability of Section 29A clause (c) to (h) in case the Corporate Debtor is a MSMEs.

5. Conclusion

Verifying each and every Resolution Plan with the eye on Section 29A in a time bound manner, can be a very challenging job for Resolution Professional, especially when the number of directors, promoters, key managerial persons, holding companies, Associated Company, related parties and connected persons are in large number requiring verification of each and every person, on individual level. Any lacuna on part of the Resolution Professional may impact finalization of Resolution Plan in a timely manner and can also invite disciplinary proceeding. Therefore, a very high level of professional competence and commitment is desired of him/her. However, with the help of proper documentation, intelligently drawn comprehensive declarations from RA and efficient use of technology, professionals can effectively do their job. Further, with the evolution of Code, a number of professionals/ organizations have developed data base, technology and skills to carry out verification of Section 29A and RP may seek such services.

² *NCLT Kolkata, CA. IB. No. 270/KB/2017, CA. IB. No. 238/KB/2018, CA. IB. No. 288/KB/2018 in CA. IB. No. 170/KB/2017 dated April 18, 2018.*

To Change, or Not to Change: The Unresolved Question in UK's Insolvency Regulation



*Arguments about the number of regulators in the UK system have been running for years, and at a time when there were eight different bodies licensing about 1,600 IPs, you can see why; that didn't make a lot of sense. However, by the time the government came to the view that it might do something about that, the market had largely resolved the issue by itself. Recently, following its 2021 consultation, the Insolvency Service, which is equivalent to IBBI in India, has proposed several changes in the UK's insolvency regulation related to Recognised Professional Bodies (equivalent to IPAs in India), insolvency professionals, professional standards, and firms etc. In the present article, the author discusses the UK Government's response to its consultation on insolvency regulation. **Read on to know more...***

Introduction

The UK Government, in the guise of the Insolvency Service (the oversight regulator, with a role similar to IBBI in India), has finally published its decision on what the future for the regulation of Insolvency Practitioners (IPs) will look like, following its 2021 consultation. Or has it?

For those who value and see the merits of the current regime based on delegated authority to well-established Recognised Professional Bodies (RPBs, equivalent to IPAs under IBC, 2016) – and I count myself among them – the sweetness of the 'fudge' over the issue of a single regulator for the profession has been soured by the threat of yet more uncertainty over what a future government might yet do, should it decide that further measures are necessary.

In one sense then, not actually a definitive decision at all, which is unhelpful on a such central point. The main announcement not to impose a new single regulator on IPs (for now, at least) was rather drowned out by a drum roll for other (expected and for the most part non-controversial) arrangements to introduce improvements to the current regime; it does though give the present RPBs a



David A Kerr

The author is a Licensed Insolvency Practitioner in the United Kingdom (UK) and Former CEO of Insolvency Practitioners Association, London. He can be reached at iiipi.journal@icai.in

temporary reprieve, and for IPs simply means not much change for the time being.

This 'decision' on a single regulator wasn't the main thrust of the Government's statement on the subject, perhaps for obvious reasons. We will come to consider whether the proposed single regulator concept in the consultation was a justified and proportionate response to any perceived shortcomings in the current system. But the focus in the recent announcement was on a broadly supported new step to authorise and regulate firms ... or more accurately, the partnerships and corporate entities in which most IPs work. This has been largely welcomed and is aimed at bringing some currently unregulated companies into the regulatory sphere, for example those running high volumes of Individual Voluntary Arrangements (IVAs) in the personal insolvency market.

We will come to consider whether the proposed single regulator concept in the consultation was a justified and proportionate response to any perceived shortcomings in the current system.

This and the other proposals might take another two years or more to bring in, because they may require primary legislation, for which time is limited. Will we see a Bill to cover this before the next general election (expected in late 2024), or in the first year of a new government in 2025? Perhaps not, so we are left with the possibility that a process that has its origins in legislation¹ in 2015 might now take a full ten years+ to be brought into fruition – a period in which a profession focussed on rescuing financially-distressed business and providing debt relief for thousands of individuals has had a regulatory shadow hanging over it. Notwithstanding the likely delay in implementation, the measures that have been announced merit some examination.

1. Single regulator

This may not have been the focal point of the government's public-relations push, but it will have been the first aspect that the profession will have looked for in the published statement. Arguments about the number of regulators in the UK system have been running for years, and at a time when there were eight different bodies licensing about 1,600 IPs, you can see why; that didn't make a lot of sense.

However, by the time the government came to the view that it might do something about that, the market had largely resolved the issue by itself. The two law societies in England and Scotland had withdrawn from their RPB roles, and they were followed by the ACCA, each taking the view that their relatively small numbers of IPs made the role unviable for them. The rationalisation resulting from those steps left two main IP regulators in England and Wales (covering 90+% of active IPs), with two others mainly covering Scotland and Northern Ireland. There have also been some profession-led measures over the years that produced one set of entry exams, and a standardised suite of mandatory practice statements, and in collaboration with the Insolvency Service there were developments in the complaints arena with a new centralised portal for making complaints and a published common sanctions guidance to facilitate consistency of outcomes.

Another factor to weigh up when considering whether the proposal was a proportionate response is the extent to which (if at all) the present system was broken. Despite some weaknesses, there is a case to be made to suggest it was not. For a start, the Service has been the oversight regulator (in effect, the regulator of the RPB front-line regulators) since 1986 (when licensing of IPs was first introduced into UK law) and has monitored the RPBs for competence/consistency and published annual reports on regulatory activity. More recently, it has published its monitoring reports. So, there has been increasing transparency, but more importantly there has been no suggestion in any of these reports that any of the RPBs have significantly under-performed. In 2015, the Service took the powers it had sought to enable it to become a more effective oversight regulator – it can issue public directions and reprimands, and thereby take regulatory action based on a lower threshold than would be required to terminate an RPB's authorisation. And yet, in the eight years following the 2015 provisions, only once (earlier this year) has it used those powers in a public way.

There has been increasing transparency, but more importantly there has been no suggestion in any of these reports that any of the RPBs have significantly under-performed.

Notwithstanding the absence of visible action by the oversight regulator, were there material shortcomings in

¹ *Small Business, Enterprise & Employment Act 2015.*

the performance of the RPBs? They were criticised sometimes for delay, for example in dealing with complaints from creditors and others – some taking more than a year to resolve – not always the fault of the regulator but nonetheless not good for complainants or IPs, and not a great advert for regulatory efficiency! However, it is surely a stretch to argue (as would be necessary for the Service to have met its own test in the consultation) that these delays constituted a 'significant concern currently affecting confidence in the regime', for if that was the case then surely it would have acted. There were also criticisms around consistency as between the RPBs, but there is a (published) common sanction guidance which should drive consistent outcomes. It is difficult to draw too many conclusions from the limited information in the public domain, but to the extent that inconsistency has been a real issue, then arguably that is matter for the oversight regulator.

Perhaps the Service's proposal to become the single regulator came too soon. Distractions attributable to the pandemic, with a perfectly natural focus on new temporary legislative measures, arguably took two years out of the period originally allowed for assessment of the effectiveness of the regulatory objectives and other changes introduced in 2015. So, maybe there is a case for extending the deadline, which in one sense is what the Service has now done.

It is reasonable to ask if there really was a case made for a single regulator, and whether the Insolvency Service (as it had proposed) could have been that regulator and do a better job than the RPBs.

It is reasonable to ask if there really was a case made for a single regulator, and whether the Insolvency Service (as it had proposed) could have been that regulator and do a better job than the RPBs. It seems the Service was persuaded that it could not, and that bringing the role into a government department would create more problems that it might solve. Result? A continuation of the RPB regime, with other measures designed to improve how it works, including no doubt close oversight of any perceived conflicts of interests. The sting in the tail is the government's stated intention to take legislative powers (when parliamentary time allows) to introduce a single regulator, if necessary, further down the line. Other than the new statement that any single regulator will not be the Insolvency Service.

(a) Lessons from aspects of the IBC/IPA system for the UK?

Could the Insolvency Service have learnt something from the IBC regime in India? The requirement in India for IPAs to have Byelaws conforming to a model imposed by the legislation, providing for majority law representation on governing boards and restricting the IPAs to functions related to insolvency (and specifically excluding functions which may be inconsistent with those of an IPA regulator) is arguably a good way to minimise any risk of conflicts arising in the way front-line regulators are run. It creates a degree of independence which some might say is absent from the UK system.

Nobody yet knows what a future UK single regulator might look like (and it may never happen), so let's look at the other announcements.

2. Regulating firms

The use of the term 'firm' here is perhaps a little misleading, as the real targets here are likely the corporates that dominate the IVA world. Most insolvency work that is focussed on dealing with failing 'companies' is undertaken by professional firms, which are self-regulating to a degree, and in some other ways are covered by light-tough regulation by, for example, the accountancy bodies of which their principals may be members. However, the market for services to over-indebted 'individuals' has seen a business model built around entrepreneurial corporates in which the IPs may not be principals and in which consequently the IPs may be unable to influence a focus on regulatory compliance to the same extent.

Bringing firms into the sphere of influence of insolvency regulators has been broadly welcomed, not least by the RPBs, which will have new powers to hold those corporates to account in ways previously not possible. Instead of indirect influence via IPs, the regulators will be able to sanction firms as well as the IPs working in them.

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This new aspect of the current regime will sit alongside the present regulation of individual IPs, rightly retaining personal responsibility for IPs, in whose names'

appointments are made, whilst also recognising the role of the firms in which they work. Those firm names are often prominent in marketing and PR, but to date have not been directly linked to any sanctions imposed on individual IPs – that will now change. There will also be a new searchable register of all IPs and firms providing insolvency services, with details of any sanctions.

It is not so unusual for firms in the accounting sector to be regulated. In audit and financial services, regulation of firms is the norm. This new measure sensibly blends regulation of IPs and insolvency firms in a way that should build confidence in the system.

Quite when the change will be made is another question. Once again, it will depend on parliamentary time, and we may therefore have to wait quite a while before this is enacted.

3. Compensation

One of the other changes promised is the power for regulators to direct an IP or firm to pay compensation or 'otherwise make good loss or damage' – that is, damage caused by IPs. So, potentially something that has been done by an IP, or that the IP has omitted to do, causing loss to say a creditor, could be the subject of a claim for compensation. This could become problematic, and some IP representatives have raised understandable concerns about how this might work, and in particular whether it might lead to a new 'industry' in claims. It could clog up the complaints system and delay completion of insolvency cases, for little benefit to the majority of creditors.

There is a proposed cap of £250 for any claim, which suggests it may be directed more at consumers in IVAs than other cases, but any monetary incentive to make a complaint is likely to increase the number of them. There will also be a need to distinguish those matters where a complainant/claimant has suffered loss directly as a consequence of an act or omission by an IP, and where that has affected one claimant as opposed to a class of creditors more generally. The latter scenario is probably best left to the courts using existing rights of action.

In what circumstances might an IP have caused loss to a particular creditor/claimant? Perhaps by failing an answer correspondence, leading to a creditor incurring legal costs? Could that even arise in cases where creditors have been advised that there is no prospect of a financial return?

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This looks out of place in a corporate insolvency world and is pitched at such a low level as to be of little benefit to most of those who might be minded to claim, but the burden on IPs could be considerable, particularly on smaller IP practices, and some have claimed that it could have 'consequences for the profession's ability to deliver for clients and creditors, and potentially undermine the UK's national and international reputation for having an effective insolvency framework and profession'.

4. Standards

Currently, the mandatory practice standards for IPs are set by the Joint Insolvency Committee (JIC), in which the RPBs, Insolvency Service, IP and creditor representatives participate. This involvement of specialists and stakeholders has served the profession well. It may not produce the quickest results, but its outputs are generally well thought through and practical. It is responsible for the Code of Ethics and Statements of Insolvency Practice which IPs must observe, across the profession irrespective of the RPB that regulates them. Common standards achieved with lay input to maintain and raise standards of practice.

The JIC replaced the lay-dominated Insolvency Practices Council which previously had the standards-setting role. All of which makes the latest proposal for the Insolvency Service to be the final arbiter on such matters look like a step backwards. It is not clear how giving the Service the final say on standards will lead to an improvement in this arena, particularly as it remains unclear to what extent external stakeholders representing creditors and others will still be at the table.

Service as oversight regulator is a better way forward, but it too must be willing to use its powers in a more effective and transparent way to enhance confidence in a regulatory regime that has gained world-wide respect over three decades.

Perhaps the aim is to remove the need for consensus and facilitate speedier decisions, but as with other aspects of the announcement, there remain many unanswered

questions. One of those is the extent to which lay/stakeholder input will continue, for example creditor input. That has been a valuable part of not only the standards-setting process, but also a key element of the regulatory decision-making committees which determine sanctions – with contributions on behalf of the Chartered Institute of Credit Management. A past chairman of CICM reinforced the need to retain that going forward, commenting that it is 'Crucial that creditors are heard and that relevant committees take their views into account in these processes. Setting standards for the profession is an important part of the mix, and the Service should ensure that future arrangements retain lay/stakeholder input'.

There are other proposed changes that will likely not have a great impact on creditors in the majority of insolvency cases and will not be in force for some time. They include increases in the cover on the bonds IPs are required to put

in place to protect creditors. Bond claims are relatively infrequent, and sensible though these measures are, it is important that the changes really do benefit creditors. Time will tell.

Nobody would deny that there are areas in which the present regulatory regime can be improved, but the Insolvency Service perhaps should be congratulated for eventually coming to the view that there is great merit in preserving the best of the present RPB regime, with improvements in some areas, rather than ripping it up to start again with a government agency taking a direct active role in regulating IPs. Arguably, the Service as oversight regulator is a better way forward, but it too must be willing to use its powers in a more effective and transparent way to enhance confidence in a regulatory regime that has gained world-wide respect over three decades.



Authority (AA) appoints a Resolution Professional (i.e. IRP/RP) and from the date of his appointment the management and the affairs of the Corporate Debtors (CD) vest with him and the power of the Board of Directors or the partners of the CD are suspended and exercised by him under the aegis of Committee of Creditors.

Thus, an Insolvency Professional (IP) as per IBC, steps into the shoes of the Entrepreneur/Managing Director of the company, and the task of managing all the affairs of the Company rest with the RP until its resolution or liquidation. Section 17 of the IBC describes in detail the Management of Affairs of the Corporate Debtor by the IRP/RP.

An IP brings expertise, experience, and objectivity to guide a distressed company through the insolvency process. He needs to understand the key intricacies of the business and plays the role of an entrepreneur in facilitating a successful resolution and maximizing the chances of the company's survival or achieving the best possible outcome for stakeholders if liquidation is unavoidable.

An IP during the CIRP thus needs to perform following functions which are the basic traits of an entrepreneur:

1. Securing Assets

Securing assets is the foundation for any business and the primary role of an entrepreneur is to enhance the value of its assets or otherwise take steps to reduce the deterioration in the value of the asset. Similarly, the primary responsibility of a Resolution Professional (RP) in the insolvency proceedings is to ensure proper preservation and protection of assets for the benefit of all the stakeholders. Section 20(1) of IBC, 2016 states that:

“The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.”

Some of the key actions that an RP shall take to secure assets of the CD during the CIRP are as below:

(a) **Taking physical control:** The RP physically secure assets of the CD by taking possession or control over them. This involve locking up premises, changing locks, taking possession of all company related documents including cheque books, company seals,

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letter heads, company websites, backup of data servers and taking all other measures to prevent unauthorized access.

- (b) **Ascertaining inventory:** The RP typically conducts a thorough verification of the company's assets to ascertain their existence, condition, and value. This helps in determining the overall financial position of the CD and assists the RP in resolution /value maximization.
- (c) **Documenting assets:** The RP ensures proper documentation of assets, including title deeds, lease agreements, contracts, and any other relevant legal documents. This helps in establishing ownership and protects the assets from potential disputes.
- (d) **Engaging professionals:** The RP may engage professionals such as security firms, valuers, and legal experts to assist in securing and safeguarding the assets. These professionals can help to assess the value of assets, protect them from theft or damage, and provide expert advice on legal matters.
- (e) **Restricting asset transfers:** The RP restricts transfer or disposal of assets to prevent any unauthorized transactions. This is done to ensure intactness of the assets and further ensure that they are available for distribution to the creditors under the insolvency process.
- (f) **Insurance of the assets:** The RP may evaluate the need for insurance coverage on valuable assets to protect against risks such as fire, theft, or natural disasters. This helps to mitigate potential losses and ensures value protection of the assets of the company during the insolvency proceedings.
- (g) **Monitoring and reporting:** The RP continuously monitors the condition and status of all the assets throughout the insolvency process. He is responsible for providing regular updates and reports to the relevant stakeholders, including the creditors and the insolvency tribunal.

By effectively securing and preserving assets during the insolvency process, the Insolvency Professional not only safeguards the interests of stakeholders but also ensures the possibility of revival of the business through existing/new set of entrepreneurs.

2. Communication Skills

The word “Communication” is derived from Latin word “*communicare*”, which means to share, or to make common. Communication is a two-way process which involves transfer of information or messages from one person or group to another. Communication is one of the most important skills for entrepreneurs to convey their vision, build relationships, inspire their team, attract customers, and negotiate with the vendors.

Likewise, an effective communication is crucial for effective management of insolvency proceedings by an RP, managing stakeholders' expectations, and fostering cooperation throughout the insolvency proceedings. While IBC itself is evolving in the country, communication at present is mostly meant in terms of the compliance and educating various stakeholders of the provisions of the Code and impact thereof, however with time it will become bidirectional.

Some of the key actions an RP needs to take for effective communication in the CIRP are as below:

- (a) **Identify stakeholders:** An IP should identify all relevant stakeholders, including creditors, debtors, employees, regulatory authorities, legal professionals, and others involved in the insolvency proceedings, to communicate with them effectively as and when required.
- (b) **Tailor communication to stakeholder needs:** Insolvency professionals needs to understand the specific information required by each stakeholder group. Some stakeholders may require regular detailed updates, while others may prefer summarized reports.
- (c) **Provide clear and concise information:** An IP should ensure that all communications are clear, concise, and easy to comprehend. He needs to avoid technical jargons and use simple language to explain complex issues.
- (d) **Timely and regular updates:** An IP should keep stakeholders informed about the progress of the insolvency proceedings through regular updates.

Timeliness is crucial in maintaining stakeholders' trust and confidence.

- (e) **Active listening and addressing concerns:** An IP should actively listen to stakeholders' concerns, questions and should also provide them opportunities to express their views. He should address their concerns promptly and transparently, demonstrating empathy and understanding. This helps in building trust and fosters a collaborative environment.
- (f) **Maintain confidentiality and data security:** Insolvency proceedings often involve sensitive financial and personal information. An IP needs to safeguard the confidentiality of the information and ensure compliance with relevant data protection laws.
- (g) **Documenting communication:** An IP needs to maintain thorough records of all communication with stakeholders. Proper documentation helps to establish a clear audit trail and serves as evidence to prove sharing of information and decision. It also aids in addressing any disputes or conflicts that may arise during the insolvency process.

In the realm of insolvency proceedings, the art of communication becomes a powerful tool, enabling them to navigate the complexities of insolvency proceedings, build strong relationships, and drive positive outcomes for all stakeholders.

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3. Timeliness

Timeliness is crucial for an entrepreneur for the overall success and the growth of his businesses. It is essential for an entrepreneur to seize opportunities, make informed decisions, execute plans efficiently, adapt to changes, meet commitments, manage finances effectively, and provide excellent customer service.

Likewise, timeliness is of utmost importance for an Insolvency Professional in handling insolvency cases and fulfilling his responsibilities. Section 12 of IBC states that “The corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement

date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.”

As, an IP is appointed to administer and manage the affairs of a financially distressed entity, his timely action is crucial in the following areas:

- (a) **Compliance with legal and regulatory requirements:** Insolvency professionals must adhere to strict timelines set by applicable insolvency laws and regulations. He shall ensure timely filing of required documents, submission of reports, and compliance with procedural requirements to meet statutory deadlines.
- (b) **Assess the viability of the business:** IPs are responsible for conducting thorough investigations into the financial affairs of the insolvent entity. Timeliness is crucial to gather necessary information, review financial records, assess the viability of the business, and identify potential fraudulent or preferential transactions. This enables him to prepare accurate reports and make recommendations to stakeholders.
- (c) **Formulation and implementation of resolution plans:** In cases where revival or resolution of the CD is feasible, IP need to facilitate submission of resolution plans within the specified timeframes. These plans should outline strategies to maximize value, address the interests of creditors, and ensure the continuity of operations. Timely implementation of approved resolution plans is essential to achieve the desired outcomes.
- (d) **Reporting and disclosure requirements:** IPs need to provide regular reports to stakeholders, creditors, and regulatory authorities, highlighting the progress of the insolvency proceedings, financial statements, and any material changes or developments. Timely and accurate reporting helps maintain transparency, builds trust, and allows stakeholders to make informed decisions.

Thus for an IP, timeliness becomes the driving force besides their ability to navigate the complexities of insolvency proceedings, seize opportunities, and deliver impactful results within the mandated timelines.

4. Negotiation and Mediation Skills

Negotiation and mediation skills are important traits of an entrepreneur, particularly while dealing with stakeholders, business partners, suppliers, clients, and employees. It enables him to build strong relationships, resolve conflicts, secure favorable deals and navigate complex business situations.

Likewise, an Insolvency Professional is also required to effectively negotiate from time to time during the CIRP to find the solution of various issues. These skills help them to find optimal solutions, maximize value for all parties involved, and contribute to the effective resolution of insolvency cases.

An IP is expected to negotiate / mediate on continuous basis with the following stakeholders:

- (a) **Employee negotiations:** In a distressed situation during the CIRP, an Insolvency Professional poses a big challenge in managing human capital. Insolvency professionals may be required to negotiate with the employees of the CD for a change in their roles, their salary structure and for completion of project deadlines.

Negotiation and mediation skills enable the IPs to build strong relationships, resolve conflicts, secure favorable deals, and navigate complex business situations.

- (b) **Creditor negotiations:** The IP interacts closely with the CoC, which primarily comprises financial creditors. The IP presents resolution plans, negotiates terms, and facilitates discussions between the CoC and resolution applicants like repayment terms, timelines, and the distribution of proceeds.
- (c) **Collaborative negotiations with buyers or investors:** In cases where the sale of assets or the revival of the insolvent entity is pursued, insolvency professionals may engage in negotiations with potential buyers or investors. Negotiation skills are crucial in structuring deals, determining the terms and conditions and maximizing value for all parties involved.
- (d) **Strategic negotiations with regulatory authorities:** Insolvency professionals may need to negotiate with regulatory authorities or governmental bodies to address legal or regulatory requirements during the

insolvency proceedings. Negotiation skills help in presenting the case, discussing compliance issues, and seeking favorable outcomes while ensuring adherence to legal and regulatory frameworks.

In the course of insolvency proceedings, conflicts and disputes among stakeholders may arise. Insolvency professionals with mediation skills shall maintain neutrality and facilitate discussions and assist in resolving disputes. Mediation allows stakeholders to explore mutually acceptable solutions and avoid costly and time-consuming litigation.

In the context of insolvency, optimal use of resources is crucial for insolvency professionals to effectively manage and maximize the outcomes of insolvency proceedings.

