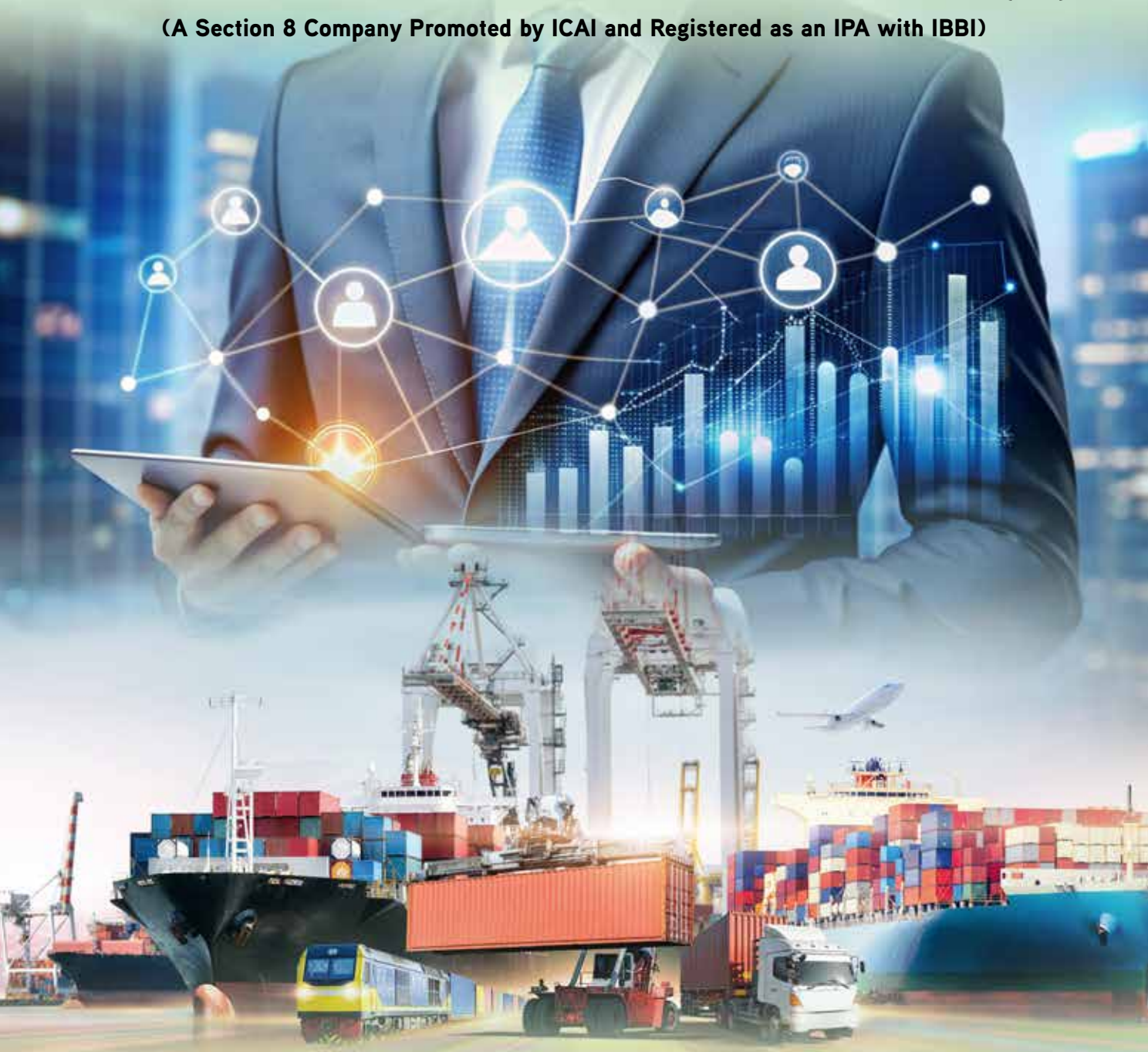
RNI Reg. No. DELENG/2021/81442
Volume 05, Issue 01, Pages 96, January 2025 I Quarterly I ₹100

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.

GOVERNING BOARD OF IIIPI

CHAIRMAN	Dr. Ashok Kumar Mishra
INDEPENDENT DIRECTORS	Shri S. K. Marathe Shri B. K. Agarwal Shri Sunil Pant
DIRECTORS	CA. Ranjeet Kumar Agarwal CA. Charanjot Singh Nanda CA. Gyan Chandra Misra CA. Sripriya Kumar CA. Rahul Madan
EDITORIAL BOARD CHAIRMAN	CA. Ranjeet Kumar Agarwal
MEMBERS	Dr. Ashok Kumar Mishra Shri B. K. Agarwal CA. Gyan Chandra Misra CA. Rahul Madan
EDITOR	Rahul Madan
IIIPI EDITORIAL TEAM	CA. Meenakshi Gupta Mr. Siddheshwar Shukla Mr. Ravi Prakash Shukla

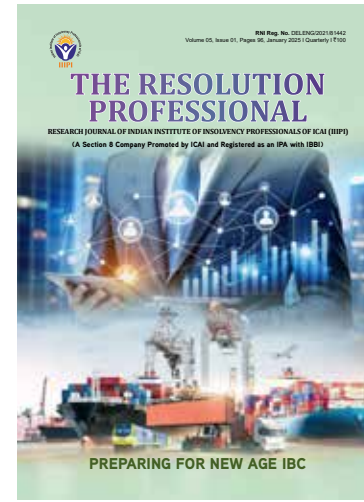
The views and opinion expressed or implied in "THE RESOLUTION PROFESSIONAL" are those of the authors and do not necessarily reflect those of IIIPI. Unsolicited articles and transparencies are sent in at the owner's risk and the publisher accepts no liability for loss or damage. Material in this publication may not be reproduced, whether in part or in whole, without the consent of IIIPI.

DISCLAIMER: *IIIPI is not in anyway responsible for the result of any action taken on the basis of the advertisements published in the Journal. The members, however, may bear in mind the provisions of the Code of Conduct and other applicable Laws/Regulation while responding to the advertisements.*

TYPE OF JOURNAL: PEER REVIEWED REFEREED
Images sourced from free sites.
© No part of the journal may be reproduced or copied in any form by any means without the written permission of IIIPI.

Imprint Line: Printed and published by Rahul Madan on behalf of Indian Institute of Insolvency Professionals of ICAI (IIIPI) and printed at VIBA Press Pvt. Ltd., C-66/3, Okhla Industrial Area, Phase-II, New Delhi - 110020 and published at ICAI Bhawan, P.O. Box No. 7100, Indraprastha Marg, New Delhi – 110002., **Editor: Rahul Madan**

Contents- January 2025



Contents

THE RESOLUTION PROFESSIONAL

TIME OUT

Subscription Rates

Inland Subscribers: ₹ 350 per annum (Four Editions)

Overseas Subscribers: $18 per annum + shipping charges

Note: The physical copies will be sent through Book Post and on specific demand through Speed Post.

Advertise in The Resolution Professional

Classifieds: Minimum ₹ 1,000 for first 25 words or parts thereof and ₹ 200 for five words or parts thereof over and above first 25 words. Post Box Facility/Highlights: ₹ 200 extra.

Display advertisements: Display Advertisements are also solicited for coming editions.

CONTACT US

iiipi.journal@icai.in
visit e-journal at www.iiipicai.in
: 0120-2975680/81/82/83

From Chairman- Editorial Board

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

Dear Professional Colleagues!

Wishing you a happy and prosperous New Year 2025.

Resolution is like a rebirth for a financially stressed company. The Insolvency and Bankruptcy Code, 2016 (IBC), is a vibrant legal framework that is continuously evolving to counter emerging changes thereby ensuring a robust ecosystem for resolving corporate debtors, maximizing value, and balancing the interests of stakeholders in a time-bound manner.

The IBC will always be marked as the landmark economic reforms of India for immensely contributing to strengthening the banking system. The gross NPA ratio of Scheduled Commercial Banks is 2.54 per cent at the end-September 2024, which is the lowest since March 2011. Furthermore, the ratio of net NPAs to total equity was 3.57 per cent, the lowest ever. As per the IBBI, since inception of CIRP Provisions till September 2024, 1068 corporate lives have been rescued through resolution plans out of which about 40% of the companies were earlier with BIFR and/or defunct. Furthermore, about 28,818 applications for initiation of CIRPs of corporate debtors having underlying default of ₹10.22 lakh crore were withdrawn before their admission under the IBC. These statistics speak a lot about the immense contribution of the IBC to India's economic growth, job creation and balancing the interests of stakeholders.

The sustained high GDP growth rate of over 6.5% for the past couple of years along with a healthy banking system has created an enabling ecosystem for viable companies and promoted entrepreneurship across sectors. India is now home to nearly 1.75 lakh startups and ranks third globally in the startup ecosystem. As per press release of Ministry of Commerce & Industry, the recognised startups have created 16.6 lakh direct jobs across more than 55 varied industries out of which maximum 2.04 lakh direct jobs were created in IT services sector.

India is a country possessing huge young talent. One of the purposes of the IBC is to unleash idle resources back into economic circulation, either by resolving financially stressed corporations or, if resolution is not possible, by liquidating them. Thus, IBC has helped a lot in multiplying our limited resources. In this context, IIIPI's contribution in providing robust research inputs for policy formation and enhancing the efficiency, efficacy, accountability, and skills of Insolvency Professionals have been recognised across stakeholders. This has continuously placed IIIPI as the largest IPA in India since its inception in 2016. Presently, IIIPI holds the confidence of 63% of IPs in India as its members. The Resolution Professional, IIIPI research journal has also carved out a niche in the intellectual world and is increasingly becoming popular across stakeholders.

All these data points mentioned above indicate that we are on the right path. However, the challenges remain. The IBC is still in the process of evolution which needs pragmatic feedback and interactive deliberations across stakeholders for growing further. Let's synergise our energies to contribute our best in making India a developed nation by 2047.

Let's work hard to make this new year more prosperous and progressive by achieving more resolutions thereby creating value from the National resources.

Wish you all the best.

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

From Chairman- Governing Board, IIIPI

Dr. Ashok Kumar Mishra
Chairman, Governing Board- IIIPI

Dear Member,

Wishing you a very happy New Year 2025

I feel privileged to deliver my maiden message as the Chairman of the Governing Board, IIIPI. As we embark on this new journey, I express my sincere gratitude to my predecessor and all those who have contributed to making the IIIPI what it is today.

Founded as the first Insolvency Professional Agency (IPA) of India in 2016, IIIPI has continuously maintained its status of the largest IPA of the country. In addition to the highest 2,832 Insolvency Professional (IP) members at the national level, IIIPI has maximum IPs in all the four metros and four regions of the country. This shows the pan India access and reach of IIIPI in the country. Furthermore, about 55% of the IPs in India are CA members of ICAI, the parent body of IIIPI.

In the past eight years, IIIPI has created several firsts for the insolvency profession and many of our recommendations and best practices have become part of the IBC ecosystem. In addition to organizing various programs for capacity building, IIIPI has great emphasis on research and policy advocacy. IIIPI's Peer Review Mechanism, Mentorship Portal, IIIPI Research Project Scheme and collaboration with international organizations are recognized as benchmarks in the insolvency profession. However, this is not the end. We are committed to keep working with a positive approach and strengthening the IBC ecosystem.

Some crucial reforms introduced by the Insolvency and Bankruptcy Board of India (IBBI) in 2024 such as making it mandatory for Information Utilities (IU) to verify key details of Corporate Debtor before issuing Record of Default, making Valuation Report Identification Number (VRIN) mandatory for each valuation report, Self-Regulatory Guidelines for Committee of Creditors (CoC) etc., will further enhance transparency and efficiency of the IBC regime. Further, the biggest transformation in insolvency ecosystem will be the development of integrated technology platform i-PIE which aims to bring various stakeholders of the IBC like IBBI, NCLT, IPAs, IU, and IPs on a single technological platform wherein data will be processed automatically. This integrated platform is currently under consideration by Ministry of Corporate Affairs, for expected roll-out in about year and a half from now.

The Resolution Professional, research journal of IIIPI, serves as a platform for dissemination of research articles, interviews of eminent personalities, case studies, and best practices. Your participation and shared experiences will enrich stakeholders and help in advancing the insolvency profession. I also express my sincere gratitude to the authors of this edition and hope you all will continue your support for its further enhancement.

Together, we will continue to uphold the highest standards of professionalism, innovation, and integrity, ensuring that the IBC remains a driving force in India's economic development. I urge all the stakeholders to join hands and contribute their best in realizing a globally acclaimed insolvency regime for India.

With your support, I hope IIIPI will reach new heights in 2025.

With Regards

Dr. Ashok Kumar Mishra
Chairman, Governing Board-IIIPI

From Editor's Desk

Dear Member,

Wishing you a very happy New Year 2025!

Balancing the interests of stakeholders is one of the primary objectives of the Insolvency and Bankruptcy Code, 2016 (IBC). In fact, this is a crucial parameter to assess the success of any legal framework. The IBC has a large set of stakeholders including Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professional Agencies (IPAs), Insolvency Professionals (IPs), Insolvency Professional Entities (IPEs), Information Utilities (IUs), corporate debtors, financial creditors and operational creditors. The tax authorities, enforcement agencies, land owning agencies, environment etc. are fast emerging as new stakeholders of the IBC regime.

To deliberate on expectations of stakeholders under IBC, the 8th foundation day of IIIPI was organized on theme "Improving Engagement Across Stakeholders" at India International Centre (IIC), New Delhi on 26th November 2024. Shri Justice Dipak Misra, Hon'ble Former Chief Justice of India graced the Inaugural Session as the Chief Guest and enlightened the stakeholders with his keynote address. We have covered the transcript of his address in this edition for wider dissemination. The key takeaways from addresses of dignitaries have also been published separately for the benefit of readers.

Moreover, this edition has four research articles and Case Study on Resolution of SHPL Vizag Hospital. In the opening article "Section 43(2) of IBC: A Forensic Lens on Preferential Transactions", the author provides a legal analysis of Section 43(2), contextualized with judicial precedents and a granular practical illustration, incorporating detailed calculations of the implications of preferential transactions on creditor recoveries under Section 53. The second article "Comparison between the IBC and USA's Chapter 11 Bankruptcy Code" presents a comparative analysis of the IBC, and the US Chapter 11 bankruptcy framework to bring forth valuable insights. Taking the example of Go Air's voluntary insolvency under the IBC, the author highlights the strengths and weaknesses of both the regimes and makes critical suggestions for further strengthening the IBC ecosystem. In the third article "Sale as a going concern: A Double-Edged Sword", the author analyses various aspects of going concern sales and makes suggestions to make it more effective. Besides providing a detailed analysis on the operation of Section 12A from the perspective of jurisprudence developing around it, the fourth article titled "Section 12A and its significant impact on CIRP Process" also explores various measures which can be used by creditors for mediation before filing insolvency petition.

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

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

Wish you a happy reading.

Editor

Address By Hon'ble Shri Justice Dipak Misra, Former Chief Justice of India

Chief Guest on the occasion of the 8th Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIIPI) organised on the theme "Improving Engagement Across Stakeholders" on November 26, 2024.

Shri Dipak Misra

Hon'ble Chief Justice (Retd.)

Supreme Court of India

Shri Dipak Misra, Hon'ble Chief Justice (Retd.), Supreme Court of India is an Indian jurist who served as the 45th Chief Justice of India (CJI) from 28th August 2017 to 02nd October 2018.

His Lordship was born on 03rd October 1953. He was enrolled as an Advocate on 14th February 1977 and Practiced in Constitutional, Civil, Criminal, Revenue, Service and Sales Tax matters in the Orissa High Court and the Service Tribunal. He was appointed as an Additional Judge of the Orissa High Court on 17th January 1996 and transferred to the Madhya Pradesh High Court on 03rd March 1997. He became permanent Judge on 19th December 1997. Justice Misra assumed charge of the office of Chief Justice, Patna High Court on 23rd December 2009 and charge of the office of the Chief Justice of Delhi High Court on 24th May 2010. He was elevated as a Judge, Supreme Court of India w.e.f. 10th October 2011.

Speaking as the Chief Guest on the occasion of the 8th Foundation Day of IIIPI organised on the theme "Improving Engagement Across Stakeholders" on November 26, 2024, Shri Misra shared his vision for further strengthening the IBC ecosystem. ***Read on to know more…***

At the very outset, I must confess that it is a matter of immense delight to be the chief participant on the occasion of the 8th Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIIPI). On this day, the protagonists are required to scrutinize the steps taken in the past and success achieved and further, think of ways to enhance the vision and accentuate the realisation of future pedestal where they would like to stand.

Having expressed my pleasure, let me proceed to share my thoughts. In a civilized and highly economically developing country, the legislative concern has always been that businesses initiated by individuals, in whatever form and frame they may be, should pave the path of progress. It is because the attempt of the law is to see a constructively affirmative business that grows progressively. To quote a statement from Benjamin Cardozo - "A business never stands still. It either grows or decays". And, at present, after decades of economic liberalisation and globalization, regard being had to growth, the law was required to be changed, and the legislature did change it with intent and purpose.

Law, fundamentally, as Edmund Burke would put it, is "the noblest of human sciences". It has to be understood while making law for the growth of business that, in a new economic atmosphere, the same engulfs and encompasses ethicality, fiscal morality and avoidance of debts and their realisation, and they have gained primacy.

Consequently, one witnessed the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act), 1993, and the SARFAESI Act, 2002. These frameworks proved inadequate. The processes were lengthy, and recovery rates remained disappointingly low. Law cannot afford to remain static. With the passage of time, experiments do take place, modifications ensue and that is the manifestation of the spirit of growth.

In the year 2014, the Bankruptcy Legislative Reforms Committee was constituted. In November 2015, the committee submitted its report. It highlighted that:

"India is one of the youngest republics in the world, with a high concentration of the most dynamic entrepreneurs. Yet these game changers and growth drivers are crippled by an environment that takes some of the longest times and highest costs by world standards to resolve any problems that arise while repaying dues on debt. This problem leads to grave consequences: India has some of the lowest credit compared to the size of the economy…"

In the Report of the Joint Committee on the Insolvency and Bankruptcy Code, 2015 (IBC) presented to the Lok Sabha on 28 April 2016, the primary objective behind the Code was set out in the following words:

"It has been mentioned in Statement of Objects and Reasons that the Code seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business and facilitate more investments leading to higher economic growth and development."

"The Insolvency and Bankruptcy Code is a landmark legislation marking India's first comprehensive law regulating insolvency of individuals and Corporate Persons."

Eventually, IBC came into existence on 28 May 2016. The Insolvency and Bankruptcy Code is a landmark legislation marking India's first comprehensive law regulating insolvency of individuals and Corporate Persons. The Preamble of the Code reads as under:

"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."

At this juncture, it is necessary to understand the judicial perspective of this legislation. In ***Swiss Ribbons (P) Ltd. v. Union of India, (2019)*** **4 SCC 17**, the Supreme Court, while upholding the constitutional validity of several provisions of the Code, observed:

*"**28.** It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors…"*

The entire process of Corporate Insolvency Resolution, or Liquidation, involves multiple stakeholders who play critical roles in the process. The key stakeholders are:

(i) **Corporate Debtor** - which includes its employees, management and shareholders. They provide all necessary information to the Resolution Professional (RP) and co-operate with the RP during the resolution process.

(ii) **Financial and Operational Creditors** - who play a critical role in identifying defaults and triggering the insolvency process by filing applications before the Adjudicating Authority.

(iii) Then comes the significant stakeholder, namely, **Resolution Professional** - who takes custody of the corporate debtor's assets and records and facilitates the claims process by inviting and verifying the creditors' claims, conducts meetings of the Committee of Creditors (CoC) and implements their decisions, and prepares an information memorandum and assists in drafting the resolution plan.

(iv) **Committee of Creditors (CoC)** - which, primarily comprising of financial creditors, evaluates and approves resolution plans, ensuring that these plans maximize the value of the corporate debtor's assets and serves all stakeholders' interests.

(v) **Resolution Applicants** - who submit plans to revive the Corporate Debtor, and ensure that their plans comply with the IBC guidelines, including fairness to all stakeholders and legal requirements.

(vi) **Adjudicating Authorities** - who ensure legal compliance and exercise legal supervision at every stage, from admitting applications to approving resolution or liquidation plans.

(vii) **The Regulatory Authority, that is, Insolvency and Bankruptcy Board of India (IBBI)** - which ensures that all stakeholders comply with the regulations, monitors the process, and penalizes misconduct. It frames rules and guidelines for effective implementation of the code.

> **The success of the Code depends on the collective roles and coordinated actions of its stakeholders.**

While each of the aforesaid stakeholder plays an independent role under the Act, the cumulative role of stakeholders under the Code is to ensure a time-bound, transparent, and efficient resolution of insolvency lis. The success of the Code depends on the collective roles and coordinated actions of its stakeholders. Together, they enable a structured process for resolving insolvency while balancing the interests of creditors, debtors, and other affected parties, ensuring economic growth and stability. It is expected from them that they must focus on substantial essentiality and pragmatic philosophy of implementation of the Code.

Presently, I shall advert to the role of **Chartered Accountants (CAs)** who play a crucial role in the effective implementation of the Insolvency and Bankruptcy Code (IBC), given their expertise in financial analysis, auditing, taxation, and regulatory compliance. Their contributions are essential throughout various stages of the insolvency resolution process.

Their role in various stages of the insolvency process can be succinctly summarised having regard to their special ability which is further cultivated by experience.

(i) CAs conduct detailed audits of the corporate debtor's accounts. They verify financial claims submitted by creditors to the Resolution Professional and analyse mismanagement or fraudulent transactions that may have contributed to the default.

(ii) CAs also play a key role in assisting RAs for the preparation of the Resolution plan by structuring financial proposals, ensuring compliance with applicable tax laws, and conducting feasibility and viability assessments. They advise on the tax implications of resolution plans, asset sales, and write-offs.

iii) In addition, CAs investigate transactions that may be fraudulent, undervalued, or preferential under Sections 43, 45, and 66 of the IBC.

Chartered Accountants bring a wealth of financial expertise to the IBC process. Whether acting as Insolvency Professionals, advisors, or auditors, their role is critical in ensuring compliance, transparency, and the successful resolution of insolvency cases. Their contribution helps balance the interests of all stakeholders and strengthens the credibility of the insolvency ecosystem.

The engagement between Chartered Accountants (CAs) and Resolution Professionals (RPs) is essential for the effective and efficient implementation of the Insolvency and Bankruptcy Code (IBC). Given their complementary skill sets, collaboration between these two professionals can streamline the insolvency process and maximize value for all stakeholders.

The synergy between Chartered Accountants and Resolution Professionals strengthens the insolvency resolution process under the IBC. Their combined expertise ensures compliance with legal, financial, and procedural requirements, enhancing efficiency and transparency. This engagement is seminal for achieving the IBC's primary objectives: timely resolution, maximization of asset value, and balancing stakeholder interests.

> **The synergy between Chartered Accountants and Resolution Professionals strengthens the insolvency resolution process under the IBC.**

Given the important roles played by Chartered Accountants in all stages of insolvency resolution, and the significance of quality engagement between them and Resolution Professionals, it is categorically imperative, for the continued success of IBC, to devise more strategies to further improve and foster collaboration between them.

The following methods may be used to achieve the said purpose:

(i) Regular joint training sessions on IBC provisions, financial restructuring, valuation, and forensic auditing can be conducted. This would promote interactions between CAs and RPs and enable them

to utilize their skills jointly for a more efficient resolution under IBC.

(ii) There can be creation of forums where RPs and CAs can share best practices, challenges, and innovative approaches from previous insolvency cases.

(iii) CAs be encouraged to develop expertise in insolvency specific fields such as forensic accounting, business valuations and restructuring plans. Such specialization will further improve collaboration between CAs and RPs.

(iv) Institutes such as the Institute of Chartered Accountants of India (ICAI), Indian Institute of Insolvency Professionals of ICAI (IIIPI), and Insolvency and Bankruptcy Board of India (IBBI) can issue joint guidelines to promote collaboration and offer incentives for successful resolution cases where RPs and CAs work in harmony to maximize value of assets or revive businesses.

By fostering transparency, inclusivity, and collaboration, these measures can significantly improve engagement among stakeholders in the IBC process, assuring smoother and more effective insolvency resolutions.

In conclusion, I must say with emphasis that IBC, as a piece of legislation, meets the vision of progress and development. But the words of law need to be activated. That should be the pledge of the day. I remember an old saying and I quote:

"*Iron rusts from disuse; stagnant water loses its purity and in cold weather becomes frozen; even so does inaction sap the vigour of the mind.*"

The suggestion today is to act with vibrance and vigour to achieve constructive economic stability with the purpose of saving and growing.

Thank you very much for your courtesy and patience.

Key Takeaways from Addresses of Dignitaries on the 8th Foundation Day of IIIPI organized in New Delhi on 26th November 2024

The 8th Foundation of Indian Institute of Insolvency Professionals of ICAI (IIIPI) was organized on the theme "Improving Engagement Across Stakeholders" at India International Center (IIC), New Delhi on 26th November 2024. Hon'ble Shri Justice Dipak Misra, Former Chief Justice of India (CJI) graced the Inaugural Session as the Chief Guest and enlightened the stakeholders with his keynote address. He emphasized that success of the Insolvency and Bankruptcy Code (IBC) depends on the collective roles and coordinated actions of its stakeholders.

In his message to the 8th Foundation Day of IIIPI, Shri Ashok Bhushan, Hon'ble Chairperson, NCLAT, in his read-out message, said that IIIPI has made great contributions in the success of the IBC. Ms. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA), Government of India; Shri Sandip Garg, Whole Time Member (WTM), Insolvency and Bankruptcy Board of India (IBBI); CA. Ranjeet Kumar Agarwal, President, the Institute of Chartered Accountants of India (ICAI); Dr. Ashok Kumar Mishra, Former Member NCLAT, Professor of Practice, Law & Management - Jamia Hamdard University and Chairman-IIIPI; addressed the gathering as Guests of Honour.

On this occasion a publication titled "Best Practices – Meetings of CoC under CIRP and SCC under Liquidation Process" was also released by the dignitaries. The inaugural session was followed up with a technical session which was chaired by Shri Rajesh Sharma, Hon'ble Former Member, NCLT. In this session Adv. Sumant Batra, Insolvency Law Expert, Shri Prashant Kumar Sahoo, DGM- Stressed Assets, Union Bank of India (UBI) and Adv. (CA) Sajeve Deora, Insolvency & Legal Expert, shared their views. For wider dissemination of this intellectual discourse, the key takeaways of the conference are presented as below:

Welcome and Opening Address

Dr. Ashok Kumar Mishra
Chairman, IIIPI

1. I express my gratitude and admiration for the collective efforts of Insolvency Professionals (IPs) who have significantly contributed to India's economic progress through the resolution of over 1,000 corporate debtors (CDs) under the IBC framework.
2. Till September 2024, the creditors have realised approximately ₹3.6 lakh crore through resolution plans under the IBC.
3. As per the study by IIM Ahmedabad, the turnover of resolved companies has increased by 76%, total assets by 50%, and employee expenses by 50%, reflecting the positive impact of the IBC.
4. The market valuation of companies resolved under IBC has tripled from ₹2 lakh crore to ₹6 lakh crore. This demonstrates the success of the framework in revitalizing distressed entities.

5. IIIPI, promoted by ICAI, handles 63% of IPs who facilitate about 75% of IBC cases. It has been instrumental in building professional capacity and providing critical policy inputs to regulators.
6. IIIPI has significantly contributed to policy formation on various issues through 24 "Study Groups". Presently, three more "Study Groups" pertaining to developing a distressed asset market, improving practices in CoC and SCC meetings, and removing redundancies in IP compliance, are under progress.
7. IIIPI has published 14 editions of its quarterly research journal, which are well-received by national and international stakeholders.
8. A research program covering 28 areas related to the insolvency ecosystem has been launched, involving multiple institutions. Initial funding of ₹50 lakhs has been provided for these initiatives. Efforts are being made to address gaps and conflicts between IBC and RERA, the underutilization of PPIRP, and the feasibility of project-wise resolutions in real estate insolvency.
9. Capacity-building programs have been organized jointly with national and international level organisations such as International Insolvency Institute, USA; UK-FCDO, PhD Chambers of Commerce etc. Besides, we have invited experts from the USA, the UK, Australia, Singapore, South Africa etc. to provide global exposure to IIIPI members.
10. IIIPI is working to build capacity and provide policy inputs for the IBC. The IPs work on the ground so they can help the policy makers to take along all the stakeholders.

Guest of Honour

CA. Ranjeet Kumar Agarwal
President, ICAI

1. Today marks the 8th Foundation Day of IIIPI, an occasion to reflect on its remarkable journey and achievements. This is a significant milestone as it aligns with the evolution of the Insolvency and Bankruptcy Code (IBC), which was enacted in 2016.
2. In 2016, the need for a fresh and comprehensive law that could subsume existing mechanisms and act as a leading framework was identified. In the past two to three decades, India has witnessed two major financial reform - GST and the IBC. These reforms have redefined the financial and economic landscape of the country.
3. In India, we have huge talent but limited resources for which we need to multiply resources, and the IBC has been successful in this endeavour.
4. The Institute of Chartered Accountants of India (ICAI), which celebrates 75 years of existence this year, has grown from 1,600 members in 1949 to over 4,25,000 members at present, making it the world's largest accounting body.
5. Notably, women make up a significant portion. Every third Chartered Accountant in our country is a woman. Besides, we have 9,50,000 students pursuing CA course out of which 44% are girls.
6. The IBC prioritizes resolution over liquidation, focusing on reviving stressed assets rather than shutting them down. This approach has contributed to reducing NPAs in Indian banks, which currently stand at 2.8%, the lowest in over a decade.
7. Challenges remain, but IIIPI has consistently worked on addressing them. Discussions often revolve around enhancing the efficiency, accountability, and skills of insolvency professionals and developing robust research to support policy reforms.
8. In September 2024, IIIPI, in collaboration with experts from other professional bodies, submitted comprehensive recommendations to IBBI and MCA on proposed amendments to the IBC and improving regulatory frameworks for insolvency professionals.
9. Initially, IBC allowed only individual insolvency professionals to operate. However, subsequent amendments permitted Insolvency Professional Entities (IPEs) to undertake resolution processes, showcasing the law's evolution and responsiveness to industry needs.
10. I congratulate IIIPI on its 8th Foundation Day and commend its rigorous efforts over the past eight years. With continued collaboration and innovation, I am confident that IIIPI will enhance India's reputation and further strengthen the insolvency ecosystem.

Guest of Honour

Shri Sandeep Garg
WTM, IBBI

1. IIIPI has set benchmarks in promoting ethical practices and engaging stakeholders effectively, earning trust and confidence across the insolvency landscape.
2. The IBC framework is fundamentally rooted in public interest, which distinguishes it from traditional dispute resolution mechanisms that involve only two parties. Insolvency proceedings under IBC encompass a vast array of stakeholders, including courts, creditors, debtors, and regulators etc. This makes the process inherently complex but also highly impactful.
3. The role of insolvency professionals becomes pivotal as they act as the bridge between various stakeholders, ensuring that the objectives of IBC are met while balancing competing interests.
4. IBBI observed that 80% of pre-admission withdrawals are from operational creditors. By implementing voluntary mediation mechanism for operational creditors, we aim to address disputes before they escalate, reducing the burden on NCLT and fostering quicker resolutions.
5. IBBI has also encouraged discussions with stakeholders, including the CoC and insolvency professionals, to identify issues and resolve them effectively.
6. Effective stakeholder engagement is key to minimizing disputes and maximizing outcomes. Stakeholder engagement should be inclusive, interactive, and adaptive, rather than reactive, to foster collaboration and reduce friction.
7. Crisis management is episodic and reactive, whereas stakeholder engagement focuses on continuous, productive communication. Planning interactions and adapting to stakeholder feedback ensures better outcomes for all parties involved.
8. Research plays a critical role in improving the insolvency ecosystem. As highlighted, IIIPI is already contributing to research and publishing guidance notes and case studies. These efforts should be expanded further.
9. IIIPI has been instrumental in shaping a resilient and progressive insolvency framework in India. On this Foundation Day, I wish for its continued success in driving innovation, fostering growth, and strengthening the insolvency profession.
10. As the insolvency framework evolves, IIIPI has also emphasized the need for continuous professional development. Professionals must adapt to changing the regulatory environment and stay updated on emerging challenges, such as addressing complex issues in the real estate sector.
11. IIIPI's efforts in promoting ethics and professionalism within the insolvency ecosystem have strengthened stakeholders' confidence. As highlighted, ethics should remain the cornerstone of the profession, ensuring that all actions are transparent, fair, and in the best interest of the economy.
12. On this Foundation Day, we celebrate IIIPI's accomplishments and its pivotal role in shaping the insolvency ecosystem. Its contributions to driving innovation, fostering growth, and ensuring economic stability are commendable. I extend my best wishes to IIIPI for continued success and impactful leadership in the years ahead.

Guest of Honour

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

1. It is truly a privilege to be part of IIIPI's 8th Foundation Day. I extend my congratulations to the organization for its significant contributions over the years in shaping the insolvency ecosystem.
2. IBC has brought a lot of behavioural changes among creditors. Our model has been appreciated across the world. The IBC is more a rescue mechanism but not a recovery mechanism and it should be evaluated in terms of companies rescued and jobs saved.
3. Over the past eight years, IBC has undergone six amendments by the Parliament, with significant

changes like Section 29A preventing promoters from reclaiming their company's post-insolvency. This has deterred misuse of the process and led to the withdrawal of approximately 30,000 cases due to settlements.

4. The ministry is working on having the integrated technology platform (i-PIE), announced by the Hon'ble Finance Minister, for the insolvency ecosystem. It is expected to be operational in the next one and half years. Under this various platform under the IBC like MCA, IBBI, NCLT, NCLAT, IUs, and Insolvency Professionals (IPs) will be on one integrated platform.

