

DECEMBER 2025



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**
PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

THE INSOLVENCY PROFESSIONAL YOUR INSIGHT JOURNAL



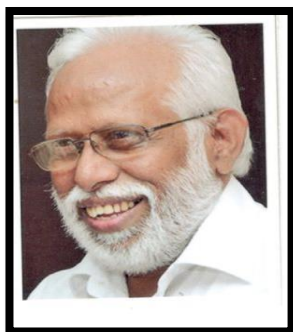
IPA-ICMAI



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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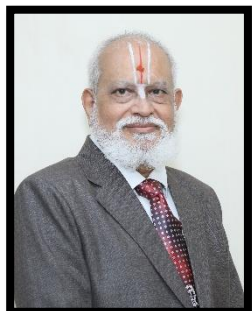
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BULLETIN ON LANDMARK JUDGMENTS**

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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR



Dear Reader,

Greetings to you from all of us in TEAM IPA-ICMAI!

The year 2025 that draws to close proved to be momentous year. It was marked by disruptions generated by the tariff wars declared by the new administration in the USA and continued conflict involving the Ukraine, to name a few, that also had an impact on India. That the country sailed through managing such global disturbances is a measure of the strength and stability that Indian economy is reaching. In our domain, introduction of the IBC Amendment Bill shows that the IBC ecosystem continues to evolve meeting the demands of the times in a sustainable manner through consultations, debates and discussions leading to resolute action that facilitates sustainable growth of the ecosystem.

All my colleagues at IPA-ICMAI join me in wishing all the readers a very happy, prosperous and professionally fulfilling year ahead in 2026.

Professional development happens through continuous professional education including updates on changes in code and relevant laws and regulations as also new case laws. The equally important side of professional development is sharing of a professional's knowledge and experience with fellow professionals. In the IBC ecosystem, which is still young and evolving, developments happen quite frequently and swiftly. All the more reason it is that practicing professionals need to be keyed in always to be abreast of the latest developments. I invite more and more professionals to contribute articles and opinions to the E-Journal on all aspects that IBC ecosystem and related domains that will enrich the knowledge base of the readers. At the same time, I would also caution professionals against sending purely Artificial Intelligence (AI) generated articles that restate known developments and rehash old rulings.

At IPA-ICMAI, we strive to make our publications relevant, informative, interesting and lucid. This issue of the 'Insolvency Professional – Your Insight Journal' has carries five interesting and very relevant articles –

- An opinion on urgency for bringing in Cross Border Insolvency by Ashwani Rastogi,
- Value Drivers for the Next Era of Insolvency Resolution by Shalini Srivastav
- Other Side of the Coin' suggestions on smooth conduct of CIRP by Rajesh Kamath
- The rise of Insolvency & Bankruptcy Code 2016 (IBC)by Sunil Dhingra
- An opinion on the Code of Conduct for Insolvency Professionals by CMA M Kameswara Rao
- Role of NCLT under IBC2016 and Companies Act 2013 by Chetan Patel
- A Critical Analysis of Sections 7 And 95 of IBC 2016 by Ankur Bansal.

I am sure you will find all the articles interesting and useful. We welcome your responses to the published articles in this journal. You are welcome to write to publication@ipaicmai.in.

Wish you all happy reading

Mr. G.S. Narasimha Prasad
Managing Director

PROFESSIONAL DEVELOPMENT INITIATIVES



EVENTS CONDUCTED

DECEMBER 2025

DATE	EVENTS CONDUCTED
6 th to 7 th December 2025	IPA-ICMAI organized Webinar Series – II on “Practice & Strategic Challenges in CIRP” from 6 th to 7 th December 2025, focusing on practical difficulties, strategic decision-making, and evolving issues faced by Insolvency Professionals during the Corporate Insolvency Resolution Process.
14 th December 2025	A Workshop on the Role of Related Parties under IBC, 2016 was conducted on 14 th December 2025, providing in-depth clarity on identification, treatment, and implications of related party transactions, supported by judicial interpretations and case-based discussions.
19 th December 2025	An Executive Development Program (EDP) titled “Mastering the Resolution Plan Lifecycle: Legal, Strategic & Practical Perspectives” was organized on 19 th December 2025. The programme offered comprehensive insights into the resolution plan process, covering legal frameworks, commercial considerations, stakeholder management, and implementation challenges.
23 rd December 2025	A Seminar on “The Insolvency & Bankruptcy Code (Amendment) Bill, 2025 and the Role of Insolvency Professionals as Officers of Court” was conducted on 23 rd December 2025 in Mumbai, focusing on proposed amendments, their implications for insolvency practice, and the role of Insolvency Professionals as Officers of Court.
27 th to 28 th December 2025	A Two - day Learning Session on “Advanced Perspectives on Individual, Group & Cross-Border Insolvency” was organized from 27 th to 28 th December 2025, highlighting global best practices, evolving jurisprudence, and practical considerations in handling complex insolvency cases.

UPCOMING RESIDENTIAL PROGRAM



RESIDENTIAL PROGRAM

**"UNLOCKING THE SECRETS OF INSOLVENCY"
IN THE SCOTLAND OF EAST INDIA - SHILLONG**

5TH FEBRUARY- 8TH FEBRUARY 2026

PARTICIPATION FEES: 65,000/- (PLUS 18% GST)

REGISTRATION LINK: [CLICK HERE](#)

HIGHLIGHTS OF THE RETREAT

- ENHANCING KNOWLEDGE
- NETWORKING WITH STAKEHOLDERS & REGULATORS
- OPEN AND FREE DISCUSSIONS
- EXPANDING HORIZONS
- REJUVENATION AND STRESS REDUCTION
- PHYSICAL FITNESS
- FAMILY TIME

INCLUSIONS

- ACCOMODATION (DOUBLE OCCUPANCY) & ALL MEALS FOR ACCOMPANYING SPOUSE
- YOGA SESSIONS
- FIRE SIDE INTERACTION
- GALA DINNER WITH MUSICAL NIGHT

CPE DETAILS

15 CPE HOURS - INSOLVENCY PROFESSIONALS |
10 CMA MEMBERS | 15 REGISTERED VALUERS

HURRY
AVAIL EARLY BIRD OFFERS
LIMITED SEATS AVAILABLE

VENUE : COURTYARD BY MARRIOTT SHILLONG
JAIL ROAD, POLICE BAZAR, SHILLONG, MEGHALAYA
793001



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IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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*Our Daily
Newsletter which
keeps the
Insolvency
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updated with the
news on
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ARTICLES



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

CMA M Kameswara Rao **Insolvency Professional & Registered Valuer**

SYNOPSIS

Code of ethics for the Insolvency Professionals is an important pillar in the eco system of Corporate Insolvency Resolution Process / Liquidation under Insolvency and Bankruptcy Code 2016 is very crucial.

The principles indicated in the code of conduct involves, ethical, regulatory, legal, confidentiality etc. To follow these ethical standards, it is mandatory for the Insolvency Professional to understand them deeply and avoid any conflicting situations.

