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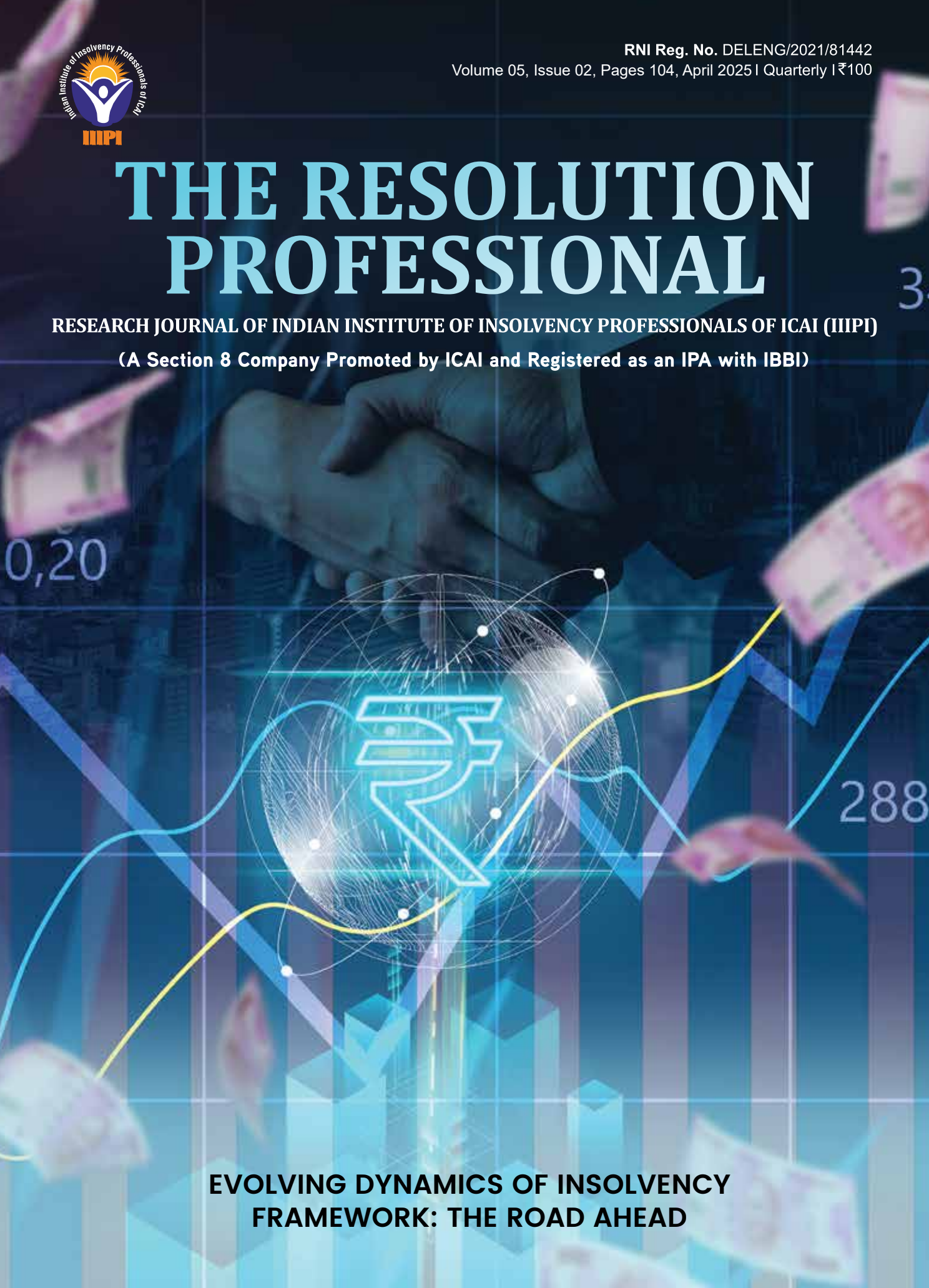

EVOLVING DYNAMICS OF INSOLVENCY FRAMEWORK: THE ROAD AHEAD

ABOUT IIIPI

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

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

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

OUR VISION

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

STRATEGIC PRIORITIES

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

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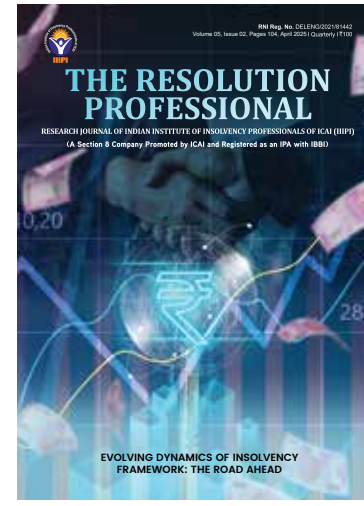

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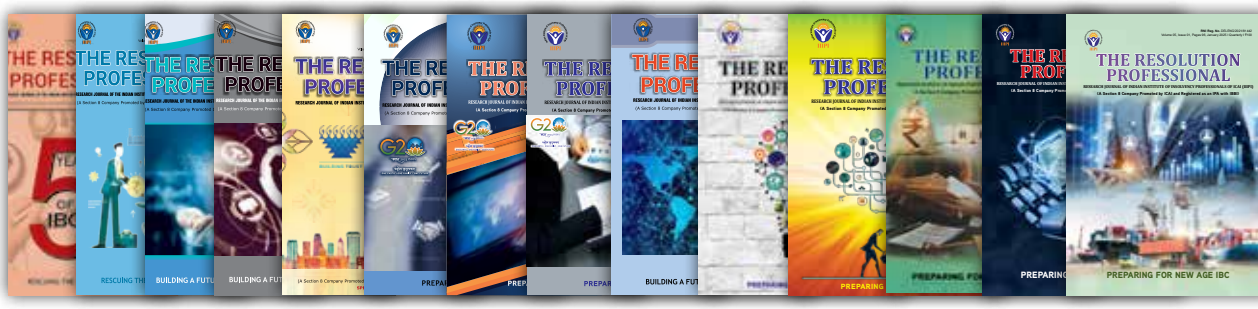

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From Chairman- Editorial Board

CA. Charanjot Singh Nanda
President, ICAI
Chairman, Editorial Board-IIIPI

"Imagination is more important than knowledge. For knowledge is limited, whereas imagination embraces the entire world, stimulating progress, giving birth to evolution". These words by Nobel laureate Albert Einstein inspire us to think out of the box, dream big and achieve those dreams. At ICAI and IIIPI, we continue to strive toward generating knowledge and implementing innovative ideas to strengthen the insolvency ecosystem in the country, contributing meaningfully to the vision of a *Viksit Bharat in 2047.*

India's insolvency regime has undergone several reforms aimed at addressing operational challenges and enhancing the efficiency and effectiveness of various processes under the Insolvency and Bankruptcy Code, 2016 (IBC). In this context, the use of technology has emerged as a great enabler – a tool that needs to be continually explored and evolved. Though still at a nascent stage, the positive impact of the insolvency regime is already evident through various economic outcomes, including a significant reduction in the gross NPA levels over the past few years. The World Bank's Global Economic Prospects (GEP) Report released in January 2025, projects the Indian economy to grow at a steady rate of 6.7% in both FY 2025-26 and FY 2026-27, substantially higher than the projected global growth rate of 2.7 per cent for 2025-26. This remarkable performance underscores India's economic resilience and its growing influence in shaping the world's economic trajectory.

As per data available on 31st December 2024, the IBC regime has successfully rescued over 1,119 viable companies through resolution plans, thereby bringing in competitive capital and the talent needed to revive and run those businesses. Data analysis further shows a notable shift: wherein in 2017-18 for every one Corporate Debtor (CD) resolved, 5 CDs entered into liquidation, however, in 2024-25 (Upto December 2024) this ratio improved significantly and only 1.3 CDs went into liquidation for every one CD resolved.

We are hopeful that recently proposed initiatives such as Integrated Technology Platform (i-PIE), BAANKNET platform and the introduction of mediation mechanism will further streamline processes and support adherence to strict timelines as prescribed under IBC.

As the largest Insolvency Professional Agency (IPA) in India, IIIPI remains deeply committed to capacity building, research, and knowledge dissemination - empowering professionals with valuable insights and expertise. *The Resolution Professional,* the research journal of IIIPI, has earned a reputation of trusted platform for thought leadership in insolvency space. Each edition features qualitative peer reviewed articles, practical case studies on resolution/liquidation of a corporate debtor and timely updates from the insolvency ecosystem which I sincerely believe are relevant for the stakeholders.

To realize the mission of IBC successfully, we must dream and strive together in a sustained and collaborative manner to establish India as home to one of the world's best insolvency regimes. In the words of the great poet Jaishankar Prasad:

इस पथ का उद्देश्य नहीं है,
श्रांत भवन में टिक रहना ।

किन्तु पहुँचना उस सीमा तक,
जिसके आगे राह नहीं ।

(The purpose of this path is not to stay in a weary shelter. But to reach the very edge, beyond which there is no road.)

Jai Hind!

CA. Charanjot Singh Nanda
President, ICAI
Chairman, Editorial Board-IIIPI

From Chairman- Governing Board, IIIPI

Dr. Ashok Kumar Mishra
Chairman, Governing Board- IIIPI

The insolvency regime has been crucial in enhancing the country's economic resilience by enabling efficient reallocation of resources, promoting healthy competition, and maintaining confidence in the financial system. Due to the path-breaking economic reforms in the past decade, such as the Insolvency and Bankruptcy Code, 2016 (IBC), Goods and Services Tax (GST), etc., the Indian economy has successfully sailed through recent global slowdowns caused by geopolitical and cyclical factors.

This resilience in the Indian economy was not achieved overnight. Besides ensuring respectful exit for genuine business failures, the IBC has introduced a transparent mechanism to rescue businesses, release idle resources back into the economy and strengthen the banking system. This has ensured a sustainable ecosystem for reviving existing businesses and availability of resources for entrepreneurs, which has led to ease of doing/exiting business resulting in promotion entrepreneurial spirit in the country. As per the latest IBBI Newsletter, 8,175 companies were admitted under the IBC out of which 75.74 % cases were closed till December 2024. The Reserve Bank of India (RBI) in its latest report titled "Trends and Progresses of Banking in India" (2023-24), has concluded that the IBC remained the dominant mode of recovery, with a share of 48.1 per cent in total amount recovered in 2023-24.

This improvement in the economic scenario of the country has bolstered the confidence of foreign investors, leading to a 26% increase in Foreign Direct Investment (FDI) to ₹42.1 billion in FY 2024-25 during the first half of the current fiscal year. The IBC regime is also witnessing several qualitative changes among stakeholders which have resulted in better financial management of corporates and also among smaller companies which form their supply chain.

Insolvency and Bankruptcy Board of India (IBBI) has recently issued some crucial amendments in regulations related to real estate, disclosure in information memorandum, Information Utilities, Grievance and Complaint Handling Procedure, Inspection and Investigation etc., which would further strengthen the IBC regime. Besides, IBBI's discussion papers related to mediation mechanism and resolution of interconnected entities shall expedite resolution in a more efficient manner.

IIIPI conducts a variety of capacity building programs for its professional members. It organizes LIE Preparatory Virtual Classroom Programs for IP aspirants on one hand, and EDPs on Legal, Forensic, Management, Group Insolvency and Cross Border Insolvency skills for IPs on the other hand. Besides, Peer Review platform is uniquely available to IIIPI's members, as a tool for enhancing quality of services. While Mentorship platform facilitates handholding of IPs by experienced IPs. Through specialized training programs, technology-driven learning modules, and continuous professional development initiatives, IIIPI is working to provide an edge to our members in all the current and prospective areas of insolvency regime.

The Resolution Professional, research journal of IIIPI, is a crucial platform for knowledge dissemination. The articles and case studies published in the journal also act as guide-map to the Insolvency Professionals. I also express my sincere gratitude to authors who have contributed articles and case study for this edition.

Let's work together in a sustained way to contribute our best to fulfill the expectations of various stakeholders.

I wish you a happy reading.

With Regards

Dr. Ashok Kumar Mishra
Chairman, Governing Board-IIIPI

From Editor's Desk

Dear Member,

IBC, 2016 comprises a unique regulatory model where the insolvency professionals are subjected to dual oversight from The Insolvency and Bankruptcy Board of India (IBBI) as the principal regulator as well the Insolvency Professional Agency (IPA). IIIPI, as the largest IPA in the country, is the last in the chain of parliamentary delegation of regulatory authority. Though law and regulations provide for clear roles and responsibilities of both these regulators, which at times may lead to duplicity of compliances and oversight by such dual regulatory bodies. However, the systems and processes are actively being scrutinized to remove the scope of duplicity of such compliances by the professionals. In addition, IBBI has recently conducted a survey to seek feedback from all concerned on various regulatory provisions. This survey is currently open for providing suggestions and feedback. On the other hand, IIIPI is actively involved in building capacity of professionals/stakeholders and carrying out research/studies on contemporary issues to support the ecosystem evolve in an orderly manner.

In this edition of The Resolution Professional, we are publishing the Address of Dr. M. S. Sahoo, Former Chairperson, IBBI which he had delivered in as the Guest of Honour during the inaugural session of 14th Batch of Executive Development Program (For IPs) on 'Mastering Avoidance/PUFE Forensics Under IBC' from 15th April to 17th April 2025. The address offers insightful message(s) to readers on clawing back value to maximize the realisation while handling Avoidance Transactions and related issues.

Moreover, this edition has five research articles and a case study on (CIRP of) Oliver Engineering Pvt. Ltd. In the opening article "IBC, 2016: A Comprehensive Legal Framework", the author highlights the fine line that defines what can be regarded as "exceptional circumstances" in view of a recent Supreme Court judgment warranting the intervention of high courts in the insolvency cases. The second article "Group Insolvency: Lifting the Corporate Veil - A Contrarian View" explores the complexities related to insolvency cases of interconnected entities in the absence of a formal Group Insolvency framework under the IBC and suggests measures for a robust Group Insolvency framework in times to come. In the third article "Foreign Investment and IBC: Making Indian Insolvency Regime More Investor-Friendly", the author discusses crucial IBC provisions, relevant insolvency cases, and comparisons with Cross Border insolvency frameworks in various foreign regimes. The article concludes with policy recommendations to enhance regulatory stability, streamline judicial processes, and improve foreign investor confidence in India's insolvency ecosystem.

The fourth article, "The Need for an Insolvency and Bankruptcy Fund", analyses the relevance of IBC fund in strengthening the insolvency ecosystem in the country by empowering the insolvency professionals and rescuing them in situations of financial crisis such as interim finance, delays in payment of CIRP cost/ liquidation cost, audit costs prior to the Insolvency Commencement Date, etc. In the concluding article, "Sustainability and IBC: Incorporating ESG Principles in Resolution Plans", the author describes this concept as an emerging trend in major economies and draws key takeaways for developing a robust ESG framework for India. 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 Dr. M. S. Sahoo, Former Chairperson, IBBI

PUFE Transactions: From Erosion to Restoration

Guest of Honour at the 14th Batch of Executive Development Program (For IPs) on Mastering "Avoidance/ PUFE Forensics" Under IBC (Online) from 15th April to 17th April 2025.

Dr. M. S. Sahoo
Former Chairperson, IBBI

Dr. M. S. Sahoo is widely regarded as a leading authority on markets and regulatory frameworks in India. Over a distinguished career spanning decades, he has played several high-impact roles, including Distinguished Professor at the National Law University Delhi; Member of the Competition Commission of India; Secretary of the Institute of Company Secretaries of India; Whole-time Member of Securities and Exchange Board of India; and Economic Adviser to the National Stock Exchange of India. As a member of the Indian Economic Service, he served in key positions across multiple central ministries.

Dr. Sahoo spearheaded insolvency reforms. He was the founding Chairperson of IBBI, the first-of-its-kind regulator globally, and played a pivotal role in establishing the Insolvency and Valuation professions in India. His work contributed to India being recognised as the "most improved jurisdiction" by Global Restructuring Review in 2018 and to a significant rise in the World Bank's Ease of Doing Business ranking in resolving insolvency.

On 15th April 2025, Dr. Sahoo addressed the 14th Batch of the Executive Development Programme on Mastering "Avoidance/ PUFE Forensics" as Guest of Honour. In his address, he emphasised the crucial role of clawing back value dissipated through avoidance transactions in preserving the integrity of the insolvency process. Read on to explore his insights…

The Insolvency and Bankruptcy Code, 2016 (Code) identifies three types of avoidance transactions: (a) preferential transactions, (b) undervalued transactions, and (c) extortionate credit transactions. In addition, it recognises fraudulent transactions comprising fraudulent trading and wrongful trading. Together, avoidance and fraudulent transactions are referred to as PUFE (preferential, undervalued, extortionate, and fraudulent) transactions.

The PUFE transactions result in the unlawful loss to or transfer of value from the corporate debtor (CD). They must be set aside or avoided during an insolvency proceeding to restore the underlying value to the CD. Section 36(3)(f) of the Code treats the value underlying avoidance transactions as part of the liquidation estate. Given their potential value, which is recoverable only through legal proceedings, PUFE transactions are classified as 'not readily realisable assets' under Regulation 37A of the Liquidation Process Regulations, 2016. It is the duty of the resolution professional (RP) to identify such transactions and file applications before the Adjudicating Authority (AA) for value recovery.

As assets of the CD, PUFE transactions must be taken into possession by the RP, accounted for in the asset register, included in the information memorandum, considered in the resolution plan, and dealt with in a manner that maximises their realisable value. However, realisation entails litigation costs and delays, making PUFE transactions an asset-cum-liability. The Committee of Creditors (CoC), as the commercial decision-making authority, must determine how to handle these transactions during and after CIRP.

Commercial wisdom

In *Piramal Capital and Housing Finance Limited vs. 63 Moons Technologies Limited & Others* (Supreme Court, 1 April 2025), the Court reaffirmed the primacy of CoC's commercial wisdom in deciding whether and how

PUFE applications should be pursued and how potential recoveries are distributed.

In this matter, PUFE applications with an aggregate underlying value of ₹45,000 crore were filed. The approved resolution plan stipulated that the successful resolution applicant (RA) would pursue avoidance applications on a best-efforts basis; and recoveries (net of costs and expenses) from these would be distributed to financial creditors, either in proportion to their claims or in the manner decided by the CoC. As for fraudulent transactions under section 66, the plan ascribed a nominal value of ₹1, indicating no expected recovery. However, it provided that any positive recovery arising therefrom would accrue solely to the RA, who would also bear the full cost of pursuing such claims. On appeal, the NCLAT set aside the clause in the plan that permitted the RA to appropriate recoveries, if any, from fraudulent transactions.

On second appeal, the Supreme Court set aside NCLAT's order, observing that the RA's offer of ₹37,250 crore took into account the potential recoveries from pending section 66 applications. The resolution plan was the outcome of a commercial negotiation between the RA and the CoC after multiple rounds of deliberation. Thus, once such commercial wisdom is exercised in accordance with the law, it is not for the AA or NCLAT to sit in judgment over the merits of such decisions.

Different approaches

The Supreme Court noted that the Code classifies PUFE transactions into two distinct categories, each with its own distinct treatment and consequences. First, Avoidance Transactions (Sections 43–51): The CIRP must disregard these transactions to claw back the value lost during the look-back period, which is two years in respect of transactions with related parties and one year in other cases, notwithstanding the sanctity of the contract underlying the transactions. Second, Fraudulent Transactions: (i) Section 66(1): Contribution by persons who knowingly carried on business with fraudulent intent, and (ii) Section 66(2): Liability of directors during the twilight period (from when they knew or ought to have known CIRP was inevitable till the CD enters into CIRP) for failure to minimise creditor loss.

The law empowers the AA to order recovery of the value lost through *PUFE transactions*, based on an application of the RP. The manner of recovery is, however, different. For avoidance transactions, the recovery is asset-centric: the underlying property/value returns from the beneficiary to the CD, whoever has benefited must return it. However, in case of *fraudulent transactions,* the liability is personal: the individuals responsible for the misconduct must make good the loss even if they derived no personal gain.

Each type of PUFE transaction involves a different legal standard, factual inquiry, and remedy. The mechanisms of recovery and distribution of realised value also vary. Therefore, IPs must file separate applications for each type of transaction rather than bundling them together. The Supreme Court has explicitly advised against simultaneously alleging multiple PUFE characterisations in respect of a single transaction in a composite application.

Underutilisation of section 66(2)

The provision under section 66(2) of the Code has seen limited use, despite its potential to transform insolvency outcomes. When invoked effectively, it creates a powerful deterrent against delay in initiating CIRP. Directors who continue to operate a financially distressed company without initiating CIRP, when they knew or ought to have known that insolvency was unavoidable, can be held personally liable for the consequent losses to creditors. The prospect of personal liability incentivises early action, thereby accelerating admissions, enabling CIRP to commence closer to the onset of stress, and improving the prospects for resolution. This mechanism also aligns the interests of the CD and its management with the objectives of the Code. It encourages voluntary commencement of CIRP in the early stages of distress, when the chances of a successful rescue through a resolution plan are significantly higher.

There exists a notable temporal gap between the filing of an application for initiating CIRP and the actual commencement of the process. The Code mandates scrutiny of transactions occurring during the one-year or two-year look-back periods preceding the insolvency commencement date, depending on whether or not the

counterparty is a related party. However, transactions executed in the period preceding the filing of the CIRP application often escape review, even though they may critically undermine the CD's solvency. Section 66(2) provides an elegant solution to this problem. If enforced diligently, it would result in timely admission within the statutory 14-day period. The fear of personal liability under this provision would prompt directors to file for CIRP, eliminating the delay between financial distress/ application for CIRP and the commencement of CIRP.

Section 66(2) is not merely a punitive provision but a strategic tool for improving insolvency outcomes. The onus is on RPs to ensure this provision is no longer overlooked but deployed wherever the facts warrant its invocation. When used diligently, it enables timely initiation, discourages value-destructive conduct, and aligns director conduct with creditor interests in the pre-insolvency phase. Systematic invocation of this provision can significantly enhance resolution outcomes and promote accountability in pre-CIRP governance.

Underutilisation of section 29A(g)

Section 29A(g) provides that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person, has been a promoter or in the management or control of a CD in which an PUFE transaction has taken place and in respect of which an order has been made by the AA under this Code. This imposes ineligibility based on two cumulative conditions: (1) the person has been a promoter or part of the management or control of a CD involved in a PUFE transaction, and (2) the AA has issued an order to this effect under the Code.

Mere filing of a PUFE application is insufficient to trigger disqualification. The requirement of an AA order ensures procedural fairness and uniform application of disqualification across CIRPs. Since ineligibility under section 29A extends beyond the specific CIRP of the concerned CD to all CIRPs, a formal determination by the AA is necessary to give effect to such disqualification system-wide. If the prohibition were tied to an application filed by the RP in a specific CIRP, the person would remain eligible to participate in other CIRPs, undermining the purpose of Section 29A.

Vulnerability of RP

Section 26 makes it clear that the filing of an avoidance application does not affect the conduct of CIRP. This ensures that resolution efforts proceed uninterrupted. However, it also means that individuals accused of orchestrating PUFE transactions can continue to participate in the distressed asset market, both in the CIRP in question and others, until the AA rules on their case. This undermines section 29A and creates an incentive for accused parties to delay adjudication, whether through legitimate or dilatory tactics.

As of December 2024, 1,396 PUFE applications had been filed, with only 368 disposed of. Anecdotal evidence suggests that it takes about three years for these applications to be decided. During this time, individuals facing credible allegations of PUFE transactions can continue to operate unchecked, potentially acquiring other distressed assets and subverting the objectives of the Code.

This protracted pendency places RPs in a vulnerable position. In some cases, extant promoters, who are the only RA, are accused of PUFE transactions. The RP may have filed an avoidance application, but without a finding from the AA, cannot prevent them from submitting a resolution plan. If the RP admits the plan, they risk censure from the AA or disciplinary action from IBBI. If they reject it and the application is ultimately not upheld, the CD could be forced into liquidation for lack of alternatives. To prevent such untenable scenarios, the AA must dispose of PUFE applications in a time-bound manner, ideally, no later than the last date for submission of resolution plans in the CIRP.

Economic Significance

Reversing PUFE transactions materially advances the objectives of the Code in several ways:

Enhancing value realisation: Avoidance transactions claw back value unlawfully transferred out of the CD, thereby increasing the asset pool available to creditors. Greater realisations improve the feasibility of resolution plans and reduce creditor haircuts.

Preventing opportunistic behaviour: The disgorgement of ill-gotten gains sends a strong signal to the market that avoidance transactions will not be tolerated. This deters opportunistic conduct and ensures value remains within the CD, reducing the risk of financial stress in the first place.

Upholding stakeholder priority: PUFE transactions can distort the statutory priority waterfall, allowing certain stakeholders to jump the queue. Setting aside such transactions restores balance and protects the equitable treatment of creditors as envisaged under the Code.

Determining resolution outcomes: Data reveal a strong correlation between the extent of PUFE losses and the outcome of CIRP. The CDs that achieved resolution through approved plans had, on average, lost only about 5% of the admitted claims due to PUFE transactions. In contrast, those that ultimately faced liquidation had lost approximately 15% of the claims through such transactions. This suggests that CIRPs are more likely to culminate in liquidation where a greater proportion of value has been siphoned off through PUFE transactions. Further, CDs that were successfully resolved typically entered CIRP with assets valued at 17% of the admitted claims. Conversely, CDs that were liquidated had lost 15% of claims through PUFE transactions and were left with assets worth just 5% of the claims. Had these CDs not suffered such PUFE-related losses, they would have entered CIRP with asset values approximating 20% of the claims, comparable to those that were ultimately resolved. In such a scenario, they too could have been rescued through resolution plans.

Conclusion

PUFE transactions often determine whether a distressed CD is rescued or liquidated. The responsibility for identifying, evaluating, and pursuing these transactions lies squarely with the RP. Except in limited circumstances, no other party can initiate PUFE proceedings. The RP's actions in this regard, while subject to AA's satisfaction, are foundational to the Code's operation. This task must not be reduced to a compliance formality. RPs must not hide behind excuses of non-cooperation by the CD, auditors, or the CoC, nor should they cite lack of forensic support as justification for inaction.

RPs who successfully recover significant value through PUFE proceedings should be rewarded with market credibility. Conversely, those who neglect this critical function should be held to account, not only by IBBI and IPAs but by the market itself. To enable market discipline, the performance of RPs in dealing with PUFE transactions must be made transparent. IPAs should disclose the detection, filing, and success rates of PUFE applications for each IP. This will empower stakeholders, reinforce accountability, and elevate professional standards across the insolvency ecosystem.

While the performance of RPs is a necessary condition for realising value from PUFE transactions, it is not sufficient on its own. The greater responsibility lies with the AA, which must ensure the timely disposal of applications filed by RPs. Both RPs and the AA must strengthen their institutional capacity to effectively address the legal, factual, and procedural complexities inherent in PUFE transactions.

IBC, 2016: A Comprehensive Legal Framework

Rashmi Agarwala
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Though the provision for establishing NCLT & NCLAT were incorporated under sections 408 & 410 of the Companies Act, 2013 respectively, these quasi-judicial courts were created only after drafting of the Insolvency and Bankruptcy Code, 2016. Idea behind establishment of these specialized authorities was to reduce the burden of enormous backlog in the Indian judiciary. However, owing to powers granted by the Constitution of India, High Courts may exercise their supervisory power and review their decisions in exceptional circumstances. These overlapping jurisdictions sometimes lead to avoidable litigation and aggrieved parties invoke the intervention of the Supreme Court. This article attempts to highlight the fine line which may define what can be regarded as exceptional circumstances in view of a recent judgements of the Supreme Court in this regard. ***Read on to know more…***

1. Introduction

Insolvency and Bankruptcy Code, 2016 (IBC/ the Code) has been a subject of litigation on various grounds before the Apex Court of the country ever since its inception. During the initial phase, the constitutionality of Part II of the IBC, i.e. the Insolvency Resolution and Liquidation for Corporate Persons, [substantial provisions of which were brought into force with effect from December 1, 2016, vide Notification S.O. 3594(E) dated November 30, 2016], as well as the constitutional validity of National Company Law Tribunal (NCLT), were challenged before various High Courts. The clouds of doubt floating over the Code were finally settled by the Hon'ble Supreme Court, vide its decision in the matter of *Swiss Ribbons Pvt. Ltd. v. Union of India*[1]., dated January 25, 2019.

Also, when Section 29A was introduced in the Code, through the IBC (Amendment) Ordinance, 2017 and then the IBC (Amendment) Act, 2018, to prescribe eligibility

[1] [Writ Petition (Civil) No. 99 of 2018, decided on January 25, 2019 (SC)], AIR 2019 SUPREME COURT 739

criteria for resolution applicants, in order to prevent defaulting promoters and related parties from regaining control of distressed companies, it opened Pandora's box of litigation. In *Swiss Ribbons v. Union of India* (2019) the Hon'ble Supreme Court upheld the constitutional validity of Section 29A too, while narrowing the scope of the "related parties" subject to disqualification.

Later when Part III of the IBC was notified on November 15, 2019 by the Ministry of Corporate Affairs (MCA), bringing into effect the provisions related to individual and partnership firm insolvency, including personal guarantors to corporate debtors, it was challenged in a series of 384 writ petitions filed under Article 32 of the Constitution of India, claiming that Sections 95 to 100 of the IBC were against the principles of natural justice. Again, the Supreme Court upheld the constitutional validity of the impugned provisions of the Code and dismissed the writ petitions vide a common judgment delivered in the lead case of *Dilip B Jiwrajka v. Union of India and Others* on 9th November, 2023[2].

> **The Supreme Court in the case of *Dilip B Jiwrajka v. Union of India and Ors. (2023) upheld the validity of Part III of the IBC and dismissed over 384 petitions against it.***

Very recently, in a significant judgement the Supreme Court ruled on the completeness and comprehensibility of the Code. In *Mohammed Enterprises (Tanzania) Ltd. (METL) Vs. Farooq Ali Khan & Ors*[3]., the Supreme Court delivered an important judgment reinforcing that the Insolvency and Bankruptcy Code, 2016 is a comprehensive legal framework for resolving corporate insolvencies. It is a complete code in itself, having sufficient checks and balances, remedial avenues and appeals. Before looking at the fineries of the judgement, it would be pertinent to comprehend the very genesis of this Code.

(a) Why is it called a Code?

It is important to understand why this legislation is referred to as a 'Code' and not as an 'Act', as most other legislations in India. In legal terms, an act is a specific law passed by a legislature, while a code is a collection of laws, rules, and regulations. "Insolvency and Bankruptcy Code," is considered a "code" because it is a comprehensive set of legal rules and procedures designed to streamline the process of resolving insolvency issues for both individuals and companies in India, essentially acting as a single, unified law on the matter, consolidating various previous laws related to bankruptcy and insolvency under one umbrella. The preamble states that it has been formulated to consolidate various laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals. Further, Section 238 of the Code says that the provisions of the Code override anything contained in any other law in force or any instrument having effect by virtue of such law. This provision accords supremacy to the Code over any other law, if it is inconsistent with the Code. This law is a complete code on matters relating to insolvency and bankruptcy, even though other applicable laws will continue to apply for all other matters.

(b) Provisions for Appeal and Appellate under the Code

As the IBC contains appeal and appellate provisions within the Code, any party who feels aggrieved by the decision of National Company Law Tribunal (NCLT) under Part II of the Code, which pertains to the insolvency resolution and liquidation for corporate persons, may file an appeal with the National Company Law Appellate Tribunal (NCLAT) under Section 61 of the Code. Correspondingly, under Part III of the Code that governs bankruptcy and insolvency for individuals and partnership firms, Section 181 contains a provision for appeal before Debt Recovery Appellate Tribunal (DRAT). It must be noted here that Part III has been notified only by a class of individuals and firms, those who are Personal Guarantors (PG) to a Corporate Debtor (CD).

Further, Section 63 of the Code states that any person aggrieved by an order of the NCLAT may file an appeal to the Supreme Court on a question of law arising out of such order under this Code. Similarly, Section 182 of the Code allows a person aggrieved by the order of the DRAT to appeal before the Supreme Court on a question of law,

[2] Writ Petition (Civil) No. 1281 of 2021 decided on 09.11.2023
[3] In Writ Petition No. 483 of 2023 (GM-RES) dated 22.04.2024

within forty-five days of the order. It should be noted that, unlike many other legislatures, the Code nowhere contains a provision to move to the High Court in matters relating to the Code. The idea was to resolve the issues in a timely manner, without going through multiple layers of judicial proceedings, timeliness being one of the prime objectives for which this Code was enacted.

2. Intervention of the High Courts

Despite the fact that the Code contains no provisions to enable aggrieved parties to knock on the doors of High Courts or any other Civil Courts, it has been a matter of fact that, time and again, various High Courts have intervened in the judicial process established by the Code. This is by invocation of Article 226 or 227 of the Constitution. Article 226 of the Indian Constitution gives High Courts the power to issue writs to enforce fundamental rights. These writs can be issued to any person or authority, including the government. Article 227 of the Constitution of India gives the High Court the superintendence power to oversee all courts and tribunals within its jurisdiction. Using this, the High Court can exercise its power of superintendence in exceptional cases when there has been a miscarriage of justice. These powers should be used carefully under extraordinary circumstances.

In order to put a judicious end to unjustified interference into the proceedings initiated under the Code, the Supreme Court reemphasized that the IBC is a complete and exhaustive Code with sufficient checks, balances, and remedial mechanisms by way of appellate provisions contained in the Code itself. Earlier, in *Anthony Raphael Kallarakkal v. National Company Law Tribunal, Mumbai Bench & Others*[4] too, Hon'ble Bombay High Court had held that High Courts cannot have the luxury to entertain the petition by enforcing Article 226 of the Constitution, when the petitioner has not only alternate but equally efficacious remedy in law.

In the case of *Mohammed Enterprises (Tanzania) Ltd. (METL) Vs. Farooq Ali Khan (2024),* the Supreme Court, held that High Courts must be extremely cautious while accepting any writ petitions under Article 226 of the Constitution when it relates to the Code. It is now well established that the mechanism prescribed under the Code has been examined by the Supreme Court more than once and found to be constitutional and comprehensive. This judicial pronouncement is of immense significance, as it is expected to reduce the delays in Corporate Insolvency Resolution Processes (CIRP) caused due to misplaced and unnecessary judicial interventions by various High Courts. Various other issues were addressed in this judgement of the Apex Court. Therefore, let's get into the details of the case referred to above.

(a) Why was the appeal made before the Apex Court?