5. Optimal use of Resources

Entrepreneurs are known for their ability to find creative solutions with limited resources. The optimal use of resources in a business is crucial for maximizing efficiency, reducing waste, and achieving sustainable growth. In the context of insolvency, optimal use of resources is crucial for insolvency professionals to effectively manage and maximize the outcomes of insolvency proceedings. Some of the key areas where insolvency professionals can focus on making the best use of resources during the CIRP are as below:

- (a) **Financial resources:** Insolvency professionals are expected to manage financial resources efficiently and ensure effective fund allocation during the insolvency process. This involves preparing realistic budgets, monitoring cash flow, and minimizing unnecessary expenses. Insolvency professionals should prioritize the use of available funds to cover essential costs, such as employee wages, legal fees, and operational expenses critical to the insolvency proceedings.
- (b) **Human resources:** Insolvency professionals are expected to effectively manage human resources involved in the insolvency process. This includes deploying skilled professionals, such as accountants, lawyers, and investigators, to carry out necessary tasks. Insolvency professionals should ensure the team is appropriately sized and skilled to handle the complexities of the case. Efficient utilization of human resources helps streamline the insolvency process and minimize costs.



- (c) **Information and data management:** Insolvency professionals are expected to deal with large volumes of information and data related to the insolvent entity's financial affairs. Effective utilization of information and data management systems can facilitate proper MIS, timely communication with stakeholders and compliance under applicable laws.
- (d) **Asset realization and distribution:** Insolvency professionals are expected to optimize the realization and distribution of assets to maximize recovery for creditors. This includes conducting thorough valuations, identifying potential buyers or investors, negotiating deals, and ensuring timely transfer of assets. By efficiently managing the sale or liquidation process, insolvency professionals can maximise the value realisation from the assets.

Efficient resource utilization stands as a cornerstone of the Insolvency Professional's entrepreneurial journey, enabling him to navigate complex insolvency proceedings, generate value, and pave the way for a bright future for distressed entities.

Conclusion

While it is possible for insolvency professional to function as an entrepreneur, his job doesn't stand comparable to that of an Entrepreneur/Managing Director of a flourishing company for it is akin to the captain of a sinking ship with a responsibility to rescue.

Though these entrepreneurial traits are required for an Insolvency Professional, it is important to note that his role also involves adhering to legal and ethical standards, maintaining impartiality, and acting in the best interests of all stakeholders. Balancing an entrepreneurial mindset with professional responsibilities is crucial for an Insolvency Professional to shoulder the great responsibilities bequeathed on him under IBC.

Liquidation of S R Foils & Tissue Limited (SRFTL)

After the Resolution Plan for SRFTL was not approved by the CoC, the NCLT vide an order on March 04, 2020, approved liquidation of the Company, and appointed its Liquidator. After taking over, the IP planned to resolve issues one by one with an aim to maximise value of the Corporate Debtor (CD) and ensure maximum possible recovery for the member of Stakeholders Consultation Committee (SCC).

The primary asset of the CD was its plant at Sotanala, Rajasthan, the lease of which was cancelled by Rajasthan State Industrial Development & Investment Corporation Ltd (RIICO) for non-payment of the dues. However, the Liquidator approached the NCLT which stayed the cancellation order. Then came the disputes of the trademarks registered on the name of the CD which were transferred on the name of M/s GMG Engineers & Contractors Pvt. Ltd. without the knowledge of the CD or Liquidator. These trademarks were also successfully restored.

Despite the best efforts, the Liquidator received a single offer amounting ₹13 Crores. Hereafter, the Liquidator followed various processes of bidding and value maximization, simultaneously. So far, ~₹28 Crores have been realised from the assignment u/r 37A, through Sale of Assets and Avoidance Applications.

*The present Case Study, sponsored by IIIPI, has been developed by the Liquidator of SRFTL. In this Case Study, he has provided a firsthand step by step guide to liquidate a company having little legally clean asset. **Read on to know more...***



Anil Kohli

The author is an Insolvency Professional (IP) member of IIIPI. He can be reached at aniljullundur@gmail.com

1. Introduction

The Corporate Insolvency Resolution Process (CIRP) of S R Foils & Tissue Limited (SRFTL) i.e., the Corporate Debtor (CD) or Company, commenced on August 07, 2017, for which Mr. Anil Kohli was appointed as Interim Resolution Professional (IRP) who was subsequently confirmed as Resolution Professional (RP). After the Resolution Plan of SRFTL was not approved by the CoC, Hon'ble National Company Law Tribunal (NCLT), New Delhi, the Adjudicating Authority (AA) vide an order on March 04, 2020, approved liquidation of the Company and appointed Mr. Anil Kohli as its Liquidator.

The Liquidator in this case handled crucial and sensitive issues viz. cancellation of lease of main asset of the CD by RIICO, issues with respect to Avoidance Transactions applications and prolonged litigations which have been described in this case study.

2. Business Profile of the Corporate Debtor

M/s S R Foils and Tissue Limited was incorporated on July 21, 1997, as M/s. R.S. Hygiene Private Limited registered with Registrar of Companies – the National Capital

CASE STUDY
S R Foils & Tissue Limited (SRFTL)

Liquidation of
S R Foils & Tissue Limited (SRFTL)

Case Study by
Anil Kohli

Sponsored by
Indian Institute of Insolvency Professionals of ICAI (IIIPI)

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Territory (NCT) of Delhi and the State of Haryana. It was converted into a limited Company and a fresh certificate of incorporation was issued on September 26, 2007. The name of the Company was changed to S R Foils and Tissue Ltd and a fresh certificate of incorporation was issued on October 18, 2007.

SRFTL started its operation with Aluminium foil production in FY 1997 and entered in tissue paper production in FY 1999. Initially the Company was in the business of buying aluminium sheet rolls & paper rolls from market, cut them into the desired size and make foils & tissues, packaging and selling them under its own brand names. Aluminium foils were sold under the brand name “Home Foil” while tissues were sold under the brand name of “Mistique”. Later the Company ventured into manufacturing of plastic food wrap under brand name “Clean Wrap”. Thereafter, it expanded its product portfolio by installing downstream product manufacturing lines.

3. Reasons behind Financial Crisis of the CD

In FY 2007, the Company set up paper mill as backward integration for tissue paper and in FY 2010, an Aluminium mill was set up as backward integration for Aluminium foils & products. The Company achieved a turnover peak of ₹603 Crores in FY 2012-13. During the same period i.e., FY 2012-13, the working capital limits of the Company were enhanced to ₹381 Cr keeping in view the challenges being faced by the Company.

The major setback for the Company came in the form of an unhealthy competition from domestic players who in a bid to gain the market share started offering higher discounts to customers, higher margins, attractive incentive schemes etc.

The industry was already facing competition from cheap Chinese imports and then the major setback for the Company came in form of an unhealthy competition from domestic players who in a bid to gain the market share started offering higher discounts to customers, higher margins, attractive incentive schemes and larger credit period scheme for distributors & dealers, fluctuations in raw material prices. The Company also tried to counter that by following the same strategy. Its sales also increased in FY 2012-13 and peaked at ₹603 Cr but came at huge cost of discounts offered to dealers.

Subsequently, the Company got tangled in a working capital debt trap. As per the financial information filed with MCA, the revenues of the Company fell sharply in 2013-14 and the Company cloaked in heavy loss same year. These financial setbacks sharply eroded its net worth and the Company's account became NPA with its lenders during this period.

The lenders, after having tried several measures to recover the amount finally resorted to the remedy available under the Insolvency and Bankruptcy Code, 2016 (IBC).

4. CIRP of SRFTL

The CIRP of SRFTL was initiated on August 07, 2017. The following claims were admitted during CIRP:

Table - 1: Claims admitted against the CD during CIRP

| S. No. | Type of Creditors | Claim Amount Admitted (₹) |
|--------------|-----------------------|---------------------------|
| 1. | Financial Creditors | 704,46,79,523 |
| 2. | Statutory Dues | 230,83,11,891 |
| 3. | Operational Creditors | 2,84,34,240 |
| 4. | Employees | 32,68,098 |
| Total | | 938,46,93,752 |

The Company was closed completely in FY 2016-17 and was no operational during CIRP.

The advertisements inviting Expression of Interest (EOI) for the CD were published four times but of no avail. The RP further approached and scouted for prospective investors to submit their EOI. However, despite the best efforts only one compliant Resolution Plan was received which was subsequently placed before the Committee of Creditors (CoC) for its approval. The plan envisaged payment of ₹32 Crores to the financial creditors. The said Resolution Plan was not approved by the CoC. Pursuant to which the CoC resolved to liquidate the Company. Subsequently, an application under Section 33 was filed by the RP before the AA, post-approval of the CoC.

5. Liquidation

The liquidation of SRFTL was initiated vide order dated March 04, 2020, passed by Hon'ble NCLT. The following claims were admitted during Liquidation:

Despite the best efforts only one Resolution Plan was received which envisaged to pay ₹32 Crores to the financial creditors, but it was not approved by the Committee of Creditors (CoC). Pursuant to which the CoC resolved to liquidate the Company.

Table -2: Claims Admitted During Liquidation

| S. No. | Type of Creditors | Claim Amount Admitted (₹) |
|--------------|-----------------------|---------------------------|
| 1 | Financial Creditors | 10,72,61,30,328 |
| 2 | Statutory Dues | 84,50,17,081 |
| 3 | Operational Creditors | 3,52,72,549 |
| 4 | Employees | 7,47,079 |
| Total | | 11,60,71,67,037 |

Subsequently, Stakeholders' Consultation Committee (SCC) was constituted in terms of Regulation 31A of Liquidation Process Regulations. However, the SCC was reconstituted as per the amendment in Regulations in September 2022.

6. Cancellation of Land Allotment by Rajasthan State Industrial Development & Investment Corporation Ltd (RIICO)

RIICO had allotted plot SP-26 (A) measuring 17,132 sq.m and Plot No. SP-26(1) measuring 20,485 sqm. at Industrial Area Sotanala, Tehsil Behror, Distt. Alwar (Rajasthan) to the CD vide execution of two lease deeds dated July 20, 2005, and August 22, 2005, between the RIICO and the CD for a period of 99 years and also granted the permission for mortgage of these lands to financial creditors way back in the year 2011.

RIICO vide Demand Notice dated March 20, 2020, which was physically received by the Liquidator on May 26, 2020, requested the Liquidator to deposit a sum of ₹53,29,789/- being the dues payable to them from the sale proceeds of auction, if any conducted, despite being aware of the fact of initiation of Liquidation Proceedings. To which the Liquidator vide E-mail dated June 10, 2020, apprised them that RIICO comes under the category of Operational Creditor therefore they are required to submit their claim in Form C. They were also apprised that; those properties are mortgaged with banks and the claims of secured creditors have also been filed with the Liquidator in terms of the provisions of the IBC.

RIICO informed the Liquidator vide its latter dated July 06, 2020, that they had cancelled the lease deeds of both the plots vide its cancellation order June 11, 2020, under Rule 24(1) of RIICO Disposal of Land Rules, 1979. Moreover, RIICO also informed that they have also initiated proceeding for taking possession of aforesaid

plots under Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 through competent E.O. Court. However, order dated June 11, 2020, was neither provided nor served to the Liquidator or upon the CD.

RIICO informed the Liquidator vide its latter dated July 06, 2020, that they had cancelled the lease deeds of both the plots vide a cancellation order June 11, 2020, under Rule 24(1) of RIICO Disposal of Land Rules, 1979.

The liquidator through his team obtained a hard copy of the order on July 28, 2020, from the office of the RIICO. The relevant portion of the order by virtue of which the RIICO had cancelled the allotment, is reproduced hereunder:

The allottee has failed to deposit dues of the Corporation. Neither allottee or Bank has submitted any reply to our Show Cause Notice.

Hence, allotment of plot no. SP-26, 26(A) and SP-26(A1) at industrial sotanala is hereby cancelled with immediate effect and security money and other charges are also forfeited.

M/s. S.R. Foils and Tissue Ltd is hereby asked to hand over the possession of the plot within 7 days to this office.

In case of failure to hand over possession in time, the plot shall be deemed to have been taken into possession by the Corporation, and action would be taken to vacate the premises under Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 through competent E.O. Court.

RIICO being aware of the Liquidation proceedings initiated against the CD vide order dated March 04, 2020, acted in complete disregard of the direction passed by the AA. It is worthwhile to mention that the RIICO informed the liquidator about the cancellation of allotment of the land(s) vide order dated June 11, 2020, without even giving a copy of the order or serving a show cause notice to the Resolution Professional during the CIRP.

The Liquidator of the CD filed an application being I.A. No. 3115 of 2020 under section 33(5), 35(1)(b), (d), (n), 36(2) & 36(3) & 235A of the IBC read with Regulation 9(1)(c) of the IBBI (Liquidation Process) before Hon'ble NCLT on August 01, 2020 seeking stay of cancellation of order dated June 11, 2020 passed by the RIICO and

Table - 3: Members of the SCC and their claims

(I) Financial Creditors

| S. No. | Name of Creditors | Names of SCC Members | Admitted Claims (₹) | Voting Share |
|--------|---|---|--------------------------|---------------|
| 1 | State Bank of India | State Bank of India | 4,726,898,429.00 | 40.724 |
| 2 | ICICI Bank | ICICI Bank | 1,986,385,039.00 | 17.113 |
| 3 | Phoenix ARC | Phoenix ARC | 1,584,935,518.00 | 13.655 |
| 4 | Union Bank of India | Union Bank of India | 1,704,515,495.00 | 14.685 |
| 5 | Punjab National Bank | Punjab National Bank Including Claim of (Erstwhile Oriental Bank of Commerce) | 351,351,702.00 | 3.027 |
| 6 | Genesis Finance Co Ltd | Genesis Finance Co Ltd | 23,063,370.00 | 0.199 |
| 7 | India Factoring & Finance Solution Pvt. Ltd | India Factoring & Finance Solution Pvt. Ltd | 283,471,922.00 | 2.442 |
| 8 | Barclays Bank Plc | Barclays Bank Plc | 49,544,917.00 | 0.427 |
| 9 | Canbank Factors Ltd | Canbank Factors Ltd | 15,963,936.00 | 0.138 |
| | Sub Total (A) | | 10,726,130,328.00 | 92.410 |

(II) Operational Creditors (Government Dues)

| S. No. | Name of Creditors | Names of SCC Members | Admitted Claims (₹) | Voting Share |
|--------|---------------------------|---|-----------------------|--------------|
| 1 | Commercial Tax Department | Joint Commissioner, Commercial Tax Dept Rajasthan | 844,813,294.00 | 7.278 |
| 2 | EPFO, | - | 203,787.00 | 0.002 |
| | Sub Total -(B) | | 845,017,081.00 | 7.280 |

(III) Operational Creditors (Employees Dues)

| S. No. | Name of Creditors | Names of SCC Members | Admitted Claims (₹) | Voting Share |
|--------|-----------------------|----------------------|---------------------|--------------|
| 1 | Mr. Bimal Jain | Mr. Bimal Jain | 747,079.00 | 0.006 |
| | Sub Total- (c) | | 747,079.00 | 0.006 |

(IV) Operational Creditors (Other Than Govt, Employees/Workmen Dues)

| S. No. | Name of Creditors | Names of SCC Members | Admitted Claims (₹) | Voting Share |
|--------|---|---------------------------------|----------------------|--------------|
| 1 | Dhawan Box Sheets Containers Pvt. Ltd. | - | 6,369,340.00 | 0.055 |
| 2 | Jindal Aluminium Ltd. | - | 3,891,444.00 | 0.034 |
| 3 | Scientific Security Management Services Private Limited | - | 266,444.00 | 0.002 |
| 4 | M/S JN Ravanuss India Pvt. Ltd. | - | 671,516.00 | 0.006 |
| 5 | M/S FIBRO Source India Pvt. Ltd | M/S FIBRO Source India Pvt. Ltd | 12,072,810.00 | 0.104 |
| 6 | BLR Logistiks (I) Ltd. | - | 75,006.00 | 0.001 |
| 7 | Well worth Packers P. Ltd. | - | 1,184,344.00 | 0.010 |
| 8 | VR Hydrochem Pvt. Ltd. | - | 10,741,645.00 | 0.093 |
| | Sub Total -(D) | | 35,272,549.00 | 0.31 |

| | | | | |
|----------------------|--|--|-----------------------|------------|
| TOTAL A+B+C+D | | | 11,607,167,037 | 100 |
|----------------------|--|--|-----------------------|------------|

consequential order for stay of the proceedings instituted by the them under Rajasthan Public Premises (Eviction of Unauthorized occupants) Acts, 1964 before Competent E.O.(Eviction Officer) Court against the CD. The copy of the application was also sent to RIICO vide e-mail dated August 01, 2020.

Meanwhile, the term/tenure of the president, Hon'ble NCLT, Principal Bench, New Delhi came to an end and considering the urgency of the matter, the Liquidator also filed a Writ Petition (C) No. 5193 of 2020 under Section 226 of the Constitution of India before the Hon'ble High Court on August 08, 2020, for issuance of writ of mandamus/prohibition or a writ of any other nature.

That the Writ Petition (C) No. 5193 of 2020 was listed before the Hon'ble High Court of Delhi on August 13, 2020, wherein the Hon'ble High Court whilst noting the fact that the term of the Acting President of the Hon'ble NCLT has been extended by a period of one month with effect from August 05, 2020 and accordingly requested the Hon'ble NCLT to consider the request for early hearing of the application filed by the Liquidator.

On the date of hearing on August 17, 2020, none appeared on behalf of RIICO. The Hon'ble AA passed an order and directed RIICO not to take possession of the properties of the CD, until further orders.

In view of the aforesaid order passed by the Hon'ble High Court, an application was filed before Hon'ble NCLT on August 01, 2020, seeking stay of cancellation order dated June 11, 2020, passed by the RIICO was scheduled for listing/hearing on August 17, 2020. On the date of hearing held on August 17, 2020, none appeared on behalf of RIICO, and the Hon'ble AA passed an order and directed RIICO not to take possession of the properties of the CD based on the cancellation order June 11, 2020, until further orders.

6.1. Insertion of Regulation 37A in 2020

In the 2nd Meeting for Consultation with stakeholders, i.e., Financial Creditors of the CD, held on February 05, 2021, the matter was discussed *w.r.t.* possible ways forward, to resolve the issue for maximization of value to stakeholders. Further, it was also discussed that since underlying assets being not readily realizable and initiation of sale process under Regulation 32 and 33 of

Liquidation Regulations¹ also subject to outcome of the application filed before Hon'ble NCLT therefore, it was decided to explore the opportunity for disposing off this asset by way of publication of sale notice under Regulation 37A of Liquidation Regulations pertaining to 'Assignment of not readily realizable assets' to solicit offers from the interested investors.

Pursuant to the advice regarding the above matter in the meeting of the Stakeholders Consultation Committee (SCC) held on February 05, 2021, the Liquidator had also sought legal opinion from counsel for assignment under Regulation 37A.

The legal counsel opined that the Liquidator could assign the rights for Litigation for the factory premises on plot area of approx. 57, 935 sqm at S.P.-26, S.P.-26(A), & S.P.-26(1), Industrial Area, Sotanala, Distt. Alwar, Rajasthan in terms of Regulation 37A of the Liquidation Process Regulations, 2016. However, the Liquidator in terms of the Discussion Paper of IBBI decided to follow the following principles:

- (a) Acting in the best interest of Liquidation Estate.
- (b) Seeking maximum consideration for the assignment.
- (c) Consulting the SCC.
- (d) Assignment through an auction or if an auction is not possible, on an arm's length basis.
- (e) Assignment shall be subject to Section 29A of the Code.
- (f) Liquidator to be reasonable, fair and should act in good faith.

6.2. First Attempt for Assignment in 2021

The Liquidator thereupon published a Notice dated February 11, 2021, under Regulation 37 A of Liquidation Regulations, 2016 for seeking interest from possible perspective assignees for all rights and interests of Litigation regarding plot area approx. 57,935 sqm at S.P.-26, S.P.-26(A), & S.P.-26(1), Industrial Area, Sotanala, Distt. Alwar, Rajasthan including building(s) constructed thereupon and including entire plant & machinery, including rights of Litigation for allotment cancelled by RIICO for its outstanding dues of ₹53,29,789/- and all

¹ IBBI (Liquidation Process) Regulations, 2016.

consequent rights for owning the subject assets, in three newspapers.

Subsequently, Liquidator received 'four offers' from prospective buyers. The prospective investors were asked to deposit EMD @10% of their proposed offer amount. However, the same was not received from any of the investors.

This was discussed in the 3rd Meeting of the SCC held on March 19, 2021, that keeping in view the objective of maximization of value of assets of CD for stakeholders, if any other prospective buyer/bidder approaches, they may be entertained by the Liquidator for submission of EOI under Regulation 37 A of Liquidation Regulations. It was further discussed that either the underlying assets of the CD may be assigned/transferred by way of assignment of rights to any prospective investor under Regulation 37A of Liquidation Regulation or Fresh Sale process of this asset may be initiated under Regulation 32 or 33 of Liquidation Regulations upon outcome of the application filed before Hon'ble NCLT since stated issue of underlying assets is major reason for pendency of completion of Liquidation Process of the CD.

Pursuant to the approval accorded in the 4th Meeting of the SCC, the Liquidator published a notice inviting for 'Assignment / Transfer of NRRA of CD in Liquidation'. Subsequently, a prospective bidder offered ₹ 14 Crores.

The liquidator received an offer of ₹13 Crores along with the EMD of 10 percent of offer amount from one bidder which was placed before the SCC. After many deliberations and negotiations, the bidder gave a final offer of ₹13.5 Crores. To ensure utmost transparency in the process and to ensure maximisation of value to the stakeholders, the Liquidator suggested to the members of the SCC that a publication may be done thereby inviting better offers from public with ₹13.5 Crores as the base price and in case of no offers received pursuant to publication then Liquidator may be authorized for assignment/transfer, under regulation 37A of IBBI (Liquidation Process) Regulations, 2016 to the current bidder. Pursuant to the approval as accorded by SCC Members in the 4th Meeting of the SCC held on July 06, 2021, the Liquidator published a notice inviting for Assignment / Transfer of 'Not Readily Realizable Assets

(NRRA) of CD in Liquidation. Subsequently a prospective bidder offered an amount of ₹ 14 Crores.

6.3. Objection of RIICO before Hon'ble NCLT for Assignment under Regulation 37A

The application filed before Hon'ble NCLT by Liquidator thereby seeking stay of cancellation of order dated June 11, 2020, passed by the RIICO and consequential order for stay of the proceedings instituted by them under Rajasthan Public Premises (Eviction of Unauthorized Occupants) Acts-1964, before Competent E.O. (Eviction Officer) Court against the CD, came up for hearing on July 13, 2021, wherein the counsel for RIICO appeared and submitted that the Liquidator is attempting to sell the assets forming part of the present application. To which, counsel appearing on behalf of the Liquidator opposed the submissions made by the counsel for RIICO and apprised the AA that the Liquidator is not selling the assets of CD but is only taking steps for assignment/transferring the rights to litigation in terms of Regulation 37A of the Liquidation Regulations, 2016. Post hearing, the Hon'ble AA recorded statement, that the Liquidator is not selling the assets of the CD forming part of the present application till the application is disposed of.

