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THE RESOLUTION PROFESSIONAL

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

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

PREPARING FOR NEW AGE IBC

ABOUT IIIPI

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

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

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

OUR VISION

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

STRATEGIC PRIORITIES

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

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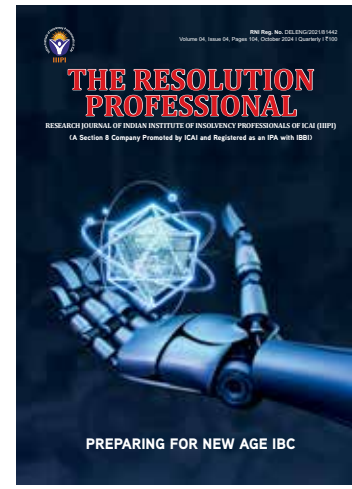

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From Chairman- Editorial Board

CA. Ranjeet Kumar Agarwal
President, ICAI
Chairman, Editorial Board-IIIPI

Dear Professional Colleagues!

Since 2016, the IBC regime has emerged as an enabler of sustainable development by ensuring the resolution of financially stressed corporate debtors, value maximization, promoting entrepreneurship, making credit availability, and balancing interests of stakeholders. It has helped in the revival of several businesses and also ensured the release of idle resources back into the economy if revival was not possible.

ICAI has been active partner and one of the frontrunners in India's journey of economic development from beginning. As Indian Institute of Insolvency Professionals of ICAI (IIIPI) is marking its 8th foundation day on 25th Nov. 2024, it is heartening to note the IIIPI's contribution as the largest Insolvency Professional Agency (IPA) in India, towards building capacity of stakeholders and creating policy inputs for strengthening the ecosystem. IIIPI holds confidence of about 63% Insolvency Professionals (IPs). Furthermore, about 55% of IPs are members of ICAI who have conducted majority of the assignments under the IBC thereby contributing a lion's share in success of the IBC regime.

The World Bank in its latest report 'India Development Update: India's Trade Opportunities in a Changing Global Context' has revised its growth forecast for India to 7 percent in FY24-25 and predicted strong economic growth in FY25-26 and FY26-27. Thus, by further evolving and strengthening the insolvency framework in the country we will be able to significantly contribute to make India a developed nation by 2047.

Since the inception of the IBC, about 3,293 financially stressed companies have been rescued so far out of which 1005 have been rescued through resolution plans, 1192 through appeal or review or settlement and 1096 through withdrawal till June 2024. The creditors have realized ₹3.40 lakh crores through the resolution plans till June 2024. In addition to strengthening the banking system, the IBC regime has been playing a great role in the Indian economy by ensuring resumption of operations, continuation of viable companies and releasing the idle resources back into the economy.

IIIPI's capacity building programs, research initiatives and publications have received accolades across stakeholders. The Resolution Professional has increasingly emerged as a credible platform for sharing knowledge among stakeholders of the IBC ecosystem for its enriching content particularly research articles, case studies, interviews and key takeaways. I am thankful to the authors of this edition and hope that the journal will meet your expectations.

Wish you a happy reading.

CA. Ranjeet Kumar Agarwal
President, ICAI
Chairman, Editorial Board-IIIPI

From Editor's Desk

Dear Member,

Insolvency profession and professionals form the bedrock of stress resolution effort as the salutary objective under IBC. Regulatory environment of IP/IPEs, therefore, assumes importance for its far-reaching implications. Indian Institute of Insolvency Professionals of ICAI (IIIPI) organized a physical conference on the theme "Improving Regulatory Framework Under IBC and Challenges Before IPs / IPEs" on September 17, 2024, in New Delhi. Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) graced the Inaugural Session as the Chief Guest and shared his thoughts on expediting the IBC processes and ensuring better resolution of corporate debtors in distress. During the conference, several dignitaries provided pertinent suggestions for further strengthening the IBC regime. In this edition of journal, we have published the 'key takeaways' from the addresses of dignitaries for dissemination of the same to wider base of IPs and other stakeholders.

IBBI, as the principal regulator under IBC, is on the forefront of evolutionary changes in the ecosystem. In this edition, we are carrying an exclusive interview of Shri Sandip Garg, Whole Time Member-IBBI wherein he has shared key insights about the evolving dispensation including the proposed integrated technological platform for the IBC ecosystem.

Besides, this edition has various Research Articles on contemporary topics and a Liquidation Case Study.

The opening article 'Unravelling the Ambiguity: The Conundrum of Preference of Payment to Statutory Dues Under IBC Law' delves into the complexities surrounding the preference of payment for statutory dues under the IBC. It also provides a comparison of IBC's approach to address statutory dues with insolvency frameworks in developing countries. In the second article, 'MSMEs Need a Second Chance: Make Pre-Packs Simpler, Less Rigid and Accessible', the author explains various challenges before the PPIRP for MSMEs in India and presents comparative analysis with foreign jurisdictions. The third article, 'How can the Objectives of the Insolvency and Bankruptcy Code (IBC) be achieved?' provides an exhaustive review of the IBC and highlights some practical issues which needs to be addressed to ensure speedy resolution of the corporate debtors under the IBC. In the fourth article 'The Role of Third-Party Funding in Insolvency Litigation in India', the author analyses various aspects of Third-Party Funding (TPF) for IBC litigations and provides some insights from the best practices for TPF frameworks in developing economies. The concluding article, 'Filing in NCLT: A Key for Timely Resolution' explains various loopholes at the level of NCLT Registry and suggests measures to resolve them.

Besides, the journal also contains its regular features, i.e., Legal Framework, IBC Case Laws, IBC News, International Development on Insolvency Law, Know Your Ethics (Avoidance Transactions), IIIPI News, IIIPI's Publications, Media Coverage, Help Us to Serve You Better, List of Successful Peer Reviewed IPs and IPEs, Services, Crossword etc.

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

Wish you a happy reading.

Editor

Exclusive Interview of Shri Sandip Garg, WTM, IBBI on the Evolving Landscape of IBC

Shri Sandip Garg

Whole Time Member (WTM)

Insolvency and Bankruptcy Board of India (IBBI)

Shri Sandip Garg took charge as WTM, IBBI on October 27, 2023. He has a multi-disciplinary educational background in Civil Engineering, Industrial Engineering and Management, Law, Finance, and Taxation and allied laws. He has received numerous awards for excellence throughout his academic journey.

Shri Garg served the Indian Railways in Indian Railways Service of Engineers from January 1990. He then served as a member of the Indian Revenue Service from 1992 for over 31 years in various capacities in Income Tax Department and Central Board of Direct Taxes. His last assignments in the Income Tax Department were as Principal Commissioner of Income Tax and Commissioner of Income Tax.

He also 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 an Exclusive Interview with IIIPI for The Resolution Professional, Shri Garg shared his views on evolving landscape of the IBC. ***Read on to know more....***

IIIPI: How will you evaluate the performance of operation of Insolvency and Bankruptcy Code (IBC) specially in light of delay in admission and resolution as against the timelines given in the Code?

Shri Garg: The snapshot of outcomes of IBC is presented in table below:

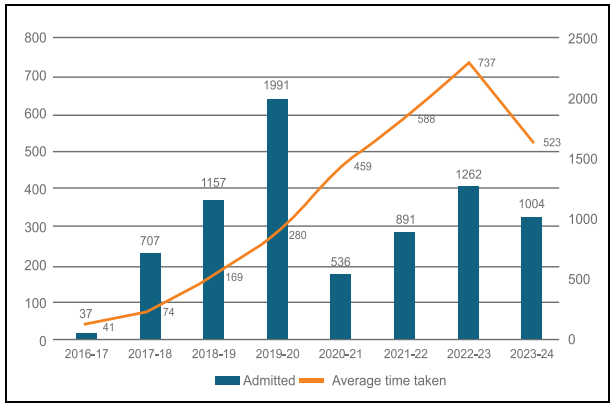
Particulars	Number	Impact
Pre-admission Case Disposal	28,818	₹10,22,485 crore of underlying default addressed
Resolution	1,068	Realizable Value- ₹3,55,375 crore • 161% of liquidation value • more than 31 % of claims
Settled/ Withdrawn/ Closed	2,341	₹ 98,845 crore
Liquidation Completed	1,113	₹10,445 crore realized • Assets re-allocated to better use
Total Disposal	33,340	Total amount: ₹14,87,150 crore

In the background of above data, the highlight of major achievements of IBC is the resolution of 1068 insolvency cases imparting monetary benefit of realisation of more than ₹3.55 lakh crores to the creditors. This amount does not include CIRP costs and potential future recoveries, such as equity, proceeds from corporate and personal guarantees, funds infused by resolution applicants, and recoveries from avoidance applications. This is apart from the non-monetary benefits also such as preservation of jobs, better utilisation of resources, etc. The recent study by IIM Ahmedabad reflects that the companies once resolved give better outcomes.

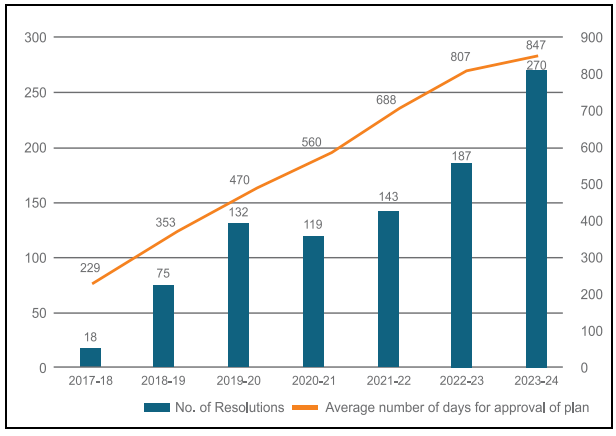
Besides, more than 2300 cases have been settled or withdrawn or closed after admission and amount involved therein is about ₹1 lakh cores. Even, these companies are continuing as going concern after resolution of stress therein. One of the less noted and having substantial impact of the IBC has been the behavioural change towards payment of debts. More than 28,000 cases have been withdrawn before admission where amount involved exceeds ₹10 lakh crores. So, in these cases, threat of insolvency has prompted the settlement of cases even before admission.

The rights provided to the creditors under the IBC, post initiation of insolvency, has resulted in change in the behaviour of the debtor, starting from the time of taking debt, to repayment of such debt and even in dealing with it at the time of stress. There is a fear on part of the debtor to resolve the impending crisis before the same results in an insolvency situation. This has resulted in the declining debt to equity ratio of the Indian companies and sharp reduction in NPAs of Indian banks. The twin balance sheet problem has been tackled to a large extent through advent of IBC.

Even when the application for insolvency is filed, the corporate debtor tries to avoid the initiation of insolvency through out-of-court settlement mechanisms as well as by litigating the matter tooth and nail. This often leads to prolonged delay in admission of insolvency cases. Number of cases admitted to insolvency and resolved in each financial year along with average time taken in days are as below:



Admissions



Resolutions

So, after excluding the data for first year which is not for a complete financial year, average number of cases admitted to insolvency has been around 1000 cases per year and average number of cases in which resolution plan has been approved each year has been about 150 cases per year excluding the first 2 financial years when there were not enough cases for approval of resolution plans. Another thing which can be noted is increasing number of approvals of resolution plans from 2021-22 onwards with substantial increase in last 2 years. We can also observe that the average number of days taken for admission and average number of days in which a case is resolved are increasing over the years.

As per information provided by NCLT in response to a Parliament question, a total of 15,186 cases have been filed in NCLT under IBC from 01.01.2020 to 31.01.2023 involving an amount of ₹13,18,296 crore. If we consider case filings and disposals etc. during the periods thereafter, about 9000 cases will be pending at present. An amount of approximately ₹13 lakh crores can be taken as the amount involved in the NCLT cases.

As of now about 8,000 cases have been admitted and 28,000 cases have been disposed of prior to admission. Though, number of cases disposed of prior to admission is on the decline now because of change in default threshold to ₹1 crore from ₹1 lakh, still we can take on an average about 1000 cases being admitted every year and about 2000 cases being withdrawn prior to admission. With these averages, we will need about 3 years to dispose of the pendency of 9000 cases. This does not consider the number of cases being added every year. Considering this, the average number of days taken for admission is likely to increase unless a greater number of newly filed cases (after increase in default threshold to ₹1 crore) are admitted and more cases filed earlier (before increase in default threshold to ₹1 crore) are dismissed prior to admission which is a likely scenario as the default threshold does reflect on the severity of stress lessening the chances of settlement before admission. This does not reflect very well against the 14 days limit set out in the Code for admission of case.

If we take an amount of approximately ₹13 lakh crores involved in the NCLT cases and recovery rate of 30%, these cases have potential of recovery of approximately

₹4 lakh crores. Delay of a year in recovery of this amount results in opportunity cost of ₹40,000 crores to the creditors considering 10% per annum as the cost of funds. Since, delay is more than a year as against the timelines given in the Code, opportunity cost involved is even higher.

> **"Though, every other pillar of IBC has been established after IBC like IBBI, IU, IPA, IPs and has increased its capacity, capacity of NCLT and NCLAT are the same as that before IBC."**

Considering, this enormous loss of opportunity cost, there is a case for increasing the strength of NCLT members from sanctioned strength of 62 which was sanctioned at the time of formation of NCLT for dealing with cases related to Companies Act only. Actual strength is less than 62 most of the time because of the time lag observed in appointment of members after post falling vacant and relatively shorter tenure of NCLT members. Though, every other pillar of IBC has been established after IBC like IBBI, IU, IPA, IPs and has increased its capacity, capacity of NCLT and NCLAT are the same as that before IBC. Considering the same, Hon'ble Finance Minister has already announced about setting up additional benches in her budget speech in July 2024. So, I am very hopeful that with this increase in strength, capacity issues of tribunals will stand addressed and performance of IBC will become even better, and pendency will come down at a rapid pace.

IIIPI: What are main issues causing hindrance in the optimal performance of the IBC ecosystem besides large pendency of cases and what can be done to tackle them?

Shri Garg: It's a very broad question because there are so many issues. I'll deal with following five main issues:

A. Lack of clarity in priority of distribution
B. Excessive litigation
C. Non-realisation of optimal value of assets
D. Resolution of real estate cases
E. Making monitoring systems more efficient

A. Lack of clarity in priority of distribution

Distribution mechanism should be absolutely clear in theory and free from arbitrariness in practice to avoid disputes as it decides what the creditors will receive and therefore involves substantial rights of creditors. If there is lack of clarity in that mechanism or even perceived arbitrariness in the minds of creditors, they approach tribunal, appellate tribunal and then the apex court leading to excessive litigations we see at present. At present, clarity is missing in three major areas.

First, lack of clarity is in treatment of statutory dues. Apex court in the Rainbow Papers case has held that the statutory dues can be secured creditors as well and where the corresponding statute provides for the claim to have charge on the assets, they will be treated as secured creditors u/s 53(1)(b)(ii). However, apex court in a later case in Paschimanchal Vidyut Nigam Ltd., observed that the statutory dues will be considered lower in the waterfall u/s 53(1)(e)(i) or (f) irrespective of whether they are secured by operation of law. However, review petition filed in Rainbow Paper failed as the apex court held that the scope of review is limited, and no case has been made out to bring it with in those parameters of review. So, there is lack of clarity regarding the place of statutory dues in the waterfall.

Second, lack of clarity is in respect of treatment of priority of charge. In the credit industry, there is well established practice of priority of charge. For creation of second charge on the property, NOC of first charge holder is required and it is given on the basis that first charge holder will get priority in payment of its dues. However, in the matter of Technology Development Board case, the NCLAT has interpreted section 53(1)(ii)(b) to mean that inter-se priorities amongst the secured creditors will not remain valid and will not prevail in distribution of assets in liquidation under section 53. This order is under challenge before the apex court which has granted stay on the operation of the order. So, there is lack of clarity about treatment of inter-se priorities of the creditors while undertaking distribution under section 53.

Third, there is lack of clarity on whether dissenting secured financial creditor is entitled to payment as per the liquidation value of its security interest or all secured

creditors are entitled to be paid as per total security without reference to their individual security interest. As per the DBS Bank case, the Hon'ble SC has said that a dissenting secured financial creditor is entitled to payment as per the liquidation value of its security interest. However, considering the divergent view in the matter of India Resurgence ARC vs. Amit Metaliks case, it has asked for referring the matter to a larger Bench. The matter is yet to be referred to a larger bench.

> **"Since distribution is dependent on the final word of apex court on these issues, there is lot of uncertainty about the distribution."**

Since distribution is dependent on the final word of apex court on these issues, there is lot of uncertainty about the distribution. So, at present, in whatever way the distribution is decided, the aggrieved party always litigates as the matters have not yet reached finality. Another way to bring certainty on these issues, is through an amendment to the Code to clarify the above issues. Same have also been addressed in the discussion papers floated by Ministry for amendments to the Code.

B. Excessive Litigation

Section 53 provides the waterfall mechanism through which that distribution takes place during liquidation. Section 30 leaves that distribution to the discretion of 2/3rd majority of creditors voting in the committee of creditors (CoC). Section 30(2) provides a safeguard to the minority dissenting creditors (if the distribution is not fair) that they shall not receive an amount less than what they would have received in the eventuality of liquidation of that company. So, normally, the distribution of liquidation value is made to all the creditors. However, the surplus of resolution plan value over liquidation value is at the discretion of the majority of creditors controlling 2/3rd of the vote of CoC. Many times, it leads to unequal treatment of similarly situated creditors leading to excessive litigations.

In one real estate case, resolution plan provided that allottees who have paid less than or up to 20% shall be refunded the amount paid by them. They were denied the allotted real estate unit even when there was no default in payment by them. While other allottees paying more than 20% were allotted the real estate unit. This effectively created a sub-class within a class of creditors (allottees) and this sub-class has been treated unfairly just because they were in a minority and could not influence the proceedings of CoC. The CoC did not record any reasons for such unjust classification.

Such unjust treatment to a minority category of creditors in the resolution plan has led to incessant litigation by aggrieved party at various fora starting from NCLT and all the way up to the apex court. The litigation creates uncertainty for the resolution applicant as the higher judiciary forum may decide the case either way. Further, it leads to delay in finalisation of claims and implementation of resolution plan. Such uncertainty and delay are counterproductive to the objectives of the Code. Since, creation of such classes among the creditors is not barred under the Code, it leads to unfair treatment of minority creditors. Therefore, there is a need to address this cause of excessive litigation. The proposal in the discussion paper issued by Ministry which proposes for distribution of surplus of resolution plan value over liquidation value between all creditors in the ratio of their unsatisfied claims, may be able to resolve it.

Also, there are litigations by unsuccessful resolution applicants. These litigations can be minimised if committee of creditors uses a transparent challenge mechanism for selection of successful resolution applicant.

Also, it has been observed that promoters, unsuccessful buyers, claimants etc. litigate with no reasonable prospect of success, to stall the process. These proceedings take up a substantial time of the AA, which can be utilised for other matters, resulting in draining of resources for the concerned parties and causing delays. Hence for discouraging these frivolous and vexatious litigations, the discussion paper of the Ministry proposes to empower AA to impose a penalty of not less than one lakh rupees per day, but which may extend to three times the loss caused or unlawful gain, whichever is higher, for such litigations. Linking of such penalty to the loss caused may prove to be effective deterrent for such litigators.

> **It is observed that several objections regarding the distribution of proceeds are raised when the resolution plan is pending approval before the AA.**

It is observed that several objections regarding the distribution of proceeds are raised when the resolution plan is pending approval before the AA. Since this requirement is a precondition for plan's approval, the process cannot move forward, and the successful resolution applicant cannot take over the stressed assets and make it productive. Therefore, it has been proposed in the discussion paper issued by the Ministry that to segregate the concept of the resolution plan from the manner of distribution of proceeds received from the resolution applicant so that the resolution plan chosen may be approved, and inflow of funds can take place. These funds can be distributed later after AA deals with the objections regarding distribution of proceeds. This will not only solve the problem of excessive litigation at the source but also will deal with the delay in resolution of stressed assets because of litigation.

C. Non-realisation of Optimal Value of Assets

Non-realisation of optimal value of assets is mainly on two accounts. First, uncertainty in information about the assets to their buyers. Second, not segregating/ grouping the assets for better marketability.

C.1 Uncertainty in information about the assets to their buyers

A typical example of uncertainty in information about the assets is 'used car' market where the buyers being uncertain about the user car's quality offer less value. Providing warranty, inspection or more information reduces uncertainty resulting in better offers. So, any effort in the direction of reducing that uncertainty will result in realisation of better value. Here are four situations where we can bring down uncertainty in information about the assets

(a) **Valuation Reports:** At present, the members of CoC are provided fair value and liquidation value after obtaining confidentiality undertaking and after the receipt of resolution plans. Since this information is primarily available only with the IP and valuers, it creates an information asymmetry. It also dissuades genuine resolution applicants, to participate who fear that some other resolution applicants close to these persons may have better information. So, disclosure of valuation reports with fair value will attract more serious bidders and result in better value. Though IBBI has provided for disclosure of fair value in the IM, the disclosure of all information which is available to the valuers, to the stakeholders in the process through an IT platform, will reduce uncertainty about the second-hand assets, create better confidence among the resolution applicants about sharing of information, and lead to better offer of value in the plans.

(b) **Use of eBKray platform for sale of assets:** Recently, a module has been developed within the eBKray platform to facilitate the listing and auction of assets under IBC. This centralized platform will list asset memorandum giving detailed information on corporate debtor's assets, including photographs, videos, and geographical coordinates. By enhancing transparency and efficiency through advanced technology, eBKray aims to increase bidder participation, streamline operations, and maximize returns for creditors while improving outcomes for bidders. Since, it will be a single listing platform to host all assets being sold in liquidation cases, it will aggregate all buyers interested in stressed assets and will result in better realisation.

(c) **Making Information Memorandum (IM) public:** The Information Memorandum, which serves as the best document for informed decision making by prospective resolution applicants, is presently a confidential document which cannot be disclosed without confidentiality undertakings though most of the information in IM is not confidential. Besides, it has been left to the understanding of the person receiving the IM that which portion of it is confidential. To make more information available to wider audience, IM can be divided into two

parts – one part can be disclosed for larger public dissemination and the confidential part can be disclosed upon submission of undertakings. This availability of better information to wider audience can result in drawing more resolution applicants and resultantly better competition amongst them. This idea needs to be debated further.

> **It is observed that several objections regarding the distribution of proceeds are raised when the resolution plan is pending approval before the AA.**

(d) Attachments under PMLA: The attachments under the Prevention of Money Laundering Act, 2002 (PMLA) also dissuade prospective resolution applicants because of possible enforcement actions and prolonged legal battle, potentially impacting the value they are willing to offer for the assets. Section 32A protects the assets of the CD which are covered in the approved resolution plan from any attachment, seizure, retention and confiscation in case of change in management. However, the issue is not yet settled as the decision of Bombay HC in Shiv Charan case is under challenge before the apex court. An order of apex court will bring more clarity about immunity from any adverse action and will give confidence to the resolution applicants to offer better value.

C.2 Segregating/ grouping the assets for better marketability

The erstwhile management grow their businesses as per their unique needs and opportunities. They may have entered into diverse set of businesses or in various geographies depending on the management capability available to them in various areas of their liking. For example - a company managed by a family of three brothers may have entered into three unrelated businesses e.g. textiles, tyres and real estate as the three brothers may have interest in these three different areas. These businesses may even be at different locations. But it may be difficult to find a buyer who is interested in all these diverse businesses of the company at different locations. A recent example can be of Jaiprakash Associates which has diverse businesses – cement, hotels, real estate, power at diverse locations.

Also, a family may also manage the business as a group where land may be owned by one company, or directors/ promoters and factory may have been set up by another company. Now, the Code treats the company as a single unit, but the business which is viable and can fetch ready buyers may be part of a company, or they may span over several entities. So, if the Code can allow these assets to be demerged or merged to find willing buyers, greater value may be realised. There are three proposals in the discussion paper issued by the Ministry which address these issues. If they come through, we may find more buyers and more value for the assets.

One proposal is for empowering the CoC and Adjudicating Authority to approve separate plans for separate business parts of the company in appropriate cases. This proposal will require the manner of distribution to be delinked from the inflow of funds in various plans as the inflow of funds will be for the parts of company and may be at different time periods while the distribution will be to the creditors of the company as a whole.

Another proposal is for resolving inter-dependent entities together using the concept of group insolvency. There are situations where a company is linked to one or more companies in terms of operations and finances and have inter-dependent assets, all of which may be in financial distress. An interlinked third proposal is for resolving the company and guarantors to its loans together if they have interlinked assets for example - land being owned by guarantors while the factory has been set up by the company. If we resolve them together, we may find more buyers.

D. Resolution of real estate cases

Real estate cases involve allottees, many of whom have used their life's saving for purchasing a home. Therefore, resolution of these cases and protection of their interest within the legal framework is very important. This has prompted measures like clarifying that the allottee is a financial creditor. IBBI has enabled project-wise resolution so that it is easier to resolve them. IBBI has also excluded units in possession of allottees from the

definition of liquidation estate recognising the concept of beneficial ownership. It has protected their interests. IBBI also wants to allow registration of agreements and delivery of possession of units to the allottees as the same are current assets in a real estate case which can be sold or parted with for running the business as a going concern. IBBI has also increased the duties and responsibilities of authorised representative to facilitate the allottees. IBBI also wants to provide for facilitators for representing various sub-classes with in the allottees class so that the problems of various sub-classes can be represented in a more efficient and democratic manner. But several problems still remain.

One of the problems frequently faced is that only certain project of real estate company faces stress while other projects are not facing any problems. The admission of such a company to insolvency puts at risk the execution of other projects as well. The judiciary has experimented with the concepts like reverse CIRP and project-wise admission in resolving these cases. Reverse CIRP involves execution of projects by the promoter but under the supervision of a resolution professional and the court. Project-wise admission involves admission of specific project(s) under stress to insolvency while the other projects continue to be executed by the promoter. There is lack of clarity about how the creditors will be identified against these specific projects if the company has certain financial and operational creditors who have supplied money or land or goods to company in general and not to specific project(s). Further, there are issues regarding how compliances of the specific project(s) under insolvency and the company will be dealt with. How will the diversions of money from those specific project(s) but within the company be dealt? How will the issue of security of a creditor who has lent to the company but has security over the assets of specific project(s) be dealt with. I believe, we need to have a framework for dealing with project-wise insolvency instead of dealing with them on a case-by-case basis. The discussion paper issued by the Ministry proposes to have a separate framework for dealing with the same.

Another problem faced is the non-cooperation by authorities in granting renewals of lease, registrations, maps etc. since their past dues have not been paid. These

“Income tax department has introduced section 156A which provides for reduction of demand for income tax in terms of resolution plan as approved by the AA.”

in turn reduce the marketability of the projects resulting in plans of lower value. The authorities are still treating the default of their past dues at the time of insolvency as default for withholding these renewals. While departments like Income Tax and GST have come to terms with the operation of IBC and understand the difference between past dues (up to the insolvency commencement date) and current dues, several other statutory authorities still hold up permissions for non-payment of past dues. They fail to understand that past dues will be dealt as per section 53 and section 30, while current dues are treated as CIRP or liquidation cost and are paid in priority. So, permissions should not be withheld for non-payment of past dues if the current dues are being paid. Income tax department has introduced section 156A which provides for reduction of demand for income tax in terms of resolution plan as approved by the AA and as modified by the appellate authorities. Introduction of similar provision by other statutory authorities in their respective statutes will sensitise the officers in those authorities and will help them differentiate between past dues and current dues.

E. Making monitoring systems more effective

As per the Code, resolution professional becomes *functus officio* after approval of resolution plan by the AA as it was envisaged that thereafter successful resolution applicant (SRA) will fulfil its obligations under the plan creditors will get paid, and SRA will assume control of the company. However, in practice, the plans are complex and contain several terms and conditions which involve action on part of several parties over a long term. Besides, at times approval of the plan is challenged in appellate forums. So, implementation of the plan is contingent on several events. Therefore, there is a need of a monitoring committee to supervise and monitor the implementation of plan. The Code does not have any specific provision for monitoring committee. However,

the plan has to have provisions to ensure its effective implementation. So, several plans have the provision of a monitoring committee. However, all plans don't have it. Although, CIRP regulations have provided for the same, but it is optional. In a recent case of Jet Airways, the apex court has commented on the need of a monitoring committee with powers and responsibilities so that there is smooth implementation of plan. The problems, if any, in implementation are brought to the attention of AA and other stakeholders. As directed by apex court, this issue is now being examined in IBBI for further action.

> **"After the launch of iPIE, the forms submitting the information of processes to IBBI can also be made more comprehensive."**

Another monitoring system in IBC ecosystem is that of monitoring the professionals and the processes. IBBI primarily relies on complaints for monitoring, and if many of these complaints are motivated by personal gain or intent to disrupt rather than genuine concerns, this could indeed lead to a significant waste of the IBBI's resources. Development of a system which can assign a credibility score to complainant based on various factors, including their track record of filing accurate complaints, specific details and evidence provided, and the presence of potential conflicts of interest, may result in better outcome. This would allow the IBBI to allocate resources effectively and prioritize investigations based on the credibility of the complainant.

Hon'ble Finance Minister (FM) has recently announced in her budget speech that an Integrated Technology Platform will be set up for improving the outcomes under IBC, thereby ensuring the consistency, transparency, timely processing and better oversight for all stakeholders. In this regard, the iPIE (Integrated Technology Platform for IBC Ecosystem) project has been conceptualised. It aims to enhance the digital processes adoption and facilitate seamless sharing of information among the different pillars of IBC. With the implementation of iPIE project, the existing IT systems of IBC pillars such as NCLT, NCLAT, MCA, IBBI, IU, and IPs, are expected to experience smoother, faster, and more efficient interoperability. After the launch of iPIE, the forms submitting the information of processes to IBBI can also be made more comprehensive so that more structured information is available with IBBI to do preliminary screening of the complaint to weed out the frivolous ones at the threshold. It may also allow the IBBI to detect exceptions where the process is held up because of various reasons or to detect anomalies at an early stage, resulting in a faster response to deal with them.

I'm very hopeful about the outcome of announcements of Hon'ble FM in her budget speech for setting up the integrated technology platform for IBC, appropriate changes to the IBC, reforms and strengthening of the tribunal and appellate tribunals and setting up of additional tribunals. These measures will make IBC ecosystem much more effective and efficient.

Key Takeaways from Addresses of Dignitaries in the Physical Conference Organized by IIIPI on September 17, 2024 in New Delhi

Indian Institute of Insolvency Professionals of ICAI (IIIPI) organized a physical conference on the theme "Improving Regulatory Framework Under IBC and Challenges Before IPs / IPEs" on September 17, 2024, at India International Center (IIC), New Delhi.

Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) graced the Inaugural Session as the Chief Guest and enlightened the stakeholders with his vision on expediting the IBC processes and ensuring better resolution of corporate debtors.

The Guest of Honour Dr. Shrikant Baldi, Chairperson, Himachal Pradesh (HP) – RERA, underscored the importance of constructive collaboration between the IBC and RERA in the greater interest of homebuyers. Ms. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA), CA. Ranjeet Kumar Agarwal, President, the Institute of Chartered Accountants of India (ICAI) and Dr. Ashok Haldia, the then Chairman, IIIPI also shared their views with the participants.

Chief Guest Shri Ravi Mital, Chairperson, IBBI addressing the Conference on 'Improving Regulatory Framework Under IBC and Challenges Before IPs/IPEs' organized by IIIPI on September 17, 2024.

The inaugural session was followed up with special addresses by Shri Sudhaker Shukla, the then WTM-IBBI and Shri Sandip Garg, WTM-IBBI. Thereafter, presentations were made on study group reports – Reforming the Insolvency Law: Key Recommendations for Amendments and Challenges Before IPs/IPEs, which was followed by interactions with participants. For wider dissemination of this intellectual discourse, the key takeaways of the conference are presented as below:

Welcome and Opening Address

Dr. Ashok Haldia
The then Chairman, IIIPI

1. The purpose of this conference is to get specific feedback from IPs on various challenges faced by them in resolving the corporate debtors.
2. Areas of concern may span across macro level such as Group Insolvency, Cross-Border Insolvency, and mediation to micro level comprising regulatory issues concerned with IPs or IPEs.
3. In the recent past the IBBI and IIIPI have conducted a number of interactive sessions with IPs. Pursuant to the same and the directions of the Chairperson of IBBI, a committee was formed under my

Chairmanship involving representatives from all the three IPAs, to examine duplicity in compliances by IPs and to suggest improvement in regulatory regime. Taking cue from such study, IBBI recently proposed a revamped set of CIRP compliance forms.

4. The second set of recommendations on the regulatory regime shall be presented in today's conference.
5. Shri Ravi Mittal and Dr. Shrikant Baldi have consistently asked us to clearly define our problems. Their approach has been quite straightforward 'Tell us what you expect us to do, and if it's within our capacity, we will certainly take action.'
6. Coordination with the IBC and RERA is important in resolving real estate companies. We are discussing diverse options such as including homebuyers and landowners in the CoC, clarifying the rights and responsibilities of stakeholders including interim finance, assigning more responsibilities to the banks, etc. to complete real estate projects.
7. IIIPI has separately explored the potential role of IPs in preventing financial sickness and developing standards for IPs to interact with the CoC.
8. I request the IPs to take advantage of the Peer Review Mechanism of IIIPI in building and enhancing their brand value.
9. The difference in fees of professionals is prevalent across professions. While quoting their fees or pressing for reforms, the IPs should articulate their views on the line that it is required to ensure quality of the service and is in the best interest of the IBC processes.

Inaugural Session Address

CA. Ranjeet Kumar Agarwal
President- ICAI

1. IBC has been one of the finest economic reforms in India in the past few years, in addition to the GST. India's GDP is growing at about 7% and we have become a $4 trillion economy.
2. While there are a few issues related to corporate governance, it is pleasant to see that the IBBI and the MCA are responsive in addressing them.
3. IIIPI, under the current leadership, is working very well. It has introduced several programs, research initiatives, and a Peer Review Mechanism. Besides, there has been active discussion regarding the Code of Ethics and Conduct for IPs.
4. The Union Finance Minister, during the budget presentation, highlighted that over 1,000 companies have been resolved, with more than ₹3.3 lakh crore recovered by creditors. Additionally, about 28,000 companies have settled claims amounting more than ₹10 lakh crore without undergoing the IBC process.
5. Recently, the ICAI hosted 'Resolve 2024' at Bharat Mandapam, New Delhi to discuss various issues surrounding the IBC. We are in the advanced stage of submitting a 'Concept Paper' and 'White Paper' including specific suggestions.
6. One of the main challenges before the IBC is the timeline. As per the IBC, the process of CIRP should complete within 330 days but it is observed that the timelines were stretched up to 643 days in few cases.
7. There are cases wherein haircuts have been as high as 95%. I agree with the IBBI's perspective that the calculation of the haircut should be based on the value of the company at the time it enters the CIRP.
8. ICAI is coming out with a separate Section 8 Company for Alternative Dispute Resolution (ADR). The efforts are being made to create a separate ADR mechanism under the Ministry of Law to resolve matters through conciliation and out of court proceedings.
9. IPs often spend considerable time dealing with regulatory agencies, which is a matter of great concern. We need to ensure that the time of IPs is mostly utilized in the activities related to the IBC processes.
10. India accounts for 48 – 49% of the global digital transactions. The challenge is to convert this data into value for the nation.
11. Under the guidance of the IBBI, IIIPI is working hard to improve skills and knowledge of IPs. We, as professionals, need to enhance our contributions to the growth momentum of this country, and with SOPs and timelines in place, I believe we can do better.

Inaugural Session Address

Ms. Anita Shah Akella
Joint Secretary
Ministry of Corporate Affairs (MCA)

1. Since its inception in 2016, the IBC has emerged as one of the cornerstones of India's economic reforms. Challenges faced in insolvency processes include navigating the ever-evolving landscape of the IBC.
2. The primary objective of the IBC is to streamline and expedite insolvency proceedings, creating a clear mechanism where distressed companies could enter with the goal of revival and resolution, not liquidation.
3. The focus has always been on maximizing value and reducing delays. Fragmented and inefficient processes like SICA were replaced, making IBC a transformative reform.
4. Since 2016, around 8,000 cases have been admitted under the IBC, with a recovery of about ₹3.5 lakh crore across over 1000 cases. Among the various channels for recovery, IBC has proven to be one of the most effective. However, continuous efforts must be focused on further strengthening the IBC.
5. The role of IPs in this framework is pivotal. IPs are the backbone of the system for ensuring that the insolvency process is conducted fairly, smoothly, and efficiently. MCA have been actively listening to stakeholders.
6. Regulatory amendments are more achievable than legislative changes, and the IBBI has filled many gaps through regulations in the past.
7. One of the challenges is the complexity of legal processes, which often leads to delays. Increased accountability and transparency through monitoring and auditing of IPs will ensure better results.
8. Moving towards self-regulation is important, and I welcome the peer review process of IIIPI that allows for self-regulation and improvements. Furthermore, adopting advanced technological platforms for real-time tracking of cases will enhance transparency and reduce manipulation.
9. The remuneration of IPs should also account for the time spent on the process, not just the recovery value, to incentivize faster resolutions.
10. IPs face challenges such as legal and procedural complexities, limited access to information of Corporate Debtor, and overlapping jurisdictions with other laws such as SEBI and the Companies Act.
11. Capacity building and regular training in legal, financial, and technological tools are essential for overcoming these challenges. Collaborative engagement among stakeholders is crucial for the success of the IBC process.
12. Technological integration is vital for improving the efficiency of the process. We also need to develop markets for litigation funding and stressed assets. The IBC has been a game changer, and as an evolving legislation. We must continue to adapt and overcome these challenges as they arise.