Oriental Bank of Commerce initiated CIRP against Associate Decor Ltd, which was admitted by the Adjudicating Authority (AA) on October 26, 2018. During CIRP in February 2020, Mohammed Enterprises (Tanzania) Ltd. (METL), the Appellant before the Supreme Court, submitted a resolution plan which was accepted by the Committee of Creditors (CoC) unanimously. However, a suspended director of Corporate Debtor (i.e. Associate Décor Ltd), filed a writ petition before the High Court of Karnataka against the Resolution Plan so approved. The suspended director invoked Article 226 of the Constitution, and claimed that he has been denied Natural Justice, as a 24-hour notice was not served in respect to CoC meeting in which the resolution was approved. This writ petition before the High Court to quash the Resolution Plan was made in January 2023, i.e. almost three years after the resolution was approved by the CoC. The Hon'ble Karnataka High Court, citing violations of natural justice, annulled the Resolution Plan of METL which had already been approved by the CoC and accepted by NCLT. Aggrieved by the order, the resolution applicant, i.e. METL, moved the Supreme Court on the grounds that the invention of the Karnataka High Court was unwarranted.

(b) Issues before the Apex Court

The proceedings in the Supreme Court revolved around three significant issues.

- Firstly, the question raised was whether High Courts have jurisdiction under Article 226 to interfere in a CIRP under the IBC, despite the availability of statutory remedies under the Code.

[4] Writ Petition (Civil) No. 1281 of 2021 decided on 09.11.2023

- Secondly, since the writ was filed almost three years after the approval of resolution plan, was the invocation of extraordinary jurisdiction under Article 226 justified in a situation where statutory remedies under the IBC were available and had been pursued.
- Finally, the Apex Court also deliberated on whether the procedural irregularities, such as inadequate notice for CoC meetings, constitute sufficient ground for judicial intervention by the High Court in CIRP proceedings under the Code.

"The most significant outcome of this litigation was reaffirmation by the Apex Court that the IBC is a complete and exhaustive code with sufficient checks, balances, and remedial mechanisms."

(c) Highlights of the Order

(i) **Comprehensiveness of the Code:** The most significant outcome of this litigation was reaffirmation by the Apex Court that the IBC is a complete and exhaustive code with sufficient checks, balances, and remedial mechanisms. It reiterated and reaffirmed that the appeal and appellate mechanism provided under the Code is exhaustive, and any interference by the High Courts evoking Article 226 or 227 should be rare and in very exceptional scenarios. This decision of the Apex Court is in line with various judgements rendered even before this case. For instance, in *the Committee of Creditors of KSK Mahanadi Power Company Ltd. Vs. Uttar Pradesh Power Corporation Ltd. and Ors*[5], where a matter related to consolidation of CIRPs of three related entities was raised, the Hon'ble Telangana High Court directed the petitioner to file an appropriate application before the NCLT and raise all grounds available under law. However, it also directed that until such time, the CIRP should be deferred. The Supreme Court held that though the High Court rightly declined to grant the main relief sought in the petition for the consolidation of the CIRP of three corporate entities, it erred when it exercised its jurisdiction under Article 226 by directing the deferment of the CIRP, as such a direction under Article 226 breaches the discipline of the law laid down in the provisions of the IBC.

(ii) **Delayed Petition:** The Supreme Court noted that the alleged procedural lapses (i.e. non issuance of 24-hour notice for CoC meeting) occurred in February 2020, but the High Court's jurisdiction was invoked after nearly three years in January 2023. The suspended director's justification for the delay precluding of the writ petition was rejected by the court, which observed that the respondent had actively pursued remedies under the Code during this period, precluding him from seeking relief through a writ petition.

(iii) **Reliance on Wisdom of the CoC:** The Court upheld that the CoC has the ultimate autonomy and emphasized that its decisions should not be inferred casually, as they are based on commercial considerations. Therefore, the Resolution Plan approved unanimously by the CoC demonstrated its credibility and adherence to statutory requirements and should be taken forward. Consequently, it directed the AA to resume proceedings from the stage at which they were disrupted by the High Court's ruling.

(iv) **Timely Resolution:** In line with the objective of the IBC, the Supreme Court once again accentuated the need to prioritize timely resolution to enable the maximization of the asset value and equitable treatment of stakeholders.

(v) **Rationalizing High Court's Intervention in IBC proceedings:** The Supreme Court came down heavily on Karnataka High Court for allowing the writ petition despite the availability of statutory remedies under the Code. It emphasized that the judicial intervention in CIRP proceedings must be limited to exceptional circumstances and admitting writ petition on procedural irregularities, such as inadequate notice, cannot be regarded as sufficient ground to warrant interference of High Court. It should be noted that in similar lines, in *Anthony Raphael Kallarakkal v. National Company Law Tribunal, Mumbai,* the Bombay High Court held that

[5] Civil Appeal No 11086 of 2024

"No doubt, this Court is not powerless to entertain the petition under Article 226 of the Constitution of India even if the party has an alternate remedy. Non-exercise of the jurisdiction of this Court under Article 226 on the grounds of availability of an alternate remedy is a self-imposed restraint. This Court entertains the petition under Article 226 of the Constitution of India when the petitioner has no alternate efficacious remedy provided to him by a Statute".

"High Court of Bombay in the case of Anthony Raphael held that Non-exercise of jurisdiction under Article 226 on the grounds of availability of an alternate remedy is a self-imposed restraint."

3. Instances when Admission of Writ under Article 226 was upheld

(a) In the matter of *Embassy Property Developments Pvt Ltd v. State of Karnataka*[6] one of the issues raised before the Supreme Court was whether the High Courts should have interfered under Article 226 or 227 of the Constitution with an order passed by the NCLT in a proceeding under the Code. Here, the NCLT had set aside an order of the Government of Karnataka with respect to the deemed renewal of a lease under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act 1957). It was held by the Supreme Court that though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes particularly in relation to disputes involving decisions of statutory authority which can be reviewed only by higher judicial authority and hence in such a case, the High Court was justified in entertaining the writ petition.

(b) In the case of *Kamal K Singh v. Union of India (UOI)*[7], a writ petition was filed before the Mumbai High Court challenging the admission order under Section 7 of the Code passed by NCLT Mumbai. Rules 150, 151, 152 of the NCLT Rules, 2016 make it clear that pronouncement must be published as soon as possible with a maximum waiting of 30 days. However, The NCLT had not followed the Rules given in the NCLT Rules, 2016 for the publication and communication of the order. Thus, the order was regarded as bad in law and the Bombay High Court issued writ of Certiorari for quashing and setting aside the impugned NCLT order and observed that since the defect in the above-mentioned case was not curable, it rendered the entire proceedings void and thus the NCLT was directed to hear afresh the entire application filed under Section 7 of IBC without being affected by its earlier order. This judgement of the Bombay High Court emphasized that if the applicant can establish that the facts and circumstances of the case are of an exceptional nature, the High Courts can exercise jurisdiction under Article 226 despite the existence of an alternative remedy.

4. Conclusion

The Apex Court's judgment in *Mohammed Enterprises (Tanzania) Ltd. Vs. Farooq Ali Khan & Ors. (2023)* is hailed as a landmark decision that reiterates the procedural sanctity, comprehensiveness, and intent of the Code. However, the said judgement does not entirely erode the powers of the High Court to interdict the processes under the Code. High Courts continues to hold constitutional powers of review and intervention in cases where statutory obligations, public law matters or fundamental rights are at stake. By allowing the appeal against the High Court's intervention, the Supreme Court has taken a significant step towards imposing judicial discipline among the lower courts in matters related to the insolvency proceedings. This decision reinforces the structured adjudicatory mechanism established under the Code and aims to prevent unwarranted interference that could disrupt the insolvency resolution process. It underscored the importance of timely resolution and minimal judicial interference in insolvency proceedings, ensuring that the Code continues to function as an efficient and effective framework for resolving corporate insolvencies and individual bankruptcies.

6. [2020] ibclaw.in 12 SC,

7. [2019] ibclaw.in 10 HC

Group Insolvency: Lifting the Corporate Veil - A Contrarian View

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The lack of a suitable framework for Group Insolvency under the Insolvency & Bankruptcy Code, 2016 (IBC) has been a matter of discussion for past many years. The Insolvency & Bankruptcy Board of India (IBBI) engaged with this issue by forming a Working Group on Group Insolvency. Subsequently, the Ministry of Corporate Affairs (MCA) invited suggestions for amendments to strengthen the IBC's framework for Group Insolvency. Meanwhile, the NCLTs, by using their inherent jurisdiction have decided several matters of interconnected entities through judicial orders. This article explores the complexities related to insolvency cases of interconnected entities in the absence of a Group Insolvency framework and suggests measures for a robust Group Insolvency framework under the IBC such as widening the scope of interconnected entities to include societies, trusts etc. ***Read on to know more….***

1. Introduction

It has been almost eight years since the Insolvency & Bankruptcy Code, 2016 (IBC/Code) was introduced to provide corporates in India with the third leg of the corporate reforms process viz. the proverbial 'exit' option. The IBC seeks to offer this option in a much more transformative manner than the 'restructuring' schemes introduced by the Reserve Bank of India (RBI) in the first decade of this century. The latter were occasioned by the huge pile up of Non-Performing Assets (NPAs) at banks which not only impacted their balance sheets requiring the Government of India to pump in capital in the Public Service Banks (PSBs) but also impacted their ability to write new corporate loans, hindering economic activity. These measures, however, ended up providing

the promoters of corporate businesses the means to retain their 'unholy' control over the businesses and kick the can down the road with tacit support of the lenders. Consequently, the fundamental role of banks as a catalyst in the country's economic growth stood squarely defeated.

The advent of IBC and the initiation of Corporate Insolvency Resolution Process (CIRP) against banks' top 12 NPAs brought about a culture of corporate accountability like never before and significantly improved credit discipline. As such, today the Banks' NPA levels are far lower with hardly any major slippages, resulting in better profitability parameters eschewing the need for PSBs to approach the Government of India for capital infusion.

However, after almost eight years since IBC's introduction, not everything is as it should be. The resolution process is taking on an average 585 days[1] (excluding the time excluded by the AA) as on December 31, 2024, for conclusion of process, as against the stipulated maximum 270 days including 90 says extension by the AA. The admittance of fresh cases takes forever (over a year in many cases) given the weak legal infrastructure and lack of substantive accountability of Adjudicating Authorities (AA) in respect of timelines. While the pace of resolutions has improved, the levels of recoveries are disappointing; 27% in 2023-24 compared to 36% in 2022-23. The cumulative levels of recovery, since the introduction of IBC, stand at 32.10% as of December 31, 2024.

> **"IBBI has proactively amended extant regulations whenever an issue of legal interpretation crops up."**

This has led to the Insolvency and Bankruptcy Board of India (IBBI/ Regulator) going into a high-octane mode to improve the efficiency of the process by addressing issues of law as they come up. IBBI attempts to do this through introduction of amendments to regulations and is also seeking to make substantive changes on the largely unaddressed issues of Cross Border Insolvency, Group Insolvency, sector -specific issues e.g. real estate etc. IBBI has proactively amended extant regulations whenever an issue of legal interpretation has cropped up in the bankruptcy ecosystem.

This article, while focusing on the issue of Group Insolvency, argues that IBC is fundamentally a commercial law. Hence, by its very nature, it cannot attempt to address every specific issue as it crops up occasioned by the unique nature of the case/s under resolution. The Code and Regulations are robust in themselves, and the practitioners need to simultaneously respect the hierarchy of jurisprudence while taking case-specific legal decisions.

2. Functioning of Interconnected Entities

A typical scenario in a group of business entities having a common promoter and a common core activity is best envisaged by the following example. Mr. X, with some dormant family members as directors, floats a listed company for the sole purpose of setting up and running hospitals all over the country. This company functions like a holding company, drawing royalties from the hospitals for consultancy support and other activities. The hospital buildings belong to a wholly owned unlisted company which raises loans from banks for their construction. The construction is undertaken by group subsidiary companies, majority owned by the promoter and his non-corporate affiliates. Additionally, the service contracts for the day to day operations of the hospitals are with promoter owned non-corporate entities. These entities are paid every month by the hospitals from designated bank accounts on contracted rates. The revenues of all the hospitals go directly to the accounts of related Trusts where the promoter or his family member is the Managing Trustee for life, to be replaced, when necessary, only by another family member. These Trusts, in turn, pay the respective hospitals at scheduled rates as per a tripartite agreement with the hospitals and the lead lender in their Trust and Retention Account (TRA) accounts maintained with the lead bank's branches. This enables the respective hospitals to pay the doctors, technicians and admin staff salaries, banks' loan dues, defray day-to-day running expenses as also pay the charges of the support service agencies.

[1] IBBI Newsletter, October-December 2025 (https://ibbi.gov.in//en/publication)

In the initial stages everything works clockwork and various agencies dealing with the group entities are comforted that they are dealing with the group as a whole, helmed by the individual promoter. It is a common practice and perfectly reasonable for commercial ventures to operate through groups of entities and for each entity in the group to have a separate legal personality. Separate entities are set up in order to dissociate specific assets from general liabilities, the purpose being to raise funding on more favorable conditions.

"Till the time interconnected entities are solvent and operational, the general perception is typically that they function as a unified group."

When these businesses are solvent and operational, general perception is typically that they function as a unified group in the eyes of customers, suppliers, creditors etc. Nevertheless, as a normal credit risk measure, lenders often seek guarantees or credit support from ultimate parent and the principal individual promoters, which are readily provided. Formal divisions are ignored under the impression that they are dealing with the group as a whole identified with the promoter. Consequently, a sense of complacency gradually sets in with all agencies, including lenders, dealing with any of the group entities.

However, the use of the group structure presents the promoters and their key personnel with opportunities for manipulating the corporate form, evading regulations and responsibilities. Annual reports can be manipulated by concealing losses using intra-group transactions designed to create profits. Assets can be transferred around the enterprise with no proper book-keeping; intra-group claims are unascertainable, etc. The result is significant confusion as to inter se liabilities as well as asset ownership.

In the specific example provided above, the promoters gradually began to betray the trust reposed in them by, inter alia, the lenders who have the overwhelming exposure to the group. The hospitals discontinue the service contracts with the group entities which were monitored by banks and awarded them to 'related' entities outside the group on terms not disclosed to the banks. The hospitals, on the pretext of poor service, opened current accounts with other banks outside the consortium and the Trusts started paying the hospitals their monthly dues into those accounts. The banks, which initially, during the bonhomie period, received their full loan instalments, later started receiving paltry amounts against their dues with the promoters citing poor business conditions due to increased competition and regulatory control on charges leviable for treatments coupled with rising costs. Accordingly, the promoter enjoined the banks to restructure the dues several times under one or the other RBI restructuring schemes on the pretext that the business revenues were inadequate to service the accounts at the agreed levels. Finally, when the promoter ran out of the restructuring schemes, and the banks started running out of patience contemplating action under SARFAESI etc., the promoter quietly took the shield of IBC and filed for insolvency.

"In the time of financial crisis, the interconnected entities dissociate themselves from agreements and common accounts and start operating as independent units."

The historical approach to these situations has been that, regardless of the fact that a legal entity is or is not part of a group of companies, if insolvency occurs it is traditionally considered a stand-alone body, solely liable for its own debts with only its own assets. This approach ignores that, during its lifetime, the company was part of a larger economic entity and has always been treated as such. The size and complexity of many enterprise groups is not always readily apparent, as the public image of many is simply that of a unitary organization operating under a single corporate/promoter identity. Indeed, that may reflect not only the public view but also the internal concept within the organization - the legal structure of a group as a number of separate legal entities is seldom indicative of how the business of the group is internally managed. The interrelationships between group members that determine the manner in which the group operates while solvent is generally severed on the commencement of insolvency and restructuring proceedings.

3. Group Insolvency and the IBC

In the case discussed above, since the Trusts and also the legal form of other group entities, like hospital societies and LLPs, were outside the ambit of IBC, the lenders could not access the fund streams going to the company's current accounts with other banks. Clearly, they have been shielded from the banks by design (almost like a pre-meditated plan) with the advantage of IBC not extending to such non-corporate entities. Consequently, the loan accounts turned NPAs. The subsequent Transaction Audits during the CIRP based on whatever records which could be accessed in the opaque group organizational set up disclosed huge irregularities with regard to the nature of suspicious transactions forcing the banks to declare the company fraudulent and the promoter as a willful defaulter.

Therefore, there is a need for widening the MCA definition of 'group' to include non-corporate entities like Trusts, Societies, etc. while retaining the significant control and substantive ownership aspects for determination of the 'group' character. In India, given the preponderance of family structures even in large conglomerates, this is necessary for enabling the courts to determine the need for lifting the corporate veil. Moreover, the definition of 'related parties' under Section 5(24) of the IBC, which covers group corporates, LLPs and KMPs would need to be widened to include non-corporate structures like Societies, Trusts, Hindu Undivided Family (HUF), etc. which are engaged in a broad common economic activity in an inter-connected way. As such, in the instant case under discussion, considering that all entities were engaged primarily in the single activity of operating hospitals, this is a fit case for collapse of group structure by piercing the corporate veil and ordering 'Substantive Consolidation' (aggregation of assets and liabilities of all group entities) as against a 'procedural coordination' (simultaneous insolvency proceedings against all group corporate entities). Here, unless consolidation is ordered, it would be difficult to achieve an effective resolution of the hospital owning company. Absence of a consolidation is likely to result in inefficiency; loss of value; lack of coherence; multiplication of cost; conflicting decision making; added uncertainty of outcome. Generally speaking, if consolidation is ordered, it would be in the interest of the creditors. Creditors will

suffer a greater prejudice in the absence of consolidation than the insolvent companies and objecting creditors would from its imposition. As all the above factors would stand in the way of maximization of value, it would be well-nigh impossible to achieve a satisfactory outcome of resolution process. Secured creditors of defaulting companies will suffer greater prejudice in the absence of consolidation.

> **"The definition of 'related parties' under Section 5(24) of the IBC, needs to be widened to include non-corporate structures like Societies, Trusts etc."**

In the alternate case of a 'procedural coordination' of a Group, it is fit to initiate CIRP against group corporate entities before a single NCLT bench. The CBIRC (Cross Border Insolvency Rules/Regulations Committee) set up by the MCA had, in their Report dated December 10, 2021, reiterated certain broad suggestions of the IBBI constituted Working Group (WG) on the operational methodology for CIRP under procedural coordination. The Working Group, in the recommendations[2] made in the report dated December 10, 2019, had stated that the Group Insolvency framework should be 'enabling' in nature for voluntary adoption by the stakeholders. It should be introduced in a phased manner starting with procedural coordination for group corporates (holding, subsidiary and associate) with some flexibility on the grouping left to the AA; subsequently cross-border and substantive variants could be introduced. The WG envisaged certain mandatory provisions like a

[2] IBBI's Working Group Report, dated 12.10.2019.

joint application for insolvency, communication and information sharing among group committee members, single IP and single AA with a group coordination structure between different lenders to the group entities. This is yet to be formalized.

4. Judicial Initiatives on Group Insolvency

In the case under discussion, we need to be cognizant that IBC is fundamentally a commercial law, and the adjudicators have the responsibility of promoting the objectives of the Code. As such, in the absence of specific provision, National Company Law Tribunal (NCLT) can order substantive consolidation and other suitable steps in this case, by exercising its inherent powers under Rule 11 of the NCLT Rules, 2016, to meet the ends of justice, in the interest of the secured creditors and other stakeholders, and to serve the larger objectives of the Code. It is the duty of NCLT to act in a manner that advances the objectives of the Code and not defeat them, by being innovative and creative. NCLT should be progressive and fill the legislative gaps by judicial decisions making and interpretation of law. In the epilogue to its decision in *Swiss Ribbons Pvt. & Anr. v. Union of India & Ors.*[3], the Supreme Court observed, "The Insolvency Code is legislation which deals with economic matters and, in a larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislation having failed, 'trial' having led to repeated 'errors', ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimenting in things economically is a grave responsibility, and denial of the right to experiment is fraught with serious consequences for the nation".

It is only fair that the NCLT, for the purpose of passing an order of substantive consolidation or procedural coordination or otherwise, examines whether the contemplated order will commercially or legally prejudice any person. The answer is most likely to weigh in favour of substantive consolidation in an overwhelming number of cases. Even the other group entities with different legal structures will benefit from the order of consolidation as they will be able to address the contractual and other relationship issues with the defaulting company arising from the insolvency resolution process.

We should nevertheless recognize that, despite the absence of a Group Insolvency Framework, NCLT benches have suo motu applied principles of Group Insolvency on a case-by-case basis to better achieve the objectives of the IBC. Illustratively, during the insolvency of Videocon Industries[4], the NCLT, Mumbai, permitted consolidation of the insolvency proceedings of 13 of the 15 entities in the Videocon Group on grounds that the operations of these entities were inextricably linked, and the entities were also involved in availing loan facilities under a composite agreement. Other factors going in favour of consolidation were (i) common control, assets, directors, liabilities; (ii) interdependence of the companies; (iii) interlacing of finance; (iv) pooling of resources; (v) co-existence for survival; (vi) intricate links between the entities; (vii) intertwined accounts; (viii) inter-looping of debts; (ix) singleness of economic activity of units; and (x) common financial creditors.

> **Hopefully, once the 'enabling' Group Insolvency Framework is introduced the vibrance of the insolvency landscape will be enhanced to the desired levels.**

Subsequently, during the insolvency of Lavasa Corporation[5], the NCLT, Mumbai permitted the consolidation of insolvency proceedings of Lavasa Corporation and its 4 wholly owned subsidiaries, including two subsidiaries that were not undergoing insolvency resolution (subject to the approval of their creditors). The NCLT based its decision on the fact that the debts of all 4 subsidiaries were guaranteed by Lavasa Corporation, and the Resolution Plan was conditional on the consolidation of the insolvency process of all the entities.

[3] *Swiss Ribbons & Anr. v. Union of India & Ors,* SC Order dated 25.01.2019.

[4] *SBI v. Videocon Industries & Ors,* NCLAT Order 4.7.2019 SCC Online NCLT 745.

[5] *Axis Bank & Ors v. Lavassa Corp.* MA 3664 of 2019 in CP 1765-1757&574/2018 26.2.2020

The National Company Law Appellate Tribunal (NCLAT) has also ordered procedural coordination for insolvency proceedings through a single IP before a single AA for 5 entities who jointly owned a plot of land and were operating as a consortium in *Edelweiss Asset Reconstruction Co Ltd v. Sachet Infrastructure Pvt Ltd & Ors.*

5. Conclusion

From the jurisprudence, it is clear that group insolvency is predicated on the insolvent entities being intricately linked and operating as a single economic unit. In addition, the consolidation of insolvency proceedings must be consistent with the objectives of the IBC.

As such, the extant laws and the judicial pronouncements on group entities where the piercing of the corporate veil is of fundamental importance in upholding the objectives of IBC in providing all stakeholders with the best possible outcome, are largely adequate to deal with situations as they arise. Only the judicial infrastructure should have the mindset to take the bull by its horns and deliver robust outcomes. The IBBI on February 04, 2025, has floated a Discussion Paper "Streamlining Processes under the Code: Reforms for Enhanced Efficiency and Outcomes" which also has a proposal on "Coordinated Insolvency Resolution for Interconnected Entities". This is viewed as a significant step towards Group Insolvency Framework under the IBC. Hopefully, once the 'enabling' group insolvency framework is introduced the currently witnessed erosion of confidence in the insolvency framework may be arrested and the vibrance of the insolvency landscape would be enhanced to the desired levels.

Foreign Investment and IBC: Making Indian Insolvency Regime More Investor-Friendly

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The IBC, 2016, has significantly transformed India's insolvency framework by consolidating fragmented laws into a structured, time-bound process, leading to improved recovery rates and increased investor confidence. While the reforms have attracted both domestic and foreign investors, challenges such as judicial delays, regulatory uncertainty, issues related to cross-border insolvency, and inconsistent asset valuation continue to hinder the full potential of foreign participation. In this article, the author examines how foreign investors perceive the IBC, highlighting key challenges they face in insolvency proceedings. It discusses crucial IBC provisions, relevant insolvency cases, and comparisons with global insolvency frameworks. The article concludes with policy recommendations to enhance regulatory stability, streamline judicial processes, and improve foreign investor confidence in India's insolvency ecosystem. ***Read on to know more...***

1. Introduction

1.1 Background and Rationale: India's economic liberalization over the past three decades has ushered in increased foreign direct investment (FDI) and global capital inflows. Yet, until the early 2010s, India's insolvency framework was characterized by a multitude of laws such as the Sick Industrial Companies Act (SICA), 1985; the Recovery of Debts Due to Banks and Financial Institutions Act (RDBFI), 1993; and the Securitization and Reconstruction of Financial Assets and Enforcement

of Security Interest Act (SARFAESI), 2002 resulting in prolonged disputes and inefficient resolution processes.

The enactment of the Insolvency and Bankruptcy Code (IBC/Code) in 2016 marked a significant overhaul by consolidating these disparate laws into a single, time-bound, and more predictable framework. The IBC aims to:

a) Ensure a speedy resolution of insolvency cases through strict timelines (a maximum of 180 days, extendable by 90 days, as provided in Section 12 of the IBC).

b) Maximize the value of assets for the benefit of creditors.

c) Enhance the overall ease of doing business by improving creditor recovery rates; and

d) Restore confidence among investors by creating a more transparent and efficient insolvency process.

1.2 Impact on Foreign Investment: The IBC has enhanced India's global insolvency rankings, boosting foreign investor participation in distressed asset sales. Landmark cases like Essar Steel and Bhushan Steel demonstrate its effectiveness. However, challenges such as judicial delays, regulatory uncertainties, and cross-border insolvency complexities continue to hinder full investor confidence. Ensuring a more predictable and transparent insolvency framework is essential to sustaining long-term foreign investment. This article explores these issues and potential solutions in detail.

"Foreign investors typically evaluate an insolvency framework based on its predictability, transparency, efficiency, and ability to enforce judgments."

2. How Foreign Investors Perceive IBC

Foreign investors typically evaluate an insolvency framework based on its predictability, transparency, efficiency, and ability to enforce judgments. These qualities are crucial in a high-stakes investment environment. In the case of the IBC, while several aspects have positively transformed India's insolvency landscape, certain areas remain problematic.

2.1 Time-Bound Resolution

(a) **Provision Reference:** Section 12 of the IBC mandates that the Corporate Insolvency Resolution Process (CIRP) be completed within 180 days, with a possible extension of 90 days by the Adjudicating Authority (AA). This strict timeline is designed to reduce delays and ensure that distressed assets are resolved swiftly.

(b) **Investor Implications:** For foreign investors, the assurance of a defined timeline minimizes the risk of prolonged litigation and uncertainty, making distressed asset investments more predictable. The prompt resolution also facilitates quicker asset monetization, thereby enhancing liquidity.

2.1.2. Enhanced Creditor Rights and Governance

(a) **Provision Reference:** Under Section 30(4) of the IBC, the Committee of Creditors (CoC) comprising primarily financial creditors, play a decisive role in approving the resolution plan.

(b) **Investor Implication:** The empowerment of creditors provides foreign investors with greater control over the insolvency process. With a more structured mechanism to influence outcomes, international lenders and distressed assets funds feel more secure in their ability to recover investments.

2.1.3. Improved Recovery Rates

(a) **Statistical Evidence:** Post-IBC data indicates that the recovery rates for creditors have improved substantially. Studies have shown an increase from pre-IBC recovery rates of around 26% to upwards of 32.1% under the IBC regime[1].

(b) **Investor Implication:** Higher recovery rates directly impact the risk-reward calculus for foreign investors, making the Indian market more attractive. Improved asset realization encourages global investment into

[1] IBBI Newsletter, Oct-Dec. 2025, p. 11

sectors that were previously considered high risk due to inefficient insolvency processes.

2.1.4. Successful High-Profile Resolutions

(a) **Case References:** Essar Steel Insolvency: The acquisition of Essar Steel by ArcelorMittal for approximately ₹42,000 crores[2] demonstrated the viability of the IBC framework in handling large-scale distressed assets.

(b) **Bhushan Steel Resolution:** The successful resolution by Tata Steel[3] further underscored the potential for strategic acquisitions under IBC.

(c) **Investor Implication:** These landmark cases have helped build confidence among foreign investors by illustrating that the IBC framework can lead to efficient and commercially viable resolutions.

> **The acquisition of Essar Steel by ArcelorMittal for approximately ₹42,000 crores demonstrated the viability of the IBC framework in handling large-scale distressed assets.**

2.2 Concerns and Challenges: Despite these positives, several issues continue to pose challenges for foreign investors.

2.2.1. Judicial Delays and Uncertainty

(a) **Provision Reference:** Although Section 12 sets a timeline, real-world practice often sees delays due to prolonged litigation in the National Company Law Tribunal (NCLT) and subsequent appeals in the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court.

(b) **Case in Point:** The Jaypee Infratech insolvency[4] case has witnessed significant delays, partly due to protracted legal challenges. Such delays undermine the very purpose of the IBC's time-bound process.

(c) **Investor Implication:** Uncertainty over the timely resolution of cases reduces the attractiveness of distressed asset investments. Foreign investors, accustomed to robust judicial processes, may find these delays prohibitive.

2.2.2. Regulatory and Policy Uncertainty

Regulatory and policy uncertainties continue to pose challenges in its application. Judicial interpretations and evolving regulations, though aimed at refining the provision, sometimes create ambiguities that can lead to the exclusion of genuine resolution applicants. This, in turn, may impact the effectiveness of the resolution process by limiting the pool of eligible bidders and potentially reducing value maximization for stakeholders. Striking a balance between preventing undesirable entities from regaining control and ensuring a fair and competitive resolution process remains a key concern in the evolving insolvency framework.

2.2.3. Cross-Border Insolvency Issues

(a) **Current Framework:** While the IBC does include provisions (notably Sections 234 and 235) that touch upon cross-border insolvency, India has not fully adopted the UNCITRAL Model Law on Cross-Border Insolvency.

(b) **Case Example:** In the Videocon Group insolvency[5] proceedings, foreign creditors encountered difficulties in enforcing their claims on assets located outside India.

(c) **Investor Implication:** The lack of a comprehensive cross-border insolvency framework creates legal uncertainty for foreign investors with transnational portfolios. Without effective mechanisms to coordinate international claims, recovery becomes complex and costly.

2.2.4. Asset Valuation and Transparency

(a) **Issue Overview:** One persistent challenge is the lack of standardized valuation practices in distressed

[2] Supreme Court Judgment on Essar Steel Insolvency Case - Civil Appeal Nos. 8766-67 of 2019, dated November 15, 2019, para 89 on page 152 of the order.

[3] In the matter of Bhushan Steel Limited CA Nos. 176, 186, 217 & 244-2018 IN CP (IB)-201-(PB)-2017.

[4] In the matter of *Yamuna Expressway Industrial Development Authority vs. Monitoring Committee of Jaypee Infratech Ltd.* Through Anuj Jain, Secretary & Ors. [C.A (AT) (Ins.) No.493 of 2023 & I.A. No. 3017, 3703 of 2023 & 2535, 2548, 2660, 2669 of 2024]

[5] Videocon Group insolvency: In the matter of Videocon Industries Ltd MA 1306 -2018 & Ors MAs CP 02-2018 & Ors CPs.

asset sales. The valuation process can be subjective, leading to disputes. Case Study: Jet Airways faced valuation disputes, delaying foreign buyer participation.

(b) **Case in Point:** In the DHFL[6] (Dewan Housing Finance Limited) case, discrepancies in asset valuation resulted in protracted negotiations and delayed resolution.

(c) **Investor Implication:** Inconsistent valuation undermines investor confidence as it directly affects bid pricing and expected recovery rates. Transparent and standardized valuation methodologies are essential for attracting foreign capital.

3. Key Issues Faced by Foreign Creditors

Foreign creditors including international banks, private equity funds, hedge funds, and asset reconstruction companies (ARCs) face several challenges when engaging with India's insolvency regime. They are as under:

3.1. Cross-Border Insolvency Challenges

3.1.1. Legal Framework Deficiencies

(a) **IBC Provisions:** Sections 234 and 235 of the IBC provide for the initiation of Cross-Border Insolvency proceedings. However, these provisions remain largely underutilized due to the absence of a comprehensive legislative framework that aligns with the UNCITRAL Model Law.

(b) **UNCITRAL Model Law:** The Model Law provides guidelines for cooperation between courts in different jurisdictions. India's reluctance to fully adopt it creates gaps in the enforcement of foreign judgments.

(c) **Investor Implication:** Without a robust Cross-Border Insolvency mechanism, foreign creditors are often left navigating a maze of local laws when attempting to recover their dues from globally operating distressed companies.

Without a robust Cross-Border Insolvency mechanism, foreign creditors are often left navigating a maze of local laws when attempting to recover their dues from globally operating distressed companies.

3.1.2. Enforcement of Foreign Judgments

(a) **Challenges:** Even when foreign creditors secure favourable rulings in their home jurisdictions, enforcing these judgments in India remains problematic.

(b) **Example:** Foreign creditors often face hurdles in enforcing foreign insolvency or arbitration awards in India due to legal and procedural challenges. Notable cases include:

(i) ***Cairn Energy vs. India (2020):*** Cairn won a $1.2 billion arbitration award but struggled with enforcement in India, leading it to seek remedies in multiple jurisdictions[7].

(ii) ***Daiichi Sankyo vs. Ranbaxy:*** Despite a favorable foreign arbitral award, Daiichi faced[8] prolonged enforcement proceedings in India.

(iii) ***Amazon vs. Future Retail:*** Amazon's Singapore arbitral award was upheld by the Indian Supreme Court but faced regulatory and legal resistance[9].

(iv) ***UpHealth vs. Glocal Healthcare:*** UpHealth's ICC award was contested[10] in India, highlighting resistance to foreign arbitration enforcement.

These cases reflect India's pro-arbitration stance in principle, but the practical difficulties foreign creditors encounter in execution. This enforcement gap diminishes

6. *Dewan Housing Finance Corporation Ltd. vs Anu Bhalla* on 17 July, 2023.

7. https://en.wikipedia.org/wiki/Cairn_Energy_and_Government_of_India_dispute

8. https://www.daiichisankyo.com/media/press_release/detail/index_3438.html

9. https://elplaw.in/leadership/a-creature-called-emergency-arbitrator/#:~:text=%5B1%5D%20(Amazon%20v.,(1)%20of%20the%20Act.

10. https://investors.uphealthinc.com/news/news-details/2024/Calcutta-High-Court-rules-in-favour-of-UpHealth-Holdings-Inc.-and-vigorously-reinforces-the-ICC-International-Court-of-Arbitration-previous-110-million-award-against-Glocal-directors-and-other-Respondents-calling-their-conduct-dishonest-and-fraudulen/default.aspx

the confidence of international investors who rely on the seamless execution of cross-border claims.