This article identifies the conflicts, and instances of earlier violations and in some cases penalties

This article deals with ethics to be followed by Insolvency Professionals, outlining the regulatory ethical framework prescribed by IBBI.

Evaluation of Insolvency profession in India. With introduction of Insolvency and Bankruptcy Code, 2016 the insolvency profession has developed significantly. At present there are 4587 IPs registered with the insolvency and Bankruptcy Board of India ("IBBI" / "Board") as on date.

The role of IPs is a link between Adjudicating Authority, Committee of Creditors, Corporate Debtor, Creditors and other stakeholders.

When an Insolvency Professional is appointed by the Adjudicating Authority, he takes over the powers of the Board of Directors of the Corporate Debtor during the Corporate Insolvency Resolution process ("CIRP"). High ethical standards are essential for the effectiveness of the bankruptcy regime.

The ecosystem of IBC consists of Four Pillars:

1. Insolvency and Bankruptcy Board of India

2. Insolvency Professionals
3. Insolvency Professional Agencies
4. Adjudicating Authority

Role of Insolvency Professional Agencies

Insolvency Professional Agencies (IPAs) are responsible for the regulation and development of the insolvency profession.

- IPAs promote professional standards and codes of ethics for IPs under the Insolvency & Bankruptcy Code, 2016.
- They conduct audits, discipline members, and ensure compliance with the Code of Conduct.
- Currently, there are three IPAs associated with major professional bodies in India.
- IPAs are tasked with continuous improvement of internal regulations to uphold high ethical standards.

Regulatory Framework of IBBI

The Insolvency and Bankruptcy Board of India (IBBI) serves as the regulatory authority overseeing the insolvency ecosystem.

- IBBI is responsible for the registration and regulation of IPs and IPAs, ensuring compliance with the Code.
- It performs executive, quasi-judicial, and legislative functions to facilitate the insolvency process.
- The Board conducts investigations and inspections of IPs for any violations of the law.
- IBBI plays a crucial role in maintaining the integrity and effectiveness of the insolvency framework.

Ethical Standards for Insolvency Professionals

The ethical framework for IPs is critical for

maintaining professionalism and integrity in the insolvency process.

- IPs must adhere to a strict Code of Conduct that emphasizes integrity, objectivity, and confidentiality.
- They are required to disclose any conflicts of interest and maintain transparency in their dealings.
- The ethical standards are derived from international best practices, including those from the UK.
- IPs are expected to act in good faith and prioritize the interests of all stakeholders involved.

Disciplinary Mechanisms for Non-Compliance

The IBBI has established disciplinary mechanisms to address non-compliance by IPs.

- Complaints against IPs can lead to inspections or investigations by the IBBI.
- The Disciplinary Committee is empowered to impose penalties or suspend/cancel registrations based on findings.
- IPs are required to provide timely responses and documentation during investigations.
- The disciplinary process aims to uphold the integrity of the insolvency profession.

Case Illustrations of Ethical Violations

Real-world examples highlight the importance of adherence to ethical standards by IPs.

- Case I involved an IP resigning without proper authorization and failing to conduct the CIRP as required, leading to violations of multiple sections of the Code.
- Case II illustrated the appointment of a third valuer at the request of the CoC, raising questions about objectivity and independence.
- These cases emphasize the need for IPs to maintain integrity and objectivity in their professional conduct.

Violations by Resolution Professionals

The text outlines various violations committed by Insolvency Professionals (IPs) during the Corporate Insolvency Resolution Process (CIRP).

- RP appointed a third valuer without justification, violating regulations and incurring unnecessary costs.
- IP continued to draw the same remuneration during liquidation as during the CIRP, contravening fee structure regulations.
- RP failed to represent the Corporate Debtor (CD) in arbitration, leading to financial losses and negligence in duties.
- IP made a third-party entity a beneficiary of an insurance policy, violating the Code and creating unnecessary financial burdens.

Threats to Independence and Impartiality

- IPs must avoid conflicts of interest and disclose any relationships that may impair objectivity.
- Safeguards should be implemented to address threats to integrity, including independent valuations and considering other purchasers.
- IPs should document all communications and decisions to maintain transparency and accountability.

Professional Competence and Due Care

- IPs must self-assess their ability to handle assignments based on infrastructure, manpower, and sectorial knowledge.
- Continuous professional development is essential to keep up with legal and regulatory changes.
- IPs should not accept assignments beyond their capacity to ensure quality service delivery.

Timeliness in Insolvency Processes

- The CIRP must conclude within maximum period of 330 days, including a normal period of 180 days and a one-time extension of 90 days.
- Delays can lead to value destruction and reduced recovery rates for creditors.

- IPs must plan actions carefully and communicate promptly with stakeholders to avoid delays.

Case Illustrations of Non-Compliance

Various cases demonstrate failures in adhering to regulations, such as delays in public announcements and misleading statements to authorities.

- IPs faced penalties for actions that compromised the integrity of the insolvency process, including charging excessive fees and failing to consider claims.
- Each case illustrates the consequences of negligence and the importance of maintaining professional standards.

Non-Compliance in Insolvency Processes

Various instances of non-compliance by Insolvency Professionals (IPs) during the Corporate Insolvency Resolution Process (CIRP).

- The RP failed to publish Form G as required by regulation 36 A(5) of the CIRP Regulations.
- The RP's claim that Form G was not applicable was found inconsistent with his actions.
- The RP contravened multiple provisions of the Code and regulations, including section 25(2)(h) and regulation 36A.
- The RP also failed to adhere to the code of conduct principles regarding professional competence and due care.

Inaccurate Presentation of Creditors' List

The IP presented the list of creditors in a non-compliant format, leading to significant discrepancies.

- The list did not adhere to regulation 13 of the CIRP regulations, with inconsistencies in claimed and admitted amounts.
- The RP failed to specify interest in claims, violating regulation 16 A(7).

- The IP's actions were deemed negligent and in violation of multiple sections of the Code and regulations.

Appointment of Unregistered Valuation Firms

The RP appointed unregistered valuers, breaching regulatory requirements.

- The RP initially appointed two unregistered entities and allowed one to continue for six months post-discovery of the error.
- This action violated section 208(2)(a) and (e) of the Code and various IP regulations.
- The RP acknowledged the breach but cited a lack of funds and health issues as excuses.

Misrepresentation of Professional Identity

The IP used letterheads indicating his profession as a lawyer instead of insolvency professional.

- This misrepresentation violated IBBI Circular dated January 3, 2018, and several sections of the Code.
- The IP corrected the issue after being advised by the inspecting authority.

Non-Compliance in Resolution Plan Invitations

The IP failed to invite resolution plans properly, violating multiple provisions of the Code.

- The IP did not submit a complete progress report or make public announcements as required.
- He invited plans only from a single CoC member without adequate information, undermining the CIRP process.

