



**STUDY GROUP REPORT
ON
TAXATION AND COMPANY LAW
COMPLIANCES UNDER IBC
– BEST PRACTICES**

Study By
Indian Institute of Insolvency Professionals of ICAI (IIPI)



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FOREWORD

The Indian Institute of Insolvency Professionals of ICAI (IIPI) is pleased to present the publication “Taxation and Company Law Compliances under IBC – Best Practices” developed by the Study Group constituted by IIPI in this regard. This publication was released on the occasion of the Web conference on the subject organized by the IIPI on 14th August 2025.

The report provides a comprehensive analysis of the key legal and procedural challenges faced by Insolvency Professionals (IPs) and other stakeholders under the Insolvency and Bankruptcy Code, 2016. It highlights systemic issues across five major regulatory domains—Corporate and Securities Law, Income Tax, GST and Customs, Labour Laws, and Audit & Accounting standards. It further outlines a set of actionable best practices for IPs, along with recommendations to bring legislative and regulatory changes to harmonise the Code with other existing laws. The report has aptly considered international best practices in this domain and has drawn the practical lessons for India.

By identifying systemic gaps and proposing targeted reforms, this study helps create a more coherent and harmonized legal framework, reduce delays and uncertainties that often hinder the resolution process. By addressing tax and procedural bottlenecks, the report aims to enhance the overall efficiency and value realization in the corporate resolution process.

The draft report was widely discussed and deliberated among a group of insolvency professionals and other experts, before finalization. I sincerely appreciate and thank CA G. Ramaswamy, IP as chairman of this study group for steering the Study Group and providing their insights, along with members of the Group who all worked hard to prepare the said report. I also thank CA M. Suresh Kumar, IP, for his active contribution for drafting the Report.

I also appreciate the efforts put in by CA. Rahul Madan, Managing Director, and CS Sakshi Aggarwal, in-charge of the Research Department of IIPI for providing their technical and administrative support in bringing out this publication.

Further, after gaining more experience, this report shall be reviewed from time to time. I am sure that the professional members of IIPI and other stakeholders of IBC will find this publication immensely helpful.

Date: 14th August, 2025

Place: New Delhi

Dr. Ashok Kumar Mishra,
Chairman, IIPI-Governing Board

PREFACE

The Study Group constituted by the Indian Institute of Insolvency Professionals of ICAI (IIPI) on “Taxation and Company Law Compliances under IBC – Best Practices” is pleased to present this report. The Study Group was constituted to enhance the effectiveness, transparency, and legal certainty of the insolvency process, thereby strengthening the overall framework of the IBC and improving outcomes for all stakeholders involved, including creditors, employees, investors, and the broader economy.

The aim of this report is not only to support IPs in effectively discharging their duties but also to strengthen the overall insolvency ecosystem by improving clarity, reducing compliance burdens, and fostering greater coordination among regulatory bodies. By identifying critical gaps and suggesting targeted legislative and procedural changes, this report aspires to contribute meaningfully to the evolution of a more transparent, predictable, and investor-friendly insolvency framework in India.

The study group comprising experienced professionals, legal experts, and domain specialists. This report is the outcome of the Group’s extensive research, consultations with stakeholders, and a careful examination of judicial precedents and statutory provisions. It seeks to provide a comprehensive overview of the key legal, regulatory, and procedural hurdles faced by IPs and to propose practical solutions, best practices, and policy-level recommendations for further reforms.

The study group is thankful to Dr. Ashok Kr. Mishra, Chairman, IIPI for providing an opportunity to carry out the study as above and for his valuable contribution as well. Further, we are also thankful to IIPI for providing necessary support in this regard. The group is particularly thankful to CA M. Suresh Kumar, IP, for his contribution in drafting the report.

CA G. Ramaswamy, IP
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Date: 14th August, 2025

Place: New Delhi

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ABBREVIATIONS

Abbreviation	Full Form
AA	Adjudicating Authority
AGM	Annual General Meeting
AOC	Form for Filing Financial Statements
AS	Accounting Standards
AY	Assessment Year
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CD	Corporate Debtor
CEO	Chief Executive Officer
CGST	Central Goods and Services Tax
CHG	Form related to Charges
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
CS	Company Secretary
DPT	Form related to Deposits
DIR	Form related to Directors
DSC	Digital Signature Certificate
EPF	Employees' Provident Fund
EPFO	Employees' Provident Fund Organisation
ESI	Employees' State Insurance
ESIC	Employees' State Insurance Corporation
FMV	Fair Market Value
GAAR	General Anti-Avoidance Rules
GST	Goods and Services Tax
GSTIN	Goods and Services Tax Identification Number
GSTN	Goods and Services Tax Network
HC	High Court
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code, 2016

ICAI	Institute of Chartered Accountants of India
IIPI	Indian Institute of Insolvency Professionals of ICAI
IM	Information Memorandum
INC	Form related to Incorporation
Ind AS	Indian Accounting Standards
IP	Insolvency Professional
IRP	Interim Resolution Professional
IT Act	Income Tax Act, 1961
ITC	Input Tax Credit
KMP	Key Managerial Personnel
LODR	(SEBI) Listing Obligations and Disclosure Requirements
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MGT	Form related to Management and Administration
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NFRA	National Financial Reporting Authority
NOC	No-Objection Certificate
PAS	Form for Prospectus and Allotment of Securities
PCIT	Principal Commissioner of Income Tax
PF	Provident Fund
PIT	(SEBI) Prohibition of Insider Trading
ROC	Registrar of Companies
RP	Resolution Professional
SA	Standards on Auditing
SC	Supreme Court
SCC	Stakeholders' Consultation Committee
SEBI	Securities and Exchange Board of India
SH	Form related to Share Capital
SOP	Standard Operating Procedure
SRA	Successful Resolution Applicant
TAN	Tax Deduction and Collection Account Number
TDS	Tax Deducted at Source

1. Executive Summary

The Insolvency and Bankruptcy Code, 2016 (the ‘Code’) has fundamentally reshaped India’s corporate distress resolution landscape. At the heart of this framework is the Insolvency Professional (IP), who is tasked with the monumental responsibility of navigating a company through the Corporate Insolvency Resolution Process (CIRP) or Liquidation. While the Code empowers the IP, it also mandates strict adherence to all other applicable laws, creating a complex and often conflicting compliance environment.

This report, prepared by the Study Group constituted by the Indian Institute of Insolvency Professionals of ICAI (IIIPi), is the culmination of extensive research, stakeholder consultations, and an analysis of judicial precedents. It identifies the critical challenges faced by IPs across five key domains—**Companies Act & SEBI Regulations, Income Tax, GST & Customs, Labour Laws, and Accounting & Auditing Standards**—and proposes a clear framework of best practices and targeted legislative reforms to address them.

Key Findings: The Core Challenges

The Study Group’s analysis reveals a consistent pattern of systemic friction, legal ambiguity, and procedural hurdles that impede the efficiency of the insolvency process:

1. **Corporate & Securities Law:** The suspension of the Board of Directors creates a governance vacuum, making it impossible to comply with statutory requirements like holding Annual General Meetings (AGMs) and obtaining necessary approvals under the Companies Act, 2013. The existing MCA and SEBI filing portals are not designed for an IP-led governance structure, leading to significant procedural delays.
2. **Income Tax:** There is profound uncertainty regarding the taxability of transactions core to any resolution, such as the waiver of debt and the transfer of assets at distressed values. The risk of these transactions attracting significant tax liabilities (including Minimum Alternate Tax) on notional gains serves as a major deterrent to potential resolution applicants and erodes the value of the resolution.
3. **GST & Customs:** The GST framework’s rigidity poses significant challenges, including the potential for forced reversal of Input Tax Credit (ITC) due to non-payment of pre-CIRP dues, the denial of ITC to innocent customers of the insolvent entity, and procedural difficulties in managing GST registrations and refunds during the CIRP.
4. **Labour Laws:** While the Code protects the principal amounts of employee welfare dues like Provident Fund and Gratuity, significant ambiguity persists regarding the priority and treatment of interest and penalties on these dues. This, coupled with the challenges of managing ongoing contributions and terminal benefits, creates legal uncertainty and potential for inequitable treatment of creditors.

5. **Accounting & Auditing:** There is a complete absence of a dedicated accounting or auditing framework for insolvent companies in India. IPs and auditors are forced to apply traditional “going concern” principles to entities that are clearly not going concerns, leading to a disconnect between the financial statements and the economic reality, and a lack of transparent, comparable reporting.

Recommended Best Practices for Insolvency Professionals

To navigate these complexities, the report puts forth a comprehensive framework of Best Practices and Standard Operating Procedures (SOPs) for IPs. These practices emphasize a proactive and diligent approach, starting from Day 1 with the immediate securing of all corporate records and digital assets. The SOPs guide IPs in maintaining continuous and transparent communication with all regulatory bodies, ensuring current statutory compliances (such as TDS, GST, and PF deposits) are met as CIRP costs, and strategically structuring resolution plans to be tax-efficient and compliant. This framework is designed to mitigate risks, enhance transparency, and provide a clear roadmap for IPs to manage the corporate debtor’s affairs in a legally compliant manner.

Summary of Key Recommendations

To address these challenges and create a more harmonised and efficient ecosystem, this report puts forth the following critical recommendations for consideration by the Government and relevant regulatory bodies:

1. Legislative Amendments for Tax Neutrality:

- Amend the Income Tax Act to provide explicit exemptions for transactions undertaken pursuant to an approved resolution plan. This includes exempting debt waivers from being taxed as income, providing a safe harbour from deeming provisions on undervalued asset transfers (Sec 56(2)(x), 50CA, etc.), and providing complete relief from MAT on notional profits arising from such transactions.
- Amend the tax law to protect innocent employees and customers from the double burden of undeposited TDS.

2. Harmonisation of GST and Labour Laws with IBC:

- Amend GST law to protect businesses from the denial or reversal of ITC due to the insolvency of a counterparty and codify the special procedures for GST compliance during CIRP.
- Amend the IBC to clarify that only the principal amount of PF/ Gratuity dues are excluded from the liquidation estate, with interest and penalties being treated as operational debt, ensuring fairness to all creditors.

3. **Streamlining Corporate Law Compliances:** Issue formal notifications under the Companies Act to exempt companies in CIRP from the requirement of holding AGMs and create a fast-track process for all corporate filings and actions required to implement a resolution plan.
4. **Introduction of an Insolvency Accounting Framework:** The Institute of Chartered Accountants of India (ICAI) and the National Financial Reporting Authority (NFRA) should be directed to issue a specific Guidance Note or a new Accounting Standard for companies under insolvency, addressing the “going concern” dilemma and mandating clear, insolvency-specific disclosures.
5. **Strengthening the IBC Framework:** Amend the Code itself to provide a clearer definition of the scope of the moratorium to include all statutory proceedings, and to legislatively settle the priority of statutory dues to prevent conflicting judicial interpretations.

By implementing these recommendations, the Government can significantly reduce legal uncertainty, lower the cost and time involved in the insolvency process, and create a more predictable and equitable environment. This will not only empower Insolvency Professionals to perform their duties more effectively but will also enhance investor confidence and ultimately strengthen the objectives of the Insolvency and Bankruptcy Code.

2. Introduction

2.1 Background & Constitution of the Study Group

The Insolvency and Bankruptcy Code, 2016 (the ‘Code’) represents a paradigm shift in the economic legislation of India, aimed at consolidating the legal framework for the time-bound resolution of insolvency and bankruptcy. A critical pillar of this framework is the Insolvency Professional (IP), who assumes the role of a resolution professional (RP) or liquidator, steering the corporate debtor through the intricate processes of revival or liquidation.

Recognising the multifarious and often onerous responsibilities cast upon IPs, the Indian Institute of Insolvency Professionals of ICAI (IIIP), the nation’s first and largest professional body of IPs, has been at the forefront of capacity building and knowledge dissemination. In furtherance of this objective, and acknowledging the persistent challenges faced by IPs in navigating the complex web of statutory compliances, the IIIP constituted this Study Group on ‘Taxation and Company law compliances under IBC – Best Practices’ . This report is the culmination of the Study Group’s extensive research and deliberations.

2.2 The Compliance Challenge under the IBC

An IP, upon appointment, steps into the shoes of the management of the corporate debtor, with the powers of the Board of Directors vesting in them. They are tasked not only with preserving the assets of the corporate debtor and managing it as a going concern but also with ensuring compliance with all applicable laws. This duty is non-negotiable and is expressly mandated by the Code and the regulations framed thereunder.

However, the practical discharge of this duty is fraught with significant challenges. The IP must interface with a multitude of statutory authorities governing direct and indirect taxes, corporate law, securities law, and labour laws. Each of these statutes has its own set of compliance requirements, which often do not seamlessly integrate with the unique circumstances of a company undergoing insolvency. This creates a landscape of legal ambiguity, procedural friction, and systemic hurdles that can impede the primary objective of the Code—the timely and effective resolution of corporate distress. This report addresses this fundamental compliance challenge.