3.2. Judicial Delays and Enforcement Inefficiencies

3.2.1. Prolonged Litigation

(a) **Statutory Timelines vs. Reality:** Although the IBC mandates completion of CIRP within 270 days (Section 12), many cases exceed this timeline due to various factors. Delays often result from a lack of potential resolution applicants, prolonged negotiations, and delayed decision-making by creditors. While judicial interventions may contribute in some instances, they are not the sole cause of delays in the process.

(b) **Notable Case:** The RCom insolvency case[11] took approximately 5.5 years instead of expected maximum 330 days, impacting not only domestic stakeholders but also foreign creditors like China Development Bank (CDB), Industrial and Commercial Bank of China (ICBC), Export-Import Bank of China etc., who had exposure to the company's debt.

(c) **Investor Implication:** Delays in litigation create uncertainty in the recovery process, directly affecting foreign investors' risk assessments and investment decisions.

3.2.2. Enforcement Challenges

(a) **Procedural Complexities:** The multi-layered appeal process, from the NCLT to the NCLAT and ultimately the Supreme Court, often prolongs insolvency resolution, undermining investor confidence particularly among foreign investors who expect predictable and time-bound dispute resolution. While statutory timelines for appeals and restrictions on grounds for appeal already exist, their enforcement remains weak due to the judiciary's consistent stance that such timelines are not binding. Additionally, while a mandatory pre-deposit for appeals could deter frivolous litigation, such a measure is only viable against debtors, as imposing it on creditors may discourage legitimate claims, further deterring foreign investment.

A key concern for foreign investors is the unpredictability and delay in judicial outcomes, which affects the ease of doing business and deters participation in India's insolvency market. The fundamental issue lies in insufficient and inadequate infrastructure, rather than procedural loopholes. Addressing these through executive action such as increasing the number of judges, strengthening tribunal infrastructure, and deploying technology for case management could significantly enhance investor confidence in the IBC framework. Creating a specialized insolvency bench with faster adjudication for large, foreign-involved cases could also help improve the investment climate and align India's insolvency regime with global best practices.

> **"Creating a specialized bench with faster adjudication for large, foreign-involved cases could also help improve the investment climate in the country."**

3.3. Bureaucratic and Regulatory Hurdles

3.3.1. Multiple Regulatory Bodies

(a) **Regulatory Overlap:** Foreign investors in India face a complex approval process involving multiple regulatory bodies such as Reserve Bank of India (RBI), SEBI, and IBBI, leading to delays and uncertainty. In contrast, countries like the United States and Australia have streamlined foreign investment regulations through centralized bodies. The Committee on Foreign Investment in the United States (CFIUS) consolidates national security reviews, ensuring a more efficient approval system. Similarly, Australia's Foreign Investment Review Board (FIRB) provides a single-window clearance mechanism for foreign investments. These centralized approaches simplify regulatory compliance, making the investment process smoother and more predictable compared to India's multi-agency system.

(b) **Investor Implication:** The multiplicity of regulatory approvals complicates and delays transactions,

[11] https://ibbi.gov.in/en/claims/order-process/L45309MH2004PLC147531

thereby increasing transaction costs and deterring swift market entry.

3.4. Need for Transparency

(a) **Best Practice Models:** Adopting more transparent valuation practices in India could enhance the credibility of the insolvency process and attract higher levels of foreign capital. However, certain issues with current valuation standards need to be addressed, such as:

(i) **Divergence in Valuation Reports:** Significant differences between two registered valuers' reports often create uncertainty, leading to disputes and delays in CIRP.

(ii) **Challenges in Valuing Distressed Assets:** The lack of market comparable and distressed nature of assets often result in conservative or inconsistent valuation estimates.

(iii) **Subjectivity in Real Estate and Intangible Asset Valuations:** The valuation of real estate-heavy companies and intangibles (such as brand value or intellectual property) remains inconsistent, impacting resolution outcomes.

(iv) **Limited Market for Independent Valuation Experts:** A shortage of experienced professionals specializing in insolvency valuations sometimes leads to quality concerns in valuation reports.

Addressing these issues through standardized methodologies, greater regulatory oversight, and independent review mechanisms could improve valuation transparency and boost investor confidence in the CIRP framework.

4. Comparative Insights: Global Insolvency Frameworks

A comparative analysis with other established insolvency regimes can provide insights into areas where India might improve its framework to become even more investor-friendly.

4.1. United States: Chapter 11 Bankruptcy

(a) **Overview:** The US Chapter 11 process provides a

well-structured, debtor-in-possession regime that allows for business restructuring while protecting the rights of creditors.

(b) Key Strengths:

(i) **Valuation Transparency:** Professional valuations and market-based pricing are integral.

(ii) **Judicial Oversight:** Experienced bankruptcy judges and specialized legal expertise ensure efficient proceedings.

(c) **Lessons for India:** India could benefit from further standardizing asset valuation practices and streamlining judicial processes to adopt the efficiency seen in Chapter 11 cases.

4.2. United Kingdom: Administration Process

(a) **Overview:** The UK's administration process focuses on rescuing the business or achieving a better result for creditors than liquidation.

(b) **Key Strengths:**

(i) **Specialist Administrators:** The use of professional insolvency practitioners with extensive experience.

(ii) **Streamlined Procedures:** Clear procedures for the resolution and turnaround of distressed companies.

(c) **Lessons for India:** Strengthening the role and better training of Insolvency Professionals (IPs) in India and streamlining the insolvency process can enhance the credibility of the IBC through:

(i) **Specialized Training & Certification:** Introducing advanced training programs on valuation, forensic audits, and Cross-Border Insolvency to improve the expertise of IPs.

(ii) **Enhanced Regulatory Oversight:** Strengthening disciplinary mechanisms under IBBI to ensure accountability and adherence to best practices.

(iii) **Streamlined Case Management:** Using technology-driven case management tools to enhance transparency and efficiency in CIRP.

(iv) **Clearer Guidelines on Commercial Decision-Making:** Providing detailed frameworks on how IPs should assess and evaluate resolution plans to minimize litigation risks.

(v) By addressing these aspects, the insolvency framework can become more predictable and investor friendly.

> **Introducing advanced training programs on valuation, forensic audits, and Cross-Border Insolvency could improve the expertise of IPs.**

4.3. Singapore: Restructuring Regime

(a) **Overview:** Singapore's insolvency framework emphasizes early intervention, pre-packaged restructurings, and close cooperation between creditors and debtors.

(b) **Key Strengths:**

(i) **Early Resolution:** The emphasis on early restructuring helps in preserving value.

(ii) **Regulatory Clarity:** Singapore vs. India

- **Legislative Framework:** Singapore's Insolvency, Restructuring and Dissolution Act (IRDA) consolidates all insolvency laws, ensuring clarity. India's IBC 2016, though unified, faces evolving jurisprudence and procedural complexities.
- **Institutional Oversight:** Singapore mandates strict licensing for insolvency practitioners, ensuring professionalism. India's IBBI regulates professionals, but expertise levels vary.
- **Procedural Efficiency:** Singapore enforces clear timelines, reducing delays. In India, judicial backlogs and appeals often extend resolution beyond the mandated 330 days.
- **Arbitration & Insolvency:** Singapore follows a pro-arbitration approach, ensuring consistency. India's stance is evolving but remains inconsistent.
- Singapore's streamlined system enhances predictability, whereas India's process, though improving, still faces challenges.

(c) **Lessons for India:** Adopting measures that facilitate early intervention and streamlined negotiations can significantly reduce the time and cost associated with insolvency proceedings.

5. Best Practices & Policy Recommendations

To enhance foreign investor confidence in the IBC framework, several best practices and policy reforms can be considered.

5.1. Adoption of a Comprehensive Cross-Border Insolvency Framework

(a) **Full Adoption of UNCITRAL Model Law:** India should consider fully implementing the UNCITRAL Model Law on Cross-Border Insolvency. This would provide a legal framework that facilitates the coordination of Cross-Border Insolvency cases and the enforcement of foreign judgments.

(b) **Clear Guidelines:** Issuing detailed guidelines on the application of Sections 234 and 235 of the IBC would help clarify procedures for international creditors.

(c) **Expected Outcome:** A robust cross-border framework will reduce legal uncertainty and encourage foreign participation by ensuring that international claims are enforceable in India.

5.2. Strengthening Judicial and Regulatory Infrastructure

(a) **Judicial Training:** Enhanced training programs for insolvency professionals and other stakeholders on the IBC provisions and international best practices will lead to more consistent and predictable rulings.

(b) **Expected Outcome:** Reduced litigation delays and improved judicial predictability will directly benefit foreign creditors by ensuring timely resolutions.

5.3. Enhancing Regulatory Consistency to Attract Foreign Investors

(a) **Ensuring a Stable Policy Environment:** For foreign investors considering distressed asset opportunities in India, regulatory certainty and consistency in insolvency proceedings are critical. Unclear policies, inconsistent tribunal rulings, and evolving interpretations of key provisions of the IBC can demotivate foreign participation. Addressing the following concerns would enhance investor confidence:

(i) **Harmonization of Cross-Border Insolvency Framework:** The absence of a comprehensive Cross-Border Insolvency framework aligned with the UNCITRAL Model Law makes it difficult for foreign creditors to effectively participate in Indian insolvency proceedings. Establishing clear rules on recognition of foreign insolvency proceedings and asset recovery across jurisdictions would encourage greater foreign investment in distressed assets.

(ii) **Transparent and Consistent Resolution Plan Approval:** Foreign investors prefer a standardized approach to evaluating resolution plans, particularly regarding valuation methodologies, distribution waterfalls, and compliance requirements. Currently, varying interpretations by different NCLT benches create unpredictability in how plans are assessed. Codifying clear evaluation criteria and ensuring time-bound approvals would make the resolution process more reliable.

(iii) **Strengthening Rights of Foreign Creditors:** The IBC prioritizes secured financial creditors in recoveries, but foreign investors (especially bondholders and institutional investors) often find themselves disadvantaged due to procedural delays and lack of clear enforcement mechanisms. Creating a dedicated framework for foreign institutional creditors would ensure better protection and participation in the resolution process.

(iv) **Improving Exit Mechanisms for Foreign Investors:** Investors seeking to acquire distressed assets under the IBC are often concerned about post-resolution litigations, regulatory hurdles, and enforcement delays. A clearer framework for post-resolution asset management, dispute resolution, and exit options (including capital repatriation policies) would make India's insolvency regime more attractive for foreign capital.

(b) **Standardized Valuation Guidelines:** Developing standardized asset valuation frameworks possibly drawing on international models can help mitigate disputes and ensure transparent pricing in distressed asset sales. Evidence from global practices supports this approach.

(c) Recommendations for Enhancing Valuation Standards

(i) **Adopting a Standardized Insolvency Valuation Framework:** Align valuation methodologies with IVS and IFRS, ensuring consistent approaches across all CIRP cases.

> **"Align valuation methodologies with IVS and IFRS, ensuring consistent approaches across all CIRP cases."**

(ii) **Restricting Frivolous Challenges to Valuation:** Establish strict thresholds for challenging valuations, preventing defaulting promoters from misusing legal provisions to delay resolutions.

(iii) **Improving Creditor Transparency in Valuation Reports:** Provide foreign investors and creditors with clearer insights into the valuation process, ensuring they can make informed decisions on bidding and recovery prospects.

(iv) **Clarifying Ranking of Charges through Legislative Reforms:** Establish a definitive legal framework on priority of claims to avoid valuation disputes linked to creditor rankings.

(c) **Expected Outcome for Foreign Investors:** A clear, standardized, and enforceable valuation process would reduce disputes, enhance predictability in asset pricing, and improve investor confidence in India's distressed asset market.

By addressing concerns around creditor ranking, valuation transparency, and dispute resolution, India can position itself as a more attractive destination for foreign capital in insolvency and distressed asset investments.

5.4. Encouraging Foreign Participation in Asset Reconstruction Companies (ARCs)

(a) **Liberalize FDI norms for ARCs:** Allowing 100% Foreign Direct Investment (FDI) in ARCs would enable greater foreign participation in the recovery and resolution of distressed assets.

(b) **Streamlined Approval Process:** Simplifying the RBI and SEBI approval processes for foreign investors can reduce transactional delays.

(c) **Expected Outcome:** Enhanced participation of foreign ARCs can lead to improved recovery rates and a more competitive market for distressed asset sales.

5.5. Promoting Best Practices Through International Cooperation

(a) **Knowledge Sharing:** Establish forums for dialogue and knowledge sharing between Indian insolvency practitioners and their international counterparts.

(b) **Regulatory Collaboration:** Engage with international bodies (such as the International Insolvency Institute) to adopt global best practices and ensure that India's insolvency framework remains aligned with international standards.

> **"Adopting global best practices such as a robust Cross-Border Insolvency Framework, judicial reforms, and regulatory stability can make India's insolvency regime more attractive."**

6. Conclusion

The IBC has significantly improved India's insolvency framework, enhancing recovery rates, creditor rights, and foreign investor interest. However, challenges like judicial delays, regulatory uncertainty, and Cross-Border Insolvency issues persist. Greater international collaboration will help India continuously improve its insolvency regime, thereby making it a more attractive destination for global investors. Adopting global best practices such as a robust Cross-Border Insolvency Framework, judicial reforms, and regulatory stability can make India's insolvency regime more attractive. Strengthening foreign participation in distressed asset markets will boost investor confidence and economic growth, benefiting both domestic and international stakeholders.

The need for an Insolvency and Bankruptcy Fund

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Insolvency and Bankruptcy Code, 2016 (IBC), since its inception, has a provision in Section 224 under Part V for constitution of the Insolvency and Bankruptcy Fund (I&B Fund). However, little progress has been made on this front in the past over eight years. The objective for creation of the said fund is to support the insolvency resolution, liquidation, and bankruptcy of individuals and businesses under the IBC. In the present article, the author analyses the relevance of this provision in strengthening the insolvency ecosystem in the country by empowering the insolvency professionals and rescuing them in situations of financial crisis such as interim finance, delays in payment of CIRP cost/ liquidation cost, audit costs prior to the Insolvency Commencement Date etc. ***Read on to know more...***

1. Overview

Part V, Section 224 of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code) provides for formation of a fund to be called the Insolvency and Bankruptcy Fund (I&B Fund). The objective for creation of the said fund is to support the insolvency resolution, liquidation, and bankruptcy of individuals and businesses under the IBC. The extant provision of Section 224 of the Code is as below:

224. Insolvency and Bankruptcy Fund. –

(1) There shall be formed a Fund to be called the Insolvency and Bankruptcy Fund (hereafter in this section referred to as the "Fund") for the purposes of insolvency resolution, liquidation and bankruptcy of persons under the Code.

(2) There shall be credited to the Fund the following amounts, namely —

(a) *the grants made by the Central Government for the purposes of the Fund;*

(b) *the amount deposited by persons as contribution to the Fund;*

(c) *the amount received in the Fund from any other source; and*

(d) *the interest or other income received out of the investment made from the Fund.*

(3) *A person who has contributed any amount to the Fund may, in the event of proceedings initiated in respect of such person under this Code before an Adjudicating Authority, make an application to such Adjudicating Authority for withdrawal of funds not exceeding the amount contributed by it, for making payment to workmen, protecting the assets of such persons, meeting the incidental cost during the proceedings or such purposes as may be prescribed.*

(4) *The Central Government shall, by notification, appoint an administrator to administer the fund in such manner as may be prescribed.*

The word "prescribed" is defined under Section 3(26) of the Code as "prescribed" means prescribed by rules made by the Central Government. Till now the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 neither provides any information on the Insolvency and Bankruptcy Fund nor it is made operational.

2. Report by the Insolvency Law Committee

A high-powered committee called the Insolvency Law Committee (ILC) was constituted by the MCA on November 16, 2017 (reconstituted on March 06, 2019, as a Standing Committee) to make recommendations to the Government on issues arising from the implementation of the IBC, as well as on the recommendations received from its various stakeholders. The ILC has also delved into the issue of the I&B Fund, the brief view and findings of the ILC on the I&B Fund are stated below:

(a) **First Insolvency Law Committee report dated March 26, 2018:** The Committee discussed that the I&B Fund has been created to allow provision of additional funds in cases of insolvency when there are no assets for conduct of insolvency proceedings and for any other reasons mentioned in section 224(3) of the Code. Utilization and effective allocation of this fund may be developed over time.

(b) **Fifth Insolvency Law Committee report dated May 20, 2022:**

(i) The I&B Fund must be used for the purposes of insolvency, liquidation and bankruptcy processes under the Code.

(ii) The Committee noted that the current design of the IBC Fund does not incentivize contributions to I&B Fund and provides very limited ways of utilizing the amounts contributed. Firstly, a contribution to the I&B Fund is voluntary and may be made by the Central Government in the form of grants and by any person who voluntarily wants to make such a contribution. The Committee discussed that incentives may need to be built, or mandates may be required for contributions to the I&B Fund, as it may not be feasible to expect voluntary contributions otherwise. Secondly, the purposes for which the I&B Fund will be utilized are limited. Section 224(3) allows persons who have contributed to the Fund to withdraw it, to the extent of their contribution. (Para 2.98 of the ILC report dated 20th May 2022)

"The 5th ILC recommended that the Government may consider building incentives or mandates in order to enable regular contributions to the I&B Fund."

(iii) The Committee agreed that suitable amendments may be made to Section 224 to allow the Central Government to prescribe a detailed framework for contribution to and utilization of the IBC Fund. For this purpose, the Government may undertake a review of the design of funds in other statutes like the Investor Protection and Education Fund under Section 11(5) of the Securities and Exchange Board of India Act, 1992 and the Investor Education and Protection Fund under Section 125 of the CA, 2013. *(Para 2.99 of the ILC report dated 20th May 2022)*

(iv) The Government may consider building incentives or mandates in order to enable regular contributions. Sources for contributions to the I&B Fund may also be expanded. Additionally, the utilization of the I&B Fund may be bolstered, and wider uses may be identified. For instance, the I&B Fund may be used to meet the expenses of resource-strapped insolvency proceedings, including payment of workmen's dues, pursuing avoidance action proceedings, etc. *(Para 2.100 of the ILC report dated 20th May 2022)*

From the observations of the ILC, it is evident that ILC was aware of the challenges faced by the insolvency professionals in meeting the expenses of resource-strapped insolvency proceedings, hence it is critical that the I&B fund as envisaged under the Code is operationalized at the earliest.

The following issues need immediate consideration as per the observations of the 5th Insolvency Law Committee report:

(a) Augmenting the sources of funds for contribution to I&B Fund

(b) Detailed framework for utilizing the purposes for which the I&B Fund can be used.

3. Augmenting the sources of funds for contribution to I&B Fund

The following may be considered for augmenting the sources of funds for contribution to I&B Fund:

(i) About 0.25% to 0.50% of the resolution plan amount may be contributed to the I&B Fund by the Successful Resolution Applicant (SRA). This step will create sufficient amount. This amendment may also entail amending Regulation 31A(1) of the CIRP Regulations which presently requires 0.25 per cent of the realizable value to creditors under the resolution plan approved under Section 31, to be paid to the IBBI. Under the present framework of Regulation 31A, the contribution to IBBI is a cost to creditors. Ideally this contribution should be a cost to the SRA which must go into the I&B Fund.

(ii) About 0.25% to 0.50% of the sale proceeds under liquidation may be contributed by the successful bidder to the I&B Fund.

(iii) The I&B Fund can also earn interest by contributing to interim finance during the CIRP process.

The above sources can contribute and create a significant corpus for the I&B Fund.

> **"About 0.25% to 0.50% of the Resolution Plan amount may be contributed to the I&B Fund by the Successful Resolution Applicant (SRA)."**

4. Purposes for which the I&B Fund can be utilized

It is suggested that the I&B Fund should be utilized in a way which yields better outcomes from a Corporate Insolvency Resolution Process (CIRP) and liquidation processes, protects the interest of insolvency professionals (IPs) and the service providers engaged by the IPs during the CIRP/ liquidation process by assuring timely payment of their fees and expenses.

The following are the suggested purposes for which the I&B Fund may be utilized:

(i) Payment of fees and expenses to the IPs where there are no assets with the Corporate Debtor (CD) or where there has been inordinate delay in payment of the same to the IPs.

(ii) Interim finance for running the CD as a going concern.

(iii) Litigation funding for CDs for realizing claims receivable by the CD.

(iv) Any other funding towards a CIRP process which can enhance or maximize the resolution value from a CD.

5. Administration of I&B Fund

As per Section 224(4) of the Code, the Central Government shall, by notification, appoint an administrator to administer the I&B Fund in such manner as may be prescribed. It is suggested that a committee for the administration of the fund may be constituted. This committee must have fair representation from IPs to advise on the utilization of the fund based on the facts of each case.

6. The Need for an I&B Fund

IPs are one of the most important pillars of the IBC ecosystem, and the entire CIRP process revolves around resolution professional of the CD. Hence protecting the interest of IPs is of paramount importance to strengthen the IBC ecosystem. One of the biggest challenges faced by the IPs is the timely payment of the CIRP cost incurred by the IPs. Despite several amendments to the CIRP Regulations, the issue of timely payment of CIRP cost is yet to be addressed. It is felt that the creation of an I&B Fund can go a long way to alleviate some of the challenges faced by the IPs and to achieve better outcomes from a CIRP/ liquidation process as detailed below:

(a) **CIRP process/ Liquidation process against a CD with no realizable assets:** There are multiple instances where the CIRP process has been initiated against a CD having no assets or the realisable value of its assets are nil. It is observed that in most of the said cases, the Committee of Creditors (CoC) is reluctant to fund the CIRP cost. A resolution of such cases is almost impossible and the CIRP cost & liquidation cost of such cases remain outstanding for payment due to resource crunch. It is imperative that the Code provides protection to IPs, i.e. the fees and cost incurred by IPs must be paid within a reasonable period. The I&B Fund can come to the rescue of the IPs under the said circumstances and the cost duly approved by the CoC/ SCC can be paid from the I&B Fund.

> **"The I&B Fund may be used to pay CoC/ SCC approved CIRP cost/ liquidation cost to IPs if the CD lacks resources."**

(b) **Liquidation is completed, but liquidation orders are pending due to pending litigation/ investigations:** There are instances where the liquidators have duly completed the liquidation process and assets have been sold and proceeds have been distributed to the stakeholders as per Section 53 of the IBC. However, the liquidators have not been relieved from their duties due to pending investigations into the corporate debtor as a result of

which the winding up orders have not been passed by the Adjudicating Authority. In such circumstances the liquidators are compelled to carry on their responsibilities without any remuneration due to a resource crunch. The I&B Fund can come to the rescue of the liquidators under said circumstances and a certain minimum fee can be paid to the liquidators from the I&B Fund.

(c) **When CoC is reluctant to fund certain critical costs necessary for a CIRP Process:**

(i) It is often seen in the case of companies under CIRP that the accounts of the said companies are not updated to the Insolvency Commencement Date. It is therefore critical of the Resolution Professional to update the books of accounts of the CD under CIRP. However, the CoC are sometimes very reluctant to incur costs to be incurred towards updating the books of accounts for the period prior to the Insolvency Commencement Date. The I&B Fund can come to the rescue of the resolution professionals under said circumstances.

(ii) A forensic/ transaction audit is to be conducted by the resolution professionals, however in some of the CIRPs, it has been observed that the CoC is reluctant to approve the cost to be incurred to carry out a forensic/ transaction audit. Without carrying out a forensic/ transaction audit, the application for PUFE transactions cannot be filed by the Resolution Professional. Resolution professionals have onerous responsibilities with very little freedom to take independent decisions. The I&B Fund can come to the rescue of the resolution professionals under said circumstances.

(iii) **Statutory compliances to be done on behalf of the CD in compliance with Section 17(2)(e) of the Code:** There are several instances where the CoC does not approve the appointment of professionals to carry out statutory compliances to be done on behalf of the CD. Under such circumstances, the resolution professional finds it very difficult to carry out his statutory responsibilities without the support of professionals required to assist him in the process. The I&B Fund can come to the rescue of the resolution professionals under said circumstances.

(d) **Inordinate delay in funding the CIRP/ Liquidation cost by the CoC /SCC:** An inordinate delay in funding the CIRP cost by the CoC has had a significant impact on conduct of the CIRP process, the only option available with the Resolution Professional is to keep on persuading the CoC for timely payment with very little outcome or to file an application before the Adjudicating Authority seeking direction against the CoC for payment of CIRP cost. The I&B Fund can come to the rescue of the resolution professionals and bridge the gap for delay under said circumstances.

"In the case of inordinate delay in funding the CIRP/ Liquidation cost by the CoC /SCC, the I&B Fund can be utilized to bridge the gap for delay."

It is also commonly noticed that, where there are multiple financial creditors in a CIRP process, it is observed that a few of the financial creditors don't contribute to the CIRP cost thereby jeopardizing the CIRP process. The I&B Fund can come to the rescue of the resolution professionals under said circumstances.

(e) **Stay granted by a higher court to the CIRP process:** In several CIRP cases post initiation of CIRP, stay is granted by a higher court like NCLAT/ Supreme Court. Post stay of the CIRP process, it is normally observed that the CoC stops payment of CIRP cost and fees to the Resolution Professional during the period of stay. It is significant to note that the duties of the RP are not paused during the period of stay by a higher court. It therefore becomes very onerous for the resolution professionals to carry out their duties without the necessary resources. The I&B Fund can come to the rescue of the resolution professionals under said circumstances.

(f) **Judicial delays in disposal of applications pending before the adjudicating authorities:** There are significant delays in disposal of applications filed by the resolution professionals or other stakeholders in the process by the Adjudicating Authorities. The I&B Fund can come to the rescue of the resolution professionals under said circumstances.

(g) **Fees payable to the resolution professionals for conducting the Personal Insolvency Resolution Process (PIRP) under Part-III of the IBC:**

(i) Under Part-III of the IBC, the IPs are required to act as resolution professionals for the Insolvency Resolution Process of Personal Guarantors to the corporate debtors ("PIRP process").

The resolution professional is appointed by the Adjudicating Authority under Section 97 of the IBC and immediately after his appointment the resolution professional is mandated to issue a report within 10 days of his appointment under Section 99 either recommending for approval or rejection of the application filed under Section 94 or 95 of the Code. However, there is no provision enshrined under the Code and Regulations framed thereunder with respect to the fees payable to the resolution professional for issuing the said report under Section 99. Resolution professionals are required to file the said report under Section 99 by way of an interlocutory application before the Adjudicating Authority. This normally requires the resolution professionals to engage a legal counsel. The lack of clarity for payment of fees and cost incurred by the resolution professionals during the process of PIRP has created immense difficulties for the resolution professionals. The I&B Fund can come to the rescue of the resolution professionals under the circumstances where the resolution professional is unable to realize his fees and costs.

(ii) The application for a PIRP process under Part-III of the Code is admitted or rejected by the Adjudicating Authority under Section 100 of the Code. Prior to the process of admission or rejection of the application for PIRP, there are multiple hearings before the Adjudicating Authority. In several instances, the applications are settled between the creditor and debtor and as a result the PIRP gets terminated on their settlement. Under the said circumstances, there is a lack of clarity in the Code and Regulations framed thereunder on who shall fund the fees and costs incurred by the resolution professionals. There are several instances where the resolution professionals have not been paid any fees and have paid the cost incurred by them from their own pocket. The I&B Fund can come to the rescue of the resolution professionals under the circumstances where the resolution professional is unable to realize his fees and costs.

With amendments to the IBC and Regulations framed thereunder, some of the expenses as stated above can gradually be managed with the use of an I&B Fund.

> **"The I&B Fund can play a big role in achieving better outcomes from a CIRP and a liquidation process."**

7. Conclusion

With the experience gained during the last eight years of the implementation of the IBC, there are sufficient reasons for operationalizing the I&B Fund as enshrined under Part V, Section 224 of the Code. Effective implementation of the I&B Fund can alleviate several challenges faced by IPs. The I&B Fund can play a big role in achieving better outcomes from a CIRP and a liquidation process.

Sustainability and IBC: Incorporating ESG Principles in Resolution Plans

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Environmental, Social, and Governance (ESG) is increasingly getting emphasis on global economic scenario. This has necessitated the integration of ESG considerations into insolvency processes to address systemic risks and enhance the long-term sustainability of distressed businesses. With rising environmental and social challenges worldwide, businesses that fail to prioritize ESG issues are prone to risk of being left behind in an increasingly sustainability-focused global economy. In this backdrop, the author has analyzed the importance of a robust ESG framework in resolution of corporate debtors under the Indian insolvency ecosystem. He has mentioned best ESG practices in United States of America (USA), European Union (EU), Brazil, Italy, Canada, Australia etc. to be used as key takeaways for developing and implementing a robust ESG framework under the IBC. ***Read on to know more…***

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) has been pivotal in reforming India's insolvency landscape. While it focuses on timely resolution and value maximization for stakeholders, the increasing global emphasis on sustainability calls for the integration of Environmental, Social, and Governance (ESG) principles within insolvency and restructuring frameworks. Incorporating ESG principles into resolution plans not only aligns insolvency processes with global trends but also ensures the sustainable revival of distressed companies, contributing positively to the broader socio-economic and environmental fabric.

Historically, insolvency and restructuring mechanisms have prioritized creditors' interests, often at the expense of broader stakeholder and societal concerns. However, a paradigm shift is underway, recognizing that companies

operate within a larger societal framework and bear responsibilities extending beyond financial metrics. As highlighted in "The Intersection of ESG and Insolvency[1]," the failure to integrate sustainability considerations in Indian insolvency framework risks perpetuating unsustainable practices that harm both economies and ecosystems. The notion that businesses can thrive while ignoring environmental and social externalities is no longer tenable.

The evolving nature of the global economy necessitates that sustainability should not merely be a corporate social responsibility initiative but a core component of economic revival strategies. By embedding ESG principles into the insolvency process, the IBC can facilitate a structural shift towards long-term resilience and sustainable economic growth. This becomes especially relevant as businesses are increasingly evaluated not just on their financial performance but also on their environmental impact, social contributions, and governance structures. Such a transition not only aligns with India's international commitments but also positions its insolvency framework as a benchmark for responsible business practices.

2. ESG Principles: A Foundation for Sustainable Business Practices

ESG represents a framework that evaluates a company's practices and policies regarding environmental stewardship, social responsibility, and corporate governance. The key components include:

a) **Environmental:** Issues like climate change, resource efficiency, carbon emissions, and pollution control are kept under this component. Companies with poor environmental practices often face reputational damage and regulatory penalties, which can be particularly detrimental during insolvency. The lack of environmental compliance can result in legal challenges, complicating the restructuring process further.

b) **Social:** It includes human rights, labor practices, community relations, and customer protection. A socially responsible company ensures fair treatment of workers and contributes positively to its surrounding community. For instance, companies that engage in ethical sourcing and provide safe working conditions tend to have stronger stakeholder support during distress.

c) **Governance:** It includes ethical business practices, regulatory compliance, board diversity, and transparency. Robust governance minimizes fraud, corruption, and mismanagement which are critical factors for rebuilding trust during insolvency. Poor governance practices often contribute to financial distress, making this aspect of ESG indispensable during restructuring.

> **"Globally, ESG principles are becoming an essential metric for investors, creditors, and regulators, highlighting their relevance in insolvency and restructuring."**

Globally, ESG principles are becoming an essential metric for investors, creditors, and regulators, highlighting their relevance in insolvency and restructuring. Evidence suggests that ESG-compliant companies tend to deliver superior financial performance over the long term, are better equipped to manage risks, and are more likely to secure stakeholders' confidence, especially during periods of distress.

3. Relevance of ESG in Insolvency and Restructuring

Integrating ESG considerations into insolvency processes can address systemic risks and enhance the long-term sustainability of distressed businesses. With rising environmental and social challenges worldwide, businesses that fail to prioritize ESG issues risk being left behind in an increasingly sustainability-focused global economy. The following key points highlight the importance of ESG integration in insolvency and restructuring:

a) **Risk Mitigation for Long-Term Stability:** Distressed companies often carry substantial environmental and social risks that can obstruct

[1] The Intersection of ESG and Insolvency" by Sudhaker Shukla and Asit Behera, *Published in IBC Evolution, learnings & Innovation by IBBI, available at: https://ibbi.gov.in/uploads/publication/c9800578f99e42c11b5573b4686fb545.pdf , at Page-142*

successful restructuring. For example, legacy issues like pollution, non-compliance with labor laws, or local community conflicts can result in legal liabilities and resistance from stakeholders. ESG-driven plans ensure these risks are identified, addressed, and mitigated, facilitating a smoother restructuring process and reducing operational disruptions[2].

b) **Strengthening Investor and Creditor Confidence:** Investors and financial institutions increasingly prioritize ESG-compliant companies, recognizing them as lower-risk and higher-value investments. Incorporating ESG principles into resolution plans helps attract investment by aligning businesses with global sustainability standards. As highlighted by Bloomberg (2024)[3], ESG-focused investments expected to hit $40 trillion by 2030 globally, signaling the significance of ESG compliance in business recovery.

c) **Alignment with International Commitments and Legal Obligations:** Incorporating ESG considerations align with international sustainability frameworks like the Paris Climate Accord, the United Nations Sustainable Development Goals (SDGs), and EU Green Deal Policies. Indian businesses integrating ESG practices are better equipped to operate in international markets where sustainability is a critical compliance requirement[4].

d) **Value Creation and Competitive Edge for Creditors:** ESG integration often uncovers new opportunities for operational efficiency, cost savings, and revenue streams, ultimately benefiting creditors. Companies focusing on sustainable practices experience reduced regulatory penalties, improved resource optimization, and enhanced brand equity. For instance, clean energy transitions or eco-friendly processes can lower costs and appeal to environmentally conscious stakeholders (OECD Report, 2024)[5].

e) **Competitive Positioning in Global Trade:** Global markets increasingly emphasize ESG compliance as a standard for trade and investment. Indian businesses integrating ESG into insolvency resolutions will gain a competitive edge by showcasing responsible business practices and aligning with international investor expectations[6].

> **"EU, USA, Brazil etc. have successfully demonstrated how incorporating ESG metrics leads to more resilient and economically viable business outcomes."**

ESG integration in insolvency processes offers a future-ready approach, ensuring distressed businesses can recover with sustainability at their core. Countries like the EU, USA, and Brazil have successfully demonstrated how incorporating ESG metrics leads to more resilient and economically viable business outcomes. These best practices of overseas economies could be contextualized and implemented in India.

4. ESG and IBC: Current Landscape in India[7]

Although the IBC does not explicitly mandate ESG considerations, India's regulatory environment reflects an evolving approach toward sustainable practices. The following key developments highlight the progress:

a) SEBI's Business Responsibility and Sustainability Reporting (BRSR): SEBI mandates listed companies to disclose ESG performance across environmental, social, and governance parameters. These disclosures provide transparency into sustainability practices and encourage companies to incorporate ESG risks into their strategic planning. This framework sets benchmarks for corporate sustainability, influencing investor decisions and fostering accountability (*SEBI Circular, 2021*[8]).