Guest of Honour

Dr. Srikant Baldi
Chairperson
RERA, Himachal Pradesh

1. RERAs have strong collaboration with ICAI, particularly in compliance and dispute resolution. The ICAI has recently developed a model certificate, which has been circulated to all RERAs in the country.
2. The Real Estate Sector is a vital contributor to our economy, accounting for more than 7% of the GDP. With rapid urbanization, the demand for housing is growing quickly, and with that comes new challenges.
3. RERA has brought in transparency in India's Real Estate Sector. Earlier, homebuyers faced a tough time trying to obtain information about their units or sanctioned plans, but now crucial documents of all the approved projects are available online.
4. The siphoning of money was a huge issue in the past. Now, with the 70% funds in Escrow monitored by RERA, promoters cannot withdraw funds without the signatures of Chartered Accountant (CA), engineer, and architect.
5. Regarding dispute resolution, more than 1,30,000 cases have been resolved by RERAs in the past five years.
6. The current focus of RERA is to ensure project completion so that the homebuyers get possession. Therefore, we emphasize quarterly progress reports, filing oversight, and ensuring that these reports are accessible to the public.
7. The entire cost and profit of a real estate project are being funded by the homebuyers while the banks

provide minimal financing for initial development. Therefore, giving priority to banks over homebuyers in real estate projects is discriminatory.

8. If an IP informs RERA regarding moratorium, all proceedings will be stopped. However, different RERAs ask for different documents. Therefore, we need uniformity within RERA.

9. RERAs should give access to IPs through a login system where all relevant information about the insolvency process could be shared with homebuyers. This would help keep homebuyers informed and engaged, especially when they become part of the CoC.

10. There is great need to form a committee comprising the members of IBBI and RERA to suggest required amendments in the IBC and Real Estate (Regulation and Development) Act, 2016 to ensure completion of real estate projects and provide homes to homebuyers.

11. The forward-looking approach of the Chairperson, IBBI gives me confidence that we are on the right path to resolving these issues provided both regulators - RERAs and IBBI, work together. I believe today's deliberation will help us move forward in addressing these challenges.

Chief Guest

Shri Ravi Mital
Chairperson, IIBBI

1. IBBI's Board has recently approved changes in the Forms suggested by the Committee chaired by IIIPI's Chairman. The enabling regulations will be issued soon reducing the compliance burden for RPs.

2. Work has also completed on 'Forms' related to Avoidance Transactions. A study group by IIIPI has provided some crucial suggestions on streamlining the process. After receiving feedback, we will try to implement it as soon as possible.

3. IPs are the fulcrum around which the entire IBC revolves. Naturally, when there are problems, the complaints often fall on IPs, as they are at the center of the process.

4. IBBI receives more than 1,000 complaints every month out of which only 1-2% result in show cause notices (SCN). As public officials, we try our best not to harass or punish IPs unnecessarily.

5. There are certain things we expect from IPs and that can significantly reduce the number of complaints. Immediately after the case is admitted, the IP must invite claims through advertisements. If the project is large, IPs should advertise in prominent newspapers and issue press notes to the media.

6. The CoC must be formed as soon as possible. You can always revise the CoC as new claims come in but forming it early and involving the CoC in decision-making can prevent many issues.

7. In real estate projects, inform the RERA office that a moratorium has started and request a list of homebuyers. This ensures that all homebuyers are aware of the process and can submit their claims.

8. Creditors, such as banks, can provide valuable information like valuation reports, forensic reports, and the loan application submitted by the borrower. This information can help with preparing a solid Information Memorandum (IM) and improve the quality of bids.

9. Be as transparent as possible during the bidding process. This will improve bids, reduce haircuts and improve image of the IBC ecosystem.

10. IPs and IPEs should be transparent, proactive and innovative to improve the image of the IBC ecosystem. No IP has been punished for trying something innovative.

11. Delays and haircuts are closely related. Maintaining a project for a longer period as a going concern is not the intent of the IBC. The focus should be on resolving the project within the prescribed period and inviting bids as soon as possible.

12. We cannot blame external factors for all delays. First look at your internal processes and be proactive in addressing issues, such as rejecting claims or delaying evaluations, which can lead to unnecessary legal challenges.

13. IPs should publicize their success stories. If you resolve a company with a high recovery rate, send a press note to newspapers. This will not only help to promote your work but will also attract more projects and recognition.

14. I thank IIIPI for organizing this event and providing the opportunity for us to discuss these critical issues. We will take the recommendations from today's technical sessions and try to implement them as soon as possible.

Special Address

Shri Sandip Garg
WTM, IBBI

1. The first recommendation to notify clauses (b) and (d) of Section 208, should be addressed soon. We will further examine it.
2. Regarding the provision for selecting IPs from a panel, we need to consult other stakeholders, especially creditors, because their views are crucial, particularly in cases where financial creditors dominate the CoC.
3. There has been a suggestion to give voting rights to OCs, but we have not gone that far. However, improving the value given to operational creditors is under consideration, particularly in terms of distributing any surplus above liquidation value, equitably.
4. Requiring service providers (like auditors and consultants) to provide necessary information about the Corporate Debtor to assist with IPs, would ensure a smoother process and is doable.
5. The discussion on government dues is complex, particularly in cases where the government is providing a service, resource, or loan. We need to carefully debate whether these dues should be treated differently.
6. IPs should be mindful of their responsibility to avoid unnecessary delays which can negatively impact the recovery and increase haircuts.
7. For individual insolvency, we need to determine who should bear the cost, especially in cases where the repayment plan has not succeeded.
8. On EPFO-related issues, there has been a misinterpretation of certain clauses regarding third-party assets in possession of the CD. The courts might have missed this, and we will need to address it further.
9. NCLT Mumbai has set up dedicated benches for admission matters. This practice can be replicated elsewhere to reduce delays.
10. We have already extended the deadline for filing claims up to the date of the latest Resolution Plan (RP). Beyond that, CoC's consent will be required to accept late claims, to ensure that the process is not affected adversely.
11. We are open to considering further suggestions. I encourage all stakeholders to continue contributing suggestions and we are committed to making the necessary improvements to the IBC processes.

Special Address

Shri Sudhaker Shukla
The then WTM, IBBI

1. The journey of the IBC has been very satisfying. It is heartening that the IBC found mention in the President's address to Parliament on June 27, 2024. There has been a big focus on the IBC and its achievements in the Economic Survey. However, there is always scope for improvement.
2. The Prime Minister has also recognized the importance of the IBC on various occasions and especially mentioned that the problem of 'twin balance sheets has been resolved under the IBC.
3. IBBI's regulations are reviewed annually. However, it does not deter stakeholders from providing overarching recommendations which require regulatory as well as legislative interventions. This shows, the IBBI is open to accommodate wherever feasible.
4. Though the IBBI does not have power to notify any regulatory provisions on the working of the Committee of Creditors (CoC), but we have recently designed 'self-regulatory guidelines for the CoC. One may call it toothless, but this is what is possible as of now. The next step may be taken only after the amendment in the IBC.
5. Thanks to IIIPI and public comments, we have come up with revision of CIRP forms wherein the number of forms have been reduced from nine forms with 370 entries to five forms with 190 entries. In the process some entries were dropped or made auto populated.
6. IBBI has recently introduced 'Liquidation Forms'. We are working on software and will soon roll out these for online filing. We have also tied up with PSB Alliance platforms through which all the auctions will be facilitated for larger reach.

7. The issue of government agencies such as NOIDA being accorded with the status of 'secured financial creditor' by the judiciary has also been debated extensively. We are also trying to come up with a feasible solution to this.
8. We have formed a committee on mediation as well and its report is under consideration. There are some legal conflicts with Schedule 1 of the Mediation Act, but we are trying to find a feasible solution to it.
9. IBBI is working to ensure that the 'Integrated Software Solution' (iPIE) works well to merge the two processes of the IBC regime i.e., case management process and judicial process.
10. The World Bank is also asking you to prioritize the environmental claims. IBC provides that while implementing it we will have to respect all the laws of the land. However, these are highly subjective issues and an internationally accepted framework on environmental claims is yet to be evolved.
11. Group Insolvency should ideally be introduced before the Cross Border Insolvency Framework. Some of the reforms are doable by December 2024 while others will be considered in the next generation reforms.

Presentation and Interactive Session on Reforming the Insolvency Law: Key Recommendations for Amendments

Dr. Ashish Makhija
Insolvency Professional

1. Core provisions of Section 208 authorizing Insolvency Professionals (IPs) to act in the capacity of Resolution Professionals (RPs) or Bankruptcy Trustees in PG to CD cases, need to be formally notified.
2. To ensure fair distribution of work amongst IPs, an automated assignment allocation system should be in place at NCLT Level.
3. Operational Creditors (OCs) can be made a part of the Committee of Creditors (CoC) individually (top 5 OCs) or all OCs can be represented through Authorized Representative.
4. Resolution Plan should provide for payment to OCs in the same percentage as their share in total debt and haircut should be uniform across creditors. Provisions of Section 30(2)(b) may be done away with.
5. It may be made mandatory for the Corporate Debtor to submit a Statement of Affairs (in a prescribed format) along with the response to an application under Section 7 or 9, or with the application under Section 10.
6. Statement of Affairs as such should specify as to who holds custody of the CD's books of accounts, records, and assets, along with an undertaking to cooperate with the IRP/RP if CIRP is initiated.
7. Admission Orders may include directions of cooperation from stakeholders including promoters, CoC and Government agencies.
8. Resolution Plan should have provision for payment to the creditors not filing the claims but whose claims exist as per books of account.
9. Group Insolvency should be made mandatory in Real Estate Projects intricately related to each other and relaxation for RERA compliances should be provided to companies undergoing insolvency process.
10. Plain Reading of S. 240A (1) indicates the exemption is for all Resolution Applicants if the CD is a MSME. This requires clarification.
11. Section 53(1)(b) may be amended by replacing the word "Secured Creditors" with "Secured Financial Creditors". Section 53(1)(e)(i) may be amended to include "whether secured or unsecured" after the words State Government.
12. Existing Section 30(2)(b) may be modified relating to dissenting financial creditors giving due consideration against security held by them.
13. Minimum Fee payable to RP may be prescribed in cases of Liquidation and Personal Insolvency and Bankruptcy along with clarification provided on who will be responsible for paying fees for IPs in these processes.
14. Clarification is required on the applicability of Section 36(4)(a)(iii) in respect of sums due to workmen/employees from the provident fund.
15. One Bench may be dedicated for admission matters only, whereby sitting days can be flexible depending on volume. Additional fees should be imposed to reduce delays in filings.

Presentation and Interactive Session on Challenges Before IPs/IPEs

Shri K. V. Jain
Insolvency Professional

1. Model timelines should ideally be counted from the date of receipt of the NCLT order i.e., publication of the NCLT order on its website or an official email from NCLT.
2. The RP has only 180 days including weekends and holidays while attending NCLT proceedings in one matter average takes the entire day. Therefore, the attendance of the IP should be made compulsory only when specifically asked by the NCLT bench to appear.
3. The Resolution Plan approved by the AA, should cover continuation of services by the RP post-approval of Resolution Plan such as ROC fillings, ITR, TDS, GST fillings, resignations of promoter directors, auditors transition etc.
4. Clarifications are required regarding IPEs such as whether an IPE can be appointed as Monitoring Professional (MP). Can an IPE appointed as a MP further engage an IPE to provide support services during the implementation of the Resolution Plan?
5. IBBI may propose to banks/MCA to create a fund to provide interim finance to meet the CIRP cost at competitive rate.
6. The panel for the banks may be maintained by IBBI/IBA on similar lines to being maintained by IBBI for NCLT. This will bring transparency and strengthen the insolvency profession.
7. During the lull period as part of CIRP/Liquidation timelines, IP's working may be reduced while the compliance burden continues. Therefore, a mechanism should be developed for calculation of the fee during such a period. The fee for report u/s 99 is an area of concern as it is generally not paid to RPs.
8. The government should appoint nodal officers for its various departments for cooperation with the IPs. The nodal officers can undergo in-depth training of IBC. Any litigation initiated by any department must have the concurrence of these trained nodal officers.
9. Non-payment of the CIRP cost within a reasonable period by the CoC is a major problem. Timely payment of fees to the RP cannot be compromised. IBBI may collate necessary data in this regard to highlight the problem.
10. Once an application under Section 19(2) is filed by an RP, the promoters should be barred from filing any application under the Code until such a time the said application is disposed of by the court.
11. Only in cases of willful defaulters, the promoters should be barred from submitting a resolution plan under Section 29 A. In all other cases, it should be left to the commercial wisdom of the CoC.

Vote of Thanks

CA. Rahul Madan
Managing Director, IIIPI

1. In nutshell there are challenges within the ecosystem we are all a part of, such as high haircuts, rampant delays, and ethical conduct issues among stakeholders.
2. Many regulatory changes have been introduced recently, thanks to the IBBI, which has acted as a friend, guide, and philosopher.
3. We may see more amendments to the IBC, possibly in the upcoming winter session of the Parliament.
4. IPs have been recognized as a crucial force within the entire ecosystem and serve as its fulcrum on which the system relies.
5. The focus must be on how to strengthen IPs as a professional and build their capacities, not only in general but also sector-specific, such as in real estate.
6. I extend my heartfelt gratitude to the dignitaries present today for their time and words of wisdom.
7. This is the last month in the office for Shri Sudhaker Shukla, WTM-IBBI as well as Dr. Ashok Haldia, Chairman-IIIPI's Board. My heartfelt thanks to them for their exemplary efforts and contributions. We expect and request your guidance in the future. Let us join hands and give a standing ovation to them. Thank you very much.

Unravelling the Ambiguity: The Conundrum of Preference of Payment to Statutory Dues Under IBC Law

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Despite the seemingly clear structure provided by Section 53 of the Insolvency and Bankruptcy Code, 2016 (IBC), several ambiguities and challenges complicate the practical application of the preferential payment involving government dues on the Corporate Debtor. These challenges stem from interpretational variances, the treatment of operational creditors, and the broader implications for stakeholders' involved in the Corporate Insolvency Resolution Process (CIRP). This article delves into the complexities surrounding the preference of payment for statutory dues under the IBC. It explores the legislative framework, key judicial rulings, and the implications for stakeholders, while also comparing IBC's approach to address statutory dues in the USA, the UK, and Australia with an objective to clarify the existing ambiguities and put forward suggestions to resolve them.

Read on to know more…

1. Introduction

The Insolvency and Bankruptcy Code (IBC) of India, introduced in 2016, was designed to provide a streamlined legal framework for resolving corporate insolvency and restructuring distressed companies. It aims to enhance the ease of doing business, preserve stakeholders' value, and maintain economic stability by ensuring a time-bound resolution process.

Despite its successes, the IBC has faced challenges, particularly regarding the priority of payment for

statutory dues such as taxes and other government dues during insolvency proceedings. This lack of legal clarity on whether these statutory dues should precede creditors' claims has sparked a debate on which judicial interpretations also differ.

This article delves into the complexities surrounding the preference of payment for statutory dues under the IBC. It explores the legislative framework, key judicial rulings, and the implications for stakeholders, while also comparing India's approach with those of other jurisdictions. The objective here is to clarify the existing ambiguities and put forward suggestions to resolve them.

2. Understanding Preference of Payment Under IBC

2.1. Preference of Payment: In insolvency, certain creditors or dues are prioritized in asset distribution, following a hierarchy outlined in the IBC. Secured creditors and workmen's dues are prioritized, while statutory dues, classified as operational debts, have a debated position in this hierarchy.

2.2. Statutory Dues in Insolvency: Statutory dues, which include taxes and other public revenues, are essential for state functioning. Their prioritization in insolvency proceedings has ambiguities leading to disputes between financial creditors and the government.

2.3. Section 53 of the IBC: The Waterfall Mechanism: Section 53 of the IBC is the cornerstone of the liquidation process, providing a clear order for the distribution of proceeds from the sale of assets of the Corporate Debtor (CD). The section lists the following priority of payments:

i. **Insolvency Resolution Process Costs and Liquidation Costs:** These are to be paid in full before any distribution is made to other creditors. This ensures that the expenses incurred during the insolvency resolution and liquidation process are covered.

ii. **Workmen's Dues and Secured Creditors:** Workmen's dues for the preceding 24 months rank equally with debts owed to secured creditors who have relinquished their security. This reflects the social importance of protecting workers' rights and interests.

iii. **Employee Dues:** Wages and unpaid dues to employees (excluding workmen) for the preceding 12 months are given priority next.

iv. **Unsecured Creditors:** These include financial creditors who are not secured by collateral.

v. **Government Dues and Remaining Secured Creditors:** Statutory dues owed to the government and the remaining debts owed to secured creditors rank next in the order of priority.

vi. **Remaining Debts and Dues:** Other debts and dues, including those owed to trade creditors and suppliers, come next.

vii. **Shareholders:** Finally, any surplus is distributed to shareholders or partners of the Corporate Debtor, as the case may be with first preference for the preference shareholders, if any).

> **Section 53 of the IBC provides a clear order for the distribution of proceeds from the sale of the CD's assets.**

3. Ambiguities and Challenges

Despite the seemingly clear structure provided by Section 53, several ambiguities and challenges complicate the practical application of the preference of payment provisions under the IBC. These challenges stem from interpretational variances, the treatment of operational creditors, and the broader implications for stakeholders involved in the Corporate Insolvency Resolution Process (CIRP).

3.1. Interpretational Variance

The IBC has faced significant ambiguity due to varying judicial interpretations on Section 53, particularly regarding the prioritization of statutory dues like taxes and government dues versus other creditors' claims. Some courts have emphasized the primacy of statutory dues, citing public interest, while others argue that financial creditors, crucial for the debtor's resolution, should not be undermined. This inconsistency has led to confusion and challenges for Resolution Professionals (RPs) managing insolvency cases as elaborated further:

3.1.1 Judicial Precedents and Interpretations

Judicial precedents play a crucial role in shaping the interpretation and application of the IBC's provisions, including those related to the preference of payment to statutory dues. However, the variance in judicial interpretations has contributed to the ongoing debate and uncertainty surrounding the preference of payment issue.

3.1.2 Landmark Cases and their Implications

The issue of preference of payment to statutory dues under the IBC has been shaped by several landmark cases, each contributing to the evolving legal framework and interpretation of the IBC's provisions. Some instances are cited below:

(a) Innovative Industries Ltd. *vs.* ICICI Bank (2017)

This case represents one of the earliest and most significant judgments under the IBC. The Supreme Court emphasized the importance of the "waterfall mechanism" detailed in Section 53 of the IBC, which ensures an equitable distribution of proceeds of assets among various classes of creditors during liquidation.

In Paragraphs 25 to 30, the court discusses the waterfall mechanism's structure, particularly how Section 53 establishes the priority of claims during liquidation. The court explains the rationale behind this hierarchy, detailing the positions of operational creditors and those with statutory dues within this framework.

Paragraphs 55 to 60 further explore the balance between the rights of operational creditors and financial creditors. The court highlights that while operational creditors, including those with statutory dues, have a level of priority, this priority is not absolute. Instead, it must be balanced against the rights of financial creditors to ensure a fair and equitable resolution process.

> **"The Supreme Court in the case of *Innovative Industries Ltd. vs. ICICI Bank (2017)* held that preference payment under Sec. 53 of the IBC is not absolute."**

Overall, these paragraphs are crucial in understanding how the Supreme Court set a precedent for balancing the rights of different creditor classes under the IBC, ensuring a fair distribution of assets while adhering to the principles of equitable treatment.

(b) Creditors of Essar Steel India Ltd. *vs.* Satish Kumar Gupta & Ors. (2019)

The Supreme Court examined whether operational creditors, including those with statutory dues, should be treated the same as financial creditors in asset distribution under the IBC. The court ruled that while operational creditors do have a conditional priority during liquidation, the resolution process must also safeguard the interests of financial creditors to ensure a fair and equitable outcome.

In **Paragraphs 37 to 40,** the court distinguishes between financial and operational creditors, highlighting their different roles within the IBC framework. The court explains why financial creditors are usually prioritized during the resolution process, due to their critical role in the financial structure of the CD.

Paragraphs 46 to 50 further explore the rationale for giving financial creditors precedence in the resolution process. At the same time, the judgment ensures that operational creditors are treated fairly during liquidation, balancing their interests with those of financial creditors.

The above underscores the court's reasoning in protecting financial creditors' interests while also recognizing the importance of operational creditors

in asset distribution. This balance is essential to achieving the IBC's goals of value maximization and economic efficiency.

(c) Rainbow Papers Case (2023)

In the Rainbow Papers case (2023), the Supreme Court gave a ruling regarding the priority of statutory dues under the IBC. The Court held that statutory dues owed to the government could be considered secured debts if a charge is created by law, thereby giving them higher priority over other creditors. This marked a departure from previous judgments and sparked debate.

Paragraphs 42 to 45 of the judgment delve into the interpretation of statutory dues and their classification as secured debts. The court's decision was based on Section 48 of the Gujarat Value Added Tax (GVAT) Act, which allows statutory dues to be treated as secured debts if a legal charge is established.

> **The Supreme Court in *Rainbow Papers Case* (2023) ruled that statutory dues owed to the government could be considered secured debts if a charge is created by law.**

Critics argue that this ruling undermines the principle of equitable distribution under the IBC and could have negative consequences, such as reducing credit availability and increasing litigation. Proponents, however, believe it upholds public interest by ensuring that government dues are protected.

This case highlights the need for greater judicial consistency in applying the IBC's provisions, particularly regarding the treatment of statutory dues and their priority in asset distribution.

3.2. Judicial Approach to Balancing Competing Interests

The judiciary's approach to the preference of payment issue under the IBC has evolved, shifting from an initial focus on equitable distribution among creditors to a more recent emphasis on the public interest in statutory dues and the effects of insolvency on government's revenue. This change reflects the broader challenges of interpreting the IBC amid a dynamic economic landscape. The judiciary's role in clarifying the treatment of statutory dues and balancing competing interests is crucial for the IBC's effectiveness and for maintaining stakeholders' confidence in the CIRP.

3.3. Legislative Framework and Regulatory Guidance

The legislative framework under the IBC offers a broad structure for asset distribution but lacks detailed guidance on statutory dues, leading to ambiguities.

3.3.1 Section 53 of the IBC: This section outlines the waterfall mechanism for debt settlement but is vague on how statutory dues are treated compared to other claims. This lack of specificity has led to inconsistency in judicial interpretations. Policymakers may need to amend Section 53 to clarify how statutory dues should be identified, classified, and settled.

3.3.2 Role of the Insolvency and Bankruptcy Board of India (IBBI): In the absence of legislative clarity, the IBBI provides essential guidance through Regulations and Guidelines, particularly pertaining to preparation of the Resolution Plan and conducting CoC (Committee of Creditors) meeting. However, regulatory guidance alone is insufficient. Therefore, comprehensive legislative reforms are necessary for consistency and predictability in insolvency resolutions.

3.4. Treatment of Operational Creditors

Statutory dues are classified as operational debts under the IBC, alongside dues owed to suppliers and employees. As regards the operational creditors, including those with statutory dues, the priority provisions for asset distribution, as per Section 30 (2)(b) of the IBC, are conditional and often lead to disputes. The uncertainty over how operational creditors should be treated has raised

concerns about fairness, especially when a debtor's assets are insufficient to satisfy all claims.

The ambiguity surrounding the treatment of operational creditors has also led to disputes between creditors, with financial creditors often arguing for a higher priority. This has raised questions about the fairness and effectiveness of the IBC's framework for resolving insolvency cases, particularly in cases involving large amounts of statutory dues.

3.5. Challenges in Implementation

(a) **Identification and Classification of Statutory Dues:** The process of identifying and classifying statutory dues is complex due to its diverse nature, which can include taxes, penalties, and other obligations owed to government authorities. The absence of clear guidelines on this matter leads to disputes, delays, and inconsistencies in the resolution process. Policymakers may need to develop detailed guidelines to help accurately classify and prioritize these dues.

> **Policymakers may need to develop detailed guidelines to help accurately classify and prioritize government dues.**

(b) **Achieving Equitable Distribution:** Balancing the priority of statutory dues with the rights of other creditors is challenging, especially given the varying judicial interpretations of Section 53 of the IBC. This lack of consensus can lead to prolonged litigation and reduced recovery for all stakeholders. A consistent judicial approach and possible legislative reform are needed to ensure a fair distribution of assets.

(c) **Judicial Delays and Litigation:** Prolonged litigation and judicial delays, exacerbated by the complexity of insolvency cases and the high volume of cases, create uncertainty and inefficiency in the resolution process. These delays can lead to significant economic costs, including asset value erosion and increased litigation expenses. Expedited procedures, specialized insolvency benches, and enhanced judicial capacity are necessary to address these delays.

(d) **Stakeholder Alignment:** Conflicts between the interests of various stakeholders, such as government authorities, financial creditors, and operational creditors, pose challenges in achieving consensus on payment preferences. This misalignment can lead to prolonged disputes and delays in the resolution process. Constructive dialogue, clear guidance from policymakers, and judicial intervention are needed to foster alignment and build trust within the insolvency ecosystem.

4. Impact on Stakeholders

(a) **Government Authorities:** Ambiguity in the treatment of statutory dues affects government revenue, fiscal planning, and public services, potentially leading to prolonged litigation and delayed settlements.

(b) **Financial Institutions:** Uncertainty about priority of statutory dues impacts recovery prospects, risk management, and credit risk assessments, necessitating more sophisticated models and advocacy for clearer legislative provisions.

(c) **Operational Creditors:** These creditors face financial vulnerability due to unclear entitlements and potential disputes, requiring active engagement in the resolution process to protect their interests.

(d) **Resolution Professionals:** They navigate complex legal and regulatory challenges, requiring specialized training and consensus-building among stakeholders to manage the preference of payment issues effectively.

5. Case Studies and Comparative Analysis

Examining case studies and insolvency frameworks from other countries can offer valuable insights into addressing the preference of payment issue under the IBC. Learning from how other jurisdictions balance creditor and government interests can help policymakers and practitioners improve the effectiveness of India's insolvency resolution framework.

5.1. United States of America (USA)Bankruptcy Code

- **Framework:** Under Chapter 11, statutory dues like taxes are classified as administrative expenses, prioritized over unsecured creditor claims.
- **Flexibility:** The Bankruptcy Code allows for the restructuring of statutory dues and the negotiation

of payment plans with government authorities.

- **Lesson for IBC:** The USA approach emphasizes clear guidelines on statutory dues' priority while allowing flexibility, balancing government and creditor interests in corporate reorganizations.

Cross-References Summary:

Administrative Expenses Priority: 11 U.S.C., 503, 507(a)(2)

Restructuring Flexibility: 11 U.S.C., 1123(a)(5)(G), 1129(a)(9)(C)]

Statutory Dues Priority: 11 U.S.C., 507(a)(8), 1129(a)(9)(A)

These sections and provisions highlight the USA's Bankruptcy Code's structured yet flexible approach to managing statutory dues during corporate reorganizations.

5.2. United Kingdom Insolvency Act

- **Framework:** The Insolvency Act prioritizes statutory dues, such as taxes and National Insurance contributions, as preferential debts, requiring settlement before unsecured creditors.
- **Flexibility:** The Act permits negotiation and restructuring of statutory dues, ensuring an equitable and efficient resolution process.

> **The UK's Insolvency Act prioritizes statutory dues as preferential debts, requiring settlement before unsecured creditors.**

- **Lesson for IBC:** The U.K. approach highlights the importance of clear priority guidelines for statutory dues while maintaining flexibility in their treatment, promoting fairness in asset distribution.

Cross-References Summary:

- **Preferential Debts Priority:** Sections 386, Schedule 6 (Paragraphs 4, 7), 175, 176ZA
- **Restructuring Flexibility:** Sections 213, 110, 112
- **Fair Distribution:** Sections 175, 176A, 176ZA

These sections of the UK Insolvency Act 1986 illustrate how the UK prioritizes statutory dues while allowing flexibility in their negotiation and restructuring, promoting a balanced approach in insolvency proceedings.

5.3. Australian Corporations Act

- **Framework:** The Corporations Act establishes the principle of *pari-passu* in distribution of a company's assets during Liquidation. As per Section 555 thereof, debts and claims proved are to rank equally except as otherwise provided.
- **Flexibility:** It allows for restructuring statutory dues and negotiating payment plans with authorities.
- **Lesson for IBC:** The Australian model offers clear guidelines on statutory dues' priority and treatment, ensuring a balanced approach that supports both government interests and corporate reorganization.

Cross-References Summary:

- **Priority Debts:** Sections 555, 556(1)(e), 556(1)(g)
- **Restructuring Flexibility:** Sections 447A, 444A, 444DA
- **Guidelines on Priority:** Sections 555, 560, 561

These sections and provisions of the Australian Corporations Act 2001 highlight the structured and flexible approach Australia takes in managing statutory dues during insolvency, balancing government interests with the need for corporate reorganization.

These international frameworks provide valuable insights for the IBC, highlighting the need for clear guidelines on the priority of statutory dues while incorporating flexibility to balance the interests of all stakeholders in insolvency proceedings.

6. Recommendations for Navigating the Way Forward

To address the ambiguity surrounding the preference of payment to statutory dues under the IBC and enhance the insolvency resolution process, the following measures are suggested:

(a) **Legislative Reforms:** Amend Section 53 of the IBC to clearly define the treatment of statutory dues relative to other creditor claims, reducing interpretational variance and ensuring consistency.

(b) Judicial Consistency: The judiciary should aim for consistent interpretations and establish binding precedents to provide clear guidance on the preference of payment issues.

(c) Stakeholder Engagement: Encourage dialogue among stakeholders, including government authorities and creditors, to align interests and inform policy decisions.

(d) Capacity Building and Training: Enhance training for Resolution Professionals and judicial officers on the IBC's provisions, judicial rulings, and stakeholder management.

(e) Comparative Analysis and Best Practices: Learn from insolvency regimes in other countries and adopt best practices to improve India's insolvency resolution framework.

7. Conclusion

The preference for payment of statutory dues under the IBC is a complex issue that affects the CIRP, creditors' recovery, and financial stability. The ambiguity in handling these dues alongside other creditor claims necessitates careful policy considerations and balanced solutions. To address this, legislative reforms, consistent judicial rulings, stakeholder engagement, capacity building, and adopting best practices from other countries are crucial. Clarifying the treatment of statutory dues while balancing stakeholder interests can enhance the IBC's effectiveness, promote economic efficiency, and ensure public finance sustainability.

MSMEs Need a Second Chance: Make Pre-Packs Simpler, Less Rigid and Accessible

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The Pre-Packaged Insolvency Resolution Process (PPIRP or Pre-Pack) was introduced to the Insolvency and Bankruptcy Code, 2016 (IBC) in April 2021 for speedier, cost-efficient, and effective resolution of financially stressed Micro Small and Medium Enterprises (MSMEs). However, it is facing several challenges. Quick turnaround time and managing costs are critical considerations. Besides, expecting owners of MSMEs to initiate the PPIRP processes against their own companies when they face a real possibility of losing ownership is not in sync with ground realities. In this article, the author explains various challenges before the PPIRP for MSMEs in India, presents comparative analysis with relevant foreign jurisdictions and makes suggestions for further improvement. ***Read on to know more…***

1. Pre-Packs should form a Lifeline in Small Business' Financial Distress

The Pre-Pack framework is considered to be a preferred hybrid framework that combines the benefits of both informal (out-of-court) and formal (judicial) insolvency proceedings. It is seen as a fast, cost-efficient, and effective method for resolving financial stress of the Corporate Debtor (CD) before the value of the company

deteriorates, with minimal business disruptions and without the stigma associated with formal insolvency processes[1]. What is crucial for its success is that:

(i) the debtors and creditors put an early effort into resolving the business' issues in a timely manner. Pre-insolvency regimes, pre-emptively dealing with financial distress before businesses are insolvent, are becoming increasingly important.[2]

(ii) quick out–of-court auctions[3] that do away with judicial delays and save costs.

(iii) encourage debtors to stay away from adopting high-risk strategies to avoid insolvency that shall impact business viability in future.

(iv) shapes public policy that better serves the credit lending objectives by providing quick remedy to distress. In a survey[4] of 130,000 firms in 135 countries, the World Bank Group found that access to credit can assist with fostering entrepreneurship and the creation of new business activity; and

(v) Pre-Packs' core objective should be to restructure and revive business operations. Businesses that have shut operations and want resolution of debt by hair cut should pursue other options in the interest of precious judicial and other stakeholder's time.

2. The great need for Pre-Packs

The MSME universe exceeds 63.39 million unincorporated and non-agriculture businesses[5] and 2.4 million registered companies. Of this macrocosm, that is expected to grow at a projected Compound Annual Growth Rate (CAGR) of 2.5%[6] to approximately 75 million in the coming times, only 25 million have ever availed credit from formal sources. The sector's criticality in the growth of the Indian economy can be underlined by the several initiatives undertaken.

2.1. Government's fiscal policy initiatives

i. Credit Guarantees for Micro and Small Enterprises till June 30, 2023, amounting to ₹ 4,50,163 crores have been issued[7].

ii. In February 2023, the credit guarantee scheme was revamped through the infusion of ₹9,000 crores in the corpus to provide additional collateral-free guaranteed credit of ₹2 lakh crores[8].

iii. In November 2021, the 'Special Credit Linked Capital Subsidy Scheme' was introduced and in August 2023 the Reserve Bank of India (RBI) announced the launch of the 'Public Tech Platform for Frictionless Credit' as a pilot project with the aim of connecting borrowers and lenders. It is expected to make small credit more accessible and enable disbursal of non-collateral based loans up to ₹1.6 lakh for MSMEs and Kisan Credit Card including dairy loan, personal loan, and home loan[9].

iv. Scheme of subordinate debt to stressed MSMEs to provide over ₹20,000 crores. Under this scheme, promoters of MSMEs will be given debt from banks, which will be infused into the MSMEs as equity.[10]

2.2. Taking cue, RBI has provided regular stimulus to the MSMEs as under:

(i) Encouraging banks to restructure the account via non-legal routes and categorizing the MSMEs as eligible priority sector lending,

(ii) Permitting banks for one-time restructuring of loans to MSMEs conditionally without downgrading beneficiaries in classification.[11]

(iii) Providing other measures[12] to improve credit delivery

1. Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process, October 2020.
2. Report on the Treatment of MSME Insolvency, World Bank Group May 4, 2017.
3. Ibid.
4. Ibid.
5. MSME Annual Report 2023-24.
6. MSME Industry Report, July 2024: India Brand Equity Foundation, Ministry of Commerce and Industry, GOI.
7. Ibid.
8. https://pib.gov.in/PressReleasePage.aspx?PRID=1895292#:~:text=Sitharaman%20announced%20that%20the%20revamped,of%20%E2%82%B9%202%20lakh%20crore.
9. Ibid 6.
10. Treatment of MSME Insolvency under IBC, Quinquennial of Insolvency and Bankruptcy Code, 2016 (2021).
11. Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances BR.No.BP.BC.18/21.04.048/2018-19 Jan 1, 2019.
12. RPCD. SME&NFS. BC.No.102/06.04.01/2008-09 updated on 01.10.2021.

a. Rural Self Employment Training Institutes

b. Trade Receivable Discounting,

c. Financial Literacy and consultancy support: Certified Credit Counsellors Scheme,

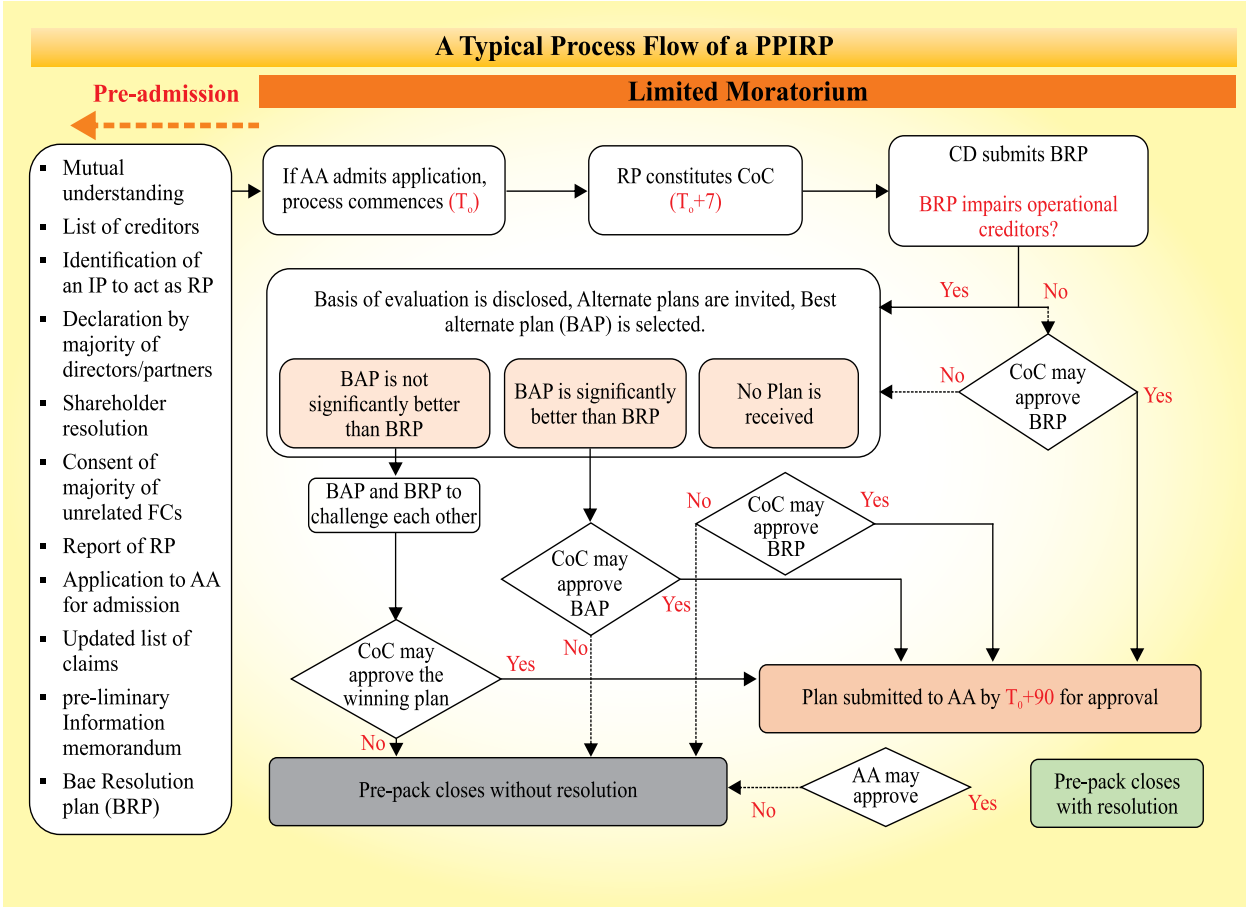
d. Instituted a framework that recognizes compromise settlements as a valid resolution plan.[13]

However, accelerated credit delivery puts stress on the credit quality. RBI projects distress in the economy where the Gross NPAs to Gross Advances ratio exceeds 2.8%[14] and the situation should be more alarming in the small to medium sector in terms of absolute number of businesses. Quick redressal of distress is where an out-of-court workout gains significance.