5. The data processing on i-PIE will largely be automated which will bring down compliance and regulatory requirements of the IPs. MCA will also get a lot of inputs for policy interventions to ensure timely resolution of corporate debtors. We are also working on losing regulatory control.

6. The Central Government has approved ₹119 cr for i-PIE project and we will soon go for tendering.

7. i-PIE will have a lot of features like template-based judgements from NCLT, online CoC meetings that data of which will be captured, App based alerts in case of delays, reminders of meetings, compliance etc.

8. NCLTs are working in hybrid mode, wi-fi service has been provided to all NCLT Benches. This will certainly improve the efficiency of the insolvency ecosystem.

9. Currently the NCLTs work as per the rules made under the Companies Act. To improve efficiency further, we are working on new rules tailored specifically for NCLT in its role as an Adjudicating Authority under IBC, emphasizing faster resolutions while maintaining procedural justice.

10. This is our vision for Viksit Bharat. What I would really like to come out of the deliberations sometime from IIIPI is what would be your vision for IBC, IPs, and how do you like to take it forward given the wealth of experience all of your people have. This is expected from you.

Message

Justice Ashok Bhushan
Chairperson, NLCAT

1. It is my distinct pleasure to extend my warmest felicitations to IIIPI for organizing the 8th Foundation Day with the theme, "Improving Engagement Across Stakeholders." This is a significant event reflecting the agency's commitment to excellence.

2. IIIPI is a professional agency that enrols and regulates insolvency professionals (IPs) as its members under the framework of the Insolvency and Bankruptcy Code, 2016 (IBC). It operates as a company promoted by ICAI, the second-largest accounting body in the world.

3. At present, IIIPI holds the distinction of being the largest Insolvency Professional Agency (IPA) in India. It attracts members from diverse professional streams, including Chartered Accountants, Company Secretaries, Cost Accountants, Layers, and management professionals.

4. The functions of IIIPI are extensive and include laying down standards of professional conduct for its members, monitoring their performance, safeguarding their rights and privileges, addressing grievances against its members, and taking disciplinary actions when required.

5. Another critical responsibility of IIIPI is to maintain high ethical and professional standards in regulating its members. This ensures that the insolvency profession operates with integrity and accountability.

6. As a key pillar of the IBC regime in India, IIIPI plays a vital role in supporting and strengthening the insolvency resolution ecosystem by fostering professionalism and ethical practices.

7. The theme, "Improving Engagement Across Stakeholders," is particularly relevant. It highlights the importance of collaboration and shared insights among stakeholders to enrich the professional journey of insolvency professionals.

Technical Session
Improving Engagement Across Stakeholders

Chairperson: Shri Rajesh Sharma, Hon'ble Former Member, NCLT

Moderator: Adv. (CA) Sajeve Deora, Insolvency & Legal Expert

Panelists:

- Dr. Ashok Kumar Mishra, Former Member NCLAT, Professor of Practice Law & Management - Jamia Hamdard University and Chairman-IIIPI
- Adv. Sumant Batra, Insolvency Law Expert
- Shri Prashant Kumar Sahoo, DGM- Stressed Assets, Union Bank of India

1. Today's topic – Improving Engagement Across Stakeholders, is very apt. In the past 8 years what has been felt by all the stakeholders in engagement needs improvement. Philosophically, there is always scope for improvement, i.e., tomorrow is always better than today.
2. Degree of involvement of stakeholders is not common for all projects. Some stakeholders may be of prime importance in one case but not so in other cases. For instance, landowning agencies are crucial in real estate cases, but employees are crucial in some other companies.
3. Operational Creditors (OCs) are often interested in recovery not in resolution of the Corporate Debtor. These cases can be settled via mediation before admission by the NCLT.
4. Section 53 provides a waterfall mechanism for distribution of proceeds across stakeholders. We need to focus more on the medium layer of stakeholders.
5. Various laws of the land play their respective roles during the insolvency processes. The IP should consider all these laws and ensure harmony among them.
6. We need to build a narrative through communication that the other laws and authorities are not undermined. The disregard for other laws results in litigation.
7. The biggest stakeholder of the IBC is the economy. Society has also emerged as a major stakeholder as the IBC processes affect the psyche of individuals and families. Besides, culture and climate change are also emerging stakeholders.
8. The definition of stakeholders needs to be articulated more emphatically and clearly before we start discussing how we need to engage with those stakeholders.

9. Insolvency is all about monetizing. The insolvency depends on how much of the Corporate Debtor's assets you can monetize?
10. If a company has not received payment for the project it was supposed to implement, how can it pay to the operational creditor? Thus, it is a case of 'back-to-back payment' and therefore, dues and default are linked. The IBC is supposed to help the company not working against it.
11. It is in the interest of both the company and supplier to keep a record of every document and communication. Suppliers generally work on trust but when it comes to litigation, only evidence matters.
12. In the case of Avoidance Transactions, there should be adequate research to collect evidence, otherwise the Avoidance Applications will be rejected and may backfire on the IP.
13. Bankers are very target oriented. The first and foremost target is to bring down NPAs. The IBC is a very good instrument in the hands of bankers. However, the pendency of the cases are the main concerns.
14. Banks (public and private) are always for garnering profit. If recovery is better, the profit will increase. This is possible if the resolution is made in a time bound manner.
15. Government companies should also be subject to insolvency. In a free market economy, you need to provide a level playing field. However, the government will always have the right to protect a set of companies based on national security and large public interest.
16. There are differences in court orders on whether the proceeds of Avoidance Transaction should go to promoters or Successful Resolution Applicant. More clarity about this is needed.
17. IPs should not compromise their independence. They should neither be anti-promoter nor pro-promoter. However, they should take assistance from promoters to run the company.

Vote of Thanks

CA. Rahul Madan
Managing Director, IIIPI

1. For the first time we celebrated the 5th Foundation Day of IIIPI during mid of the Covid in 2021 whereby Hon'ble Union Minister Shri Piyush Goyal graced as the Chief Guest. Thereafter, we have been regularly celebrating Foundation Day. On this 8th Foundation of IIIPI, I am very proud to have all of you joining on this occasion.
2. Today coincides with India's Constitution Day, a remarkable occasion for us all to celebrate.
3. It is essential to address disputes and frictions among stakeholders proactively, as such issues can lead to prolonged litigation, undermining the objectives of timeliness and value maximization under IBC.
4. Crisis management and stakeholder engagement are vital aspects of the IBC process. As highlighted in the session, moving towards positive engagement rather than reactive responses is the way forward for insolvency professionals.
5. Effective communication and information sharing among stakeholders are key to maintaining integrity and transparency, which in turn help reduce disputes and litigation. This approach aligns with the objectives of the IBC framework.
6. Conferences like today provide us with unique insights and opportunities to keep updating our know-how.
7. Let's pledge together, as nudged by the Hon'ble Chief Guest, to act with vigour, to protect as well as grow the businesses under stress.

Section 43(2) of IBC: A Forensic Lens on Preferential Transactions

Kamal Garg
The author is an Insolvency Professional (IP) Member of IIIPI. He can be reached at
cakamalgarg@gmail.com

Section 43(2) of the IBC serves as a cornerstone in maintaining the integrity and equity of insolvency proceedings. By addressing preferential transactions, the provision ensures that no creditor receives undue advantage to the detriment of others, particularly when a debtor approaches insolvency. The Supreme Court in the matter of Anuj Jain v. Axis Bank Ltd. (2020), emphasized that the provision is objective and effect-based, requiring a detailed examination of specific criteria to ascertain whether a transfer constitutes a preferential transaction. In this backdrop, the present article provides a legal analysis of Section 43(2), contextualized with judicial precedents and a granular practical illustration, incorporating detailed calculations of the implications of preferential transactions on creditor recoveries under Section 53.

Read on to know more…

Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC or the Code), is a transformative legislation designed to ensure an equitable and time-bound resolution of insolvency while prioritizing the interests of creditors. To achieve this, Section 43 plays a pivotal role in identifying and avoiding preferential transactions, which disrupt creditor equality and contravene the liquidation framework under Section 53.

Section 43(2) defines preferential transactions by analyzing the effect of the transaction, without delving into the debtor's intent. As articulated by the Supreme Court in *Anuj Jain v. Axis Bank Ltd.*[1], (2020), the provision operates on a legal fiction, treating qualifying transactions as preferential if they satisfy the twin criteria set out in clauses (a) and (b) of Section 43(2). Judicial scrutiny of such transactions ensures that no creditor is

unfairly advantaged, safeguarding the principle of *pari passu* distribution.

This write-up provides a legal analysis of Section 43(2), contextualized with judicial precedents and a granular practical illustration, incorporating detailed calculations of the implications of preferential transactions on creditor recoveries under Section 53.

1. What Constitutes a Preferential Transaction?

A transaction is deemed preferential under Section 43(2) if **both** the following conditions are fulfilled:

1.1. Transfer of Property or Interest for an Antecedent Debt [Clause (a)]

(i). The corporate debtor transfers property or interest therein to a creditor, surety, or guarantor.

(ii). The transfer is for the settlement of a pre-existing (antecedent) financial or operational debt.

1.2. Resulting Beneficial Position (Clause (b))

(i) The transaction places the recipient in a more favorable position than they would have been under the liquidation hierarchy prescribed in Section 53.

2. Framework for Analyzing Preferential Transactions

In *Anuj Jain v. Axis Bank Ltd.* (supra), the Supreme Court provided a structured and methodical framework for determining whether a transaction falls within the ambit of Section 43 of the IBC. The Court emphasized that the provision is objective and effect-based, requiring a detailed examination of specific criteria to ascertain whether a transfer constitutes a preferential transaction.

In paragraph 20 of its judgment, the Court outlined the essential factors that must be evaluated to determine whether a transaction involves the preferential transfer of property or an interest therein by the corporate debtor. The first inquiry is whether the transfer was made for the benefit of a creditor, surety, or guarantor. This analysis establishes whether the transaction involved a direct or indirect advantage to a party that has a claim against the corporate debtor.

> **"The Apex Court in case of *Anuj Jain v. Axis Bank*, provided a structured & methodical framework for determining whether a transaction falls within the ambit of Section 43."**

Next, the Court directed that it must be examined whether the transfer was made on account of an antecedent financial or operational debt or any other liability owed by the corporate debtor. The term "antecedent debt" signifies that the obligation existed before the transaction took place, distinguishing such transfers from payments made for current liabilities.

The third inquiry centers on the effect of the transfer, specifically whether it places the beneficiary (creditor, surety, or guarantor) in a more favorable position than they would have been under the liquidation framework prescribed in Section 53 of the IBC. This requires comparing the creditor's hypothetical recovery in liquidation without the transfer to their actual position following the transaction.

The fourth consideration involves the timing of the transaction. Section 43(4) imposes a look-back period to determine whether the transfer occurred during a relevant timeframe preceding the insolvency commencement date. For transfers benefiting a related party (excluding employees), the relevant period is two years. For unrelated parties, it is one year. This temporal restriction ensures that only recent transactions made in proximity to insolvency are subject to scrutiny under Section 43.

Finally, the Court highlighted the need to examine whether the transfer qualifies as an 'excluded transaction' under Section 43(3). Transfers made in the ordinary course of the corporate debtor's business or financial affairs, or those creating a security interest to secure new value, are exceptions and do not qualify as preferential transactions. This ensures that legitimate business transactions are protected, even if they occur within the relevant period.

[1] *Anuj Jain v. Axis Bank Ltd.,* (2020) 114 taxmann.com 656, Supreme Court.

> **Even if a transaction was undertaken without malintent or strategic planning, its classification as preferential is determined solely by its outcome.**

In paragraph 19.3, the Supreme Court addressed the conceptual underpinning of Section 43 by analyzing the use of the word "deemed" in the provision. The Court explained that the deeming nature of the section operates as a legal fiction, requiring that transactions meeting the stipulated conditions be treated as preferential, irrespective of whether they were intended or anticipated to be so. The Court observed that the term "deemed" is used to create a presumption that a transaction falling under subsections (2) and (4) is preferential, triggering the consequences set out in Section 44 of the Code.

The Court clarified that the legal fiction removes any necessity to prove intent, ensuring that the provision remains effect based. Even if a transaction was undertaken without malintent or strategic planning, its classification as preferential is determined solely by its outcome. Thus, the judgment highlights the significance of legal fiction in ensuring that the provision is applied objectively. By focusing on the effect of a transaction rather than the intent, Section 43 aims to prevent circumvention of creditors' rights and to uphold the equitable distribution principle under Section 53. This mechanism ensures that creditors cannot be unfairly prioritized or disadvantaged due to transactions that alter their relative standing during insolvency. The Adjudicating Authority "may", on an application made by the Resolution Professional (RP) under Section 43 pass the order as per Section 44. This means that the person concerned has the right to take the defense in fact and law to prove that the transaction is not covered under section 43 of IBC.

2.1. Ensuring Equitable Distribution: NCLAT's Application of Section 43 of IBC in Line with Anuj Jain Principles

In *Kushal Traders v. T. V. Balasubramanian*[2] (2021), the NCLAT adjudicated on a significant matter concerning the applicability of Section 43 of the IBC, which deals with preferential transactions. The case involved the transfer of immovable property worth ₹1.69 crore by a corporate debtor to an operational creditor. This transaction, executed shortly before the initiation of the Corporate Insolvency Resolution Process (CIRP), disrupted the statutory distribution framework under Section 53, as it conferred an undue advantage to the operational creditor over secured and financial creditors.

The RP challenged the transaction, arguing that it constituted a preferential transfer under Section 43(2). The transfer occurred within the look-back period defined in Section 43(4), which allows scrutiny of transactions executed up to one year before the insolvency commencement date for unrelated parties. The NCLAT examined the matter through the statutory lens, applying the principles laid out by the Supreme Court in *Anuj Jain v. Axis Bank Ltd*. (2020), which provides a structured framework for analyzing preferential transactions.

The tribunal found that the transaction satisfied all the statutory criteria for preference. Firstly, the transfer of property was for the benefit of a creditor, namely, the operational creditor. Secondly, the transfer addressed an antecedent debt that predated the transaction. Thirdly, and most critically, the transfer placed the operational creditor in a more favorable position than it would have been under the liquidation hierarchy prescribed in Section 53.

> **The deeming nature of the provision under Section 43 focuses on the effect of the transaction rather than the debtor's intent.**

Section 53 mandates that secured creditors and financial creditors are to be prioritized over operational creditors during liquidation. However, the transfer allowed the operational creditor to bypass this framework, thereby prejudicing the rights of higher-ranking creditors. The NCLAT further analyzed whether the transaction could be excluded under Section 43(3), which exempts transfers made in the ordinary course of business or for securing new value. The tribunal concluded that the transaction did not qualify for these exemptions.

[2] *Kushal Traders v. T. V. Balasubramanian* [2021] 133 taxmann.com 425, NCLAT.

In declaring the transaction as preferential, the NCLAT relied on the legal fiction embedded in Section 43, as clarified by the Supreme Court in Anuj Jain case (supra). The deeming nature of the provision focuses on the effect of the transaction rather than the debtor's intent. Consequently, the tribunal reversed the transaction under Section 44, directing the restoration of the transferred property to the corporate debtor's estate. This ensured adherence to the equitable distribution framework and reaffirmed the statutory priority of creditors.

2.2. Ordinary Course of Business under Section 43(3) of IBC

In Anuj Jain v. Axis Bank Ltd. (supra), the Supreme Court also provided an in-depth analysis of Section 43(3) of the IBC, which outlines specific exceptions to the general rule of preferential transactions. The Court examined whether certain transactions involving the creation of mortgages by a corporate debtor to secure loans obtained by its parent company could qualify as transfers made in the ordinary course of business or financial affairs, thereby falling outside the purview of preferential transactions.

The Supreme Court clarified that even when a transaction satisfies the requirements of Section 43(2) and falls within the relevant look-back period specified in Section 43(4), the inquiry does not end there. It must still be determined whether the transaction qualifies as an excluded transfer under Section 43(3). Two types of transfers are exempted:

(i) Transfers made in the ordinary course of business or financial affairs of the corporate debtor or the transferee [Section 43(3)(a)].

(ii) Transfers creating a security interest to secure new value, provided the security interest meets certain conditions [Section 43(3)(b)].

The Court emphasized that the phrase "ordinary course of business or financial affairs" must be interpreted in light of the legislative intent to protect only those transactions that do not confer unwarranted benefit to a particular creditor. The analysis is debtor-focused, and the ordinary course of business or financial affairs of the corporate debtor must align with its usual operations. This principle ensures that transactions arising out of unique or extraordinary circumstances—such as providing security for loans taken by a holding company—do not fall within the exclusion.

The Court rejected the argument that the disjunctive "or" in Section 43(3)(a) should be interpreted to mean that the ordinary course of business or financial affairs of either the corporate debtor or the transferee would suffice. Instead, it held that the phrase must be read conjunctively as "and." For a transaction to be excluded, it must simultaneously meet the ordinary course of business or financial affairs test for both the corporate debtor and the transferee. This conjunctive reading preserves the focus on the corporate debtor's conduct, ensuring that its transactions are consistent with its regular operations.

> **"The Apex Court highlighted that the transactions detrimental to the CD's financial health, especially those executed during financial distress, cannot be considered ordinary."**

Applying this interpretation, the Court examined the corporate debtor's actions and found that the creation of mortgages for securing loans taken by its parent company was neither in the ordinary course of its business nor consistent with its financial affairs. The corporate debtor's primary purpose was to execute infrastructure projects, not to routinely mortgage its assets for the benefit of related parties. The Court further highlighted that the transactions detrimental to the corporate debtor's financial health, especially those executed during financial distress, cannot be considered ordinary.

3. Practical Illustration: Applying the Framework

To understand the practical application of Section 43(2), a detailed hypothetical scenario is provided, mirroring real-life insolvency situations. This example demonstrates how a preferential transaction disrupts the equitable distribution of liquidation proceeds among creditors under Section 53, placing one creditor in an unduly favorable position. By systematically applying the framework articulated by the Supreme Court in *Anuj Jain v. Axis Bank Ltd.,* the illustration highlights how such transactions are identified, analyzed, and rectified

to restore creditor parity. This step-by-step approach ensures clarity in understanding the underlying legal principles and their practical consequences.

3.1. Scenario:

(i) **Corporate Debtor:** Zenith Fabrics Pvt. Ltd.

(ii) **Debt Structure:**

a) **Secured Creditor (Alpha Bank):** ₹10 crore.

b) **Operational Creditor (Beta Traders)**: ₹3 crore.

c) **Financial Creditor (Gamma Financials)**: ₹5 crore.

(iii) **Transaction:** On March 1, 2023, Zenith transferred machinery worth ₹2 crore to Beta Traders to partially settle its operational debt.

(iv) **CIRP Commencement Date:** January 1, 2024.

(v) **Liquidation Value:** ₹8 crore.

3.2. Step-by-Step Application

(i). **Relevant Period:** Beta Traders is a non-related party. The transaction occurred within the one-year look-back period (March 1, 2023, to January 1, 2024).

(ii). **Nature of the Beneficiary:** The recipient, Beta Traders, is an operational creditor, not a related party.

(iii). **Transfer of Property:** Machinery worth ₹2 crore was transferred to Beta Traders, constituting a transfer of property for the benefit of a creditor.

(iv). **Antecedent Debt:** The ₹3 crore debt owed to Beta Traders existed prior to the transfer, satisfying the requirement of antecedent debt under Section 43(2)(a).

(v). **Effect on Creditor Position:** Under Section 53, Beta Traders, as an operational creditor, ranks below Alpha Bank (secured creditor) and Gamma Financials (financial creditor). The transfer placed Beta Traders in a better position than it would have been under liquidation.

(vi). **Exclusions Under Section 43(3):** The transfer was not made in the ordinary course of business or to create new value. It fails the exclusions test.

3.3. Liquidation Calculations

(a). Without Preferential Transfer (Distribution of Amount as per Section 53)

Category	Priority under Section 53	Claims Admitted (₹)	Distribution (₹)	Balance Unpaid (₹)
Insolvency Costs	I	₹1 crore	₹1 crore (fully paid)	₹0
Secured Creditor (Alpha Bank)	II	₹10 crore	₹7 crore	₹3 crore
Financial Creditor (Gamma Financials)	III	₹5 crore	₹0	₹5 crore
Operational Creditor (Beta Traders)	IV	₹3 crore	₹0	₹3 crore

(b) With Preferential Transfer (Distribution of Amount as per Section 53 in the case when the liquidation amount is reduced by ₹2 Crore because of the avoidable transaction)

Category	Priority under Section 53	Claims Admitted (₹)	Distribution (₹)	Balance Unpaid (₹)
Insolvency Costs	I	₹1 crore	₹1 crore (fully paid)	₹0
Secured Creditor (Alpha Bank)	II	₹10 crore	₹5 crore	₹5 crore
Financial Creditor (Gamma Financials)	III	₹5 crore	₹0	₹5 crore
Operational Creditor (Beta Traders)	IV	₹3 crore	₹2 crore (via transfer)	₹1 crore

3.4. Impact of Preferential Transfer

(i) **Secured Creditors' Recovery Reduced:** Alpha Bank's recovery reduces from ₹7 crore to ₹5 crore.

(ii) **Operational Creditors' Advantage:** Beta Traders bypasses the statutory hierarchy and recovers ₹2 crore, which would have been unavailable under Section 53.

4. Conclusion

Section 43(2) of the IBC serves as a cornerstone in maintaining the integrity and equity of insolvency

proceedings. By addressing preferential transactions, the provision ensures that no creditor receives undue advantage to the detriment of others, particularly when a debtor approaches insolvency. This is critical to upholding the principles of creditor equality, which lie at the heart of the IBC's liquidation and resolution framework.

The Supreme Court's framework, as elucidated in Anuj Jain v. Axis Bank Ltd., has provided much-needed clarity on how to identify and analyze preferential transactions. The Court's emphasis on focusing solely on the effect of a transaction, rather than intent, underscores the objectivity and predictability of Section 43. The framework helps resolution professionals and adjudicating authorities systematically evaluate transactions, ensuring consistency in their application across cases.

"By reinforcing the principles of equality, transparency, and fairness, Section 43(2) ensures that insolvency processes remain robust, predictable, and efficient."

In the practical illustration, the hypothetical transfer of machinery worth ₹2 crore to an operational creditor (Beta Traders) bypassed the statutory waterfall of Section 53 and disrupted the orderly distribution of the debtor's estate. Without this preferential transfer, the secured creditor (Alpha Bank) would have recovered ₹7 crore instead of ₹5 crore, demonstrating the real-world consequences of such transactions on creditor recoveries.

By deeming such transactions preferential and allowing their reversal under Section 44, the IBC empowers resolution professionals and tribunals to restore fairness in insolvency proceedings. Reversing preferential transfers ensures that:

(i) The *pari passu* principle is preserved, treating creditors equitably.

(ii) The distribution of assets adheres to statutory priority under Section 53.

(iii) The confidence of secured creditors and financial stakeholders in the insolvency system remains intact.

Additionally, the exceptions under Section 43(3) act as a safeguard, ensuring that legitimate transactions undertaken in the ordinary course of business or to secure new value are not unfairly penalized. This balance of equity and practicality highlights the meticulous design of Section 43 within the IBC framework.

Judicial precedents such as *Kushal Traders v. T.V. Balasubramanian* demonstrate the applicability of Section 43(2) in reversing transfers that unfairly benefit certain creditors, even when undertaken without malicious intent. By reinforcing the principles of equality, transparency, and fairness, Section 43(2) ensures that insolvency processes remain robust, predictable, and efficient.

In conclusion, Section 43(2) is a testament to the IBC's commitment to balancing creditor rights while preventing abuse by debtors. The provision's structured analysis, bolstered by the judiciary's insights, ensures that insolvency proceedings operate within a framework of fairness and legality, protecting the collective interests of all stakeholders involved.

Comparison between the IBC and USA's Chapter 11 Bankruptcy Code

Anshul Vikram Pathania
The author is an Insolvency Professional (IP) Member of IIIPI. He can be reached at
anshul.pathania@gmail.com

The legal framework of the Insolvency and Bankruptcy Code 2016 (IBC) is based on Creditor-in-Control model wherein on admission of an insolvency petition, the promoters of the Corporate Debtor (CD) are suspended, and the CD is put under the control of the Committee of Creditors (CoC). However, USA's Chapter 11 Bankruptcy Code is based on a Debtor-in-Possession model under which the promoters retain control of the CD during the bankruptcy process. In this backdrop, the present article provides a comparative analysis of the IBC, and the US Chapter 11 bankruptcy framework to bring forth valuable insights. Taking the example of Go Air's voluntary insolvency under the IBC, the author highlights the strengths and weaknesses of both the regimes and makes critical suggestions for further strengthening the IBC ecosystem.
Read on to know more...

1. Introduction

Corporate insolvency is a critical aspect of modern economies, ensuring that companies facing financial distress can either be restructured or liquidated in an orderly manner. Effective insolvency regimes are essential for maintaining corporate health and economic stability, as they allow businesses to deal with financial difficulties while balancing the interests of creditors, employees, and other stakeholders.

India's Insolvency and Bankruptcy Code (IBC), introduced in 2016, marked a significant step toward addressing the shortcomings of previous insolvency frameworks. While issues relating to "Ease of Commencing business" and "Ease of Doing business" had been substantially addressed post liberalization, "Ease of Exiting Business", a vital part of a healthy economic cycle, had not been addressed comprehensively. It was realized that the

retrievable economic value of a distressed enterprise was inversely proportional to the time taken for resolution or liquidation. IBC emerged as a means for achieving this and aimed at encouraging resolution - as against recovery - within a time-bound resolution process to revive struggling companies or liquidate them efficiently.

On the other hand, in the United States bankruptcy is largely governed by a federal law which is found in Title 11 of the United States Code. This is commonly referred to as the "Bankruptcy Code". Title 11 contains nine chapters, six of which provide for the filing of a petition. The other three chapters provide rules governing bankruptcy cases in general. A case is typically referred to by the chapter under which the petition is filed, for example:

Chapter 7: A liquidation bankruptcy

Chapter 11: A reorganization bankruptcy that can be used by individuals and businesses

Chapter 13: A reorganization process for most private individuals

"USA's Chapter 11 Bankruptcy is recognized globally for its flexible and debtor-in-possession provisions that allows CDs to restructure while continuing operations."

The present US Chapter 11 Bankruptcy Code of 1978 (with subsequent amendments) has evolved from the Bankruptcy Act of 1800 and provides a well- established insolvency regime recognized globally for its flexibility and debtor-in-possession provisions that allow companies to restructure while continuing operations during the process.

This article provides a comparative analysis of the Indian IBC and the US Chapter 11 bankruptcy framework, examining their similarities, differences, strengths, and limitations. To illustrate these points, we will refer to the recent case of Go First (formerly GoAir), which filed for voluntary insolvency under Section 10 of IBC due to operational and financial challenges, including issues with its aircraft engines supplied by Pratt & Whitney. This case will serve as a practical reference to highlight the strengths and need for improvement in the Indian insolvency regime.

2. Overview of Insolvency Frameworks in India and USA

2.1. Insolvency and Bankruptcy Code (IBC): India

Prior to the enactment of IBC in 2016, the insolvency landscape in India was fragmented, with multiple laws governing the process, leading to delays and inefficiencies. The IBC aimed to consolidate these laws and provide a time-bound, transparent mechanism for resolving insolvency cases, ultimately improving the ease of doing (and exiting) business in India.

One of the key features of the IBC is the Corporate Insolvency Resolution Process (CIRP), which mandates a strict timeline of 180 days (extendable by 90 days) to either resolve the insolvency or proceed with liquidation. Although the average time from initiation of the resolution process till restoration of operations or commencement of liquidation has been in excess of 690 days (IBBI Newsletter Sept 2024), it is still reportedly faster as compared to earlier processes. IBC seeks to prioritize creditor interests, with the Committee of Creditors (CoC) playing a central role in deciding the future of the distressed company given their 'commercial wisdom'. The IBC also introduced the concept of an Insolvency Resolution Professional (IRP), who takes control of the debtor's assets and operations as a means of enforcing the Creditor-in-Control regime during the resolution process.[1]

Key stake holders in the IBC process include Financial Creditor (FC), Operational Creditor (OC), National Company Law Tribunal (NCLT), and Resolution Applicants (RAs). FCs, such as banks and financial institutions, normally constitute the CoC with OCs stepping up if there are no FCs. The CoC makes the key decisions regarding the Resolution Plan. The NCLT, a quasi-judicial body, oversees the insolvency process and approves the final Resolution Plan.

The Debtor-in-Possession model has been adapted for the Pre-Packaged Insolvency Resolution Process

[1] Insolvency and BankruptcyCode,2016-Government of India. Available at: https://ibbi.gov.in/legal-framework/act

(PPIRP) introduced in April 2021, for MSME borrowers. This is a pre-CIRP bankruptcy procedure that allows the debtor and creditor(s) to negotiate a Resolution Plan within a timeline of 120 days for approval by the NCLT/ Adjudicating Authority (AA).

However, as per the information available from the Board, 13 applications have been admitted as of September 2024, out of which one has been withdrawn and resolution plans have been approved in five cases. This low turnout is reportedly due to the hesitancy of financial institutions to go for voluntary haircuts.

Since its enactment in 2016, the IBC has undergone several amendments to address emerging challenges and improve its effectiveness. These amendments have aimed to clarify provisions, address delays, and enhance the rights of different stakeholders, making the Code more robust and efficient.

> **"Under Chapter 11 Bankruptcy the debtor usually retains the exclusive right to propose a reorganization plan for a set period."**

2.2. Chapter11: US Bankruptcy Code

The US Chapter 11 Bankruptcy is part of the broader US Bankruptcy Code, which has been in place since 1978 and is one of the most recognized insolvency frameworks globally. Chapter 11 provides a mechanism for financially distressed companies to reorganize their debts while continuing their operations, with the goal of emerging from bankruptcy as a viable entity. The flexibility of Chapter 11 has made it a preferred choice for large corporations seeking to restructure their obligations.[2]

A distinctive feature of Chapter 11 is the concept of Debtor-in-Possession, which allows the existing management of the company to retain control of its operations during the restructuring process. This approach contrasts with the Creditor-in-Control process under the IBC, as it gives the debtor an opportunity to develop a reorganization plan while benefiting from an automatic stay on creditor actions. The automatic stay is a powerful provision that prevents creditors from pursuing collection efforts, providing the debtor with breathing space to negotiate a viable restructuring plan. The key stake holders in Chapter 11 include the debtor, creditors, the Bankruptcy Court, and a trustee who may be appointed in certain cases. Creditors are typically grouped into committees, with an unsecured creditors' committee playing a significant role in the negotiation of the reorganization plan. However, unlike the IBC, the debtor usually retains the exclusive right to propose a reorganization plan for a set period.

The flexibility of Chapter 11 allows for a wide range of restructuring options, including debt rescheduling, equity swaps, and the sale of non-core assets. This flexibility, coupled with the ability to retain control, has made Chapter 11 an attractive option for companies facing temporary financial challenges. However, the process can be lengthy and costly, often taking several years to complete, depending on the complexity of the case.

3. Key Differences between the IBC and USA's Chapter 11 Bankruptcy

3.1. Philosophy and Approach

The basic difference between the IBC and the USA's Chapter 11 lies in their underlying philosophy and approach. The IBC is a creditor-driven process that emphasizes resolution within strict timelines. The Corporate Debtor (CD) is divested of operational control of her/his enterprise by ceding charge to an Insolvency Professional (IP) appointed by the AA on the recommendations of the creditors. The Board of Directors of the CD is suspended although individual Directors may continue to perform their specific roles. In contrast, Chapter 11 is a debtor-driven process that allows the debtor to remain in control (Debtor-in-Possession) and provides an opportunity for restructuring with the aim of preserving the business as a going concern.

3.2. Control of Assets

In the IBC framework, once insolvency proceedings commence, an Insolvency Resolution Professional (IRP) is appointed to take control of the debtor's assets and manage the operations. This ensures that the interest of creditors is

[2] US Bankruptcy Code, Chapter11-United States Courts. Available at: https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics

safeguarded, and the debtor no longer has direct control. Chapter 11 allows the debtor to retain control over his/her assets and continue operating as Debtor-in-Possession. This aspect of Chapter 11 aims to provide the debtor with a wider range of options for restructuring and revival while maintaining business continuity.

3.3. Timelines and Speed of Resolution

The IBC is designed to provide a quicker solution to insolvency cases, with a strict timeline of 180 days, extendable by 90 days, to either achieve a resolution or proceed with liquidation. This emphasis on speed aims to prevent value erosion and enhance creditor recoveries. In contrast, Chapter 11 offers a more flexible timeline, allowing the debtor and creditors to negotiate and develop a reorganization plan, which may sometimes take years to finalize. This flexibility enables more complex restructuring but can lead to prolonged uncertainty and enterprise value erosion.

"Chapter 11 offers a more flexible timeline, allowing the debtor and creditors to negotiate and develop a reorganization plan, which may sometimes take years to finalize."

3.4. Outcome of the Process

The outcome of the insolvency process under the IBC is typically focused on either resolution or liquidation, with less emphasis on reorganization. The goal is to maximize creditor recoveries while adhering to strict timelines. In contrast, Chapter 11 primarily aims at reorganization, giving the debtor the opportunity to restructure its debts, renegotiate contracts, and emerge from bankruptcy as a viable entity. The emphasis on reorganization in Chapter 11 is intended to preserve jobs, maintain supplier relationships, and protect the value of the business.

3.5. Creditor Rights and Involvement

Under the IBC, the CoC, consisting mainly of financial creditors, plays a central role in decision-making. The CoC evaluates resolution plans and has the authority to approve or reject them, giving creditors significant control over the outcome. In Chapter 11, creditors are grouped into committees, and while they have a role in the negotiation of the reorganization plan, their influence is more advisory. The debtor usually retains the exclusive right to propose a reorganization plan for a specific period, which limits creditor control compared to the IBC.