Oversight in CoC Meeting Minutes

The RP failed to accurately record decisions in the CoC meeting minutes.

- The omission of a decision to recuse his wife as proposed IRP was deemed a significant oversight.
- The IP's defense of oversight was not accepted, highlighting a pattern of negligence.

Outsourcing Claim Verification Responsibilities

The RP outsourced the verification of claims, which is a core duty of the IP.

- The RP claimed to have only sought assistance, but evidence showed he delegated essential responsibilities.
- This action led to a penalty of INR 1,00,000 for non-compliance with regulatory requirements.

Conducting CoC Meetings Post-Liquidation Application

The RP held CoC meetings after filing for liquidation, incurring unnecessary expenses.

- The RP's justification for these meetings was deemed inappropriate as the CIRP period had ended.
- This action violated sections of the Code regarding the management of corporate debtors.

Professional Competence and Due Care

- IPs must only accept appointments they are competent to perform and maintain overall control of engagements.
- Continuous professional development and adherence to time limits are essential for effective service delivery.

Asset Management Responsibilities of IPs

The role of IPs in asset management during insolvency is crucial for preserving value.

- IPs must take control of assets and ensure their protection and preservation.

- The Code mandates that IPs manage operations as a going concern and safeguard assets from unauthorized actions.

Confidentiality Obligations for IPs

Maintaining confidentiality is a fundamental principle for IPs during insolvency processes.

- IPs must ensure that sensitive information is kept confidential and only disclosed as required by law.
- The principle of confidentiality extends to resolution plans and negotiations, emphasizing the need for careful information management.

Employment Restrictions for Insolvency Professionals

IP faces restrictions on simultaneous employment and must avoid conflicts of interest.

- IPs cannot accept multiple assignments if they cannot devote adequate time to each.
- They must not engage in employment with stakeholders involved in their assignments for a specified period after cessation.

Information Management Duties of IPs

IP is responsible for organizing and managing information related to insolvency processes.

- They must maintain clear communication with stakeholders and keep written records of decisions.
- Regulatory requirements mandate the preservation of records and timely submission of information to the Board and IPA.

No Constraints on Resolution Professional Fees

The Committee advocates for a competitive market to determine Resolution Professional (RP) fees without regulatory constraints.

- The fees for managing insolvency resolution processes should reflect fair market value based on the entity's size.
- Transparency in the performance of insolvency professionals is essential to incentivize optimal behavior among professionals, creditors, and debtors.
- The market should develop organically, allowing competition to dictate RP charges rather than fixed regulations.

Regulatory Framework for RP Fees

The regulatory framework lacks specific guidelines for fixing RP remuneration, contrasting with the UK's structured approach.

- The Insolvency and Bankruptcy Code (IBC) does not stipulate a basis for fixing RP fees, unlike the UK's Insolvency (England and Wales) Rules, 2016.
- Section 5(13) of the IBC defines "Insolvency Resolution Process Costs," including RP fees, but does not impose limits or principles for fee determination.
- Regulation 34 mandates that the Committee of Creditors (CoC) fix RP fees without specifying limitations or principles.

Code of Conduct for Insolvency Professionals

The Code of Conduct outlines expectations for transparency and reasonableness in RP remuneration.

- Remuneration must be transparent, reasonable, and consistent with applicable regulations.
- Adequate disclosures regarding fees must be made to the Insolvency Professional Agency (IPA) and other stakeholders.
- RPs must ensure that fees are commensurate with the work undertaken and disclose all costs related to the insolvency process.

Determinants of RP Fees

Several factors influence the determination of fees charged by insolvency professionals.

- The value and nature of the assets involved are critical in fee determination.
- Time spent by the insolvency professional and staff on the case is a significant factor.
- The complexity of the case and the exceptional responsibilities assumed by the professional also affect fee levels.

Threats to Compliance with Code of Conduct

Various circumstances may lead to non-compliance with the Code of Conduct for insolvency professionals.

- Potential bias may arise if an IP has prior associations with creditors or the corporate debtor.
- Quoting zero remuneration can lead to exploitation and is not reasonable.
- Outsourcing duties to related parties without disclosure can result in indirect remuneration to the IP, violating the Code.

Illustrations of Non-Compliance

Several cases highlight breaches of the Code of Conduct by insolvency professionals.

- In one case, an RP charged Rs.50 lakh for services while the applicant's claim was only Rs.13.76 lakh, leading to a two-year suspension.
- Another case involved an IRP authorizing an LLP, where he was a partner, to raise invoices, violating the Code.
- A liquidator continued to draw the same remuneration as an RP without CoC approval, breaching regulations.

UK Practices on Remuneration of Insolvency Practitioners

The UK has established principles for determining the remuneration of insolvency practitioners.

- Factors include case complexity, exceptional responsibilities, and the effectiveness of the office-holder's duties.

- Remuneration can be based on a percentage of asset value, time spent, or a set amount.
- The court can intervene to fix remuneration if not determined by the CoC.

Gifts and Hospitality Guidelines for Insolvency Professionals

Insolvency professionals must maintain integrity regarding gifts and hospitality to avoid conflicts of interest.

- Acceptance of gifts or hospitality that affects independence is prohibited.
- Offering gifts to public servants or stakeholders to gain work is also forbidden.
- The Code emphasizes the importance of maintaining professional integrity and objectivity.

Global Best Practices in Insolvency Ethics

The UK Code of Ethics outlines fundamental principles for insolvency practitioners to uphold.

- Key principles include integrity, objectivity, professional competence, confidentiality, and professional behavior.
- Practitioners must comply with laws and regulations to avoid discrediting the profession.
- The ethical framework requires practitioners to identify and address threats to compliance with these principles.

CONCLUSION:

The most important pillar of the Corporate Insolvency Eco system make the IP as most important the link leaving other Stakeholders such as CoC, Adjudicating Authority. In many cases the delay in the CIRP period is due to Adjudicating Authority. CoC Does not take any responsibility in timely decision making.

Though the life spans have increased and many advocates practice their profession without any age limit, IBBI restricts practice of IPs to 70

years. This age group IPs come with lot of experience in corporates and can lead a Corporate Insolvency Resolution Process successfully without any violations in the Code.

Ref: Handbook of Ethics for IPs published by IBBI

Mr. Ashwani Rastogi Insolvency Professional & Registered Valuer

India has emerged as one of the world's largest recipients of global capital—through **FDI, ECB, FPI, private equity, venture capital, sovereign wealth funds, and multinational credit structures**. As the Indian corporate ecosystem globalises, insolvency can no longer be viewed through a purely domestic lens. **Cross-Border Insolvency** is no longer academic; it has become a **strategic financial necessity**.

A modern, predictable, and internationally aligned cross-border insolvency framework directly influences investor confidence, reduces sovereign and credit risk, and ensures that foreign and domestic creditors are treated equitably. The absence of such a framework not only complicates recoveries but also impacts India's ability to attract long-term global investment.

