

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





## 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 25<sup>th</sup> 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 28<sup>th</sup> 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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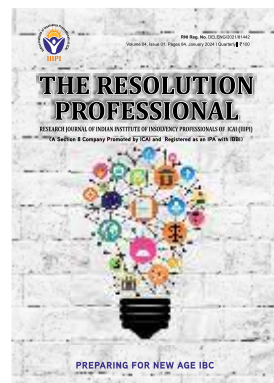
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Joint Secretary  
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## Message from Chairman, Editorial Board



**CA. Aniket Sunil Talati**

President, ICAI  
Chairman, Editorial Board-IIIPI

*Dear Member,*

As we embrace the ongoing New Year 2024, I extend warm wishes to all of you for a year filled with wellbeing, advancement, and achievement.

India's recent economic trajectory has been truly remarkable, establishing itself as the major economic power on a global scale. The key to sustaining this momentum lies in the resilience and efficacy of our financial system under which the Insolvency and Bankruptcy Code (IBC) stands as a cornerstone. The World Bank in its latest report "India Development Update" has highlighted resilience of the Indian economy. As per the report, India remained one of the fastest growing major economies of the world. As in FY 2022-23, its GDP expanded by 7.2%. The report further noticed that the Real GDP of India grew 7.8% in Q1 of FY 2023-24, due to strong public sector investment, steady private consumption growth, and lingering base effects.

Since the IBC came into force in 2016, about 7,058 companies were admitted under the Corporate Insolvency Resolution Process (CIRP) out of which 5057 cases have been closed and of that 56% cases have

been rescued through various processes namely- resolution plans, withdrawals, and review/settlements. This shows the contribution of the IBC ecosystem in the Indian economy.

In the past seven years, Indian Institute of Insolvency Professionals of ICAI (IIIPI) has emerged as front runner of the IBC regime particularly in the field of capacity building, policy advocacy and research. With 63% of insolvency professionals (IPs) and 53% of Insolvency Professional Entities (IPEs) as its members, IIIPI continues to be the largest Insolvency Professional Agency (IPA) in India. It is a matter of pride that about 55% of total IPs in India are members of The Institute of Chartered Accountants of India (ICAI) which highlights the contribution of the CA fraternity in the insolvency ecosystem of the country.

IIIPI's journal 'The Resolution Professional' has become increasingly coveted among diverse stakeholders in the insolvency profession. The journal's in- depth articles, case studies, interviews and key takeaways provide insight to the readers about the trends, issues, challenges regarding insolvency ecosystem and suggests the way forward.

Let us together delve into the development of IBC's role in fostering economic resilience, promoting efficient resolution mechanisms, and propelling India towards a sustained growth. I extend my best wishes to IIIPI in its ongoing efforts to fortify and elevate the IBC ecosystem to global standards.

I trust you'll find this edition of the Journal informative and knowledge-enriching.

*With regards,*

**CA. Aniket Sunil Talati**

President, ICAI  
Director & Chairman, Editorial Board-IIIPI

## Message from Chairman, Governing Board-IIPI



**Dr. Ashok Haldia**  
Chairman, Governing Board- IIPI

*Dear Member,*

Wish you a very happy and prosperous New Year 2024!

On 25th November 2023, Indian Institute of Insolvency Professionals of ICAI, completed the seven momentous years of strengthening the insolvency ecosystem in the country under the IBC regime. In the past over seven years, IIPI's contribution in enhancing the capacity, capability, and efficiency of the insolvency ecosystem in India has been widely recognized across stakeholders.

The financial health and robustness of the banking system plays a crucial role in economic development of any country for which an effective insolvency ecosystem is a must. In its latest publication 'Report on Trend and Progress of Banking in India for 2022-23', the Reserve Bank of India (RBI) has concluded that the Insolvency and Bankruptcy Code, 2016 (IBC) remained the dominant mode of recovery with a share of 43.0 per cent in the total amount recovered in 2022-23 and the recovery rate also improved. The GNPA ratio of Scheduled Commercial Banks (SCBs) fell to a decadal low of 3.9 per cent at end-March 2023 and further to 3.2 per cent at end-September 2023.

Besides, in its latest report, the New York based Standard & Poor's (S&P Global) has estimated that India will remain the fastest-growing major economy

for at least the next three years, setting it on course to become the world's third-largest economy by 2030. The experts have recognized that the strengths of the Indian economy include strong domestic demand, rapidly expanding fixed investment amid rising public infrastructure spending and strong private-sector credit growth backed by solid corporate sector balance sheets.

This positive outlook of Indian economy is also reflected in IBBI's Newsletter of September 2023, which reveals that the creditors have realized ₹3.16 lakh crore under the resolution plans approved under the IBC. In addition, more than 26,000 applications having underlying defaults of ₹9.33 lakh crores have been withdrawn before their admission process.

However, inability to meet timelines and huge haircuts have been two major challenges. Highlighting these bottlenecks of the IBC, Shri Shaktikanta Das, Governor, the Reserve Bank of India (RBI), recently called for 'some course correction'. Furthering the reform agenda, Shri Swaminathan J., Deputy Governor, RBI has advocated for legislative changes for effective resolution of business conglomerates and address the issues of frivolous litigations used as a tactics by defaulting borrowers.

To appreciate and critically analyse the reasons of delays and haircuts in insolvency processes along with the extent to which these are attributable to the roles of IPs, IIPI recently constituted a Study Group on 'Contribution of Insolvency Professionals in Resolution under IBC' under the Chairmanship of CA. Subodh Agarwal, Past President- ICAI. In this report, which is available on IIPI website, the Study Group has highlighted positive work and contribution of IPs in resolving corporate debtors and examined the problems faced by IPs as IRP/RP/ Liquidator. Besides, the report also highlights the contribution of IPs outside the IBC processes, in settling cases and supporting rescue efforts.

Recently, IIPI jointly with the two other Insolvency Professional Agencies (IPAs) organized three 'Open House Sessions' that were attended by Shri Ravi Mital, Chairperson, IBBI and other senior officials of IBBI,

representatives of the IPAs and Insolvency Professionals. They are as under:

1. 'Challenges and way forward in Liquidation process' on November 23, 2023.
2. 'Challenges and way forward in IP and IPE Regulations under IBC' on November 29, 2023.
3. 'Challenges and way forward in CIRP under IBC' on December 01, 2023.

In the aforesaid sessions, open discussions were held between Insolvency Professionals and the team of IBBI regarding the problems faced by Insolvency Professionals. On the advice of Chairperson-IBBI, Shri Mital, a joint committee of the three IPAs under my chairmanship has been constituted on 'Removal of Duplicity/Redundancy in Compliance Reporting by IPs'. Besides, IIPI is closely working with IBBI to develop integrated technological facilities aimed at removal of duplicity of compliances and improving the overall efficiencies.

So far, IIPI has constituted 19 Study Groups. The Reports of 14 Study Groups have been published and are available on the IIPI website. Presently, the following five Study Groups are under progress or completed recently:

1. Developing Market for Distress Assets in India.
2. Mediation under IBC basis Global Learnings.
3. Case Management system-IT infrastructure for IPs-report submitted to IBBI.
4. Improving Real Estate Resolutions under IBC and Coordination with RERA- report sent IBBI and a few RERA.

5. Developing Templates under Avoidance Transactions-report completed and to be discussed in open house with IBBI.

IIPI also carried a survey on issues and challenges faced by IPs regarding Enforcement agencies. Outcome of the exercise will be brought out shortly. IIPI is also scheduling for an international event, round table with bankers and real estate regulators.

As the insolvency profession is highly dynamic in nature, we look forward to resource ideas from across stakeholders particularly Insolvency Professionals who implement the rules and regulations on the ground. The Resolution Professional, research journal of IIPI, provides a platform to various stakeholders for sharing of knowledge and experiences. Besides, articles and case studies published in the journal also act as guide map to the Insolvency Professionals. We encourage the insolvency professionals to share their views and experiences in the form of articles and case studies.

I extend my sincere gratitude to Regulator, Members, and other Stakeholders for their continuous support in IIPI's endeavour to strengthening the IBC ecosystem in the country. I am also thankful to all the authors who have proactively contributed in IIPI's journal - The Resolution Professional.

Let's contribute to making the IBC ecosystem more robust and sustainable.

**Dr. Ashok Haldia**  
Chairman, Governing Board-IIPI



## From Editor's Desk

Dear Member,

Wishing you a very happy New Year 2024.

Indian Institute of Insolvency Professionals of ICAI (IIPI) has completed seven years of its successful operation on November 25, 2023. On this occasion, we organized a Conference (Physical) on the theme 'Insolvency Profession – The Way forward' in New Delhi. Shri Sudhaker Shukla, Whole Time Member (WTM), Insolvency and Bankruptcy Board of India (IBBI) graced the Conference as Chief Guest and enlightened the gathering with his words of wisdom. Besides, we were also guided by 'Special Addresses' of Dr. M. S. Sahoo, Distinguished Professor, NLU Delhi & Former Chairperson-IBBI; Shri Sunil Mehta, Chief Executive, Indian Banks' Association (IBA), and Dr Sanjeev Gemawat, Group Chief Counsel-Vedanta Group. In this edition, we are publishing the key takeaways of the conference for wider dissemination.

The Ministry of Corporate Affairs (MCA), Government of India, has been continuously supporting the insolvency professional from the very beginning. Thus, the guidance of the MCA is very crucial for the development of insolvency ecosystem in the country. Ms. Anita Shah Akella, Joint Secretary, MCA has been kind enough to carve out some time from her busy schedule to provide an exclusive interview, which we are carrying in the present edition. In the interview, she has shared her views on the journey of IBC in the past over seven years highlighting strengths and weaknesses of the insolvency ecosystem and also provided her valuable suggestions to make it more robust.

I am pleased to inform you that IIPI journal *The Resolution Professional* has entered into 4<sup>th</sup> year of continuous publication and has become one of the sought after journals on insolvency nationally and internationally.

This January 2024 edition of *The Resolution Professional* has four research articles and a Case Study on resolution of 'Ideal Energy Projects Limited: A Remarkable IBC, 2016, Success Story in the face of Adversity'. In the opening article 'Making IBC the Preferred Resolution Mechanism: Some suggestions evolving from practical experiences', the author after analysing CIRP and Liquidation processes under the IBC has proposed certain suggestions to make timely resolution of corporate debtors, effective

implementation of their resolution plans and quick liquidations, where it is the only way out. The second article 'Exceptions to Moratorium Under Section 14(1) of the Insolvency and Bankruptcy Code, 2016', presents a thorough analysis of the various aspects of the moratorium under the IBC and related jurisprudence. In the third article, the author has explored the evolution of insolvency laws in India from ancient Hindu Literature to the contemporary. He has taken into account the concepts of debt in the Vedic literature, Shrimad Bhagwat Gita, Chankya's Arthshastra, Todarmal's financial policy during Mughal period etc. The concluding article of this edition 'Statutory Compliances during Corporate Insolvency' analyses various compliances to be required during the CIRP and has also made recommendations to ease them. Highlighting the importance of compliance he argues that though the Liquidator is under no specific obligation to file the Income Tax Return, the non-filing may result in denial of benefit to carry forward losses to the successor in case the CD is sold as a going concern.

Besides, the journal also contains its regular features, i.e., Legal Framework, IBC Case Laws, IBC News, Know Your Ethics (Peer Review Policy), IIPI News, IIPI'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](mailto:iiipi.journal@icai.in)

Wish you a happy reading.

Editor



## Disintegrated Nature of The Standalone Information Technology Platforms is the Major Bottleneck for the Insolvency Ecosystem: Smt. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs, Government of India

*A comprehensive IT platform is being proposed by the MCA. This would be more of a case management system, which would run through the pillars of the Code, drop, and pick up data as needed. This would reduce duplication of efforts and have a single source of truth.*



**Smt. Anita Shah Akella**

Joint Secretary,  
Ministry of Corporate Affairs (MCA)  
Government of India

*Smt. Anita Shah Akella belongs to the 1996 batch of Indian Audit and Accounts Service (IAAS). She is presently Joint Secretary in the Ministry of Corporate Affairs, Government of India. On July 05, 2022, she was nominated as Ex-Officio Member in the Governing Board of IBBI, as a representative of the MCA.*

*Smt. Akella has held several important positions during her service including as Director General in C&AG Office, Delhi; Internal Financial Advisor, Department of Atomic Energy, Mumbai; Internal Financial Advisor and Member Secretary, Nuclear Recycle Board (NRB)/Bhabha Atomic Research Centre, Mumbai; India's Finance Representative in Square Kilometer Array Project; Financial Advisor and Chief Accounts Officer, Tirumala Tirupati Devasthanam Board. She has also been the Auditor for UNICEF.*

*She holds an MBA degree, with specialization in Finance from ICAI University, Hyderabad. She is a certified Internal Auditor from the Institute of Internal Auditors, Florida. She holds B.Sc. in Botanical Genetics from St. Ann's College, Osmania University, Hyderabad and was awarded a Gold Medal for the same.*

*In an Exclusive Interview with IIIPI for The Resolution Professional, Smt. Akella shared her views on the journey of the IBC regime in India so far and the way forward. Read on to know more....*

**IIIPI:** Over past seven years of operation, Insolvency regime in India has come of age with the Insolvency and Bankruptcy Code, 2016 (IBC) having been recognized as a game changer in resolving stress and promoting ease of doing business. Request you to take us through some of the highs and lows of the journey so far, especially in terms of achievement of objectives that the IBC was set out for.

**Smt. Akella:** India's Insolvency Framework Post-Implementation of the IBC has made significant strides. There have been pivotal achievements and transformative impact on the debtor creditor relationship, post implementation of the code.

Reflecting upon the enhanced recovery through IBC, the RBI's Trend and Progress of Banking in India for the year 2022-23 report as released on 27<sup>th</sup> December 2023, highlights that scheduled commercial banks have recovered ₹1,25,587 crores through various channels, with the IBC channel alone contributed ₹53,968 crore, which is 43% of the total recoveries.

The provisions of the IBC have prompted debtors to take early action in distress situations, marking a positive shift in their behaviour. There's a noticeable improvement in credit discipline, with 27,514 cases settled prior to admission, covering underlying defaults worth ₹9.74 lakh crore till October 2023.

The Corporate Insolvency Resolution Process (CIRP) under the Code has successfully resolved 887 cases as of December 2023, unlocking over ₹3.19 lakh crore in realizable value. The average realization against admitted claims stands at 32%, with an impressive 168% against liquidation value.

The year 2023 marked a historic high with 273 cases yielding resolution plans - the most in a single year since the IBC's inception. This number indicates a robust upward trajectory in the IBC's effectiveness, significantly

**The year 2023 marked a historic high with 273 cases yielding resolution plans - the most in a single year since the IBC's inception. Besides, the year 2023 saw a realization of approximately ₹67,000 crore, a significant increase from the ₹20,860 crores in 2022.**

surpassing the 160 resolutions recorded in 2022. The year 2023 saw a realization of approximately ₹67,000 crore, a significant increase from the ₹20,860 crores in 2022.

The year 2023 also witnessed slew of regulatory interventions aimed at enhancing procedural efficiency. Notable improvements include the establishment of more structured cooperation from Corporate Debtor personnel and a streamlined process for the Resolution Professional to manage the debtor's assets. These amendments aim at promoting efficiency, transparency, and stakeholder inclusivity.

**IIPI:** With jurisprudence around the key provisions of IBC having been settled, the regime is gearing towards the next phase of evolutionary journey. The frameworks which were not preferred in the initial phase viz. Cross Border, Group insolvency and full-fledged insolvency may see the light of the day soon. Request you to deliberate upon the road map that lies ahead.

**Smt. Akella:** The IBC is an economic legislation and continues to evolve. There is a growing clamor for Group Insolvency and Cross Border Insolvency. The recommendations of the Committee formed for studying the way forward on this are under consideration. These will be green flagged when the time is right.

**IIPI:** The stakeholders often highlight avoidable litigations and long pendency of cases with adjudicating authorities as the key reason for delays in proceedings. How would you like to assess the situation on the ground and highlight any measures that have been taken or are in pipeline to address such concerns.

**Smt. Akella:** We must look at marginal improvements to achieve gains which aggregate to a larger whole. The NCLT is moving towards hybrid courts and is becoming technologically advanced by going full-fledged on the e-Court System. The filing is nearly 100% electronic. NCLT has recently issued a circular recognizing that the Record of Default issued by NeSL is sufficient to admit an account

into CIRP. This will significantly reduce the time taken for admissions. NCLT is also in the process of designating an exclusive Admission Bench to expedite admissions. The Government on its part has filled up the vacancies in the years 2022 and 2023. And has provisioned all the support for improving the infrastructure of NCLT and NCLAT.

**IIPI:** Like the Achilles heel, the stress resolution in the real-estate sector poses unique challenges, given the underlying public interest and peculiarities of the sector including perceived overlaps with RERA law. Request you to summarize the efforts being taken or proposed to alleviate the house allottees' concerns.

**Smt. Akella:** The Government had constituted a Committee under Shri Amitabh Kant to recommend measures to bring the legacy stalled process out of the glut they had got into. The Committee, which also had Secretary MCA as a member, has already given its report. The recommendations have been acted on by UP Govt. This should alleviate the issues to a large extent.

IBBI has also proposed certain changes to their regulations to facilitate resolution of Real Estate Companies.

**The filing in NCLT is nearly 100% electronic. The NCLT has recently issued a circular recognizing that the Record of Default issued by NeSL is sufficient to admit an account into CIRP. This will significantly reduce the time taken for admissions.**

**IIPI:** Technology can be seen as a force multiplier by removing information asymmetry, enhancing transparency, and bridging the digital divide. How well is IBC ecosystem geared to adopt the technology in a meaningful way and in this context what steps are afoot to ensure seamless interface across the pillars of IBC?

**Smt. Akella:** There are five pillars of the IBC being:

1. Adjudicating Authorities (NCLT & NCLAT),
2. Insolvency and Bankruptcy Board of India (IBBI),
3. Information Utility (IU),
4. Service Providers under the Code like Insolvency Professionals, etc. and
5. Ministry of Corporate Affairs (MCA).

These pillars have their separate fragmented technological platforms and work in silos. This disintegrated nature of the standalone information technology platforms is the major bottleneck for the insolvency ecosystem.



The interactions between the institutions still happen through traditional routes and outside the technological systems. The Insolvency Professionals (IPs) carry out the processes of IBC and report back to the NCLT/IBBI etc., periodically, with there being a time lag in reporting. These are fraught with risk of loss of accuracy and are high consumers of resources and time. The systems are disparate and do not talk to each other.

A comprehensive IT platform is being proposed by the MCA. This would be more of a case management system, which would run through the pillars of the Code, drop and pick up data as needed. This would reduce duplication of efforts and have a single source of truth. The time spent on compliances would be reduced, plus enable monitoring of delays at the requisite levels. It would improve outcomes under the Code, both in terms of reducing delays and improving realizations. It also has the potential to enhance transparency of the processes under the Code.

**IIPI:** Insolvency profession being a newer evolving profession in India, called a profession of professionals and is often compared to healthcare profession being able to rescue corporate lives. What words of wisdom and guidance would you like to offer to IPs for becoming a successful professional and being able to serve effectively and fearlessly?

**Smt. Akella:** The Insolvency Professionals are actually the rescuers of a CD. They have our highest regard for the tough job they do, with utmost dedication and sincerity.

The mantra of POISE, P for Professionalism, O for Objectiveness, I for Integrity, S for Security and Confidentiality and E for efficiency and effectiveness will stand the IPs in good stead. Due to the ever-evolving nature of the IBC and the complexities involved in rescuing Distressed Companies, Continuous Professional Education, Peer Review and Self-regulation is a must for Insolvency Professionals.

*Satyamev Jayate.*



## Key Takeaways from Addresses of dignitaries in the Conference on the theme ‘Insolvency Profession – The Way forward’ organized (Physical Mode) on the occasion of the 7<sup>th</sup> Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIPI) in New Delhi on December 06, 2023.

Indian Institute of Insolvency Professionals of ICAI (IIPI), with an aim to facilitate discussions and sharing of ideas on various aspects of insolvency profession in India and get insights for the way forward, organized a Conference (Physical) on the occasion of its 7<sup>th</sup> Foundation Day in New Delhi on December 06, 2023.

Shri Sudhaker Shukla, Whole Time Member (WTM), Insolvency and Bankruptcy Board of India (IBBI) graced the occasion as Chief Guest and enlightened the gathering with his words of wisdom. CA. G. C. Mishra, Chairman, Committee on IBC-ICAI and Dr. Ashok Haldia, Chairman-IIPI Board were present as Guests of Honour and shared their ideas on various aspects of the IBC including the role of IIPI in strengthening the insolvency ecosystem. On this occasion, a publication entitled “Case Studies of Successful Resolutions and Liquidations under IBC – Series 2” based on successful resolution and Liquidation cases conducted by insolvency professional members of IIPI, was also released.



The Inaugural Session was followed by Special Addresses by Dr. M. S. Sahoo, Distinguished Professor, NLU Delhi & Former Chairperson-IBBI, Shri Sunil Mehta, Chief Executive- Indian Banking Association, and Dr. Sanjeev Gemawat, Group Counsel-Vedanta Group. Besides, a Panel Discussion was also organized in which experts from across the professional backgrounds shared their views.

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. IIPI has completed seven years of its operations. Though seven years are not a long period in the life of an organization, IIPI has contributed significantly in terms of competency, capacity, and credibility of insolvency ecosystem in India to deal with the various issues arising out of the implementation of the IBC.
2. We have worked to develop insolvency profession with a diversified set of knowledge, experience and skill sets including soft skills that enable the professionals to deal with various stakeholders while discharging their duties.
3. Besides its statutory responsibilities, IIPI has been proactively engaged in policy advocacy with Insolvency and Bankruptcy Board of India (IBBI) and Government of India. Thus, IIPI acts as interface between insolvency professionals who work on the ground and the Regulator i.e., IBBI.
4. We have been arranging international experts and providing platform for knowledge sharing between Indian IPs and their professional counterparts. Besides organizing several international seminars, webinars, and conferences with the help of insolvency experts/ institutions from the UK, USA, Australia, Singapore, South Africa, etc., we also have partnerships with INSOL International, UK.
5. As the insolvency ecosystem is changing at fast pace, the programs of IIPI needs to be comprehensive

as well as updated to deal with the issues across variety of industries to enable IPs to run the business of corporate debtors as going concerns. We have dealt with these challenges by conducting various Executive Development Programs (EDPs), Webinars and Seminars in collaboration with national and international industrial bodies, government organizations, professional associations, and institutions.

6. IBC is a dynamic law that is evolving with the changing horizons of the national economy, global economy, and technology. Therefore, IPs need to change, adopt and adapt accordingly. Besides, the IPs need to be fair, transparent and keep proper record of their communication with various authorities and stakeholders.
7. IBBI has been proactively working to resolve various issues and I hope that frameworks on Group Insolvency, Cross-Border Insolvency, Individual Insolvency, and other areas will come soon.
8. We all need to prepare for implementation of amendments in the existing frameworks and also new frameworks to be introduced in the near future. The IPAs, IPs and IPEs need to prepare in advance to rub shoulders with the modifications and changes in the IBC and IBBI Regulations.
9. I hope the outcomes of the discussions in today's program will be helpful in addressing various issues and challenges before the IPs and also provide inputs for required changes in the IBC and IBBI Regulations to facilitate better resolution of corporate debtors and also meet the expectation of various stakeholders.



### Guest of Honour

**CA. Gyan Chandra Misra**

Chairman

Committee on IBC-ICAI

1. Insolvency profession is indeed a dynamic profession, where the Insolvency Professionals are always on radar. This is because their work is related to several stakeholders and also involves dealing with various statutory agencies.
2. Insolvency professionals need to be good at using information technology. IBBI is working on Integrated Case Management System. In near future,

we will have to deal with Artificial Intelligence (AI) and other technologies.

3. The thrust areas of insolvency profession should be upcoming frameworks for Cross Border Insolvency, Group Insolvency and Individual Insolvency.
4. Today, IIPI is working not only in respect of knowledge dissemination but in terms of regulation, research and other aspects also. I am sure, IIPI shall be working to take initiatives on fronts of capacity building, technology, and regulatory framework. We can keep working together to become not only the best of the professional body but also serve the nation with the best of our capabilities.



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

1. ICAI has provided a strong foundation to IIPI to deliver what it is delivering in such a robust manner on the ground.
2. In addition to various stakeholder of the insolvency, we are now receiving queries from non-IPs and other ministries like Ministry of Textiles, Financial Services, and MSMEs on how the things are going on and what should be the way forward for distressed assets. The intensity of discussion on insolvency is increasing across various professional and sectoral backgrounds.
3. As an auditor, you are the first person to realize that the company is in some financial distress which needs to be fixed. Your audit report should have an honest reflection of those issues so that the company is saved from downhill journey. Thus, a non-IP can contribute significantly to saving a company by pointing out faults and suggesting precautionary measures to the management.
4. When you talk about reforms, there is a need for learning from best practices of foreign countries and contextualization them as per the Indian environment.
5. The best practices could be divided into two categories - (i) which are annulled or reimagined e.g., two tier regulatory system instead of single regulator, (ii) which we have developed, and other regimes are looking forward e.g., Information Utilities (IUs) and Graduate Insolvency Program (GIP). Presently, the IUs have over 5 crore records which is a unique institution in the Indian context.
6. As a Regulator, IBBI has three roles to play – Regulator of the Insolvency Profession, Regulator of the Market and Regulator of IUs. The IPAs are doing a lot, but they need to focus more on skill sets and self-reliance in their operations in moving forward so that they can manage the profession and cadre in a better way.
7. Recent studies have shown that Cross Border Insolvency may not yield the desired results without a Group insolvency framework. Therefore, both Cross Border Insolvency and Group Insolvency frameworks can be rolled out simultaneously if approval comes through.
8. Best practices of one country can't be exactly implemented in another regime. It is always context specific. There have been large deviations from UNCITRAL (United Nations Commission on International Trade Law) model in implementing Cross Border Insolvency Framework from one regime to another wherein each and every regime has carved out exceptions as per their requirements.
9. Insolvency should be ready for various upcoming challenges like Cross Border Insolvency, Digital Assets, Cryptocurrencies, Cape Town Convention, etc., to ensure that Indian insolvency ecosystem continues to excel.
10. I would like to mention 'Business Ready Framework' which the World Bank has come out with. The survey on this framework will start in October 2024. It is my request to IPAs also to sensitize you all that it would mean and what will be framework of questions and how the questions are to be responded.
11. There have been two separate free- flowing interactions of insolvency professionals with IBBI and NCLT. But that was not end of the interactions. In fact, in the last few weeks we had three seminars which were not seminar in its traditional sense but unique experience wherein the top management of IBBI was sitting in a 'classroom setting' and listening the problems from IPAs which they are facing on the ground.
12. Regarding the suggestion of discontinuing 24-hour window for voting by the CoC, we are examining whether it infringes on the rights of other stakeholders. If found not harmful; it may be implemented.
13. Regarding disciplinary action by IBBI, earlier we were in the process of transition so small mistakes were overlooked but now stricter scrutiny is conducted. However, it does not mean that everything is punishable buy we definitely take action where it is warranted as it is in the very interest of the profession.



**Special Address**  
**Shri Sunil Mehta**  
 Chief Executive  
 Indian Banking Association

1. On the occasion of the 7<sup>th</sup> Foundation Day, my congratulations to IIIPI on this momentous day. I also compliment IIIPI for conducting this conference for capacity building, creating awareness, finding resolutions and playing a basic coordination role with the various stakeholders for building efficiency to the IBC processes.
2. IBC is a landmark legislation by the Government which had brought a lot of financial discipline in the corporate sector leading to running corporate debtors as going concern and providing ease of the exit from the business.
3. Insolvency Professionals play a very pivotal role in this entire ecosystem. They work as the driver of the CIRP, run the affairs of the Corporate Debtor, address the issues related to the promoter/s, coordinate with the CoC and finally encourage the investors for Resolution Plan. Thus, the resolution involves a teamwork and efforts from all the stakeholders of the ecosystem.
4. Insolvency Professionals need to develop skills and capacities to face the challenges. This is because it is a herculean task for a single person to replace the entire board of company and shoulder their responsibilities.
5. We have taken various issues with the Ministry of Corporate Affairs (MCA) and IBBI so that Insolvency Professional Entities (IPEs) could act as IPs. The fee structure has been incentivized for faster resolution of corporate debtors.
6. We have also taken up with the MCA and IBBI various issues which cause delays and need to be plugged to expedite admission of CIRP cases. We are deliberating on these issues with our Stressed Assets Management Committee.
7. As per the data of IBBI, more than 70% of the cases are going for Liquidation and that is the cause of concern. The basic objective of the IBC is neither recovery nor Liquidation but keeping the corporate debtor as a going concern.
8. The bankers and IPs can work together in some areas such as preventing cartelization so that people do not take undue advantage of the process, creating greater transparency into the system, creating a market for the stressed assets, and encouraging investors to receive more resolution applicants.
9. These kinds of workshops will give us a scope for brainstorming and understanding on what we can do at our level and policy advocacy with the MCA and IBBI to improve the resolution of financially stressed corporate debtors in the country.
10. IIIPI has the 63% of IPs as its members so has major responsibility to play in nurturing an environment of transparency, building capacity of IPs, formulating standards, and increasing efficiency by creating a better understanding across the stakeholders.



