JUNE 2025

INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

IPA-ICMAI

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enroll there under insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhering to fair, just, and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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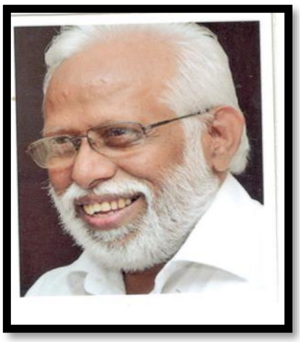

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TABLE OF CONTENTS

MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Professional,

Greetings to you from all of us in Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI). E-Journal is one of the publications regularly published by the Publications Desk of IPA-ICMAI. This journal seeks to carry interesting articles and opinions that not just inform but provide an enlightened insight into issues of vital interest in the domain of insolvency and bankruptcy, corporate restructuring and rejuvenation and related subjects. The profession of IPs, now getting out of infancy into adolescence, is continuously evolving with numerous rulings from the adjudicating authorities as well as constitutional courts apart from regulatory changes and hence demands a high level of attention of IPs in the midst of assignments and related preoccupations.

Professional development happens through continuous professional education including updates on changes in the code, relevant laws and regulations and also new case laws. As the saying goes, articulation of one's own understanding is the highest level of learning. Hence, an important part of professional development is expression of a professional's knowledge and experience and sharing with fellow professionals. The professional strength we gain and the satisfaction from the intellectual exercise in working for and preparing an opinion/ article shall drive us to be active participants in professional development activities. We at IPA-ICMAI are indeed privileged to be a vehicle of such expressions.

IPA-ICMAI looks to continually expand the horizons of knowledge and skillsets for IPs that would also help them professionally. The in-person workshop on developments in the IBC ecosystem organised under the auspices of the Insolvency and Bankruptcy Board of India (IBBI) jointly with the local Chapter of ICMAI at Kochi was one such event that saw good participation of professionals and interesting discussions.

This is a bumper issue of e-Journal carrying 7 articles on very interesting and relevant topics like treatment of government dues under CIRP, CIRP Timelines under IBC, Re-calibrating Cross Border Insolvency, Reporting Obligations of Liquidator, the latest amendments to the IBC regulations, etc.. I hope you will find these articles useful and interesting as much to generate your responses and feedback.

I welcome your comments, observations and critique on the published articles in this journal. Your response will contribute to better understanding of the issues in the articles and also better appreciation of different perspectives. I welcome you to contribute with your updates that would help our fellow IPs and opinions from your experiences that all of us can benefit from. Such responses will also be published in the journal in future to generate a healthy discussion and as also an expression of the appreciation of the author.

Your rejoinder/ response/ feedback may be sent to publication@ipaicmai.in.
Wish you all happy reading.

Mr. G.S. Narasimha Prasad
Managing Director

PROFESSIONAL DEVELOPMENT INTIATIVES

EVENTS CONDUCTED

JUNE 2025

DATE	EVENTS CONDUCTED
June 6, 2025	**Workshop on Not Readily Realisable Assets (NRRA)** was conducted on June 6, 2025.This workshop focused on the treatment and management of Not Readily Realisable Assets under IBC.
June 13- 15, 2025	An **Executive Development Program "Navigating the NCLT & NCLAT Landscape"** was organised by IPA-ICMAI from June 13 to 15, 2025. This program provided insights and practical knowledge on navigating the NCLT and NCLAT landscape.
June 14, 2025	A **Roundtable on Insolvency Insights: Navigating Challenges for best Practices vis-à-vis Statutory Authorities in association with Hyderabad Insolvency Professionals Association** was held on June 14, 2025, Hyderabad. This roundtable discussion brought together experts to share insights and best practices on navigating challenges with statutory authorities.
June 20, 2025	**Seminar on "Balancing Interest of Stakeholders under the processes of IBC" Conducted by IPA-ICMAI in association with the cochin Chapter of ICMAI** on June 20, 2025.This seminar focused on balancing the interests of stakeholders under the processes of IBC. Participants gained insights into the competing interests of stakeholders and learned strategies for balancing these interests in a fair and transparent manner.
June 20, 2025	A **Workshop on "Insolvency of Personal Guarantors" - Evolving Landscape and Ground Realities** was held on June 20, 2025.This workshop explored the evolving landscape and ground realities of insolvency of personal guarantors.
June 28-29, 2025	**IPA-ICMAI organized an Advance Workshop on "Avoidance Transactions under IBC, 2016"**, from June 28 to 29 2025 covering topics such as analysis of financial statements, identification of red alerts, forensic audits, and jurisprudential developments. The workshop provided expert insights and practical knowledge on avoidance transactions. Key aspects of IBC Sections 43-51 were also discussed.

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ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

ANALYSIS OF THE IBBI'S FOURTH AMENDMENT TO CIRP REGULATIONS, 2025

MR. JAYKISHAN RATHI
INSOLVENCY PROFESSIONAL

Introduction

The Insolvency and Bankruptcy Board of India (IBBI) has introduced significant amendments to the Corporate Insolvency Resolution Process (CIRP) through the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025. These changes, effective from May 26, 2025, aim to streamline the resolution process, enhance value maximization, and align the IBC framework with international insolvency practices. Key amendments include provisions for asset-wise or segment-wise resolution plans, the inclusion of interim finance providers as observers in CoC meetings, changes to payment priorities for dissenting financial creditors, and modifications to compliance requirements for resolution plans. This article examines the implications of these changes, their potential benefits, challenges, and necessary clarifications or solutions to ensure their effective implementation.

Key Amendments and Their Implications

1. **Asset-Wise or Segment-Wise Resolution Plans (Regulation 36A, Sub- Regulation 1A)**

Amendment: The new sub-regulation 36A(1A) allows the resolution professional, with CoC approval, to invite expressions of interest for resolution plans covering the corporate debtor as a whole, or for specific assets, or both.

Positive Impacts:

Enhanced Value Maximization: Allowing asset-wise or segment-wise resolution plans aligns with global practices, such as those in the U.S. under Chapter 11 bankruptcy, where segmented sales are common. This flexibility enables the CoC to maximize value by selling high-value assets or business segments separately, particularly for conglomerates with diverse operations (e.g., a company with real estate, manufacturing, and retail divisions).

Attracting Diverse Bidders: By permitting segmented bids, the amendment opens the door to a broader pool of investors who may be interested in specific assets rather than the entire corporate debtor. This could increase competition and potentially lead to higher recovery rates.

Resolving Stressed Assets Efficiently: For companies with underperforming segments, selling viable assets separately can prevent the drag of loss-making units, facilitating faster resolution. Especially in the Real Estate Sector, where different projects may have different viabilities, The new regulations may come as a good rescue mechanism for failed projects while preserving completed or viable projects.

Practical Challenges:

- Valuation Challenges: Accurately valuing individual assets or segments is complex, especially for intangible assets like intellectual property or brand value. Misvaluation could lead to disputes among stakeholders or undervaluation of assets, reducing recoveries and increasing litigation.
- Fragmentation Risks: Selling parts of a company may complicate the resolution of the corporate debtor as a whole as now COC

and RP will have to tackle multiple Resolution Plans. Further, if viable segments are sold but others remain unresolved, it could lead to partial liquidation.

- Increased Disputes: The CoC's and RP's decisions on segmenting assets may face objections from creditors, particularly operational creditors or minority financial creditors, who may perceive unequal treatment or loss of value. This may lead to higher litigations.
- Determining Asset Segmentation: The CoC and RP must develop robust criteria for identifying which assets or segments to sell. Without clear guidelines, this process could be subjective and prone to legal challenges. Some unscrupulous Developers can take advantage of these Regulations by completing profitable projects and leaving unviable ones to be tackled by CoC and RP to resolve.
- Balancing Whole vs. Partial Resolution: The amendment does not clarify whether unsold segments can be liquidated while others are resolved. This ambiguity could lead to disputes over whether the corporate debtor's resolution is complete.
- Stakeholder Coordination: Coordinating with multiple bidders for different assets requires significant effort from the RP, potentially delaying the CIRP timeline (180–270 days under IBC).

Solutions/Clarifications Needed:

- framework for Partial Resolution: The IBBI must clarify whether unsold segments can proceed to liquidation while others are resolved. A hybrid model could be introduced, allowing partial liquidation within the CIRP framework, with safeguards to protect creditor interests.
- Inclusion of Interim Finance Providers as Observers (Regulation 18, Sub- Regulation 5)
- **Amendment:** The CoC may direct the RP to invite interim finance providers to attend CoC meetings as observers without voting rights.

Positive Impacts:

- Improved Transparency: Allowing interim finance providers to attend CoC meetings fosters transparency, as these stakeholders, who fund the CIRP, can stay informed about key decisions.
- Encouraging Interim Financing: This provision may incentivize lenders to provide interim finance, knowing they will have visibility into the resolution process, potentially easing liquidity constraints during CIRP.

Clarifications Needed:

- Clear Guidelines on Observer Roles: The IBBI should define the rights and restrictions of observers, such as limiting their access to sensitive financial data unless approved by the CoC.

Payment Priority for Dissenting Financial Creditors (Regulation 38, Sub- Regulation 1)

- Amendment: A new proviso in regulation 38(1) mandates that dissenting financial creditors (those who vote against the resolution plan) receive payments at least on a pro-rata basis and in priority over assenting financial creditors in each stage of a staged payment plan.

Positive Impacts:

- Protecting Dissenting Creditors: This ensures fair treatment for dissenting financial creditors, aligning with the IBC's principle of equitable distribution. It addresses concerns raised in cases like Essar Steel (2019), where dissenting creditors sought better protection.
- Encouraging CoC Consensus: By prioritizing dissenting creditors, the amendment may push the CoC to develop more inclusive resolution plans, reducing dissent and

litigation.

Negative Impacts:

- Disincentivizing Assenting Creditors: Prioritizing dissenting creditors may discourage financial creditors from voting in favor of plans, as they may perceive delayed or reduced payments, potentially stalling approvals (requiring 66% CoC approval under IBC).

Challenges:

- Balancing Interests: Ensuring priority payments to dissenting creditors without alienating assenting creditors is a delicate balance. Over- prioritization may lead to reduced support for resolution plans.

Solutions/Clarifications Needed:

- Minimum Payment Guarantees: The IBBI could specify minimum payment thresholds for dissenting creditors (e.g., liquidation value as per IBC Section 30) to ensure fairness without discouraging assent.
- Streamlined Payment Mechanisms: Templates for staged payment structures could be provided to RPs, ensuring compliance with priority rules while maintaining simplicity.

Changes to Resolution Plan Compliance (Regulation 3G)

- **Amendment:** The amendments modify regulation 39 by removing the requirement in sub-regulation (2) that resolution plans must comply with the IBC and its regulations before submission to the CoC, adding "non-compliant plans" to the details submitted, and reinstating compliance requirements in sub-regulation (3) for plans submitted to the adjudicating authority.

Positive Impacts:

- Increased Flexibility: Allowing non-compliant plans to be submitted to the CoC enables broader discussions, potentially leading to innovative solutions that can be refined to meet compliance requirements.
- Streamlined Submission Process: By deferring strict compliance checks to the adjudicating authority stage, the amendment reduces the RP's initial burden, allowing faster plan evaluations.

Negative Impacts:

- Risk of Delays: Submitting non-compliant plans to the CoC may lead to prolonged discussions or rejections, delaying the CIRP timeline.
- Potential for Litigation: Non-compliant plans reaching the adjudicating authority could increase litigation if stakeholders challenge their validity, burdening the National Company Law Tribunal (NCLT).

Challenges:

- Ensuring Final Compliance: The shift of compliance checks to the adjudicating authority stage places greater responsibility on the NCLT, which is already overburdened.

Omission of Sub-Regulation 36B(6A)

- **Amendment**: The omission of sub-regulation 36B(6A) removes a previous provision which said that "If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor". This Sub-regulation has become redundant because of revised Regulations and hence omitted.