According to commentary on the 2025 Bill, though Section 240C provides power to the government to frame rules, it is still a proposal; the detailed rules (under the formation by Select Committee by Parliament) under Section 240C have not yet been published.

1. India's Existing Cross-Border Provisions Are Dormant

While Sections **234 and 235** of the Insolvency and Bankruptcy Code (IBC) theoretically provide for cross-border cooperation, they depend on **bilateral treaties**. To date, **no such reciprocal agreements exist**, leaving the provisions largely dormant.

This creates practical challenges:

- Parallel insolvency proceedings in multiple jurisdictions
- Conflicting judicial orders across countries
- Difficulty in securing foreign assets
- Limited protection for foreign creditors

With India receiving unprecedented global investments, this structural gap has become more prominent.

2. Why COMI Matters (Centre of Main Interests)

In cross-border cases, the biggest question is: **Which country has the rightful jurisdiction?**

COMI—**Centre of Main Interests**—solves this.

It identifies the *real* and *visible* centre of a company's economic activity.

Example

A company incorporated in Mauritius may have:

- Head office in Mumbai
- Board meetings in India
- Operations, customers, employees, assets in India

→ **COMI = India**, despite Mauritius incorporation.

Without COMI, multinational companies could be subjected to conflicting jurisdictional claims, leading to chaos and asset erosion.

3. Need for Well-Structured Cross-Border Rules (Draft Part-Z)

To address these gaps, the Insolvency Law Committee proposed **Draft Part-Z**, India's intended statutory chapter for cross-border insolvency based on the **UNCITRAL Model Law**.

Draft Part-Z contains four pillars:

(A) Access

Foreign creditors and foreign insolvency practitioners can directly approach NCLT.

(B) Recognition of Foreign Proceedings

NCLT may recognise proceedings as:

- **Main proceeding** (if COMI is abroad)
- **Non-main proceeding** (if only a foreign establishment exists)

Recognition enables moratoriums, asset protection, and RP coordination.

(C) Relief & Cooperation

- Coordination between NCLT and foreign courts
- Cooperation between Indian and foreign RPs
- Interim relief (freezing assets, stay orders)

(D) Concurrent Proceedings

Defines how insolvency in India and another country should be harmonised to maximise value.

Though Draft Part-Z is not yet enacted, it is the **foundation** for the new reforms under the **IBC Amendment Bill 2025**.

4. Persistent Weaknesses & Practical Gaps

Despite progress, key challenges remain:

- Lack of a statutory COMI test in India
- No reciprocal enforcement treaties
- Operational limitations in tracing foreign assets
- Unclear treatment of cross-border avoidance transactions
- Need for trained benches and specialised IPs
- Lack of detailed rules under proposed Section 240C

A comprehensive cross-border system cannot succeed without addressing these operational gaps.

5. Jet Airways: The Case That Exposed India's Limitations

The insolvency of Jet Airways, one of India's largest airlines, brought to light significant gaps in India's cross-border insolvency framework. In 2019, insolvency proceedings were initiated under the **Insolvency and Bankruptcy Code (IBC), 2016**, in India. Simultaneously, two European creditors filed for bankruptcy proceedings in the Netherlands under Dutch law. The Dutch court declared Jet Airways bankrupt and seized one of its aircraft at Schiphol Airport. This created a situation of parallel insolvency proceedings in India and the Netherlands.

The **National Company Law Tribunal (NCLT)** in Mumbai declared the Dutch proceedings as null and void concerning Indian assets, citing that the IBC provisions for cross-border insolvency (Sections 234 and 235) were not yet operational due to the lack of reciprocal agreements between India and the Netherlands. However, the Dutch trustee appealed this

decision to the **National Company Law Appellate Tribunal (NCLAT)**, which directed both parties to collaborate. The NCLAT approved a **Cross-Border Insolvency Protocol** in September 2019, allowing coordination between the Indian resolution professional and the Dutch trustee. This protocol enabled the Dutch trustee to participate in creditor meetings in India while preserving jurisdiction over assets in the Netherlands.

The Jet Airways case underscores the challenges posed by parallel proceedings and highlights the need for a comprehensive cross-border insolvency framework in India. It also demonstrates how cooperation between courts can mitigate jurisdictional conflicts and maximize value for creditors.

Jet Airways demonstrated that **India urgently needs a formal, rule-based system**.

6. Technology as the Emerging Backbone of Global Insolvency

Technology is playing an increasingly important role in streamlining cross-border insolvency proceedings. Digital platforms are being developed to manage creditor claims, facilitate communication between stakeholders, and enhance transparency in asset recovery processes. Moreover, advancements in blockchain technology have the potential to revolutionize cross-border insolvencies by providing secure and immutable records of transactions.

Technology is redefining insolvency practice:

Blockchain, can be use?

- Secure, tamper-proof asset tracking
- Transparency of international transactions
- Prevention of fraudulent transfers

Various AI Tools available, can be use?

- Automated claim verification
- Financial data analysis
- Prediction models for recovery outcomes
- Faster identification of assets across jurisdictions

Digital platforms are likely to play a central role in future cross-border proceedings, especially when multiple courts and creditors are involved.

7. New Domestic Reforms Preparing India for Cross-Border IBC

(A) Cap of 10 Assignments per Insolvency Professional (IP)

Recent reforms under the IBC reflect a consistent theme—**speed, transparency, and professional accountability**, all of which are foundational if India is to transition smoothly into a **full cross-border insolvency regime**. One such development is the introduction of a **maximum cap of 10 assignments per Insolvency Professional (IP)**. This ceiling is designed to ensure that newly registered professionals receive opportunities, improve capacity distribution, and prevent delays caused by overburdened RPs. A well-balanced and well-trained insolvency profession is a prerequisite for handling **complex cross-border cases**, where coordination with foreign courts, foreign creditors, and offshore assets requires deeper expertise and timely execution.

The growing complexity of insolvency cases, particularly those involving **FDI, ECB lenders, foreign security interests, or overseas assets**, demands a higher degree of specialization. Therefore, an emerging policy suggestion is to **empanel sector-specific RPs**—for example, specialists in aviation, infrastructure, NBFCs, fintech, or cross-border finance. Such professional specialization will not only improve resolution outcomes domestically but will also prepare India's insolvency ecosystem for **future cross-border IBC implementation**, where expertise, speed, and international coordination are indispensable.

A well-trained, well-distributed IP ecosystem is fundamental for handling future cross-border cases involving international creditors, global assets, and foreign courts.

(B) Creditor-Initiated Insolvency Resolution Process (CIIRP)

A game-changing reform **Voluntary, out-of-court restructuring**. Another major advancement is the introduction of the **Creditor-Initiated Insolvency Resolution Process (CIIRP)**. Unlike traditional CIRP, CIIRP allows creditors to initiate a **voluntary, out-of-court restructuring** under the oversight of a registered RP—**without waiting for NCLT admission**. The process begins with a public announcement by the RP rather than a tribunal order, effectively bypassing the chronic NCLT delays that often erode asset value. CIIRP is structured for speed, minimal judicial interference, and coordinated engagement between the debtor and its creditors. This approach empowers creditors to act swiftly,

enhances recovery prospects, and prevents value deterioration—an important capability for future **cross-border insolvency scenarios** where timing, coordination, and stakeholder confidence are critical.