**Special Address**  
**Dr. M. S. Sahoo**  
 Distinguished Professor, NLU Delhi  
 & Former Chairperson, IBBI

1. I still remember the small and glittering function in 2016, in which I had joined Hon'ble Financial Minister Shri Arun Jaitley, who is regarded as the Father of Insolvency in India, to congratulate IIIPI as the first registered Insolvency Professional Agency (IPA) under the IBBI. Thus, IIIPI also became the first registered entity under the IBC. Today, I against congratulate IIIPI on its 7<sup>th</sup> Foundation Day.
2. According to the architect of the IBC, IPs are the first pillar. It is our duty to make this pillar stronger. There are only about 4,000 IPs today out of which only about 2,000 have AFAs. However, in just seven years, you can see the impact these IPs have made in comparison to other older professions.
3. Insolvency Profession has performed exceptionally well. This is because in a market led insolvency regime on the ground, the IPs rose to the occasion to apply the law, extend the professional support, and help in the resolution of the Corporate Debtors in distress.

4. In every case when the law is applied by an IP, there are plenty of agencies who examine it and contribute to improvement of the ecosystem. The insolvency profession has emerged as a robust institution to which the IBC ecosystem is proud of. Thus, IP stands for the “Intellectual Property” of the insolvency regime.
5. The Delhi High Court on 20<sup>th</sup> November 2023, in the case of Ms. Puja Meghnani, said that “an Insolvency Professional in fact has become the heart and brain of the company undergoing insolvency process”. Furthermore, the Hon'ble Supreme Court in another case has acknowledged the 'pivotal role' an Insolvency Professional plays in the effective function of the insolvency process and significant contribution she makes to the efficiency of the process. We must respect this endorsement and try to live up to their expectations.
6. Insolvency Profession stands on two pillars – competence and conduct. We have a systematic process in place for capacity building of insolvency professionals. However, it requires a transformative journey in the next decade primarily arising from three sources, namely, (i) changing regulatory environment, (ii) evolving economic landscape and (iii) technological advancement.
7. There is huge increase in the pre and post CIRP work. IPs are emerging as restructuring professionals. IPAs need to prepare IPs for these emerging opportunities.
8. The insolvency ecosystem has reasonably matured, and this is high time to move beyond CIRP such as Group Insolvency, Pre-Pack for all corporates, and other value-added features. These will require sophisticated skills.
9. The future of insolvency profession will see a great emphasis on global collaboration, standardization of procedures, development of uniform regulations etc. The IPs who are in sync with these developments will be able to provide services across the world and IPAs should emerge as facilitators for such IPs who can provide insolvency services to other countries.
10. Lastly, the reputation of the profession is very important. We need to preserve the reputation and also enhance it further. The IP may face several conflicting demands, but s/he must rise for the law and not compromise on any ground.



**Special Address**  
**Dr. Sanjeev Gemawat**  
 Group Counsel, Vedanta Group

1. IBC per se is close to our heart particularly in view of the experiences in the past several years in terms of various issues and challenges.
2. IBC is indeed a revolutionary law. When this law came, we believed that there was a law with definite timelines, responsibilities fixed with various stakeholders, and also addressing the socio-economic problems of the country because it was not a recovery tool but a revival related framework.
3. This is one of the finest legislations in the post-independence period which has created such a professional discipline. More importantly, the members of ICAI are leading the insolvency profession. We have not seen any profession that has progressed so much in just seven years period.
4. In terms of meeting the timelines prescribed under the IBC, insolvency professionals have done exceptionally well. However, there have been avoidable delays on the part of Committee of Creditors (CoC) and the Adjudicating Authorities, that are the causes of concern.
5. Insolvency Profession is the profession wherein the professionals follow a Code of Conduct, follow the rules and regulations, are part of a professional institute, and work to protect the public money.
6. There are only two kinds of issues that go before Adjudicating Authority for adjudication, *firstly*, whether the claims have been admitted or not? and *secondly*, whether the distribution of proceeds have been done rights or not? If the insolvency professionals do proper homework on these two aspects of every case, the delays can be reduced.
7. The IBC ecosystem stands on two aspects, commercial wisdom of the CoC and judicial wisdom



of the Adjudicating Authority. Can the CoC's commercial wisdom and professional wisdom be structured in such a way that we can avoid delays happening at the level of judicial wisdom?

8. Under the IBC, insolvency professionals are the authority to approve whether a particular thing is in compliance with the law or not? If the signature of a Chartered Accountant is valid for auditing Account

books, why the IBC requires another authority to review it? The way things are moving, tomorrow, insolvency professional may emerge as the final authority on many things.

9. We need to make a list of the issues which do not require interference or adjudication by the Adjudicating Authority and can be decided at the level of insolvency professionals.

### Panel Discussion

**Chairperson:** CA Gyan Chandra Misra, Chairman, Committee on IBC - ICAI

#### Panellists:

- Shri Rajesh Sharma, Hon'ble Former Member, NCLT
- Shri Arun Yadav, Chief General Manager (SARG), SBI
- Shri Debajyoti Ray Chaudhuri, Managing Director, NeSL (IU)
- Adv. Nilesh Sharma, Partner, RRR Legal Advisors LLP
- CA. Avil Menezes, Insolvency Professional
- CA. Hitesh Goel, Insolvency Professional



1. Resolution Professional (RP) is the hub of the entire CIRP process and except the RP, all other stakeholders, including promoters, the creditors, CoC etc., are most of the time are on the opposite sides. To put all of them on the same table and bring a resolution is not an easy task for the RP. The moment he starts working, he is subject to many complaints by rival groups.
2. Innovative ideas are essential to tackle the issues confronting the Adjudicating Authority, particularly the extensive litigation it deals with. The considerable caseload across various benches poses a formidable challenge in efficiently disposing of cases and ensuring responsible outcomes.
3. Integrating mediation into this system holds promise. Although initially voluntary, mediation could be an asset in handling Section 7 and Section 9 applications. NCLT orders can facilitate immediate referral to a mediator, potentially resolving 20% to 30% of these cases. Mediation could effectively address issues, especially regarding interests, in running companies.
4. The Government is expected to take appropriate decision on Cross-Border Insolvency but before that we should focus on Group Insolvency. If implemented simultaneously, these two processes will benefit lenders. Besides, substantial amount of homework is required for individual insolvency.

5. IUs have integrated case management systems that comprehensively cover every aspect of the insolvency resolution process. IUs are also collaborating with IBBI to potentially enable auto-generation of Forms through the platform. This would streamline the process, reducing redundant data entry. Besides, there is a proposal to integrate the National Company Law Tribunal (NCLT) systems into the platform.
6. In a recent judgment, the Supreme Court dismissed a bunch of petitions challenging various provisions of the IBC and affirmed their constitutional validity. There is a need for further efforts by IIPI to train more professionals to meet the demands of expanding insolvency profession. It is also recommended that insolvency professionals coordinate with insolvency professional entities for better services.
7. Unfortunately, the PUF transactions tend to be neglected, as resolution professionals and adjudicating authorities prioritize fresh cases and approval of resolution plans. To address these issues, specialized benches dedicated to avoidance applications could be established. Furthermore, exploring mechanisms for mediation and settlement in avoidance applications can be beneficial.
8. CIRP and Liquidation process are largely a participative and consultative process among all the stakeholders wherein the Resolution Professional has been bestowed with the responsibility of driving seat. Here, competence is not the sole concern; the conduct also plays a crucial role.
9. Challenges may arise in communication between the CoC and the Resolution Professional. These challenges can be addressed by engaging meaningfully with various stakeholders. Properly managing claims, reaching out to prospective resolution applicants, and preparing comprehensive information are essential for success.
10. The Corporate Debtor's business is a significant stakeholder in the entire CIRP process. It has its own ecosystem, impacting employees and livelihoods. In the larger interest of the process, it's essential to treat promoters with respect, acknowledging their achievements and explaining that the goal is to ensure the company's survival and continuity of the business.
11. With the IP being appointed within an institution as IPE, it enhances the chances of securing work. The collective representation and capabilities of the IPE become more visible, which positively impacts evaluations by banks and boosts confidence in the Committee of Creditors (CoC).
12. The RPs of real estate companies are required to collect huge data from various agencies in a short period of time. However, the law does not provide much guidance or mandate to those agencies and authorities to understand the insolvency process and give it priority. Cooperation from the ex-management is crucial, and the responsibility should be clearly placed on them to provide all data, appear before the agency, and answer queries.
13. It is crucial to recognize that not all aspects of implementation occur within the initial 180 days. Therefore, the insolvency professional should remain actively engaged till the conclusion of the entire resolution process. There is also a need to consider the applicant's perspective, especially public sector banks, which may benefit from engaging professionals early in the process.



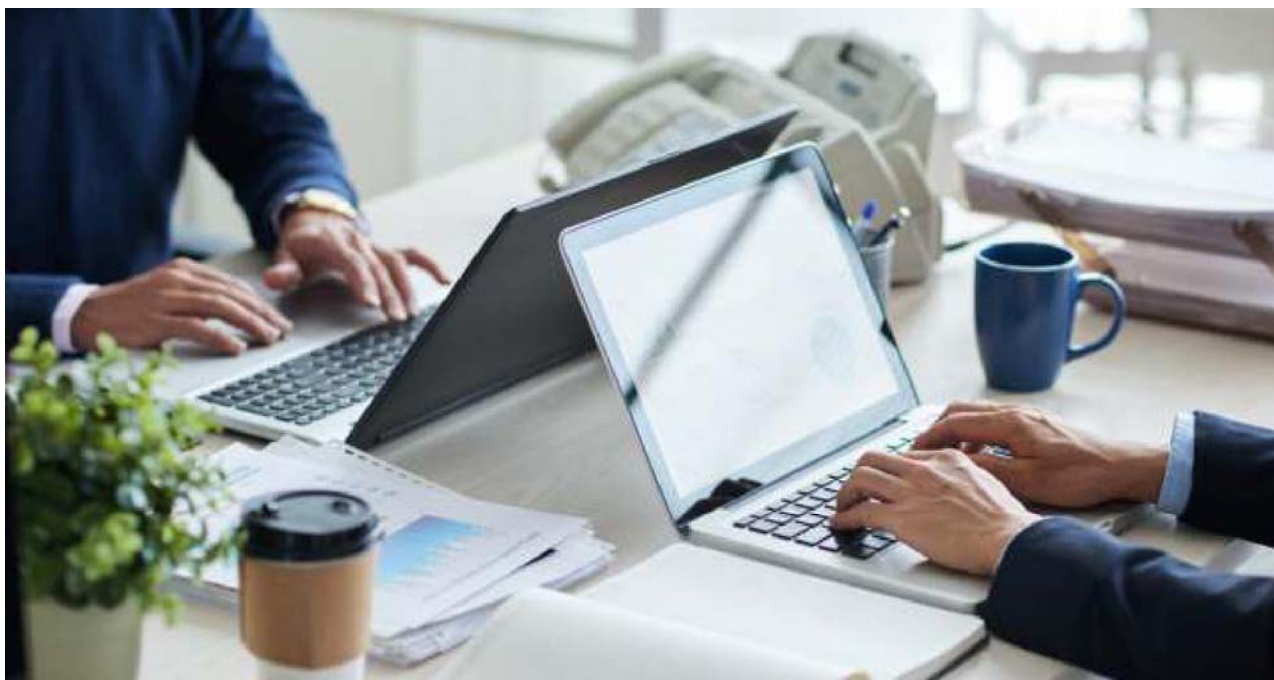
### Vote of Thanks

**Rahul Madan**

Managing Director, IIPI

1. At the outset, on this occasion of the 7<sup>th</sup> Foundation Day of IIPI, I am very thankful to the Chief Guest and all the dignitaries for carving out time to enlighten us and also the professional members who have joined us for deliberation and interaction.
2. In fact, continuous dialogues, engagement, and interaction across various stakeholders is truly a hallmark for IBC regime.
3. In context of today's conference "Insolvency Profession: The Way Forward", I believe through the insolvency profession has gained a lot, it is still the nascent stage.
4. Despite several challenges, the profession has gained momentum and is certainly moving forward with a lot of confidence.
5. The question before us today is, how and what can be done to improve the efficacy of this profession. The views shared by various dignitaries certainly provide us the much-needed insights.

## Making IBC the Preferred Resolution Mechanism: Some suggestions evolving from practical experiences



*In the past seven years of its operation, the IBC, 2016 has overcome several hurdles and achieved accolades from various quarters. However, there are still some bottlenecks which needs to be addressed. In the present article, the author, after analysing various CIRP and Liquidation processes under the IBC has proposed certain suggestions to make timely resolution of corporate debtors, effective implementation of their resolution plans and quick liquidations, where it is the only way out. The four-step practical propositions, proposed in the article, seek to address how IBC can become a preferred route for resolution of debt in the Indian business landscape that is dotted with MSMEs. In this article, the author has made some recommendations related to (1) Expediting the process; (2) Improving resolution; (3) Ensuring implementation of the Resolution Plan and (4) Enhancing the contribution of Ips. **Read on to know more...***



### Vivek Parti

The author is an Insolvency Professional (IP) Member of IIPPI. He can be reached at [v\\_parti@yahoo.com](mailto:v_parti@yahoo.com)

*“Economic downturns or sectoral issues trigger a chain reaction, making prompt resolution of distressed debt crucial to avoid increased costs for creditors and lowering recovery rates.... The primary reasons for hesitance towards the IBC route are delays, such delays leading to increased resolution costs and the misplaced belief that resolution includes all borrower assets”.— The Bankruptcy Law Committee in its Report<sup>1</sup>, 2015.*

### 1. Adaptive Regulatory Framework to Marketplace Dynamics

The Insolvency and Bankruptcy Board of India (IBBI) has established a regulatory framework that is proactive to the change in the marketplace. Dr. M.S. Sahoo, First Chairman, IBBI, has said, “A regulator is often accused of lacking democratic legitimacy. Public consultation is generally used to bridge the democratic deficit<sup>2</sup>.” Such public engagement measures make the regulatory environment adaptive to marketplace dynamics. Keeping pace with change, the regulator has instituted, directly and via IPAs, capacity building initiatives for IPs and other stakeholders with the aim of meeting the overall objectives of the IBC.

<sup>1</sup>. The Bankruptcy Law Reform Committee Report 2015 Volume I: Rationale and Design

<sup>2</sup>. Dr. M S Sahoo and CKG Nair, “When the regulated become the regulator” published in Business Standard October 4, 2023

### 3. Snapshot of the Distress Debt Numbers

#### Outstanding credit of Scheduled Commercial Banks<sup>3</sup>

1. All accounts: ₹1,40,51,320 crores
2. Short to Medium term, Demand Loans, Bills, etc.: ₹66,27,843 crores
3. All accounts (Nos): 342.380 mn
4. Private Corporate Sector accounts (Nos) – 2.019 mn

Gross NPAs to Gross Advances Ratio<sup>4</sup> – 3.9%

Number of cases pending in NCLTs<sup>5</sup> – 7058

Number of cases pending in DRT (SARFAESI - Feb 2022)<sup>6</sup> – ~161,000

April – June 2023<sup>7</sup> • July – September 2023<sup>8</sup>

Number of new CIRP filed • 248 • 243

Number of new PIRP filed • 200 • 250

Number of new IPs registered • 43 • 41

Drop-out rate % (Registered IPs without AFA) • 42.96 • 45.80

Average number of CIRP per AFA • 1.70 • 1.72

Average number of PIRP per AFA • 0.93 • 0.83

Number of PIRP added per AFA (01.10.2022-30.09.2023) – 0.36

Number of Registered IPs (30.09.2023) – 4371

Number of AFAs (30.09.2023) – 2369

Number of CIRP added per AFA (01.10.2022-30.09.2023)<sup>9</sup> – 0.47

Number of PIRP added per AFA (01.10.2022-30.09.2023) – 0.36

There are some practical challenges arising out in the current regime and suggestions have been made to address them in this article.

- Most committee reports have acknowledged that the delays arising in the insolvency processes create impediment to its success. The IBBI (Regulator) is mindful of this state and has tried to address it through new tools such as Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs. Besides, efforts are being made to explore a creditor-led fast track resolution process.

- The second challenge arises from falling recovery through resolution plans that have dropped to 32% cent in some cases and 4% for liquidated realizations.
- The third pain point arises after resolutions are approved but face setbacks in their implementation.
- Finally, the Insolvency Professional (IP) who is the catalyst to ensure the success of an insolvency process should have added opportunities to grow professionally.

### 3. Four-Step Practical Proposition

#### 3.1. Removing delays associated with insolvency process

IBC proceedings are summary in nature and the term implies expeditious disposal of matters. The timeline for disposal in Corporate Insolvency Resolution Process (CIRP) has steadily increased. A brief snapshot is given in Table- 1.

**Table -1: Timeline for disposal of CIRP cases**

Phases/ Stages	As on 30.09.2023 (Days)	As on 31.03.2022 (Days) <sup>10</sup>
From Insolvency Commencement Date (ICD) to Resolution Plan Approval	867	533
[Excluded period]	[143]	[83]
From ICD to Liquidation Order	630	414
Average for concluded CIRP	749	474
From LCD to Final Report	589	487

Timely execution is in the law, but practical implementation is critically desired whether it is at the stage of admission or plan approval<sup>11</sup>. The above table suggests that timelines are stretching beyond days even as the NCLTs have allowed exclusion period that was an average of 83 days as of March 31, 2022, to now 143 days as on September 30, 2023.

**The timelines are reportedly stretching beyond days even as the NCLTs have allowed exclusion period that was an average of 83 days as of March 31, 2022, to 143 days as on September 30, 2023.**

These exclusions, as observed by the NCLAT in the matter of *Quinn Logistics India*<sup>12</sup>, are for good grounds and

<sup>3</sup> RBI, Quarterly Statistics June 2023

<sup>4</sup> Press Release: 2023-2024/493, Financial Stability Report, June 2023 dated 28.06.2023

<sup>5</sup> IBBI Newsletter July-September 2023

<sup>6</sup> The Hindu, businessline Mumbai July 19, 2022

<sup>7</sup> IBBI Quarterly Newsletter (IBBIQN) April-June, 2023

<sup>8</sup> IBBIQN July-September, 2023

<sup>9</sup> IBBIQN July-September, 2022

<sup>10</sup> IBBIQN January-March, 2023

<sup>11</sup> Standing Committee on Finance (2020-2021), Seventeenth Lok Sabha, Thirty-Second Report, August 2021

<sup>12</sup> Quinn Logistics India Company Appeal (AT)(Ins) No 185 of 2018



unforeseen circumstances. In a case followed by the author, the matter was listed on 50 occasions out of which on 17 occasions, the bench noted for adjournment 'due to paucity of time'; on 13 occasions orders were directed for procedural reasons such as progress. Beyond the obvious choice to add bench strength of the NCLT members, other suggestions include:

(a) **Streamlining litigation process:** Summary proceeding broadly include plaint served upon the respondent, issue of notice, pleadings, and arguments (including written submissions). Hence there is the preparatory stage followed by the exploratory stage. Benches prioritize cases through a display of colour-codes in cause-lists for matters pertaining to admission, Resolution Plan approval and Liquidation yet there are undesirable extensions.

(i) The matters listed in the ordinary list find limited time as complete board for the day is not disposed. The reasons ascribed could be – the bench presided over limited time or the number of critical matters to be dealt with. There are several Interlocutory Applications (IAs) filed for procedural issues under the IBC. These procedures may be dealt with independently or via an institutional mechanism which will save crucial judicial time.

(ii) All the benches needn't deal with all kinds of cases. The very purpose of having technical members forming the quorum suggest that there could be sector specialization. Expertise of benches could be sector-specific such as real estate, power, airlines, auto, Original Equipment Manufacturer (OEM), complex capital & debt structures, and Cross Border operations. Greater understanding through past professional experience and application of technology would aid in expeditious disposal of cases. The NCLT's 'Case Information System' may include a summary sheet for the parties to submit in compliance of various stages. Procedural issues should be de-linked to the judicial process.

(iii) The IBC may define an institutional mechanism for certain statutory process -related filings.

Progress reports, replacement of IP, CoC decisions and requests for extensions are generally accepted by the Adjudicating Authorities (AAs). The IBBI may develop a mechanism of 'exceptions' where the AA would rule on matters that are 'non-ordinary' and the same mechanism could be incorporated in related IBBI Regulations.

(iv) Procedural IAs should be rule-based and be heard via Video Conferencing. This will help to lower the physical burden on NCLT's infrastructure.

#### (b) IPs to upgrade legal skill sets

(i) IPs should be involved in the drafting stage of the applications and ensure that applications are filed with greater legal scrutiny. Applications, not following the laid down jurisprudence, are bound to be promptly rejected and thus waste judiciary's time.

**IPs should be involved in the drafting stage of the applications and ensure that they are filed with greater legal scrutiny. Applications not following the laid down jurisprudence are bound to be rejected thereby wasting judiciary's time.**

(ii) Jurisprudence is ever evolving. From an IP's perspective, database, and index of judgements on the IBC ecosystem are equally important.

(iii) IPs should ensure proxy appearances by counsels are discouraged. 'Buying time' contradicts the objective of IBC and adds to the delays.

#### (c) IPs' involvement before filing of insolvency application

IP who is engaged by the creditor and is proposed in Section 7 application should actively participate at the pre-filing stage. This allows preparation for early and quick understanding of the business operations and ensuing challenges. For instance, under the Chinese insolvency laws, the entire bankruptcy process is mainly controlled by the Administrator which helps in improving the effectiveness of the system<sup>13</sup>.

<sup>13</sup> IBBI Navdriшти "Emerging Ideas on IBC" 2023 p.32

### 3.2. Improve Resolution and Aid Recovery

#### (a) Solving the Avoidance Muddle will Propel the IBC

As of September 2023, 1025, avoidance applications seeking to recover an aggregate amount of over ₹3,19,000 crores had been filed with the NCLTs. However, orders have been passed in only 203 cases with an extremely low claw back rate of ~11%. Data available from the RBI<sup>14</sup> states that short to medium term loans extended to businesses for their working capital constitute ~47% of the total credit extended by the SCBs.

- (i) Non-cooperation by promoters/management applications to be disposed by the NCLTs within specified timelines. Not handing over books of accounts and records should be considered as intent to defraud creditors. This requires an amendment in the IBC.
- (ii) Counter party & regulatory records to be accepted as primary evidence where promoters/management are non-cooperating. This can be ensured by amending IBC and related Regulations.
- (iii) Determination of avoidable transactions by IP raises a big challenge. The IP should ensure that bona fide transactions are not treated as avoidable actions. It is commonly observed that there is non-cooperation by the promoters. Therefore, if much time has lapsed from the transaction dates, the ex-management/promoters of the CD should be made responsible for establishing the fairness of doubtful transactions.
- (vi) Financial forensics could make use of advanced Machine Learning (ML)/ Block chain technologies to identify impugned vulnerable transactions<sup>15</sup> from large datasets which would greatly reduce professional costs. Capacity building is already a developing practice and should be provided further impetus. Avoidance transactions require a critical understanding of financial transactions, forensic methodology, evidence gathering and reporting. In Technovaa<sup>16</sup> matter the avoidance applications were dismissed for lack of evidence as well as undue

reliance placed on the forensic report that was full of disclaimers and did not make any definite observation.

**Unnecessary litigation leading to delays can be avoided if appeals were to be entertained with a money deposit against the amount under challenge. This can be ensured by amendments in the IBC, and Regulations and NCLT Rules.**

- (v) Unnecessary litigation leading to delays can be avoided if appeals were to be entertained with a money deposit against amount under challenge. This can be ensured by amendments in the IBC, and Regulations and NCLT Rules.

#### (b) The Word Liquidation Devalues the Enterprise

Liquidation is a terminal state and therefore is the scavenging tool for 'bounty-hunters'. It leads to a huge markdown of enterprise value that in some cases exceeds 30% to fair value. In the 85 CIRPs that yielded resolution plans, June-September 2023, the Liquidation Value was ₹9,456.75 crores as against corresponding Fair Value of ₹15,579.98 crores. The introduction of the Scheme of Arrangement and Compromise (Scheme) is a welcome notification<sup>17</sup>. However, the number of cases settled under IBC vide approval of scheme have been limited. The Liquidation Period to final report has incrementally increased from 487 days in March 2022 to 589 days in September 2023. International experiences point towards greater success via rehabilitation and creditor-debtor compromise. The other problem encountered during Liquidation is the lack in ease of assignment of "Not Readily Realizable Assets".

IBC should be a three-stage formal restructuring process i.e., CIRP, the Scheme and Liquidation resulting in compulsory dissolution. The enterprise value under CIRP and Scheme phase will remain closer to the Fair Value. Presently, Regulation 2B of the IBBI (Liquidation Process Regulations) 2016 provides for powers to make compromises or arrangement with creditors under Section 230 of Companies Act, 2013. The provisions may be adopted under new regulations separate from the Liquidation Process Regulations. The Scheme is considered a restructuring tool distinct from the terminal dissolution of a company.

<sup>14</sup> RBI, Quarterly Statistics June 2023

<sup>15</sup> Avoidable transactions under section 43, 45, 50, 49 and 66 of the Code

<sup>16</sup> Technovaa Plastic Industries IA 618 of 2019 in CP (IB) 189/9/NCLT/AHM/2018

<sup>17</sup> Notification No. IBBI/2022-23/GN/REG. 093, dated 16.09.2022

NCLTs should prioritize resolution under the above proposed Scheme at par with Resolution Plan approval process.

- (i) Regulations<sup>18</sup> provide for assignment of Not Readily Realizable Assets (NRRA). However, practically it is challenging. Statutory bodies such as “Bad Bank” which could be an intermediary parking bay until litigation is settled.

### (c) MSMEs are the Sweet Spot

As mentioned, the Indian business space is dominated by MSMEs. The Financial Stability Report puts the gross non-performing assets (GNPAs) of the SCBs at 3.9% of the 342 million credit accounts. The total number of corporate accounts where credit has been extended is over 2 million. IBC's resolution numbers suggest higher recoveries are enjoyed by MSMEs without accounting for the amounts realized/realizable from avoidable actions.

**Table - 2: CIRPs Yielding Resolution Plans**

CIRPs Yielding Resolution Plans				
Number of CIRPs	Period	Total dmitted Claims (₹ Crs)	Total Realizable Value (₹ Crs)	Realizable Value as Percentage of Admitted Claims
808	Till 30.09.2023	991815.55	315937.2	31.85
185	01.10.2022 -30.09.2023	183513.13	66758.62	36.38
35	Large cases*	90927.33	19324.95	21.25
<b>150</b>	<b>MSMEs</b>	<b>25299.31</b>	<b>7687.61</b>	<b>30.39</b>

\* Removing 8 outliers where percentage of realizable value is high.

There is an overarching need for insolvency law to resolve distress debt within the MSME segment.

- (i) **Institutional promotion of Pre-Packs among financial creditors:** Benefits of Pre-Pack are underlined in NCLT's observation in *Garodia Chemicals Ltd* matter which states, “the legislative intent behind the introduction of PPIRP in the IBC was to provide an alternative process for resolution of the stress of corporate MSMEs due to their unique nature of business and simpler corporate structures”.<sup>19</sup>
- (ii) The creditor led resolution approach has been suggested by an expert committee constituted by the

IBBI to cover a wider spectrum of corporate debtors on similar lines as the PPIRP for MSMEs.

**This fear of losing could be mitigated by assigning a greater restructuring professional role to the IP who presently is primarily engaged in administering the process. The promoter requires handholding by experts.**

However, the success of these formalized processes majorly operating in the informal domain (hybrid workouts<sup>20</sup>) would completely hinge on intangibles such as process simplification and eradication of 'fear of losing' by the promoters. This fear of losing could be mitigated by assigning a greater restructuring professional role to the IP who presently is primarily engaged in administering the process. The promoter requires handholding by experts.

### 3.3. Ensuring Resolution Plan is implemented

- (i) **Monitoring of approved Resolution Plans:** There should be a mechanism to ensure rigorous and sustained monitoring for effective implementation of resolution plans approved by the AA in its letter and spirit. Such a monitoring of the implementation of the resolution plans becomes crucial in certain cases that demand longer implementation period. Failure in implementation of a Resolution Plan allows the AA to pass the Liquidation order which may harm the interests of stakeholders.
- (ii) There are instances of government departments raising claims upon applicants for the period prior to the approval of Resolution Plan thus causing delay and unnecessary hardships<sup>21</sup> in resolution of the CD.
- (iii) The IBC, 2016 may arm the NCLT with specific provisions for enforcement of the Resolution order under Section 60(5) in lines with Section 105 of the US Bankruptcy Law<sup>22</sup> that provides powers to enforce or implement court orders or rules or to prevent an abuse of process.