That pursuant to the above development the Liquidator vide E-mails intimated the Members of the SCC and the prospective buyers that as a fair practice, the process of assignment of rights of 'NRRA of CD' has been put on hold till decision by Hon'ble NCLT.

In the 5th meeting of the SCC held on March 28, 2022 it was deliberated upon that since significant time has already elapsed in the matter and no outcome has been received till date, hence an application may be filed before Hon'ble NCLT wherein permission for assignment/transfer of all rights of litigation and interest of underlying asset, being NRRA of CD under Regulations 37 A of Liquidation Process Regulations, 2016, be sought. It was further discussed that the intent of filing this application before Hon'ble NCLT is to safeguard the interests of the stakeholders and to clarify before Hon'ble NCLT that undertaking given by Liquidator in pursuance to hearing held on July 13, 2021 was for not selling the assts of CD whereas transfer /assignment of rights of litigations and interest for underlying asset is still permissible as per the IBC and that transfer /assignment of rights of litigation of assets of CD is not synonymous to the sale of assets.

All the SCC members present in the meeting unanimously accorded their consent to go ahead with filing of application before Hon'ble NCLT during pendency of this application and seek permission for assignment/transfer of rights of litigation and interest of underlying asset of CD under Regulations 37 A of Liquidation Process Regulations, 2016 which shall be in the best interest of the stakeholders and post obtaining approval from Hon'ble NCLT. In this regard, the Liquidator may immediately initiate the process by giving publication for invitation for submission of EOIs in leading newspapers. Accordingly, an application to this effect was filed before Hon'ble NCLT. The matter was decided and allowed in the hearing held on July 08, 2022, with the condition that the Liquidator will seek approval from the AA before actual auction as well as actual assignment/sale. Subsequently, it was decided in the SCC that notice inviting offers to be published again in the newspapers for inviting EOIs/Offer from public at large for assignment of NRRA of CD as the old process was scrapped due to the litigation.

The SCC suggested that an online bidding may be conducted amongst the bidders by keeping the reserve price of ₹14.51 Crores which shall ensure both transparency and maximization of value to the stakeholders and minimise litigations.

Post publishing of Notice thereby inviting offers from bidders, the liquidator received offers from three bidders, Rs. 14.51 Crores being the highest offer. The liquidator then sought the views of the SCC members to decide upon the way forward. It was discussed that either Swiss Challenge Mechanism be adopted in the process, or an open inter-se bidding be done with reserve price being the highest offer received from the current bidders for value maximization.

It was suggested that an online bidding may be conducted amongst the present bidders by keeping the reserve price of ₹14.51 Crores which shall ensure both transparency and maximization of value to the stakeholders along with minimal possibility of litigations. An application to this effect was filed by the liquidator for obtaining approval of the Hon'ble AA on September 27, 2022, for inter se bidding amongst bidders which was allowed on October 07, 2022.

6.4. Inter-Se Bidding held on October 18, 2022

The Liquidator successfully conducted inter se bidding by using e-auction platform of one of the most reputed e-auction agency in the most fair and transparent manner with the sole objective of maximisation of value of the stakeholders.

In the inter-se bidding the highest bid received was for ₹21,21,00,000/- which was ₹ 6,70,00,000/- more than the reserve price. Subsequently, the Liquidator had filed an application in I.A. No. 5373 of 2022 under Section 60(5) of the IBC read with Regulation 37A of the Liquidations Regulations, 2016 seeking approval for assignment of 'NRRA' to the successful bidder in the inter se bidding conducted on October 18, 2022. The Hon'ble NCLT vide its order dated March 02, 2023, allowed the said application.

Accordingly, the assignment of NRRA (disputed asset) was finally concluded in the most fair and transparent manner ensuring value maximisation to stakeholders and the price realised, though a disputed asset, was nearly equivalent to the reserve price in first failed auction conducted before communication for cancellation of lease was received.

7. Trademarks

The RP in discharge of his duties to preserve assets of the CD traced the trademarks registered in name of CD and got lien marked in the records of Registrar of Trademarks. Notice for sale of trademarks of the CD vide e-auction was published in the 2nd Notice for sale of assets in June 2020. The trademarks were successfully sold in the said e-auction. However, the successful bidder after depositing 25 % of the sale consideration amount failed to deposit the balance amount and the sale was cancelled after forfeiting the amount deposited by the bidder.

Thereupon the trademarks of the CD were successfully sold in the 4th e-auction process. However, post-sale of trademarks as mentioned in the sale notice, it came to the knowledge of Liquidator that there are also some other trademarks registered in the name of the CD post-initiation of CIRP. The same are presented in tabular form in Table 4.

Table – 4: Trademarks registered with the Corporate Debtor

| S. No. | Trademark Applied For | Class | Application No. | Date of Application | Date of Registration | Valid Till |
|--------|-----------------------|-------|-----------------|---------------------|----------------------|---|
| 1 | Mistique Joy | 16 | 2088717 | 24.01.2011 | 06.12.2017 | 24.01.2021 |
| 2 | Mistique Magic | 16 | 2088716 | 24.01.2011 | 12.06.2018 | 24.01.2021 |
| 3 | Mistique Softee | 16 | 2088718 | 24.01.2011 | 12.06.2018 | 24.01.2021 |
| 4 | Mistique Sparkle | 16 | 2088719 | 24.01.2011 | 12.06.2018 | 24.01.2021 |
| 5 | SR | 99 | 1924333 | 18.02.2010 | 17.12.2015 | Filed Renewal Application with Trademark Registry |

Table – 5: Disputed Trademarks of the Corporate Debtor

| S. No. | Name | Application Ref. No | Class | Certificate issued on |
|--------|------------------------|---------------------|-------|-----------------------|
| 1 | HOMEFOIL | 3593364 | 16 | 23.01.1018 |
| 2 | HOMEFOIL | 3593365 | 6 | 06.09.2020 |
| 3 | MISTIQUE | 3593366 | 16 | 06.09.2020 |
| 4 | SR CHAPATI WRAP | 3593367 | 6 | Objected |
| 5 | SR CLEAN WRAP | 3593368 | 16 | 23.01.2018 |
| 6 | CHAPATI N WRAP (LABEL) | 3951394 | 6 | 01.06.2019 |

On further investigation it was found that the below mentioned marks (other than those listed above) which were in the name of CD, were also registered in the name of GMG Engineers & Contractor Pvt Ltd. by the Trademark Dept vide its certificate issued post commencement of CIRP based on an undated Letter of Consent/No Objection given by the CD prior to CIRP without bringing the same in knowledge of RP/Liquidator despite lien being marked on the same.

The application for registration was filed on July 17, 2017, i.e., just prior to the Insolvency Commencement Date (ICD) i.e., August 07, 2017, and the certificates were issued post commencement of CIRP by the trademark registry despite lien of the Liquidator on the same. The facts thereto were concealed by M/s. GMG Engineers & Contractors Pvt Ltd and erstwhile directors of the CD during the entire CIRP despite proceedings before Hon'ble NCLT to bar them from usage of trademarks and order for payment of Royalty to RP for usage of trademarks.

7.1. Steps taken to Resolve the issue of wrongful registered trademarks

The Liquidator post coordinating with representative of

GMG Engineers & Contractors Pvt. Ltd., got the requisite documents /application signed and appointed a consultant through which the application was filed with Trademark Dept. for cancellation of 6 additional trademarks of CD which were also registered in the name of GMG.

Pursuant to the application filed on behalf of the Liquidator, the Trademark Department cancelled registration of five trademarks on the name of GMG Engineers & Contractors Pvt Ltd. Thus, these trademarks again became assets of the CD.

Accordingly, five (5) out of six (6) trademarks got cancelled and one (1) trademark, namely, “SR Chapati Wrap” was not cancelled since the status of the same was already 'objected'. Thereupon, the Liquidator vide E-mail dated March 09, 2021, wrote to the office of Trademark Registry, restraining for proceeding further on registration of this trademark, keeping in view our lien on the trademarks registered in the name of M/s S R Foils & Tissue Limited pursuant to AA order dated March 04, 2020.

Further, two (2) additional trademarks i.e., viz SR (device) under class 6 and 16 strikingly similar to the ones

registered in name of the CD were also found registered (application no 3594267) /accepted & advertised (application no 3594268) that too post E-auction of trademarks. Accordingly, M/s GMG Engineers & Contractors Pvt. Ltd. were advised by Liquidator to also get these trademarks cancelled /withdrawn at the earliest by way of filing cancellation application before the Trademark Registry as done for trademarks registered in their name earlier. Pursuant to which, the cancellation application was obtained from M/s GMG Engineers & Contractors Pvt. Ltd. and was filed with the trademark registry. Finally, upon resolution of the above trademark issues, the successful bidder made the balance payment of sale consideration against the trademarks sold to him through fourth e-auction.

8. Sale of Assets of CD during Moratorium

The RP, on examination of records at the website of Ministry of Corporate Affairs (MCA), had reported a charge on some assets of the CD in favour of Religare. Even after rigorous follow up Religare did not file its claim, examination of records of sub registrar was conducted wherein it was noticed that a transfer of immovable properties was made at a consideration of ₹3.60 Crores, which was in contravention to the Section 14 of the IBC i.e., moratorium period. Further, on enquiry from Religare it was found that they had settled their claim of ~₹10 Crores for ₹3.60 Crores and released the properties charged to them. The RP then carried out valuation of the properties which came out to be ~₹7.00 Crores. Accordingly, RP filed an application under Section 74(1) & 60(5), 43,45 being C.A. No. 173(PB)/2018 seeking appropriate reliefs. Subsequently, the AA directed the buyer to deposit a sum of ₹3.40 crores being differential of value arrived and the purchase price. The buyer contested that it had also deposited ₹120 lacs earlier besides the reserve price. Hon'ble NCLT thereafter vide order dated October 15, 2018, directed the RP to file an affidavit concerning the amount of ₹120 lakhs. The Affidavit was accordingly filed by RP. Thereafter, the Hon'ble NCLT vide order dated November 27, 2018, disposed of the application with direction to the RP to seek an opinion of the expert, which shall be binding upon the respondent.

Pursuant to the above, the RP sought an expert opinion of a Chartered Accountant and based on the opinion obtained

It was found that Religare had settled its claim of ~₹10 Crores for ₹3.60 Crores and released the properties charged to them. The RP then carried out valuation of the properties which came out to be ~₹7.00 Crores.

& the statement made by the Counsel for M/s S.R. Foils & Hygiene Private Ltd before the AA, the RP vide email dated December 07, 2018, requested M/s S.R. Foils & Hygiene Private Ltd to make the payment of ₹340.17 lacs being the differential amount. The said differential amount was required to be paid in the following manner:

| S.No. | Amount | Due Date |
|-------|--------------|------------|
| 1. | ₹100 lacs | 07.01.2019 |
| 2. | ₹120 lacs | 07.02.2019 |
| 3. | ₹120.17 lacs | 07.03.2019 |

However, M/s S.R. Foils & Hygiene Private Ltd failed to make payment as per directions.

In pursuance to above, the RP filed an application being C.A. No. 935(PB)/2019 before Hon'ble NCLT seeking appropriate reliefs.

That the above-captioned C.A. No. 935(PB)/2019 was considered by the Hon'ble Adjudicating Authority on August 07, 2019, wherein the Respondents insisted that interest should be payable from February 07, 2019, to September 07, 2019, i.e., till the date of payment. The AA in its order on August 07, 2019, directed 'that a sum of ₹2,13,44,000/- be paid to the applicant with interest at the rate of 10.50% from February 07, 2019, till the date of payment i.e., September 07, 2019. The AA also made it clear that if payment was not made by the due date the consequences shall follow and no further time for payment shall be granted².

However, the respondent failed to deposit the amount and on account of non-payment of said amount by Director of Purchaser Co. and CD in accordance with Hon'ble NCLT order dated August 07, 2019, another application was filed by the RP under Section 60(5) of the IBC, read with Rule 11 of the NCLT Rules, 2016 and read with Section 425 of the Companies Act, 2013 on November 13, 2019 for seeking directions against the Directors of Purchaser / Director of CD in view of contempt of the order dated

² C.A. No. 935(PB)/2019, Date of Judgement: August 07, 2019.

August 07, 2019 passed by the AA to either the outstanding amount of ₹2,13,44,000/- along with interest from September 07, 2019, till passing of order by the AA and that appropriate action be initiated against M/S S.R. Foils & Hygiene Pvt Ltd for wilful disobedience of the undertakings given before the CoC and before the AA.

8.1. Avoidance Transactions

It came to the knowledge of the Liquidator that the buyer of flats has defaulted in payment of loan facility availed from Indiabulls Commercial Credit Limited and Fullerton India Credit Company Limited, wherein the properties, being an asset of the CD and being subject matter of Avoidance Application bearing C.A. No. 2517 of 2019 which were pending adjudication before AA, have been offered as security to aforementioned financial institutions.

Both the financial institutions i.e. Indiabulls Commercial Credit Ltd., and Fullerton India Credit Company Ltd., issued 'Demand Notice' under Section – 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to directors of the CD. Thereafter, 'Possession Notices' in terms of Section 13(4) of the SARFAESI Act to take possession of the underlying properties of the CD forming subject matter of Avoidance Application were also issued. Subsequently, action was initiated taken by these financial institutions for sale of assets.

To safeguard the interests of the stakeholders of the CD, the Liquidator immediately filed Applications under Section – 60 (5) of the IBC against India bulls Commercial Credit Limited and Fullerton India Credit Company limited to maintain status quo. Subsequently, the AA granted stay on sale of the properties and directed the respondents to maintain status quo till disposal of the matter. Thereafter, the contemnor in the Contempt Application filed by the Liquidator gave a proposal to purge the contempt. Hon'ble NCLT directed the liquidator to place the proposal before the SCC for its consideration.

The SCC after much deliberation gave approval to the proposal subject to some terms. Accordingly, the decision of the SCC was placed before Hon'ble NCLT. However, there was no consensus between the parties and both Indiabulls and Fullerton submitted before Hon'ble NCLT that they are ready to deposit the sale proceeds in the Liquidation Estate of the CD once the stay is vacated and

An amount of ~₹28 Crores has been realised from Assignment u/r 37A, through Sale of Assets and Avoidance Applications.

they are permitted to sell the assets subject to the undertaking to be given by them.

Subsequently, Hon'ble NCLT directed Indiabulls & Fullerton to file an affidavit by way of an undertaking before the next date and the same can be considered after filing of the undertaking. Pursuant to which an undertaking was filed by both the financial institutions and Hon'ble NCLT vide its order dated January 04, 2023, vacated the stay and allowed both the parties to sell the assets. Finally, the matter was brought to its logical conclusion and the properties were sold by the respective financial creditors and the amount of Rs. 2,13,00,000/- along with applicable interest was duly deposited by them in the liquidation estate of the CD in proportion to their share. An amount of ~₹28 Crores has been realised from assignment u/r 37A, Sale of Assets and Avoidance Applications in the matter.

9. Pending Matters

(a) Royalty

M/s GMG Engineers & Contractors Pvt. Ltd was allowed to enjoy the right of usage of the Trademarks of the CD during CIRP in pursuance to Memorandum of Understanding executed between the CD and M/s GMG Engineers & Contractors Pvt. Ltd. on August 12, 2014, by the CoC. However, since the CoC had rejected the Resolution Plan submitted by M/s Lucky Generators Pvt. Ltd (its sister concern), and no further settlement proposal has been given by M/s GMG Engineers. Therefore, it was decided by the CoC that for further usage of trademarks of the CD, the royalty at the rate of 2% per annum of value of the intellectual property rights of CD has to be paid, else the usage of trademarks of the CD will not be allowed.

Accordingly, RP was advised to issue notice to M/s GMG Engineers & Contractors Pvt. Ltd. (renamed as 'SR Foils & Hygiene Pvt. Ltd.') stating either to surrender the usage of the trademarks of the CD or to pay royalty at the rate of 12% per annum of the value of the intellectual property rights of the CD for using the trademarks. However, SR Foils & Hygiene Pvt. Ltd. failed to take either of the actions i.e., they did not pay the royalty as mentioned in the

notice to the CD and also had not given any confirmation for stopping usage of the trademarks.

SR Foils & Hygiene Pvt. Ltd. failed to comply with the order of Hon'ble NCLT and accordingly a contempt application was filed which is pending adjudication.

After deliberations on the same, the CoC directed the RP to file an application before Hon'ble NCLT to direct SR Foils & Hygiene Pvt. Ltd. either to pay royalty at the rate of 12% per annum of the value of trademarks as assigned by the valuers i.e., ₹40.56 lakhs per annum, for continuous usage till the disposal of trademarks under liquidation or otherwise, or to stop the usage of registered trademarks of the CD.

Subsequently, after hearing the Hon'ble NCLT directed the SR Foils & Hygiene Pvt. Ltd. to stop the use of trade name 'home foils' on the completion of three months starting from July 15, 2019, and payment of royalty from the date of use till October 15, 2019. However, SR Foils & Hygiene Pvt. Ltd. failed to comply with the order of Hon'ble NCLT and accordingly a contempt application was filed which is pending adjudication.

10. Non-Co-operation from Customs Department

There were certain bank guarantees issued by the CD in favour of the Customs Department. The said bank guarantees were issued by State Bank of India (SBI) against fixed deposits kept as margin money. The Liquidator requested SBI to release the said Fixed Deposit since the same shall form part of the Liquidation Estate of the CD. However, SBI expressed its inability to do the same since the original bank guarantees were not handed over by the Customs Department. Accordingly, the Liquidator filed an application before Hon'ble NCLT and SBI gave an undertaking to release the fixed deposits held with them as 100 percent margin money on receipt of the original bank guarantees. However, there was no response from the Customs Department.

The liquidator was constrained to file a fresh application before the AA for directions to SBI to release the FDRs in the absence of receipt of original bank guarantee from the Customs Department. Meanwhile, the SBI vide its email dated April 20, 2023, informed the Liquidator that the bank guarantees to the Customs Department may have perpetual automatic renewal clause. Therefore, to reverse the bank guarantee liability in the CBS system and



extinguish Bank's liability for Bank Guarantee, original bank guarantees will be required from the Customs Department. They further requested the Liquidator to take-up the matter with the Custom Department for return of original bank guarantees.

The Liquidator issued a letter along with email to the Customs department on April 20, 2023, requesting them to confirm whether any valid bank guarantee is held by them as on date. It was further requested that they arrange to return all the original bank guarantees issued on behalf of the CD, since the bank guarantees have already expired. They were further requested to treat the matter as urgent and it was stated that in the event the original bank guarantees are not returned within 15 days of receipt of the letter, the Liquidator shall be constrained to approach Hon'ble AA for appropriate directions.

The AA vide its order dated May 10, 2023, directed the Liquidator to get the proof of whether the bank guarantee is subsisting or if it has been invoked. The Liquidator was further directed to take instructions to state whether the bank guarantee was still with the Custom Department, by writing to both the Customs Department and the SBI, that were directed to give the necessary details to the Liquidator without fail. In view of the directions of Hon'ble AA vide order dated May 10, 2023, the Liquidator issued letter and email to the Customs department on May 30, 2023, requesting them to provide the details of the said bank guarantees.

However, no revert has been received from the Customs Department. The liquidator has been following up with the Customs Department rigorously and shall seek appropriate directions from Hon'ble NCLT. Meanwhile, State Bank of India has come forward to remit the amount of fixed deposits over and above the liability reflecting in the bank guarantees. Therefore, the matter is expected to be resolved soon.

11. Learnings

- Value maximisation by fairness and transparency in the process by inter-se bidding.
- Efficient handling of complex situations like sale of assets during moratorium.
- Importance and ways of tracking assets of the CD including intangible assets like trademarks and value maximisation thereof.

Table-6: Realization from the Liquidation of the Corporate Debtor

| Particulars | Total Realization (₹) | CIRP cost/Liquidation cost including Liquidator fee and Estimated Liquidation cost etc. (₹) | Amount distributed to stakeholders as per Section 53 (₹) |
|---|-----------------------|---|--|
| Assignment | 21,21,00,000 | 1,25,32,103 | 19,95,67,897 |
| Avoidance Transactions | 2,85,47,423 | 9,35,900 | 2,76,11,523 |
| Brands, Royalty | 3,06,00,000 | 33,05,940 | 2,72,94,060 |
| Sale of Assets (Including Interest) | 73,22,439 | 6,47,495 | 66,74,944 |
| Forfeiture of EMD | 85,25,000 | 30,30,615 | 54,88,985 |
| Other Realization (i.e., FD Interest, Recovery from old bank accounts etc.) | 73,39,988 | 5,08,425 | 68,31,563 |
| Total | 29,44,34,850 | 2,09,60,478 | 27,34,68,974 |



Legal Framework

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

REGULATIONS

IBBI Amended IBBI (CIRP) Regulations to streamline process and expedite Resolution of Corporate Debtors

This amendment IBBI (IRPCP) Regulation (Second Amendment), Regulations, 2023 dated Sept. 18, 2023, is primarily related to the additional information, and documents the creditors will be required to provide along with the CIRP petition, assistance, and cooperation by the personnel of the CD in taking over of assets by the IRP/RP, filing of claims by the creditors, transfer of debt by creditor, audit of the CD.

As per the Regulation 2 D inserted through this amendment, 'While filing an application under Section 7 or 9, the financial creditor or operational creditor, as the case may be, shall also submit along with evidence, chronology of the debt and default including the date when the debt became due, date of default, dates of part payments, if any, date of last acknowledgment of debt and the limitation applicable. Further, the amendments in Regulation 16 A clarify the roles, responsibilities, and remuneration of Authorized Representatives of homebuyers.

The Amended Regulations increase the timelines to file claims up to the date of issue of request for resolution plans under regulation 36B or ninety days from the Insolvency Commencement Date (ICD), whichever is later. Furthermore, the RP has been empowered to give his view on the acceptance of claim for its collation even for claims submitted beyond this time and committee of creditors (CoC) to recommend their acceptance for inclusion in the list of claims and its treatment in the Resolution Plan before the same is adjudicated or condoned by the Adjudicating Authority (AA). These amendments are aimed to facilitate the Adjudicating Authorities, which are burdened with applications for acceptance of delayed claims. Besides, the amendment aligns the timelines concerning various procedural aspects like issuance of information memorandum and request for resolution plans.

Source: Notification No. No. IBBI/2023-24/GN/REG106 dated September 18, 2023.



IBBI (Insolvency Professionals) Regulations amended to simplify the Enrolment and Registration Process for IPs

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2023 dated September 18, 2023, has introduced a 'Unified Enrolment and Registration Application Form' to enable submission of Common Application Form for both enrolment and registration processes. The amended Regulations provide a timeline of 60 days for approval of unified application (for enrolment) by the IPA and 30 days for forwarding the unified application (for registration) to the IBBI. Through this amendment, the IBBI has introduced a provision for surrender of certificate of registration by the IP to the IBBI.

Source: Notification No. IBBI/2023-24/GN/REG104 dated September 18, 2023.