3. Schematic presentation of current Pre-Pack process

Chart -1 presents an elaborate scheme of sub-processes that may seem formidable to a typical MSME having a homogeneous business structure fighting for its very survival. Three years on, since April 2021, the Pre-Pack process metaphorically is a 'non-starter'. A snapshot of

Chart -1: Graphical Representation of process of PPIRP for MSMEs under the IBC



[13] Framework for Compromise Settlements and Technical Write-offs DOR.STR. REC.20/21.04.048/2023-24 June 08, 2023.

[14] RBI, Financial Stability Report, June 2024.

Table 1: Applications pending or disposed of by various benches of NCLT

the applications pending or disposed of by the National Company Law Tribunal (NCLT) is presented in Table -1.

Company	Bench	Special Resolution Date	Status	Date of Approval/ Ndoh	Plan Approved (haircut%)/ Withdrawn/ Reject	Insolvency Period (Days)	Sector	Secured FC Claims	Unsecured FC Claims	OC Claims	Other Claims
											(₹ in Crs.)
Amrit India Ltd	New Delhi	15-Jun-22	Plan Approved	3-May-23	Promoters	322	Trading	0.13	-	-	0.26
Sudal Industries Ltd	Mumbai	25-Feb-22	Plan Approved	10-Aug-23	Promoters	531	Manu-facture	103.45	28.70	8.22	0.74
Shree Rajasthan Syntax Ltd	Jaipur	7-May-22	Plan Approved	22-Aug-23	Promoters	472	Manu-facture	100.08		7.87	1.87
GCCL Infrastructure & Projects Ltd	Ahmedabad	27-Jul-21	Plan Approved	5-Sep-23	Promoters	770	NA		0.56	0.54	
Enn Tee International Ltd	New Delhi	25-Apr-22	Plan Approved	19-Oct-23	Promoters	542	Manu-facture	12.54		2.78	1.37
Loonland Developers Pvt Ltd	New Delhi	18-Nov-21	Withdrawn	17-Feb-23	MSME status in question	456	Builder				
Mudraa Lifespaces Pvt Ltd	Mumbai	2-Jan-23	Admitted	24-Aug-24		600	Builder		0.62	1.23	0.22
Kethos Tiles Pvt Ltd	Ahmedabad	27-Feb-23	Reject	6-Jun-24	Extension of time denied	465	Manu-facture	93.80			
Shree Uttam Food Products Pvt Ltd	Indore	25-Aug-22	Withdrawn	15-Sep-23		386					
Shreemati Fashions Pvt Ltd	Kolkata	17-Mar-22	Admitted	28-Aug-24		895	Trading		3.06		
Garodia Chemicals Ltd	Mumbai	17-Sep-21	Reject	8-Nov-23	Evasion of legal compliances	782	Manu-facture		0.09	0.01	4.31
Kratos Energy & Infrastructure Ltd		22-Sep-23	Admitted	24-Aug-24		337	Trading		1.20	0.20	0.33
RG Residency Pvt Ltd	New Delhi	12-Dec-23	Admitted	30-Sep-24		293	Builder				
KVIR Towers Pvt Ltd	New Delhi	12-Dec-23	Admitted	24-Aug-24		256	Builder				
CHD Developers Ltd	New Delhi	14-Jul-22	Reject	5-Sep-22		53	Builder				
Krrish Realtech Pvt Ltd	New Delhi	30-Sep-21	Withdrawn	21-Feb-22	Non-compliance of the statutory provisions	144	NA				

Drulite Builders (P) Ltd	New Delhi	1-Sep-21	Withdrawn	15-Sep-21	Application not filed by CD	14	NA				
G Security India Pvt Ltd	Mumbai		Pending	18-Sep-24		221	NA				

**Data drawn from respective orders; independent research (as of August 24, 2024) conducted from NCLT Case Management System; Total of 18 cases listed with 29 Tribunal Benches at 15 locations.*

4. Challenges arising from the Pre-Pack scheme

In 2021, Pre-Packs were introduced only for corporate MSMEs thus leaving out a vast number of non-corporates[15]. Nevertheless, lack of adoption among the corporate businesses is on several counts:

4.1. Behaviour is a crucial challenge to overcome. From the owner's perspective, the stigma associated with initiating formal insolvency processes via public announcements and court visits has been overwhelming. From the creditor's outlook, the crucial trust factor erodes on continuing default. At the advent of stress, the business owner's behavior undergoes a change and their frequency of interactions with bank officials reduces leading to continuing cycle of trust deficiency. Bankers are driven by transaction viability and profitability rather than business relationships as they fear the possibility of repetitive behavior. In a research[16], it was found that, in countries where the levels of stigma and regulatory conveyance of stigma markings were the highest, the likelihood that failed entrepreneurs would reenter into entrepreneurial activity was lower. In some context, the negative social judgment of failed entrepreneurs interacts with the regulated disclosure of historical business data to increase the likelihood that failed entrepreneurs would reenter into entrepreneurial activity[17]. This suggests that negative social and economic sanctions that are associated with stigma markings may act as a stimulus for failed entrepreneurs to defy their illegitimacy and to actively seek out and engage in innovative behaviors[18]. In a nutshell, stigma may sometimes produce positive consequences on entrepreneurial activities in a country but simultaneously raises risk levels considerably.

> **"Creditor's passivity makes it more complicated to save the business, even when the business is viable."**

4.2. Creditor's passivity[19] may hamper the process, as early and proactive actions result in the best outcomes. Where the approval of restructuring plans requires the majority of stakeholders to vote positively, creditor's passivity makes it more complicated to save the business, even when the business is viable.

4.3. Principles governing time value of money in resolution of debt are crucial. Alternate recovery proceedings provide a credible challenge.

i. Restructuring under RBI Prudential Framework[20] 2019 is enforceable as a simpler contract and provides no consequent special treatment.

ii. The waterfall mechanism under the CIRP favours the financial creditors and provides the opportunity to invoke personal guarantees.

iii. For businesses, where operations have halted, the creditors are inclined to recover under SARFAESI as sales of tangible assets constitute the substantial portion and the process is under their operational control.

4.4. The size and operational status of the business is of important consideration when assessing costs

15. Ibid 10.
16. https://www.researchgate.net/publication/258165368_Stigma_and_business_failure_Implications_for_entrepreneurs'_career_choices.
17. Ibid.
18. Ibid.
19. Ibid 2.
20. Master Circular DOR.STR.REC.3/21.04.048/2023-24 dated April 1, 2023.

vis-à-vis realizations. Larger units having complex financial structures can beneficially be restructured via CIRP or under the RBI's prudential framework. Businesses where operations have halted, the creditors are inclined to recover under SARFAESI. The cost burden deters creditors and discourages commencement of proceedings 'of particular importance in the case of insolvency of small and medium-size businesses[21].

4.5. Pre-Pack process is elaborate and requires the debtor companies to have adequate financial and human resources to undertake it. However, in reality, a vast majority of distressed MSMEs have little liquidity at their disposal and are less sophisticated than larger corporations. A temporary and minor lack of liquidity could rapidly spiral into liquidation in a way it may not for a larger business.

4.6. The true valuation of a small to medium enterprise materially includes intangibles such as owner's goodwill and customer dealings. Such valuation is never realized for businesses in distress. Consequently, business owners suppress and delay negative information, eventually leading to defaults. In such a scenario where it is incumbent for the debtor to initiate the process – why would they want to do it when it hurts them?

4.7. The role of the Insolvency Professional (IP) needs a rethink on multiple grounds. One, the onerous duty of avoidable transaction determination, monitoring of management or making application for non-cooperation can be perceived adversarial. Two, the IP, based on his training and education, should be more for value enhancement especially in consideration of the size of transactions for creditors and that the MSME are relatively less capable for such restructuring. Three, the professional is proposed by the creditors, but the costs are borne by the debtor.

4.8. Certain elements of the PPIRP are detrimental to the process as detailed below:

i. As mentioned above, time is of crucial consideration in a pre-insolvency regime. MSME promoters require advisory to prepare an effective plan for survival. The bankers, who are the major affected class of creditors, have detailed EOI procedure for selection of IP; judicial proceedings in disposal of cases have proved to be time consuming.

> **"Under the Pre-Pack, the Resolution Professional is proposed by creditor, but the cost is borne by the debtor."**

ii. Appointment of Authorized Representatives (AR), where mandated, is an additional layer that conflicts with the objective of time and costs rationalization.

iii. The fear that any possible transaction may be determined by the RP as fraud or conduct of business as gross mismanagement will become cause for vesting management. It will definitely have a dampening effect on owner's enthusiasm.

4.9. Admission to Pre-Pack may trigger avoidance transactions that have adverse consequences for promoters.

i. Affidavit from owners has its inherent reservation of not knowing what definitely will qualify as suspicious transaction. Undeniably a characteristic of MSMEs has been the inseparability of business from the owner.

ii. In the event of failure to resolve, the attendant risk of litigation costs attached to avoidance applications. The Adjudicating Authority in the matter of *Piramal Capital & Housing* matter[22] observed that avoidance applications cannot be withdrawn ipso facto where settlement has been reached between parties.

4.10. Finally, it's ironic that there is no surety on approval of 'Base Plan' submitted by the CD and as consequence one loses business and personal sureties.

5. The Way forward: Simple Re-Engineering

Pre-Pack process suggests an arrangement or preparation has been achieved before approaching the judicial forum.

[21] Ibid 2.

[22] In matter of *Black Rock Financial Services Pvt Ltd Vs. Primal Capital & Housing Finance Ltd.* IA No 3126 of 2023 in IA No 2524 of 2020 in CP(IB) No 4258/MB/2019.

Then why should the process mirror CIRP? The process should be "Simpler, Less Rigid and Accessible." Out-of-court workouts can be a win-win for debtors and creditors, both. Pre-Pack approval leaves the business in the hands of the current owners and lifts the burden from their shoulders as personal guarantees shall not be invoked. Concomitantly, the advantage for creditors may include a future transfer of benefits to mitigate the present haircut undertaken. The crucial aspect of price discovery should be with the consent of the owners. As in the successful case of Shree Rajasthan Syntex[23] the owners had their plan approved by the financial creditors who had debt exposure more than ₹100 crores.

"Stigmatized behavioral challenge may partially be addressed by rechristening the process where the words "insolvency" or "bankruptcy" are avoided."

5.1. Facilitating rescues of viable MSMEs at an early stage of imminent insolvency, is to be complemented with an educational tool with regard to the proper means for addressing the situation of financial distress and the proper use of the module options[24]. Continuing education through MSMEs associations and professional bodies is crucial. Secondly, the stigmatized behavioral challenge may partially be addressed by rechristening the process where the words "insolvency" or "bankruptcy" are avoided. The Code has put a scare in promoters, notwithstanding its beneficial impact on credit behavior, is evident from the number of withdrawals under Section 12A of IBC. The overarching theme of Pre-Pack should be to provide entrepreneurs with the opportunity for a fresh start, as recognized by the World Bank and the European Commission. Thirdly, debtor-friendly personal bankruptcy laws provide a safety net for entrepreneurs. Like in Italy the newly introduced insolvency regime for small businesses and practices, *Codice della Crisi,*[25] in situations of excessive indebtedness provides simplified procedures of general restructuring agreements or minor arrangements with creditors or controlled liquidation of assets to grant a second chance[26].

5.2. Countries having developed practice of insolvency show an inverse correlation to Corruption Perception Index. It is observed that correlation is not causation. As as per the Transparency International, India ranks 85 out of 180 countries (corruption perception index). Even on the two counts of World Bank's Governance Indicator - Rule of Law and Control of Corruption, India performs in the lower percentile as compared to US, UK and Netherlands. A simpliciter process should be the cardinal mantra for a homogenous business structure. As per the Australian insolvency regime,[27] where the framework provides financially distressed small businesses to work with a restructuring practitioner to restructure debts while allowing owners to remain in control of the business. Simpler processes would encourage creditors to overcome passivity. Some measures for simplification are as under:

i. As workout regimes typically involve informal and private negotiations, they provide greater flexibility, confidentiality, and less onerous administrative requirements, which is particularly useful when dealing with MSMEs[28]. Time delays due to litigations in SARFAESI and CIRP actions are reasons for adoption of Pre-Packs.

ii. Repealing the multi-layered structure of appointing ARs or perceived adversarial actions at this stage.

iii. Simpler processes would call for greater monitoring and ensuring implementation. As introduced in the recent CIRP Regulations, providing for a monitoring committee and defining the role of the RP in that committee for ensuring compliance is imminent.

23. *Shree Rajasthan Syntex Vs. State Bank of India* CP (IBPP)1JPR 2022.
24. Ibid 2.
25. Law Decree no.83/2022 based on Law No.155/2017, Italy.
26. Consumer Debt Issues Italy, Karl Heinz Lauser of Derra, Meyer & Partner published in Small Practice and Consumer Debt Issues Series, INSOL International, December 2023.
27. https://www.accountantsdaily.com.au/business/19681-looking-back-and-thinking-forward-the-insolvency-landscape-in-2024-and-beyond.
28. Ibid 2.

The direct benefit of an uncomplicated process is rationalization of costs and eventual minimization.

5.3. The direct benefit of an uncomplicated process is rationalization of costs and eventual minimization. Further, the IBBI may conceptualize a centralized fund in instances of failed Pre-Packs to appropriate costs. The case in point is the Korean Insolvency Law provides for an accounting firm, use of simplified accounting method and dispenses with court clerk fee (Jurisdictions with Comprehensive MSME Legislation, Korea)[29]. Furthermore, RP's fee, as in CIRP Regulations, should be mutatis mutandis applied to Pre-Packs with necessary weightage to performance fee that forms the general norm in turnaround and restructuring practice.

5.4. The key to unlocking the potential of Pre-Packs lies with the IPs. The IPs role should be that of a mediator (conciliator), debt-counsellor, restructuring expert and also administrator (supervisor). Prior to admission under Pre-Packs scheme, CD restructuring should be planned by a turnaround specialist. This forms the underlying intent of the European Commission Recommendation of March 12, 2014, on a new approach to business failure and insolvency. Similarly, Japan established a scheme called Turnaround ADR to facilitate the rescue of companies in financial distress through out-of-court workouts and to be managed by certified turnaround professionals.[30] IP appointments should have mutuality at its driving principle as they are duty-bound by the Code of Conduct for independence and impartiality.

The World Bank Task Force mooted the importance of non-judicial assistance for MSMEs and that micro enterprises are suited for solutions such as debt-counselling, mediation & financial education. There has been increased advocacy for mediation in the IBC leading to the Expert Committee Framework Report[31] in January 2024.

5.5. The self-declaration by MSMEs promoters on Avoidance Transactions has a 'blindsight' effect. Where the liability is crystallized, there will be the business owner's willingness to participate in the process rather than push the company towards liquidation or change of ownership. The regulations should define avoidance transactions. Further, such visibility shall minimize disagreement between RP and the owners and enable trust. This stumbling block has been recognized by expert committee[32] that has suggested avoidance objections to be filed before the Adjudicating Authority only if the application for approval of the Resolution Plan is filed by the RP before them unless the transactions will vitiate the process. The Japanese framework similarly bars any avoidance claim in a small case (Jurisdictions with Comprehensive MSME Legislation, Japan[33]). Duty towards avoidance application needs management's hand holding and education.

5.6. Vesting management should be dispensed with. Pre-Packs should come with no strings attached for resolving distress. Failure to resolve allows the creditors to pursue other remedies.

Pre-Packs should come with no strings attached for resolving distress. Failure to resolve allows the creditors to pursue other remedies.

5.7. Finally, the Government's stimulus to sector through various measures may be passed on through the Pre-Pack product. Japan incentivizes the debtor, conditionally, to apply for rehabilitation under Pre-Pack to source long-term finance for viable units. *(Jurisdictions with Comprehensive MSME Legislation, Japan [34]).*

29. Ibid 2.
30. World Bank, A Toolkit for Corporate Workouts, January 2022.
31. "Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016", IBBI 31 January 2024.
32. https://pib.gov.in/PressReleasePage.aspx?PRID=1895292#:~:text=Sitharaman%20announced%20that%20the%20revamped,of%20%E2%82%B9%202%20lakh%20crore.
33. Ibid 2
34. Ibid.

i. Government infused ₹20,000 crores subordinate debt for stressed MSMEs. Such mandated schemes where the objective is restructuring and rehabilitation, the Pre-Pack could become the preferred route for credit delivery. In ET Prime on January 08, 2024, Soumya Kanti Ghosh, Chief Economic Advisor of SBI argued that the Indian economy, post-pandemic, is on the path of equitable recovery contrary to what a number of world economists propositioned. The income inequalities of individuals are smoothening and there is progressive upward transition on income of micro firms moving towards SMEs on account of government distribution programs targeted at the lowest strata. Yet these firms are vulnerable to sudden change and thus such firms are not in need of resolving distress but much in advance for financial discipline, restructuring and rehabilitation through expert support.

ii. Factors such as additional provisioning by banks where recovery proceedings have been initiated further bear upon the decision making. Relaxed provisioning will reduce creditor passivity.

iii. Policy makers should focus on information dissemination, training, and promotion.

How can the Objectives of the Insolvency and Bankruptcy Code (IBC) be achieved?

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Insolvency and Bankruptcy Code, 2016 (IBC) is a landmark legislation for resolving financially stressed corporate debtors. The policymakers have been quite open-minded in incorporating suggestions for further strengthening the IBC and making it all-inclusive. However, timeliness and haircuts have been major concerns across stakeholders. It has been observed that timeliness and haircuts both are interlinked. The delays in insolvency processes lead to value degradation which results in haircuts i.e., low realization by creditors in terms of their admitted claims. In this article, the author has analysed various procedures under the Corporate Insolvency Resolution Process (CIRP) and suggested solutions to further strengthen the insolvency ecosystem to meet timelines of the IBC. ***Read on to know more…***

A lot has been done about the landmark legislation – the Insolvency and Bankruptcy Code, 2016 (IBC/ Code), however, a lot still needs to be done to make it an effective tool for timely resolution of financially stressed companies particularly on the front of implementation. In this article an attempt has been made to point out the key areas of concern, the path corrections required, key reasons for the delay in closure of processes under IBC and the improvements urgently required to achieve the desired objectives of IBC.

1. Educating the stakeholders

There is a great need to educate various stakeholders, namely the Committee Of Creditors (CoC), statutory

authorities (including various investigation agencies of the Central Government), industry associations etc. This is the primary reason for delays in completion of the Corporate Insolvency Resolution Process (CIRP) within the prescribed time limit. Some of the challenges which occur due to lack of correct understanding of the IBC are enumerated below:

a. Non filing/ delayed filing or filing of multiple claims by the stakeholders.

b. Violation of the moratorium provisions as laid down under Section 14 of the IBC.

c. Summons issued to the Resolution Professional (RP) treating the RP as an accused by the investigative agencies of the Government.

d. Lack of co-operation by various statutory authorities to the RP.

e. Unnecessary litigation by the various statutory authorities due to lack of proper understanding of the IBC.

f. Attachment of bank accounts and assets of the Corporate Debtor (CD) under CIRP.

g. Seizure of records of the CD under CIRP.

h. Lack of effective co-ordination between different arms of the Government.

> **"Government can have nodal officers for its various departments, these nodal officers can undergo in-depth training of IBC."**

Suggested Solution

(i) It is suggested that the Government can have nodal officers for its various departments, who should be provided with in-depth training in the IBC. Any litigation initiated by any wing of the Government must have the concurrence from these trained nodal officers. This will facilitate curtailing unnecessary litigation resulting in faster resolution and closure of CIRP processes. These nodal officers can also assist the RP in getting the desired co-operation from various Government departments. The name and contact details of these nodal officers can be published on the website of Insolvency and Bankruptcy Board of India (IBBI) for wider publicity and awareness.

(ii) Compulsory training to stakeholders and assessment of their understating of the IBC.

2. Litigation by the promoters of the corporate entities under CIRP

The promoters and directors of the corporate entities under CIRP have the incentives and motivation to delay and derail the CIRP process. It is common to notice that the promoters don't co-operate with the RP on one hand and on the other hand file multiple applications before various judicial forums. In this situation, the only option available under the IBC to an RP is to file an application under Section 19(2) of the IBC before the NCLT seeking directions for getting the desired co-operation from the promoters and their officers etc. However, applications under Section 19(2) of the IBC sometimes continue pending for months at the NCLT. Thus, Section 19(2) application is no longer an effective tool to get desired cooperation from the officials and promoters of the CD.

It is also noticed that the books of accounts and statutory compliances by the corporate debtors are mostly incomplete or pending for a substantial period of time as on the Insolvency Commencement Date (ICD), which creates substantial difficulties for the RP. Unless the records and statutory compliances are not updated, the status of outstanding liabilities as on the ICD cannot be ascertained. Hence with incomplete records a meaningful resolution /value maximization cannot happen. It is very onerous for the RP to complete the records for the period prior to ICD without the requisite support and cooperation of promoters.

Suggested Solution

(i) It is suggested that suitable amendments should be made to the IBC/ associated Regulations to ensure effectiveness of Section 19(2) of the IBC. The promoters may be barred from filing any application under the IBC before any court until such time the said application under Section 19(2) is disposed by the court.

"It is very onerous for the RP to complete the records for the period prior to ICD without the requisite support and cooperation of promoters."

(ii) Similarly, if records of the CD are incomplete as on the ICD, the promoters and directors of the CD shall be directed to complete those records on priority and in a time bound manner and till such time the records are incomplete, directors of the CD may be barred from filing any application under the IBC seeking any relief.

(iii) The above measures can be a big game changer, and the promoters would co-operate with the RP in providing the desired information in a time bound manner thereby saving valuable time and avoiding unnecessary litigation.

3. A code of conduct for the CoC

The timelines prescribed under the IBC/ associated Regulations are binding only to IPs. Some of the major challenges faced by the RP with respect to the conduct of the CoC are enumerated below:

a. Non-payment of the cost incurred by the RP & fees payable to the RP within a reasonable period: This is a very serious problem which has largely remained unaddressed by the IBC and the Regulations framed by IBBI. Therefore, RPs often hesitate in engaging in the services of professionals which adversely impacts the resolution of the Corporate Debtor. If the cost of professionals is not paid post-engagement, it brings a negative image to the IP as well as the entire insolvency ecosystem. Furthermore, it raises a question mark on commercial wisdom of the CoC.

b. Generally, senior officials of banks and other financial creditors (CoC Members) do not attend the CoC meetings due to which issues are not decided in the CoC meetings but postponed for e-voting. In the e-voting also multiple extensions are sought by the members of the CoC as a result weeks and even months are lost in taking such decisions.

c. The RP can easily be changed by the CoC.

d. Even after approval of the cost and expenses in the CoC meeting, banks took months in internal approvals.

Suggested Solution

(i) A code of conduct for the CoC needs to be enforced to rein in irresponsible behavior on part of the CoC.

(ii) IBBI issued a Guideline for CoC on August 06, 2024. The said guidelines were issued in response to the order passed by the Hon'ble Delhi High Court in the matter of *w* [W.P.(C) 10599/2021 & CM APPLs. 32697/2021,25107/2023, 61523/2023 and 62100/2023 dated 12.02.2024]. In this case, the Hon'ble Delhi High Court made some very important observations as summarized below:

(a) The CoC, which is a pivotal body under the regime of CIRP, cannot be devoid of any code of conduct for its functioning and discharging obligations under the provisions of the Code (IBC).

(b) It is pertinent to mention that the Insolvency Law Committee in its report dated February 20, 2020, has also recommended a standard code of conduct for the functioning of the CoC.

(c) It is widely said that 'with great power comes great responsibility'. One of the foremost functions of law is to circumscribe power with responsibility. The CoC, being entrusted with the fiduciary duty to bring back the Corporate Debtor from the vicious cycle of debt trap and revive the company, must be saddled with the responsibility.

(d) It be noted that the code of conduct is not intended to question the justness of the decision, as the wisdom

"Hon'ble High Court of Delhi in the case of *Kunwer Sachdev vs. Various Banks* (2024) said "A code of conduct shall be subservient to the Code and not in excess of it".

of the CoC is to be upheld. Even the Adjudicatory Authority is not empowered to do so, as the interference of the Adjudicatory Authority is also limited to the manner set forth 'In the Code'. A code of conduct shall be subservient to the Code and not in excess of it. However, the process of decision-

making must reflect fairness, reasonableness and objectivity, irrespective of the outcome.

(e) The IBBI is directed to frame/finalize a code of conduct/guidelines in accordance with its stand set out in the instant case, principles mentioned hereinabove and as per other relevant considerations, within a reasonable period of time, preferably, within three months from the date of the passing of this judgment, for the effective functioning of the CoC, without diluting the sanctity of the 'commercial wisdom' of the CoC and the legislative intent of the IBC.

However, the guidelines issued by IBBI have hardly made any impact on the conduct of the CoC post its issue. Therefore, it is essential to have a code of conduct which is binding to be effective in letter and spirit.

4. Delays at NCLT

There are considerable delays in disposing cases at the level of NCLT due to various reasons like:

(a) shortage of judicial and technical members.

(b) Lack of dedicated benches for IBC matters.

(c) Frivolous applications filed by promoters to delay the process.

(d) Unnecessary litigations by unsuccessful resolution applicants.

(e) Long dates given for the next date of hearing by the NCLT benches.

(f) Lack of dedicated benches for approval of Resolution Plans.

Suggested solution

(i) It is suggested that the services of Insolvency Professionals (IPs) can be mandated under the IBC like in the case of insolvency resolution process for PGs to CDs wherein the IP may be asked to submit report on admission of CIRP application.

(ii) CoC can be empowered to take some of the decisions which are presently taken by the NCLT, such as confirming the Interim Resolution Professional (IRP) as the RP, constitution of the CoC, change in constitution of CoC, admitting delayed claims, filing progress reports etc. These decisions can be taken by the CoC and NCLT may be intimated via email.

5. The power of the board of directors is suspended but duties are not suspended

As per Section 17(1)(b) of the IBC the powers of the board of directors or the partners of the CD are suspended and are exercised by the IRP. This provision has been conveniently interpreted by the directors as their powers are suspended, therefore their duties are also suspended. It is therefore necessary to categorically mention in the IBC that duties of the board are not suspended, rather they are compounded during the CIRP. The challenges faced by the RP with respect to the provisions of Section 17(1)(b) of the IBC are as enumerated below:

(a) The investigative wings of the Government expect all the information and documents from the RP post commencement of CIRP, which is only possible when the promoters are cooperative. Where the RP has filed an application under Section 19(2) of the IBC, the investigative wings of the Government should seek the information and documents from the directors only.

(b) The RP is held responsible for providing information and documents to the various statutory authorities for the period prior to the ICD, which is not in his possession.

(c) The RP needs to focus on the CIRP process and its resolution, the directors cannot be left scot-free. The RPs cannot be held liable to provide documents for the period prior to the insolvency commencement date which are not in his possession.

"Section 17(1)(b) of the IBC must specify that the duties of the board are not suspended, rather they are compounded during the CIRP."

Suggested solution

(i) Section 17(1)(b) of the IBC must specify that the duties of the board are not suspended, rather they are compounded during the CIRP.

(ii) The investigative wings of the Government need

to be educated that the primary responsibility of providing information for the period prior to the insolvency commencement date rests with the directors of the corporate entity under CIRP.

(iii) The RP is an officer of the court and needs to be treated with respect and not as an accused. This needs to be explained to the investigative wings of the Government.

6. Section 29A needs to be diluted

Various judicial pronouncements of the Supreme Court of India have established the supremacy of the CoC's commercial wisdom. Thus, CoC's commercial wisdom cannot be challenged in any court of law. Section 29A is too restrictive and does not distinguish between genuine and willful defaults.

Suggested solution

(i) Only in cases of willful default, the promoters and their related entities should be barred from submitting a resolution plan. In all other cases, it should be left to the commercial wisdom of the CoC.

(ii) Section 29A may be diluted to facilitate resolution.

7. Claims of EPFO pertaining to employees' dues

Section 36(4)(iii) of the IBC provides that all sums due to any workmen or employee from the Provident Fund, the pension fund and the gratuity fund (emphasis supplied to the term "Fund") shall not be used for recovery in the liquidation. This provision has been interpreted by the courts as – entire dues of the employees towards provident, pension and gratuity are to be paid in priority before any payment can be made to any other stakeholders.

> **"The SRA should not be liable for inactions and non-compliances on the part of promoters and directors of the CD towards employee dues."**

Even where no fund towards provident/pension/ gratuity has been created by the corporate entity under CIRP, the courts are passing orders against the Successful Resolution Applicant (SRA) for payment of entire dues pertaining to provident/pension/ gratuity. The said payments are not provided under the Resolution Plan as the requisite claims have not been received by the RP during the CIRP. This creates uncertainty for resolution applicants to participate in the resolution process as the resolution applicants can be held liable to pay for the liabilities pertaining to the period prior to the ICD for which no provision has been made under the Resolution Plan.

Suggested Solution

(i) Needful amendment may be in the IBC to remove this anomaly. It needs to be categorically stated in the IBC that only where a fund has been created by the corporate entity under CIRP towards Provident Fund, the pension fund and the gratuity fund, the said fund shall not be treated as assets of the corporate entity under CIRP/ liquidation and shall be utilized only towards payment to the respective employees/workers.

(ii) The SRA should not be liable for inactions and non-compliances on the part of the promoters and directors of the CD towards employee dues.

(iii) It must be the personal liability of the directors of the corporate entity under CIRP to pay the dues pertaining to the employees/ workers for the period prior to the ICD.

8. Lower Threshold Limit for MSMEs to initiate CIRP

The present threshold limit of default amounting to one crore rupee is very high for a MSME unit to initiate a CIRP against a defaulting creditor. The limit needs to be brought down for MSMEs to ten lacs rupees only. This will facilitate the MSMEs to initiate CIRP against unscrupulous creditors. MSMEs need to be protected with a special set of provisions which can protect and take care of their interest.

9. Resolving Pain Points of IPs

It needs to be appreciated that IPs are the most important pillar of the IBC, therefore, protecting and safeguarding the interests of IPs is imperative to strengthen the IBC. The IBC is a landmark legislation and with the suggested modification and changes it can become much more effective as a tool

for timely resolution and restructuring. The list of key 'pain points' faced by the IPs during the IBC processes and 'suggested solution' for strengthening the IBC are as follows:

(a) Untimely payment of CIRP Cost and fees approved by the CoC. Without timely payment, compliance of Section 17(2)(e) is not possible by the IPs.

Suggested Solution: (i) Provide payment of interest to IPs for delayed payment under the CIRP Regulations. (ii) A robust code of conduct for the CoC will facilitate this.

(b) Compliance with Regulation 31A – Regulatory Fees

The RP is liable to collect and pay Regulatory Fees on behalf of IBBI as per details below:

Regulation 31(A)(1) - Regulatory fee calculated at the rate of 0.25% of the realisable value to creditors under the Resolution Plan approved under Section 31.

Regulation 31(A)(2) - Regulatory fee calculated at the rate of 1% of the cost being booked in CIRP costs in respect of hiring any professional or other services.

It needs to be appreciated that when the IPs are unable to collect their own fees and expenses from the CoC, burdening them with additional responsibility of collecting regulatory fees for IBBI is unwarranted.

Suggested Solution: (i) Increase the fees under Regulation 31(A)(1) from 0.25% to 0.50% and the make the SRA responsible to pay the said fees directly to IBBI or contribute the said fees in addition to the Resolution Plan value. Presently this is considered as a part of the CIRP Cost. (ii) Delete Regulation 31(A)(2).

(c) Frivolous complaints are being filed before the IBBI/IPA against the IPs.

Suggested Solution: (i) Impose cost where IPs are not found guilty (ii) Reimburse the cost incurred by the IP in defending himself, the said cost may be recovered from the complainant. (iii) IBBI/IPA to first examine the genuineness of complaint before seeking any reply from the IP. (iv) Track record of the IP to be given due weightage before initiating any investigation against the IP (v) A process of appeal against the DC order within IBBI by an independent body needs to be created.

(d) After the IP is discharged from the process, he cannot be made a party in any application.

Suggested Solution: With the order of Liquidation/ Resolution, the NCLT can pass orders for discharge of the RP/ Liquidator.

(e) Summons are issued by the investigative agencies (ED / EOW / CBI) against the IPs.

Suggested Solution: (i) Promoters' powers are suspended, but duties are not suspended, hence promoters/ directors to be primarily responsible to provide the information to the investigative agencies (ED / EOW / CBI) for the period prior to the ICD. (ii) Investigative agencies (ED / EOW / CBI) can only seek information from the IP and IPs should not be summoned/ asked to appear before the said investigative agencies.

(f) Difficulties in locating the office and contacting the directors of the corporate entity in CIRP post-commencement of CIRP.

Suggested Solution: Every order of admission of an application for CIRP must mention - (a) Mobile No. (b) Email id and (c) address of the director of the CD who shall be responsible for assisting the IP. (iv) the address of the place where books are maintained must be stated in the order of admission.

(g) Lack of clarity regarding payment of fees to the RP for applications filed under Section 94 and Section 95.

There is lack of clarity on who is responsible for payment of fees to the RP where an application is filed under Section 94 and Section 95. The minimum fees payable to the RP also needs to be specified in the regulations.

Suggested solution: (i) Regulations to expressly provide who shall fund the cost and fees of RPs. (ii) Minimum fee structure for RP may be specified in the Regulations.

The Role of Third-Party Funding in Insolvency Litigation in India

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Third Party Funding (TPF) allows financially constrained entities to pursue legitimate claims by covering costs such as legal fees and court expenses. This is particularly beneficial for insolvent companies that may otherwise avoid litigation due to cost constraints. The Supreme Court in the case of Bar Council of India vs. A.K. Balaji (2018) upheld that non-lawyers could fund litigation in exchange for a share in the recovery. However, concerns around the lack of regulation and transparency remain key challenges for the expansion of TPF in the country. In this article the author analyses various aspects of TPF for IBC litigations and based on the best practices for TPF frameworks in the UK, the USA, Australia and Singapore, she recommends a comprehensive legal framework for TPF in India.

Read on to know more…

1. Introduction

Insolvency litigation is resource-intensive and often burdens companies facing financial distress. The Insolvency and Bankruptcy Code, 2016 (IBC) was designed to streamline insolvency processes, ensure timely resolution, and maximize asset value. However, the costs associated with litigation, particularly in

complex insolvency cases, continue to be a significant challenge for corporate debtors. In response, Third-Party Funding (TPF) has emerged as a potential solution.