### 3.4. Insolvency Professionals as 'Pillars' should be Specialists

Insolvency as a profession is gaining prominence as several educational initiatives, including university courses, insolvency academies, graduate programs etc.,

<sup>18</sup> Regulation 37A of Liquidation Process Regulations

<sup>19</sup> *Garodia Chemicals Ltd CP (IBPP)* No. 02 of 2023 Mumbai

<sup>20</sup> World Bank Group, A Toolkit for Corporate Workouts January 2022

<sup>21</sup> *Ruchi Soya Industries IA 2281 of 2021 in CP (IB)* No. 1371 & 1372 MB of 2017

<sup>22</sup> <https://usbankruptcycode.org/chapter-1/section-105-power-of-court/>

are pullulating. When the Banking Law Report envisioned the IP as a “*crucial pillar*” it certainly did not imply a “*generalist*” who would be engaged in a bit of diverse professional engagements. The purpose of placing limitations on the IP via Code of Conduct<sup>23</sup> clause on “Occupation, employability and restrictions” was with pivotal need to have specialists. Specialization places an onerous responsibility on the profession to keep the IPs gainfully employed in insolvency and restructuring. Employment analogously necessitates continuing professional competence and to maintain efficient management systems leading to costs associated with practice. The IP is compelled to pay-out costs associated with a reasonable office, professional fee, CPEs, membership to various professional forums, subscription of journals and other periodicals.

#### (a) Creating more opportunities for IPs

More than 7,000 corporate debtors, as of September 30, 2023, have been admitted under insolvency processes would seem miniscule to the over 1,61,000 with DRTs and many more where bankers resolve or settle matters directly. The potential upside for the IBC is great, considering the distress in MSMEs and that the numbers of large cases<sup>24</sup> are less than 10% of all the cases (as on 30.09.2023).

**Concerns about ease of coordination have been mitigated by the AA in the case of Monica Jajoo wherein it was decided that the proceedings of the CD and Personal Guarantor should be before the same NCLT but as separate cases.**

Personal insolvencies: Proposal<sup>25</sup> to manage CIRP and personal insolvencies by the same IP postulates the benefit of information availability and coordination of processes over the need for independence. However, such benefits shall negatively impact the number of cases managed by individual IPs. Personal guarantors have multiple creditors and crossholdings in assets. Hence information availability with corporate debtors may not be such a critical factor in managing the personal insolvency process. The benefit analysis should favor “more-work-to-more-IPs” with added benefits of independence and sharper focus in case management.

- (i) Regulate sharing of information by the IPs in CIRP and PPIRP.
  - (ii) Concerns with regard to ease of coordination have been mitigated by the AA in the case of *Monica Jajoo*<sup>26</sup> wherein it was decided that the proceedings of the CD and Personal Guarantor shall be before the same NCLT but as separate cases.
- (b) Removing 'overweight cases' in the creditor selection process**

There is a Latin maxim '*aequitas est quasi aequalitas*', fundamental notion of equality and impartiality. Thus, equitable opportunities for all IPs should be elementary. The past conduct of the IP in managing or being engaged in the IBC assignments should be the crucial deciding factor. Though creditors may not be compelled but advisors may provide guidance.

- (i) The statement of problem in the IBBI Discussion Paper<sup>27</sup> on appointment of Insolvency Professional Entities (IPEs) as IPs states, “*the resolution professional tends to outsource his functions to other persons such as Insolvency Professional Entities, Process advisors etc.*” This reasoning may hold true for large cases, however, in cases where the companies are non-operational or have admitted claims less than ₹500 crores, there should be limitations on appointment of IPEs. This is because the creditors, particularly Public Sector Banks (PSBs) tend to provide weightage to IPEs or IPs that are associated with them.
  - (ii) Another selection criterion of being 'sector-specialist' may be misconceived as the CIRP is a process-oriented resolution mechanism. The '*objectivity*' and '*impartiality*' of IPs should be tested if s/he is familiar or close to market participants on account of his/her past employments.
- The 'objectivity' and 'impartiality' of IPs should be tested if s/he is familiar or close to market participants on account of his/her past employments.**
- (iii) Compulsory professional training for fresh IPs should be made mandatory under practicing IPs

<sup>23</sup> First Schedule under Regulation 7(2)(h) of IP Regulations

<sup>24</sup> Admitted claims >Rs. 1000 crores

<sup>25</sup> IBBI Discussion Paper, dated 27.09.2023

<sup>26</sup> Monica Jajoo CA(AT) (Ins) No. 1344 & 1345 of 2022

<sup>27</sup> IBBI Discussion Paper, dated 14.06.2022



before being eligible for AFA to manage assignments.

- (iv) Selection criteria that 'piggyback' on in-house support services in a market-driven profession should not be a differentiator where the reasonableness of costs is doctrinal.

### (c) Insolvency costs

Let's consider a few facts:

- The IBBI has structured fee for IPs in CIRP and Liquidation cases, even then there is litigation with respect to costs leading to judicial delays.
- The number of new CIRPs in the last one year (Oct 22–Sept 23) was 1,169 of which 670 were withdrawn, settled or plan approved. Thus, the incremental number is incontrovertibly low compared to the number of IPs holding AFAs.
- About 52% of the businesses as of September 2023 are under Liquidation and will close soon.
- Personal insolvency matters, until recently, were stayed by NCLTs.
- The fee and subscriptions collected, as per IBBI Accounts for YE 2021-22<sup>28</sup> had plateaued before the introduction of IP Regulation<sup>29</sup> in later part of 2022 wherein IBBI while increasing fee introduced ad

valorem (0.25%) of the realizable value payable to creditors under an approved Resolution Plan.

In the backdrop of such marketplace realities some practical suggestions would find relevance.

- Delay in settlement of insolvency costs by creditors can partially be addressed if claims were to be admitted along with fee, to ensure that the IBC needs to be amended. The fee could be established as a percentage of the claim value thus discouraging inflated or contestable claims. To determine the percentage, the basis could be ascertained from available data on costs with the regulators. This would also ensure equality by distributing the burden of costs to all the creditors.
- There are several instances where processes for various uncontrollable reasons get into an impasse. It was the case with over 2,200 personal insolvencies, where the appointed IPs were not paid by the creditors. Understandably fee is contractual in nature, however, as the IBBI has mandated minimum fee for CIRP, here too fee structure could be advised for unavoidable circumstances allowing ease of working and reducing litigations. It is also suggested to make provisions for appearance fees, fee as per work categorization and out of pocket reimbursements.



<sup>28</sup> IBBI Annual accounts (2022-23)

<sup>29</sup> Regulation 7 of the IP Regulations and Regulation 31A of the CIRP Regulations

## Exceptions to Moratorium Under Section 14(1) of the Insolvency and Bankruptcy Code, 2016



*The moratorium is a crucial provision of the Insolvency and Bankruptcy Code, 2016 (IBC) for successful resolution of the Corporate Debtor. As per Section 14 (1) of the IBC, the Adjudicating Authority is empowered to declare the moratorium for the Corporate Debtor that shall have effect from the Insolvency Commencement Date (ICD) till the approval of the Resolution Plan or Liquidation as the case may be. As the order of the moratorium prohibits any kind of recovery action by any creditor including taxation agencies against the Corporate Debtor and ensures maintenance of the supply of essential goods and/or services, it greatly helps in running the Corporate Debtor as a Going Concern which is crucial for the value maximization. In the present article, the author presents a thorough analysis of the various aspects of the moratorium under the IBC and related jurisprudence. **Read on to know more...***



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### **1. Declaration of Moratorium**

Once the application for the initiation of Corporate Insolvency Resolution Process (CIRP) filed by either Financial Creditor or Operational Creditor, against a Corporate Debtor is admitted by the Adjudicating Authority (AA), the AA declares a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). The term 'moratorium' has not been defined in the IBC. In Cambridge Dictionary the expression 'moratorium' has been defined to mean 'the stopping of an activity for an agreed amount of time'. In Merriam Webster Dictionary it means 'legally authorized period of delay in the performance of a legal obligation or the payment of a debt; a waiting period set by an authority; or a suspension of activity.

The moratorium begins from the commencement of CIRP and ceased to have effect on the approval of Resolution Plan by the AA or on Liquidation. In between period the bar available in Section 14 will have effect.

### **2. Prohibitions Imposed by Moratorium**

The moratorium prohibits the following activities after commencement of CIRP under Section 14(1) of the IBC:

- (a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Thus, any legal proceedings during the moratorium period are prohibited under Section 14(1) of the IBC. However, there are exceptions to Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the Corporate Debtor, Section 14(1)(b) refers to the Corporate Debtor's assets, and together, these two clauses form a scheme which shields the Corporate Debtor from pecuniary attacks against it in the moratorium period so that the Corporate Debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself.

**Section 14(1)(a) refers to monetary liabilities of the CD while Section 14(1)(b) refers to the CD's assets, and together, these two clauses form a scheme which shields the CD from pecuniary attacks against it in the moratorium period.**

There are many case laws where the proceedings against the Corporate Debtor have been barred by National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), High Courts and the Supreme Court.

### 3. License, Quota etc.

The explanation to Section 14(1) provides that a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, state governments, local authorities, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that

there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

### 4. Supply of Essential Goods

Section 14(2) of the IBC provides that the supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

Section 14(2A) of the IBC provides that where the Interim Resolution Professional and/or Resolution Professional (RP) considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

However, Section 14(3) of the IBC, as amended from time to time, provides that the restrictions during moratorium shall not apply to:

- (a) such transactions, agreements or other arrangements may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
- (b) surety in a contract of guarantee to a Corporate Debtor.

### 5. Corporate Guarantee

As per Section 14(3)(b) of the IBC the guarantee can be revoked during CIRP. The same has been confirmed by the NCLAT in the matter of *National Small Industries Corporation Limited, Delhi v. Prabhakara Kumar and Canara bank*<sup>1</sup> (2023). The NCLAT held that the 'Bank Guarantee' provided by the Respondent No. 2/Bank is held to be covered by the exception provided in provisions of Section 14(3)(b) of the IBC and the moratorium prescribed under Section 14(1) of the IBC, shall not apply to its 'encashment'. The NCLAT set aside the order of the AA and allowed the appeal.

<sup>1</sup>. *Company Appeal (AT) (Insolvency) No. 841 of 201 in IA No. 3139/ND/2020 in CP (IB) No. 364(ND)/2019- NCLT, Principal Bench, New Delhi, decided on October 10, 2023.*

## 6. Arbitration proceedings

In the matter of *Alchemist Asset Reconstruction Company Limited v. Hotel Gaudayan Private Limited*<sup>2</sup> (2017) the Supreme Court held that arbitration proceedings initiated after implementation of CIRP is *non est* in the law. However, Courts have created certain exceptions where arbitration may be allowed to continue, if, it was filed before the order of moratorium or invoked during moratorium in cases where the claims are for the benefit of Corporate Debtor.

**In the matter of Alchemist Asset Reconstruction Company Limited v. Hotel Gaudayan Private Limited (2017) the Supreme Court held that arbitration proceedings initiated after implementation of CIRP is non-est in the law.**

In *Power Grid Corporation of India Limited v. Jyoti Structures Limited*<sup>3</sup> (2017), it was held that a case was initiated under Section 34 of the Arbitration Act to set aside the arbitral award which was passed in the favor of the Corporate Debtor. The nature of the arbitral award was that of a pure money decree. When the proceedings were pending, an application for insolvency of the Corporate Debtor was filed and a moratorium was imposed under Section 14. The question before the Court was whether, after the imposition of the moratorium, the arbitral proceedings ought to be stayed or not.

The Court held that the term 'proceedings' mentioned in Section 14 is limited to the debt recovery actions against the assets of the Corporate Debtor and not any type of proceedings. Moreover, there is no burden created on the assets of the Corporate Debtor when the proceedings are continued. Hence, there is no bar on such proceedings under the provisions of moratorium. Moreover, a distinction is made between usage of the term 'against the Corporate Debtor' in Section 14(1)(a) of the IBC in comparison with 'by or against the Corporate Debtor' in Section 33(5). It makes it clear that the latter encompasses a wider meaning.

Furthermore, only the enforceability of the arbitral award is subjected to the moratorium provision and not the proceedings, execution of the award and the objections.

Subsequently, the proceedings can be continued by the Interim Resolution Professional.

## 7. Negotiable Instruments Act

Section 138 of the Negotiable Instruments Act (NI Act) deals with cheque bouncing; if an amount falls due in this respect, the same can be recovered by filing a complaint under this provision. The NCLAT, in *Shah Brothers Ispat Pvt. Ltd. v. P. Mohanraj & others*<sup>4</sup> (2018) held that a moratorium would not be extended to proceedings filed under the NI Act. The reasoning adopted by the NCLAT was that the proceedings under the NI Act are criminal in nature and that Section 138 is a penal provision. The NCLAT took the view that the action taken under the section is not a proceeding or a judgment or a decree of a money claim.

**The NCLAT in Shah Brothers Ispat Pvt. Ltd. v. P. Mohanraj ((2018), on the grounds that the Negotiable Instruments (NI) Act is criminal in nature and that Section 138 is a penal provision, held that a moratorium would not be extended to proceedings filed under the NI Act.**

## 8. Proceedings under Articles 32 and 136 of the Constitution of India

An exception was created by the NCLAT in *Canara Bank v. Deccan Chronicle Holdings Limited*<sup>5</sup> (2017) in which it was held that the imposition of the moratorium will not restrict any proceedings to be initiated or pending before the Supreme Court under Article 32 or Article 136 of the Constitution of India wherein an order is passed. Moreover, the power of any High Court under Article 226 of the Constitution of India will not be affected by such imposition of a moratorium.

## 9. Property not owned by Corporate Debtor

In *Alpha & Omega Diagnostics (India) Limited v. Asset Reconstruction Company of India Limited and others*<sup>6</sup> (2023), the appellant filed an application under Section 10 of the IBC for initiation of CIRP. For the question whether a property which is not owned by a Corporate Debtor shall come within the ambits of the moratorium, the Adjudicating Authority held that the word 'its' denotes the property owned by the Corporate Debtor. The property not

<sup>2</sup> The Supreme Court, Civil Appeal No. 16929 of 2017 decided on October 23, 2017.

<sup>3</sup> Delhi High Court, OMP (Comm) 397 of 2016, decided on December 11, 2017.



owned by the Corporate Debtor does not fall within the ambits of the moratorium.

## 10. Circulars

Exceptions to Section 14 of the IBC are given by the Insolvency and Bankruptcy Board of India (IBBI) through its circulars.

(a) The Central Government vide Notification No. S.O. 2660(E), dated June 14, 2023, notified that the provisions of sub section (1) of Section 24 of the IBC, 2016 shall not apply where the Corporate Debtor has entered into any of the following transactions, arrangements or agreements, namely: -

(i) the Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, 1948 and rules made there under; and

(ii) any transactions, arrangements, or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements referred to in clause (i).

(b) The Central Government vide Notification No. SO 4321(E), dated October 03, 2023, notified that the provisions of sub-section (1) of Section 14 of the IBBI

not apply to transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters.

**Moratorium is applicable to all proceedings which have a civil nature or seem to enforce a civil remedy. The basis for the application of moratorium is the nature of such proceedings and the object and purpose of such enactment.**

## 11. Conclusion

Moratorium is applicable to all proceedings which have a civil nature or seem to enforce a civil remedy. The basis for the application of moratorium is the nature of such proceedings and the object and purpose of such enactment. It is now clear that once a moratorium has been declared, any proceeding which may affect the liquidity or assets of the company cannot be permitted to continue in the event moratorium has been declared. While the Supreme Court has clearly laid down the effects of moratorium on proceedings instituted to recover a civil debt, question marks remain over the effects of moratorium for recovery of 'proceeds of a crime' once moratorium has been declared. While such criminal proceedings are likely to be unaffected, question marks may arise as to how such criminal proceedings may affect parties whose dues are not recoverable owing to the effects of moratorium.



## Statutory Compliances during Corporate Insolvency Resolution Process



*During the period of CIRP, an IP in his/her capacity as the IRP/ RP is responsible for compliance of various mandatory filings and disclosures related to the Corporate Debtor. This includes but not limited to, various compliances under The Companies Act, 2013; Income Tax Act, 1961; Goods and Services Tax Act 2017; Provident Fund Act, 1952; Employees State Insurance Act, 1948 etc. Though the Liquidator is under no specific obligation to file the Income Tax Return, the non-filing may result in denial of benefit of carry forward of losses to the successor in case the CD is sold as a going concern. In the present article, the author has analysed various compliances to be made during the CIRP and had also made recommendations to ease them. **Read on to know more...***



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### Introduction

As per Section 17(2) of the Insolvency & Bankruptcy Code, 2016 (IBC), the Interim Resolution Professional (IRP)/ Resolution Professional (RP) is vested with the management of the Corporate Debtor (CD) and shall be responsible for complying with the requirements under any law for the time being in force on behalf of the CD.

The IRP/ RP needs to ensure statutory compliances under various laws, which inter-alia include The Companies Act, 2013; Income Tax Act, 1961; Goods & Services Act 2017; Provident Fund Act, 1952; Employees State Insurance Act, 1948; etc. If a CD is having ongoing business operations and maintaining updated records, then it becomes easier for IRP / RP to ensure statutory compliances on behalf of the CD. However, in most cases, business operations have been discontinued before commencement of the Corporate Insolvency Resolution Process (CIRP). Consequently, books of account/ statutory records of the CD remains incomplete / untraceable and most/all employees who were responsible for making statutory compliances have already left the organisation. Generally, directors remain non-supportive to the RP and even if, they are willing to extend

cooperation to RP, they have their own limitations due to the prevailing situation mentioned above.

Therefore, ensuring statutory compliances often become onerous for the RP. There has been limited alignment of the Companies Act 2013, the Income Tax Act 1961, and the Central Goods & Services Tax Act 2017 (GST Act), by factoring in this new situation arising consequent to the commencement of CIRP under the IBC.

## 1. Impediments in compliances of Provisions of the Companies Act 2013

### 1.1. Annual Return

- a) Section 92 of Companies Act 2013 requires filing of the Annual Return within sixty days from the day the Annual General Meeting (AGM) is held or from the last date on which such AGM should have been held, as the case may be. In the Annual Return, various details and information are required to be given which *inter alia* include details of meetings of members or a class thereof, of the Board of directors and its various committees along with attendance details, remuneration of directors and key managerial personnel etc.
- b) In many companies, either secretarial records are not updated or insufficiently updated, therefore, it becomes that much more difficult to get the Annual Return certified from a practicing company secretary or obtain a secretarial audit report.
- c) After commencement of CIRP, generally no Board Meeting is convened, as powers of Board of Directors is suspended. Even if, any attempt is made to convene any Board meeting, it would remain unsuccessful due to resignation or unsupportive attitude of directors. Annual Return Form, i.e. Form MGT-7, requires the number of directors present to be a figure greater than "0" and less than or equal to "99", and there is no option to show that no Board Meeting has been convened or there was no attendance at Board Meeting. As a result, e-form shows an error during pre-scrutiny stage.

**The Annual Return Form i.e., Form MGT-7 has no option to show that no Board Meeting was convened, or no member attended the meeting. As a result, it shows an error at pre-scrutiny stage.**

**1.2. Section 137 of the Companies Act 2013**, requires filing of financial statements, duly adopted at the AGM with the Registrar within thirty days of the AGM. There are various issues in finalisation of financial statements and adoption of the same by shareholders in AGM which *inter alia* include:

- a) Non availability of updated accounting data. Discontinuation of operations and desertion of employees causes difficulty in updating books of account and sometimes take considerably long time.
- b) Even if books of account are updated, there may be lingering pre-CIRP legacy issues, due to non-availability of sufficient information, documents, or contravention of statutory provisions etc, resulting into qualified audit report. Since, directors and their relatives generally hold majority shareholding in the CD, therefore, adoption of financial statements with qualified audit report entirely depend upon them and shareholders may not adopt the financial statements in AGM.
- c) Resignation / refusal by existing statutory auditor to audit the financial statements. Section 139(8) of the Companies Act, 2013 requires confirmation of appointment of new auditor from shareholders. Since erstwhile promoters generally hold majority shares, therefore, appointment of new statutory auditor depends largely upon the cooperation of the erstwhile promoters.
- d) Disagreement between the management, directors and/or auditors on the accounting treatment / disclosure in the financial statements resulting in the financial statements not being acceptable to one of the key signing parties leading to non-finalization of the accounts.
- e) Sec.134(1) of the Companies Act, 2013 requires that the financial statements shall be

approved by the Board of Directors (BOD) before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be Managing Director and the Chief Executive Officer, if he is a Director in the company, or the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed. After the commencement of CIRP, since powers of the Board stand suspended therefore, directors, generally refuse to sign the financial statements. Resignation / non availability of the CFO and the company secretary further shifts entire responsibility about truthfulness of financial statements on to the RP, though not being privy to transactions incorporated in the said financial statements.

The decision of the Hon'ble NCLAT in the case of *Mukund Choudhary (Resolution Professional) v. Subhash Kumar Kundra*<sup>1</sup> that the IBC does not release the directors of the CD from their duties, but only suspends their power as directors and appoints the RP for managing the Company, and directors are under obligation to authenticate the financial statements, seldom helps in persuading directors to sign the financial statement prepared during the CIRP.

**Convening AGM and adoption of financial statements in the meeting largely depends upon the cooperation from erstwhile promoter's due to having majority shareholding.**

- f) Convening of AGM and adoption of financial statements at the AGM depends largely upon the cooperation from erstwhile promoter's due to having majority shareholding.
- g) Non availability of requisite details and information required for preparing the Board report is also a problem. Further, the Board report is required to be signed by the Chairperson of the Company if he is so authorised by the Board and where he is not so

authorised, shall be signed by at least two directors, one of whom shall be a Managing Director, or by the Director where there is one director. Though power of the Board of directors is vested with the RP after the commencement of CIRP but he is not designated as a director and therefore cannot act as Chairperson of the company. Therefore, the RP's signature alone on the Board Report, may not be considered as being proper and in due compliance of the Act. Further, Section 134(3)(c) requires a Director's Responsibility Statement in the Board report. The RP can neither take responsibility for any omission / commission of the erstwhile management nor can confirm any thing for which he is not privy to, by signing the Board Report.

- h) A company is not allowed to file any financial statements and annual returns with the Registrar if its status on the Ministry of Corporate Affairs (MCA) portal is "ACTIVE Non-Compliant" due to non-filing of Form INC 22A. Filing of INC 22A again requires the active cooperation of directors and access to registered office.

### 1.3. Statutory compliance during Liquidation – an unresolved issue

The MCA vide a Circular<sup>2</sup> have clarified that the IRP/RP/Liquidator shall be responsible for filing all the e-forms in the MCA portal and sign the Form in the capacity of Chief Executive Officer in order to meet filing protocol in the existing Forms architecture. However, this shall in no way affect his legal status as IRP/RP/Liquidator. All the filings of e-forms including Form AOC 4 and Form MGT 7 shall be filed through e-form GNL 2 by way of attachment till the Company is under CIRP/Liquidation.

Under Section 35 of the IBC, no duty has been prescribed for Liquidator to comply with the requirement under any law for the time being enforce on behalf of corporate debtor as prescribed in section 17(2)(e) of the IBC for IRP/ RP. Further, Regulation 6(3) of the IBBI (Liquidation Process) Regulations, 2016 requires the Liquidator to maintain registers and books in the forms indicated in

<sup>1</sup> *Company Appeal (AT) (Insolvency) No. 452 of 2021.*

<sup>2</sup> *Circular No. 8/2020 dated March 06, 2020.*



Schedule III, with such modifications as the Liquidator may deem fit in the facts and circumstances of the Liquidation Process. Therefore, under the IBC, Liquidator is under no specific obligation to prepare and submit audited financial statements and annual return with MCA, pursuant to section 92 and 137 of the Companies Act.

**Preparation of financial statements during Liquidation will be a complex proposition, as underlying “concept of going concern” on the basis of which they are generally prepared, cannot be used, as the CD is in Liquidation.**

Without prejudice to the above, preparation of financial statements during Liquidation will be a complex proposition, as underlying “concept of going concern” on the basis of which financial statements are generally prepared, cannot be used, as the CD is in Liquidation. This issue becomes that much more complex when the Liquidator is tasked to first explore selling the CD as a going concern or the business of the CD is being run as a going concern.

Further, as per Section 178 of Income Tax Act, the Liquidator is required to give a notice to the assessing officer, within thirty days of his appointment and Income-tax Officer shall inform him the amount which, in the opinion of the Income Tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company. In addition, the tax department is also requested to file its claim as required under the IBC.

In *Om Prakash Agrawal (Liquidator) of S Kumar Nationwide Limited v. Chief Commissioner of Income Tax<sup>3</sup> (TDS)*, the NCLAT held that there is inconsistency between Section 194 IA of the Income Tax Act and Section 53(1)(e) of the IBC therefore, by virtue of Section 238 of the IBC, Section 53(1)(e) of the IBC shall have overriding effect on the provisions of the Section 194 IA of the Income Tax Act. The Appellate Tribunal further observed that there is no such provision in the Income Tax Act, IBC or (Liquidation Process Regulation that the Liquidator is required to file Income Tax Return.

The Supreme Court in the case of *Principal Commissioner of Income Tax v. Monnet Ispat and Energy Limited* (2018) SCC held that Section 238 of the IBC shall have

overridden effect if anything inconsistent is contained in any other enactment.

In view of the above, it may appear that the Liquidator is under no obligation to make any statutory compliance neither under Companies Act, 2013 nor under Income Tax Act, 1961. However, if liquidator proposes to sell the CD as a going concern during Liquidation, then he needs to ensure that the books of account are updated, financial statements are prepared and tax returns are also filed, as per statutory requirements, to maintain going concern status of the CD. However, there is a need to align the provisions of the Companies Act, 2013 the Income Tax, 1961 and the IBC considering practical issues arising after commencement of CIRP/Liquidation.

## 2. Intricacy of Provisions of Income Tax Act, 1961

### 2.1. Filing of Income Tax Return under Section 139 of the Income Tax Act, 1961

As per the Provisions of the Income Tax Act, all corporate assesses are required to file an income tax return latest by October 31 after obtaining tax audit report latest by September 30, of the relevant Assessment Year. An assessee may file a belated income tax return anytime on or before three months before the end of the relevant Assessment Year (AY) or before the completion of the assessment, whichever is earlier with penalty and interest. As per Section 80 of Income Tax Act, no loss from business, assessed pursuant to filing of a belated return, is allowed to carry forward and set-off.

**As finalisation and audit of financial statements within the stipulated time frame remains a challenge for the RP, compliance relating to timing filing of income tax return is also difficult to adhere with.**

As stated earlier, since finalisation and audit of financial statements within the stipulated time frame remains a challenge for the RP, compliance relating to timing filing of income tax return is also difficult to adhere with. The resolution professional at times, has to face the ire of a successful resolution applicant due to denial of benefit of carry forward losses on account of filing of a belated return.

Further, as stated earlier, if it is interpreted and acted upon that the Liquidator is under no obligation to file the Income Tax Return, it may result in denial of benefit of carry

<sup>3</sup>. *Company Appeal (AT) (Insolvency) No. 624 of 2020.*

forward of losses to the successor in case the CD is sold as a going concern.

## 2.2. Denial of tax credit and claim for pre-CIRP unpaid TDS/TCS Amount

As per the scheme of the IBC, the Income Tax Department is required to submit its claim for all outstanding demand including for TDS / TCS, outstanding as on CIRP commencement date. Further, as per extant provisions of Income Tax Act, if any amount of TDS / TCS is deducted but remains unpaid then service provider / employees are denied credit for the same. However, on denial of any such tax credit, RP has to face hostile vendors, contractors and employees and such vendors / service providers may withhold supplies of goods & services also. Further, it may be argued that any admission of claim for the TDS / TCS amount, credit of which is denied to the recipients of income, would be enrichment of statutory authorities at the cost of other creditors, at least to extent said claim is settled through payment out of the proceeds of the resolution plan or liquidation estate, as the case may be.

Therefore, there is an urgent need for CBDT to issue clarification that no tax credit shall be denied in NCLT cases due to non-deposit of TDS/ TCS amount for the pre-CIRP period by the unit / company under CIRP and Income Tax Department shall exclude from its claim, amount for which it has already denied tax credit.

## 3. Intricacy of Provisions of GST Act

### 3.1. Requirement of new Registration number

As per Notification No. 11/20 Central Tax dated March 21, 2020, corporate debtors who are undergoing CIRP shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the CD, and shall be liable to take a new registration within 30 days of the appointment of the IRP/RP or by June 30, 2020, whichever is later. However, corporate debtors who have not defaulted in furnishing the return under GST would not be required to obtain a separate registration.

Central Board of Indirect Taxes and Customs (CBIC) has further clarified that though IRP/RP are not under an obligation to file returns of pre-CIRP period, but they will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during the CIRP period.

**CBIC has clarified that though IRP/RP are not under an obligation to file returns of pre-CIRP period, they will be liable to furnish returns, pay taxes and comply with all the provisions of the GST during the CIRP.**

The threshold of aggregate turnover in a financial year for obtaining a GST registration is ₹20.00 lacs and therefore, legally IRP / RP can dispense with the requirement of taking new GST registration number, if the CD has no operations. However, in the author's view, IRP / RP should take new GST registration number, even if sale turnover during CIRP period is likely to be below threshold limit of ₹20.00 lacs, if turnover is likely to exceed threshold limit post approval of resolution plan, as resolution applicant can continue with the said number and take benefit of eligible input credit on CIRP cost.