CIRCULARS

IBBI issued Clarifications on 'Liquidation Fee'

IBBI, through a Circular dated Sept. 28, 2023, has clarified that the term 'Amount Realized' in Regulation 4(2)(b) of the IBBI (Liquidation Process) Regulations, 2016 'shall mean amount realized from assets other than liquid assets such as cash and bank balance including term deposit, mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any.' The "other liquidation cost" in regulation 4(2)(b) shall mean liquidation cost paid in priority under section 53(1)(a), after excluding the liquidator's fee. "Amount distributed to stakeholders" shall mean distributions made to the

stakeholders, after deducting CIRP and liquidation cost. The Circular also provides ‘illustrations’ to calculate the Liquidation Cost.

Source: *Circular No. No. IBBI/LIQ/61/2023, September 28, 2023.*

IBBI extends facility of submitting the CIRP Forms to IPEs acting as IPs

The Insolvency Professional Agencies (IPEs) acting as IPs shall access the designated platform with the help of a unique username and password provided by the IBBI and authorize an IP handling the process to upload/ submit the CIRP Forms. Thereafter, the authorized IP shall submit the CIRP Forms along with relevant information and records through his username and password as provided to him in capacity of individual IP.

To facilitate submission of forms for all assignments handled by these IPEs through the facility being introduced now, CIRP forms filed till September 30, 2023, shall not attract any fee as provided under regulation 40B of the CIRP Regulations. Thereafter, it shall attract fee as specified in sub regulation (4) of regulation 40B of the CIRP Regulations. The contents of the aforesaid Circulars shall apply to all the assignments handled by the IPEs acting as IPs.

Source: *Circular No. IBBI/CIRP/60/2023 dated September 01, 2023.*

DISCUSSION PAPER

IBBI issued ‘Discussion Paper’ on three crucial issues about PG to CD

Through this Discussion Paper dated Sept. 27, 2023, the IBBI has proposed amendments in IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Persons) Regulations, 2019, related to (i) Appointment of RP in the Insolvency Resolution Process of PGs to CDs, (ii) Sharing of report prepared by the RP under Section 99 of IBBI with the PG and the creditors; and (iii) Mandating summoning of meeting of the CoC under Section 106 of the IBBI in case of insolvency resolution process of PGs to CDs.

The Discussion Paper proposes to enable the CoC to appoint the IRP/ RP/ Liquidator of the CD as RP in the PG matter for enhanced harmonization of both the processes. Even in the case of replacement of the IRP/ RP/ liquidator of the CD, the CoC in its commercial wisdom may appoint a common IP in both the processes. Further, it is proposed

that RP may in all cases, provide the copy of report under Section 99 to PG and creditors and convening of meeting of the CoC will be mandatory in all PG insolvency matters. Comments can be submitted by Oct. 19, 2023.

Source: *Discussion Paper dated September 27, 2023.*

PRESS RELEASE

IBC has been a game changer legislation: Justice Shri Ashok Bhushan, Chairperson, NCLAT

Addressing the 7th Annual Day celebrations of IBBI on October 01, 2023, as Chief Guest, Justice Shri Ashok Bhushan emphasized the need for continuous innovation in insolvency ecosystem by all stakeholders and for capacity building through proactive advocacy. He congratulated IBBI for being a pro-active regulator constantly learning through interactions with stakeholders.

Delivering the ‘Annual Day Lecture’, Chief Justice (Retd.) Shri Ramalingam Sudhakar appreciated the efforts by the Government and IBBI in conducting the review exercise of the provisions of the IBC. Furthermore, he impressed upon use of AI in proceedings so as to achieve better and speedy outcomes.

Speaking on this occasion, Dr. Manoj Govil, Secretary, Ministry of Corporate Affairs, acknowledged that the highest ever resolutions were witnessed in the year 2022-23 with 186 CDs being resolved. He appreciated IBBI for being at the forefront for engaging effectively with stakeholders on regulatory changes and maintaining transparency in decision making and ensuring information dissemination.

In his Welcome Address, Shri Ravi Mital, Chairperson-IBBI, highlighted that there has been a recovery of three lakh crores through IBC which enables creditors to lend multiple times more in the market. He encouraged IPs to speed up the process to enable NCLTs pass orders for prompt disposal of applications filed for the CDs. On this occasion, IBBI’s annual publication, “IBC: Evolution, Learnings and Innovation” and a research publication, “Navdrishti: Emerging Ideas on IBC” were also released. Shri Sudhakar Shukla, WTM- IBBI proposed the vote of thanks.

Source: *Press Release, No. IBBI/PR/2023/13, October 01, 2023.*

IBC Case Laws

Supreme Court of India

Eva Agro Feeds Pvt. Ltd. Vs. Punjab National Bank and Anr. Civil Appeal No.7906 of 2021. Date of Supreme Court Judgement: September 06, 2023.

Facts of the Case

The present appeal is filed by Eva Agro Feeds Pvt. Ltd. (hereinafter referred to as the 'Appellant') after being aggrieved by the order dated 30.11.21 passed by the Appellate Tribunal. CIRP proceedings were initiated against M/s. Amrit Feeds Ltd/CD by One Huvepharma Sea Pvt. Ltd., and the same was accepted by the AA. The AA later ordered the Liquidation of the CD, and the Liquidator (hereinafter referred to as 'Respondent no. 2') was appointed. Several attempts to auction the CD's assets did not materialize. The Appellant, incorporated on 09.07.21, submitted a bid for the CD's assets and also paid an earnest money deposit (EMD) of ₹1 Cr.

The Appellant later submitted the bid amount of ₹10 Crore within the stipulated time prescribed under the sale notice in respect of the subject property. The Appellant received an E-auction certificate from Respondent no. 2 stating that it had won the auction. However, on an email dated 21.07.21 received from Respondent no. 2, it was stated that the E-auction process had been cancelled under clause 3(k) of the disclaimer clause in the E-auction process, and a fresh auction would be conducted. The Appellant filed an application against this decision to the AA, which instructed Respondent No. 2 to send communication to the Appellant for depositing the balance sale consideration. The appellant complied, and Respondent no. 2 issued a sale certificate. However, Punjab National Bank, in the capacity of a Financial Creditor (hereinafter referred as 'Respondent no. 1'), filed an appeal against the AA's decision, and the Appellate Tribunal ruled in their favor, setting aside the earlier order of AA and allowing Respondent no. 2 to initiate a fresh auction process. As a result, the Appellant has filed this appeal in the Apex Court, challenging the Appellate Tribunal's decision.

Supreme Court's Observations

The Apex Court, relying on judgments like *S. N Mukherjee vs. UOI 1990*, *State of Orissa vs Dhaniram Luhar 2004*,



East Coast Railway vs Mahadev Appa Rao 2010, and *Kranti Associates (P) Ltd. vs Masood Ahmed Khan 2010*, emphasized that recording reasons is a fundamental principle of natural justice governing the exercise of power by administrative authorities. The Court dismissed the argument that para 1(11A) of Schedule 1 of the IBBI (Liquidation process) Regulations, which mandates the liquidator to provide reasons for rejecting the highest bid, applies only prospectively since it was added on 30.09.21. The Apex Court clarified that this provision merely recognizes an existing principle, applicable even before 30.09.21.

The Court highlighted that, unless a material irregularity and/or illegality in holding the public auction and/ or the auction sale was vitiated by any fraud or collusion it is not open to set aside the auction or sale in favour of the highest bidder. Further, the contention of Respondent 2, that he was expecting higher price is not justifiable as the reserve price for the second auction was the same as in the first auction. Rejecting the Appellant's bid and going for another round of auction at the same reserve price without justification erodes the credibility of the auction process.

On the issue of related party, the Apex Court, citing *Phoenix ARC Pvt. Ltd. vs. Spade Financial Services Ltd. 2021*, found the disqualification attached to the appellant is groundless, as the related party had not been in control or an influential member of the company for over a decade.

Order: The Apex Court concluded that the Appellate Tribunal had erred in setting aside the order dated 12.08.21 passed by the AA. As a result, the Apex Court set aside the order dated 30.11.21 passed by the Appellate Tribunal and restored the order dated 12.08.21 passed by the AA.

Case Review: *Appeal Allowed.*

Paschimanchal Vidyut Vitran Nigam Ltd. Vs Raman Ispat Private Ltd. & ors. Civil Appeal No. 7976 OF 2019. Date of Supreme Court Judgement: July 17, 2023.

Facts of the Case

The Present appeal is filed by the Paschimanchal Vidyut Vitran Nigam Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the order of the Appellate Tribunal. The Appellate Tribunal rejected the Appellant's appeal against the order of AA which directed the District Magistrate and Tehsildar, Muzaffarnagar to release the property in favour of the liquidator.

Raman Ispat Pvt. Ltd. (hereinafter referred as 'Respondent') and the Appellant entered into power supply agreement on dated 11.02.2010. The Respondent failed to pay the electricity bills generated throughout the times, and therefore as per the agreement, the Appellant attached the properties. The Tehsildar Muzaffarnagar, by its order restrained the sale and transfers of the property and created a charge on them. The Respondent underwent the resolution process but upon its failure, the Respondent was later subjected to liquidation.

The total arrears from the Respondent amounted to ₹4,32,33,883/-, the District Collector issued a notice for recovery of dues to the tune of ₹2,50,14,080/-. The liquidator alleged that the attachment orders of the District Collector and of Tehsildar, Muzaffarnagar, needs to be set aside by the AA as the potential buyers were uncertain about the liquidator's authority to sell the property and hence making it difficult to find buyers. Additionally, the liquidator submitted that the Appellant claim would be classified in order of priority under Section 53 of the IBC.

The Appellate Tribunal instructed the DM and Tehsildar, Muzaffarnagar, to release the attached property in favor of the liquidator. The Appellate Tribunal also agreed with the AA's reasoning that the Appellant fell within the definition of 'operational creditor' and could recover its dues through the liquidation process. The Appellant stated that the Section 173 & 174 of the Electricity Act 2003 has an overriding effect over other laws including IBC and therefore the Appellant could opt to stay out of liquidation and recover its dues. Alternatively, the Appellant submitted that the electricity dues were also 'security interest' in favor of electricity service provider and therefore should be considered as Secured Creditors. The

issue raised before the Apex court are: - 1. Whether IBC will override Electricity Act? 2. Whether the Appellant was a secured creditor?

Supreme Court's Observations

The Supreme Court relying on the Bankruptcy Law Reforms Committee Report, 2015 and the Preamble of IBC observed that the government dues have been given lower priority in waterfall mechanism under Section 53.

Placing reliance on its previous judgment delivered in Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs and Duncans Industries Ltd. v. AJ Agrochem, the Apex Court held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). Further, the Apex Court held that in the present case, dues payable to the Appellant do not fall within Section 53(1)(f) of IBC. The Appellant, which is undisputedly a secured creditor in the case, is entitled to its dues in accordance with the IBC mechanism.

Order: The Supreme Court held that the appeal deserves to fail and directed the Liquidator to decide the claim exercised by the Appellant in the manner required by the law. Further, the court directed to complete the process within 10 weeks from the date of pronouncement of the decision.

Case Review: *Appeal Dismissed.*

National Company Law Appellate Tribunal (NCLAT)

Sanjeev Kumar Sharma Vs. SREI Equipment Finance Ltd. Company Appeal (AT) (Insolvency) No. 909 of 2023. Date of NCLAT Judgement: August 17, 2023.

Facts of the Case

The Present appeal is filed by the Mr. Sanjeev Kumar Sharma (hereinafter referred as 'Appellant') in the capacity of suspended director of Dadheech Infrastructures Pvt. Ltd. (CD), after being aggrieved by the impugned order dated 26.06.23 passed by the Adjudicating Authority.

Since 2007, the Appellant had a business relationship with the SREI Equipment Finance Ltd., (hereinafter referred as

'Respondent'). During the business relationship, several loan agreements were signed following which funds were transferred by the Respondent to the Appellant. Meanwhile, the Respondent was admitted into CIRP and was taken over by the Administrator. Claiming that an amount of ₹ 131.35 Cr. was due from the Appellant, Section 7 application (hereinafter referred as 'Main Petition') was filed by the authorized signatory on behalf of the Respondent showing date of default as 23.08.2021.

Later, a new authorized signatory of the Respondent was appointed by the Administrator to re-sign, re-verify and to make formal amendments to the main petition. The same was allowed by the AA on 01.07.2022. An IA was filed by the Appellant before the AA to decide on the maintainability of the main petition on the broad ground that despite the amendments made, the main application continued to remain defective, invalid and not maintainable. The matter came up for hearing before the AA and by order dated 26.06.2023, the main petition was allowed, and the Appellant was admitted into CIRP. The Appellant aggrieved that though hearing was done only in respect of IA application regarding the maintainability of the main petition and not for the main petition but surprisingly the order was passed on the main petition admitting the Appellant to the rigours of CIRP. Hence Appellant has invoked the appellate jurisdiction of the Tribunal.

NCLATs Observations

The Appellate Tribunal after observing the submissions of both the parties held that the institution of the main petition and continuance of the proceedings on behalf of the Respondent has been done by duly authorized persons at all points of time and therefore the AA did not commit any error in finding the main petition to be maintainable and valid.

The Appellate Tribunal, while supporting the observation of AA, further held that debt and default above the threshold limit have been established, and there is sufficient reason for admission of main petition and admitting the Appellant into the rigours of CIRP. Further, the Tribunal stated that procrastinated pronouncement of the order has given fodder to the Appellant in making the absurd claims of having not been heard. The Appellate Tribunal further observed that such unreasonable and explained delays in delivering verdicts are not desirable

and the hyper technical and opportunistic pleas raised by the Appellant to stymie the admission of CIRP of the CD can't be countenanced either.

Order: The Appellate Tribunal held that there are being no sufficient and plausible grounds made which warrant any interference with the impugned order of AA, there is no merit in the appeal.

Case Review: *Appeal Dismissed.*

The Assistant Commissioner of Central Tax Vs. Mr. Sreenivasa Rao Ravinuthala & Ors. Company Appeal (AT) (CH) (INS.) No. 346/2021. Date of NCLAT Judgement: August 18, 2023.

Facts of the Case

The present appeal is filed by the Assistant Commissioner of Central Tax (hereinafter referred as 'Appellant') after being aggrieved by the order dated 13.08.21 passed by the Adjudicating Authority.

The CD, M/s Samyu Glass Pvt. Ltd. entered into CIRP and the RP (hereinafter referred as 'Respondent' no. 1) was appointed by the AA. The resolution plan submitted by the M/s Renganayaki Agencies (hereinafter referred as 'Respondent no. 2') was approved by the CoC with 100% majority votes and same was also approved by the AA through its order dated 13.08.21.

The Appellant challenged the order and contended that the CD had defaulted in payment of the Central Excise Duty amounting to ₹22,60,32,948/- (including interest and penalty) but the Resolution Plan earmarked only 0.13% of the claim amount towards Government dues. Whereas the Financial Creditor and other Operational Creditors were given a higher percentage of their Claim amounts. The Appellant further stated that due to the attachment placed on the CD's assets, the Appellant should be categorized as a 'Secured Creditor. The Appellant placed its reliance on the judgment pronounced in State Tax Officer vs. Rainbow Papers Limited, (2022) SCC, wherein it was held that State is a Secured Creditor under GVAT Act 2003.

The Respondent no. 1 submitted that the Appellant's challenge comes after the approval of the Resolution Plan, which was subsequently implemented on 08.02.2022. The SRA has already spent ₹68,98,00,000/- following the approval of the Plan. The Respondent argues that the Appellant did not raise any objections when the claim

amount was initially communicated. The AA noted that the Resolution Plan was in accordance with Section 30(2) of Code and Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations, 2016, and approved the same by its order dated 13.08.21, resulting which the Appellant filed this appeal before Appellate Tribunal.

NCLAT's Observations

The Appellate Tribunal contented that the demand orders were issued to the CD were under Central Excise Act 1944 and its provision are distinct from the provisions of GVAT Act 2003. The Appellate Tribunal held that the usage of the words 'save as provided in' in Section 11E of Central Excise Act, 1944 is in the nature of an exception intended to exclude the class of cases, mentioned in Companies Act, 1956, The Recovery of Debts due to Banks and the Financial Institutions Act, 1993, SARFAESI Act, 2002 and IBC. Further, 'Secured Interest' as defined under IBC, excludes charges created by Operation of law.

The Appellate Tribunal referring to the Master Circular No.1053/02/2017-CX, issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, held that dues under 'Central Excise Act, 1944' would have first charge only after the dues under the Provisions of IBC are recovered. Therefore, the decision in the matter of State Tax Officer vs. Rainbow Papers Ltd. cannot be made applicable to the facts of this case and the Appellant cannot be treated as a Secured Creditor. The Appellate Tribunal placing their reliance on the judgment pronounced by the Apex court in Kalparaj Dharamshi & Anr. v. Kotal investment Advisors Ltd. & Anr., held that the Commercial Wisdom of the CoC is non-justiciable unless it is not in accordance with Section 30(2) of the Code.

Order: The Appellate Tribunal found no irregularities in the Resolution Plan under Section 30(2) of the Code. The Plan was fully executed and the SRA paid Rs. 35,25,00,000/- to all the Creditors. Further as over 2 years have passed since approval the Appellate Tribunal didn't find any tangible and substantial reasons to set the clock back at this point of time.

Case Review: *Appeal Dismissed.*

Laxman Singh (Ex-Director) of Divinesear Logistics Pvt. Ltd. Vs. Kerry Indev Logistics Pvt. Ltd. Company Appeal (AT)(Insolvency) No. 1002 of 2022. Date of NCLAT Judgement: August 10, 2023.

Facts of the Case

The Present appeal is filed by the Mr. Laxman Singh, Ex-Director of the Corporate Debtor M/s Divinesear Logistics Pvt. Ltd. (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 18.02.22 passed by the Adjudicating Authority.

M/s Kerry Indev Logistics Pvt. Ltd. (hereinafter referred as 'Respondent-1) provided freight forwarding services to the CD. The Respondent-1 claimed that there were outstanding dues of ₹9,26,970/- along with an interest amount of ₹1,38,055/- for the services rendered. The Respondent-1 in the capacity of Operational Creditor served the demand notice dated 01.10.19, u/s 8 of the IBC. As no response was received from the CD the Respondent-1 filed Section 9 application for initiating CIRP before the AA, following which the AA admitted the Section 9 application.

The Appellant stated that they only referred clients to Respondent-1 for freight transportation and received commission in return. The Appellant stated that no contractual agreement existed between them, and they couldn't be held responsible for the dues as they weren't the consignee or beneficiary of the services. The Appellant also claimed that there was a pre-existing dispute to the Respondent no.1 and the security cheques were issued to secure commission for customer referrals and asserted that they are the Operational Creditor, not the Respondent-1.

The Respondent-1 contended that they fulfilled export services assigned by the CD and provided relevant Bills of Lading. The Respondent-1 submitted invoices with partial payments from the CD and stated that the cheques issued by the CD as a commission advance for referring a customer were rejected by the bank. Further, the Appellant did not raise any pre-existing dispute either before the issue of demand notice on in the reply thereof. The Respondent-1 further informed the Tribunal about its intention to withdraw the CIRP and stated that the issue

related to excessive fees demanded by the RP (hereinafter referred as Respondent-2) was the reason for delay in filing withdrawn application. The AA allowed the initiation of CIRP of the CD and dissatisfied with the AA's decision to accept the Section 9 application while disregarding pre-existing dispute, the Appellant filed this appeal.

NCLAT's Observations

The Appellate Tribunal after examining the submission of both the parties held that the emails shared between both the parties are clear admission of operational debt and the contention of the CD that there is no admitted debt is specious and lacks substance. The Appellate Tribunal further held that there is nothing on record to suggest that the Appellant raised any preexisting dispute before receipt of invoices or at any period prior to the issue of demand notice. Even the complaint of delay, purportedly received by the Appellant from its customers, does not seem to have been shared with the Respondent-1 prior to filing Section 9 application.

The Appellate Tribunal acknowledged that aggrieved with the hefty fees of the RP, the Respondent-1 filed a complaint before IBBI and held that the RP is expected to charge his fees in a transparent manner which should be reasonable reflection of the works undertaken rather than maximizing their own personal benefits.

The Appellate Tribunal further held that the RP should have facilitate the withdrawal of CIRP application, as desired by the sole CoC member, without unduly prolonging the proceedings. It is commonsensical that for recovery of a claim of about ₹10 lakhs, incurring an expenditure of ₹19 lakhs by way of fee/expenses of the RP is outlandish and that too when there seems to be no possibility of revival of the CD.

Order: By Exercising its inherent powers given under Rule 11 of (NCLAT Rules), the Appellate Tribunal orders the closure of CIRP proceedings in the interests of justice. The CD is relieved from the rigors of the CIRP, and the RP is not entitled to demand any fees or expenses beyond the amount of ₹8 lakh that has already been received.

Case Review: *Appeal Disposed of.*

Anil Kumar Vs. Jayesh Sanghrajaka. & Ors. Company Appeal (AT) (Insolvency) No. 513 of 202, No. 753 of 2023 & IA No.1666 of 2023 Date of NCLAT Judgement: August 03, 2023.

Facts of the Case

Both the present appeals are filed by Mr. Anil Kumar, suspended director of SK Elite Industries (hereinafter referred as 'Appellant') after being aggrieved by the orders-dated 06.03.23 and 15.05.23 passed by the Adjudicating Authority.

M/s SK Elite Industries ('Corporate Debtor') entered in to the CIRP which led to the formation of the Committee of Creditors/CoC and appointment of RP (hereinafter referred as "Respondent no. 2" and Respondent no. 1, respectfully). The Respondent no. 2 set forth criteria for Potential Resolution Applicants (PRA's) and issued Expression of Interest forms. However, due to a limited response, the CoC extended the deadline for EoI submission. In light of this, a fresh Form G was issued, according to more time for interested parties to express their interest.

Despite the extended timeline, no initial resolution plans were received from the PRA's. An extension of the CIRP period was granted by the AA. The resolution plans received through PRAs to the CoC, during its successive meetings were unsatisfactory, the CoC, in response, permitted PRAs to revise their offer. However, the revisions were not received within the stipulated timeframe and thus the liquidation proceedings were initiated. During the 9th CoC meeting, the Appellant indicated a Section 12A settlement proposal, but submitted it after significant delay, i.e., just before the 11th CoC meeting. Despite the challenges, CoC meetings continued to evaluate plans, including one from M/s Metro Realty Group (hereinafter referred as 'Respondent no.3'). The resolution plan submitted by Respondent no. 3 was considered after a halt to liquidation proceedings. The plan was approved during the 19th CoC meeting, benefiting stakeholders and promoters. The Appellant didn't object to the resolution plan but later, filed the appeals challenging the orders.

The main issue raised before the Appellate Tribunal is: (i) Whether the exercise of commercial wisdom of the CoC in approving the resolution plan of Respondent No.3 is sustainable in the teeth of material irregularity alleged by the Appellant or not?

NCLAT's Observations

The Appellate Tribunal while placing their reliance on the judgement pronounced in *Ngaitlang Dhar v Panna Pragati Infrastructure Pvt. Ltd.* by the Hon'ble Supreme Court held that it's a trite law that commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the process within the timelines prescribed by the IBC.