Broader Challenges and Solutions

- **Jurisprudential Development**

The introduction of asset-wise resolution plans is a significant shift, and its success will depend on how jurisprudence evolves. Courts, particularly the NCLT and NCLAT, will need to address disputes over asset segmentation, valuation, and partial liquidation. Precedents from cases like

Binani Industries (2018) emphasize value maximization, but segmented sales introduce new complexities.

Stakeholder Awareness

- Operational creditors, employees, and other stakeholders may be unaware of the implications of segmented sales or priority payments. This could lead to resistance or legal challenges. Hence, The IBBI and IPAs should conduct awareness campaigns and stakeholder consultations to explain the amendments and their benefits, fostering trust and cooperation.

Timeline Adherence

- The CIRP timeline (180–270 days) is already challenging, and the added complexity of segmented sales and non-compliant plan evaluations could lead to delays.The IBBI could introduce interim milestones for asset-wise resolutions and fast-track processes for non-compliant plan reviews to ensure timely completion.

Conclusion

- The IBBI's Fourth Amendment to the CIRP Regulations, 2025, introduces progressive changes that align the IBC with global insolvency practices and aims to maximize value for stakeholders. Asset-wise resolution plans and the inclusion of interim finance providers enhance flexibility and transparency, while priority payments to dissenting creditors promote fairness. However, these amendments also introduce challenges, including valuation disputes, potential fragmentation of the corporate debtor, and increased administrative burdens. To ensure their success, the IBBI must issue clear guidelines on asset segmentation, observer roles, payment structures, and plan compliance. Additionally, capacity building for RPs and the NCLT, along with stakeholder awareness initiatives, will be critical.

As jurisprudence evolves, these amendments have the potential to transform the CIRP into a more dynamic and effective process, provided the challenges are addressed proactively.

RECALIBRATING CROSS-BORDER INSOLVENCY IN INDIA:
A CRITICAL ANALYSIS OF GLOBAL NORMS, DOMESTIC READINESS, AND LEGAL IMPERATIVES

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Abstract
Insolvency regimes globally are undergoing a profound transformation due to increased economic interdependence, complex transnational corporate structures, and the rising volume of cross-border defaults. While the Insolvency and Bankruptcy Code, 2016 (IBC), represents a transformative leap for domestic insolvency resolution in India, its present inability to address cross-border insolvency in a comprehensive and legislatively cohesive manner is a material deficiency in India's legal and economic architecture. This article explores the doctrinal evolution of cross-border insolvency, critically evaluates the UNCITRAL Model Law as the global standard, examines the Indian framework (statutory and jurisprudential), and recommends a multi-dimensional reform path that combines legislative adoption with treaty-building, judicial capacity enhancement, and regulatory convergence. India's ambition to be a global investment and insolvency jurisdiction hinges on the maturity of its legal responses to cross-border distress, which is no longer the exception but the norm.

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1. Introduction: The Globalization-Insolvency Conundrum

The convergence of capital markets, liberalization of investment regimes, and global expansion of corporate footprints have rendered the boundaries of domestic insolvency law increasingly porous. Insolvency of entities like **Lehman Brothers**, **Nortel Networks**, and **Jet Airways** revealed that the existing national insolvency regimes—designed for domestic disputes—are ill-equipped to manage the intricate web of multinational asset locations, creditor claims, and overlapping jurisdictions.

Cross-border insolvency represents the legal, institutional, and operational challenge of resolving insolvencies where the debtor, its assets, creditors, or proceedings span multiple legal regimes. The Indian context—marked by exponential growth in outbound investments and increasing foreign portfolio and direct investments—makes cross-border insolvency a matter of both legal urgency and strategic significance.

2. Definitional Contours and Conceptual Foundations

Cross-border insolvency may be defined as the condition arising when:

- An insolvent debtor has assets in more than one country;
- Creditors are located across jurisdictions;
- Multiple proceedings are initiated in different countries; or
- There is a need for foreign judicial cooperation for resolution.

While the subject engages traditional principles of **private international law**, **comity of nations**, and **sovereignty**, it also invokes questions of **creditor protection**, **value maximization**, and **legal predictability**.

3. Legal Doctrines: Between Territorial Absolutism and Global Cooperation

3.1 Territorialism: Legal Isolationism

Territorialism postulates that each state exercises exclusive jurisdiction over insolvency proceedings within its territory, applying its laws to local assets and creditors. While it protects domestic priorities, it often results in:

- Duplication of proceedings,
- Forum shopping,
- Inconsistent creditor treatment, and
- Sub-optimal value realization.

3.2 Universalism: Legal Cosmopolitanism

This approach envisions a single, centralized proceeding in the debtor's "home" jurisdiction (determined by COMI—Centre of Main Interests), with global recognition. However, it is practically constrained by:

- Differing national priorities,
- Lack of uniform enforcement mechanisms,
- Public policy divergences.

3.3 Modified Universalism: Pragmatic Harmonization

Modified universalism underpins the **UNCITRAL Model Law on Cross-Border Insolvency, 1997**, balancing centralization of proceedings with local safeguards. It seeks inter-jurisdictional cooperation without abdicating national legal discretion.

4. The UNCITRAL Model Law: Blueprint for Global Best Practices

4.1 Adoption and Scope

The Model Law is designed to be adopted into domestic law and:

- Recognizes foreign insolvency proceedings (main and non-main),
- Permits access to foreign representatives,
- Provides for automatic or discretionary relief,
- Mandates cooperation and coordination among courts and insolvency administrators.

As of 2025, over **55 jurisdictions** including the **US, UK, Singapore, Japan, Canada**, and **Australia** have adopted the Model Law.

4.2 Key Provisions

- **Articles 15–17:** Procedure for recognition of foreign proceedings.
- **Article 20:** Automatic stay on recognition of a foreign main proceeding.
- **Articles 25–27:** Judicial cooperation and coordination mandates.
- **Article 6:** Public policy exception to preserve national sovereignty.

The Model Law provides a skeletal framework, enabling national customization, which has been crucial to its global acceptability.

5. India's Cross-Border Insolvency Regime: Present and Deficient

5.1 Sections 234 and 235 of the IBC

- **Section 234:** Permits bilateral agreements with foreign states for reciprocal enforcement of insolvency proceedings.
- **Section 235:** Allows the NCLT to issue letters of request to foreign courts for evidence or action.

However, these provisions are:

- **Unnotified** as of 2025,

- **Dependent on bilateral treaties**, none of which exist currently,
- **Procedurally ambiguous**, lacking implementation protocols.

Thus, India currently operates in a state of **judicial and legislative vacuum** in respect to cross-border insolvency.

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6. The Jet Airways Case: Judicial Innovation in a Legislative Void

In 2019, **Jet Airways (India) Ltd.**, undergoing CIRP in India, was simultaneously declared bankrupt in the **Netherlands**. The Dutch court appointed a bankruptcy trustee and initiated proceedings, leading to:

- Competing claims over the airline's assets in Europe,
- A request by the Dutch trustee for recognition in India.

6.1 NCLT vs NCLAT Approach

- **NCLT**: Denied recognition due to lack of enabling legislation.
- **NCLAT**: Allowed a **cross-border protocol** under which Indian and Dutch resolution professionals coordinated under judicial supervision.

6.2 Legal Implications

- Showed the judiciary's **adaptive capacity**,
- Highlighted the **limitations of ad hoc arrangements**,
- Reinforced the need for a **formal legislative framework**.

7. The Draft Cross-Border Framework: India's Unfinished Legal Business

- Following recommendations from the **Insolvency Law Committee (2018)**, the MCA released a **draft Part Z** to the IBC in 2019, largely adopting the UNCITRAL Model Law with tailored modifications.

7.1 Key Features

- Recognition of **foreign main and non-main proceedings** based on COMI.
- **Automatic moratorium** for recognized main proceedings.
- Direct access for **foreign representatives**.
- **Public policy clauses** for safeguarding sovereignty and legal integrity.
- Power to **exclude financial service providers** via notification.

7.2 Comparative Strengths

- **Unilateral recognition** even in the absence of treaties,
- **Court-to-court cooperation** provisions,
- **Discretionary relief** consistent with Indian jurisprudence.

7.3 Present Status

- The framework remains **pending parliamentary enactment**, leaving India out of step with similarly placed jurisdictions like Singapore, South Africa, and the UAE.

8. Comparative Jurisdictions: Lessons in Legal Convergence

Country	Adoption Year	Key Highlights
USA	2005	Chapter 15; robust jurisprudence on COMI and reliefs
UK	2006 (EU Recast Insolvency Regulation)	Strong cross-border protocols, though Brexit limited EU scope
Singapore	2018	Enhanced Model Law; court-supervised COMI determination
Australia	2008	Emphasis on mutual cooperation and judicial flexibility
South Africa	2000	Partial adoption; SADC coordination remains limited

India's non-adoption places it at a competitive disadvantage in cross-border claim enforcement and coordination.

9. Implementation Challenges: From Law to Practice

9.1 Institutional Capacity

- NCLTs and NCLAT need capacity building to handle international legal principles.
- SOPs for cooperation with foreign courts and professionals are absent.

9.2 Regulatory Coordination

- Need for harmonization between IBC and **FEMA, SEBI, RBI, and ED** rules.
- Cross-border flows, especially in financial distress, are heavily regulated.

9.3 Creditor Concerns

- Domestic creditors may perceive cross-border protocols as favoring foreign entities.Mechanisms for **class voting**, **creditor ranking**, and **asset tracing** must be clarified.

9.4 Enforcement Gaps

- India's enforcement of foreign judgments relies on **Section 13 CPC**, which may be insufficient for insolvency-specific orders.

10. Strategic Justifications for Reform

10.1 Investment Climate

A credible cross-border regime enhances confidence for:

- Foreign bondholders and lenders,
- Multinational suppliers and service providers.

10.2 Value Preservation

Coordinated proceedings reduce duplicative litigation, asset dissipation, and inconsistent rulings.

10.3 Legal Sovereignty

By adopting the Model Law with appropriate exceptions, India retains sovereignty while engaging with global norms.

10.4 Institutional Credibility

Demonstrates India's maturity in legal infrastructure, crucial for WTO, FTA, and G20 engagements.

11. Recommendations: Toward a Coherent Cross-Border Insolvency Ecosystem

1. **Legislative Enactment**: Introduce and pass the Draft Part Z in Parliament with stakeholder consultation.
2. **Protocol Development**: Create model court-to-court cooperation protocols and inter-jurisdictional SOPs.
3. **Capacity Building**: Launch certification programs for judges, insolvency professionals, and regulators.
4. **Treaty Framework**: Use Section 234 to develop treaties with strategic jurisdictions—UK, Singapore, UAE.
5. **Data Infrastructure**: Link insolvency data with global platforms like **INSOL** and **UNCITRAL Judicial Networks**.
6. **Public Policy Clarification**: Define 'public policy' in the context of cross-border recognition to avoid discretionary misuse.

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12. Conclusion: India at the Crossroads of Global Insolvency Reform

India's insolvency ecosystem has matured impressively in the last decade, but its inability to handle cross-border insolvency in a codified, rule-based manner poses a threat to that progress. The legal and commercial realities of transnational insolvencies demand that India adopt an advanced cross-border insolvency framework in line with global standards. The UNCITRAL Model Law, adapted to Indian needs, offers a pragmatic and tested model. Enacting this reform is not only a legal necessity—it is a strategic imperative.

As India seeks to become a hub for international finance, arbitration, and restructuring, its legal infrastructure must reflect its ambitions. Cross-border insolvency is no longer a peripheral issue—it is a central feature of global commerce. The time for legislative and institutional action is now.