4. Go First Case Study

Go First, an Indian low-cost airline, recently filed for voluntary insolvency under the IBC due to a combination of operational and financial challenges. The airline, which faced severe financial distress, cited engine supply issues from Pratt & Whitney as one of the major reasons for its operational disruptions[3]. These issues led to a significant reduction in the availability of aircraft, negatively impacting on the airline's ability to generate revenue and cover its operational costs.

The insolvency filing under the IBC was aimed at finding a resolution that would allow the airline to either be restructured or liquidated. The airline's management hoped that the insolvency process would help address its financial obligations and provide a pathway for revival. However, Go First faced several challenges in utilizing the IBC including the strict timelines and the requirement to cede control to an Insolvency Resolution Professional (IRP). The IRP took over the operations and assets of the airline, and the Committee of Creditors was formed to decide on the future course of action.

The CoC, comprising financial creditors, evaluated various resolution plans to determine the best possible outcome for the airline. Given the time-bound nature of the IBC, Go First faced pressure to quickly identify a viable resolution plan or proceed with liquidation if no suitable plan was approved. The strict timelines under the IBC were intended to prevent value erosion, but they also limited the airline's ability to explore more flexible restructuring options that could potentially have provided a long-term solution.

In contrast, if Go First had been operating under the US Chapter 11 framework, the situation might have been treated differently. Chapter 11 would have allowed the airline to remain in control of its assets and continue its operations. This debtor-led approach would have

[3] The Times of India (2023). Pratt Engine woes Grounded Go First planes for 17,000 days, May 04. https://timesofindia.indiatimes.com/business/india-business/pratt-engine-woes-grounded-go-first-planes-for-17000-days/articleshow/99978271.cms

provided Go First with more flexibility to develop a reorganization plan that addressed its operational and financial challenges, potentially allowing the airline to negotiate directly with creditors and suppliers, including Pratt & Whitney, to resolve the engine supply issues.

> **Chapter 11 could have given Go First the opportunity to implement a more comprehensive restructuring plan.**

The flexibility for reorganization under Chapter 11 could have given Go First the opportunity to implement a more comprehensive restructuring plan, including debt rescheduling and renegotiation of contracts. Additionally, the automatic stay provision in Chapter 11 would have provided the airline with breathing space from creditors' actions, allowing it to focus on stabilizing operations and developing a sustainable business model. The debtor-in-possession provision would have also enabled the airline's existing management, who were familiar with the business, to continue running operations there by minimizing disruption.[4]

Overall, the case of Go First highlights some of the key strengths and limitations of the IBC when compared to the USA's Chapter 11 framework. While the IBC's emphasis on speed and creditor control aims to provide quick resolutions, the lack of flexibility for debtor-led restructuring can limit the options available to distressed companies seeking to revive their operations. A more balanced approach, incorporating element of both the IBC and Chapter 11, could help improve the effectiveness of India's insolvency regime in addressing complex cases like that of Go First.

5. Strengths and Limitations of Both Regimes

5.1. Strengths

(a) IBC: Timeliness, Reduction in NPA's, Improved Creditor Confidence

One of the key strengths of the IBC is its emphasis on timeliness. The strict timelines for resolving insolvency cases --typically 180 days, extendable by 90 days-- help to prevent value erosion and ensure that creditors can recover their dues more efficiently. This time-bound process has also contributed to the reduction in non-performing assets (NPAs) in the banking system, improving the overall health of the financial sector. Furthermore, IBC has instilled greater confidence among creditors by providing a transparent and creditor-driven mechanism for resolving insolvency.

(b) US Chapter 11: Flexibility, Reorganization-Focused, Debtor Control

The US Chapter 11 Bankruptcy Code is known for its flexibility, which is a significant strength. It allows financially distressed companies to remain in control of their operations through the Debtor-in-Possession mechanism, enabling management to work on a reorganization plan while continuing business activities. This reorganization-focused approach aims to help the debtor emerge from bankruptcy as a viable entity, preserving jobs, maintaining relationships with suppliers, and protecting the value of the business.[5]

The flexibility provided by Chapter 11 is particularly beneficial for companies with complex financial structures that require a tailored restructuring plan.

5.2. Limitations

(a) IBC: Limited Flexibility, Challenges with Strict Timelines

While the IBC's strict timelines are intended to expedite the resolution process, they can also pose significant challenges for distressed companies. The limited flexibility in the timeline often puts pressure on companies to find a quick resolution, which may not always result in the best outcome for all stakeholders. Additionally, the creditor-driven nature of the IBC can make it difficult for debtors to negotiate favorable terms, potentially leading to liquidation rather than a successful turnaround. The lack of provisions for debtor-in-possession further limits the debtor's ability to take an active role in the restructuring process.[6]

[4] Baird, D.G., & Rasmussen, R. K. (2002). The End of Bankruptcy, Stanford Law Review, 55(3), 751-789.

[5] Saxena, A. (2020). Corporate Insolvency Law in India: An Overview, Journal of Business Law, 45(2), 123-145.

[6] Warren, E. (2019). Chapter11: Reorganizing American Businesses, Harvard Law Review, 133(4), 945-1002.

> **Under IBC, the limited flexibility in timeline often puts pressure to find a quick resolution, which may not always result in the best outcome for all stakeholders.**

(b) US Chapter 11: Lengthy and Expensive Process, Risk of Abuse

One of the major limitations of Chapter 11 is that it can be a lengthy and expensive process. The flexibility that allows for comprehensive restructuring also means that the process can drag on for years, leading to high administrative and legal costs. This can be particularly burdensome for smaller companies that may not have the financial resources to sustain a prolonged restructuring effort. Additionally, the debtor-in-possession provision can sometimes be abused by debtors to delay obligations and stall creditor actions, which can lead to prolonged uncertainty and reduced recoveries for creditors.

6. Lessons for Improvement in the IBC

To further enhance the effectiveness of the IBC, India can draw valuable lessons from the USA's Chapter 11 framework. By integrating certain aspects of Chapter 11, the IBC can address some of its current limitations and provide a more balanced approach to corporate insolvency resolution.

(a) Introducing Debtor-in-Possession Provisions

One of the key features of Chapter 11 is the Debtor-in-Possession provision, which allows the existing management of a distressed company to retain control during the insolvency process. Introducing Debtor-in-Possession provisions under certain circumstances in the IBC could provide companies with a better chance of recovery. This approach would allow the debtor to continue managing the business while working on a restructuring plan, minimizing disruptions and retaining the expertise of the existing management team. The Debtor-in-Possession provision could be restricted to cases where the existing management has demonstrated a credible plan for revival, ensuring that creditors' interests are still protected.

(b) Balancing Creditor Control with Opportunities for Debtor Reorganization

While the creditor-driven approach of the IBC ensures that creditors' interests are prioritized, providing the debtor with more opportunities for reorganization could lead to better outcomes in certain cases. A more balanced approach that allows debtors to propose restructuring plans, similar to Chapter 11, could help distressed companies explore viable solutions before resorting to liquidation. This could be especially beneficial for companies facing temporary financial challenges that have the potential for long-term viability if given sufficient time to reorganize their operations and renegotiate obligations.

(c) Enhancing Judicial Infrastructure and Expertise

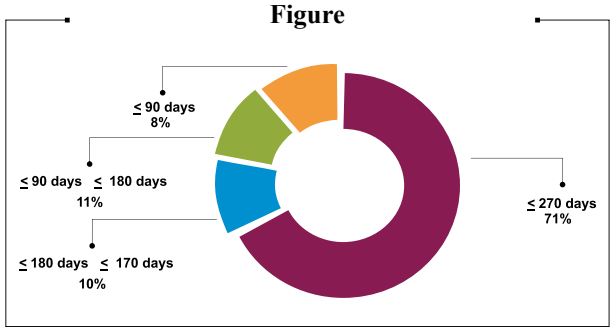
The success of any insolvency framework depends significantly on the efficiency and expertise of the judicial system. In the USA, the Bankruptcy Court plays a crucial role in overseeing Chapter 11 cases, with judges experienced in handling complex restructuring matters. To improve the effectiveness of the IBC, India should focus on enhancing the capacity and expertise of the NCLT and related judicial bodies. This could involve specialized training for judges, increased staffing to reduce case backlogs, and the establishment of dedicated benches to handle complex insolvency cases more efficiently. Strengthening the judicial infrastructure will help ensure that insolvency cases are resolved in a timely manner while maintaining the quality of decision- making.

(d) Introducing Greater Flexibility in Timelines

While IBC's strict timelines are intended to expedite the insolvency process, greater flexibility in timelines could help address cases that require more comprehensive restructuring. Introducing provisions that allow for timeline extensions in specific scenarios, particularly for large and complex cases, could provide companies with the breathing space needed to develop and implement viable restructuring plans. Such flexibility would need to be balanced with safeguards to prevent misuse and ensure that the process remains time efficient.

Despite the provision of strict timelines for the CIRP process, it has not been possible to adhere to these in a majority of cases. The undernoted chart gives an idea of the time actually taken for completion of the insolvency process, with 71% pending for more than 270 days and barely 19% meeting 180 days limit.

Figure



(Source: IBBI Newsletter, Sept. 2024)

As would be evident, the prescription of strict timelines in a CIC environment is not the answer. A re-look at the processes may be warranted. A reference to alternate systems could provide possible options.

7. Conclusion

The comparative analysis of the IBC and the US Chapter 11 Bankruptcy Code highlights both strengths and areas for improvement in each regime. The IBC 's emphasis on timeliness and creditor control has contributed to reducing non-performing assets and instilling greater confidence among creditors. However, the strict timelines and limited flexibility can pose challenges for distressed companies seeking viable restructuring solutions. On the other hand, Chapter 11's debtor-in-possession provisions and reorganization-focused approach offer greater flexibility, enabling companies to explore comprehensive restructuring options. However, the lengthy and costly process can be a significant drawback, especially for smaller firms.

“Ultimately, an effective insolvency regime should strike a balance between efficiency and flexibility, ensuring that creditors' interests are taken care of.”

The Go First case study illustrates how a more balanced insolvency framework could better serve distressed companies, allowing them to address both operational and financial challenges. Introducing debtor-in-possession provisions, enhancing judicial infrastructure, and providing greater flexibility in timelines are some of the key lessons that India can learn from the US Chapter 11 framework. Ultimately, an effective insolvency regime should strike a balance between efficiency and flexibility, ensuring that creditors' interests are taken care of.

Sale as a going concern: A Double-Edged Sword

S. Sidharth
The author is a Chartered Accountant (CA). He can be reached at sidharthshanmugam@gmail.com

The sale as a going concern under the Insolvency and Bankruptcy Code, 2016 (IBC or the Code) allows for the liquidation of a Corporate Debtor (CD) while retaining its identity and name and continue the business. It facilitates the transfer of CD's assets to the bidder, ensuring value preservation, job retention, and strategic growth opportunities. Despite these benefits, there are several challenges which include potential hidden liabilities, operational difficulties in reviving distressed businesses, regulatory compliances, uncertainties regarding employment continuity and other legal challenges. However, adoption of this approach has been only about 8% of liquidated entities. In this article, the author analyses various aspects of going concern sales and makes suggestions to make it more effective. ***Read on to know more…***

1. Introduction

Liquidators under the IBC have the option of selling a CD's assets through various methods outlined in liquidation regulations. One such method is the sale of a CD or its business as a going concern, which has become increasingly popular. However, neither the Code nor the Regulations of Insolvency and Bankruptcy Board of India (IBBI) provide a specific definition of 'going concern'. Although the concept was discussed in committee reports, it was never legally tested until recently. The sale of a CD as a going concern implies that the company will not be dissolved and will continue to conduct business under its name and retain its corporate entity.

During the Corporate Insolvency Resolution Process (CIRP), creditors are required to identify the group of assets and liabilities, which the liquidator must consider if the CD enters liquidation. If the creditors fail to identify, the liquidator must do so. The liquidator must

also attempt to sell the CD as a going concern within 90 days of the liquidation commencement date.

A sale as a going concern means selling on an "as is, where is" basis, allowing the liquidator to sell the business of the company, including all assets, and properties, which can help save jobs as existing employees may continue in with the CD. The concept of going concern has been examined in the recent *M/s. Visisth Services Limited vs. SV Ramani order*[1], where the appellate tribunal confirmed that going concern sale means the sale of all assets and liabilities that constitute an integral business. This order raised concerns among bidders as the liabilities were being transferred.

The question arises whether going concern means the sale of the company with the settlement of liabilities and a fresh start, similar to the clean slate principle in the resolution process, where all stakeholders are paid as per the IBC and all past liabilities are wiped off. Recent orders from tribunals indicate that the clean slate principle will extend to going concern sales under liquidation. Orders such as the Dekon Enterprises[2] have extended the clean slate principle to going concern sales under liquidation, offering relief on past liabilities to successful bidders.

2. Objective of the Code

The principal aim of the code is to safeguard the interests of the stakeholders while concurrently maximizing the value of the assets. This can be achieved by preserving the CD as an operating entity. Whether within the framework of the CIRP or in the context of liquidation, the fundamental objective of a Resolution Plan and the sale of a CD as a going concern remains consistent, specifically the revival of the CD's business. The challenges encountered by the purchaser in the sale of a CD as a 'going concern' and those faced by the Successful Resolution Applicant (SRA) are alike, if not identical. Consequently, it is desirable that comparable reliefs and concessions should be granted in both scenarios, ensuring parity and integrity within the process.

3. Legal Framework and the Rise of Going Concern Sales

Liquidation usually begins after the resolution process under the IBC fails. The main goal is to sell the CD's assets to maximize recovery. Traditionally, sales were limited to standalone sales, slump sales, assets collectively or assets in parcels as per Regulation 32(a) to 32 (d) of the IBBI (Liquidation) Regulations, 2016. The remaining entity would then be dissolved in accordance with Section 54 of the IBC. However, an amendment in the Liquidation Regulations introduced the concept of Going Concern Sale under the Regulation 32(e) to explore options for selling the entire entity as a going concern without dismantling its assets.

> **"The challenges encountered by the purchaser in the sale of a CD as a 'going concern' and those faced by the SRA are alike, if not identical."**

Despite being introduced in 2019, the successful Going Concern Sale cases have only recently experienced a notable increase. This upsurge may be attributed partly to the ongoing economic recovery in the aftermath of the pandemic, which has revitalized many struggling businesses. However, a more significant driving force appears to be the reliefs that the National Company Law Tribunal (NCLT) offers to successful bidders.

In numerous instances, the NCLT has provided a range of reliefs that can be incredibly advantageous for bidders to taking over CDs under liquidation. These include the satisfaction of all outstanding dues, protection from prosecution related to past offenses, exemptions from civil liabilities, and the dismissal of pending legal proceedings. Such measures present a robust safety net for buyers, encouraging them to invest in these distressed businesses.

Moreover, the reliefs granted by the NCLT closely match the provisions available to SRAs under the IBC. This similarity suggests a developing trend where Going Concern sales are increasingly viewed as a 'second chance' at resolution for enterprises that previously faltered in their original recovery processes. This evolving landscape indicates a growing recognition of the value in preserving businesses and jobs, providing renewed hope for sustainable recovery in challenging economic times.

The importance of Going Concern sale is rising more and more because of the clarity given by the Hon'ble NCLT and NCLAT in various judgments as in Table 1.

[1] (2022) ibclaw.in 33 NCLAT - *Visisth Services Ltd vs. Mr. S. V. Ramani and Ors.*
[2] (2022) ibclaw.in 212 NCLT - *Dekon Enterprises Pvt. Ltd. vs. Anil Anchalia, Liquidator*

Table – 1: Judgements backing Sale as Going Concern

Decisions/ Observations	Case Laws
The sale of a CD as a going concern is similar to a de facto CIRP. Therefore, the relevant judgments apply to sales conducted in this manner. The NCLT has the authority to grant reliefs, waivers, or concessions only when they are directly related to the IBC and the Companies Act, 2013.	*Liquidator of SKP Steel Industries Pvt. Ltd.* NCLT Kolkata Bench order dated 25.07.2023.
It is no longer Res Integra that while approving a CD sale as a 'going concern' in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential 19 Company Appeal (AT) (Insolvency) No. 650 of 2020 to see that the 'CD' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the IBC.	*M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. KTC Foods Pvt. Ltd.* Through Liquidator, NCLAT New Delhi order dated 22.02.2022.
The primary objective of a Resolution Plan, as well as the sale of a CD as a Going Concern, is the revival of the CD's business. As such comparable reliefs and concessions, be granted in both cases.	*Universaltech Paper LLP vs. Liquidator of Kohinoor Pulp & Paper Pvt. Ltd.,* NCLT Kolkata Bench order dated 10.01.2024.
A successful bidder who is declared as successful bidder of sale as going concern can seek access of the Adjudicating Authority (AA) and may pray for necessary directions in accord with and in consonance with the process document in the liquidation proceedings. In result, we partly allow this Appeal and hold that applicant's prayers i.e. relief/concessions/directions need consideration by the Adjudicating Authority for which we grant liberty to the Applicant to make a fresh Application containing prayers which may be commensurate and in accord with terms and conditions of the process document of e- auction process document. The Appellant may submit a fresh application praying for reliefs, concessions and directions which may be considered and decided by the Adjudicating Authority in accordance with law.	*Jasamrit Designers Pvt. Ltd. vs. Liquidator of Apex Buildsys Ltd.,* NCLAT New Delhi order dated 04.07.2023.
In case of going concern sale in liquidation process, successful bidder can approach to Income Tax (IT) authorities to get the benefits of brought forward losses.	*Consortium of RVR Enterprises vs. G. Madhusudan Rao Liquidator of Chadalavada Infratech Ltd.,* NCLT Hyderabad Bench

4. Pros of Going Concern Sale under IBC

(a) **Preservation of Value:** A key advantage of going concern sale is the preservation of the company's value as a going concern. By purchasing the business in its entirety, successful bidders can avoid the depreciation that often accompanies asset sales in liquidation. This is especially important in industries where the value of the business is closely tied to its operational continuity, such as manufacturing, retail, or services. The acquirers find value in a going concern by taking advantage of retaining customers and infrastructure available with the CD.

(b) **Employment Preservation:** One of the most significant social benefits of a going concern sale is the preservation of jobs. By maintaining the business as a going concern, successful bidders can keep the workforce employed, which can also enhance the morale and productivity of the employees, contributing to the revival of the company.

(c) **Long-term Strategic Opportunities:** Acquiring a business as a going concern can offer strategic opportunities for growth. The acquirer can leverage existing operations, brand value, and market position to expand or integrate with their existing business.

5. Current Progress of Going Concern Sale

The Table-2 presents a comprehensive overview of the entities that have undergone the liquidation process and delineates the manner in which they have been concluded.

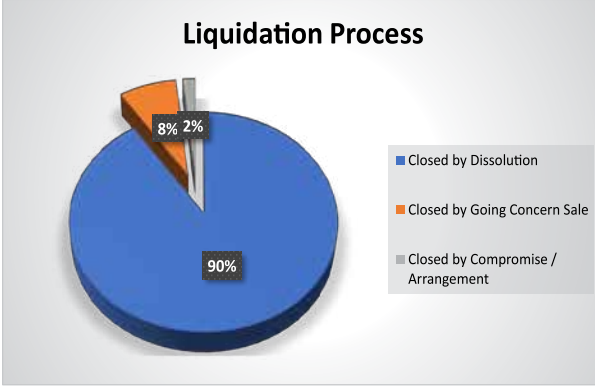
Table 2: Mode of Closure of Liquidation Processes

Status of Liquidation	Till Mar, 2024	Apr – Jun, 2024	Total as on June 30, 2024
Initiated	2470	77	2547*
Final Report submitted	1049	23	1072
Closed by Dissolution	616	33	649
Closed by Going Concern Sale	51	4	55
Closed by Compromise / Arrangement	12	0	12
Ongoing processes	1421	NA	1475
Total Closed cases (A+B+C)	679	37	716
*This excludes 43 cases where liquidation order has been set aside by NCLT / NCLAT / HC / SC.			

Source: *Quarterly Newsletter of IBBI, April to June 2024*

Based on the data presented in the Table-2, it is evident that once a company undergoes the liquidation process, there are only three methods by which it can exit this process: compromise or arrangement, sale as a going concern, or dissolution. Among these methods, only compromise or arrangement and sale as a going concern have the potential to rescue the company, thereby sustaining its operations. Notably, the data illustrates that as of June 30, 2024, 55 companies have been preserved and maintained as a result of the sale of the company as a going concern within the context of the liquidation process.

Chart – 1: Liquidation Processes



The Chart-1 provides a clear delineation of the fact that only 8% of the CD's assets which were undergone liquidation process has been salvaged and acquired through a going concern sale till June 30, 2024, while the remaining CD assets are sold off individually. This process has led to suboptimal economies of scale within the broader economy.

6. Lack of Legal clarity for Going Concern Sales

Although both going concern sales and resolution processes aim to revive the CD, the similarities end there. The Appellate Authority (AA) in the case of *Binani Industries Ltd. vs Bank of Baroda*[3] clarified that a resolution under the IBC is not a 'sale'. Instead, it involves multi-stakeholder consultations and strategic planning for the CD's future viability, taking place within the IBC's institutional framework. A Resolution Plan is binding on all stakeholders, ensuring that the restructuring process is undertaken with care and pragmatism.

In contrast, a going concern sale is merely a sale rather than a restructuring, and there is no legal obligation for the buyer to maintain the debtor as a going concern post-acquisition. Therefore, while a going concern sale might 'revive' the debtor, it does not necessarily 'save' it from corporate demise in the same manner as a Resolution Plan. The IBC is designed to create long-term, binding viability plans for distressed debtors under a comprehensive framework. A fragile and unplanned revival through going concern sales falls outside the IBC's intended scope, which may explain why the IBC assumes dissolution as the natural outcome of liquidation (Section 54). Notably, going concern sale was introduced via an amendment to the Liquidation Regulations rather than the IBC itself. Observing that going concern sale may be ultra vires to the IBC, the Standing Committee on Finance (2020-21)[4] has recommended the deletion of the going concern sale provision from the Regulations. However, until this recommendation is potentially adopted, the popularity of going concern sale is likely to persist due to its appeal to creditors, employees, and buyers. Nonetheless, its very attractiveness could, in the long term, undermine the effectiveness of future resolutions.

> **"While a going concern sale might 'revive' the debtor, it does not necessarily 'save' it from corporate demise in the same manner as a resolution plan."**

The early cases of going concern sale are likely to shape its future trajectory. As going concern sale becomes more popular as a 'second chance' for revival, prospective acquirers may find it more appealing than pursuing a resolution. This preference could be driven by several factors: (a) acquisitions through going concern sale may occur at a much lower cost than through a corresponding resolution, (b) unlike resolutions, going concern sale does not require extensive negotiations within the Committee of Creditors (CoC) or adherence to the rigorous compliance requirements of the IBC, and (c) acquirers are not bound to maintain the debtor as a going concern post-purchase. As a result, prospective acquirers may be less inclined to improve their resolution plans, preferring to wait for a more favourable opportunity through going

3. (2018) ibclaw.in 06 NCLAT, *Binani Industries Ltd vs. Bank of Baroda and Anr.*

4. https://eparlib.nic.in/bitstream/123456789/811572/1/17_Finance_32.pdf (Para 8 of Page 27)

concern sale. The mere existence of going concern sale as an option may disincentivize acquirers from proposing strong resolution plans in the future. The Insolvency Law Committee Report 2020[5] also highlighted this concern, noting that going concern sale could undermine the efficiency of the resolution process.

> **Despite the benefits, going concern sale can expose successful bidders to hidden liabilities and contingent risks.**

7. Bottlenecks of Sale as Going Concern

(a) **Liabilities and Contingent Risks:** Despite the benefits, going concern sale can expose successful bidders to hidden liabilities and contingent risks. Although the NCLT often grants relief from past liabilities, not all risks can be eliminated, especially those that are discovered post-acquisition.

(b) **Operational Challenges:** Reviving a distressed business is no small feat. Successful bidders must often invest substantial time, capital, and resources to turn around the operations, which can be a complex and lengthy process. If the business does not recover as expected, the acquisition can become a financial burden.

(c) **Regulatory and Compliance Issues:** The legal and regulatory landscape can pose additional hurdles. Compliance with various statutory requirements, particularly in heavily regulated sectors, can be a significant burden. Moreover, any lapse in the due diligence process can lead to unforeseen legal challenges.

(d) **Employment Issues:** Since the company has been revived through a going concern sale after the initiation of the liquidation process, there is an arbitrary question as to whether the employees' employment terms continue or if it would be considered as fresh employment. These challenges are faced by the employees who continue to work under the new management or successful bidder.

8. The Way Forward

To maximize the benefits of going concern sale and mitigate its risks, several measures can be adopted:

(a) **Enhanced Due Diligence:** Acquirers should conduct comprehensive due diligence to identify all potential liabilities and operational challenges. Some liabilities may rise up as a post facto item which the acquirers may not be aware but are significant to carry out the business and the acquirers' expectations. These liabilities may fall on the acquirers on account of various contracts which may bind the CD in future.

(b) **Strategic Planning:** A clear post-acquisition plan, including integration strategies and operational turnaround plans, is essential.

(c) **Regulatory Navigation:** Engaging with regulators early in the process regarding renewal of various licenses, tax benefits for acquiring company as a going concern and other statutory compliances can help address compliance issues and avoid delays. Most acquirers are interested in the potential of acquiring distressed assets for regulatory and tax benefits, which can be advantageous for them. Therefore, it is important to thoroughly assess these aspects at an earlier stage before making the acquisition.

(d) **Legal Protections:** Negotiating for maximum reliefs and protections in the bidding process can shield acquirers from unforeseen liabilities. These challenges can come from long term contracts and impact of these on the acquirers.

[5] https://ibbi.gov.in/uploads/resources/c6cb71c9f69f66858830630da08e45b4.pdf (Para 5.8 of Page 74)

(e) **Retention of Employees:** The acquirer should assess whether continuing employees are treated as fresh employees or their employment continues, because this matter affects the employees from the point of gratuity calculation and cash flow of the CD and needs to be sorted well in time.

As the use of going concern sale under the IBC continues to evolve, its impact on the resolution landscape will become clearer. Successful bidders must remain vigilant and proactive in managing the complexities associated with such acquisitions to ensure they derive the maximum benefit from this unique opportunity.

9. Conclusion

The sale of a CD as a going concern under the IBC framework has both advantages and potential drawbacks for successful bidders. It offers significant benefits such as preserving value, continuing business operations, retaining jobs, and providing long-term strategic opportunities. Acquiring a business at a lower cost, along with reliefs granted by the NCLT in terms of liabilities, makes it an attractive option.

However, there are inherent risks and challenges. Bidders may still face contingent liabilities, operational hurdles, and regulatory compliance issues that could complicate post-acquisition integration. Additionally, the absence of an obligation to maintain the business as a going concern can undermine the IBC's long-term resolution goals.

> **"Going Concern sales should be viewed as a tool that, when carefully executed, can facilitate business revival but also requires vigilant management to avoid future complications."**

While going concern sales are gaining popularity due to their apparent benefits, a balanced approach is necessary to address their shortcomings. Enhanced due diligence, strategic planning, and legal protections are crucial to mitigating risks. As the legal framework and its application continue to evolve, the true impact of this sale method on India's insolvency landscape will become clearer. Ultimately, Going Concern Sales should be viewed as a tool that, when carefully executed, can facilitate business revival but also requires vigilant management to avoid future complications.

Section 12A and its significant impact on CIRP Process

R. S. Balasubramanyam
The author is an Insolvency Professional (IP) Member of IIIPI. He can be reached at
rsbalasubramanyam7@gmail.com

The Section 12 A was inserted in the IBC in 2018 via an amendment by the Parliament. In the course of time, the provision of withdrawal under Section 12 A has become one of the flagship provisions under the IBC. As per the judgement of NCLAT in the matter of Sanjeev Mahajan vs. Nehru Place Hotels & Real Estates Pvt Ltd & Ors (2024), which was also upheld by the Supreme Court, the Section 12 application cannot be admitted once the CoC has approved the Resolution Plan, and it is pending for approval of the NCLT. Besides providing a detailed analysis on the operation of Section 12A from the perspective of jurisprudence developing around it, the article also explores various measures which can be used by creditors for mediation before filing insolvency petition.
Read on to know more….

1. Introduction of the IBC

The Insolvency and Bankruptcy Code, 2016 (IBC or the Code) was passed by Parliament on May 28, 2016, to ensure that the financially stressed companies which are either operating at lower scale or not in operation are brought back into operation and remain as going concern for the benefit of the various stakeholders in the eco system. The purpose as stated, inter alia in the IBC, is to consolidate and amend the laws relating to the reorganisation and insolvency resolution of corporate persons, partnership firms and individuals, to maximise the value of assets and to increase the availability of credit. Further, the intention behind introducing IBC is also to ensure that the process should not be misused for recovery of the dues by the creditors and the liquidation of the Corporate Debtor (CD) shall be a last resort.

The IBC prescribes threshold debt limits for making an application, conditions, procedures, timelines,

adjudication, appeals for the resolution process of the CD. Besides covering CIRP and Liquidation, the Code also covers Pre-packaged Insolvency Resolution Process (PRIRP) for MSMEs, Fast Track Corporate Insolvency Resolution Process (FTCIRP) and Voluntary Liquidation of Corporate Persons (VLCP). The process typically involves the following steps:

(i) The Financial Creditors under Section 7, (mainly debt lenders; and also includes the allottees of the real estate project); Operational Creditors (mainly supplier of goods and services) under Section 9 can approach the Adjudicating Authority (AA) to admit the company into CIRP if their dues of ₹1 crore and above are not paid by the CD.

(ii) The CD under Section 10 of the IBC, can also approach the AA.

"After the approval by CoC with 66% value of votes, RP submits the Resolution Plan to the NCLT for its final approval under Section 31."

(iii) Once the CD is admitted into CIRP, there would be a moratorium under Section 14 inter alia in respect of any legal proceedings against the CD. Further, an Interim Resolution Professional (IRP)/ Resolution Professional (RP) is appointed who takes over the charge of the company, as an officer of the Court to run the company for the benefit of all the stakeholders. A Committee of Creditors (CoC) is formed under Section 21, which is the decision-making body. The RP issues invitation for Expression of Interest (EoI). Thereafter, the resolution plans are submitted by Prospective Resolution Applicants (PRAs) under Section 30 to the RP and then after the approval by CoC with 66% value of votes, RP submits it to the NCLT for its final approval under Section 31. The decision of the NCLT can be appealed before the NCLAT which can be challenged before the Supreme Court.

2. Genesis of Section 12A of the IBC

Section 12A was introduced into the IBC through an amendment by the Parliament w.e.f. June 6, 2018, to provide an opportunity to promoters, suspended directors (SD) of the CD, which is admitted into CIRP, to regain/ take back the company that they had promoted, managed and have emotional connect. Thus, the purpose of Section 12A is to give promoters, an opportunity to come out of the CIRP.

In the *case*[1] of *Uttara Foods & Feeds (P.) Ltd. v. Mona Pharmachem,* the Supreme Court ruled that the competent authority may amend the rules to enable the NCLAT to exercise its inherent power under Rule 11 of the National Company Law Appellate Tribunal (NCLAT) Rules, 2016 to allow a compromise to take effect after admission of the insolvency petition. Thus, to allow withdrawal of such cases.

3. Section 12A

Section 12A of the IBC empowers the AA to allow the withdrawal of applications filed under Sections 7 or 9 or 10 of the IBC on an application made by the applicant with the approval of ninety per cent voting share of the CoC, in such manner as may be prescribed. The application can be withdrawn under Section 12A before or after the formation of the CoC and the provisions relating to withdrawal of the application is directory and not mandatory[2]. Thus, the Code provides multiple opportunities to the SD to regain the CD.

(a) The main precondition for withdrawal is that the 90 percent of the CoC members shall agree to it.

This provision of withdrawal is not applicable to Resolution Applicant[3] under Sections 7, 9 and 10. In other words, the Resolution Applicants under the above Sections, once submit the Resolution Plan and the same is accepted by the CoC, then they cannot withdraw the Resolution Plan.

4. Section 29A of the IBC Code

Section 29A is one of the crucial sections under the IBC. This section determines who all cannot participate in the CIRP and submit Resolution Plan. Every applicant has to scrupulously follow the conditions of this Section.

1. *Uttara Foods & Feeds (P.) Ltd. vs. Mona Pharmachem* [185/(2017) ibclaw.in 10 SC]
2. *Swiss Ribbons Private Limited and Another vs. Union of India and Ors.* [(2019) 4 SCC 17]
3. *Maharashtra Seamless Ltd. vs. Padmanabh Venkatesh* [(2020) 158 SCL 567].

> **Section 29 A of the IBC prohibits the suspended directors and related parties from taking part in resolution process and submitting resolution plan for the CD.**

The provisions of the Section 29A of IBC prohibit certain persons from taking part in the Resolution Process. Thus, one of the class of persons is, SD and their group and other persons connected with SD are precluded from submission of Resolution Plan. The premise behind barring the SD has been, *inter alia*, stated in the Report of the Insolvency Law Committee- March 2018 that it is due to the misconduct of the CD that default occurs, and it would be desirable to prevent them to regain the control and reward themselves at the expense of the creditors and it undermine the process of the IBC. However, Section 240A of the Code provides an exemption to the resolution applicants from Sections 29A (c) and 29A (h) if the CD is an MSME.

5. Impact of Section 12A on CIRP

Once the application under sections 7 or 9 or 10 of the IBC is admitted by the NCLT, the CIRP triggers. Under Section 12 of the IBC, the CIRP should be completed within180 days and with approval of NCLT, the timelines can be extended to 270 and maximum 330 days.