The Appellate Tribunal further held that the CoC, led by the RP, ensured transparency by updating the AA about developments since the liquidation application. The 19th CoC meeting also clearly notes that multiple opportunities given to the Appellant to submit resolution proposal went futile. The Appellant even supported the resolution plan of Respondent No.3. Hence, there's no valid basis for the Appellant to claim unfair treatment in the resolution process.

The Appellate Tribunal further held that when the COC has approved a Resolution Plan by 100% voting share after considering its feasibility and viability, such decision of CoC is a commercial decision. The Appellant had multiple opportunities to submit a Section 12-A proposal but consistently failed to do so, and therefore, there is no sufficient ground for the Appellant to claim prejudice.

Order: The Appellate Tribunal held that the commercial wisdom of CoC in approving the Resolution Plan is not to be interfered in the exercise of jurisdiction of judicial review either by the Adjudicating Authority or by the Tribunal in the exercise of its appellate powers. Hence the AA did not commit any error in approving the resolution plan.

Case Review: *Appeal Dismissed.*

Monica Jajoo Vs PHL Fininvest Pvt. Ltd. & Mr. Jayant Prakash Company Appeal No. 1344 & 1345 of 2022. Date of NCLAT Judgement: July 21, 2023.

Facts of the Case

The present appeal was filed under section 61 of the IBC by Monica Jajoo (hereinafter referred as "Appellant")

against two orders, dated 29.08.2022 and 16.9.2022, passed by the AA ('NCLT, New Delhi, Court -IV').

A Facility Agreement for a loan was entered into by M/s Piramal Finance Limited with M/s Hema Engineering Industries Ltd (hereinafter referred as 'CD'). By virtue of an Assignment Agreement the above loan was assigned in favour of PHL Finvest Private Limited (hereinafter referred as "Respondent"). The Respondent issued a demand notice in under Rule 7(1) of the IBC seeking repayment of alleged outstanding of Rs. 443,36,21,727 and subsequently filed an application under section 95(1) of the IBC seeking initiation of personal insolvency against the Appellant who is the personal guarantor of the loan.

The personal insolvency against the Appellant was initiated vide AA's order dated 29.8.2022 and an RP was appointed. The Respondent further filed an application under section 98(1) for the replacement of the RP which was decided by the AA vide order dated 16.9.2022. The Appellant stated that procedure followed by the AA, in adjudicating the section 95 application vide Impugned Order dated 29.08.2022 and for replacement of the Resolution Professional vide Impugned Order dated 16.9.2022, was against the procedure prescribed under the IBC. The Appellant contended that the appointment/replacement of the Resolution Professional was done without following the due procedure provided under section 98 of IBC. Further, the Appellant claimed that Bench-IV of NCLT, New Delhi had no jurisdiction to pass both the Impugned Orders, since liquidation proceedings of the CD was pending before the Bench-III of NCLT, New Delhi.

NCLAT's Observations

NCLAT referring to the State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia held that the sub sections (1) and (2) of section 60 lay down a requirement of law, which stipulates and mandates that an application relating to insolvency resolution or liquidation of corporate guarantor of a CD shall be filed before such NCLT, where a CIRP or liquidation proceedings of the same CD is pending.

The Appellate Tribunal held that even though transfer application was filed before the AA, it did not take the transfer application into consideration before passing both

the Impugned Orders. The Bench-IV of NCLT, New Delhi could not have heard and adjudicated upon the applications under section 95 and 98 and should have transferred these applications to Bench-III which was already considering the liquidation proceedings of the CD under the IBC.

Order: The Appellate Tribunal held that requirement of law has not been kept in mind while considering the applications under section 95 and 98, and accordingly it directed to set aside both the Impugned Orders. Further, the Appellate Tribunal directed that the application filed by the Respondent against the Appellant be heard afresh and decided by the same bench of NCLT, New Delhi, which considered the insolvency and liquidation application against the CD.

Case Review: *Appeal Allowed.*

Harish Sharma Vs. M/s. C & C Constructions Ltd., & Ors. Company Appeal (AT) (INS) NO. 368 of 2023 Date of NCLAT Judgement: July 05, 2023.

Facts of the Case

The Present Appeal is filed by Mr. Harish Sharma in the capacity of Operational Creditor (hereinafter referred as 'Appellant') after being aggrieved by the impugned order dated 08.02.23 passed by the AA.

The Appellant became the operational Creditor of M/s C.C Construction Ltd. (hereinafter referred as 'CD'), by virtue of two distinct Assignment Agreements dated 15.12.22 executed with KM contractors and SNI Infratech. Upon the agreement the Appellant became eligible under section 230 of the companies Act, 2013 to submit a scheme of compromise and arrangements. The Appellant also became the power of attorney holder of Gulshan Investment Company Ltd. and Montage Enterprises Pvt. Ltd. and Anantjeet Nutriment LLP with whom it has formed a consortium for the ostensible reason of proposing a scheme of compromise and arrangements with respect to the CD.

The CD was entered into CIRP but due to lack of proper resolution proposal, the CD was sent for Liquidation and official Liquidator was appointed. The liquidator issued an invitation for the submission of a scheme of arrangement

under section 230 of Companies Act, 2013, thereafter the Appellant made a request to the liquidator for granting the access to the Virtual data Room (VDR) and also submitted the supported document for the same but his request could not be completed within 90 days limit and therefore an IA dated 07.01.23 was filed by the Appellant for seeking extension of timeline regarding submission of Scheme. The said IA was rejected by the AA by the impugned order.

The Appellant further claims that he had finalized a scheme of arrangement but did not submit it due to the lack of an extension of the deadline requested through IA dated 07.01.23.

NCLAT's Observations

The Appellate Tribunal while placing its reliance on judgment delivered by the Apex Court and the Appellate Tribunal in Arun Kumar Jagatramka vs. Jindal Steel & Power Ltd. 2021 and Y. Shivaram Prasad vs. S. Dhanpal & Ors, 2019 held that the amendment dated 25.07.19 made to the Liquidation Process Regulation, 2016 by the IBBI recognizes a process envisaged u/s 230 of the companies Act, 2013 as a valid method of revival of CD during liquidation. Further, regulation 2-B clearly stipulates that submission of compromise and arrangement should be completed with-in 90 days from the order of Liquidation and clause 2 of 2-B clearly says that time taken for compromise or arrangement not be included in the Liquidation period.

The Appellate Tribunal further stated that the Appellant failed to provide proof of a formulated and ready scheme of compromise or arrangement, as well as the consent of 75% of the secured creditors of CD in support of such scheme. Merely requesting an extension of the timeline without demonstrating sincere and serious efforts in preparing and formulating the scheme indicates a lack of concrete action. The 90-day timeline prescribed under Regulation 2-B of the Liquidation Process Regulations, 2016 expired on 04.01.23 with no evidence of the scheme's readiness presented.

Order: The AA has not committed any error in passing the impugned order. No merit found in the appeal.

Case Review: *Appeal Dismissed.*

Naren Seth Vs. Sunrise Industries & Ors. With, Marine Electrical Ltd. Vs Sunrise Industries & Ors. Company Appeal (AT) (Insolvency) No. 401 of 2023, No. 695 of 2023. Date of NCLAT Judgement: July 04, 2023.

Facts of the Case

The present two appeals are filed by aggrieved parties in response to the impugned order dated 02.03.23 passed by the Adjudicating Authority (AA). The first is by Naren Seth (hereinafter referred as the 'Appellant/Liquidator') and the other by Marine Electrical Ltd., the successful bidder. The CIRP application u/s 9 of IBC has been initiated by M/s Vijisan Exports Pvt. Ltd. in the capacity of Operational Creditor against the CD - Ciemme Jewels Ltd. before AA which was admitted and CIRP was initiated against the CD through an order dated 18.04.18. Due to non-receipt of any resolution plan the AA passed a liquidation order dated 25.03.19 and the official liquidator has been appointed.

The Liquidator contended that he conducted two separate auctions for the sale of premises of the CD, but both the auctions were unsuccessful as no bid was received. Subsequently, the 3rd Sale Notice was issued which was later revised due to certain dates being incorrect caused by typographical errors. Finally, the Liquidator issued a revised notice for sale of assets and date of E-auction was fixed on 08.04.22 for which the last date of submission of Expression of Interest (EoI) by bidders was fixed on 04.04.22.

The Marine Electrical India Ltd., the successful bidder and appellant in second appeal submitted that all the formalities towards bidding process have been furnished within stipulated time including required payment of EMD and Sales Certificate was obtained dated 11.05.22. It also stated that the AA has wrongly passed the impugned order in setting aside the E-auction dated 08.04.22 without granting an opportunity to the successful bidder.

The Sunrise Industries (hereinafter referred as 'Respondent-1') submitted that the liquidator published E-auction notice with vital errors and wrongful intention. Besides, only one working day was given for submission of documents and no time was provided to due diligence including site visit, executing the required documents and

the money needed for EMD. Learned counsel for Respondents assailed the conduct of Liquidator and stated that even the corrigendum on the IBBI website and newspapers was published on 08.04.22 and 09.04.22, after the sale was concluded. The Main issue arises in the present two appeals before the Appellate Tribunal is that: (i) Whether the correct procedure was followed in the E-auction or not? (ii) Whether auction was conducted in haste without giving adequate opportunity to all to participate?

NCLAT's Observations

The Appellate Tribunal said that after examining the submission of both the parties, the dates which are published in previous bidding notice and later on changed can't be treated as typographical errors as claimed by the liquidator and entire auction was conducted in just five days including weekend. However, no specific timeline has been given in the IBBI (Liquidation Process) Regulations, 2016 but normally notice period of 30 days should be given to get the best value.

The Appellate Tribunal also agreed to the observations of the AA that the 'haste' and 'procedural irregularities' committed by the Liquidator in conducting the auction clearly points out finger towards his conduct. The Appellate Tribunal while placing reliance on the judgment given by Hon'ble Supreme Court in the matter of M/s Jainsons Exports India Vs. Binatone Electronics Ltd, 1996, said that "the purpose of open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value". The liquidator acted in hurry in conducting the E-auction without giving adequate opportunity to the entire participant.

Order: The Appellate Tribunal didn't find any error in the impugned order dated 02.03.23 wherein the E-auction was set aside, and it was held that the Liquidator must bear all expenses incurred for the auction. It also did not appreciate the conduct of liquidator in whole process as observed by AA.

Case Review: *Both the Appeals Dismissed.*

National Company Law Tribunal (NCLT)

Deutsche Bank A.G Vs. Mr. Devendra Umrao. IA. NO. 3846/ND/2023 & IA-1175/ND/2022 in C.P. (IB)-2240(ND)/2019. Date of NCLT Judgement: September 18, 2023

Facts of the Case

The Present IA (NO. 3846/ND/2023) is filed by the Deutsche Bank A.G (hereinafter referred as 'Applicant') against the resolution plan submitted by the Resolution Professional (hereinafter referred as 'Respondent') through IA (No1175/ND/2022).

The main CIRP petition was filed by M/s Hi-tech Resource Management Ltd. against, M/s Overnite Express Ltd ('CD') u/s 7 of IBC, 2016 and the same was admitted vide order dated 02.03.2020. The Applicant has raised concerns that secured creditors have been offered a meager amount of ₹3,24,62,545/- against total admitted claims of ₹10,82,08,485/-, which represents approximately 30% of the total admitted claims. Given the Applicant's claim of ₹6,00,26,716.30/-, they are set to receive only 30% of their admitted claim and this offer has been made without considering the security held by the Applicant, which is valued at more than ₹12 crores as of the current date. The Applicant further stated that they are entitled to equivalent the value of their security/Mortgage property, as held by the Hon'ble Apex Court in the cases of *Jaypee Kensington Boulevard Apartments Welfare Assn. vs. NBCC (India) Ltd.* and *India Resurgence ARC Pvt. Ltd. vs. Amit Metaliks Ltd.*, and also stated that, the Respondent has not included the Applicant's claims, even after admitting it before AA. The Applicant further contended that the suspended director of CD has submitted the resolution plan claiming that CD falls under the MSME category in terms of the Central Govt. notification and is fraudulently trying to take advantage available to MSME u/s 240A of the Code.

The Respondent submitted that he took legal opinion before obtaining MSME license for the CD and cited the judgement of the Appellate Tribunal in *Govind Prasad Todi vs. Satyanarayana Gudetti and Ors.* where promoters who obtained an MSME certificate after CIRP initiation submitted a resolution plan. The Respondent also stated that the dissenting Financial Creditors who did not support the Resolution Plan would be paid the liquidation value in

accordance with the provisions under Section 30(2) read with Section 53 of the Code.

The main issue raised before the AA is: (i) Whether the MSME Certificate obtained after the commencement of CIRP is valid for making a Defaulter Promoter eligible to submit a Resolution Plan under Section 240A of IBC, 2016. or not?

NCLT's Observations

The AA while placing its reliance on judgement pronounced by the Appellate Tribunal in *Harkirat Singh Bedi vs. The Oriental Bank of Commerce & Anr.*, observed that an MSME Certificate obtained by Promoter(s)/ Ex-Director(s) post-commencement of the CIRP is invalid and it will not make them eligible to submit an EOI or the Resolution Plan by taking benefit of Section 240A of IBC 2016.

The AA further stated that the RP/CoC members can obtain the MSME certificate after commencement of CIRP, either for the purpose of availing the business advantages available under the MSME Act, 2006 or for availing the preference in the marketing of its product which are in overall interest of maximizing the value of assets of the CD.

Further, the AA while placing its reliance on the judgment delivered by the Apex court in *Arun Kumar jagatramka Vs. Jindal Steel and power Ltd. & Anr.* 2019, observed that Section 29A was incorporated to prevent unscrupulous persons from gaining control over the affairs of the company, including those who by their misconduct have contributed to the defaults of the company or are otherwise undesirable. Hence, neither Section 25 nor Section 28 of IBC empowers the Respondent or CoC to obtain an MSME Certificate to enable the back door entry of the defaulting Promoter/Suspended Management into the CD, who is otherwise barred under Section 29A of IBC to submit the EOI/Resolution Plan.

Order: The AA rejected the resolution plan and allowed the IA. Furthermore, it stated that since a period far exceeding 330 days of the CIRP has already elapsed, the CD should be liquidated with immediate effect in terms of Section 34(4) of the IBC, and a Liquidator is appointed.

Case Review: *The IA (NO. 3846/ND/2023) filed by the Deutsche Bank A.G is allowed, and IA (No1175/ND/2022) filed by the Respondent is rejected.*

Suraksha Realty Ltd. Vs. Mr. Anuj Bajpai. IA No. 1758/2022 in C.P.(IB)2808/2018. Date of NCLT Judgement: September 04, 2023.

Facts of the Case

The present IA is filed by the Suraksha Realty Ltd. (hereinafter referred as 'Applicant') in CIRP proceedings of the Corporate Debtor Panache Aluminum Extrusions Pvt. Ltd., after being aggrieved by the actions of Mr. Anuj Bajpai, Resolution Professional of CD (hereinafter referred as 'Respondent'). The CIRP proceedings were initiated against the CD by an order dated 31.12.19 passed by the AA and the RP was appointed.

As per the Applicant, the CD along with its group company-Blockwel Pvt. Ltd., sought a financial assistance of ₹3 crores from him. The loan was provided as per agreed terms of agreement executed between the Applicant and CD (borrower) with its group company as 'Co-borrower' at an interest rate of 15% per annum and 210-days of repayment period. To secure the loan, physical shares of the Blockwel Pvt. Ltd. were pledged.

The Applicant vide letter dated 09.12.18 demanded a total payment of ₹ 9.30 crores from the CD and Co-borrower informing them that it would invoke the agreement on 'Pledge of Shares' if the payment was not made. However, no payment was received despite this letter. The applicant contended that he got to know about the CIRP proceedings only after being contacted by the police and he was unaware of the claims process and could not file their claim as a secured Financial Creditor. The Applicant believes that the Respondent should have been aware of these secured loans and advances based on the CD's records such as ledger accounts and balance sheets, and the CoC did the same mistake while approving the Resolution Plan without informing to PRAs about such claims.

The Respondent contends that the Applicant's claim is time-barred due to failure to meet the Regulation 12 of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, and once a CoC-approved Resolution Plan is in place, new claims cannot be accepted. Further, the Respondent submitted that the Code doesn't require individual notifications to creditors, as the necessary regulations, including the Public Announcement, were followed and the Applicant has not proven the existence of

any mortgage or security from the CD that would establish a charge in favor of the Applicant.

NCLT's Observations

The AA placed reliance on the judgment pronounced by the Apex court in the case of *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*, 2021 whereby it was held that due adherence to the timelines provided in the Code and related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution and if a claim is not made within the stipulated time, the same cannot become part of the Information Memorandum to be prepared by the IRP.

The AA further stated that the Respondent can't be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the stipulated time and the extended time as permitted by Regulation 12. It was further observed that SRA should not be burdened with unresolved claims that arise after their Resolution Plan has been accepted, as this would introduce uncertainty regarding the amounts payable by the prospective resolution applicant taking over the CD's business.

Order: The AA said that the Resolution Plan has already been approved by the CoC which is pending for approval with the AA. Therefore, admission of any claim at this stage would jeopardize the whole CIRP process.

Case Review: *IA Application Dismissed.*

M/s Bezel Stockbrokers Private Limited Vs Security Exchange Board of India (SEBI) & Insolvency and Bankruptcy Board of India (IBBI), Company Petition No. (IB) -251 (ND)/2021. Date of NCLT Judgement: August 02, 2023.

Facts of the Case

The present application is filed by M/s Bezel Stockbrokers Pvt. Ltd. in the capacity of Corporate Debtor (hereinafter referred as 'Applicant' or 'Company') for initiating CIRP against itself u/s 10 of IBC before Adjudication Authority (AA).

The Applicant being a stockbroker company incorporated under the Companies Act, 1956, registered with ROC Delhi, and also registered with SEBI under (Stockbrokers

and Sub-Brokers) Regulations, 1992 since 14.06.2019. The Applicant has been engaged in the business of stock brokering, proprietary trading, and clearing member services for buying, selling, and dealing in securities etc., as permitted by the stock exchange(s)/clearing corporation and subject to conditions specified by the SEBI.

Due to the financial crisis, the Applicant couldn't deposit the required 20% margin for the stocks purchased on behalf of its clients as per SEBI rules. Consequently, the SEBI forfeited the shares, resulting in a significant liability of ₹3,35,84,815/- towards the shareholders/ clients of the Applicant. Additionally, the advance funds (Cash & Collateral) provided by clients for future orders were not returned by the Company, adding a further liability of ₹ 91,78,621/-. Therefore, the total liability towards its clients amounts to ₹4,27,63,436/-. The Applicant has been facing increasing losses year after year, making it impossible to continue its operations. Consequently, the Applicant has been declared a defaulter and expelled from the NSE membership. In light of these circumstances, the Applicant has decided to file this Application under Section 10 of the IBC 2016.

The SEBI (hereinafter referred as 'Respondent No.1') submitted that the Applicant is a Financial Service provider as defined u/s 3(7) of the code and does not cover within the definition of the 'CD'. The main issue that emerges from the submission of the parties before the AA is: (i) Whether a Stockbroker Company is a Financial Service Provider?

NCLT's Observations

The AA observed that u/s 3(15) of IBC, 'Securities' and various types of 'Contracts' are considered as Financial Products. Since these terms are not explicitly defined in IBC, the AA referred to Section 2 of the Securities Contracts (Regulation) Act, 1956, which includes Shares, Scrips, Stocks, Bonds, Debentures, and Debenture Stocks under the term Securities, thereby treating them as Financial Products under Section 3(15) of IBC.

The AA concluded that the Applicant, being a stockbroker dealing in securities (considered Financial Products under section 3(15) of IBC), was providing 'Financial Services' as per Section 3(16) and, therefore, qualified as a 'Financial Service Provider'. Additionally, the Applicant was registered with SEBI, which is a 'Financial Sector Regulator' in terms of Section 3(18) of IBC, thus the Applicant falls under the control and supervision of SEBI as a Financial Service Provider.

Order: The AA observed that a stockbroker company will be considered as a Financial Service Provider, thus the Applicant being a "Financial Service Provider" is outside the purview of the definition of a "Corporate Person" as defined under Section 3(7) of IBC 2016 and therefore, could not be considered as a "Corporate Debtor" u/s 3(8) of IBC, 2016.

Case Review: *Application Dismissed.*



IBC News

We should improve our system so that prospective bidders feel more confident: Ravi Mital, Chairperson-IBBI

Shri Ravi Mital, Chairperson-IBBI has said that Insolvency Professionals (IPs) should make every possible effort to improve the insolvency ecosystem in the country which will ultimately increase the confidence of prospective bidders in the stressed assets and ensure better resolution of the corporate debtors. He was speaking as the Chief Guest at the Conference (physical) on “Developing Markets for Stressed Assets in India” organized by IIIPI in New Delhi on Friday, September 22, 2023.

“IPs should compile litigations and find out ways to minimize delays. If delays are reduced, venture capitalists will be encouraged to invest in stressed assets,” said Shri Ravi Mital. He also suggested the IPs to revisit the companies, which they had resolved through resolution plans under the IBC, after 4 to 5 years of their resolution and prepare “success stories”, which will be useful in creating a positive environment for investment in stressed assets. Speaking on this occasion, Shri Akhil Gupta, Vice Chairman-Bharti Enterprises Ltd., said that it is the right time to extend Prepack Insolvency for all the companies.

IIIPI Chairman Dr. Ashok Haldia highlighted that the ultimate objective of the IBC is to reduce stressed assets and the focus of the IBC 2.0 is to ensure the speedy resolution of CIRP cases. He informed that IIIPI has made mandatory Peer Review for a class of IPs and the result of Peer Review will also be made available on IIIPI website in future. The Conference also witnessed 'Special Address' by CA. G. C. Misra, Chairman, Committee on IBC-ICAI and CA Subodh Kumar Aggarwal, Past President-ICAI and Prof. Balagopal Gopalakrishnan, IIM, Ahmedabad. Besides, there was a “Panel Discussion” on the topic in which IPs, bankers, industry professionals, lawyers etc. shared their views and exchanged ideas.

Source: [iiipi.icai.in/September 22, 2023](https://www.iiipicai.in/September%2022,%202023)

<https://www.iiipicai.in/wp-content/uploads/2023/09/IIIPI-Press-Release-on-Stressed-Assets-22.09.23.pdf>



The clean slate principle would stand negated if the Successful Resolution Applicant is asked to pay the arrears payable by the CD: SC

The Supreme Court has held that the issue of Corporate Debtor's dues falls within the fold of the phrase 'arising out of or in relation to insolvency resolution' under Section 60(5)(c) of the IBC. Therefore, the dues of the Corporate Debtor have to be paid in the manner prescribed in the Resolution Plan, as approved by the Adjudicating Authority. The above judgement came in the case of *TATA Power Western Odisha Distribution Ltd. (TPWODL) Vs. Jagannath Sponge Private Ltd.*

In this appeal, TPWODL, which supplies the electricity, insisted on payment of the dues of the Corporate Debtor by the Successful Resolution Applicant (SRA)- Jagannath Sponge Private Ltd., for restoration/grant of the electricity connection. Relying on the previous Supreme Court judgements in the matter of *Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Private Limited and Ors.* (2023) and *Southern Power Distribution Company of Andhra Pradesh Limited Vs. Gavi Siddeswara Steels (India) Pvt. Ltd. and Anr.* (2023), the Court ruled that the Appellant cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the SRA will have to comply with the other requirements for grant of electricity connection, added the Court. Further, the Court also cited the case of *Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Ors.* (2020) wherein the Supreme Court has clarified that a decision by public authority etc. may fall within the jurisdiction of the tribunals constituted under the IBC, where the issue relates to or arises out of the dues payable to an Operational or Financial Creditor.