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THE INSOLVENCY AND BANKRUPTCY CODE (IBC): A NEW DAWN FOR DEBT RESOLUTION IN INDIA

MR. PANKAJ KUMAR GUPTA
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SYNOPSIS

The article explores the transformative journey of India's Insolvency and Bankruptcy Code (IBC), enacted in 2016, as a structured and time-bound solution to corporate debt resolution. It covers the historical challenges pre-IBC, the Code's key features like creditor control and professional intermediaries, and its significant impact on the Indian economy. Highlighting improved creditor recovery, reduced NPAs, and enhanced investor confidence, it also details real success stories like Bhushan Steel. The article further identifies ongoing challenges—such as resolution delays and capacity gaps—and calls for systemic strengthening. Ultimately, it presents IBC as a foundational reform still evolving to meet India's complex insolvency landscape.

INTRODUCTION

Think of a world where distressed enterprises find a fresh dawn with creditors recovering their dues without the burdened weight of time. Is there a utopia like this? No, Insolvency and Bankruptcy Code, established in 2016, carries hopes and promises what is longed for. The Code has been a game-changer for financial markets in India, offering a clean and pragmatic way to deal with corporate insolvency. In this article, we dwell on the story of the Code: How the Code framed, what impact it had on the economy, and an instance in real life where the Code shines.

How the IBC aids India from the adverse?

The IBC was at the center of every pivot for a long time. And it did so with sufficient force to prompt a reason in its favor. Before the IBC, the insolvency framework of India was one huge nest of laws and processes dated for every era. In stoic silence multiply laws set governing insolvency, only leading to additional chaos and delay and ending in nothing short of frustration and hopelessness to all concerned in the said issues. On the other hand, creditors languished in a hazy expectation for an aging recovery of dues and the businesses overextended in insolvency battled in the reactive and outdated system with no sharp escape. No wonder India scored poorly in this respect in the World Bank Ease of Doing Business Report!

This led to the promised exciting possibilities. By 2014, the Indian government had formed the Bankruptcy Law Reforms Committee (BLRC) to evolve recommendations. The BLRC decreed the IBC in both houses of the Indian parliament then. It was not till the very next year that Parliament enacted it officially; this took place in May 2016, and the Code was implemented in late 2016. The view was as simple as it could be come up with a single mandate, time-bound, transparent system for insolvency resolution.

What's Special About the IBC?

The features introduced by the IBC were path breaking, namely:

Time-bound Resolution: It mandated that CIRP must be concluded within 180-day deadline (extendable 330 days), including all were legal proceedings for resolution ensures quick closure. That way, endless delays would not sap the value of a distressed business.

Creditors Steering the Process: Previously, debtor companies continued to operate during insolvency proceedings, leading to misuse of funds and delays. The control of a beleaguered company was now shifted to the creditors themselves primarily composed of financial creditors. This in effect ensured insolvency proceedings were undertaken fairly and expeditiously in favor of the creditors.

Insolvency Professionals (IPs): A regulated cadre of professionals who manage the resolution process independently, ensuring neutrality and efficiency. IPs were introduced under the IBC as middlemen between debtors and creditors. They worked alongside the ailing unit during the CIRP to smoothen the operation.

Information Utilities (IUs): This constitutes a database repository on financial information, enabling transparency and verification of claims and thereby expediting the resolution process. It is a Digital platform that maintain financial records, claims, and defaults—ensuring a single source of truth for all parties involved.

National Company law Tribunal (NCLT): Judicial body that presides over insolvency cases to ensure adherence to the faith of the law waving a green flag to ensure smooth run of the fishing of the parties.

Adjudication Mechanism: The National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) act as quasi-judicial bodies for efficient case disposal.

<u>How IBC Has Changed India's Economy?</u>

The IBC made a significant impact once implemented:

The Insolvency and Bankruptcy Code (IBC), enacted in 2016, has been a transformative reform for India's financial and corporate landscape. It has fundamentally shifted the balance of power from debtors to creditors, promoting a culture of credit discipline and timely repayment. Before IBC, resolving bad debts was a slow and inefficient process. With the introduction of time-bound insolvency resolution (180–330 days), recovery rates have significantly improved, boosting investor confidence and ease of doing business.

IBC has unclogged the banking system by addressing non-performing assets (NPAs), helping banks recover large sums and improve liquidity. It has also fostered the development of a robust ecosystem involving Insolvency Professionals, Information Utilities, and Adjudicating Authorities like NCLT and NCLAT.

The emphasis on resolution over liquidation promotes entrepreneurship, preserves jobs, and ensures higher economic value creation. Overall, IBC has strengthened India's financial stability, increased transparency, and positioned the country as a more reliable investment destination.

Better Payment for Creditors: Creditors currently receive about 40% of their dues compared to the rather low 20% received under the old system average. This is considered a massive improvement and the ultimate restoration of confidence in the financial system.

Reducing NPA Problems: The primary goal of IBC is to help banks clean up their balance sheets quickly and effectively, allowing offloading of bad assets and thus improving the solvency of the banks and their ability to lend.

Boosting Investor Confidence: At present, investors (both domestic and foreign) have a greater degree of confidence in terms of the inability to invest in Indian firms once they decide on structure, clear and fair processes to be systematically followed in case of insolvencies.

Encouraging Entrepreneurship: Much is expected to happen through the IBC to instill confidence within the entrepreneurs in taking risks. When a business fails, there are rules defined how to exit without carrying a huge debt with oneself for years.

A Real-Life Success Story: Bhushan Steel

One of the notable success stories from the IBC is the turning around of Bhushan Steel. Brought down by debts amounting to over ₹56,000 Crore, Bhushan Steel was dragged to the NCLT in July 2017.

The lucky winner in the competitive meals of the bidders was Tata group with a bid of ₹35,200 crore. The resolution plan was approved in May 2018, and Tata Steel has since been running the company. It was thus a very successful case of debt recoveries for creditors, while holding up opportunities for saving employment and a functioning business.

Solving the Challenges and How We Can Progress

The largest challenge despite its promising prospects manifested by the functionality of the IBC is:

Delays in Resolution: As of the 330-day timeline, delays caused by court appeals, etc., are common. The value of distressed assets can be diminished if things get delayed.

Creditors Face Severe Haircuts: Creditors always must take substantial haircuts on their dues to make resolution plans work. But now, on the other hand, because of these stark differences, creditors are relaxed and they might prefer not to move into insolvency in the anticipation of wider benefits.

Liquidation vs. Resolution: The fine line can become very crucial between trying to salvage a company and liquidating it. Not all businesses are restorable, and for the ideal cases, liquidation becomes a viable alternative.

Resolution focuses on reviving the debtor company by restructuring its debt or finding a new management to take over and run it as a going concern. The aim is to maximize the value of the assets, protect jobs, and recover dues for creditors in a time-bound manner. It supports economic continuity and encourages entrepreneurship by giving viable businesses a second chance.

Liquidation, on the other hand, is the process of shutting down the business and selling its assets to repay creditors. It is considered a last resort when resolution is not feasible or no resolution plan is approved. Although it may provide quicker returns to creditors in some cases, it often results in value erosion and job losses.

In essence, resolution prioritizes recovery and revival, while liquidation marks the end of a business's lifecycle, often leading to suboptimal outcomes for all stakeholders.

Operational Creditors' Concerns: While financial creditors are prioritized, operational creditors often receive negligible amounts in resolution plans, leading to discontent and legal scrutiny.

Cross-Border Insolvency: India lacks a robust framework for handling cases involving foreign creditors and assets. Integration of UNCITRAL Model Law is needed to strengthen the Code globally.

Building Capacity: NCLT, IPs, and other stakeholders require training and resources to handle the development of substantially increasing insolvency cases.

It involves strengthening institutional frameworks, professional expertise, and regulatory mechanisms to ensure the effective implementation of the Insolvency and Bankruptcy Code. It requires developing skilled insolvency professionals, enhancing the capabilities of Adjudicating Authorities like NCLT and NCLAT, and improving infrastructure for timely resolution of cases. Capacity building also includes creating awareness among stakeholders—creditors, debtors, legal professionals, and regulators—through training and dissemination of best practices. With growing complexity in insolvency matters, continuous upskilling and coordination among agencies like IBBI, IPAs, and other regulatory bodies are crucial to uphold the objectives of IBC: resolution over liquidation, maximization of asset value, and promotion of entrepreneurship.

- **Strengthening Institutions**: NCLT and NCLAT must be adequately staffed and technologically equipped for faster resolution.
- **Training Professionals**: Continuous learning programs for Insolvency Professionals, IPAs, lawyers, and regulators are vital to address the increasing complexity of cases.
- **Digital Transformation**: End-to-end digital case tracking, automation of filings, and AI-driven data analytics could vastly improve transparency and speed.
- **Awareness Campaigns**: Educating stakeholders—especially MSMEs and startups—on how to use IBC as a tool of restructuring and revival can broaden its reach.

Conclusion: This Is Just the Beginning of a Long Journey

The IBC has been, at present, one of the moving forces in the Indian financial system. The insolvency and bankruptcy code has brought transparency, efficiency and fairness in the resolution of corporate debt. The success of the likes of cases like Bhushan Steel is the way to understand the potency of the IBC.

So, practically, the other major challenges such as lengthy delay perception, creditor haemorrhage, and the most important of them all, the concentration of capacity need to be addressed realistically. These will be the key factors in maintaining the success of the IBC. It now envisages being complemented and groomed further to lay down a greater imprint on the economic future of India through reform and commitment.

DUAL COMPLIANCE MANDATE UNDER REGULATION 31A(10) OF THE IBBI LIQUIDATION REGULATIONS: A LEGAL ANALYSIS OF LIQUIDATOR'S REPORTING OBLIGATIONS

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INTRODUCTION: The Evolving Paradigm of Liquidator Accountability

Insolvency law in India has undergone transformative changes since the introduction of the Insolvency and Bankruptcy Code, 2016. The Code redefined the landscape of corporate resolution and liquidation by emphasizing time-bound processes, stakeholder protection, and professional accountability. Within the liquidation regime, the role of the liquidator is not only crucial but also legally complex, requiring a delicate balance between commercial discretion and stringent regulatory discipline. A core area that frequently invites interpretational queries is the extent and nature of reporting obligations when a liquidator chooses to act contrary to the advice of the Stakeholders' Consultation Committee (in short 'SCC'). Regulation 31A(10) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter, "Liquidation Regulations"), specifically addresses this situation and imposes compliance mandates that merit close examination.

The SCC, established under Regulation 31A, plays an advisory role by offering guidance to the liquidator on a range of critical matters, including the mode of sale, valuation methodology, distribution strategy, and the pursuit of legal proceedings. Although its advice is not binding on the liquidator, the Liquidation Regulations recognize the imperative of robust stakeholder engagement by requiring that any deviation from such advice must be formally recorded and reported. This is codified under the proviso to Regulation 31A(10), which mandates that when a liquidator takes a decision divergent from the SCC's recommendation, the liquidator must record the reasons in writing and submit the records to both the Adjudicating Authority (AA) and the Insolvency and Bankruptcy Board of India (IBBI) within five days of the said decision. Additionally, the same information must be incorporated in the next quarterly progress report filed under Regulation 15.

This article undertakes a comprehensive legal analysis to clarify the precise scope and nature of these dual reporting obligations, drawing upon principles of statutory interpretation, regulatory circulars, and the broader jurisprudence emanating from the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT).

The "Within Five Days" Mandate: A Dual and Simultaneous Obligation

The interpretation of the phrase in Regulation 31A(10) *"submit the records... to the Adjudicating Authority and to the Board within five days"* has been the subject of considerable discussion among practitioners. The pivotal element in this phrase is the use of the conjunction "and." In the canons of statutory construction, *"and"* is generally understood to indicate a cumulative obligation, meaning that all conditions connected by it must be fulfilled, unless the context unequivocally suggests a disjunctive intent. Hence, the requirement to submit the records within five days is equally applicable to both designated recipients—the Adjudicating Authority and the IBBI.