2.3 Objectives and Scope of the Report

The primary objective of this report is to identify the challenges faced by IPs during the Corporate Insolvency Resolution Process (CIRP) and Liquidation, and to recommend a clear and actionable framework of best practices. The scope of the Study Group’s work encompasses the following key areas of compliance:

- Compliances under the Companies Act, 2013, and SEBI Regulations
- Compliances under the Income Tax Act, 1961
- Compliances under GST and Customs Laws
- Compliances under key Labour Laws
- Compliances related to Accounting & Auditing Standards

In addition to recommending best practices for IPs, this report also puts forth specific, well-reasoned proposals for legislative and regulatory amendments aimed at creating a more harmonised and efficient compliance ecosystem for companies under insolvency.

2.4 Methodology of the Study

The findings and recommendations contained in this report are the result of a comprehensive and multi-pronged research methodology undertaken by the Study Group. The process involved:

- **Extensive Deliberations:** The members of the Study Group held numerous meetings to deliberate on the practical challenges and legal ambiguities faced in each area of compliance.
- **Stakeholder Consultation:** A detailed questionnaire was formulated in a Google Form and circulated by IIPI to a wide base of Insolvency Professionals across India. The extensive feedback and real-world concerns received were systematically collated and analysed.
- **Evaluation of Case Studies:** The Group evaluated numerous case studies of companies that have undergone CIRP and liquidation to understand the practical application of the laws and the specific hurdles encountered.
- **Interpretation of Judicial Pronouncements:** The report is informed by a thorough analysis of relevant judgments from the Hon'ble Supreme Court, various High Courts, the National Company Law Appellate Tribunal (NCLAT), and the National Company Law Tribunal (NCLT), which have shaped the jurisprudence on the interplay between the IBC and other statutes.
- **Review of Existing Literature:** The Study Group also reviewed existing research papers, articles, and regulatory circulars on the subject to ensure a comprehensive understanding of the issues.

This rigorous methodology ensures that the report is grounded in both legal scholarship and the extensive practical experience of insolvency professionals operating in the field.

3. The IP's Statutory Imperative for Compliance

Upon the commencement of a Corporate Insolvency Resolution Process (CIRP), a fundamental shift occurs in the governance of the corporate debtor. The powers of its board of directors are suspended, and the management of its affairs vests entirely in the hands of the appointed Interim Resolution Professional (IRP) or Resolution Professional (RP), hereinafter collectively referred to as the Insolvency Professional (IP). In this capacity, the IP assumes a role that is, de facto, that of a chief executive officer and, de jure, that of a trustee for all stakeholders. This transition is not merely a change in management but the imposition of a comprehensive statutory duty upon the IP to navigate the corporate debtor through the complexities of the Insolvency and Bankruptcy Code, 2016 (the 'Code').

A central, and often onerous, aspect of this responsibility is the unwavering duty to ensure that the corporate debtor, under the stewardship of the IP, adheres to all applicable laws of the land. This duty is not ancillary; it is a core tenet of the IP's role, mandated expressly by the Code and the regulations framed thereunder. The legislative intent is clear: the insolvency process, while providing a moratorium and a pathway to resolution, does not create a law-free zone. The corporate debtor remains an entity subject to its legal and statutory obligations, and the responsibility for ensuring compliance is unequivocally placed upon the IP.

This statutory imperative is primarily enshrined in the following provisions:

1. Section 25 of the Insolvency and Bankruptcy Code, 2016: This section outlines the duties of the Resolution Professional.
 - Section 25(1) stipulates that, "It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor." The preservation of a business as a "going concern" inherently includes ensuring its operations are lawful and compliant with all statutory requirements.
 - Section 25(2)(b) further mandates that the RP shall, for the purposes of managing the operations of the corporate debtor, "represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings." This duty extends to representing the corporate debtor before all statutory and regulatory authorities, such as the Income Tax Department, GST authorities, the Registrar of Companies, and others.
2. IBBI (Insolvency Professionals) Regulations, 2016: The Code of Conduct, detailed in the First Schedule to these regulations, further crystallizes this responsibility.

- Clause 27A of the First Schedule to the IBBI (Insolvency Professionals) Regulations, 2016 imposes a direct obligation on the IP, stating, “An insolvency professional shall, while undertaking any assignment or conducting any process under the Code, exercise reasonable care and diligence and take all necessary steps to ensure that the entity is in compliance with the applicable laws.”
- Clause 27B reinforces this duty by introducing a pecuniary consequence for non-compliance. It provides that an IP cannot include any loss or penalty incurred on account of non-compliance with any applicable law in the insolvency resolution process cost or liquidation cost. This effectively means that the financial burden of non-compliance may fall upon the IP, underscoring the gravity of this duty.

Therefore, the legal framework establishes an unambiguous mandate. The IP is not merely an administrator of assets but a custodian of the corporate debtor's legal integrity. This statutory imperative forms the critical backdrop against which the challenges of compliance under various laws—including the Companies Act, taxation statutes, and labour laws—must be analysed. The subsequent sections of this report delve into the specific practical and legal impediments faced by IPs in discharging this fundamental duty.

4. Analysis of Challenges in Statutory Compliances during CIRP & Liquidation

While the statutory imperative for an Insolvency Professional (IP) to ensure compliance is unequivocal, the practical application of this duty is fraught with significant challenges. The interplay between the Insolvency and Bankruptcy Code, 2016, and other existing statutes creates numerous legal ambiguities and operational impediments. These challenges are not uniform and vary significantly depending on the specific legislation in question.

This section provides a detailed analysis of the key challenges faced by IPs in ensuring compliance under various pivotal laws. It draws upon the extensive research, stakeholder consultations, and practical experiences gathered by the Study Group. The analysis is structured to first identify the specific legal or procedural issue, then to explore its practical impact on the CIRP or Liquidation process, thereby laying the groundwork for the best practices and legislative reforms recommended in subsequent sections.

4.1 Compliances under the Companies Act, 2013, and SEBI Regulations

The Companies Act, 2013, and the regulations issued by the Securities and Exchange Board of India (SEBI) govern the fundamental corporate and governance obligations of a company. For listed entities, these two legal frameworks are inextricably linked. During a CIRP or Liquidation, while the Board of Directors is suspended, the company as a legal entity continues to exist and remains subject to these provisions. This creates an immediate conflict between the normal functioning envisaged by company and securities law and the altered reality of a company managed by an IP. The primary challenges identified in this domain are as follows:

4.1.1 Conundrum of Statutory Meetings and Corporate Approvals

The mechanism of corporate approvals under the Companies Act is predicated on a functional Board of Directors and an engaged body of shareholders. The initiation of CIRP renders this mechanism largely unworkable.

- **Board and Committee Meetings:** With the powers of the Board suspended under Section 17 of the Code, the convening of Board meetings and its various committees (e.g., Audit Committee, Nomination & Remuneration Committee, Stakeholders Relationship Committee) becomes a legal impossibility. All powers are vested in the IP, who acts in consultation with the Committee of Creditors (CoC). This suspension creates a governance vacuum that the law does not formally address with exemptions.
- **Annual General Meetings (AGMs):** The requirement to hold an AGM under Section 96 of the Companies Act presents a significant challenge. The primary purpose of an AGM is to consider and adopt

the annual financial statements. However, with the Board suspended, the accounts cannot be approved by directors in the conventional manner before being presented to the shareholders. Furthermore, as the erstwhile promoters and their relatives often constitute the majority of shareholders, their cooperation in convening an AGM and adopting the accounts (which may contain qualifications or reflect poor performance) is frequently withheld. This creates a procedural deadlock, making a fundamental compliance of the Companies Act impracticable.

4.1.2 Preparation, Signing, and Auditing of Financial Statements

The finalisation of financial statements is a cornerstone of corporate compliance, yet it is an area fraught with obstacles for the IP.

- **Access to Information:** IPs frequently encounter non-cooperation from the suspended management and face situations where financial records are incomplete, missing, or inaccessible. This severely hampers the ability to prepare accurate financial statements for the period prior to and during the CIRP.
- **Signing of Financial Statements:** A significant point of contention is the legal responsibility for signing the financial statements. Section 134(1) of the Companies Act requires financial statements to be signed by directors. Suspended directors often refuse to sign, arguing that they no longer control the company's affairs. While IPs have the authority to manage the company, they are not designated as directors and may be hesitant to sign off on accounts for periods they did not oversee. The Hon'ble NCLAT, in the matter of Mr. Mukund Choudhary vs. Mr. Subhash Kumar Kundra (RP for CLC Industries Ltd.), has clarified that the suspension of powers does not absolve directors of their duties and they are obligated to cooperate and sign the financial statements. Despite this judicial clarification, non-cooperation remains a persistent ground-level challenge requiring the IP to seek directions from the Adjudicating Authority, causing delays.
- **Appointment and Role of Statutory Auditors:** The process for appointment or re-appointment of a statutory auditor, which requires shareholder approval in an AGM, is disrupted. IPs often struggle to have auditors appointed or to secure the cooperation of existing auditors, who may have outstanding fees from the pre-CIRP period or may be unwilling to continue due to the complexities and risks involved.

4.1.3 Impediments in Statutory Filings with Regulatory Portals

Even when an IP manages to prepare the requisite documents, procedural and technical hurdles in filing them with the Registrar of Companies (ROC) present a major challenge.

- **MCA Portal Architecture:** The MCA-21 e-filing portal is designed for filings to be made by directors or other Key Managerial Personnel (KMP) using their Digital Signature Certificates (DSCs). The system architecture is not inherently equipped to recognise the role of an IP.
- **Workarounds and Their Limitations:** While the Ministry of Corporate Affairs (MCA) has issued circulars (e.g., General Circular No. 08/2020) providing workarounds—such as requiring the IP to first file Form INC-28 to notify the appointment, and subsequently file other forms like AOC-4 and MGT-7 as attachments to Form GNL-2, signing as “CEO” for filing purposes—these are ad hoc solutions. They indicate a responsive approach from the Ministry but also highlight a deeper systemic issue: the lack of seamless integration between the IBC process and the standard corporate filing infrastructure. This multi-step, manual-override process is cumbersome, prone to error, and can lead to delays.

4.1.4 Specific Form-wise Filing Challenges

The general challenges in filing manifest as specific, acute problems when dealing with individual statutory forms. The following are key examples:

- **Form AOC-4 (Financial Statements) & Form MGT-7 (Annual Return):** These are the most critical annual filings and face the most significant hurdles.
 - **Interdependency:** The filing of MGT-7 is contingent on the date of the AGM, and the filing of AOC-4 requires financial statements to be duly signed and adopted at the AGM. Since holding an AGM is often impracticable, a cascading failure occurs.
 - **Data Field Constraints:** Form MGT-7 contains mandatory fields for details of Board and Committee meetings held during the year. As no such meetings are held post-CIRP initiation, the form cannot be accurately filled, leading to validation errors on the portal.
- **Form DIR-12 (Particulars of Appointment of Directors and KMP):**
 - **Inapplicability during CIRP:** This form is used to report changes in the Board of Directors. During CIRP, the Board is suspended, not changed. The IP’s appointment is notified via Form INC-28. There is no standard procedure to reflect the “suspension” status of existing directors in the MCA master data, leading to an inaccurate representation of the company’s governance.
 - **Post-Plan Complications:** Upon approval of a resolution plan that requires the appointment of a new Board, filing DIR-12 for the new directors can be problematic if the records for previous directors are not in order.
- **Form ADT-1 (Auditor Appointment):** The inability to convene an AGM makes it impossible to follow the standard procedure for auditor appointment or ratification, rendering the filing of this form problematic.

- Forms for Charges (CHG-1, CHG-4): Modifying or satisfying charges as part of debt restructuring is a key CIRP activity. However, filing these forms can be challenging without the active cooperation of the charge holders (lenders), who may be slow to provide the necessary authorisations.
- Forms for Corporate Actions (e.g., PAS-3 - Return of Allotment, SH-7 - Notice for Alteration of Capital):
 - These forms are critical for implementing a resolution plan that involves issuance of new shares to a resolution applicant or alteration of the company's capital structure. The successful filing of these forms is often hindered by the need for precedent actions (like shareholder resolutions) which are typically waived by the NCLT in the resolution plan approval order. However, the portal's validation checks may not recognize such waivers, creating filing impediments that delay the legal and financial closure of the resolution plan.
- **Form DPT-3 (Return of Deposits):** The IP may not have access to complete historical records of deposits accepted by the company, making it difficult to file an accurate return.

4.1.5 Heightened Challenges for Listed Entities under SEBI Regulations

For companies whose securities are listed, the compliance burden is magnified due to the stringent and time-sensitive disclosure regime of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR). The IP must effectively function as the Board, CEO, and Compliance Officer combined.

- **Continuous Disclosure Obligations (Regulation 30):** The LODR mandates disclosure of all material events. An IP, who is primarily focused on the resolution process, faces the immense challenge of identifying and disclosing such information within the stipulated timelines. This includes quarterly financial results, which suffer from the same finalisation and audit issues detailed above, leading to significant delays and potential non-compliance.
- **Specialised SEBI Filings:** The IP is confronted with numerous specialised compliance requirements for which they may lack historical data or context, including:
 - **Annual Secretarial Compliance Report (LODR 24A):** Requires a comprehensive review of past compliance, which is difficult for an IP to certify.
 - **Insider Trading Compliance (PIT Regulations):** The IP assumes responsibility for implementing the code of conduct, including maintaining a Structured Digital Database (SDD) and monitoring the trading window for designated persons, tasks complicated by the potential lack of a complete list of such persons from the erstwhile management.