TPF, also known as litigation financing, allows a third party—typically a financial entity—to cover a claimant's litigation costs in exchange for a portion of the proceeds if the case succeeds. This arrangement enables distressed companies to pursue legal claims without the burden of upfront costs. If the claim is unsuccessful, the funder absorbs the financial loss, making it a non-recourse investment for the debtor[1].

While TPF is a relatively new concept in India, has gained significant traction in countries such as the United States, United Kingdom, and Australia. In *Bar Council of India vs. A. K. Balaji* (2018)[2], the Supreme Court of India confirmed that non-lawyers could fund litigation in exchange for a share in the recovery. Despite this judicial endorsement, the use of TPF in insolvency remains limited[3].

Insolvency cases often involve complex, lengthy, and expensive litigation. TPF offers companies under the IBC a way to continue litigation without depleting their resources, benefiting both the debtor and the creditors. However, concerns around the lack of regulation and transparency remain key challenges for the expansion of TPF in India[4].

2. Legal Framework of TPF in India

The TPF is legally recognized in certain Indian states through amendments to the Code of Civil Procedure, 1908 (CPC). States such as Maharashtra, Gujarat, Madhya Pradesh, and Uttar Pradesh have introduced specific provisions under Order XXV, Rules 1 and 3 of the CPC, authorizing TPF. These amendments allow courts to require third-party financiers to be involved in the litigation by depositing necessary costs. Although other states have not made similar amendments, there is no explicit prohibition against TPF in any national legislation. Importantly, while no comprehensive law regulates TPF in India, courts review the terms of such funding agreements to ensure fairness, particularly scrutinizing them under principles of public policy[5]. For instance, in *Ram Coomar Coondoo vs. Chunder Canto Mookerjee* (1867)[6], the Privy Council acknowledged the legality of funding agreements, provided they were not extortionate or unconscionable. Furthermore, the Supreme Court of India, in the case of *Re: 'G', A Senior Advocate* of the Supreme Court[7], noted that the strict English doctrines of champerty and maintenance do not apply in India, meaning TPF arrangements could be legally enforceable.

"As no comprehensive law regulates TPF in India, courts review such agreements to ensure fairness, particularly scrutinizing them under principles of public policy."

Additionally, in the case of Bar Council of India vs. AK Balaji[8], the Supreme Court clarified that while lawyers in India are prohibited from funding litigation, non-lawyers (third parties) may finance legal proceedings. This view is echoed in the Kerala High Court ruling in *Damodar Kilikar vs. Oosman Abdul Gani*[9], which held that champerty agreements are not inherently illegal unless lawyers are involved. India's growing role as a hub for commercial arbitration has spurred interest in TPF, particularly in industries like construction and engineering, where companies such as Patel Engineering and Hindustan Construction Company have already secured TPF for arbitration claims. TPF is increasingly seen as a solution for debt-ridden firms, providing much-needed financial relief to pursue meritorious claims.

This framework is particularly relevant in insolvency litigation, where debt-ridden companies often struggle to secure the necessary financial resources to pursue complex and high-cost legal disputes. In the context of

[1] Chaudhuri, D. R., & Agarwal, R. (2021). Litigation funding: A breakthrough for avoidance proceedings under IBC. IBBI Quarterly Newsletter.

[2] *Bar Council of India v. AK Balaji,* AIR 2018 SC 1382.

[3] Choubey, P. (2023). Litigation funding in Indian corporate insolvency regime: An analysis. Pimpri Law Review Journal, 3(1), 1-15.

[4] Gupta, R. (2021). Litigation financing and its viability under Insolvency Bankruptcy Code 2016. IBCLaw.in. Retrieved from https://ibclaw.in.

[5] Cyril Shroff, (2019) https://www.cyrilshroff.com/wp-content/uploads/2019/06/Third-Party-Funding-in-India.pdf, Page no: 8, 10.

[6] *Ram Coomar Coondoo v Chunder Canto Mookerjee* (1876-77) 4 IA 23.

[7] AIR 1954 SC 557, 559, para 11.

[8] Ibid, AIR 2018 SC 1382.

[9] *Damodar Kilikar and Ors. v. Oosman Abdul Gani,* 1961 KLJ 356.

the IBC, TPF can serve as a lifeline for creditors and Resolution Professionals (RPs) involved in contentious litigation or arbitration during the resolution process. By leveraging TPF, financially stressed entities can access the capital required to pursue legal claims that may help recover assets or settle disputes, thereby aiding the overall resolution process. In insolvency cases, TPF helps ease the financial burden on companies in distress while ensuring that creditors can maximize recoveries, making it an increasingly attractive option in the insolvency landscape.

3. Advantages of TPF in Insolvency Litigation

The introduction of TPF in insolvency litigation offers several advantages, particularly for financially distressed companies under the purview of the IBC. As insolvency cases often require substantial legal costs, which many corporate debtors cannot afford, TPF emerges as an effective mechanism to bridge this financial gap. Below are the key benefits of TPF in the insolvency landscape:

3.1. Access to Justice and Increased Litigation Capacity

TPF allows financially constrained entities to pursue legitimate claims by covering costs such as legal fees and court expenses. This is particularly beneficial for insolvent companies that may otherwise avoid litigation due to cost constraints. With TPF, companies can pursue claims, including those related to avoidance transactions or fraudulent transfers[10], without depleting their limited resources[11].

3.2. Risk Mitigation for Insolvency Professionals

Insolvency Professionals (IPs) in their capacity as RPs and Liquidators, benefit from TPF as it removes the financial burden of litigation from the debtor's estate. Since TPF is non-recourse, the funder absorbs the cost if the case fails. This allows IPs to focus on core responsibilities without worrying about funding costly litigation[12].

3.3. Maximization of Asset Recovery

TPF enables IPs to pursue complex, resource-intensive claims, such as those involving undervalued or preferential transactions. This increases the likelihood of higher asset recoveries, which benefits creditors and helps ensure that valuable claims are not abandoned due to a lack of funding.

"Since TPF is non-recourse, funder absorbs the cost if the case fails. This allows IPs to focus on core responsibilities without worrying about funding costly litigation."

3.4. Levelling the Playing Field

In many insolvency cases, creditors with deep pockets may have an unfair advantage. TPF helps level the playing field by providing debtors with the financial backing needed to litigate on an equal footing. This ensures that outcomes are based on the merits of the case rather than the financial resources of the parties involved[13].

3.5. Facilitation of Settlement and Early Resolution

TPF can facilitate early settlement discussions. Funders conduct rigorous due diligence before investing, signalling to defendants that the claim is strong. This can encourage defendants to settle early, avoiding lengthy litigation. Funders also push for settlements to reduce their risk, creating a win-win for all parties.

4. Challenges and Risks of Third-Party Funding in Insolvency Litigation

While TPF offers several advantages in insolvency litigation, it is not without challenges and risks. These concerns are particularly significant in India, where the regulatory framework for TPF is still evolving. The key challenges include:

4.1. Lack of a Comprehensive Regulatory Framework

One of the most significant hurdles to the adoption of TPF in India is the absence of a comprehensive legal framework

[10] Amrit Mahal. (2023), Third-Party Litigation Funding For Avoidance Actions: The Key To Trapped Recoveries For Creditors, Page 1-3,

[11] Baker Botts. (2024). An overview of how third-party litigation funders are being addressed by courts and policymakers. Retrieved from https://www.bakerbotts.com

[12] ibid, Gupta, R. (2021).

[13] ibid, Baker Botts. (2024)

governing its practice. While the Supreme Court's ruling in *Bar Council of India vs. A.K. Balaji* allowed non-lawyers to fund litigation, there is no legislation that clearly defines the roles and responsibilities of funders, litigants, or legal professionals involved[14]. The lack of regulation raises concerns about transparency, as well as the possibility of funders exerting undue influence over the litigation process[15]. In contrast, jurisdictions like the United Kingdom and Australia have established regulatory guidelines that ensure transparency and prevent funders from taking control of litigation strategies[16]. India lacks equivalent rules, which makes it challenging to address potential conflicts of interest and protect the rights of all parties involved.

4.2. Potential Conflicts of Interest

The lack of clear regulations increases the risk of conflicts of interest between funders, litigants, and other stakeholders. Funders typically seek a return on their investment, which may lead them to push for decisions that prioritize financial gain over the best interests of the debtor or creditors[17]. For instance, a funder might encourage a quick settlement to secure a return, even if continuing the litigation could result in a larger recovery for the debtor or creditors.

There is also the risk that funders might exert undue control over litigation strategy, particularly if they have significant financial exposure. This compromises the litigant's autonomy, with decisions being driven by the funder's interests rather than the legal merits of the case. Addressing these conflicts requires clear contractual terms and regulatory oversight to ensure funders cannot unduly influence litigation processes.

4.3. Uncertainty and Delays in the Indian Legal System

The Indian legal system is known for its delays and unpredictability, which poses a significant risk for third-party funders. Protracted litigation increases legal costs and extends timelines for resolution, which may deter potential funders from investing in insolvency cases[18]. Unlike jurisdictions with more efficient legal systems, delays in India make it difficult for funders to accurately assess the risks and potential returns of financing a case.

> **"Delays in India make it difficult for funders to accurately assess the risks and potential returns of financing a case."**

Furthermore, delays in insolvency proceedings, especially during the admission and approval of claims under the IBC, exacerbate these risks. Funders may be reluctant to invest in cases where the outcome is uncertain or could be delayed for years, eroding their returns.

4.4. Confidentiality and Privilege Issues

Another significant risk associated with TPF in insolvency litigation is the potential breach of confidentiality and attorney-client privilege. Funders often require access to sensitive case details to conduct due diligence before agreeing to provide funding. Without proper safeguards, this could result in the unintentional waiver of attorney-client privilege. In jurisdictions where TPF is more established, specific rules have been introduced to protect the confidentiality of information shared with funders. However, India lacks such safeguards, which adds another layer of complexity to the use of TPF in litigation.

4.5. Reputational Risks for Funders and Litigants

Reputational risks are a concern for third-party funders, especially if they are perceived to be supporting unmeritorious or speculative claims. Funders need to maintain their credibility in the legal market, as their reputation influences the willingness of courts and stakeholders to engage with the cases they support. Similarly, litigants who use TPF may face reputational risks, particularly if stakeholders like creditors or regulators view third-party financing negatively. In some cases, the involvement of a third-party funder may lead to perceptions of frivolous or vexatious litigation, especially if there is no well-defined regulatory framework. Such perceptions can undermine the debtor's position in the insolvency process and affect the legitimacy of their claims.

[14] Ibid, Choubey, P. (2023).

[15] Ibid, Baker Botts. (2024).

[16] International Bar Association. (2023). Third-party funding: A saviour to the distressed claimant. Retrieved from https://www.ibanet.org

[17] Ibid, Baker Botts. (2024).

[18] Ibid, International Bar Association. (2023).

5. Global Perspectives on TPF

5.1. United Kingdom

The United Kingdom has been a pioneer in the adoption and regulation of TPF. In the UK, the practice of litigation financing has been bolstered by the Civil Justice Council's Code of Conduct for Litigation Funders, established in 2011. This Code provides a self-regulatory framework that outlines the duties of funders, including maintaining confidentiality, ensuring non-interference in litigation strategy, and defining circumstances under which funding can be withdrawn. The UK model provides a clear structure for funders, litigants, and legal professionals, which helps mitigate the risks associated with TPF, such as conflicts of interest and undue influence over litigation strategy. By promoting transparency and requiring funders to adhere to ethical guidelines, the UK has fostered a thriving litigation funding market. India could benefit from adopting similar self-regulatory measures, particularly as the TPF market in the country matures[19].

"One of the key drivers of Australia's success in implementing TPF is its clear legal framework, which includes judicial oversight of funding arrangements."

5.2. Australia

Australia is another jurisdiction where TPF has gained significant traction. The Australian market for litigation funding emerged in the context of class actions and insolvency litigation, where funders play a crucial role in financing large, complex cases that would otherwise be prohibitively expensive. One of the key drivers of Australia's success in implementing TPF is its clear legal framework, which includes judicial oversight of funding arrangements to ensure fairness and prevent abuse. Australian courts actively ensure that the interests of funders align with those of the litigants; judges regularly scrutinize funding agreements to safeguard against unreasonable profit-sharing arrangements or undue control over the litigation process. India too could benefit from such judicial scrutiny to ensure that TPF arrangements are fair and equitable, particularly in insolvency cases where multiple stakeholders have competing interests.

5.3. Singapore and Hong Kong

Singapore and Hong Kong have recently introduced TPF into their legal systems, particularly in international arbitration. Both jurisdictions recognized the benefits of TPF in enhancing access to justice and promoting efficiency in dispute resolution. In Singapore, the Civil Law (Third-Party Funding) Regulations were introduced in 2017[20], allowing for third-party financing in international arbitration and related proceedings. Similarly, Hong Kong passed legislation allowing TPF in arbitration and mediation, ensuring that the practice is well-regulated and transparent[21]. These jurisdictions recognized the importance of balancing the need for funding with the potential risks, such as conflicts of interest and confidentiality concerns. By focusing on specific dispute resolution contexts, Singapore and Hong Kong provide models for India, which could expand the use of TPF beyond insolvency into other areas of commercial dispute resolution.

5.4. United States

In the United States, TPF has become a well-established practice, particularly in commercial litigation and class actions. Unlike other jurisdictions, the U.S. market for litigation financing is largely driven by private agreements, with funders and litigants negotiating the terms of funding arrangements. While the U.S. does not have a centralized regulatory framework for TPF, courts have occasionally weighed in on issues related to disclosure and conflicts of interest. One lesson from the U.S. experience is the importance of balancing flexibility with oversight, the U.S. model allows funders and litigants to tailor funding agreements to suit the specific needs of each case, but judicial oversight ensures that the funder's involvement does not undermine the fairness of proceedings. India can draw from this experience by allowing flexibility in funding agreements while ensuring

[19] https://www.scconline.com/blog/post/2022/04/11/third-party-litigation-funding/#_ftn30

[20] https://sso.agc.gov.sg/SL/CLA1909-S68-2017, chapter 43

[21] Zhang B. (2021), Third Party Funding for Dispute Resolution, Springer Nature Publications, pp. 195-196

that courts have the authority to review and intervene in cases that may compromise the integrity of insolvency proceedings.

5.5. Challenges in Global Adoption of TPF

Despite its success in many jurisdictions, TPF has faced challenges globally, particularly ethical concerns and the need for greater regulation. Critics argue that TPF can incentivize frivolous litigation or create situations where funders prioritize profit over the best interests of litigants. Several jurisdictions have introduced measures to ensure that funders do not unduly control litigation and that their involvement is transparent to all parties involved. Additionally, confidentiality and privilege issues have arisen in many jurisdictions where TPF is used. Funders often require access to sensitive case information to assess the merits of a claim, which can lead to the unintentional waiver of attorney-client privilege or breach of confidentiality agreements. Jurisdictions like Australia and the UK have developed rules to mitigate these risks by protecting the privileged status of information shared with funders, a practice India could adopt to ensure TPF operates within the bounds of existing legal protections.

6. Lessons for India

India, with its evolving insolvency regime under the IBC, stands at a pivotal point in determining how to effectively integrate TPF into its legal framework. Drawing from global practices, India can take several steps to maximize the benefits of TPF while mitigating the associated risks. Firstly, developing a comprehensive regulatory framework, either through legislation or self-regulation, is crucial[22]. This would ensure transparency, protect all stakeholders, and prevent funders from unduly influencing litigation strategies. Regulatory bodies like the Ministry of Corporate Affairs (MCA) and the Insolvency and Bankruptcy Board of India (IBBI) should take the lead in implementing such a framework. Additionally, courts in India should actively scrutinize TPF agreements to guarantee fairness, especially in high-stakes insolvency cases where creditor's interests are at risk. Judicial oversight would ensure that TPF arrangements are equitable and prevent funders from exerting excessive control over litigation outcomes.

Attracting more financiers to the TPF market is equally important. By making TPF a more lucrative and secure investment, India can encourage more funders to participate, promoting competition and providing corporate debtors with a range of funding options. However, this should be coupled with strong safeguards to ensure transparency, fair play, ethical conduct, and confidentiality in all transactions. Prioritizing TPF cases in courts and tribunals is another essential step; by marking these cases for expedited hearings and minimizing delays, India can reduce cost overruns and inefficiencies that often plague insolvency proceedings.

Further, India must adopt rules to protect attorney-client privilege and maintain confidentiality in communications with funders. This will prevent the unintentional waiver of these protections during insolvency litigation. Regulating the entry of third-party financiers is also critical. Only financiers with strong net worth and an unblemished financial record should be allowed to participate, ensuring that only credible entities are involved. By learning from global experiences and tailoring those practices to the Indian context, India can unlock the full potential of TPF, providing much-needed financial relief to distressed companies while preserving the integrity and fairness of the insolvency process.

7. Conclusion

TPF in insolvency litigation presents a transformative opportunity for India, especially in supporting financially distressed companies. By learning from global examples like the UK, Australia, and Singapore, India can establish a regulatory framework that promotes transparency, fairness, and safeguards against undue influence. TPF enhances access to justice, allowing insolvent companies to pursue complex claims specially matters related to avoidance transaction that might otherwise be abandoned due to cost constraints. However, it also introduces risks such as potential conflicts of interest, control over litigation strategy, and confidentiality concerns. Addressing these challenges through comprehensive regulations and judicial oversight will enable India to fully leverage the advantages of TPF, while maintaining the integrity and fairness of its insolvency proceedings. With appropriate safeguards in place, TPF can help balance the interests of debtors, creditors, and funders, contributing to a more efficient and equitable insolvency framework.

[22] https://www.mca.gov.in/Ministry/pdf/ICLReport_05032020.pdf, Page 20

Filing in NCLT: A Key For Timely Resolution

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Insolvency Professionals (IPs) in their capacity as IRP, RP or Liquidator are bound with timelines under the IBC. In addition to the CIRP and Liquidation applications, several Interlocutory Applications are filed before the NCLT under various sections of the IBC. The pendency before the Registry, which is responsible for scrutinizing applications and assigning them numbers, results in non-timely compliance by the RP that adversely affects the very objective of the IBC. If Registry personnel of NCLT are provided appropriate training, the pendency before the Registry can be minimized. In this article, the author analyzes the Registry's functioning and suggests measures to enhance the quality of service, which will ultimately help reduce pendency and increase the value of the Corporate Debtor. ***Read on to know more…***

1. Filing in NCLT and Scrutiny by the Registry

In this era of hybrid court proceeding error free e-filing as well as manual filing of the cases before the court is a very important aspect in early admission and timely disposal of matters. The key to the success of the Insolvency and Bankruptcy Code, 2016 (IBC) is envisaged in the time bound resolutions. However, it is observed that the e-filing and manual filing is taking painfully longer time before the Registry of the National Company Law

Tribunal (NCLT) due to delayed numbering of Corporate Insolvency Resolution Process (CIRP) applications, Liquidation applications and Interlocutory Applications (IAs). The cascading effect of pendency results in non-timely compliance by the Resolution Professional (RP) which adversely affects the very objective of the IBC.

The majority of the CIRP applications, Liquidation applications and IAs filed before NCLT are related to sections 7, 9, 10, 94, 95 under the IBC and various provisions pertaining to amalgamation and merger under the Companies Act 2013. Furthermore, under the main petition several IAs to be filed in the same format as that of main case/ petition which also includes, indexing, synopsis, date and events, the application, affidavits and Vakalatnama etc., despite the same advocate in main petition filing such IAs.

The procedure for filing various reports / progress reports / CIRP period extension by Interim Resolution Professional (IRP)/ RP and Liquidator are also required to go through the same rigor which results in inordinate delays in numbering and listing. These delays in obtaining directions from the Adjudicating Authority (AA) further delay CIRP and Liquidation processes. Sometimes, the Committee of Creditors (CoC) does not approve legal expenses due to which IRP/ RP is required to appear in person or file an application of his own so as to ensure compliances which also come heavily in smooth conduct of insolvency processes and this issue is pertinent where all creditors are only operational creditors.

> **"The pendency of applications filed u/s 94 on the pretext of moratorium available u/s 96 of the IBC adversely affect the insolvency process and realization by creditors."**

Further it is also observed that the litigants, more specifically Personal Guarantors (PGs) to the Corporate Debtors (CDs), are filing application u/s 94 of IBC to stall the legal actions by the banks and other financial creditors. The pendency of such applications before the Registry of NCLT, on pretext of moratorium available u/s 96 of the IBC, adversely affect the insolvency process and realization by creditors.

2. Timelines under the IBC and IPs

Insolvency Professionals (IPs) in their capacity as IRP, RP or Liquidator are bound with timelines under the IBC. However, court proceedings are neither counted in these timelines nor are any time limit is mandatory for courts.

Thus, the 14 days' time for admission of petitions u/s 7,9,10 envisaged under the IBC is not binding upon the AA. However, filing the report under Section 99 in 10 days of admission of the application u/s 94 or 95 petition is mandatory for IRP and non-filing of the report attracts accountability. Several IPs have been issued adverse remarks and disciplinary actions for non-compliance of this provision. The average time taken from filing of a CIRP application to numbering by the Registry and listing thereof is more than 90 days. Then the question arises, how could it be possible to conduct an entire CIRP in 180 days? Probably, this is a primary reason for increasing the time limit to 330 days but that too is difficult to achieve. There is no preferential treatment to the application pertaining to the compliance by IRP /RP/ Liquidator under the relevant sections of the IBC so as to facilitate timely directions from AA for speedy resolution of CDs.

3. Procedure of Filing Petitions before NCLT

The registration of an application starts with e-filing on the e-filing portal of NCLT. The Registry of NCLT Benches generally issue defect letters in 7 to 15 days and the refiling window is kept open for seven days. Thereafter, it is automatically blocked and could be accessed only after Registry allows it to do so, that to after filing of praecipe. Not removing defects or non-refiling of fresh applications during this period by the applicant/ litigants, keeps the application pending in 'defective stage' until it is discarded by the Registry which takes 9-12 months. After observing the application defect free, the Registry provides a unique number. Thereafter, manual filing is to be done by submitting application in two sets in the office of the Registrar of NCLT. Finally, the filing is said to be complete for placing before the AA.

> **The scrutiny of the Registry is mainly focused on Scanning, OCR, Book Marking and E-sign, Digital Signature Certificate (DSC), order of filing etc.**

The scrutiny of the Registry is mainly focused on Scanning, Optical Character Recognition (OCR), Book Marking and E-sign, Digital Signature Certificate (DSC), order of filing etc., which is as per the order of NCLT Principal Bench dated September 28, 2023. However, it does not include jurisdiction, locus standi, amount of default and dispute, non-pendency before any other court (res judicata), declaration on eligibility in filing etc., which are directly linked to acceptance or rejection of the application. It has been observed that litigants move to the NCLT filing on the flag end of SARFAESI Act,2002. Besides, petitions are frequently filed under sections 10 and 94 of the IBC to avail benefits of the moratorium available u/s 14 and 96 of the IBC.

The Hon'ble High Court of Kerala in the case of Jeny Thankachan[1] vs. Union of Inia & others held that the Personal Guarantor (PG) to the Corporate Debtor (CD) with defective filing cannot use Section 96 as a shield to escape claims of creditors. In this case, the petitioner had filed an application before AA for resolution of personal insolvency under Section 94. The application was not made defect free but claimed protection of moratorium under Section 96. Thus, removal of defects is of paramount importance. The Registry should provide pinpoint observations in scrutiny and promptly decide on such applications.

4. Practical Difficulties in NCLT Filings

The author, in his capacity as advocate and an IP, had firsthand experience of hardships in filing three applications before the NCLT, Mumbai. The first was filed under Section 94 of the IBC pertaining to a default amounting ₹50 lakhs while the default amount in the second case was ₹74 lakhs. In both the above cases default was below the threshold of ₹1.00 crore, minimum default required to admit CIRP application under the IBC. Therefore, the CIRP applications in both cases should have been rejected at the stage of filing. However, in both cases, applicants issued legal notice through his advocate threatening contempt of court if anybody violates moratorium available u/s 96 and restrained the Bank as well as the court receiver appointed by the Chief Metropolitan Magistrate (CMM) from taking possession under SARFAESI Act,2002.

In the third case, an application was filed under Section 94 for initiation of the insolvency process against the PG to CD wherein the default was ₹3.50 crore whereas available asset value was declared ₹10.50 crores. However, in this case the debtor had three times assets than his liabilities. It is assumed that if liability exceeds assets, the person is insolvent, but this application was not labelled as defective by NCLT, and the Registry processed it for presentation before the AA. The applicant in this case went on to issue legal notice to the bank on pretext of moratorium u/s 96, filed contempt petition before Debt Recovery Tribunal – II (DRT-II), Mumbai and filed securitization application against the issuance of possession notice by the Court Receiver appointed by the CMM.

> **As per Rule 28 of NCLT, in case of non-removal of defects within seven days of issuing defect letter, the Registrar may pass appropriate orders.**

In another case, an application u/s 94 was pending before Registry of the NCLT, Mumbai for more than 265 days and the applicant was enjoying moratorium u/s 96 as no action was taken under Rule 28 to reject the application. In its judgment dated May 03, 2024, the Hon'ble High Court of Bombay observed[2] that Rule 28 of NCLT provides that once a document has been filed by a party, the Registry is required to scrutinize the application, documents and objections should be notified for compliance. The party / litigants ought to comply within seven days from the date of issuance of the defect in the filing by the Registry.

1. *Jeny Takhankachan vs. Union of India & Other,* Judgement of Kerala High Court Dated 17th Nov,2023. Also available at https://indiankanoon.org/doc/122763948/?type=print

2. *Bank Of Baroda vs. Union Of India* on 3 May 2024 available at https://indiankanoon.org/doc/60101475/

In case of non-removal of defects within seven days of issuance of such defects/ objections, the document shall be placed before the Registrar who may pass appropriate orders. The Registrar is vested with a discretion to grant extension of time and allow refiling based on sufficient cause being established. It is observed that Rule 28(4) clearly states that when the litigants / parties fail to take appropriate and corrective steps in removing the defects issued by the Registry within a stipulated time period, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document.

Here it seems that the guidelines under Rule 28 of NCLT are quite clear. However, large number of applications remained pending at the scrutiny stage. Thus, practically the filing before NCLT is becoming more and more technical, which is focusing on Book marking, OCR, scanning, stamping etc. than looking at the jurisdiction of tribunal i.e., ascertaining the amount of default and declaration by the applicant on eligibility in filing such application. The staff posted at the Registry of NCLT lacks necessary skills to process the applications.

5. Conclusion & Suggestions

The various forums in the ecosystem have made it clear that the IBC should not be used as a recovery mechanism and creditors should approach DRT for recovery of dues. The NCLTs and DRTs are expected to work on the principle of natural justice so that the cases can be disposed of in an expeditious manner. However, pendency before NCLT is increasing. It is also necessary to note that the entire IBC has not yet been operationalized as Bankruptcy Proceeding before DRT is yet to commence in full force. The pendency before the DRT is more than 2 lakh cases and pendency before NCLT is over 23,000 cases[3]. It is still increasing. Therefore, strengthening the ecosystem is very important, failing which NCLT may compete with DRT in terms of pendency. The author therefore makes the following suggestions:

1. The preliminary scrutiny of the application filed before NCLT should be based on the jurisdiction (pecuniary and territorial) of the Tribunal /Court.

2. The second level of scrutiny should be on the Locus of the applicant in entertaining the application filed.

3. The third level scrutiny should be about the declarations which should be like "present application is filed for a purpose of resolving insolvency and not to escape or defraud the creditors".

4. The defect is to be issued with the code of Scrutiny Clerk / Office Assistant. To the extent possible refiled applications go to the same code.

5. Scrutiny clerks / office assistants at NCLT should be provided with proper training.

6. The application pertaining to the compliance by IRP/RP/Liquidator under the relevant sections should be treated as a priority and for that the separate scrutiny counter be arranged at the Registry.

7. The time limit for removal of defects in CIRP applications and IAs be strictly observed in accordance with NCLT Rule-28.

8. Automatic disposal system should be in place to reject defective applications which are pending beyond 90 days.

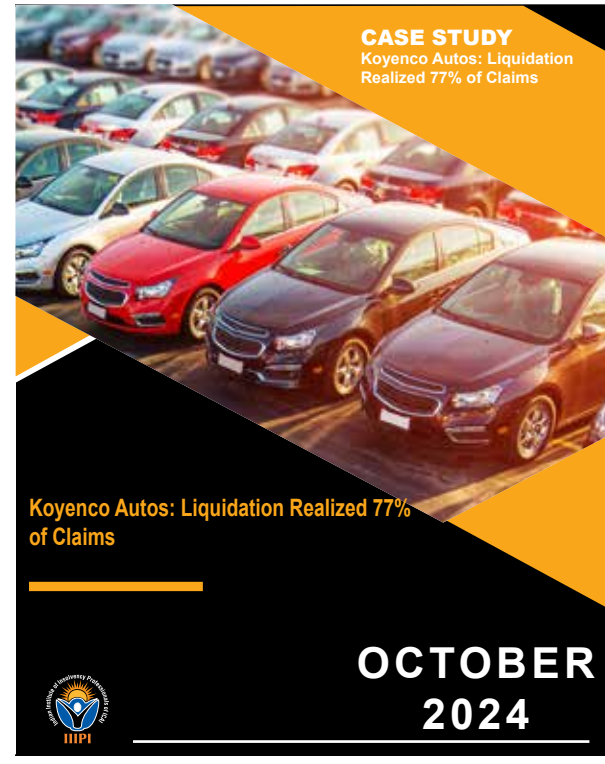
[3] Loksabha unstarred question No.440, Available online extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sansad.in/getFile/loksabhaquestions/annex/1715/AU440.pdf?source=pqals#:~:text=2024%2C%20the%20total%20number%20of,Section%2017%20of%20Securitization%20and

Koyenco Autos: Liquidation Realized 77% of Claims

This is a classic case of a company experiencing financial collapse, primarily due to prevalent avoidance transactions by the directors, including siphoning of funds, and compounded by management inefficiencies. The Corporate Debtor (CD) was unable to obtain a viable resolution plan during the Corporate Insolvency Resolution Process (CIRP). However, 77% of its total claims were realized through the liquidation process by employing effective marketing techniques and pursuing avoidance transactions in an innovative manner.

Platino Classic Motors Private Limited (Platino), an authorized dealer of BMW India in the State of Kerala, obtained loans from BMWFS through various agreements and included its sister company Koyenco Autos Pvt. Ltd. (Koyenco) as coborrower in an agreement. On default, insolvency proceedings were initiated against Platino. Subsequently, Koyenco (CD) was also admitted to CIRP via an order of NCLT on October 06, 2021. The total claims against the CD amounted to about ₹39 crore with BMWFS holding a majority share of 74.80% and IDBI Bank holding 25.20%.

In the present case study, Mr. Vibin Vincent, the RP and Liquidator of the CD, has highlighted the challenges faced during the CIRP and Liquidation, value maximization, Avoidance Transactions etc. ***Read on to know more…***



1. Introduction

This case study examines the Corporate Insolvency Resolution Process (CIRP) of M/s Koyenco Autos Private Limited (Koyenco) and its subsidiary Platino Classic Motors Private Limited (Platino), which faced financial stress primarily due to financial mismanagement and fraudulent activities leading to the initiation of insolvency proceedings under the Insolvency and Bankruptcy Code (IBC) 2016. The case highlights the complexities of CIRP in India, particularly when the sister concerns are involved, and financial irregularity leads to financial crisis of the Corporate Debtor (CD).

2. Background

BMW India appointed Platino as an authorized dealer in the state of Kerala. Over the years, the dealership agreement was extended multiple times, with the final extension lasting until December 31, 2018.

To support its dealership operations, Platino made substantial investments primarily financed through loans from BMW India Financial Services Private Limited

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(BMWFS). These loans were governed by several agreements, including a Floor Plan Agreement, Credit Facility Agreement, and Spare Part Financing Agreement.

To accommodate Platino's growing financial needs, BMWFS agreed to provide additional funding on the condition that Koyenco, a related entity with common directors, would serve as a co-borrower. A Term Loan Agreement was subsequently executed among Koyenco, Platino, and BMWFS, enabling Platino to borrow an additional ₹13 Crores. The funds were disbursed to Platino, with Koyenco's assets, particularly its land and building, serving as collateral for the loan through an Addendum Agreement that added Koyenco as a co-borrower to the existing agreements.

Platino's business and financial health gradually declined due to a confluence of internal and external factors, including global economic downturns, inadequate marketing strategies, and customer dissatisfaction. These challenges resulted in Platino's default on its loan and credit facility repayments to BMWFS. As Platino's financial difficulties intensified, BMW India appointed a new dealer in Kerala, ultimately leading to the termination of Platino's operations.

3. Initiation of CIRP against of Koyenco

Federal Bank Limited, a secured creditor of Platino, initiated CIRP against Platino, which were subsequently admitted by the National Company Law Tribunal (NCLT), Kochi Bench (Adjudicating Authority or AA). Subsequently, BMWFS filed a CIRP application against Koyenco, the CD, due to its failure to fulfil its co-borrower obligations.

The promoters argued that, according to the IBC, to be considered a financial creditor, funds must be disbursed to the debtor, and in this case, the funds were disbursed to Platino, with Koyenco only added as a co-borrower. However, the AA clarified that, under Section 7 of the IBC, a financial creditor, either alone, jointly with other financial creditors, or through a representative, may initiate CIRP proceedings against a CD, including cases where the CD is a co-borrower or guarantor. As per Section 5(7), a financial creditor is defined as one to whom a financial debt is owed, and financial debt includes liabilities related to guarantees or indemnities. Therefore, a lender can pursue both the principal borrower and the co-borrower in the event of default, making Koyenco, as a co-borrower, liable and qualifying it as a CD under Section 3(8) of the IBC.

> **"NCLT observed that in the case of default, a lender can pursue CIRP against principal borrower as well as co-borrower and ordered initiation of insolvency against Koyenco."**

Further, the promoters contended that Section 7 application filed by BMWFS against Koyenco was not admissible since a similar CIRP application had already been admitted against Platino, and BMWFS was claiming the same debt from Platino. The AA addressed this by noting that the current application was filed exclusively against Koyenco but not Platino, and earlier application was based on a filing by another secured financial creditor - Federal Bank Limited. Since the current application was solely directed at the co-borrower Koyenco, there was no legal impediment to admitting it against the CD. The AA admitted[1] the Section 7 application and appointed the Interim Resolution Professional (IRP) to conduct the CIRP and dismissed Koyenco's Interlocutory Application (IA) to refer the matter to arbitration, as no disputes regarding the financial debt were identified under Section 7 of the IBC.

Promoters preferred an appeal to the National Company Law Appellate Tribunal (NCLAT), seeking to overturn the initiation of CIRP against Koyenco. However, NCLAT dismissed this appeal, emphasizing that Koyenco had willingly assumed joint liability[2] as a co-borrower in the loan agreements between BMWFS and Platino. The tribunal noted that Koyenco's participation in the loan agreements established its liability as a financial debtor, regardless of the direct disbursement of funds. This ruling was consistent with established legal principles, notably in the case of *Maitreya Doshi vs. Anand Rathi Global Finance Ltd. & Anr.,* which affirmed that a co-borrower could be classified as a financial debtor under the IBC.

1. NCLT Kochi, IBA/37/KOB/2020, dated October 06, 2021.
2. NCLAT Chennai, Company Appeal (AT) (Ins) - 301/CN/202, dated 27th July 2023.

The promoters escalated their appeal to the Supreme Court, but it was dismissed reinforcing the validity of the CIRP against Koyenco.

4. Commencement of CIRP

4.1 Key Issues and Challenges

Interconnected Liabilities: The close relationship between Koyenco and Platino made it challenging to disentangle their financial liabilities. This resulted in both companies being embroiled in the insolvency proceedings, despite Platino's primary role in the financial distress.

Fraudulent Investment: Koyenco's fraudulent investment in Platino created a complex legal and financial situation. The NCLT was required to address the implications of this illegal act on the insolvency proceedings.

Co-Borrower Liability: Koyenco's liability as a co-borrower for Platino's debts exposed its own assets to creditor claims. This highlighted the risks associated with entering into such arrangements, particularly when the financial health of the primary borrower is uncertain.

Diversion of Funds: The diversion of funds by Koyenco and Platino contributed to their financial downfall. This case underscores the importance of effective corporate governance and internal controls to prevent such practices.

4.2 Promoters' legal efforts to avoid insolvency proceedings

The insolvency process of Koyenco was characterized by multiple attempts by the suspended management to impede the proceedings, employing various legal avenues to challenge and delay the CIRP. These efforts culminated in multiple litigations aimed at contesting the initiation and conduct of the CIRP, each of which ultimately proved unsuccessful. The following is an analysis of the key litigations pursued by the suspended management and their outcomes.