This interpretation is not merely predicated on grammatical construction but is definitively substantiated by regulatory guidance issued by the IBBI itself. IBBI Circular No. IBBI/LIQ/57/2022, dated December 21, 2022, explicitly directs insolvency professionals to utilize a prescribed electronic proforma for reporting to "the Board **and Adjudicating Authority**, under proviso to sub-regulation (10) of regulation 31A". This circular leaves no ambiguity about the dual and simultaneous nature of the submission, reinforcing that the electronic platform established by the IBBI facilitates a single, consolidated submission to both regulatory bodies.

The rationale underpinning this immediate reporting obligation is rooted in the principle of real-time oversight. The five-day timeframe commences from the date on which the liquidator makes the decision contrary to the SCC's advice. The objective is to provide prompt notification to both judicial and regulatory authorities, enabling timely review and potential intervention if deemed necessary. This mechanism serves as an early warning system, ensuring that significant deviations from stakeholder advice are brought to the immediate attention of oversight bodies, thereby upholding transparency and accountability in the liquidation process.

Cumulative Compliance: Separate Submission vs. Inclusion in Progress Report

The second critical aspect of the liquidator's reporting obligations concerns whether merely mentioning a divergent decision in the quarterly Progress Report (Regulation 15) suffices, or if a separate, immediate submission is also mandatory.

The cumulative reading of Regulation 31A(10) makes it unequivocally evident that these two reporting obligations are not mutually exclusive; rather, they are distinct and cumulative. The proviso states: ***"...submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report".*** The persistent use of *"and"* connecting these two clauses signifies that both actions are mandatory and must be independently discharged.

These two reporting mechanisms serve complementary, yet distinct, objectives:

The Five-Day Event-Driven Report - This report, submitted within five days, serves the purpose of immediate transparency and enables swift scrutiny of a specific, high-impact decision. Its focus is narrow, concentrating solely on the divergent decision, the reasons for it, and the SCC's original advice. The IBBI's proforma for this report mandates detailed inputs, including the agenda of the SCC meeting, the advice given, voting outcomes, and a cogent rationale for deviation, ensuring that the regulatory and judicial stakeholders are fully apprised of the factual and legal context.

The Quarterly Progress Report (Regulation 15) - In contrast, the Progress Report is a comprehensive, retrospective summary of the entire liquidation process. It encompasses a wide array of information, including the progress in asset realization, distributions made to stakeholders, details regarding the appointment of professionals, updates on material litigations, and overall expenses incurred. The inclusion of the divergent decision within this report serves to embed the event into the ongoing documentary trail of the liquidation process, providing a periodic summary for ongoing monitoring and record-keeping purposes. Liquidators are also obligated to share these progress reports with the members of the SCC, provided a confidential undertaking is received from them.

The principle of effective statutory interpretation dictates that no part of a regulation should be rendered redundant. Were the quarterly report sufficient in itself, the five-day requirement would become otiose - a conclusion not supported by the structure or legislative intent of the regulation. The deliberate drafting by the IBBI, including the introduction of Regulation 31A(6B) to ensure SCC is presented with liquidation costs and legal proceedings status at every meeting, further reinforces the intent for multiple layers of information dissemination and oversight, rather than a single, all-encompassing report.

Judicial Trends and Compliance Imperatives

While direct judicial pronouncements specifically interpreting the precise interplay of the "within five days" submission and the "inclusion in the next progress report" under Regulation 31A(10) may not be extensively documented in the provided materials, the broader jurisprudence from the NCLT and NCLAT consistently underscores the paramount importance of strict adherence to the procedural timelines and reporting obligations stipulated under the IBC.

Judgments from the NCLT and NCLAT frequently emphasize the mandatory nature of consultation with the SCC, even though its advice is not binding on the liquidator. For instance, the NCLT has denied post-facto litigation approval to a liquidator, mandating prior SCC consultation and presentation of an economic rationale, thereby highlighting the pivotal role of the SCC in decision-making and the necessity for transparency and justification for the liquidator's actions. The NCLT has also upheld the advisory role of the SCC while simultaneously scrutinizing the liquidator's diligence and actions, particularly when an application for replacement of the liquidator is filed. This implies that while the liquidator has autonomy, this autonomy is subject to rigorous review, and proper reporting forms a crucial part of demonstrating diligent conduct.

Additionally, the NCLT routinely takes quarterly Progress Reports filed by liquidators under Regulation 15 on record. This practice signifies the formal importance of these reports as a record of the liquidation proceedings and a mechanism for the Adjudicating Authority to monitor the overall progress. The general principle that timelines under the IBC are to be adhered to strictly, unless specifically provided otherwise for condonation of delay, is a recurring theme in NCLT/NCLAT judgments. This reinforces the interpretation that the *"within five days"* requirement in Regulation 31A(10) is a critical, mandatory obligation designed to ensure prompt oversight and accountability. Any non-compliance or delay without proper justification could attract adverse observations or actions from the adjudicating or regulatory authorities.

Practical Implications and Recommendations for Liquidators

The practical implication of non-compliance with either of these dual obligations is significant. Failure to submit the five-day report may be construed as dereliction of statutory duty and may expose the liquidator to disciplinary proceedings by the IBBI or adverse orders from the NCLT. Furthermore, such lapses may erode stakeholder confidence and affect the credibility, reputation, or even continuation in the assignment of the liquidator. In a regime where the speed and integrity of resolution are paramount, such reporting mechanisms are not optional - they are legal imperatives.

Accordingly, it is recommended that liquidators institutionalize robust internal processes to ensure seamless compliance :-

1. **Immediate Documentation -** Upon taking any decision that deviates from SCC advice, meticulously record the reasons in writing.
2. **Timely Electronic Submission -** Within **five days** of such a decision, submit the records, including the detailed reasons, to **both** the Adjudicating Authority and the IBBI through the designated electronic platform and prescribed proforma.
3. **Mandatory Inclusion in Progress Report -** Ensure that the details of the divergent decision and its rationale are also incorporated into the **next quarterly Progress Report** filed under Regulation 15.
4. **Comprehensive Record Keeping -** Diligently maintain particulars of all consultations with stakeholders as specified in Form A of Schedule II (Regulation 8(2)).
5. **Objective Justification -** Ensure that every decision taken contrary to SCC advice is objectively justified, well-reasoned, and capable of withstanding regulatory and judicial scrutiny.

Conclusion

In conclusion, Regulation 31A(10) stands as a critical pillar of the IBBI’s endeavor to enhance fiduciary standards and ensure robust stakeholder governance during liquidation. The five-day reporting requirement to both the Adjudicating Authority and the IBBI is not a mere procedural formality; ***it is a substantive legal duty***, designed to provide ***immediate, event-driven transparency***. Likewise, the inclusion of such decisions in the ***quarterly progress report is not a substitute but a supplement***, serving to integrate these specific events into the comprehensive periodic overview of the liquidation process.

Together, these obligations reinforce the broader ethos of the IBC - transparency, accountability, and efficiency. For insolvency professionals functioning as liquidators, a precise and prompt execution of these dual duties is not merely a matter of regulatory compliance - it is fundamental to upholding the trust reposed in them under the law and ensuring the integrity and efficacy of India's insolvency regime.

CIRP TIMELINES AND JUDICIAL DISCIPLINE: CAN THE CODE'S OBJECTIVES BE REALISTICALLY ACHIEVED?

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REGISTERED VALUER

Abstract: The Insolvency and Bankruptcy Code, 2016 (IBC) was introduced with the bold promise of time-bound resolution of distressed assets. As we approach nearly a decade since its enactment, delays in the Corporate Insolvency Resolution Process (CIRP) have emerged as a critical bottleneck. This article evaluates the statutory intent, practical realities, causes of delay, and judicial patterns, while also proposing a way forward to restore time discipline and ensure that the IBC meets its foundational objectives. Empirical data, legal precedents, and international comparisons substantiate the analysis. The analysis is beneficial for policymakers, insolvency professionals, financial institutions, legal scholars, and corporate stakeholders.

1. Introduction

The enactment of the Insolvency and Bankruptcy Code (IBC) in 2016 marked a watershed moment in India's economic and legal history. With a framework intended to consolidate and streamline multiple insolvency laws, the IBC's most compelling feature was its emphasis on speed and efficiency. Timely resolution was believed to be crucial for preserving enterprise value, boosting investor confidence, and improving the ease of doing business in India.

Section 12 of the Code initially mandated a 180-day period for the completion of the CIRP, with a single extension of 90 days permitted under specific circumstances. Subsequently, through jurisprudential evolution and statutory amendment, a hard cap of 330 days was endorsed by the Supreme Court in the landmark *Essar Steel* judgment. Yet, in practice, most CIRPs breach these outer limits, leading to a dilution of the Code's original spirit. The challenge today lies in restoring the sanctity of these timelines without compromising procedural fairness or stakeholder interest.

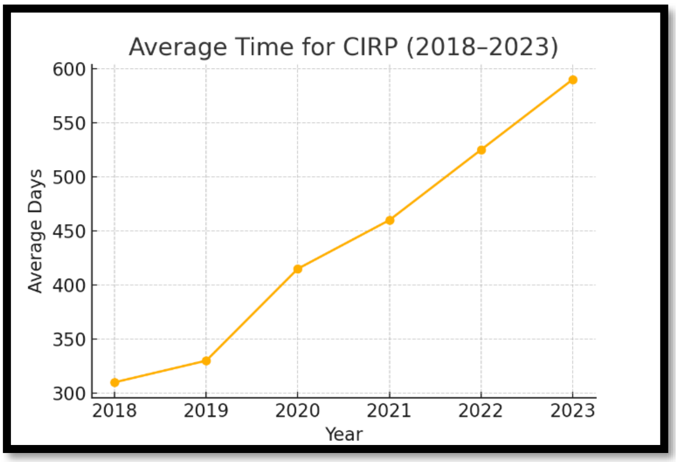
2. The Promise of Time Efficiency under IBC

The rationale behind a time-bound resolution mechanism is to avoid erosion in asset value, reduce litigation fatigue, and revive viable companies before they are pushed into liquidation. Unlike legacy frameworks such as the Sick Industrial Companies Act (SICA) and Debt Recovery Tribunals (DRTs), which suffered from excessive delays, the IBC aimed to resolve insolvency matters in less than a year, thereby restoring the economic value of distressed assets.

The economic logic is compelling: the longer an entity remains entangled in insolvency proceedings, the greater the chance of operational decay, erosion of goodwill, loss of customers and suppliers, and a complete breakdown of working capital cycles. In addition to financial losses, such delays affect morale among employees and weaken public trust in the resolution system.

3. Empirical Analysis: Where Do We Stand?

Despite the legal caps enshrined in Section 12 and the judicial backing they have received, the average duration of CIRPs has seen a steady and worrying rise. According to IBBI's annual reports and compiled data from 2018 to 2023:



Source: Insolvency and Bankruptcy Board of India (IBBI) Annual Reports, 2018–2023

These statistics highlight a widening gap between legislative intent and practical implementation. Notably, nearly 65% of the CIRPs admitted since inception have exceeded the 270-day period. Cases such as Bhushan Steel, Amtek Auto, and Jet Airways demonstrate the impact of long-drawn CIRPs, often exceeding two years, which dampens recovery prospects and burdens creditors with uncertainties.

4. Causes Behind the Delay

4.1 Judicial Overload and Procedural Laxity The overburdening of the National Company Law Tribunals (NCLTs) remains a critical bottleneck. As of early 2024, over 30,000 cases were pending before NCLTs across India, with insolvency-related disputes forming a significant portion. A shortage of judges, administrative staff, and inconsistent court procedures contribute to long waiting periods, deferred hearings, and delays in pronouncement of orders. Courts sometimes prioritize urgent commercial matters over CIRPs, further delaying insolvency resolutions.