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2. https://www.unep.org/about-un-environment/why-does-un-environment-matter/environmental-social-and-economic, *UNEP, ESG framework*
3. *https://www.bloomberg.com/company/press/global-esg-assets-predicted-to-hit-40-trillion-by-2030-despite-challenging-environment-forecasts-bloomberg-intelligence/*
4. *Ibid. 2*
5. Global Corporate Sustainability Report 2024, available at: *https://www.oecd.org/en/publications/global-corporate-sustainability-report-2024_8416b635-en.html*
6. *https://tradejini.com/why-esg-matters-for-indian-businesses-and-investors/*
7. Ashwin Bishnoi Khaitan & Co., ESG In Restructuring, *Published by INSOL Internatinal*
8. SEBI Circular, 2021, available at: *https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html*

b) **The Companies Act and Corporate Governance:** India's Companies Act 2013 promotes ethical governance practices, such as appointing independent directors and ensuring compliance with transparency norms. These regulations indirectly advance ESG principles, reinforcing accountability, minimizing mismanagement, and aligning corporate practices with sustainable goals.

c) **Potential Role of the IBBI:** The Insolvency and Bankruptcy Board of India (IBBI) is well-positioned to institutionalize ESG frameworks within insolvency proceedings. While ESG mandates are not yet explicit, the IBBI can issue guidelines requiring resolution applicants to disclose sustainability risks and integrate ESG components into resolution plans. This approach would align India's insolvency framework with international best practices, promoting resilient and responsible corporate recoveries[9].

d) **Judicial Recognition of ESG Principles:** Indian courts have begun recognizing the importance of environmental sustainability during insolvency and restructuring. For example, courts have emphasized the need for companies in environmentally sensitive industries to address pollution liabilities and adopt remediation measures as part of their restructuring plans.

> **"Indian courts have begun recognizing the importance of environmental sustainability during insolvency and restructuring."**

e) **Rise of ESG as a Market Driver:** Market forces, including institutional investors and creditors, are increasingly considering ESG compliance into their assessments of distressed companies. A business failing to align with sustainability standards may face challenges securing financing and investor confidence, further emphasizing the need for ESG adoption during insolvency[10].

[9] *Ibid 1*

[10] *Ibid 1*

Together, these developments reflect a growing acknowledgment of ESG as a critical component of corporate governance and restructuring in India. Integrating ESG principles into the IBC will not only enhance business resilience but also align India's insolvency framework with global sustainability imperatives.

5. Global Practices[11]

Countries like the United States and those in the European Union (EU) have made strides in integrating ESG into their insolvency laws:

a) **United States:** ESG factors are considered in Chapter 11 bankruptcy cases, influencing restructuring outcomes. For example, companies in industries like energy are often required to address environmental risks before securing creditor approval. In some cases, resolution plans explicitly incorporate commitments to reduce carbon emissions or transition to renewable energy. Moreover, under environmental laws such as CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act), provisions ensure that environmental cleanup obligations are factored into bankruptcy proceedings. This approach highlights the importance of incorporating ESG-related liabilities into insolvency processes.

b) **European Union:** The EU's Corporate Sustainability Reporting Directive (CSRD) emphasizes the integration of sustainability in corporate practices, including insolvency proceedings. This directive has spurred companies to adopt ESG metrics even in challenging circumstances like restructuring. Additionally, the EU's Green Deal has created financial incentives for businesses to adopt sustainable practices during distress. Regulation No. 2019/2088 (SFDR) also mandates financial market participants to disclose sustainability risks, ensuring accountability in investments and restructuring plans.

[11] Sustainability in Insolvency and Restructuring Procedures, by Carlo Ghia, Thiago Braga Junqueira, Mariam Zaidi, and Gabriel Olivera, *Published by UN under Sustainable development Goals, Available at: https://www.iiiglobal.org/file.cfm/156/docs/sustainability%20in%20insolvency%20and%20restructuring%20procedures.pdf*

c) **Italy:** Italy's Corporate Crisis and Insolvency Code (CCII) incorporates early warning tools and provisions for restructuring agreements that account for ESG considerations. Article 87 of the CCII specifically mandates that restructuring plans must account for safety and environmental protection costs, signaling a shift towards more inclusive frameworks.

d) **Brazil:** Brazil's insolvency regime demonstrates the critical role ESG plays in restructuring. The Samarco case, involving a major environmental disaster, illustrates how judicial reorganization plans can prioritize environmental remediation while ensuring business continuity. Similar cases emphasize the inclusion of social commitments as part of restructuring agreements.

e) **Australia and Canada:** Shareholder activism in these regions has encouraged the inclusion of ESG considerations in corporate governance and insolvency practices, setting valuable precedents for India to emulate. Australian laws, for example, often require detailed reporting on environmental impact during restructuring, promoting transparency and accountability.

India can adopt similar measures to promote ESG compliance, making its insolvency framework more globally competitive and sustainable. By integrating international best practices, India can improve the efficiency and outcomes of its insolvency processes while enhancing its global standing as a sustainable business hub.

6. Challenges in Integrating ESG within IBC

Despite the advantages, integrating ESG principles into the IBC framework is fraught with challenges:

a) **Cost Implications:** Evaluating and implementing ESG measures may increase the cost and complexity of resolution plans. Smaller companies in distress may find it challenging to bear these additional costs without financial support. ESG audits and compliance monitoring add to the financial burden, making it necessary to incentivize ESG adoption for smaller businesses. Additionally, companies with limited resources may struggle to prioritize ESG measures while addressing immediate financial obligations.

> **"Raising awareness about how ESG principles align with financial viability can help overcome misconceptions and promote acceptance."**

b) **Lack of Awareness:** Limited understanding of ESG among insolvency professionals and creditors can impede its adoption. Comprehensive training programs are essential to bridge this gap. Additionally, many stakeholders view ESG as a secondary consideration, focusing instead on immediate financial recovery. Raising awareness about how ESG principles align with financial viability can help overcome these misconceptions and promote acceptance among stakeholders.

c) **Quantification Issues:** Measuring and enforcing ESG commitments post-resolution remains a challenge. Lack of standardized ESG metrics can create discrepancies in implementation. The absence of clear benchmarks makes it difficult to assess whether companies are meeting their ESG goals. Developing sector-specific ESG criteria and frameworks can ensure consistent monitoring and reporting, addressing this issue.

d) **Resistance to Change:** Stakeholders might resist ESG integration due to its perceived impact on immediate value recovery. Educating stakeholders about the long-term benefits of ESG is critical. Resistance is often rooted in misconceptions about ESG being incompatible with financial goals. A collaborative effort involving regulators, creditors, and professionals can help demonstrate the synergies between ESG adoption and economic revival, fostering stakeholder confidence.

Addressing these challenges requires a collaborative approach involving regulators, professionals, and creditors. Incentivizing ESG adoption and providing technical support can mitigate some of these barriers.

Additionally, introducing policy frameworks that mandate ESG integration and aligning incentives for compliance will encourage wider adoption within the insolvency ecosystem.

7. Recommendations for ESG Integration

To effectively incorporate ESG principles into the IBC framework, the following steps are recommended:

a) **Policy Framework:** Introduce ESG guidelines under the IBC, mandating their inclusion in resolution plans. Such guidelines could provide clarity on expectations and facilitate standardized practices. Policymakers can draw from international frameworks like the EU's CSRD to design robust ESG regulations. This approach would ensure that resolution professionals have a clear understanding of the required ESG benchmarks, minimizing ambiguity and encouraging structured implementation.

b) **Capacity Building:** Train insolvency professionals and resolution applicants on ESG evaluation and compliance. This training should include practical tools and case studies to make ESG integration actionable. Professional certification programs can also enhance awareness and expertise. Additionally, continuous learning opportunities, such as workshops and seminars, can help professionals stay updated with global ESG trends and frameworks.

c) **Incentivization:** Provide financial or regulatory benefits to resolution plans that prioritize ESG adherence. For instance, reduced regulatory scrutiny or tax benefits could incentivize compliance. Financial institutions could also offer preferential lending rates to ESG-compliant businesses. Creating government-backed ESG funds to support distressed companies in adopting sustainability measures can further encourage adoption among smaller businesses.

d) **Monitoring Mechanisms:** Establish systems to track ESG compliance post-resolution, ensuring adherence to commitments. Regular audits and public disclosure can reinforce accountability. Advanced technologies like blockchain can be used to create transparent and immutable records of ESG performance. Leveraging digital tools can simplify monitoring and reporting processes, reducing administrative burdens for companies.

"Advanced technologies like blockchain can be used to create transparent and immutable records of ESG performance."

e) **Stakeholder Collaboration:** Foster collaboration between regulators, creditors, and professionals to build consensus on ESG integration. Collaborative approaches can minimize resistance and enhance adoption rates. Creating a multi-stakeholder task force to oversee ESG integration could be a viable strategy. Engaging industry experts and civil society organizations can further strengthen the credibility and success of ESG initiatives.

8. Benefits of ESG Integration in Insolvency

The incorporation of ESG principles into insolvency frameworks brings multifaceted benefits that extend beyond financial recovery. Key advantages include:

a) **Long-term Viability:** Businesses aligned with ESG principles demonstrate greater resilience to market fluctuations and environmental disruptions. Studies by the United Nations Environment Programme (2022) indicate that ESG-compliant companies are better prepared to mitigate risks such as climate change, resource scarcity, and regulatory pressure. This long-term stability ensures businesses recover sustainably while enhancing their competitiveness.

b) **Enhanced Reputation and Stakeholder Trust:** ESG compliance fosters a strong reputation by demonstrating a commitment to ethical business practices, environmental protection, and social responsibility. Companies adhering to ESG principles often experience improved stakeholder trust, which translates into stronger relationships with investors, employees, customers, and regulatory authorities. A Harvard Business Review report (2021) highlighted those businesses focusing on sustainability experienced a 20% increase in customer loyalty and brand value.

c) **Attracting Global Investments:** ESG-compliant businesses are increasingly favored by institutional investors and global markets. Investment funds, such as ESG-specific green bonds, prioritize companies meeting sustainability benchmarks. According to a report by MSCI (2022)[12], ESG-driven investments have outperformed traditional investment portfolios, indicating that sustainability can serve as a driver for financial recovery and improved market access.

d) **Regulatory and International Alignment:** Integrating ESG into insolvency processes aligns India's corporate restructuring frameworks with international sustainability standards, such as the EU Taxonomy for Sustainable Activities and the UN's SDGs. This alignment not only enhances India's competitiveness in global trade but also facilitates smoother cross-border insolvency resolutions. Regulatory authorities worldwide increasingly emphasize ESG disclosures, making compliance a necessity for Indian businesses seeking international investment, said *OECD Report, 2023*[13].

e) **Cost Savings and Operational Efficiencies:** ESG principles promote resource efficiency, energy savings, and waste reduction thereby lowering operational costs during and after insolvency proceedings. Businesses transitioning to renewable energy or adopting circular economy practices often achieve significant long-term cost advantages while mitigating environmental liabilities.

f) **Improved Credit Access and Market Positioning:** Financial institutions and creditors are more likely to extend credit to businesses that demonstrate strong ESG compliance. Companies integrating ESG principles into their resolution plans reduce perceived risks for creditors, improving their creditworthiness and access to financing[14].

> **"Integration of ESG into resolution plans under the IBC represents a significant opportunity to align Indian insolvency ecosystem with SDGs."**

9. Conclusion

The integration of ESG principles into resolution plans under the IBC represents a significant opportunity to align India's insolvency framework with sustainable development goals. While challenges persist, proactive measures by regulators, professionals, and creditors can pave the way for a more resilient insolvency ecosystem. By embedding sustainability into the heart of corporate restructuring, India can ensure that distressed businesses emerge stronger, contributing positively to the economy, society, and environment.

As India aspires to position itself as a global leader in sustainable business practices, incorporating ESG into insolvency processes can serve as a crucial milestone. The alignment of economic revival with sustainability principles will not only secure financial stability but also safeguard the interests of future generations.

12. *https://www.msci.com/www/blog-posts/esg-factor-returns-2022-in/03701563813*

13. *https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/01/trends-in-esg-investing-and-quality-infrastructure-investment-in-asia-pacific_022d1fc8/86d154c1-en.pdf*, page 43

14. *Ibid 3*

Reviving Excellence: The Transformative Journey of Oliver Engineering Pvt. Ltd. under the IBC Regime

Oliver Engineering Pvt. Ltd. (OEPIL), a manufacturing unit based in the village of Snadharasi, Shambu in Punjab, was renowned for its production of high-quality ferrous and non-ferrous castings for the automobile industry. However, it ran into several financial crises in the first quarter of 2022 and became non-operational. Meanwhile, on an insolvency application by Punjab National Bank (PNB) under Section 7 of the IBC, NCLT ordered commencement of CIRP against the company on April 26, 2022.

After taking over the assignment from the IRP, the RP and his team began the process of formulating a viable resolution plan for OEPIL. In response to the "Form G", 10 companies expressed interest to submit bids but only three submitted their resolution plans. The CoC thorough evaluations and several rounds of negotiations followed by Electronic Challenge Mechanism approved the Resolution Plan submitted by KFIL with 100% vote share on August 11, 2023. The negotiations and Electronic Challenge Mechanism improved the Plan amount from initial ₹90 crore to ₹110.6 crore. The most important feature of the plan was 100% payments to employees' dues and the EPFO. Another notable aspect of the OEPIL revival was the prompt payment to creditors within a 45-day timeline.

In the present case study, Mr. Sumit Shukla, the RP of the CD, has highlighted the challenges faced during the resolution of OEPIL and the measures he adopted to conclude the resolution. ***Read on to know more…***

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1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) enacted in 2016, has transformed the landscape of insolvency resolution in the country. This comprehensive legislation aims to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner.

The IBC provides a structured and time-bound process for insolvency resolution, which is crucial for maintaining the confidence of stakeholders and ensuring maximum value realization. The framework's emphasis on transparency, fairness, and efficiency enables fair market value discovery of the business through a competitive bid process.

Moreover, the IBC's provisions for creditor protection and stakeholder engagement ensure that the resolution process is inclusive and equitable. The ability of the Committee of Creditors (CoC) to exercise its commercial

wisdom in a fair and just manner, as demonstrated in the Oliver Engineering Pvt. Ltd. (OEPIL) case, is a critical component of the IBC's effectiveness. By empowering the CoC to make informed decisions, the IBC ensures that the resolution process is aligned with the best interests of all stakeholders.

The case of OEPIL, an auto-component manufacturer, specializing in ferrous and non-ferrous castings, exemplifies the effectiveness of the IBC regime in reviving distressed companies and contributing to the nation's economic growth. Unlocking the value of the assets of a stressed company is a pivotal aspect of the insolvency resolution process, particularly under the framework provided by the IBC. The objective is not only to rehabilitate the distressed company but also to maximize the value of its assets to ensure the best possible recoveries for all creditors. A quintessential example of this can be seen in the revival of OEPIL, where the CoC negotiated a 24% value increase from the initial resolution. This remarkable outcome underscores the effectiveness of the IBC framework in enhancing value and reaffirms its importance in the economic landscape.

The process of unlocking the value of a company's assets begins with a thorough assessment and identification of all assets, including tangible and intangible assets. Tangible assets typically include physical properties such as machinery, equipment, inventory, and real estate. Intangible assets, on the other hand, may comprise intellectual property, brand value, patents, and goodwill. A comprehensive inventory of these assets is crucial as it forms the foundation for the subsequent valuation and resolution plan formulation.

2. Background

OEPIL, a manufacturing unit based in village Snadharasi, Shambu, Punjab, was renowned for its production of high-quality ferrous and non-ferrous castings for the automobile industry. The company had established a significant strategic presence in the region by serving prominent automobile manufacturers such as Swaraj and Sonalika, which are key players in the tractor manufacturing sector. However, due to severe financial stress, the company's production operations came to a grinding halt in the first quarter of 2022. This abrupt cessation of operations led to all employees leaving the organization, further compounding the company's difficulties. Despite these challenges, the strategic importance of OEPIL in the regional supply chain remained undeniable, highlighting its potential value if successfully revived under a structured insolvency resolution framework. The company's critical role in the supply chains of major automobile manufacturers underscored the urgency and importance of its revival, not just for the sake of the company itself, but also for the broader industrial ecosystem in Punjab.

"Due to severe financial stress, the company's production operations came to a grinding halt in the first quarter of 2022."

3. Challenges

Over the years, OEPIL faced significant challenges that compounded its financial distress. Key such issues were poor financial management, inefficiencies in resources allocations, mounting financial obligations and inadequate cost controls have compounded the difficulties. These factors combined have eroded the company's operational performance, impacting profitability and long-term stability. OEPIL had been availing substantial financial assistance from Punjab National Bank (PNB), Bank of India, and Bank of Maharashtra to support its operations and growth. Despite this, the company's cash flow issues prevented it from fulfilling its financial obligations to these institutions. The inability to service its debt led to mounting pressure from the creditors, further straining the company's financial health. The financial instability also disrupted OEPIL's supply chain and affected its relationships with suppliers and customers. The stoppage of production in the first quarter of 2022 was a significant blow, as it led to loss of business opportunities and trust among its key clients, including major automobile manufacturers like Swaraj and Sonalika. The exodus of employees due to halted operations added to the company's challenges, as retaining skilled labor is crucial for the specialized manufacturing processes that OEPIL was known for. In parallel the company also struggled to meet various statutory and regulatory compliances, which further exacerbated its financial woes. These

compliance issues not only resulted in penalties and legal complications but also affected the company's credibility and operational efficiency.

Ultimately, the company's worsening financial situation and inability to meet its obligations led to the initiation of the Corporate Insolvency Resolution Process (CIRP) on April 26, 2022. The CIRP was a necessary step to address the financial distress and seek a structured resolution. This process involved the appointment of an Interim Resolution Professional (IRP) and later a Resolution Professional (RP), who worked towards formulating a viable resolution plan to revive OEPIL. Despite the severe challenges, the initiation of CIRP marked the beginning of a structured effort to restore the company's financial health and operational stability.

4. Initiation of CIRP

The CIRP application was filed by the PNB under Section 7 of the IBC on a default of ₹400 crore. Following the commencement of CIRP passed by the Adjudicating Authority (AA) vide order dated April 26, 2022, appointed Interim Resolution Professional (IRP). His immediate task was to take control of the company's operations, assess its financial situation, and invite claims from creditors. Despite his efforts, it became evident that the company required a more comprehensive resolution plan to address its financial distress effectively while ensuring that the company remains as a going concern.

5. Publication of Form A

In response to the Form A published by the IRP inviting the claims from the creditors, three secured financial creditors and over 150 operational creditors, predominantly employees and suppliers, submitted their claims in the resolution process for the Corporate Debtor (CD). It is pertinent to mention that certain government / regulatory agencies such as GST department, EPFO and Income Tax department also submitted their claims.

The active engagement of such a diverse group of creditors demonstrated their trust in the structured, transparent, and equitable resolution mechanism provided by the IBC, reinforcing its pivotal role in facilitating effective insolvency proceedings and ensuring maximum value recovery for all parties involved.

“The active engagement of such a diverse group of creditors demonstrated their trust in the structured, transparent, and equitable resolution mechanism under the IBC.”

6. Appointment of the Resolution Professional

In August 2022, the CoC, comprising representatives from PNB, Bank of India, and Bank of Maharashtra, voted to appoint Mr. Sumit Shukla as the RP. Mr. Shukla took over the charge from the IRP and began the process of formulating a viable resolution plan for OEPIL.

During the CIRP, the RP along with his team meticulously ensured that all necessary compliances and statutory requirements were adhered to, thereby providing critical continuity for the company. This included conducting comprehensive audits to verify and validate the company’s financial records, timely filing of Income Tax Returns (ITR) to maintain fiscal responsibility and holding Annual General Meetings (AGM) to uphold corporate governance standards. Additionally, the RP ensured compliance with other statutory obligations such as regulatory filings and reporting requirements. These actions were not merely procedural; they were essential in stabilizing the company’s operations and maintaining its legal and financial standing. By diligently managing these obligations, the RP instilled confidence among creditors, employees, and other stakeholders, reinforcing the company’s commitment to transparency and accountability during a period of financial distress. This proactive approach not only safeguarded the company from potential legal repercussions but also laid a strong foundation for its eventual revival. The RP’s efforts in ensuring compliance and continuity were pivotal in preserving the inherent value of the company and facilitating a smooth transition towards resolution and recovery.

7. Appointment of Registered Valuers

In terms of the provisions of the IBC, the IRP appointed the registered valuers to assess and submit the fair and liquidation value of the company which also provides a reference point to the CoC to make assessments of the

resolution plans so received by the RP/CoC. However, noting the on account of substantial variations in the valuations, the RP applied to the CoC to appoint third valuer for the Land & Building and Plant & machinery Asset class.

These valuers used various methodologies such as market comparisons, income-based approaches, and cost-based approaches to determine the fair market value of the assets. The accuracy and reliability of this valuation are critical as they directly influence the subsequent bidding and resolution plan approval processes. The Liquidation Value and Fair Value were respectively ₹993, 725, 491.50 and ₹1,537,975,367.

8. Invitation for Resolution Plans

The RP issued "Form G", inviting Expressions of Interest (EOI) from potential resolution applicants. This stage is critical as it sets the stage for competitive bidding, which is essential for value maximization. The terms of the EoI, as decided by the CoC, were comprehensive, clearly outlined the eligibility criteria of the prospective resolution applicants (PRAs). In case of OEPL, CoC decided to publish "Form G" twice to ensure a wider reach and attract the most suitable bids so as to ensure that the company does not slip into the Liquidation due to non-participation by credible resolution applicants.

> **"The RP received three resolution plans one each from International Tractors Ltd., Kirloskar Ferrous Industries Ltd., and RKG Fund and Alternative Investment Fund."**

In response to the "Form G", more than 10 PRAs submitted their EOIs to submit resolution plans. This high level of participation in the EOI process response to the "Form G" underscored the significant interest in the company's revival and highlights the robust confidence stakeholders have in the IBC regime. The RP received three resolution plans from International Tractors Limited, Kirloskar Ferrous Industries Limited (KFIL), and RKG Fund and Alternative Investment Fund.

9. Evaluation and Negotiations

The evaluation of the resolution plans was another critical phase where the true value of the company's assets is unlocked and therefore the CoC assessed and evaluated the bids as well as capabilities / track records of the resolution applicants based on multiple qualitative and quantitative parameters including the assessment of financial viability of the resolution plans, the bidder's track record, and their proposed revival strategy.

While evaluating outcomes of the CIRP i.e. revival or liquidation or sale as a going concern the CoC deeply reviewed the quality and valuation of the assets followed by the objective assessment of the company's tangible and intangible assets. In OEPIL's case, the CoC adopted the Electronic Challenge Mechanism, a widely used practice known for its transparency and efficiency. This faceless and unbiased approach ensured a fair evaluation process and instilled confidence in the bidders. In the case of OEPIL, the valuation process revealed the inherent value in the company's manufacturing capabilities, demand and market position. Despite the financial stress, the company's assets held significant potential, which needed to be strategically unlocked to attract viable resolution applicants.

The CoC meticulously evaluated the submitted resolution plans, considering various factors such as financial viability, the credibility of the applicants, and their ability to revive the company's operations. After thorough negotiations, the CoC unanimously approved the resolution plan submitted by KFIL with 100% vote share on August 11, 2023.

10. Approval by Adjudicating Authority

The final approval of the Resolution Plan by the AA is a significant milestone in the resolution process. The approval not only formalizes the selected bid but also ensures that the resolution plan complies with all regulatory requirements and is in the best interests of all stakeholders. In OEPIL's case, the AA approved

the resolution plan on September 12, 2023. The AA's approval marked the culmination of a resolution process that successfully maximized the value of the company's assets. This marked a significant milestone in the revival process of OEPIL, providing a structured and legally sanctioned roadmap for the company's resurgence.

Table 1: Overview of claims and payouts to the claimants

Particulars	Amount claimed	Claim Admitted	Sum propsoed under the Plan
Secured Finanical Creditors	7,627,658,893.00	7,627,658,893.00	1,063,813,891.61
Operational Creditors - Employees	21,104,772.14	20,148,517.14	20,148,517.14
Operational Creditors - Government dues	119,897,887.00	119,897,887.00	3,013,289.00
Other Operational Creditors	392,931,326.08	297,559,650.02	18,507,065.46
Other debts and dues	712,353.00	-	-
Total payouts to Claimants (1+2+3+4)	8,162,305,231.22	8,065,264,947.16	1,105,482,763.21

11. Implementation and Monitoring

Subsequent to the approval of the Resolution Plan for OEPIL, a Monitoring Committee (MI) was constituted to ensure the effective implementation and supervision of the approved Resolution Plan. This committee comprised representatives from the secured financial creditors, the Successful Resolution Applicant (SRA) i.e., KFIL, and the erstwhile RP. The involvement of these key stakeholders was crucial in maintaining transparency and accountability throughout the implementation phase. The MI played an active role in overseeing the financial aspects, ensuring that payments and financial commitments were met as per the resolution plan. The SRA contributed its strategic vision and operational expertise to drive the revival and growth of OEPIL. Meanwhile, the erstwhile RP provided continuity and stability, leveraging their in-depth knowledge of the company's operational and financial status. This collaborative approach facilitated seamless coordination and addressed any challenges promptly, ensuring that the objectives of the Resolution Plan were met. The formation of the MI underscored the commitment to a structured and disciplined process, vital for the successful turnaround of OEPIL and safeguarding the interests of all stakeholders involved.

12. Key highlights of the Revival Process

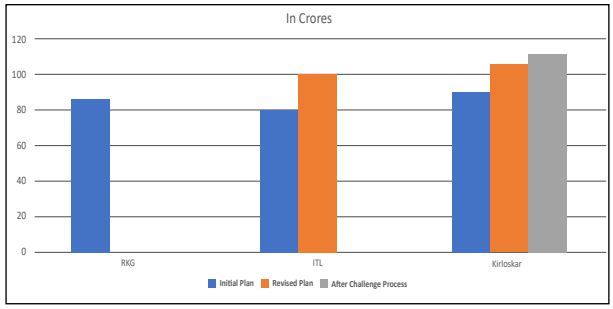
(a) Value Maximization

It is important to highlight here that negotiation phase is where the real potential for value maximization is realized. Through constructive negotiations, the CoC ensured revival of the company and maximized recovery for the creditors.

> **"One of the most remarkable aspects of the revival process was the achievement of a 24% value maximization over the initial highest resolution bid."**

One of the most remarkable aspects of the revival process was the achievement of a 24% value maximization over the initial highest resolution bid amounting to about ₹90 crores. This outcome underscored the effectiveness of the IBC framework in enhancing value for all stakeholders involved. This outcome was possible due to the CoC's strategic approach, which included leveraging the competitive environment created by the multiple bids and ensuring that the final resolution plan addressed the long-term sustainability of the company.

Graph 1: Value Discovery during Negotiations & Challenge Process



(b) Accelerated Payments to Creditors

Another notable aspect of the OEPIL revival was the prompt payment to creditors within a 45-day timeline. Timely payments are crucial as they ensure the stakeholders receive their dues without prolonged delays, which can further erode the value of the assets. The entire payment cycle to various claimants was completed within a 45-day timeline. This prompt action not only restored the confidence of the creditors but also exemplified the efficiency and time-bound nature of the resolution process under the IBC. By adhering to such a stringent and rapid schedule, the resolution process showcased its ability to swiftly address financial claims, thus preventing prolonged uncertainty and financial distress among the stakeholders. This timely payment not only reinforced the credibility of the IBC framework but also ensured that all claimants received their due settlements promptly. The efficiency demonstrated in managing the payment cycle instilled a renewed sense of trust and reliability in the insolvency resolution mechanism, proving that the IBC can effectively handle complex financial recoveries in a structured and expedient manner.

(c) Adoption of Best Practices

The challenge mechanism plays a crucial role in the IBC regime, particularly in the context of maximizing the value of a distressed company's assets. This mechanism, often referred to as the Electronic Challenge Mechanism, ensures a transparent, competitive, and time-bound process for selecting the best resolution plan from multiple bidders. By fostering a competitive bidding environment, the challenge mechanism drives resolution applicants to put forward their best financial offers and strategic plans for the revival of the insolvent entity. This not only enhances the value recovery for creditors but also ensures that the most capable and committed bidder is selected to manage the distressed company's turnaround.

In the case of OEPIL, the adoption of the Electronic Challenge Mechanism by the CoC was instrumental in achieving a 24% value maximization over the initial highest resolution bid. The faceless and transparent nature of this mechanism minimized biases and allowed for an efficient evaluation of competing bids based on their financial viability and strategic merit. This approach has not only resulted in higher recoveries for the creditors but also ensured the selection of a resolution applicant, KFIL, who could effectively steer the company towards recovery and growth.

> **"The importance of the challenge mechanism extends beyond immediate financial gains. It reinforces principles of fairness and equity, which are foundational to the IBC."**

The importance of the challenge mechanism extends beyond immediate financial gains. It reinforces the principles of fairness and equity, which are foundational to the IBC. By ensuring a level playing field, it boosts the confidence of all stakeholders in the insolvency resolution process. Ultimately, the challenge mechanism exemplifies the IBC's commitment to transparency, efficiency, and value maximization, contributing to the overall stability and growth of the Indian economy.

(d) Employees and EPFO Payments

A noteworthy aspect of the Resolution Plan was the decision to make 100% payments towards the employees and the Employees' Provident Fund Organization (EPFO). Furthermore, the decision was a testament to the CoC's commitment to equity and fairness. This decision, despite requiring additional haircuts from the secured financial creditors, highlighted the importance of maintaining workforce morale and support. By prioritizing employee payments, the CoC underscored the significance of human capital in the revival process, which is often a key driver of long-term sustainability and growth. This practice also reflected the CoC's commitment to safeguarding employee

interests, even at the cost of additional haircuts for the secured financial creditors. Recognizing the significance of the workforce, this step reinforced the humane aspect of the IBC framework.

Graph 2: Key Milestones

(e) Successful Resolution Applicant

The success of the OEPIL resolution process also underscores the importance of having a capable and committed resolution applicant. KFIL, the SRA, is a listed entity on the stock exchange and a market leader in the industry. Their involvement added a layer of credibility and assurance to the revival process, ensuring long-term sustainability and growth for OEPIL. KFIL, the successful bidder, brought to the table not only financial resources but also industry expertise and a strategic vision for the company's future. As a listed entity and a market leader, KFIL's involvement added credibility to the resolution process and ensured that OEPIL was in capable hands for its revival and future growth.

(f) Leveraging the competition

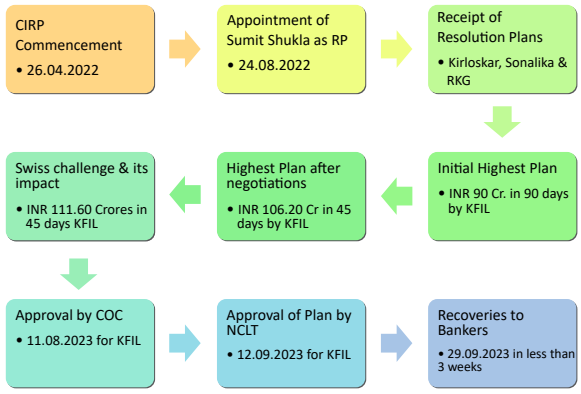
The CoC demonstrated remarkable efficiency in leveraging the value proposition that OEPIL presented for both KFIL and ITL. Recognizing the strategic importance of OEPIL's manufacturing capabilities in the ferrous and non-ferrous casting sector, the CoC astutely identified the urgent need KFIL and ITL had for acquiring OEPIL's assets to bolster their market positions. By understanding the competitive advantage that the acquisition of OEPIL would afford to these companies, the CoC was able to create a compelling and highly competitive bidding environment. This keen insight allowed the CoC to effectively capitalize on the situation, ensuring that the resolution plan not only addressed the financial rehabilitation of OEPIL but also maximized value for all stakeholders involved. The negotiation process was handled with strategic foresight, leveraging the keenness of KFIL and ITL to secure OEPIL's assets, which in turn drove up the bid values. The result was a 24% increase over the initial highest resolution bid, demonstrating the CoC's capability to seize opportunities and achieve optimal outcomes. This strategic manoeuvring underscored the CoC's role in not only facilitating a fair and transparent resolution process but also in enhancing the overall value recovery, thereby reinforcing the objectives of the IBC to maximize asset value in insolvency proceedings. Through their adept handling of the resolution process, the CoC ensured that the revival of OEPIL was not just about rescuing a distressed company, but also about strategically unlocking and maximizing its intrinsic value for the benefit of all stakeholders.

12. Key Takeaways

The success of the resolution process highlights the broader economic impact of effective insolvency resolution. The revival of a manufacturing units has far-reaching implications for the local economy, including job preservation, sustained industrial activity, and enhanced economic output. The successful resolution also sends a positive signal to the market, reinforcing the credibility of the IBC framework and encouraging future investments.

In this case, the successful resolution of OEPIL under the IBC regime has had a profound impact on the broader economic landscape. The revival of this manufacturing unit not only preserved jobs and contributed to the local economy of Rajpura, Punjab, but also highlighted the transformative potential of the IBC framework. By ensuring the continuity of operations and maximizing value for all stakeholders, the IBC has demonstrated its pivotal role in fostering economic stability and growth in the nation.

Graph 3: Bird's eye view: Revival of Oliver Engineering Pvt. Ltd. under the IBC



The revival of OEPIL underscores the crucial powers vested in the CoC to determine the future of a company undergoing the CIRP. In this instance, the CoC exercised its commercial wisdom in a fair and just manner, ensuring the continuation of the CD's operations. Notably, the CoC's decision facilitated full payments to employees towards their dues, even though this required the secured financial creditors to accept additional haircuts. This approach not only highlighted the CoC's commitment to maintaining business continuity but also demonstrated their balanced consideration of equity, reflecting a thoughtful and inclusive decision-making process. The reasonable treatment of all stakeholders, particularly the employees, epitomized the CoC's dedication to upholding the principles of fairness and justice, which are central to the objectives of the IBC.