Source: [Livelaw.in, dated September 11, 2023](https://www.livelaw.in/pdf_upload/34458202332646784or%20der%201-sep-2023-492608.pdf)

[https://www.livelaw.in/pdf_upload/34458202332646784or der1 1-sep-2023-492608.pdf](https://www.livelaw.in/pdf_upload/34458202332646784or%20der%201-sep-2023-492608.pdf)

If we reduce delay, then the recovery will be better: IBBI Chairperson

“We are trying to speed up the process and are open to suggestions from stakeholders. The direct benefit of the IBC is recovery, but you know the indirect benefit is even bigger and it is called a behavioral change. It is called the change in creditor and borrower relationship,” said Ravi Mital, Chairperson, IBBI addressing Assocham's 8th National Summit on 'Insolvency and Bankruptcy Code and Valuation'. He also highlighted that the motto was to bring the company back on track, however, IBC is evaluated based on the recovery mode.

IBBI Chairperson informed that now the NCLT is approving 35 plans a month and at this rate, and if it can continue it will definitely reduce delay to a large extent. “We have to be more innovative to reduce delays. Of course, there is a need for an amendment,” said Mital. “We are trying to find out or analyse the cause of delays at various levels and are trying to speed up the processes,” he added.

Source: *Telegraphindia.com, September 17, 2023*

<https://www.telegraphindia.com/business/insolvency-and-bankruptcy-board-of-india-seeks-to-plug-delay-and-low-recovery/cid/1966882>

UK Electric Car Subscription Service 'Onto' Faces Insolvency

Onto, a UK electric car subscription service is currently facing insolvency despite successfully raising £100 million in investments in January of this year. The investments were intended to expand its electric vehicle fleet and potentially expand into other regions. The company cites challenging market conditions, including a significant drop in the price of used electric vehicles, rising interest rates, and financial constraints on consumers' disposable income as reasons for its financial difficulties. According to the company, the administrators now manage the business and affairs as agents of the Company and certain subsidiaries.

Source: *Electrive.com, September 18, 2023*

<https://www.electrive.com/2023/09/18/onto-insolvent/>

Party City exits bankruptcy as USA Court approved Reorganization Plan

As per the Reorganization Plan, debt of around \$1 billion has been cancelled and nearly 800 stores of the Company will be closed in the USA. However, many of its workers will stay employed as the company has renegotiated many of its leases and exited 'less productive locations'. Party City had approximately 6,400 full-time and 10,100 part-time workers as of 2021. Party City, the largest party supply store in the US, filed for bankruptcy in January after struggling to pay off its \$1.7 billion debt load.

Source: *CNNBusiness.com, September 07, 2023*

<https://edition.cnn.com/2023/09/07/business/party-city-exits-bankruptcy/index.html>

Whether the Corporate Debtor is to be revived or not is essentially a business decision and hence should be left to the CoC so long as it musters more than 66% vote share: NCLAT

The NCLAT, New Delhi has held that undisputedly, in the statutory framework of the IBC, there is only limited review available which can be exercised by the Adjudicating Authority without trespassing upon the business decision of the majority of the CoC and it is here that primacy of the commercial wisdom of the CoC comes into play.

“There can be no fetters on the commercial wisdom of the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon'ble Supreme Court. It is not for the Adjudicating Authority to consider or evaluate on merits the rationale underlying the commercial decision of the CoC.,” said the court and upheld the decision of the Adjudicating Authority of ordering the liquidation of the Corporate Debtor as decided by the CoC with 100% vote share. This judgement has come in the matter of SAJ Housing Pvt. Ltd. (Appellant) Vs. Priyanka Chouhan, Liquidator of CD. The Court also observed that the Appellant was informed and given ample opportunity to file claims as Operational Creditor, but it did not turn up. The CoC having applied its commercial wisdom and proposed liquidation, the CIRP having been concluded and liquidation proceedings under

Section 33(2) of the IBC have commenced. However, the court allowed the Appellant to file claims before the Liquidator.

Source: *IBCLaw.in, September 01, 2023*

<https://ibclaw.in/saj-housing-pvt-ltd-vs-ms-priyanka-chouhan-nclat-new-delhi/?print-posts=pdf>

Marginal Improvement in Realizations under the IBC, 2016 during Q1 of FY 2023-24: Study

The report revealed that CDs, OCs and FCs witnessed a marginal improvement in realisations during the June quarter of FY24 compared to previous year. While the realisation for CDs was 18.3% compared to 18.2%, it was 17.7% for OCs as against 15.7%, said the Report which is based on an analysis of the recent data released by the IBBI. As per the Report, for the CIRP yielding resolution, the timeline recorded in this period has been the highest at 635 and 643 days for OCs and FCs, respectively, since FY21. The average timeline for resolution of cases for CDs was 541 days in Q1 FY24, same as in FY23. The resolution timeline for CDs was 516 days in FY2022 and 439 in FY2021.

Source: *The Indian Express, August 31, 2023*

<https://indianexpress.com/article/business/banking-and-finance/average-time-taken-for-ibc-resolution-at-three-year-high-8916823/>

Benitago Group, which had acquired Amazon's e-commerce business, files for bankruptcy

As per the media report, the company's assets and liabilities are ranging from \$50 million to \$100 million. "Benitago has plans to restructure its debt and potentially sell off some parts of its business in bankruptcy," said the Report. Founded by Benedict Dohmen and Santiago Nestares in 2016, Benitago connects with self-starting Amazon business owners who are looking to sell their businesses. The company had raised around \$380 million in equity and debt to fund acquisitions of brands built to sell on Amazon's marketplace. It had about \$7.5 million in cash at the time of the bankruptcy filing.

Source: *ET Retail.com, September 02, 2023*

<https://retail.economictimes.indiatimes.com/news/e-commerce/e-tailing/amazon-e-commerce-business-acquirer-benitago-files-for-bankruptcy/103306411>

Insolvency and Bankruptcy Code has brought a paradigm shift in the insolvency regime in the country and is a crucial milestone in the economic reforms: Prime Minister

Hailing the IBC, 2016 as a crucial economic reform, Prime Minister Shri Narendra Modi has said, "When we speak of Ease of Doing Business, ease of winding up a business is also an important facet of the cycle". He acknowledged the need to make the insolvency regime "even better". These views were expressed by the Prime Minister in a signed message for seminar on "Rejuvenation of Economy under Insolvency Laws" recently organized by the International Council of Jurists, London in New Delhi.

"Today, the health of our banking system is seeing new highs while the recovery of NPAs has been extremely encouraging. The sustained efforts by all stakeholders to get the process of resolving insolvency going smoothly has been an important contributor. It is the outcome of these dedicated and committed endeavours that the nation has massively improved its Ease of Doing Business," said the Prime Minister. "Although other factors, like rigorous tax enforcement, still impact the economy, resolving NPAs is pivotal for revitalising credit growth and investment," he said. The Prime Minister emphasized that India has pursued a human-centric approach to development, for true progress is always people-centric. "Just a few years ago, India, which used to be counted among the "Fragile Five" economies, is now being considered a bright spot in the global economy," said the Prime Minister and credited the turnaround to the coordinated implementation of several reforms.

Source: *Business Standard.Com, August 26, 2023*

https://www.business-standard.com/economy/news/insolvency-code-a-crucial-milestone-in-economic-reforms-pm-modi-123082600841_1.html

Financial Performance of the Companies that were taken up for action under IBC has improved: Study by IIM Ahmedabad

According to the Study, there was a 76% jump in average sales of companies three years after resolution. Besides, the staff strength (employees) went up, which was indicated by an increase in average wage bill by around 50%. "Trends in the market capitalization of listed resolved firms indicate a significant revival in the average

market valuations in the post resolution period, which is expected give the growth opportunities that will accrue to these firms post the resolution with creditors,” said the Report. The Report has also highlighted some of the areas of improvement in the IBC ecosystem such as performance of resolution professionals, repeated attempts by the litigants to delay the process, and dealing of tax authorities, banks and RBI with resolved companies.

Source: *The Times of India, August 28, 2023*

<https://timesofindia.indiatimes.com/business/india-business/business-parameters-of-companies-improve-after-insolvency-process-study/articleshow/103114811.cms?from=mdr>

Judicial Interventions such as IBC should be used only as a last resort in case of stalled housing projects: Govt. Panel

The primary reason for stress in real estate projects is lack of financial viability which has resulted in cost overruns and delays, said the 'Report of the 'Expert Committee on Rehabilitation of Legacy Stalled Real Estate Projects' which was headed by former NITI Aayog CEO Amitabh Kant. “The project resolution should be a win-win situation for all stakeholders,” suggested the Expert Committee. The 14-member Committee has made seven-point recommendations. It was set up by the Union Housing and Urban Affairs Ministry in March to tackle the problem of incomplete real estate projects following a recommendation made by the Central Advisory Council under the Real Estate (Regulation and Development) Act, 2016.

Source: *The Hindu, August 21, 2023*

<https://www.thehindu.com/news/national/use-insolvency-code-as-a-last-resort-says-panel-on-stalled-housing-projects/article67219902.ece>

China's Real Estate Company - Evergrande Group - filed for bankruptcy protection in New York

Evergrande Group, once holding a staggering debt exceeding \$300 billion, has initiated a Chapter 15 bankruptcy protection filing under USA's bankruptcy laws. It is reportedly part of one of the world's biggest debt restructuring exercises, as anxiety grows over China's worsening property crisis and a weakening economy. In addition to the Evergrande Group, some more major real

estate companies in China have defaulted on their offshore debt obligations. The Company has over 1,300 real estate projects spanning more than 280 cities of China. Its bankruptcy filing is being seen as a move for securing its US assets as it navigates a multi-billion-dollar debt restructuring deal with creditors. The company's offshore debt restructuring involves a total of \$31.7 billion, which includes bonds, collaterals and repurchase obligations.

Source: *The Telegraph, August 19, 2023*

<https://www.telegraphindia.com/world/evergrande-files-for-us-bankruptcy-protection-as-china-economic-fears-mount/cid/1960022>

NARCL gets NCLT's approval to acquire twin SREI Companies

NCLT Kolkata on August 11 approved the Resolution Plan submitted by National Asset Reconstruction Company Ltd. (NARCL) with respect to the Corporate Insolvency Resolution Process (CIRP) of the twin companies – SREI Infrastructure Finance Ltd (SIFL) and SREI Equipment Finance Ltd (SEFL). The Plan has already received 'fit and proper' approval from the Reserve Bank of India (RBI). It will be the first acquisition by the government-owned Asset Reconstruction Company (ARC).

The insolvency proceedings against SIFL and SEFL commenced in October 2021 after the insolvency petitions filed by the Reserve Bank of India (RBI) were approved by the Kolkata bench of the NCLT. The total admitted claims of financial creditors are ₹32,750.22 crore. State Bank of India, Punjab National Bank, Axis Bank, HDFC Bank, Union Bank of India, Canara Bank, IDBI Bank, UCO Bank and Indian Overseas Bank, among others, are the financial creditors to the Corporate Debtors. The Resolution Plan submitted by NARCL was approved with an 89.2% voting share of the consolidated CoC for SIFL and SEFL while the Resolution Plan submitted by Authum Investment and Infrastructure received 84.86% vote, and the consortium of Varde Partners and Arena Investors got only 9% vote. These three bidders had had participated in the challenge mechanism process, adopted by the CoC in which NARCL won the bid.

Source: *Financial Express, August 12, 2023*

<https://www.financialexpress.com/business/industry-nclt-approves-narcls-resolution-plan-for-two-srei-firms-3207937/>

NCLT approved Vedanta's Plan for Meenakshi Energy

NCLT Hyderabad has approved ₹1,440 Crores' Resolution Plan of the Vedanta Limited to acquire Meenakshi Energy Ltd. As per the Resolution Plan Vedanta Limited will pay ₹312 Crores as Upfront Payment. The CIRP of Meenakshi Energy Ltd. was admitted on November 07, 2019, on a petition filed by the State Bank of India. Subsequently, claims amounting ₹12,944 Crores were filed out of which ₹4,625 Crores were approved as 'Admitted Debt'. The Average Liquidation Value of the CD was ₹1,100 Crores while Average Fair Value was estimated to be ₹2,150 Crores.

Source: *ibbi.gov.in, August 14, 2023*

<https://ibbi.gov.in/uploads/order/38088c4a6ca0b9d235a4b4a0ccc0f24f.pdf>

Sudal Industries' Resolution Plan approved from Canara Bank under Pre-Pack

The resolution plans for Sudal Industries, an aluminum products manufacturer, were also invited from external parties but no other investor submitted resolution plan. Finally, Canara Bank, the financial creditor of the company approved the Resolution Plan that was tabled by the company's existing promoters.

The Company had an outstanding dues of ₹150 crore out of which ₹96 crore was owned by the Canara Bank. As the Company failed to pay back, it was admitted to Pre-Pack Insolvency Resolution Process for MSMEs (PPIRP for MSMEs) in April. So far only six cases have been admitted under PPIRP for MSMEs, which was introduced in 2021. Out of the six cases, four are ongoing while one – Amrit India - has been resolved and one case was withdrawn. Amrit India had not availed any bank loan. As per the Resolution Plan, Canara Bank will receive ₹32 crore while unsecured financial creditors, will get less than 1% of their claims. The operational creditors, employees and workmen will be paid their full dues.

Source: *The Economic Times, August 11, 2023*

<https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/aluminum-co-becomes-first-to-get-debt-resolution-from-banks-under-pre-pack-rules/articleshow/102657564.cms?from=mdr>

Euroboden GmbH, Germany's real estate giant filed for bankruptcy

The Munich based property developer has reportedly filed to 'open insolvency proceedings' with a local court. Euroboden GmbH, which has 115 million euros (\$126 million) in bonds outstanding and is facing possible downgrades in its credit rating, said in a statement that negotiations for property sales had fallen through, hurting its finances. Germany has long benefited from an era of cheap money that fuelled a boom in real estate, but now the sector is grappling with a major turn of fortune.

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

<https://www.reuters.com/markets/europe/munich-developer-insolvent-latest-blow-german-property-sector-2023-08-11/>

NCLAT is empowered to recall its judgment but not to review them: Supreme Court

The Supreme Court has upheld the judgement of a five members' bench of NCLAT wherein it was held that the Rule 11 of the NCLAT Rules, 2016 empowers the Appellate Tribunal to recall its judgment but not to review them.

“We are in agreement with the view taken by the Five Judges Bench of the NCLAT and thus find no reason to interfere with the impugned judgment,” said a two judges' Bench of the Supreme Court in the matter of Union Bank of India Vs. Financial Creditors of M/s Amtek Auto Limited & Ors. The Apex Court dismissed the appeal but allowed the appellant to approach appropriate Bench 'to urge on the facts of the case'.

In the incumbent case, a three Member bench of NCLAT had made a reference to a larger bench on three points – (a) Whether NCLAT not being vested with any power to review the judgment can entertain an application for recall of judgment on sufficient grounds? (b) Whether NCLAT judgment in Agarwal Coal Corporation Private Limited Vs Sun Paper Mill Limited & Anr., (2019) and Rajendra Mulchand Varma & Ors Vs K.L.J Resources Ltd & Anr., (2020), can be read to mean that there is no power vested in NCLAT to recall a judgment? (c) Whether the judgment in above two cases, lay down the correct law? Answering

these questions in June 2023, a five-member Bench of NCLAT had ruled that by invoking inherent powers under Rule 11 of NCLAT Rules, 2016, the Appellate Tribunal can recall its judgement, but the power of recall would not include re-hearing of a case to find out any apparent error in the judgment. NCLAT also laid down the grounds on which power of recall can be exercised.

Source: *Livelaw.in August 02, 2023*

<https://www.livelaw.in/supreme-court/supreme-court-ruling-nclat-judgement-review-recall-union-bank-of-india-v-amtek-auto-case-234172?infinitescroll=1>

SBI Files CIRP petition against Mumbai Metro One on ₹416.08 crore dues

India's largest bank, the State Bank of India (SBI) has filed a CIRP petition under Section 7 of the IBC2016 in NCLT, Mumbai seeking to initiate insolvency proceedings against Reliance Infrastructure (RInfra) led Mumbai Metro One Private Limited (MMOPL), which operates Versova -- Andheri -- Ghatkopar Metro Rail in Mumbai. RInfra holds 74% of the equity share in MMOPL and the balance 26% is held by the MMRDA. As per the petition, the MMOPL owes about ₹416.08 crore dues to the SBI.

MMOPL is India's first metro project to be financed by Indian banks and also the first such metro project in the country to be awarded on Public Private Partnership (PPP) basis. In addition to the SBI, MMOPL has also borrowed from Canara Bank, IDBI Bank, Indian Bank, Bank of Maharashtra, IDBI Bank and India Infrastructure Finance Company (UK).

Source: *Freepressjournal.in, August 05, 2023*

<https://www.freepressjournal.in/mumbai/mumbai-news-sbifiles-insolvency-proceedings-against-rinfras-mmopl>

USA's 100-year-old trucking giant 'Yellow Corp' files for Bankruptcy

The Company has filed for Chapter 11 bankruptcy protection as it is reportedly burdened with a heavy debt load after a series of mergers and following tense contract negotiations with the Teamsters Union. Reportedly, the estimated assets and liabilities of the company are \$1 billion to \$10 billion, with more than 100,000 creditors. Yellow, formerly called YRC Worldwide, is one of the largest U.S. trucking companies and a dominant player in the “less-than-truckload” segment that hauls cargo for

multiple customers on a single truck. Its customers include large retailers such as Walmart, Home Depot, and Uber Freight etc.

Source: *Reuters.com, August 08, 2023*

<https://www.reuters.com/business/autos-transportation/us-trucking-firm-yellow-files-bankruptcy-after-loading-up-debt-2023-08-07/>

There should be no differentiation in payment among Operational Creditors of the same class- NCLAT

The NCLAT heard an appeal filed by Akashganga Processors Pvt. Ltd. against the rejection of their resolution plan by the Adjudicating Authority under the IBC: The Resolution Professional's plan was rejected, citing violations of Section 30(2)(e) and (f) of the I&B Code. Akashganga Processors argued that the Operational Creditor, who received no allocation in the plan, did not object and thus, could not be considered aggrieved. They also defended payments made to Gujarat Industrial Development Corporation (GIDC) and Surat Municipal Corporation, which were vital for the Corporate Debtor's continuity. Supporting the appellant's stance, the Resolution Professional's counsel asserted that the resolution plan adhered to the regulations, and the payments made were in line with the Section 53 waterfall mechanism, prioritizing creditor payments. However, a dissenting Financial Creditor opposed the appellant's arguments, advocating for no discrimination in payment among Operational Creditors.

After careful consideration of all submissions, the NCLAT acknowledged differential payment between Financial and Operational Creditors, but it emphasized that there should be no discrimination among Operational Creditors themselves. In this case, while the claims of two Operational Creditors, State Tax, Government of Gujarat, and Central Excise, Government of India, were admitted, the Resolution Plan allocated no amount to one Operational Creditor but made payments to the other two. The NCLAT held that there couldn't be discrimination in payment among Operational Creditors within the same class.

Source: *ibbi.gov.in*

<https://ibbi.gov.in/uploads/order/2f72d4f861acbe397871823af096ff4c.pdf>

Amidst Energy Crisis and Rising Interest Rates Insolvencies Surge at Record Pace in Germany

German firms experienced the highest increase in insolvencies in over two decades during the first half of this year, according to a study by Creditreform. The 16.2% rise, totalling 8,400 corporate insolvencies, was attributed to factors such as the energy crisis, inflation, and rising interest rates. Excessive energy and material costs, poor consumer conditions, and reliance on state funding without adapting business models were also identified as contributing factors. The insolvencies are expected to increase further as inflation and interest rates continue to rise.

Source: *Yahoo.com, June 29, 2023*
<https://shorturl.at/oANP2>

IBC has rescued 72% of distressed assets since 2016, though half of them ended in orders of liquidation: Financial Stability Report by RBI

While the IBC has been effective in terms of financial recovery, with financial creditors recovering 34.3% of their claims, realization in comparison to liquidation value was 169%. “Though realization is incidental under the Code, financial creditors recovered 34.3% of their claims

which only reflects the extent of value erosion by the time the CDs entered CIRP,” said the Financial Stability Report by the Reserve Bank of India.

According to the Report, by March 2023, a total of 6,571 corporate insolvency resolution processes (CIRPs) had commenced, of which 4,515 or 69% were closed. Among the closed CIRPs, 21% were closed on appeal, review or through settlements, 19% were withdrawn, 45% ended in orders of liquidation, 15% resulted in the approval of the resolution plans. It further revealed that the average time for concluding the 678 CIRPs that yielded resolution plans was 512 days, while CIRPs ending in liquidation took an average of 456 days. Voluntary liquidation processes took average of 411 days for closure, which is much higher than the 330 days' timeframe provided under the IBC, 2016. Another challenge, according to the Report, has been attracting investors for legacy non-performing assets. Investors remain wary of complexities involved in restructuring and turning around these troubled assets, which has hindered the resolution process.

Source: *The Economic Times, June 29, 2023*
<https://economictimes.indiatimes.com/news/economy/policy/since-launch-ibc-has-resolved-72-of-distressed-asset-cases/articleshow/101348409.cms>

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

MASTERING LEGAL SKILLS, PLEADINGS AND COURT PROCESSES UNDER IBC

IBC has been an evolving jurisprudence. In furtherance of value maximization and timeliness as its avowed objectives, IPs face many complexities, hence the need to hone their legal skills and knowhow.

Mode: Virtual Platform
 Fees: Rs. 7500/- + Taxes

Highlights

- Knowhow of Legal Drafting & Pleadings
- Filing Petitions & Applications under IBC
- Deciphering Landmark Judgements
- Appearing Before the Adjudicating Authorities
- Moot Courts Before Hon'ble NCLT/NCLATS

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Peer Review Policy

(...Continue from previous edition)

CONCEPT AND SCOPE OF PEER REVIEW

The term 'peer' means a person of similar standing. The term 'review' means re-examination or retrospective evaluation of the subject matter. In generality, for a professional, the term “peer review” would mean review of the work done by a professional, by another member of the same profession with similar standing.

Peer review is basically an examination of a professional's performance or practices in a particular area by other professional in the same area. The objective of the exercise is to benchmark the professional services under review to help improving performance, decision making, adoption of best practices and standards including ethics, compliance with relevant laws, established standards and principles. The system relies heavily on mutual trust among the professional involved, as well as their shared confidence in the process.