### 3.2. Denial of input credit and claim for pre-CIRP GST liability

As per scheme of the IBC, the GST Department is required to submit its claim for all demands, outstanding as on CIRP commencement date. CBIC by Instruction No 1083/04/2022 dated May 23, 2022, has circulated Standard Operating System (SOP) to all principal chief commissioners, relating to NCLT cases. As per SOP, concerned office/ Commissionerate which has arrears pending against the unit /company shall file its claims timely for safeguarding and realisation of the government dues and inform the fact of having filed its claim to the Nodal Officer through the ADC/ JC in the Chief Commissioner's Office (CCO).

However, as per GST Act, input credit is allowed only on deposit of GST by suppliers of goods & services which means customers are denied input credit even if GST is paid by customers but remains undeposited with GST Department. As per strict legal interpretation, claim of unpaid GST amount is not admissible if GST Department has denied input credit as it has already recouped its losses by denying such input credit. If claim for unpaid GST amount is admitted during CIRP and thereafter, said claim is settled through payment out of Resolution Plan settlement amount, then it may be argued that this would be enrichment of statutory authorities at the cost of other creditors. On the contrary, the RP has to face hostile customers who have been denied credit input of GST due to non-deposit of the same, resulting into withholding of

payments by customers to recoup their losses, stress in cash flow and disruption in going concern status of the CD. Therefore, there is an urgent need for CBIC to issue clarification that no input credit for GST shall be denied in NCLT cases due to non-deposit of GST amount for the pre-CIRP period by the unit / company under CIRP and GST department shall exclude from its claim, amount for which it has denied input credit.

**RP has to face hostile customers who have been denied credit of GST due to non-deposit of the same, resulting into withholding of payments by them to recoup their losses, stress in cash flow and disruption in going concern status of the CD.**

### 3.3. Can liability relating to pre CIRP period be paid during CIRP Period

RP cannot pay any liability including deposit of TDS / TCS, GST amount, electricity bill, salary & wages etc., relating to pre-CIRP period as same may be termed as transferring or disposing off assets by the CD, an activity prohibited u/s 14(1)(b) of the IBC. However, to maintain continued business operations, certain essential payments may need to be made, even if pertaining to pre CIRP period. For instance, if the CIRP period commences on October 20, then business expediency requires that all pending electricity bills outstanding or accruing up to

October 20, GST / TDS amount collected from customers till October 20 and workers / staff salary becoming due up to October 20, should be paid on respective due date (s) to avoid any business disruption. Presently, only available option is to seek the permission of the Adjudicating Authority to make such payments which at times, take untoward long time. Therefore, there is an urgent need for IBBI to amend CIRP Regulations to authorise IRP / RP to make few payments relating to pre- CIRP which inter-alia includes gas, electricity, water, TDS / TCS, GST, PF, ESI, and salary & wages which became due within 30 days prior to commencement of CIRP wherever, CD is having on going business operations.

### 4. Conclusion

Section 238 of the IBC gives an overriding effect to its provisions over any other law, in case of any inconsistency between the two. However, provisions of other law shall prevail if there is no inconsistency or if the IBC is silent on the same. As regards statutory compliances, the IBC is silent except making IRP/RP responsible for complying with the requirements under any law for the time being in force on behalf of the CD. Therefore, there is a need to harmonise various provisions of the Companies Act, Income Tax Act and GST Act with the IBC to ensure better compliance by resolution professionals and liquidators.



## Insolvency in India during Ancient Times



*The concept of insolvency in Hindu literature can be traced back to the ancient texts of the Vedas, which speak of a man's duty to pay back 'Deva-Rina', where Hindu Literature gets its idea of insolvency. The term 'Deva-Rina' describes the obligation that a person owes to the Almighty or Deities for the blessings and advantages they have experienced in life. Besides, there is the concept of 'Rishi-Rina', which refers to the debt owed to the sages or wise men who have passed down the knowledge and wisdom of the Vedas to future generations. A description of the cosmic wheel of life can be found in Chapter 3 of Shrimad Bhagavad Gita. This article explores the evolution of insolvency laws in India from ancient Hindu Literature to the contemporary. **Read on to know more...***



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### 1. Introduction

Insolvency and Bankruptcy Code, 2016 (IBC) aims to consolidate the existing legal framework and establish a single law for insolvency and bankruptcy. The objective of the IBC is to streamline the existing framework by repealing the Presidency Towns Insolvency Act of 1909, Provincial Insolvency Act of 1920, and the Sick Industrial Companies Act of 1985 (SICA) and also amending other laws, including the Companies Act of 2013, Recovery of Debt Due to Banks and Financial Institutions Act of 1993, and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002.

Under the IBC regime in India, cases go through a specific legal process, which involves several stages and legal forums such as:

- (a) National Company Law Tribunal (NCLT): where a creditor files a petition for initiating insolvency proceedings against a debtor.
- (b) National Company Law Appellate Tribunal (NCLAT): a higher forum where parties can appeal against orders passed by the NCLT.



(c) Supreme Court (SC): Any person aggrieved by any order of the NCLAT may file an appeal to the Supreme Court.

Insolvency laws were introduced in India during the British colonial period, as there was a need to regulate trade-related operations in the Presidency States of Bombay, Madras, and Calcutta. The Indian Insolvency Act of 1848 was introduced, but with changing times, the insolvency laws were needed to be updated. Thus, the Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920 were enacted to ensure that both the Presidency Towns and Non-Presidency Towns were included under the ambit of insolvency laws in India.

The modern insolvency law has evolved over the centuries and has been influenced by English laws. However, a startling fact is that insolvency laws have been in place since ancient times, even in our own history.

## 2. The evolution of the Insolvency & Bankruptcy Laws in India: A Historical Perspective

Insolvency and Bankruptcy are two related but distinct concepts. While insolvency refers to the inability to pay debts as they become due, bankruptcy is the legal process that results from insolvency. In other words, insolvency is a state of financial distress that may lead to bankruptcy.

According to the *Dharmashastras*, failure to repay debts can have severe consequences, one is loss of reputation. Therefore, it is considered a moral duty to repay one's debts, and various remedies and penalties were prescribed for those who default on their financial obligations. The *Dharmashastras* are a collection of *Smriti* texts that were authored by the sages in ancient times to provide guidance on ethical and legal principles in Hindu society i.e., *Sanatan Dharma*. The *Dharmashastras* state that if a person dies without repaying his/her debts, the unpaid debt will have to be paid in the next life by serving the creditor as a slave. This cycle of servitude will continue until the debt is fully discharged, and the person will not be able to attain salvation until the debt is paid off.

In the ancient Hindu legal system, the concept of '*Kusidin*' was used to refer a creditor or a person who lends money. In ancient Hindu society, money lending was a common practice and *Kusidin* played an important role in the economy. However, the charging of high-interest rates by

**To determine the extent of the borrower's assets and liabilities and for their settlement, a person known as the "Vyavaharik" was appointed. Thereafter, it used to be taken up to the king for resolution. The role of the "Vyavaharik" was akin to the present day's Resolution Professional.**

*Kusidin* was also a cause of concern, and Hindu law provided for regulations to ensure fair practices in lending and borrowing. To determine the extent of the borrower's assets and liabilities and for their settlement, a person known as the '*Vyavaharik*' was appointed to investigate the matter. The same matter would then be taken up to the king for resolution. In the modern context, the role of the '*Vyavaharik*' has been replaced with the 'Resolution Professional (RP)'. The RP is appointed to spearhead the Corporate Insolvency Resolution Process (CIRP) by the Adjudicating Authority (AA). The RP plays a crucial role in managing the affairs of the Corporate Debtor (CD) during the insolvency process and facilitating the resolution of its debts. The *Manusmriti*, for instance, regarded *Kusidin* as an acceptable means of accumulating wealth.

Kautilya's writings from the Mauryan era are one of the known references to a structured system of lending. Within these texts, there are mentions of various types of loan deeds such as *RNapatra*, *RNapanna*, and *RNalekhaya* that were commonly used and recognized during the Maurya empire's reign from 321 to 185 BCE. In the Maurya Era, a financial instrument called '*Adesha*' emerged. This instrument was a directive given to an indigenous banker, instructing them to transfer the specified amount on the note to a third party. This bears resemblance to the concept of a contemporary Bill of Exchange. Loan instruments were widely utilized in big cities, and merchants exchanged Letters of Credit. During the Mughal period, loan agreements called '*Dastawez*' were prevalent, with two variations: '*Dastawez-e-Indultalab*', which was payable immediately, and '*Dastawez-e-Miadi*', which was payable after a specified period. These are identical of DP (Documents against Payment)-LC (Letter of Credit) and DA (Documents against Acceptance) -LC (Letter of Credit) of modern Banking system.

Another concept was '*Arthashastra*' which comes from ancient Indian texts that were written around 300 BCE by

the Indian philosopher, economist, political scientist Chanakya (also known as Kautilya). The term "*Arthashastra*" means "the science of wealth" and it contains a detailed account of everything a king should have the understanding to become a good ruler such as economics, public policy, politics, diplomacy, logic, administration, management, defence sciences etc. One of the mechanisms suggested in the *Arthashastra* to deal with insolvency and debt was the idea that if a debtor was unable to pay their debts, they could be forced to work for their creditors until the debts were paid off. This was seen as a way to ensure that the creditor was not left with unpaid debts, while also giving the debtor an opportunity to work off their debts. Another suggestion made in the *Arthashastra* is the establishment of a debt relief fund, which is akin to nowadays Interim Finance. This fund would provide financial assistance to insolvent debtors who were unable to pay off their debts. The idea was that this fund would help to alleviate the burden on debtors who were struggling financially, while also ensuring that creditors were not left with unpaid debts.

**Another suggestion made in the *Arthashastra* is the establishment of a debt relief fund, which is akin to nowadays Interim Finance. This fund would provide financial assistance to insolvent debtors who were unable to pay off their debts.**

In the *Arthashastra* (Book 3 Chapter 13), insolvency is discussed as a possible scenario for a trader or merchant who is unable to pay off their debts. The Chapter outlines the consequences of insolvency and the steps that can be taken by creditors to recover their money. Example of insolvency given in the Chapter is that of a trader who has borrowed money to finance a business venture and not able to repay the loan due to losses incurred in the venture. The trader's assets are then seized by their creditors, who may sell them off to recover their money. The Chapter also lays out the procedure for dealing with insolvency. If a trader is unable to pay the debts, the creditors could approach the king's court to initiate insolvency proceedings. The court would appoint a receiver to take charge of the trader's assets and distribute them among the creditors.

Another concept has been '*Sreni System*' which was an important economic and social institution in ancient India. This guild-based system was made up of various occupational groups or guilds, each with its own chief who

was responsible for the economic well-being of its members. The *Sreni System* is believed to have existed in India since the Maurya period or before and continued to play an important role in Indian society and economy for centuries. One of the unique features of the '*Sreni System*' was the provision of '*Dharma-Saukshmya*' which allowed for the discharge of debts in cases of insolvency. This provision was based on the principle of *Dharma* (*Science of Righteousness*), or righteous behaviour, and recognized that economic setbacks and misfortunes could happen to anyone. The provision of '*Dharma-Saukshmya*' ensured that debtors who were unable to repay their debts due to unforeseen circumstances could be given relief and not be punished unjustly.

During the medieval period, insolvency became a common problem, especially in the mercantile communities. To address this issue, various provisions were made under the Islamic law, which was prevalent in many parts of medieval India. Islamic law allowed for the appointment of a *Nazir* (trustee) to manage the affairs of an insolvent person or entity. The *Nazir* was responsible for liquidating the assets and distributing the proceeds among the creditors. The process was overseen by a *Qazi* (Islamic Judge), who was responsible for ensuring that the distribution was fair and equitable as per the Islamic Laws. Another notable development in insolvency and bankruptcy during the medieval period was the emergence of *Hundis* or Bills of Exchange. *Hundis* were widely used in the mercantile communities as a means of credit and payment. They were issued by merchants and bankers and could be endorsed and traded like modern-day cheques. In case of default, the creditor could initiate legal proceedings against the debtor.

**Another notable development in insolvency and bankruptcy during the medieval period was the emergence of *Hundis* or Bills of Exchange. The *Hundis* were issued by merchants and bankers that could be endorsed and traded like modern-day cheques.**

In Sultanate period, the *Qazi-ul-Qazat*, also known as the *Chief Qazi*, was the highest judicial authority of the Islamic legal system. This position was responsible for hearing civil and criminal cases and ensuring that justice was served according to Islamic law. In the case of insolvency, the *Qazi-ul-Qazat* would act as an arbitrator between the debtor and the creditor to negotiate a payment

plan that would settle the debt. If negotiations were unsuccessful, the debtor would be declared insolvent, and his assets would be sold off to repay the creditor. This was done to prevent the debtor from running away or hiding his assets to avoid paying back the debt. The *Qazi-ul-Qazat* was responsible to ensure that the sale of assets was done in a fair and transparent manner and that the proceeds were distributed among the creditors according to the amount owed to each of them. This can be well equated with the IBC where in the present days RPs are appointed to work out a Resolution Plan and if it could not materialise, they are allowed to proceed for the Liquidation of the CD.

### 3. Development of Insolvency & Bankruptcy in Different Yugas

In Hindu Literature, it is believed that the world undergoes a cycle of four Ages or Yugas. Each Yuga is said to have its own distinct characteristics and spiritual significance.

- (a) In Hindu Literature, '*Satyuga*' is considered to be the golden age, where people lived a virtuous life and followed the path of truth and righteousness. As per the ancient texts, insolvency cases were not prevalent during *Satyuga* because people lived in a harmonious and cooperative society where everyone had enough resources to meet their needs. They lived a simple life and were content with what they had. They did not accumulate wealth or possessions beyond their needs, which helped in preventing insolvency cases. Moreover, the economy in the *Satyuga* was largely based on the barter system, where people exchanged goods and services, which reduced the chances of financial disputes and insolvency cases. Therefore, insolvency cases were not a common phenomenon in the *Satyuga*.
- (b) *Tretayuga* is a period in Hindu Literature, which is believed to have occurred millions of years ago. There are a few instances mentioned in Hindu Literature where characters faced financial difficulties or debts. The story of the great king Raja Harishchandra is a popular legend that illustrates the significance of virtue and sacrifice. Harishchandra, known for his virtuous and righteous conduct, encountered various obstacles in his life. His encounter with *Vighnaraja*, the deity of obstacles, is one of them. *Vighnaraja* possessed the king's body and destroyed the Sage Vishwamitra's holy *tapasya*, leading to the sage losing all the learning that

he gained through his *tapasya*. To make amends for King's mistake, Vishwamitra asked for *Dakshina* for his '*Rajasuya Yajna*'.

**The legend of the great king of ancient India Harishchandra provides a clear case of Corporate Insolvency of the contemporary and also presents a unique example of Personal Insolvency.**

The king, without any hesitation, donated everything he had except for his body, his wife, and their only son. On further insistence of Sage Vishwamitra, the king faced various challenges in fulfilling his promise and had to sell his wife and son to an old man as a maid servant. The king then worked as a slave at a cremation ground under the instructions of '*Chandala*' (Chief of the Crematorium in Kashi i.e., Varanasi). He had to collect fees for every cremation that took place there. When Harishchandra's own son died due to a snake bite his wife didn't have money to pay fee for his cremation. He continued with his righteousness and honesty and did not allow the funeral of his son to take place without cremation fee. As it was the height of Harishchandra's test, the God Vishnu exonerated him for all his hardships with the consent of Sage Vishwamitra and revived his family and kingdom back to him. As there were no corporates at that time and the wealth used to held by Kingdoms, this story provides a clear case of corporate insolvency of the contemporary and also presents a unique example of Personal Insolvency.

- (c) In Hindu Literature, the *Dwaparyuga* is believed to be the third of the four cosmic ages, characterized by a decline in moral and spiritual values. Many stories from this period relate to insolvency, which is the state of being unable to pay one's debts. One such story is about the '*Pandavas*'. In the game of '*Chausar*', they lost their Kingdom to *Kauravas*. They had to go exile into forest for many years. The story serves as a cautionary tale about the consequences of poor financial decision-making and the importance of responsible financial management.
- (d) *Kaliyuga* is considered the last and fourth *yuga*, known for its moral decay, corruption, and chaos. The historical records reveal several instances of insolvency and bankruptcy during this period. The medieval period in India witnessed a significant rise in insolvency cases due to the increasing commercialization and trade activities. The Mughal

Emperor Akbar, as per the suggestions of his finance minister Todarmal, took various measures to address this issue, such as appointing officials to supervise financial transactions, establishing courts to settle disputes, and imposing penalties for fraud and other financial crimes.

**Akbar, as per the suggestions of his finance minister Todarmal, took various measures to address the issue of insolvency such as appointing officials to supervise financial transactions, establishing courts to settle disputes, and imposing penalties for fraud etc.**

In present times, the legal framework in India has a comprehensive mechanism for dealing with insolvency cases, along with the introduction of various measures. In the 19<sup>th</sup> century, British colonial rule saw a further increase in insolvency cases in India due to the introduction of highly discriminatory commercial laws and the growth of new industries. The Indian Insolvency Act of 1848 was the first law that dealt with insolvency in India during British colonial rule. This law provided for the appointment of a court-appointed trustee who would take control of the insolvent's assets and distribute them to the creditors. In modern times, the Indian government has introduced the IBC to address insolvency cases. The IBC provides for a time-bound process for resolving insolvency and aims to maximize the value of the assets of the insolvent company, protect the interests of creditors and other stakeholders, and promote entrepreneurship and investment. Overall, while insolvency cases have been prevalent throughout history, the *Kaliyuga* period saw a significant rise in insolvency cases due to the increasing commercialization and trade activities on one side and moral deterioration on

the other. Various measures have been introduced to address insolvency, and the current legal framework in India provides for a comprehensive mechanism for dealing with insolvency cases.

## 4. Conclusion

Insolvency, or the inability to pay one's debts, has been a problem for individuals and societies throughout the history. In ancient times, insolvency was often viewed as a moral failing, and debtors were sometimes punished severely, including being sold into slavery. However, ancient societies also developed various forms of debt relief, such as debt forgiveness and debt restructuring, to help debtors get back on their feet.

In modern times, insolvency is typically handled through legal processes such as insolvency proceedings. These processes aim to provide debt relief while also protecting the rights of creditors. In many countries, bankruptcy laws have been established to provide a framework for insolvency proceedings, including the discharge of debts, the sale of assets, and the distribution of proceeds to creditors.

One key difference between ancient and modern insolvency is the role of the State. In ancient times, debt relief was often provided by religious or community institutions. In modern times, the State has taken up a larger role in providing debt relief and regulating insolvency proceedings.

Overall, while the specifics of insolvency have evolved over time, the basic problem of debt and the need for debt relief remain constant. Both ancient and modern societies have developed systems and processes to address this issue, with varying degrees of success.





# Resolution of Ideal Energy Projects Limited: A Successful CIRP in the face of Adversity

*Ideal Energy Projects Limited (IEPL), the Corporate Debtor, incorporated in 2008, decided to establish a 270 MW coal-based thermal power project in Maharashtra with an estimated cost of ₹1,477 crores for which it secured funding through a consortium of banks. The project was set up as expandable to 540 MW.*

*However, due to adverse situations such as lack of Power Purchase Agreements (PPAs), coal linkages, high coal price and low realization per unit of electricity generated in the open market, the Company was forced to close the operations only after 50 days of trial. Thereafter, the project was shut down for five years and no operational Profit and Loss Account was ever prepared before the commencement of the Corporate Insolvency Resolution Process (CIRP) on February 17, 2020.*

*The CIRP of IEPL was conducted amidst the challenges of the COVID-19 pandemic and a declining thermal power sector, posed a formidable task for the Resolution Professional (RP). The financial creditors had submitted claims amounting to ₹3,188 crores. As no financial assistance was received from the CoC, the RP had to arrange interim finances from his own sources to fund the operationalization of the Corporate Debtor. After several rounds of negotiations, an initiation offering of ₹160 crores resulted in the Resolution Plan of ₹387 crores. In the present case study, the Resolution Professional Mr. Anil Goel delves into IEPL's journey, highlighting the challenges faced during the CIRP and its status in the power sector of India. **Read on to know more...***



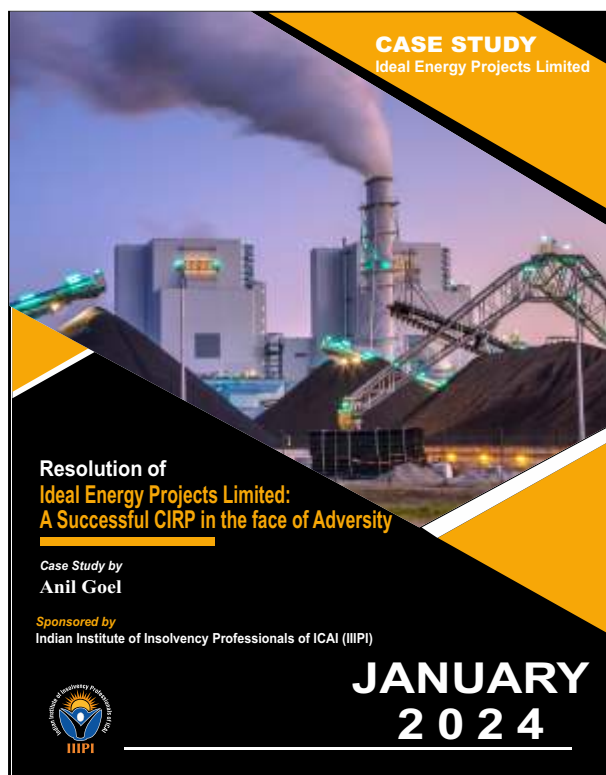
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## 1. Introduction

On a momentous day in August 2023, the Resolution Professional (RP) attended a jubilant gathering at the site of Ideal Energy Projects Limited (IEPL), witnessing a remarkable transformation. Invited by the directors of Manas Agro Industries & Infrastructure Limited, the Successful Resolution Applicant (SRA) for IEPL, the RP stood witness to the reawakening of a once ailing entity. As the sun cast its rays upon the revived 270 MW Thermal Power Plant in Bela, Khursaoar, Nagpur, Maharashtra, he couldn't help but reminisce about its bleak past—a dilapidated state that had rendered it dormant and desolate for more than five years.

The occasion was graced by the esteemed presence of Shri Nitin Gadkari, Hon'ble Minister for Road Transport & Highways, Government of India. Emotions surged, as the RP beheld over 2000 industrious workers, well-wishers and friends of the SRA witnessing 270 MW Thermal Plant breathing life again after struggling in ICU for more than eight years. The event of *Pooja* (worship) and thanksgiving event culminated in a triumphant moment as the facility



surged to its maximum electricity generation capacity on that day also.

The words of Shri Gadkari, extolling the success of the Insolvency and Bankruptcy Code, 2016 (IBC) and acknowledging the RP's role in this resurrection, stirred a deep sense of pride within the RP, igniting the inspiration to chronicle the astounding journey of this revitalization process.

Motivated by these pivotal moments and inspired by the recognition of the journey's significance, the RP resolved to craft a comprehensive success story, detailing the intricate process that led to the reinvigoration of the IEPL under the purview of the IBC.

The IBC, introduced by the Indian government, has been instrumental in revitalizing financially distressed companies and industries, providing them with a second chance to survive. The success story of the IEPL exemplifies the transformative power of the IBC, as it emerged from the brink of insolvency to not only recover financial stability but also achieve full capacity under new management.

### 2. Initial challenges to the Corporate Debtor and reasons of Default

IEPL, incorporated in 2008, embarked on an ambitious venture to establish a 270 MW coal-based thermal power project Near Bela Village of Nagpur, Maharashtra. With an estimated cost of ₹1,477 crores, IEPL secured funding through a consortium arrangement involving six public sector banks namely Canara Bank (Lead Bank), Andhra Bank, Corporation Bank, Union Bank of India & Punjab National Bank. The project was set up as expandable to 540 MW capacity and all ancillary infrastructure and utilities were planned accordingly.

However, the company encountered several obstacles that led to its financial distress. Some of the reasons for financial stress of the Corporate Debtor are as under:

- (a) **Change in Government Policy:** A shift in government policy for allocating coal linkage to Independent Power Producers (IPPs) and the absence of Long-Term Power Purchase Agreements (PPAs) posed significant challenges.
- (b) **Non-Availability of Transmission Corridor:** IEPL faced difficulties due to the lack of power-transmission corridors.

- (c) **High Cost of Imported Coal:** Rising costs of imported coal and fluctuations in the e-Auction coal market impacted IEPL's profitability.
- (d) **Deteriorating Financial Health of Discoms:** The financial instability of state and central power distribution companies (Discoms) exacerbated IEPL's problems.

IEPL closed operations after 50 days of trial operations for want of PPA, Coal Linkages, and unviable market conditions because of high price of coal and low realization per unit of electricity generated in the open market.

**The Corporate Debtor (IEPL) closed operations after 50 days of trial operations for want of PPA, Coal Linkages, and unviable market conditions because of high price of coal and low realization per unit of electricity generated in the open market.**

A project ready for electricity generation was kept closed for five years and no operational Profit and Loss Account was ever prepared before the commencement of CIRP. The project could never start commercial generation of electricity.

### 3. Corporate Insolvency Resolution Process, under IBC, 2016

IEPL entered the Corporate Insolvency Resolution Process (CIRP) on February 17, 2020, with Mr. Anil Goel, appointed as the Interim Resolution Professional (IRP) who was subsequently confirmed as the Resolution Professional (RP) of the CD. The CIRP, conducted amidst the challenges of the COVID-19 pandemic and a declining thermal power sector, posed a formidable task for the RP. The valuation process was delayed as appointed valuers were not ready to travel during the peak of Covid-19. Similarly, the maintenance team of the Corporate Debtor could not continue maintenance partially because of Covid-19 restrictions and partially because the Corporate Debtor had no funds to make payment of their salaries and wages.

The Financial Creditors had submitted claims totaling ₹3,188 crores, reflecting the magnitude of IEPL's financial troubles.

The RP oversaw 24 Committee of Creditors (CoC) meetings and engaged in extensive marketing efforts, publishing the Expression of Interest (EOI) multiple

times. Ultimately, two resolution plans were received from M/s. Manas Agro Industries & Infrastructure Limited (M/s Manas Agro) and Manikaran Power Limited (MPL). Intensive negotiations took place from January 18, 2021, to August 14, 2021, to enhance the offers and achieve the best possible outcome.

During the course of the CIRP, a series of CoC meetings were convened on different dates. These meetings involved discussions with multiple resolution applicants who presented their proposals to address the financial distress of the company in question.

#### (a) First Rejection of the Resolution Plan

In the initial 11<sup>th</sup> CoC meeting held on January 18, 2021, M/S Manas Agro proposed a resolution plan amounting to ₹160 crores, while MPL offered ₹135.50 crores.

These amounts were negotiated by the RP and COC multiple times from the 12<sup>th</sup> Meeting to the 16<sup>th</sup> meeting. Subsequently, in the 17<sup>th</sup> CoC meeting conducted on April 15, 2021, M/S Manas Agro put forth a revised Resolution Plan, offering ₹200 crores, and MPL increased its offer to ₹160.50 crores which were both put up for voting. However, both the plans were rejected by CoC via e-voting.

#### (b) Second Rejection of the Resolution Plan

As the CIRP and negotiations progressed, more CoC meetings were held. In the 20<sup>th</sup> CoC meeting on June 22, 2021, M/S Manas Agro proposed a significantly higher resolution plan of ₹352 crores, while MPL offered ₹315.79 crores. These resolution plans were again put up for e-voting, however, neither plan secured enough votes to be approved.

#### (c) Third Rejection of Resolution Plans

This trend continued in the 22<sup>nd</sup> CoC meeting on July 14, 2021, where M/S Manas Agro increased their proposal to ₹372 crores, and MPL maintained their offer at ₹315.79 crores. Both the plans were again put up for voting but failed to secure the required vote.

#### (d) Final approval to the Resolution Plan

In the 24<sup>th</sup> CoC meeting on August 13, 2021, after multiple negotiations by the RP and the CoC, M/S Manas Agro offered ₹387 crores, while MPL's proposal remained at ₹315.79 crores. The Resolution Plan submitted by Manas

**In the 20<sup>th</sup> CoC meeting on June 22, 2021, M/S Manas Agro proposed a significantly higher resolution plan of ₹352 crores, while MPL offered ₹315.79 crores. However, both the plans were rejected by the CoC.**

Agro was finally approved with 100% voting and the CIRP of the Corporate Debtor finally culminated in a resounding success.