(a) Writ Application at the High Court of Kerala

Among the earliest attempts by the former directors to impede the insolvency proceedings was the filing of a writ application in the High Court of Kerala. The directors sought a temporary injunction on the CIRP proceedings, arguing that they were unable to appeal the CIRP order to the NCLAT due to the Appellate Tribunal's closure during the Dussehra and Milad-Un-Nabi holidays. The High Court granted a temporary injunction for one month, effectively halting the CIRP. This injunction was subsequently extended twice, resulting in a to suspension of 60 days during the CIRP period[3].

> **"The injunction by the High Court of Kerala resulted in the suspension of CIRP for 60 days. Finally, the injunction was vacated and the CIRP resumed."**

The temporary relief granted by the High Court, while a short-term victory for the promoters, had minimal impact on the overall course of the CIRP. The delay caused by this injunction was eventually overcame, and the CIRP proceedings resumed, leading to the continuation of the insolvency process. The High Court's involvement, while notable, ultimately did not prevent the CIRP from progressing, as the legal basis for the injunction was time-limited and related solely to procedural delays at the NCLAT.

(b) Application for Appointment of Sole Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996

Following the initiation of CIRP against the CD, the management filed a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996, seeking the appointment of a Sole Arbitrator. The intent behind this petition was to transfer the dispute to arbitration, potentially circumventing the CIRP. However, after the CD was admitted into CIRP, the Resolution Professional (RP) pursued the application on behalf of the CD and informed the court that the CIRP had already been initiated by the AA, following an application under Section 7 of the IBC filed by BMWFS.

The admission of the Section 7 application by the AA rendered the arbitration application under Section 8

[3] High Court of Kerala, WP(C) 22280/2021, dated November 16, 2021.

of the Arbitration Act as infructuous. The Delhi High Court, aligning with the established legal precedent that insolvency proceedings are in rem (i.e., against the company and its assets), ruled that the request for arbitration was unsustainable while the CIRP was active. Hon'ble High Court of Delhi relied upon the judgments of the Supreme Court in the case of Indus Bio-Tech Pvt. Ltd. vs. Kotak India (Offshore) Fund (2019) and Anil vs. Rajendra, (2015) rejected the petition, highlighting that the initiation of CIRP nullified the arbitrability of the dispute[4].

(c) Application under Sections 65 and 60(5) of the IBC: Allegations of Fraudulent or Malicious Initiation of Proceedings

In a final bid to derail the insolvency process, the suspended board of directors of Koyenco filed applications under Sections 65 and 60(5) of the IBC, accusing BMWFS of initiating CIRP with fraudulent or malicious intent. The directors alleged that BMWFS had filed the Section 7 application not to resolve insolvency but to obstruct Platino Classic Motors' claim for compensation related to the termination of its dealership with BMW India. They argued that the initiation of CIRP was part of a collusive effort between BMWFS and BMW India to strip Koyenco of its assets under mortgage, rather than to pursue a legitimate insolvency resolution.

> **"NCLT Kochi Bench dismissed the Section 65 application filed by promoters noting that it was filed after the initiation of liquidation."**

The NCLT, Kochi, rejected these applications, noting that the petition under Section 65 of the IBC was filed long after the CIRP was initiated and even after the commencement of liquidation. The tribunal emphasized that the application was not only time-barred but also lacked substantive evidence to support the claims of fraud or malicious intent. The NCLT pointed out that the directors had already exhausted their legal remedies by challenging the CIRP order before the NCLAT and the Supreme Court, both of which dismissed the appeals. Furthermore, the court observed that the directors failed to raise these allegations during the initial stages of CIRP, choosing instead to wait until other legal avenues had been exhausted. As a result, the tribunal dismissed the applications, upholding the legitimacy of the CIRP and rejecting the notion of malicious intent on the part of BMWFS.

5. Outcomes of the CIRP

5.1. Constitution of the CoC

Following the lifting of the stay by the Kerala High Court on December 15, 2021, CIRP for Koyenco was resumed. The IRP quickly moved forward, inviting claims from creditors through public advertisement. Two secured financial creditors, BMWFS and IDBI Bank, submitted their claims, which were duly verified and admitted. The total claims amounted to ₹393,260,723, with BMWFS holding a majority share of 74.80% and IDBI Bank holding 25.20%. These verified claims formed the basis for constituting the Committee of Creditors (CoC), which was officially recognized by the AA.

As the IRP did not consent to act as the RP, the CoC recommended the appointment of another Insolvency Professional (IP). However, the Hon'ble NCLT rejected the appointment of IP other than the IRP, proposed by the CoC because the proposed IP was not part of the panel maintained by the Insolvency and Bankruptcy Board of India (IBBI). The NCLT appointed another IP, Mr. Vibin Vincent, from the IBBI panel as RP of the CD.

The AA's decision was based on the provisions of Section 22(3)(b), (4), and (5) of the IBC. Sections 22(3)(b), (4), and (5) of the IBC set forth the procedure for replacing the IRP and appointing another IP as the RP. These sections require that the AA must forward the name of the RP proposed by the CoC to the IBBI for confirmation. The appointment be made only after the confirmation by the IBBI.

5.2. Handover and Preparation of Information Memorandum

After the new RP was appointed, the IRP promptly handed over all necessary documents, records, and assets, which were verified and taken into custody. The

[4] High Court of Delhi, ARB.P. 870/2021, dated September 06, 2022.

RP then undertook the preparation of the Information Memorandum (IM) as per Section 29(1) of IBC read with Regulation 36(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), drawing from the company's books of accounts, audited financial statements, and other records. The IM provided a comprehensive overview of Koyenco's financial status, assets, liabilities, and other critical information essential for prospective resolution applicants (PRAs).

"The RP ensured that IM provided a comprehensive overview of CD's financial status, assets, liabilities, and other critical information essential for prospective resolution applicants."

5.3. Appointment of Professionals for Valuation, Auditing, and Legal Assistance

To ensure compliance of Regulation 27 of CIRP Regulations and a thorough and accurate resolution process, the RP appointed two registered valuers for each category of Koyenco's assets, including 'land and building', 'plant and machinery', and 'securities & financial assets. These valuers conducted independent assessments to determine the fair and liquidation values of the CD's assets. Additionally, the RP appointed a statutory auditor to address the pending audits of the company's financial statements, which had not been completed for several years. To further scrutinize Koyenco's financial transactions, a forensic auditor was engaged to investigate any Preferential, Undervalued, Fraudulent, or Extortionate (PUFE) transactions.

For handling legal matter, a legal firm was appointed which provided essential legal support and representation in various court proceedings. An accountant was also engaged to update and maintain Koyenco's books of accounts, ensuring that financial records were accurate and up to date during the CIRP. Moreover, a caretaker was hired to protect and maintain the physical assets of the company during the resolution process.

5.4. Publication of Form G

With the CoC's approval, the RP issued Form G as per Regulation 36A of CIRP Regulations to invite Expressions of Interest (EoI) from PRAs. However, only one EoI was received, which came from the suspended Managing Director of Koyenco. Despite this initial response, the suspended director failed to submit a resolution plan within the stipulated deadline, leading to the failure of the first Form G issuance.

In a subsequent CoC meeting, the RP was authorized to re-publish Form G to attract more resolution applicants. Once again, only the suspended director expressed interest by submitting an EoI. After verification, the suspended director was declared an eligible resolution applicant under Section 29A, considering the exemption available under Section 240A of the IBC, which applies to Corporate Insolvency Resolution Process for Micro, Small, and Medium Enterprises (MSMEs). This exemption waives the applicability of clauses (c) and (h) of Section 29A. The RP ensured that the CD qualified as an MSME.

The director then requested an extension to submit the resolution plan. After careful deliberation, the CoC, by majority vote, granted a 30-day extension to provide the director with additional time to complete and submit the resolution plan. This decision reflected the CoC's willingness to explore all possible avenues for resolving the insolvency, despite limited interest from external applicants.

Eventually, the director submitted the resolution plan along with the Earnest Money Deposit (EMD). After scrutiny, the RP presented the plan to the CoC, accompanied by a note highlighting the deficiencies and non-compliances for further deliberation. Upon review, the CoC found that the resolution plan was vague and lacked key details. Critical information regarding the source of financing, which is essential for the plan's feasibility, was missing. Moreover, the financial bid was significantly below the liquidation value, and there was no clarity on the business structure post-approval. The applicant's request for the release of a personal guarantee upon plan acceptance further complicated the plan's viability.

> **Even after granting an additional time of over 30 days, the director of the CD, an MSME, failed to submit a viable resolution plan.**

Despite the CIRP period nearing its conclusion, the CoC granted the director additional time to submit a revised resolution plan with an improved offer and to rectify the deficiencies. However, the revised plan was largely similar to the initial one, with only minor technical changes. It still failed to comply with the Request for Resolution Plan (RFRP) conditions, lacked clarity regarding the source of financing, and omitted necessary declarations as required by Regulations 37 and 38(1B) of the CIRP Regulations.

5.5. Final Decision and Liquidation

Dissatisfied with these shortcomings, the CoC exercised its commercial wisdom and decided that liquidation of the CD was the only viable option. It was noted that the CD had been a non-going concern for several years and had actively attempted to dispose of its assets. Therefore, liquidation was deemed inevitable. Furthermore, in accordance with Regulation 39AB, the CoC did not recommend exploring a compromise or arrangement under sub-regulation (1) of Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016.

6. Liquidation Process

6.1. Order of liquidation

The Hon'ble NCLT, Kochi bench ordered initiation of liquidation of the CD and appointed the RP as its Liquidator. As directed by the order and in compliance with the IBC and IBBI (Liquidation Process) Regulations, 2016, the Liquidator made a public announcement in one Malayalam and one English newspaper inviting claims from creditors and informed the same to the CoC and directors of the CD. Besides, statutory authorities including SEBI, the Income Tax Department, the State Tax Department, the PF Department, the GST Department, and the Labour Department were also informed via email about the initiation of the liquidation process. A separate liquidation account was opened with IDBI Bank for receiving all money due to the CD.

Following the public announcement, the liquidator received two claims from financial creditors and three claims from statutory/government authorities, which were verified and admitted in accordance with Section 41 of the IBC, 2016. In compliance with Regulation 31A (6) of the IBBI (Liquidation Process) Regulations, 2016, the liquidator conducted the first Stakeholders Consultation Committee (SCC) meeting within one week. In the first SCC meeting, it was decided to rely on the existing valuation conducted during the CIRP, negating the need for a separate valuation.

6.2. Realisation of Readily Realisable Assets

The CD had two properties as assets, which included 26.67 acres of land and the building thereon, along with plant and machinery (office equipment) of the BMW showroom, and 29,500 sq. ft. of commercial office space and cafeteria, along with proportionate common area and car parking space on the basement floor, ground floor, and 1st floor of the High-lite Platino commercial building. These properties were specifically mortgaged to BMWFS and IDBI Bank, respectively.

Both secured financial creditors submitted their claims in time and in the appropriate form. IDBI Bank Ltd., one of the secured financial creditors, opted to realize its security interest under Section 52(1)(b) of the IBC, in conjunction with Regulations 21A(2) and 37 of the IBBI (Liquidation Process) Regulations, 2016. In contrast, BMWFS, the other secured financial creditor, chose to relinquish its security interest to the liquidation estate under Section 52(1)(a) of the IBC and receive proceeds from the sale of assets by the liquidator in accordance with Section 53 of the IBC.

The first auction for the property, for which the security interest had been relinquished by BMWFS, failed due to the lack of EMD from bidders, despite the reserve price being set at the fair value determined by registered valuers and approved by the SCC. A second auction, advertised more widely but with the same reserve price, also failed for the same reason. Following the SCC's recommendation, a third auction was held with a 10% reduced reserve price, but it too failed due to non-submission of EMD by bidders.

> **Ultimately, the property was sold in this fourth auction to a single bidder at a price significantly higher than the liquidation value.**

The Liquidator then explored private sale options as per the IBC Regulations and received interest from two potential buyers. To promote competition in the bidding process and maximize the realizable value of the CD's assets, the Liquidator proposed another public auction, setting the highest private offer as the new reserve price. Ultimately, the property was sold in this fourth auction to a single bidder at a price significantly higher than the liquidation value.

However, IDBI Bank Ltd., which had opted to realize its security interest, was unable to do so within 180 days from the liquidation commencement date and failed to deposit the surplus amount with the liquidator as required under Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016. When the bank's application for an extension of time was rejected by the Hon'ble NCLT, Kochi Bench, possession of the asset was transferred back to the liquidator following the NCLT's order.

Subsequently, the liquidator conducted an auction of the repossessed property at the reserve price of the two previously failed auctions held by IDBI Bank. The property was sold in the first auction conducted by the liquidator after its repossession into the liquidation estate.

As a result, the total amount realized from readily realizable assets, including immovable property, closure of fixed deposits and interest thereon, as well as interest for the delayed remittance of sale proceeds by the successful bidder, amounted to ₹33,20,99,493, against a liquidation value of ₹29,48,97,324, resulting in a recovery rate of 113%.

Subsequently, the proceeds from the realization of assets were distributed according to the waterfall mechanism outlined in Section 53 of the IBC.

6.3. Realisation of Not Readily Realisable Assets

The insolvency process of Koyenco uncovered significant instances of preferential transactions and fraudulent trading and wrongful conduct by the company's former directors under Section 43 and 66 of the IBC. These findings were brought to light following a meticulous examination of Koyenco's financial statements, books of accounts, and other relevant documents by the RP. The identification of these anomalies led to the decision to conduct a transaction audit which further exposed the preferential and fraudulent transactions carried out by the directors, necessitating legal action.

(a) Fraudulent Share Transfer by Directors to the CD to Settle Personal Liabilities

The additional shares allotted to the promoters in Platino (a sister concern), in violation of the provisions of the Companies Act, 2013, were subsequently transferred to Koyenco. This transfer, carried out by the suspended directors, was highly questionable, involving a series of dubious transactions that primarily benefited the directors at the expense of Koyenco and its creditors.

It was discovered that ₹10 crore had been illicitly diverted to the personal accounts of the suspended Managing Director (MD) of Koyenco, which was recorded as a 'Loan to Director.' These funds were sourced from the proceeds of a Joint Development Agreement involving the sale of Koyenco-owned land, as well as from a loan Koyenco had obtained from IDBI Bank, using the company's property as collateral.

> **Total 95,96,000 shares were transferred to Koyenco at face value, offsetting the ₹10 crore liability of the director.**

Simultaneously, Platino, issued 71,56,000 shares at a face value of ₹10 to the directors by converting an accumulated loan payable to one of them. However, there was no formal agreement governing this loan, nor any provision allowing its conversion into equity shares. Additionally, 24,40,000 bonus shares were issued to the promoters in proportion to their existing holdings. These 95,96,000 shares were then transferred to Koyenco at face value, offsetting the ₹10 crore liability of the director as recorded in Koyenco's financial statements.

The former MD's alleged settlement of a ₹10 crore liability to Koyenco through a share transfer of Platino

raised significant concerns. No valuation was conducted prior to the acquisition, and the share transfer documents were missing. Despite Platino's deteriorating financial condition and negative net worth, the directors transferred their shares at face value. Platino's subsequent admission into CIRP and the resulting loss of Koyenco's investment strongly indicated fraudulent intent behind these transactions.

(b) Director's Loan

Another irregularity uncovered during the forensic audit was related to a loan of ₹34,17,335 that was shown as outstanding from one of Koyenco's directors. This loan was in direct violation of Section 185 of the Companies Act, 2013, which restricts companies from providing loans to their directors without proper approval and adherence to specific conditions. In this case, there was no formal agreement to support the loan, and Koyenco did not receive any interest on the amount, even though the company was burdened with interest payments on other loans taken for business purposes. Furthermore, Koyenco was already defaulting on loan repayments to financial creditors, making the director's loan even more questionable and detrimental to the company's financial health.

(c) Loan from IDBI Bank

The forensic audit also revealed a particularly concerning misuse of funds obtained through a loan from IDBI Bank. The former directors of Koyenco had secured a loan of ₹3.69 crore from IDBI Bank for business purposes, with Koyenco serving as a co-borrower. The loan was secured against Koyenco's 29,500 square feet of commercial property. However, instead of using the loan amount for the intended business purposes, the funds were disbursed directly into the former MD's bank account. This misuse of borrowed funds not only constituted a breach of fiduciary duty but also placed Koyenco in a precarious financial position, as the company was liable for the loan despite not benefiting from it.

6.4. Legal Actions and NCLT Ruling

In light of these findings, the Liquidator, acting in the interest of Koyenco's stakeholders, filed an application under Section 66 of the IBC. This section empowers the NCLT to hold directors personally liable for engaging in fraudulent or wrongful trading that leads to the company's insolvency. The evidence presented in the application demonstrated that the respondents, in their capacity as directors, had obtained loans in the name of Koyenco and then diverted the funds into their personal accounts. Additionally, the funds obtained through the Joint Development Agreement were used by the directors as consideration for the share transfer in Platino, rather than being utilized for the benefit of Koyenco.

The NCLT, in its order dated June 22, 2023, upheld the Liquidator's claims and found the respondents guilty of engaging in fraudulent transactions under Section 66 of the IBC. The AA ruled that the directors had knowingly violated Section 185 of the Companies Act, 2013, by obtaining loans from Koyenco and creating charges over the company's property to secure personal loans. The NCLT held that these actions were a clear abuse of their positions as directors, with the intent to gain undue advantage and harm the interests of Koyenco. As a result, the tribunal classified these actions as fraud under the Companies Act, 2013.

6.5. NCLT Orders for Financial Recovery

The NCLT issued a detailed order directing the directors to make significant financial restitution to the liquidation estate. The directors were jointly and severally ordered to pay a sum of ₹9,59,60,000 to the applicant within one month from the date of the order. In case of failure to comply, the amount would accrue interest at 12% per annum until realization. Additionally, the former MD was ordered to pay a further sum of ₹4,06,54,435, and another director was directed to pay ₹34,17,335, both within the same timeframe and subject to the same interest conditions.

"NCLT issued a detailed order directing the directors to make significant financial restitution to the liquidation estate."

Despite appeals filed by the directors at the NCLAT in Chennai and subsequently at the Supreme Court of India, both appellate forums dismissed the appeals, thereby upholding the NCLT's orders. This legal victory crystallized a due amount of ₹14,00,31,770 against the directors, along with 12% interest per annum from the date of the order until full realization.

The liquidation estate's successful pursuit of these fraudulent transaction applications not only provided a

Table 1: Realization from the Corporate Debtor as on December 19, 2023

S. N.	Heads	Details of Property	Amount (₹)	Percentage of Liquidation Value	Percentage of Claim Value
1.	Realization from sale of Assets mortgaged to BMW Financial Services	Land and Building of BMW Showroom (Plant and Machinery) and plot	20, 65,00,000	115%	65%
2.	Realization from sale of assets mortgaged to IDBI Bank	Commercial Office, Building, Parking etc.	12,47,79,595	109%	113%
	Total Realization		**33,12,79,595**	**113%**	**77%**

Note: *The claim of statutory authorities, which come under Operational Creditors, amounting ₹1,41,32,251 has not considered while calculating the above ratio of percentage of claim.*

substantial recovery of funds for the creditors but also served as a strong deterrent against future instances of fraudulent trading by corporate directors. The case reinforced the importance of holding directors accountable for their actions and demonstrated the effectiveness of the IBC in addressing and rectifying corporate fraud.

6.6. Recovery of Preferential Transactions under Section 43 of IBC

During the insolvency process, the RP identified certain transactions that were categorized as preferential under Section 43 of the IBC.

The RP's investigation into Koyenco's financial dealings revealed that a total amount of ₹7,81,352 had been transferred as a preferential payment to the suspended MD of the CD. These transactions were considered preferential because the transfers placed the MD in a more beneficial position than he would have been if the assets had been distributed in accordance with Section 53 of the IBC. The MD is an unsecured creditor and a related party, which led to the conclusion that these transfers gave him an undue benefit, as per Section 43(2)(b) of the IBC. Since he is the former director of the CD, he qualifies as a related party under Section 5(24). As per Section 43(4)(a), a preference is deemed to have been given to a related party if the transaction occurred within two years preceding the Insolvency Commencement Date (ICD). In this case, the transfers were made within the two-year period prior to the ICD, making them fall within the relevant timeframe under Section 43(4).

It was also noted that these transfers were made to settle an antecedent financial debt of ₹36,03,970.50 owed to the MD as of that date. Moreover, these transactions do not qualify as excluded transactions under Sub-section (3) of Section 43, as they were neither made in the ordinary course of business nor involved the creation of a security interest in property to secure new value.

Recognizing the need to recover this amount for the benefit of the company's creditors, the RP/Liquidator filed an application with the AA under Section 43 of the IBC. The application sought the reversal of the preferential transaction, and the recovery of the funds transferred to the MD. The NCLT, upon reviewing the evidence and the arguments presented by the Liquidator, issued an order directing the suspended MD to repay the sum of ₹7,81,352 to the liquidation estate within one month from the date of the order. The tribunal also stipulated that if the payment was not made within the specified period, the amount would accrue simple interest at the rate of 12% per annum until full realization.

Following the NCLT's order, the suspended MD challenged the decision by filing appeals at both the NCLAT in Chennai and the Supreme Court of India. However, both appellate forums upheld the NCLT's ruling, dismissing the appeals and affirming the Liquidator's right to recover the preferential payment. This outcome further solidified the Liquidator's position in reclaiming funds that had been unjustly transferred, thereby reinforcing the principles of fairness and equitable treatment of creditors as enshrined in the IBC.

As a result of this order and the direction on fraudulent transactions under Section 66 of the IBC, the total crystallized dues from the respondent directors reached ₹14,08,13,122. The addition of 12% interest per annum from the date of order until realization further augmented the liquidation estate, ensuring that creditors received the maximum possible recovery from the company's assets.

The Liquidator's diligent efforts in identifying and pursuing both fraudulent and preferential transactions

under the IBC underscore the importance of thorough financial scrutiny during the insolvency process. By addressing these improper transactions, the Liquidator not only maximized the value of the liquidation estate but also upheld the integrity of the insolvency process, ensuring that all creditors were treated equitably in accordance with the law.

6.7. Assignment of Non-Readily Realizable Assets (NRRA)

The liquidation process of Koyenco formally commenced on November 04, 2022, and the liquidator was tasked with realizing the maximum possible value for the company's assets within the statutory period of one year. Despite the liquidator's diligent efforts, including repeated attempts to recover the dues from the respondent directors as per the NCLT orders, the respondent directors failed to comply with the payment directives. Consequently, the liquidator, in consultation with the SCC, decided to classify these unresolved dues as Non-Readily Realizable Assets (NRRA).

Given the complexity of recovering NRRA, which typically includes assets that are difficult to realize within the usual timeframe of liquidation, the Liquidator and the SCC devised a strategic plan to address the situation. Four potential avenues were identified for the assignment of these assets:

1. Any SCC member belonging to the class of Financial Creditor could opt to take responsibility for pursuing the recovery and continue litigation related to the transaction applications filed under Sections 43, 45, and 66 of the IBC. This would involve a direct assignment of the NRRA to an interested member who would then lead the recovery efforts.

2. In the absence of interest from SCC members, the Liquidator could invite EoI from the public through a formal notice. These EoIs would be evaluated against the liquidation value of the NRRA, if any, and after considering the advice of SCC members, a decision on the assignment would be finalized.

3. The Liquidator could engage professional services from a consultant or law firm, assigning the litigation rights to pursue NRRA recovery. This would be done after thorough consultation with the SCC, and the plan would be reported to the NCLT in compliance with Regulation 44A of the IBBI (Liquidation Process) Regulations, 2016.

4. The liquidator could continue to manage the NRRA litigation personally, utilizing legal tools such as execution and contempt applications, with ongoing guidance and input from the SCC members.

Table 2: PUFE Transactions on which recovery order has been passed by NCLT

S. N.	Official	Amount (₹)	Status
1.	PUFE (MD)	15,93,94,740	NCLT order passed, Appeals filed by MD & Directors of the CD were dismissed by NCLAT and the Hon'ble Supreme Court. However, recovery is pending
2.	PUFE (Directors)	39,64,132	
	Total PUFE	**16,33,58,872**	

Note: *This PUFE amount is inclusive of interest till date 12% per annum.*

Following the exploration of these options, the liquidator took proactive steps by sending a formal proposal to financial creditors within the SCC, seeking their interest in the assignment of NRRA. However, no expressions of interest or responses were received from financial creditors, which necessitated a continuation of the NRRA recovery efforts by the Liquidator.

In the absence of immediate solutions, the Liquidator pressed on with efforts to realize the NCLT-ordered dues, filing contempt applications and enlisting appropriate agencies to trace the assets of the respondent directors. This asset tracing yielded some positive results, as certain assets were identified by detective agencies, indicating potential avenues for recovery.

In parallel, the Liquidator pursued the publication of EoI to attract potential assignees for the NRRA. The first EoI was published following the NCLAT's decision to uphold the NCLT's original order. However, this initial attempt did not garner any expressions of interest, likely due to the ongoing challenge before the Supreme Court. The situation changed after the Supreme Court's final order, which crystallized the dues amounting to ₹14,08,13,122. Subsequently, a second EoI was published, which elicited a strong response from over five prospective assignees, which were processed in consultation with the SCC.

This strategic approach to managing NRRA exemplifies the liquidator's commitment to fulfilling the liquidation objectives within the constraints of the IBC, while also navigating the complexities associated with realizing non-liquid assets.

> **Realization in this case has already reached approximately 77% of the total claims admitted.**

7. Conclusion

The insolvency of Koyenco and Platino serves as a cautionary tale about the risks associated with interconnected corporate structures, fraudulent activities, and the complexities of corporate insolvency in India. The case underscores the critical importance of robust corporate governance, effective risk management, and transparency in financial dealings to prevent similar situations in the future.

In this instance, the resolution stage of the insolvency process was not successful, primarily due to the CD's prolonged non-operational status and lack of viable business operations. Consequently, liquidation became inevitable. However, despite the challenges, the liquidation process has yielded positive results so far. Realization in this case has already reached approximately 77% of the total claims admitted. If the recovery from Not Readily Realisable Assets (NRRA) is successful, there is a strong possibility of generating a surplus that could be distributed to shareholders.

This case highlights the significance of diligent recovery efforts during liquidation and demonstrates that, even in seemingly dire circumstances, substantial recoveries can be achieved through methodical and strategic liquidation processes.

Legal Framework

REGULATIONS

IBBI amends CIRP Regulations to facilitate effective representation of homebuyers and other large number of creditors in CIRP

Insolvency and Bankruptcy Board of India (IBBI) has amended the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016 or CIRP Regulations to facilitate the effective representation of certain classes of creditors which are large in numbers, such as homebuyers, during the CIRP. These amendments will be effective from September 24, 2024.

As per the IBBI (CIRP) (Second Amendment) Regulations, 2024 (Amendment Regulations) notified by the IBBI on September 24, 2024, in the Principal Regulation 16 A, a provision has been inserted under sub-regulation 2. It reads "Provided that till the application for appointment of the authorized representative for a class of creditors is under consideration before the Adjudicating Authority, the insolvency professional selected under sub-regulation (1) shall act as an interim representative for such class of creditors and shall be entitled to attend the meetings of the committee and shall have such rights and duties as that of an authorized representative". Furthermore, an enabling provision "Provided that the choice of an insolvency professional to act as an authorized representative by a financial creditor in a class in Form CA shall not be considered, if the Form CA is received after the time stipulated in the public announcement" has been substituted under Regulation 16 A (1). This notification also makes changes in Regulation 40 A, in the Table, pertaining to Regulation 12 (2) and Regulation 13 (1).

Source: *IBBI Notification No. IBBI/2024-25/GN/REG116 dated September 24, 2024.*

Information Utilities (IU) shall verify key details of Corporate Debtor before issuing Record of Default

IBBI through a Notification dated August 13, 2024, has amended IBBI (Information Utilities) Regulations, 2017. The original Regulation 21 A has been renamed 21 B and a new provision 21 A has been inserted. "21A.

Verification of information before issuance of a record of default - (1) An information utility shall verify the key details such as e-mail address of the debtor, document showing proof of debt, latest acknowledgment of debt by the debtor and proof of default before issuance of record of default in Form D of the Schedule under regulation 21." These amendments shall come into force on October 01, 2024, except Regulations 3 and 5 of these Regulations which shall come into force on December 01, 2024.

Source: *IBBI Notification No. IBBI/2024-25/GN/REG114, dated August 13, 2024.*

IBBI extends SCN Disposal from 35 days to 60 days

The Insolvency and Bankruptcy Board of India (IBBI) has extended the SCN (Show Cause Notice) disposal from 35 days to 60 days issued under IBBI (Inspection and Investigation) (Amendment) Regulations 2024. For this purpose, the Regulation 13 has been amended. In the IBBI (Inspection and Investigation) Regulations, 2017, in regulation 13, in sub-regulation (2), for the words "thirty-five days of the date of the issuance of the show-cause notice", the words "sixty days from the due date for receipt of reply to the show-cause notice" shall be substituted, says the Gazette Notification by the IBBI dated August 13, 2024. This amendment has been done by IBBI, in exercise of the powers conferred to it under sections 196, 217, 218, 219, 220 read with section 240 of the Insolvency and Bankruptcy Code, 2016.

Source: *IBBI Notification No. IBBI/2024-25/GN/REG115 dated August 13, 2024.*

CIRCULAR

IBBI makes VRIN Mandatory for each valuation conducted under the IBC

The Insolvency and Bankruptcy Board of India (IBBI) through a Circular dated August 12, 2024, has introduced Valuation Report Identification Number (VRIN) for each valuation conducted under the Insolvency and Bankruptcy Code, 2016 (IBC). “In order to ensure authenticity and to have a unique reference number of the valuation reports, it has been decided to provide a Valuation Report Identification Number (VRIN) for each valuation conducted under the Code,” said IBBI in the Circular. The IBBI has developed an online module and hosted it on its website. "The IPs shall not accept any valuation reports without VRIN in all such cases," said IBBI. The IBBI has also directed the RV/RVEs to generate VRIN and mandatorily mention it on the front page of the valuation report.

Source: *No. IBBI/RV/75/2024 dated August 12, 2024.*

GUIDELINE

IBBI issued ‘Self-Regulatory’ Guidelines for Committee of Creditors

The Insolvency and Bankruptcy Board of India (IBBI) has issued guidelines for Committee of Creditors (CoC) on August 06, 2024. According to the IBBI, these guidelines would help in resolution under the IBC in a time bound manner in the interest of maximization of value of the assets of the Corporate Debtor (CD).

“Nevertheless, to foster more effective and time bound decision making by the CoC members, these self-regulating guidelines are being issued, to stem the value erosion, through curtailment of procedural delays and enhancement of transparency and coordinated approach of decision making by the members of the CoC,” said IBBI. The three-page Guidelines for the member of the CoC is divided into -- Objectivity and Integrity, Independence and Impartiality, Professional Competence and Participation, Co-operation, Supervision and Timeliness, Confidentiality, Costs, Meeting of the CoC, Sharing of Information, and Feasibility and Viability of Corporate Debtor.

As per the guidelines, the members of the CoC will now be required to disclose to the CoC/ IP the details of any existing or potential conflict of interest arising due to pecuniary, personal or professional relationship with any stakeholder, immediately on becoming aware of it. Besides, the CoC members are expected to ensure at all times complete adherence to the undertaking regarding confidentiality of information. "Expeditiously decide on all the expenses to be incurred by the IP including the going concern expenses of the CD and his fee," said the Guidelines to CoC members.

Source: *IBBI Guidelines for Committee of Creditors dated August 06, 2024.*

DISCUSSION PAPER

IBBI’s Discussion Paper proposes MSME Registration and Disclosure Framework under CIRP

Through a Discussion Paper dated August 23, 2024, the Insolvency and Bankruptcy Board of India (IBBI) has proposed to make it mandatory for MSMEs to get registered on Udyam Registration Portal and disclose the Certificate during insolvency process. In case, the MSME undergoing the insolvency process is not registered and the available documents with the RP, indicates CD falls within the category of MSME, in that event, he may get the Udyam Registration Certificate generated, on case-to-case basis before making such disclosure in the Information Memorandum (IM).

“The MSME status of a corporate debtor has important implications for the insolvency resolution process, particularly in terms of the eligibility criteria for resolution applicants under Section 240A,” said the Discussion Paper. It further added,” there have been instances where the classification of a corporate debtor as an MSME has been contested during the insolvency resolution process”. The Reserve Bank of India (Lending to MSMEs) Directions, 2017, mandate the enterprises to register online on the Udyam Registration portal and obtain 'Udyam Registration Certificate'. To ensure mandatory disclosure of the MSMEs' registration, the IBBI has proposed to amend Regulation 36 of the IBBI (CIRP Regulations) Regulations, 2016.

Source: *IBBI’s Discussion Paper on MSME Registration and Disclosure Framework under CIRP dated August 23, 2024.*

PRESS RELEASE

Insolvency and Bankruptcy Board of India celebrates its Eighth Annual Day

The Insolvency and Bankruptcy Board of India (IBBI) celebrated its Eighth Annual Day on October 01, 2024. Chief Justice (Retd.) Shri Ramalingam Sudhakar, Hon'ble President, National Company Law Tribunal (NCLT) graced the occasion as the Chief Guest. Mr. Amitabh Kant, India's G20 Sherpa and Former CEO of NITI Aayog delivered the Annual Day Lecture.

Chief Justice (Retd.) Shri Ramalingam Sudhakar, Hon'ble President, NCLT in his Keynote Address highlighted the transformative impact of the Insolvency and Bankruptcy Code (IBC / Code) on India's corporate insolvency landscape.

Delivering the Annual Day lecture, Sh. Amitabh Kant applauded IBBI for the noteworthy achievements of the IBC in the short span of 8 years. Citing the Reserve Bank of India's report from June 2024, he highlighted that the Gross NPAs have reached a 12-year low of 2.8%, with Net NPAs at 0.6%. Dr. V. Anantha Nageswaran, Chief Economic Advisor, Ministry of Finance while delivering the special address expressed his gratification regarding the increased pace of resolutions under the IBC.

Addressing the occasion, Sh. Ravi Mital, Chairperson, IBBI reflected on the significant achievements during the eight-year journey of the IBC. He noted that approximately 1,000 resolutions have been passed by the Hon'ble National Company Law Tribunal (NCLT) in this period, with 450 of those occurring in the last two years alone.

On this occasion, IBBIs annual publication, "IBC आठवर्ष: शोध एवं विश्लेषण" was also released.

IBC Case Laws

Supreme Court of India

BRS Ventures Investments Ltd. Vs. SREI Infrastructure Finance Ltd. & Anr. CIVIL APPEAL NO. 4565 OF 2021, Date of Supreme Court Judgement: July 23, 2024.

Facts of the Case

The present appeal is filled by BRS Ventures Investments Ltd. (Appellant) against M/s SERI Infrastructure Finance ltd. & Gujarat Hydrocarbon and Power SEZ Limited/CD. (hereinafter referred as 'Respondent No.1 & Respondent No.2) after being aggrieved by the impugned order passed by the Appellate Tribunal. In this case, the Respondent No. 1 had provided a loan of ₹100 crores to the Respondent No. 2/CD, a subsidiary of M/s Assam Company India Limited (ACIL). The loan, dated 05.01.11, was secured by a mortgage of leasehold land of the CD, a pledge of shares of the CD and ACIL, and a corporate guarantee provided by ACIL. Due to defaults, the Respondent No. 1 invoked the corporate guarantee of ACIL, leading to a Section 7 application under the IBC, 2016 which was admitted, initiating the CIRP for ACIL, the Corporate Guarantor. The CIRP concluded with the approval of the Resolution Plan of the ACIL amounting ₹38.87 core by NCLT on September 20, 2018. However, the financial creditor on February 10, 2020, filed a Section 7 Application against the Corporate Debtor for recovery of the balance amount of ₹1428 crores despite the full and final settlement of all claims of the Respondent No. 1 against ACIL. The Appellant (Successful Resolution Applicant) challenged the admission of this application on grounds that it was barred by limitation and that the same debt had already been subjected to CIRP against the Corporate Guarantor (ACIL), with the Respondent No.1 accepting the resolution amount as full and final settlement of all dues. This led to the current appeal before the Supreme Court. The main issues raised before the Apex Court are: (i) Whether the application u/s 7 of IBC is barred by Limitation or not? (ii) Whether the second Application u/s 7 of IBC is not maintainable against the CD as for the same debt and default, CIRP has already been taken place against the Corporate Guarantor and the financial Creditor has accepted the amount in full and final settlement of all its dues?

Supreme Court's Observations

The Supreme Court observed that the liability of the surety and the principal debtor is co-extensive under Section 128 of the Indian Contract Act, 1872, meaning the creditor can proceed against either or both.