The peer review is a discussion among equals, not a hearing by a superior body that will hand down a judgement or punishment. This makes it a more flexible tool, a professional may be more willing to accept criticism, if both sides know it does not commit them to a rigid position or obligatory course of action.

Peer Review process is based on the principle of benchmarking while systematically reviewing the procedures adopted and records maintained in compliance with the IBC and rules, regulations, guidelines, circulars issued thereunder, while carrying out professional services and responsibilities by IPs to ensure and sustain quality.

IP's Peer review is the evaluation of work of the IP under review by one or more IP members with similar competence. Such peer review focuses on reviewing the performance of IP, by seeing whether:

- (a) Complying with technical, professional and ethical standards as applicable including other regulatory requirements thereto;
- (b) Putting in place proper systems including documentation thereof, to amply demonstrate the transparency and quality services to all stakeholders; and

- (c) Preparation of Reports/Time-sheets, office infrastructure, usage of technology, assessment of professional fee, knowledge upgradation, communication with stakeholders, engagement of professionals, support services from IPEs/professionals, preservation of records, etc.

Moreover, a peer review process may aid stakeholders in building reliability and credibility of the professional services rendered by the respective IP appointed for a particular assignment under IBC. Peer review is primarily directed towards ensuring as well as enhancing the quality and standardized (to the extent possible) professional services by IPs. Peer Review is to be conducted by an independent evaluator known as a Peer Reviewer.

While carrying out regular/event-based inspections of members by IIIPI, the Inspection Authority shall accord due regard to successful peer-review having been undertaken by the concerned reviewed IP, subject to fulfilling requirements of inspection policy and other guidelines as prescribed by IBBI. However, during the course of peer review, IIIPI shall not be directly involved but shall have access to questionnaire, reports (provisional/final) between the reviewed and reviewer IPs, as provided for in this policy document.

OBJECTIVES

The purpose of the Peer Review Policy is to provide a framework for planning, performing, reporting and administration of the Peer Review processes. Peer Review process is intended to review and benchmark the quality control framework of the IPs of IIIPI as well as proper and consistent application of such control frameworks across engagement samples selected for review. Peer Review is to be undertaken by IPs on voluntary or compulsory basis as prescribed in this policy document.

The main objective of Peer Review is to benchmark the activities undertaken by the professional members of IIIPI under IBC and broadly includes the followings:

- (a) Adhering to the provisions of the IBC, rules, regulations and guidelines issued thereunder, the byelaws, the Code of Conduct and directions given by IBBI/Governing Board of IIIPI or any other Statutory Body;

- (b) Complying with Technical, Professional and Ethical Standards as applicable including other regulatory requirements thereto; and
- (c) Putting in place proper systems including documentation thereof, to amply demonstrate the transparency and quality services to all stakeholders;
- (d) Preparation of Reports/Timesheets, office infrastructure, usage of technology, assessment of professional fee, knowledge upgradation, communication with stakeholders, engagement of professionals, support services from IPEs/ professionals, preservation of records, etc.

In this policy the framework and terms of reference under which Peer Review is to be conducted, have been specified. The implementation of the objectives of this policy is to be ensured both in letter and spirit during a Peer Review Process.

DEFINITIONS

In this policy, the following terms have the meanings attributed below:

- (a) *“Assignment” means professional engagement under the IBC in the capacity of an IRP or RP or Liquidator or Voluntary Liquidator or Bankruptcy Trustee or Authorized Representative (AR).*
- (b) *“Byelaws” means Byelaws of the Indian Institute of Insolvency Professionals of ICAI (IIPI) adopted based on the IBBI (Model Byelaws and Governing Body of Insolvency Professional Agencies) Regulations 2016;*
- (c) *“Code/IBC” means the Insolvency and Bankruptcy Code, 2016;*
- (d) *“Governing Board” means the Board of Directors of IIPI constituted under clause 4 of the Byelaws of IIPI;*
- (e) *“IBBI” means the Insolvency and Bankruptcy Board of India established under section 188 of the Insolvency and Bankruptcy Code, 2016;*
- (f) *“IIPI” means the Indian Institute of Insolvency Professionals of ICAI (IIPI), a section 8 Company, registered with Insolvency and Bankruptcy Board of India;*

- (g) *“Member” means an individual who is enrolled with IIPI and/or registered with IBBI;*
- (h) *“Peer Review” means an examination and review of the systems and procedures to determine whether the same have been put in place by the IP members of IIPI for ensuring the quality of professional services as envisaged by the provisions of the Code rules, regulations, guidelines issued there-under; the bye-laws, the Code of Conduct, directions, standards and best practices as applicable and whether the same were consistently applied during the assignment/period under review;*
- (i) *“Peer Reviewer” means an IP member of IIPI empanelled on the Peer Reviewers' expert panel specifically constituted by IIPI;*
- (j) *For definition of other terms used in this policy document but not defined under this clause, the Code and/or Regulations made thereunder should be referred to.*

ROLE OF IIPI IN CONDUCTING PEER REVIEW

This Peer Review policy shall be applicable to all IP members who wish to subject themselves to peer review on voluntary basis. The Peer Review would be carried out only by the reviewer-members of the IIPI, on voluntary or compulsory basis as prescribed in this policy document.

The Role of IIPI in conducting peer reviews by professional members, shall be of a facilitator by providing framework for empanelling Peer Reviewers, reporting mechanism, payment of fees and certification in respect of peer reviews, as outlined in following paras. The functioning of peer review policy and mechanism shall be monitored by nodal officer under supervision of Monitoring Committee of IIPI. Therefore, the policy framework (voluntary/compulsory) for peer review as provided by IIPI shall enable an IP to:

- a. Initiate the peer review of services undertaken during specified past period, on voluntary basis or compulsory basis;
- b. Depending upon the criteria viz. handling or having handled ten or more CIRP/Liquidations undertaken during specified past period for peer review (upto 3 years), initiate the peer review of services on compulsory basis. The initial criterion for compulsory

- peer review as above, shall be reviewed for lowering such criteria, from time to time.
- c. Enlisting the services of a Peer Reviewer from the panel of IIIPI;
 - d. Pay the cost for such review to Reviewer IP, after clearance of report from IIIPI; and
 - e. Get the certificate from IIIPI after having carried out such review successfully.

CRITERIA AND STEP BY STEP PROCESS FOR PEER REVIEW

A. Standards and criteria against which the IP's performance shall be reviewed

During Peer-Review exercise, IP's performance shall be reviewed upon the following parameters:

- a. Quality of Records and Documentation maintained;
- b. Adherence to relevant laws, rules, regulations and guidelines and amendments made there under from time to time;
- c. Adherence to standards, best practices, and guidance notes, as applicable;
- d. Methods and approaches applied;
- e. Quality of communication with stakeholders, working papers;
- f. Procedure for maintaining confidentiality of the information/documents;
- g. Procedure for storage of the documents/information;
- h. Independence, impartiality of the IP in conducting assignment;
- i. Complaint's handling procedure;
- j. Conflict of Interest checks;
- k. Status of Disciplinary/Grievance against IP;
- l. Corrective steps after inspection by regulators, if any.

B. Formation of Peer Reviewers' Panel by IIIPI

The peer review shall be conducted by IP members of IIIPI, empaneled specifically for the purpose. Following guidelines shall apply while forming/selecting expert panel of Peer Reviewers:

- a. To be eligible as a peer reviewer, s/he must be:
 - i. the Insolvency Professional Member of IIIPI;
 - ii. having experience of completing at least 3 CIRP/Liquidation assignments
 - iii. expert in the specified field/discipline/industry;
 - iv. preferably holding a valid 'Authorisation for Assignment' (AFA) on the date of application;
 - v. having no identified conflict of interest in the assignments carried by the IPs under review;
 - vi. should have undergone the requisite orientation for Peer Review as prescribed by IIIPI.
- b. The panel shall be constituted by following a proper selection procedure by floating Expression of Interest on the Website of IIIPI. The selection of the IPs as peer reviewers shall be coordinated by nodal officer under supervision of Monitoring Committee of IIIPI.
- c. A member on being appointed as Reviewer shall be required to furnish a Declaration of Confidentiality as per **Annexure A** to this policy, while giving consent for appointment as a Peer Reviewer.
- d. A member shall not be eligible for being appointed as a reviewer, if:
 - i. he has been declared to be of unsound mind;
 - ii. he is an undischarged bankrupt, or has applied to be adjudicated as a bankrupt;
 - iii. is a person not resident in India;
 - iv. has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence;
 - v. has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more; and
 - vi. is not a fit and proper person in terms of provisions of IBC 2016 and regulations thereunder.

C. Step by Step Process for Peer Review

The Peer Review process will include following stages:

- a. Appointment of Peer Reviewer

- b. Assessment
- c. Reporting
- d. Discussion/Communication of Findings
- e. Final Peer Review Report by the Reviewer
- f. Issuance of Peer Review Certificate.

a. Stage I: Application for and Appointment of Peer Reviewer

- (I) The IIIPI empanels the peer reviewer for conducting peer review for the specified period.
- (II) While voluntarily/compulsorily applying for getting Peer-Reviewed, a detailed declaration cum questionnaire in the form approved by IIIPI, shall be submitted by such IP.
- (III) Based on the questionnaire received from IP applying for Peer-Review and experience of empanelled reviewers, a list of three Reviewer IPs shall be identified and communicated by IIIPI to the applying IP.
- (IV) Applying IP shall select one out of three Reviewers and intimate to IIIPI within 7 days of receipt of the names.
- (V) IIIPI shall intimate the Reviewer so selected and seek his consent within 7 days.

b. Stage II: Assessment

The Reviewer IP and to-be-Reviewed IP shall endeavour to work cooperatively to identify, analyse and address issues during the peer review exercise. The Reviewer IP shall have advisory role in assisting the Reviewed IP to address the issues emerged while conducting of the peer review. This is the phase during which areas for possible improvement shall also be analysed and recorded. The following matters, *inter-alia*, shall be taken care:

- (I) Whether the assignment under review has been done adhering to the provisions of the Code, rules, regulations and guidelines issued there-under, the byelaws, the Code of Conduct and directions given

by IBBI/ Governing Board of IIIPI or any other Statutory Body.

- (II) Whether the IP has complied with technical, professional and ethical standards, including best practices as applicable including other regulatory requirements thereto; and
- (III) Whether IP has placed proper and adequate systems including documentation thereof, to amply demonstrate the transparency and quality services to all stakeholders.
- (IV) Whether the IP has in place and maintained the Reports/Time-sheets, proper infrastructure including the support staff, office infrastructure, usage of technology, assessment of professional fee, knowledge upgradation, communication with stakeholders, engagement of professionals, support services from IPEs/professionals, preservation of records, etc.
- (V) During the review process, reviewer shall review the quality control framework as well as proper and consistent application of such control frameworks across completed assignments, and all completed stages of ongoing assignments during the period of review. The reviewer, in order to make an opinion on the aforesaid requirement, shall draw a sample for carrying out the due diligence basis the response to the questionnaire from the Reviewed IP.
- (VI) While deciding the sample size as referred above, the reviewer should attempt to choose an appropriate number of assignments undertaken/being undertaken by the reviewed IP, which should be reflective of underlying complexity and size of CIRP. However, within each assignment so chosen as part of sample, all stages and activities/ transactions there under should be examined/ reviewed.

The sample size as indicated above, may be increased by the reviewer, if the situation so warrants during the course of Peer- Review exercise.

.....to be continued.

IIIPI News



Chief Guest, Shri Ravi Mital, Chairperson-IBBI addressing the Conference on ‘Developing Market for Stressed Assets in India’ (Physical Mode) organized by IIIPI in New Delhi on Sept. 22, 2023.



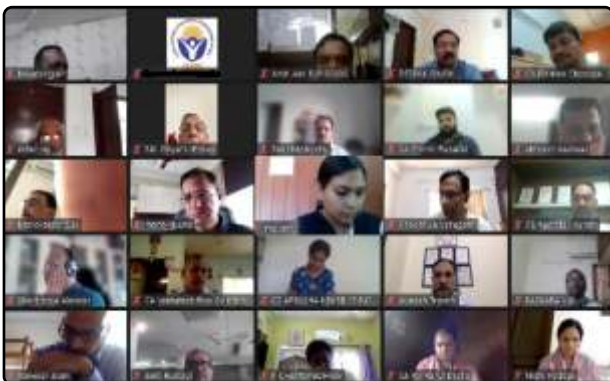
CA. Subodh Kumar Agrawal, Past President-ICAI delivering ‘Special Address’ in the Conference on ‘Developing Market for Stressed Assets in India’ (Physical Mode) organized by IIIPI in New Delhi on Sept. 22, 2023.



Dr. M. S. Sahoo, Former Chairperson-IBBI, addressing 8th Batch of EDP (For IPs) on “Mastering Legal Skills, Pleading and Court Processes Under IBC” (Online) conducted by IIIPI from 26th to 29th July 2023.



Webinar on ‘07th June Discussion Papers by IBBI’ organized by IIIPI on July 07, 2023.



62nd Batch of Pre-Registration Educational Course (PREC) Online from 19th September to 25th September 2023.



13th Batch of Executive Development Program (For IPs) on "Managing Corporate Debtors as Going Concern under CIRP" organised by IIIPI from 22nd to 26th August 2023.

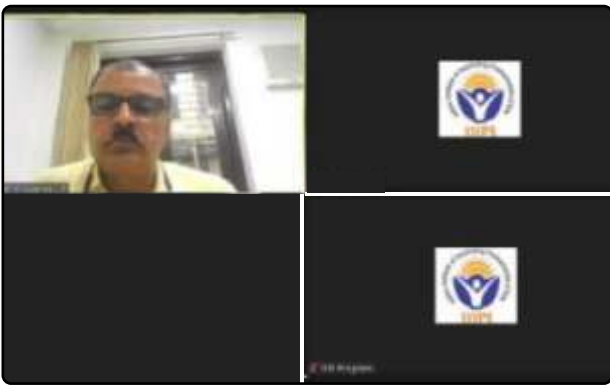
IIIPI News



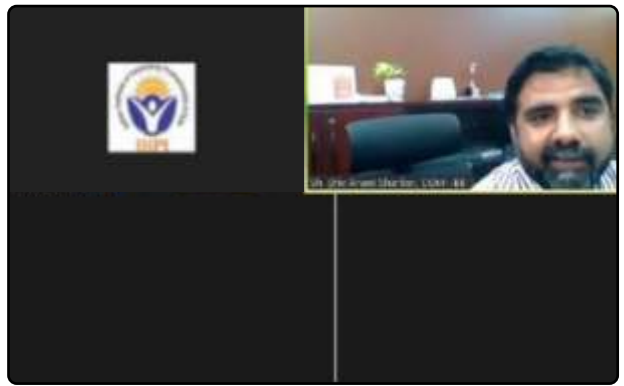
Dr. Navrang Saini, Former Chairperson, IBBI addressing the '14th Executive Development Program (EDP)- Managing Corporate Debtor as Going Concern under CIRP (For IPs)' organized by IIIPI from 12th to 16th September 2023.



Webinar on "Accounting /Taxation Issues during CIRP/Liquidation" conducted by IIIPI on Sept. 01, 2023.



Webinar on 'Liquidation & Voluntary Liquidation-Best Practices' conducted by IIIPI on 21st July 2023.



Webinar on "Common Issues under Monitoring & Inspection" organized by IIIPI on August 25, 2023.



Inaugural Session of IIIPI's 14th Limited Insolvency Examination (LIE) Preparatory Classroom (Virtual) Program (Weekday and Weekend Batches) on September 11, 2023.



Webinar on "Office Infrastructure and IT Solutions by IPs" conducted by IIIPI on August 04, 2023.

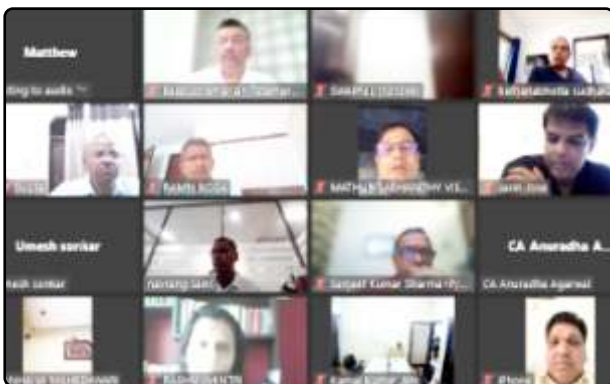
IIIPI News



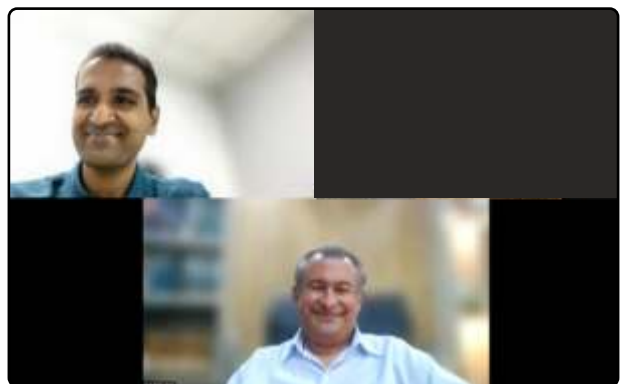
Webinar on ‘Evolving Jurisprudence under IBC- Recent Case Laws’ organized by IIIPI on July 28, 2023.



Webinar on ‘CIRP under IBC - Best Practices’ organized by IIIPI on July 13, 2023.



14th Batch of Executive Development Program (For IPs) on Managing Corporate Debtors as going concern under CIRP (Virtual) from 12th to 16th September 2023.



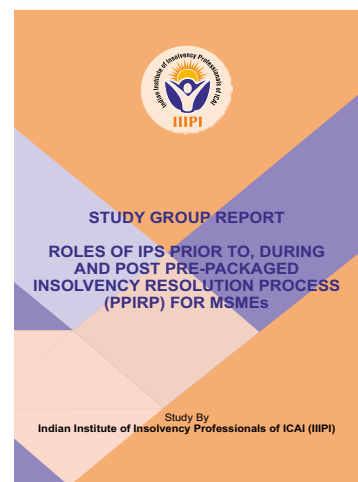
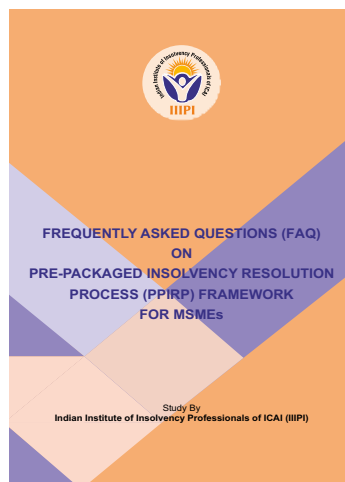
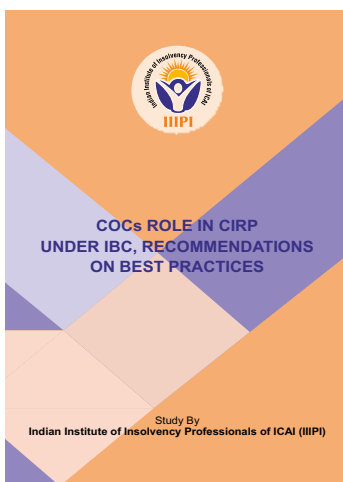
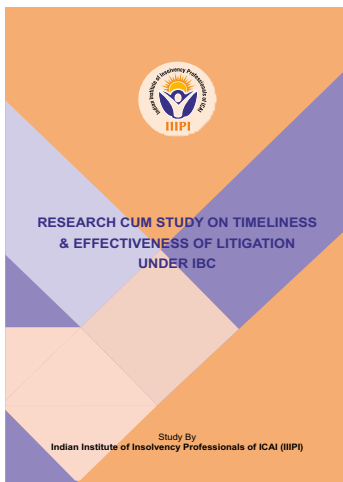
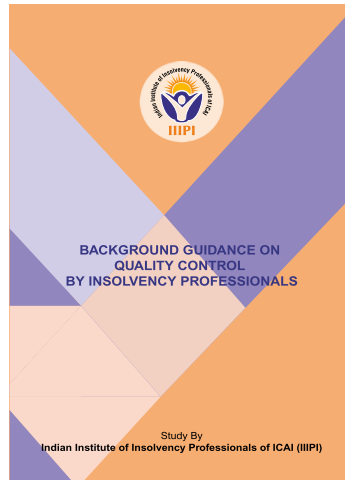
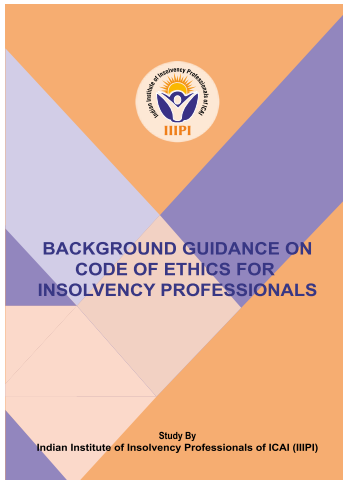
Webinar on ‘Case Studies-CIRP and Liquidation’ on 12th August 2023.

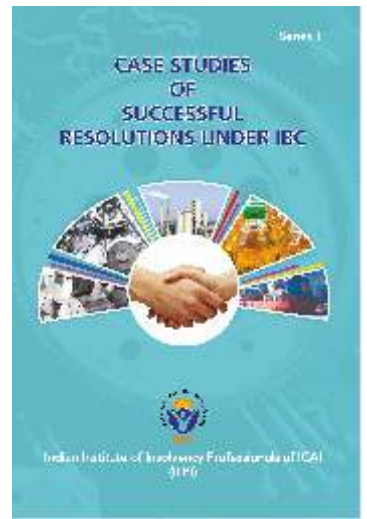
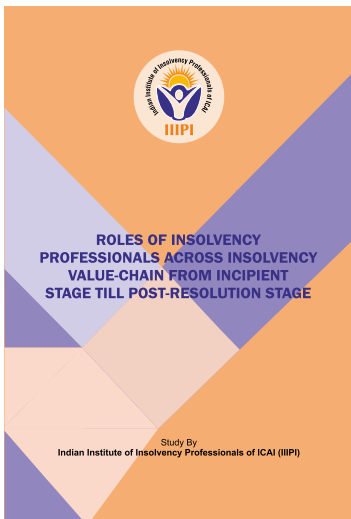
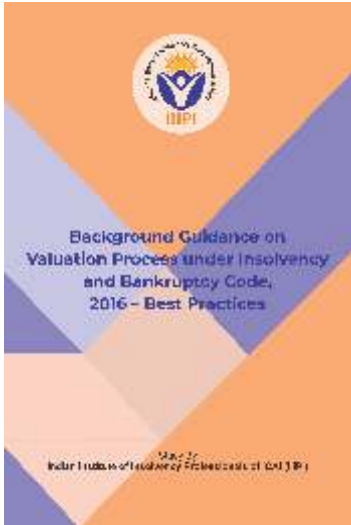


Release of the publication titled “Study Group Report on Contribution by Insolvency Professionals in Resolution Under IBC” During the Conference on ‘Developing Market for Stressed Assets in India’ (Physical Mode) organized by IIIPI in New Delhi on Sept. 22, 2023.

IIPI's PUBLICATIONS

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





Weekly Publications

IIPI Newsletter is an initiative of the IIPI 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.