- **Scheme of Arrangement Approvals:** If a resolution plan involves a scheme of arrangement, navigating the SEBI Master Circular on Schemes can be complex and time-consuming.
- **Related Party Transaction Disclosures (Regulation 23):** While SEBI has granted exemptions from shareholder approvals for related party transactions forming part of an NCLT-approved resolution plan, the IP must still ensure compliance with all other facets of the regulation during the CIRP, including identification of related parties and maintaining proper records, which can be difficult without historical context and cooperation.
- **Compliance with Minimum Public Shareholding (MPS):** A resolution plan that involves significant equity infusion to a new promoter can lead to the public shareholding falling below the mandated 25%. While rules provide a window to restore the MPS, this adds another layer of complexity for the incoming resolution applicant and must be factored into the plan, potentially affecting its attractiveness.

4.1.6 The Inherited Burden of Pre-CIRP Non-Compliance

The IP does not start with a clean slate. Upon appointment, the IP inherits a history of the corporate debtor's operations, which often includes a significant backlog of statutory non-compliances under both the Companies Act and SEBI regulations.

- **Unfulfilled Filing Obligations:** Typically, a company spirals into insolvency after a period of financial distress, during which statutory filings such as annual returns (MGT-7), financial statements (AOC-4), and various SEBI disclosures for one or more preceding years are often neglected. The IP is then faced with the monumental task of rectifying these historical defaults, a task made difficult by the aforementioned issues of data unavailability and non-cooperation.
- **Penalties and Prosecution:** This inherited non-compliance carries the risk of substantial additional fees for delayed filings and potential prosecution against the company and its "officers in default." The IP must then expend valuable time and resources seeking condonation of these delays or waivers from regulatory authorities, diverting focus from the core resolution activities.

4.1.7 Post-Resolution Plan Implementation Challenges

The challenges do not cease upon the approval of a resolution plan by the Adjudicating Authority. The new management, installed by the Successful Resolution Applicant (SRA), faces its own set of compliance hurdles as it seeks to regularise the company's affairs.

- **Rectification of Past Defaults:** The new Board of Directors assumes responsibility for a company whose public records with both the ROC and stock exchanges are often outdated and reflect a history of non-compliance. Bringing these records up to date, filing for condonation of delays for the pre-CIRP and CIRP periods, and ensuring the company master data is accurate is a complex and time-consuming process.
- **Transition of Authority:** Transitioning filing authority on the MCA portal and stock exchange portals from the IP back to the newly appointed directors of the revived company can be procedurally challenging. It requires proactive coordination with multiple regulators to ensure a smooth handover and to update the signatory details in the respective systems, failing which the new management may find itself unable to make statutory filings.
- **Impact of Waivers:** While a resolution plan approved under Section 31 of the Code is binding on all stakeholders, the extent to which it grants a blanket waiver for all past non-compliances under the Companies Act and SEBI Regulations is still a matter of debate. The new management often has to engage with authorities to have historical defaults formally addressed, even if they are covered by the plan's provisions.

4.2 Compliances under the Income Tax Act, 1961

The interface between the Insolvency and Bankruptcy Code (the 'Code') and the Income Tax Act, 1961, is one of the most complex and litigated areas for an Insolvency Professional (IP). While the Code provides for a moratorium and a "clean slate" upon resolution, the Income Tax Act imposes continuing obligations related to filing, withholding, and payment of taxes. Although several legislative amendments have sought to harmonise these two statutes, significant interpretative ambiguities and practical challenges persist, creating uncertainty for IPs, resolution applicants, and the corporate debtor itself.

4.2.1 Jurisdictional Conflicts and Legacy Issues

The IP inherits a litany of historical tax issues and immediately faces jurisdictional friction between the overriding nature of the Code and the powers of the tax authorities.

- **Priority and Enforceability of Pre-CIRP Dues:** Tax authorities often file substantial claims for past dues. Despite the Supreme Court's repeated affirmations (e.g., *Monnet Ispat & Energy Ltd.*) that government dues are treated as operational debt and do not enjoy priority over secured creditors, tax officials may continue to assert "crown debt" status, creating friction. A significant challenge arose from the *Rainbow Papers Ltd.* judgment, which treated a statutory charge under state law as a security interest, giving the tax authority the status of a secured creditor. While subsequent judgments have clarified that *Rainbow Papers* was fact-specific, the precedent has created ambiguity and encouraged tax authorities to resist the statutory waterfall under Section 53 of the Code.

- **Enforcement of Moratorium:** While Section 14 of the Code imposes a clear moratorium on the institution or continuation of proceedings, IPs consistently report the issuance of assessment notices, demand notices, and even attachment orders for pre-CIRP periods after the moratorium has begun. In some cases, notices are backdated to circumvent the moratorium. This forces the IP to expend valuable time and resources responding to these notices and seeking intervention from the Adjudicating Authority to quash actions that are legally void ab initio.
- **Set-off of Refunds:** A critical operational issue is the auto-adjustment of tax refunds due to the corporate debtor against pre-CIRP outstanding demands by the tax department's centralized processing system. This action violates the moratorium and deprives the corporate debtor of essential cash flow needed to maintain itself as a going concern. IPs are often forced to litigate to have these unilateral adjustments reversed and the refunds released.

4.2.2 Systemic and Procedural Hurdles for Insolvency Professionals

IPs face a range of systemic challenges that hinder their ability to perform their statutory duties effectively.

- **Non-Cooperation and Lack of Data:** IPs are heavily reliant on the cooperation of suspended management and past auditors to obtain financial records, books of account, and login credentials for regulatory portals. This cooperation is frequently withheld. The lack of historical data makes it impossible to accurately ascertain past tax liabilities, file pending returns, or validate the claims submitted by tax authorities. While IPs can seek directions from the NCLT under Section 19 of the Code, this is a time-consuming process.
- **Portal Access and Authorized Signatory Issues:** Initially, the Income Tax portal was not equipped to recognise an IP as an authorized representative. While amendments to Section 140(c) of the Income Tax Act and the introduction of Rule 51B have formally empowered the IP to sign and verify returns, practical hurdles remain. Specifically, obtaining or updating the Tax Deduction and Collection Account Number (TAN) remains a significant challenge, as there is no clear process for issuing a new TAN or changing credentials for an IP, hindering TDS compliance.
- **Double Burden on Employees and Suppliers for Undeposited TDS:** A severe challenge arises when a corporate debtor deducts TDS from payments to employees and vendors pre-CIRP but fails to deposit the amount with the government due to financial distress. The tax department, upon finding no corresponding credit in its records, disallows the TDS credit for the employee or vendor during their own tax assessments. This forces them to pay the income tax on the full amount again, creating a highly inequitable "double burden." The IP,

constrained by the moratorium, cannot pay these pre-CIRP dues, leaving these innocent stakeholders with no immediate recourse other than filing a claim in the CIRP, where recovery is uncertain.[This creates a highly inequitable ‘double burden’, as Section 205 of the Income Tax Act bars the department from demanding tax from the employee if it has been deducted by the employer.]

- **Absence of Dedicated Support:** There are no specialized helpdesks or nodal officers within the tax departments specifically designated to handle queries from IPs. As a result, IPs must navigate standard bureaucratic channels, which are not attuned to the unique circumstances and expedited timelines of the IBC, leading to inconsistent responses and prolonged delays.

4.2.3 Critical Ambiguities in Tax Treatment of Resolution Plan Components

The core of the tax challenge lies in the uncertain tax treatment of standard components of a resolution plan, which directly impacts the financial viability of any resolution.

- **Taxability of Waived Liabilities:** A resolution plan invariably involves a “haircut” or waiver of debt. This raises a critical risk of such waivers being taxed as income in the hands of the corporate debtor under Section 41(1) (cessation of trading liability) or Section 28(iv) (benefit arising from business). The amendment to Section 28(iv) by the Finance Act, 2023, to include monetary benefits has significantly heightened the risk that even loan waivers will be taxed. This potential tax on a “notional” gain can cripple the revived entity.
- **Minimum Alternate Tax (MAT) on Book Profits:** Even if a debt waiver is not taxed as normal income, the accounting entry for the write-back inflates the “book profit” of the company. This can trigger a substantial liability under Section 115JB (MAT). While a specific relief allows the full set-off of brought-forward losses and unabsorbed depreciation for MAT calculation for IBC companies, a large waiver that exceeds these accumulated losses can still result in a MAT liability, acting as a direct deterrent to resolution.
- **Preservation and Carry Forward of Losses (Section 79):** The ability to carry forward past business losses is a key commercial driver for a resolution applicant. Section 79 was amended to protect these losses despite a change in shareholding pursuant to a resolution plan. However, ambiguities remain regarding its application to subsidiary companies or in complex restructuring scenarios involving mergers (where the stricter conditions of Section 72A might apply). Furthermore, the ability to carry forward losses is contingent on the timely filing of tax returns, a condition often breached by companies prior to CIRP, and a challenge for the IP during CIRP.
- **Applicability of Deemed Income and Fair Value Provisions:**

- **For the Acquirer (Section 56(2)(x)):** If a resolution applicant acquires shares or assets at a price below the fair market value (FMV), this provision could tax the notional gain in the hands of the acquirer.
- **For the Corporate Debtor/Seller (Section 50CA & 43CA):** These provisions could deem the sale consideration to be the FMV, creating a notional capital gain for the corporate debtor on the transfer of assets. The lack of a specific carve-out for court-approved IBC transactions from these anti-abuse provisions imposes a punitive tax risk on genuine, market-driven distress sales.
- **Deductibility of CIRP Costs:** Significant expenses are incurred during the CIRP. There is no explicit provision clarifying whether these costs are deductible as revenue expenditure. The risk that tax authorities may treat them as capital expenditure and disallow the deduction creates financial uncertainty for the post-resolution entity.

4.2.4 Specific Tax Implications and Challenges in Liquidation

The liquidation process introduces its own unique set of tax-related challenges.

- **Tax Clearance (Section 178):** Prior to the IBC, liquidators were required to obtain a No-Objection Certificate from the tax department before distributing assets. Although Section 178(6) now explicitly exempts IBC liquidations from this requirement, some IPs, out of abundant caution, and some tax officials, out of unawareness, continue to engage in this defunct process, causing unnecessary delays.
- **Capital Gains on Sale of Assets:** When a liquidator sells assets, the resulting profit is potentially subject to capital gains tax. A key point of contention is whether this tax is a “liquidation cost” to be paid in priority or an operational debt to be settled per the Section 53 waterfall. Judicial pronouncements have leaned towards the latter, but the lack of statutory clarity can lead to disputes.
- **TDS on Sale of Property (Section 194-IA):** The requirement for a buyer to deduct TDS on the purchase of immovable property has been judicially held by the NCLAT to be inapplicable for sales under IBC liquidation. However, the absence of an explicit statutory clarification means IPs must often educate buyers and cite case law to prevent such deductions, which would otherwise trap funds outside the liquidation estate.

The confluence of these inherited issues, policy ambiguities, and operational hurdles creates a challenging tax compliance landscape for IPs, which can impede the primary objective of the Code: the timely and effective resolution of corporate distress.

4.3 Compliances under GST & Customs Laws

The Goods and Services Tax (GST) and Customs regimes, with their focus on transactional compliance and real-time revenue protection, create a uniquely challenging environment for a corporate debtor undergoing insolvency. The framework's inherent rigidity often conflicts with the flexibility required during the Corporate Insolvency Resolution Process (CIRP) or Liquidation. While the Central Board of Indirect Taxes and Customs (CBIC) has issued several clarifications to harmonise procedures with the Insolvency and Bankruptcy Code (the 'Code'), significant operational, systemic, and legal challenges persist for the Insolvency Professional (IP).

4.3.1 Procedural and Systemic Hurdles

The foundational design of tax portals and compliance mechanisms presents immediate difficulties upon the commencement of insolvency proceedings.

- New GST Registration and Portal Access:** A primary challenge arises from the corporate debtor's pre-CIRP non-compliance, which often leads to a blocked GST portal where current returns cannot be filed until past returns are submitted. To overcome this, CBIC introduced a special procedure (Notification 11/2020-Central Tax) treating the corporate debtor under an IP as a "distinct person" who must obtain a new GST registration. While a pragmatic solution, this imposes a significant administrative burden on the IP to secure new registrations in every state of operation within 30 days, navigate portal-related technical issues, and manage the transition of authorised signatory details from the erstwhile management.
- Ongoing Compliance Burden with Limited Resources:** Even when a corporate debtor's business is dormant during CIRP or liquidation, the formal requirement to file monthly or quarterly GST returns persists. For an IP with limited staff and immense pressure to focus on core resolution activities, filing "nil" returns becomes a significant administrative chore. Failure to do so can lead to the automated accrual of late fees and penalties, further burdening the estate and creating compliance risks.
- Lack of Coordination and Specialized Support:** There is a persistent lack of a unified understanding of IBC principles among field-level GST and Customs officers. IPs frequently encounter inconsistent actions, such as the issuance of show-cause notices in violation of the moratorium or reluctance to lift pre-CIRP attachments without a specific court order. The absence of a dedicated nodal cell or helpdesk for insolvency matters within tax departments means IPs must expend considerable effort educating various authorities about the legal position, leading to delays and avoidable litigation.