4.2 Multiplicity of Litigation CIRPs often attract multiple layers of litigation—by operational creditors, homebuyers, tax departments, and ex-promoters. These lead to numerous appeals and counterclaims, often resulting in stays or adjournments. The *Jaypee Infratech* case serves as a prime example, where insolvency resolution remained stuck for over four years due to interlinked litigations and competing stakeholder interests. Such delays also highlight the need for faster dispute resolution outside courtrooms.

4.3 Inefficiencies in CoC and IP Functioning The efficiency of the Committee of Creditors (CoC) and Resolution Professionals (RPs) plays a pivotal role in the pace of resolution. Issues such as delayed claim verification, disputes over voting shares, non-cooperation by management, and lack of expertise among RPs lead to procedural bottlenecks. Some CoCs demand extensive clarifications or request multiple revisions of plans, stalling finalisation. In many cases, multiple resolution plans are invited and evaluated repeatedly, adding to time overruns.

4.4 Absence of Accountability Mechanisms A systemic absence of penalties for delay contributes to inertia. There are no real consequences for RPs, CoC members, or judicial officers for breaching deadlines. In contrast, jurisdictions like Singapore impose strict penalties or cost sanctions for non-compliance with timelines. This lack of deterrent in India hampers discipline and encourages casual approach to deadlines.

5. Judicial Trends: A Cautious Flexibility

In *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019), the Supreme Court interpreted the 330-day timeline as mandatory but carved out exceptions for unavoidable delays. While this flexibility was well-intentioned, it has led to repeated judicial indulgence in timeline extensions. This creates a sense of uncertainty, undermining the Code's goal of prompt and definitive resolution.

In several subsequent rulings, tribunals have extended deadlines on grounds of procedural fairness or public interest. While such judicial discretion may serve justice in individual cases, it collectively undermines the urgency and predictability that the IBC intended to create. A fine balance is required between judicial flexibility and legislative discipline, ensuring timely resolutions without compromising fairness.

6. International Comparison: India vs Global Peers

Country	Average Time for Insolvency Resolution
Singapore	~180 days (Pre-pack framework)
United Kingdom	~1 year
South Korea	~6 months
India	~590 days

Source: World Bank Doing Business Report (2023); National Insolvency Framework Reports

Globally, jurisdictions with shorter resolution times have adopted streamlined procedures, robust digital platforms, and pre-packaged insolvency models. Singapore, for instance, has effectively implemented a pre-pack regime allowing debtors and creditors to negotiate outside the tribunal, ensuring minimal judicial intervention. South Korea's court-led yet time-bound restructuring process also serves as a model.

India, by contrast, relies heavily on tribunal-centric resolution, with limited alternate dispute resolution mechanisms. This over-reliance on NCLTs, combined with inconsistent adjudication standards, creates friction and delay. Lessons from international best practices suggest that hybrid models—combining court oversight with stakeholder-driven pre-negotiations—can significantly reduce resolution timelines.

7. Reform Measures: A Multi-Pronged Solution

7.1 Strengthening Judicial Infrastructure

- Establishment of more NCLT benches across financial hubs.
- Dedicated benches for fast-track CIRPs.
- Training and capacity building for judges on insolvency jurisprudence.
- Integration of AI-based scheduling and automated case listing systems.

7.2 Enforcing Time Discipline

- Statutory tightening of extension criteria under Section 12.
- Timeline mandates for sub-tasks: claim verification (15 days), CoC formation (7 days), plan evaluation (30 days).
- Real-time dashboards tracking CIRP progress, managed by IBBI.
- Imposing cost consequences for delays attributable to specific parties.

7.3 Empowering Insolvency Professionals (IPs)

- Periodic performance audits by the IBBI.
- Mandatory rotation of RPs in long-drawn CIRPs.
- Establishment of a national portal for RP ratings and feedback.
- Enhanced training and specialization in cross-border and group insolvency.

7.4 Promoting Pre-Pack Resolutions

- Institutionalising pre-pack frameworks for all companies, not just MSMEs.
- Pre-filing negotiations among stakeholders to streamline judicial oversight.
- Government-backed awareness campaigns to promote pre-pack adoption.

7.5 Reducing Litigation Abuse

- Penal costs for frivolous or repetitive litigations.
- Empowering NCLTs with summary dismissal rights for dilatory tactics.
- Special appellate benches to expedite CIRP-related appeals.

7.6 Integrating Technology

- Centralised e-Insolvency platform for filings, disclosures, and claims.
- Blockchain to ensure tamper-proof communication and document sharing.
- Predictive analytics to assess CIRP success probability and plan viability.
- Smart contracts to automate RP milestones and plan compliance.

8. Conclusion

The IBC was conceived as a transformative reform capable of rejuvenating India's corporate ecosystem. However, time delays in the CIRP process have eroded the confidence of investors, lenders, and stakeholders. As the gap between legislative goals and practical outcomes widens, immediate policy recalibration becomes indispensable.

Timely resolution is not just a statutory objective but a commercial necessity. If India aspires to be a $5 trillion economy with robust financial markets, it must ensure that its insolvency framework delivers predictable, efficient, and time-bound outcomes. Judicial responsibility, stakeholder discipline, and proactive regulation must coalesce to bring the Code back on its original track. The journey ahead must be marked by consistency, accountability, and innovation to restore faith in India's insolvency ecosystem.

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PAYMENTS MADE BY CORPORATE DEBTOR AFTER COMMENCEMENT OF CIRP – BREACH OF MORATORIUM?

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INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS

The Insolvency and Bankruptcy Code, 2016 ('Code' for short) provides the procedure for initiation of corporate insolvency resolution process ('CIRP' for short) by the FinancialCreditor/OperationalCreditor/corporate applicant under Section 7, 9 or 10 of the Insolvency and Bankruptcy Code, 2016 ('Code' for short). On receipt of the application for initiation of CIRP, if the Adjudicating Authority is satisfied that the application is complete in all aspects, the Adjudicating Authority admits the application for CIRP and appoints the interim resolution professional ('IRP' for short). The date of order is the commencement of the CIRP. The Adjudicating Authority also declares the moratorium under Section 14 of the Code. From this date all transactions against the corporate debtor will be stayed and no further action can be taken against the corporate debtor, till the date of revocation of moratorium.

Payment after declaration of moratorium

The issue to be discussed in this article is as to whether any transaction can be made after declaration of the moratorium by the corporate debtor to its creditors and whether it is in violation of the provisions of the moratorium with reference to the decided case by NCLAT as discussed below-

In '**Sunil Gutte, Promoter and suspended director v. Avil Menezes, Liquidator of Sunil Hitech Engineers Limited and 4 others'** – Company Appeal (AT) (Insolvency) No. 515 of 2025 – NCLAT, Principal Bench, New Delhi, decided on 30.05.2025, the appellant was the corporate debtor. The CIRP was initiated against the corporate debtor under Section 7 of the Code and the same was admitted by the Adjudicating Authority on 07.09.2018. The said order was uploaded on the website of the Insolvency and Bankruptcy Board of India website on 10.09.2018. The Adjudicating Authority also appointed an Interim Resolution Professional ('IRP' for short).

The IRP, immediately, on his appointment, took action to take over the management of the corporate debtor and sent a notice in this regard to the suspended Directors of the corporate debtor. The IRP was replaced by the Resolution Professional ('RP' for short) on 27.11.2018.

The RP noticed that certain unauthorised payments were made by the Ex-promoter of the company and Chief Financial Officer, (respondent No. 6) to the respondents 2 to 5 in this case to the tune of Rs.11.01 crores from 10.09.2018. Major payments were made through RTGS and by cheques. The RP sent a letter to the appellant asking the details of payments made from 10.09.2018 to 14.09.2018. The appellant and respondent No. 6 informed the RP vide their letter dated 09.04.2019 that the payments were made to maintain the corporate debtor as a going concern. They further added that the payments were made routine as per the standard operating procedures entered into by the corporate debtor and the respondents 2 to 5.

The RP filed a misc. application before the Adjudicating Authority with the prayer for issuing directions to the corporate debtor and the respondents 2 to 6 to return the entire amount of Rs.11.01 crores to the RP. The Adjudicating Authority allowed the application of the RP. Being aggrieved against the order of the Adjudicating Authority the appellant filed the present appeal before the National Company Law Appellate Tribunal ('NCLAT' for short).

The appellant submitted the following before NCLAT-

- The RP had divided the entire lot of these unauthorised payments amounting Rs.11.01 crore into two phases of which the first phase included transactions during period of 10.09.2018 to 14.09.2018 while the second phase was for transactions during 27.09.2018 to 10.11.2018.
- These transactions were routinely done in the course of ordinary business and not done for purposes of unjust enrichment or personal gain of the appellant or with any other *mala fide* intention.
- The Respondent Nos. 2 to 5 were long term service providers/vendors of the Corporate Debtor who were having an ongoing and continuing contract with the Corporate Debtor and therefore entitled to receive their dues for the goods and services provided by them.
- If these payments were not made the corporate debtor would have run the risk of facing an abrupt halt.
- Since the objective of the Code of keeping the Corporate Debtor running as a going concern, the Adjudicating Authority could not have treated the transactions as not being in the ordinary course of business.
- These payments were further in respect of invoices issued upon the Corporate Debtor by Respondent Nos. 2 to 5 before the commencement of CIRP.
- The cheques were issued to the respondents 2 to 5 before the commencement of CIRP. It is not for the appellant to explain why these cheques were encashed by respondent Nos. 2 to 5 after commencement of the CIRP.
- If the IRP did not take any pre-emptive action to ensure stop payments in respect of the cheques routinely issued before the commencement of CIRP, the appellant cannot be held responsible for encashment of these cheques post commencement of CIRP.
- The RP has not made any allegation that respondent Nos. 2 to 5 were related parties of the Corporate Debtor.
- The IRP had not raised objections shows that IRP was convinced that these transactions were necessary and critical for maintaining the Corporate Debtor as a going concern.
- There were several other vendors/suppliers to whom payments had also been released but from whom refunds had not been sought.

The RP, the first respondent in the present appeal submitted the following before the NCLAT-

- The appellant and respondent No.6 had made these payments from the account of the Corporate Debtor after commencement of CIRP in contravention of Section 14(1)(b) of the Code which prohibits any payment to be made by the suspended management after commencement of CIRP.
- Once the CIRP order is pronounced, the legal consequences flow from the date of pronouncement of such order.

- The Adjudicating Authority had rightly held that the appellant and respondent No. 6 were jointly and severally liable along with Respondent Nos. 2 to 5 to return the money which had been unauthorisedly transferred from the account of the Corporate Debtor in breach of moratorium.

The NCLAT considered the submissions of the appellant and of RP. The NCLAT considered the question, in the present appeal, as to whether the payments made by the Appellant after commencement of CIRP constituted a breach of the provisions of moratorium and whether there was any infirmity in the impugned order directing the reversal of the impugned transactions by the Appellant and Respondent No. 2 to 5 to the assets of the Corporate Debtor.

The NCLAT analysed the provisions of Section 5, 13 and 14 of the Code. The NCLAT observed that the moratorium becomes enforceable from the date the CIRP application is admitted or as indicated in the order of admission passed by the Adjudicating Authority. The provisions of moratorium *inter-alia* provide for a stand-still period during which Financial or Operational creditors cannot resort to individual debt enforcement action in respect of debts which had accrued during the period prior to commencement of CIRP proceedings. The suspended management of the Corporate Debtor is also strictly prohibited from directly or indirectly deploying the funds of the Corporate Debtor unilaterally, without the authorisation of IRP, to clear any dues of any Financial Creditor or Operational Creditor.

The NCLAT observed that after commencement of CIRP on 07.09.2018, certain payment transactions were made from the account of the Corporate Debtor in two phases. The first phase was between 10.09.2018 to 14.09.2018 amounting to Rs 9.54 Cr. The second set of transactions occurred between 27.09.2018 to 10.10.2018 amounted to Rs 6.80 Cr. The RP had sought to set aside 12 payments only and these impugned transactions were made by the appellant to respondent Nos. 2 to 5 amounting to Rs 11.01 Cr. The rest of the payments have been allowed since the same related to the payment of the workers dues.