Graph 4: Important Dates/ Events

PARTICULARS	DATE
Filing of application in NCLT	2019 by PNB
Admission for CIRP & IRP appointment	26.04.2022
Appointment of RP	24.08.2022
Number of Meetings conducted by IRP & RP	IRP-4 and RP - 17
Invitation of Plans	20.09.2022
Receipt of Resolution Plans	20.10.2022
Number of negotiation meetings with the RAs	More than 10
Receipt of Revised financial proposal	17.03.2023
Swiss Challenge	10.04.2023
Receipt of modified resolution plan	20.04.2023
COC meeting where Plan was put for voting	02.05.2023
Approval of Plan by the COC	11.08.2023
Filing of application with NCLT	19.08.2023
Number of hearings in NCLT for Plan Approval	Four
Orders for approval of Resolution Plan	12.09.2023

13. Conclusion

The case of OEPIL serves as a testament to the efficacy of the IBC in reviving distressed businesses and contributing to the nation's growth process. The structured and transparent resolution process, coupled with the adoption of best practices and timely actions, ensured the successful turnaround of OEPIL. This case study underscores the critical role of the IBC in enhancing the ease of doing business in India and promoting economic resilience. As the IBC continues to evolve, its impact on the Indian economy is poised to grow, driving sustainable development and financial stability for years to come.

> **"The revival of an auto ancillary manufacturing facility brings a multitude of benefits that significantly enhance the economic and industrial landscape in the region."**

The revival of an auto ancillary manufacturing facility brings a multitude of benefits that significantly enhance the economic and industrial landscape in the region. Firstly, it ensures the restoration and creation of numerous jobs, fostering local employment and contributing to the socio-economic development of the community. A functioning manufacturing unit also revitalizes the local supply chain, stimulating business for suppliers and service providers, thereby bolstering the regional economy. Moreover, it re-establishes the company's role in the larger automotive ecosystem, ensuring the continuous supply of crucial components to automobile manufacturers. Furthermore, the revival supports technological advancements and innovation within the industry, as operational facilities are often at the forefront of adopting new manufacturing techniques and improving product quality. Financially, it aids in the recovery of investments made by creditors and stakeholders, promoting a healthy financial ecosystem. Lastly, the sustained operation of the facility reinforces market confidence, demonstrating resilience and the capability to overcome financial distress, which is essential for attracting future investments and fostering long-term growth. In essence, the successful revival of an auto ancillary manufacturing unit serves as a catalyst for industrial rejuvenation, economic stability, and sustainable development.

Legal Framework

CIRCULARS

IBBI Mandates Enhanced Disclosure of Carry Forward Losses in IM

The IBBI has directed Insolvency Professionals (IPs) to strengthen disclosures on carry forward of losses in the Information Memorandum (IM). As per the latest circular, IPs must include a dedicated section in the IM detailing the quantum, classification, and utilization limits of carry forward losses under the Income Tax Act, 1961. If no such losses exist, the IM must explicitly state it. This move aims to enhance transparency and assist resolution applicants in making informed decisions. Issued under Section 196 of the IBC 2016, the directive applies to all registered insolvency professionals, entities, and agencies.

Source: *Circular No. IBBI/CIRP/83/2025, 17th March, 2025.*

IBBI mandates timely reporting of assignments by Insolvency Professionals on its portal

As per the Circular issued by the Insolvency and Bankruptcy Board of India (IBBI, Insolvency Professionals (IPs) are required to provide information to the IBBI portal regarding their closed, ongoing and new cases under the Insolvency and Bankruptcy Code (IBC).

The Circular also provides timelines for reporting various assignments electronically on the IBBI's portal under three categories (a) New Assignments: For all cases commencing from the date of issuance of this circular, the IP shall add the assignment to the designated system within three (3) days of his/her appointment, (b) Ongoing Cases: For all ongoing cases (i.e., cases initiated before the issuance of this circular) where the assignment has not already been added, the IP shall add the assignment by February 28 2025, (c) Closed Cases: For all closed cases where the assignment has not already been added, the IP shall add the assignment by March 31, 2025. However, for closed cases relating to Personal Guarantors, the assignments shall be added by April 30, 2025. "Once the assignment is added and approved by the IBBI, the IP

shall proceed with subsequent compliances, including reporting requirements such as public announcements, EOIs, and auction notices, as applicable under different processes outlined in the Code," said the Circular. The Board has refined the Assignment Module to streamline the process and ensure thorough record-keeping, said the Circular.

Source: *Circular No. IBBI/LIQ/82/2025, dated 11th February 2025.*

REGULATIONS

RP, after approval of the CoC, can now handover possession of plots, flats etc. to homebuyers even during CIRP

The Insolvency and Bankruptcy Board of India (IBBI) through a notification dated February 03, 2025, has notified several crucial amendments in the IBBI (CIRP) Regulations 2016 to take care the interests of homebuyers and facilitate insolvency of real estate companies/ projects.

"After obtaining the approval of the committee with not less than sixty-six percent of total votes, the resolution professional shall hand over the possession of the plot, apartment, or building or any instruments agreed to be transferred under the real estate project and facilitate registration, where the allottee has requested for the same and has performed his part under the agreement," said the Regulation 4E inserted after Regulation 4 D in the IBBI (CIRP) Regulations 2016. Besides, Regulations 16C (Appointment of facilitators), 16D (Roles and

responsibilities of the facilitator), 30C (Report on the status of development rights and permissions of real estate projects), 18(3) (4), and 31 (ac) have been inserted. The amendments have also been made in Regulations 36 A (4), 36 B (4A), 38 (4) and Schedule 1 in Form G. The RPs must now prepare a detailed report on the status of development rights, approvals, and permissions for real estate projects within 60 days of insolvency commencement. Besides, the CoC have now been empowered to relax certain conditions for associations or group of homebuyers to participate as resolution applicants in the insolvency resolution process.

Source: *Notification, F. No. IBBI/2024-25/GN/REG122, dated 03rd February 2025.*

Amendment in IBBI Regulations for Inspection and Investigation

As per the Notification dated 28th January 2025, the IBBI has amended IBBI (Inspection and Investigation) Regulations from the date of publication in the Official Gazette. Through this amendment, in Regulation 2, in sub-regulation (1), clause (c), after the proviso, an explanation shall be inserted, namely: "Explanation: It is hereby clarified that "associated" shall mean involvement in the conduct of investigation or inspection or consideration of the investigation or inspection report or issuance of show cause notice,".

Source: *Notification, F. No. IBBI/2024-25/GN/REG/118, dated 28th January 2025.*

IBBI amends Regulations for Liquidation and Voluntarily Liquidation

With the aim to streamline liquidation, strengthen regulatory oversight, and enhance transparency in insolvency resolution, the IBBI has amended the IBBI (Liquidation Process) Regulations, 2016 and IBBI (Voluntary Liquidation Process) Regulations, 2017 with immediate effect. The amendments extend the auction timeline from 14 to 30 days, require eligibility verification of bidders, and mandate consultation with the Stakeholder Consultation Committee (SCC), if the highest bidder is ineligible. Liquidators must now submit the final report, including Form H, when a scheme under Section 230 of the Companies Act, 2013, is approved. Voluntary liquidation can now proceed even if uncalled capital exists, preventing delays.

Source: *Notification, F. No. IBBI/2024-25/GN/REG121 and F. No. IBBI/2024-25/GN/REG120 dated 28th January 2025.*

IBBI Amends Information Utilities Regulations for Greater Transparency

IBBI has amended the Guidelines for Technical Standards under the Information Utilities Regulations 2017, enhancing user authentication, document submission, and default verification. IU's now must verify users via PAN or other valid documents, with demographic authentication from UIDAI. Supporting documents can be submitted anytime in multiple formats with mandatory e-signatures, and digital stamping may be enabled. Before initiating CIRP u/s 7 or 9 of IBC, default information must be filed with an IU, along with authentication statuses including 'Authenticated,' 'Disputed,' and 'Deemed to be Authenticated'. A color-coded system for tracking default authentication and mandatory email record-keeping will improve security and traceability, said the IBBI.

Source: *Notification, IBBI (Information Utilities) REGULATIONS, 2017 dated 29th January 2025.*

Amendment in IBBI (Grievance and Complaint Handling Procedure) Regulations 2017

The IBBI through a Gazette Notification dated January 28, 2025, has introduced an amendment in the IBBI (Grievance and Complaint Handling Procedure) Regulations 2017. Though this amendment, in Regulation 3, in sub-regulation (4), in the proviso, for the figure and word "30 days", the following words shall be substituted, namely:- "thirty days from the date of closure of all proceedings related to the process under the Code before the Adjudicating Authority, the Appellate Authority, the High Court, or the Supreme Court, as the case may be". This amendment has been done by the IBBI in exercise of the powers conferred under sections 196, 217 read with section 240 of the IBC, 2016 (31 of 2016). Source: Notification, F. No. IBBI/2024-25/GN/REG 119 dated 28th January 2025.

DISCUSSION PAPER

IBBI's Discussion Paper proposes Coordinated Insolvency Resolution for Interconnected Entities

Insolvency and Bankruptcy Board of India (IBBI) in a Discussion Paper has proposed to amend the CIRP Regulations to introduce a mechanism for coordination of CIRP of interconnected entities. These amendments may include: (a) Provisions for joint hearings, (b) Appointment of a common resolution professional, (c) Information sharing protocols, and (d) Coordinated timelines. This amendment aims to increase efficiency, reduce costs, and improve outcomes in cases involving multiple interconnected entities undergoing CIRP simultaneously, said IBBI.

Besides, the Discussion Paper has proposed amendments under 10 more heads. They are Review of expenditure on Goods and Services availed during CIRP, Coordinated Insolvency Resolution for Interconnected Entities, Presentation of All Resolution Plans before the Committee of Creditors, Mandatory Submission of Statement of Affairs by Corporate Debtors, Reliefs and Concessions subsequent to approval of Resolution Plan, Incentivizing Interim Finance Providers, Disclosure and Treatment of Avoidance Transactions, Request for resolution plans for part wise resolution of Corporate Debtor, Empowering CoC for Expedited Implementation of Resolution Plans, Non-receipt of Repayment Plan under Insolvency Resolution of Personal Guarantor, and Sale of Corporate Debtor as a going concern.

Source: *IBBI Discussion Paper dated 4th February 2025.*

PRESS RELEASES

Dr. Bhushan Kumar Sinha takes charge as WTM-IBBI

Dr. Bhushan Kumar Sinha took charge as Whole Time Member of Insolvency and Bankruptcy Board of India on February 11, 2025. Dr. Sinha holds a PhD in Financial Economics from the University of Delhi (DU) and an MBA from the College of Business Studies, National Graduate School of Management, Australian National University, Canberra. He also holds an LLB from the DU. He joined the Indian Economic Service (IES) in 1993, coinciding with the economic reforms process in India. Over the years, he has held key portfolios in banking & finance, capital & debt markets, external debt management, asset management & strategic divestment, MSMEs, etc., while serving in the Ministry of Finance. He has also served as Joint Development Commissioner for 4 yrs in the Office of Dev Commissioner, Ministry of MSME.

Source: *IBBI Press Release, No. IBBI/PR/2025/04 dated 12th February 2025.*

IBBI published syllabus of phase 9 of the LIE

Pursuant to Regulation 3 of the IBBI (Insolvency Professionals) Regulations, 2016, the Board has published the syllabus of phase 9 of the Limited Insolvency Examination (LIE). The revised syllabus is applicable for the examination to be conducted with effect from 5th May 2025. The IBBI commenced LIE on 31st December 2016. The Board reviews the Examination continuously to keep it relevant with respect to the dynamics of the market. So far seven phases have been completed, and eighth phase of examination is currently going on, said the IBBI in a press release.

Source: *IBBI Press Release No. IBBI/PR/2025/03 dated 4th February 2025.*

IBC Case Laws

Supreme Court of India

Vishnoo Mittal Vs. M/s Shakti Trading Company Criminal Appeal No. of 2025 @ Special Leave Petition (Crl) No.1104 of 2022. Date of Supreme Court's Judgement: March 17, 2025.

Facts of the Case

The present appeal is filed by Vishnoo Mittal (Appellant), in the capacity of Director of M/s Xalta Food and Beverages Private Limited/CD against M/s Shakti Trading Company (Respondent) challenged the order dated 21.12.21 passed by the Punjab and Haryana High Court. The High Court had dismissed the Appellant's petition filed under Section 482 of the Criminal Procedure Code, 1973 (CrPC), which sought quashing of proceedings under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), initiated by the Respondent. The CD had engaged the Respondent as its super stockist and issued eleven cheques amounting to approximately ₹11,17,326/- to the Respondent.

These cheques were dishonoured on 07.07.18. Consequently, a demand notice under Section 138 of the NI Act was issued on 06.08.18, and upon non-payment, a complaint was filed in September 2018. Meanwhile, on 25.07.18, insolvency proceedings were initiated against the CD under the Insolvency and Bankruptcy Code, 2016 (IBC), a moratorium under Section 14 of the IBC was imposed and an Interim Resolution Professional (IRP) was appointed. Despite the moratorium, the Magistrate Court issued summons to the Appellant on 07.09.18. Challenging this, the Appellant moved the High Court, which dismissed the petition, holding that the moratorium under Section 14 of the IBC protected only the CD and not the natural person (i.e., the director). Aggrieved by this, the Appellant approached the Supreme Court.

Supreme Court's Observations

The Supreme Court critically examined the applicability of the moratorium under Section 14 of the IBC and its impact on proceedings under Section 138 of the NI Act. While acknowledging the High Court's reliance on the precedent laid down in *P. Mohan Raj v. Shah Brothers*

Ispat Pvt. Ltd. (2021), the Supreme Court clarified that the facts of the present case were materially different and distinguishable.

In P. Mohan Raj, the cause of action for the offence under Section 138 NI Act arose before the moratorium commenced. However, in the present case, although the cheques were dishonoured on 07.07.18, the legal notice was issued on 06.08.18 after the moratorium was imposed on 25.07.18. The Court emphasized that under the NI Act, the offence under Section 138 is not complete upon dishonour of the cheque alone. As per the statute and reiterated in *Jugesh Sehgal v. Shamsher Singh Gogi* (2009), the offence is constituted only after the drawer fails to make payment within fifteen days of receiving the statutory demand notice. Given that the appellant had ceased to be in control of the CD from 25.07.18 onwards (the date of appointment of the IRP under Section 17 of the IBC), he lacked the legal and factual capacity to repay the amount post-notice. The IRP was in charge of the debtor's affairs and all bank operations. Furthermore, the Respondent had also filed a claim before the IRP under the IBC mechanism.

Accordingly, the Apex Court held that the High Court erred in not exercising its inherent jurisdiction under Section 482 CrPC to quash the criminal proceedings, especially considering that the essential ingredients of Section 138 NI Act could not be satisfied under the peculiar facts of this case.

Order: The Supreme Court set aside the impugned order of the High Court dated 21.12.21, and quashed the summoning order dated 07.09.18. Consequently, the

complaint case no. 15580/2018 pending before the Chief Judicial Magistrate, Chandigarh, was also quashed.

Case Review: *Appeal Allowed and pending applications, if any, were disposed of.*

Saranga Anilkumar Aggarwal Vs. Bhavesh Dhirajlal Sheth & Ors. Civil Appeal No(S). 4048 OF 2024. Date of Supreme Court Judgement: March 04, 2025.

Facts of the Case

The present appeal has been filed by the Appellant, Saranga Anilkumar Aggarwal (Appellant) against Bhavesh Dhirajlal Sheth & Ors. (Respondent), challenging the final judgment and order of the National Consumer Disputes Redressal Commission (NCDRC). The dispute arises from multiple penalties imposed (27 in total) on the Appellant due to the failure to deliver possession of residential units to homebuyers within the stipulated timeline. The Appellant seeks a stay on the execution of penalty proceedings on the grounds that an application under Section 95 of the IBC code 2016 has been filed, triggering an interim moratorium under Section 96 of the IBC. The matter originates from an execution application filed by Respondents before the NCDRC, demanding compliance with its earlier orders penalizing the Appellant for deficiency in service and breach of contractual obligations. The NCDRC had issued a ruling dated 10.08.18 in Consumer Complaint No. 1362 of 2017 and other related cases, directing the Appellant to complete construction, obtain an occupancy certificate, and hand over possession. However, the Appellant failed to comply, leading to execution applications seeking enforcement of penalties. The appellant contends that the penalties should be stayed due to ongoing insolvency proceedings against the company. The Appellant further argues that insolvency proceedings were initiated against A.A. Estates Pvt. Ltd., for which the Appellant is a personal guarantor. Following this, the State Bank of India (SBI) filed an application under Section 95 of the IBC against the Appellant, triggering an interim moratorium under Section 96. The Appellant submits that the moratorium prevents all legal proceedings, including the NCDRC's execution proceedings. The NCDRC, however, rejected the Appellant's plea on 07.02.24, asserting that penalties imposed under consumer law do not fall within the scope of the IBC moratorium.

The main issue raised before this court is: (i) Whether the execution of penalty orders passed by the NCDRC can be stayed under the interim moratorium provisions of Section 96 of the IBC or not?

Supreme Court's Observations

The Supreme Court held that civil proceedings are generally stayed under IBC provisions, but criminal proceedings, including penalty enforcement, do not automatically fall within its ambit unless explicitly stated by law. The penalties imposed by the NCDRC are regulatory and arise due to non-compliance with consumer protection laws. They are distinct from "debt recovery proceedings" under the IBC. The Supreme Court observed that a moratorium under Section 96 of the IBC applies to individuals and personal guarantors, staying legal actions relating to debt. However, this provision does not cover regulatory penalties. The statutory scheme of the IBC suggests that penalties arising from regulatory infractions are outside the definition of "debt." The Apex court while placing its reliance on P. Mohanraj and Ors. vs Shah brothers Ispat Pvt. Ltd. 2021 held that there is a distinction between punitive actions and criminal proceedings. While criminal proceedings aim to determine guilt, regulatory penalties, such as those imposed by the NCDRC, ensure compliance and deter violations. Section 27 of the CP Act empowers consumer fora to impose penalties for non-compliance. These penalties do not arise from "debt" but rather from failure to comply with consumer law. Unlike criminal prosecutions requiring mens rea, NCDRC penalties are regulatory, aiming to protect public interest rather than punish criminal behavior. A distinction must be drawn between the corporate debtor moratorium under Section 14 and the personal guarantor moratorium under Section 96 of the IBC.

The court also said that enforcing consumer rights through regulatory penalties, not just a financial dispute. Since the CP Act aims to ensure consumer welfare, staying such penalties would violate public policy. The appellant cannot use insolvency proceedings to evade statutory liabilities. The IBC is meant to resolve financial distress, not nullify regulatory obligations. The legislative intent behind Section 96 must be respected, and a blanket stay on regulatory penalties would defeat consumer protection objectives.

Order: The Apex court held that there is no merit in the appellant's arguments. The penalties imposed by the NCDRC are regulatory in nature and do not constitute "debt" under the IBC and directed to comply with penalties within period of eight weeks. The moratorium under Section 96 of the IBC does not extend to regulatory penalties imposed for non-compliance with consumer protection laws.

Case Review: *Appeal Dismissed.*

State Bank of India Vs. India Power Corporation Limited Civil Appeal No(s). 8178 of 2023. Date of Supreme Court's Judgement: February 14, 2025.

Facts of the Case

The present appeal has been filed u/s 62 of the IBC 2016 by the State Bank of India (Appellant) against India Power Corporation Ltd. (Respondent) challenging the order dated 04.10.23, passed by the Appellate Tribunal. The Appellate Tribunal had dismissed the Appellant's appeal and upheld the earlier order passed by the Adjudicating Authority/AA. The dispute originates from an application filed by the Appellant u/s 7 of the IBC before AA in February 2020, seeking initiation of insolvency proceedings against the Respondents. In November 2021, the Respondent filed its counter affidavit before AA.

The Appellant filed its rejoinder affidavit on 13.06.22, but with a delay, which was attributed to a separate money suit filed by the Respondent. Consequently, the Appellant filed an IA requesting the tribunal to condone the delay in filing the rejoinder affidavit. The AA in its order dated 30.01.23, condoned the delay but ruled that the factual assertions made in the rejoinder affidavit shall not be taken into consideration while deciding the Section 7 application. Dissatisfied with this decision, the Appellant approached the Appellate Tribunal, which dismissed Appellant's appeal on 04.10.23, effectively upholding the AA's order. Following this, the AA rejected the Appellant's Section 7 application on 30.11.23, stating that only the facts mentioned in the respondent's reply to affidavit could be considered. Aggrieved by this the Appellant approached the Supreme Court to challenge the Appellate tribunal's order.

Supreme Court's Observations

The Supreme Court observed that both the AA and Appellate Tribunal committed an egregious error by adopting a highly technical and pedantic approach. Having condoned the delay and permitted the Appellant to file its rejoinder, the AA erred in directing that the assertions in the rejoinder affidavit shall not be considered.

The Apex Court emphasized that it was expected of the Appellate Tribunal to correct this error, but it too fell into the same mistake. The learned Solicitor General of India referred to *Dena Bank vs. C. Shivakumar Reddy* (2021), where it was held that in the absence of any express provision prohibiting or setting a time limit for filing additional documents, there is no bar to submitting them beyond those initially filed with a Section 7 petition. The Apex Court clarified that a financial creditor filing a Section 7 application in Form 1 does not require elaborate pleadings, and such an application cannot be judged by the same standards as a plaint in a suit. It reiterated that there is no legal restriction on amending pleadings or filing additional documents. However, if there is an inordinate delay, the AA may at its discretion decline such requests and proceed with a final order. In the present case, the Supreme Court found that both the AA and the Appellate Tribunal failed to apply this principle. Having permitted the Appellant to file its rejoinder affidavit after condoning the delay, the AA was incorrect in prohibiting the Appellant from relying on it, and the Appellate Tribunal erred in upholding this decision. The Apex Court also noted that the Appellant had already filed an appeal before the Appellate tribunal against the final rejection of its Section 7 application by the AA. In light of this, the Supreme Court ruled that the appeal must be allowed, and the matter remanded for reconsideration.

Order: The Supreme Court allowed Appellant's appeal and set aside the Appellate Tribunal's order dated 04.10.23. The Apex Court clarified that it had not expressed any opinion on the merits of the case, leaving the final decision to the appropriate forums.

Case Review: *Appeal Allowed.*

China Development Bank Vs. Doha Bank Q.P.S.C. & Ors. Civil Appeal No. 7298 OF 2022 with 7407, 7615 and 7328 of 2022 & 7434 of 2023. Date of Supreme Court Judgement: December 20, 2024.

Facts of the Case

The current appeal is filled by the China Development Bank (Appellant) against Doha bank Q.P.S.C & Ors. (Respondents). The appeals, Civil Appeal Nos. 7298, 7407, 7615 and 7328 of 2022, and 7434 of 2023, challenge the judgment dated 09.09.22 passed by the Appellate Tribunal.

The CIRP of Reliance Infratel Limited (RITL)/Corporate Debtor, part of the RCom entities (including RCom, RCIL, and RTL), was initiated by Ericsson India Pvt. Ltd. u/s 15 of the IBC. The appellants submitted claims as Financial Creditors, relying on the Master Security Trustee Agreement (MSTA) and the Deeds of Hypothecation (DoH). The claims were admitted by the RP, and the appellants were included in the CoC. The Respondents contested this classification before the AA, arguing that the appellants were not direct lenders to the CD and that the DoH merely created a charge without constituting a "guarantee" u/s 126 of the Contract Act. While the AA approved the Resolution Plan on 03.12.20, it did not decide on the appellants' status. The Appellate Tribunal later held that the DoH was not a deed of guarantee, lacking the essential three-party structure and a covenant by the CD to discharge RCom or RTL's liabilities. It ruled that the appellants' claims were contingent and unenforceable due to the moratorium u/s 14 of the IBC. The appellants argued that Clause 5(iii) of the DoH obligated the CD to cover shortfalls in debt realization, qualifying as a "guarantee" under Section 126. They claimed this established their debts as financial debt u/s 5(8) of the IBC. Then the appeal was filled before the Supreme Court for final adjudication. The core issues arrised before the Apex court are: (i) Whether the appellants, including, Industrial and Commercial Bank of China, and other financial institutions, qualify as "Financial Creditors" under sub-section (7) of Section 5 of the IBC, and if not then in that case, (ii) Whether they are entitled to payments as "Secured Creditors."

Supreme Court's Observations

The Apex Court emphasized that financial debt involves a debt disbursed against consideration for the time value of money. It reviewed the Deeds of Hypothecation (DoH), specifically Clause 5(iii), which required the CD to pay any shortfall in debt recovery after the realization of hypothecated assets and held that this provision constituted a "guarantee" under Section 126 of the Indian Contract Act, 1872. The Apex Court observed while citing Anuj Jain, Interim Resolution Professional for *Jaypee Infratech Limited v. Axis Bank Limited & Ors.* (2020), the Court reiterated that mere creation of a charge or security interest does not qualify as financial debt unless it includes a guarantee or disbursement against time value of money. Referring to *Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel* (2021), the Apex Court further highlighted that a guarantee entails a promise to discharge a third party's liability in case of default. The Apex Court concluded that the CD had agreed to discharge RCom and RTL's liabilities, meeting the conditions of a guarantee. It rejected the argument that the moratorium under Section 14 extinguished claims, clarifying that the liability under agreements like the DoH remains valid during the moratorium. The Apex Court also relied on *Vistra ITCL (India) Ltd. & Ors. v. Dinkar Venkatasubramanian & Ors.* (2023) to reaffirm secured creditors' rights in CIRP and cited *Kotak Mahindra Bank Ltd. v. A. Balakrishnan* (2022) and *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.* (2023) to emphasize that financial debt need not be directly disbursed to the CD to qualify a creditor as a Financial Creditor. It clarified that the DoH created a contractual obligation for the CD to pay shortfalls, rendering the appellants' claims financial debt under Section 5(8).

Order: The Supreme Court overturned the Appellate Tribunal judgment, restoring the AA decision to classify the appellants as Financial Creditors. The Apex Court held that the DoH created a guarantee within the meaning of the IBC and the Contract Act, entitling the appellants to Financial Creditor status. It directed the AA to proceed with implementing the Resolution Plan, taking into account the appellants' claims.

Case Review: *Appeals Allowed.*

APURVA @ Apurvo Bhuvanbabu Mandal Vs. Dolly & Ors. Criminal Appeal Nos.5148-5149 of 2024 (Arising out of SLP (Crl.) Nos.10093-10094/2022). Date of Supreme Court Judgement: December 10, 2024.

Facts of the Case

The present criminal appeals were filed by Apurva (Appellant) against Dolly (Respondent), arising out of Special Leave Petitions, SLP (Crl.) Nos. 10093-10094 of 2022), and challenged the judgment dated 12.09.22 passed by the High Court of Gujarat at Ahmedabad. The High Court enhanced the maintenance amounts granted to the Respondent and the two children. Under the impugned order dated 12.09.22, the Respondent was awarded maintenance of ₹1,00,000 per month, and the children were each granted ₹50,000 per month. This was a significant enhancement from the earlier order of the Family Court, Surat, which had awarded ₹6,000 per month to the wife and ₹3,000 per month to each child.

The High Court justified the enhancement by noting the appellant-husband's status as a businessman owning a diamond factory. It also considered that the Appellant employed a manager to handle his office's day-to-day affairs, reflecting his financial capacity. Furthermore, adverse inferences were drawn against the appellant for failing to produce income tax returns or other financial documents, despite being a taxpayer and having been directed by the High Court to submit these records. The High Court directed that the enhanced maintenance amounts would be payable from the date of the initial filing of the maintenance application. Additionally, the Appellant was instructed to clear the arrears of maintenance within six months. Interim relief was granted by the Apex dated 07.11.22, staying the enhanced maintenance amounts temporarily, provided the Appellant paid interim maintenance of ₹50,000 per month to the Respondent and ₹25,000 per month to each child. A further order dated 12.03.24 clarified that the reduced maintenance amounts would be applicable retrospectively from the date of the impugned order dated 12.09.22. The Appellant contested the High Court's findings, arguing that his financial condition had worsened due to business setbacks and recovery proceedings. He also claimed that the respondent, being self-employed, had her own source of income and did not require maintenance. However, these claims were not substantiated with sufficient evidence before the Court. The matter was adjudicated under Section 125 of the Criminal Procedure Code, with the High Court considering the totality of circumstances, including the fundamental right to dignity and sustenance, while granting the enhancement.

Supreme Court's Observations

The Supreme Court observed that the maintenance awarded under Section 125 of the Criminal Procedure Code, 1973, was based on the appellant's presumed financial status, which lacked substantiation through documentary evidence. The appellant's failure to produce income tax returns and financial records, despite High Court directions, led to an adverse inference against him. The Apex Court clarified that interim maintenance amounts of ₹50,000 per month for the wife and ₹25,000 per month for each child were appropriate for their sustenance, considering the totality of circumstances. However, it emphasized that maintenance amounts could be adjusted based on evidence of the appellant's actual income and financial capacity, which may be addressed under Section 127 of the Criminal Procedure Code. Recognizing the fundamental right to maintenance as integral to dignity and sustenance under Article 21 of the Constitution, the Court stated this right override statutory claims under laws like the Insolvency and Bankruptcy Code, 2016, and SARFAESI Act, 2002. It directed arrears of maintenance to take priority over the appellant's assets, including those in recovery proceedings. Highlighting the importance of ensuring the respondents' dignity and standard of living, the Court noted maintenance as both a legal and constitutional mandate. It directed arrears to be paid within three months, failing which the Family Court could take coercive measures, including auctioning the appellant's immovable assets. While reducing maintenance amounts, the Court clarified this adjustment did not render the High Court's award erroneous but balanced competing claims and available evidence.

Order: The appeals were partially allowed. The maintenance amounts were reduced to ₹50,000 per month for the wife and ₹25,000 per month for each child, effective from the High Court's order date. The arrears, at the rates awarded by the High Court, were upheld, with

specific directions to prioritize these payments over any secured creditor claims. The appellant was directed to clear the arrears within three months, with the Family Court authorized to enforce recovery through coercive measures.

Case Review: *The appeals are allowed in part; the pending interlocutory applications also stand disposed of.*

High Court

Bhushan Power & Steel Ltd. Vs. Union of India & Anr. W.P.(CRL) 1261/2024. Date of Delhi High Court's Judgement: January 30, 2025.

Facts of the Case

The writ petition was filed by Bhushan power & Steel Ltd. (Appellant) against Union of India (Respondent) before the High Court under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., seeking quashing of ECIR NO. DLZO-I/02/2019 u/s 3 and 4 of PMLA and all related proceedings, including the order dated 17.01.20 passed by the Special Judge-05, CBI (PC Act), Rouse Avenue District Court against Appellant. The AA admitted an insolvency application against Appellant on 26.07.17, filed by PNB u/s 7 of IBC, 2016. During the CIRP, JSW Steel Ltd. emerged as the successful resolution applicant. On 05.04.19, the CBI registered FIR against Appellant, its Chairman, Directors, and others for alleged offences under Sections 120-B r/w 420, 468, 471 & 477A of IPC and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. Based on this, the ED recorded ECIR on 25.04.19 for suspected money laundering activities. On 05.09.19, the AA conditionally approved JSW's Resolution Plan u/s 31 of IBC, granting protection from criminal proceedings related to the erstwhile management but not explicitly shielding Appellant from past liabilities.

On 10.10.19, the ED issued Provisional Attachment Order (PAO No. 11/2019) u/s 5(1) of PMLA, attaching Appellant's assets as "proceeds of crime," restricting their transfer or disposal. This led to a legal conflict, prompting NCLAT to stay the attachment on 14.10.19, allowing the RP to regain control over Appellant's assets.

On 17.01.2020, the ED filed a Prosecution Complaint under PMLA against the Appellant, its former Chairman, Managing Director, and other executives, alleging bank fraud of ₹47,204 crores. On 17.02.20, the NCLAT ruled the ED's asset attachment illegal, citing Section 32A of IBC (introduced via the IBC (Amendment) Ordinance, 2019), which protects CDs from prosecution for past offences if there is a change in management. The ED challenged this ruling in Civil Appeal No. 3362/2020 before the Supreme Court, which, on 11.12.24, disposed the appeal while affirming the restoration of Appellant's assets to JSW Steel under Section 8(8) of PMLA, subject to ED's ongoing investigation against the erstwhile promoters.

High Court's Observations

The Hon'ble high Court observed that Section 32A of the IBC provides that a CD's liability for offences committed before CIRP shall cease upon approval of a Resolution Plan provided there is a change in management. It noted that the Resolution Plan for Appellant was approved by the AA on 05.09.19 and by the NCLAT on 17.02.20, thereby protecting the CD from prosecution. However, the erstwhile management, including promoters and key officers, could still be prosecuted under the second proviso to Section 32A (1). The ED provisionally attached Appellant's assets on 10.10.19, but the high court found this contrary to Section 32A, as it came after the resolution plan's approval. The NCLAT ruled this attachment illegal, and the Supreme Court later affirmed that the assets should be restored to JSW Steel, subject to ongoing investigations against the former management.

The Court acknowledged the ED's argument that while Appellant cannot be prosecuted post resolution, its former directors and promoters remain under investigation for alleged fraudulent transactions. It noted that the ED filed a Prosecution Complaint on 17.01.20, alleging a bank fraud of ₹47,204 crores, but since the Appellant had undergone a successful resolution process, it could not be held liable under Section 32A. Accordingly, the criminal proceedings against the Appellant were set aside, but the ruling would not impact investigations or potential prosecution of its erstwhile management. The Supreme Court's order dated 11.12.24 directed the restoration of Appellant attached assets to JSW Steel under Section

8(8) of PMLA, while leaving the ED's right to investigate the former promoters intact

Order: In light of these findings, the Hon'ble High court allowed the writ petition to the extent of setting aside criminal proceedings against Appellant but clarified that this decision remains subject to pending appeals challenging the resolution plan before the Supreme Court. It reiterated that these observations would not affect the trial of Appellant's former promoters and key executives.

Case review: *Petition disposed of, along with pending applications if any.*

Ankit Bhuwalka Vs. IDBI Bank Ltd. & Union of India Writ Petition no.12 of 2025. Date of Bombay High Court Judgement: January 16, 2025.

Facts of the Case

This petition is filled by Mr. Ankit Bhuwalka, the erstwhile Director of Bhuwalka Steel Industries Limited (BSIL) (Petitioner) against the IDBI Bank Ltd. and Ors. (Respondents) challenged the issuance of a Show Cause Notice (SCN) dated 05.04.23 and subsequent orders by the Wilful Defaulters Committee (WDC) on 14.09.23 and the Wilful Defaulters Review Committee (WDRC) on 25.10.24, declaring him a wilful defaulter. These actions were based on findings in a Transaction Audit Report (TAR) prepared by M/s G.D. Apte & Co. during BSIL's Corporate Insolvency Resolution Process (CIRP), initiated by the AA in 2019. The TAR alleged fraudulent transactions, including diversion of ₹74.27 crore between BSIL and its group company, Shree Durga Trade Links Pvt. Ltd. (SDTL). The report indicated that receivables from BSIL were transferred to SDTL despite pending dues, suggesting diversion of funds. The petitioner argued that the TAR relied on assumptions and was deemed inconclusive by the AA in its order dated 10.03.21, which directed the RP to conduct a more thorough inquiry.