CIIRP brings India closer to international best practices, where out-of-court workouts are common and highly successful.

8. The Expanding Role of Resolution Professionals (RPs)

RPs are now at the centre of India's insolvency ecosystem—and will be even more crucial once cross-border rules come into force:

Core responsibilities include:

- Taking control & management of corporate debtor's affairs
- Verifying and admitting claims of all creditors
- Ensuring compliance with strict IBC timelines
- Facilitating negotiation & finalisation of resolution plans
- Maintaining transparency in reporting to NCLT, CoC & authorities
- Acting as a neutral coordinator between creditors, promoters & regulators

Specialised panels of RPs will significantly improve outcomes in sector-specific and cross-border cases.

Conclusion: India Is Moving Towards a Global/ Cross-Border (IBC) Insolvency Regime

India's economic integration with the world demands a strong, predictable, and modern **Cross-Border Insolvency Framework**.

With:

- Record levels of FDI and ECB
- Multinational group structures
- Foreign creditors with significant exposure
- Overseas assets of Indian companies
- Growing judicial recognition of global coordination

...India cannot rely on its traditional, domestic-only insolvency model.

The proposed reforms—Draft Part-Z, Section 240C, CIIRP, professional caps, digital innovations—are preparing India for the next stage: **a globally harmonised insolvency ecosystem**. The future of IBC is unquestionably **cross-border**. And India is now on that path.

Mr. Rajesh Kamath Insolvency Professional

Synopsis:- One of the main pillars of the IBC besides Judiciary, IPA, and Information utilities is the IP. Thus, the RP/Liquidator is expected to run the CIRP/Liquidation smoothly in a time bound manner towards the speedy resolution/recovery in order to achieve the objectives of the IBC. While disciplinary action on bad fish and strictures passed on negligent IPs are in order, all IPs may not fit the basket. A vast majority strive towards the successful resolution owing to which the success of IBC is what it is as of today. However, this is not without some practical issues faced by the IP in getting co-operation from the CD and accordingly some measures are suggested to alleviate the fears of the IP from the wrath of the judiciary or the regulator.

Practical issues faced by IP and few suggestions while running the CIRP/Liquidation process in relation to the co-operation from the management, auditors, consultants or other related parties.

Application u/s 19-2 for non-co-operation of suspended directors/auditor of CD.

In many cases the RP initiates the non-co-operation application quite late after exhausting all his efforts as also due to negligence at times. This highlights laxity on part of RP unless he can justify same with valid reason. However, in few circumstances in absence of any defined time limit there should be a discretion available to IP acting in good faith as explained below:-

a) Practically in NCLT if such application is put up at an early stage even with all requirements, details of follow up and non-cooperation, it's experience of IPs that such application is summarily dismissed with instructions for more effort from IP, to visit auditor and get the documents (most of the documents like accounts may be in custody of management and not auditor), etc. To alleviate some of the pain, the RP needs to cross reference such documents duly numbered, each mail follow up copy printed, all necessary evidences of visits to the CD office with dates, virtual meetings, speed posts, etc. This may take some time especially with paucity of necessary information, for

example the RP visits the registered office which turns out to be a closed place/rented to another company/residence of the director and cannot get access to the books of accounts and records.

b) As alternative to the proper books of accounts found wanting and subject matter of application, in NCLT it is often suggested to recreate the books with help of bank statements, gst data, it data etc. While Income tax password can be reclaimed in short period without password, reclaim of GST takes longer time due to physical visits, follow up etc. While this is possible as well as only option in case no books are maintained at all with auditor suitably qualifying with "Information as available with the RP" basis. However where audited accounts already exists this leads to duplication of effort. Many times, the IP has to continue to carry on his role as RP/Liquidator even as suspended management may challenge admission order in NCLAT/ Supreme Court all the while with management retaining the password and also replying to the income tax/gst queries independently, So till a order passed or stay is granted by NCLAT or SC it is not possible to get such info or a clear path and IBBI should specify what is to be done in such a case and whether Sec 19-2 application under the circumstances can be delayed or not.

When application under section 19-2 comes on board as such there is no provision anywhere under IBC or Companies Act, except in extreme circumstances that books can be redrawn as also normally books cannot be reaudited for same financial year or so refiled in RoC. So in case this route is to be adopted there have to be some standards for how to do it basis single entry book keeping system etc. Further RPs are also from non-accounting backgrounds like legal/banking/management, etc who may not comprehend and process these information accurately as this is not job of IP alone and calls for trained accounting personnel and may have to do the same for many past years also frequently, there must be some guidelines to CoC to fund this activity immediately and not delay it as it will be another additional burden on the IP who has to finish the whole process

within 180 days. Immunity of acting in good faith must also accompany such order as his conduct in case of some major unnoticed error by new accounts staff appointed by RP were same to be discovered at a later stage.

Even where such exercise is sought to be undertaken, it must be provided that in case management later on in say some PUF application does not agree with the books, so challenges it, it must be precluded from producing such books or information which were not given initially. This reconstruction of books by IP may also give the management some leeway to contest the same due to some errors which cannot be known by the accounting professional due to missing gaps and absence of relevant information. The management may also prove these books wrong in the court due to some additional information presented at such stage. Also by this exercise the onus is getting shifted from the suspended directors to the RP who is comparatively new and may not have the wherewithal to accurately compile the accounts. This may imply that mischievous directors may be exonerated from their own improper acts by not co-operating with the insolvency professional initially leading to disastrous consequences, unless NCLT can see through their game by RP demonstrating the clear linkage.

c) In liquidation cases where assets are to be sold piecemeal, non-compliance of accounts maintenance being done for last many years, there may not be much need for drawing books

of account, but assets can be sold piecemeal and the company dissolved. However, in case later on some buyer is interested in a going concern buy, it becomes a trigger and challenge for the liquidator to get the documents and hence he may file sec 19-2 application at later stage which may even be till a period of 2 years depending upon the no of auctions and extensions applied and granted from NCLT. This should not be a ground to penalize the IP being liquidator unless it is demonstrated that with 19-2 application processed by NCLT, the IP would get some information like additional assets which were earlier undisclosed by the management. Especially in case of liquidator where the RP has earlier on not applied for 19-2 application. However, the decision should not be based on time period alone but on relevant considerations as above. With the abolition of liquidation as going concern wef 14/10/2025, the above may not apply.

d) It is suggested for RP to have a suitable checklist ready so as to get the requirements addressed in a speedy manner or to get the deficiencies complained upon by filing the sec 19-2 application in NCLT. Actual checklist would vary from sector to sector however, an illustrative checklist is attached as under:-