The NCLAT considered the question as to whether the IRP has approved these payments made during moratorium. In this regard the NCLAT found that the RP has sent a mail to IRP, seeking clarification as to whether the payments made during the impugned period were approved by IRP. The IRP replied that all the payments made are with the approval of Committee of Creditors and the payments were made only through UCO bank. But these payments were made through the HDFC Account of the corporate debtor. Further the NCLAT observed that the appellant informed the IRP about the payment on 14.09.2018 which shows that the payments were made prior to the taking over the charges of the corporate debtor by IRP.

The RP wrote a letter to the appellant on 29.03.2019 that the impugned transactions were made after CIRP commencement and without the authority of IRP. The appellant and respondent Nos. 2 to 5 had offered their explanation to the RP on 09.04.2019 on this count. In the said explanation the appellant informed the RP that the payments made before Take - Over Notice were not made in violation of the Code and the admission Order. The appellant has neither committed any act of fraud or concealment of property nor he has contravened the moratorium.

The NCLAT observed that in terms of Section 14(1)(b) of the Code, once moratorium has been declared upon admission of Section 7 application, it is not open for any person to recover any amount from the account of the Corporate Debtor. Once moratorium is declared, the suspended management of the Corporate Debtor has to willy-nilly and mandatorily abide by this clear and express provision contained in the Code and cannot raise grounds of exception to the applicability of Section 14(1)(b) of the Code. Any action contrary to the provisions of moratorium would vitiate the resolution process of the Corporate Debtor and thereby render itself illegal and perverse. The NCLAT found that in the present case, there is no dispute that all the RTGS payments were made after commencement of CIRP as well as after the declaration of moratorium. The considered view of the NCLAT is that all the nine RTGS payments were perverse and it was the statutorily incumbent upon the RP to seek reversal of these payments and bring it back to the corpus of the Corporate Debtor. The RP in seeking reappropriation of the said amount has acted in conformity with the Code. The NCLAT did not find that the Adjudicating Authority committed any error in holding these RTGS payments to have been made in violation of the statutory provisions and consequentially directing the appellant and respondent Nos. 2 to 5 to reverse these payments to the kitty of the Corporate Debtor after holding them to be jointly and severally viable. In respect of the cheque payments the Adjudicating Authority had concluded that the cheques were deliberately ante-dated only to conjure the impression that they were handed over before commencement of CIRP. There was no explanation from the appellant as to why these cheques though issued prior to CIRP commencement date were kept on hold by respondent Nos. 2 to 5 and encashed after the commencement of CIRP. The Adjudicating Authority, has therefore, rightly set aside all the impugned transactions.

The NCLAT did not find any error in the impugned order of the Adjudicating Authority holding the appellant and respondent Nos. 2 to 5 to be jointly and severally liable to refund the said amount to the account of the Corporate Debtor. The NCLAT dismissed the appeal of the appellant. However, the NCLAT held that liberty is given to the respondent Nos.2 to 5 to file their claims, if they so wish, in respect of these transactions which may then be considered by the RP/Liquidator in accordance with law.

Conclusion

After initiation of CIRP once moratorium starts no person can recover any amount from the account of the Corporate Debtor. No action violating moratorium can be countenanced.

TREATMENT OF GOVERNMENT DUES UNDER IBC

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SYNOPSIS:

This article provides a comprehensive analysis of how government dues are treated under the Insolvency and Bankruptcy Code (IBC). It explains the classification of such dues as operational debt and when they may qualify as secured, particularly in cases involving statutory charges. The piece examines key judicial pronouncements, including *Rainbow Papers*, *Sundaresh Bhatt*, and *Union Bank v. Sales Tax Dept.*, clarifying the impact of moratorium, claim timelines, and the Section 53 waterfall. It also distinguishes between admissible and non-admissible claims depending on when and how they are filed. The article closes with practical guidance for resolution professionals and applicants navigating unresolved or statutory liabilities during CIRP.

INTRODUCTION:

The Insolvency & Bankruptcy Code, 2016 (IBC) has transformed how government dues, such as taxes, levies, and regulatory charges, are treated during corporate insolvency. While tax authorities previously had near-automatic recourse, the IBC's structured regime now governs the timing, recognition, and ranking of such claims, often causing confusion and litigation. This article offers a comprehensive, narrative-style analysis of:

- How and when government claims are admitted or rejected
- The impact of the Section 14 moratorium on tax processes and coercive recovery
- Important judicial developments, including recent pronouncements
- Practical guidance for resolution professionals (RPs), government bodies, and creditors

I. The Legal Framework: Government Dues in the IBC Ecosystem

The IBC does not differentiate between government and private creditors. Under Section 5(20), operational debt includes amounts owed for statutory obligations; Sections 3(10), 14, 30(2)(e), and 53 frame how these claims are processed, managed, and prioritized. The CGST, VAT, Excise, and Income Tax Acts often confer statutory charges, effectively functioning as liens on the corporate debtor's assets. Consequently, whether a claim is merely operational or also secured depends on whether a valid statutory charge exists.

The Supreme Court has clearly stated that the IBC's waterfall mechanism under Section 53 intentionally reshuffled priorities, placing secured creditors and workmen ahead of government dues, which come later, underscoring that statutory charges alone don't guarantee preferential treatment.

II. Are Government Dues "Secured" or "Unsecured"?

A pivotal question in insolvency disputes: When is a government claim treated as secured? The answer depends on judicial interpretation and the facts at hand.

The Supreme Court's ruling in State Tax Officer v. Rainbow Papers Ltd. held that a state tax authority can be a secured creditor if a statutory charge is provided by law (e.g., VAT or CST Acts). The court emphasized that such charges could constitute security interests under Section 3(31), entitling the government to secured creditor rights.

In the follow-up judgment Sanjay Kumar Agarwal v. State Tax Officer, the Supreme Court upheld Rainbow Papers and dismissed review petitions, affirming that statutory charges suffice to classify government dues as secured, regardless of formal registration.

However, distinctions emerged in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt Ltd. Here, the Court clarified that dues to statutory corporations that are not payable into the Consolidated Fund of India or a state, such as electricity distribution dues, are not "government dues" and cannot override the IBC's waterfall. The SC also reaffirmed that Section 53's priority structure remains paramount, meaning secured financial creditors and workmen generally rank ahead of government dues.

In a significant ruling, the Kochi Bench of the NCLT in **Audit Officer, Kerala State GST Dept. v. Mr. Dileep K.P. (RP)** [IA(IBC)/31/KOB/2025 in CP(IBC)/21/KOB/2023, decided on 28-May-2025], held that: "The IBC does not exclude the Government or Government Authorities from being secured creditors. Thus, claims such as tax dues or customs duties can be secured in nature and deserve consideration even if delayed." This affirms that statutory dues backed by statutory charge can enjoy secured status, even if not registered with the RoC.

Further reinforcing the priority structure under the IBC, the Bombay High Court in **Union Bank of India v. Deputy Commissioner of Sales Tax & Ors.** [Writ Petition No. 248 of 2020, decided on 22-Jan-2024], held that: "Sales Tax Department cannot claim priority over the dues payable to Secured Creditor." The Court underscored that despite any statutory charge, government departments must align their claims with the Section 53 waterfall mechanism of the IBC.

In summary:

- Statutory charge = secured creditor status
- Ranked alongside secured financial creditors, not automatically at top
- Falling behind resolution costs, workmen, and secured creditors under IBC

III. <u>Moratorium (Sec. 14) and Government Actions</u>

Section 14 imposes a moratorium preventing creditors from pursuing recovery or taking coercive action against assets. However, there remains confusion around assessments.

The Supreme Court ruled in Sundaresh Bhatt (CBIC) v. RP of ABG Shipyard that tax assessments may proceed during moratorium, but enforcement or recovery is strictly prohibited.

Similarly, in Ghanashyam Mishra & Sons v. Edelweiss ARC (2021), the SC confirmed that coercive actions, including attachment, auction, or post-CIRP recovery, are forbidden under moratorium.

Therefore, government authorities should continue with assessments (issuing notices, issuing demands), but must not seize property or enforce attachment during CIRP or after (pre-resolution plan). They must file claims via RP and cooperate with the process.

IV. <u>When Are Government Claims Admitted or Rejected?</u>

Government dues are typically operational debt, and courts have clarified their status through multiple rulings:

- The NCLAT (Delhi Bench, Jan 2025) reaffirmed that government dues enjoy no preferential treatment over secured financial creditors, emphasizing IBC's waterfall rules.

Claims Admitted:

1. If the claim is filed before the expiry of the time limit prescribed under Regulation 12 of the CIRP Regulations. Even if there is delay, it may be condoned by the RP or the Adjudicating Authority in the interest of justice.

2. If the original claim is filed within the prescribed period and a revised or additional claim is filed before approval of the resolution plan by the CoC, the same can be accepted under Regulation 13(1B) and 13(1C).

3. If the claim is filed after admission of CIRP but before CoC approval of the resolution plan, it is generally allowed if the delay is reasonable and explained.

Claims Rejected:

1. Claims filed after the resolution plan is approved by the CoC and submitted to the Adjudicating Authority cannot be entertained. This is settled in Mathur Sabhapathy Vishwanathan (NCLT).

2. If no supporting documentation is furnished, as held in Ruchi Soya (NCLT Mumbai), such claims are inadmissible.

3. Inconsistent or dormant claims that are revived at liquidation stage or after resolution plan approval are extinguished, per Ghanashyam Mishra (SC).

V. <u>Liquidation Waterfall & Government Dues</u>

Section 53 determines payment priority:

1. CIRP liquidation costs and tribunal fees

2. Workmen dues (last 24 months) and secured creditors (to the extent of the unsecured portion)

3. Wages (last 12 months) and unsecured financial creditors

4. Unsecured operational creditors, which include government dues and secured creditors beyond discharged amounts

5. Other unsecured debts

6. Equity/shareholders

This structure signifies that even secured government dues do not precede secured financial creditors. The Supreme Court, in recent rulings, stressed that Parliament intended this order to stand.

VI. <u>Recent Developments: Priority Challenges on Statutory Dues</u>

A recent SC case (May 2025) involving the MPID Act reaffirmed that:

- Even where sector-specific laws grant priority to funds or charges, the IBC regime prevails owing to its non-obstante clause. Specialized statutes do not automatically override IBC priorities.

This trend underlines the judiciary's intent to protect the integrity of the IBC waterfall, regardless of historical or statutory seniority of government claims.

VII. <u>Strategic Considerations for Resolution Stakeholders</u>

For Resolution Professionals

- Treat government dues as operational; classify as secured only when statutory charge exists.
- Accept late claims under Reg. 13(1C) if plausible.
- Coordinate with tax authorities before CoC voting; clearly document assessment stage.