#### 4. How stressful was the entire Journey for the Resolution Professional

- (a) The entire CIRP was conducted during peak Covid-19 pandemic.
- (b) The power sector in India was grappling with sluggish growth, stranded thermal plant capacities, a lack of PPAs, and low tariff rates during the entire period of CIRP. The rise of renewable energy sources had further challenged the prospects of thermal power plants. The decrease in the number of tenders released by Discoms for new thermal plant tie-ups has compounded the sector's woes. It had been a real challenge to find a Prospective Resolution Applicant willing to put forth a proposal acceptable to the CoC.
- (c) As the Corporate Debtor had never declared commercial production, no profit and loss account were prepared for the operations of the power plant. Therefore, no brought forward losses were assessed by the Income-tax Department. The Resolution Applicants were apprehensive of income tax implication u/s 41(1) of the Income-tax Act for cessation and remission of liabilities under the Resolution Plan.
- (d) The Corporate Debtor had no funds for making payment of salaries and workers, however, their continuation was important for regular maintenance of the Plant. Without maintenance the value of the project would have diminished substantially.
- (e) The CoC did not contribute towards CIRP cost including the need for making payment to maintenance and Power Grid staff. Power Grid was functional as some part of electricity supply was using the Grid set up by the Corporate Debtor.

- (f) Resolution Professional raised small amount of interim finance to make payment of few professionals and minimum survival small amount to workmen and employees.
- (g) An application by RP before Adjudicating Authority (AA) seeking directions to CoC for making contribution for CIRP cost could not bring any results.
- (h) Workers and employees filed various complaints before IBBI, IPA, Prime Minister's Office (PMO), etc. against the RP as he could not arrange funds for their salaries and wages. The RP could not remove them to protect the value of assets of the Corporate Debtor.

**As the CoC did not contribute towards CIRP costs including the need for making payment to maintenance and payment to the Power Grid staff, the RP raised some interim finance for payment to a few professionals and minimum survival amount to workmen and employees.**

- (i) Workers and employees filed various police complaints against the RP at various police stations in Nagpur. After the police complaints and threats from workers, the RP could not visit Nagpur Plant for inspection etc., fearing threat to life or body injury.
- (j) Various virtual meetings took place with the representatives of workmen and employees and relationship between RP and the workmen was normalized.
- (k) The RP could not draw any fee during the entire period of CIRP. During the CIRP, the RP invested from his own sources and also for all his expenses. Thus, the RP could recover his fee and expenses after 800 days from commencement of CIRP.
- (l) The Resolution Applicant proposed assignment of entire debt on payment of agreed amount in the Resolution Plan to circumvent the tax implication u/s 41(1) of the Income Tax Act for cessation and remission of various liabilities in the Resolution Plan.

### 5. The Resolution Plan: A Lifeline for IEPL

M/S Manas Agro, the Successful Resolution Applicant, crafted a comprehensive Resolution Plan that addressed

the myriad financial challenges being faced by IEPL. The plan, approved by the NCLT, Mumbai Bench, on March 01, 2022, offered a multi-faceted approach to revive the company. The entire resolution process took 743 days including the time taken by the AA for approval of the resolution plan and three rejections of resolution plan by the CoC through e-voting,

#### (a) Key components of the Resolution Plan

The total settlement amount in the Resolution plan was ₹387 crores, paying ₹360 crores to financial creditors. The operational creditors were allocated ₹1.27 crores, the Plan allocated ₹0.73 crores to employees and the balance amount was wages and salaries for CIRP period, CIRP Cost and statutory dues.

#### (b) An experiment on Assignment of Debt

The Resolution Applicant was guided that IEPL is not having the benefit of brought forward losses under Income Tax law and in case liabilities are removed from books of account of the Corporate Debtor consequent to approval of the Resolution Plan by the AA it would be considered as cessation and remission of liabilities and would attract levy of Income Tax as per Section 41(1) and Section 28(iv) of the Income Tax Act.

To provide a solution to this tax complexity, the RP proposed assignment of entire debt of banks to Successful Resolution Applicant as against haircut and final settlement of debt in the Resolution Plan.

It was a herculean task to convince sanctioning authorities of banks about the assignment as it was first time for them, and it took substantial time to get positive opinion from their respective legal departments.

**To provide a solution to this tax complexity, the RP proposed assignment of entire debt of banks to Successful Resolution Applicant as against haircut and final settlement of debt in the Resolution Plan.**

#### (c) Implementation of the Resolution Plan

The Monitoring Committee played a pivotal role in supervising the implementation of the Resolution Plan. This committee ensured that the agreed-upon terms and actions were executed smoothly and transparently. The members of this committee were:



- (i) **The RP as the Chairman of Monitoring Committee:** As the leader of the Monitoring Committee, the RP brought his extensive expertise in insolvency proceedings to oversee IEPL's resolution and implementation process.
- (ii) **Canara Bank, Representatives of Lenders' Member:** Canara Bank, representing the financial creditors, participated actively in the Monitoring Committee. Their presence ensured that the interests of the lending institutions were adequately safeguarded during the resolution.
- (iii) **Mr. Uday Kamat, Representative of the Resolution Applicant:** Mr. Uday Kamat represented the Successful Resolution Application M/s Manas Agro. His role was crucial in aligning the actions of the Successful Resolution Applicant as per the terms and conditions of the Resolution Plan.
- (d) **Supervision and Oversight:** The Monitoring Committee conducted seven meetings, reflecting the dedication and diligence with which they oversaw the resolution process. These meetings served as a platform for reviewing progress, addressing challenges, and ensuring compliance of the Resolution Plan.
- (e) **Fund Disbursement:** A critical aspect of the resolution process involves the disbursement of funds as outlined in the approved Resolution Plan. The disbursement of funds was executed in two phases:
  - (i) **Disbursement on June 28, 2022:** In the first tranche, an amount of ₹30 Crore was deposited into the bank account maintained with IDBI Bank on June 28, 2022. Subsequently, these funds were disbursed to the existing lenders in accordance with their voting share. This initial

disbursement marked a significant step in implementing the Resolution Plan.

- (ii) **Disbursement on July 1, 2023:** The second and final tranche of disbursement amounted to ₹315 Crore. These funds were deposited in the bank account maintained with IDBI Bank on July 1, 2023.

The meticulous handling of fund disbursement by the Monitoring Committee and the adherence to the agreed timelines underscored the commitment to the Successful Resolution Applicant of IEPL. It highlighted the transparency and accountability embedded in the IBC's framework, ensuring that all stakeholders' interests were duly addressed and executed as per the approved Resolution Plan.

**Despite the challenges posed by changing government policies, market dynamics, and the global pandemic, the Corporate Debtor has emerged stronger in the post-resolution period, with a renewed commitment to India's power sector.**

## 6. Conclusion

The IEPL's successful resolution under the IBC, 2016, showcases the IBC's effectiveness in rescuing companies from financial distress. Despite the challenges posed by changing government policies, market dynamics, and the global pandemic, the Corporate Debtor has emerged stronger, with a renewed commitment to India's power sector. The success of this resolution process can be adjudged not only from the recovery of the financial creditors but from the fact that despite the economic climate for the thermal power sector and the constant failures experienced by the company prior to the CIRP, it is now fully operational and generating electricity at full capacity. This success story serves as an inspiration for other companies facing financial crises, illustrating that with determination, effective resolution planning, and the IBC's support, a path to recovery is indeed possible.

## Legal Framework

### CIRCULAR

#### IBBI issued Circular for clarification on appointment of RP in insolvency cases of PG to CD

As per the Circular dated December 21, 2023, the IBBI has clarified that where the application is filed through an RP, the particulars and declaration by such RP are provided in Part IV of the Form C of the IRP Personal Guarantors to Corporate Debtors (PGCD) Rules. In such cases, the AA, after confirming that there is no pendency in respect of disciplinary proceedings against the RP from the database shared by the IBBI, appoints the proposed RP by an Order under Section 97 (5) of the IBC. In certain cases, the creditor may file the application itself recommending the name of the IP to be appointed as RP. It is hereby clarified that in such cases, the IP proposed to be appointed as RP shall also provide the particulars of and declaration in Part IV of Form C of the IRP PGCD Rules to the creditor for the consideration of the AA.

**Source:** Circular No. IBBI/II/62/2023, December 21, 2023.

### DISCUSSION PAPERS

#### IBBI issued Discussion Paper on Streamlining Voluntary Liquidation Process

Through this Discussion Paper dated October 05, 2023, IBBI has proposed certain amendments in the IBBI (Voluntary Liquidation Process) Regulations, 2017 related to Disclosures by Corporate Person, Voluntary Liquidation of Financial Service Providers (FSP), Withdrawal from Corporate Voluntary Liquidation Account, Sharing Final Report and Form H, and Order of dissolution. “If the liquidator fails to liquidate the corporate person within stipulated period of 90 days or 270 days as the case may be, he shall hold a meeting of contributories of the corporate person and file within fifteen days after the end of the quarter in which the stipulated period for completion of liquidation has expired, status report to the Board (IBBI) explaining why the liquidation has not been completed and specify, along with reasons, the additional time that shall be required for completing the process,” reads Proposal 2. There is a total of 6 Proposals in the Discussion Paper.

**Source:** Discussion Paper dated October 05, 2023.



#### IBBI proposed to restrict number of Assignments for Insolvency Professionals (IPs) and IPEs acting as IPs

Through a 'Discussion Paper' dated October 20, 2023, the Insolvency and Bankruptcy Board of India (IBBI) has proposed some amendments related to (1) Monitoring of IPE acting as IP (2) Related Party Definition for an IPE acting as IP (3) Restriction on Number of Assignments by an IP (4) Minimum Fee Structure of an IPE acting as IP.

“For IP who is an individual - Overall limit of 10 assignments at any point of time, out of which not more than three shall have admitted claims exceeding one thousand crore rupees each. The overall limit includes all the assignments of an IP,” reads a proposal in the Discussion Paper. “For IP which is an entity - Overall limit of 5 assignments per partner or director who are IPs holding AFA, at any point of time (excluding the assignments taken by an IP in his individual capacity). However, the number of assignments for an IPE acting as IP at any point of time shall not be more than 15 assignments having admitted claims exceeding one thousand crore rupees each. The overall limit includes all the assignments of an IPE acting as IP,” it added. Furthermore, it has been proposed that in case of contravention by the IPE, disciplinary proceeding shall be initiated against the IP who is/has been its authorized signatory for respective assignment(s). However, disciplinary proceedings may also be initiated against the IPE on repeated instances of contravention or disciplinary proceedings against multiple partners/ directors.

**Source:** Discussion Paper dated October 20, 2023.

## **IBBI Invited Comments on 16 Proposals aimed at Strengthening Liquidation Process**

These proposals have been deliberated in a Discussion Paper issued by the IBBI dated October 20, 2023, with an aim to further strengthen the regulatory framework of the liquidation process in terms of certain matters related to sale, accountability of liquidator towards stakeholders. Comments can be submitted electronically by November 10, 2023. The Discussion Paper covers several issues related to the liquidation process such as Sale Related Issues, Reduction in Reserve Prices, Monitoring Private Sale, Listing of all assets on Listing Platform, Circulation of progress reports to stakeholders, Simplification of calculation of liquidator's fee, Consultation with SCC, Form H - Compliance Certificate, Assignment of Not Readily Realisable Assets (NRRAs), Early Dissolution, and Withdrawal from Corporate Liquidation Account.

**Source:** *Discussion Paper on Strengthening the Liquidation Process dated October 20, 2023.*

## **IBBI invited comments on 'Discussion Paper' pertaining to CoC and other crucial issues of CIRP Regulations**

The 'Discussion Paper' on amendments to IBBI (CIRP) Regulations, 2016 dated November 01, 2013 has solicited comments on various issues related to approval of Committee of Creditors (CoC) for CIRP cost, monthly CoC meetings, discussion of valuation methodology and report with CoC, disclosure of valuation reports, continuation of process activities pending disposal of extension application by the Adjudicating Authority (AA), clarity in minimum entitlement to dissenting financial creditors, and mandatory contents of resolution plan. Comments may be submitted electronically by 22nd Nov. 2023. "It is clarified that the resolution professional shall continue to discharge his responsibilities under the CIRP, for the period when the application seeking extension of the CIRP is filed by the resolution professional till the application for extension is decided by the AA," reads the clarification proposed to be inserted in Regulation 40 of the CIRP Regulations.

**Source:** *Discussion paper on amendments to IBBI (IRPCP) Regulations, 2016 dated November 01, 2023.*

## **IBBI issued 'Discussion Paper' on CIRP and Liquidation of Real Estate projects**

The discussion paper titled "Real Estate Related Proposals- CIRP & Liquidation" dated November 06, 2023, deals with crucial issues being faced in insolvency processes of real-estate projects – Mandatory registration and extension of projects under Real Estate Regulatory Authority (RERA), Operating a separate bank account for each real estate project, Execution of registration/sublease deeds with approval of committee of the creditors (CoC) during corporate insolvency resolution process (CIRP), CoC to examine and invite separate plans for each project, and Exclusion of property in possession of homebuyers from the liquidation estate. The Discussion Paper is based on recommendations of Shri Amitabh Kant Committee Report on issues related to Legacy Stalled Real Estate Projects.

**Source:** *Discussion Paper on Real-Estate Related Proposals- CIRP & Liquidation dated November 06, 2023.*

## **PRESS RELEASES**

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

Addressing the 07<sup>th</sup> 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 Sudhaker Shukla, WTM- IBBI proposed the vote of thanks.


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

### Shri Sandip Garg takes charge as Whole Time Member (WTM) of IBBI

Before taking charge as WTM of Insolvency and Bankruptcy Board of India (IBBI) on October 27, 2023,

Shri Garg has served as Executive Director in IBBI wherein he handled a diverse portfolio comprising of Corporate Insolvency, Corporate Liquidation, Individual Insolvency, Individual Bankruptcy and Data Dissemination. In addition, he looked after IT functions of IBBI and had been a member of the Steering Committee for Integrated Information Technology Platform for IBC Ecosystem etc. At IBBI, he played an instrumental role in streamlining the corporate insolvency process and liquidation process through a series of policy and regulatory interventions, including framing regulations, along with technology upgrades. Shri Garg has a multi-disciplinary educational background having degrees in civil engineering, management, law, finance, and taxation and allied laws. He has served the Indian Revenue Service (IRS) for 31 years in various capacities.

**Source:** Press Release No. IBBI/PR/2023/15 dated October 27, 2023.



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- IBC & REGULATIONS: Introduction
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## IBC Case Laws

### Supreme Court of India

*Bharti Airtel Ltd. and Anr. Vs Vijaykumar V. Iyer and Ors.*  
Civil Appeal No. 3088-3089 of 2020, Date of Supreme Court Judgement: January 03, 2024.

#### Facts of the Case

The present appeal is filed by the M/s Bharti Airtel Ltd. and others (Appellants) after being aggrieved by the Appellate Tribunal's order on May 17, 2019.

In 2016, the Appellant entered into eight spectrum trading agreements with Aircel Limited and Dishnet Wireless Limited (collectively called as CDs), for purchase of the right to use the spectrum allocated to the latter in the 2300 MHz band. The Appellants were to pay ₹4,022.75 crores to the CDs. The agreement was contingent on approval of the Department of Telecommunications (DoT) who demanded bank guarantees from the CDs. Upon request, the Appellants furnished bank guarantees to DoT on behalf of CDs.

Later the bank guarantees were cancelled and thereupon the Appellant made a payment of ₹341.80 Crs due to the CD and the balance amount of ₹145.20 Crs was set off by the CD on the ground that the amount was owed by CD to the Appellants. In the meantime, the CIRP application was admitted against the CDs in 2018 by the AA. According to the Appellant ₹145.20 crores was the net amount payable by the CDs towards operational charges, SMS charges and interconnect usage charges to the Appellant.

The Appellant submitted a claim of ₹203.46 crores in the CIRP of CD's which was admitted by RP (hereinafter referred as 'Respondent') to the extent of ₹ 112 Crores. However, the Appellant also owed ₹64.11 Crs towards interconnects charges to the CDs. The RP informed the Appellant that they have *suo moto* adjusted ₹112.87 crores from the amount of ₹453.73 consequent to the discharge and cancellation of bank guarantee. The Appellant claimed set-off of the amount due to them by CDs. The RP rejected the reply and claim of the Appellants. Upon appeal, the Appellate Authority vide its order on May 17, 2019, held that the set-off is violative of the basic principles and protection under IBC.



#### Supreme Court Observations

The Apex court scrutinized various types of setoffs. In its analysis of statutory set-off, the Apex Court highlighted that as per Code of Civil Procedure, a defendant can claim set-off against the plaintiff demand for any ascertained sum of money. Mutual cross-obligations, indicating crossclaims between the parties in the same right, are essential for a set-off in law. The Apex Court noted that under United Kingdom law, insolvency set-off is permissible when there are mutual debts, mutual credits, and other mutual dealings between parties at the relevant cut-off time, typically at the commencement of the liquidation process.

It was further emphasized that unlike the Companies Act, the IBC doesn't grant indebted creditors the right to set off against the CD in the case of CIRP. The insolvency set-off under the IBC is neither automatic nor self-executing. While Section 173 of the IBC allows set-off in partnerships and individual bankruptcies, Regulation 29 of the Liquidation Regulations, dealing with mutual credits and setoff, doesn't apply to Chapter II Part II of the IBC, which pertains to CIRP.

The Court outlined two exceptions to the applicability of statutory or insolvency set-off to CIRP:

1. Statutory set-off or insolvency set-off cannot be applied to CIRP, except in cases where a party is entitled to contractual set-off effective before or on the date the CIRP commencement. The moratorium during CIRP does not preclude the application of contractual set-off, as the terms of the contract remain binding.
2. The second exception is for 'equitable set-off,' applicable when the claim and counterclaim are linked

due to one or more transactions. For this set-off to be valid, it must be genuine, clearly established on facts and in law, and involve a quantifiable and unquestionable monetary claim.

**Order:** The Apex Court rejected the Appellant's plea for set off since 'Amounts' to be set-off is not the part of the CDs assets in the present fact and upheld the order dated 17.05.2019 passed by the Appellate tribunal.

**Case Review:** *Appeal dismissed.*

*In the matter of Hari Babu Thotha, Civil Appeal No. 4422/2023, Date of Supreme Court Judgement: November 29, 2023*

## Fact of the Case:

The Present appeal is filled by the RP of the Shree Aashraya Infra-Con Limited / CD, (Appellant), after being aggrieved by the order on June 02, 2023, passed by the Appellate Tribunal.

The CD was admitted into CIRP by the AA's order dated April 06, 2021. Subsequently, the CD was registered as Micro, Small and Medium Enterprise (MSME) on July 15, 2021. Later, the promoters of the CD submitted a Resolution Plan which was approved by the CoC, by availing benefits provided u/s 240A of IBC.

Section 240A provides that the bar u/s 29A of IBC, to submit a plan would not apply in the CIRP of a MSME CD. However, the submitted Resolution Plan was declined by the AA through its order dated February 28, 2023, stating that the MSME certificate was obtained post commencement of CIRP. An appeal was filed against the said order of AA and the Appellate Tribunal citing **Digamber Anand Rao Pingle Vs. Shrikant Madanlal Zawar & Ors** upheld the order of AA. The Appellant thereafter filed an appeal against the order of Appellate Tribunal before the Supreme Court.

The main Issue faced by the Apex court is that whether the CD not having an MSME status at the time of commencement of CIRP, would disqualify the Resolution applicant under Section 29A of IBC as benefit of Section 240A would not be available?

## Supreme Court's Observations

The Supreme Court emphasized the purpose of Section 29A of the IBC, which aims to address issues caused by

individuals responsible for a company's financial distress attempting to submit plans to take over the company. Sub-sections (c), (g), and (h) of Section 29A focus on the ineligibility of CD's promoters.

The Supreme Court observed that the CD's promoter was not disqualified under Section 29A because there were no outstanding bank dues or NPA's. The Apex Court observed that only one preferential transaction was identified, with no AA order issued, and therefore section 29A did not apply here. The Supreme Court held that the exemption of Micro, Small, and Medium Enterprises (MSMEs) from Section 29A allows MSME promoters, not wilful defaulters, to bid for the MSME in insolvency to prevent liquidation and protect employee livelihoods. The Supreme Court rejected the Appellate Tribunal order and held that even if MSME registration was obtained post-CIRP commencement; the CD's promoter remains eligible to submit a resolution plan under Section 240-A of IBC.

## Order

The Supreme Court set aside the AA and the Appellate Tribunal orders, affirming the eligibility of the MSME promoter to propose a resolution plan.

**Case Review:** *Appeal Allowed.*

*Ramkrishna Forgings Ltd. Vs. Ravindra Loonkar, RP of ACIL Ltd. & Anr. Civil Appeal No.1527 of 2022, Date of Supreme Court's Judgement: November 21, 2023at*

## Fact of the Case

The Present Appeal is filled by M/s Ramkrishna Forgings Ltd. (Appellant) after being aggrieved by the order dated February 19, 2022, passed by the Appellate Tribunal.

The CIRP application was filed by IDBI bank Ltd. against ACIL/CD which was admitted by the AA and the IRP was appointed (Respondent) by an order dated October 16, 2018. The Appellant submitted a Resolution Plan which was negotiated and revised several times. Thus, the final Resolution Plan was submitted on August 05, 2019, and approved by the CoC on August 14, 2019, with majority of 88.56% votes. Accordingly, the Respondent filed an application under Section 30(6) of IBC before the AA, seeking approval of the Resolution Plan.

Later, the AA kept the approval of the Appellant's (Successful Resolution Applicant or SRA) Resolution Plan in abeyance and directed the Official Liquidator (OL)

to provide exact figures/value of assets by an order dated September 01, 2021. The Appellant filed an appeal before the Appellate Tribunal against the order dated September 01, 2021. The Appellate Tribunal dismissed the appeal vide an order dated January 19, 2022, while observing that an avoidance transaction of approximately ₹1000 Crores had come to light and the case justifies interference since figures of crores are involved. The Appellant filed an appeal before the Supreme Court against the order dated January 19, 2022, passed by the Appellate Tribunal.

The Appellant submitted that the IBC has an inbuilt mechanism for valuation of assets of the CD which is provided under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Therefore, appointment of an Official Liquidator for valuation, which is otherwise a creation of the Companies Act, 2013 is unwarranted. Further, AA cannot sit in appeal over commercial decision of the CoC. The AA can exercise its discretion in rare cases and order for re-valuation, but the same can't be justified in present matter as absolutely no reason has been given by the AA or the Appellate Tribunal for undertaking such exercise in respect of the assets of the CD, which is arbitrary and unjustified.

### Supreme Court Observations

The Apex court observed while placing its reliance on judgment pronounced in *Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh (2020)* and *K Sashidhar Vs. Indian Overseas Bank (2019)* and said that the AA did not have sufficient grounds to solely rely on the argument that the proposed haircut in the debt was around 94.25%. Furthermore, the court was not convinced that the fair value of the assets has been projected in proper manner as the bid of the Appellant was very close to the fair value of the assets of ACIL. The Supreme Court also observed that the order of AA for revaluation of assets by the OL i.e., Ministry of Corporate Affairs, was unjustified.

Stricto sensu, it is now well-settled that the CoC holds the authority to decide how to handle the entire debt of the CD. The Resolution Plan submitted by the Appellant, including the financial aspects and upfront payments, had undergone repeated negotiations and gained approval from the CoC with a substantial majority vote of 88.56%. The court asserted that such commercial wisdom, backed by the CoC's approval, should not be casually questioned or interfered with.

The Supreme Court found a lack of detailed discussion in the orders, of AA and the Appellate Tribunal except for discrepancies in outstanding dues and the initial amount the Appellant was to contribute. The AA's decision to order revaluation by the OL was deemed 'novel path' and was not adequately justified. Notably, no objections had been raised or challenges made to the Resolution Plan during the approval process. The Appellate Tribunal had only suggested considering expert opinions when dealing with large financial figures.

**Order:** The Supreme Court set aside both the order dated September 01, 2021, passed by AA and impugned order dated January 19, 2022, passed by the Appellate Tribunal and further directed the AA to pass appropriate orders in terms of this judgment.

**Case Review:** *Appeal allowed.*

*Vishal Chelani & Ors. Vs. Debashis Nanda, Civil Appeal No. 3806 of 2023, Date of Supreme Court Judgement: October 06, 2023.*

### Facts of the Case

The present appeal is filed by Mr. Vishal Chelani & Ors. (Appellants) after being aggrieved by the decision of the Appellate Tribunal.

The Appellants, in the capacity of homebuyers, invested in a real estate project of Bulland Buildtech Pvt. Ltd. (CD). The Appellants were dissatisfied with the project's delays and sought relief through the Uttar Pradesh Real Estate Regulatory Authority (UPRERA). The UPRERA ruled in the appellants favor by upholding their right to refund along with interest. Meanwhile, the CIRP proceedings were initiated against the CD and the RP was appointed (Respondent).

After due consultations form CoC, a Resolution Plan was submitted before AA, which differentiated between home buyers who had sought remedies under the RERA and those who had not. Those who hadn't approached RERA were offered more favorable terms, with a 50% advantage over those who had obtained RERA orders or were decree holders. The Appellants being unhappy with the arrangement, filed an application with AA but their claims were denied by the AA. The Appellate Tribunal further turned down their appeal which led them to approach the Supreme Court.

The Appellants submitted that a distinction cannot be made between two set of home buyer allottees as the definition of financial debt u/s 5(8)(f), after the amendment in 2018, include home buyer allottees in real estate projects under the broad description of financial creditors.

The Respondent submitted that the appellants cannot be permitted to secure two benefits. Having approached the UPRERA, they fell into a different sub-class of home buyers, who were entitled to specified amounts and, therefore, were unsecured creditors, as compared with allottees who had not invoked RERA remedies.

## Supreme Court's Observations

The Apex Court, citing the judgement in the case of *Mr. Natwar Agarwal (HUF) Vs. Ms. Ssakash Developers & Builders Pvt. Ltd.*, emphasized that the 2018 amendment with the added explanation to section 5(8)(f), categorizes homebuyers and allottees of real estate projects as 'financial creditors. The Apex Court stated that there's no inherent distinction among different classes of financial creditors when it comes to creating a resolution plan.

The Apex Court further stated that only homebuyers have the standing to seek remedies under RERA. Therefore, it would be highly inequitable to treat a specific segment of this class differently under another law solely because they opted to receive their deposits along with the interest. The fundamental claim of an aggrieved party remains unaltered by a court order or decree, and allottees retain their status as financial creditors.

Furthermore, Section 238 of the IBC includes a non-obstante clause, giving priority to its provisions over those of the RERA Act. The artificial distinction made by the Respondent constitutes 'hyper classification' and contravenes Article 14.

**Order:** The Apex Court set aside the impugned order of the Appellate Tribunal and declared the Appellants as financial creditors within the meaning of section 5(8)(f) explanation. Further the Court directed to treat the Appellant at par with the other home buyers/financial creditors, for the purposes of a resolution plan.

**Case Review:** *Appeal Allowed.*

*Tottempudi Salalith. Vs. State Bank of India & Ors. Civil Appeal No. 2348 Of 2021 Date of Supreme Court Judgement: October 18, 2023.*

## Facts of the Case

The present appeal is filed by Mr. Tottempudi Salalith (Appellant), in the capacity of MD of Totem Infrastructures Ltd. (CD), after being aggrieved by the order of Appellate Tribunal. The CD was facing insolvency proceedings due to default on financial obligations to multiple banks. The total claim against the CD was approximately ₹613 crore. The State Bank of India (Respondent), representing several other banks, initiated the insolvency proceedings U/s 7 of the IBC.

Earlier, the Respondent also pursued recovery proceedings under the SARFAESI Act, 2002 and obtained recovery certificates from the Debt Recovery Tribunals. The Respondent's application under the IBC was based on these recovery certificates. The Adjudicating Authority admitted the application and appointed an IRP. The Appellant appealed against the decision, primarily arguing that the petition u/s 7 of IBC was barred by limitation since one of the Recovery Certificates dated back to 2015 and the Section 7 petition was filed in 2019. Moreover, the Appellant asserted that the date of default should be the date when the CD's account was declared NPA and not from the date of Recovery Certificate.

Furthermore, the Appellant stated that the Respondents, having chosen the SARFAESI mechanism first and having approached the DRT, were barred, under the doctrine of election, from approaching the AA for the recovery of the same set of debts.

The Appellate Tribunal dismissed the appeal. Consequently, the Appellant filed an appeal before the Supreme Court.

## Supreme Court's Observations

The Apex court while citing the judgement delivered in *Kotak Mahindra Bank LTD. Vs A Balakrishnan*, held that liability in respect of a claim arising out of recovery certificate would be a financial debt with-in the meaning of section 5(8) of IBC. This makes the holder of a recovery certificate a financial creditor entitled to initiate CIRP.

On the issue of applicability of Doctrine of Election, the Apex Court stated that recovery proceedings began before the DRT in 2014 i.e., prior to the IBC's implementation.



The Kotak Mahindra (Supra) established that the issuance of a recovery certificate creates a new cause of action, allowing financial creditors to initiate CIRP. The Doctrine of Election doesn't prevent financial creditors from approaching the AA for CIRP after obtaining a recovery certificate. Further, the court held that a recovery certificate is also clothed with the character of a deemed decree and life of a decree is twelve years for enforcement as per Article 136 of the schedule of Limitation Act.