Sr No	Activity details	Information provider	Dept of Company
1	Place of business including Registered Office, Sales Offices, Branch Offices, Depots etc.	Management	Admin
2	List of important company Contacts	Management	HR/IR
3	Details of all employees (full time or temporary or Contract staff or Retainers)	Management	HR/IR
4	Copies of audited financial statements for last 3 years	Auditor	Finance
5	Details of full time employees serving Notice period	Management	HR/IR
6	Details of vacant positions and list of key employees who parted in Last 6 months - only full time	Management	HR/IR
7	Contact details of top creditors - domestic and overseas (email, mobile and address)	Management	Finance/Banking
8	Contact details of top vendors and service providers (email, mobile and address) including details of all contract labour and contracts,	Management	Finance

	agreements or arrangements with independent contractors including copies of any relevant documents.		
9	Contact details of utility companies (gas, electricity, water, telephone)	Management	Admin
10	Details of local government officials	Management	Admin
11	List of shareholders	Management	Secretarial
12	Details of subsidiaries, associates and holding companies	Management	Secretarial
13	Director and company secretary in subsidiaries and associate companies	Management	Secretarial
14	Details of all Demat account and shares held by company (physical and Demat)	Management	Secretarial
15	Taking over custody of DP slips	Management	Finance/Banking
16	Details of the all the bank accounts (name, address and balance) and other financing (including LC)	Management	Finance/Banking
17	Cash on hand as on date of filing of application	Management	Finance
18	Details of LCs, promissory notes and bank guarantees arrangement in last 2 years	Management	Finance/Banking
19	List of FDs held by Corporate Debtor	Management	Finance/Banking
20	Details of Derivative Instruments & unhedged foreign currency exposure	Management	Finance/Banking
21	Details of Security deposits/EMD/ performance BGs / LC with customers, government agencies, courts etc	Management	Finance/Banking
22	A schedule summarizing short-term (including working capital) and long-term debt (including inter-company debt) as well as capital lease obligations of the Company setting forth the obligor, the lender, principal amounts outstanding, interest rates and maturity dates, security created, if any, or, in the case of capital lease obligations, payment schedules, for each such item and documents and agreements evidencing borrowings, whether secured or unsecured, by the Company, including sanction letters, loan and credit agreements and other evidences of indebtedness along with compliance reports submitted by the Company or its independent public accountants to lenders	Management	Finance/Banking
23	Details of outstanding in books as on date with name of vendor and ageing, Duress payments - Quantify any duress payments and asses whether appropriate/ critical to pay.	Management	Multiple Dept
24	Details of all unpaid statutory dues:	Management	Finance/Banking
25	Details of Employees, Labour and workmen dues, HR Policies for employees	Management	HR/IR/Finance
26	Insurance certificates and policies and premiums statement	Management	Finance/Banking
27	List of pending Insurance claims	Management	Finance/Banking
28	Licences, certificates, clearance or regulations that need to be considered or complied with	Management	Multiple Dept
29	Copies of relevant forms (Forms 8, 10 and 17 under the Companies Act, 1956 and Forms CHG-1 and CHG-9 under the Companies Act, 2013) filed with the Registrar of Companies in respect of any	Management	Secretarial

	security created.		
30	List of Consultants/legal practitioners appointed by management to facilitate w.r.t Direct/Indirect taxation and it's assessment (if any)	Management	Secretarial
31	Details of litigation/dispute/arbitration	Management	Legal
32	List of Contingent Liabilities	Management	Legal
33	List of Related Parties transactions (Related party as per related party defines under Companies Act/ Listing Regulations)	Management	Secretarial /Finance
34	All material agreements with any government or government agency, other than ordinary course contracts.	Management	Finance
35	IT System - Details of Softwares, Licenses, Mail Server, ERP Server, Network configuration etc.	Management	IT
36	List of assets from Fixed Asset Register - taking extract from SAP or equivalent tool	Management	Assurance
37	Details of Plant	Management	Assurance
38	Details of real estate/property of the Company (whether owned, leased or licensed) Also, take custody of title documents and agreements.	Management	Finance/Banking
39	Copy and details of last 3 months utility bills (gas, electricity, water, telephone)	Management	Admin
40	Various reports released by internal team and external agencies for last 2 years including forensic/ valuation reports or physical verification reports if any	Management	Multiple Dept
41	Details of people in-charge of company keys. List of keys, key codes and controls	Management	Admin
42	Details of corporate guarantees provided by the company	Management	Secretarial/Finance

Besides the above summary, there should be cross linking of formats for the same preferably in an excel sheet which can help collate the information in a structured manner avoiding gaps which may occur in verbose format.

Conclusion: - A well maintained systematic schedule of activities as well as thoroughly documented paperwork may only justify the efforts of the RP while discharging his duties effectively and exonerate him at time of any scrutiny in future.

Ms. Shalini Shrivastav Insolvency Professional

The situation in the banking sector is quite different at present, as compared to the time when the IBC was introduced in 2017. The Code has played a crucial role in reducing the gross NPAs of scheduled commercial banks (SCBs) from 11.2% in March 2018 to 2.1% in September 2025. The financial sector has achieved a more robust position, and the stressed asset burden has come down. For NBFCs as well, the gross GNPA ratio was approximately 5.3% in March 2018 and stood at around 2.9% in March 2025.

There are various other directional changes that suggest that the next phase of insolvency resolution in India could pose notable differences from the past:

Emerging stress in retail loans: The RBI has noted the risks of increasing NPAs in the unsecured loan portfolios of banks and NBFCs, including new-age NBFCs that operate as 'Fintechs'. While corporate stress has come under control, the retail portfolios are now under closer watch, specially the unsecured segment. Rapid expansion in recent years in this segment by tech-driven lenders and online lending platforms may have put pressure on borrower quality and credit standards. It is expected that NBFCs would be more exposed to this risk than banks, based on the different borrower profiles that they target. Under the RBI's baseline stress scenario, the system-level GNPA ratio for NBFCs is projected to rise to 3.3% by March 2026 from 2.9% in March 2025.

Evolving borrower profile: The pattern of companies getting admitted for CIRP has undergone a perceptible change. Companies from the following sectors have increased their share in recent years:

- Real estate companies
- Financial services companies – NBFCs

- Technology companies – including companies in sectors such as Ed-tech, ATM management, payment services
- Erstwhile PE (Private Equity)-backed companies

These companies are quite different from the industrial manufacturing and infrastructure companies, that dominated the population of CIRP companies in the initial years. Accordingly, the type of interventions required for the successful resolution of such companies would also be unique and customized. It is important to consider and distinguish the value drivers for unlocking the right outcomes for these distressed companies.