4.3.2 Moratorium vs. Tax Enforcement: A Persistent Conflict

A major area of friction is the conflict between the moratorium imposed by Section 14 of the Code and the statutory enforcement actions of tax authorities.

- **Continuation of Adjudication and Assessment:** There remains ambiguity on whether the term “proceedings” under Section 14 covers non-recovery actions like adjudication of show-cause notices (SCNs) or the finalisation of assessments. The Supreme Court’s ruling in *Sundresh Bhatt (Liquidator of ABG Shipyard) v. CBIC* clarified that while tax determination can proceed, no recovery or coercive action can be taken. Nonetheless, this distinction creates practical difficulties, as any finalised assessment order can create pressure on the IP and lead to disputes.
- **Unlawful Attachments and Detention of Assets:** IPs often find the corporate debtor’s bank accounts frozen or assets attached by tax authorities for pre-CIRP dues. Similarly, imported goods crucial for operations may be detained by Customs for non-payment of duty. While judicial precedents are clear that such attachments and detentions are illegal during the moratorium and must be lifted, IPs are often forced to seek specific NCLT orders to secure the release of these assets, leading to costly delays that can paralyze the company’s operations.
- **Issuance of Post-Admission and Backdated Demands:** A serious challenge is the practice of some tax officers issuing fresh or backdated notices for pre-CIRP periods after the insolvency commencement date, in an attempt to bypass the moratorium. Such actions violate the standstill objective of the Code and create surprise claims outside the established process, forcing the IP into needless litigation to have them quashed.

4.3.3 The Ripple Effect: Complications in the Input Tax Credit (ITC) Ecosystem

The intricate rules governing ITC create significant challenges that impact not only the corporate debtor but its entire commercial ecosystem.

- **Forced ITC Reversal for the Corporate Debtor:** Under GST law (Rule 37), a recipient must reverse ITC if the supplier’s invoice is not paid within 180 days. A corporate debtor under moratorium is legally barred from paying its pre-CIRP operational creditors. A strict application of this rule would compel the IP to reverse valuable ITC on pre-CIRP purchases, thereby increasing the tax outflow and depleting the assets of the corporate debtor in direct conflict with the principles of the Code.
- **Unfair ITC Denial for Customers of Insolvent Companies:** A significant and deeply inequitable challenge arises for the customers of the corporate debtor. When the corporate debtor, acting as a supplier, collects GST from its customers but fails to remit it to the government before entering CIRP, those customers face severe consequences. Under Section 16(2)(c) of the CGST Act, a recipient’s eligibility for ITC is contingent on the tax being actually paid to the government by the

supplier. Consequently, compliant customers who have paid the full invoice amount (including GST) to the corporate debtor are later denied their legitimate ITC by the tax department. This penalises innocent businesses for the default of their supplier, creating a direct financial loss and a “double burden,” and undermines trust in the GST system. These affected customers are left with no recourse but to file a claim in the CIRP, where recovery is often minimal.

- **Loss of Accumulated ITC:** While CBIC has clarified that an IP can claim ITC for the interim period between their appointment and the grant of a new GST registration, there is currently no mechanism to transfer the unutilised ITC accumulated in the old GST registration to the new one. This accumulated credit, which is a valuable asset of the corporate debtor, is often lost, diminishing the value of the estate.
- **Withheld GST Refunds:** Corporate debtors often have pending GST refunds (e.g., from exports or an inverted duty structure). IPs face significant challenges in getting these refunds processed, as tax authorities may either delay payment or attempt to illegally set off the refund amount against disputed pre-CIRP dues, in clear violation of the moratorium.

4.3.4 Challenges in Claim Adjudication and Asset Monetization

The final stages of resolution or liquidation are also beset with tax-related hurdles.

- **Uncertainty in Priority of Tax Claims:** A significant challenge stems from the conflicting judicial view on the priority of statutory dues. While the Code treats government dues as operational debt, the Supreme Court’s decision in *State Tax Officer v. Rainbow Papers Ltd.* held that a statutory first charge under a state’s VAT law could elevate the tax authority to the status of a secured creditor. This ruling, while debated and distinguished in subsequent judgments, has created profound uncertainty for IPs and CoCs in finalising resolution plans and distribution waterfalls, as the priority of tax claims remains ambiguous.
- **GST on Sale of Assets:** The sale of business assets by an IP is generally a taxable supply under GST. The IP must ensure that GST is correctly charged, collected, and remitted. While a “going concern sale” is exempt from GST, determining whether a specific sale meets this definition can be subjective and open to dispute, creating tax risks for the transaction.
- **Customs Duty on Imported Goods:** Goods imported by the corporate debtor pre-CIRP but pending clearance are often held by Customs authorities. The Supreme Court’s judgment in *Sundresh Bhatt* has settled the law that Customs cannot auction such goods and must release them to the IP, with the duty being treated as a claim in the insolvency process. However, securing the physical release of these goods can still involve significant negotiation and potential NCLT intervention, delaying their monetisation and potentially causing value erosion.

4.4 Compliances under Key Labour Laws

The intersection of the Insolvency and Bankruptcy Code (the 'Code') with India's robust framework of labour laws presents one of the most socially sensitive and legally intricate areas for an Insolvency Professional (IP). Labour statutes are designed to be protective, creating statutory rights and entitlements for employees and workmen. The IBC, while aiming for a collective and time-bound resolution, must navigate these vested rights, leading to significant challenges in interpretation and practical application.

The core tension arises from the conflict between the IBC's moratorium and distribution waterfall on one hand, and the special status and priority granted to employee dues under laws like the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act) and the Payment of Gratuity Act, 1972, on the other.

4.4.1 The Sacrosanct Status of Provident Fund and Gratuity Dues

A fundamental principle, clarified through judicial pronouncements and embedded within the Code itself, is that certain employee welfare funds are held in trust and do not form part of the corporate debtor's assets available for general distribution.

- **Exclusion from Liquidation Estate:** Section 36(4)(a)(iii) of the Code explicitly excludes "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund" from the liquidation estate. This establishes that these funds cannot be used to pay any other creditor and must be disbursed in full to the employees. The Supreme Court and NCLAT (e.g., in the Jet Airways case) have repeatedly affirmed that these dues must be paid in full and cannot be compromised or written down in a resolution plan.
- **Challenges in Application:** Despite this clear legal mandate, IPs face significant practical challenges:
 - **Unfunded Liabilities:** Often, a corporate debtor has failed to maintain a separate, funded gratuity trust. The IP is then faced with the contentious task of carving out funds for the full gratuity liability from the company's general assets, which directly reduces the pool of funds available for other creditors.
 - **Ongoing Contributions vs. Arrears:** The IP must ensure timely deposit of current PF contributions for all retained employees during the CIRP to maintain the going-concern status. This can be challenging amidst a severe cash crunch. In contrast, pre-CIRP arrears of PF cannot be paid directly due to the moratorium and must be filed as a claim by the EPFO, a distinction that often creates friction with the authorities.

- **Ambiguity on What Constitutes “Dues”:** A significant legal grey area is the interpretation of “sums due” under Section 36(4). While it clearly covers the principal contribution amounts for PF and gratuity, it is ambiguous whether it also includes statutory interest (e.g., under Section 7Q of the EPF Act) and damages/penalties (under Section 14B of the EPF Act) levied for delayed payments. Different NCLT and NCLAT benches have delivered conflicting judgments on this issue. Some have held that only the principal contribution is excluded from the estate, treating interest and damages as operational debt to be paid via the waterfall. Others have ruled that interest and damages are integral to making the fund whole and must also be paid in full. This lack of a definitive ruling from the Supreme Court places the IP in a precarious position, facing potential challenges from either the EPFO or the Committee of Creditors depending on the interpretation adopted.
- **Quantification and Verification:** Accurately calculating the PF and gratuity liability for a large workforce, often with incomplete historical records, is a monumental task for the IP. Errors in calculation can lead to disputes and challenges to the resolution plan.

4.4.2 The Moratorium’s Impact on Labour-Related Proceedings

The moratorium under Section 14 of the Code creates a standstill, but its precise scope in relation to various labour law proceedings has been a persistent source of conflict.

- **Stay on Recovery vs. Assessment:** While it is settled that the moratorium bars the EPFO or other labour authorities from initiating recovery actions like attaching bank accounts, there was considerable ambiguity on whether assessment proceedings (e.g., a Section 7A inquiry under the EPF Act) could continue. This was a critical issue, as an ex parte assessment could lead to an inflated claim against the corporate debtor. The NCLAT has now clarified (e.g., in *EPFO v. Jaykumar Pesumal Arlani*) that even quasi-judicial assessment proceedings are stayed during CIRP to prevent the debtor from being burdened with parallel litigation.
- **Continuation of Criminal Proceedings:** Section 14 does not explicitly stay criminal proceedings against the erstwhile management for offences under labour laws (e.g., prosecution for non-deposit of PF). While Section 32A of the Code provides immunity to the corporate debtor itself post-resolution, the personal liability of former directors may continue, creating complexities for the IP who may be summoned to provide information or face inquiries related to such proceedings.

4.4.3 Ambiguity in Treatment and Priority of Other Employee Dues

While PF and gratuity are specially protected, the treatment of other statutory and operational dues owed to employees creates significant challenges in claim verification and distribution.

- **Classification of ESI, Bonus, and Leave Encashment:** Dues related to Employees' State Insurance (ESI), statutory bonus, and leave encashment are not excluded from the liquidation estate. These are treated as operational debts. The primary challenge for the IP is to accurately calculate these dues and correctly classify them within the liquidation waterfall. The NCLT has clarified (e.g., *ESIC v. Gupta Dyeing*) that ESI dues do not enjoy the same priority as PF/gratuity.
- **Priority Conflicts and Statutory Charges:** Some labour laws create a "first charge" on the assets of the establishment for unpaid dues. This can conflict with the IBC's waterfall priority. While courts have generally held that the IBC's non-obstante clause (Section 238) ensures its priority scheme prevails, the Rainbow Papers judgment (in a tax context) created ambiguity, leading to potential disputes with labour authorities over their status as secured or operational creditors.

4.4.4 Challenges in Workforce Management and Coordination

The IP, as the de facto management, faces numerous operational challenges in dealing with the workforce and coordinating with multiple labour authorities.

- **Maintaining Service Conditions:** The IP is bound by the existing service conditions and certified Standing Orders. Any changes, such as wage reductions to cut costs or altering work hours, must be negotiated and cannot be imposed unilaterally, making operational restructuring difficult.
- **Retrenchment and Closure Compliance:** The commencement of liquidation is typically construed as a termination of employment for all employees of the corporate debtor. This event crystallizes a host of terminal benefit claims that the liquidator must address.
 - **Crystallization of Dues:** Upon liquidation, all accumulated employee entitlements become immediately due and payable. This includes leave encashment for the entire period of service, not just the portion accrued during CIRP.
 - **Eligibility for Retrenchment Compensation:** The termination of services due to the closure of an undertaking constitutes retrenchment under the Industrial Disputes Act, 1947. Consequently, workmen are generally entitled to retrenchment compensation (e.g., 15 days' wages for each completed year of service) and notice pay

in lieu of the statutory notice period. The challenge for the liquidator is to correctly calculate these amounts for every employee and treat them as claims in the liquidation process, with the appropriate priority under Section 53.

- **Lack of Coordination Among Authorities:** Labour compliance involves multiple agencies (EPFO, ESIC, Labour Commissioner). These agencies often act in silos and may not be aware of the ongoing insolvency proceedings. IPs report that authorities frequently file claims late or initiate parallel recovery actions due to this lack of awareness, forcing the IP to engage in needless correspondence and litigation to uphold the moratorium.
- **Personal Liability Risk for IPs:** Labour laws often place liability on the “employer” or the “person in charge.” This creates a risk that an IP could be held personally liable for non-compliance, such as failure to deposit PF contributions during CIRP due to a cash crunch. The absence of an explicit safe-harbour provision for IPs in the Code is a significant concern for insolvency professionals.

4.5 Compliances related to Accounting & Auditing Standards

The process of insolvency under the Code creates a unique and challenging financial reporting environment. Unlike other areas where special procedures have been introduced, there are currently no dedicated accounting or auditing standards in India specifically designed for companies undergoing CIRP or Liquidation. This regulatory vacuum forces Insolvency Professionals (IPs) and statutory auditors to apply existing standards—such as Indian Accounting Standards (Ind AS) and Standards on Auditing (SAs)—to situations they were not originally intended to govern. This leads to significant conceptual conflicts, practical hurdles, and a lack of consistent, transparent financial reporting for distressed entities.