Further, the Apex Court held that the IBC primarily focuses on company revival but also aids debt recovery. Once CIRP results in a moratorium declaration, the enforcement mechanisms under the 1993 Act or the SARFAESI Act are suspended. The financial creditor, after receiving a recovery certificate, has the option to pursue debt recovery through a different forum, rather than sticking to the one through which the certificate was issued. This aligns with the decision in the *Transcore Vs. UOI*, where SARFAESI mechanisms were considered permissible even if the initial proceedings were instituted under the 1993 Act.

**Order:** The Appeal is dismissed. Interim order, if any, stands dissolved.

**Case Review:** *Application Disposed of.*

*Vishal chelani & ors. Vs Debashis Nanda, Civil Appeal No. 3806 of 2023, Date of Supreme Court Judgement: October 06, 2023.*

### **Fact of the Case**

The present appeal is filled by Mr. Vishal Chelani & Ors. (Appellants) after being aggrieved by the decision of the Appellate Tribunal.

The Appellants, in the capacity of homebuyers, invested in a real estate project of Bulland Buildtech Pvt. Ltd. (CD). The Appellants were dissatisfied with the project's delays and sought relief through the Uttar Pradesh Real Estate Regulatory Authority (UPRERA). The UPRERA ruled in the appellants favor by upholding their right to refund along with interest. Meanwhile, the CIRP proceedings were initiated against the CD and the RP was appointed (Respondent).

After due consultations form CoC, a resolution plan was submitted before AA, which differentiated between home buyers who had sought remedies under the RERA and

those who had not. Those who hadn't approached RERA were offered more favorable terms, with a 50% advantage over those who had obtained RERA orders or were decree holders. The Appellants being unhappy with the arrangement filed an application with the AA, but their claims were denied by the AA. The Appellate Tribunal further turned down their appeal which led them to approach the Supreme Court.

The Appellants submitted that a distinction cannot be made between two set of home buyer allottees as the definition of financial debt u/s 5(8)(f), after the amendment in 2018, include home buyer allottees in real estate projects under the broad description of financial creditors.

The Respondent submitted that the appellants cannot be permitted to secure two benefits. Having approached the UPRERA, they fell into a different sub-class of home buyers, who were entitled to specified amounts and, therefore, were unsecured creditors, as compared with allottees who had not invoked RERA remedies.

### **Supreme Court's Observations**

The Apex Court, citing the judgement in the case of *Mr. Natwar Agarwal (HUF) Vs. Ms. Ssakash Developers & Builders Pvt. Ltd.*, emphasized that the 2018 amendment with the added explanation to section 5(8)(f), categorizes homebuyers and allottees of real estate projects as 'financial creditors.' The Apex Court stated that there's no inherent distinction among different classes of financial creditors when it comes to creating a resolution plan.

The Apex Court further stated that only homebuyers have the standing to seek remedies under RERA. Therefore, it would be highly inequitable to treat a specific segment of this class differently under another law solely because they opted to receive their deposits along with the interest. The fundamental claim of an aggrieved party remains unaltered by a court order or decree, and allottees retain their status as financial creditors.

Furthermore, Section 238 of the IBC includes a non-obstante clause, giving priority to its provisions over those of the RERA Act. The artificial distinction made by the Respondent constitutes 'hyper classification' and contravenes Article 14.

**Order:** The Apex Court set aside the impugned order of the Appellate Tribunal and declared the Appellants as

financial creditors within the meaning of section 5(8)(f) explanation. Further the Court directed to treat the Appellant at par with the other home buyers/financial creditors, for the purposes of a resolution plan.

**Case Review:** *Appeal Allowed.*

## High Court

*Dr. Arun Mohan Vs. Central Bureau of Investigation, W.P.(CRL) 544/2020 & CRL.M.A. 4088/2020, Date of High Court Judgement: December 18, 2023.*

### Fact of the Case

The present petition is filed by Dr. Arun Mohan (Petitioner) under Article 226 of the Constitution of India read with Section 482 of the IBC of Criminal Procedure seeking writ of Mandamus or any other appropriate writ, order or direction to quash FIR filed under Sections 7 and 7A of the Prevention of Corruption Act (PC Act), read with Section 120-B of Indian Penal Code, and pending before learned Special Judge, PC Act.

On being approached by a Financial Creditor, Mr. Karan Lalwani (Respondent-2), the Petitioner consented to act as IRP of FR Tech Innovations Private Limited (CD). The AA vide its order appointed the Petitioner as the IRP. The Petitioner verified the claims received from various creditors, including the claim of the Respondent-2's wife who allegedly submitted the forged documents in support of her claim. The Petitioner sought additional details from the Respondent-2's wife in support of her claims. The petitioner informed the Respondent-2 that the CoC had decided to recover ₹15.20 Lacs from his wife along with interest as she had received the said amount based on forged documents. Accordingly, the Petitioner issued the Demand notices. The Respondent instead of replying to Demand notice, filed a fabricated complaint under the PC Act against the Petitioner with CBI (Respondent-1).

The Petitioner contended that IP/IRP are not 'public servants' for the purposes of PC Act and therefore FIR is *void ab initio*. Relying upon *Arcelor Mittal India Pvt. Ltd.*

*Vs. Satish Kumar Gupta and Ors.* and *Swiss Ribbons Pvt. Ltd. Vs. Union of India*, the Petitioner submits that IRP/RP does not render any adjudication over any point and only act as a Facilitator to sub-serve the interests of the CoC. The Respondent(s) relied upon the judgement of *Sanjay Kumar Aggarwal Vs. Central Bureau of Investigation* that the RP are 'Public Servant' falling under the definition of the Section 2(c) of the PC Act.

The main issue faced by the High court is that whether the petitioner who is a 'Resolution Professional' is a public servant or not and thus, would be liable for the offence punishable under Prevention of Corruption Act?

### High Court Observations

The High Court referring to *Central Bureau of Investigation, Bank Securities and Fraud Cell Vs. Ramesh Gelli and Ors.*, held that it is trite that every duty, even if has a colour of 'public duty', may necessarily not be of a character which is 'public' in nature. There could be many instances where a role or a responsibility of an individual in a particular statute would assume the nature of 'public duty' but sans the 'Public Character'.

The High Court respectfully differs with the judgement rendered by the learned Single Judge of the High Court of Jharkhand at Ranchi, in *Sanjay Kumar Aggarwal's case (supra)*.

Further, the High Court held that the omission to include IP in section 232 IBC (related to Members, officers, and employees of the Board to be public servants) is not inadvertent but a thoughtful, wilful and deliberate one by the Legislature, and the Courts of law being empowered to interpret the same, ought not to legislate or supply *casus omissus*, which in any case is prohibited.

**Order:** The High Court held that IP does not fall within the meaning of 'public servant' as ascribed in any of the clauses of sub-section (c) of section 2 of the Prevention of Corruption Act, 1988. Resultantly, the FIR registered by the Respondent No.1 is quashed and set aside.

**Case Review:** Petition along with pending application stands disposed of.

## National Company Law Appellate Tribunal (NCLAT)

*Jaipur Trade Expocentre Pvt. Ltd. Vs. Metro Jet Airways Training Pvt. Ltd. & Ors. Company Appeal (AT) (Ins.) No. 1224 of 2023, Date of NCLAT Judgement: December 21, 2023.*

### Facts of the Case

The Present Appeal is filed by M/s Jaipur Trade Expo Centre Pvt. Ltd. in the capacity of operational creditor (Appellant) after being aggrieved by order dated August 31, 2023, passed by the Adjudicating Authority.

A CIRP application under section 9 of IBC was admitted against Metro Jet Airways Training Pvt. Ltd. & Ors., (Respondent) by an order dated August 10, 2023, passed by the AA, The Interim Resolution Professional (IRP) made the publication wherein only one claim was received that too of the Appellant who initiated the CIRP. A CoC was constituted and since no other claim was received, in the third Meeting of the CoC a resolution was passed for liquidation of the Respondent. Accordingly, the RP filed the application for liquidation before the AA. The AA disposed of the application and directed the CoC to take steps in successfully resolving the Respondent, including publication of Form-G and appointment of valuers. After being aggrieved by the order passed by the AA, the Appellant filed this appeal in the Appellate Tribunal.

The Applicant submitted that the scheme of IBC does not contemplate that without issuance of Form-G, decision can't be taken by the CoC to liquidate the Respondent and further submitted that the RP, after passing of the interim order passed by the AA, had published Form-G but no EOI was received.

### NCLAT's Observations

The Appellate Tribunal, upon reviewing the arguments presented by both parties, noted that the CoC provided justifications for its decision, highlighting the absence of employees, business activities, a registered office, and the filing of annual accounts with the Ministry of Corporate Affairs since March 31, 2011. Furthermore, it was observed that no returns had been filed, and no transactions had taken place since 2017.

The Appellate Tribunal emphasized that Section 33(2) of the IBC grants authority to the CoC to opt for liquidation after its constitution. The Tribunal clarified that such decisions must be accompanied by reasons and cannot be made arbitrarily. Upon examining the CoC's resolution, the Tribunal affirmed that there was a deliberate and objective consideration by the CoC in choosing to proceed with the liquidation process.

**Order:** The Appellate Tribunal allowed the appeal and set aside the order passed by the AA and directed the Liquidation of the Respondent. It also ordered the AA to pass an order for the appointment of a liquidator to proceed with the liquidation proceeding.

**Case Review:** *Appeal Allowed.*

*Fervent Synergies Ltd. Vs. Manish Jaju & Ors., Company Appeal (AT) (Insolvency) No.1338 of 2023, Date of NCLAT Judgement: November 02, 2023.*

### Facts of the Case

The present appeal is filed by M/s Fervent Synergies Ltd. (Appellant) after being aggrieved by the order dated July 19, 2023, passed by the Adjudicating Authority.

Sivana Reality Pvt. Ltd./CD launched the 'Samriddhi Garden' project, funded by a ₹130 crore term loan from LIC Housing Finance Ltd. (LICHFL), with the project mortgaged to LICHFL. The mortgage stipulated that any sale or third-party right required prior written consent or NOC from LICHFL.

On August 09, 2018, the Appellant and CD entered 10 separate agreements for the sale of flats in the project. The CD faced insolvency proceedings, and the Appellant filed a claim for 10 flats, initially being informed of its admission as a Financial Creditor (FC) by the Respondent. However, the Respondent later demanded to produce the required NOC for the 10 flats, which the appellant failed to submit. This led to the Appellant's rejection of claims on June 17, 2021. Subsequently, on June 30, 2021, the Respondent reinstated the Appellant's status as a FC belonging to a class of creditors.

The Resolution Plan divided Financial Creditors Class into two categories – 'Affected Homebuyers' and 'Unaffected Homebuyers' based on whether they had obtained or not obtained the NOC from LICHFL. Those without NOC were treated differently in the Plan. The

Appellant objected to the Plan before the AA which rejected the application emphasizing that individual objections from homebuyers were impermissible since the Plan had been collectively approved by the Class.

The Appellant submitted that the Plan discriminates between homebuyers, who belong to one class of creditors and such classification between Affected and Unaffected homebuyers is erroneous and illegal. Furthermore, the Appellant argued, given their admitted claim and reliance on representations made by the Respondent is bound by the principle of promissory estoppel and cannot deny the claim.

The main issues raised before the Appellate Tribunal are:

(i) Whether the categorization of the homebuyers in class as 'Affected' and 'Unaffected' homebuyers is violative of Section 30(2)(e) and the Resolution plan deserve to be set aside on this ground alone? (ii) The doctrine of promissory estoppel can be pressed in respect of a Resolution Plan approved by the CoC and submitted to the AA or not?

### NCLAT's Observations

The Appellate Tribunal clearly justified the Respondent's decision regarding the classification of the homebuyers into two groups and held that the Resolution Plan did not violate any provision of the IBC. The Appellate Tribunal placed its reliance on its previous judgment in the case of *Sabari Reality Pvt. Ltd. Vs. Sivana Realty Pvt. Ltd. & Ors.* (2023).

The Appellate Tribunal further stated that acceptance or admission of the claim of a Financial Creditor including homebuyers is one aspect of the scheme under the IBC. Subsequent steps in the IBC including the preparation of Resolution Plan are based on the list of creditors, admitted claims of the creditors etc. as per the scheme of the IBC, but the principle of promissory estoppel cannot be pressed against the Resolution Applicant, who submits Resolution Plan on the basis of relying on the Information Memorandum, the list of creditors and other aspect of the matter.

The Respondent has not extended any promise to the Appellant/FC's of the CD that the claim submitted by the FC, or any other creditor shall be accepted in toto. The mandatory contents of the Resolution Plan are laid down in the CIRP Regulations, 2016. If a Resolution Plan is compliant with the provision of Section 30, sub-section (2)

of the IBC and the provisions of the Regulations, 2016, the Plan cannot be faulted on the ground of the promissory estoppel, which the Appellant is pressing against the Respondent, who has admitted the claim.

**Order:** The Appellate Tribunal upheld the decision of AA and held that the doctrine of promissory estoppel can't be pressed in reference to the Resolution Plan which have been approved by the CoC in its commercial wisdom and submitted to the AA.

**Case Review:** *Appeal Dismissed.*

*DB Power Ltd. Vs. Kreate Energy (I) Pvt. Ltd. Company petition No. (IB)-521/ND/2022, Date of NCLAT Judgement: October 31, 2023.*

### Facts of the Case

The Present CIRP application filed by M/s. DB Power Ltd (Applicant) in the capacity of an Operational Creditor against the Corporate Debtor, M/s Kreate Energy (I) Pvt. Ltd (Respondent) for defaulting the payment of ₹9.62 Crore.

The Applicant is operating a 1200 (2x600) MW coal-based thermal power plant in District Janjgir Champa, Chhattisgarh. The Respondent offered to purchase 105 MW of RTC power for the period September 01, 2020, to September 30, 2020 @ ₹2.75/KWh at Regional Periphery and the same offer was accepted by the Applicant.

The Applicant supplied 105 MW of RTC powers for which invoice of ₹20.87 Crores was raised and the same became due on December 01, 2020. The Respondent defaulted in payment and therefore the Applicant served a Demand notice on October 21, 2021, u/s 8 of IBC for payment of the operational debt.

The Applicant submitted that the Respondent via various emails acknowledged its liability to pay the operational debt and through its mail dated March 09, 2021, the Respondent agreed to pay the debt during the period March 25, 2021, to March 31, 2021, i.e., after the expiry of the period mentioned under Section 10A. Therefore, giving a fresh cause of action which is beyond the Section 10A of IBC. The Applicant further stated that the Respondent issued a cheque for ₹10.87 Crores on July 09, 2021. However, the cheque was dishonored and returned on October 05, 2021, giving rise to a fresh cause of action again.



The Respondent submitted that the date of default mentioned in the filed application is December 01, 2020, which is covered under the Section 10A of IBC. Section 10A restricts the filing of any application under Sections 7, 9, and 10 of IBC if the default occurred on or after March 25, 2020, for duration of six months. Later this period was extended till March 24, 2021.

### NCLAT's Observations

The AA while placing its reliance on the judgement pronounced in *Ramesh Kymal Vs. Siemens Gamesa Renewable power Pvt. Ltd.* (2021) observed that the legislative intent behind section 10A was not to extinguish the right of the creditor but to safeguard the CD from the rigorous of corporate Insolvency.

The AA further observed that as per Section 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the periods from March 25, 2020 till March 24, 2021 and therefore the application could not be allowed.

The AA also noted that the criteria for deciding the limitation period for a debt and the criteria for determining the date of default for that debt are two distinct questions of law and fact and cannot be evaluated on the same scale. The submission of the Applicant in reference to the fresh cause of action can only be sustained for the purposes of Limitation Act.

**Order:** The AA dismissed the application of CIRP filed u/s 9 by Applicant as the fact of the present case clearly attracts the provisions of section 10A of IBC

**Case Review:** *CIRP Application Dismissed.*

*Rakesh Gupta & Nidhi Gupta Vs. Mahesh Bansal, Company Appeal (AT) (Insolvency) No. 401 of 2022, Date of NCLAT Judgement: October 19, 2023.*

### Facts of the Case

The present appeal is filed by M/s Rakesh Gupta and Ors. (Appellants) in the capacity of suspended director of Gupta Marriage Halls Pvt. Ltd. (CD) after being aggrieved by the impugned order dated March 02, 2022, passed by the AA.

The CD being engaged in the business of hiring and running the business of Hotels, Restaurants, and Marriage Halls availed credit facilities from Punjab National Bank. The CIRP petition u/s 7 of IBC was filed by the PNB on

September 03, 2019, and the IRP was appointed (Respondent).

The Respondent during the pendency of CIRP filed application u/s 19(2) of IBC alleging non-cooperation from the Appellants. Later, liquidation of the CD was initiated, and the appointed liquidator filed a fresh application u/s 34(3) of IBC on the same ground of non-cooperation by the Appellants. The AA by the order dated March 02, 2022, held that the act of Appellants constituted misconduct during CIRP and was punishable u/s 70 of IBC. The Appellants were accordingly fined ₹5 lakhs.

The Appellant asserted that any fine or penalty for offences is dealt under Chapter VII of IBC and trial of offences under Sections 70 and 236 can only be done by a Special Court established under Chapter XXVIII of the Companies Act, 2013. Additionally, the Appellants disputed the Respondent's claim that the AA imposed 'cost' under Rule 149 of the Companies Rules, asserting that the term 'cost' is not mentioned in the entire AA's order.

### NCLAT's Observations

The Appellate Tribunal while placing its reliance on its judgement pronounced in *Lagadapati Ramesh Vs Mrs. Ramanathan Bhuvaneshwari* held that in order to initiate prosecution u/s 70 of the IBC, the complaint has to be filed by the IBBI or Central Government or any person authorized by the Central Government. The Appellate Tribunal further relying on the judgment pronounced in *Vikram Puri Vs. Universal Buidwell Pvt. Ltd.* held that the prosecution u/s 70 of the IBC is a separate and independent proceedings, and in no manner fetter power upon tribunal to invoke Section 70 of the IBC. The Appellate Tribunal further held that the term 'fine' is covered in penalty, which is required to be dealt under sections 70 and 236 and is outside the jurisdiction of AA. Further, the Appellate Tribunal distinguished between 'Fine' and 'Cost' and explicitly stated that both terms are not synonyms to each other.

**Order:** The Appellate Tribunal set aside the order dated March 02, 2022, passed by the AA, and held that AA passed the impugned order only by overlooking the law of the land through the IBC not by the precedent cases settled by the Appellate Tribunal. The order is remanded back to AA to have a fresh look in accordance with the law.

**Case Review:** *Appeal Allowed.*

## National Company Law Tribunal (NCLT)

*Vinsari Fruitech Ltd. Vs. Effort BPO Private Limited, CP (IB) No. 330/MB/2023, Date of NCLT Judgement: December 05, 2023.*

### Facts of the Case

The Present CIRP application is filled before the AA u/s 7 of the IBC by M/s Vinsari Fruitech Ltd. in the capacity of financial creditor (Applicant) against M/s Effort BPO Pvt. Ltd. (Respondent). M/s One Modesto Logistics & Cargo Pvt. Ltd. (Modesto) availed a loan for an amount of ₹1,10,00,000/- from the Applicant. Modesto being unable to repay the said loan amount approached the Respondent to take over the said loan. As per Deed of Assignment dated April 01, 2021, Modesto assigned all its right, title and interest in the financial facility to the Respondent.

The assigned outstanding debt of ₹ 1,10,00,000/- was repayable by the Respondent to the Applicant within a period of 6 months from date execution of the deed (i.e. 1 October 2021). In turn the Respondent would recover the said amount of ₹1,10,00,000/- along with interest at the 24% within a period of 12 months from Modesto. However, the Respondent failed to repay the outstanding dues on given date. The Applicant issued the demand notice and the Respondent even after admitting its liability

vide letter dated October 06, 2021, again failed to repay the loan amount. The Respondent submitted that the assignment deed dated April 01, 2021, is insufficiently stamped and unless the deed is impounded, CIRP can't be initiated.

### NCLT's Observations

The AA while placing its reliance in the judgment pronounced by the apex court in *N.N. Global Mercantile Pvt. Ltd. Vs. Indo Unique Flame Ltd. and Ors.*, observed that an instrument which is not stamped or insufficiently stamped in accordance with the Stamps Act, is not an enforceable instrument. Hence it is a void contract in terms of Contract Act and cannot be taken as evidence by the Court.

The AA further held that the liability of the Respondent accrues from the insufficiently stamped Assignment Deed as the assignment which are legally carried out are only included in the definition of financial creditor under the IBC.

**Order:** The AA asked the affected party to approach the Collector of Stamps to adjudicate the quantum of stamp duty payable on the document and thereafter upon payment of such duty, the party shall be at the liberty to file the appropriate application in terms of legally enforceable assignment deed.

**Case Review:** *Petition Dismissed.*



## IBC News

### IBBI issues final list of IPs for January to June 2024

The Insolvency & Bankruptcy Board of India (IBBI) released the final list of insolvency professionals (IPs) for the January 01 to 30 June 2024 period. There are a total of 779 IPs and 33 insolvency professional entities (IPEs), according to the insolvency regulator's final list. The maximum number of IPs are from New Delhi zone (176), followed by Mumbai zone (143), Kolkata zone (85), Chennai zone (63) and Chandigarh zone (70), the list showed. The IBBI is required under the Insolvency and Bankruptcy Code (IBC) 2016 to recommend the name of an IP for appointment as an interim resolution professional (IRP), liquidator, resolution professional (RP), or bankruptcy trustee (BT), as the case may be.

**Source:** <https://ibbi.gov.in/uploads/whatsnew/76f6f0af1408a5483f9dbe31fbccc9e7.pdf>

### NCLT gives nod to Resolution Plan for Reliance Com. Infra.

NCLT Mumbai has approved the Resolution Plan of Reliance Projects and Property Management Services Ltd. to acquire Reliance Communications Infrastructure Ltd. (RCIL), a subsidiary of bankrupt Reliance Communications Ltd., through the IBC, 2016. Earlier, the Resolution Plan submitted by Reliance Projects and Property Management Services Ltd., was approved by the Committee of Creditors (CoC) of RCIL in its meeting dated August 5, 2021, following which an application was filed by the Resolution Professional of the RCIL on Aug 31, 2021, with the NCLT Mumbai, inter alia, seeking approval of the Adjudicating Authority (AA) under Section 31 of the IBC. Last week, the AA had approved the sale of specific real estate properties of Reliance Communications.

**Source:** *Business Standard*, December 20, 2023.

[https://www.business-standard.com/companies/news/nclt-approves-resolution-plan-for-reliance-communications-infrastructure-123122000919\\_1.html](https://www.business-standard.com/companies/news/nclt-approves-resolution-plan-for-reliance-communications-infrastructure-123122000919_1.html)



### Resolution Professional under IBC, 2016 is not a public servant under the Prevention of Corruption Act 1988, rules the High Court of Delhi

The Delhi High Court has differed from a 2023 judgement of the Jharkhand High Court wherein it was held that the RP is a public servant under the Prevention of Corruption Act. According to the Delhi High Court, IBC is a culmination of all previous insolvency laws such as the Provincial Insolvency Act, 1909, the Insolvency Act, 1920 etc., which were codified to form the IBC. It was further observed that despite the roles and duties ascribed to the IP under these laws, the Central Government chose not to classify them as a public servant. Thus, the court allowed the plea and quashed the complaint against the RP under the Prevention of Corruption (PC) Act, 1988. The judgment came in the case where allegations of corruption were made against the RP of a company for taking bribes, subsequently, the Central Bureau of Investigation (CBI) had taken control of the case. It was submitted by the prosecutor that the RP was appointed by NCLT and the nature of the duties which the RPs are required to perform, clearly shows that the same are “Public Duty” having a “Public Character”. However, the RP contended that the Parliament chose to amend the provisions of the PC Act in 2018, two years after the introduction of the IBC in 2016, however, no amendment was made to include an RP or any other authority under the IBC within the purview of the PC Act. It was also submitted that the IBC, 2016 is a complete Act to deal with all the matters regarding insolvency including the RP.

**Source:** *Moneycontrol.Com*, December 20, 2023.

<https://www.moneycontrol.com/news/trends/legal/resolution-professional-under-insolvency-code-not-a-public-servant-delhi-hc-holds-11932741.html>

## CoC approved Resolution Plan of a Consortium led by Adani Power to acquire Coastal Energen Ltd.

The CIRP of the Coastal Energen Ltd. was admitted by NCLT Chennai Bench in February 2022 on an insolvency petition filed by the State Bank of India. It has an imported, 1,200-MW (2X660) coal-based power plant operating in Tuticorin. According to media reports, the consortium of Adani Power Ltd. (APL) has recently received a Letter of Intent from the RP. The Corporate Debtor has reportedly admitted claims of ~₹12,300 Cr. from creditors against which the Resolution Plan has committed to provide ₹3,500 crore. The other plans that were considered by the lenders included Jindal Power Ltd. and the Chennai-based Sherisha Technologies, and a settlement proposal by the promoters of the Corporate Debtor.

**Source:** *The Hindu*, December 25, 2023.

<https://www.thehindu.com/news/national/tamil-nadu/creditors-approve-adani-power-consortium-bid-to-takeover-bankrupt-coastal-energen/article67674664.ece>

## America's P&W's faulty engines caused 'Go First' airlines Irreparable Damage of ₹10,000 crore

Wadia Group chairman Nusli Wadia has blamed Pratt & Whitney (P&W) for the grounding of Go First, which sought voluntary bankruptcy in May, pegging the damage caused to the airline because of the US company's faulty engines at more than ₹10,000 crore, based on the calculations of global experts. "Despite P&W searching for solutions to remedy the defects, they were unable to succeed," said Wadia.

**Source:** *The Economic Times*, December 28, 2023.

<https://economictimes.indiatimes.com/epaper/delhicapital/2023/dec/28/et-front/pw-caused-go-first-irreparable-damage/articleshow/106331155.cms?from=mdr>

## MDs of banks have been instructed to monitor and review all their ongoing insolvency cases very closely, particularly the top 20 accounts: Secretary, DoFS

Mr. Vivek Joshi, Secretary, Department of Financial Services (DoFS), Union Ministry of Finance has recently held a review meeting of the banks particularly Public Sector Bank (PSB) chiefs to review the progress of the 'National Asset Reconstruction Co. Ltd.' (NARCL) or 'Bad Bank' and the status of pending insolvency cases. Mr. Joshi presided over a workshop on customer service and two meetings - one on the progress of the NARCL., and the

other on the resolution of accounts under the IBC. Speaking to media persons, Mr. Joshi said that MDs of banks have been instructed to monitor and review all their ongoing insolvency cases very closely, particularly the top 20 accounts at their level.

**Source:** *NDTVProfit.com*, December 22, 2023.

<https://www.ndtvprofit.com/economy-finance/psbs-advised-to-monitor-top-20-insolvency-cases-says-financial-services-secretary>

## PC Jeweller approaches State Bank of India for settlement of the Debt

The lawyers for both the parties - SBI (Financial Creditor) and PC Jeweller (Corporate Debtor) jointly sought an adjournment of the insolvency plea at the NCLT. Accordingly, the tribunal has adjourned the hearing of the CIRP plea to January 2024. The jewellery company has reportedly offered to pay a sizeable chunk of its outstanding dues spread over a period of three years along with an upfront payment. PC Jeweller owes over ₹3,000 crore to the SBI. In June 2023, SBI moved an insolvency plea against PC Jeweller. Subsequently, in November 2023, it was reported that SBI took control of two prime properties of PC Jeweller in New Delhi. PC Jeweller's troubles began in February 2023, when banks decided to recall loans advanced to it after it was revealed in a filing that the company had defaulted on loans worth ₹3,466 crore from banks and financial institutions.

**Source:** *Moneycontrol.com*, December 12, 2023.

<https://www.moneycontrol.com/news/trends/legal/nclt-defers-insolvency-hearing-as-sbi-pc-jeweller-explore-settlement-options-11891201.html>

## American Bankruptcy court approved \$1.88 billion real estate sale for Bankrupt trucking company Yellow

An USA Bankruptcy court has approved the sale saying that the purchase price was a "tremendous outcome" for the trucking company and its creditors. The approval to sell most of its shipping centres and real estate to multiple buyers for \$1.88 billion, has ended a bidder's long-shot effort to keep the company intact. The sale will parcel out 130 of the company's shipping centers to multiple buyers and is expected to generate enough cash to pay off its \$1.2 billion pre-bankruptcy debt.

**Source:** *Reuters.com*, December 12, 2023.

<https://www.reuters.com/business/autos-transportation/bankrupt-trucking-co-yellow-approved-188-bln-real-estate-sale-2023-12-12/>



## NARCL acquires two SREI Group companies under the IBC, 2016

National Asset Reconstruction Company (NARCL) on Friday signed transaction documents to acquire two SREI companies -- SREI Equipment Finance and SREI Infrastructure Finance -- under the Insolvency and Bankruptcy Code, 2016 (IBC). The Resolution Plan of NARCL has already been approved by NCLT, Reserve Bank of India (RBI) and Competition Commission of India (CCI). NARCL has reportedly paid ₹50 per cent of the committed resolution amount to the lending consortium. The implementation of the consolidated plan would result in the resolution of financial debt worth ₹32,700 crore and entails about 50 % recovery upfront for lenders. "We are aiming to revive SREI's equipment lending business and work with all stakeholders to derive optimum value for both the entities. The endeavor would also be to maximize recovery for the lenders in a transparent and timebound manner, said N. Sundar, MD & CEO of NARCL.