IBC Case Laws Capsules



IIPI Newsletter



Media Coverage

Insolvency professionals should make all efforts to further improve insolvency ecosystem: Official

PTI Last Updated: Sep 22, 2023, 10:37 PM IST

Synopsis

Insolvency professionals should focus on improving the insolvency ecosystem in India to increase the confidence of potential bidders for stressed assets and enhance the prospects for successful resolution, according to the chairman of the Insolvency and Bankruptcy Board of India (IBBI), Ravi Mital. He also called for efforts to reduce delays and litigations.

New Delhi: Insolvency professionals should make all possible efforts to improve the overall insolvency ecosystem that will help in increasing the confidence of prospective bidders of stressed assets and ensuring better resolution prospects, according to a senior official. At a conference here on Friday, IBBI Chairperson Ravi Mital also said that insolvency professionals should compile details about delays and litigations, and work towards minimising them.

The Insolvency and Bankruptcy Board of India (IBBI) is a key institution in implementing the Insolvency and Bankruptcy Code (IBC) that provides for a market-linked and time-bound resolution of stressed assets.

"If delays are reduced, venture capitalists will be encouraged to invest in stressed assets," Mital was quoted as saying in a release issued by IIPI.

The Indian Institute of Insolvency Professionals of ICAI (IIPI) organised the conference on 'Developing Markets for Stressed Assets in India'.

Mital said that insolvency professionals should make every possible effort to improve the insolvency ecosystem in the country, which will ultimately increase the confidence of prospective bidders in the stressed assets and ensure better resolution of the corporate debtors, as per the release.

IIPI Chairman Ashok Haldia said the ultimate objective of the IBC is to reduce stressed assets and the focus of the IBC 2.0 is to ensure the speedy resolution of the cases.

Among others, IIPI has made peer review mandatory for a certain class of insolvency professionals. ■

IBBI chief calls for efforts to improve bidders' confidence

September 23, 2023 at 11:37 AM.

IBBI Chairperson Ravi Mital asks Insolvency Professionals to make every possible effort to improve the system

Insolvency Professionals (IPs) should make every possible effort to improve the insolvency ecosystem in the country, Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) has said.

This will increase the confidence of prospective bidders in the stressed assets and ensure better resolution of the corporate debtors, Mital said at a conference on "Developing Markets for Stressed Assets in India" organized by Indian Institute of Insolvency Professionals of ICAI (IIPI).

"IPs should compile delays and litigations and find out ways to minimize them. If delays are reduced, venture capitalists will be encouraged to invest in stressed assets," Mital said.

He also suggested that IPs revisit the companies which they had resolved through resolution plans under the IBC, after 4 to 5 years of their resolution. They should prepare "success stories", which will be useful in creating a positive environment for investment in stressed assets, he added.



Akhil Gupta, Vice Chairman, Bharti Enterprises Ltd, said that it is the right time to extend Prepack Insolvency regime for all the companies.

"If implemented properly it would be a very significant step for the development of the stressed assets market in India," he said.

IIPI Chairman Ashok Haldia highlighted that the ultimate objective of the IBC is to reduce stressed assets and the focus of the IBC 2.0 is to ensure the speedy resolution of CIRP cases.

He informed that IIPI has made mandatory Peer Review for a class of IPs and the result of Peer Review will also be made available on IIPI website in future.

In the seven years since its enactment, the IBC has made some strides in reducing the time required for the resolution of insolvency cases, leading to quicker closure of distressed businesses.

The overall time taken on an average still continues to be a picture of worry at about 620 days, higher than the legally enacted outer limit of 330 days.

For creditors, the IBC process has been a mixed bag with some witnessing higher recovery rates from stressed assets, enhancing their confidence in the insolvency resolution process.

The code helped banks and financial institutions reduce their Non-Performing Asset (NPA) burden by resolving bad loans.

The IBC has enhanced the ease of doing business in India by providing a structured framework for insolvency proceedings, attracting both domestic and foreign investors.

IBC has also strengthened the rights of creditors and prioritized their interests during insolvency proceedings.

Last Updated: 23rd September 2023 13:35 IST

IBBI URGES FOR STREAMLINING INSOLVENCY PROCESS TO BOOST INVESTOR CONFIDENCE

IBBI plays a key role in implementing the Insolvency and Bankruptcy Code (IBC), a framework designed to facilitate the time-bound resolution of stressed assets.

India Business | Written By Business Desk

Insolvency process in India: Insolvency professionals are encouraged to enhance the insolvency ecosystem to boost confidence among potential bidders for stressed assets and improve the prospects of successful resolution, said a senior IBBI official at a conference.

Ravi Mital, the Chairperson of the Insolvency and Bankruptcy Board of India (IBBI), underlined the need for professionals to compile information on delays and legal disputes, working diligently to minimise them.

The IBBI plays a pivotal role in implementing the Insolvency and Bankruptcy Code (IBC), a framework designed to facilitate the time-bound resolution of stressed assets in a market-driven manner.

"If delays are reduced, venture capitalists will be encouraged to invest in stressed assets," Mital was quoted as saying in a release issued by IIPI.

The Indian Institute of Insolvency Professionals of ICAI (IIPI) organised a conference titled 'Developing Markets for Stressed Assets in India,' providing a platform to discuss strategies and advancements in the management and resolution of stressed assets.

Investing best efforts in enhancing the insolvency ecosystem

Mital urged insolvency professionals to invest their best efforts in enhancing the insolvency ecosystem in the country. This enhancement, he underlined, would instil confidence in potential bidders, leading to improved resolution outcomes for corporate debtors. Confidence in the insolvency process is vital for attracting bids and achieving successful resolutions in a timely manner.

Ashok Haldia, the Chairman of IIPI, said that the primary objective of the IBC is to reduce stressed assets. He highlighted that IBC 2.0 is designed to expedite the resolution process and address challenges that were identified in the initial implementation. One of the measures implemented by IIPI is the mandatory peer review for a specific class of insolvency professionals, aiming to enhance the overall quality and effectiveness of insolvency proceedings.

Overall, the efforts to improve the insolvency ecosystem in India are fundamental to attracting investment, fostering confidence among stakeholders, and achieving successful resolutions in the realm of corporate debt. The ongoing refinements and initiatives like IBC 2.0 aim to further streamline the insolvency process, aligning it with the ultimate goal of reducing stressed assets and enhancing economic stability.

(With PTI inputs) ■



Media Coverage

businessline
Companies | Markets | Portfolio | Opinion | Economy

Capacity building. Managerial skills for IPs: IIPI signs MoU with IIM Ahmedabad

Updated - May 03, 2023, at 01:04 PM.

By KR Srivats
They will roll out residential "Management Development Programme" for insolvency professionals.

BY KR SRIVATS
Indian Institute of Insolvency Professionals of ICAI (IIPI), an Insolvency Professional Agency (IPA), has joined hands with the Indian Institute of Management (IIM) Ahmedabad to offer a residential management development programme for its members.

SAKSHI POST

Doctoral Research Programme in Insolvency and Bankruptcy in offing

May 04, 2023, 09:00 AM IST

(IANS) With a view to promote high-quality research in the field of insolvency and bankruptcy, the Insolvency and Bankruptcy Board of India (IBBI) has announced a Doctoral Research Programme in Insolvency and Bankruptcy. The programme will be conducted in accordance with the guidelines of the University Grants Commission (UGC). The programme will be a two-year full-time programme. As per the MoU, the main topic and sub-topics of research will be decided by NLU's doctoral research committee in accordance with the guidelines of the University Grants Commission (UGC). The programme will be a two-year full-time programme.

businessline

MCA CALLS FOR INSOLVENCY PROFESSIONALS WITH HIGH INTEGRITY AND CREDIBILITY TO STRENGTHEN IBC

June 17, 2023 at 02:05 PM.

BY KR SRIVATS
Insolvency Professionals (IPs) of the highest integrity and credibility are needed for an effective insolvency and bankruptcy code (IBC) regime, Minister for Corporate Affairs, Joint Secretary, Ministry of Corporate Affairs (MCA) has said.

She addressed an event organised by the Indian Institute of Insolvency Professionals of ICAI (IIPI). Her remarks are significant as it comes at a time when several issues are being raised on the functioning of IPs, and there is an all-round clamour for improving the ethics of such professionals.

Ashok Haldia, Chairman of the Board of India Insolvency and Bankruptcy Board of India (IBBI), said that the Board of India has over 3,000 IPs registered and regulated under the Insolvency and Bankruptcy Code (IBC). Since its implementation, the Board has been a multi-disciplinary body, comprising representatives from various stakeholders. IIPI is committed to capacity building and knowledge quotient as its constant endeavour.

The 'Management Development Programme' (Residential) will be a five-day residential programme to be conducted at the campus of IIM, Ahmedabad. The programme for IIPI's members will focus on building leadership and managerial capacity of insolvency professionals. It will be a five-day residential programme to be conducted at the campus of IIM, Ahmedabad.

THE TIMES OF INDIA

IIPI along with IIM Ahmedabad to offer residential mgmt. development prog for insolvency professionals

New Delhi, May 03 (PTI) Indian Institute of Insolvency Professionals of ICAI (IIPI) has joined hands with Indian Institute of Management, Ahmedabad (IIMA) to start a residential management development programme for insolvency professionals. Both the institutes have signed a Memorandum of Understanding (MoU) in this regard, according to a release on Wednesday.

The programme for IIPI's members will focus on building leadership and managerial capacity of insolvency professionals. It will be a five-day residential programme to be conducted at the campus of IIM, Ahmedabad.

IIPI Chairman Ashok Haldia said managerial and leadership skills of insolvency professionals are critical for their role as trustee on behalf of stakeholders and at the same time as de facto CEO while resolving stressed businesses as going concerns. "The programme will bring the nuances of insolvency and bankruptcy to the attention of the Insolvency and Bankruptcy Board of India (IBBI) to build its capacity and to policy inputs to the government."

Business Standard

IIPI FORMS COMMITTEE TO RECOMMEND MEASURES FOR GROWTH OF IBC ECOSYSTEM

May 09, 2023 | 9:00 PM (IST) Press Trust of India | New Delhi

The Indian Institute of Insolvency Professionals of ICAI (IIPI) has constituted a committee to recommend measures to prepare the IBC ecosystem for the next phase of growth.

"After over six years since inception of IBC, there is a need to consider futuristic challenges and recommend to IBBI and other authorities, changes required in the ecosystem and for preparing IIPI and insolvency professionals to support these," IIPI Chairman, Ashok Haldia said.

IIPI has constituted a board-level committee of its directors to recommend measures for preparing the IBC ecosystem for the next phase of growth by envisioning future changes and imperative requirements, according to a release on Tuesday.

The Indian Institute of Insolvency Professionals of ICAI (IIPI) has constituted a committee to recommend measures to prepare the IBC ecosystem for the next phase of growth.

New Delhi, May 9 (PTI) The Indian Institute of Insolvency Professionals of ICAI (IIPI) has constituted a committee to recommend measures to prepare the IBC ecosystem for the next phase of growth.

"After over six years since inception of IBC, there is a need to consider futuristic challenges and recommend to IBBI and other authorities, changes required in the ecosystem and for preparing IIPI and insolvency professionals to support these," IIPI Chairman, Ashok Haldia said.

IBC ecosystem

IIPI along with IIM Ahmedabad to offer residential mgmt. development prog for insolvency professionals

New Delhi, May 03 (PTI) Indian Institute of Insolvency Professionals of ICAI (IIPI) has joined hands with Indian Institute of Management, Ahmedabad (IIMA) to start a residential management development programme for insolvency professionals. Both the institutes have signed a Memorandum of Understanding (MoU) in this regard, according to a release on Wednesday.

The programme for IIPI's members will focus on building leadership and managerial capacity of insolvency professionals. It will be a five-day residential programme to be conducted at the campus of IIM, Ahmedabad.

IIPI Chairman Ashok Haldia said managerial and leadership skills of insolvency professionals are critical for their role as trustee on behalf of stakeholders and at the same time as de facto CEO while resolving stressed businesses as going concerns. "The programme will bring the nuances of insolvency and bankruptcy to the attention of the Insolvency and Bankruptcy Board of India (IBBI) to build its capacity and to policy inputs to the government."

IIPI has constituted a board-level committee of its directors to recommend measures for preparing the IBC ecosystem for the next phase of growth by envisioning future changes and imperative requirements, according to a release on Tuesday.

Haldia welcomed IBBI's initiative to seek public comments on changes needed in regulations under IBC 2016.

IIPI, promoted by the Institute of Chartered Accountants of India (ICAI), is the largest frontline regulator under the Insolvency and Bankruptcy Code (IBC).

It works under the aegis of the Insolvency and Bankruptcy Board of India (IBBI).

(Only the headline and picture of this report may have been reworked by the Business Standard staff; the rest of the content is auto-generated from a syndicated feed.)

Services**Indian Institute of Insolvency Professionals of ICAI (IIIPI)****ICAI Bhawan, 8th Floor, Hostel Block, A-29, Sector-62,****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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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

Launch of Master Data Utility

Dear Professional Members,

We are pleased to announce the launch of our new regulatory utility portal, "Master Data Utility," by IIIPI/ICAI, effective from October 01, 2023, via IIIPI portal (<https://www.iiipicai.in/>), wherein we have streamlined the process for submission of an IP's monthly assignment details. In simple terms, instead of the Monthly Google Form, IPs are now required to use this software on our IIIPI website for reporting new assignments and updating the status of ongoing cases. Please ensure that you submit your data no later than the 5th of the succeeding month.

Here's what an IP/IPE needs to do

Do's:

- In current month add details, including the status of assignment, of any ongoing and concluded assignments that are not visible on the portal by clicking on the tab "New Assignment".
- Subsequent monthly update of the 'status' of your ongoing assignments and add 'new assignments', if any.
- Double-check the details of concluded assignments or data already appearing on the portal after login with respect to your previous assignments. For any discrepancies, kindly write to email id iiipi.helpdesk@icai.in with correct details, so that the same can be modified from backend.
- Ensure that you enter the correct format as below:
 - i. Enrolment number (IP/P-0xxxx)
 - ii. Date of AFA validity in DD/MM/YYYY
 - iii. Date of Consent in DD/MM/YYYY

Don'ts:

- Do not attempt to edit or delete the details of concluded assignments or data already existing for previous assignments handled/undertaken by you. For any discrepancies, kindly write to email id iiipi.helpdesk@icai.in with correct details, so that the same can be modified from backend.

We have prepared a handbook to guide you through the usage of the "Master Data Utility" on the IIIPI website.

Step-by-Step Guide for IP/IPE:

Step 1: Visit the IIIPI website using link: [iiipicai](https://www.iiipicai.in/)

HOME Page click on the "Member" tab.



Select "Master Data Utility" from the options. This will take you to the member login page. (please see the image below).

Step 2: In the member login page:

Select either "IP" or "IPE" from the "ENROLLMENT TYPE" dropdown.

Enter your registered email ID in "REGISTERED EMAIL ID."

Step 3: An OTP will be sent to your registered email ID.

Enter the OTP received and click on "OTP Verify."

Step 4: Upon successful verification:

The Filing Dashboard is displayed. Here, fill in the details for your ongoing assignments (CIRP, Liquidation, AR, PG to CD, Voluntary Liquidation, Bankruptcy Trustee, PPIRP). This is a one-time exercise; in subsequent months, only assignment status updates are required.

Step 5: After entering all assignment details click on the "submit" button.

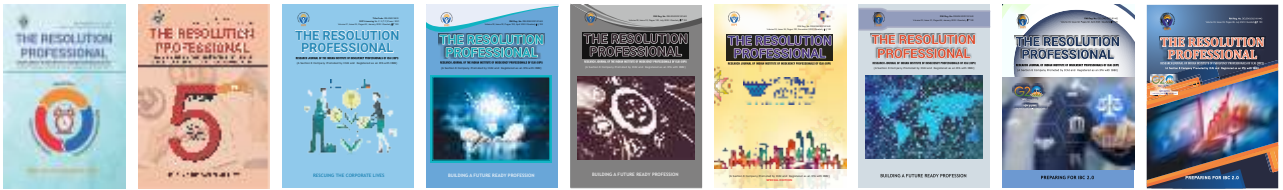
Step 6: If the status of IP's assignment's changes in a respective month, login to the account and update the status assignment-wise. This reduces the monthly exercise that an IP previously did using the Monthly Google Form.

For example, in the case of CIRP:

- i. The Committee of Creditors is constituted on 10.10.2023, update the assignment status and the date.
- ii. If additional updates are needed (e.g., a Registered Valuer is appointed on 20.10.2023), update the status accordingly.

Support Team

Helpdesk of IIIPI office: 7579500137



Book your Advertisements in IIPPI's journal The Resolution Professional

Dear Member,

The Resolution Professional, quarterly research journal of IIPPI, 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, IIPPI News, IIPPI's Publications, Media Coverage, Services and Crossword, etc.

The soft copies of the journal are emailed to all the IPs, several ministries, 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 IIPPI website in three different formats (a) Flip Book (b)

HTML Highlights, (c) IIPPI 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.
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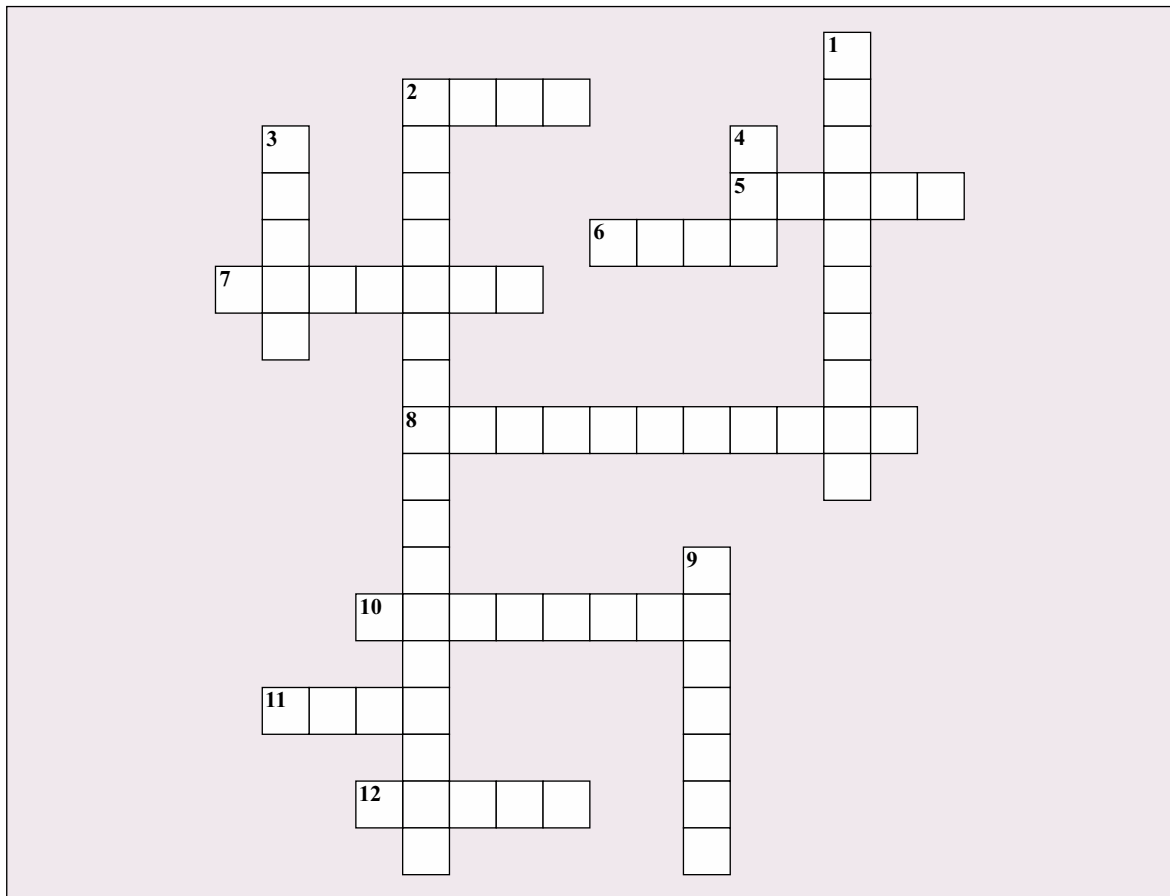
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The content of display advertisements should be broadly related to stakeholders of the insolvency profession.

Please send us your request with content (text and creatives etc.) at iippi.journal@icai.in at the earliest. The advertisements will be published after approval of the Competent Authority.

IBC Crossword

**Across** _____

2. Valuation can be done by _____ methods.
5. Which company won the bid to take over SREI Group through Resolution Plan?
6. The RP shall appoint registered valuer within _____ days of his appointment.
7. The amendment to the bye-laws of the IPA shall come into effect on the _____ day of the receipt of the approval.
8. Who headed the 'Expert Committee on Rehabilitation of Legacy Stalled Real Estate Projects'?
10. _____ Group, which had acquired Amazon's e-commerce business has filed bankruptcy in the USA.
11. The discharge order shall be forwarded to _____ for the purpose of recording an entry in the register.
12. The brief particulars of the invitation shall be published in _____.

Down _____

1. The manufacturing sector constitutes _____% of total CIRP applications admitted till March 2023 under the IBC, 2016.
2. What will be someone's status if the real estate company they had booked a flat with undergoes CIRP?
3. An IRP shall make a public announcement within _____ days of his appointment.
4. The liquidator can keep a minimum of _____ lakh rupees in the CD's bank account for covering liquidation expenses, subject to approval from the AA.
9. Who has the highest priority in liquidation sale proceeds distribution?

Answer Key: IBC Crossword, July 2023

- | | | |
|-----------------------|---------------|-----------|
| 1. One Hundred Eighty | 5. IBBI | 9. Five |
| 2. NCLT | 6. One Fourth | 10. Once |
| 3. Sixty Six | 7. Fourteen | 11. Seven |
| 4. Two | 8. One lakh | 12. CoC |



GUIDELINES FOR ARTICLE SUBMISSION


THE RESOLUTION PROFESSIONAL, quarterly peer-reviewed refereed research journal of Indian Institute of Insolvency Professionals of ICAI (IIPI), 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.
 - Plagiarism (including references) should be below 10%.
 - 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: IIPI 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 IIPI.

For further details, please contact:

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Indian Institute of Insolvency Professionals of ICAI
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EXECUTIVE DEVELOPMENT PROGRAM

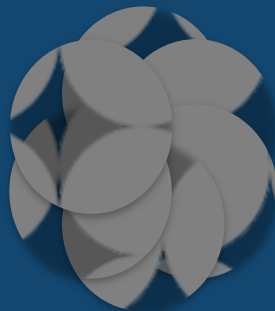
Managing Corporate Debtor as Going Concern under CIRP (For IPs)

“An IP as one of the key pillars under IBC exercise powers of Board of Directors of the CD under resolution and inter-alia, manages its operations as a going concern. The managerial skill therefore is a quintessential element for a successful professional and to ensure an effective resolution process.”

HIGHLIGHTS

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Regd. Office: Post Box No: 7100, ICAI Bhawan, Indraprastha Marg, New Delhi - 110002

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