4.5.1 The “Going Concern” Assumption: A Fundamental Conflict

The most fundamental challenge lies with the “going concern” principle, which is a cornerstone of standard accounting and auditing.

- **Conceptual Dilemma:** Accounting standards presume that an entity will continue to operate for the foreseeable future. However, a company in CIRP faces material uncertainty about its ability to continue as a going concern, and a company in liquidation is explicitly being wound up. Applying a going-concern basis of accounting in such scenarios creates a disconnect between the financial statements and the economic reality of the entity. There is no formal guidance on when or how to shift to a “liquidation basis” of accounting, where assets are stated at their net realizable value.

- **Auditor's Predicament:** Statutory auditors are required to report on the appropriateness of the going concern assumption. In an insolvency context, auditors often issue an "Emphasis of Matter" paragraph or a "Material Uncertainty Related to Going Concern" section in their audit reports. While this complies with auditing standards, it does not fully resolve the underlying issue of whether the accounting basis itself should be different.

4.5.2 Practical Challenges in Data Reconstruction and Verification

IPs are almost invariably confronted with a history of poor record-keeping, which severely impedes the financial reporting process.

- **Incomplete and Inaccessible Records:** Upon appointment, the IP often discovers that the corporate debtor's books of account are incomplete, erroneous, or inaccessible. The erstwhile management and key financial personnel may be uncooperative, and electronic data may be lost or secured with passwords that are not shared. This is compounded by a "brain-drain" of employees who leave the distressed company before the IP's arrival.
- **Reconstruction of Financials:** The IP is legally responsible for the company's compliance, which includes finalising financial statements for pre-CIRP years that were left incomplete. This often requires a complete reconstruction of financial records from disparate sources like bank statements, third-party confirmations, and statutory filings, a task that is both time-consuming and expensive.
- **Audit Delays and Qualified Opinions:** The lack of reliable data creates significant hurdles for the statutory auditor. The inability to obtain sufficient appropriate audit evidence can lead to qualified opinions, disclaimers of opinion, and significant delays in the issuance of the audit report. This, in turn, delays the finalisation of the Information Memorandum and the overall resolution process.

4.5.3 Difficulties in Applying Existing Accounting Standards

Applying conventional accounting standards to insolvency-specific events leads to further ambiguities and inconsistent practices.

- **Provisions and Claims (Ind AS 37):** There is often a vast difference between the liabilities recorded in the books and the claims submitted by creditors. Standard accounting practices for provisions and contingent liabilities are not well-suited for the formal claims admission process under the Code, requiring significant reconciliation and judgment by the IP.
- **Prior Period Errors and Adjustments (Ind AS 8):** If the IP discovers material errors in the financial statements of prior periods, Ind AS 8 requires a retrospective restatement. This can have significant tax implications, as it may be impossible to file a revised tax return for a period for which the statutory deadline has long passed.

- **Accounting for the Resolution Plan:** A major gap is the absence of a specific standard for “fresh start” accounting upon the implementation of a resolution plan. The extinguishment of liabilities, issuance of new equity, and acquisition by a new entity are complex transactions that are currently accounted for using general principles, leading to a lack of comparability across resolved companies. The treatment of a debt waiver as income versus a capital reserve contribution is a key area of divergence.
- **Assets Held for Sale (Ind AS 105):** While Ind AS 105 provides guidance for “Assets Held for Sale,” its application during a liquidation process, where all assets are effectively held for sale, is not explicitly defined, leading to uncertainty in valuation and presentation.

4.5.4 Procedural, Legal, and Governance Ambiguities

The existing corporate law framework for finalising and approving accounts is rendered unworkable during insolvency.

- **Finalisation and Signing Authority:** The Companies Act requires the Board of Directors to approve and sign the financial statements. With the Board suspended, there is no explicit provision in the Code or the Companies Act that designates the IP as the signing authority. In practice, IPs sign the accounts based on their general powers to manage the company’s affairs, but this remains a legal grey area.
- **Impracticability of Annual General Meetings (AGMs):** The requirement to hold an AGM to adopt the annual accounts is typically impossible to meet during CIRP. While NCLTs have, in cases like James Hotels Ltd., used their inherent powers to grant exemptions or extensions, the lack of a uniform statutory waiver creates uncertainty and forces IPs to seek case-by-case relief.
- **Consolidated Financial Statements:** For corporate groups where only a parent or a few subsidiaries enter CIRP, there is no clear guidance on how to prepare consolidated financial statements, leading to complex reporting challenges.

4.5.5 Lack of Standardised Insolvency-Specific Disclosures

A significant drawback of the current framework is the absence of mandated, insolvency-specific disclosures, which hinders transparency for creditors and other stakeholders.

- **Liabilities Subject to Compromise:** Unlike in other jurisdictions (e.g., US GAAP), there is no requirement in India to separately present or disclose “liabilities subject to compromise” on the face of the balance sheet. This makes it difficult for a reader of the financial statements to distinguish between liabilities that are likely to be paid in the normal course and those that are part of the insolvency resolution.

- **Reporting on Realisation and Distribution:** In liquidation, there is no standardised format for reporting on the realisation of assets and the distribution of proceeds to creditors. This lack of uniform reporting makes it difficult for stakeholders to compare the outcomes of different liquidation processes and assess recovery rates.

4.5.6 Insights from International Practices

A brief review of international practices highlights potential pathways for reform.

- **United States (Chapter 11):** US GAAP includes a specific standard (ASC 852-10) for entities in bankruptcy. While it maintains the going-concern basis, it mandates specific disclosures, such as the segregation of “liabilities subject to compromise” and requires the entity to be identified as a “Debtor-in-Possession.”
- **United Kingdom:** UK practice also continues with standard accounting frameworks (UK GAAP or IFRS) but has well-established procedures under the Insolvency Act for statements of affairs and accounts prepared by the administrator or liquidator.

The common international theme is the retention of standard accounting principles supplemented by targeted, insolvency-specific disclosures to provide clarity. India currently lacks this supplementary disclosure framework.

5. Recommended Best Practices & Standard Operating Procedures (SOPs)

In response to the multifaceted challenges identified in the preceding analysis, this section puts forth a set of recommended Best Practices and Standard Operating Procedures (SOPs). These recommendations are designed to provide Insolvency Professionals (IPs) with a clear, actionable framework to navigate the complexities of statutory compliances during the Corporate Insolvency Resolution Process (CIRP) and Liquidation.

The objective of these best practices is to promote uniformity, enhance transparency, ensure compliance with the law in both letter and spirit, and mitigate risks for the IP and all stakeholders involved. By adopting a structured and proactive approach, IPs can more effectively preserve the value of the corporate debtor while fulfilling their extensive statutory duties.

5.1 Best Practices: Companies Act and SEBI Regulations

To navigate the complex compliance landscape under the Companies Act and SEBI Regulations, IPs should adopt a structured and proactive approach from the outset.

Day 1 Actions: Securing Control over Records

1. **Immediate Custody:** On appointment, the IP's foremost priority should be to take immediate physical and digital custody of all statutory records, including minute books, statutory registers, share certificates, and financial records. An inventory should be created and signed off by representatives of the suspended management, if available.
2. **Digital Security:** Secure all digital assets by changing passwords to accounting systems, company email servers, and the MCA/SEBI portal accounts. The IP should immediately take steps to have their own Digital Signature Certificate (DSC) mapped to the corporate debtor's accounts.
3. **Formal Communication:** Issue a formal letter to the suspended directors and KMPs, reminding them of their statutory duty under Section 19 of the Code to cooperate and provide all necessary information and documents, failing which an application will be filed with the Adjudicating Authority.

Ongoing CIRP Management: Proactive Compliance & Communication

1. **Initial Status Report:** Conduct a preliminary assessment of the corporate debtor's statutory compliance status for at least the preceding two financial years. This "Compliance Health Check" should identify all pending filings, outstanding penalties, and potential defaults under the Companies Act and SEBI Regulations. This report should be shared with the Committee of Creditors (CoC).

2. Statutory Filings (MCA):

- Immediately file Form INC-28 with the ROC to intimate the commencement of CIRP and the appointment of the IP.
- For all subsequent filings (e.g., AOC-4, MGT-7), use Form GNL-2 as prescribed by MCA circulars, attaching the relevant document. The IP should sign in the capacity of “CEO” for this purpose. Maintain a clear log of all such filings.

3. Listed Company Compliances (SEBI):

- Promptly inform the stock exchanges about the commencement of CIRP and the suspension of the Board.
- Maintain a clear channel of communication with the stock exchanges for all disclosures required under Regulation 30 of the LODR. While certain filings like quarterly financial results may be delayed due to data unavailability, the IP must regularly update the exchanges on the status and reasons for the delay.
- Disclose all key events, such as the constitution of the CoC, issuance of the Information Memorandum, and receipt of resolution plans, to the stock exchanges. For any non-compliance with LODR, provide a detailed explanation to SEBI/Stock Exchange.

4. Handling of AGMs and Board Meetings:

- Since Board meetings are suspended and AGMs are impracticable, the IP should document this status. It is a best practice to file an application with the jurisdictional ROC seeking an extension for the AGM, citing the ongoing CIRP.
- Alternatively, the IP can seek a specific order from the NCLT granting an exemption from holding the AGM for the duration of the CIRP.

Post-Resolution: Ensuring a Smooth Transition

1. **Comprehensive Handover:** Upon approval of a resolution plan, the IP should prepare a comprehensive “Compliance Handover Dossier” for the new management. This dossier should include the status of all statutory filings made during the CIRP, a list of any remaining non-compliances, and copies of all regulatory communications.
2. **Facilitating Change in Management:** The IP must proactively coordinate with the ROC to ensure a smooth transition of filing authority. This involves filing Form INC-28 to report the approval of the resolution plan and assisting the new directors in updating their DSCs on the MCA portal.
3. **Regularisation of Past Defaults:** The resolution plan should ideally contain provisions seeking a waiver of penalties for past non-compliances.

The IP should provide the new management with all necessary documentation to approach the ROC or other authorities for the formal compounding or condonation of these defaults as per the terms of the approved plan. The new management should conduct pending AGMs (unless waived by NCLT) and regularise all past filing gaps.

During Liquidation: Final Compliance and Dissolution

1. **Regulatory Intimation:** The liquidator must immediately file the NCLT order for liquidation with the ROC using Form INC-28. For listed entities, the stock exchanges must be promptly informed of the commencement of liquidation.
2. **Maintenance of Records:** The liquidator is responsible for maintaining all statutory registers and books of account of the corporate debtor until its dissolution. All actions taken during the liquidation process should be properly documented.
3. **Final Filings:** Before applying for dissolution, the liquidator must ensure that any necessary final statements or reports are filed. This includes preparing the final accounts of the liquidation process for stakeholder approval and submission.
4. **Application for Dissolution:** Once all assets have been liquidated and proceeds distributed as per the waterfall in Section 53, the liquidator must file the application for the dissolution of the corporate debtor with the NCLT and subsequently with the ROC using the appropriate forms (e.g., STK-2 for strike-off, where applicable). This ensures a clean and formal closure of the company's legal existence.

5.2 Best Practices: Income Tax

To mitigate the significant tax-related challenges, IPs should adopt a multi-pronged strategy focused on immediate control, ongoing diligence, strategic planning, and clear communication.

Initial Phase (First 30 Days): Gaining Control and Assessing Legacy Issues

1. **Secure Tax Credentials:** The IP must immediately take control of the corporate debtor's PAN, TAN, and login credentials for the Income Tax e-filing portal. Where credentials are not shared by the erstwhile management, the IP should use the "Register as Representative" facility on the portal, as enabled by CBDT, to get their DSC mapped as the authorised representative.
2. **Comprehensive Tax Due Diligence:** Conduct a thorough review of the corporate debtor's tax history for at least the past seven assessment years. This should include identifying all unfiled returns, pending assessments, appeals, outstanding demands, and tax refunds due. This forms the basis for all future tax-related actions.

3. **Formal Intimation to Tax Department:** Proactively send a formal intimation letter enclosing the NCLT admission order to the jurisdictional Assessing Officer (AO), the Principal Commissioner of Income Tax (PCIT), and the TDS officer. This letter should clearly state the commencement of CIRP and the imposition of the moratorium under Section 14, requesting a stay on all pending and future proceedings.

During CIRP: Ensuring Current Compliance and Managing Past Liabilities

1. **Handle Unenforceable Notices:** If any demand notice or assessment order is issued for a pre-CIRP period, the IP should immediately respond in writing to the concerned authority, pointing out that the action is in violation of the moratorium and therefore unenforceable. This creates a formal record and prevents ex parte proceedings. Do not ignore such notices.
2. **TDS and Advance Tax Compliance:**
 - Ensure that Tax Deduction at Source (TDS) on all payments made during the CIRP is deducted and deposited on time. This is a CIRP cost and must be prioritized.
 - Evaluate the requirement for advance tax payments based on the operational profitability of the corporate debtor. If there are no profits, maintain documentation supporting the non-payment of advance tax.
3. **Filing of Income Tax Returns:**
 - The IP must ensure that income tax returns for all financial years falling within the CIRP period are filed by the due date to preserve valuable tax attributes like the ability to carry forward losses.
 - Where possible and with available data, file any pending returns for pre-CIRP years, even if belated, to quantify losses and establish a clear record.
4. **Claiming Refunds:** Proactively pursue all outstanding tax refunds due to the corporate debtor. If the department attempts to set off the refund against pre-CIRP demands, the IP must immediately file an application before the NCLT seeking directions for the release of the refund, citing the violation of the moratorium.