Further, within 60 days of the Insolvency Commencement Date (ICD), the RP should issue Form G (Invitation for Expression of Interest) from those persons who are not barred under Section 29A of the IBC. Under Regulation 36B of IBBI (CIRP), Regulation 2016 and as amended from time to time, the RP shall issue RFRP including evaluation matrix and information memorandum within 5 days of the issue of "Final List".

Once the Final List is decided and RFRP is issued, the PRAs submit their plans along with EMD which is based on the assets of the CD under CIRP. The EMD does not carry any interest and is returned when the final decision is taken by the CoC. Substantial efforts and time are consumed in preparation of resolution plan which runs into hundreds of pages based on the assets of CD.

Even when the Successful Resolution Applicant (SRA) is decided by the CoC, the SD whose Section 12A application was rejected by the NCLT would appeal before NCLAT and the Supreme Court. The disposal of these appeals would take considerable time due to pendency and for other administrative reasons.

Meanwhile, the SRA, who, based on the timeline as per his Resolution Plan, would have arranged funding, lined up professionals, other personnel will seek approval from various authorities as per the Resolution Plan. As at this stage, there is no certainty as to the ultimate outcome due to the pending application under Section 12A /appeal, the SRA would be forced to incur substantial cost till the final disposal of Section 12 A application.

In the case of *Sandeep Gupta vs. J.M. Financial ARC Ltd.*[4], the CoC rejected the Section 12A application and proposed to consider the resolution plans received from the Prospective Resolution Applicant (PRA). However, the NCLAT New Delhi, inter alia, held that the PRA cannot direct the CoC to evaluate the Resolution Plan which was received by them and hence ordered to accept the Section 12A application. Thus, it is established that the PRA does not have right to get their Plan approved.

As per the Para 39 of the interim order, inter alia, it was stated that mere fact that the PRA has submitted resolution plan does not give him any right to get the plan approved, especially when CoC was interdicted from not considering the plan by interim order passed in these appeals. Thus, in the above case, despite the resolution plans along with the EMD were submitted and deposited, but the same was not opened in view of the pending decision of Section 12A application.

6. Opportunities/Reliefs available from the Banks and NCLT to the Promoters/ Directors to retain their Company before the case is brought under IBC

(a) Relief measures from the Banks/ Financial Creditors (FC)

When the banks review the monthly/quarterly reports submitted by the CD as a part of the conditions of the loan/ debt sanction, they generally discuss the matter with the promoters/SD from time to time, about the performance of

[4] *Sandeep Gupta vs. J.M. Financial ARC Ltd.*, & Anr., in the case of Asian Hotels Private Limited [(2024) ibclaw.in 16 NCLAT]

the company, future growth plans, industry performance, impact of international environment, etc. If there is a delay on payment of interest /principal and when it is a NPA, the FC, intensely and frequently deliberate upon the business plan and its credibility as to how the company can overcome the financial stress and ensure repayment of the debts and interest which are outstanding and as well ensure the timely payment in the future.

Further, if the FC is of the opinion that the borrower is not a fraud/wilful defaulter and delay/default is mainly due to the unfavourable conditions prevailing in the industry like it happened in the case of power sectors, infrastructure, etc., or for various reasons such as war, covid, epidemics, they may resolve it by way of an additional loan, changes in repayment plans or conversion of loan into equity, etc. As per the Reserve Bank of India[5] (RBI), even in the case of fraud/willful default account, the bank at its discretion can have "compromise settlement". The penal measures currently applicable to borrowers classified as fraud or willful defaulter in terms of the Master Directions on Frauds dated July 1, 2016 and the Master Circular on Willful Defaulters dated July 1, 2015, respectively, remain unchanged and shall continue to be applicable in cases where the banks enter into compromise settlement with such borrowers.

Such penal measures entail inter alia that no additional facilities should be granted by any bank/ FC to borrowers listed as willful defaulters, and that such companies (including their entrepreneurs/ promoters) get debarred from institutional finance for floating new ventures for a period of five years from the date of removal of their name from the list of willful defaulters. In addition, borrowers classified as fraud are debarred from availing bank finance for a period of five years from the date of full payment of the defrauded amount. Thus, the above guidelines will ensure greater transparency of the whole process. Besides, the following measures can also be used for debt restructuring/ settlement before invoking the IBC:

(i) Other stressed borrowers can avail the OTS (one-time settlement)/ re-structuring, with bank to overcome the financial stress where the haircut for the bank varies from 35-50% of the loan and interest outstanding.

"In the case of *SBI vs. Rajesh Agarwal*, the Supreme Court ruled that a borrower must be given a hearing by the lender before an account is classified as fraud."

(ii) In the case of SBI[6], the Supreme Court upheld a judgement of Telangana High Court that said a borrower must be given a hearing by the lender before an account is classified as fraud. In line to this judgement, the RBI has issued on July 15, 2024, Master Directions, 2024, providing for systematic process for issuing Show Cause Notices (SCNs) and for evaluating responses from individuals / entities under investigation before making any determination of fraudulent activity.

(iii) Recently, the Supreme Court, in *Pro Knits case*[7], though relating to MSMEs, *inter alia*, stated that the Framework for Revival and Rehabilitation of MSME vide Notification dated 29.05.2015, having statutory force, are binding to all Scheduled Commercial Banks (SCBs), licensed to operate in India by the RBI, as stated in the said Directions.

From the above, it is clear that the Banks/FI provides umpteen opportunities to the promoters/directors of the financially stressed entities to overcome from the stressed financial conditions. Typically, these negotiations consume 6 to 12 months.

(b). Relief from the NCLT/NCLAT

Furthermore, when the applications are filed under Sections 7 or 9 or 10 of the IBC for admission by the NCLT, the NCLT is considerate to provide an opportunity to the CD to settle the matter before its admission for CIRP and the case is adjourned typically for a period of 6 to 12 months.

[5] *Sandeep Gupta vs. J.M. Financial ARC Ltd.,* & Anr., in the case of Asian Hotels Private Limited [(2024) ibclaw.in 16 NCLAT]

[6] *State Bank of India & Others vs. Rajesh Agarwal & Ors.* [(2023) ibclaw.in 36 SC]

[7] *Pro Knits vs. Board of Directors of the Canara Bank and Ors.* [(2024) ibclaw.in 177SC]

7. Important Case Laws-Section 12A

Despite reliefs are available to SD as mentioned above, they file Section 12A applications. Followings are the cases which are illustrative as to the litigation by the SD at all levels of judicial forum before /after formation of CoC and the time that is consumed in disposing of the case by the AA and NCLAT:

(a) In the case of *Pratham Expofab Pvt. Ltd. vs. Anil Matta*[9], the SD pleaded for considering his second application under Section 12A as the earlier application was rejected by the CoC while the Resolution Plan was accepted by CoC and pending for NCLT approval. NCLAT ordered to expedite the case in favour of SRA as nearly 4 years since the Resolution Plan was approved by CoC. It rejected the plea of SD.

(b) In the case of *Asha Chopra and Ors. vs. Hind Motors India Limited*[10], it was decided by the NCLAT, New Delhi, that an application under Section 12A is not permissible during the liquidation period in terms of the Section 33 and Regulation 2B of the Liquidation Regulation. Further, even during the Liquidation Process, the parties have arrived at a settlement, then the Application filed under Section 7, 9 and 10 can be withdrawn u/s 12A of the IBC.[10a]

> **In *Sanjeev Mahajan vs. Nehru Place Hotels,* the NCLAT held that Section 12A application cannot be accepted once the Resolution Plan is approved by the CoC and pending before AA.**

(c) In the case of *Vallal RCK*[10b], the Supreme Court upheld the decision of CoC exercising their commercial wisdom as to acceptance of the settlement plan.

(d) If the Resolution Plan already approved by the CoC and pending before NCLT for approval: In the case of *Sanjeev Mahajan vs. Nehru Place Hotels & Real Estates Pvt Ltd & Ors*[11] it was inter alia, held by the NCLAT, New Delhi, that Section 12A application cannot be accepted once the Resolution Plan has been approved by the CoC and the application for approval of the Plan is pending before AA. Thus, NCLAT stated that the AA should have considered and decided the application for approval of the Resolution Plan rather admitting the Section 12A application. Further on an appeal by the SD, the SC held that it was not necessary for it to interfere with the judgement of NCLAT.

8. Conclusion

Clarifying the objectives of the IBC, the NCLAT in the matter of *Binani Industries Limited*[12] *Vs. Bank of Baroda & Anr.* (2018), said, "The first order objective of the Code is resolution. The second order objective is maximisation of value of assets of the firm and the third order objective is promoting entrepreneurship, availability of credit and balancing the interests of stakeholders. This order of objectives is sacrosanct." This indicates that the time bound formal mediation mechanism with the promoters of CD should be tried prior to the initiation of CIRP. In this process, the banks, by using RBI's "Master Directions, 2024", judicial pronouncements and other instruments can work towards mediation.

---

10. *Asha Chopra, Dimple Gulati, Deep Rathore vs. Hind Motors India Limited* through its liquidator Sh. K.V. Jain, and Ashish Mohan Gupta, Union Bank of India through its authorized representative Sh. Navneet Chauhan [2024 (10) TMI 463]

10a. *S. Rajendran, Liquidator of Arohi Infrastructure Pvt. Ltd. vs. Tata Capital Financial Services Pvt. Ltd.* – NCLT Chennai Bench IA(IBC)/514(CHE)/2022 in CP/672/IB/2017 dt 20th June 2022.

10b. *Vallal RCK vs. Siva Industries and Holdings Ltd. and Ors.* Civil Appeal Nos. 1811-1812 of 2022 Decided on 03-Jun-22.

11. *Sanjeev Mahajan vs. Nehru Place Hotels and Real Estates Pvt Ltd & Ors* [2024 (2) TMI 680 – Supreme Court]

12. Judgement dated 14th November, 2018 of the NCLAT in the matter of *Binani Industries Limited Vs. Bank of Baroda & Anr.*

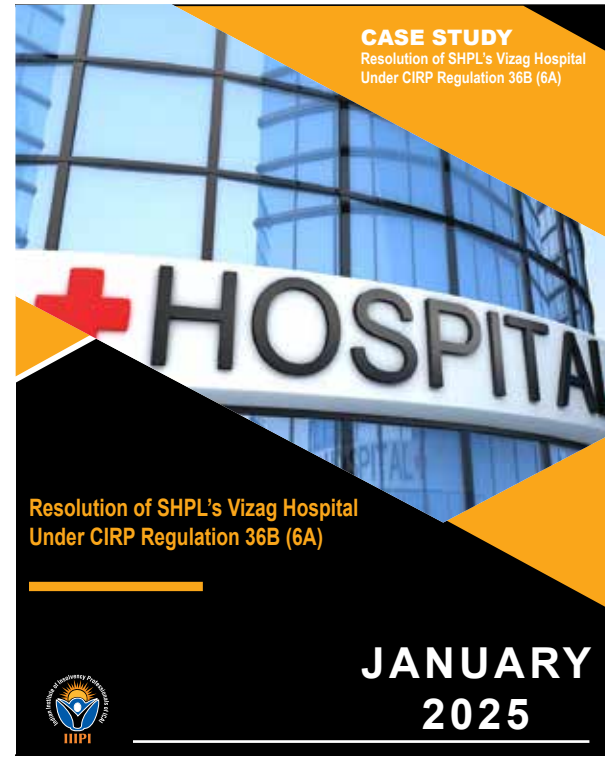
Resolution of SHPL's Vizag Hospital Under CIRP Regulation 36B (6A)

Sevenhills Healthcare Private Limited (SHPL), the Corporate Debtor (CD), owns and operates one hospital each in Visakhapatnam (Vizag) and Mumbai. The CIRP of the SHPL was initiated on March 13, 2018, and a Resolution Plan was approved by NCLT on July 26, 2019. However, the Supreme Court set aside the order of NCLT and ruled that any resolution of the Mumbai hospital could only be done after an approval was received from the general body of the Municipal Corporation of Greater Mumbai (MCGM). As the Mumbai hospital was requisitioned by the MCGM as a dedicated Covid-19 facility, a fresh effort of inviting resolution plans could not yield expected results.

Meanwhile, the IBBI, on September 16, 2022, inserted Regulation 36 B (6A) to the CIRP Regulations, paving the way for asset-wise resolution of a CD. Foreseeing an opportunity, the RP in consultation with the CoC decided to invite resolution plans independently for Vizag hospital. Finally, the Vizag hospital received a Resolution Plan of ₹153 crore against its liquidation value of ₹87.9 crore. Thus, the RP successfully completed the first-of-its-kind transaction under Regulation 36B(6A).

In the present case study, Mr. Abhilash Lal, the RP of the CD, and Mr. Darshil Mashru (Co-Author) have highlighted the challenges faced during the resolution of the Vizag hospital and the solutions the RP and his support team discovered in cooperation with the CoC. ***Read on to know more…***

Abhilash Lal and Darshil Mashru
The author is Insolvency Professional (IP) Member of IIIPI and the Co-Author is a lawyer.
He can be reached at
abhilash.lal@gmail.com



1. Introduction

Sevenhills Healthcare Private Limited (SHPL), the Corporate Debtor (CD) is a private limited company promoted by Dr. Jitendra Das Maganti with significant investment by J.P. Morgan Chase & Co. SHPL owns and operates a 303-bed hospital at Visakhapatnam (Vizag) in Andhra Pradesh, and a 1,500-bed hospital through a public-private partnership (PPP) with the Municipal Corporation of Greater Mumbai (MCGM) in Mumbai. SHPL was admitted to Corporate Insolvency Resolution Process (CIRP) on March 13, 2018, on an application filed by a financial creditor.

The Resolution Professional (RP) and his support team successfully completed the first-of-its-kind transaction under Regulation 36B(6A) of the CIRP Regulations, where resolution of the Visakhapatnam Hospital, as a standalone unit, has been achieved on a going concern basis while ensuring no disruption in operations, with the resolution of SHPL and its Mumbai hospital continuing.

The RP and his support team identified allocable assets and liabilities to both Visakhapatnam and Mumbai hospitals, implementing a classic M&A strategy of separate-and-sell, maximizing value for all stakeholders and enabling the Successful Resolution Applicant (SRA) and stakeholders of Visakhapatnam Hospital to write a growth story independent of the Mumbai Hospital.

The support team also worked towards improving the operations of the hospitals throughout the CIRP, reinforcing the going concern status of the company. This enabled the support team to market the Visakhapatnam Hospital, generate interest in the same and obtain IBC compliant resolution plans before handing over the Visakhapatnam hospital to Mr. M. K. Rajagopalan and MGM Healthcare Private Limited, the Successful Resolution Applicant (SRA), a strategic player, who operates multiple hospitals in South India.

The present case study discusses the steps taken towards resolution of Visakhapatnam Hospital, a first of-its-kind resolution under Regulation 36B(6A) setting precedent where a plan was received on a going concern basis for a unit while the CIRP continued for the remaining entity.

2. Company Profile

SHPL, a private limited company promoted by Dr. Jitendra Das Maganti and Mrs. Maganti Renukarani, with a significant investment by J.P. Morgan Chase & Co., is a healthcare company based in Visakhapatnam. SHPL owns and operates a 303-bed hospital along with a nursing college in Visakhapatnam and commenced operations in 1988. It also operates a 1,500-bed hospital through public-private partnership (PPP) model with the MCGM in Mumbai.

"Visakhapatnam Hospital is a major super-specialty hospital in the region. At any given time about 76% of the IPD patients in the hospital have been from Odisha and Chhattisgarh."

Visakhapatnam Hospital is a major super-specialty hospital in the region, catering to patients from as far as southern Odisha and southern Chhattisgarh, with patients from both these states contributing close to 76% of the inpatient (IPD) population at any given time.

The Mumbai hospital stands on a 19-acre plot in Andheri East, leased from the MCGM, with a potential for further expansion as well as for constructing a medical college. As part of the PPP agreement with the MCGM, 20% of the beds are reserved for MCGM stated categories, to provide affordable super-specialty healthcare to the underprivileged sections of the society.

The Visakhapatnam Hospital is on Waltair Main Road, 2.5 km away from Visakhapatnam railway station, 1.5 km from the APSRTC Bus Depot and 12 km from the Visakhapatnam Airport, in addition to being in close proximity to major industrial institutions in the area. The Mumbai hospital is located just 3.0 km from the Chhatrapati Shivaji Maharaj International Airport (Terminal 2). Both hospitals are accredited by the National Accreditation Board for Laboratories (NABL) and National Accreditation Board for Hospitals and Healthcare providers (NABH), while the Mumbai hospital was previously accredited by the Joint Commission International (JCI).

3. Background of the CIRP till 2023

The National Company Law Tribunal (NCLT) / Adjudicating Authority (AA) admitted a CIRP application against SHPL (CD) on March 13, 2018, and ordered commencement of insolvency proceedings. The CIRP application was filed by Axis Bank Ltd, a financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code). A resolution plan for the CD was approved by NCLT on July 26, 2019. However, the order approving the plan was overturned by the Hon'ble Supreme Court on November 15, 2019. The Supreme court ruled that any resolution of the Mumbai hospital of SHPL could only be done after an approval was received from the general body of the MCGM under the BMC Act. Subsequent to the Supreme Court's order and directions from the NCLT, the RP issued a fresh Invitation for Expression of Interest (EOI) on December 25, 2019, and a Request for Resolution Plans (RFRF) on February 13, 2020. However, due to the onset of the Covid-19 pandemic, since March 2020, the Mumbai Hospital of the Corporate Debtor was requisitioned by

the MCGM as a dedicated Covid-19 facility under the Disaster Management Act, 2005. In view of this, the CIRP of the CD was extended from time-to-time as the CIRP could not proceed to its conclusion till the Mumbai Hospital remained requisitioned under the Disaster Management Act, 2005.

4. Rationale for asset-wise Resolution

As the Mumbai Hospital remained requisitioned by the MCGM as a designated Covid-19 facility, post the conclusion of the Covid-19 vaccination drive, RP sought cooperation from MCGM to conclude the CIRP. However, since MCGM has continued to requisition the Mumbai Hospital and not confirmed a closure date, the CIRP has been in a deadlock. In the meantime, the IBBI, via notification no. IBBI/2022-23/GN/REG093, dated September 16, 2022, inserted Regulation 36B(6A) to the CIRP Regulations, paving the way for asset-wise resolution of a Corporate Debtor. Foreseeing an opportunity of resolution, the RP, and the support team and Committee of Creditors (CoC) deliberated and decided to explore an asset-wise resolution. Basis the deliberations, RP and the support team identified allocable assets and liabilities associated with both the hospitals, and cost and claims associated to each hospital.

> **"On September 16, 2022, the IBBI inserted Regulation 36B(6A) to the CIRP Regulations, paving the way for asset-wise resolution of Corporate Debtor."**

5. Key Considerations and Issuance of RFRP (Request For Resolution Plan)

Basis identification by RP and the support team, it was agreed with the CoC that the Visakhapatnam Hospital and Mumbai Hospital could be considered as two separate identifiable assets, and we could proceed for resolution for both assets separately (hereinafter identified as "categories"). There were multiple areas that the support team had to answer satisfactorily to ensure we remained fully compliant with all laws and regulations such as:

i. compliances with the Code and the Regulations formed thereunder;

ii. treatment of claims and liabilities in asset-wise resolution plans;

iii. distribution amongst class of creditors of each asset;

iv. Inter-se distribution within a class of creditor of each asset;

v. resolving the complex security structure;

vi. tagging of the legal entity with an asset;

vii. treatment of tax losses;

viii. impact on operations;

ix. lack of judicial precedents and contradicting interpretations of the law;

x. preparation of Evaluation Matrix;

xi. comparing plans received for the CD as a whole with asset-wise resolution plans

xii. operational issues like usage of brand, shifting of registered office, transfer of multiple regulatory registrations like GST, TDS, PF etc., transfer of hospital empanelment with various customers and government schemes;

Further, since a resolution plan must deal with liabilities, interest of all stakeholders, provide for implementation schedule etc., the categorisation of assets becomes more complex. Considering the requirements of Section 30 of the IBC, read with Regulations 37 and 38 of the CIRP Regulations, and the continuing requisition of Mumbai Hospital by MCGM, it was decided that assets and liabilities associated thereto of both hospitals would need to be dealt with for any resolution plan to comply with the Code and CIRP Regulations. Additionally, considering the Mumbai hospital to be the main and larger asset, though under requisition by the MCGM, it was decided that CD shall be tagged along with Mumbai Hospital.

The CoC decided that considering the difference in complexity of both assets, separate Evaluation Matrices were required for both hospitals. This allowed the CoC to evaluate both the assets independently and allowed evolution of evaluation matrix according to complexity of the asset and attached liabilities thereto. The CoC, in the interest of maximisation of value, also decided that, if a Prospective Resolution Applicant (PRA) is desirous of acquiring the CD as a whole, they shall submit two

separate, resolution plans for each hospital and the CoC, at its sole discretion, may offer maximum weightage to the Resolution Plan(s) which provide for resolution of CD as a whole.

Accordingly, to resolve both the assets together, the RP issued a fresh Invitation of EoI dated January 05, 2023, and subsequently, RFRP dated May 03, 2023, as per Regulation 36B(6A) of the CIRP Regulations inviting separate resolution plans under two categories – (i) Category I being the Vishakhapatnam Hospital, and (ii) Category II being the Mumbai Hospital and the CD.

6. Resolution Process, Resolution Plan and its challenges

In response, the RP and the support team received multiple expressions of interest (EoI) from prospective resolution applicants (PRAs) for both, the Mumbai and Visakhapatnam Hospitals. Meanwhile, given the situation with MCGM, RP took appropriate legal steps to ensure no coercive steps such as cancellation of the PPP contract / lease were taken.

In view of the prevailing circumstances, the CoC decided to call for Resolution Plans for Category I and provide extension for submission for Category II. On 31 August 2023, RP and the support team received three resolution plans for the Visakhapatnam Hospital. Being a first-of-its-kind transaction, PRAs also faced multiple challenges in addressing various questions and challenges.

> **"The CoC decided to call for resolution plans for Category I (Visakhapatnam Hospital) and provide extension for submission for Category II (Mumbai Hospital)."**

Since the categories defined in the RFRP consisted of all the assets and liabilities associated thereto, assets, outstanding operating cost, claims of creditors, liabilities in the books of accounts were bifurcated between both the categories. Accordingly, resolution plans pertaining to Visakhapatnam Hospital addressed claims and liabilities relating to Visakhapatnam and hence, the amount under these resolution plans was allocated towards liabilities and creditors of Visakhapatnam Hospital only.

However, loans extended by the financial creditors to the Corporate Debtor were as a single legal entity. Therefore, were not allocable to any defined category. Coupled with a complex security structure, determination of intra-creditor realisable value upon resolution posed a significant risk of intra-creditor litigation. In the interest of resolution, CoC members extensively deliberated on the distribution and concluded that all assenting creditors would be paid in proportion to their claim, irrespective of security held, and dissenting creditors will be paid as per the Code. This cooperation amongst members of the CoC was the foundation of this unique resolution going forward.

RP and the support team had also identified various non-core assets tagged as part of the Visakhapatnam Hospital. Besides, the RP and the support team successfully negotiated with the PRAs to release the non-core assets of more than ₹45 crore in favour of the CoC without impacting the Plan value. Post tagging of non-core assets to the CoC, the fair value and liquidation value of the Vizag asset was ₹121.5 crore and ₹87.9 crore respectively.

A major question before PRAs, RP team and CoC was distribution of Resolution Plan proceeds amounting ₹153 crores. Though outstanding costs had been allocated to each unit, process related cost like RP and support team fees could not be allocated to any single unit. Also, the total outstanding CIRP cost, mainly interim finance and interest thereon, was more than the expected Vizag resolution plan amount. After multiple rounds of deliberation, it was decided, with the consent of CoC members, that CIRP cost shall be paid at actuals and out of amount allocated to financial creditors. CIRP cost (OC claims) pertaining to Vizag operations was paid as the resolution was an asset sale and asset was being demerged into a separate entity. Hence, the same was paid to prevent any disruption in operations of the asset. PRAs covered their exposure by capping the total resolution plan amount, in case of any unforeseen additional liability towards acquisition of the Visakhapatnam Hospital.

7. Resolution Plan: Operational and Tax Challenges

The CIRP for the CD had extended to over 5 years due

to litigation and Covid-19 related issues. Further, given the age of the buildings, dated equipment, spread out facilities, legacy operational issues and challenges under Covid 19, the Visakhapatnam Hospital, it would not have been a very attractive stand-alone acquisition for Resolution Applicants (RAs). However, the RP and the support team not only managed to maintain the company as a going concern as per the provisions of the Code, but also successfully transformed business operations leading to superior performance and achieving lifetime high operational and financial milestones. This showcased the potential of the hospital and attracted the interest of RAs.

Some key areas where RP team worked towards improving operations of Visakhapatnam Hospital were:

I. Revamp of Organisational Structure

(a) To ensure proper oversight over the hospital, the management structure of hospital was reviewed and revamped in a comprehensive manner.

(b) A new CEO with relevant experience in healthcare sector was appointed to ensure proper controls were in place to prevent any significant operational leakage in the Vizag hospital.

> **"A new CEO, with relevant experience in healthcare sector, was appointed for Vizag hospital to ensure proper controls were in place to prevent any significant operational leakage in the hospital."**

(c) Key positions of Chief Medical Superintendent and Hospital Administrator were restaffed after substantial review of credentials and extensive interviews.

(d) Key departments like Human Resources and Marketing were revamped to prevent wastage and promote achievement of targets in an efficient manner

II. Marketing and Empanelment

(a) The marketing department of hospital was re-structured into two separate departments: Marketing and Corporate Development - to ensure better focus and specialization.

(b) Candidates with extensive experience in hospital marketing were interviewed and selected to aid the revival efforts of hospital.

(c) Innovative marketing methods like social media marketing and digital screens were used to promote the hospital in a cost-effective way while ensuring extensive reach.

(d) Various events such as medical camps were held from time to time to ensure that the name and recognition of hospital remained intact despite facing challenges stemming from CIRP.

(e) Empanelment with key public and private players in the surrounding areas to ensure a steady flow of patients.

III. Doctor Structure

(a) The hospital faced an extensive outflow of key doctors, post-Covid 19 pandemic due to reduction in speciality patients (reducing variable compensation) and inability of the hospital to pay increased salaries offered by competitors in the market.

(b) To offset this outflow, new doctors with suitable knowledge and experience were hired and they performed successfully under the new supervision over the CIRP period.

(c) The salary structure of doctors was revamped to ensure a proper balance between fixed and variable pay ensuring equitable distribution of revenue between hospital and doctors.

IV. Capex

(a) To ensure the infrastructure of hospital was in line with new advances and competitors, significant improvements were made in the hospital.

(b) Modular Operation Theatres (OTs) were constructed to ensure adequate infrastructure in relation to operation of patients.

(c) Cardio-Thoracic department of the hospital

was started for which RP team utilized various innovative methods like refurbishment and leasing to procure equipment at lower cost as compared to outright purchase.

(d) Liver transplant facility was provided to Visakhapatnam populace through the inauguration of the Liver Clinic, a one-of-its-kind initiative, in collaboration with a leading Hyderabad based institute.

(e) All changes / modernizations were done in regular consultation with the staff since finance was limited to internal accruals alone. The requirements were prioritized in terms of patient needs, safety / regulatory requirements and payback period.

V. Cost Reduction Initiatives

(a) For every purchase order, multiple quotations were sourced to optimize the procurement cost.

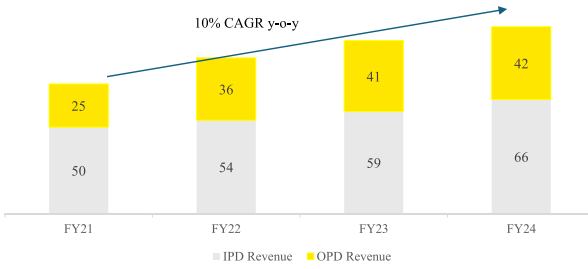
(b) Doctors' salary structure was revamped to prevent excessive outflow of doctor cost as compared to competitors.

(c) Extensive negotiations were conducted to ensure cooperation of vendors despite significant pre-CIRP dues.

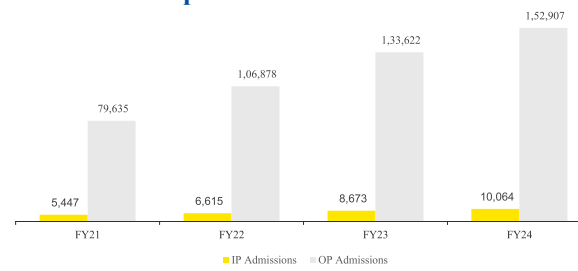
(d) The excess manpower of hospital in areas like housekeeping was trimmed down significantly to reduce employee cost while retaining service standards.

Following the efforts undertaken by RP to improve operations of the hospital, significant improvements were seen in key performance metrics of the hospital:

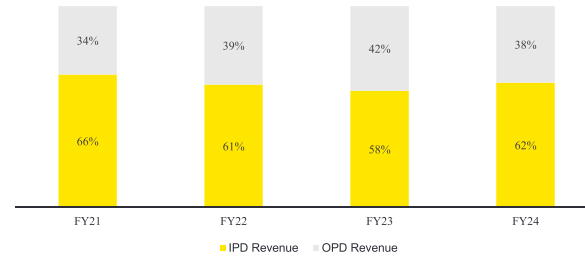
Graph 1: IPD and OPD Revenue Trend (INR in Crore)



Graph 2: Number of Patients



Graph 3: Revenue Contribution %



Significant improvements were also made in the infrastructure of the hospital to ensure the same is in line with competing hospitals of Vizag:

- The hospital canteen has been renovated at a cost of ₹23 lacs with ₹10 lacs borne by the canteen operator.
- OPD rooms have undergone renovation in phased manner with renovation cost at ₹0.7 lacs per OPD.
- Upgradation of 8 rooms to 'Deluxe' AC rooms with better facilities to attract higher income patients at minimal cost.
- Purchase of 128 slice CT scan machine financed partly by sale of old machine.
- Renovation of the modular OTs within the allocated budget of ₹~150 lacs.

Since resolution plans were received for a particular category of the CD, transfer of the asset in a clean and effective manner was critical to successful implementation. Helping PRAs understand the resolution process was a challenge given the unique nature of the transaction. A key concern for the PRAs was lack of precedents, an MCA white paper discussing potential amendments in the Code, and contradicting interpretations of the amendment.

Resolution plans received envisioned a simple transfer of assets and liabilities creating possible tax outflow. The agreed structure also had to be vetted to ensure compliance with applicable laws and regulations. Employee contracts would have to terminated as they moved to a new entity triggering payment of gratuity. Further, issues such as transfer of contracts, licenses and empanelment upon the sale of the hospital could severely impact smooth operations.

After extensive deliberations with PRAs, it was decided that Visakhapatnam Hospital would be demerged from SHPL into the PRA on a going concern basis, along with all assets and liabilities associated thereto. This structure allowed all assets, employees, contracts, licenses, empanelment and liabilities associated to be transferred to the PRA on a going concern basis without any GST implications. Also, no outflow towards income tax was expected, being an Income Tax compliant demerger and losses in proportion to the assets being transferred would also be transferred to PRA. Such a demerger was also found to be efficient for stamp duty implications. Ensuring seamless continuity of operations at the hospital was another key reason for adopting the demerger route.

8. Final Resolution Plan: Operational and Implementation Challenges

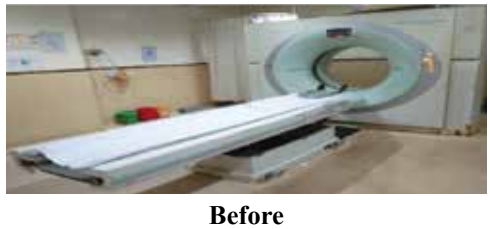
On January 23, 2024, the CoC unanimously approved the resolution plan filed by M. K. Rajagopalan and MGM Healthcare Private Limited for the Visakhapatnam Hospital. The same was filed before the NCLT on January 25, 2024, and received approval vide order dated June 10, 2024. Pursuant to the order, the RP and team ensured compliance with the defined steps and completed implementation by July 12, 2024.

Though the PRA had addressed payment of CIRP cost and distribution to FCs, the question on payment of outstanding CIRP cost continued before RP team and CoC since the CIRP Cost (interim funding + interest for the whole CD) was higher than the total plan amount (i.e. sale value of Vizag asset). Hence, RP team faced a bigger question of distribution of the Plan proceeds as multiple interpretations led to multiple options:

Before

After

Upgradation of 8 rooms to 'Deluxe' AC rooms with better facilities to attract higher income patients at minimal cost.



Before

After

Purchase of 128 slice CT scan machine financed partly by sale of old machine.

Before

After

Renovation of the modular OTs within the allocated budget of ~₹150 lacs.

1. Pay creditors of Vizag asset only
2. Keep all sale proceeds with the CD and distribute upon resolution of the CD as a whole
3. Pay all creditors on proportionally reduced basis

RP team and CoC deliberated extensively and decided than since the Visakhapatnam Hospital only was being resolved, all outstanding cost relating to Visakhapatnam Hospital should be paid to avoid any disruption in operations. Similarly, since majority of outstanding process cost i.e. interim finance could not be allocated to any particular asset, clarity would be required in treatment of such cost. This had been mitigated by CoC ensuring that, if any order directing payment of remaining CIRP cost is passed, then all CoC members will return the Plan amount received. As required by the RFRP, the resolution plans also specifically addressed the dues of employees, OCs and other stakeholders relating to Visakhapatnam Hospital which needed to be paid in accordance with the Resolution Plan after approval.