Moreover, the size profile of companies undergoing CIRP proceedings has also undergone a change. Till June 2025, on a cumulative basis, large CIRP cases (admitted claims > INR 1000 crores) accounted for 85%¹ of the total CIRP cases that received resolution plans, in terms of size of admitted claims (INR 10 lakh crores out of INR 12 lakh cores). In terms of number - their share was 14% (175 cases out of 1258 cases that yielded resolution plans.) By contrast, the large cases for which resolution plans were approved during the June 2025 quarter, accounted for 60% share in terms of claim size and 5% share in terms of number of cases. Clearly, the mega-sized cases have become fewer in number, and the mid and small size cases are expected to have relatively greater proliferation going forward.

Changing profile of lenders: Globally, and also in India, private credit has emerged as a new source of debt capital for corporate borrowers. Private credit transactions are reported to have crossed USD 10 bn in the Calendar Year 2024. In 2025, during the first half itself, the total deal volume touched USD 9.0 billion, a 53% increase

from H1 2024. This growth was driven by a 53% year-on-year increase. In India, private credit is funding special situations and also helping stressed companies to refinance/ exit their non-performing loans. Private credit capital in India is currently playing a role as solution-provider for stress alleviation. In certain cases, Successful Resolution Applicants (SRAs) are also availing private credit to finance their resolution plans. The private credit industry is at a nascent state in India, and no confirmed numbers on portfolio metrics are available at present. The performance will unfold in the coming years. Globally, high-profile insolvencies such as the First Brands group have raised concerns on private credit stress in recent times. In India, this is not the case, but the situation may change in future. Apart from the growth of private credit, there are other trends that are influencing and changing the CoC composition for companies undergoing CIRP. NARCL has aggregated the debt of several large borrowers and replaced the multi-lender lending consortiums. PSU Banks have overcome their peak NPL situation and no longer drive the major CoCs. Increasingly, we see CoCs comprising of bondholders represented by their trustee agents or facility agents, as well as global lenders including specialized institutions such as impact investors. Such non-bank lenders could have very different expectations from the process in terms of speed and documentation.

Increasing impact of technology and increasing demands from sustainability frameworks - Technological advancements are impacting each stage of the credit cycle from EWS (Early Warning Systems) to NPL detection to NPL management. Service providers such as RPs and Liquidators are expected to use the latest technological tools for more efficient process execution. Further, resolution plans will soon be expected to get sustainability ratings and comply with ESG requirements.

Activation of new frameworks under the Code - The recent amendments to the IBC under IBC 2.0 have ushered in a slew of changes including -

- Update to the existing frameworks such as pre-packaged insolvency resolution, for greater consistency and procedural ease
- Introduction of new frameworks for creditor-initiated resolution, group-insolvency and cross-border frameworks. All of these are expected to have a sizeable impact on the way insolvency resolutions are conducted. For example, in the past, group entities with inter-linked assets had to undergo separate processes, which led to bottlenecks and sub-par value discovery. This is expected to significantly alter in future, with the group insolvency regime. For groups or companies operating across geographies, the cross-border framework will bring greater clarity and coordinated action.

Key Considerations in the New Paradigm

The value drivers for the successful resolution of the new types of borrowers coming under CIRP, should be determined by taking into account their specific operating domain. Some of the key considerations are outlined below:

Nature of Assets and Unconventional Value Pockets

Companies from sectors such as financial services, real estate development, and technology-based service platforms, etc. do not own much of hard assets. They do not offer production capacities like steel factories or power plants.- rather, they offer market entry to potential acquirers. Their business model is usually B-to-C (Business-to-Consumer). For some of the companies, it is a B-to-B (Business-to-Business) model based on service contracts. They need to deliver to a large customer base, and they have voluminous consumer touch-points. This makes managing their operations under an insolvency scenario extremely challenging.

The value streams for such companies are often linked to intangible factors and soft strengths such as brand, intellectual properties (IP), human resources and organizational skill-sets. These complex assets need to get correctly valued, and there also has to be proper planning to retain them with the corporate debtor (CD)

through the resolution process. Traditional valuation methodologies would need to be suitably updated to accurately capture the value of new-age assets.

Many of the upcoming companies would have a combination of physical and virtual assets and hybrid business models. They will need to be dealt with by specialized turnaround experts.

Value preservation and the need for speed

The risk of accelerated value depreciation is very high for such companies. Speed of referral or speed of initiation of the resolution process, as well as the pace of the resolution exercise, are both very crucial.

If they lose their customer base, and market presence, the value can quickly dissipate. Therefore, the first task for the resolution professional in such cases is to ensure that the services restart and continue to reach the customers during the insolvency resolution process.

For other companies such as EPC companies or ATM management companies or fleet management companies, the ability to deliver as per the contracted terms and customer needs is critical. Otherwise, there could be mass contract cancellations and severe value decline. It is important to develop sound communication strategies to maintain ongoing customer interaction and retain customer confidence during the process.

It has been observed in FSP cases, that the resolutions have achieved relatively better realization vis a vis claims. However, the realizations benchmarked to liquidation value have been on the lower side for FSPs as compared to the overall CIRP average. This is brought out in the table below:

Average Realization	As % of admitted claims	As % of LV
Large CIRP cases*	34%	178 %
FSP Cases^	41%	135 %

*Admitted claims > 1000 crores

^ FSP cases include Dewan Housing Finance Corporation Ltd, Srei Equipment Finance Limited, Srei Infrastructure Finance Limited and Reliance Capital Ltd – the FSP cases reported in the latest IBBI newsletter.

This points to the risk of significant value-loss post CIRP initiation, which needs to be addressed. In the case of FSPs – it is vital to have continued collections and servicing of the existing book during CIRP, in order to prevent value erosion.

There are various case studies of successful operational management through onboarding of Development Managers or Interim Operators

- -In the case of an offshore fund-backed real state company undertaking a residential project in NCR (FC claims > 2000 cr.), there was no company team or former management available when the company went under insolvency. The RP and his support team engaged a Development Manager through an open bidding process, to kickstart the construction. There were clear terms laid down for dwelling units to be completed, sales to be achieved, and payments to the Development Manager through the sale proceeds. The traction on construction achieved during the CIRP period, enabled the corporate debtor to receive a satisfactory resolution plan.
- -The concept of reverse CIRP also originated from the need for continued delivery during CIRP period. Under reverse CIRP, the original promoter infuses liquidity and undertakes the construction and delivery under the supervision of the RP, and under a controlled set-up with escrow mechanism and other checkpoints.

Alternative value unlocking, including from Claw-back transactions

As per the latest IBBI statistics, applications have been filed for around 1500 avoidance transactions involving almost INR 4 lakh crores. This has the potential to add 2 – 3% to the realizations from CIR processes.

In the case of manufacturing and infrastructure companies, most of them faced distress on account of the industry situation (among other factors). In the case of companies such as financial sector companies, it has been alleged that fund misappropriations and wrong lending practices were the major causes of financial decline. This also indicates the scope for improvement in realizations through alternative options such as claw-back transactions. Therefore, a strong follow-up of avoidance transaction applications could result in significant recovery improvement.