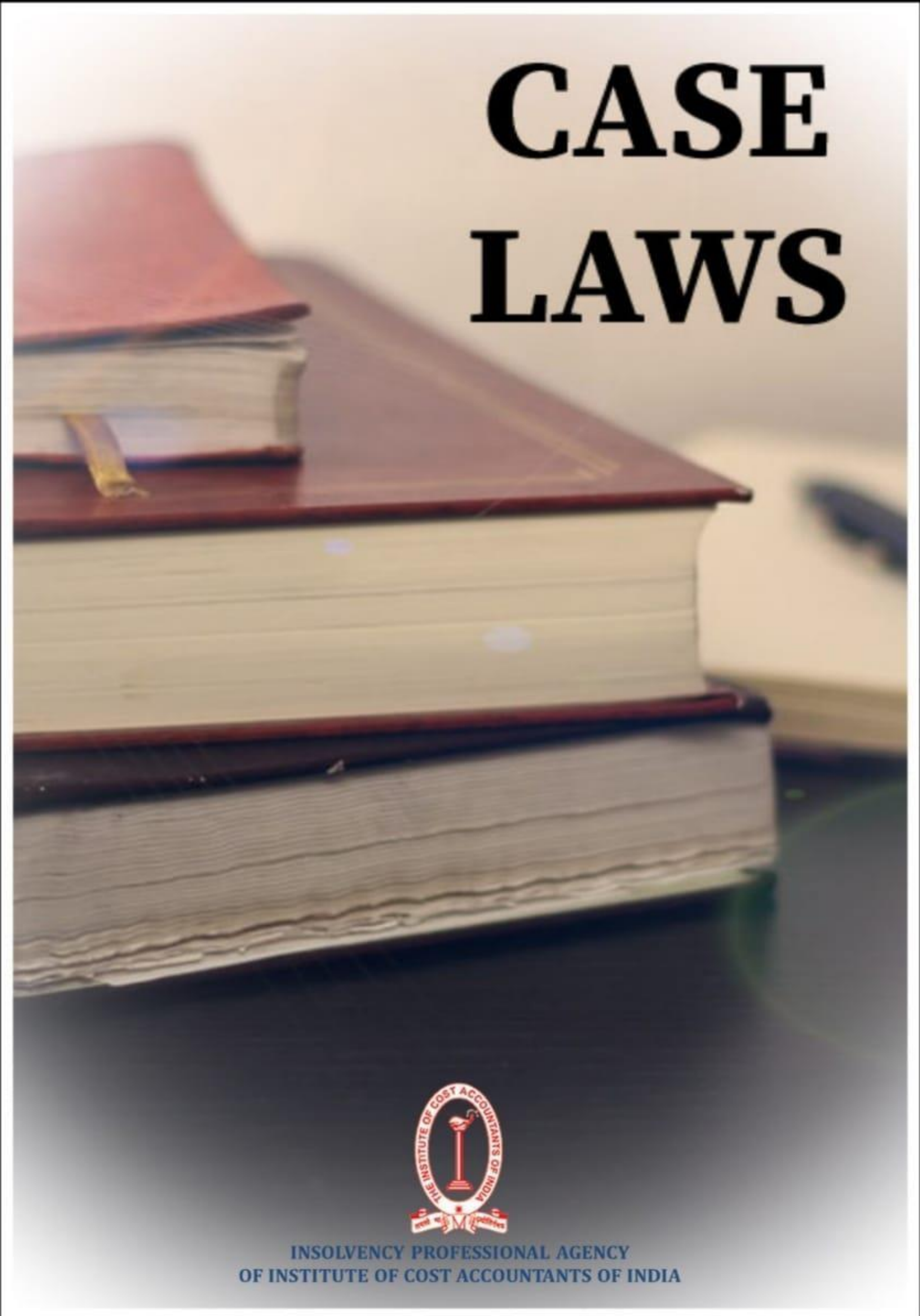
For Resolution Plan Applicants

- Conduct thorough due diligence for pending government dues.
- Must account for these dues in plan costs.

VIII. <u>Final Observations</u>

The judicial framework today affirms:

- Statutory charges can elevate government dues to secured status, but their priority is aligned with the IBC waterfall, not above it.
- The moratorium allows assessments but prevents enforcement, striking a balance.
- Claims must be filed in a timely, evidence-based manner; inclusion in the resolution plan is final.
- With recent rulings reinforcing Section 53's primacy (e.g., MPID, PT Vidyut), the IBC structure holds firm against statutory or common law claims to superiority.



CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 95 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS – APPLICATION BY CREDITOR

Paresh Rastogi v. Omkara Assets Reconstruction (P.) Ltd. [2025] 173 taxmann.com 84 (NCLAT- New Delhi)

Where personal guarantor agreed in guarantee deed that all communications including a notice of demand, sent to last known address would be considered sufficient service, therefore, Recall Notice, Invocation Notice and Demand Notice sent to last known address as per guarantee deed were deemed valid and could not be invalidated on ground that personal guarantor had not received same.

The corporate debtor had taken loan from financial creditor, which was secured by way of irrevocable personal guarantees. The appellant/personal guarantor had executed a Guarantee Deed in favour of the financial creditor. However, the corporate debtor along with co-borrower had committed default in repaying loan. The financial creditor issued a Loan Recall Notice, Invocation Notice and, Demand Notice to last known address of the appellant as per terms of Guarantee Deed. Thereafter, the financial creditor filed an application under section 95 to initiate Insolvency Resolution Process against the appellant. The Adjudicating Authority admitted said application. The appellant filed appeal contending that Recall Notice, Invocation Notice and Demand Notice were not delivered on the appellant. It was noted that the appellant had agreed in Guarantee Deed that all communications, including a Notice of Demand sent to last known address would be considered sufficient service.

Held that since the appellant had not updated its address with the financial creditor, same address remained last known address. Since financial creditor had sent Recall Notice, Invocation Notice and Demand Notice to last known address as per Guarantee Deed, service of said notices was valid and could not be invalidated on ground that the appellant had not received same. The appellant's failure to update its address could not be used to invalidate such service, therefore, there was no infirmity in impugned order passed by Adjudicating Authority.

Case Review: Omkara Assets Reconstruction (P.) Ltd. v. Paresh Rastogi [2025] 173 taxmann.com 34 (NCLT - New Delhi) affirmed.

SECTION 31 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. [2025] 173 taxmann.com 123 (SC)

Where approved resolution plan was challenged by respondent on ground that recoveries under section 66 should not benefit Successful Resolution Applicant (SRA), however, NCLT approved resolution plan, citing CoC's commercial wisdom, NCLAT had clearly transgressed its jurisdiction under section 61 in striking down clause that allowed SRA to benefit from section 66 recoveries.

The corporate debtor was a NBFC engaged in housing finance, project loans, etc. RBI superseded the corporate debtor's Board, citing operations detrimental to depositors and creditors. An Administrator was appointed, and CIRP proceedings were initiated. Creditors submitted claims totalling Rs. 82,247 crores. Committee of Creditors (CoC) was constituted, and an invitation for Expression of Interest (EOI) & Resolution Plans (RP) was issued. However audit report revealed preferential, undervalued, fraudulent, and extortionate transactions worth Rs. 45,050 crores. Multiple applications were filed before NCLT to set aside these transactions, pending adjudication. Request for Resolution Plan Proposal (RFRP) was issued and later revised to address complexities regarding section 66 recoveries. The appellant submitted a resolution plan. CoC approved said plan with 93.65 per cent votes, and Administrator sought NCLT approval. Resolution plan was challenged by respondent, contesting that section 66 recoveries should not benefit successful resolution applicant (SRA). NCLT approved resolution plan observing that CoC had exercised commercial wisdom. NCLAT by impugned order set aside term in resolution plan that permitted SRA to appropriate recoveries, if any, from avoidance applications filed under section 66. It was noted that SRA had raised its offer to extent of Rs.37,250 crores, which had factored potential recoveries from section 66 Applications and thus, resolution plan approved by CoC was an outcome of commercial bargain struck between SRA and CoC after several rounds of negotiations.

Held that NCLAT had clearly transgressed its jurisdiction under section 61 by interfering with clause pertaining to treatment to recoveries from Fraudulent and Wrongful trading under section 66, therefore, impugned order passed by NCLAT was to be set aside and order passed by NCLT in plan approval order was to be upheld.

Case Review: 63 Moons Technologies Ltd. v. Administrator of Dewan Housing Finance Corporation Ltd. [2022] 134 taxmann.com 334 (NCL-AT - New Delhi) (para 87) Set aside.

SECTION 31 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

Garden Silk Mills Ltd. v. Gayatri Industries [2025] 173 taxmann.com 247 (Bombay)

Where respondent's claim had not been part of resolution plan due to respondent's failure to lodge its claim with RP, claim of respondent creditor stood extinguished upon approval of resolution plan.

The respondent had filed a suit against the appellant-corporate debtor, resulting in a decree in respondent's favour. The appellant appealed decree, with a condition to furnish bank guarantees for a stay, while appeal was pending, the appellant's Corporate Insolvency Resolution Process (CIRP) had been initiated, and a Resolution Plan was approved. Respondent filed an interim application, arguing that due to the appellant's insolvency, he had been deprived of benefits of his decree since 2003. It was noted that the respondent's claim was not a part of resolution plan due to failure of respondent to lodge its claim with Resolution Professional (RP).

Held that once resolution plan is duly approved by NCLT, claims as provided in resolution plan shall stand frozen and will be binding on the corporate debtor and its creditors and all such claims which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim, which is not part of resolution plan. Where resolution plan had been approved, claim of the respondent creditor stood extinguished upon approval of resolution plan and, an embargo was placed on initiation or continuation of any proceedings for executing decree. Upon extinguishment of debt, no right vested in respondent in respect of bank guarantees. Consequently, order and decree stood extinguished and no proceeding in respect thereto could be continued and/or initiated and all bank guarantees were to be released

SECTION 96 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - INTERIM MORATORIUM

Rakesh Bhanot v. Gurdas Agro (P.) Ltd. [2025] 173 taxmann.com 249 (SC)

Legislative intent behind IBC is to provide a protective shield for debtors during insolvency process; however, allowing debtors to evade prosecution under section 138 of Negotiable Instruments Act, 1881 would undermine very purpose of NI Act, 1881, which is to preserve integrity and credibility of commercial transactions.

The respondent filed a complaint under section 138 against appellants for dishonour of cheques due to insufficiency of funds. During pendency of proceedings, appellants filed an application under section 94 before NCLT for personal insolvency. Said application was pending adjudication. Appellants moved an application before Trial Court for adjourning section 138 of NI Act proceedings sine die, in view of pendency of section 94 petition as well as injunctive provision as envisaged under section 96. Trial Court rejected aforesaid application.

Held that legislative intent behind IBC is to provide a protective shield for debtors during insolvency process. Scope and nature of proceedings under IBC may result in extinguishment of actual debt by restructuring or through process of liquidation but such extinguishment will not absolve its directors from criminal liability. However, allowing debtors to evade prosecution under section 138 would undermine very purpose of NI Act, 1881, which is to preserve integrity and credibility of commercial transactions and personal responsibility persists, regardless of insolvency proceedings and its outcome. Prayer of appellants/petitioners to stay prosecution under section 138, relying on interim moratorium under section 96, could not be entertained.

Case Review: Rakesh Bhanot v. Gurdas Agro (P.) Ltd. [Criminal Petition Bearing No. CRM-M37169-2022 (O&M), dated 23-3-2023, affirmed.

SECTION 61 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – APPEALS AND APPELLATE AUTHORITY

A Rajendra v. Gonugunta Madhusudhan Rao - [2025] 173 taxmann.com 297 (SC)

Where appellant filed appeals without applying for certified copies of NCLT orders and no steps were taken to obtain certified copies, appeals filed before NCLAT beyond 30 days period were barred.

The appellant, who was the shareholder and suspended Managing Director of the Corporate Debtor, filed an application under section 60(5) read with section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 seeking a direction to the respondents to place the Resolution Plans submitted by him before the Committee of Creditors (CoC) for consideration along with the other Resolution Plan and for staying the voting results on the Resolution Plan which was dismissed by the NCLT. The appellant preferred an appeal before the NCLAT against the order of the NCLT without any application for condonation of delay with a declaration in Paragraph 6 of the grounds of appeal that the same was within the period specified in section 61 of the IBC. The NCLAT vide impugned order dismissed said appeal on ground that the appellant was guilty of suppression of correct facts and making wrong averments in appeal where it was asserted that the appeals had been preferred within the time as specified under the statute. The factum with regard to the certified copy having been applied for by the appellant had also been informed to be not correct and therefore the application preferred in the second appeal for dispensing with the certified copy had also been stated to be a mis-statement apart from the fact that the appellant had taken a totally new stand in the application for condonation of delay which was contrary to the stand taken in the grounds of appeal. The applications for condonation of delay were therefore dismissed leading to the dismissal of the appeals.