"On June 10, 2024, the NCLT approved the Resolution Plan for Visakhapatnam Hospital. Besides, the court also decided other related applications in favour of the RP and the CoC."

On June 10, 2024, the NCLT, along with order approving the resolution plan for the Visakhapatnam Hospital, pronounced its order in other applications, including applications against the resolution of the Visakhapatnam Hospital, in favour of the RP and CoC. Considering the favourable order from NCLT and expecting resolution of Mumbai Hospital, after considering multiple options and deliberating on payment between CIRP cost and FCs, CoC decided that the outstanding CIRP cost will be paid out of proceeds from resolution of Mumbai Hospital and remaining plan amount shall be distributed to FCs. While deciding on the distribution, the CoC, being cognizant of uncertainty of interpretation, also decided that if any order directing payment of CIRP cost is passed, then all CoC members will return the Plan amount received.

An unexpected operational difficulty surfaced during payments to operational creditors and employees. Since the commencement of the CIRP in March 2018, several employees and a few OCs had moved on and their bank details, as provided under the claims, had changed. Foreseeing this requirement of updated bank account details, the RP reached out to OCs and employees to update their records and ensure payment is made within the approved timeline.

The location of the registered office and registrations with statutory authorities provided another challenge. The registered office of the CD was the Visakhapatnam Hospital. Since the Resolution Plan envisioned a demerger of Visakhapatnam Hospital to another entity, the registered office needed to be shifted without disturbing the applicable territorial jurisdiction of statutory authorities, such as income tax, GST, EPFO, ESIC and also the NCLT. Hence, the CoC approved the shifting of the registered office of SHPL within the city limits to a new commercial building. Due to limited filing options on MCA portal, MCA records are in process of updating which will be followed by income tax, GST among others. Also, since all employees are being transferred to an existing entity, the employees' provident fund, ESIC, and other statutory accounts with the CD are also being transferred to the new entity. Post the transfer of all employees to new registration, all existing registrations obtained by SHPL for use by the Visakhapatnam Hospital shall be closed.

9. Conclusion of transaction and transition

Upon the infusion of funds by M. K. Rajagopalan, through his company MGM Healthcare Private Limited, the transaction stood implemented. MGM Healthcare Private Limited and the RP signed a transfer deed for the Visakhapatnam Hospital and all assets associated therewith, for the transfer of the asset in favour of MGM Healthcare Private Limited, and MGM Healthcare Private Limited recently rebranded the SevenHills Hospital, Visakhapatnam as "MGM Healthcare SevenHills Hospital". With this, the resolution of the Visakhapatnam Hospital stood completed, while the resolution of the Mumbai Hospital and SHPL continuing, pending closure of litigation mounted by the MCGM and the promoters.

Legal Framework

CIRCULARS

IBBI makes Mandatory the use of eBKray Auction Platform for Liquidation Processes

IBBI through a Circular dated January 10, 2025, has directed all IPs handling liquidation processes to exclusively use the eBKray auction platform for conducting auctions for sale of assets during the liquidation process with effect from April 01, 2025. It is further directed that listing of unsold assets in all ongoing liquidation cases shall be completed by March 31, 2025, said the Circular.

In continuation of efforts to streamline the liquidation process and improve transparency, the Insolvency and Bankruptcy Board of India (IBBI), through Circular No. IBBI/LIQ/78/2024 dated October 29, 2024, had issued directions regarding the use of the eBKray auction platform. The IPs were, inter-alia, directed that they shall exclusively list the details of all the unsold assets in respect of the ongoing liquidation processes on the eBKray platform and that they may utilize the eBKray auction platform for the sale of assets in respect of ongoing cases for auctions. The platform has received an encouraging response since its introduction. It is presently running on a pilot mode and will be improved based on the experience of usage.

Source: *IBBI Circular No. IBBI/LIQ/81/2025 dated January 10, 2025.*

IBBI Extended date for filing Forms to monitor liquidation and voluntary liquidation processes

Considering representations received from liquidators and Insolvency Professional Agencies for extending the date citing the technicalities and issues involved in the submission of the forms, the IBBI has decided to extend the last date of submission of the liquidation and voluntary liquidation forms till March 31, 2025. Accordingly, the liquidators can now file Forms to monitor liquidation and voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder by March 31, 2025.

In case of any clarification, the Frequently Asked Questions (FAQs) as available on www.ibbi.gov.in may be referred. Further, any technical issues or difficulties in filing may be reported to support.form@ibbi.gov.in. Furthermore, it has been observed that some IPs have been submitting incorrect information in the forms, such as entering zero values in all fields. In this regard, it is directed that IPs shall ensure the information submitted is accurate, truthful, and consistent with the supporting documents attached, said the IBBI Circular.

Source: *IBBI Circular No. IBBI/LIQ/80/2025, January 09, 2025.*

IBBI Joins hands with IBA to facilitate the sale of Liquidation Assets through Centralized Electronic Listing and Auction Platform

Insolvency and Bankruptcy Board of India (IBB) vide a Circular dated October 29, 2024, has collaborated with the Indian Banks' Association (IBA) to facilitate the auction of assets through the eBKray platform which is presently owned and managed by PSB Alliance Pvt. Ltd., a consortium of 12 public sector banks.

"PSB Alliance has developed a module within the eBKray platform to facilitate the listing and auction of assets under IBC. This centralized platform offers detailed information on corporate debtor (CD) assets, including photographs, videos, and geographical coordinates," said IBBI. 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, said the IBBI. eBKray has been reportedly conducting auctions for assets mortgaged to PSBs under the SARFAESI Act for the past five years.

IPs handling liquidation processes have been asked to list the details of all the unsold assets in respect of the ongoing liquidation processes on the eBKray platform. Furthermore, the Liquidators of liquidation processes commencing on or after issuance of this circular shall list all the assets of the CD within 7 days of submission of the asset memorandum to the NCLT. This Circular has come into effect from November 01, 2024.

Source: *IBBI Circular No. No. IBBI/LIQ/78/2024 dated October 29, 2024.*

IBBI Extended time for filing Forms to monitor Liquidation & Voluntary Liquidation processes

Considering the representations received from the liquidators and Insolvency Professional Agencies (IPAs) for extending the date citing the technicalities and issues in submitting the Forms, the Insolvency and Bankruptcy Board of India (IBBI) has decided to extend the last date of submission of the liquidation and voluntary liquidation forms till 31.12.2024. "It is further clarified that, for ongoing liquidation and voluntary liquidation cases, the responsibility for filing all forms shall lie with the Insolvency Professionals (IP) currently handling the process," said the IBBI in a Circular dated Dec. 02, 2024. Moreover, in cases where an application for closure or dissolution has been filed, or a dissolution or closure order has been passed, the IP under whose tenure the said the application was filed or the order was passed shall be responsible for filing all forms related to the particular case, it added.

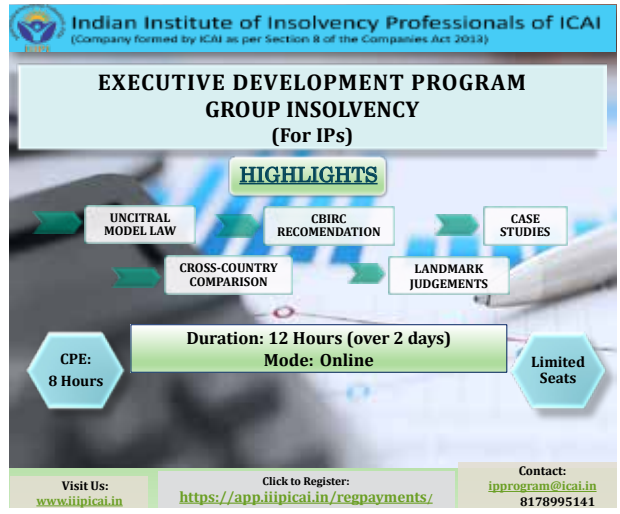
Source: *Circular No. IBBI/LIQ/79/2024, December 02, 2024.*

DISSCUSSION PAPER

IBBI's Discussion Paper proposes amendments in Grievance Redressal, Enforcement Framework and AFA Timelines

The IBBI via a Discussion Paper dated November 19, 2024, has proposed extending the time limit for filing grievances or complaints against service providers (IPs, IPAs, and IUs) with the IBBI to 30 days from the closure of the process by an order of the Adjudicating Authority, Appellate Authority or a Court. Furthermore, in the interest of operational efficiency and greater flexibility to the IPs and IPAs, the IBBI has proposed to relax (a) timeline for submission of application for renewal of AFA to IPA from existing 45 days before the date of expiry of previous AFA to 90 days before the data of expiry of previous AFA, and (b) timeline for Approval or Rejection of AFA Application (Issuance or Renewal) by the IPA from existing 15 days from date of receipt of application to 45 days from date of receipt of application.

Source: *Discussion Paper on Review of Grievance Redressal and Enforcement Framework and Rationalisation of Timelines Regarding Authorisation for Assignment, dated November 19, 2024.*



IBC Case Laws

Supreme Court of India

M/S HPCL Bio-Fuels Ltd. vs. M/S Shahaji Bhanudas Bhad, Civil Appeal No. 12233 of 2024 Arising out of SLP (C) No. 5589 of 2024), Date of Supreme Court Judgement: November 07, 2024.

Facts of the Case

The present civil Appeal filled by M/S HPCL Bio-Fuels Ltd. (Appellant) against M/S Shahaji Bhanudas Bhad (Respondent), after being aggrieved by the judgment dated 31.01.24, passed by the Bombay High Court in Commercial Arbitration Petition No. 1 of 2023. The High Court allowed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (The Act), filed by the Respondent, for appointing the sole arbitrator to adjudicate disputes with the Appellant. The dispute originates from purchase orders issued between 2012 and 2014 for enhancing the capacity of process stations and Boiling House at Lauriya and Sugauli on a turn-key basis. The Respondent supplied equipment worth ₹38.18 crores and raised invoices, while the Appellant made payments aggregating to ₹19.02 crores, leaving rest a claimed outstanding balance. Despite several discussions between October 2013 and January 2014, the issue remained unresolved, with the Appellant citing delays, unsatisfactory performance, and contractual non-compliance as reasons for withholding payment. On 09.07.2016, the Respondent issued a legal notice to the Appellant invoking arbitration and later filed a petition under Section 11 of the Act in 2018.

However, this petition was withdrawn, and the respondent pursued insolvency proceedings u/s 9 of the IBC, 2016. While the adjudicating authority admitted the application, the Appellate Tribunal reversed this decision, citing pre-existing disputes that barred the initiation of CIRP. The Supreme Court, in its judgment dated 15.07.22, upheld this decision, clarifying that CIRP cannot proceed for disputed debts and granted the respondent liberty to pursue other remedies, including arbitration. Following the dismissal of the IBC proceedings, the respondent filed a fresh petition under Section 11(6) of the Act in 2023. The appellant opposed this, arguing that the petition was

time-barred and non-maintainable due to the withdrawal of the earlier arbitration petition without liberty to refile. However, the High Court allowed the petition, finding that the respondent had diligently pursued remedies and was entitled to arbitration, leading to the present appeal before the Supreme Court.

Supreme Court's Observations

The Supreme Court considered whether the fresh application under Section 11(6) was barred due to the withdrawal of the earlier petition without liberty to refile. While Section 11(6) applications are not strictly governed by Order 23 Rule 1 of the CPC, the Apex Court referred to its principles to prevent abuse of process and ensure finality. It found that the earlier petition was withdrawn bona fide to pursue IBC proceedings, not to evade litigation or engage in bench-hunting, and that the liberty granted in the 2022 judgment allowed the respondent to pursue remedies under the Act. The Appellant argued that the petition was time-barred since the cause of action arose in 2014, with the limitation expiring in 2017. The Respondent invoked Section 14 of the Limitation Act to exclude the period spent pursuing IBC proceedings. The Apex Court, citing *Consolidated Engineering Enterprises v. Principal Secy., Irrigation Department* (2008) 7 SCC 169 and *M.P. Housing Board v. Mohanlal & Co.* (2016), held that Section 14 applies where proceedings in an incorrect forum were pursued diligently and bona fide. It clarified that the distinction between proceedings in rem (IBC) and in personam (arbitration) does not preclude Section 14, as both addressed the same underlying dispute. Referring to *BSNL v. Nortel Networks (India)*

Pvt. Ltd. (2021) 5 SCC 738, the Apex Court emphasized the importance of efficiency in arbitration and held that procedural technicalities should not obstruct arbitration if justified by circumstances. It reiterated arbitration's role in ensuring swift dispute resolution, aligning with the petition's acceptance. The Apex Court further discussed *Sarguja Transport Service v. State Transport Appellate Tribunal* (1987) 1 SCC 5, noting that while Order 23 Rule 1 aims to prevent repetitive litigation, it is not rigidly applicable to arbitration, where flexibility is essential for justice.

Order: The Apex court set aside the impugned order dated 31.01.24 passed by the High court.

Case Review: *Appeal Allowed.*

GOQII Technologies Pvt. Ltd. vs. Sokrati Technologies Pvt. Ltd. Civil Appeal No. 12234 of 2024, Date of Supreme Court Judgement: November 07, 2024.

Facts of the Case

The present appeal, has been filed by Goqii Technologies Pvt. Ltd. (Appellant) against the Sokrarti Technologies Pvt. Ltd. after being aggrieved by the judgment and order dated 30.04.24, passed by the Bombay High Court in Commercial Arbitration Application. In the said order, the Hon'ble high court dismissed the application filed by the Appellant u/s 11 of the Arbitration and Conciliation Act, 1996. The appellant sought the appointment of an arbitrator to resolve disputes with the Respondent under the arbitration clause (Clause 18.12) of the Master Services Agreement (MSA) executed between the parties. The Appellant, a technology-based wellness company providing lifestyle consultancy services, had entered into the MSA with the Respondent, a digital marketing services provider and subsidiary of Dentsu International Limited, for managing its advertising campaigns. The agreement, initially signed in 2021, was extended on 29.04.2022 for three years with amendments. Between August 2021 and April 2022, the Appellant paid ₹5.53 crore for services rendered. Subsequently, disputes arose regarding unpaid invoices raised by the Respondent and allegations of malpractice against its parent company.

In September 2022, media reports alleged fraud by senior officials of Dentsu International Ltd., prompting the Appellant to conduct an independent audit. The February 2023 audit report highlighted significant deficiencies, including poor return on investment (ROI), overcharging, fraudulent clicks, and poor targeting, estimating an overcharge of ₹4.48 crore. Based on these findings, the Appellant rejected the Respondent's demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (IBC), for ₹6.25 crore in unpaid invoices and invoked arbitration under Clause 18.12 of the MSA, counterclaiming ₹5.53 crore with interest and ₹6 crore in damages. In response, the Respondent initiated insolvency proceedings against the Appellant under Section 9 of the IBC, filing a petition before the NCLT, Mumbai. While the insolvency petition was pending, the High Court dismissed the Appellant's arbitration application, concluding that the claims were dishonest and lacked credible evidence to justify invoking the arbitration clause. The main issue arise before the Apex court is: Whether the High Court erred in dismissing the appellant's application under Section 11 of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator.

Supreme Court's Observations

The Supreme Court thoroughly examined whether the High Court erred in dismissing the appellant's application under Section 11 of the Act, 1996. It emphasized that the scope of judicial intervention at this stage is limited to a prima facie assessment of whether a valid arbitration agreement exists. The Court referred to its rulings in *SBI General Insurance Co. Ltd. v. Krish Spinning* (2024) and In Re: Interplay between Arbitration Agreements under the Arbitration and conciliation act 1996 and the Indian Stamp Act, 1899, highlighting that courts must not delve into the merits of disputes or assess frivolity at the referral stage. Such determinations are within the exclusive jurisdiction of the arbitral tribunal. The Apex Court found that the High Court had exceeded its jurisdiction by conducting a detailed factual analysis of the audit report and rejecting the arbitration request. It reiterated that an arbitral tribunal is well-equipped to assess the validity and substance of claims, including their alleged dishonesty or frivolity, during the arbitral proceedings.

The Court also underscored that the 2015 amendment to the Act, 1996, restricted judicial scrutiny under Section

11 to avoid interference in arbitration processes, ensuring disputes are efficiently resolved. The Supreme Court also addressed concerns about misuse of arbitration proceedings, noting that arbitral tribunals can allocate costs equitably to prevent abuse of the arbitration process. It clarified that while the referral court's jurisdiction is limited, parties cannot exploit arbitration agreements to pursue non-existent or mala fide claims. This balance ensures fairness without undermining arbitration as a dispute resolution mechanism.

Order: The Supreme Court set aside the impugned order dated 30.04.24 passed by Hon'ble High court and concluded that the appellant's claims fell within the scope of arbitration under Clause 18.12 of the MSA. The Apex court appointed Mr. S. J. Vazifdar, former Chief Justice of the Punjab & Haryana High Court, as the sole arbitrator to adjudicate the disputes between the parties. All legal objections and contentions raised by the respondent were kept open for adjudication by the arbitrator.

Case Review: *Appeal Allowed.*

Noida Special Economic Zone Authority vs. Manish Agarwal & Ors., Civil Appeal Nos. 5918-5919 of 2022, Date of Supreme Court Judgement: November 05, 2024.

Facts of the Case

The present appeal was filed by the Noida Special Economic Zone Authority Appellant against Manish Agarwal & Ors. (Respondents) after being aggrieved by the order dated February 14.02.22 passed by the Appellate Tribunal. This appeal also challenges two previous orders: one order dated 05.10.20, approving the Resolution Plan submitted by M/s Commodities Trading (Resolution Applicant) and the other order dated 27.11.20, rejecting the 'Appellant's application wherein the Resolution Plan was challenged. The dispute arose from a sub-lease of Plot No. 59-I, admeasuring 16,100 square meters, in the Noida Special Economic Zone (NSEZ). The plot was sub-leased to Shree Bhoomika International Limited/CD under a lease deed dated 26.10.1995, valid for 15 years. Defaults in lease payments began in 1999, and the CD ceased operations on the land by 2003-04, causing financial losses to the Government Exchequer and violating SEZ guidelines. The CIRP against the CD was initiated by the Appellant and admitted by the AA on 11.07.19. The IRP constituted a CoC with a sole financial creditor, the Stressed Assets Stabilization Fund - IDBI Bank Limited. The Appellant's claim of ₹6.29 crore was fully admitted by the Resolution Professional (RP). Valuers assessed the liquidation value of the CD to be ₹4.25 crore. The Resolution Plan, dated 24.11.19, was approved by the CoC on 06.01.20. The NCLT allocated ₹50 lakh to the Appellant and approved the plan on 05.10.20. The Appellant's subsequent application challenging the plan was dismissed on 27.11.20, as the AA observed it lacked jurisdiction to set aside the plan. The Appellant appealed to the Appellate Tribunal, raising concerns about the undervaluation of assets, the lack of notification regarding auction proceedings, and exemptions in the plan that allegedly contravened the Special Economic Zone Act, 2005. The Appellate Tribunal dismissed the appeal, upholding the CoC's commercial wisdom, leading to the present appeals before the Supreme Court.

Supreme Court's Observations

The Supreme Court examined the grievances raised by the Appellant and noted that the valuation of the CD's assets was conducted by two valuers, with an average of their estimates adopted as the liquidation and fair value. Citing *Duncans Industries Ltd. v. State of U.P. and Ors*. (2020), it emphasized that valuation is a factual question not warranting judicial interference if based on relevant material and confirmed adherence to Section 35C of the IBC and procedural norms. The Apex Court also addressed the Appellant's claim of inadequate physical inspection under the IBBI Regulations, 2016 and found no substantial deviation warranting intervention. It underscored that Sections 30 and 31 of the IBC provide a framework for submitting and approving resolution plans and agreed with the Appellate Tribunal that, dues including statutory obligations prior to plan approval stand extinguished and cannot be revived. The Apex Court further evaluated the Appellant's objections to Clause 10.9 of the Resolution Plan, which exempted specific payments under the SEZ Act, 2005 and clarified that Section 238 of the IBC gives it overriding effect over other laws. The SEZ Act could not supersede the IBC, rendering the objections untenable. Reiterating the "commercial wisdom" of the CoC, the Apex Court

emphasized its decisions, particularly on viability and feasibility, are non-justiciable except within the parameters of Section 30(2) of the IBC. Referring to precedents such as *Maharashtra Seamless Limited v. Padmanabhan Venkatesh* (2020) and *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited* (2021), the Apex Court upheld the CoC's authority in fund distribution and commercial judgment. The Court further observed that the Resolution Plan had been implemented with ₹50 lakh disbursed to the Appellant. Relying on decisions in Committee of Creditors of *Essar Steel India Limited v. Satish Kumar Gupta* (2020) and *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Ltd.* (2022), it concluded that statutory dues and claims excluded from the Resolution Plan cannot be pursued

Order: The Supreme Court held that order dated 05.10.20 & 27.11.20 as have been passed by the AA and approved by the Appellate Tribunal vide its impugned judgement dated 14.02.22, do not call for any interference in the present appeals and also held that the appeal being devoid of merit.

Case Review: *Appeal Dismissed.*

State Bank of India & Ors. vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr., Civil Appeal Nos. 5023-5024 of 2024 with Civil Appeal Nos. 12220-12221 OF 2024, Date of Supreme Court Judgement: November 07, 2024.

Facts of the Case

The present appeal filed by State Bank of India & Ors. (Appellants) against the Consortium of Murari Lal Jalan and Florian Fritsch & Anr. (Respondents) challenges the order dated 12.03.24 passed by the Appellate Tribunal (NCLAT), which dismissed the Appellants appeal and upheld the order of Adjudicating Authority (AA) dated 13.01.23. Jet Airways (India) Ltd./CD was admitted into CIRP on 20.06.19, following an application u/s 7 of the IBC, 2016 by the Appellants. The Resolution Plan submitted by the Respondents or Successful Resolution Applicant (SRA) was approved by the CoC and subsequently by the Adjudicating Authority (AA) on 22.06.21 as per resolution plan the SRA has to pay ₹4,783 crore and infuse ₹350 crore as the first tranche of the payment. As per CIRP regulations, the SRA furnished a Performance Bank Guarantee (PBG) of ₹150 crore, in line with Regulation 36B (4A). The Plan contained several conditions precedent (CP's) for the revival of CD, all of which were to be satisfied by the "Effective Date" (90 days from plan approval, extendable by another 180 days). The first tranche of payment ₹350 crore was required within 180 days after the Effective Date.

However, only some CPs was fulfilled, with the SRA proposing phased compliance, which the AA accepted despite the plan having no provision for waiving or partially satisfying CP's. During appeals before the Appellate Tribunal, the lenders offered to withdraw their appeals if the SRA infused the first tranche payment by 31.08.23, as noted in an Lender's affidavit. Despite multiple extensions granted by the AA, Appellate Tribunal, and Supreme Court, the SRA only deposited ₹200 crore in cash and sought to adjust the PBG against the remaining amount. The Appellate Tribunal permitted this adjustment, which the lenders challenged before the Supreme Court in this appeal. The Appellants argued that the SRA's failure to fulfill key obligations, including timely capital infusion and payment of statutory employee dues, constituted a breach of the Plan's terms. They contended that these delays undermined the CIRP's objectives and warranted the liquidation of the CD u/s 33(3) of the IBC. The Respondents submitted that regulatory delays justified additional time for fulfilling financial commitments, including the ₹350 Crore tranche required by the Plan.

The main issues arise before the apex court is:

(i) Whether the PBG could be adjusted toward the initial tranche payment under the Resolution Plan.

(ii) Whether the failure of the SRA to timely implement the Resolution Plan warranted liquidation of the CD u/s 33(3) of the IBC.

(iii) Whether the timely implementation of the Resolution Plan is also one of the objectives of the IBC, 2016, including payment toward employees' PF and Gratuity dues?

Supreme Court's Observations

The Supreme Court emphasized that the IBC requires strict adherence to its procedures, especially regarding enforceability and timely compliance with the terms of a Resolution Plan. It underscored those deviations from agreed-upon terms, unless explicitly justified, could compromise the IBC's objectives and delays the resolution of distressed assets. The Apex Court held that PBG adjustment against the first tranche of payment is impermissible, as the Resolution Plan required a cash infusion, not substitution by guarantees. This distinction between the required "infusion" of funds and "adjustment" of financial instruments like the PBG underscored the need for strict compliance under the IBC. The Apex Court cited *Ebix Singapore Pvt. Ltd. v. CoC's of Educomp Solutions Ltd. and Anr.* (2022) to reinforce that once a Resolution Plan is approved by the AA, it becomes binding on all stakeholders and cannot be modified or withdrawn, establishing finality under Section 31(1) of the IBC. Additionally, in *Glas Trust Company LLC v. Byju Raveendran and Ors.* (2024), the Apex Court highlighted the importance of cautious judicial intervention in IBC matters to prevent disrupting the code's predictability and timelines. In *IFCI Ltd. v. Sutanu Sinha and Ors.* (2023), it stressed that supreme court appeals should address "questions of law" rather than re-evaluating factual findings to maintain efficient oversight and respect lower tribunals' determinations.

The Apex Court also noted that while the AA and Appellate Tribunal hold powers to extend deadlines, such extensions must be exercised thoughtfully to avoid eroding the objectives of the IBC. The Lenders' Affidavit condition, which required the first tranche payment to be made in cash, did not modify the Plan's terms. The Apex Court further observed that an SRA's obligations under an approved Resolution Plan cannot be endlessly postponed or delayed under the guise of ongoing litigation. Here, the SRA's phased compliance and delayed fund infusion demonstrated a mala fide intention to avoid fulfilling its obligations, necessitating liquidation u/s 33(3) of the IBC. Given that over five years had passed without significant progress in the Resolution Plan's implementation, the Apex Court determined that timely liquidation was preferable to an indefinite resolution process.

Order: The Apex court set aside the impugned order passed by the Appellate Tribunal. Given the alarming circumstances and nearly five years of stalled progress since the Appellate Tribunal approval of the Resolution Plan, the Supreme Court invoked its jurisdiction under Article 142 of the Constitution of India to direct the liquidation of the CD. The AA shall proceed with appointing a liquidator and initiate the liquidation process. The ₹200 Crore infused by the SRA is forfeited, and Lenders/Creditors are permitted to encase the ₹150 Crore PBG provided by the SRA.

Case Review: *Appeals disposed of.*

GLAS Trust Company LLC vs. BYJU Raveendran & Ors., Civil Appeal No. 9986 of 2024 & Special Leave Petition (C) No. 21023 of 2024, Date of Supreme Court Judgement: October 23, 2024.

Facts of the Case

The civil appeal was filed by GLAS Trust Company LLC (Appellant), along with an SLP against BYJU Raveendran (Respondent No. 1) and Board of Control for Cricket in India (BCCI) /OC (Respondent No. 2), arises from the judgement dated 02.08.24 by the Appellate Tribunal. The Appellant, acting as "Administrative Agent" for lenders under a USD 1.2 billion "Credit Agreement" and as a "Collateral Agent" for secured parties, proceedings involving Think & Learn Pvt. Ltd. (BYJU'S), the Corporate Debtor (CD), and its wholly owned U.S. subsidiary, Byju's Alpha Inc. This case involves cross-border implications, with allegations of financial mismanagement and defaults by BYJU'S Alpha Inc., which obtained a USD 1.2 billion loan under a Credit Agreement dated 24.11.21. The CD guaranteed this loan, executing a guaranteed deed in favor of the Appellant. Due to defaults, the Appellant took action, including replacing Byju's Alpha Inc.'s directors, but payment defaults persisted. This led the Appellant to issue a demand notice to the CD, invoking the Guaranteed Deed for payment. The appeal also addresses wire transfers of approximately USD 533 million by Byju's Alpha Inc. in April and July 2022, allegedly directed by the CD to a U.S. hedge fund, raising concerns of possible fund diversion. Subsequently, on 18.03.24, the Delaware Bankruptcy Court issued a preliminary injunction

barring the Respondent no. 1 from "taking any steps to spend, transfer, exchange, convert, dissipate, liquidate, or otherwise move or modify any rights related to the funds" transferred to the hedge fund. On 23.07.23, the Respondent No. 2, acting as an OC, filed a petition u/s 9 of the IBC against the CD, claiming dues of approximately ₹158 crore under a "Team Sponsor Agreement." The Adjudicating Authority admitted the Section 9 petition on 16.07.24, initiating CIRP.

Separately, the Appellant filed a Section 7 petition on 22.01.24, which was disposed of due to the ongoing Section 9 CIRP. In response, the Respondent No.1, acting in a personal capacity, proposed a settlement with the Respondent No. 2 to clear the dues of ₹158 crore in three tranches. On 31.07.24, they submitted an affidavit to the Appellate Tribunal, asserting that the funds for this settlement originated from personal assets in India, unrelated to the USD 533 million governed by the Delaware Court's injunction, and affirming that "no part of the Settlement Amount" violated any court order. The Appellate Tribunal subsequently approved the settlement and allowed withdrawal of CIRP. The Appellant escalated this decision to the Apex Court, challenging the legal basis for NCLAT's approval under Rule 11, citing the specific provisions of Section 12A for such withdrawals.

Supreme Court's Observations

The Supreme Court reviewed whether the Appellate Tribunal's use of Rule 11 of the NCLAT Rules, 2016 to permit CIRP withdrawal was appropriate given the explicit process outlined in Section 12A of the IBC, which requires 90% CoC approval for post-admission withdrawals. Emphasizing the collective nature of insolvency proceedings, the Apex Court cited *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019) and *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore)* Fund (2021), underscoring that once CIRP is admitted, it operates in rem, affecting all creditors and involving public interest considerations. The Apex Court reaffirmed that Section 12A is the main route for CIRP withdrawals post-CoC formation. Referencing *Brilliant Alloy Pvt. Ltd. v. Mr. S. Rajagopal* (2022), the Apex Court acknowledged that while Rule 11 may allow flexibility, this is limited to cases before CoC constitution, with Section 12A taking precedence afterward.

Additionally, the Apex Court assessed the source of funds used for the settlement with the Respondent No. 2, as the Delaware Bankruptcy Court had issued an injunction barring the transfer or use of Byju's Alpha Inc.'s funds. Although the Respondent No.1 claimed, the funds were from his personal assets in India and unlinked to the Delaware-barred funds, the Appellant argued that this settlement might represent a "preferential payment" to the Respondent no. 2, warranting verification of fund origin to ensure compliance with the Delaware Bankruptcy Court order. The Apex Court stressed the need for careful scrutiny in Cross-Border cases to uphold both domestic and foreign judicial orders. It ordered that the ₹158 crore settlements be held in escrow account and CoC is directed to maintain that and stayed further CoC meetings.

Order: The Apex Court set aside the impugned order dated 02.08.24 regarding the settlement and CIRP withdrawal passed by Appellate Tribunal and staying further CoC meetings to maintain the insolvency proceedings. This interim measure aimed to protect all stakeholders while verifying the legitimacy of the disputed funds.

Case Review: *Civil Appeal and SLP stand disposed of.*

High Court

Maha Mineral Mining and Benefication Pvt. Ltd. Vs. Gram Panchayat, Gowari, Writ Petition No. 1874 of 2024, Date of Mumbai High Court Judgement: October 08, 2024.

Facts of the Case

The present writ petition was filled by M/s Maha Mineral Mining and Benefication Pvt. Ltd. (Petitioner) against Gram Panchayat, Gowari (Respondent). The Petitioner engaged in coal beneficiation, approached the Bombay High Court (Nagpur Bench) challenging a demand notice and subsequent communication issued by the Respondent for outstanding tax dues on assets acquired from Gupta Global Resources Pvt. Ltd. /CD under the IBC. The CD defaulted on credit facilities, which lead to the initiation of CIRP by Adjudicating Authority vide an order dated 04.10.17. After no resolution plan was approved,

liquidation commenced. Subsequently, an auction was conducted on 03.06.19. The Petitioner acquired assets in the auction held by Liquidator and obtained a sale certificate stating the assets were transferred "free from all encumbrances." Despite multiple public announcements, the Respondent had not submitted any claim during CIRP or liquidation. On 25.09.21, the Respondent issued a notice to the Petitioner demanding ₹36,25,400/- for tax dues from 2013-2022. The Petitioner argued that this demand contradicted the IBC, as the Respondent's failure to file a claim during CIRP extinguished its right to recover past dues. The Petitioner sought a declaration that it was not liable for any dues prior to its acquisition, asserting the IBC's provision that claims not included in the resolution process are bindingly extinguished.

High Court's Observations

The Hon'ble High court closely examined the obligations under the IBC for creditors, including operational creditors like the Respondent, to submit claims during the CIRP and liquidation. By failing to lodge its claim for outstanding taxes during these stages, the Respondent effectively forfeited its right to recover pre-acquisition dues, as its claim was extinguished under the IBC.

The Hon'ble High court referred to *Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd.* (2021), where the Supreme Court interpreted Section 31 of the IBC, which mandates that once a Resolution Plan is approved by the AA, it becomes binding on all stakeholders, including Central and State governments, local authorities, creditors, and guarantors. The Hon'ble High court further observed that the amendment to Section 31 in 2019 clarified this provision's retrospective applicability, as confirmed in Ghanshyam Mishra (Supra), establishing that any claim not included in the Resolution Plan shall stand extinguished. The Hon'ble High court highlighted that the petitioner's acquisition, as per the sale certificate, was "free from encumbrances, aligning with the IBC's intention to allow successful bidders a clean slate regarding past liabilities. It emphasized that the Respondent's attempt to recover past tax dues disregarded this IBC mandate and violated the extinguishment principle recognized in *Ghanshyam Mishra* (Supra). Further, the Hon'ble High court underscored that the scheme of the IBC specifically debars any attempt by creditors to recover claims outside the CIRP or liquidation process, stressing that the petitioner, having acquired assets under the IBC, was protected against such claims not raised within the prescribed time.