Resolution Plan Stage: Strategic Tax Structuring

1. **Provide Comprehensive Tax Information:** The Information Memorandum (IM) should contain a dedicated section on the corporate debtor's tax position, including details of brought-forward losses, unabsorbed depreciation, pending litigations, and potential tax implications of debt waivers. This allows resolution applicants to make informed bids.

2. **Structure for Tax Efficiency:** The IP should guide the CoC and resolution applicants on structuring the plan to be tax-efficient and compliant. This includes:
 - **Addressing Debt Waivers:** Explicitly state in the resolution plan that any waiver of debt will be credited to capital reserves or other appropriate accounts to mitigate the risk of it being taxed as income under Section 41(1) or 28(iv).
 - **Preserving Tax Losses:** Ensure the resolution plan meets the conditions of Section 79 of the Income Tax Act and that the required intimation is sent to the PCIT to protect the carry-forward of losses.
 - **Seeking Specific Waivers:** The resolution plan should seek explicit relief from the NCLT from the applicability of deeming provisions like Section 56(2)(x) and Section 50CA for transactions undertaken pursuant to the plan.
3. **“Clean Slate” Provision:** Ensure the resolution plan contains a clear and unambiguous provision stating that upon approval, all past tax liabilities, including interest and penalties, whether claimed or unclaimed, known or unknown, shall stand extinguished except to the extent provided for in the plan. This should explicitly cover immunity under Section 32A from past tax offences.

During Liquidation: Final Tax Compliance and Closure

1. **Final Tax Returns:** The liquidator is responsible for filing a final income tax return covering the period up to the company’s dissolution. This return must account for any income earned during liquidation, such as capital gains from the sale of assets or interest income.
2. **No-Objection Certificate (NOC) Exemption:** The liquidator should be aware that Section 178(6) of the Income Tax Act explicitly exempts IBC liquidations from the requirement to obtain an NOC from the tax department before distributing assets. No time should be wasted in pursuing this, and any insistence by tax officials should be countered by citing the statutory provision.
3. **Priority of Tax Dues:** The liquidator must treat the Income Tax Department’s claims as operational debt to be paid strictly in accordance with the waterfall under Section 53 of the Code. No preferential payment should be made outside of this waterfall.
4. **TDS on Property Sales:** In case of the sale of immovable property, the liquidator should inform the buyer that no TDS is required to be deducted under Section 194-IA, citing the NCLAT rulings on the matter. This ensures the full sale proceeds are received into the liquidation estate.

5.3 Best Practices: GST & Customs

Navigating GST and Customs laws requires a highly proactive and structured approach to overcome systemic friction and ensure compliance while protecting the corporate debtor's assets.

Immediate Actions (First 30 Days): Establishing a Compliant Framework

1. GST Registration Strategy:

- Immediately assess the corporate debtor's GST filing status. If returns for the pre-CIRP period are pending, the IP must, within 30 days of appointment, apply for a new GST registration in every state of operation, as mandated by CBIC Notification 11/2020-CT. This is critical to de-link past non-compliance from current operations.
- If all pre-CIRP returns are filed, a new registration is not mandatory. The IP should make a considered decision based on the complexity of the case; a new registration often provides a cleaner slate.

2. Formal Intimation to Authorities: Send a formal letter enclosing the NCLT admission order to all relevant GST (Central and State) and Customs Commissionerates. This letter must:

- Inform them of the CIRP commencement and the moratorium under Section 14.
- Request them to file any pre-CIRP dues as a claim with the IP.
- Demand the immediate lifting of any pre-existing attachments on bank accounts or assets.

3. Secure GST Portal Access: Take immediate control of the existing GST portal login credentials. If unavailable, use the new GSTIN to manage all future compliances.

4. Customs Liaison: For corporate debtors with import/export operations, immediately contact the relevant customs port authorities. Provide the NCLT order and request the release of any goods detained for pre-CIRP dues, citing the Supreme Court's judgment in Sundresh Bhatt.

During CIRP: Diligent Compliance and Asset Protection

1. Maintain Current GST Compliance:

- Ensure timely filing of all GST returns (GSTR-1, GSTR-3B, etc.) under the new (or existing) GSTIN for the entire CIRP period. All GST collected on sales must be deposited, as this constitutes a CIRP cost.
- File "Nil" returns for dormant entities or during periods of no activity to avoid automated penalties and maintain an active compliance status.

2. Input Tax Credit (ITC) Management:

- **Claiming Current ITC:** Diligently claim all eligible ITC on invoices for goods and services procured during the CIRP period to preserve cash flow. For the interim period before a new GSTIN is granted, claim ITC on invoices bearing the old GSTIN in the first return, as permitted by CBIC.
- **Resisting ITC Reversal:** Do not automatically reverse ITC for pre-CIRP payables that cross the 180-day limit. The IP should take a documented stand that such reversal is not applicable as the non-payment is due to the legal bar imposed by the moratorium under the Code. Communicate this position to the GST department if queried.
- **Protecting Counterparties:** To the extent possible, ensure timely filing of GSTR-1 to allow customers to avail ITC, thereby preserving commercial relationships.

3. Handling Pre-CIRP Issues:

- Treat all pre-CIRP GST and Customs dues as operational debt. Collate and verify all claims submitted by the tax departments.
- If any authority issues a notice or attempts recovery for pre-CIRP dues, respond immediately in writing, asserting the moratorium, and escalate to the NCLT if the authority persists.
- Proactively follow up on pending GST refunds. If the department fails to process them or attempts an illegal set-off, file an application with the NCLT.

During Liquidation: Compliant Monetisation of Assets

1. **GST on Asset Sales:** The liquidator must charge and remit GST on the sale of movable assets like plant, machinery, and inventory. This must be factored into the sale process. If GST registration is not available, the Liquidator should ensure proper registration under GST act before initiating sale process.
2. **Going Concern Sales:** Where the business is sold as a going concern, structure the transaction to explicitly qualify for the GST exemption available for such transfers. This should be clearly documented in the sale agreement to avoid future disputes.
3. **Final GST Compliance:** After all assets are sold and the business is wound up, the liquidator must file the final return (GSTR-10) and apply for cancellation of the GST registration to formally close the compliance chapter.

5.4 Best Practices: Labour Laws

Managing labour law compliances requires a delicate balance between fiduciary duties to all creditors and upholding the statutory rights of employees. IPs should adopt an approach rooted in diligence, clear communication, and adherence to established legal principles.

Initial Phase: Assessment and Communication

1. **Secure Employee Records:** Immediately on appointment, take custody of all employee-related records, including employment contracts, payroll data, attendance registers, and records pertaining to PF, ESI, and gratuity contributions.
2. **Labour Law Compliance Audit:** Conduct a swift audit to ascertain the status of labour law compliances, identifying any pre-CIRP arrears for wages, PF, ESI, gratuity, bonus, etc. This assessment is critical for verifying claims and for the Information Memorandum.
3. **Proactive Intimation to Authorities:** Send formal intimation of the CIRP commencement and moratorium to the respective regional offices of the EPFO and ESIC, and to the jurisdictional Labour Commissioner. This proactive communication helps prevent the issuance of notices in violation of the moratorium.

Verification and Treatment of Employee Dues

1. **Diligence on PF and Gratuity:**
 - **Verification:** Verify the claims submitted by the EPFO by cross-referencing with the corporate debtor's payroll records and challans. For gratuity, conduct an actuarial valuation if one is not available to accurately determine the liability.
 - **Handling Interest & Damages:** Given the legal ambiguity, the best practice is to admit the principal amount of PF/gratuity as a priority claim excluded from the estate. For interest and damages, the IP should admit them as operational debt but make a clear note in the list of claims regarding the ongoing legal debate on their priority status, for the CoC's consideration.
 - **Provisioning in Resolution Plans:** Advise the CoC and prospective resolution applicants that 100% of admitted PF and gratuity dues (at least the principal) must be provided for in the resolution plan, as these cannot be legally extinguished or written down.
2. **Treatment of Other Dues:** For ESI, leave encashment, and bonus, admit claims as operational debts and classify them correctly for the liquidation waterfall (e.g., as workmen's dues for the 24 months preceding the insolvency commencement date).

During CIRP: Ongoing Compliance and Workforce Management

1. **Timely Deposit of Current Dues:** Ensure that all current contributions for PF and ESI for retained employees are deposited on time. These are CIRP costs and enjoy the highest priority. This is crucial for maintaining employee morale and avoiding statutory penalties.
2. **Maintaining Service Conditions:** Adhere to all existing service conditions as per certified Standing Orders and employment contracts. Avoid any unilateral changes to wages or terms of employment. If workforce rationalisation or changes are essential for the business to survive, these should be done in consultation with the CoC and in compliance with the Industrial Disputes Act, 1947.
3. **Employee Communication:** Maintain open and transparent communication with employees and their representatives. Clearly explain the status of their pre-CIRP and current dues and the processes under the Code.

Liquidation Phase: Ensuring Full and Final Settlement

1. **Calculation of Terminal Dues:** Upon liquidation, the employment of all workmen and employees is deemed terminated. The liquidator must meticulously calculate all terminal dues for each employee, including:
 - Unpaid salary and wages.
 - Gratuity payable for the entire period of service.
 - Leave encashment for all accumulated leave.
 - Statutory retrenchment compensation and notice pay as required under the Industrial Disputes Act, 1947.
2. **Distribution as per Priority:** Ensure that the distribution of proceeds strictly follows the waterfall under Section 53, prioritizing workmen's dues (for the 24 months preceding liquidation) *pari passu* with secured creditors, and paying other employee dues as per their rank. Ensure that PF and gratuity dues are paid in full outside the waterfall.
3. **Assistance with PF Withdrawals:** The liquidator should provide necessary assistance and documentation to employees to facilitate the timely withdrawal of their PF accumulations from the EPFO or the company's private trust.

5.5 Best Practices: Accounting & Auditing

In the absence of a dedicated insolvency-specific accounting framework, IPs must navigate the existing standards with diligence and a focus on transparent disclosure.

Initial Phase: Securing the Financial Reporting Framework

1. **Secure All Financial Records:** Immediately secure all original books of account, ledgers, vouchers, and electronic data (e.g., accounting software backups like Tally/SAP). Create an inventory and encrypted backups to prevent data loss or tampering.
2. **Engage Professional Support:** It is a best practice to immediately appoint an independent firm of Chartered Accountants to assist in the reconstruction of accounts, reconciliation of claims, and preparation of financial statements. This provides an additional layer of professional oversight.
3. **Liaise with Statutory Auditors:** Hold an initial meeting with the incumbent statutory auditor to discuss the challenges ahead. Agree on a clear audit plan, timelines, and the approach to key issues like the “going concern” assumption. If the auditor is uncooperative or resigns, the IP should, with CoC approval, move to appoint a new auditor.

Ongoing Financial Management and Reporting

1. **Maintain Continuous Accounting:** Do not let accounting work accumulate. Maintain the corporate debtor’s books on an ongoing basis during the CIRP. This practice facilitates the preparation of interim reports for the CoC and ensures the final audit process is smoother.
2. **Tackle the “Going Concern” Dilemma:**
 - **During CIRP:** Prepare financial statements on a going-concern basis but include a detailed “Material Uncertainty Related to Going Concern” note in the financial statements. This note should explicitly state that the company is under CIRP and its ability to continue as a going concern is dependent on the approval and implementation of a resolution plan.
 - **During Liquidation:** The going concern assumption is no longer appropriate. The IP should prepare financial statements on a “liquidation basis” or “net realizable value basis.” Since no Indian standard exists for this, the basis of preparation must be clearly disclosed, explaining how assets and liabilities are valued.
3. **Handle Pre-CIRP Adjustments and Claims:**
 - For prior period errors discovered, apply Ind AS 8 and make restatements. The financial and tax impact of such restatements should be clearly documented and disclosed.
 - Maintain a clear reconciliation between the liabilities as per the books of account and the claims admitted during the CIRP. This reconciliation is a critical piece of information for all stakeholders.

Audit and Finalisation Process

1. **IP's Responsibility and Signing:** The IP should take ultimate responsibility for the finalisation of the financial statements. It is a best practice for the IP to sign the accounts on behalf of the company, citing their authority under the IBC. To strengthen this position, the IP can seek a specific authorization from the CoC to approve and sign the financial statements.
2. **Providing Representations to Auditor:** The IP should provide a formal Management Representation Letter to the statutory auditor. This letter should detail the key assumptions made, the limitations faced due to data unavailability, and the basis for accounting judgments, especially concerning claims and valuations.
3. **Dealing with Audit Qualifications:** If the auditor issues a qualified opinion or a disclaimer due to issues like data unavailability, the IP should ensure that the Information Memorandum and reports to the CoC clearly explain the reasons for the qualification and its potential impact.