Held that scheme of section 61 does not contain condition for commencement of period of limitation only after obtaining a certified copy of order. Appeals as preferred by the appellant were to be dismissed as they were filed beyond 30 days and no steps had been taken by the appellant to seek certified copy of order. Thus, there was no question of moving an application for condonation of delay when no application for obtaining a certified copy of order had been filed. Impugned order passed by NCLAT dismissing appeal was to be upheld.

Case Review: A Rajendra v. Gonugunta Madhusudhan Rao [2025] 173 taxmann.com 246 (NCLAT - Chennai) affirmed.

SECTION 94 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS – APPLICATION BY DEBTOR

Ramesh Kothari v. State of Madhya Pradesh [2025] 173 taxmann.com 341 (Madhya Pradesh)

Proprietorship firm is not included in definition of 'corporate debtor' and, thus, in respect of proprietorship firms, no application under section 94 was liable to be entertained even at instance of personal guarantor.

The petitioner stood as a guarantor to a loan advanced by the respondent-bank to borrowers. On default in repayment, bank initiated recovery proceedings under Section 14 of SARFAESI. In compliance of order passed by District Magistrate for taking possession of mortgaged property with help of Tehsildar, Tehsildar issued a notice to borrowers as well as petitioner for taking possession of mortgaged property. The petitioner approached NCLT by way of petition under section 94. In order to protect possession of secured asset, the petitioner also filed instant writ seeking direction to respondents to stop recovery of possession during pendency of insolvency proceedings before DRT. It was noted that in definition of 'corporate debtor', proprietorship firm is not included.

Held that since borrowers were sole partnership firms, no application under section 94 was liable to be entertained even at instance of the petitioner.

SECTION 220 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES- DISCIPLINARY COMMITTEE - APPOINTMENT OF

Sandeep Kumar Bhatt v. Insolvency & Bankruptcy Board of India [2025] 173 taxmann.com 464 (Delhi)

Where penalty of two years suspension from taking any assignment as IRP had been imposed on appellant by IBBI and almost 1 year and 4 months of penalty imposed had already lapsed, suspension period was to be reduced to period already undergone.

The appellant was registered with the respondent-Board as Insolvency Professional. He was appointed as an Interim Resolution Professional (IRP) in CIRP of the corporate debtor. Disciplinary Committee of Board passed an order suspending registration of the appellant for a period of two years on ground that the appellant had contravened sections 25(1), 25–(2)(a), 25(2)(b) and 208(2)(e) of the Code and Regulation 40B of CIRP Regulations, Regulations 7(2)(a) and (h) of the IP Regulations and clauses 1, 2, 14 and 19 of the code of conduct specified thereunder. The appellant filed writ petition challenging order of suspension on ground that punishment was grossly disproportionate. Single Judge dismissed writ petition holding that Board had duly adhered to procedure before passing order of suspension.

Held that analysis regarding charges levelled against the appellant appeared to be aspects which might have inadvertently been overlooked by Disciplinary Committee and it was possible that a penalty, not so severe in nature might perhaps, have been imposed upon the appellant. Since almost 1 year and 4 months of penalty imposed had already lapsed, penalty imposed of two years suspension from taking any assignment as IRP was to be reduced to period already undergone.

SECTION 52 - CORPORATE LIQUIDATION PROCESS - SECURED CREDITOR IN

Avil Menezes v. Hinduja Leyland Finance Ltd. [2025] 173 taxmann.com 532 (NCLAT- New Delhi)

Where existing assets especially, movable assets were re-financed, by any subsequent financer/ lender as against financed for new additional fixed assets for Corporate Debtor, then re-financer would not have any first charge over existing movable assets which were already stood charged (as first charge) in favour of UCO Bank Consortium and, thus, in no circumstances any charge could not be created in favour of third parties, such as Respondent, without consent or NOC of UCO Bank Consortium.

The corporate debtor availed certain credit facilities from TCFSL against movable assets, which were exclusively charged in favour of TCFSL. Corporate debtor repaid said loan and TCFSL issued a closure letter confirming that facilities were repaid. The Corporate Debtor had also availed financial assistance from a consortium led by UCO Bank Consortium comprising of various banks and financial institutions and had created charge on movable assets in favour of UCO Bank consortium. The corporate debtor availed refinancing facilities from respondent and created charge over movable assets in favour of respondent. Respondent filed an application under section 52 before liquidator of the corporate debtor seeking to realise its security interest. Adjudicating Authority allowed respondent's application seeking directions to Liquidator to allow to realize corporate debtor's Assets specifically charged to respondent under provisions of Section 52.

Held that if existing assets especially, movable assets were re-financed, by any subsequent financer/ lender as against financed for new additional fixed assets for the Corporate Debtor, then re-financer would not have any first charge over existing movable assets which were already stood charged (as first charge) in favour of UCO Bank Consortium. UCO Bank Consortium had first pari-passu charge over movable assets and, therefore, in no circumstances could any charge have been created in favour of third parties, such as Respondent, without consent or NOC of UCO Bank Consortium. Further arguments of the Respondent with regard to his holding first charge on movable assets of the Corporate Debtor due to charge registered with RoC were not attractive as Registration is only a form of proof under Liquidation, which could not take away or improve/substantiate a charge created, such as hypothecation or a mortgage, under Transfer of Property Act. In view thereof, impugned order was to be set aside.

Case Review: Order of NCLT- Mumbai in Hinduja Leyland Finance Limited v. Avil Menezes [2025] 173 taxmann.com 531 (NCLT - Mum.), set aside.

SECTION 95 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS – APPLICATION BY CREDITOR

Iqbal Jumabhoy v. Manoj Kumar Anand [2025] 173 taxmann.com 648 (NCLAT - Chennai)

Where Adjudicating Authority served appellant/personal guarantors with Resolution Professional's report and allowing them two months to respond, since they were given sufficient opportunity to file their reply before their right was forfeited, order admitting insolvency application under section 95 did not require any interference.

Applications had been filed under section 95 against appellants/personal guarantors. RP had submitted his report under section 99, recommending acceptance of said applications. Adjudicating Authority passed order under section 100 admitting application preferred under section 95, thereby ordering initiation of insolvency resolution process against appellants. Appellants had filed appeal contending that Adjudicating Authority had not followed principles of natural justice by giving sufficient opportunity to appellants to present their case.

Held that Resolution Professional was not meant to perform any adjudicatory function or to arrive at a binding conclusion on facts, which would have required adherence to principles of natural justice, that role played by and acts committed by Resolution Professional at that stage were only recommendatory in nature and neither prejudice nor bind any of parties to proceedings under section 95. Report had been given to appellants and, they had been given two months time to file their reply before right to file reply was forfeited and, therefore, opportunities given to appellants were sufficient. Therefore, Adjudicating Authority had followed principles of natural justice by giving sufficient opportunity to appellants and had protected all rights of appellants and, therefore, impugned order did not call for any interference.

Case Review : Order of NCLT, in IA No. 447/2024 in CP (IB) No. 15/BB/2023,dated 06.11.2024, affirmed.

Pratibha Industries Ltd. v. Yes Bank Ltd. [2025] 173 taxmann.com 763 (NCLAT-New Delhi)

Where respondent bank conducted e-auctions and sold mortgaged property under SARFAESI Act, borrower had no right to property for purpose of raising a dispute regarding sale.

The corporate Debtor (CD) availed a credit facility from secured creditor (SC) by way of a term loan and created exclusive mortgage on two properties. CD was admitted to CIRP and, a moratorium under section 14 was imposed. SC issued first e-auction sale notice under section 13(8) of SARFAESI Act but e-auction was declared unsuccessful because no bid was received. Second e-auction sale notice was issued and sale was conducted of first property, in which one buyer gave highest bid. Bid was accepted by SC and, a letter of confirmation was issued in favour of the buyer. Remaining payment of sale consideration was made and sale certificate was issued. Sale was confirmed and it was registered. In respect of second property, since no bid was received by SC, it issued a letter of confirmation to itself for said property and issued sale certificate - Appellant, liquidator of CD filed an application for reversing sale transactions of properties on ground that sale had been affected after imposition of moratorium, which was dismissed by NCLT.

Held that once the borrower failed to tender entire amount of dues with all costs and charges to secured creditor before publication of auction notice, his right of redemption of mortgage shall stand extinguished / waived on date of publication of auction notice in newspaper in accordance with Rule 8 of 2002 Rules. Relationship between mortgagor and mortgagee, for purpose of redemption exists till date of issuance of notice of sale, if property is being sold under section 13(8) of the SARFAESI Act then in that situation also the borrower had no right to property for purpose of raising dispute and thus, appeal filed by the appellant was to be dismissed.

Case Review: Order of NCLT(mumbai) in M. A No. 1662 of 2019, dated 08.04.2024, **affirmed.**

Electrosteel Steel Ltd. v. Ispat Carrier (P.) Ltd. [2025] 173 taxmann.com 873 (SC)

Once a resolution plan is duly approved by Adjudicating Authority, all claims which are not part of resolution plan stand extinguished and no person will be entitled to initiate or continue any proceeding in respect of a claim which is not part of resolution plan.

The respondent-operational creditor filed claim against the appellant-corporate debtor before Micro and Small Facilitation Council (MSMEC) for outstanding amount. Meanwhile, financial creditors of the appellant had filed application under section 7. NCLT had imposed a moratorium and appointed a Resolution Professional (RP). Resolution plan had been approved by CoC, wherein all claims of operational creditors, including the respondent had been settled at nil value. After moratorium had ended, Facilitation Council had resumed arbitration and had awarded Rs. 1.59 crores plus interest to respondent under MSME Act. The respondent had instituted execution proceeding of Arbitral Award passed by MSMEC. At stage of execution of Award, the appellant filed a petition contending that Arbitral Award was a nullity and hence not executable, as claim of the respondent had already been settled at nil as per resolution plan. Executing Court by order had directed the appellant to comply with award. On appeal, High Court upheld order of Executing Court.

Held that once a resolution plan is duly approved by adjudicating authority, all claims which are not part of resolution plan stand extinguished and no person will be entitled to initiate or continue any proceeding in respect of a claim which is not part of resolution plan. In instant case, upon approval of resolution plan by NCLT, claim of the respondent being outside purview of resolution plan stood extinguished and, therefore, award passed by MSMEC was incapable of being executed, therefore, order passed by Executing Court directing the appellant to comply with award was to be set aside.
Case Review: Order of High Court of Jharkhand at Ranchi in C. M. P. No. 376 of 2023, dated 17.07.2023, set aside

IPA ICMAI, IN ASSOCIATION WITH HYDERABAD INSOLVENCY PROFESSIONALS' ASSOCIATION (HIPA), SUCCESSFULLY CONDUCTED A PROFESSIONAL ROUNDTABLE ON 14TH JUNE 2025, FOCUSING ON CRITICAL ASPECTS OF THE INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016

"IPA-ICMAI, IN COLLABORATION WITH ICMAI COCHIN CHAPTER, SUCCESSFULLY ORGANIZED A WORKSHOP ON "BALANCING THE INTERESTS OF STAKEHOLDERS UNDER THE INSOLVENCY AND BANKRUPTCY CODE"

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The articles sent for publication in the journal "The Insolvency Professional" should conform to the following parameters, which are crucial in selection of the article for publication:

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✓ The article should be topical and should discuss a matter of current interest to the professionals/readers.

✓ It should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of.

✓The length of the article should be 2500-3000 words.

✓The article should also have an executive summary of around 100 words.

✓The article should contain headings, which should be clear, short, catchy, and interesting.

✓The authors must provide the list of references if any at the end of article.

✓A brief profile of the author, e-mail ID, postal address and contact numbers and declaration regarding the originality of the article as mentioned above should be enclosed along with the article.

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