**Source:** *Business Standard*, December 08, 2023.

[https://www.business-standard.com/companies/news/narcl-acquires-two-srei-companies-under-the-insolvency-resolution-123120801273\\_1.html](https://www.business-standard.com/companies/news/narcl-acquires-two-srei-companies-under-the-insolvency-resolution-123120801273_1.html)

## Best practices of one country can't be exactly implemented in other countries: Sudhaker Shukla, Whole Time Member (WTM) of IBBI

Speaking at an event to mark the 7th Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIPI) in New Delhi, IBBI's Whole Time Member Shri Sudhaker Shukla has indicated that India may go in for simultaneous introduction of Cross Border Insolvency and Group Insolvency frameworks. This is however subject to necessary approvals coming for such an approach, he added.

"Both can be rolled out simultaneously if approvals come through. Increasingly, we realize that without Group Insolvency the aspect of Cross Insolvency will not work at all. So perhaps Group Insolvency needs priority to Cross Border. That wisdom is there," said Shukla. According to media reports, his remarks are significant as international bodies had earlier recommended that India can go ahead and introduce Cross Border Insolvency Framework without having a Group Insolvency Framework in place. "Best practices of one country can't be exactly implemented in another regime. There have been large

deviations from UNCITRAL (United Nations Commission on International Trade Law) model in implementing Cross Border Insolvency Framework from one regime to another wherein each and every regime has carved out exceptions as per their requirements," Shukla said.

Ashok Haldia, Chairman, IIPI-Board, highlighted various capacity-building activities of IIPI stating that IBC is a very dynamic law and will change with the changing horizons of the national economy, global economy, technology. IPs need to change, adopt and adapt accordingly. He appreciated the progressive approach of IBBI and expressed the hope that frameworks on group insolvency, cross-border insolvency, individual insolvency, and other areas will come soon.

**Source:** *The Hindu Businessline*, December 07, 2023.

<https://www.thehindubusinessline.com/economy/ibbi-hints-at-simultaneous-rollout-of-cross-border-and-group-insolvency-frameworks/article67613701.ece>

## Discretionary powers have been accorded to IBBI in order to ensure that the CIRP is 'clean and free', says Delhi High Court

Delhi High Court has said that the decision to determine as to whether a person is fit and proper to be appointed as Insolvency Professional (IP) is based on the subjective satisfaction of the Insolvency and Bankruptcy Board of India (IBBI). The Court emphasized that an IP becomes the "heart and brain" of a company going through the CIRP by virtually taking it over and a person with "slightest of disqualification" cannot be appointed to the position as it would vitiate the entire purpose of the Insolvency and Bankruptcy Code, 2016 (IBC).

"The question of adjudging as to whether a person is suitable for a particular job or not should be left to the appointing authority and more particularly when the appointing authority consists of experts. It is for the experts to decide as to who is best and most qualified for a particular job. The antecedent of a person is an important criterion to decide as to whether the said person is suitable for the post or not," said the Court. It further added that good reputation and character of a person is very important for appointment as an IP. "While judging as to whether a person is fit and proper to be appointed as an Insolvency Professional his past actions and conduct cannot be ignored and the fact that immediate past was clean does not give a clean chit to the person that his candidature

will be considered,” added the Court. The judgment came on an appeal of a banker who had challenged IBBI's refusal to register her as an IP on the ground that she was found guilty of violating SEBI norms in 2015.

**Source:** *Telegraphindia.com, November 30, 2023.*

<https://www.telegraphindia.com/india/good-reputation-character-important-for-appointment-as-insolvency-professional-delhi-hc/cid/1983712>

### **No Casual Interference with Commercial Wisdom of the Committee of Creditors: Supreme Court**

The Apex Court observed that although nobody had moved before the Adjudicating Authority or raised any objection challenging the Resolution Plan, but its approval was kept in abeyance only on the ground of an estimated haircut of about 94.25%. Furthermore, the Bench observed that the Resolution Professional has complied with the statutory requirement of involving two approved valuers for giving reports apropos fair market value and liquidation value. Both reports did not show much variance and the same was placed before the CoC.

“Stricto sensu, it is now well-settled that within the CoC's domain as to how to deal with the entire debt of the Corporate Debtor (CD). In this background, if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with,” said the Supreme Court and set aside the order of 'revaluation' of the CD by the Official Liquidator i.e., Ministry of Corporate Affairs (MCA). Besides, it directed the NCLT to pass appropriate orders in application for approval of Resolution Plan. The Appeal was filed by Ramkrishna Forgings Ltd. the Successful Resolution Applicant (SRA) who's Resolution Plan to takeover ACIL (Corporate Debtor) was approved by the CoC but kept in abeyance by the AA due to estimated huge haircut and avoidance transaction of approximately ₹1000 Crores.

**Source:** *Livelaw.in, November 23, 2023.*

<https://www.livelaw.in/top-stories/ibc-no-casual-interference-with-commercial-wisdom-of-coc-supreme-court-sets-aside-nclt-direction-to-re-evaluate-corporate-debtors-assets-242841?infinitescroll=1>

### **Allottee (s) entering into settlement with CD after filing Section 7 Application, are not excluded from the threshold of 100: NCLAT**

Placing reliance on the Supreme Court judgement in the matter of Manish Kumar Vs. Union of India (2021) wherein it was held that the requirement of threshold under proviso in Section 7(1) must be fulfilled as on the date of filing of the CIRP Application, the NCLAT, has ruled that if any allottee/ allottees enter settlement with the CD post filing of the petition, then they are not required to be excluded from the count of 100 allottees. This judgement has come in the case of Mist Avenue Pvt. Ltd. Vs. Nitin Batra & Ors. In this case eight allottees settled the matter after filing of CIRP application against the CD. The Court held that the fact that eight allottees have settled the matter is thus inconsequential and they cannot be excluded. The Bench also held that a petition under Section 7, filed by allottees for joint CIRP of separate corporate entities involved in a common real estate project is maintainable.

**Source:** *Legalertonline.com, November 22, 2023.*

<https://www.legalertonline.com/amp/news/nclat-obligatory-to-have-at-least-100-allottees-file-petition-under-section-7-of-ibc-subsequent-settlement-irrelevant-882703>

### **Zhongzhi Wealth Manager's \$58-64 Billion Debt Crisis Sparks Concerns of Broader Impact on China's Financial Sector**

Zhongzhi Enterprise Group, a leading wealth manager in China with sizable exposure to real estate sector, has apologized to its investors in a letter that said it had total liabilities of about 420 billion yuan (\$58 billion) to 460 billion yuan (\$64 billion). Zhongzhi's financial crisis is threatening to reignite concerns that the country's property debt crisis is spilling over into the broader financial sector. China's highly indebted property sector has been reeling from a liquidity crunch since 2020. According to the letter, the company has estimated total assets of about 200 billion yuan.

**Source:** *Reuters.com, November 23, 2023.*

<https://www.reuters.com/world/china/china-wealth-manager-zhongzhi-flags-insolvency-liabilities-64-bln-2023-11-23/>

### **Doctrine of 'Promissory Estoppel' can't be applied against an Approved Resolution Plan: NCLAT**

NCLAT, New Delhi has held that if a Resolution Plan is compliant with the provision of Section 30 (2) of the IBC

and the provisions of the Regulations, 2016, it cannot be faulted on the ground of the 'promissory estoppel'. The Court dismissed the appeal of Fervent Synergies Ltd. (Appellant) in which it has alleged 'differential treatment' by the RP in the Plan. The Appellant had entered into 10 separate agreements to buy 10 flats in a real estate project 'Samriddhi Garden' which was being developed by Sivana Reality Pvt. Ltd. (CD) and funded by LIC Housing Finance Limited (LICHFL). As the project was mortgaged to LICHFL, its prior consent/NOC was mandatory for any sale by the CD. Since, the Appellant had not obtained the NOC, his matter was put under – 'Affected Homebuyers' and treated differently from the 'Unaffected Homebuyers'.

**Source:** *The Economic Times*, November 17, 2023.

<https://economictimes.indiatimes.com/industry/indl-goods/svs/cement/adani-unit-arcelormittal-jsw-in-race-to-buy-vadraj-cement/articleshow/105270888.cms>

### Operational Creditor cannot object to the approval of Resolution Plan: NCLT

On an application filed by Operational Creditor (OC) seeking to set aside the advertisement inviting claims and the rejection of the approved Resolution Plan by the CoC, NCLT Mumbai has held that an OC cannot object to the approval of the Resolution Plan by CoC and only a Financial Creditor is eligible to receive a copy of it. "The applicant being an OC whose claim has been admitted by the RP cannot be made a Respondent and given opportunity to object to the approval of the plan," said the Court. In its petition, the OC argued that due to shift in the insolvency commencement date of the CD, claims of various creditors would increase by ~15 to 20%. The petition was dismissed with ₹50,000 cost on the OC.

**Source:** *Lawbeat.in*, November 07, 2023.

<https://lawbeat.in/news-updates/operational-creditor-cannot-object-approval-resolution-plan-nclt-mumbai-imposes-rs-50k-cost>

### Central Govt. asks state-owned power generation companies to consider acquiring stressed power assets under the IBC

In a communication to Power Secretaries of All States and Chiefs of State and Central power generating companies, the Union Ministry of Power has said that the acquisition would help the States to meet their increasing power demand economically with significant control on such

generated power. "State-owned generating companies may also be encouraged to participate in the CIRP of stressed power assets, which are of strategic and commercial significance to the capacity addition plans of the concerned States," said the Ministry. The Ministry has also highlighted the benefits of acquiring stressed assets by Central PSUs.

**Source:** *Energywatch.in*, November 03, 2023.

<https://www.energywatch.in/power/power-ministry-asks-gencos-to-consider-acquiring-655-gw-of-stressed-power-assets>

### NCLT approved more than double Resolution Plans in Q2 than Q1

As per the latest data released by the Insolvency and Bankruptcy Board of India (IBBI), NCLT approved 85 Resolution Plans in July-September 2023 quarter as compared to 38 Resolution Plans in the previous April – July quarter. According to media reports, with this rate, NCLT may approve a record 300 resolution plans in the current financial year, which was indicated by IBBI Chairperson Shri Ravi Mital in his speech on IBBI's Foundation Day, this year.

The IBBI data also reveals that for the September 2023 quarter, the realizable value as a percentage of liquidation value stood at a record 219 per cent and 133 per cent of the fair value of assets resolved. Furthermore, the total value of 'admitted claims' under the IBC, 2016 was about ₹65,247 crore in July-September quarter, while the total realizable value stood at ₹20,771 crore. This improvement in NCLT's processing of CIRP cases has come at a time when Shri Manoj Govil, Secretary, Ministry of Corporate Affairs (MCA) had recently underscored the need for a significant ramp up in the processing capacity of insolvency cases under IBC. Govil had then noted that a large gap still exists between the demand on the system and the current NCLT processing capacity. About 5,000 new cases are filed with NCLT every financial year. Shri Govil had underscored the need to build capacity at NCLT to handle at least 1500 cases per year.

**Source:** *The Hindu Businessline*, November 05, 2023.

<https://www.thehindubusinessline.com/economy/ibc-nclt-approved-record-resolutions-more-than-doubled-in-september-quarter/article67500864.ece>

### If OC returns principal amount paid by CD during pendency of CIRP petition, Application u/s 9 is not maintainable: NCLT

The CD made an attempt to pay the principal amount twice -- once by sending demand draft and then by transferring the amount through RTGS but that was returned by the Operational Creditor (OC). The OC wanted to pursue application u/s 9 only for payment of interest also on the basis of invoices. The court observed that the provisions of the IBC are essentially intended to bring the CD to its feet and are not for money recovery proceedings. Relying upon the judgement of Hon'ble Principal Bench NCLT in the matter of *Ms. Rita Malhotra and Ors. Vs. M/s. Orris Infrastructure Pvt. Ltd.* (2023), wherein it is said that IBC cannot be used as a tool of recovery, the AA dismissed the petition.

**Source:** <https://cdn.ibclaw.online/insolvency/nclt/2023/Oct/Shah+Paper+Mills+Ltd.+Vs.+Shree+Rama+News+Print+%26+Papers+Ltd.+18.10.2023+NCLT+Ahmedabad+Bench.pdf>

### Moscow Court recognized Google's Russian subsidiary as Bankrupt

Alphabet Inc., the Russian unit of Google filed for bankruptcy in summer 2022 after Russian authorities seized its bank account, making it impossible to pay staff and vendors. However, free services, including search and YouTube continued operating. Alphabet Inc. has been under pressure in Russia for failing to delete content that the Russian authorities deems illegal and for restricting access to some Russian media on YouTube. Russia has disputes with foreign technology companies over content, censorship, data and local representation. These disputes intensified after Russia sent armed forces into Ukraine in February 2022.

**Source:** *Reuters.com*, October 13, 2023.

<https://www.reuters.com/markets/deals/googles-russian-subsidiary-recognised-bankrupt-by-court-ria-2023-10-18/>

### England and Wales witnessed 17% higher insolvencies in Sept. 2023 than Sept. 2022

The Insolvency Service, a UK government agency, said 1,967 companies were registered insolvent, according to the non-seasonally adjusted data, up from 1,688 a year earlier. However, insolvencies over Q3 look on track to be down slightly from the Q2's 14-year high. Over the three

months to the end of Sept., 6,011 companies were declared insolvent on a non-seasonally adjusted basis, down from a seasonally adjusted total of 6,342 in Q2, which was the highest since 2009.

**Source:** *Reuters.com*, October 13, 2023.

<https://www.reuters.com/world/uk/england-wales-insolvencies-rise-17-year-2023-10-13/>

### Government tweaks law to exempt Aircraft, Helicopters and Engines from Moratorium under Section 14 (1) of the IBC, 2016

The Notification by the Ministry of Corporate Affairs (MCA) dated October 03, 2023, is reportedly in line to the India's commitments under the 'Cape Town Convention and Protocol-2001' to which India is a signatory.

"The provisions of Sub-Section (1) of Section 14 of the Insolvency and Bankruptcy Code, 2016 shall not apply to transactions, arrangements or agreements, under the [Cape Town] Convention and Protocol, relating to aircraft, aircraft engines, airframes and helicopters," reads the Notification. It reportedly goes beyond India's commitments under the Cape Town Convention under which there is a time limit of 60 days within which a leased aircraft has to be returned to the lessor in case of insolvency.

According to media reports, if implemented retrospectively, the move may impact 'Go First' airlines' CIRP as it has been granted a blanket moratorium by NCLT under the same law i.e., Subsection (1) of Section 14 of the IBC, to shield 'Go Air' from lessors and creditors and also restrained the DGCA from accepting any applications for deregistration of aircraft from any lessors. Go First' had 54 aircraft in its fleet, and lessors of nearly all aircraft had sought de-registration of their assets over pending dues. After the moratorium by NCLT, the lessors have even approached Delhi High Court seeking access to their respective aircraft. Furthermore, due to the moratorium granted to 'Go Air' in May, Global Aviation Leasing Watchdog, the Aviation Working Group has recently reduced India's score on the compliance index from 3.5 to 2.0.

**Source:** *The Hindu*, October 04, 2023.

<https://www.thehindu.com/news/national/moratorium-under-ibc-to-exempt-aircraft-and-engines-govt-notifies/article67380627.ece>



## India needs to enhance resilience in financial sector by accelerating IBC process, managing NPAs, and providing appropriate Govt. Supervision: OECD

Organization for Economic Co-operation and Development (OECD), the Paris-based group of rich countries, has suggested India to further promote structural reforms in the financial sector by reducing government ownership of banks and insurance companies and liberalize foreign direct investment (FDI) by removing remaining restrictions. In its latest Going for Growth 2023 report, the OECD charted country-specific structural policy priorities to strengthen growth fundamentals and pave the way for successful green and digital transitions. Despite the reduction in nonperforming loans and the creation of an Asset Reconstruction Company (Bad Bank), resolution procedures remain slow, said the report.

**Source:** *The Business Standard*, October 03, 2023.

[https://www.business-standard.com/economy/news/oecd-urges-india-to-reduce-govt-ownership-in-banks-and-insurance-companies-123100300941\\_1.html](https://www.business-standard.com/economy/news/oecd-urges-india-to-reduce-govt-ownership-in-banks-and-insurance-companies-123100300941_1.html)

## Construction companies in Australia are grappling with a significant increase in insolvencies over the past 3 months

According to a report, the escalating costs for materials and insurance have added to the challenges faced by the troubled \$360 billion industry. The recent data released by the Australian Securities and Investments Commission reveal a 38% rise in external administration appointments within the construction sector in the same period last year, which is an indicator of the crisis in this sector. This figure reportedly 255% higher from the 186 appointments made in 2021.

**Source:** *mpamag.com*, October 04, 2023.

<https://www.mpamag.com/au/news/general/construction-insolvencies-spike/461776>



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(Company formed by ICAI as per Section 8 of the Companies Act 2013)

## MASTERING LEGAL SKILLS, PLEADINGS AND COURT PROCESSES UNDER IBC

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## Peer Review Policy

*(...Continue from previous edition)*

### **c. Stage III: Reporting**

IPs' peer review process includes benchmarking the similar work by one or more IP members (peers) with that of the IP under review. An IP's peer review focuses on the performance of IP, with a view to improving:

- (I) Quality of Records and Documentation maintained.
- (II) Reporting and compliances done at IIIPI, IBBI, Adjudicating Authority and any other statutory Body.
- (III) Upholding Technical, Professional and Ethical Standards.
- (IV) Adherence with Code, relevant laws, regulations, rules, guidelines, Circulars, best practices and amendments made there under from time to time.
- (V) Methodologies and approaches adopted for demonstrating the transparency and quality services to all stakeholders.
- (VI) Infrastructure, team size/support services.
- (VII) Any adverse order/warnings/advisory from IIIPI/IBBI/ statutory Body.
- (VIII) Complaints Handling Procedure.
- (IX) Conflict of Interest' checks.

### **d. Stage IV: Discussion/Communication of Findings**

- (I) After completing the review, the reviewer shall share a preliminary report with Reviewed IP marking copy on email to the nodal officer of IIIPI, quoting his findings and deficiency in the systems and procedures adopted by IP.
- (II) The Reviewed IP within seven working days from receipt of the preliminary report from the peer reviewer, shall submit the feedback to the reviewer, in respect of deficiency(ies) noticed, marking copy on email to the nodal officer of IIIPI.
- (III) The Reviewer IP shall finalise the report within seven working days of the receipt of the submissions against the preliminary report and submit the same to the nodal officer of IIIPI

marking copy to the Reviewed IP. Such a report should take care of requirements as mentioned in Stage V below.

### **e. Stage V: Final Peer Review Report by the Reviewer**

- (I) On receipt of responses/replies from the Reviewed IP, if the Reviewer is satisfied, he shall submit a 'satisfactory' Peer Review report to the IIIPI along with his initial findings, response by the IP and the way the responses have been dealt with.
- (II) However, if the Reviewer is not satisfied, he shall submit a 'qualified report' to IIIPI along with the reasons thereof.
- (III) In the case of 'qualified report', the concerned Reviewed IP shall be eligible to apply for 'Follow-on' Review, after a period of six months from the date of issue of 'qualified report' as above. Follow-on Review shall preferably be conducted by a different Reviewer.
- (IV) The Reviewer and Reviewed IPs shall mutually co-operate and ensure that the entire review process is completed within 60 days from the date of appointment of Peer Reviewer.

### **f. Stage VI: Issuance of Peer Review Certificate**

On receipt of the satisfactory Peer Review Report, IIIPI shall within three months issue a Peer Review Certificate to the Reviewed IP mentioning the validity period therein viz. three years at a time, from the date of issuance of such certificate.

## **7. DUTIES AND OBLIGATIONS OF IPs AND IIIPI**

The set of principles which shall be observed by the Reviewer IP, the Reviewed IP and IIIPI for the purposes of conducting Peer Review, have been listed below:

### **a. The Reviewed IP shall:**

- I. co-operate with the Reviewer IP.
- II. make documents, information and the data available to the Reviewer IP by himself or through his staff members.
- III. exhibit qualities of transparency, value sharing, mutual trust, commitment, and credibility.

- IV. respond to all the questions and other relevant requests for self-assessment.
- V. willingly shall take part in discussions with the Reviewing IP.
- VI. where any information or matter relevant is recorded otherwise than in a legible form, provide and present to the Reviewer IP a reproduction of any such information or matter, or of the relevant part of it in a legible form, with a translation in English or Hindi, if the matter is in any other language, and if such translation is requested for by such Reviewer. The Reviewed IP shall be responsible and accountable for the accuracy and truthfulness of the translation so provided.
- VII. allow on-site visits by the Reviewer IP or their authorised representatives, if needed.

**b. The Reviewer IP shall:**

- I. be objective and fair.
- II. be free from any influence or any interest that would undermine the credibility of the peer review mechanism.
- III. exhibit qualities of transparency, value sharing, mutual trust, commitment, and credibility.
- IV. have systematic exchange of information and views during Peer Review process with the Reviewed IP.
- V. not take any extracts of the Reviewed IP's records examined by him while conducting Peer Review, as a part of his working papers.
- VI. complete the Review within the prescribed time frame and submit the report to IIIPI.
- VII. document all his working papers and submit a copy of his working papers to IIIPI, if called for by IIIPI within 18 months of submission of Peer Review report.
- VIII. maintain confidentiality of the all the data of the Reviewed IP and their stakeholders. Adverse observations, if any, should only be shared with IIIPI.

**c. IIIPI shall:**

- I. support the process of Peer Review, including by providing online platform for facilitating applications by Reviewer IPs for empanelment, applications by IPs for initiating their Peer Review, issuance of certificates, etc.
- II. appoint Peer Reviewer.
- III. stimulate discussions between the Reviewed IP and the Reviewing IP.
- IV. maintain continuity of the Peer Review process.
- V. address grievance between the parties during Peer Review, if any.

**8. DOCUMENTATION BY PEER REVIEWER AND IIIPI**

- a. On completion of Peer Review process, the IIIPI is required to store the relevant documents in a digital manner for a period of 8 years, having due regard for:
  - I. ensuring the privacy of members and confidentiality of information received, except when disclosure of information is required by the Board or by law;
  - II. in a non-discriminatory; and
  - III. with proper safeguards, including Disaster Recovery Mechanism procedures.
- b. The following documents shall be stored by IIIPI, as referred in (a) above.
  - I. Checklist for peer review- The checklist for each Peer Review shall be prepared and filled by Peer Reviewer, commenting upon the following parameters:
    - (i) quality of records and documentation maintained;
    - (ii) reporting and compliances done at IIIPI, IBBI, AA and any other statutory Bodies.
    - (iii) upholding technical, professional, and ethical standards;
    - (iv) adherence and compliance with Code, relevant laws, regulations, rules, guidelines, circulars, best practices, and

amendments made there under from time to time;

- (v) methodologies and approaches adopted for demonstrating the transparency and quality services to all stakeholders.

- II. Questionnaire as sent to Reviewed IP before the initiation of Peer review exercise.
- III. Preliminary Report- from Reviewer IP.
- IV. Representations from Reviewed IP on the preliminary report of the peer reviewer.
- V. Final Peer Review Report.

### 9. COST OF PEER REVIEW

- a. The fees for Peer Review and limit for out-of-pocket expenses payable to the Peer Reviewer, shall be decided by the IIIPI from time to time and is shown in the Annexure B.
- b. The criterion of annual gross revenue earned by reviewed IP, for arriving at the applicable fee, shall be inclusive of fee of IPE in the concerned assignment.
- c. Such fee and expenses shall be paid by Reviewed IP, as mentioned hereinafter.
- d. On completion of Peer Review, the Reviewer shall send the final clean report/ Qualified Report, as the case may be, to the nodal officer of the IIIPI. The nodal officer, after confirming that there is no discrepancy in the documents submitted by the Reviewer, shall direct the Reviewer to raise an invoice on the Reviewed IP.
- e. Such invoice as referred above, shall be shared by reviewer IP with IIIPI. The IIIPI shall intimate the same to reviewed IP.
- f. The amount shall be paid by the Reviewed IP to IIIPI within 15 days of receipt of intimation (along with copy of invoice) from IIIPI. Along with the fee/expenses as above, The Reviewed IP shall also pay to IIIPI, an additional fee of ₹ 5,000/- (or any other amount as decided by IIIPI from time to time) towards meeting administrative expenses for peer review.

- g. IIIPI shall remit the fee/expenses as per invoice of Reviewer IP within seven days of receipt of such funds as above.
- h. In case of non-payment of fee, IIIPI reserves the right to withhold the Peer Review Certificate of Reviewed IP.
- i. In the event the Reviewer does not submit the report or submits the report with unreasonable delay, IIIPI reserves the right to remove such reviewer's name from the panel. Further, IIIPI may bar such reviewer from getting so empanelled for a specified period.

### 10. Periodicity of Peer Review

- a. In case of a member with registration more than three years old, period of peer review shall be from the end-date covered under the last peer review till end of preceding completed financial year; or preceding three years, whichever is less.

**Illustration:** *If an IP having commenced practice in financial year 2016-17, initiates peer review in financial year 2022-23, the period of peer review shall be FY 19-20, FY 20-21 and FY 21-22. Period prior to FY 19-20 shall not be covered.*

- b. In case of a member with registration less than three years old, period of peer review shall be from the date of registration till end of preceding completed financial year.

### 11. Reporting to Monitoring Committee

- a. The nodal officer of IIIPI shall submit a gist of peer reviews carried out and findings therein, from time to time and at least on a quarterly basis, with the Monitoring Committee of IIIPI.

### 12. Review of the Peer Review Policy

- a. The implementation of the Peer Review Policy will be monitored and reviewed by the Monitoring Committee of IIIPI from time to time and at least annually.
- b. Upon the review by Monitoring Committee, any amendment in this policy, other than minor/ cosmetics changes, shall be subject to the approval from Governing Board of IIIPI.

\* \* \*



## IIIPI News



Shri Sandip Garg, Whole Time Member (WTM)-IBBI (the then Executive Director-IBBI), addressing the Workshop (Physical) on “Preparation of IM and Resolution Plan” organized by IIIPI at India Habitat Centre, New Delhi, on October 20, 2023.



CA. Subodh Agrawal, Past President-ICAI addressing the 16th Batch of Executive Development Program (For IPs) on Managing CDs as going concern under CIRP from Oct. 30 to November 03, 2023, through Online Mode.



Shri Santosh Kumar Shukla, Executive Director-IBBI, addressing the 17th Batch of Executive Development Program (For IPs) on “Managing Corporate Debtors as Going Concern under CIRP” organized by IIIPI from 26th to 30th Dec. 2023.



08th Batch Executive Development Program (EDP) “Mastering Avoidance/PUE Forensics under IBC” conducted by IIIPI from 20th to 22nd November 2023.



Limited Insolvency Examination- Preparatory Classroom (Virtual) Program- Sept. & Oct.2023 Batches, organized by IIIPI.



15th Batch of EDP (For IPs) on Managing CDs as going concern under CIRP (Online), organized by IIIPI from 10th to 14th Oct. 2023.

## IIIPI News



Webinar on “Issues faced by Real Estate Allottees under IBC” conducted by IIIPI on November 03, 2023.



Dr. M. S. Sahoo, Distinguished Professor, NLU Delhi & Former Chairperson, IBBI, delivering the Special Address in the Conference on the theme ‘Insolvency Profession – The Way forward’ organized (Physical Mode) on the occasion of the 7th Foundation Day of IIIPI in New Delhi on December 06, 2023.



Webinar on “PG to CD Insolvency – Recent Hon’ble SC Judgement” conducted by IIIPI on December 12, 2023.



Shri Manishkumar M. Chaudhari, Chief General Manager- IBBI addressing Webinar on ‘Common Issues under Monitoring & Inspection & Peer Review’ organized by IIIPI on January 05, 2024.



Webinar on ‘Pre-Pack Insolvency Resolutions for MSMEs’ jointly organized by IIIPI with WASMEs on January 12, 2024.



Webinar on ‘Avoidance Transactions-Improving Outcomes’ organized by IIIPI on January 25, 2024.



## IIPI News



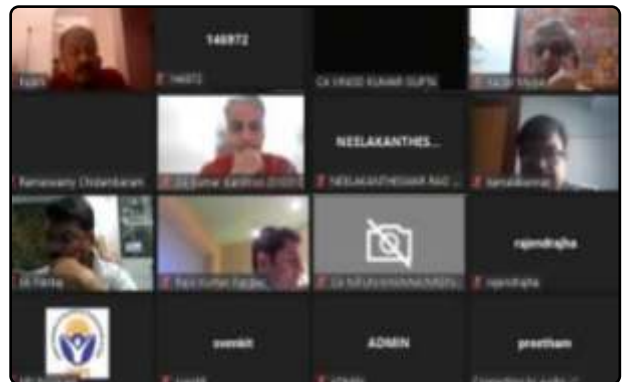
Webinar on ‘Best Practices - Appointment of Professionals & CoC Meetings’ conducted by IIIPI on Sept. 29, 2023.