Order: The Hon'ble High Court allowed the Petitioner's request, holding that the demand notice dated 31.12.23 and related communication from the Respondent were arbitrary and unenforceable under the IBC, as they sought dues from a period prior to the acquisition. The Hon'ble High court declared that the Petitioner was not liable for any outstanding dues prior to its acquisition of assets under the IBC, thereby quashing the Respondent's demands.

Case review: *The writ petition was granted.*

Gateway Investment Management Services Ltd. vs. Reserve Bank of India & Ors. W.P.(C) 13278/2024 & CM Appl. 55477/2024, Date of Delhi High Court Judgement: September 23, 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 Observation

The Hon'ble High Court highlighted that under the Insolvency and Bankruptcy Code (IBC), the "commercial wisdom" of the Committee of Creditors (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 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 of along with pending application.*

National Company Law Appellate Tribunal (NCLAT)

Rakesh J Shah & Ors. vs. Sanjay Kumar Agarwal & Ors., Company Appeal (AT) (Insolvency) No. 1490 of 2024, Date of NCLAT Judgement: November 22, 2024.

Facts of the Case

The present appeal is filled by Rakesh J shah & Ors. (Appellants) against Sanjay Kumar Agarwal & Ors. (Respondents) after being aggrieved by order dated 18.01.24 passed by Adjudicating Authority (AA). The matter involves the claims submitted by the Appellants, who represent 271 workmen of the Corporate Debtor (CD), Biotor Industries Ltd., during its liquidation process. The CIRP for the CD began on 01.01.18 following a Section 7 application by Allahabad Bank. By 31.12.18, the AA ordered the liquidation of the CD. The liquidator, in response to stakeholder's claims, required evidence of employment in the two years preceding the liquidation commencement date to admit claims. The Appellants submitted their claims via Form F on 07.02.19. However, the liquidator rejected these claims, citing inadequate proof of employment for the relevant period. Aggrieved by this, the appellants filed M.A. No. 1847 of 2019 before the AA. They argued that the factory closure since June 2010 was illegal under the Industrial Disputes Act, 1947, as no government approval was obtained. They claimed entitlement to wages until 31.12.2018, arguing the factory's closure was invalid. However, the AA dismissed their application, prompting the present appeal before the Appellate Tribunal.

The main issue arises before the Appellate Tribunal:

1. Whether the workmen are entitled to wages up to 31.12.18 despite the factory's cessation of operations in June 2010.

2. Whether the liquidator erred in rejecting the claims for lack of evidence of employment during the relevant period.

3. Whether the factory's closure violated the Industrial Disputes Act, 1947, thereby entitling the workmen to continued benefits.

NCLAT's Observations

The Appellate Tribunal observed that the appellants failed to provide sufficient evidence to substantiate their claims of employment or unpaid wages during the relevant period preceding the liquidation commencement date. The reliance on outdated documents, such as identity cards and pay slips from 2010, was deemed inadequate. The Appellate Tribunal highlighted significant delay in asserting their rights, emphasizing that the appellants had not approached labor courts or raised any disputes under the Industrial Disputes Act, 1947, regarding unpaid dues or wrongful denial of employment since 2010. It stressed that the principle of vigilantibus non dormientibus jura subveniunt (law aids the vigilant, not those who sleep) applies, and claims made only after the initiation of CIRP, and liquidation cannot be entertained without proper evidence. The Appellate Tribunal clarified that the legality of the factory's closure under Section 25-O of the Industrial Disputes Act, 1947, was outside the jurisdiction of the AA and Appellate Tribunal, as such matters fall within the domain of labor courts or industrial tribunals. The liquidator's decision to reject the claims was upheld, as it was based on the lack of adequate documentation proving employment or dues during the stipulated period. Citing precedents such as *Era Labourer Union of Sidcul, Pant Nagar vs. Apex Buildsys Ltd.* (2024)., the Appellate Tribunal reaffirmed that challenges to closures or lockouts are not within the scope of adjudication during insolvency proceedings unless they directly pertain to the liquidation process. Consequently, the appellants' claims were dismissed, and the Appellate Tribunal reiterated the necessity of timely and substantiated submissions in insolvency proceedings.

Order: The Appellate Tribunal upheld the AA's order, and it observed that the liquidator's decision was consistent with the provisions of the IBC and the appellants' claims were inadequately supported by evidence. The Appellate Tribunal emphasized the need for timely action by stakeholders to assert their rights.

Case Review: *Appeal Dismissed.*

Corob India Pvt. Ltd. vs. Mr. Birendra Kumar Agrawal & Canara Bank, Company Appeal (AT) (Insolvency) No. 749 of 2024, Date of NCLAT Judgement: November 08, 2024.

Facts of the Case

The present appeal was filed u/s 61 of the IBC by Corob India Pvt. Ltd. (Appellant) against Mr. Birendra Kumar Agrawal & Canara bank (Respondent No. 1 & 2, respectively) after being aggrieved by the impugned order dated 01.03.24 passed by the Adjudicating Authority (AA). This order partially granted the Appellant's relief in I.A. No. 3878 of 2023. The Appellant had entered into a lease deed with Renaissance Indus Infra Pvt. Ltd./CD on 12.12.18 for a ten-year lease starting from 12.12.19. As per Article 3.4 of the lease deed, the Appellant provided a Security Deposit and a Bank Guarantee (BG). However, the CD failed to deliver possession by the agreed date of 12.10.19. On 22.02.22, the CD acknowledged its financial constraints and inability to grant the agreed rent-free occupation. The Appellant issued a Notice of Default on 30.06.2022 and a Termination Notice on 12.08.2022 due to continued breach. Following the CD's admission into CIRP on 31.03.23, the Appellant filed claims for the BG and Security Deposit through Forms C and F. The RP admitted the claim in Form C under the "Other Creditors" category on 18.05.23. The Appellant filed I.A. No. 3878 before the AA, seeking the return of the BG, the Security Deposit with 18% annual interest, or alternatively, recognition of the Security Deposit as financial debt. The AA directed the RP to return the BG but denied other reliefs. The Appellant contended that the Security Deposit, intended for construction financing, qualified as financial debt and was an asset of the Appellant.

The Appellant cited Embassy Property Development Pvt. Ltd. v. State of Karnataka (2020), arguing that the RP could not claim third-party assets under CIRP. The RP argued that the lease deed defined the Security Deposit as an interest-free amount for lease security, lacking the "commercial effect of borrowing." The RP maintained the categorization of the Appellant as an "Other Creditor,"

leading to the current appeal. The main issue raised before the Appellate Tribunal is: (i) Whether the RP's treatment of the claim made by the Appellant in respect of the security deposit made in pursuance of the lease deed in the category of 'Other Creditor' is justifiable or not?

NCLAT's Observations

The Appellate Tribunal observed that financial debt requires disbursal for "time value of money," a criterion the Security Deposit failed to meet. The court reviewed precedents, including *Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd.* (2020), which emphasized that the "time value of money" is a key requirement for financial debt. The appellate Tribunal also referenced *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019) and *Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd.* (2023), reiterating that financial debt may include even interest-free loans, provided they have a commercial effect of borrowing. The Appellate Tribunal found that the Appellant was not a "financial creditor" and that the Security Deposit did not qualify as "financial debt" u/s 5(7) and 5(8) of the IBC. The Lease Deed established the Security Deposit as an interest-free amount, equivalent to four months' lease rent, refundable upon lease termination.

Interest at 18% was applicable only on delayed refunds, indicating it was not disbursed against time value of money and lacked elements of commercial borrowing, disqualifying it as financial debt. Regarding operational debt, defined under Section 5(21) of the IBC, the Security Deposit, as an advance for prospective occupation of the leased premises, was linked to services under the lease. While operational debt must relate to goods, services, employment, or government dues, the court applied a broad interpretation of "services" by relying on the Apex court judgment in *M/s Consolidated construction consortium ltd. vs. M/s Hitro energy solutions Pvt. Ltd.* (2020). The Appellate Tribunal recognized the RP's duties u/s 18 and 20 of the IBC and held that the Security Deposit qualified as operational debt due to its link to services under the lease agreement. It rejected the RP's classification of the Appellant in the category of "Other Creditor" and accorded the Appellant the status of an operational creditor.

Order: The Appellate Tribunal granted the status of Operational Creditor to the Appellant and directed the RP to admit its claim under operational creditors and paragraph 3 & 4 of the impugned order dated 01.03.24 should be modified accordingly.

Case Review: *The appeal was disposed of, with no costs.*

Ramesh Kumar Chugh vs. Assets Care & Construction Enterprises Ltd. Company Appeal (AT) (Insolvency) No. 1726 of 2024, Date of NCLAT Judgement: October 15, 2024.

Facts of the Case

The present appeal, was filed by Mr. Ramesh Kumar Chugh (Appellant) u/s 61 of the IBC against M/s Assets Care & Construction Enterprises Ltd. (Respondent), challenging the Adjudicating Authority's (AA) order dated 03.07.24, which dismissed I.A. No. 317/2024. The Appellant sought to restrain the Respondent from auctioning properties under SARFAESI Act sale notices issued on 15.12.23 and 01.02.24 concerning properties of M/s Sheena Exports, a partnership firm in which the appellant was a partner. A Company Petition u/s 95 of IBC has been filed by White Line Enterprises (Operational Creditor) against the Appellant in his capacity as Personal Guarantor for M/s Sahil Home Loomtex Pvt. Ltd., triggering an interim moratorium on 22.12.23. The Appellant argued that the dissolution of the partnership firm, M/s Sheena Exports, via notice on 06.02.24, shifted the firm's liabilities to the partners, thus extending the interim moratorium to the firm's properties. He further contended that auctioning the properties would violate Sections 96 and 178 of the IBC, which prioritize partnership debts over personal debts. The Respondent argued that the concerned properties were owned by M/s Sheena Exports and not the Appellant's personal assets. Since the moratorium under Section 96 applies to the personal guarantee of the Appellant, the partnership firm's properties were not covered. The Respondent cited legal precedents to affirm that partnership assets are distinct from personal assets and are not subject to personal insolvency proceedings unless specifically indicated.

The main question arises before the Appellate Tribunal is: (i) Whether in the backdrop of Section 95 proceedings

under IBC having been initiated against the Appellant/ Partner in his personal capacity as a Personal Guarantor, can the creditor be barred from conducting sale of the property of the partnership firm (under dissolution) on grounds of operation of moratorium under Section 96 of the IBC in respect of personal guarantee of the Appellant.

NCLAT's Observations

The Appellate Tribunal clarified that the interim moratorium u/s 96 applies specifically to debts related to the personal guarantee of the appellant and does not automatically extend to the partnership firm's assets. The Appellate Tribunal noted that Section 96(1)(a) creates a stay on legal actions related to the debtor's debts but does not cover assets of entities (such as a partnership firm) that are not subject to the personal guarantee. The moratorium is limited to the personal insolvency proceedings against the appellant and does not encompass the firm's liabilities.

The Appellate Tribunal relied on the Supreme Court judgment in the case of *Rajendra Bajoria vs. Hemant Kumar Jalan* (2021), wherein it was held that partners do not have a direct claim to the assets of a firm while it is in operation. Similarly, the High Court of Allahabad in the case of *Onkar Rice Mill vs. State of U.P & Ors.* (2019) reinforced that partnership firm assets are separate from personal assets and can only be distributed after liabilities are settled. Furthermore, the Appellate Tribunal examined Section 178 of the IBC, which deals with the distribution of partnership firm's debts, and confirmed that while IBC has overriding provisions under Section 238, these do not apply in this instance because the firm's properties were distinct from the appellant's personal obligations. In conclusion, the Appellate Tribunal held that the interim moratorium under Section 96 of IBC did not bar the Respondent from proceeding with the auction of M/s Sheena Exports' properties under the SARFAESI Act, as those properties were not subject to the personal guarantee of the Appellant. Therefore, the auction could proceed without violating the moratorium provisions.

Order: The Appellate Tribunal dismissed the appeal filed by the Appellant, finding no merit in the arguments. The Appellate Tribunal upheld the decision of the AA and ruled that the moratorium under Section 96 of IBC was limited to the appellant's personal insolvency proceedings and did not extend to the partnership firm's assets. The respondent was thus permitted to continue with the auction of the properties under the SARFAESI Act.

Case Review: *Appeal Dismissed.*

National Company Law Tribunal (NCLT)

Spectrum Trimpex Pvt. Ltd. vs. VPhrase Analytics Solutions Pvt. Ltd., CP (IB) 249/MB/2024, Date of NCLT Judgement: October 04, 2024.

Facts of the Case

The present CIRP application was filed by Spectrum Trimpex Pvt. Ltd. (Financial Creditor/Applicant) u/s 7 of the Insolvency and Bankruptcy Code, 2016 against VPhrase Analytics Solutions Pvt. Ltd. (Corporate Debtor/Respondent). The Applicant sought the initiation of the Corporate Insolvency Resolution Process (CIRP) due to an alleged default of ₹1,30,78,880 in repayment of a financial debt. The Applicant had made an investment in the CD/Respondent through a Share Subscription and Shareholders Agreement dated 24.02.16, entered between the CD/Respondent and its founders, and several investors, including the Financial Creditor (FC). The Applicant/FC was allotted 378 equity shares, amounting to 2.98% of the issued, subscribed, and paid-up share capital of the CD, with the understanding that the shares would be compulsorily redeemed. As per Clause 16.1 of the Agreement, the CD/Respondent was obliged to provide an exit for the investors before the end of the Exit Period, either by buying back the shares or other means. Upon reaching the Exit Period, the FC issued a notice on 27.01.23 to the CD/Respondent, requesting it to buy back the shares at a price of ₹24,814 per share, as per the audited financial statements of the CD for the financial year ending on 31.03.22, amounting to ₹93,79,692. The CD/Respondent did not respond. Subsequently, the FC appointed an independent valuer who assessed the fair market value at ₹34,600 per share, bringing the total to ₹1,30,78,880. Despite this, the CD again failed to respond, leading to the filing of the present petition. The question before the AA was whether the claim made by

the FC under the Share Subscription and Shareholders Agreement dated 24.02.16 qualified as a "financial debt" under Section 5(8) of the IBC and whether it met the threshold limit under Section 4 of the IBC for initiating the Corporate Insolvency Resolution Process (CIRP).

NCLT's Observations

The Applicant/FC argued that the investment, with an exit option for the buy-back of shares, had the commercial effect of borrowing, making it a financial debt. In support of his argument, the FC referred to previous NCLAT judgement in the case of *Sanjay D. Kakade vs. HDFC Ventures Trustee Co. Ltd.* (2023) and the Supreme Court judgement in the case of *Kotak Mahindra Bank Ltd. vs. A. Balakrishnan & Anr.* (2022). On the other hand, the CD contended that equity investments do not qualify as financial debt and argued that there was no compulsory redemption under the Companies Act, 2013. They further pointed out that the Shareholders Agreement required mutual consent for appointing an independent valuer, but the FC had unilaterally appointed one, making the valuation report invalid. The AA noted that the FC's original claim of ₹93,79,692 was below the ₹1 crore threshold for CIRP under Section 4 of the IBC. The AA found that the unilateral appointment of the valuer violated the agreement, rendering the valuation report unreliable. Therefore, the FC failed to establish that the claim was a financial debt, and the petition was deemed non-maintainable due to the threshold not being met.

Order: The AA held that the FC had failed to prove that the claim met the ₹1 crore threshold required under Section 4 of the IBC. Additionally, it ruled that the unilateral appointment of the valuer violated the terms of the Shareholders Agreement, making the valuation report non-binding.

Case Review: *Petition Dismissed.*

Kapston Facilities Management Ltd. vs. Karvy Stock Broking Ltd., CP (IB) No.332/9/HDB/2021, Date of NCLT Judgement: September 10, 2024.

Facts of the Case

The Present CIRP application filled by M/s Kapston Facilities Management Ltd. (Operational Creditor or Applicant) u/s 9 of the IBC 2016 against M/s Karvy Stock Broking Ltd. (Corporate Debtor or Respondent) before the Adjudicating Authority. The petition sought to initiate the CIRP due to the non-payment of an operational debt amounting to ₹1,07,63,333, which included the principal debt and interest. The Respondent is a company registered under the Companies Act, 1956, engaged in stock broking and research advisory services in India. The Applicant is engaged in providing security and housekeeping services.

The two parties had entered into an agreement dated 20.04.11, with services being provided since then. Despite the invoices raised for these services, the respondent defaulted on payments. Consequently, a demand notice was issued by the Applicant/OC on 28.06.21, seeking recovery of ₹1, 07, 63,333, including a principal amount of ₹91,21,469 and an interest component of ₹16, 41,864. The Respondent contended that it is a financial service provider and, as such, does not fall under the definition of a 'corporate person' as per Section 3(7) of the IBC. It further argued that the inclusion of interest in the operational creditor's claim was incorrect, as it was not part of the contractual agreement, and without the interest, the claim would fall below the ₹1 crore threshold required under Section 4 of the IBC. The main issue raised before AA was: (i) Whether the Respondent could be classified as a CD under the IBC, given its status as a registered stockbroker and financial service provider.

NCLT's Observations

The AA observed that the Respondent argued that it is a financial service provider under Section 3(17) of IBC and therefore is excluded from the definition of a corporate person u/s 3(7) of the IBC. The AA referred to Annexure R3, which confirmed the Respondent's SEBI registration as a stockbroker. It further explained that under Sections 3(16), 3(17), and 3(18) of the IBC, financial service providers are exempted from CIRP.

Relying on *Globe Capital Market Ltd. vs. Narayan Securities Ltd.* (2024), the AA observed that the Respondent qualifies as a Financial Service Provider and, thus, cannot be treated as a CD. The AA also addressed the claim amount of ₹1,07,63,333, including interest. The Respondent contended that interest was not part of

the contract and if excluded, the claim would fall below the ₹1 crore threshold required u/s 4 of the IBC to initiate CIRP. Referring to *Swastic Enterprises vs. Gammon India Ltd.* (2018) and *S Polymers vs. Kanodia Technoplast Ltd.* (2019), the AA held that interest cannot be included unless contractually agreed upon thereby reducing the claim to ₹91,21,469, which is below the statutory threshold. Further, the AA examined the applicability of Section 10A of the IBC, which bars CIRP for defaults between 25.03.20 and 24.03.21. The Respondent highlighted that those 25 invoices, amounting to ₹37,99,639, fall within this period. The AA referred to *Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Ltd.* (2021) and agreed that these invoices could not be included in the claim, further invalidating the petition.

Order: The AA observed that the Respondent, being a financial service provider, did not fall under the definition of a corporate person under the IBC. Furthermore, the amount claimed by the Applicant/OC was below the statutory threshold for initiating CIRP, and a portion of the debt was barred under Section 10A.

Case Review: *Appeal Dismissed.*

IBC News

The Supreme Court restored claims of four lenders of the insolvent Reliance Infratel Ltd.

The judgement came as a big relief to four entities namely Assets Care & Reconstruction Enterprise Ltd, Shubh Holdings Pte Ltd, China Development Bank, and Export-Import Bank of China. According to media reports, the total claim of the four entities was more than ₹10,952 crore out of the total ₹ 41,055 crore.

The Resolution Professional had admitted these four entities as lenders, but a Doha Bank challenged this decision in the Appellate Tribunal arguing that these entities were not direct lenders of the Reliance Infratel Ltd, the Corporate Debtor (CD). Therefore, they were not entitled to be admitted as lenders based on various terms of the deeds of hypothecation (DoH). The Appellate Tribunal de-recognized the four entities as lenders. Finally, the matter reached the Supreme Court.

The main issue before the Supreme Court was whether the lenders could be classified as 'financial creditors' within the meaning of sub-section (7) of Section 5 of the IBC. "If the right to payment exists or if a breach of contract gives rise to a right to payment, the definition of 'claim' is attracted. Even if that right cannot be enforced by reason of the applicability of the moratorium, the claim will still exist. Therefore, whether the cause of action for invoking the guarantee has arisen or not is not relevant for considering the definition of 'claim'," said the Supreme Court.

Source: *Business Standard, December 20, 2024.*

https://www.business-standard.com/companies/news/sc-reverses-nclat-order-restores-claims-of-4-lenders-of-reliance-infratel-124122001329_1.html

No Construction after takeover by Suraksha Group, Homebuyers petition in NCLT

The homebuyers of Jaypee Infratech Ltd. (JIL), which was taken over by Suraksha Group through the Resolution Plan approved in March 2023, have reportedly filed a petition before the NCLT alleging that Suraksha Group, the Successful Resolution Applicant (SRA), has not started the construction activities.

In the petition, the homebuyers have alleged that the SRA had failed to mobilize the promised ₹ 3,000 crore required for construction, deploy workers, or even establish escrow accounts as stipulated in the Resolution Plan. According to the approved Resolution Plan, the SRA was supposed to resume the construction of flats within 90 days. Besides, the SRA has increased charges, lacks transparency and had not launched a mobile application to keep homebuyers informed, they alleged. Notices have been issued to concerned parties.

Source: *The Times of India, December 23, 2024.*

https://timesofindia.indiatimes.com/city/noida/no-construction-after-suraksha-takeover-jaypee-buyers-in-nclt-again/articleshow/116575607.cms

NCLT approved Reliance's ₹200 cr plan for Karkinos Healthcare

The Resolution Plan amounting ₹200 crore by Reliance Strategic Business Ventures Ltd. for Karkinos Healthcare Pvt. Ltd. reportedly provides 100% settlement to creditors' dues. The CIRP was completed within 180 days. NCLT observed that the approval shall not ipsofacto tantamount to abatement of such litigations/ liabilities etc., and the same may be carried on in consonance with the tenets enshrined in law. The SRA has been directed to implement the Plan within 60 days.

Source: *The Economic Times, December 11, 2024.*

https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/reliance-strategic-business-ventures-rs-202-cr-plan-for-karkinos-healthcare-approved-by-nclt/articleshow/116214802.cms?from=mdr

The Union Finance Ministry asked PSBs to closely monitor the top 20 large cases of defaults that are undergoing insolvency proceedings

Public Sector Banks (PSBs) have been reportedly advised to ensure active monitoring of the top 20 cases of banks at the managing-director level, with all proceedings to be attended by senior officials not below the rank of general manager. These directions were issued during a review meeting chaired by M. Nagaraju, Secretary to the Department of Financial Services (DFS), Ministry of Finance, said media reports.

The Secretary also asked the banks to minimize procedural delays and strongly oppose unnecessary adjournments. Banks were also advised to strengthen their synergies with NARCL to ensure efficient and timely resolutions, it noted. The ministry has decided to set up a committee under SBI to examine and submit a fresh list of accounts for transfer to bolster the resolution pipeline and align the process with its intended objectives. The review meeting took stock of key operational challenges and ways to enhance the efficiency of resolution mechanisms through the National Asset Reconstruction Company Limited (NARCL) and the NCLT. In the review meeting, it was informed that NARCL has acquired 22 accounts with an exposure of ₹95,711 crore. It was also informed that 28 accounts with an exposure of ₹1.28 lakh crore were resolved by banks, subsequent to the NARCL making the offers, reflecting the indirect impact of NARCL's presence in settling/successfully pursuing recovery through other resolution mechanisms.

Source: *The New Indian Express, December 13, 2024.*

https://www.newindianexpress.com/business/2024/Dec/13/finance-ministry-asks-banks-to-closely-monitor-top-20-large-insolvency-cases

Maintenance to estranged wife and children, would get priority over claims of creditors under the IBC: Supreme Court

The Supreme Court has ruled that the right to the maintenance of the wife and children would have overriding effects on claimants in any recovery proceedings under the SARFAESI Act and IBC Code. "The right to maintenance is commensurate to the right to sustenance. This right is a subset of the right to dignity and dignified life, which flows from Article 21 of the Constitution of India," said the Court. This judgment came on appeal of a man who contended that he was not in a position to pay maintenance to his estranged wife and children because he suffered losses in business and faced recovery proceedings. The Apex Court dismissed his appeal and directed him to provide maintenance as per the order of the Gujarat High Court.

Source: *ETV Bharat.com, December 12, 2024.*

https://www.etvbharat.com/en/!bharat/right-to-maintenance-of-wife-children-overrides-effects-on-other-claimants-under-ibc-sc-enn24121206496

ED Restitutes Properties Worth ₹4,000 Crore to JSW Steel

These assets of the Corporate Debtor (Bhushan Power and Steel Ltd.) were attached by the Enforcement Directorate (ED) in 2019, about a month after the NCLT approved the Resolution Plan submitted by JSW Steel Ltd., the Successful Resolution Applicant (SRA). The ED was investigating a case of alleged bank loan fraud against the former management of the Corporate Debtor. As the case was pending, the resolution of the Corporate Debtor stalled completely. Subsequently, the Central Government amended the IBC to provide that criminal proceedings against former promoters will not affect a resolution applicant when acquiring a stressed firm. Thereafter, the NCLT vacated the attachment, but the ED challenged it in the Supreme Court contending that the amendment should not apply retrospectively.

Source: *NDTV Profit.com, December 14, 2024.*

https://www.ndtvprofit.com/law-and-policy/bhushan-power-insolvency-jsw-steel-ed-restitutes-rs-4000-crore-properties

We need an enforceable code of conduct for CoC: Deputy Governor, RBI

Shri M. Rajeshwar Rao, Deputy Governor-RBI, has said that there have been instances where the CoC's performance has been found lacking in several aspects. "This includes disproportionate prioritization of individual creditors' interests over the collective interests of the group, disagreements among the CoC members on approving the Resolution Plan due to concerns about undervaluation and perceived lack of viability,

disagreement over the distribution of the proceeds," said Shri Rao. Even when the resolution plan is agreed upon, Rao said there have been instances of non-participation in the CoC meetings and a lack of effective engagement, coordination or information exchange among the members. "Ideally, IBBI should have the powers to enforce norms for the conduct of all the stakeholders under the IBC process," said Shri Rao.

Source: *The Hindu, December 08, 2024.*

https://www.thehindu.com/business/Industry/insolvency-process-rbi-deputy-guv-pitches-for-enforceable-code-of-conduct-for-coc/article68959580.ece

Parliamentary Panel recommended fast-track Tribunals for high-priority insolvency cases: Media Report

Parliament's Standing Committee on Finance has recommended that fast-track Tribunals with strict timelines be set up for high-priority insolvency cases under the IBC. It has also been suggested that the Ministry of Corporate Affairs (MCA) should also consider adopting an urgent list system for insolvency cases, similar to the UK, to priorities time-sensitive matters. Furthermore, the MCA has been asked to provide clearer guidelines on treating government dues, especially taxes and penalties, ensuring equitable and transparent resolution of government claims. To reduce delays, the Panel has recommended introducing a provision under the IBC, similar to Article 226(3) of the Constitution, mandating the processing of applications within 14 days.

Source: *LiveLaw.in, November 25, 2024.*

https://www.livelaw.in/ibc-cases/nclat-chennai-revisiting-resolution-plan-after-commencement-of-liquidation-process-against-principle-of-procedural-finality-276175

India needs a tailored Group Insolvency framework: Shri Ravi Mital, Chairperson, IBBI

Highlighting the need for Group Insolvency under the Insolvency and Bankruptcy Code, 2016 (IBC), Shri Ravi Mital has said that India must go in for a specific Group Insolvency framework. He was speaking at an international conclave jointly organized by INSOL India and IBBI.

"There is a need to introduce group insolvency. This is despite NCLT doing several cases based on powers they have," said Mital. He further added that the IBBI was keen to reduce the workload of the NCLTs and is also trying to introduce creditor-led resolution processes in the country. Shri Mital lauded the work being done by the NCLT, noting that last year the Tribunal had approved as many as 270 resolution plans. Group Insolvency refers to the insolvency resolution process dealing with a group of companies that are interconnected through ownership, control, or shared business operations. It aims to address situations where financial distress in one entity impacts the entire group, requiring a coordinated approach for resolution. Indian courts, especially the National Company Law Tribunal (NCLT), have recognized the need for group insolvency in certain cases. In cases like Videocon Group Insolvency, the NCLT allowed the substantive consolidation of 13 Videocon group companies into a single process. The tribunal acknowledged the interlinked financial and operational structures, deeming it necessary for effective resolution.

Source: *The Hindu BusinessLine, December 08, 2024.*

https://www.thehindubusinessline.com/economy/india-needs-a-tailored-group-insolvency-framework-says-ibbi-chief/article68962151.ece

Bombay HC Quashes ED's Attachment Order against V Hotels

Upholding the immunity under IBC, the Bombay High Court has quashed an attachment order issued by the Adjudicating Authority under the PMLA Act. This order followed a provisional attachment issued by the Enforcement Directorate. V Hotels, the Corporate Debtor (CD), contented that Section 32A of IBC grants immunity to the CD and its properties from prosecution or attachment for offenses committed prior to CIRP initiation. Further the court was informed that pursuant to completion of the insolvency process the CD was handed over to SRA.

Source: *The Times of India, December 11, 2024.*

https://timesofindia.indiatimes.com/city/mumbai/bombay-high-court-quashes-ed-case-against-v-hotels-upholds-corporate-debtor-immunity-post-ibc-resolution/articleshow/116208973.cms

The government is working on an integrated platform for the Insolvency Ecosystem: Ms. Anit Shah Akella

Speaking on the 8th Foundation Day of IIIPI, Ms. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA) said that the government is working on an integrated platform for the insolvency ecosystem covering key stakeholders that will also help speed up resolution processes. She also emphasized that the IBC is not a recovery mechanism but a rescue mechanism. The platform will connect MCA, Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and insolvency professionals, among others. It will have various features such as red flags in case of delays and alerts on the app, she added.

Source: *Business Standard, November 27, 2024.*

https://www.business-standard.com/companies/news/govt-working-on-integrated-platform-to-speed-up-resolution-processes-124112601094_1.html

Revisiting Resolution Plan after initiation of Liquidation Process is against principle of procedural finality: NCLAT

Dismissing two separate appeals by the Corporate Debtor, who has urged the Appellate Tribunal to stall the process of auction and reconsider the Resolution Plan, NCLAT Chennai upheld revisiting the Resolution Plan after the commencement of liquidation process and the process of auction is against the principle of procedural finality. The Appellate Tribunal further stated that Resolution plan had several deficiencies including insufficient upfront payment and inadequate financial assurance to support the plan and that the applicant was also provided with many opportunities to rectify their defects and even after five addendums they were not able to rectify the whole defects of the Resolution Plan.

Source: *LiveLaw.in, November 25, 2024.*

https://www.livelaw.in/ibc-cases/nclat-chennai-revisiting-resolution-plan-after-commencement-of-liquidation-process-against-principle-of-procedural-finality-276175

Recovery from Avoidance Transactions would play a Vital Role in Reducing Haircuts to Creditors: Shri Ravi Mital, Chairperson, IBBI

Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI), has urged the Committee of Creditors (CoC) to take the avoidance transactions under the Insolvency and Bankruptcy Code (IBC) "seriously", and review the progress of these proceedings on monthly basis to enhance recoveries.

"The CoC should review the progress of these avoidance proceedings on a monthly basis and if required, create a mechanism to pursue these transactions before the Adjudicating Authority (AA)," said Mital in the recent quarterly newsletter of the IBBI. He further added that on a conservative scale, decisions on avoidance transactions would add recovery to creditors by at least 10%. He also suggested that specifically in those cases where avoidance transactions are approved by the AA for prosecution, creditors should approach the Ministry of Corporate Affairs (MCA) or the IBBI and file a criminal complaint under Section 236 of the IBC before the Special Court. Shri Mital emphasized that a "significant value" of insolvent entities is often locked in assets underlying avoidance transactions which are undertaken by the CD prior to the initiation of the Corporate Insolvency Resolution Process (CIRP). According to the IBBI Newsletter, till September 2024, as many as 1,326 avoidance transaction applications involving an amount of ₹3.76 lakh crore have been filed with the AA. The AA, after consideration, can order for the amount to be clawed back, said Mital.

Source: *The Financial Express, November 13, 2024.*

https://www.financialexpress.com/business/banking-finance-track-last-minute-transfers-to-enhance-recoveries-ibbi-3663406/

NCLT approved ₹595 Cr. Resolution Plan for Metenere Ltd.

The Resolution Plan of Orissa Metaliks Pvt. Ltd. amounting ₹595 crore for Metenere Ltd. was already approved by the CoC with 98.94% vote share. As per the Resolution Plan, financial creditors would receive ₹272 crore against their admitted claims of ₹3,152

crore. However, secured operational creditors will get ₹5.61 crore against their admitted claims of ₹230 crore. Further, Orissa Metaliks has also proposed to infuse a sum of ₹300 crore within 6 months of payment date.

Source: *InsolvencyTracker.in, November 18, 2024.*

https://insolvencytracker.in/2024/11/18/nclt-approves-orissa-metaliks-rs-595-cr-bid-for-metenere-limited/#:~:text=The%20New%20Delhi%20bench%20of,3%2C672%20crore%20to%20all%20creditors.

During July-September quarter, 54 Corporate Insolvency Resolution Processes (CIRPs) yielded resolution plans

According to media reports, during the July-September quarter of FY 25, as many as 54 corporate insolvency resolution processes (CIRPs) yielded resolution plans while 79 CIRPs ended in orders for liquidation. Thus, till September 2024, the total CIRPs yielding resolution plans have reached 1068 and 2,630 companies were sent for liquidation. The creditors have realized ₹3.55 lakh crore through resolution plans till September 2024. The fair value and liquidation value of the assets available with these corporate debtors (CDs), when they entered the CIRP, was estimated at ₹3.38 lakh crore and ₹2.20 lakh crore, respectively, as against the total claims of the creditors worth ₹11.44 lakh crore. The creditors have reportedly realized 161.11% of the liquidation value and 86.13% of the fair value.