This principle was upheld in *Industrial Finance Corporation of India Ltd. vs. Cannanore Spg. & Wvg. Mills Ltd.* (2002), emphasizing that the surety's liability does not extinguish even if the principal debtor's liability is discharged by law. In the context of the IBC, the Apex Court noted that a guarantor's liability does not end merely due to the resolution process of the principal debtor. In *Lalit Kumar Jain vs. UOI & Ors.* (2021), it was held that approving a Resolution Plan does not discharge a personal guarantor's liabilities under the contract of guarantee. The release or discharge of a principal borrower from the debt owed to its creditor by an involuntary process, like liquidation or insolvency proceedings, does not absolve the surety of its liability, arising from an independent contract. The Apex Court further clarified that u/s 60 of the IBC, simultaneous or separate insolvency proceedings against the CD and its guarantors are allowed. Sub-section (3) of Section 60 permits if CIRP against CD and its Guarantor are pending before different Adjudicating Authorities (AA), the CIRP against Guarantor should be transferred to the AA handling CIRP of CD. This aligns with the decision in *State Bank of India vs. V. Ramakrishnan & Anr.,* confirming that the guarantor's liability remains even if the CD undergoes insolvency proceedings. Regarding the inclusion of a subsidiary's assets in the Resolution Plan, the Court referred to Sections 18 and 36 of the IBC,

excluding subsidiary assets from the liquidation estate of the CD. In Bacha F. Guzdar vs. Commissioner of Income Tax, Bombay (1955) clarified that a company is a separate legal entity from its shareholders, who do not have a direct claim over its assets. *Vodafone International Holdings BV vs. Union of India & Anr.* (2021) reinforced that a subsidiary's assets belong to the subsidiary or its liquidator but not the holding company. The Supreme Court observed that u/s 140 of the Contract Act, if the surety pays the full amount under the guarantee to the creditor, the surety can recover the entire amount from the principal debtor. This gives the surety the rights of the creditor. If only part of the debt is paid, the surety's right is limited to the amount cleared. In this case, the liability of ACIL was extinguished after paying ₹38.87 crore, but the financial creditor's right to recover the remaining debt is not extinguished.

Order: The Apex Court upheld the Appellate Tribunal's decision, observing that the principal borrower's liabilities remain independent of the guarantor's resolution process. The guarantor's settlement does not extinguish the principal borrower's debt obligations under the IBC. Additionally, a holding company does not own its subsidiary's assets, so these cannot be included in its Resolution Plan. The FC can file separate or simultaneous applications u/s 7 of the IBC against both the CD and the Corporate Guarantor.

Case Review: *Appeal Dismissed.*

High Court

M/s Asian Colour Coated Ispat Ltd. Vs. Assistant Commissioner of Income Tax & Anr. W.P.(C) 3498/2022, Date of Delhi High Court Judgement: August 07, 2024.

Facts of the Case

The Present petition is filled by M/s Gateway Investment Management Services Ltd. (Petitioner) against Reserve Bank of India & Ors. (Respondents). The petitioner invoked the writ jurisdiction of the Delhi High Court under Article 226 of the Constitution of India, seeking various reliefs. The petitioner contended that its Resolution Plan, which had offered to infuse ₹109,87,50,000/- for the revival of Helios Photo Voltaic Private Ltd (Corporate Debtor), was arbitrarily rejected by the Committee of Creditors (CoC). The petitioner submitted that it had placed the highest bid in the CIRP e-auction held on 24.07.24, offering the said amount to be paid over a period of 12 months, which was significantly higher than the ₹99 crore bid offered by the Successful Resolution Applicant (SRA) who proposed to pay the amount within 30 days. Despite this, the CoC rejected the petitioner's plan in its meeting held on 18.09.24, failing to follow proper commercial wisdom, alleged the petitioner. The petitioner's counsel argued that the CoC's decision violated the principles of fairness and transparency, as the petitioner had revised its offer during the CoC's deliberations to expedite the payment of ₹75 crore within 90 days. Furthermore, the Petitioner contended that respondent no. 3, Punjab National Bank, the lead secured creditor, played a pivotal role in the CoC's rejection of the petitioner's Resolution Plan.

High Court's Observations

The Hon'ble High Court highlighted that under the Insolvency and Bankruptcy Code (IBC), the "commercial wisdom" of the CoC is paramount. It acknowledged that the CoC holds the authority to make decisions on resolution plans and that judicial review is limited to ensuring that the CoC's decisions comply with the provisions of the IBC. The Hon'ble High Court emphasized that its interference is only warranted in cases of illegality or violation of the IBC.

It was noted that the CoC had the discretion to prioritize quicker recovery of funds over a larger financial offer, provided the decision aligned with the IBC's objectives — namely, the revival of the corporate debtor and the maximization of asset value. The CoC's preference for the Resolution Plan that promised a faster infusion of funds over the petitioner's larger but delayed payment plan was deemed a valid exercise of its commercial judgment. The Hon'ble High Court referred to the Insolvency and Bankruptcy Board of India (IBBI) guidelines from August 2024, stressing that the CoC must maintain fairness, objectivity, and integrity in decision-making. These principles are crucial in ensuring that the CoC operates transparently and in the best interest of all stakeholders. Given the CoC's adherence to its discretion under the IBC, the petitioner's argument that its higher bid should have been accepted was dismissed.

Order: The Hon'ble High Court dismissed the writ petition, holding that the petitioner had an alternative and efficacious remedy under Section 60 of the IBC and should approach the AA to challenge the CoC's decision. The Court reiterated that the CoC's decision, based on its commercial wisdom, is non-justiciable unless it is shown to be tainted by illegality or violates the provisions of the IBC. If it deems fit, NCLT may even allow 'Open Court Bidding' in accordance with law.

Case review: *Petition Disposed.*

M/s.Vasan Healthcare Pvt Ltd. Vs. M/s. India Infoline Finance Ltd, Crl.O.P.Nos.1772, 1775, 1776, 1784, 1786, 1788, 1792, 1796 & 1797 of 2024 & Crl.M.P.Nos.1224, 1226, 1227, 1235, 1237, 1238, 1251, 1255 & 1259 of 2024, Date of Madras High Court Judgement: July 24, 2024.

Facts of the Case

The present batch of Criminal Original Petitions seek to quash proceedings against M/s. Vasan Healthcare Pvt. Ltd. (Petitioner/1st Accused) initiated by M/s. India Infoline Finance Ltd. (Respondent/Complainant) under Section 138 of the Negotiable Instruments Act for dishonouring cheques issued to discharge liabilities. The Petitioner had borrowed substantial loans from the Respondent, a financial institution, to finance the purchase of medical equipment. To discharge these liabilities, the Managing Director (MD)/Authorized Signatory of the Petitioner issued several cheques, which were subsequently dishonored due to insufficient funds. Following this, the Respondent issued statutory notices and filed multiple complaints against the Petitioner, its MD, and Director. During the trial proceedings, M/s. Alcon Laboratories, another creditor, filed an application u/s 9 of the IBC, citing an unpaid amount of ₹86,65,75,855/-. This led to the initiation of the CIRP against the Petitioner by the AA, with an IRP appointed, marking the beginning of a moratorium on proceedings against the CD. In the midst of these events, the MD of the company Mr. A.M. Arun, the second accused and representative of the Petitioner Company, passed away. Meanwhile, AA appointed Resolution Professional (RP) for the CD. Subsequently, the Resolution Plan submitted by M/s. ASG Hospital Pvt. Ltd. was approved by the AA on 03.02.23, settling the claims of creditors and extinguishing all civil and criminal proceedings against the CD. The Petitioner company, now under new management as per the approved Resolution Plan, argued that the ongoing prosecution should be quashed based on Section 32A of the IBC, which provides immunity to the CD from prior liabilities after the resolution process. The petitioner filed a memo before the Judicial Magistrate seeking dismissal of the complaint against the first accused Company, citing Section 32A of IBC and the Supreme Court judgment in the case of Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India. The Judicial Magistrate returned the memo, stating that the relief sought could not be granted via memo, meaning the petitioner should have filed an application under the relevant provision of law. The petitioner then filed a petition under Section 482 Cr.P.C. before Hon'ble High Court to quash the criminal complaint against the first accused Company, which is the CD.

The main issues raised before the Hon'ble High court is: (i) Whether the existing criminal liability of the Company and its erstwhile directors will get extinguished in view of the Resolution Plan approved by AA?

High Court's Observations

The Apex court observed that after the commencement of the CIRP, the management of the CD vests with the IRP, and the erstwhile directors cease to represent the company. Relying on the Supreme Court judgment in *Ajay Kumar Radheshyam Goenka vs. Tourism Finance Corporation of India Ltd* (2023), it was emphasized that Section 32A of IBC restricts the liability of the CD for offences committed prior to the resolution process. The Supreme Court clarified that the protection under Section 32A extends only to the CD and not to its directors or officers who were responsible for the conduct of its business at the time of the offence. The Hon'ble High Court further elaborated that once the Resolution Plan is approved and a new management takes over, the company is absolved of prior liabilities, including those under Section 138 of the NI Act, provided the company is not dissolved. However, the personal liability of the directors or signatories to the cheques continues despite the company's resolution process.

Order: The Hon'ble High Court, considering the application to quash the proceedings under Section

482 of Cr.P.C., allowed the petitions to quash the criminal prosecution against the Petitioner/CD only, in C.C.Nos.308, 309, 310, 311, 312, 313, 3088, 3089, and 3090 of 2016. The Hon'ble High Court upheld that the criminal prosecution cannot proceed against the CD post-approval of the Resolution Plan under Section 32A of IBC. Consequently, the connected Miscellaneous Petitions were closed.

Case Review: The Criminal Original Petitions are allowed, quashing the proceedings against the first accused company, the personal liability of the directors or signatories under Section 138 r/w Section 141 of the NI Act remains unaffected by this order.

Uphealth Holdings, INC. Vs. Dr. Syed Sabahat Azim & Ors. in C.O. No. 241 of 2024, Date of Calcutta High Court Judgement: May 22, 2024.

Facts of the Case

The Present Revisional Application is filled by the M/s Uphealth Holdings, Inc. (Petitioner) against Dr. Syed Sabahat Azim & Ors. (Defendants) after being aggrieved by the order dated 17.01.24 passed by the learned commercial Judge in Title Suit No. 17 of 2023. The application, is directed against an order dated 17.01.24, passed by the Learned Commercial Judge at Rajarhat, North 24 Parganas, in Title Suit No. 17 of 2023. This anti-arbitration suit was filed by the Defendants. During the pendency of suit, the Petitioner filed an application u/s 151 of CPC and requested a stay of further proceedings in the suit due to a moratorium issued by the U.S. Bankruptcy Court under Chapter 11 of the U.S. Bankruptcy Code. The petitioner argued that the moratorium order, which was akin to Section 14 of the IBC, 2016, should operate as a worldwide temporary stay, thereby halting all legal proceedings against them globally, including the current suit in India. Alternatively, they sought an adjournment for 180 days. The Petitioner submitted that the moratorium order dated 24.10.23 issued by the Bankruptcy Court of the District of Delaware, U.S., was claimed to impose an automatic stay on all legal actions against the petitioner. The petitioner further submitted that the doctrine of Comity of Courts required Indian courts to respect the decisions of competent foreign courts. The petitioner invoked the inherent power of the court to recognize the proceedings before the U.S. Bankruptcy Court and grant a stay, emphasizing that the principle of comity and universalism should be considered in the absence of a specific statutory framework in India for cross-border insolvencies. The Learned Judge rejected the stay application, citing that the moratorium order of the U.S. Bankruptcy Court was not applicable in India because the U.S.A. had not been declared a reciprocating territory under Section 44A of the Code of Civil Procedure. The court further noted that the Comity of Nations and Comity of Courts doctrine did not mandate automatic enforcement of foreign court orders in India. The pendency of a suit in a foreign court does not preclude Indian courts from trying a suit founded on the same cause of action. Resulting this appeal is filled.

High Court's Observations

The Hon'ble High court observed that the Court was not bound to stay the suit just because a proceeding was ongoing in a foreign country. The proceedings before the suit court were not insolvency proceedings, the foreign judgments relied upon by the Petitioner was based on the globalization of commercial relationships and the recognition of moratoriums granted by foreign courts.

All of which pertained to insolvency proceedings, and the moratorium in this case, granted in Chapter 11 cases, dealt with insolvency, reorganization, and restructuring, categories under which this suit does not fall. While Section 14 of the IBC, 2016, applies to claims of creditors and matters related to CD within the jurisdiction of IBC 2016, cross-border insolvency issues have gained importance due to increased transnational transactions. Recognition of foreign proceedings is vital for an effective cross-border insolvency regime. Indian courts recognize foreign judgments and decrees from reciprocating countries like the UK and Singapore, but not foreign insolvency proceedings like re-organizations; India lacks a comprehensive cross-border insolvency framework under the Code. The High court referred the judgement given in *Surya Vadanan vs. State of Tamil Nadu and Ors.,* (2015), wherein it was held that the principle of Comity of Courts is one of self-restraint, requiring domestic courts to recognize and follow foreign court orders where possible, acknowledging the first strike principle. Further, the High Court also referred the judgement in *Nithya Anand Raghavan vs. State (NCT OF DELHI) and Anr.,* (2017), wherein the Apex Court held that the first strike principle was not

applicable and that pre-existing foreign court orders are merely a factor to consider. The present suit was a prior suit, and an application had been filed under Section 45 of the Arbitration and Conciliation Act, 1996. During the hearing of this application, the U.S. Court passed the moratorium order on 24.10.23. This was not a preexisting foreign court order, and the suit court only needed to take note of the U.S. Bankruptcy Court proceedings. The trial judge's conclusion, based on Sections 44A, 13, and 14 of the CPC, concerned the enforcement of foreign decrees from non-reciprocating countries. However, the principle of Comity of Nations and Comity of Courts has been recognized by Indian Courts, which consider foreign court orders when deciding domestic proceedings. In this case, the plaint and reliefs claimed did not indicate any claims covered by Chapter 11 cases of the U.S. Bankruptcy Code. Therefore, the suit can continue and is not required to be stayed.

Order: The Hon'ble High Court held that the order passed by the U.S insolvency court could not bind the learned trial judge to stay the suit and The moratorium order applies to Chapter 11 cases, particularly concerning money claims or claims depleting assets, The Hon'ble High Court further stated that the petitioner's management was not superseded by the U.S. Court's order and can continue to contest the suit.

Case Review: *Revisional Application Dismissed. The Suit will proceed.*

National Company Law Appellate Tribunal (NCLAT)

B.C. Rajat Metaal Polychem Pvt. Ltd. Vs. Mr. Neeraj Bhatia & Subhash Bhati & Ashok Kumar Bhati Company Appeal (AT) (Insolvency) No. 1063 of 2022 & I.A. No. 3101 of 2022 Date of NCLAT Judgement: September 04, 2024.

Facts of the Case

The Present appeal was filed by M/s Rajat Metaal Polychem Pvt. Ltd., in the capacity of an Operational Creditor (Appellant) of M/s Vinayak Rathi Steels Rolling Mills Pvt. Ltd./CD against Resolution Professional of the CD & Subhash Bhati & Ashok Kumar Bhati (Successful Resolution Applicant 'SRA' (Respondent No: 1, 2) after being aggrieved by the order dated 21.04.22 passed by the Adjudicating Authority 'AA' which approved the Resolution Plan submitted by Respondent No. 2/SRA. The CIRP of the CD was initiated by an order dated 16.06.20 based on an application filed by Jammu and Kashmir Bank (Financial creditor). The Appellant filed its claim as an Operational Creditor (OC) on 01.08.20 for ₹1,54,64,626/-, out of which ₹93,00,564/- was admitted by the Respondent No. 1. The Appellant contested the rejection of the remaining amount and the non-inclusion of OCs in the Resolution Plan but was unsuccessful, as the application for rejecting the Resolution Plan was dismissed on 21.04.22 by AA. The FC, represented by Jammu and Kashmir Bank, had an admitted claim of ₹60,13,50,956/-. The Resolution Plan proposed a payment of ₹23,12,50,000/- to the FC and covered 100% of the CIRP Cost amounting ₹30,50,206/-, but no amount was provided for the OC. The Committee of Creditors (CoC) approved the plan, which led to this appeal by the Appellant, arguing that their claims were overlooked despite Section 30(2) of the IBC requiring fair treatment of OC's based on the liquidation value of the CD.

NCLAT's Observations

The Appellate Tribunal reviewed the Appellant's primary contention that the Resolution Plan did not provide for any payment to operational creditors, is in violation of Section 30(2) of the Insolvency and Bankruptcy Code, 2016 (IBC). The Appellate Tribunal emphasized that u/s 30(2)(b), the OC's are entitled to receive a minimum payment based on the amount they would have received in the event of liquidation as per Section 53 of the IBC.

However, in the present case, the liquidation value of the CD was insufficient to meet the claims of even the FC's, and as a result, the OC' were left with no recovery. The Appellate Tribunal referred to the Supreme Court's judgment in Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta 2020, which highlighted that the commercial wisdom of the CoC should be respected, and judicial interference is limited to ensuring that the Resolution Plan meets the statutory requirements of the IBC. The court noted that FC's, being in the CoC, had the authority to approve the Resolution Plan based

on their assessment of the viability and liquidation value, which was done here by the FC. The Tribunal also acknowledged that the non-payment to OCs, though harsh, was in line with the IBC provisions as the liquidation value payable to OC's was nil. The CoC's decision to approve the Resolution Plan was upheld as it met the minimum threshold laid out by Section 30(2)(b) of the IBC. The Appellate Tribunal concluded that the Resolution Plan, as approved by the AA, complied with the statutory requirements, and the decision of the CoC could not be interfered with unless it violated any provisions of the IBC, which was not the case here.

Order: The Appellate Tribunal upheld the decision of AA and also observed that the OC's have no inherent right to payment if the liquidation value of the CD is insufficient. The Appellate Tribunal acknowledged that this situation may appear harsh but noted that any changes to this framework would require legislative intervention. Until such amendments are made, the courts are bound by the existing provisions of the IBC.

Case Review: *Appeal Dismissed*

Ms. Asha Chopra & Ors. Vs. M/s. Hind Motors India Limited & Ors., Company Appeal (AT) (Insolvency) No. 1425 – 1428 of 2024 & I.A. No. 5180 – 5183 of 2024, Date of NCLAT Judgement: August 29, 2024.

Facts of the Case

The present Appeal and IA filed by Asha Chopra, Dimple Gulati and Deep Rathore (Appellant 1, 2 & 3 respectively) against M/s Hind Motors India Ltd., Ashish Mohan Gupta & Union Bank of India (hereinafter referred as 'Respondent' No. 1, 2 & 3 respectively), after being aggrieved by the order dated 31.05.24 passed by the Adjudicating Authority. The CIRP of M/s Hind Motors India Ltd/CD was initiated on 09.03.17 u/s 10 of the IBC 2016, based on an application filed by the CD itself. An order for liquidation was passed on 12.09.17 by the AA. This order was contested by the Promoter and former Director i.e., the Respondent No. 2, but his appeal was dismissed by Appellate Tribunal on 26.04.18. During the liquidation, the Liquidator issued an e-Auction Notice, which was challenged by the Respondent No. 2 on the grounds that a settlement scheme under Section 230 of the Companies Act, 2013 had been submitted. The AA rejected this application on 23.08.19, and the appeal against this rejection was dismissed on 13.04.21. The Appellate Tribunal, relying on the Hon'ble Supreme Court judgment in Arun Kumar Jagatramka vs. Jindal Steel & Power Ltd. & Anr. 2021, held that a former Director is ineligible to propose a settlement scheme under Section 230 of the Companies Act due to disqualification under Section 29A of the IBC. The Appellants, claiming to be depositors of the CD, filed applications u/s 12A of the IBC on 24.05.21, seeking directions for the Liquidator to convene a Committee of Creditors (CoC) meeting to consider the withdrawal of the CIRP proceedings. The applications, filed under I.A. No. 336/2021, aimed to withdraw the CIRP under Section 12A of the IBC, which permits such withdrawal with 90% approval from the CoC. The Liquidator contended that the Section 12A application was not maintainable during liquidation and noted that the liquidation commenced on 12.09.17, prior to the amendments requiring the formation of a Stakeholders Consultation Committee (SCC). The AA, by its order dated 31.05.24, dismissed the applications, stating that the Section 12A application was not maintainable during liquidation and that the application was filed at the behest of the exDirector, who is barred under Section 29A of the IBC. The AA also found no merit in the argument regarding the SCC, as the requirement did not apply to liquidation processes initiated before the amendments resulting this appeal is filed before the Appellate tribunal.

Main issues arise before the Appellate Tribunal is: (i) whether an Application u/s 12A for withdrawal of the CIRP can be filed after commencement of the Liquidation Proceedings or not?, (ii) whether in the facts of the present case, when the Liquidation commenced on 12.09.17, it was obligatory for the Liquidator to constitute the SCC as per the Regulation 31A inserted in Liquidation Regulation with effect from 25.07.19.

NCLAT's Observations

The Appellate Tribunal noted that Section 12A of the IBC 2016, permits withdrawal of applications admitted under sections 7, 9, or 10 of the IBC, but only during the CIRP with the approval of 90% voting share of the CoC. The Appellate Tribunal further emphasized that once liquidation proceedings start, the CoC ceases to exist, making it impossible to meet the Section 12A requirements. The Appellate tribunal underscored that

the IBC's statutory framework does not support the withdrawal of CIRP u/s 12A after the commencement of liquidation. It also highlighted that Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, allows for compromise or arrangement during liquidation stipulating completion within 90 days of the liquidation order and excluding ineligible persons from proposing such compromises. The process is distinct from a CIRP withdrawal u/s 12 A of the IBC. Additionally, the Appellate Tribunal addressed the Appellants' concerns about the non-constitution of a Stakeholders' Consultation Committee (SCC) as per the amended IBBI (Liquidation Process) Regulations, 2019. It clarified that this amendment is not retrospective and does not apply to liquidations initiated before its introduction, indicating a legislative intent against imposing new obligations retrospectively. Ultimately, the Tribunal dismissed the Appellants' claims regarding the maintainability of the Section 12A Application and the need for an SCC, confirming that the Liquidator correctly followed the law in managing the liquidation of CD.

Order: The Appellate Tribunal upheld the decision of the AA, dismissing the appeals. The Appellate Tribunal agreed that the Section 12A application was not maintainable during the liquidation process and that the Liquidator acted in accordance with the applicable regulations, given that the liquidation process began before the provision to constitute an SCC was introduced.

Case Review: *Appeals Dismissed.*

Wind World (India) Ltd. Vs. Indian Renewable Energy Development Agency Ltd. & Wind World (India) Infrastructure Private Ltd. Company Appeal (AT) (Insolvency) No.175 of 2023, Date of NCLAT Judgement: August 12, 2024.

Facts of the Case

The Present Appeal is filed by the Wind World (India) Ltd./CD, through its RP, (Appellant) against Indian Renewable Energy Development Agency Ltd. (Respondent No.1) & Wind World (India) Infrastructure Pvt Ltd. (Respondent No.2), earlier Enercon India Limited (EIL), aggrieved by the order dated 28.11.22 passed by the Adjudicating Authority (AA), NCLT, Ahmedabad. This Appeal arises from the rejection of IA No. 422/2022, in which the RP prayed for quashing the invitation of Expression of Interest (EoI) dated 25.04.22 issued by Respondent No. 1 seeking new operation and management contractors for the power switchyard (Facility) of Respondent No. 2. The Appellant/ CD is a holding company of Respondent No. 2, which had initially entered into a Facility Agreement with CD on 28.12.07 to construct and operate power switchyards required for pooling the power generated by wind energy projects. This agreement was amended several times until 2016. Under this agreement, the Appellant/ CD was authorized to use, operate, and maintain the Facility, but ownership remained with Respondent No. 2. The Respondent No. 2, a subsidiary of the CD, secured loans of ₹90 crores each from the Respondent No.1 under two Loan Agreements, with the associated assets being hypothecated in favor of the Respondent No.1 through agreements dated 05.07.12 and 19.12.13. Additionally, a Conditional Deed of Assignment dated 23.12.13 transferred all rights under the Facility Agreement to the Respondent No.1. Subsequently, an application was filed u/s 7 of the IBC, 2016, initiating the CIRP against the Appellant/CD by an order dated 20.02.18. Following financial distress and defaults by Respondent No. 2, its account was declared a Non-Performing Asset (NPA) on 31.03.18. This led the Respondent No. 1 to issue Notices u/s 13(2) of the SARFAESI Act on 12.05.21 and 13.06.21 and initiate proceedings under the SARFAESI Act. The EoI issued by the Respondent No. 1 on 25.04.22, sought new contractors to operate and maintain the switchyard, which the RP challenged on the grounds that it violated the moratorium imposed under Section 14(1)(d) of the IBC 2016. This section prohibits the recovery of any property occupied by or in possession of the CD during the moratorium period. However, the AA rejected this challenge, prompting the current Appeal before the Appellate tribunal.

NCLAT's Observations

The Appellate Tribunal considered the provisions of the Facility Agreement, including Clause 2.1 (Right to use the Facility) and Clause 2.2(d) (Ownership of the Facility), which clarified that the CD was granted the right to operate, maintain, and use the Facility but not to own it. The Appellate Tribunal noted that the ownership of the Facility remained solely with the Respondent No. 2, and the CD had no right whatsoever in the ownership

of the Facility. The Appellate Tribunal further observed that Section 14(1)(d) of the IBC restricts the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD during the moratorium. However, in this case, the Appellate Tribunal found that the CD was not in "occupation" of the property in the sense required by Section 14(1)(d). The CD's role was limited to the operation and maintenance of the Facility, and the EoI issued by Respondent No. 1 did not amount to recovery of the property. The Appellate Tribunal also examined the previous judgments, including the Supreme Court's decision in *Rajendra K. Bhutta vs. Maharashtra Housing and Area Development Authority* (2020), to elucidate the scope of Section 14(1)(d). The Appellate Tribunal concluded that the CD was not in occupation of the property in a manner that would trigger the protection under Section 14(1)(d) of the IBC. The EoI was not in contravention of the IBC provisions as it sought to appoint a new operator for the facility, not to recover the property itself, the Appellate Tribunal further cited that the CD's lack of payment of facility usage charges and the subsequent financial distress faced by Respondent No. 2 justified the Respondent no.1 actions under the SARFAESI Act.

Order: The Appellate Tribunal upheld the AA's order dated 28.11.22 and held that no error has been committed by the AA in rejecting the application filled by the Appellant and also held that the issuance of the EoI by Respondent No. 1 was lawful and did not violate Section 14(1) (d) of the IBC.

Case Review: *Appeal Dismissed.*

National Company Law Tribunal (NCLT)

State Bank of India Vs. M/s. Reform Ferro Cast Limited., IA (IBC)/1274(KB)2024 in CP(IB)/393(KB)2021, Date of NCLT Judgement: September 03, 2024.

Facts of the Case

The IA was filled by Resolution Professional (RP) of M/s Reform ferro cast Ltd./CD to withdraw the Liquidation Application filed by the RP before the Adjudicating Authority (AA). This IA was opposed by the State Bank of India (SBI), the "Applicant" in the original CIRP Application against the CD. The CIRP for the CD was initiated on 21.11.22 by an order of the Adjudicating Authority. Pursuant to the publication of Form G (Expression of Interest), 20 prospective resolution applicants expressed interest, however, only four submitted resolution plans by the deadline of 14.04.23. With the initial 180-day CIRP period set to expire on 20.05.23, and no successful resolution applicant determined, the RP, with the approval of Committee of Creditors (CoC), sought and obtained a 90-day extension from the AA on 17.05.23. During the CoC meetings, the consortium of M/s Clearwater Commodities Pvt. Ltd. and M/s MFPL Commercial Pvt. Ltd. was declared the H1 bidder. As the extended CIRP period approached its end on 18.08.23, without a finalized resolution plan, the RP filed for an exclusion of eight weeks from the CIRP timeline, which the AA granted, extending to 12.10.23. On this date, the resolution plan was presented for CoC approval. The Applicant, holding a 99.94% voting share and the only secured FC, voted against the resolution plan, leading the CoC to decide on liquidating the Respondent/CD. Consequently, the RP filed an application (IA No. 1803/KB/2023) u/s 33 of the IBC, which was heard and reserved for orders on 07.11.23. In a significant turn of events, on 12.06.24, the RP received a new resolution plan proposal via email from M/s SSM Ispat Ltd., a previously uninvolved prospective resolution applicant. This prompted another CoC meeting on June 18, 2024, where it was decided to seek permission to withdraw the liquidation application and request further exclusion of time due to the pendency of this application. The CoC also planned to issue a new Form G to invite Expressions of Interest (EOI) from prospective applicants, aiming to complete the resolution process in the shortest possible time. The RP subsequently filed for the exclusion of the time period from the end of the extended CIRP on 12.10.23, and an additional 90 days to finalize the CIRP, aligning with the new proposals received and the decisions of the CoC meeting to preserve the ongoing efforts to revive the Respondent/CD.

The Main issues arise before the AA are: (i) Whether the CoC can withdraw a liquidation application filed before the AA in order to consider a resolution plan? (ii) Whether fresh resolution plan should be allowed to be submitted after the expiry of 270 days period prescribed under the Code?

NCLT's Observations

The AA deliberated on two critical issues, referencing pertinent case laws and statutory provisions to underscore the flexibility within the IBC framework for adapting procedural timelines to benefit all stakeholders. The AA highlighted higher court decisions emphasizing the importance of maximizing the value of the CD and avoiding liquidation when feasible. Specifically, the AA cited the case of *Anil Kumar Suspended Director SK Elite Industries India Ltd. Vs. Jayesh Sanghrajaka RP of SK Elite Industries India Ltd.* (2023), wherein the Appellate Tribunal upheld the decision to allow the withdrawal of a liquidation application in favor of a resolution plan. This case reinforced the notion that the CoC's decisions reflect their commercial wisdom, which should not be interfered with unless manifestly unreasonable. Additionally, the AA referred to the Supreme Court's decision in *Swiss Ribbons Pvt. Ltd. & Anr. vs. UOI* (2019), which outlines the IBC's goals to resolve corporate insolvency in a timely manner, thus preserving the value of the insolvent entity and ensuring better outcomes for creditors. This decision guides the IBC's application, advocating for resolution over liquidation. The Tribunal also referenced the Supreme Court's judgments in *Essar Steel India ltd. through Authorised Signatory vs. Satish Kumar Gupta and Ors. (2020) and the AA's ruling in West Bengal Financial Corporation vs. Bijoy Murmuria and Ors.* (2021), which further support flexibility in procedural timelines and emphasize the CoC's authority in the resolution process. These references shaped the AA's decision to grant procedural flexibility, allowing the withdrawal of the liquidation petition and the extension of the CIRP timeline. This approach aims to facilitate the resolution and revival of the CD, ensuring that the IBC's objectives of timely resolution, value maximization, and balancing stakeholder interests are met. This reflects a pragmatic application of the law to the complex realities of corporate insolvency.

Order: The AA allowed the withdrawal of the liquidation application and approved the exclusion of certain periods from the CIRP timeline, extending the timeline by an additional 90 days.

Case Review: *The IA Application Disposed.*

IBC News

CoC approved Resolution Plan for Future Lifestyle

The lenders of Future Lifestyle Fashions Ltd (FLFL) have approved the Resolution Plan from a consortium of Space Mantra and Sandeep Gupta & Shalini Gupta, September 27, 2024. The company has an admitted loan of ₹476.59 crore. State Bank of India leads the CoC of FLFL with a ₹22.51 per cent voting share. In June 2023, FLFL had informed that it had received a total claim of ₹ 2,155.53 crore from 12 financial creditors in CIRP initiated against the company.

Source: *Business Standard, September 28, 2024.*

https://www.business-standard.com/companies/news/future-lifestyle-lenders-approve-resolution-plan-of-space-mantra-guptas-consortium-124092800401_1.html

NCLAT rejected tax claims of State Govt against R. Com, post-CIRP initiation

The Appellate Tribunal has rejected tax claims of about ₹6.10 crore filed by the State Government's tax department against the Reliance Communications (R. Com) observing that it was based on the assessment made after the initiation of CIRP against the Corporate Debtor. "We are of the view that the claim which was on the basis of the assessment made subsequent to the initiation of CIRP could not have been admitted," said the NCLAT. The state government's tax department had filed two claims. The first claim amounting ₹94.97 lakh was filed on July 24, 2019, which was admitted. Subsequently, the CoC of RCom approved the Resolution Plan on March 2, 2020. Thereafter, a second claim was filed on Nov. 15, 2021, for ₹6.10 crore, which arose out of an assessment order dated August 30, 2021.

Source: *Business Standard, September 21, 2024.*

https://www.business-standard.com/companies/news/nclat-rejects-tax-claim-against-rcom-after-initiation-of-insolvency-124092100307_1.html

IPs & IPEs are fulcrum of the IBC ecosystem: Shri Ravi Mital, Chairperson, IBBI

Shri Ravi Mital, Chairperson, IBBI has said that IPs and IPEs are fulcrum of the insolvency system in India around which the entire process resolves. Therefore, they

should be transparent, proactive and innovate to improve the image of the IBC ecosystem. He was addressing a physical conference as the Chief Guest organized by IIIPI on September 17, 2024, in New Delhi.

Speaking as the Guest of Honour Dr. Shrikant Baldi, Chairperson, Himachal Pradesh-RERA, highlighted the need to form a committee comprising the members of IBBI and RERA to suggest required amendments in the IBC 2016 and RERA 2016 to ensure completion of real estate projects and provide homes to homebuyers. Ms. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs said that the IPs are the backbone of the system. "We are moving towards self-regulation, that's why we welcomed peer-review process introduced by IIIPI," she added. CA. Ranjeet Kumar Agarwal, President-ICAI said that the IBC has been one of the finest reforms in addition to the GST. "We are trying to bring professional code of conduct for IPs," said Agarwal. In his inaugural address Dr. Ashok Haldia, Chairperson, IIIPI-Board said, "The purpose of this conference is to get specific feedback from IPs on various hurdles they face in resolving the CDs," said Dr. Haldia. The inaugural session was followed up with special addresses, interactions with IPs and presentations.

Source: *IIIPI Press Release, September 17, 2024.*

https://www.iiipicai.in/wp-content/uploads/2024/09/IIIPI-Press-Release-Physical-Conference-Sept-17-1.pdf

Max Healthcare to Acquire Jaypee Healthcare under IBC

Max Healthcare has reportedly entered into a strategic agreement with Lakshdeep Group to acquire a controlling stake in Jaypee Healthcare Ltd. (JHL), which

is undergoing CIRP. The acquisition is based on an enterprise value of ₹1,660 crore.

According to media reports, Max Healthcare will initially acquire a 64% stake in JHL, with plans to acquire the remaining 36%. The deal includes Jaypee Hospital in Noida and two other hospitals, said media reports. NCLAT Delhi has recently approved the settlement agreed between Lakshdeep Group and the CoC of JHL.

Source: *The Economic Times, September 13, 2024.*

https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/max-healthcare-acquires-64-pc-stake-in-jaypee-healthcare-at-an-enterprise-value-of-rs-1660-crore/articleshow/113319755.cms?from=mdr

Sale Agreement not a 'Financial Debt' under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (IBC): NCLAT

The NCLAT observed that the nature of the transaction must be determined from the documents reflecting the transaction and dismissed insolvency process against the Corporate Debtor (CD). In this case, an Ahmedabad based company M/s Ganpati Pulp and Paper Ltd. (GPPL) availed a loan of ₹1.23 crore from Gujarat State Financial Corporation (GSFC), Bank of Baroda and two other lenders. Due to the default by GPPL, GSFC took possession of its 24 acres land. The GSFC, acting on behalf of itself and other lenders, signed a 'Sale Agreement' with Shree Industries Ltd. (SIL) for the sale of the land on Nov. 27, 1990. However, SIL was declared a sick industry on Nov. 12, 1997. Thereafter, GSFC approached the Gujarat High Court, seeking return of the land from SIL. Subsequently, some other petitions were filed, and the matter was referred to NCLT Gujarat Bench. Meanwhile, Bank of Baroda assigned its debt to ASREC (India) Ltd, which filed a Section 7 application against SIL (Corporate Debtor) before the NCLT, New Delhi, on Nov. 23, 2022, claiming a default of about ₹ 92.35 crore. The NCLT, New Delhi admitted the insolvency application against the Corporate Debtor. However, the Corporate Debtor filed an Appeal before the Appellate Tribunal contending that the debt was not a 'financial debt' but a sale consideration due to the vendor. The NCLAT allowed the appeal.

Source: *Livelaw.in, September 11, 2024.*

https://www.livelaw.in/ibc-cases/nclat-declares-sale-agreement-not-financial-debt-dismisses-insolvency-petition-269276

Insolvency process under Section 95 of the IBC cannot continued against legal heirs of the Personal Guarantor

The National Company Law Tribunal (NCLT) has held that insolvency proceedings against a deceased Personal Guarantor to Corporate Debtor (PG to CD) cannot continue against the legal heirs as those obligations are personal under the IBC, 2016. Relying on the judgement of *Vinayak Purushottam Dube vs. Jayashree Padamkar Bhat* (2024) wherein the Supreme Court has held that the legal representatives cannot be held liable to discharge the personal obligations of a deceased guarantor under a contract, the NCLT dismissed the application seeking substitution of legal heirs in place of the Personal guarantor for insolvency under Section 95 of the IBC.