The petitioner claimed that the Respondent Bank failed to provide the complete TAR or supporting documents despite repeated requests, depriving him of a meaningful opportunity to respond to the SCN. Only an extract of the TAR was provided, which was insufficient for him to prepare a defence. He also cited his inability to access BSIL's records from the new management or the RP after the resolution process. A personal hearing was held on 28.02.24, where the petitioner reiterated his lack of access to documents. Despite this, the WDC declared him a wilful defaulter on 13.06.24, and the WDRC confirmed the decision on 25.10.24. The petitioner contended that these actions violated principles of natural justice and relied on a TAR previously found unreliable by the AA. He highlighted the severe repercussions of being declared a wilful defaulter, including reputational damage and restrictions on business activities.

High Court's Observation

The Bombay High Court noted significant procedural lapses by the Respondent Bank, particularly its failure to provide the full Transaction Audit Report (TAR) and supporting documents despite repeated requests via emails on 22.04.23, 25.05.23, and 17.10.23. Relying solely on an extract of the TAR, the Bank violated the principles of natural justice by denying the petitioner a meaningful opportunity to defend himself. The court highlighted that the AA, in its 10.03.21 order, found the TAR inconclusive and based on assumptions, directing further inquiry into the flagged transactions. The court further emphasized that the RBI's Master Circular on Wilful Defaulters dated 01.07.15 requires transparency, disclosure of evidence, and a fair hearing, which were not adhered to. Referring to Supreme Court rulings in *Jah Developers Pvt. Ltd. vs. State Bank of India* (2019) and *Rajesh Agarwal vs. State Bank of India* (2023), it stressed the serious repercussions of being declared a wilful defaulter, including reputational harm and restrictions on business under Article 19(1)(g). It also cited *Milind Patel v. Union Bank of India* (2024), emphasizing the need to disclose all material relevant to the case. The maintainability of the writ petition was affirmed under *Kaushal Kishore vs. State of Uttar Pradesh* (2023), establishing that fundamental rights can be enforced against non-state actors. The court concluded that the SCN and orders were procedurally flawed, relying on an inconclusive TAR and denying the petitioner fair representation. It quashed the SCN and orders, allowing the Bank to issue a fresh SCN only if it follows due process and ensures adherence to the principles of natural justice.

Order: The Bombay High Court quashed and set aside the SCN dated 05.04.23 and the orders dated 14.09.23, and 13.06.23, and 25.10.24 issued by the WDC and WDRC. The court granted liberty to the Respondent Bank to initiate fresh proceedings against the petitioner, provided it adheres to procedural norms and principles of natural justice.

Case review: *Petition Allowed.*

National Company Law Appellate Tribunal (NCLAT)

Shri Krishan and Anr. Vs. H.S. Oberoi Buildtech Pvt. Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 128, 129, 130, 131 of 2025. Date of NCLAT's Judgement: March 07, 2025.

Facts of the Case

The present set of four appeals filed u/s 61 IBC 2016 arise out of a common order dated 24.10.24 passed by the Adjudicating Authority, in IA Nos. 112, 77, 599 & 89 of 2024 in CP(IB) No. 1768(ND)/2018. The AA refused to entertain the belated claims of the appellants, who are home buyers in the "Earth Iconic" project developed by Earth Infrastructure Ltd. (EIL). The appeals have been filed against the rejection of their claims by the Successful Resolution Applicant (SRA). The Appellants had booked units in the Earth Iconic project, received allotment letters on 31.06.12, and made payments in instalments. CIRP was initiated against EIL on 06.06.18, and later against Celestial Estate Pvt. Ltd. (CEPL) on 11.03.19, which was the landowner of the project. By order dated 15.03.21, the AA directed EIL to transfer the partly constructed structure of Earth Iconic project to CEPL, and most of EIL's creditors transferred their claims to CEPL. The appellants claim that they became aware of the CIRP proceedings only in November 2023, by which time the Resolution Plan had already been approved. They submitted claims to the SRA via email on 10.12.23, along with relevant documents, including payment receipts, but received no response. As a result, they filed IA No. 112 of 2024 before the AA, seeking directions to compel the SRA to accept their claims.

They contended that the RP failed to consider their claims, severely prejudicing their interests and those of other similarly placed homebuyers. However, the AA, in its order dated 24.10.24, rejected their applications, stating that their claims were filed belatedly and not part of the approved Resolution Plan. Aggrieved by this order, the appellants filed the present appeals before NCLAT, arguing that the RP failed to notify them individually, despite their names being reflected in the CD's CRM records, and instead only issued public notices in newspapers, which they claimed was insufficient. They further contended that the RP's failure to include their claims in the Information Memorandum led to their exclusion from the Resolution Plan, violating their rights as homebuyers.

The appellants also asserted that the provisions of the IBC were misused to extinguish the claims of bona fide creditors, unfairly benefiting the SRA. They sought relief from the NCLAT to direct the SRA to accept their claims and include them in the Resolution Plan, arguing that the resolution process was conducted unfairly to their detriment.

NCLAT's Observations

The Appellate Tribunal noted that the RP had issued a public notice on 27.03.19, with the last date for claim submission being 10.04.2019. Additionally, Form-G was published on 26.09.19, the Information Memorandum (IM) was issued on 05.10.19, and the Resolution Plan was approved by the CoC on 16.11.19 and by the AA on 15.03.21. The appellants submitted their claims only on 10.12.23, over four years and eight months after the deadline, and therefore, their claims were not reflected in the Information Memorandum. The Appellate Tribunal further held that the RP was not required to send individual notices to each creditor, as public notices complied with IBC and IBBI Regulations. The appellants' argument that their names were in the CD's CRM and should have been included in the IM was rejected. Citing *Ghanshyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.* (2021), the Appellate Tribunal reaffirmed that once a Resolution Plan is approved, all claims not included are extinguished and cannot be reopened. The Appellate Tribunal also

distinguished the appellants' reliance on Puneet Kaur Vs KV Developers Ltd. 2022, stating that in that case, claims were filed within a year and before the Resolution Plan's approval, whereas in the present case, claims were submitted nearly three years post-approval. Referring to *RP Infrastructure Ltd. vs. Mukul Kumar & Anr.* (2021), the Appellate Tribunal emphasized that permitting such delayed claims would disrupt the insolvency resolution process.

The Appellate Tribunal found no merit in the appellant's argument that the Resolution Plan was unfair for not considering their claims, noting that it had already provided extended periods for belated claims with additional charges, which the appellants failed to utilize. It reiterated that the SRA cannot be burdened with undisclosed liabilities due to creditors' inaction. Citing Ghanshyam Mishra and Sons Pvt. Ltd. 2021 the Appellate Tribunal reaffirmed that once a plan is approved, it is binding on all stakeholders, and unsubmitted claims stand extinguished.

Order: The Appellate Tribunal held that Since the Resolution Plan has already been approved by both the CoC and the AA, it cannot be reopened based on belated claims by the appellant, AA has committed no error in rejecting the appellant's request for claim admission. In view of these discussions, no cogent grounds exist to interfere with the impugned order, which does not suffer from any infirmities.

Case Review: *Appeals Dismissed.*

ILD Owners Welfare Association Vs. M/s. ALM Infotech City Private Ltd., Company Appeal (AT) (Insolvency) No. 2198 of 2024 & I.A. No. 8172 of 2024. Date of NCLAT Judgement: February 28, 2025.

Facts of the Case

The present appeal has been filed by ILD Owners Welfare Association (Appellant) against M/s ALM Infotech City Pvt. Ltd. (Respondent). This appeal arises from the impugned order dated 30.07.24 passed by the Adjudicating Authority/AA. The dispute pertains to a real estate project, ILD Trade Centre, Sector 47, Sohna Road, Gurgaon, which received its occupancy certificate on 19.11.10. Various unit holders booked their respective units, executed Builder Buyer Agreements (BBA), and subsequently received Conveyance Deeds in their favor from 2015 onwards. According to the Conveyance Deeds, each unit holder was required to pay ₹100 per square foot of the super area of their unit to the respondent towards Interest-Free Maintenance Security (IFMS). The IFMS was intended for maintaining common areas, services, facilities, and installations within the project. Over time, complaints regarding maintenance arose from both individual unit holders and the Appellant. On 08.09.22, the Appellant took over the maintenance of the project. Subsequently, on 06.10.23, the Appellant issued a demand notice for ₹2.95 crore to the Respondent, alleging a default on financial debt. This was followed by an application under Section 7 of the IBC in April 2024. The AA through its order dated 08.05.24, directed the Appellant to file an affidavit demonstrating that the amount in question qualified as financial debt under Section 5(8) of the IBC. In compliance, the Appellant argued that the Conveyance Deed dated 09.12.15 obligated the Respondent to refund the IFMS, and thus, it qualified as financial debt. However, the AA dismissed the Section 7 application, holding that IFMS does not constitute financial debt, prompting the present appeal before the Appellate Tribunal.

The main issue raised before the Appellate Tribunal is: (i) Whether the amount deposited as Interest-Free Maintenance Security (IFMS) by the allottees qualifies as financial debt u/s 5(8) (f) of the IBC 2016.

NCLAT's Observations

The Appellate Tribunal analyzed Clauses 26 and 27 of the Conveyance Deed, which specified that IFMS was collected for maintaining common areas, services, installations, and amenities, with maintenance charges payable to the maintenance agency.

The Appellate Tribunal considered whether this amount could be classified as financial debt. Referring to *Global Credit Capital Limited & Anr. vs. Sach Marketing Pvt. Ltd. & Anr.* (2024)., the Appellate Tribunal held that the classification of a debt depends on the nature of the transaction. It emphasized that a financial debt must involve disbursement for the time value of money, a necessary element u/s 5(8). Citing *Pioneer Urban Land*

and Infrastructure Limited & Anr. vs. Union of India & Ors. (2019), the Appellate Tribunal reaffirmed that financial debt requires disbursal for the borrower's use against consideration for the time value of money. The Tribunal further examined *Corab India Private Limited vs. Birendra Kumar Aggarwal* (2024), which dealt with whether a lease security deposit could be classified as financial debt. It upheld the AA's ruling that security deposits are not disbursed against time value of money and cited Anuj Jain, *Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Limited & Ors.* (2020)., which stressed that time value of money is a key condition for financial debt. Applying these principles, the Appellate Tribunal concluded that IFMS was collected for maintenance services and payable to the vendor or its maintenance agency, making it ineligible as financial debt. It further assessed whether IFMS could qualify as operational debt, which covers claims for goods, services, employment, or government dues. Citing *Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions Pvt. Ltd.* (2020), the Appellate Tribunal observed that operational debt must have a direct link to the provision of goods or services. Since IFMS was deposited for future maintenance services, it had characteristics of operational debt rather than financial debt.

The Appellate Tribunal also examined the Appellant's argument based on Section 6(6) of the Haryana Apartment Ownership Act, 1983, which mandates the association's role in maintenance. However, it held that this statutory obligation does not convert IFMS into financial debt, as the provisions merely define rights over common areas.

Order: The Appellate Tribunal upheld the AA's decision rejecting the Section 7 application, ruling that IFMS does not meet the essential elements of financial debt u/s 5(8) of IBC. Reaffirming that security deposits for maintenance purposes cannot be classified as financial debt under IBC.

Case Review: *Appeal Dismissed.*

Amrit Rajani Vs. Pegasus Assets Reconstruction Pvt. Ltd. & Shri Balaji Entertainment Pvt. Ltd. Company Appeal (AT) (Ins) No. 375 of 2023 & I.A. No. 1261, 1262 of 2023. Date of NCLAT Judgement: January 23, 2025.

Facts of the Case

The present appeal was filed u/s 61(1) of the IBC 2016 by Amrit Rajani erstwhile Director of CD (Appellant) against M/s Pegasus Assets Reconstruction Pvt. Ltd. & Shri Balaji Entertainment Pvt. Ltd./CD (Respondent no. 1 and 2) respectively, challenging the impugned order dated 03.02.23 passed by the Adjudicating Authority (AA). The case originated when Respondent No. 1 initiated insolvency proceedings against Respondent No. 2 u/s 7 of the IBC, alleging a default of ₹35,90,56,629. The financial creditor claimed that the CD's account was classified as a Non-Performing Asset (NPA) on 02.12.2019, with default occurring on 01.06.19. The CD was both a co-borrower and corporate guarantor for a loan taken by M/s Universal Textile Waterproof Company (India) (UTWC), originally sanctioned by SVC Co-operative Bank Ltd., which was later assigned to Respondent No. 1.

The AA admitted the Section 7 application, imposed a moratorium, and ordered commencement of the CIRP on 20.04.22. A Committee of Creditors (CoC) was constituted, with Respondent No.1 holding 79% voting rights and NKGSB Co-operative Bank Ltd. holding 21% voting rights. Despite publishing Form-G for Expression of Interest (EoI) on 22.06.22, no resolution applicant submitted bid before the deadline of 07.07.22. After four CoC meetings, the CoC unanimously voted for liquidation with a 100% voting share. The RP filed an application under Section 33(1) (a), 33 (2) and 34 (1) of IBC, which was allowed by the AA, leading to the CD's liquidation.

The Appellant challenged the liquidation order, arguing that the CoC did not take meaningful steps to revive the CD, which contradicts the spirit of the IBC. It was further alleged that the RP accepted financial creditors' claims without proper verification, amounting to negligence and misconduct. The Appellant also contended that the introduction of the SVC Bank ledger account harmed the CD and violated natural justice principles.

NCLAT's Observations

The Appellate Tribunal observed that the definition of financial debt u/s 5(8) of the IBC 2016 requires disbursal against the consideration for time value of money. In the present case, the financial agreements and ledger accounts from SVC Bank provided evidence of the CD's obligations as a co-borrower and corporate guarantor for the loan availed by M/s Universal Textile Waterproof Company (India) (UTWC). The Appellate Tribunal further observed that the CoC exercised due diligence by following the prescribed procedure under the IBC. Form-G (Expression of Interest) was issued on 22.06.22 to invite potential resolution applicants, but no EoI was received by the deadline of 07.07.22, despite sufficient time being provided. The CoC also noted concerns over the non-availability of corporate assets, discrepancies in financial records, and the absence of a viable resolution plan. Based on these factors, the CoC resolved that liquidation was the only practical and legally sound recourse. The Appellate Tribunal also examined the applicability of Section 33(2) of the IBC, which mandates that if the CoC, with at least 66% voting rights; resolves to liquidate the CD, the AA must pass a liquidation order. Since the CoC's decision to liquidate was unanimous with 100% approval, the Tribunal held that the statutory framework leaves no room for deviation once the required threshold is met. Further, the Appellate Tribunal considered the Appellant's claims of forged documents and negligence in the verification of financial claims but found no substantive evidence to support these allegations.

It reiterated that mere allegations, without material proof, cannot override statutory procedures. It was also noted that the CoC had exhausted all avenues for resolution, providing adequate time for potential applicants to submit plans, but none emerged, making liquidation a rational and compliant decision under the IBC. Finally, the Tribunal reinforced that while the IBC prioritizes resolution over liquidation, in cases where a CD has no assets or viable business prospects, liquidation remains the only feasible course. Forcing a resolution process in the absence of a prospective applicant would only delay the inevitable and impose unnecessary financial burdens on creditors.

Order: The Appellate Tribunal upheld the AA's order, affirming that the CoC's decision to liquidate the CD was valid and in compliance with the IBC. It ruled that the Appellant's claims were unsubstantiated and lacked merit.

Case Review: *Appeal Dismissed.*

Anil Kumar (RP) Vs. Mukund Choudhary (Personal Guarantor) Company Appeal (AT) (Insolvency) No. 38 of 2025. Date of NCLAT Judgement: January 22, 2025.

Facts of the Case

The present appeal has been filed by the Resolution Professional/RP (hereinafter referred as 'Appellant') in the Personal Insolvency Resolution Process (PIRP) of the Personal Guarantor Mukund Choudhary (hereinafter referred as 'Respondent'), challenging the order dated 04.12.2024, passed by the Adjudicating Authority/ AA in I.A. No. 5719/2024. The appeal arises from an application filed under Section 94(1) of the IBC 2016 by the Respondent on 08.04.2021 through which the AA declared an Interim Moratorium u/s 96 of the IBC and appointed the Appellant as the RP. The RP filed a report under Section 99, which was considered and by order dated 30.04.2024, the Section 94 application was admitted, initiating the PIRP against the Personal Guarantor and a moratorium was imposed under Section 101 for 180 days. Following this, the Appellant made a public announcement on 03.05.2024 and the Personal Guarantor submitted a draft repayment plan. A meeting of creditors was convened under Section 106(2)(c) which was rescheduled to 23.10.2024, where creditors discussed the repayment plan and sought modifications. On 28.10.2024, the Appellant was authorized to seek an extension of the PIRP by 90 days beyond 180 days, leading to the filing of I.A. 5719/2024. The AA granted a 90-day extension for the PIRP but did not extend the moratorium. Aggrieved by this, the Appellant filed the present appeal, arguing that a PIRP without a moratorium would be ineffective, allowing creditors to initiate recovery actions and enforce security interests. The Appellant contended that the AA had jurisdiction to extend the moratorium beyond 180 days, relying on *Vikas Gautamchand Jain,* (2024) and *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd.* (2021). The Respondent

supported the appeal, submitting that the 180-day limit under Section 101 was directory not mandatory, and the AA had the power to extend it and also said that without extension of moratorium proceeding under personal Gurantor shall not yield any favorable results. The main issue raised before the Appellate Tribunal was: (i) Whether the moratorium under Section 101 of the IBC could be extended beyond 180 days?

NCLAT's Observations

The Appellate Tribunal examined Section 101(1) of the IBC, which states that a moratorium shall commence upon admission of the application under Section 100 and shall cease to have effect at the end of 180 days or on the date the AA passes an order on the repayment plan u/s 114, whichever is earlier. The provision clearly defines both the commencement and cessation of the moratorium, leaving no discretion for its extension. The Appellant contended that the 180-day period under Section 101(1) is directory and can be extended by the AA to ensure an effective resolution process, but the Tribunal rejected this argument, emphasizing that a statutory timeframe with a specified consequence must be interpreted as mandatory.

The Appellate Tribunal distinguished this case from Vikas Gautamchand Jain (2024), where Section 54D concerning Pre-Packaged Insolvency Resolution Process (PPIRP) was considered, noting that Section 101(1) mandates an automatic cessation of the moratorium after 180 days unlike Section 54D, which does not specify automatic termination. Similarly, reliance on *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd.* (2021) was misplaced, as that case dealt with the moratorium under Section 14 in relation to proceedings under the Negotiable Instruments Act and did not address the issue of extending the moratorium under Section 101.

The Appellate Tribunal held that when statutory language is clear, courts must adhere to its plain meaning without interpretative extensions by placing its reliance on *Dilip B. Jiwrajka vs. UOI* (2021). Since Section 101(1) explicitly limits the moratorium period and does not permit any extension, the AA was correct in not extending it beyond 180 days. Consequently, no further extension could be granted, and the appeal was unsustainable in law.

Order: The Appellate Tribunal affirmed that the moratorium u/s 101 automatically ceases after 180 days and cannot be extended. The extension granted for the PIRP does not imply an automatic extension of the moratorium, and creditors can proceed with legal actions beyond the 180-day period.

Case Review: *Appeal Dismissed.*

M/S Transline Technologies Ltd. (Through Its Authorized Representative) Vs. Experio Tech Pvt. Ltd. CP IB NO. 236/(ND)/2023. Date of NCLT Judgement: January 08, 2025.

Facts of the Case

The petition was filed by M/s Transline Technologies Limited in the capacity of Operational Creditor (OC) through its authorized representative Mr. Munish Kumar Goyal (Applicant) against M/s Experio Tech Private Limited/CD (Respondent) under u/s 9 of the IBC, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 wherein the Applicant sought initiation of CIRP against the CD for recovery of outstanding dues amounting to ₹3,87,90,800/-. The CD engaged in software and hardware-related IT and electronics manufacturing, had entered into an agreement (MoU) dated 03.09.2021 with the Applicant/OC, through its ex-director, Mr. Niraj Kumar Gupta. Under this agreement, the CD was obligated to procure raw materials and sell all finished products exclusively through the Applicant/OC. Thus, transline was conferred with the monopoly to carry out supplies to Experio Tech. The terms also included a profit-sharing arrangement between the parties. Disputes arose when the Applicant/OC claimed outstanding dues from the CD for electronic items supplied under five invoices. The CD however, denied the claims, stating that the parties were not in a debtor-creditor relationship but joint business partners sharing profits and losses.

The primary issue before the AA was to determine:

(i) Whether there is an operational debt exceeding ₹ 1 crore as defined u/s 4 of the IBC?

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

NCLAT's Observations

The AA noted that the relationship between the parties, as evidenced by the MoU dated 03.09.2021, reflected integrated business operations rather than a debtor-creditor relationship. The OC and CD agreed to share profits equally, and their transactions involved joint responsibilities for sales and distribution, which is not covered under the definition of "Operational Debt" as per Section 5(21) of the IBC. The terms of the MoU granted monopoly rights to the Operational Creditor for supplies to the CD, obligating the CD to procure raw materials and sell finished products exclusively through the Operational Creditor. These provisions indicated a joint business arrangement rather than a simple goods-and-services relationship.

The AA emphasized that profit-sharing agreements disqualify Transline Technologies from being considered as "Operational Creditor" within the meaning of Section 5 (20) of the IBC due to the deviation from a typical creditor-debtor structure. Relying on *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.* (2018), the AA held that it must ascertain the existence of an operational debt and its payable status. The profit-sharing clauses in this case prevented the establishment of a straightforward operational debt. The AA also referred to *Prashanth Shekara Shetty v. Alcuris Healthcare Pvt. Ltd.* (2022), whereby the Hon'ble NCLAT held that joint business arrangements with shared profits and liabilities lack the characteristics of operational debt. The AA considered the CD's contention regarding the Purchase Order dated 07.09.2021, where delays in supplies by the Operational Creditor led to tender cancellations by Gujarat Police, forfeiture of ₹16,47,475/- as Earnest Money Deposit (EMD), and additional disputes over debit notes worth ₹2,27,98,393/- for returned goods. These disputes rendered the claim untenable under Section 9.

Order: The AA concluded that the application failed to meet the criteria for initiating CIRP under Section 9 of the IBC, as the applicant could not establish its status as an Operational Creditor under Section 5(20) of IBC. AA observed that the relationship between the parties was that of joint suppliers and not one of debtor and creditor.

Case Review: *CIRP Application Dismissed.*

Sumati Suresh Hegde & Ors. Vs. Anand Sonbhadra, RP of Champalalji Finance Pvt. Ltd. & Ors. Company Appeal (AT) (Ins) No. 884 of 2024. Date of NCLAT Judgement: January 09, 2024.

Facts of the Case

The present appeal involves Sumati Suresh Hegde & Ors. (Appellants') against the Resolution Professional (RP) of Champalalji Finance Pvt. Ltd. and others (Respondents). The appeal arises from the impugned order dated 05.04.2024, passed by the Adjudicating Authority (AA), directing the RP to take possession of the property, Villa Mohindra Outhouse, Khar (W), Mumbai, u/s 60(5) r/w Section 25(2)(a) of the Insolvency and Bankruptcy Code (IBC), 2016. The Corporate Debtor (CD), M/s Champalalji Finance Pvt. Ltd., entered in CIRP on 17.03.2023 following an application u/s 7 of the IBC by Edelweiss Asset Reconstruction Company Limited.

During the first Committee of Creditors (CoC) meeting held on 26.04.2023, the Interim Resolution Professional (IRP) was confirmed as the RP. The property in question Villa Mohindra Outhouse, was occupied by the Appellants, legal heirs of Late Shri Suresh Padmanabha Hegde, who claimed tenancy rights rooted in a decree dated 26.11.2009 by the Small Causes Court. The decree declared Shri Hegde a monthly tenant under the Maharashtra Rent Control Act, 1999, restraining the landlord from dispossessing him without due legal process. The property was later purchased by the CD from its original landlords, Prem Mohindra and Dilip Mohindra, along with the tenancy. On 23.12.2016, the CD filed RAE Suit No. 149 of 2011 before the Small Causes Court, seeking eviction on grounds of bona fide requirement to demolish the existing structure. This suit was pending when CIRP was initiated but was dismissed for non-prosecution on 16.11.2024. Despite this, the RP filed I.A. No. 4632 of 2023 under Section 60(5) read with Section 25(2)(a) of the IBC, seeking control and custody of the property. The Appellants contested this, arguing their tenancy rights were protected and the AA lacked jurisdiction to order eviction. The Respondent contended that, under Section 18(1)(f) of the IBC, it was his duty to take possession of all assets of the CD, including the property. The AA, in its order dated 05.04.2024, ruled in favor of the RP, stating that Section 238 of the IBC

(non-obstante clause) overrides the Maharashtra Rent Control Act, 1999, and directed eviction. Aggrieved, the Appellants filed the present appeal before the Appellate Tribunal, asserting that their tenancy rights were being disregarded and emphasizing the distinction between tenancy and lease. They argued that their rights were perpetual unless altered through due process of law under the Rent Control Act

NCLAT's Observations

The NCLAT observed that the tenancy rights of the Appellants were established through a 26.11.2009 decree by the Small Causes Court, declaring Late Shri Suresh Padmanabha Hegde a monthly tenant under the Maharashtra Rent Control Act, 1999 and restraining eviction without due process of law. The CD acquired the property with the tenancy and filled the RAE Suit No. 149 of 2011 for eviction on bona fide grounds that were dismissed for non-prosecution. The Appellate Tribunal highlighted the distinction between tenancy and lease, emphasizing that tenancy continues unless altered by contract or law. While the RP is empowered under Section 18(1) (f) and Section 25(2) (a) of the IBC to take possession of CD assets, such powers do not override tenancy protections. Referring to *Embassy Property Developments Pvt. Ltd. v. State of Karnataka* (2020), the Appellate Tribunal noted that tenancy disputes fall outside the jurisdiction of the NCLT/NCLAT. In *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* (2021), the Supreme Court cautioned against overreach by NCLT/NCLAT into non-insolvency matters. It also cited *Vishal N. Kalsaria v. Bank of India* (2016), which held that tenancy rights under rent control laws cannot be overridden by non-obstante clauses and also placed reliance on K. L Jute Products Pvt. Ltd. vs Tirupati Jute Industries Ltd. (2020) and said that the AA is not empowered to pass an eviction and it is for an aggrieved party to move the appropriate forum for redressal of its grievances in accordance with law." The Appellate Tribunal further relied on *Raj Builders v. Raj Oil Mills Ltd.* (2018), stating that eviction orders must follow due legal process, and on Devendra *Padamchand Jain v. Sandhya Prakash* (2018), affirming that the RP cannot evict tenants without approaching the proper forum.

Order: The Appellate Tribunal set aside the impugned order dated 05.04.24 passed by the AA deeming it legally erroneous and held that, the RP cannot evict tenants under IBC without pursuing the appropriate legal process under tenancy laws and the tenancy rights of the Appellants remain valid, and eviction is permissible only through due legal procedure as per the Maharashtra Rent Control Act.

Case Review: *Appeal Allowed.*

National Company Law Tribunal (NCLT)

M/s. Canara Bank Vs. M/s. DAAJ Hotels & Resorts Private Limited, Company Appeal (AT) (CH) (Ins) No.390/2022. Date of NCLAT Judgement: December 20, 2024.

Facts of the Case

The present appeal is filed by M/s Canara bank (Appellant) against M/s. Daaj Hotels & Resorts Pvt. Ltd. (CD or Respondent). The case revolves around a financial arrangement where the CD sought funding for the construction of a five-star hotel with an estimated project cost of ₹101.31 crores. For this purpose, the CD secured financial assistance from a consortium of banks, comprising State Bank of India (SBI), State Bank of Hyderabad (SBH), and the Appellant. SBI sanctioned ₹40 crores, SBH extended ₹10 crores, and the Appellant contributed ₹30 crores towards the project. However, the CD encountered financial difficulties, leading to a shortfall in project funding. Consequently, an additional term loan of ₹25 crores was sought from the consortium to meet the escalated project costs. Despite the consortium's efforts to restructure the financial assistance mechanism, the CD failed to achieve its financial objectives. This resulted in the declaration of its account as a NPA on 01.10.12. Subsequent to this, proceedings under the Recovery of Debts and Bankruptcy Act, 1993, were initiated on 18.08.17, before the Debt Recovery Tribunal (DRT), with a claim of ₹131.88 crores. During these proceedings, the CD acknowledged its dues and proposed a One-Time Settlement (OTS) of ₹80 crores. However, the OTS proposal was not honored, leading the consortium to withdraw from the settlement on 04.02.19. The Appellant subsequently issued a demand

notice on 29.08.19, seeking repayment of ₹30 crores, along with additional amounts, but no payments were made by the CD. As the financial distress persisted, the Appellant filed an application u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) on 19.07.19, to initiate a CIRP. However, the AA, dismissed the application on 28.02.22 citing limitation issues and the binding nature of the default date as 1.10.12. The present appeal was filed against this dismissal.

NCLAT's Observations

The Appellate Tribunal noted that the date of default was 01.10.12 when the CD's account was classified as a Non-Performing Asset (NPA). It clarified that acknowledgment of debt under Section 18 of the Limitation Act must occur within the three-year limitation period to extend the timeline. Subsequent acknowledgments by the CD fell outside this statutory window, rendering them insufficient to revive the limitation period. The issuance of notices under Section 13(2) of the SARFAESI Act on 01.10.12 provided a clear and undisputed date of default. Applying Section 137 of the Limitation Act to Section 7 applications under the IBC, the Appellate Tribunal emphasized a three-year limitation period starting from the default date. Citing its previous verdict in the mater of *Bijnor Urban Co-Operative Bank Limited Vs. Meenal Agarwal & Others,* the NCLAT held that OTS schemes or acknowledgments beyond the limitation period cannot revive time-barred debts. Referring to the judgement of Adjudicating Authority in the matter of Asset Reconstruction Company Limited, the Appellate Tribunal reiterated that the declaration of an account as an NPA marks the starting point for limitation. The Tribunal rejected arguments for reckoning default from subsequent correspondence or the compromise decree of 03.01.20, as they occurred beyond the limitation period. It held that SARFAESI notices merely establish the timeline for default and reaffirmed the binding nature of the 01.10.12 default date. The Appellate Tribunal further concluded that limitation cannot be extended once the statutory period has lapsed. Thus, the Section 7 application filed on 19.07.20 was barred by limitation.

Order: The Appellate Tribunal dismissed the appeal and upheld the AA's order dated 28.02.22, which rejected the Section 7 application on the grounds of limitation. NCLAT reaffirmed that the limitation period for initiating CIRP is non-negotiable and must be calculated from the actual date of default, which was 01.10.12 in this matter.

Case Review: *Appeal Dismissed.*

Himatsingka Seide Ltd. vs. Textile Professional LLP CP (IB) No. 886/MB/2022. Date of NCLT's Judgement: March 21, 2025.

Facts of the Case

The present case concerns an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Himatsingka Seide Limited (hereinafter referred as 'Operational Creditor') seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Textile Professional LLP (hereinafter referred as Corporate Debtor).

The application, filed on 27.07.2022, was premised on the alleged default in payment of ₹1,29,07,257.60, which includes interest of ₹8,78,383.60 at 18% per annum from due dates till 12.05.2022. This claim arises out of five unpaid invoices raised by the Operational Creditor between December 2021 and January 2022 for supply of cotton fibre to the CD. The dispute traces back to an arrangement wherein the OC agreed to supply cotton fibre and bear the conversion charges to be processed by Shree Gajanan Sahakari Soot Girni Ltd., the consignee nominated by the CD. As per the agreed terms, payments were to be made within 30 days of invoice dates, failing which interest at 18% per annum would apply. Despite several invoices being raised, the CD defaulted on payment, prompting the issuance of a demand notice on 13.05.2022.

In response, the CD refuted the debt, alleging a pre-existing dispute over both the qualities of goods supplied and unresolved conversion charges, asserting that it had acted merely as a facilitator. It claimed the goods were of inferior quality and that it had to bear the cost of conversion due to a default by the OC. It also claimed that mediation was attempted, with a meeting held on 06.04.2022, minutes of which were drafted (though unsigned), and legal proceedings were subsequently

initiated by the CD in other forums, including a case under the Maharashtra Cooperative Societies Act and a writ petition before the Bombay High Court. The main issue raised before the Adjudicating Authority is: (i) Whether there is preexisting dispute between the parties?

NCLT's observations

The AA noted that the crux of the matter lay in determining whether a pre-existing dispute existed prior to the issuance of the demand notice. Despite the Operational Creditor's assertion that the CD accepted the goods without demur, the AA found on record several email correspondences dating back to January 2022 indicating dissatisfaction over the quality of goods and delays in resolving payment issues with the consignee. The AA acknowledged that while the CD's reply to the demand notice was received after the statutory 10-day period, such delay did not bar the Debtor from substantiating pre-existing disputes through other records. It relied on precedent from *Brand Realty Services Ltd. v. Sir John Bakeries India Pvt. Ltd* (2020)., wherein the Hon'ble NCLAT held that absence of a timely reply under Section 8(1) IBC does not preclude the CD from producing evidence of pre-existing disputes before the AA. Furthermore, the AA observed that the CD had promptly initiated parallel proceedings (including civil recovery claims and writ petitions) and had furnished uncontroverted communications showing that the parties had engaged in a mediation process. The OC neither denied nor effectively refuted these developments. Consequently, the AA held that a genuine and pre-existing dispute had been raised prior to the application under Section 9.

Order/Judgement: The AA dismissed the application filed by Operational Creditors on the grounds of a preexisting dispute. It clarified that the order would not prejudice the Operational Creditor's right to pursue its claims before any other judicial forum.

Case Review: *CIRP Application Dismissed.*

IBC News

Parliamentary Panel suggests 4-point action plan to improve IBC outcomes

The Standing Committee of Parliament on Finance has reportedly directed the Ministry of Corporate Affairs (MCA) to implement a direct submission system for resolution plans through a central online portal. This move aims to ensure confidentiality in the submission process, preventing any undue advantage for certain parties, the Committee reportedly stated in its latest report on MCA's demands for grants for 2025-26. In addition to this, the four-point action plan also includes Enhancing the Role and Accountability of Resolution Professionals; Transparent Monitoring of Case Resolution Timelines and Review of the Committee of Creditors' (CoC) Structure.