Source: *Financial Expess.com, November 18, 2024.*

https://www.financialexpress.com/business/banking-finance-insolvency-haircuts-for-creditors-as-high-as-69-3667430/

Supreme Court ordered Liquidation of Jet Airways

As the Resolution Plan was pending implementation for almost five years, the Supreme Court used its extraordinary powers under Article 142 of the Constitution to order liquidation of the Jet Airways. The Successful Resolution Applicant (SRA), according to the Resolution Plan, was to pay ₹ 4,783 crore and infuse ₹350 crore as the first tranche of the payment. However, the SRA could not infuse the ₹ 350 crore even after extending deadline to May 20, 2024.

"Although one of the key objectives of the IBC is to ensure the survival of the corporate debtor as a going concern, yet the same must not come at the cost of efficiency. In scenarios such as the present, timely liquidation is indeed preferred over an endless resolution process," said the Supreme Court. It further added, "Such a view will prevent the likelihood of adversely affecting the interests of all the creditors who have been suffering due to no fault of their own and also securing the maximization of value of the remaining assets". The court observed that due to the failure of SRA to implement the Resolution Plan, the payment of CIRP costs, workmen and employees' dues etc. which must be made in priority over the dues of the other creditors have also not been made.

"More than 5 years have passed, and the implementation of the Resolution Plan still seems to be a dim light at the far end of a long tunnel," said the Court. It was also observed that in the past five years several dues paid by the Corporate Debtor have increased multifold due to the fault of the SRA.

Source: *The Indian Express, November 08, 2024.*

https://indianexpress.com/article/business/aviation/supreme-court-nclat-jet-airways-9657883/

Section 7 Applications take precedence over arbitration proceedings: NCLAT

The Appellate Tribunal has held that if an Application under Section 8 of the Arbitration and Conciliation Act, 1996, is filed, the Adjudicating Authority is bound to proceed first to decide the Application under Section 7 of the IBC. "The remedy under Section 7 is a special remedy, keeping the object and purpose of the IBC," said NCLAT. Furthermore, the Appellate Tribunal observed that the pending arbitration proceeding on the date when the Section 7 Application is filed, or it is sought to be initiated after the filing of Section 7 Application to be immaterial. The Appellate Tribunal held that the AA's mandate is to consider whether there is a debt and default in the application under Section 7. It was also held that the Arbitration Proceedings can wait until the insolvency application is decided.

Source: *ET Legal World.com, Octoeber 30, 2024.*

https://shorturl.at/0YVGw.

The Supreme Court revives Insolvency Proceedings against Byju's

The Supreme Court has allowed the Appeal of the US-based Glas Trust Company LLC, which challenged the order of NCLAT allowing the settlement agreement of Byjus (Corporate Debtor) with BCCI on ~₹158 crore dues. The Corporate Insolvency Resolution Process (CIRP) against Byju's was initiated by BCCI (Operational Creditor) on a default of ~₹158 crore. However, during the pendency of the CIRP, Byju's reached a settlement with the BCCI for payment of the dues that was approved by the NCLAT.

US-based creditor firm Glas Trust Company LLC, a financial creditor, challenged this settlement in the Supreme Court alleging the money being used for the repayment to BCCI was "tainted" as it was part of $533 million that had gone "missing".

"There was no formal application made for withdrawal, the first respondent who was a former director of Corporate Debtor, had moved NCLAT directly," said the Supreme Court. "Despite these grave deviations, the NCLAT still approved the settlement. Exercise of inherent powers cannot be done to subjugate the legal process and the NCLAT should have stayed the composition of CoC instead. Thus, we allow the appeal and set aside the NCLAT judgement," ordered the Supreme Court. The Apex Court also asked other parties to approach the Committee of Creditors (CoC) of the insolvent firm to pursue appropriate remedies and directed that the money should now be deposited in an escrow account managed by the CoC.

Source: *Business Standard, October 24, 2024.*

https://www.business-standard.com/finance/news/supreme-court-sets-aside-nclat-order-halting-byju-s-insolvency-proceedings-124102300959_1.html

Dissenting Financial Creditor is only entitled to Liquidation Value of its Secured Interest: NCLAT

The Appellate Tribunal has ruled that as per Section 30(2)(b) of the IBC, a dissenting financial creditor is only entitled to the liquidation value of its secured interest, not the total liquidation value of the Corporate Debtor. Besides, the Court reiterated that the 'commercial wisdom' of the Committee of Creditors (CoC) is paramount and cannot be interfered with unless similarly situated creditors are denied fair and equitable treatment. In this case, the Resolution Plan was approved by the CoC with 87.5% voting majority. The Appellant, a Financial Creditor, which dissented with the resolution plan contended that he was offered only ₹79 lakh against a liquidation value of ₹1.38 crore. Pursuant to the previous judgments of the Supreme Court, the NCLAT dismissed the Appeal.

Source: *LiveLaw.in, October 26, 2024.*

https://www.livelaw.in/ibc-cases/nclat-dissenting-financial-creditor-only-entitled-to-liquidation-value-of-secured-interest-us-302b-ibc-commercial-wisdom-of-coc-sacrosanct-273671

Supreme Court gives Go Ahead to Adani's ₹27, 000 crores Resolution Plan for KSK Mahanadi Project

The Supreme Court set aside the order of Telangana High Court which was issued on a petition filed by the Uttar Pradesh Power Corp and allowed the appeal of the Committee of Creditors (CoC) of KSK Mahanadi Power Company (Corporate Debtor). Adani Power was the highest bidder for the stressed thermal project with an offer of ₹27,000 crore, which ensured 92% of the recovery for lenders. The Corporate Debtor had a 3,600 MW coal-based power project in Chhattisgarh. Currently, it has three operational units of 600 MW each and the rest of its units are under various stages of construction. The total claims against the Corporate Debtor were ₹ 29,330 crore. KSK Mahanadi had power purchase agreements with Andhra Pradesh, Tamil Nadu and Uttar Pradesh, but defaulted on loans due to lack of coal supply.

Source: *Business Standard, October 14, 2024.*

https://www.business-standard.com/companies/news/sc-revives-adani-s-rs-27k-cr-insolvency-resolution-for-ksk-mahanadi-project-124101401184_1.html

NCLAT ordered closure of CIRP against JHL

NCLAT's order to close the insolvency process against Jaypee Healthcare Ltd. (JHL) came after Max Healthcare settled the dues with the financial creditors. The CIRP against JHL was initiated by NCLT Allahabad on a petition filed by J C Flowers Asset Reconstruction Ltd. During the CIRP, Max Healthcare announced to acquire a 64% stake in JHL for an enterprise value of ₹1,660 crore. JHL used to operate three hospitals in Uttar Pradesh. Max Healthcare

has reportedly deposited ₹1,305.29 crore, which is equivalent to the admitted financial creditors' claims.

Source: *The Economic Times, October 18, 2024.*

https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/nclat-closes-insolvency-proceedings-against-jhl-as-max-healthcare-settles-creditors-claims/articleshow/114339747.cms?from=mdr

High Court directed Creditor to refund forfeited deposit to CD which failed to deposit the Balance due to the moratorium under the IBC

The Punjab and Haryana High Court has directed the Union Bank of India (bank) to refund the forfeited deposit amount to a Corporate Debtor (CD) after holding that the contract of sale was frustrated by legal impossibility, caused by the moratorium under the IBC.

"As the respondent is statutorily barred till such time the insolvency petition was rejected by NCLT, this Court has no hesitation to hold that the contract of sale that the respondent bank had sought to enter with the auction purchaser stood frustrated due to the intervening legal impossibility. The insolvency proceedings having been initiated against the debtor-company by an operational creditor and the interim moratorium being in place debarred the bank from issuing the sale certificate, said a two judges' bench of the Punjab and Haryana High Court. In this case, the bank had issued an e-auction sale notice for the sale of a commercial property, wherein the petitioner was the highest bidder. After submitting an Earnest Money Deposit (EMD), the CD met the requirement of paying 25% of the total sale price. In the meantime, CIRP were initiated against the petitioner under the IBC. As the moratorium came into effect, the petitioner was not able to pay the balance amount to the bank. Subsequently, the bank forfeited the EMD.

Source: *Verdictum.in, October 19, 2024.*

https://www.verdictum.in/court-updates/high-courts/punjab-and-haryana-high-court-micro-turner-v-union-bank-of-india-2024-phhc-126020-db-legal-impossibility-refund-bid-amount-1555268

MahaRERA issues list of 314 housing projects undergoing insolvency processes under the IBC

Maharashtra Real Estate Regulatory Authority (MahaRERA) has published a list of 314 housing projects on its website which are undergoing insolvency proceedings under the Insolvency and Bankruptcy Code 2016 (IBC). This information came to light when MahaRERA started investigating the extent of the situation, gathering data from various sources including the NCLT. According to MahaRERA the list will be helpful to protect homebuyers from potential deception and inform stakeholders about proceedings initiated by banks, financial institutions, etc.

"MahaRERA is consistently working to ensure that homebuyers' investments remain safe and protected. We have compiled this crucial information of the projects undergoing IBC proceedings from various sources and has also verified the same from NCLT website. A comprehensive and compiled list has been made public for the larger interest of the homebuyers," said Manoj Saunik, Chairman, MahaRERA. According to media reports, they include projects by prominent developers such as Lavasa, Wadhwa Group, Godrej Properties, RNA Corp, Radius, Nirmal Lifestyle, Neptune Developers, etc. Of the total 314 projects, 56 are ongoing projects with sales-cum-registration of 34% of the total inventory. Another set of 194 lapsed projects have an average registration of over 61%. The remaining 64 completed projects have an average sales-cum-registration of apartments at 84%.

Source: *Hindustan Times, October 16, 2024.*

https://www.hindustantimes.com/cities/mumbai-news/314-maharashtra-housing-projects-registered-with-maharera-face-insolvency-proceedings-101728648351770.html

Creditors have the right to file for insolvency beyond the threshold timeline: NCLAT

The Chennai Bench of NCLAT has held that the creditors have the right to file insolvency petition beyond the threshold timeline under Section 118 of Insolvency Bankruptcy Code 2016 (IBC). The Appellate Tribunal observed that debtors had not undertaken full implementation of the repayment plan as per the given timeframe, which meant it had attained a premature end at that time by exercising its right and which allowed creditor to move for CIRP.

Source: *TaxScan.in, October 11, 2024.*

https://www.taxscan.in/creditors-have-right-to-file-for-bankruptcy-beyond-threshold-timeline-u-s-118-of-ibc-nclat/445338/#google_vignette

International Development on Insolvency Law
From Around the World

Hospitality Sector Faces Crisis as Insolvencies Soar

Sacha Lord, the Night-Time Economy Adviser for Greater Manchester, has issued a stark warning about the perilous state of the hospitality sector as new data reveals a surge in insolvencies.

Official figures from the Insolvency Service show hospitality businesses were the third highest sector for insolvencies in the year to October 2024, with 63.4 per cent of those bankruptcies occurring in restaurants and mobile food outlets. Overall, the official data showed that the total number of registered company insolvencies in England and Wales totalled 1,966 in November, with construction and wholesale and retail trade reporting the highest number per sector.

The alarming trend is set to worsen as businesses face a "double hit" from increased employer National Insurance contributions and reduced business rates relief, both taking effect in April."The rate of self-employed bankruptcies within the hospitality sector further underscores the wider challenges facing the industry. Businesses are in hazardous financial positions, and this will only continue to increase as April approaches," warns Sacha Lord.

For more details, please visit: *https://catererlicensee.com/hospitality-sector-faces-crisis-as-insolvencies-soar/*

Manz AG to file for insolvency amid financial crisis

The application for insolvency proceedings is expected to be submitted in the coming days following a decision by the company's management board. The move was triggered by the withdrawal of financial support from Manz AG's creditors. Independently of this, Manz is also over-indebted under insolvency law.

As a result of this, there is no financing solution to secure the funds needed to continue Manz's operations outside of insolvency proceedings. However, the Management Board is continuing talks with potential investors. In recent weeks, the Management Board has been in intensive discussions with a number of lenders and investors regarding new equity and debt capital.

Discussions with one of the interested investors were at an advanced stage but were unexpectedly broken off by that investor, said media reports.

For more details, please visit: *https://evertiq.com/news/56966*

UK restructurings could climb as budget cost rises loom, warn experts

Insolvencies and restructuring could rise further over the start of 2025 as firms face increased cost pressures, industry experts in the UK have warned.

Restructuring bosses have cautioned that impending cost rises linked to the autumn budget could particularly weigh on the retail, hospitality and care sectors. It comes after official figures pointed out an uptick in insolvencies at the end of this year. Company insolvencies lifted by 13% in November compared with the previous month, although they were lower year-on-year, according to the Office for National Statistics. DIY and garden retailer Homebase was among firms to collapse into administration in November. Insolvency practitioners said they have witnessed an increase in inquiries in the run up to the new year.

Nicky Fisher, immediate past president of R3, the UK's insolvency and restructuring trade body, and a partner at Herron Fisher, said, "Our members are telling us that inquiries from directors increased in November, as they looked to understand more about their insolvency or

restructuring options and discuss their financial concerns ahead of January."

For more details, please visit: *https://www.lse.co.uk/news/uk-restructurings-could-climb-as-budget-cost-rises-loom-warn-experts-ixzwe0mw5nfkw6n.html*

Elon Musk issues USA Bankruptcy Warning amid calls for a Bitcoin-Inspired 'Fix'

Now, as Donald Trump has been pitched a "capital markets renaissance fueled" by bitcoin to "unlock trillions in wealth," Elon Musk has warned "de facto" bankruptcy will happen in the U.S. Mr. Musk, who has been waging a campaign against spiraling U.S. debt, has again warned of looming U.S. bankruptcy as a Federal Reserve "nightmare" could be coming true. The bitcoin price has surged following the election of Donald Trump, climbing after he confirmed plans to create a bitcoin strategic reserve--something proposed as a way to combat soaring debt and sticky inflation.

For More Details, Please Visit: *https://www.forbes.com/sites/digital-assets/2024/12/27/tesla-ceo-elon-musk-issues-us-bankruptcy-warning-amid-calls-for-a-bitcoin-inspired-fix/*

USA's retail giant 'Party City' files for Bankruptcy for the 2nd time in two years

Party City, which has been in business for over 40 years and sells party supplies from themed decorations to Christmas costumes, said that all its 700 stores in the USA would remain open as it commences a going-out-of-business sale. As per the media reports, Party City Holdco listed both assets and liabilities in the range of $1 billion to $10 billion and estimated to have more than 10,000 creditors. Party City, which operates both brick-and-mortar stores and an e-commerce website, said it would retain most of its 12,000 employees during the period of sales to assist with the wind-down process.

For More Details, Please Visit: *https://www.reuters.com/legal/retailer-party-city-files-bankruptcy-will-wind-down-700-stores-2024-12-21/*

Miss America Competition LLC to withdraw Bankruptcy application due to ownership disputes

The company runs the Miss America competition. It has asked to withdraw its bitterly contested bankruptcy case so that other courts can decide who owns the organization. At the time of filing the Bankruptcy application on November 22, the company said that it needed to urgently address $4.1 million in debt and reclaim financial and operational control from a "former" manager that had gone rogue. But that manager, Robin Fleming, said in court filings that the bankruptcy was a fraudulent attempt by an estranged business partner, Glenn Straub, to wrest control over an organization he never owned.

For More Details, Please Visit: *https://www.reuters.com/legal/litigation/miss-america-seeks-withdraw-bankruptcy-amid-ownership-dispute-2024-12-12/*

Japan's bankruptcies set to hit 11-year high in 2024: Report

According to a research, Japan's bankruptcy filings this year are set to surpass 10,000 and hit the highest since 2013. In November, 841 Japanese companies went bankrupt, bringing the January-November tally to 9,164, already exceeding last year's total, said the research. According to the report, the 2024 bankruptcy figure will likely exceed 10,000 for the first time since 2013, when 10,855 firms went bankrupt. The Bank of Japan holds a rate review on Dec. 18-19 at which policymakers will scrutinize recent economic indicators to see if they are in line with forecasts.

For More Details, Please Visit: *https://www.reuters.com/world/japan/japans-bankruptcies-set-hit-11-year-high-2024-data-shows-2024-12-09/*

About 12% of all UK restaurants face insolvency: Report

The research conducted by a United Kingdom (UK) based accountancy firm has revealed that more than one in 10 (12%) restaurants are at imminent risk of closure, a result of declining consumer confidence and ongoing inflation. The firm analyzed the credit risk scores and balance sheet information of all 50,900 British restaurants wherein it was found that 10,388 (20% of the total) have negative net assets on their balance sheets. "These businesses are vulnerable to going bust (cash flow insolvent), which occurs when businesses are unable to make payments to suppliers or lenders," said the firm to media.

For More Details, Please Visit: *https://harpers.co.uk/news/fullstory.php/aid/33514/New_report_suggests_12_25_of_all_UK_restaurants*

Sweden's Northvolt files for bankruptcy, in blow to Europe's EV ambitions

Northvolt, the Swedish maker of battery cells for electric vehicles has reportedly filed for Chapter 11 bankruptcy protection in the U.S. This is considered as a blow to Europe's hopes that its most developed battery player would reduce Western car makers' reliance on Chinese rivals. According to media reports, the company has cash to support only for one week's operations. It has $5.8 billion in debts. The company claims to run its operations normally and complete restructuring process by Q1 of 2025.

For More Details, Please Visit: *https://www.reuters.com/technology/northvolt-files-chapter-11-bankruptcy-us-2024-11-21/*

Spirit Airlines, USA's low-cost carrier, files for Bankruptcy

After struggling with years of losses, failed merger attempts and heavy debt levels, the Florida-based Spirit Airlines reportedly filed for Bankruptcy protection under Chapter 11 on Monday. According to media reports, it is the first major USA airline to file for Chapter 11 in more than a decade, after a proposed $3.8 billion merger with JetBlue Airways collapsed in January. In a media statement the company said it had pre-arranged a deal with its bondholders to restructure its debts and raise money to help it operate during the bankruptcy process, which it expects to exit in the first quarter of 2025.

For More Details, Please Visit: *https://www.reuters.com/business/aerospace-defense/spirit-airlines-files-bankruptcy-2024-11-18/*

Japan's 925 companies went bankrupt in October 2024

According to the media report, 925 companies of Japan went bankrupt in October 2024 which is the second highest in this year. In May 1,016 companies were sent to bankruptcy which was 17.1% higher than year-before levels. This will reportedly adversely affect Japan's Central Bank's effort to meet its 2% inflation target driven by robust domestic demand. Corporate bankruptcy cases are also creeping up as rising raw material costs and labour shortages squeeze profits particularly for small and medium-sized firms, said the media report.

For More Details, Please Visit: *https://www.reuters.com/markets/asia/dampening-corporate-mood-rising-bankruptcies-cloud-bojs-rate-hike-path-2024-11-11/*

B. Riley-backed Franchise Group commences Chapter 11 bankruptcy proceedings in USA Court

Vitamin Shoppe-owner Franchise Group, backed by investment bank B. Riley Financial has reportedly commenced voluntary Chapter 11 proceedings in the U.S. Bankruptcy Court on Sunday. B. Riley, which had participated in the management-led buyout of Franchise in 2023, has been under investor and media scrutiny involving its deal and warned in August its exposure to Franchise could result in a write down and losses for the second quarter ended June 30. The company has assets and liabilities, each between $1 billion and $10 billion.

For More Details, please visit: *https://www.reuters.com/business/retail-consumer/b-riley-backed-franchise-group-commences-bankruptcy-proceedings-2024-11-04/*

Europe's Intrum seeks US bankruptcy protection to restructure $4.7 bln net debt

Intrum, the biggest debt collector in Europe, 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 2024. "Intrum expects to emerge from the prepackaged Chapter 11 process and the Swedish company reorganization process with ample runway and liquidity to execute its business plan and positioned for long term growth and success," it said in a press statement. Intrum had won support for a debt restructuring from 73% of its noteholders, enough for a U.S. Chapter 11 procedure.

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

Best Practices Meetings of Committee of Creditors Under CIRP and Stakeholder's Consultation Committee Under Liquidation Process

I. BACKGROUND

In a corporate insolvency resolution process (CIRP), the commercial wisdom of the Committee of Creditors (CoC) is final subject to approval of the resolution plan by the Adjudicating authority. The CoC decides various matters in a CIRP, including acceptance or rejection of a resolution plan. It takes decisions through its meetings which are recorded in the minutes of the meetings. In CIRP, thus the role of CoC is akin to that of a protagonist, giving finality to the process.

This Statement of Best Practices (Statement) on the meetings of the Committee of Creditors (CoC) and Stakeholder Consultation Committee (SCC) is one of a series of Best Practices issued and recommended to Insolvency Professionals (IPs) with a view of maintaining high standards by setting out best practices and harmonizing approach to particular aspects of insolvency resolution process.

Adherence by an Insolvency Professional to this Statement is recommendatory. It prescribes a set of guidelines for convening and conducting meetings of the CoC and SCC constituted under Chapter II of the Insolvency and Bankruptcy Code, 2016 (IBC/ Code) and matters related thereto.

This Statement of Best Practices sets out-

a) The legal provisions on meetings of Committee of Creditors as provided under the Code and Rules/ Regulations/IBBI facilitation letters.

b) Practice of observance of the legal provisions in letter and spirit; and

c) Suggested best practices in conducting and convening the CoC meetings and SCC meetings.

II. SCOPE

This Statement is recommended to be followed by Insolvency Professionals while conducting the CoC and SCC meetings. This Statement is in conformity with the provisions of the Code and the Rules/Regulations/ Guidelines/Circulars made thereunder. However, if, due to subsequent changes/Amendments in the Code and the Rules/Regulations/Guidelines/Circulars made thereunder, a particular Statement or any part thereof becomes inconsistent with the Code or the regulations, the provisions of the Code or rules or the regulations shall prevail.

III. MEETING OF COMMITTEE OF CREDITORS

The committee and its members shall discharge their functions and exercise powers under the Code and its regulations in respect of the corporate insolvency resolution process in compliance with the guidelines issued by the Board. The Board has issued Guidelines Dated 6th August 2024 for the Committee of Creditors, annexed as Annexure A. Therefore, it is the duty of the IRP/RP to appraise the Members and Committee about these guidelines by including in the preface of agenda for all CoC meetings as a protocol to be followed. The IRP/RP shall also inform the Members of the Committee at the start of each meeting for seamless approvals and interactions with stakeholders about the following:

a) From the commencement of the meeting until its conclusion, no person other than the participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where the meeting is held or to the video conferencing or other audio and visual facilities, without the permission of the resolution professional.

b) Every participant attending through video conferencing or other audio and visual means shall state, for the record, that no one other than the participant is attending or has access to the proceedings of the meeting at that participant's location.

c) A Committee member may attend and vote in the meeting either in person or through an authorized representative. Provided, however, that such a Member of the Committee shall inform the resolution professional, in advance of the meeting, of the identity of the authorized representative who will attend and vote at the meeting on their behalf.

d) The IRP/RP shall, in every notice of the CoC meeting and any other communication addressed to the financial creditors, other than creditors under Section 21(6A) (b), nominate a representative with proper authorization and sufficient mandate to effectively participate in the meetings. The nominated representative shall endeavour to obtain the approval of the competent authority, if required, at the earliest.

e) All decisions of the Committee of Creditors shall be taken by a vote of not less than 66%/51% of the voting share of the creditors (FC/OC), as the case may be.

f) Model timeline for corporate insolvency resolution process.

1. Convening of Committee Meeting:

1.1 Authority to convene

a) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors. The Resolution Professional appointed by the Adjudicating Authority to conduct the CIRP, may as and when he considers necessary summon subsequent meetings of the CoC.

b) However, a resolution professional shall convene a meeting of the committee before the lapse of thirty days from the last meeting. Provided that the committee may decide to extend the interval between such meetings subject to the condition that there shall be at least one meeting in each quarter. [Explanation: It is clarified that meeting(s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority.]

c) The Resolution Professional shall summon a meeting of the CoC if a request to that effect is made by the members of the committee representing thirty-three per cent of the voting rights.

Such a request shall include a note proposing the matters to be discussed or issues to be voted upon, along with relevant documents, if any. The RP shall forthwith convene a meeting of the CoC for consideration of the note or place the note for consideration in a meeting of the CoC if it is already scheduled or in the ensuing meeting of the CoC.

d) When members of the CoC having less than 33 percent of voting rights request the IRP/RP, along with a note, to place the note for consideration in a meeting of the CoC, the IRP/RP shall consider the request expeditiously on merits. If he considers it necessary, he shall place the note for consideration in the meeting of the CoC if it is already scheduled or in the ensuing meeting of the CoC.

e) The Interim Resolution Professional/Resolution Professional shall act as a chairperson for all the meetings of CoC. The Interim Resolution Professional/Resolution Professional shall himself conduct all the meetings of CoC. The Chairperson may have his/ her team members including legal counsel, other relevant persons and professionals attending the meeting and they may present their views on matters and provide clarifications on specific issues and matters of discussion when permitted by the IRP/RP.

1.2 Number, Day, Time, Place and Mode of Meeting

a) Serial Number of Meeting:

Every Meeting shall have a serial number.

b) Day, Time & Place of Meeting:

- A Meeting may be convened on any day, at any time and places the Interim Resolution Professional/ Resolution Professional deems fit. The Resolution

Professional may keep in mind that a meeting/ adjourned meeting may not preferably be kept on a National Holiday, unless absolutely necessary and /or when directed and approved by the CoC. The Date, time and place of the meeting must be fixed and intimated keeping in mind the convenience of members of COC and having regard to their geographical location.

- The Resolution Professional may convene the meeting of COC at the premises of corporate debtor/ or his/her own premises or any other place as the Resolution Professional deems fit. The decision of the Resolution Professional will be final and binding.
- Supreme Court Judgement - Aishwarya Mohan Gahrana v. Rajesh Narang and Anr. "As a Resolution Professional, the Appellant chose to visit the premises of the Financial Creditor and convened the meetings of the COC there, which gives rise to doubts about the independence of the appellant"

Provided, when choosing the venue for the meeting, the Resolution Professional should not only fulfil the legal requirement to choose a place which is convenient for persons who are invited to attend, but he/she should also ensure that the accommodation is adequate for the number of persons likely to attend. Where a meeting is conducted through video conferencing or other audio and visual means, the venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

1.3 Mode of Meeting

- The members of the CoC may meet in person or through such other electronic means as provided in CIRP Regulations.
- Where a meeting is conducted through video conferencing or other audio and visual means, the venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place. The link for joining the meeting shall be communicated, in advance, to all the members of the COC with clear advice to attend the meeting at the scheduled time by joining the link.

2. Notice of the Meeting

2.1 Service of Notice

a) Notice Period

A meeting of the CoC shall be called by giving not less than five days' notice in writing along with notes on agenda to every participant, at the address it has provided to the

Interim Resolution Professional/Resolution Professional, as the case may be and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20 of CIRP Regulations.

The illustrative list of items of business for the agenda for the first and subsequent meetings of the Committee of Creditors is placed at Annexure B and C, respectively.

The CoC may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit.

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is an authorized representative.

2.2 Notice to be served on

a) The Interim Resolution Professional/Resolution Professional shall give notice of each meeting of the CoC to:

b) All its members including the authorised representatives referred to in sub-section (6) and (6A) of Section 21 and sub-section (5) of Section 21:

Provided that when Authorised Representatives are present, then the Financial Creditors or Operational Creditors or Homebuyers they represent would not be allowed to attend the meeting.

c) Members of suspended Board of Directors or Partners of the corporate debtor as the case may be;

Note: The authorized Representative of Suspended Board of Directors are not allowed to attend the meeting

d) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten percent of the debt.

Note: If the claim of Operational Creditors, on verification is found to be less than ten percent, the Operational Creditors have no right to claim representation in the meeting of the Committee of Creditors.

e) The IRP/Resolution Professional may, if required, invite (by not sharing the full agenda of the meeting) such persons relating to the CIRP, as invitees to participate in a particular meeting, where presence of such invitee is required. Such persons may include statutory auditors/senior management personnel of Corporate Debtor, Registered Valuers, Forensic Auditors, if any, etc.

f) A foreign insolvency practitioner or Administrator of any given case may be allowed to attend the CoC proceedings in India, subject to the approval of Adjudicating Authority.

The obligation of the resolution professional shall be satisfied when he/she transmits the e-mail, and he/she shall not be held responsible for a failure in transmission beyond its control.

2.3 Service of notice by electronic means

a) A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

b) The subject line in the e-mail shall state the name of the corporate debtor, the place, if any, the time and the date on which the meeting is scheduled. If notice is sent in the form of a non-editable attachment to an e-mail. Such attachment shall be in the Portable Document Format (PDF) or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

c) A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

Further, the subject line in e-mail sharing notice of CoC meeting shall state the name of the corporate debtor, the place (if any), the time and the date on which the meeting is scheduled.

d) If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

e) When notice or notifications of availability of notice are sent by an e-mail, the resolution professional shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as ''proof of sending''.

f) The obligation of the resolution professional shall be satisfied when he transmits the e-mail and he shall not be held responsible for a failure in transmission beyond its control.

g) The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies and the resolution professional shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.

h) If a participant, other than a member of the committee, fails to provide or update the relevant e-mail address to the resolution professional, the non-receipt of such notice by such participant of

any meeting shall not invalidate the decisions taken at such meeting.

2.4 Contents of Notice

a) The notice shall provide the participants the details of day, date, time and venue of the meeting and of the option available to them to participate through video conferencing or other audio and visual means and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means.

b) In Notice, contact detail of the person, who will provide support in case of any difficulty in joining the meeting, should also be given.

c) The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through a representative duly authorised:

Provided that such participant shall provide the Interim Resolution Professional/Resolution Professional, in advance, the identity of the authorised representative, who will attend and vote at the meeting on its behalf.

d) The notice of the meeting shall contain the following-

i. a list of the matters to be discussed at the meeting.

ii. a list of the issues to be voted upon at the meeting; and

iii. copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.

e) Each item of the business requiring approval at the meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the members of the committee of creditors to understand the meaning, scope and implications of the proposal.

f) The insolvency professional shall place in each meeting of the committee the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process costs.

g) The RP shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.

(to be continued....)

IIIPI News

Inauguration of the 8th Foundation Day of IIIPI by Chief Guest, Hon'ble Shri Justice Dipak Misra, Former Chief Justice, Supreme Court on 26th November 2024.

CA. Ranjeet Kumar Agarwal, President-ICAI, addressing the gathering at the 8th Foundation Day of IIIPI on 26th November 2024.

Webinar on "Mediation under IBC - The way forward" organized by IIIPI on December 06, 2024.

Webinar on "Liquidation & Voluntary Liquidation – Best Practices" organized by IIIPI on November 14, 2024.

2nd Batch of Executive Development Programme on Group Insolvency organized by IIIPI from 20th November to 21st November 2024.

Virtual Workshop on Mastering "Avoidance/PUFE Forensics under IBC" (For IPs and IVs) organized by IIIPI on 23rd Nov 2024.

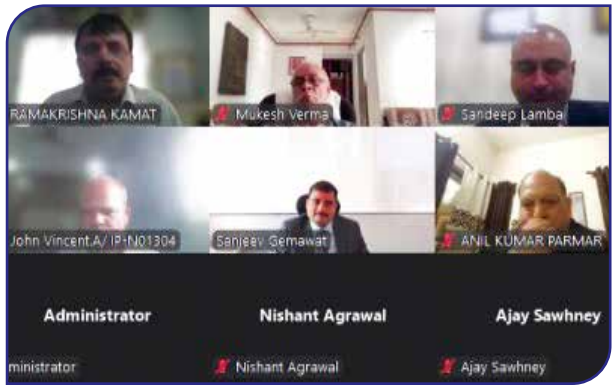
IIIPI News

Webinar on "Individual Insolvency (PG to CD): Best Practices" organized by IIIPI on November 08, 2024.

IIIPI organized One-day Virtual Workshop on "Group and Cross-Border Insolvency" on December 21, 2024.

Webinar on "Evolving Jurisprudence - Recent Case Laws" organized by IIIPI on October 10, 2024.

Webinar on "Case Studies – CIRP & Liquidation" organized by IIIPI on October 18, 2024.

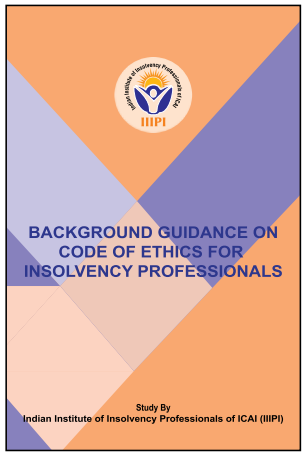


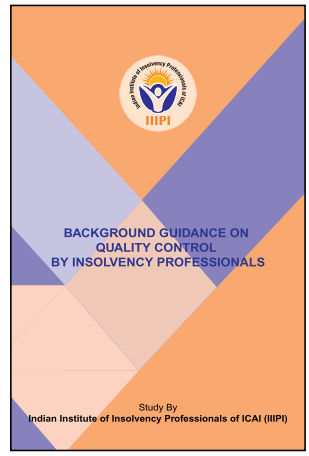
The 22nd Batch of EDP on "Managing Corporate Debtors as Going Concern under CIRP" conducted by IIIPI from 10th to 14th Dec. 2024.

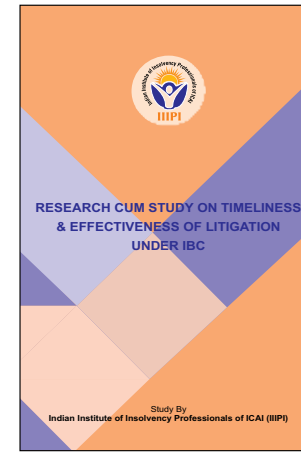
The 12th Batch of EDP (For IPs) on Mastering "Avoidance/PUFE Forensics" Under IBC (Online) from 22nd October to 24th October 2024.