Webinar on “Interface with Statutory Authorities/ Enforcement Agencies” conducted by IIIPI on October 27, 2023.



Webinar on “Evolving Jurisprudence under IBC – Important Case Laws” organized by IIIPI on December 29, 2023.



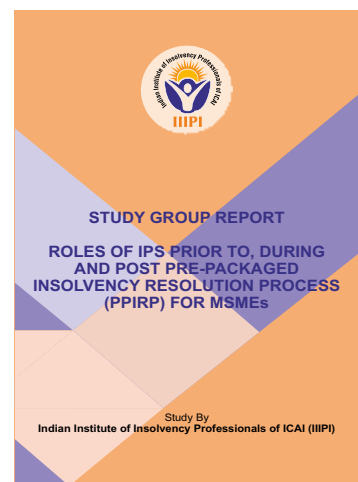
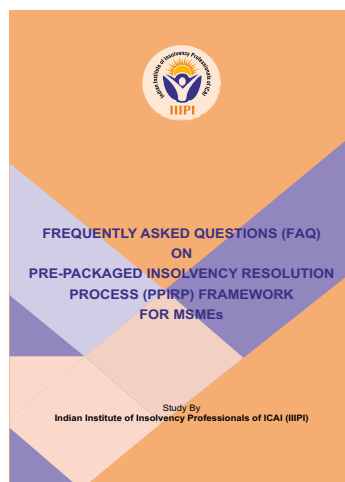
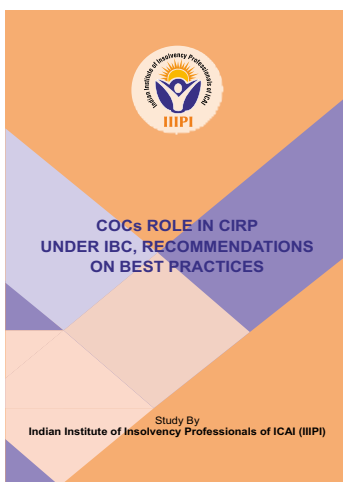
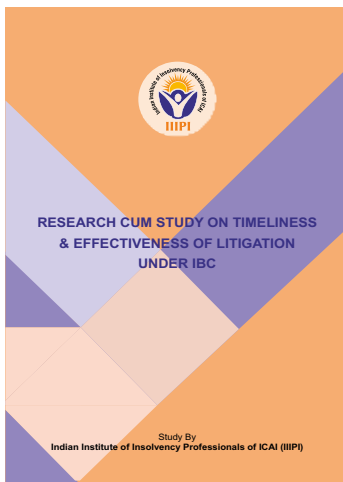
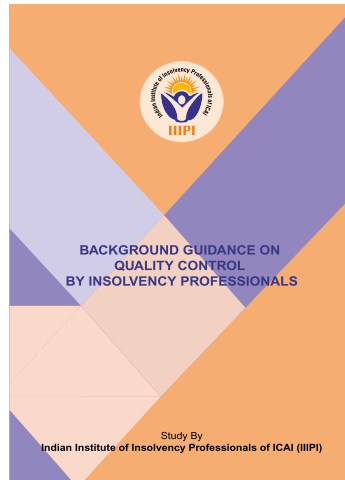
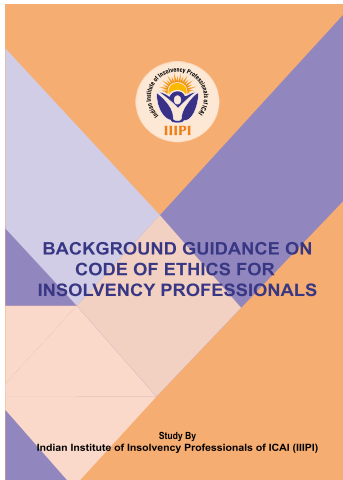
Limited Insolvency Examination (LIE) – Preparatory Classroom (Virtual) Program ‘Weekday Batch’ organized by IIIPI from 28th November to 2nd December 2023.



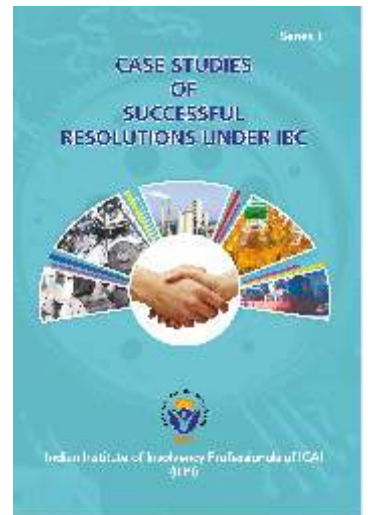
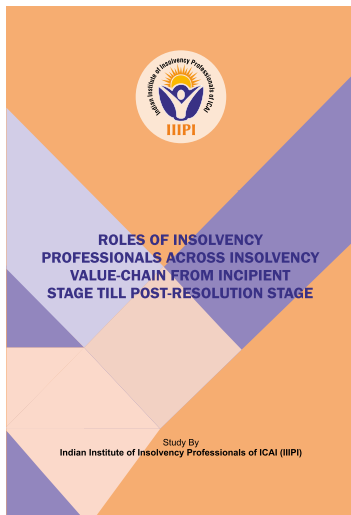
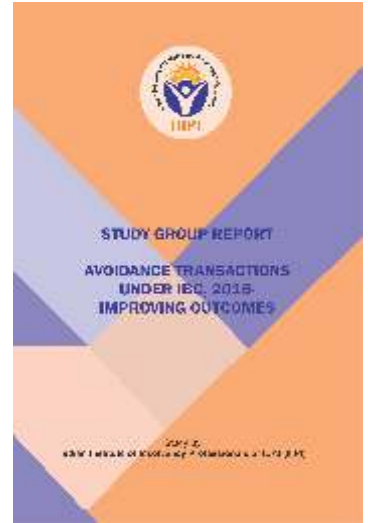
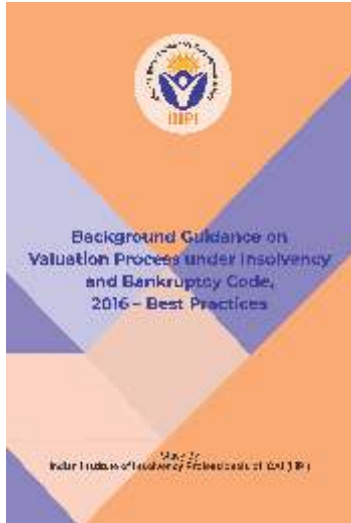
*Release of the publication titled “Case Studies of Successful Resolutions and Liquidations under IBC – Series 2” during the Conference on “Insolvency Profession – The Way forward” (Physical Mode) on the occasion of the 7th Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIIPI) in New Delhi on December 06, 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/>).







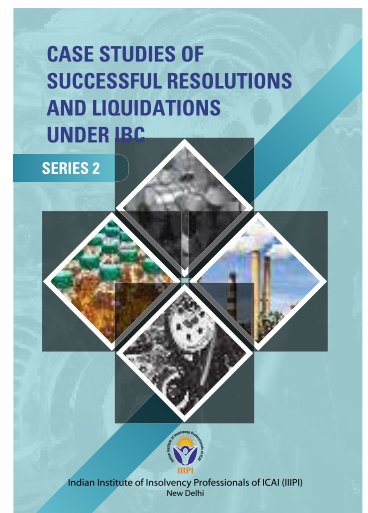
## Weekly Publications

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



### ICAI to extend peer review framework to insolvency professional entities

PTI | New Delhi | Updated: 25-01-2024 21:51 IST | Created: 25-01-2024 21:51 IST

Insolvency professional entities that are enrolled as members of the Indian Institute of Insolvency Professionals of ICAI will now have access to the peer review mechanism.

Peer Review is facilitated by experienced insolvency professionals (IPs) to serve as a benchmark for professional services and adherence to standards and principles related to professional assignments under the Insolvency and Bankruptcy Code (IBC).

"The Indian Institute of Insolvency Professionals of ICAI has recently decided to extend the Peer Review Framework to Insolvency Professional Entities (IPEs) that are enrolled as its members," the release said.

The Insolvency professional entities (IPEs) play an important role by offering support services to insolvency resolution professionals (IRPs), resolution professionals (RPs), and liquidators. Their responsibilities include verifying and

processing creditors' claims, finalising Committee of Creditors (CoC) meeting agendas, and ensuring statutory compliance, among other tasks.

"The decision to bring IPEs for subjecting these to peer review will improve the quality of their service and help in enhancing the confidence of various stakeholders," said Ashok Haldia, Chairman, IIPI Board.

In addition to providing support services, IPEs have the capacity to independently undertake insolvency assignments.

The peer review is obligatory for IPs associated with the Indian Institute of Insolvency Professionals of ICAI (IIPI) who have managed or been involved in ten or more cases of Corporate Insolvency Resolution Process (CIRP) or liquidation within the three years following the launch of the framework in July 2022. Presently, peer reviews for over 30 such professionals are in progress.



### Insolvency Professional Entities With IIPI To Get Access To Peer Review Mechanism

Peer Review is facilitated by experienced insolvency professionals to serve as a benchmark for professional services and adherence to standards and principles related to professional assignments under the Insolvency and Bankruptcy Code.

PTI/ 26 Jan 2024, 12:30 AM IST

Insolvency professional entities that are enrolled as members of the Indian Institute of Insolvency Professionals of ICAI will now have access to the peer review mechanism.

Peer Review is facilitated by experienced insolvency professionals to serve as a benchmark for professional services and adherence to standards and principles related to professional assignments under the Insolvency and Bankruptcy Code.

"The Indian Institute of Insolvency Professionals of ICAI has recently decided to extend the Peer Review Framework to Insolvency Professional Entities that are enrolled as its members," the release said.

The Insolvency professional entities play an important role by offering support services to insolvency resolution professionals, resolution professionals, and liquidators.

Their responsibilities include verifying and processing creditors' claims, finalising Committee of Creditors meeting agendas, and ensuring statutory compliance, among other tasks.

"The decision to bring IPEs for subjecting these to peer review will improve the quality of their service and help in enhancing the confidence of various stakeholders," said Ashok Haldia, Chairman, IIPI Board.

In addition to providing support services, IPEs have the capacity to independently undertake insolvency assignments.

The peer review is obligatory for IPs associated with the Indian Institute of Insolvency Professionals of ICAI (IIPI) who have managed or been involved in ten or more cases of Corporate Insolvency Resolution Process (CIRP) or liquidation within the three years following the launch of the framework in July 2022.

Presently, peer reviews for over 30 such professionals are in progress.



### IIPI brings insolvency professional entities under peer review framework

Updated – January 26, 2024, at 09.30AM | New Delhi

#### The decision to bring IPEs for subjecting these to peer review will improve the quality of their service and help in enhancing the confidence of various stakeholders

BY KR SRIVATS

Indian Institute of Insolvency Professionals of ICAI (IIPI) has recently decided to extend the Peer Review Framework to Insolvency Professional Entities (IPEs) that are enrolled as its members.

The IPEs provide support services to IRPs/RPs/ Liquidators including verifying and processing claims of creditors, finalising the agenda for the meetings of the Committee of Creditors (CoC), running the Corporate Debtor as Going Concern, preparing Information Memorandum, ensuring statutory compliances, preparing Expression of Interest (EoI) and finalising suitable Resolution Applicants (RAs) etc.

They can also undertake insolvency assignments.

#### Improve performance

"The decision to bring IPEs for subjecting these to peer review will improve the quality of their service and help in enhancing

the confidence of various stakeholders," Ashok Haldia, Chairman, IIPI Board, said.

Peer Review is conducted by experienced IPs and aims at benchmarking the professional services under review to help improve performance, decision-making and adoption of best practices and standards including ethics, compliance with relevant laws, established standards and principles with respect of professional assignments under the IBC.

The Peer Review is mandatory for IIPI's Insolvency Professionals (IPs) handling or having handled ten or more cases of Corporate Insolvency Resolution Process (CIRP)/ Liquidation in the past three years since the launch of the Peer Review Framework of IIPI in July 2022.

Currently peer review of more than 30 such professionals is under progress.

Institute of Insolvency Professionals of ICAI (IIPI), promoted by the Institute of Chartered Accountants of India (ICAI) is the largest frontline regulator under IBC in India with about 63 per cent of Insolvency Professionals as its Members.

IIPI actively works under the aegis of Insolvency and Bankruptcy Board of India (IBBI) to build professionals' capacity and provide policy inputs to regulators.

Press Trust of India  
Published on: 26 Jan 2024, 10:43 am



### Insolvency Professional Entities With IIPI To Get Access To Peer Review Mechanism

The Insolvency professional entities (IPEs) play an important role by offering support services to insolvency resolution professionals (IRPs), resolution professionals (RPs), and liquidators.

Insolvency professional entities that are enrolled as members of the Indian Institute of Insolvency Professionals of ICAI (IIPI) will now have access to the peer review mechanism.

Peer Review is facilitated by experienced insolvency professionals (IPs) to serve as a benchmark for professional services and adherence to standards and principles related to professional assignments under the Insolvency and Bankruptcy Code (IBC).

"The Indian Institute of Insolvency Professionals of ICAI has recently decided to extend the Peer Review Framework to Insolvency Professional Entities (IPEs)

that are enrolled as its members," the release said.

The Insolvency professional entities (IPEs) play an important role by offering support services to insolvency resolution professionals (IRPs), resolution professionals (RPs), and liquidators.

Their responsibilities include verifying and processing creditors' claims, finalising Committee of Creditors (CoC) meeting agendas, and ensuring statutory compliance, among other tasks.

"The decision to bring IPEs for subjecting these to peer review will improve the quality of their service and help in enhancing the confidence of various stakeholders,"

said Ashok Haldia, Chairman, IIPI Board.

In addition to providing support services, IPEs have the capacity to independently undertake insolvency assignments.

The peer review is obligatory for IPs associated with the Indian Institute of Insolvency Professionals of ICAI (IIPI) who have managed or been involved in ten or more cases of Corporate Insolvency Resolution Process (CIRP) or liquidation within the three years following the launch of the framework in July 2022.

Presently, peer reviews for over 30 such professionals are in progress.

## Media Coverage



### Insolvency professionals can play crucial role in pre & post resolution process: Report

PTI Last Updated: Jan 17, 2024, 10:22:00 PM IST

#### Synopsis

Exploring the advantages of addressing stress early, the report -- Roles of Insolvency Professionals Across Insolvency Value Chain from Incipient Stage till Post-Resolution Stage -- delved into areas to identify and control the initial signs of distress, providing valuable insights for effective intervention.

New Delhi: Insolvency professionals can play a crucial role in the pre and post-Corporate Insolvency Resolution Process stages, according to a report. The report by the Indian Institute of Insolvency Professionals of ICAI (IIPI) also highlighted various methods and processes to diagnose corporate distress at an early stage and suggested interventions to mitigate insolvency processes.

New Delhi: Insolvency professionals can play a crucial role in the pre and post-Corporate Insolvency Resolution Process stages, according to a report. The report by the Indian Institute of Insolvency Professionals of ICAI (IIPI) also highlighted various methods and processes to diagnose corporate distress at an early stage and suggested interventions to mitigate insolvency processes.

Exploring the advantages of addressing stress early, the report -- Roles of Insolvency Professionals Across Insolvency Value Chain from Incipient

Stage till Post-Resolution Stage -- delved into areas to identify and control the initial signs of distress, providing valuable insights for effective intervention.

It also underscores the importance of addressing stress early to prevent the escalation of financial difficulties, positioning companies for long-term success.

"This report will help the Insolvency Professionals (IPs) to manage the stress in companies at both, pre and post CIRP stages as they bring specialised expertise and experience within the scope of law and regulations as envisaged under the IBC," Ashok Haldia, Chairman, IIPI-Board, said.

IIPI is promoted by the Institute of Chartered Accountants of India. It is the largest frontline regulator under Insolvency and Bankruptcy Code in the country.



**PRESS TRUST OF INDIA**  
India's premier news agency

### Insolvency professionals can play crucial role in pre & post resolution process: Report

New Delhi: Insolvency professionals can play a crucial role in the pre and post-Corporate Insolvency Resolution Process stages, according to a report. The report by the Indian Institute of Insolvency Professionals of ICAI (IIPI) also highlighted various methods and processes to diagnose corporate distress at an early stage and suggested interventions to mitigate insolvency processes.

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Insolvency Professionals of ICAI (IIPI) also highlighted various methods and processes to diagnose corporate distress at an early stage and suggested interventions to mitigate insolvency processes.

Exploring the advantages of addressing stress early, the report -- Roles of Insolvency Professionals Across Insolvency Value Chain from Incipient Stage till Post-Resolution Stage -- delved into areas to identify and control the initial signs of distress, providing valuable insights for effective intervention.



Monday, January 22, 2024 | 05:02 PM IST | 1101

### Insolvency professionals can be crucial in resolution process: Report

*It also underscores the importance of addressing stress early to prevent the escalation of financial difficulties, positioning companies for long-term success*

Press Trust of India | New Delhi

1 min read Last Updated : Jan 17 2024 | 10:44 PM IST

Insolvency professionals can play a crucial role in the pre and post-Corporate Insolvency Resolution Process stages, according to a report.

The report by the Indian Institute of Insolvency Professionals of ICAI (IIPI) also highlighted various methods and processes to diagnose corporate distress at an early stage and suggested interventions to mitigate insolvency processes.

Exploring the advantages of addressing stress early, the report -- Roles of Insolvency Professionals Across Insolvency Value Chain from Incipient Stage till Post-Resolution Stage -- delved into areas to identify and control the initial signs of distress, providing valuable insights for effective intervention.

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"This report will help the Insolvency Professionals (IPs) to manage the stress in companies at both, pre and post CIRP stages as they bring specialised expertise and experience within the scope of law and regulations as envisaged under the IBC," Ashok Haldia, Chairman, IIPI-Board, said.

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## Media Coverage



### Cross-border insolvency framework should consider country-specific issues: IBBI Whole-Time Member

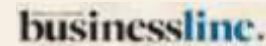
Cross-border insolvency framework should take into account country-specific circumstances to promote effective resolution of insolvency cases, Insolvency, and Bankruptcy Board of India IBBI Whole Time Member Sudhaker Shukla on Wednesday said.

PTI | New Delhi | Updated: 06-12-2023 20:41 IST | Created: 06-12-2023 20:41 IST

Cross-border insolvency framework should take into account country-specific circumstances to promote effective resolution of insolvency cases, Insolvency, and Bankruptcy Board of India (IBBI) Whole Time Member Sudhaker Shukla on Wednesday said. He emphasised on the need for learning from the best practices of foreign countries and contextualisation of those. Addressing the Insolvency Professionals (IPs) on the occasion of the 7th Foundation Day of the Indian Institute of Insolvency Professionals of ICAI (IIPI), Shukla said recent studies have shown that cross-border insolvency may not yield the desired results without a group insolvency framework. "Best practices of one country can't exactly be implemented in another. There have been large deviations from the UNCITRAL (United Nations Commission on International Trade Law) model in implementing Cross-Border Insolvency Framework from one regime to another wherein each and every regime has carved out exceptions as per their requirements," Shukla said. He asked the IPs (Insolvency

Professionals) to be ready for various upcoming challenges like digital assets, and cryptocurrencies to ensure that the Indian insolvency ecosystem continues to excel. Also, he suggested that the IPs should use their expertise in recommending appropriate measures for vulnerable corporates in expediting the resolution process.

Ashok Haldia, Chairman, of the IIPI-Board, highlighted various capacity-building activities of IIPI, stating that IBC is a very dynamic law and will change with the changing horizons of the national economy, global economy, and technology. IPs need to change, adopt, and adapt accordingly. He expressed hope that frameworks on group insolvency, cross-border insolvency, individual insolvency, and other areas will come soon. The Indian Institute of Insolvency Professionals (IIPI), promoted by the Institute of Chartered Accountants of India (ICAI), operates under the supervision of IBBI. Its primary focus is on enhancing professionals' capabilities in the field of insolvency and providing valuable policy recommendations to regulators. ■



### IBBI hints at simultaneous rollout of cross-border and group insolvency frameworks

Updated - December 07, 2023, at 12:21 PM. | New Delhi

**Best practices of one country can't be exactly implemented in other countries, says IBBI Wholetime Member Sudhaker Shukla**

BY KR SRIVATS

India may go in for simultaneous introduction of cross border insolvency and group insolvency frameworks, Sudhaker Shukla, Whole Time Member of IBBI has indicated.

This is however subject to necessary approvals coming for such an approach, Shukla said at an event to mark the 7th Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIPI) in the capital.

"Both can be rolled out simultaneously if approvals come through. Increasingly, we realise that without group insolvency the aspect of cross insolvency will not work at all. So perhaps group insolvency needs priority to cross border. That wisdom is there," Shukla said.

Shukla's remarks are significant as international bodies had earlier recommended that India can go ahead and introduce cross border insolvency framework without having a group insolvency framework in place.

Shukla also said that India is now confident to say what kind of regime the country would be having under cross border insolvency framework moving forward. "We are much more informed than earlier," he added.

"Best practices of one country can't be exactly implemented in another regime. There have been large deviations from UNCITRAL (United Nations Commission on International Trade Law) model in implementing Cross Border Insolvency Framework from one regime to another wherein each and every regime has carved out exceptions as per their requirements," Shukla said.

Shukla asked the insolvency professionals (IPs) to be ready for various upcoming challenges like Digital Assets, Cryptocurrencies, Cape Town Convention, etc., to ensure that Indian insolvency ecosystem continues to excel. He also suggested that the IPs should use their expertise in recommending appropriate measures for vulnerable corporates in expediting the resolution process.

Ashok Haldia, Chairman, IIPI-Board, highlighted various capacity-building activities of IIPI stating that IBC is a very dynamic law and will change with the changing horizons of the national economy, global economy, technology. IPs need to change, adopt and adapt accordingly.

He appreciated the progressive approach of IBBI and expressed the hope that frameworks on group insolvency, cross-border insolvency, individual insolvency and other areas will come soon.

The Statesman, New Delhi, 24th December, 2023

### IIPI's study group report

To appreciate and critically analyse the reasons of time delays and haircuts along with the extent to which these are attributable to the roles of IPs, Indian Institute of Insolvency Professionals of ICAI (IIPI) recently constituted a Study Group on Contribution of Insolvency Professionals in Resolution under IBC & under the Chairmanship of CA. Subodh Agarwal, former president- The Institute of Chartered Accountants of India (ICAI), and an experienced Insolvency Professional

(IP). The report of the said study group has been recently released and published by IIPI.

The Study Group Report presents a critical perspective on the contributions and role of an IP in reference to (a) Stakeholders awareness and improvements in Financial Governance frameworks; (b) Timelines of Resolution Process; (c) Timelines of Liquidation Process; (d) Value Maximization in Resolution; and (e) Value Maximization in Liquidation.



## Media Coverage



# 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 *IIIPICAI*, 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 5<sup>th</sup> 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](mailto: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](mailto: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

## Services

**Indian Institute of Insolvency Professionals of ICAI (IIPI)**

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

Sl No	Department	Email Id
1	Enrolment & Registration as an Individual IP	ipenroll@icai.in
2	IPE Enrolment & Registration as an IP	ipe.enroll@icai.in
3	Program	ipprogram@icai.in
4	Authorization for Assignment	ip.afa@icai.in
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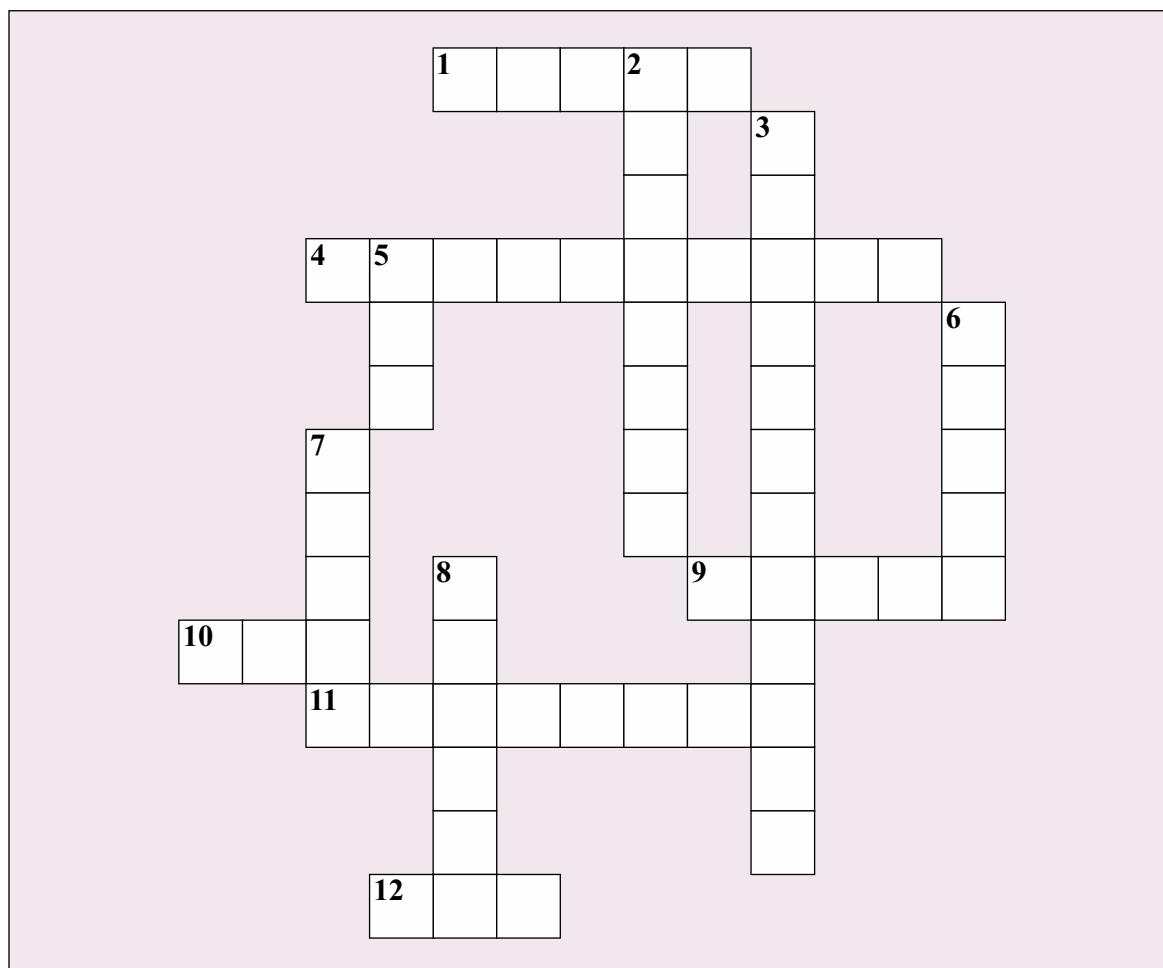
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## IBC Crossword



## Across \_\_\_\_\_

- 1: The IBBI may grant renew certificate of registration to the Information Utility in\_\_\_\_\_
- 4: An information utility holds financial information as a\_\_\_\_\_
- 9: The RP must provide a final list of qualifying debts to the AA at least \_\_\_\_\_ days before the moratorium period ends.
- 10: The Order for cancelling suspending the Certificate of Registration shall be made only by\_\_\_\_\_ of IBBI
- 11: \_\_\_\_\_ Objects are exempt from the moratorium under the IBC, 2016, as per the MCA notification issued on October 23, 2023
- 12: The accounts of the IBBI shall be audited by the \_\_\_\_\_

## Down \_\_\_\_\_

- 2: A Registered Partnership firm may be recognized as an IPE if \_\_\_\_\_ of the partners are registered as IP.
- 3: \_\_\_\_\_ largest U.S. retailer of music instruments and equipment files for bankruptcy.
- 5: The Corporate Social Responsibility Committee must have at least \_\_\_\_\_ Independent directors.
- 6: The Bankruptcy trustee shall not adjourn the meeting of the creditors for more than \_\_\_\_\_ days at a time.
- 7: For Becoming Registered valuer application to the authority must be done in \_\_\_\_\_ of Annexure II.
- 8: A person claiming to be a creditor in a class shall submit claim with proof to the IRP in electronic form in \_\_\_\_\_ of the Schedule I

## Answer Key: IBC Crossword, October 2023

- |                |                 |              |
|----------------|-----------------|--------------|
| 1. Thirty Nine | 5. NARCL        | 9. Workman   |
| 2. Four        | 6. Five         | 10. Benitago |
| 3. Three       | 7. Seventh      | 11. IBBI     |
| 4. One         | 8. Amitabh kant | 12. Form G   |



## 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](mailto:iiipi.journal@icai.in). The same will be considered for publication in the upcoming edition of the journal, subject to approval by the Editorial Board. The articles sent for publication in the journal should conform to the following parameters:

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- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
- The article should:
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  - 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.
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