Source: *Hindu Businessline, March 20, 2025.*

https://www.thehindubusinessline.com/economy/standing-committee-on-finance-recommends-direct-submission-system-for-ibc-resolution-plans/article69352602.ece

Acquisition of Reliance Capital completed

IndusInd International Holdings Ltd (IIHL), the Successful Resolution Application (SRA) of Reliance Capital, has reportedly claimed that it has completed the transaction to acquire Reliance Capital IBC by transferring the entire bid amount to lenders. "The journey for value creation would now begin. The value of the Reliance Capital business on a conservative basis would be ₹20,000 crore," said IIHL to the media. The Resolution Plan of IIHL was finally approved in April 2023 in which it had offered ₹9,650 crore to acquire Reliance Capital.

Source: *The Hindu, March 18, 2025.*

https://www.thehindu.com/business/iihl-completes-reliance-capital-acquisition-entire-bid-amount-transferred/article69345868.ece

No tax demand after approval of the Resolution Plan: Supreme Court

The Supreme Court has ruled that no tax demand, even if raised by the income tax (IT) department, can be allowed to be included in a resolution plan after its approval by

the Adjudicating Authority (AA/NCLT). The Apex Court also clarified that all claims must be submitted to and decided by professional resolution so that a prospective resolution applicant knows exactly what has to be paid, so that it may then take over and run the business of the Corporate Debtor.

"A successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted, as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor," said the Supreme Court in a case of insolvency against Tehri Iron and Steel Casting Limited. In this case, the resolution plan was approved by the NCLT on May 21, 2019. Thereafter, the Income Tax (IT) department issued demand notices dated December 26, 2019, and December 28, 2019, under the IT Act concerning assessment years 2012-13 and 2013-14, respectively, in respect of the Corporate Debtor. The NCLT and NCLAT, however, sided with the I-T department. The Apex Court observed that no claims about the demands for the two assessment years were submitted.

Source: *Business Standard, March 21, 2025.*

https://www.business-standard.com/finance/news/no-tax-demand-can-be-raised-after-resolution-plan-approval-says-sc-125032101110_1.html

Cheque Bounce Case Barred Against Ex-Director Post IBC Moratorium: Supreme Court

The Supreme Court has ruled that cheque bounce proceedings under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) cannot continue against

an ex-director if the cause of action arises after the imposition of a moratorium under the Insolvency and Bankruptcy Code, 2016 (IBC). A bench comprising Justices Sudhanshu Dhulia and Ahsanuddin Amanullah set aside the Punjab & Haryana High Court's decision, which had refused to quash proceedings against the appellant. The Court distinguished this case from *P. Mohan Raj vs. M/S Shah Brothers Ispat Pvt. Ltd.* (2021), clarifying that in Mohan Raj, the cause of action arose before the moratorium, while in this case it arose after. The Apex Court emphasized that upon the imposition of a moratorium, the corporate debtor's management vests with the Insolvency Resolution Professional (IRP), and ex-directors cannot be held liable for acts they are no longer authorized to undertake. Since the demand notice in the present case was issued after the moratorium was imposed, the liability did not extend to the appellant. Highlighting that the offence under S.138 NI Act arises only after the lapse of 15 days from a demand notice, the Court concluded that the appellant could not be prosecuted. Accordingly, it quashed the cheque dishonour case against the appellant, reinforcing the legal protection granted under IBC's moratorium provisions.

Source: *Livelaw.in, March 18, 2025.*

https://www.livelaw.in/supreme-court/no-s138-ni-act-case-against-ex-director-of-company-when-cause-of-action-arose-after-ibc-moratorium-was-declared-supreme-court-286691

NCLT directs RP to invite single Plan for entire JAL

Initially, the Resolution Professional (RP) had invited Expressions of Interest (EOIs) under two options, Option I: Resolution of Jaiprakash Associates Ltd. (JAL) as a whole, as a going concern, and Option II: Resolution of specific business clusters separately, with JAL's operations categorized into 12 clusters. However, the NCLT has directed that only Option I will proceed, meaning all EOIs must now be invited for the entire company. Option II has been set aside, and any EOI submitted for specific clusters will not be considered.

Source: *CNBCTV19.COM, March 10, 2025.*

https://www.cnbctv18.com/business/companies/nclt-directs-jaiprakash-associates-to-continue-with-single-resolution-plan-19571145.htm

Builders can't use IBC to evade penalties: Supreme Court

In a landmark judgement, the Supreme Court has held that the real estate corporate debtors undergoing insolvency process cannot evade monetary penalties imposed for consumer rights violations. The court clarified that penalties imposed by consumer courts serve a regulatory function and do not constitute "debt" under the Insolvency and Bankruptcy Code, 2026 (IBC).

"Homebuyers, many of whom invest their life savings in purchasing residential units, are already in a precarious position due to delays in possession and breaches of contractual obligations. Staying penalties that serve as deterrence against such unfair practices would render consumer protection mechanisms ineffective and erode trust in the regulatory framework," said the Court. The judgement came in the matter of the proprietor of East & West Builders (RNA Corp Group Co), who had sought relief from penalties imposed by the National Consumer Disputes Redressal Commission (NCDRC) on the grounds that an application under Section 95 of the IBC had filed against her, triggering an interim moratorium under Section 96 of the IBC. The NCDRC had in 2018 imposed 27 penalties on the proprietor for failing to deliver possession of residential units within the agreed timeline, causing distress to homebuyers. "The IBC is not a tool for escaping liability arising from statutory obligations. The penalties imposed by the NCDRC are meant to ensure compliance with consumer laws and cannot be equated with a recoverable financial debt," said the Supreme Court.

Source: *Hindustan Times, March 05, 2025.*

https://www.hindustantimes.com/india-news/builders-can-t-use-insolvency-to-evade-penalties-top-court-101741114940426.html

Attachment under the BUDS Act does not have precedence over proceedings under SARFAESI Act and IBC: Kerala High Court

The Kerala High Court has held that the proceedings under the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and the Insolvency and Bankruptcy Code,

2016 (IBC) will have superseding effects on proceedings of attachment under the Banning of Unregulated Deposit Schemes Act (BUDSA). This judgement was delivered in a case wherein the Appellant filed a writ petition seeking directions to the Respondent to register the Sale Certificate issued by it in terms of the provisions contained in the SARFAESI Act 2002 and consequently, for directions to the revenue authorities to carry out the mutation of the property covered by Sale Certificate. "It is clear that the expression 'Save as otherwise provided in the SARFAESI Act 2002 or the IBC, 2016 can only mean that any action/proceeding under the SARFAESI Act and the IBC is saved from the provision providing precedence to the BUDS Act," said the Court. The Court did not accept arguments of the Government counsel to invoke the High Court's power under Article 226. This matter is not related to Writ Appeal No. 1087/2024, as that case pertains to the High Court's power under Article 226 to efface an attachment ordered by a Court without approaching the competent Court and is unrelated to the present issue, the Court further observed.

Source: *Verdictum.in, March 03, 2024.*

https://www.verdictum.in/court-updates/high-courts/kerala-high-court/hdb-financial-services-limited-vs-the-sub-registrar-2025ker14342-no-precedence-to-attachment-under-buds-act-over-proceeding-under-sarfaesi-act-and-ibc-1569891

NCLAT sets aside CIRP against Coffee Day Enterprises

The shares of Coffee Day Enterprises Ltd (CDEL), surged to their 20 percent upper circuit limit of ₹25.65 in intra-day trading on Monday, March 3, after the NCLAT, Chennai Bench dismissed insolvency proceedings against the company. The CIRP began when IDBI Trusteeship Services Ltd. (IDBITSL) moved NCLT, Bengaluru, alleging a default of ₹228.45 crore by CDEL. However, CDEL appealed against the order and the matter reached the Supreme Court which directed the NCLAT to dispose of the matter.

Source: *Livemint.com, February 27, 2025.*

https://www.livemint.com/companies/news/nclat-sets-aside-insolvency-proceedings-against-coffee-day-enterprises-11740636672582.html

Application u/s 9 of the IBC cannot be entertained when the debt is not unequivocally admitted by the CD: NCLAT

The NCLAT has held that a Section 9 Application by Operational Creditor (OC) must be denied if the OC receives notice of dispute or if a dispute is noted in the Information Utility in accordance with section 9(5)(ii) of the IBC. In this case, the OC sent a demand notice under section 8 of the IBC to the Corporate Debtor (CD). However, the CD responded to the notice contesting the OC's claim. Thereafter, the OC sent out a payment reminder and then filed an application under section 9 of the IBC. Subsequently, the NCLT passed an order of insolvency against the CD which was challenged in the Appellate Tribunal. "When Operational Creditor seeks to initiate insolvency process against a CD, it can only be done in clear cases where no real dispute exists between the two," said the Court.

Source: *Taxscan.in, March 01, 2025.*

https://www.taxscan.in/application-u-s-of-ibc-must-not-be-entertained-when-debt-is-not-unequivocally-admitted-by-corporate-debtor-nclat/494126/

Benches assigned to newly appointed NCLT Members

The Union government has reportedly assigned benches to 21 of the 24 newly appointed judicial and technical members of the National Company Law Tribunal (NCLT). These members were appointed to 11 NCLT Benches across the country to fill the vacant positions. However, the delay in assigning the benches was reportedly due to the non-completion of the induction program. The vacancies in the NCLT adversely affect the resolution of cases. According to the IBBI, the recovery rate for creditors stands at 49.2% if the CIRP is concluded within 330 days. It reduces to 36% if the CIRP process concludes between 330-599 days; and beyond 600 days, recovery stands at mere 26.1%.

Source: *Financial Express, March 02, 2025.*

https://www.financialexpress.com/business/industry-21-new-nclt-members-get-to-work-after-sc-rap-over-delays-3764797/

Challenge to the Resolution Plan cannot be maintained on behalf of one lone homebuyer: NCLAT

The Appellate Tribunal has held that one lone homebuyer has to go with the majority decision of the homebuyers and cannot be allowed to challenge the approval of Resolution Plan which is law settled by the Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Limited & Ors.* The home buyer had challenged the Resolution Plan on the grounds that the Plan is conditional and contingent which lacks necessary ingredients required under Regulation 38. This ruling came in the case of *Jai Prakash Keswani v. MB Malls Pvt. Ltd & Ors.* Deciding on an IA filed by the promoter who had challenged the approval of the same Resolution Plan on the grounds of viability, feasibility and implementation, the Appellate Tribunal held that it is the commercial wisdom of the Committee of Creditors (CoC) to take a decision on viability and feasibility of the Plan. The CoC, having approved the Plan with 100% voting, deemed it to have adverted to the viability and feasibility of the Resolution Plan, said the Court. On the question of whether the Plan is implementable within the specified period, the Appellate Tribunal clarified that such a question can be raised after expiry of the period contemplated in the Plan. The question of whether the Plan is not implementable within specified period is not an issue which can be decided at the time of approval of the Plan, said the Court.

Source: *Livelaw.in, February 23, 2025.*

https://www.livelaw.in/ibc-cases/nclat-lone-homebuyer-cant-challenge-approval-of-resolution-plan-284744

Financial creditors of Anil Ambani-promoted Reliance Big Pvt. Ltd. to face a 99% haircut

NCLT has approved the Resolution Plan for Reliance Big Pvt. Ltd. submitted by Manoj Kumar Upadhyay through his affiliate firm, ACME Cleantech Solutions Private Limited. As per the plan the creditors will get ₹3.5 crores against the total admitted claim of ₹999 crores. The entire amount of the Resolution Plan will go to secured financial creditors while unsecured financial creditors, who submitted claims totaling ₹515 crore, will not receive any payments. The plan also includes an upfront cash infusion of ₹4 crore in the form of equity. The Corporate Debtor, which is engaged in radio and television activities, including the production of radio and TV programs, entered the CIRP in August 2023 after failing to maintain security cover for its debenture obligations.

Source: *The New Indian Express, February 20, 2025.*

https://www.newindianexpress.com/business/2025/Feb/20/creditors-take-99-haircut-in-reliance-big-insolvency-resolution-case

There is a visible trend reversal in the number of companies going into liquidation under the code: IBBI

Chairperson In 2017-18, for every corporate debtor (CD) resolved, five CDs went into liquidation. By 2024-25, the ratio had improved to 1.3 CDs per resolved entity, said media reports citing the IBBI Newsletter for October – December 2024. "With many distressed entities still entering liquidation, enhancing recoveries for claimants is crucial. The liquidation process needs further refinement to improve outcomes," said Mital. Despite these gains, the recoveries from completed liquidations reportedly remained significantly lower than those under the corporate insolvency resolution process (CIRP). IBBI has been amending liquidation regulations periodically to increase efficiency, said the media reports.

Source: *The Telegraph, February 17, 2025.*

https://www.telegraphindia.com/business/positive-shift-in-corporate-resolutions-under-insolvency-and-bankruptcy-code-ibbi/cid/2083985#goog_rewarded

CCI's approval must in merger cases before CoC's voting on Resolution Plan: SC

The Supreme Court of India has ruled that Section 31(4) of the Insolvency and Bankruptcy Code (IBC) makes it clear that in cases involving combinations (mergers/acquisitions), prior approval from the Competition Commission of India (CCI) is a prerequisite before the Committee of Creditors (CoC) votes on a resolution plan. By enforcing this requirement, the judgment prevents potential anticompetitive outcomes and ensures compliance with the legislative intent of both the IBC and the Competition Act. The Apex Court also clarifies

that IBC, and the Competition Act must operate in alignment to maintain investor confidence. This ruling highlight that competition law considerations cannot be bypassed in insolvency proceedings, particularly when market dominance is at stake. The verdict came in the case involving AGI Greenpac's acquisition of Hindustan National Glass and Industries Ltd. (HNGIL), which was challenged by Independent Sugar Corporation Ltd.

Source: *Insolvency Tracker, February 10, 2025.*

https://insolvencytracker.in/2025/02/10/sc-upholds-prior-cci-approval-mandate-in-hngil-cirp-quashes-agi-greenpacs-resolution-plan/

IBBI proposes 'mini group insolvency' to streamline resolution of interconnected entities

The Discussion Paper issued by the IBBI highlights the inefficiencies, escalated costs and conflicts arising from the absence of a structured approach when multiple related entities undergo CIRP simultaneously. This initiative is being viewed as a "mini group insolvency" mechanism, laying the groundwork for a more comprehensive group insolvency framework under the IBC. Recent judicial precedents in cases such as Videocon Industries and SREI Infrastructure Finance have underlined the need for a more sophisticated approach to handling interconnected corporate entities. The proposed mechanism includes provisions for joint hearings, appointment of a common RPs, information sharing protocols and coordinated timelines.

Source: *The Hindu Businessline, February 07, 2025.*

https://www.thehindubusinessline.com/economy/ibbi-proposes-mini-group-insolvency-to-streamline-resolution-of-interconnected-entities/article69188971.ece

Actor Akshay Kumar's insolvency plea against edtech firm rejected

The actor had moved the NCLT against the ed-tech company Cue Learn over the nonpayment of ₹4.83 crore as part of a 2021 endorsement agreement, terming the dues as Operational Debt. However, the tribunal observed that his claims did not qualify as Operational Debt under the Insolvency and Bankruptcy Code, 2016 (IBC). "We conclude that the application filed by the applicant under Section 9 of the Code for initiating CIRP (Corporate Insolvency Resolution Process) against the Respondent is not maintainable and stands dismissed," said the Adjudicating Authority (AA). The Operational Debt, under the IBC, refers to money a company owes for goods or services it has received. It includes unpaid bills for supplies, rent, or salaries.

Source: *Mint, January 22, 2025*

https://www.livemint.com/companies/news/nclt-rejects-akshay-kumar-s-insolvency-plea-against-edtech-cue-learn-11737545079375.html

NCLT approved Resolution Plan for PMC Pvt. Ltd.

The Resolution Plan of Purulia Metal Casting (PMC) Pvt. Ltd amounting ₹55.51 crores by DD International Pvt. Ltd., the Successful Resolution Applicant (SRA), was already approved by the Committee of Creditors (CoC) with an 87.16% majority vote. The RP has been directed to transfer all records to the SRA within 30 days. The SRA must secure regulatory approvals (e.g., land surveys, permits etc.) within 1 year. Noncompliance by the SRA could result in forfeiture of the ₹5.56 crore performance guarantees.

Source: *Business Standard, January 16, 2025.*

https://www.business-standard.com/content/press-releases-ani/nclt-approves-resolution-plan-for-rite-builtec-private-limited-125011601349_1.html

IRP acting on behalf of the CD represents the 'Promoter' and is subject to the same obligations under Section 43(5) of RERA Act: High Court

A double bench of the Delhi High Court has held that the Interim Resolution Professional (IRP) representing the company itself, that is, the "Promoter" and therefore, is to be considered as a "Promoter" for the purposes of the appeal and the application of provisions of Section 43(5) of the RERA.

The Court has ruled that the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC), does not exempt a promoter from complying with the mandatory pre-deposit requirement under Section 43(5) of the Real Estate (Regulation & Development) Act,

2016 (RERA). Further, citing the NCLAT judgement in the matter of *Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd.* (2020) wherein it was clarified that insolvency process against a real estate company is limited to a project as per approved plan by the Competent Authority and not the other projects which are separate at other places for which separate plans approved, the High Court clarified that the Appellant cannot seek any benefit of the moratorium that has been issued by the NCLT for seeking an exemption from making the pre-deposit in terms of Section 43(5) of the RERA. The Appellant had claimed that the petition filed by the IRP cannot be considered as an appeal filed by a "Promoter" and, therefore, the rigours of Section 43(5) of the RERA would not be applicable.

Source: *Ibclaw.in, January 27, 2025.*

https://shorturl.at/sclHw

The issue of maintainability of application under Section 7 of the IBC can either be decided separately or with other substantive issues: NCLAT

The Principal Bench of NCLAT, New Delhi has held that although the Adjudicating Authority (AA) is not obligated to decide the question of maintainability in a Section 7 application separately, it may choose to decide such objections separately. "Justice would be served if both parties are allowed to present their arguments on merits therefore it was held that although the issue of maintainability stands resolved in favor of the applicant, other issues with respect to debt and default can be decided by the Adjudicating Authority on merits by providing opportunity to both the parties to lead their evidence," observed the NCLAT in the matter of *Pioneer Urban Land & Infrastructure Ltd. v. Presidia Araya Residents Welfare Association* (2025). In this case, the respondent filed an application under Section 7 of the IBC before NCLT seeking initiation of the insolvency process against the Appellant (Corporate Debtor). The Appellant raised objections with respect to maintainability of the application which were agreed to be heard by the AA. After completing the hearing, the AA held the application to be maintainable. Before the NCLAT, the Appellant submitted that while deciding the issue of maintainability, the AA unnecessarily went on to decide other issues on merits thereby precluding the Appellant from raising them in further proceedings. However, the respondent argued that no error was committed by the AA as sufficient opportunity of being heard was provided to both the parties.

Source: *Livelaw.in, January 21, 2025.*

https://www.livelaw.in/ibc-cases/issue-of-maintainability-application-us-7-of-ibc-can-be-decided-separately-by-adjudicating-authority-nclat-281545

International Development on Insolvency Law
From Around the World

DNA testing company "23 and Me" files for bankruptcy in the USA

According to media reports, the $50 million company has filed for Chapter 11 bankruptcy protection to sell itself. Its co-founder and CEO Anne Wojcicki resigned after multiple failed takeover bids. 23andMe, whose saliva-based test kits help customers learn about their ancestry, had cut about 40%, or 200 employees, of its workforce and stopped development of all its therapies as part of a restructuring program announced in November last year. The company's last offer was for $0.41 per share, an 84% cut from an offer in the previous month since her private equity partner in that bid had walked after the board's rejection.

For more details, please visit: *https://www.investing.com/news/stock-market-news/dna-testing-firm-23andme-files-for-chapter-11-bankruptcy-to-sell-itself-3943486*

Indonesia textiles giant Sritex in talks with investors to lease assets following bankruptcy

PT Sri Rejeki Isman (Sritex), the leading textile firm in Indonesia is reportedly in talks with potential investors to take over assets under a lease scheme. The company was declared bankrupt at the end of last year as it struggled to service its debts, which reached $1.6 billion in June. It stopped operations on March 1 after failing in its appeal against the bankruptcy ruling, said media reports. About 10,000 Sritex workers were facing layoffs due to bankruptcy, several local media outlets reported. The lease option might also create an opportunity for Sritex's workers to be rehired, said the Company.

For more details, please visit: *https://www.reuters.com/markets/deals/indonesia-textiles-giant-sritex-talks-with-investors-lease-assets-following-2025-03-03/*

U.S. carmaker Tesla will acquire parts of the insolvent German high-tech parts maker Manz AG

This acquisition will reportedly include more than 300 employees at its site in Reutlingen city in the southwest. According to media reports, the deal marks

a wider presence by Tesla in Germany, where it runs a manufacturing site near Berlin, even after CEO Elon Musk endorsed the far-right party AfD, which mainstream parties have refused to work with due to its extreme positions. Tesla sold almost 60% fewer cars in Germany in January than a year earlier, as the U.S. electric vehicle maker faces a test of popularity amid Musk's U.S. political involvement.

For more details, please visit: *https://www.reuters.com/business/autos-transportation/struggling-e-truck-maker-nikola-files-chapter-11-bankruptcy-protection-2025-02-19/*

US Electric Vehicle (EV) maker Nikola files for Bankruptcy

Nikola, an EV Startup, has filed for Chapter 11 bankruptcy protection and would pursue a sale of its assets, said media reports. The latest electric-vehicle maker is reportedly to stumble after grappling with tepid demand, rapid cash burn and funding challenges. The company went public during the pandemic and started out making battery-powered semi-trucks and pivoted them to electric trucks that use hydrogen. The stock reportedly fell about 38% on Wednesday, valuing the company at less than $50 million which was about $27 billion in 2020.

For more details, please visit: *https://www.reuters.com/technology/us-ev-startups-under-spotlight-nikola-files-bankruptcy-2025-02-19/*

Craft retailer Joann seeks court permission for closure of 500 stores amid bankruptcy

According to media reports, Craft retailer Joann has sought the court's permission to close 500 stores across the United States as part of its ongoing bankruptcy process. In January, Joann filed for Chapter 11 protection in Delaware as inventory shortages and increased competition forced the retailer into bankruptcy for the second time in less than a year. "A careful analysis of store performance and future strategic fit for the company determined which stores should remain operating as usual at this time," said Joann. The retailer, founded in 1943 and known for selling sewing, arts and crafts, as well as home décor products, currently has 800 stores in 49 states, with 19,000 employees.

For more details, please visit: *https://www.reuters.com/en/craft-retailer-joann-seeks-court-permission-closure-500-stores-amid-bankruptcy-2025-02-12/*

Business start-ups rise as insolvency-related activity falls across Yorkshire and Humber: Report

According to the research, there has been 35% increase in new business startups in these two regions of the United Kingdom in January, with insolvency related activity falling by 30% in the same month. The reported increase in business start-ups in Yorkshire and the Humber, from 3,235 new businesses established in December, to 4,375 in January, comes after a 16% fall in the number of new start-ups at the end of last year. Insolvency-related activity, which includes liquidator and administrator appointments and creditors' meetings, also fell, following a small rise, of 5%, in December 2024.

For more details, please visit: *https://www.rotherhamadvertiser.co.uk/community/business-start-ups-rise-by-a-third-as-insolvency-related-activity-falls-across-yorkshire-and-humber-4983015*

Brazil's Agribusiness Bankruptcies rose by 38.5% in 2025

Brazil's agribusiness sector saw 295 companies under court-supervised reorganization in Q4 2024, a 38.49% rise from the previous year, according to a report. Poor governance, financial mismanagement, and commodity price fluctuations have driven the crisis, with soybean producers (34%), cattle ranching (20%), and sugarcane growers (15%) most affected. Agrogalaxy was among the biggest bankruptcy cases, with fertilizer distributors also struggling. Goiás led in filings (53), followed by Rio Grande do Sul (50), São Paulo (47), and Mato Grosso (46), said the Report.

For more details, please visit: *https://valorinternational.globo.com/agribusiness/news/2025/02/03/bankruptcies-in-brazils-agribusiness-expected-to-rise-in-2025.ghtml*

Container Store gets USA court's approval for bankruptcy restructuring

While approving the bankruptcy restructuring for Container Store (Company) the Court has allowed the retailer to cut $88 million in debt. The court also overruled the objections of the U.S. Justice Department's bankruptcy watchdog to the deal's legal protections for the company's officers, directors, and lenders, finding that the company had obtained consent from its creditors. The Company, which filed for bankruptcy in December due to $243 million in debt, will exit from bankruptcy as a private company owned by lenders including investment firms Golub Capital and Glendon Capital Management. They sell storage solutions, shelving, and custom closets.

For more details, please visit: *https://www.reuters.com/legal/litigation/container-store-gets-court-approval-bankruptcy-restructuring-2025-01-24/*

Planetary Insolvency: Global GDP could face 50 per cent loss between 2070 and 2090 due to climate shocks, Report

The global economy could face 50% loss in gross domestic product (GDP) between 2070 and 2090 from the catastrophic shocks of climate change unless immediate action by political leaders is taken to decarbonize and restore nature, according to a new report. This report has hugely increased the estimate of risk to global economic wellbeing from climate change impacts such as fires, flooding, droughts, temperature rises and nature breakdowns. The report was published after data from the EU's Copernicus Climate Change Service (C3S) showed climate breakdown drove the annual global temperature above the internationally agreed 1.5-degree Celsius target for the first time in 2024, supercharging extreme weather.

For more details, please visit: *https://www.businessgreen.com/news/4396351/planetary-insolvency-gdp-cent-hit-unless-world-acts-curb-emissions-report-warns*

Autonomous lifts LA fire insured loss estimate to $25bn, warns of potential FAIR Plan insolvency

Analysts at Autonomous have increased their insured loss estimate for the ongoing Los Angeles wildfires by 92% to $25 billion, forecasting a significant loss of up to $8 billion for California's FAIR Plan. As the fires continue to burn and affect over 40,000 acres, with more than 12,000 structures reported to have been either damaged or destroyed, Autonomous has updated its insurance industry loss estimate from the $13 billion published late January 08, 2025. Now, the firm is estimating insured losses of $18 billion from the affluent Pacific Palisades neighbourhood fires, which according to officials damaged or destroyed over 5,300 structures.

For more details, please visit: *https://www.reinsurancene.ws/autonomous-lifts-la-fire-insured-loss-estimate-to-25bn-warns-of-potential-fair-plan-insolvency/*

Business Bankruptcies in Canada Soar to 15-Year high amid

Economic Pressures Business bankruptcies in Canada hit a 15-year high in Q3 2024, with 1,312 filings, marking a significant rise since the 2009 financial crisis. Ontario and Quebec saw year-over-year increases of 67% and 40%, respectively. The surge follows the withdrawal of pandemic-era financial support, with 25% of small businesses failing to repay loans under the "Canadian Emergency Business Account" program. Insolvencies spanned multiple sectors, with construction up 37% and food services rising 32%. Oil and gas bankruptcies reached a three-year high due to declining prices. Analysts cite weak economic conditions, high inflation, and elevated interest rates as drivers, though the Bank of Canada's recent rate cut to 3.25% may offer some relief.

For more details, please visit: *https://shorturl.at/u1FBI*

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

(…..Continue from the previous edition)

2.4 Contents of Notice

h) The notice of the meeting shall-

i. State the process and manner for voting by electronic means and the time schedule, including the time period during which the votes may be casted;

ii. Provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in a secure manner; and

iii. Provide contact details of the person who will address the queries connected with the electronic voting.

i) Notice of CoC meeting enclosing agenda should separately record the items to be discussed and items to be voted upon in the meeting for better understanding as a whole.

3. Quorum:

a) A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent (33%) of the voting rights are present either in person or by video conferencing or other audio and visual means.

Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.

b) Where a meeting of the committee cannot be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.

c) In the event a meeting of the committee is adjourned in accordance with sub-regulation (2), the adjourned meeting shall be quorate with the members of the committee attending the meeting.

Note: The meeting shall be considered as conducted unless and until attended by at least one member from COC, participants shall not be counted for such purposes.

- Quorum shall be present throughout the meeting.
- Quorum shall be present not only at the time of commencement of the meeting but also while transacting business.

4. Appointment of Authorized Representative

4.1 Appointment of representative duly authorized by financial creditor to attend CoC meetings on their behalf

a. Every notice shall be accompanied by a form for appointment of representative duly authorised by financial creditor (form) and shall contain the name of the Corporate Debtor and the date of the meeting A Copy of Form for Appointment of Authorised Representatives is enclosed as Annexure – D.

b. The form must not be sent out with the name or description of any other person inserted on it.

c. The form is valid only if it is presented by the time stated in the notice convening the meeting.

d. The form which is incorrect, or incomplete will be considered invalid.

e. The Form which is unsigned, or which do not explain the authority under which it is signed, will, therefore, be invalid. However, the form should not be rejected simply because of a minor error in its completion provided:

i. The form sent with the notice of the meeting (or a substantially similar form) has been used.

ii. The identity of the creditor and the authorised representative, the nature of his/her authority and any

instructions given to the authorised representative are clear.

f. Resolution Professional will be the deciding authority in what is to be considered a 'Minor error' in the form.

g. The RP should intimate to the applicant who wish to be appointed as representative authorised by the financial creditor, in cases where the form is not being accepted for being invalid.

h. A person may be authorised to represent a creditor which is a body corporate. Where a person is so authorised, he must produce to the RP a copy of the Board resolution from which he derives his authority. The copy of the resolution shared must be signed by the Board of Directors of the Company or Company Secretary of the Company.

4.2 Authorized Representatives for class of Creditors

The authorised representative for a class of creditors shall attend all the meetings of COC either in person or through video conferencing or other audiovisual means.

4.3 Voting by Authorised Representative:

Where the Corporate Debtor has at least ten financial creditors in a class, the resolution professional shall offer a choice of three insolvency professionals and a creditor in the class may indicate its choice of an insolvency professional, from amongst the three, to act as its authorised representative. The insolvency professional, who is the choice of the highest number of creditors in the class, is appointed as the authorised representative of the creditors of the respective class. The authorised representative shall circulate the agenda to creditors in a class, and may seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee;

Provided that creditors shall have a time window of at least twelve hours to submit their preliminary views, and the said window opens at least twenty-four hours after the authorised representative seeks preliminary views;

Provided further that such preliminary views shall not be considered as voting instructions by the creditors.

The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of subsection (3) or sub-section (3A) of section 25A, as the case may be.

The procedure for voting and representation will be in accordance with Section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 16A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations).

5. Participation through video conferencing

The notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with Regulation 23 of IBBI (CIRP) Regulation 2016.

The Resolution Professional shall make necessary arrangements to ensure uninterrupted and clear video or audio and visual connection. The Resolution Professional shall take due and reasonable care:

a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures.

b) to ensure availability of proper video conferencing or other audio and visual equipment or facilities for providing transmission of the communications

c) for effective participation of the participants at the meeting.

- to store for safekeeping and marking the physical recording(s) or other electronic recording mechanism as part of the records of the corporate debtor;
- to ensure that no person other than the intended participants attends or has access to the proceedings of the meeting through video conferencing or other audio and visual means; and
- to ensure that participants attending the meeting through audio and visual means are able to hear and see, if applicable, the other participants clearly during the course of the meeting.

Provided that the persons, who are differently abled, may make request to the resolution professional to allow a person to accompany him at the meeting.

6. Attendance Records

a) The attendance sheet should be complete in all respects and signing should be ensured within the meeting itself.

b) The attendance sheet shall contain the following particulars: serial number and date of the meeting; name of the Corporate Debtor; date of initiation of CIRP; place of the meeting; time of the meeting; names and signatures of the members of COC, the Resolution Professional and also of persons attending the meeting by special invitation and their mode of presence, if participating through electronic mode. Designation, person to whom representing, Mobile no. and Email Id of the CoC member should also be recorded in Attendance sheet.

c) The attendance sheet shall be deemed to have been signed by the members of COC participating through electronic mode, if their attendance is recorded in the attendance sheet and authenticated by the Resolution Professional.

d) When the meetings are held through electronic mode, the attendance list may be generated through the Video Conferencing software.

e) An electronic copy of all records of CoC meetings (physical and electronic) should be kept as per the Record Retention Schedule advised by IBBI from time to time.

7. Conduct of the Meeting

a) The Interim Resolution Professional/Resolution Professional acts as the chairperson of the meeting of the committee. At the commencement of a meeting, the Resolution Professional shall take a roll call when every participant attending through video conferencing or other audio and visual means shall state, for the record, the following -

i. his name;

ii. whether he is attending in the capacity of a member of the committee or any other participant;

iii. whether he is representing a member or group of members;

iv. the location from where he is participating;

v. that he has received the agenda and all the relevant material for the meeting; and

vi. that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.

b) After the roll call, the Resolution Professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.

c) The resolution professional shall ensure that the required quorum is present throughout the meeting.

d) From the commencement of the meeting till 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 facility, without the permission of the resolution professional.

e) The Authorized representative of the Suspended Board of Directors is not allowed to attend the meeting.

f) Resolution Professional has to provide Information Memorandum (IM) in electronic form to each member of the CoC along with all other relevant information.

In addition to the items mentioned in Regulation 36 of CIRP the IM must include a dedicated section detailing the following:

- Quantum of Carry Forward Losses available to the CD
- a breakdown of these losses under the specific heads as per the income tac act 1961
- the applicable time limits for utilizing these losses

- the status of MSME of the CD
- Fair Value Provided that the COC may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such nondisclosure to be beneficial for the resolution process
- The IM is mandated to be shared with the members of the COC not with the other participants and Suspended Board of Directors.

g) The Resolution Professional also has to take a confidentiality undertaking from the members of the COC before sharing information and documents relating to Resolution Applicants, valuation, financials and Resolution Plans. The details of valuation are required to be disclosed to every member of the CoC in electronic form, on receiving a confidentiality undertaking. Thus, information and documents need to be disclosed or supplied to entitled persons, in the specified manner, at the specified time, after meeting the specified requirements.

h) After the receipt of resolution plan, the RP shall provide the fair value, liquidation value and valuation reports to every member of the committee in electronic form on receiving an undertaking from the member of the committee to the effect that such member shall maintain confidentiality.

Note: The Valuation aforesaid is mandated to be shared with the members of the COC and not with the other participants and Suspended Board of Directors.

i) The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.

j) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.

7.1 List of Creditors and authorized representatives to be available for Inspection

a) The list of creditors, and authorised representatives shall be available for inspection by the persons who submitted proofs of claim ants the first meeting of Committee of creditors.

b) The Resolution Professional may place the updated list of creditors, if any, at every meeting of COC and shall be available for inspection with required documents, if needed.

c) The updated list of creditors should also be filed on the electronic platform of the Board for dissemination on its website.

7.2 Voting by the committee and Authorised Representative.

a) The actions listed in section 28(1) shall be considered in meetings of the committee by a voting of 66%.