Source: *SSCOnline.com, September 10, 2024.*

https://www.scconline.com/blog/post/2024/09/10/an-insolvency-proceeding-under-section-95-of-the-ibc-abates-after-the-death-of-personal-guarantor-nclt-scc-times/

Rule 12 of Schedule 1 under Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016, is mandatory: Supreme Court

The Supreme Court has held that Rule 12 would have to be treated as mandatory in character for the reason that it contemplates a consequence in the event of non-payment of the balance sale consideration by the highest bidder within the stipulated timeline of 90 days, which is cancellation of the sale by the Liquidator. "To that extent, there is substance in the submission made on behalf of the appellant that since the second proviso under Rule 12 contemplates a consequence of cancellation of the auction on nonpayment of the balance sale consideration within 90 days, the Liquidator was not empowered to extend the timeline," said the Supreme Court in the matter of *V.S. Palanivel vs. P. Sriram*. In this case, the Appellant argued that anything in Rule 12 would not be completed unless the sale deed was executed under Rule 13. "Rule 12 to be mandatory in character because non-payment within the timeline has consequences attached to it. However, in contrast thereto, there are no adverse consequences spelt out in Rule 13 for it to be treated as mandatory," clarified by the court. The sale deed under Rule 13 could not be executed between the liquidator and the Auction Purchaser because there was an attachment

order relating to the subject property by the Income Tax authorities which required it to be lifted.

Source: *Livelaw.in, September 07, 2024.*

https://www.livelaw.in/supreme-court/ibc-timeline-to-pay-balance-sale-consideration-by-auction-purchaser-in-liquidation-proceedings-mandatory-supreme-court-268912

NBCC proposes to complete 50k units across 17 real estate projects of Supertech

According to media reports, the state-owned NBCC has submitted a three-year construction plan before NCLAT to complete 50,000 apartments across 17 projects of Supertech, which is undergoing Corporate Insolvency Resolution Process (CIRP). The promoter Supertech is facing various charges, including fund diversion and money laundering. In the proposal, NBCC has urged the Appellate Tribunal to engage it as a project management consultant for the ongoing work at Amrapali. As per the plan the project will cost around ₹9,500 crore, with expected receivables of ₹16,000 crore. This includes ₹14,000 crore that could be generated from the unsold inventory of 10,000 apartments.

Source: *The Economic Times, September 09, 2024.*

https://economictimes.indiatimes.com/wealth/real-estate/nbccs-three-phase-plan-to-complete-50000-supertech-homes-offers-hope-for-stranded-home-buyers-amid-insolvency-proceedings/articleshow/113183634.cms?from=mdr

IIIPI Suggests Measures for Faster Resolution of Insolvency Cases

Setting up specialized NCLT benches and adopting an integrated case management software can help in faster resolution of cases under insolvency law, according to a study. The Insolvency and Bankruptcy Code (IBC) provides for a timebound and market-linked resolution of stressed assets. Of late, many IBC cases are getting delayed due to various factors. In its study, Indian Institute of Insolvency Professionals of ICAI (IIIPI) has suggested various measures that can help in faster insolvency resolution. Specialized benches of the National Company Law Tribunal (NCLT) can be constituted from time to time to bring extra focus on matters like resolution plans and avoidance transactions, IIIPI said in a release.

Source: *Outlook Business, September 03, 2024.*

https://www.outlookbusiness.com/news/iiipi-suggests-measures-for-faster-resolution-of-insolvency-cases

India's growth story is intact, and banks have robust balance sheets: RBI Governor

Shri Shaktikanta Das, Governor, the Reserve Bank of India (RBI) has said that past reforms like GST and IBC have yielded long-term positive outcomes, and emphasized the need for further reforms in land, labour, and agri-markets. He was speaking in the inaugural address at FIBAC 2024. "Fundamental drivers of the Indian economy are gaining momentum, and the country is moving on a sustainable growth path," said Shri Das. He further said, "Our nation's journey towards becoming an advanced economy is drawing strength from a unique blend of factors, and these factors would include a young and a dynamic population, a resilient and diverse economy, robust democracy, and a rich tradition of entrepreneurship and innovation". He also made a strong case for tailored products and services for women-led businesses and MSMEs without diluting underwriting standards.

Source: *Zeebiz.com, September 05, 2024.*

https://www.zeebiz.com/economy-infra/news-reforms-like-gst-ibc-have-yielded-long-term-positive-outcomes-rbi-government-shaktikanta-das-313161

Covid Relaxation for Limitation Under Section 34 and IBC Moratorium Protection, can' be claimed simultaneously

The Calcutta High Court has held that if a petitioner seeks to benefit from the pandemic relaxation under Section 34 of the Arbitration Act, it cannot simultaneously claim protection under the moratorium of Section 14 of the IBC. Furthermore, the court said that to avail the pandemic relaxation, the applicant needs to show that Covid initially prevented it from filing the application on time. The court observed that if the petitioner wished to take advantage of the pandemic-related relaxation, it had to file the application by May 29, 2022. By attempting to defer the ninety-day extension to a period of its choosing, the Petitioner sought to benefit from the moratorium under the IBC, which the court found untenable. The HC noted that from May 30, 2022, onwards, petitioner was not prevented by Covid but by moratorium.

Source: *Livelaw.in, September 01, 2024.*

https://www.livelaw.in/arbitration-cases/applicants-seeking-pandemic-relaxation-limitation-under-section-34-petition-cannot-simultaneously-claim-ibc-moratorium-protection-calcutta-high-court-268256

NCLT approves ₹3,335.52 crore Resolution Plan of DAIT and Adani Power Ltd. to acquire Coastal Energen Pvt. Ltd. under the IBC

Coastal Energen, the Corporate Debtor (CD), owns a coal-based thermal power plant in Tuticorin, Tamil Nadu. As per the approved Resolution Plan, the secured lenders of the CD will get about ₹3,330 crore to, which accounts for 28.52 per cent of the total admitted claims of around ₹11,677 crore. Earlier, the Resolution Plan was approved by the Committee of Creditors (CoC) with 97.80 per cent voting share. The consortium of Dickey Alternative Investment Trust (DAIT) and Adani Power has created a special purpose vehicle (SPV) named Moxie Power Generation Ltd., with ownership of 51:49 ratio to implement the Resolution Plan. This strategic move aims to streamline the acquisition and management process, ensuring that the restructuring and revival of Coastal Energen handled, efficiently. Coastal Energen was admitted to the CIRP by an NCLT on February 4, 2022. The proceedings were initiated following a petition filed by the State Bank of India. The CD's Tuticorin power plant, which is based on imported coal, faced several operational and financial hurdles due to fluctuating in coal prices and other economic factors. The approval of the resolution plan for Coastal Energen is a notable example of how India's insolvency and bankruptcy framework is being used to address corporate distress, offering a pathway for recovery and sustainability.

Source: *The Hindu, August 30, 2024.*

https://www.thehindu.com/business/nclt-approves-dickey-alternative-adani-power-consortium-resolution-plan-for-coastal-energen/article68586414.ece

NCLT has greenlit the merger between Reliance's Viacom18 and Disney's Star India

Reliance Industries Ltd.'s Viacom18 Media Pvt. Ltd will control 63.16% of the entity, and Walt Disney-owned Star India Pvt. Ltd will hold 36.84%, forming India's largest media conglomerate. According to media reports, this will be one of the biggest mergers in India's media and entertainment sector. The Competition Commission of India (CCI) has already provided its approval to the deal. Reliance is expected to secure the approval of the Ministry of Information and Broadcasting soon and start the integration phase before October 2024. The combined entity will house two streaming services and 120 television channels.

Source: *LiveMint.com, August 30, 2024.*

https://www.livemint.com/companies/news/viacom18star-merger-nclt-approval-reliance-walt-disney-deal-cci-nod-11725025395214.html

SRA to rebrand Reliance Capital

Hinduja Group owned IndusInd International Holdings Ltd (IIHL), which has taken over Reliance Capital through a Resolution Plan under the IBC, has informed the NCLT that it would rebrand 'Reliance Capital' under the 'IndusInd' brand. "We are not claiming ownership of the Reliance brand or name, but we intend to use it only for the purposes of an orderly transition of the business," said a spokesperson of IIHL to media. The clarification has reportedly been issued after the concerns raised by Anil Dhirubhai Ambani Ventures Ltd that IIHL intends to operate under the Reliance brand.

Source: *Livemint.com, August 17, 2024.*

https://www.livemint.com/companies/news/hindujas-rcap-insolvency-indusind-reliance-brand-nclt-bankruptcy-11724746422253.html

Top 15% CIRP cases amount for 90% recoverable value: Study

Only 15% of insolvency cases have claims over ₹1,000 crore, they make up 90% of recoverable value, said research. According to data published in the IBBI Newsletter, out of 1,005 cases valued at ₹3.4 lakh crore, the 153 cases with claims exceeding 1₹,000 crore represent a realizable value of ₹3.05 lakh crore, highlighting the outsized impact that large claims have on overall bad loan recovery, said a media report. Presently, about 13,000 cases involving approximately ₹9 lakh crore claims are pending in National Company Law Tribunals (NCLTs). The research also concluded that the time taken for case resolution has been steadily increasing, from 611 days in March 2023 to 680 days in March 2024, and further to 761 days by June 2024.

Source: *The Economic Times, August 24, 2024.*

https://economictimes.indiatimes.com/industry/banking/finance/banking/insolvency-cases-of-rs-1000-cr-hold-90-of-recoverable-value-despite-representing-just-15-of-total-cases/articleshow/112757180.cms?from=mdr

Rescued Real Estate Companies under the IBC are 2.5 times of those liquidated: Shri Ravi Mital, IBBI Chairperson

In the recently released Quarterly Newsletter of the Insolvency and Bankruptcy Board of India (IBBI) for April-June 2024, Shri Ravi Mital, Chairperson of IBBI has said that about 1,400 real estate/construction companies that were admitted into the Corporate Insolvency Resolution Process (CIRP) so far, 645 were "successfully rescued", via resolution or closure, and 261 were liquidated. He further added that that the number of rescued companies in the real estate sector has been 2.5 times those liquidated.

"With the help of measures as introduced from time to time, several real estate companies have been successfully resolved under the IBC," he said. The measures include designating home buyers as financial creditors, keeping possessed units out of liquidation estate, allowing project wise insolvency, and permitting home buyers to act as resolution applicants. The large-scale real estate cases, such as that of Jaypee Infratech, Kohinoor CTNL Infrastructure, SARE Gurugram and others have yielded recovery of more than 60% of the admitted claims, he said. As of June 2024, as many as 3293 corporate debtors (CDs) have been rescued under the IBC, and 2547 were referred for liquidation. The resolved CDs resulted in realization of more than 32% as against the admitted claims, and more than 161% as against the liquidation value. "Resolution plans on average are yielding 84.9% of the fair value of CDs," said Mital.

Source: *The Financial Express, August 14, 2024.*

https://www.financialexpress.com/business/banking-finance-645-real-estate-firms-rescued-under-insolvency-process-ibbi-chief-3582070/

NCLT approved Resolution Plan for SKS Power

NCLT has approved Sarda Energy and Mining's (SEML) Resolution Plan of ₹2,200 crore to acquire SKS Power Generation (Chhattisgarh) under the insolvency process. The Resolution Plan proposes to pay entire amount of ₹1,890 crore to the banks. The CoC led by State Bank of India (SBI) and Bank of Baroda (BoB), approved the Resolution Plan of Sarda Energy with 100 per cent voting. SKS owns a 600-Mw power plant in Chhattisgarh, which is currently being run by NTPC. The company was admitted into insolvency after it defaulted on loans amounting to ₹1,890 crore to SBI and BoB in April 2022.

Source: *Livemint.com, August 13, 2024.*

https://www.livemint.com/companies/news/nclt-approves-sarda-energys-resolution-plan-for-sks-power-11723529886626.html

Noida Authority approves ₹300 crore haircut, allows Max's Resolution Plan for 'Delhi One Project' near DND Flyway

The Authority Board has reportedly accepted Max Estate's proposal to pay ₹542 crore in three years period, total ₹613 crore, out of which 25% will be upfront payment, as per the revised Resolution Plan. The company will not be charged any time extension fee for three years, but it has to lease rent and other charges as per rules. The 'Delhi One Commercial Project' was jointly launched by a group of three promoters; however, it faced financial constraints and was admitted into insolvency. Max Estate's Resolution Plan to acquire the project under the IBC was approved by NCLT in February, last year under which Noida Authority was allocated ₹325.5 crore against its claim of ₹932 crore. Thereafter, an appeal was filed before Appellate Tribunal wherein Max Estate's contended if penalties and rent are waived off, its claim will come down to ₹542 crore.

Source: *The Times of India, August 14, 2024.*

https://timesofindia.indiatimes.com/city/noida/noida-takes-rs-300-crore-haircut-allows-maxs-resolution-plan-for-delhi-one-project/articleshow/112513412.cms

Assets of the Subsidiary Company cannot be part of the Resolution Plan of the Holding Company: Supreme Court

The Supreme Court in the case of *BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. & Anr.* has held that the holding company is not the owner of assets of the subsidiary company and hence, the assets of the subsidiary company cannot be part of the resolution plan of the holding company. "A company is a separate legal person and the fact that the parent company owns all its share has nothing to do with its separate legal existence. Therefore, the assets of the

subsidiary company of the corporate debtor cannot be part of the resolution plan of the corporate debtor," said the Supreme Court.

In this case, the financial creditor provided ₹100 crore loan to the Corporate Debtor which was secured by a mortgage made by the corporate debtor of its leasehold land and a pledge of shares of the corporate debtor and holding company. Besides, the loan was also secured by the corporate guarantee furnished by holding company. Accordingly, the financial creditor filed an original application before the Debt Recovery Tribunal (DRT) to recover the outstanding loan amount. Subsequently, a 'debt repayment and settlement agreement' was singed. However, due to the default committed by the corporate debtor, the financial creditor invoked the corporate guarantee of holding company and filed Section 7 application under the IBC. Accordingly, CIRP started, and Resolution Plan was approved which was challenged in the Supreme Court.

Source: *Verdictum.in, July 24, 2024.*

https://www.verdictum.in/court-updates/supreme-court/brs-ventures-investments-ltd-v-srei-infrastructure-finance-ltd-2024-insc-548-subsidiary-holding-company-ibc-1545199?infinitescroll=1

Central Government has started monitoring the top 20 insolvency cases

Deeply concerned with the slow process of resolution of corporate debtors under the Insolvency and Bankruptcy Code, 2016 (IBC), the Central Government has reportedly started monitoring of top 20 insolvency cases and has also asked the banks chiefs to closely follow the top 20 cases with their banks. According to media reports, due to this initiative some of the stuck cases have started moving. Furthermore, some of the banks were found discussing loan settlements with promoters even after the issue had been taken up under the IBC, which suggests nexus between the banks and promoters in some cases. Although bankers often blame NCLT, legal system and promoters for delays but case wise analysis revealed that in several cases banks sought adjournments which caused delays.

Source: *The Times of India, July 29, 2024.*

https://timesofindia.indiatimes.com/business/india-business/banks-told-to-speed-up-ibc-resolutions/articleshow/112090179.cms

NCLAT amends Resolution Plan for DS Kulkarni Developers approved by Adjudicating Authority

Though the Appellate Tribunal did not set aside the Resolution Plan, it ordered deletion of some clauses which were contrary to the law. "By deleting the clauses in the Resolution Plan which are contrary to the law, as per Section 30, sub-section (2), sub-clause (e), so as not to interfere with the other part of the resolution plan, which has been approved," said the NCLAT. Thus, the Resolution Plan of the Successful Resolution Applicant -- a consortium led by Ashdan Properties Pvt Ltd, was approved with changes. The NCLAT also provided relief to homebuyers whose claims were not admitted by the RP. "When DS Kulkarni Developers itself acknowledged the payments by issuing allotment letters, it was not open for the RP to take a stand that no payments had been made," said the NCLAT.

Source: *Moneylife.in, July 05, 2024.*

https://www.moneylife.in/article/ds-kulkarni-developers-nclat-upholds-nclt-order-approving-resolution-plan-but-directs-deletion-of-illegal-clauses/74575.html

International Development on Insolvency Law

From Around the World

Intrum seeks US bankruptcy protection to restructure $4.7 bln net debt.

Intrum, Europe's biggest debt collector, said it will file for voluntary Chapter 11 bankruptcy protection in the United States as it seeks to restructure its own finances.

The company has struggled as the pandemic, an energy crisis and two-decade-high interest rates failed to unleash a wave of loan defaults, with concerns mounting over Intrum's net debt, which reached 49.4 billion Swedish crowns ($4.69 billion) at the end of June.

"Intrum expects to emerge from the prepackaged Chapter 11 process and the Swedish company reorganisation process with ample runway and liquidity to execute its business plan and positioned for long term growth and success," it said in a statement.

For More Details, Please Visit: *https://www.reuters.com/business/finance/intrum-seeks-us-bankruptcy-protection-restructure-47-bln-net-debt-2024-10-18/*

Fisker bankruptcy plan approved after deal on vehicle tech support

Electric vehicle startup Fisker received court approval of its bankruptcy liquidation plan on Friday, following last-minute negotiations to preserve the company's $46 million sale of its remaining inventory of about 3,000 Ocean SUVs.

U.S. Bankruptcy Judge Thomas Horan signed off on Fisker's bankruptcy plan at a court hearing in Wilmington, Delaware, clearing the company to repay creditors with assets remaining after it sold off its vehicle fleet.

Fisker filed for bankruptcy in June, after failing to reach a partnership with Nissan for production of its electric vehicles.

For More Details, Please Visit: *https://www.reuters.com/legal/fisker-bankruptcy-plan-approved-after-deal-vehicle-tech-support-2024-10-11/*

J&J talc bankruptcy stays in Texas despite 'forum-shopping' opposition.

A Johnson & Johnson (JNJ.N), opens new tab subsidiary can pursue its third attempt to resolve tens of thousands

of lawsuits alleging its talc products caused cancer in a federal bankruptcy court in Texas, a judge ruled on Thursday, allowing the company to avoid a venue that shot down its two previous efforts.

U.S. Bankruptcy Judge Christopher Lopez at a hearing in Houston rejected arguments raised by the U.S. Department of Justice's Office of the U.S. Trustee, its bankruptcy watchdog, and attorneys representing some of the women suing the company who are opposed to the settlement.

For More Details, Please Visit: *https://www.reuters.com/legal/jj-talc-bankruptcy-stays-texas-despite-forum-shopping-opposition-2024-10-10/*

Northvolt subsidiary files for bankruptcy after project pulled

A subsidiary of Sweden's Northvolt filed for bankruptcy on Tuesday after the project it was developing was cancelled, court filings showed, while the rest of the cash-strapped battery making group continued to consolidate operations.

The Northvolt Ett Expansion AB unit had debts estimated at between 2 billion and 3 billion Swedish crowns ($194 million and $290 million), a court-appointed bankruptcy trustee told business daily Dagens Industry.

It had been responsible for a planned tripling of capacity at the group's gigafactory in northern Sweden, but the company's board last month cancelled the project.

"This is a necessary step as the expansion of Northvolt Ett has been halted and further investments in it would have risked the financial basis for Northvolt," a spokesperson for the group said in an emailed statement to Reuters.

For More Details, Please Visit: *https://www.reuters.com/markets/deals/northvolt-subsidiary-files-bankruptcy-after-project-pulled-2024-10-08/*

Canadian crypto miner's bankruptcy recognised in Australia

An Australian court has recognised the Canadian bankruptcy trustee of two special purpose vehicles that owned Bitcoin mining equipment on behalf of crypto group Iris Energy, despite its parent's claims the trustee is attempting to relitigate decided matters.

On 18 October, Justice Brigitte Markovic in the Federal Court of Australia recognised the Canadian bankruptcy of IE CA 3 Holdings and IE CA 4 Holdings under Article 17 of the UNCITRAL Model Law on Cross-Border Insolvency.

The judge recognised the Canadian bankruptcy trustee, PwC senior vice president Michelle Grant, so she could publicly examine executives of the companies' parent entity, Iris Energy, about operational and structural issues at the IE CA companies.

The recognition comes after the Supreme Court of British Columbia converted the IE CA companies' receivership into a bankruptcy process in June 2023, appointing Grant and PwC manager Georgina Foster in Vancouver as trustees.

For More Details, Please Visit: *https://globalrestructuringreview.com/article/canadian-crypto-miners-bankruptcy-recognised-in-australia#:~:text=An%20Australian%20court%20has%20recognised,attempting%20to%20relitigate%20decided%20matters.*

The number of UK estate agents declaring insolvency has jumped by almost a third

According to media reports, nearly 300 businesses bust in the last year. The figures underline the gloom around Britain's property market, with the fewest home sales recorded for more than a decade hitting estate agent income. According to figures from the Insolvency Service, 286 UK estate agency firms went out of business in the 12 months to 31 July, a 32% increase from the 216 in the previous year. The highest cost of borrowing for 15 years has reportedly hit lettings as well as sales.

For More Details, Please Visit: *https://www.theguardian.com/money/2024/sep/30/number-of-uk-estate-agents-going-bust-rises-almost-a-third-in-one-year*

USA's food container brand 'Tupperware' files for bankruptcy

US brand Tupperware has filed for bankruptcy as it struggles to survive in the face of sliding sales. The 78-year-old food storage container firm said it will ask for court permission to start a sale of the business and that it aimed to continue operating. Despite attempts to freshen up its products in recent years and reposition itself to a younger audience, it has reportedly failed to stand out from competitors. The company's shares have fallen by more 50% this week after reports that it was planning to file for bankruptcy. After a brief surge in sales during the pandemic, as more people cooked at home, the firm saw demand continue to slide. The rising cost of raw materials, higher wages and transportation costs have also eaten into its profit margins.

For More Details, Please Visit: *https://www.bbc.com/news/articles/c4gdprv2ddxo*

China's leading shadow banking company used Aggressive and Potentially Illegal Sales Practices before collapse: Report

According to media reports, Zhongzhi Enterprise Group, a former leader of China's shadow banking sector that declared insolvency in 2023, used aggressive and potentially illegal sales practices to sustain its operations as it lurched toward collapse. China's years-long property boom had propelled Beijing-headquartered Zhongzhi to the top of the country's $18 trillion asset management industry and made it a key player in a shadow banking sector. Asset managers such as Zhongzhi sell wealth-management products to investors. The proceeds are then channelled by licensed trust firms like its Zhongrong unit to developers and other companies that cannot tap bank funding directly.

For More Details, Please Visit: *https://www.reuters.com/world/china/chinas-zhongzhi-risky-practices-preceded-shadow-banks-collapse-2024-09-11/*

USA's Big Lots sells business to Nexus Capital as it begins bankruptcy proceedings

Big Lotus, a discount home goods retailer, has informed the media that it has secured $707.5 million to support its operations and sell its business to private equity firm Nexus Capital, as it has initiated bankruptcy proceedings under Chapter 11. The company has reportedly listed its assets and liabilities in the range of $1 billion to $10 billion. Nexus will serve as a "stalking horse bidder" in a court-supervised auction process, Big Lots said, adding that the deal will close in the fourth quarter of 2024 if Nexus is deemed the winning bidder.

For More Details, Please Visit: *https://www.reuters.com/markets/us/big-lots-sells-business-nexus-capital-it-begins-bankruptcy-proceedings-2024-09-09/*

US bankruptcy court approves stalking horse bid for SunPower assets

The US court has approved a $45 million bid for the assets of failed residential solar company SunPower by rival Complete Solaria. Approval of the “stalking horse” bid means California-based Complete Solaria will snap up SunPower’s major assets if no higher offers emerge in the coming weeks. Assets of the company included are the company's business for solar on new homes, a sales business for non-installing dealers, and the Blue Raven division it acquired in 2021 for $165 million.

For More Details, Please Visit: *https://www.reuters.com/legal/us-bankruptcy-court-approves-stalking-horse-bid-sunpower-assets-2024-08-29/*

WazirX files moratorium application in Singapore to restructure liabilities

Zettai Pte Ltd, the holding company of the cryptocurrency exchange WazirX, has filed an application with the High Court of Singapore under Section 64 of the Insolvency, Restructuring and Dissolution Act 2018. According to the media report, the company aims to restructure its liabilities under a scheme of arrangement. This move comes after it lost $230 million in the form of crypto assets after a hacking attack on July 18, 2024. The moratorium period will reportedly give the holding company some "breathing space" while it proceeds with the restructuring. The company is expected to get an automatic moratorium period of 30 days from the filing of the application, and the High Court of Singapore will decide whether or not to grant the request of the company.

For More Details, Please Visit: *https://www.livemint.com/companies/news/wazirx-files-moratorium-application-with-singapore-court-under-insolvency-act-seeks-to-restructure-liabilities-11724859865409.html*

Scandinavian airline SAS exist bankruptcy, CEO hails 'new era’ with a stronger balance sheet and new owners

“This is truly a new era for SAS with a much stronger position, lower debt and lower cost," said the Company in a media statement while announcing its exit from the Chapter 11 bankruptcy process in the USA. It added that the airline had seen a strong operational performance during the recent summer. SAS has restructured debt of more than $2 billion, adjusted its fleet and delisted its stock in a process that wiped out the stakes of its more than 250,000 former owners. The company sought bankruptcy protection in July 2022 after years of struggling with high costs and low demand.

For More Details, Please Visit: *https://www.investing.com/news/economy-news/scandinavian-airline-sas-completes-restructuring-exits-us-bankruptcy-proceedings-3590111*

Brazilian cosmetics maker Natura’s US subsidiary files for Bankruptcy

Avon Products (API), a USA based non-operating holding of Natura & Co. which it acquired in 2020, has filed for Chapter 11 bankruptcy to deal with high debt. Natura & Co. is API’s largest creditor and supports the move, committing to a $43-million debtor-in-possession financing and a $125- million offer to buy Avon’s non-U.S. operations. API’s move led Natura &Co to post a net loss of 859 million reais in the second quarter, wider than last year's 732 million real loss, mainly due to write-offs.

For More Details, Please Visit: *https://www.reuters.com/business/retail-consumer/natura-posts-better-than-expected-q2-core-earnings-api-hits-bottom-line-2024-08-13/*

USA’s LL Flooring files for bankruptcy, to pursue sale of its business as Going Concern

As per the media reports, specialty flooring retailer LL Flooring has commenced Chapter 11 bankruptcy proceedings. The Richmond, Virginiaheadquartered firm had reportedly secured $130 million in debtor-inpossession (DIP) financing from an existing bank group led by Bank of America. It is also looking to close 94 of its over 300

stores. The company listed estimated assets are reportedly in the range of $500 million to $1 billion and liabilities in the range of $100 million to $500 million.

For More Details, Please Visit: *https://www.investing.com/news/stock-market-news/ll-flooring-files-for-chapter-11-bankruptcy-3565655*

BBS Wheels, popular aftermarket wheel manufacturer, files for bankruptcy in Germany

BBS Wheels is the second most famous car component manufacturer to go bust after seat maker 'Recaro'. However, this isn't the first time BBS Wheels has become insolvent, it's the fifth. The company had previously announced that it had become insolvent back in 2007, 2010, 2020, and 2023. While BBS Automotive GmBH filed for insolvency in Germany, its American operations isn't going anywhere, as it is under a different ownership. BBS Japan also mentioned that it has no equity relationship with BBS Germany.

For More Details, Please Visit: https://www.team-bhp.com/news/bbs-wheels-files-insolvency-germany

Shares of China Evergrande New Energy Vehicle drop by 7% after creditors seek bankruptcy proceedings for 2 units

The electric car maker China Evergrande has confirmed that its two units - Evergrande New Energy Vehicle (Guangdong) and Evergrande Smart Automotive (Guangdong), received bankruptcy notices from a local court. These notices have reportedly had material impact on the production and operating activities of the company and the relevant subsidiaries. As per media reports the shares of China Evergrande New Energy Vehicle have dropped nearly 40% so far this year.

For More Details, Please Visit: *https://www.reuters.com/business/autos-transportation/shares-china-evergrande-new-energy-vehicle-set-open-up-9-2024-07-29/*

June 2024 marked a historic surge in US corporate bankruptcy filings since early 2020: Report

According to a Report by S&P Global Market Intelligence 75 new corporate bankruptcy cases were filed in the USA in June 2024. The Report suggests that the pace of bankruptcy filings accelerated from the first months of 2024 and is rivaled by only the busiest months in 2020. “The 346 total filings so far in 2024 is also higher than any comparable figure in the prior 13 years,” said the Report. High interest rates, supply chain issues and slowing consumer spending have been recorded as reasons behind surge in bankruptcy filings.

For More Details, Please Visit: *https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-corporate-bankruptcies-in-june-reach-highest-monthly-level-since-early-2020-82297569*

Study Group Report: Avoidance Transactions under IBC 2016 – Improving Outcomes

(…..Continue from the previous edition)

3.3.6. Related Parties

Records or Documents That the Forensic Auditor May Inspect:

- Entity's Income Tax Returns.
- Information supplied by the entity to regulatory authorities.
- Shareholder registers to identify the entity's principal shareholders.
- Statements of conflicts of interest from management and those charged with governance.
- Records of the entity's investments and those of its pension plans.
- Contracts and agreements with key management or those charged with governance.
- Significant contracts and agreements not in the entity's ordinary course of business.
- Specific invoices and correspondence from the entity's professional advisors.
- Life insurance policies acquired by the entity.
- Significant contracts re-negotiated by the entity during the period.
- Internal auditors' reports.
- Documents associated with the entity's filings with a securities regulator (e.g., prospectuses).

3.4. Forensic Accounting and Investigation Standards:

Forensic Accounting and Investigation Standards (FAIS) in the context of IBC, may be developed under aegis of IBBI. This would ensure uniformity and consistency in inputs, critical for better outcomes. For instance, such standards should provide for the following:

- the Professionals, with the minimum standards for undertaking FAI engagement.
- the Users of FAI services, with an indication of the quality of service that can be expected from such engagements.
- the Regulators and Governmental Agencies, with an appreciation of what can be expected from FAI services; and
- in General, guidance on matters of implementation and related practical issues

3.4.1. These Standards shall be principle-based, thereby providing adequate scope for professional judgment when applying such principles to unique situations and under specific circumstances.

3.4.2. Every professional conducting a forensic accounting and investigation engagement is bound by a written Code of Ethics (or Conduct), issued by a professional body and/or an organization of which he is a Member, based on basic principles as follows: -

- **Independence:** be free from any undue influence which forces deviation from the truth or influences the outcome of the engagement and shall ensure that the appointment is made with due authority.
- **Integrity and Objectivity:** avoid all conflicts of interest and shall not seek to derive any undue benefits or advantages from their position.
- **Due Professional Care:** focus and attention are given to matters of importance, along with diligence in time-management, comply with Standards and ensure continuous communication to prevent any misunderstanding.
- **Confidentiality:** It also includes the need to protect privacy rights of the suspect and to discover evidence in a manner which does not infringe upon the privacy rights of individuals.

- **Skills and Competence:** undertake only those engagements for which they have the requisite competence.
- **Contextualization of Situation:** FAI engagements cannot be conducted in isolation. The context of the situation and the environment where the transactions or operations take place is important to understand the complete picture.
- **Primacy of Truth:** the primary objective of any Professional is to unearth the reality behind every allegation or dispute, which in turn shall be based on facts, figures and reliable evidential matter.
- **Respecting Rights and Obligations:** it is critical to obtain and understand the views and standpoint of all parties. Just as much as the Professional has the right of examination to unearth the truth, the suspects have a similar right to defend their innocence.
- **Separating facts from opinions:** The Professional shall ensure that their personal judgement and biases find no place in this exercise. Personal perspectives shall be separated from professional judgement. This is particularly important when interviewing a witness or suspect.
- **Quality and Continuous Improvement:** Professional shall have in place a process of quality control to ensure factual authenticity of evidence obtained as well as the accuracy of findings.

3.4.3. The FAI professional should document the audit reports, initial correspondences, minutes of meetings with stakeholders, engagement letter, understanding of fraud risk and its relevance for the engagement, the fraud indicators observed, checklists, applicable laws and regulations, Chain of Custody of the evidence discovered, testing of hypotheses, etc.

3.4.4. The FAI professional should ensure that the expected outcome is in line with the objectives and the defined scope and where there is any mismatch between any of these, clarity should be sought to resolve ambiguity.

3.4.5. Such professional should identify all key stakeholders, the individuals covered under the scope and the direct and indirect users of the engagement report, such as law enforcement or regulatory agencies, lenders, other third parties.

3.4.6. In conducting FAI engagements, the Professional may seek assistance, and place reliance on the work of an expert where the required skills are neither possessed by the Professional, nor available within the team. The work of the expert may be in the form of specific examination procedures covering a specialized area or field, (such as, Discovering Electronic evidence, Cyber security, Asset Valuations, Voice sampling, Signature verification) or advise from a Legal or industry specialist. The Professional shall seek the authority to select, appoint and engage the Expert. Where the findings of the Expert will form part of the report, the Professional shall participate in defining the scope and expected deliverables for the work to be conducted by the Expert.

3.4.7. All communication with the Stakeholders, by the Professional, shall be clear, direct, independent, objective and effective, conducted with an open mind and take into account the relevant laws and regulations, principles of neutrality, confidentiality, natural justice, etc. However, the Professional may have to assess the requirement of communicating directly with other stakeholders for the purpose of enquiry, confirmation of facts, collection of evidence or such other matters, for effective execution of the engagement. Where the Professional has agreed to communicate directly with external agencies, this understanding shall be formalized in the terms of engagement. Hence, what can be communicated may include the following:

- Non-cooperation/ denial of access to information.
- Intimidation/ life-threatening situations.
- Destruction of evidence, etc.

3.4.8. The professional should obtain evidence from reliable sources and ensure that evidence discovered is appropriate to the objectives of

the assignment and suitable in a Court of law. Evidence shall support the basis of findings and allows reasonable conclusions to be drawn from those findings.

3.4.9. Discover appropriate and reliable evidence, which can stand on its own and does not require any follow-up clarification or additional information to arrive at the same conclusion as drawn by the Professional.

3.4.10. The professional should clearly identify and define the 'work procedures. Work Procedures refer to a number of FAI activities to collect, analyze and interpret data and information, discover reliable and appropriate evidence in order to prove or disprove formulated hypotheses.

3.4.11. Generally, in FAI assignments, 'work procedures' are:

- first conducted behind the scenes (Phase 1) where there is little interaction with the individuals involved; and
- thereafter (Phase 2), where there is a need to engage with the relevant stakeholders

3.4.12. Testifying before a competent authority:

- Pursuant to the directives received from the Competent Authority, the Testifying Professional may be required to provide testimony as a Fact Witness or as an Expert Witness on the matter under investigation.
- The former (by a Fact Witness) is limited to presenting facts as observed, without expressing any opinion. The latter (by an Expert Witness) includes the expression of an opinion through the application of assumptions and analysis on the facts and by reaching a conclusion on the outcome of the work completed.
- The Testifying Professional shall be independent and be objective in approach and ensure that there is no conflict of interest.
- The Testifying Professional shall adhere to the statutory provisions for deposition, as per applicable law and adhere to the relevant Standards issued by the IPA etc. on the matters relating to accounting are concerned.

3.4.13. Reporting:

- Reporting results of the work procedures completed and the findings from those procedures, is the concluding part of the assignment. Since one engagement may include multiple transactions, multiple reports may have to be issued, one for each transactions.
- The Professional shall issue a written report which is precise and unambiguous.
- The report shall be addressed to the Primary Stakeholders and shared with other stakeholder(s) if required or otherwise permissible.
- The report shall include certain key elements to enable the recipient to understand the purpose of the assignment, the extent and scope of work performed by the Professional, any limitations, assumptions or disclaimers, the facts and evidence discovered, and the conclusions drawn.
- Where the form and content of the report is mandated by the stakeholders, or specified by the statutory or regulatory requirements, the Professional shall report in line with those requirements, while keeping in mind the key elements.
- The report shall highlight any key assumptions made and whether any limitations were faced by the Professional during the course of the assignment.
- The report shall not express an opinion or pass any judgement on the guilt or innocence. Determination of culpability is either a disciplinary process internal to the organization under review, or a judicial process depending on the specific situation under review. The report can, at best, highlight the circumstances and facts that may aid a stakeholder decision or further a civil or criminal investigation.
- In circumstances where the assignment could not be completed due to unforeseen or unavoidable reasons, the Professional shall provide a status report with an assessment of the results, including

due limitations and disclaimers, and reasons for the incomplete nature of the assignment.

3.5. Additional Suggestions

- Need for guidelines for information flow to RP and Auditors, in the context of avoidance transactions.
- Guidelines should be made available for fixation of minimum fee for forensic/transaction auditor to ensure quality and independence.
- In addition to Executive Development programs of IIIPI on Forensic Skills being conducted currently, similar certificate course/training program can be developed by in association with Committee of IBC of ICAI (CIBCICAI), focussing on IBC related Forensic Audit skills for even non-IP CAs.
- Minimum (say, 2 days) training programme should be made mandatory to be attended by any professional who desires to undertake PUFE transaction audit assignment.
- Special focus on drafting applications and presentation before the AA, may be emphasized while imparting such training as above. This would improve the quality of applications/proceedings.
- Weightage to forensic skills/knowhow in granting CPE credit, under additional criteria, being rolled by IIIPI for its members.