Transparency and Enhanced Disclosures

1. **Insolvency-Specific Disclosures:** In the absence of a specific standard, IPs should voluntarily enhance disclosures in the Notes to Accounts. These should include:
 - A clear statement that the company is under CIRP/Liquidation.
 - The basis of preparation of the financial statements, especially if it is not on a going-concern basis.
 - A summary of claims received, admitted, and their status.
 - The accounting treatment for key events like debt waivers under a resolution plan.
 - Disclosures regarding asset valuations performed by registered valuers and how they compare to book values.
2. **Regular Updates to CoC:** Provide the CoC with periodic (preferably monthly or quarterly) unaudited financial statements and cash flow statements to ensure they are fully informed of the corporate debtor's financial health during the CIRP.

6. Proposals for Legislative and Regulatory Amendments

The preceding analysis has identified several areas where a lack of legal clarity, procedural friction between statutes, and systemic gaps hinder the effective implementation of the Insolvency and Bankruptcy Code, 2016. While judicial pronouncements and administrative circulars have addressed some issues, long-term certainty and efficiency can only be achieved through targeted legislative and regulatory amendments.

This section consolidates the key recommendations of the Study Group, proposing specific amendments to the Insolvency and Bankruptcy Code, the Companies Act, SEBI Regulations, various Tax Laws, and Labour Laws. These proposals are aimed directly at policymakers with the objective of creating a more harmonised, predictable, and efficient compliance framework for companies undergoing insolvency.

- Proposed Amendments to the Insolvency and Bankruptcy Code, 2016
- Proposed Amendments to the Companies Act, 2013 & SEBI Regulations
- Proposed Amendments to the Income Tax Act, 1961
- Proposed Amendments to the Central GST Act, 2017 & Customs Act, 1962
- Proposed Harmonization with Labour Laws
- Proposed Amendments/Clarifications for Accounting & Auditing Standards

[Refer the details tables provided for each of these laws and regulations separately in the following pages]

6.1 Proposed Amendments to the Insolvency and Bankruptcy Code, 2016

To strengthen the foundational framework of the Code and address recurring conflicts with other statutes, the following amendments to the IBC itself are proposed:

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To strengthen the foundational framework of the Code and address recurring conflicts with other statutes, the following amendments to the IBC itself are proposed:

S.No.	Current Challenge	Proposed Amendment	Rationale
1	Ambiguous Scope of Moratorium: The term “proceedings” in Sec 14(1)(a) is not explicitly defined, allowing statutory authorities to continue assessment / adjudication actions, which burdens the IP.	Insert an Explanation to Sec 14(1) (a) to clarify that “proceedings” includes all forms of assessment, adjudication, quasi-judicial actions, and inquiries by any statutory or regulatory authority for pre-CIRP periods.	Prevents misinterpretation, ensures a complete standstill, reduces litigation, and allows the IP to focus on resolution without distraction from parallel proceedings.
2	Uncertain Priority of Statutory Dues: The Rainbow Papers judgment created confusion by allowing a statutory “first charge” to elevate a government authority to a secured creditor, disrupting the waterfall.	Insert a non-obstante clause or an Explanation in Sec 53 to clarify that all statutory dues are operational debts unless the charge is registered in the same manner as for any other secured creditor.	Restores the original legislative intent of the Code’s waterfall, provides certainty to all stakeholders, and prevents resolution plans from being derailed by unforeseen priority claims.
3	Ambiguity in “Dues” Excluded from Estate: Sec 36(4) excludes PF/ gratuity “sums due” but is silent on whether this includes interest and penalties, leading to conflicting judgments and inequity among creditors.	Add an Explanation to Sec 36(4) to define “sums due” to mean only the principal amount of contributions to the provident fund, pension fund, and gratuity fund. The explanation should clarify that any associated interest, damages, or penalties shall be treated as operational debt and settled as per the waterfall in Sec 53.	This provides legal certainty and ensures fairness. It protects the core retirement savings of employees (the principal) while ensuring that interest and penalties, which accrue due to default, do not get an unfair super-priority over the dues of other creditors who are also taking a significant financial hit.

S.No.	Current Challenge	Proposed Amendment	Rationale
4	Insufficient Deterrence for Non-Cooperation: The existing provisions under Sec 19 are often insufficient to deter non-cooperation from erstwhile management, leading to significant delays for the IP.	Amend Sec 19(3) to introduce mandatory, time-bound hearings for non-cooperation applications. Further, amend Sec 70 to introduce more stringent and specific penalties, including monetary fines.	Creates a stronger deterrent against non-cooperation, expedites information gathering for the IP, and reduces the administrative burden on the NCLT.

6.2 Proposed Amendments to the Companies Act, 2013 & SEBI Regulations

To align the Companies Act and SEBI's regulatory framework with the unique governance structure under the IBC, the following amendments and clarifications are proposed:

S.No.	Current Challenge	Proposed Amendment (via MCA/SEBI Notification)	Rationale
1	Impracticability of Meetings: Companies in CIRP cannot hold Board Meetings or AGMs, but no formal exemption exists, forcing case-by-case reliefs.	Issue a notification for an explicit and automatic exemption from holding Board Meetings (Sec 173) and AGMs (Sec 96) for any company during its CIRP period.	Provides legal certainty, eliminates the need for IPs to seek extensions/ exemptions, and formally recognizes the governance shift under the IBC.
2	Unrealistic Filing Deadlines: Annual filing of AOC-4 and MGT-7 is contingent on the AGM, leading to a cascading compliance failure during CIRP.	Defer the statutory due dates for filing Forms AOC-4 and MGT-7. The new due date should be a specified period (e.g., 180 days) from the date of approval of the resolution plan.	Acknowledges the practical impossibility of meeting standard deadlines during CIRP and provides a realistic timeline for the new management to ensure compliance without penalty.

S.No.	Current Challenge	Proposed Amendment (via MCA/SEBI Notification)	Rationale
3	Accrual of Penalties: Delays in filings during the CIRP period, often for reasons beyond the IP's control, lead to significant additional fees and penalties.	Introduce an automatic waiver of all additional fees and penalties under the Companies Act for any delay in filing of forms that were due during the CIRP period.	Prevents the corporate debtor's estate from being eroded by penalties arising from procedural delays inherent to the insolvency process and allows the new management a clean slate.
4	Procedural Hurdles for Corporate Actions: Implementing a resolution plan (e.g., altering capital, issuing shares) is hindered because existing e-forms are not designed for the IP's authority.	Create a special, fast-track process or a consolidated e-form for corporate actions under an NCLT-approved plan, empowering the IP to file based on the NCLT order alone.	Significantly expedites the implementation of resolution plans, reducing delays and ensuring the company's legal and capital structure reflects the approved plan without procedural friction.
5	Burdensome Disclosures for Listed Entities: IPs of listed entities struggle to meet periodic disclosure requirements (e.g., quarterly results, RPTs) due to lack of data and a functional management structure.	SEBI to issue a master circular granting specific, time-bound exemptions from certain LODR provisions. The IP would instead provide periodic updates on the CIRP's progress.	Reduces the administrative burden on the IP while ensuring material information relevant to the insolvency process is still communicated, balancing regulatory compliance with practical realities.

S.No.	Current Challenge	Proposed Amendment (via MCA/SEBI Notification)	Rationale
6	Ambiguity in Takeover/Delisting Rules: There is a need for clear, automatic exemptions from the SEBI Takeover Code and Delisting Regulations for transactions approved under an IBC plan.	Amend regulations to provide a clear and automatic exemption for any acquisition, change in control, or delisting that is part of an NCLT-approved resolution plan.	Provides certainty to resolution applicants, simplifies the transaction process, and makes the resolution of listed companies more efficient and attractive.

6.3 Proposed Amendments to the Income Tax Act, 1961

To achieve tax neutrality for insolvency proceedings and remove significant deterrents to resolution, the following legislative amendments and administrative clarifications are proposed:

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
1	Taxation of Debt Waivers: Waiver of debt under a resolution plan is at high risk of being taxed as income under Sec 41(1) or Sec 28(iv), which undermines the financial relief provided by the plan.	Legislative Amendment: Amend Sec 41(1) and Sec 28(iv) to explicitly exclude any remission, waiver, or extinguishment of any liability (trading or capital) undertaken pursuant to a resolution plan approved under the IBC.	This will ensure a true “clean slate” for the revived entity, align tax law with the commercial objective of the IBC, and prevent the imposition of a tax on a notional gain, thereby encouraging viable resolutions.
2	MAT on Book Profits from Waivers: The write-back of waived liabilities inflates book profits, potentially triggering a significant MAT liability under Sec 115JB, even with existing reliefs.	Legislative Amendment: Introduce a specific provision to Sec 115JB to exclude any credit to the Profit & Loss Account arising from the waiver or extinguishment of liabilities under an IBC-approved resolution plan from the computation of “book profit”.	This would provide complete relief from MAT on notional profits, ensuring that the resolution is not made unviable by a tax that arises purely from an accounting entry designed to clean the balance sheet.

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
3	Tax on Undervalued Asset Transfers: Deeming provisions like Sec 50C, Sec 50CA, and Sec 43CA treat the “fair market value” as the sale consideration, creating notional taxable gains for the corporate debtor during distressed asset sales under IBC.	Legislative Amendment: Amend Sections 50C, 50CA, and 43CA to provide a specific exemption for any transfer of assets undertaken as part of a resolution plan or liquidation process under the IBC.	Recognizes that the sale price discovered through a transparent, market-driven process under the IBC is the true value. It prevents the taxation of fictitious gains and encourages better price discovery for distressed assets.
4	Tax on Buyers for Undervalued Receipts: Sec 56(2)(x) can tax a resolution applicant for receiving shares or assets at a price lower than the fair market value, creating a major deterrent for investors.	Legislative Amendment: Insert a proviso in Sec 56(2)(x) to exempt any receipt of money or property (including shares) by a person pursuant to a resolution plan approved under the IBC.	Provides tax certainty to resolution applicants, encouraging them to invest in distressed companies without the fear of being taxed on a notional gain for acquiring assets at a court-approved, commercially negotiated price.
5	Potential ‘Angel Tax’ on Equity Infusion: Sec 56(2)(viib) could tax a corporate debtor for receiving share premium on fresh equity infusion from a resolution applicant if the issue price is above fair market value, which is absurd in a rescue scenario.	Legislative Amendment: Add a specific exemption in Sec 56(2)(viib) for any consideration received from the issue of shares by a company pursuant to a resolution plan approved under the IBC.	Ensures that vital rescue capital infused to revive a company is not partially clawed back as tax, thereby supporting the recapitalisation of distressed entities.

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
6	Lapse of Tax Losses on Late Filing: The benefit of carrying forward losses (Sec 79) is contingent on timely filing of returns (Sec 80). IPs often cannot meet these deadlines due to data unavailability, leading to the lapse of a valuable asset.	Legislative Amendment: Amend Sec 80 to provide that for a company undergoing CIRP, the condition of filing the return by the due date shall be relaxed, and losses can be carried forward even if the return is filed belatedly by the IP.	Protects the tax losses of the corporate debtor, which are a critical asset for the incoming resolution applicant, and makes the resolution of the company more financially attractive and viable.
7	Double Burden on Employees/ Suppliers for Undeposited TDS: Employees and suppliers whose TDS was deducted by a company pre-CIRP but not deposited are unfairly asked to pay the tax again, as they do not get credit for the deduction.	Legislative Amendment: Amend Section 205 of the Income Tax Act to explicitly state that if an assessee provides evidence (e.g., salary slip, Form 16A) of tax deduction by a deductor who subsequently entered CIRP/liquidation, credit for such TDS shall be granted to the assessee. The recourse for the department will be to file a claim for the undeposited TDS amount in the insolvency/ liquidation proceedings of the deductor.	This measure provides critical relief to innocent employees and vendors, preventing their double taxation due to the fault of the corporate debtor. It correctly shifts the burden of recovery from the individual assessee to the insolvency process, where the department can stand as a creditor.
8	Deductibility of CIRP Costs: There is no clarity on whether the significant costs incurred during the CIRP (IP fees, legal fees, etc.) are tax-deductible as revenue expenditure.	CBDT Circular/ Legislative Amendment: Issue a circular clarifying that all costs included in the “insolvency resolution process costs” as defined under the IBC shall be treated as revenue expenditure and be fully deductible in the year they are incurred.	Provides certainty on the tax treatment of CIRP expenses, preventing potential litigation and ensuring that the costs of resolution do not become a deferred financial burden on the revived entity.

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
9	Administrative & Procedural Hurdles: IPs face significant delays and procedural issues with the tax department, such as obtaining a new TAN, getting portal access updated, and getting illegal attachments lifted.	Administrative Action: CBDT should establish a dedicated “Insolvency Cell” or appoint Nodal Officers in each jurisdiction to act as a single point of contact for all IBC-related matters, and issue a comprehensive circular guiding field officers on all procedural aspects.	This will streamline communication, ensure consistent and timely action from the tax department, reduce litigation, and allow IPs to resolve procedural issues efficiently without delaying the insolvency process.