Note: The IRP/RP shall provide a summary of rationale for agenda item to be voted upon. The IRP/RP shall place the identified professional with the specific scope of work seeking delegation of Authority, if any and shall also ensure Independence and no conflicting interest with IRP/RP/CD/COC/PRA. IRP/RP must ensure that he/she maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such a decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of its decisions and actions.

b) Any action other than those listed in section 28(1) requiring 51% voting approval of the committee may be considered in meetings of the committee.

Note: IRP/RP must include the operational status of the corporate debtor shall seek its approval for all costs, which are part of insolvency resolution process costs.

c) The resolution professional shall take a vote of the members of the committee present in the meeting on any item listed for voting after discussion on the same.

d) The authorized representative of a particular class of financial creditors will vote in the CoC, on behalf of all financial creditors represented by him as per the decision taken by a vote of more than 50 percent of the voting share of the financial creditors of such

class, who have cast their vote. Such majority vote within a class of creditors will be counted as a 100 percent vote from that class of creditors in favour or against a voting item.

Illustration: If out of a class of 100 homebuyers, 50 or more homebuyers vote in favour of a resolution plan, then all homebuyers would be considered to have voted in favour of the resolution plan.

e) In case COC members voted physically, the IRP/RP shall maintain voting sheets and to be complete in all respect and signing should be ensured within the meeting itself on the agenda to be voted upon.

f) The voting sheet shall contain the following particulars: serial number and date of the meeting; name of the Corporate Debtor; date of initiation of CIRP; place of the meeting; time of the meeting; list of agenda to be voted upon; names and signatures of the members of CoC.

g) At the conclusion of voting at the meeting, the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision or abstained from voting.

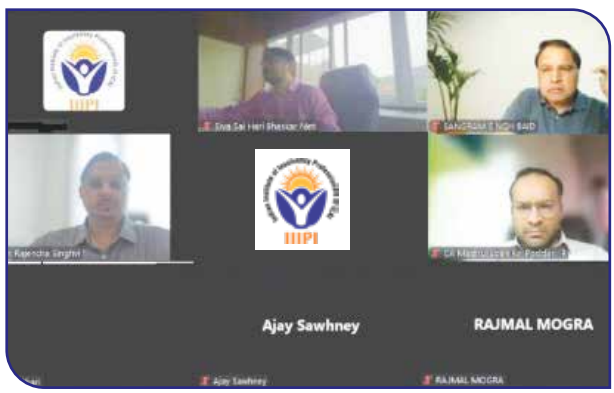
h) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved: Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting. Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

(to be continued....)

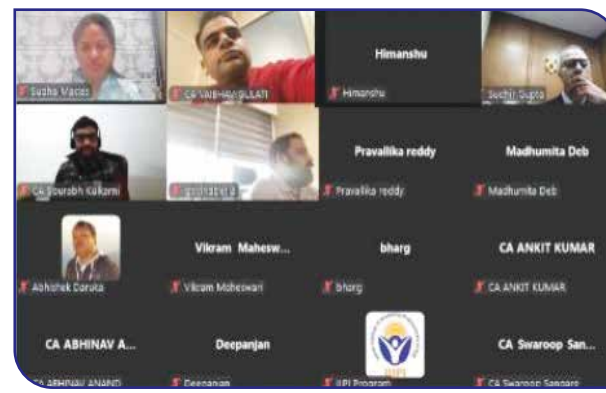
IIIPI News

Webinar on "Evolving Jurisprudence under IBC- Recent Case Laws" organized by IIIPI on December 27, 2024.

Webinar on "Interface with Enforcement Agencies and Statutory Authorities" organized by IIIPI on January 10, 2025.



13th Batch of EDP (For IPs) on Mastering "Avoidance/PUFE Forensics" Under IBC (Online) from 15th to 17th January 2025.



LIE Preparatory Classroom (Virtual) Program organized by IIIPI from 21st to 25th January 2025.

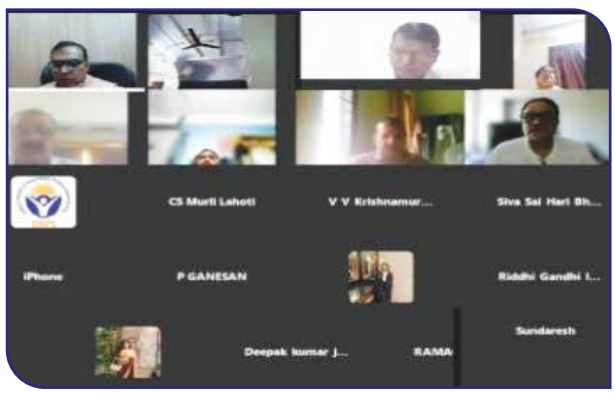
One-Day Virtual Workshop on Managing Corporate Debtors as Going Concern Under CIRP organized by IIIPI on 25th January 2025.

23rd Batch of EDP on "Managing CDs as going concern under CIRP" organized by IIIPI from 18th to 22nd February 2025.

IIIPI News

Webinar on "Resolution in Real Estate Sector under IBC" organized by IIIPI on February 21, 2025.

Limited Insolvency Examination Preparatory Classroom Program (Virtual) organized by IIIPI from 25th February to 01st March 2025.



One-Day Virtual Workshop on "Managing Corporate Debtors as going concern under CIRP" organized by IIIPI on March 08, 2025.

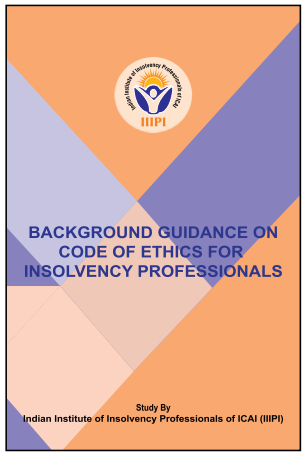
2nd Batch of EDP on Cross Border Insolvency (Online) organized by IIIPI from 11th to 12th March 2025.

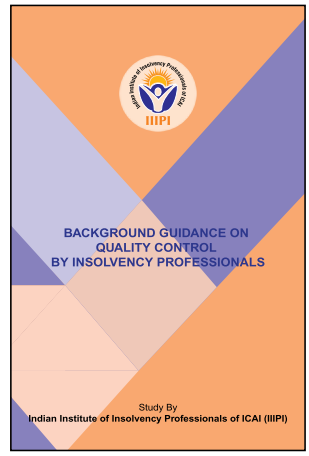
One Day Virtual Workshop "Avoidance/PUFE Forensics under IBC" organized by IIIPI on March 22, 2025.

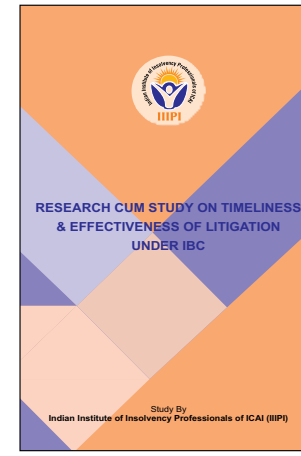
National Conclave on Insolvency and Bankruptcy Laws (NCIBL), 2025 organised by NALSAR, Hyderabad and IICA in association with IIIPI on 12th and 13th April 2025 (Hybrid Mode).

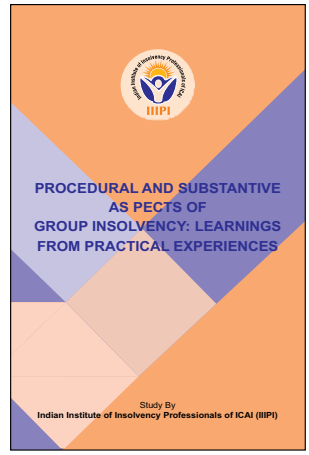
IIIPI's PUBLICATIONS

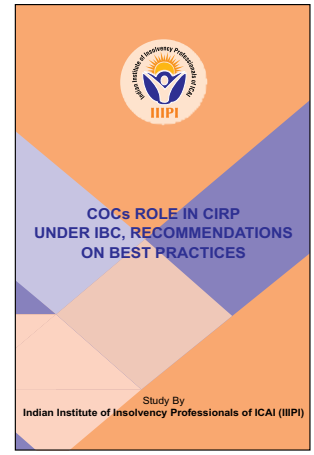
IIIPI has published several research publications based on the Reports submitted by various Study Groups. The Study Reports of some other Study Groups are under process. The soft copies (downloadable PDF) of all these publications are available on IIIPI website (https://www.iiipicai.in/publications/).

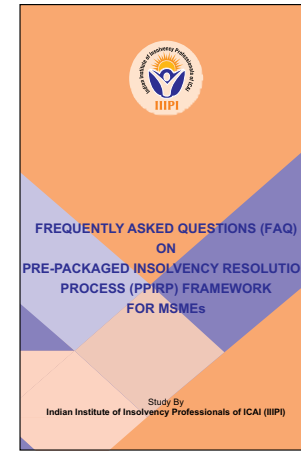


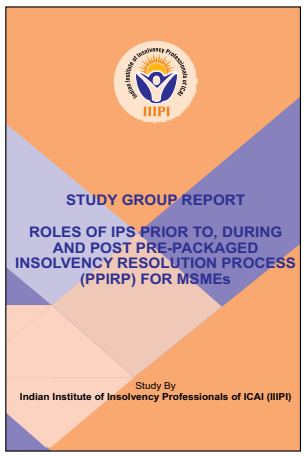


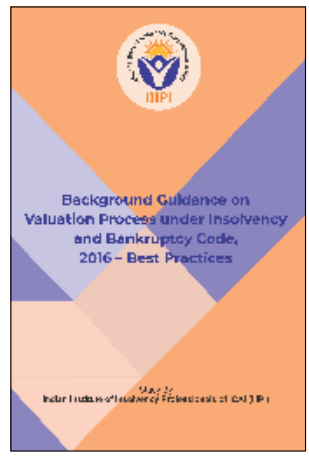


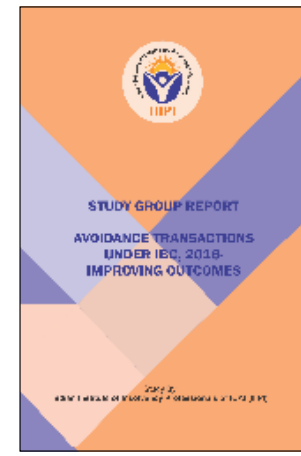


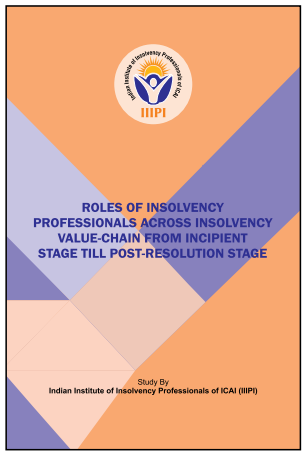


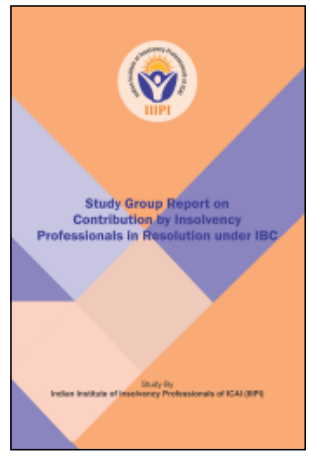


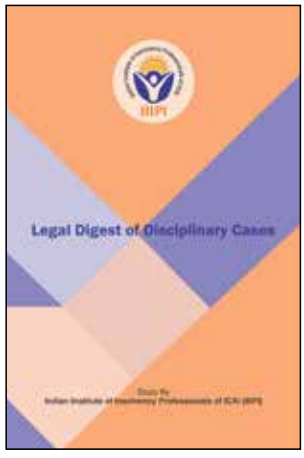


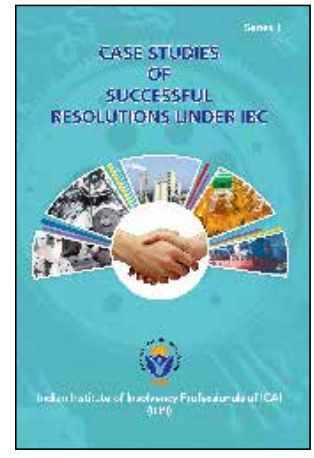


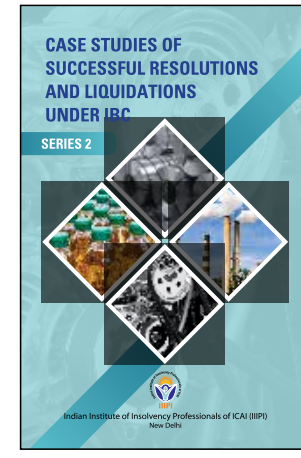


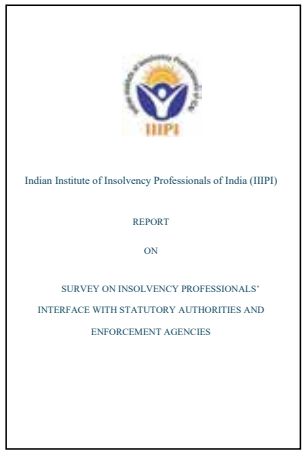


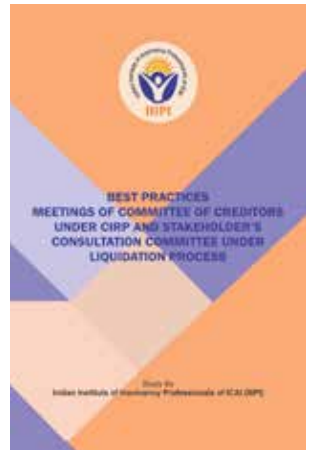






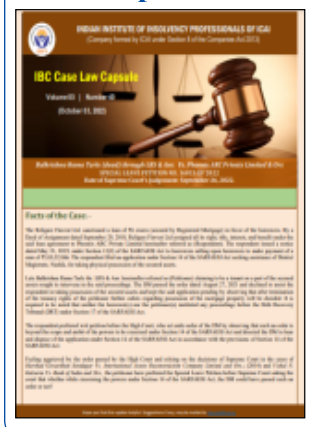






Weekly Publications

IBC Case Laws Capsules



IIIPI Newsletter

Media Coverage

Help Us to Serve You Better

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

(.....Continued from the previous edition)

Part – 1: Corporate Insolvency Resolution Process (CIRP)

1.7 Observations related to Information Memorandum

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that the Information Memorandum (IM) was not prepared within the stipulated timelines and the reason for the same was not been duly recorded in the minutes. ii. Delay in preparation of IM within the timelines specified under the Code. iii. It is observed that the Information Memorandum was placed before the CoC without obtaining a confidentiality undertaking from the recipients of IM. iv. It has been observed that the copyright for the IM provided is exclusively owned by IPE. The copyright mark on the IM indicates that IPE is the owner of all the intellectual property rights associated with the IM document leading to a conflict of interest. v. Updating of IM is not placed before the CoC. vi. Revision/updating in IM not done on changes made in the content like revised claims, and updating of financial Statements. vii. It has been observed that CIRP - 7 was not filed by IP recording the reasons for non-issuance from 92 days from Public Announcement and thereafter in every 30 days till actual issuance.	• Section 29 of the Code • Regulation 36 and 40B of IBBI (CIRP) Regulations, 2016 • Circular No. IBBI/2020-21/GN/REG070, dated 15thMarch, 2021	i. The Information Memorandum (IM) is crucial in the Corporate Insolvency Resolution Process (CIRP) for transparency and stakeholder engagement. Insolvency Professionals (IPs) must meticulously document the sharing of the IM with the Committee of Creditors and prospective resolution applicants, including confidentiality declarations. Failure to prepare or share the IM is not just a procedural lapse but has substantive implications, potentially undermining the resolution process's effectiveness. ii. IP shall intimate through revising the IM, any change in list of claims and mention the liabilities for the nonsubmitted claims for the benefit of the PRA/SRA to consider any future liability or to propose settlement in Resolution Plan. iii. IP should ensure filing of CIRP-7 in delay in issuance of IM in every 30 days till issuance of IM.

1.8 Observations related to Expression of Interest, Request for Resolution Plan (RFRP)

Observations	Relevant Provisions of Law	Remarks
i. Delay in placing the agenda before the COC for issuance of Expression of Interest (EOI). ii. No agenda placed before the COC for EOI even after a substantial period of CIRP had elapsed. iii. The minimum timelines of 15 days to submit EOI to PRA are not provided. iv. The non-eligible EOI accepted by IP without the approval of COC in the eligibility parameters and reinviting the EOI. v. The EOI submitted after the last dates provided in Form G was accepted by the IP.. vi. Non-refundable deposit was sought along with EOI/RFRP. vii. It has been observed that CIRP Form 7 was not filed by IP recording the reasons for delay in issuance of RPRP in every 30 days from the last filing till completion of event.	• Section 29A of the Code. • Regulation 36A, 36B and 40B of IBBI (CIRP) Regulations 2016 • Circular No. IBBI/2020-21/GN/REG070, dated 15th March 2021.	i. The observations may signify substantive hinderance in timely resolution. Concurrently, obtaining non-refundable Earnest Money Deposits (EMD) is not in letter and spirit of the Code. The absence of prescribed timelines for EOI submissions to the Professional Resolution Applicant (PRA) questionable on the fairness and transparency the process. Further, ineligible EOIs without COC approval may exacerbate substantive gaps, risking resolution outcomes and defeat the objective of the code. ii. IP to ensure filing of CIRP-7 in delay in issuance of RFRP in every 30 days till issuance of RFRP. iii. IP to seek approval from CoC for accepting EOI after the last date provided in Form G. iv. IP to ensure that RFRP shall not require any non-refundable deposit for submission of or along with resolution plan.

1.9 Observations related to the Resolution Plan:

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that the distribution amount to the stakeholders as per the approved resolution plan was different from the last updated list of creditors as the Resolution Plan was revised by the SRA however the plan did not include updated list of creditors and the same was placed before the AA for approval and therefore the order contained wrong details of distribution. ii. Resolution plan consists of list of creditors with admitted claim of uninvoked bank guarantee with no clarity on its dealing. iii. The RP accepted the Resolution plan of the suspended Board of Directors who are ineligible as per Sec29A of the Code. iv. The Resolution Plan submitted consisted of provision that advance amount was provided by SRA to keep CD as a going concern and the same shall be adjusted in distribution. However, if the resolution plan is not approved, no ratification was sought for Interim Finance from the CoC. Also, no such treatment of that amount was provided in the resolution plan.	• Section 29A, 30 & 31 of the Code • Regulation 37-39 of IBBI (CIRP) Regulations 2016	i. Ensuring that the resolution plan presented to the Adjudicating Authority (AA) accurately reflects the updated list of creditors is procedurally essential, as discrepancies could impact the approved distribution and unnecessary litigation which may impact the implementation of the approved Plan. ii. Additionally, as a best practice incorporating uninvoked bank guarantees as contingent claims, rather than including them in the resolution plan as it may have a substantive impact on the distribution to the creditors. iii. The evaluation of the eligibility of Prospective Resolution Applicants (PRAs) under Section 29A of the Code has a significant impact on the objectivity of the Resolution Professional (RP). The IP shall ensure all compliances for evaluating the Resolution Plan and minutise the summary of all decisions taken in cases where assistance have been taken by the IP and maintain written contemporaneous records for all decisions taken, the reason for taking the decision, and the information and evidence in support of such decisions.

1.10 Observations related to Delegation of Authority Vs. Outsourcing of Work:

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that the IP authorized his team member (part of IPE providing support services) for chairing the CoC meetings and being the signatory for all the applications filed before AA. Such an act of delegation of authority in exceptional cases without obtaining any approval u/s 28 of the Code from the COC may amount to outsourcing as these are among the key duties defined for IP under the Code. ii. It has been observed that IP appointed professionals for claim verification, Section 29A compliance, etc wherein in the absence of written contemporaneous records for exchange of communication between the RP and professional appointed demonstrating that the decision making was all time lies with IP and the appointed professional was only providing assistance/support to the IP , may amount to outsourcing. For example: The appointed professional carries out their work independently, with no feedback loop to the IP, and the IP adopts the Professional's findings without any documented independent review. This situation could be considered outsourcing, as there's no proof that the IP remained in control of the process. iii. It has been observed that relationship disclosure not filed wherein delegation of authority is sought u/s 28 of the Code for specific tasks. Delegation of specific task is an engagement of other person with/ without separate fees, which requires independence and should not inherit the risk of any conflict of interest.	• Section 18, 25 and 28(h) of the Code • Regulation 7(2) (bb) of IBBI (IP) Regulations, 2016 • Clause 23B of Schedule I of IBBI (IP) Regulations, 2016	i. Firstly, instances where delegation of authority lacks formal acknowledgment by the insolvency professional (IP) for pivotal tasks like chairing CoC meetings may substantially raise concerns of outsourcing, compromising the IP's pivotal role. ii. Secondly, appointments of professionals for crucial tasks without documented evidence of IP oversight risk diluting decision-making authority, substantially may be considered as outsourcing. iii. Additionally, failure to disclose relationships when seeking delegation of authority undermines procedural transparency. iv. Unclear delegation terms or unsanctioned professionals may pose both procedural and substantive risks. v. IP shall ensure Delegation of authority shall not amount to outsourcing and shall maintain complete independence without any conflict of interest.

i. Delegation of Authority was sought for professional appointed as Authorized Representative of IP. The Code does not provide any concept of an Authorised representative of IRP/RP which may amount to misleading communication to stakeholders. ii. Delegation of authority sought was not role/task specific but in general. Therefore scope/ role/relation of the professional in the CIRP process cannot be ascertained. The role of IRP/RP is significant in the entire CIRP and delegation to another person without specifying any role may amount to outsourcing of work.		vi. IP shall be able to always demonstrate in cases where assistance have been taken by IP, through written contemporaneous records for all decisions taken, the reason for taking the decision, and the information and evidence in support of such decisions. vii. If there is no significant difference (25%) between the two valuation reports, a third valuation is not required. Moreover, it is the duty of the Resolution Professional (RP), as per Regulation 35 of the CIRP Regulations, to obtain the valuation reports(not COC) and ensure that they comply with the provisions of the Code.

1.11 Observations related to Pre/during CIRP cost:

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that pre-CIRP dues were paid by the IP during CIRP. ii. It has been observed that due to delay in receipt of order of admission, suspended Board paid the CIRP dues, and no steps were taken by IP against the act. iii. Appointment of professionals was done by CoC, however, the cost of such professionals was made part of the CIRP cost. iv. Amount not ratified yet made part of the CIRP cost. v. It is generally observed that the costs disclosed in Form II, Form III, CIRP2 and CIRP5 are mismatched with respect to the costs appearing in the minutes of the meetings of the CoC.	• Regulation 31A, 33, 34 and 34A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with the Circular No. IBBI/IP/ 013 dated 12th June, 2018	i. Firstly, instances where pre-CIRP dues are paid during CIRP raises questions regarding payment approvals and oversight in case paid by the suspended board of directors after ICD but before IP took control and custody, may have substantive impact the objectivity and the scheme of IBC. ii. Procedural lapses, like failing to seek CoC approval for regulatory fee ratification, etc., however the same was either obtained from FC/SRA and deposited by IP to IBBI. The incorporation CIRP expenses without proper Approval in every COC may amount to Substantive lapse.

vi. In the event of withdrawal under section 12 A of the Code before the constitution of CoC it has been observed that the IPs did not submit cost details as required by Form II to be submitted with IIIPI. vii. The operational cost of the CD never placed nor apprised to the CD and the same is not disclosed in any of the Disclosure/ Compliance form II/ III, CIRP2/5. viii. The regulatory fee not placed before the CoC for ratification. ix. Pre-CIRP cost towards the appointment of professionals made by COC forming part of the CIRP cost which is in violation of the circular dated 12th June 2018. x. No approval from COC for interim funding by SRA xi. Keyman Insurance cover cost of the Suspended Board of Directors forming part of CIRP cost, Insurance was obtained from one of the COC (FC) members. This may be questionable. xii. Huge expenditure on venue conducting regular COC meeting outside the premises of CD/COC/RP/IPE. xiii. It has been observed that AA directed the IP to publish a Public Announcement in a specific newspaper, however, IP did not comply with the directions and later again published the public announcement in newspaper as directed by AA leading to an unnecessary increase in cost.		iii. Discrepancies, coupled with mismatches between disclosed costs and CoC meeting minutes, suggest substantive lapse in financial transparency and accountability. iv. The IP has to ensure all pre CIRP cost shall be considered and admitted through Claims only. v. The pre CIRP cost towards appointment of professionals shall not form of the CIRP cost. vi. The appointment of professionals by COC shall not form part of the CIRP cost. vii. The IP shall ensure to place all CIRP and operational cost before the COC for its approval in every meeting. viii. The IP shall present all agenda items in the subsequent meeting immediately after any decision of cost or cost is incurred, without delay. ix. The IP as a best practice shall ensure that the CD shall not be burdened with unnecessary/ exorbitant costs and shall endeavour to avoid costs on a venue for conducting COC meetings, if possible. The RP may prefer COC meeting in CD or his own office. x. The IP shall ensure that the Fees have been paid through the banking channel in the name of the professional appointed including valuer. xi. The IP shall include the fees Under Regulation 31A under CIRP and must intimate to the COC for the same.

		xii. It is advisable to consider the circular dated 12th June 2018 of IBBI for details regarding guidance on CIRP cost inclusion, exclusion and factors to be considered for reasonable fees. xiii. IPs must prioritize procedural diligence, promptly seeking AA intervention when face with uncharted circumstances.

1.12 Observations related to Valuation

Observations	Relevant Provisions of Law	Remarks
i. It has been observed that non-registered valuers-entity was appointed in the first place, and later on replaced with Registered valuers which leads to delay in the appointment of valuers. ii. It has been observed that IPs have issued engagement letters in the name of firms/ LLPs/ Companies which are not IBBI registered valuer/ registered valuer entities and later on have disclosed the relationship disclosures on the website of the IPA in the name of individual registered valuer registered with IBBI, being partners of the firms so appointed by the IPs. iii. Common engagement letter issued to registered valuers not belonging to a registered valuation entity with a total fee to be paid. It reflects the conflict of interest as the lumpsum fee is mentioned. iv. It has been observed that there was a delay in the appointment of registered valuers. v. It has been observed that a non-registered entity was appointed, however, the valuation report was signed by the registered valuer. The written contemporaneous records did not uniformly capture the details of the Registered Valuers.	• Regulation 27 of IBBI (CIRP) regulations 2016. • CIRCULAR No. IBBI/ RV/019/ 2018 dated 17th October 2018 • Circular No. IBBI/ RV/022/ 2019 dated 13th August 2019.	i. IP to be vigilant while analysing the financial statements and record available as to which all categories of assets required appointment of valuers. It is the duty of the IP to appoint valuers and cost needs to be ratified by the COC. IPs must issue written engagement letters to IBBI Registered Valuers or Registered Valuers Entities, detailing essential information such as name, Registration number, class of asset, scope of work, fees, and timelines. ii. As a best practice IP should call for quotations and records reasons to selecting the valuers. The IP should obtain the no relation/conflict of interest undertaking from the valuers so appointed and preserved in its records. Substantively, ensuring consistency in disclosing valuer details in CoC minutes, IIIPI disclosures, and IBBI forms enhances transparency and accountability. No appointment of Registered Valuer/ valuation conducted by a non-registered valuer may also have a substantive impact.

vi. The written contemporaneous records demonstrating the fact that IRP/RP made the appointment for the valuers after considering the reasonableness of fees, arm-length basis and no conflict of interest disclosure, were maintained by the IRP/RP. vii. The third valuer was appointed on the request of the COC and the cost is included in the CIRP cost. viii. The name of the valuers was suggested by the COC. ix. Non-appointment of valuers for all categories of Assets like Land & Building, Plant and Machinery, Securities and Financial Assets, Intellectual Property Rights/Brands in the name of the CD, a shortfall in analysing the balance sheets and other records available with IRP/RP, especially wrt Securities and financial assets. x. Appointment of a single Valuer for each class of asset.		iii. IP are advised to be guided by Circular No. IBBI/RV/019/ 2018 dated 17th October 2018 and Circular No. IBBI/ RV/022/ 2019 dated 13th August 2019 issued by IBBI on Registered valuer. iv. The IP shall ensure that the Fees has been paid through banking channel in the name of professional appointed including valuer.

(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 Junuary 2025 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.	Chirag Rajendrakumar Shah	IBBI/IPA-001/IP-P01169/2018-2019/11837	2025-03-12	2028-03-12
2.	Vineeta Maheshwari	IBBI/IPA-001/IP-P00185/2017-18/10364	2025-02-13	2028-02-13
3.	Prashant Agrawal	IBBI/IPA-001/IP-P00053/2017-18/10127	2024-12-19	2027-12-19
4.	Rajender Kumar Jain	IBBI/IPA-001/IP-P00543/2017-2018/10968	2024-11-29	2027-11-29
5	Divyesh Desai	IBBI/IPA-001/IP-P00169/2017-18/10338	2024-10-09	2027-10-09

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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

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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.

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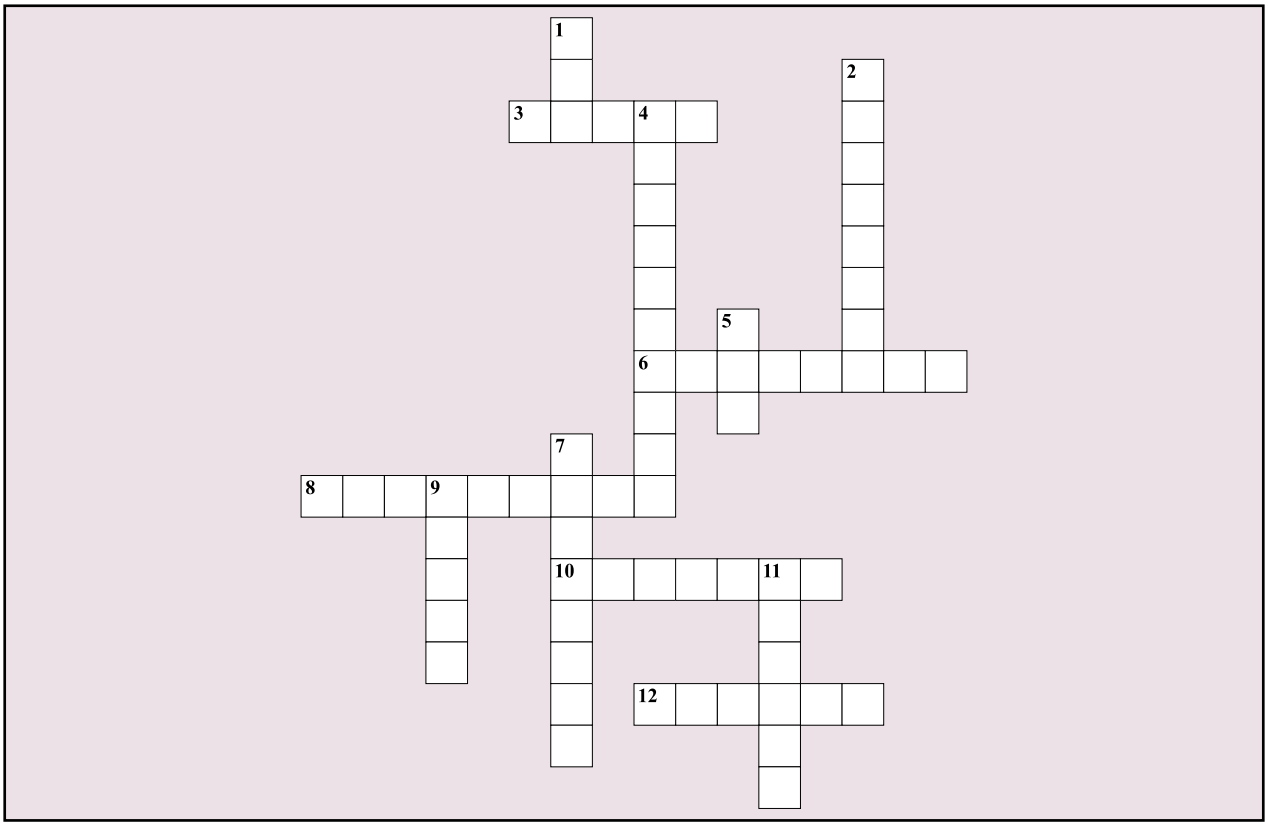
IBC Crossword



Across

3. Within _____days the RP shall submit a report to the AA on the status of development rights and permissions required for development of the real estate project along with the comments of the CoC.

6. The bankruptcy trustee must serve notice to each creditor to submit proof of debt within _____ days under section 132.

8. The extension of fast track CIRP can be granted for maximum _____days.

10. Till December 2024, a total of 1130 CIRPs have been withdrawn under section _____of the IBC Code.

12. *Res Judicata* is defined under section _____of the CPC.

Down

1. In the case of *Independent Sugar Corporation Ltd. vs Girish Sriram Juneja & Ors.,* the Apex court held that the approval of _____ is mandatory prior to approval of Resolution Plan in merger or amalgamation of entities.

4. The Hon'ble Supreme Court, through its order in the matter of *Mardia Chemicals Ltd. vs. UOI,* reduced the mandatory pre-deposit for filing securitization applications from 75% to _____%.

5. An IU must obtain a _____ license from UIDAI for demographic authentication during user registration.

7. Under CIRP Regulations, the CoC can approve handing over plots or flats to homebuyers even during CIRP with _____% votes.

9. For all cases under the IBC commencing from 11th February 2025, the IP shall add the assignment to the designated system of IBBI portal within _____ days.

11. Section _____ of the IBC allows a CD undergoing CIRP to file an application for initiating CIRP against its own debtors.

Answer key: IBC Cross word, January 2025

1. 142
2. Air Castle
3. Duly Stamped
4. WTM
5. Five lakh
6. Eight
7. Seven
8. SEBI
9. Ex- Management
10. EbKray
11. Seven
12. Twelve
13. Five

GUIDELINES FOR ARTICLE SUBMISSION

THE RESOLUTION PROFESSIONAL, quarterly peer-reviewed refereed research journal of Indian Institute of Insolvency Professionals of ICAI (IIIPI), with RNI Registration Number DELENG/2021/81442/ invites research-based articles for its upcoming editions on a rolling stock basis. The contributors/authors can send their article/s manuscripts for publications in The Resolution Professional as per their convenience at iiipi.journal@icai.in. The same will be considered for publication in the upcoming edition of the journal, subject to approval by the Editorial Board. The articles sent for publication in the journal should conform to the following parameters:

- The article should be of 2,500-3,000 words and cover a subject with relevance to IBC and the practice of insolvency while a case study should be around 5,000 words.
- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
- 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.
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