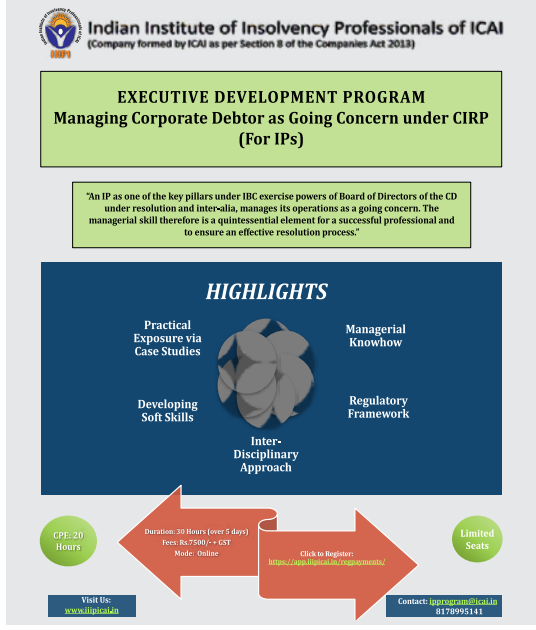
3.6. Mechanism to review the observations made by the 'forensic auditors':

IBBI should also put in place a mechanism to review the observations made by the 'forensic auditors' contained in their audit reports.

3.7. Other Measures to Enhance Effectiveness

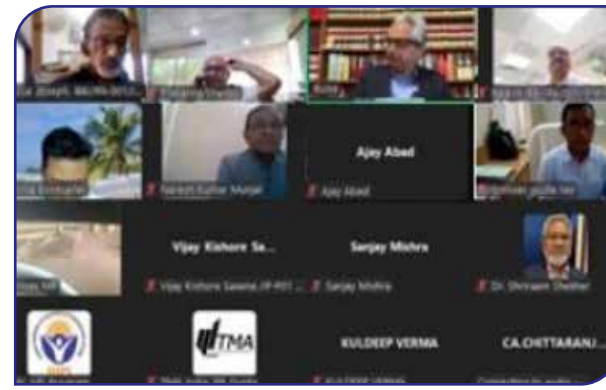
3.7.1. Avoidance proceedings should be permitted to be commenced by creditors (and, in some cases, the COC) with the prior consent of the IP. Requiring such consent ensures that the IP is informed as to what creditors propose, giving him the opportunity to engage with COC meaningfully.

3.7.2. Where the consent of the IP is required, but not obtained, the creditor/COC may be permitted to seek court approval to commence avoidance proceedings. The IP has a right to be heard in any resulting court hearing to explain why it believes the proceedings should not go ahead. At such a hearing, the court might give leave for the avoidance proceeding to be commenced or may decide to hear the case on its own merits. Such an approach may work to reduce the likelihood of any unethical conduct by the concerned parties.



IIIPI News

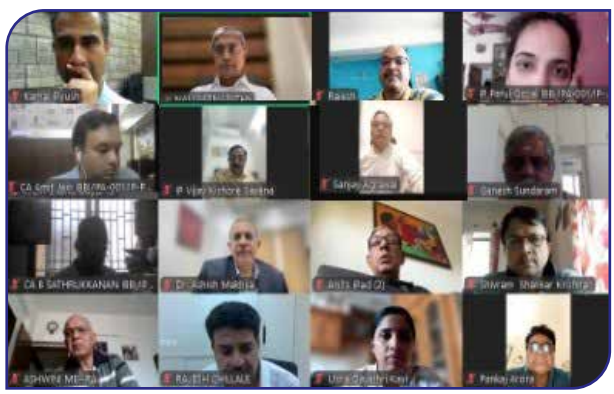
Inaugural Session of the Conference on 'Improving Regulatory Framework Under IBC and Challenges Before IPs/IPEs' organized by IIIPI on 17 Sept. 2024.



The 1st Batch of EDP on Cross Border Insolvency (online) conducted by IIIPI from 27th to 28th September 2024.

Webinar on 'IBC interface with Income tax, GST and other acts' organized by IIIPI on August 23, 2024.

Webinar on 'Accounting, Audit & Forensics in IBC cases – Issues & Solutions' conducted by IIIPI on September 13, 2024.



Workshop on 'Legal Skills, Pleading & Court Processes under IBC' organized online by IIIPI on Sept 21, 2024.

Workshop (Virtual) on Industry sectors (Real Estate & EPC) by IIIPI jointly with CARE Ratings on July 30, 2024.

IIIPI News

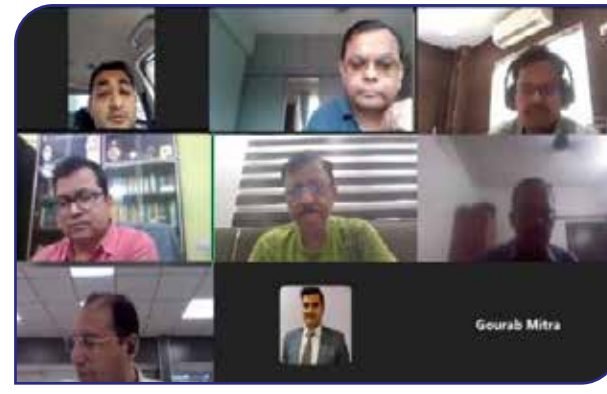
Webinar on 'Information Technology and Infrastructure for IPs' organized by IIIPI on October 04, 2024.

Webinar on 'Mediation under IBC -- Role of IPs' conducted by IIIPI on August 16, 2024.

Webinar on 'Personal Insolvency (PG to CD) - Challenges & Best Practices' organized by IIIPI on September 06, 2024.

IIIPI conducted 1st Batch - Executive Development Program on Group Insolvency (For IPs) on 29th - 30th August 2024.

Limited Insolvency Examination - Preparatory Classroom (Virtual) Program Batch conducted by IIIPI from 03rd to 07th September 2024.



Limited Insolvency Examination -- Preparatory Classroom (Virtual) Program Batch conducted by IIIPI from 30th July to 3rd August 2024.

IIIPI News

Webinar on 'Role of IPs in Restructuring & Turnaround skills' organized by IIIPI on 26th July 2024.

20th Batch of EDP (For IPs) on Managing Corporate Debtors as Going Concern under CIRP conducted online by IIIPI from 2nd to 6th July 2024.

Webinar on 'Interface with Statutory Authorities/ Enforcement Agencies' organized by IIIPI on August 09, 2024.

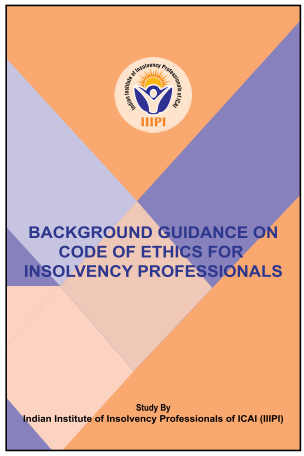
Webinar on 'Emerging Jurisprudence – Recent Case Laws' conducted by IIIPI on 02nd August 2024.

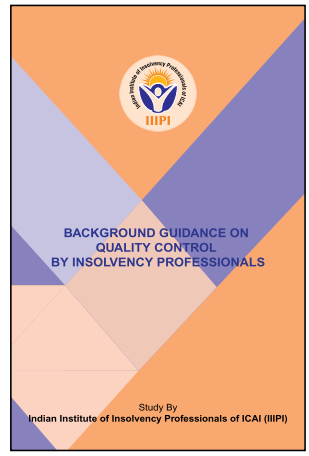
21st Batch of EDP (For IPs) on 'Managing Corporate Debtors as Going Concern under CIRP' conducted by IIIPI from 10th to 14th September 2024.

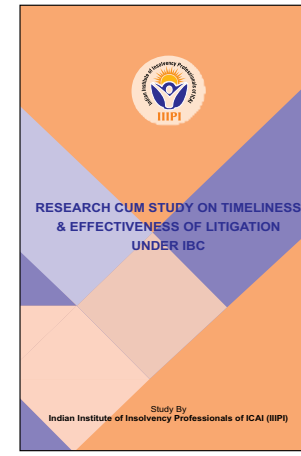
EDP (Virtual) on Mastering Legal Skills, Pleadings & Court Processes Under IBC, for IPs conducted by IIIPI from 07th to 10th August 2024.

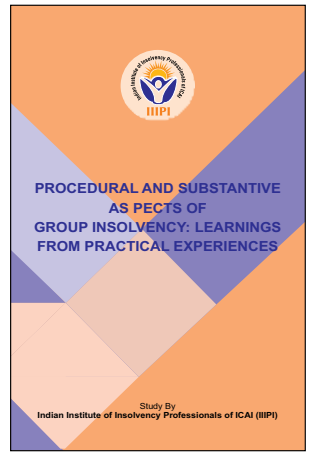
IIIPI's PUBLICATIONS

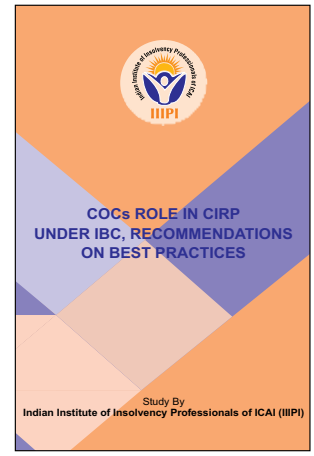
IIIPI has published several research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

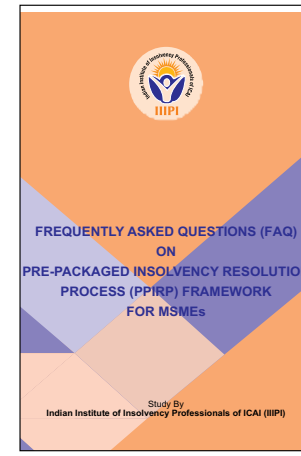


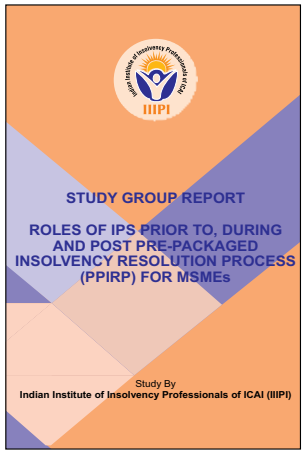


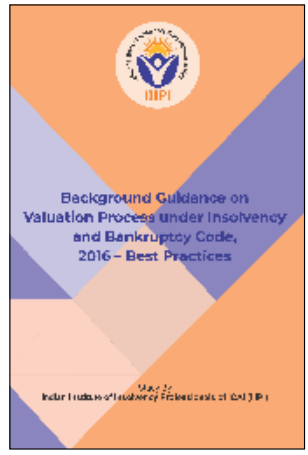


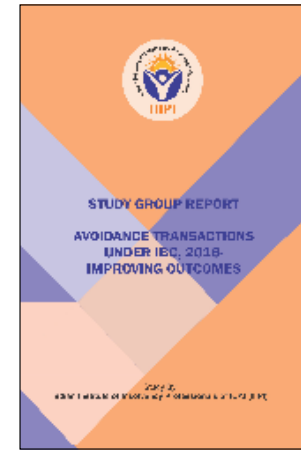


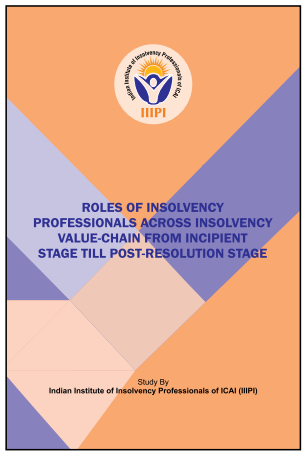


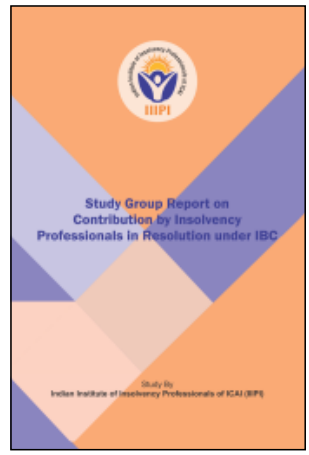


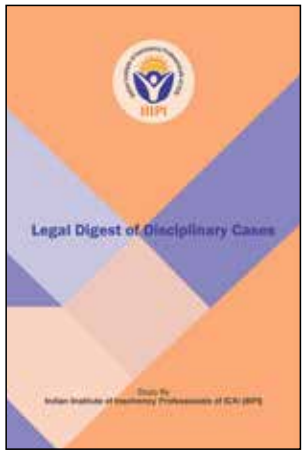


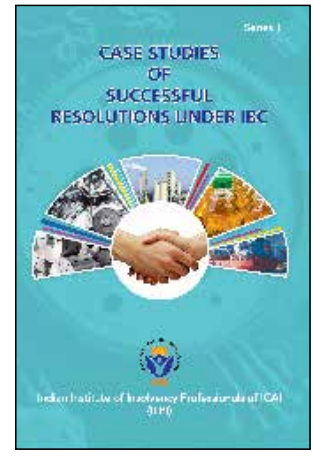


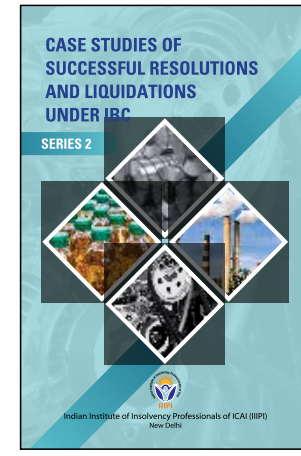


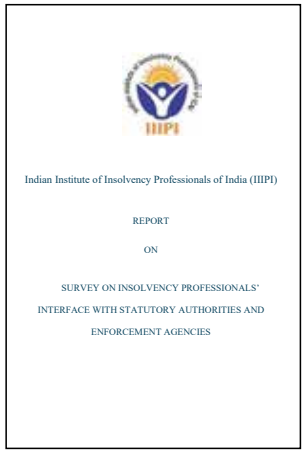








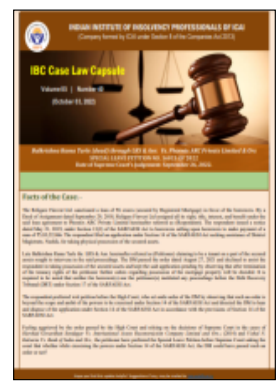




Weekly Publications

IIIPI Newsletter is an initiative of the IIIPI to provide weekly updates to IPs on IBC regime in India and relevant international news on insolvency and bankruptcy while IBC Case Law Capsules provide summary of pathbreaking judgements from the Supreme Court, High Courts, NCLATs and NCLTs.

IBC Case Laws Capsules



IIIPI Newsletter

Media Coverage

Business Standard

IBBI chief asks insolvency professionals to be transparent to improve bids

Press Trust of India New Delhi | Sep 17, 2024, | 11:23 PM IST

IBBI Chairperson Ravi Mital on Tuesday asked insolvency professionals to be as transparent as possible during the resolution process as that will help in improving the bids and reduce haircuts.

Speaking at a conference organised by the Indian Institute of Insolvency Professionals of ICAI (IIIPI) in the national capital, he said insolvency professionals and insolvency professional entities are the fulcrum of the insolvency system.

While highlighting that the insolvency professionals need to be mindful of time and delays, Mital said, "be as transparent as possible during the bidding process. This will improve bids, reduce haircuts and improve image of the IBC ecosystem," according to a release issued by IIIPI.

The Insolvency and Bankruptcy Board of India (IBBI) is a key institution in implementing the Insolvency and Bankruptcy Code (IBC).

rediff.com
rediff MONEYWIZ

IIIPI Proposes Measures for Faster Insolvency Resolution

By Rediff Money Desk, New Delhi Sep 02, 2024 19:50

IIIPI recommends specialised NCLT benches and integrated case management software to expedite insolvency resolution under IBC. The study highlights the need for faster resolution of stressed assets.

New Delhi, Sep 2 (PTI) Setting up specialised NCLT benches and adopting an integrated case management software can help in faster resolution of cases under the insolvency law, according to a study.

The Insolvency and Bankruptcy Code (IBC) provides for a time-bound and market-linked resolution of stressed assets. Of late, many IBC cases are getting delayed due to various factors.

In its study, Indian Institute of Insolvency Professionals of ICAI (IIIPI) has suggested various measures that can help in faster insolvency resolution.

Specialised benches of the National Company Law Tribunal (NCLT) can be constituted from time to time to bring extra focus on matters like resolution plans and avoidance transactions, IIIPI said in a release.

Another suggestion is to have an integrated case management software allowing various stakeholders to interact in a faceless and paperless technological environment.

Among others, the institute has said that pre-packaged insolvency mechanism, currently available for MSMEs (Micro, Small & Medium Enterprises), can be extended to the larger corporate segment.

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

Source: PTI

ET CFO.com
From The Economic Times

IIIPI suggests measures for faster resolution of insolvency cases

Indian Institute of Insolvency Professionals of ICAI (IIIPI) has suggested various measures that can help in faster insolvency resolution.

PTI. September 03, 2024. at 9.12 AM IST

Setting up specialised NCLT benches and adopting integrated case management software can help in faster resolution of cases under the insolvency law, according to a study. The Insolvency and Bankruptcy Code (IBC) provides for a time-bound and market-linked resolution of stressed assets. Of late, many IBC ases are getting delayed due to various factors.

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THE ECONOMIC TIMES

IBBI chief asks insolvency professionals to be as transparent as possible

PTI. Last Updated: Sep 17, 2024, 09:28:00 PM IST

Synopsis

IBBI Chairperson Ravi Mital urged insolvency professionals to maintain transparency during the resolution process to enhance bids and minimize haircuts. Speaking at an IIIPI conference, he emphasized the importance of timeliness and transparency in improving the image of the IBC ecosystem. The IBBI plays a crucial role in implementing the Insolvency and Bankruptcy Code.

IBBI Chairperson Ravi Mital on Tuesday asked insolvency professionals to be as transparent as possible during the resolution process as that will help in improving the bids and reduce haircuts. Speaking at a conference organised by the Indian Institute of Insolvency Professionals of ICAI (IIIPI) in the national capital, he said insolvency professionals and insolvency professional entities are the fulcrum of the insolvency system.

While highlighting that the insolvency professionals need need to be mindful of time and delays, Mital said, "be as transparent as possible during the bidding process. This will improve bids, reduce haircuts and improve image of the IBC ecosystem," according to a release issued by IIIPI.

The Insolvency and Bankruptcy Board of India (IBBI) is a key institution in implementing the Insolvency and Bankruptcy Code (IBC).

NDTV | Profit

IIIPI Suggests Dedicated NCLT Benches To Speed Up Insolvency Process

The Indian Institute of Insolvency Professionals of ICAI has suggested various measures that can help in faster insolvency resolution.

PTI 03 Sep 2024, 12:19 AM IST

Setting up specialised National Company Law Tribunal benches and adopting an integrated case management software can help in faster resolution of cases under the insolvency law, according to a study. The Insolvency and Bankruptcy Code provides for a time-bound and market-linked resolution of stressed assets. Of late, many IBC cases are getting delayed due to various factors.

In its study, Indian Institute of Insolvency Professionals of the Institute of Chartered Accountants of India has suggested various measures that can help in faster insolvency resolution.

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IIIPI is promoted by the ICAI.

Help Us to Serve You Better

Peer Review Mechanism of IIIPI

In year in 2022, IIIPI had constituted a study group on "Framework for Quality Control and Assurance Mechanism". IIIPI Peer Review Policy is the outcome of the recommendation of the study group. An online Peer Review Portal was launched on 07th July 2022 on the website of IIIPI.

This policy is aimed at benchmarking the IP services under review to help improving performance, decision making and adoption of best practices, thereby working to ensure quality of service rendered under the IBC Regime.

Meaning of Peer Review

Peer means a person of similar standing. Review means re-examination or retrospective evaluation of the subject matter. Peer review is basically an examination of a professional's performance or practice in a particular area by other professional in the same area. It is conducted by an independent evaluator who is known as Peer Reviewer.

The main purpose of this policy is to provide a framework for planning performing, reporting, and administration of the peer review process.

Difference between Monitoring and Peer Review

Section 204 (c) of IBC mandates monitoring the performance of IPs by IPA. The objective of monitoring of IP is to ascertain whether the conduct of IP is in overall interest of the stake holders, CD and to ensure that the position of trust held by IP is not abused and in case wherever it happens, to take appropriate action against the defaulting IP. Monitoring is always undertaken by regulator i.e., IPA and IBBI.

Whereas Peer review is the process of an independent review of services of an IP by a third person of the same profession other than regulator.

Role of IIIPI in conducting Peer Review

The role of IIIPI in conducting Peer Review would be of as a facilitator by providing framework for empaneling

Peer Reviewers, reporting mechanism, payment of fees and certification in respect of peer reviews, as given in the Peer Review Policy. The Peer Review policy is applicable to all the members of IIIPI, who wish to subject themselves for Peer Review on voluntary basis/ compulsory basis. The Peer Review would be carried out only by the members of IIIPI empaneled as reviewer.

Eligibility to become Peer Reviewer

- Insolvency Professional Member of IIIPI.
- Having experience of **completing** at least 3 CIRP/ Liquidation assignments.
- Expert in the specified field/discipline/industry.
- Preferably holding a valid 'Authorization for Assignment' (AFA) on the date of application.
- Having no identified conflict of interest in the assignments carried by the IPs under review.
- Should have undergone the requisite orientation for Peer Review as prescribed by IIIPI.
- Should apply on the IIIPI website as Peer Reviewer.
- A member on being appointed as Reviewer shall be required to furnish a Declaration of Confidentiality.

Eligibility to get Peer Reviewed

- Peer Review policy applies to all the IP members of IIIPI on voluntary basis, however if any IP

is handling or has handled ten or more CIRP/ Liquidations undertaken during specified past period for peer review (up to 3 financial years), peer review of services should be initiated on compulsory basis.

Process for Peer Review

The Peer Review process will include following stages:

- **Application for Peer Review and appointment of Peer Reviewer:**

  On line Application for Peer Review by reviewed IP, along with detailed questionnaire to be submitted. Based on the questionnaire and based on the experience of the available empaneled peer reviewer, a list of 3 Reviewer will be communicated to Peer Reviewed, out of which he needs to select one name and intimate to IIIPI within 07 days. IIIPI shall seek the consent of the reviewer so selected before appointment.

- **Assessment:**

  In this stage Reviewer will make an opinion by drawing a sample for carrying out the due diligence on the based on the questionnaire from Reviewed IP. Reviewer shall review the quality control framework and application of such framework across the completed assignments and all completed stages of ongoing assignments during the period under review. Reviewer should try to choose an appropriate no. of assignments undertaken/being undertaken, which should be reflective of the complexity and size of CIRP.

- **Reporting:**

  This stage includes issuance of Preliminary report quoting the findings and deficiencies in the system and procedures. Here Reviewer IP shall have an advisory Role in assisting the Reviewed IP to address the identified issues during the process. In this phase areas of possible improvement shall be analysed and recorded.

- **Discussion/Communication of Findings:**

  The reviewed IP within 07 working days from the receipt of preliminary report from the peer reviewer shall submit feedback to the reviewer in respect of deficiencies noticed.

- **Final Peer Review Report by the Reviewer:**

  If reviewer is satisfied with the responses/replies from the reviewed IP, He will submit a satisfactory report. In case there is a qualified report, the reviewed IP shall be eligible to apply for a follow up review after six months preferable by a different Reviewer. The Reviewer and Reviewed IP should ensure that the entire review process is completed within 60 days from the date of appointment of Peer Reviewer.

- Issuance of Peer Review Certificate by IIIPI within 03 months after receipt of satisfactory report, the validity of which will be three years at a time from date of issuance.

- Details of the fees chargeable by Peer Reviewers including IIIPI administrative charges are given in the Peer Review Policy available on the website of IIIPI.

List of Successful Peer Reviewed IPs of IIIPI

Pursuant to the recommendations of the IIIPI constituted Study Group on "Framework for Quality Control and Assurance Mechanism", IIIPI prepared a 'Peer Review Policy' for Insolvency Professionals (IPs) affiliated with the institute. Subsequently, a peer review mechanism was developed, and an online Peer Review Portal was launched on 07th July 2022 on the website of IIIPI. Furthermore, as per the decision of the Monitoring Committee of IIIPI dated 06th September 2023, the scope of peer review has also been extended to cover support services provided by Insolvency Professional Entities (IPEs) which are enrolled as IIIPI's members as juristic IPs. The details of the Insolvency Professionals (IPs) who have successfully completed the Peer Review are as follows:

Sr. No.	Name of Insolvency Professional	Registration No.	Date of Completion of Peer Review	Date of Validity of Peer Review Certificate
1.	Pradeep Kumar Kabra	IBBI/IPA-001/IP-P01104/2017-2018/11790	2024-10-07	2027-10-07
2.	Sunil Kumar Kabra	IBBI/IPA-001/IP-P01011/2017-2018/11662	2024-10-07	2027-10-07
3.	Dinesh Mundada	IP/P-00286	2024-10-07	2027-10-07
4	Ms. Bhavi Shreyans Shah	IBBI/IPA-001/IP-P00915/2017-2018/11521	2024-09-27	2027-09-27
5	CA IP Sunit Jagdishchandra Shah	IBBI/IPA-001/IP-P00471/2017-18/10814	2024-09-14	2027-09-14
6	Kanchan Dutta	IP Reg. No.: IBBI/IPA-001/IP-P00202/2017-18/10391	2024-09-12	2027-09-12
7	Kuldeep Verma	IBBI/IPA-001/IP-P00014/2016-2017/10038	2024-09-07	2027-09-07
8	Sudha Pravin Navandar	IBBI/IPA-001/IP-P00451/2017-2018/10794	2024-08-20	2027-08-20
9	R Raghavendran	IBBI/IPA-001/IP-P00211 /2017-18/10411	2024-08-19	2027-08-19
10	Ashish Vyas	IBBI/IPA-001/IP-P01520/2018-2019/12267	2024-07-24	2027-07-24
11	Kailash Shah	IBBI/IPA-001/IP-P00267/2017-2018/10511	2024-07-17	2027-07-17
12	Mr. Ramchandra Dallaram Choudhary	IBBI/IPA-001/IP-P00157/2017-2018/10326	2024-06-13	2027-06-13
13	Prashant Jain	IBBI/IPA-001/IP-P01368/2018-19/12131	2024-06-11	2027-06-11
14	Sanjai Kumar Gupta	IBBI/IPA-001/IP-P00592/2017-2018/11045	2024-06-11	2027-06-11
15	Vijay P Lulla	IBBI/IPA-001/IP-P00323/2017-18/10593	2024-06-11	2027-06-11
16	Vinod Tarachand Agrawal	IBBI/IPA-001/IP-P00641/2017-2018/11090	2024-06-11	2027-06-11
17	Jayesh Sanghrajka	IBBI/IPA-001/IP-P00216/2017-2018/10416	2024-06-11	2027-06-11
18	Ravindra Chaturvedi	IBBI/IPA-001/IP-P00792/2017-2018/11359	2024-04-29	2027-04-29
19	Chandra Prakash Jain	IBBI/IPA-001/IP-P00147/2017-18/10311	2024-03-13	2027-03-13
20	Mahalingam Suresh Kumar	IBBI/IPA-001/IP-P00110/2017-2018/10217	2024-02-16	2027-02-16

Services

Indian Institute of Insolvency Professionals of ICAI (IIIPI)

ICAI Bhawan, 8th Floor, Hostel Block, A-29, Sector-62, NOIDA, UP – 201309

Office Hours: 09:30 AM to 06:00 PM (Monday to Friday), except closed on holidays

Contact Details

☎ **0120-2990080 / 81 / 82 / 83**
0120-2975680 / 81 / 82 / 83

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
5	CPE	iiipi.cpe@icai.in
6	Change of Address/e-mail/contact number/any other required changes	iiipi.updation@icai.in
7	Grievance/Complaint	ipgrievance@icai.in
8	Disciplinary /Legal	iiipi.legal@icai.in iiipi.dc@icai.in
9	Monitoring (For reporting compliances on CIRP forms, Relationship, fees and cost disclosures, Half yearly returns)	ip_monitoring@icai.in iiipi_monitoring@icai.in iiipi.helpdesk@icai.in
10	Publication	iiipi.pub@icai.in
11	Accounts	cfo.iiipi@icai.in
12	Human Resources	iiipi.hr@icai.in
13	Membership Surrender	iiipi.surrender@icai.in
14	Research Department	iiipi.research@icai.in

FEEDBACK

Dear Reader,

The Resolution Professional is aimed at providing a platform for dissemination of information and knowledge on evolving ecosystem of insolvency and bankruptcy profession and developing a global world view among practicing and aspiring insolvency professionals in India.

We firmly believe in innovations in communication approaches and strategies to present complicated information of insolvency ecosystem in a highly simplified and interesting manner to our readers.

We welcome your feedback on the current issue and the suggestions for further improvement. Please write to us at iiipi.journal@icai.in

Editor
The Resolution Professional

Book your Advertisements in IIIPI's journal The Resolution Professional

Dear Member,

The Resolution Professional, quarterly research journal of IIIPI, is the first-ever peer-review refereed research journal of its kind with a focus on the insolvency ecosystem in India. The journal is aimed at providing a platform for dissemination of information and knowledge-sharing on the IBC ecosystem and developing a global world view among Insolvency Professionals (IPs). It carries Articles, Case Studies, Key Takeaways from Important Events, Code of Ethics, Legal Framework, IBC Case Laws, IBC News, Know Your Ethics, IIIPI News, IIIPI's Publications, Media Coverage, Services and Crossword, etc.

The soft copies of the journal are emailed to all the IPs, ICAI Members (CAs) several ministries, NCLATs, NCLTs, IBBI, ICAI's Indian and offshore offices, State Governments, Universities, Management Institutions, PSUs, industry bodies, lawyers, media, foreign professional bodies and much more. Besides, about 2,000 physical copies are also circulated among dignitaries and subscribers.

The soft copies of the journal are also available free of cost on IIIPI website in three different formats (a) Flip Book (b) HTML Highlights, (c) IIIPI e-Journal PDF Downloads and, (d) Full PDF.

We trust, this audience base will be helpful for you to increase your reach for various purposes while discharging your responsibilities as an IRP, RP, Liquidator or Bankruptcy Trustee under the IBC, 2016. Accordingly, you can book your Classified Advertisements under the following categories:

- Advertisement for recruiting staff in the IP's own office.
- Advertisement inserted on behalf of the Corporate Debtor (CD) requiring staff/ professionals or wishing to acquire or dispose of business or property.
- Advertisement for the sale of a business or property by an IP acting in a professional capacity as Interim Resolution Professional (IRP), Resolution Professional (RP), Bankruptcy Trustee, Liquidator, or Administrator or any other capacity/ ies notified by IBBI.
- Change in the Address, contact number and email id.

Rates for Classified Advertisements

Minimum ₹1,000 for first 25 words or parts thereof and ₹200 for five words or parts thereof over and above first 25 words.

Box Highlights: ₹200 extra.

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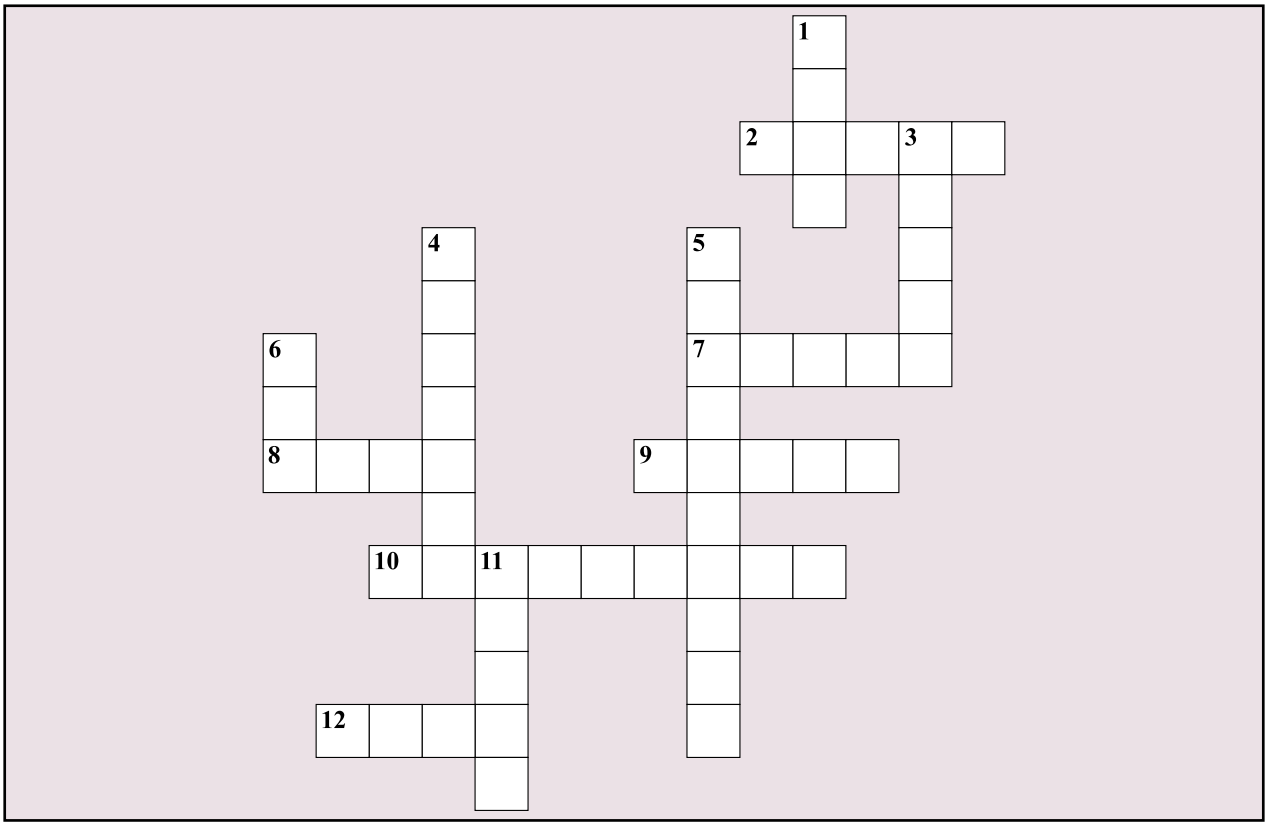
The content of display advertisements should be broadly related to stakeholders of the insolvency profession.

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

IBC Crossword



Across

2: IBBI has recently extended the duration for the disposal of Show Cause Notice (SCN) to IPs from 35 days to _____ Days.

7: A professional member shall submit to the IPA, in the manner and format specified, records of ongoing and concluded engagements as an IP at least _____ a year.

8: The Registration Certificate issued to IU's by IBBI shall valid for _____ years from the date of issue.

9: The Application under Section 19 of the Recovery of Debts and Bankruptcy (RDB) Act 1993 may be presented as nearly as possible in_____.

10: The Apex Court in the case of CoC of Essar Steel India Ltd. through *Authorised Signatory Vs. Satish Kumar Gupta & Ors*. held that section 60(5)(c) of the IBC was like a ____ jurisdiction vested in the AA.

12: The Appellate Tribunal in the matter of *Shree Industries Ltd. vs. ASREC* (India) Ltd.(2024) held that _____ Agreement is not a 'Financial Debt' under Section 5(8) of the IBC.

Down

1: Securities and Exchange Board of India does not regulate _____.

3: _____year is the period of limitation for a suit relating to contracts, declarations, decrees and instruments.

4: Disciplinary enquiry against NCLAT Chairperson can be initiated by _____ Court Judge.

5: _____claim shall be treated neither as a supply of goods nor a supply of services.

6: Under the S4A scheme the Fair Market Value shall be arrived at as per_____ method.

11: A person will not be eligible for registration as an IP, if he or she has been convicted of any offence for which the prison term was _____ years or more.

Answer Key: IBC Cross word, July 2024

1. 226
2. Progress
3. Two
4. Sixty
5. Silicon Valley
6. Ninety
7. Twenty
8. Fourteen
9. Delhi
10. Ten
11. Thirty
12. Five

GUIDELINES FOR ARTICLE SUBMISSION

THE RESOLUTION PROFESSIONAL, quarterly peer-reviewed refereed research journal of Indian Institute of Insolvency Professionals of ICAI (IIIPI), with RNI Registration Number DELENG/2021/81442/ invites research-based articles for its upcoming editions on a rolling stock basis. The contributors/authors can send their article/s manuscripts for publications in The Resolution Professional as per their convenience at iiipi.journal@icai.in. The same will be considered for publication in the upcoming edition of the journal, subject to approval by the Editorial Board. The articles sent for publication in the journal should conform to the following parameters:

- The article should be of 2,500-3,000 words and cover a subject with relevance to IBC and the practice of insolvency while a case study should be around 5,000 words.
- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
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