6.4 Proposed Amendments to the Central GST Act, 2017 & Customs Act, 1962

To resolve conflicts between GST/Customs laws and the IBC, and to streamline compliance, the following legislative and administrative actions are proposed:

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
1	Forced ITC Reversal for Non-payment: The requirement under GST law (Rule 37) to reverse ITC if a supplier is not paid within 180 days directly conflicts with the IBC’s moratorium, which prohibits such payments for pre-CIRP dues.	Legislative Amendment: Amend Rule 37 of the CGST Rules to insert a proviso stating that the condition of payment within 180 days shall not apply to any invoice for which payment is stayed or restrained due to the imposition of a moratorium under Section 14 of the IBC.	This will prevent the unjust enrichment of the exchequer at the expense of an insolvent company’s estate. It aligns the GST law with the reality of the IBC, ensuring that the corporate debtor is not penalised for adhering to the moratorium.

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
2	Unfair ITC Denial for Customers of Insolvent Companies: Customers who have paid GST to a supplier are denied Input Tax Credit under Sec 16(2)(c) if that supplier enters insolvency and fails to remit the tax to the government, causing a direct loss to the compliant customer.	Legislative Amendment & Circular: Amend Section 16(2)(c) to provide that the ITC of a recipient shall not be denied for the default of a supplier who is undergoing CIRP/ liquidation, provided the recipient can furnish proof of payment (including the tax amount) to the supplier. The department's recourse should be limited to filing a claim in the supplier's insolvency proceedings.	This provides crucial protection to the entire commercial ecosystem, ensuring that the insolvency of one entity does not trigger a cascade of tax losses for its otherwise compliant business partners. It places the onus of recovery on the correct party—the defaulting supplier's estate.
3	Procedural Hurdles and Lack of Systemic Integration: IPs face significant delays due to the need for new GST registrations and the lack of automated systems that recognise a company's insolvency status.	Administrative Action & Legislative Amendment: (1) Codify Special Procedures: Amend the CGST Act to incorporate the special procedures (currently in Notification 11/2020) for new GST registration and compliance during CIRP. (2) Integrate with GSTN: Create an automated “IBC Flag” in the GSTN system, triggered by NCLT admission, to alert officers and prevent automated enforcement actions.	Codifying the procedures will provide legal certainty. An automated flag will eliminate inconsistent actions by field officers, prevent illegal attachments, and streamline compliance for IPs, making the entire process more efficient.
4	Delayed GST Refunds: IPs face significant challenges in obtaining pending GST refunds, as departments often attempt to illegally set them off against pre-CIRP dues, violating the moratorium.	CBIC Circular: Issue a binding circular directing all GST formations to process and pay out legitimate GST refunds due to a corporate debtor within a fixed, expedited timeframe (e.g., 45 days) of receiving an application from the IP, without any set-off against pre-CIRP liabilities.	Ensures that the corporate debtor's estate is not deprived of vital cash flow during the CIRP. This will aid in maintaining the company as a going concern and will align the actions of the GST department with the legal principles of the moratorium.

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
5	Burdensome Compliance for Dormant Entities: IPs are required to file “Nil” GST returns for companies that are non-operational during CIRP/ Liquidation, which is an administrative burden.	Legislative Amendment: Introduce a provision to allow for the suspension of GST registration and the requirement to file returns for a company that has ceased all operations upon an application by the IP, with a simplified process for reactivation if needed.	Reduces the compliance burden on IPs, allowing them to focus on substantive resolution or liquidation tasks, and prevents the accumulation of penalties for procedural non-compliance for a non-operational entity.
6	Administrative Friction with Customs: Release of imported goods is often delayed despite clear Supreme Court rulings, as IPs have to educate field officers and seek specific NCLT orders.	CBIC Circular: Issue a comprehensive circular to all Customs formations, reiterating the law laid down in Sundresh Bhatt. This circular should establish a clear SOP for IPs to get goods released upon intimation of CIRP, without the need for litigation.	This will ensure uniform and swift implementation of the Supreme Court’s directives, preventing value erosion of assets stuck at ports and facilitating a smoother resolution or liquidation process.

6.5 Proposed Harmonization with Labour Laws

To resolve ambiguities and ensure the protection of employee rights in a manner consistent with the objectives of the Code, the following proposals are made:

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
1	Ambiguity on payment of Interest & Damages on PF dues: It is unclear if interest and damages on PF dues are part of the “sums due” excluded from the liquidation estate. Giving super-priority to interest, which often accrues due to historic default, is inequitable to other creditors.	Legislative Amendment (to IBC): Amend Sec 36(4)(a)(iii) to explicitly clarify that only the principal amount of provident fund, pension fund, and gratuity fund contributions shall be excluded from the liquidation estate. Any associated interest and damages shall be treated as unsecured operational debt and settled through the waterfall mechanism.	This provides legal certainty and ensures fairness. It protects the core retirement savings of employees (the principal) while ensuring that interest and penalties, which accrue due to default, do not get an unfair super-priority over the dues of other creditors who are also taking a significant financial hit.

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
2	Mandatory Full Payment of PF/ Gratuity in Resolution Plans: While judicially mandated, there is no explicit provision in the IBC that requires resolution plans to provide for 100% payment of PF and Gratuity dues, leading to some non-compliant plans being proposed.	Legislative Amendment (to IBC): Amend Section 30(2) of the Code to insert a specific clause mandating that any resolution plan must provide for the full payment of all admitted claims towards the principal amount of provident fund, pension fund, and gratuity fund.	This will codify the judicial precedents (Jet Airways, etc.), ensuring that all resolution applicants are aware of this non-negotiable requirement from the outset. It will prevent non-compliant plans and protect the sacrosanct nature of these employee welfare funds.
3	Lack of Clarity on Priority of Other Employee Dues: The priority status of other terminal benefits like leave encashment and retrenchment compensation that crystallize upon liquidation is not explicitly defined, leading to inconsistent treatment.	Legislative Amendment (to IBC): Add an Explanation to Section 53 to clarify that for the purpose of priority, “workmen’s dues” shall be deemed to include all statutory terminal benefits that become due on account of termination, such as leave encashment and retrenchment compensation.	This provides clear guidance to liquidators, ensures uniform treatment of these earned benefits, and prevents disputes during the distribution of assets, upholding the protective intent of the Code.
4	Lack of Reciprocal Recognition in Labour Laws: Labour authorities sometimes continue proceedings during the moratorium due to a lack of specific provisions in their own statutes acknowledging the IBC’s overriding effect.	Legislative Amendment (to EPF & ESI Acts): Amend the EPF Act, 1952, and the ESI Act, 1948, to include a specific section stating that upon commencement of CIRP under the IBC, all recovery proceedings shall be stayed, and claims shall be filed and adjudicated only as per the provisions of the Code.	This will create a clear directive for field officers of the EPFO and ESIC, ensuring automatic compliance with the IBC’s moratorium and claims process, thereby reducing inter-departmental friction and litigation.

S.No.	Current Challenge	Proposed Amendment / Clarification	Rationale
5	Personal Liability Risk for IPs: IPs face a risk of being held personally liable as “employers” for non-compliance with labour laws (e.g., non-deposit of PF) during CIRP, even if it is due to a cash crunch beyond their control.	IBBI/Government Circular: Issue a clarification or guidance note providing a “safe harbour” to IPs, stating that they shall not be held personally liable for any non-compliance with labour laws provided they have acted in good faith and the non-compliance was due to circumstances arising from the insolvency of the corporate debtor.	This will remove the “fear factor” for IPs, allowing them to make commercially sound decisions for the benefit of all stakeholders without the constant threat of personal prosecution for circumstances beyond their control.

6.6 Proposed Amendments/Clarifications for Accounting & Auditing Standards

To address the regulatory vacuum and practical difficulties in financial reporting for insolvent companies, the following actions are recommended for consideration by the Institute of Chartered Accountants of India (ICAI), the National Financial Reporting Authority (NFRA), and the IBBI.

S.No.	Current Challenge	Proposed Recommendation (Action by ICAI/NFRA/IBBI)	Rationale
1	Absence of Specific Accounting Framework: There are no dedicated accounting standards for companies under CIRP or Liquidation, forcing the application of standards based on the “going concern” assumption, which is often inappropriate.	Issue a new Guidance Note or Accounting Standard: The ICAI should develop and issue a comprehensive “Guidance Note on Accounting for Companies undergoing CIRP and Liquidation.” In the long term, this could evolve into a full-fledged Accounting Standard (AS) or an appendix to existing Ind AS.	This will provide a definitive framework, ensure consistency in financial reporting, and eliminate the conceptual conflict of applying a going-concern basis to non-going-concern entities. It will provide IPs and auditors with clear, authoritative guidance.

S.No.	Current Challenge	Proposed Recommendation (Action by ICAI/NFRA/IBBI)	Rationale
2	Ambiguity on “Liquidation Basis” of Accounting: When a company enters liquidation, there is no prescribed framework in India for preparing accounts on a “liquidation basis” (i.e., at net realizable value).	Introduce a Liquidation Basis Framework: The proposed Guidance Note should explicitly define the principles of the “liquidation basis” of accounting, including how to measure assets and liabilities, when to switch from the going-concern basis, and the required disclosures.	A formal framework will standardize the preparation of financial statements for companies in liquidation, enhancing the reliability and comparability of the information available to stakeholders for assessing recovery prospects.
3	Lack of Standardised Insolvency Disclosures: Financial statements of insolvent companies often lack specific disclosures that are crucial for stakeholders, such as the status of claims or the impact of a resolution plan.	Mandate Insolvency-Specific Disclosures: The new Guidance Note should mandate a set of specific disclosures in the notes to accounts, including: (a) A clear statement of the company’s status under IBC; (b) A reconciliation of liabilities as per books with claims admitted; (c) The basis of valuation for key assets; (d) The accounting treatment for key features of an approved resolution plan.	Enhanced disclosures will significantly improve transparency, allowing creditors, resolution applicants, and other stakeholders to better understand the financial position of the corporate debtor and the potential outcomes of the insolvency process.
4	Uncertainty in Auditor’s Role and Reporting: Statutory auditors face dilemmas regarding their reporting responsibilities, especially concerning the going concern assumption and the scope of their audit in the absence of complete records.	Issue a Guidance Note for Auditors: The Auditing and Assurance Standards Board (AASB) of the ICAI should issue a specific “Guidance Note on Audit of Companies under Insolvency,” addressing the practical challenges faced by auditors.	This will provide auditors with clear guidance on how to modify their audit reports, how to deal with limitations in scope due to non-availability of data, and how to report on the financial statements of a company under CIRP or liquidation, thereby ensuring consistent and high-quality audits.

S.No.	Current Challenge	Proposed Recommendation (Action by ICAI/NFRA/IBBI)	Rationale
5	Procedural Ambiguity on Finalising Accounts: The authority of the IP to approve and sign financial statements in the absence of a Board of Directors is based on general powers rather than an explicit provision, creating a legal grey area.	ICAI/IBBI to issue Clarification: The ICAI and IBBI should jointly issue a clarification or include in the proposed Guidance Note that the IP, with the approval of the CoC, is empowered to approve and sign the financial statements of the corporate debtor during the CIRP period.	This will remove the legal ambiguity surrounding the finalisation of accounts, provide a clear procedural pathway, and strengthen the authority of the IP in fulfilling their financial reporting obligations.

7 Conclusion

The Insolvency and Bankruptcy Code, 2016, stands as a landmark reform, pivotal to enhancing the ease of doing business and fostering a robust credit culture in India. The success of this Code is intrinsically linked to the effective functioning of its key pillar, the Insolvency Professional (IP), who acts as the fulcrum balancing the diverse and often competing interests of all stakeholders.

As this report has detailed, the role of the IP extends far beyond mere administrative management; it demands navigating a complex and often conflicting maze of statutory compliances under various laws that were not originally designed to operate in an insolvency scenario. The friction between the Code and the provisions of the Companies Act, SEBI Regulations, Income Tax Act, GST laws, and Labour statutes creates significant legal ambiguities, procedural impediments, and practical hurdles. These challenges not only increase the time and cost of the insolvency process but also create uncertainty that can deter value-maximizing resolutions.

The best practices and standard operating procedures recommended in this report are intended to serve as a practical guide for IPs to navigate these challenges with greater consistency and transparency. However, practice can only mitigate, not eliminate, the underlying systemic and structural issues.

Therefore, the legislative and regulatory amendments proposed herein are of paramount importance. By providing explicit tax neutrality, streamlining corporate law procedures, clarifying the treatment of statutory dues, and developing a specific accounting framework for insolvency, the Government and respective regulatory bodies can create a truly harmonised and efficient ecosystem. The implementation of these recommendations will significantly empower Insolvency Professionals, provide greater certainty to all stakeholders, and ultimately strengthen the framework of the Code. This will, in turn, accelerate the resolution of corporate distress, enhance investor confidence, and contribute to the overall health and resilience of the Indian economy.



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