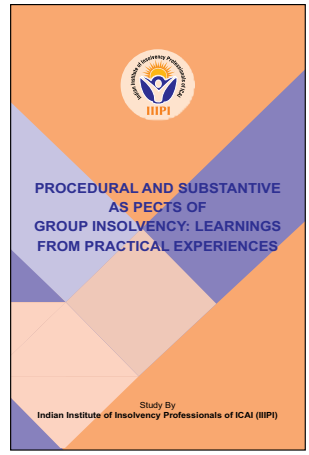
IIIPI's PUBLICATIONS

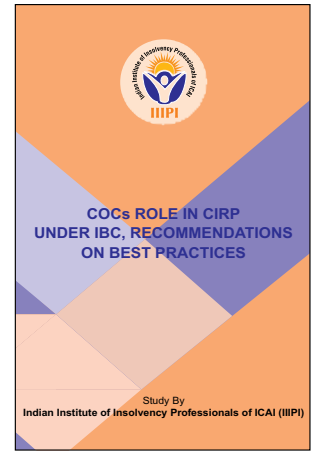
IIIPI has published several research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

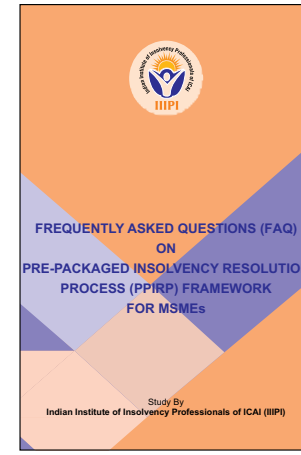


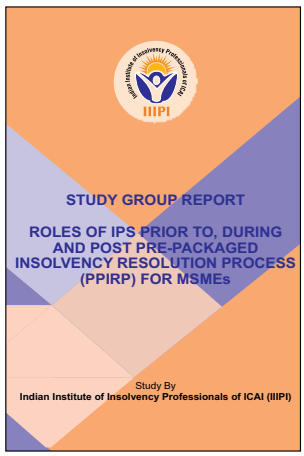


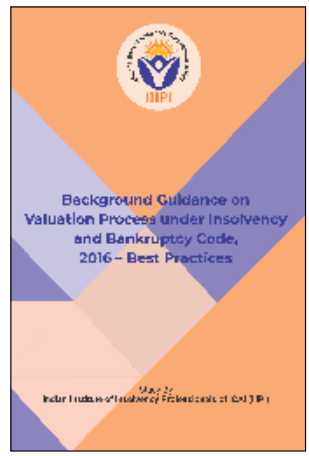


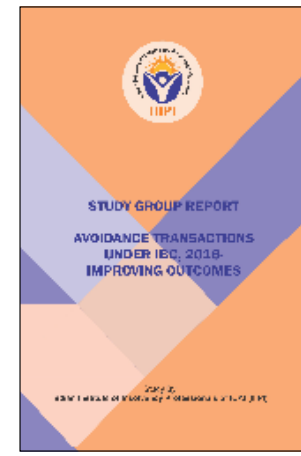


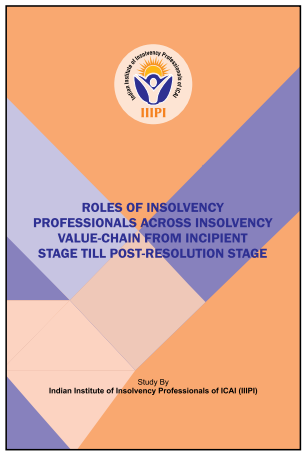


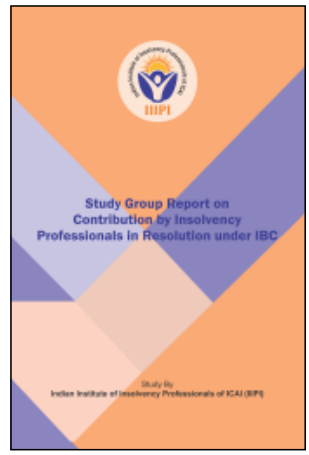


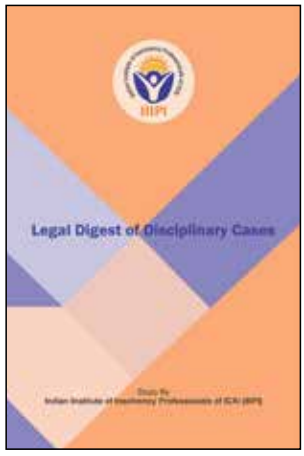


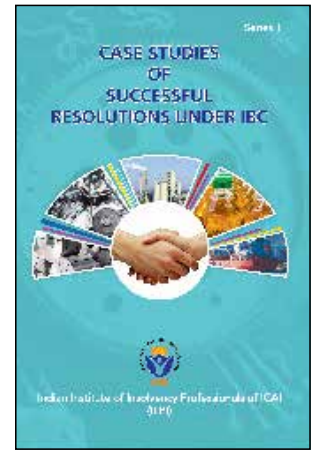


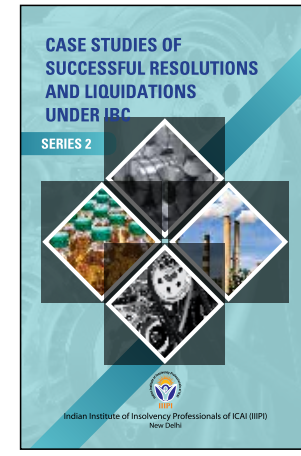


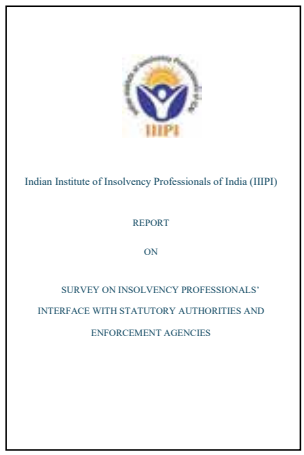


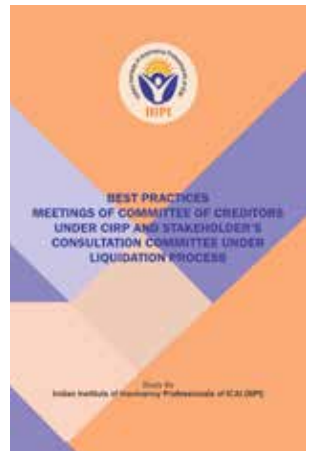












Weekly Publications

IBC Case Laws Capsules

IIIPI Newsletter

Media Coverage

Business Standard
Friday, January 03, 2025 | 11:55 AM IST EN | Hindi

Govt working on integrated platform to speed up resolution processes

The government is working on an integrated platform for the insolvency ecosystem covering key stakeholders that will also help speed up resolution processes.

Press Trust of India/ New Delhi Nov 27, 2024, | 12:19 AM IST

The government is working on an integrated platform for the insolvency ecosystem covering key stakeholders that will also help speed up resolution processes.

The Insolvency and Bankruptcy Code (IBC), which came into force in 2016, aims to provide market-linked and time-bound resolution of stressed assets. However, there have been delays in the resolution process.

Anita Shah Akella, Joint Secretary at the Ministry of Corporate Affairs (MCA), on Tuesday emphasised that IBC is not a recovery mechanism but a rescue mechanism.

She was speaking at a conference in the national capital to mark the eighth annual day of the Indian Institute of Insolvency Professionals of ICAI.

While mentioning various steps taken and also being planned to further improve IBC resolutions, she said the ministry is working on having an integrated platform for the insolvency ecosystem.

"(It will be a) federated architecture that will push and pull data as and when required," she noted.

The platform will connect MCA, Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and insolvency professionals, among others. It will have various features such as red flags in case of delays and alerts on the app, she added.

As per official data, a total of 1,963 CIRP (Corporate Insolvency Resolution Process) cases are ongoing and out of them, 1,388 have exceeded the time limit of 270 days.

Creditors have recovered around Rs 3.55 lakh crore through resolution of 1,068 cases under the insolvency law till September this year, the data shared by the ministry with the Lok Sabha on Monday showed.

THE ECONOMIC TIMES

Govt working on integrated platform for insolvency ecosystem: Official

PTI. Nov 26, 2024, 08:58:00 PM IST

Synopsis

The government is creating a new platform to improve the insolvency process. The platform will connect key stakeholders like the MCA and IBBI. It aims to speed up resolutions under the IBC. The IBC is a rescue mechanism, not a recovery one. Many insolvency cases have exceeded the 270-day deadline. Creditors have recovered a significant amount through resolved cases.

New Delhi: New Delhi: The government is working on an integrated platform for the insolvency ecosystem covering key stakeholders that will also help speed up resolution processes. The Insolvency and Bankruptcy Code (IBC), which came into force in 2016, aims to provide market-linked and time-bound resolution of stressed assets. However, there have been delays in the resolution process.

Anita Shah Akella, Joint Secretary at the Ministry of Corporate Affairs (MCA), on Tuesday emphasised that IBC is not a recovery mechanism but a rescue mechanism.

She was speaking at a conference in the national capital to mark the eighth annual day of the Indian Institute of Insolvency Professionals of ICAI.

While mentioning various steps taken and also being planned to further improve IBC resolutions, she said the ministry is working on having an integrated platform for the insolvency ecosystem.

"(It will be a) federated architecture that will push and pull data as and when required," she noted.

The platform will connect MCA, Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and insolvency professionals, among others. It will have various features such as red flags in case of delays and alerts on the app, she added.

As per official data, a total of 1,963 CIRP (Corporate Insolvency Resolution Process) cases are ongoing and out of them, 1,388 have exceeded the time limit of 270 days.

Creditors have recovered around Rs 3.55 lakh crore through resolution of 1,068 cases under the insolvency law till September this year, the data shared by the ministry with the Lok Sabha on Monday showed.

businessline.

Cross-border insolvency framework may not be reality anytime soon

November 27, 2024 at 10:02 PM. | New Delhi

MCA, however, optimistic about eventual realisation of this vision

BY KR SRIVATS

India's aspirations for a robust cross-border insolvency framework may remain a work in progress for sometime, a top Corporate Affairs Ministry (MCA) official has indicated. However, MCA is optimistic about its eventual implementation in the country.

"Cross-border framework is something whose time will come; it has not yet come. It will come," Anita Shah Akella, Joint Secretary, MCA, said at the 8th Foundation Day of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) in the capital.

Her remarks are significant as Centre was widely expected to include provisions related to 'cross border insolvency framework' as part of Bill to amend the Insolvency and Bankruptcy Code 2016. Indications are that the IBC amendment Bill may not get introduced in the ongoing Winter Session. It is not part of list of Bills announced by the Government ahead of the commencement of Winter Session.

A cross-border insolvency framework is essential for handling bankruptcy cases involving multinational corporations with operations and creditors spanning different jurisdictions.

It facilitates efficient resolution of claims, provides legal certainty to creditors, and ensures fair distribution of assets.

Currently, India's Insolvency and Bankruptcy Code (IBC), despite its achievements in streamlining domestic insolvency processes, lacks provisions to address cross-border insolvency comprehensively.

Procedural challenges

Experts believe that India's delay in adopting a cross-border insolvency framework stems from the legal and procedural challenges involved. They feel that harmonising the domestic insolvency process with international laws under frameworks like the United Nations Commission on International Trade Law (UNCITRAL) Model Law requires careful calibration.

Issues such as jurisdictional conflicts, recognition of foreign insolvency proceedings, and asset tracing across borders need clarity. Additionally, concerns about safeguarding domestic creditors' interests and ensuring that the framework aligns with India's economic realities have slowed progress.

The need for such a framework, however, is pressing. With India emerging as a global investment hub, multinational corporations often find themselves entangled in insolvency proceedings involving entities in other jurisdictions. Without a streamlined mechanism, resolving such cases becomes inefficient and costly.

As global trade and investments deepen, the urgency for a cross-border insolvency regime is expected to grow, making it a key reform on India's economic agenda, experts said.

Specific rules for NCLT

Meanwhile, Akella said that MCA is in the process of framing specific Rules for National Company Law Tribunal (NCLT) as an adjudicating authority. The Rules are expected to help get things faster in NCLT functioning.

The integrated portal for IBC announced in the Budget is expected to go live in the next 18 months, she added.

MCA is also soon expected to introduce special dedicated NCLT Benches for Company law matters, she said.

Insolvency mediation to cut NCLT load: Govt

FE BUREAU
New Delhi, November 26

It has been proposed that operational creditors will exercise the option of mediation before filing insolvency applications

THE INSOLVENCY AND Bankruptcy Board of India's (IBBI) proposal to include an option of mediation for operational creditors (OCs) under the Insolvency and Bankruptcy Code (IBC) should be looked into "seriously", as it will cut the burden of NCLTs, Anita Shah Akella, joint secretary, the ministry of corporate affairs, said on Tuesday.

"The (voluntary mediation) proposal needs to be looked into seriously, as about 70% of withdrawal in pre-admission stage (of corporate insolvency resolution process) is mostly by the OCs," Akella said at the IIIPI's 8th Foundation Day event.

"The OCs are using IBC more like a recovery mechanism...Once the voluntary mediation procedure is introduced, the OC cases will reduce to a large extent, which will consequently stop choking the NCLTs (National Company Law Tribunals)," she said.

In a discussion paper floated earlier this month, the IBBI said the OCs would exercise the option of mediation before filing insolvency applications under Section 9 of the IBC. This is the same provision which allows OCs to initiate corporate insolvency resolution process (CIRP) against a corporate debtor over non-payment of dues.

However, if the mediation fails to reach settlement, the mediator will be asked to prepare a non-settlement report which shall be annexed with the application for initiation of CIRP before the adjudicating authority. Till June 30, 21,466 cases under Section 9 were disposed of before admission, data showed.

The Financial Express, 26th November 2024.

Help Us to Serve You Better

Guidance on Common Issues Observed by IIIPI During Monitoring/ Inspections of IPs

Part – 1: Corporate Insolvency Resolution Process (CIRP)

1.1. Observations related to Public Announcement

Observations	Relevant Provisions of Law	Remarks
i. IP did not provide justifiable reasons alongwith supporting documents for delay in the Public Announcement (PA), lacking written contemporaneous records via post, email, etc for vouching the date of receipt of order. ii. IPs miscalculated the estimated date of closure of CIRP in Public Announcement by calculating from receipt of order instead of Insolvency Commencement date. iii. IP did not file CIRP Form 7 recording the reasons for delay in public announcement. iv. IRP/RP neglected to seek condonation and exclusion of delay period from timelines. v. Despite giving consent under sections 7/10 of IBC, IP did not communicate or approach the Counsels of the FC or CD and registry of the respective AA for copy of the admission. vi. In applications under Section 9, (a) there were significant delays in issuing the Public Announcement (PA); (b) and in the withdrawal of assignments during the interim period before the Committee of Creditors (CoC) was constituted. During this time, the Interim Resolution Professional (IRP) handled the withdrawal process independently, without the involvement of the CoC.	• Section 13 & 15 of the Code. • Regulation 6,7,8 & 40B (CIRP-7) of the Insolvency and Bankruptcy Board of India (CIRP) Regulations, 2016.	i. The delay in making the announcement may substantially affect the model timelines. Additionally, any delay in taking custody and control of the matter poses the risk of the suspended Board of Directors of the Corporate Debtor continuing operations, which could lead to payments toward pre-CIRP costs, thereby impacting moratorium under Section 14. The Moratorium u/s 14 is applicable from the date of the admission order and not from the date of the receipt of the order. ii. In cases where the Operational Creditors (OCs) are members of the Committee of Creditors (CoC) if constituted, these OCs may be adversely affected due to the delay in the Public Announcement (PA) and the non-constitution of the CoC. iii. The IP should publish a corrigendum in case any correction is required in the Public Announcement as an incomplete public announcement leads to substantial lapse.

vii. Public Announcement lack information of three choices of Authorised Representative (AR) names for specific class of creditors.		iv. The IP is expected to file the Requisite CIRP –7 for any delay in timelines of Public Announcement as per the stated regulation, repeatedly till the public announcement is done. Delay in submitting CIRP –7 leads to late fees and impacts AFA renewal/ issuance.

1.2 Observation on Claim Verifications:

Observations	Relevant Provisions of Law	Remarks
i. Delay in claim verification by the IP. ii. The Uninvoked bank guarantee admitted as a claim. Since the amount claimed for uninvoked bank guarantee was not defaulted at the time of admission of the claim and hence being contingent in nature, the claims should have been admitted as contingent in nature while constituting the CoC. iii. IP did not intimate the reasons in writing for rejection or partial admission of claim amount to the claimants. iv. Revised List of creditors was not informed to the PRA/SRA as a result the distribution within the same class of claimants was affected. v. Revised list of creditors included in Compliance Certificate (Form H) however, the resolution plan submitted to AA for approval was based on the previous list of creditors as a result the AA resolution plan approval order consists of distribution to claimant on the basis of old list of creditors. vi. Non-maintenance of calculation/ verification sheets of claims admitted. vii. Verification of claim without verification of security interest.	• Section, 18(b), 25(e) of the Code. • Regulation 13(1) & 14 of IBBI (CIRP) Regulations 2016 • IBBI circular No. IBBI/ CIRP/36/2020 dated 27th November 2020 • IBBI circular No IBBI/ CIRP/47/2021 dated 24th November 2021.	i. As it is the duty of IP to consider the interests of all stakeholders, the claim verification may substantially affect the IBC process and its conclusion and prompt undue delays and litigations. Further, it affects the distribution of resolution plan value or liquidation estate. ii. The IP is expected to verify claim and maintain transparency in the process by intimating/ communicating with the claimant along with reasons for non/partial admission of claim. iii. IP shall maintain all documents w.r.t. verification of all claims and the list shall be made available during the CoC meeting if sought by other stakeholders. iv. IP shall intimate through revising the IM, any change in list of claims and mention the liabilities for the non-submitted claims for the benefit of the PRA/SRA to consider any future liability or to propose a settlement in the Resolution Plan.

viii. List of creditors may be verified by the other creditors, as agenda item not forming part of Notice of the meeting		v. It is the sole responsibility of the IP to verify the claim even in cases where assistance have been taken by IP and maintain contemporaneous records for all decisions taken, the reason for taking the decision, and the information and evidence in support of such decisions. vi. The IP shall submit report to AA along with revised list of creditors. vii. The IP shall file through electronic platform of IBBI the list of creditors within 3 days and thereafter on subsequent revision/ modification.

1.3 Observations related to the Constitution of CoC

Observations	Relevant Provisions of Law	Remarks
i. Delay in the constitution of CoC. ii. Non-constitution of CoC on various grounds and eventually there was a withdrawal/settlement. iii. Non-constitution of CoC with Operational creditors in the absence of any financial creditor claim submission. iv. Delay in filing of the report certifying constitution of CoC to the Adjudicating Authority (AA). v. The voting share was provided to the related Financial creditor.	• Section 18(c), 21 of the Code • Regulation 17 of IBBI (CIRP) Regulations, 2016	i. The CoC plays a vital role in executing and concluding the CIRP through the IP. Any shortfall in the constitution of CoC may have a substantive impact on the rights of stakeholders and the overall conclusion of the CIRP. ii. The IP shall reconstitute the CoC within two days as and when verification of the claim and report to AA. iii. The IP must constitute CoC with Operational creditors, where the CD has no financial creditor or where all FCs are related parties. iv. Any change in the constitution of CoC shall be intimated to the PRA.

1.4 Observations related to the Appointment of Authorized Representatives for creditors in a Class.

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that AR was attending the CoC meetings even before its appointment as AR by the order of AA. Therefore, the AR was given the right to attend before the appointment, however, the voting of home buyers was being conducted by RP itself. ii. IPs are not clear on the process of appointment and functionality of Authorized Representative. The AR attended most of the CoC meetings without any confirmed appointment or role in them. iii. There have been delays in the appointment of AR.	• Section 21 (6A), 24(5), 25A of the Insolvency and Bankruptcy Code 2016. • Regulation 16A of IBBI (CIRP) Regulations 2016	i. This highlights the ***procedural impact*** of the discrepancy between the legal framework and its execution in practice, potentially undermining the effective representation of homebuyers' interests in the insolvency resolution process. ii. The RP along with request for AR appointment to AA , shall also intimate AA for his continuation in -interim.

1.5 Observations related to Conducting CoC meetings- Notice, minutes, timelines, voting and approvals

Observations	Relevant Provisions of Law	Remarks
i. Delay in conducting the 1st CoC meeting. ii. Shorter Notice sent for CoC meetings without approval from CoC. iii. Non-sharing of Notice for the meeting with the suspended Board of Management of the CD and to OC or its representatives wherein the amount of their aggregate dues is 10% or more of the debt. iv. Written contemporaneous records not maintained properly by IP pertaining to CoC meetings conducted by the IP like voting sheets and attendance sheets. v. The agenda items are not bifurcated between discussion and voting items. vi. It was observed that the notice enclosing the agenda did not provide segregation of the item to be discussed at the meeting and the issues to be voted upon in the meeting of CoC.	• Section 22 (1), 24, 25 of the Code • Regulations 18 to 26 of IBBI (CIRP) Regulations, 2016 read with Regulation 40A of IBBI (CIRP) Regulations 2016.	i. The decision-making during the execution of the CIRP process lies with the CoC. Consequently, any procedural lapses regarding the issuance of notices and the maintenance of meeting minutes may result in a dereliction of duties by the IP. ii. It is the duty of the IP to consider the interest of all stakeholders and circulate notices/ minutes to all members of the meeting including the suspended Board and representative of the OCs. iii. The shorter notice shall be considered by IP only in a subsequent CoC meeting, following the meeting wherein the CoC has approved the shorter notice agenda with requisite Voting.

vii. Team member of IP chaired the CoC meeting as recorded in the minutes. viii. It has been observed that the contents of the notice are deficient in line with the provisions of Regulation 20(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 such as the place, time, and date on which the meeting is scheduled are not mentioned in the subject line. ix. It has been observed that the notice of the meeting did not contain the information which states the process and manner of voting by electronic means and the time schedule, including the time period during which the votes may be cast, did not provide the login ID and the details of a facility for generating password and for casting the vote in a secured manner. x. The notice for convening the meeting of the committee did not provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with the regulation 21(2) of IBBI (Insolvency resolution process of corporate persons) Regulations, 2016. xi. Circulation of the minutes of the meeting of committee of creditors is not done within 48 hours (including Holidays) from the conclusion of meeting of the CoC. xii. The minutes were not circulated to all members of the meeting. xiii. The minutes were circulated in hard copy instead of in electronic form xiv. It has been observed that the minutes of the meeting do not contain the outcome of the physical voting citing the names of the members of the committee, their voting share, and their voting decision (voted for/ against/ abstained from voting) xv. The minutes do not disclose the particulars of the participants who attended the meeting in person, through video conferencing or other audio and visual means or through authorised representatives.		iv. The agenda items need to be properly bifurcated and shall also include the agenda item for approval item including the CIRP cost. v. The IP shall place in every meeting the operational status of the CD along with all operational expenses for approval. vi. The IP shall maintain the voting sheets duly signed by the CoC members. vii. The Insolvency Professional (IP) shall record the minutes, providing a summary of the decisions made by the Committee of Creditors (CoC) regarding major items, especially those mentioned in Section 28. viii. The IP shall circulate notice / minutes by electronic means to all members of the meeting and preserve the same for future references. ix. The IP shall present all agenda items in the subsequent meeting immediately after any decision is made, appointment is confirmed, or cost is incurred, without delay.

xvi. Decisions of the CoC minutized in the records however no action initiated by the IP xvii. No specific approval was obtained on the agendas specified in sec 28 of the Code. xviii. Circulation of the outcome of Evoting wrt CoC meeting is not done within 24 hours (including Holidays) from the conclusion of E-voting.		

1.6 Observations related to the Appointment of IRP/RP

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that the IRP did not continue to function till the appointment of another RP was made by order of NCLT. As a result, the operations of the CD remain unattended. ii. It has been observed that appointment of IRP as RP was not ratified by the CoC due to lack of co-operation by the CoC, however, IRP discontinued his duties and operations of the CD. It has been observed that in many cases that where IRP is appointed as RP, the IRP did not given consent to act as the RP in the prescribed manner as provided by the Code. iii. In many cases handover of records to the succeeding IRP/RP was not in proper manner. The insolvency professional did not provide the complete records of the CIRP which hampers the work of succeeding IP, and which is against the code of conduct. iv. It has been observed that CIRP Form 7 was not filed by IP recording the reasons for the delay in the appointment of RP in every 30 days from the last filing till the completion of the event.	• Section 16, 22 & 27 of the Code. • Regulation 3 and 40 B of IBBI (CIRP) Regulations, 2016. • Circular No. IBBI/2020-21/GN/REG070, dated 15th March, 2021.	i. The appointment of a Resolution Professional (RP), including the replacement or confirmation of an Interim Resolution Professional (IRP) as RP, can significantly impact the procedural aspects of insolvency proceedings. Ensuring a smooth transition and continuity of these proceedings is crucial. However, several challenges have been observed, such as the cessation of IRP functions before the NCLT appoints the RP. Moreover, instances of incomplete handover of records to succeeding IRPs/RPs disrupt the process, emphasizing the importance of adhering to procedural guidelines to ensure seamless transitions and proper maintenance of records. ii. IP should ensure the filing of CIRP-7 in case of delay in the appointment of RP in every 30 days till the appointment of RP. iii. IRP should continue to function and perform all duties/ compliances of RP including filing of forms till the appointment of RP. Also, wherein another RP is appointed, IRP to continue till the date of the order by AA/ NCLT for the appointment of RP.

(to be continued…)

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 complete list of "Successful Peer Reviewed IPs of IIIPI" is available on IIIPI website (https://pr.iiipicai.in/compleated-peer-review-process/compleated-peer-review.php). The details of the Insolvency Professionals (IPs) who have successfully completed the Peer Review since the publication of October 2024 edition of *The Resolution Professional* 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	Pratap Mukherjee	IBBI/IPA-001/IP-P-2515/2021-2022/13851	2024-12-24	2027-12-24
2	Ajit Gyanchand Jain	IBBI/IPA-001/IP-P00368/2017-18/10625	2024-12-20	2027-12-20
3	Arvind Kumar	IP-P00178	2024-12-19	2027-12-19
4	Girish Siriram Juneja	IP-P00999	2024-11-27	2027-11-27
5	Divyesh Desai	IBBI/IPA-001/IP-P00169/2017-18/10338	2024-10-09	2027-10-09

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.

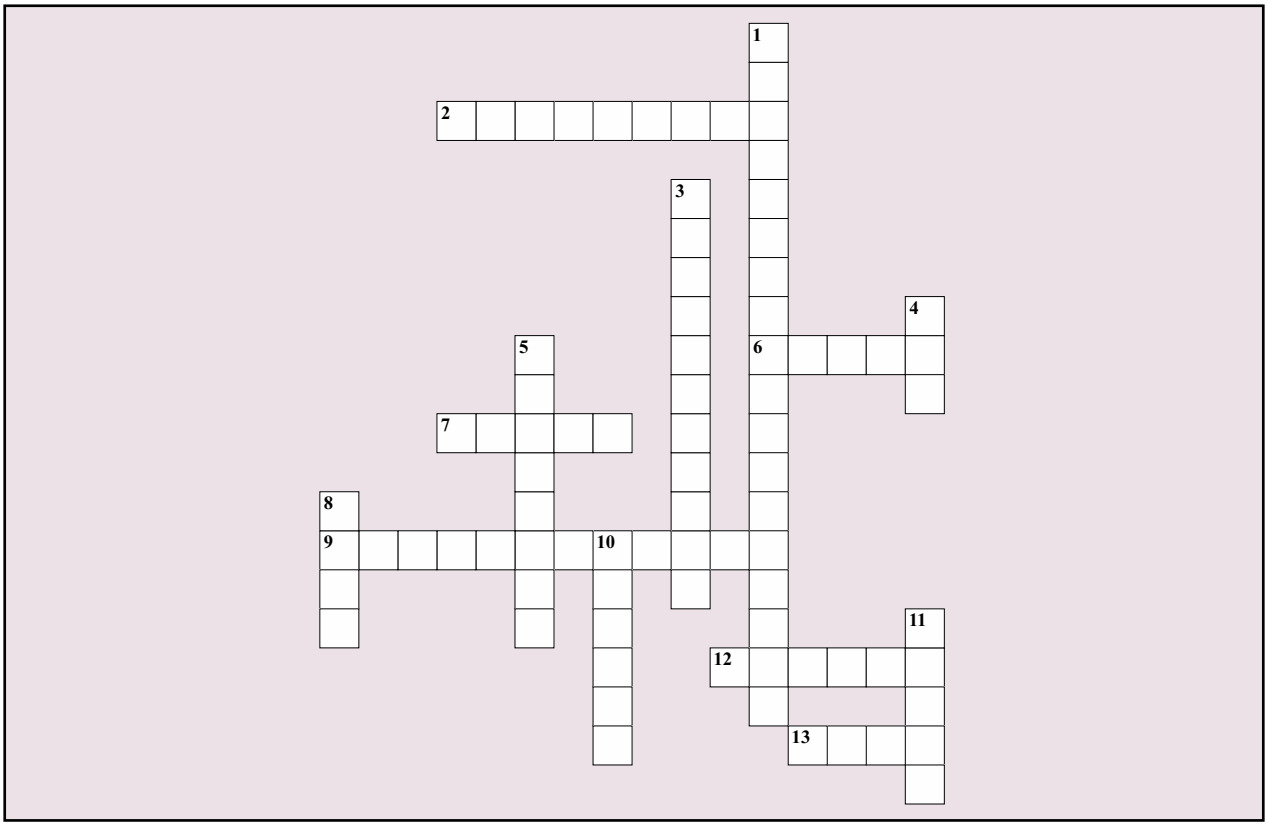
Rates for Display Advertisements

Back Cover	:	**₹50,000/-**
Inside Cover	:	**₹30,000/-**
Double Spread	:	**₹40,000/-**
Full Page	:	**₹25,000/-**
Half Page	:	**₹15,000/-**
Single Column	:	**₹10,000/-**

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: Ireland-based aircraft lessor company _____ withdraws insolvency case against SpiceJet after 5.6 million settlement.

6: The IRP or the RP shall preserve electronic copy of all records (physical and electronic) for a minimum period of _____ years.

7: The special resolution passed by the shareholders to liquidate the company shall be approved by Creditors representing 2/3rd of the value of the debt within_____ days.

9: In *Vijay Kumar Jain Vs. Standard Chartered Bank & Ors.*, SC, 2019 the apex court decided Valuation report should be shared with _____.

12: As per a research report published in Novmeber 2024 by UK-based accountancy firm, about _____% of all restaurants in the United Kingdom face insolvency.

13: A registered valuer in a corporate liquidation process cannot be an auditor of the Corporate debtor in the past _____years.

Down

1: Supreme Court ordered Liquidation of Jet Airways by using its extraordinary powers under Article_____ of the Constitution.

3: As per the Negotiable Instrument Act, 1881, until the contrary is proved, it shall be presumed that a lost instrument was _____.

4: The Order for cancelling suspending the Registration certificate of IPA shall be made only by_____ of IBBI.

5: _____is the annual contribution that is to be made by other banks and financial institutions to keep the CDR Cell running.

8: Abridged prospectus is prepared as per format specified by_____.

10: IBBI has collaborated with IBA to facilitate the auction of assets through the_____ platform.

11: The IMF has stated that India's GDP growth rate for 2024 stands at _____%.

Answer Key: IBC Cross word, October 2024

1. Sixty
2. Five
3. Residuary
4. Seven
5. Twice
6. ULIP
7. DCF
8. Three
9. Sale
10. Supreme
11. Form I
12. Actionable

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.
- The article should:
  - Contribute towards development of practice of Insolvency Professionals and enhance their ability to meet the challenges of competition, globalisation, or technology, etc.
  - Be helpful to professionals as a guide in new initiatives and procedures, etc.
  - Should be topical and should discuss a matter of current interest to the professionals/readers.
  - Should have the potential to stimulate a healthy debate among professionals.
  - Should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of. It may also preferably highlight the emerging professional areas of relevance.
  - Should be technically correct and sound.
  - Headline of the article should be clear, short, catchy and interesting, written with the purpose of drawing attention of the readers. The sub-headings should preferably within 20 words.
  - Should be accompanied with abstract of 150-200 words. The tables and graphs should be properly numbered with headlines, and referred with their numbers in the text. The use of words such as below table, above table or following graph etc., should be avoided.
  - Authors may use citations as per need but one citation/ quote should have about 40 words only. Lengthy citations and copy paste must be avoided.
  - Plagiarism (including references) should be below 10%.
  - The authors must provide the list of references at the end of article.
  - A brief profile of the author, e-mail ID, postal address and contact number along with his passport size photograph and declaration confirming the originality of the article as mentioned above should be enclosed along with the article.
  - The article can be sent by e-mail at **iiipi.journal@icai.in**
  - In case the article is found suitable for publication, the same shall be communicated to the author/s at the earliest.
  - The articles/ case studies received from authors are subjected to blind review.
  - 8 Hours CPE Credit is provided to every author who is an Insolvency Professional (IP) for each of article published in the journal.

NOTE: IIIPI has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal. The copyright for the article(s) published in the Journal will vest with IIIPI.

For further details, please contact:

THE RESOLUTION PROFESSIONAL
Indian Institute of Insolvency Professionals of ICAI
ICAI Bhawan, 8th Floor, Hostel Block,
A-29, Sector 62, NOIDA– 201309

☎ **0120-2975680/81/82/83**

Indian Institute of Insolvency Professionals of ICAI (IIIPI)

(A Section 8 Company & Wholly Owned Subsidiary of ICAI and Registered as an IPA with IBBI)

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

Admin. Office: ICAI Bhwan, 8th Floor, Hostel Block, A-29, Sector-62, Noida - 201309

0120-2975680/81/82/83 iiipi.journal@icai.in www.iiipicai.in