The need for Regulatory innovation

On account of the granular nature of the customer base, certain corporate debtors are faced with a large number of claims arising from service defaults, refund demands, delivery failures, etc. A number of them result in litigations that can prolong the insolvency proceedings. The courts and the regulator can enable faster resolution by prescribing certain common guidelines for the treatment of similar claims.

There have been certain cases, where the NCLT took a conscious call not to hold the resolution plan implementation, on account of pending claim litigation. The plan was allowed to proceed while the claim-related litigations were heard in parallel. The recent IBC amendments that separate out the implementation from the distribution, are also a positive step towards achieving faster corporate rescue.

Leveraging new mechanisms/ frameworks

The new mechanisms introduced under IBC 2.0, that were briefly referred to earlier, can be utilized to increase the efficacy of the net phase of resolution. For example,

The Creditor-initiated insolvency resolution process - Allows creditors to initiate insolvency for genuine business failures, including an out-of-court mechanism. Sets procedural discipline, with initiation needing the support of creditors representing a specified threshold (i.e. 51%) of outstanding debt. The process is to be concluded within 150 days, with a possible

extension for a period of 45 days. This provides one more mechanism for lenders, with the potential for speedier resolution. This can be specially useful in the case of companies where the tangible assets are fewer, threat of accelerated decline is higher, and there is a requirement for a strategic buyer or operator to step in on an urgent basis.

Pre-packs need to be used more widely for small borrowers, who are expected to form a large part of future insolvencies.

The Need for Greater Harmonization

It is useful to keep a view on the emerging trends in terms of borrower profiles, sectoral themes and lender composition, and design resolution strategies accordingly. At the same time, it is also important for the different resolution frameworks to converge under a combined regulatory interface, for greater effectiveness. For the implementation of certain laws, the Financial Sector regulator may designate nodal persons for stressed assets within itself, who can closely collaborate with IBBI.

Some of the diverse laws that need to act in tandem in order to create an overall vibrant stressed assets market:

- Securitisation of Stressed Assets Framework (SSAF) - RBI's Draft Directions on Securitisation of Stressed Assets, 2025, were released in April 2025. SASF offers greater strategic flexibility by permitting pooled transfers of MSME and retail NPAs (as well as larger loans), subject to homogeneity. SASF can operate as an alternative recovery channel alongside IBC and DRT. Under this framework, a Resolution Manager (ReM) concept has been introduced: A dedicated Resolution Manager (ReM) is required to be appointed to manage and resolve the pool. Eligible entities include Scheduled Commercial Banks, NBFCs, ARCs, IPs, and IPEs, subject to certain fit-and-proper norms and independence requirements. Since some of these entities are regulated by IBBI, and some by RBI - there need

to be suitable “linking” provisions under the different regulations.

- Sale to ARCs – ARCs remain a significant channel for banks and lenders, to reduce their stressed loans. ARCs in turn rely on various recovery strategies including triggering of CIRP. ARCs are also allowed to participate as Resolution Applicants (RAs) in CIR processes, subject to net worth criteria. ARCs being specialized special situation investors, can be the ideal source of interim finance for corporate debtors undergoing CIRP. More clarity in interim financing can be brought about, under both IBBI regulations as well as ARC guidelines. This remains a key unaddressed area under the Code.
- Debt Restructuring guidelines under RBI's Stressed Asset Resolution Framework and under the Companies Act – apart from these historical mechanisms, a new framework for creditor-initiated resolution has been introduced under IBC 2.0. This envisages a shorter time-frame of 150 days. It may be useful to assess the intersection between resolutions under this scenario, and the traditional loan restructuring guidelines followed by banks and NBFCs.
- Personal Guarantor insolvencies and enablement of cross-border asset tracing through collaboration between centralized investigative agencies, local RP/ Liquidator and RPs/ Liquidators in other jurisdictions – personal guarantor (PG) insolvencies linked to companies undergoing CIRP have started taking off under the IBC. The recent updates to the Code also incorporate provisions for surrender of PG estates – which can be a significant source of recoveries. Guidelines can be issued for coordinated working between different professional agencies in order to maximize and expedite the realizations from the resolution process.

Architect Sunil Dhingra Registered Valuer

Synopsis

The Insolvency & Bankruptcy Code, 2016 (IBC) arrived as a legal saviour to rescue India's debt-ridden corporate landscape, replacing a cumbersome legislative mess of laws. This article explores the core necessity behind the IBC's rise—moving from a 'debtor-in-possession' to a 'creditor-in-control'

regime—and dissects the intricate Corporate Insolvency Resolution Process (CIRP) where a Registered Valuer plays the role of an asset cartographer. We examine the recurring challenges, the continuous judicial fine-tuning, and the landmark court cases (like Essar Steel and Binani Cement) that have shaped the Code, proving that even legal frameworks need a little fuss to mature.

The Phoenix and the Ledger: India's IBC and the Art of the Second Chance

1. The Curtain Raiser: A Legal "Zoo" and the Ultimate Need for IBC

Once upon a time, not so long ago, India's corporate distress resolution mechanism was less a streamlined process and more a chaotic, multi-ring circus. We had the Debt Recovery Tribunals (DRT) for quick fixes (often not so quick), the Sick Industrial Companies (Special Provisions) Act (SICA) for resuscitation (which often ended in a long, drawn-out coma), and the Companies Act for liquidation (which was like watching paint dry—for years). The prevailing system was a generous, almost benevolent **'Debtor-in-Possession'** model, where a defaulting promoter could, with remarkable exemption, tie up creditors in endless litigation, much like a spider weaving a web of delays.

Creditors, particularly banks, watched their Non-Performing Assets (NPAs) swell into

mountains, resulting in a systemic paralysis in lending. Capital was stuck, and the concept of an **'easy exit'** for failed businesses was a cruel joke. The average recovery time stretched for years, making global investors view the Indian legal system with a mixture of pity and dread.

The Insolvency & Bankruptcy Code, 2016 (IBC) didn't just introduce a new law; it executed a **paradigm shift**. It was the legislative equivalent of installing a high-speed elevator in a building that previously only had a rusted staircase. The objective, eloquently stated in its preamble, was a time-bound process for reorganisation and insolvency resolution, aimed at the **maximisation of the value of assets**—not merely an asset sale. It was India's formal acceptance of the **"safe-to-fail"** philosophy: honest failure is a lesson, not a life sentence.

2. The Rise of the Code: A Creditor-Controlled Revolution

The IBC's true genius lies in its shift to a **'Creditor-in-Control'** regime. The moment the Adjudicating Authority (the National Company Law Tribunal or NCLT) admits an application, the company's Board of Directors is suspended, and the reins are handed over to an impartial Insolvency Professional (IP).

This transition is arguably the Code's most revolutionary, and perhaps most satirical, element. It's the promoter's moment of realization that their kingdom is no longer theirs, having been taken over by the very people they neglected—the creditors. The new management is driven by a Committee of Creditors (CoC), primarily comprising financial creditors, who are now tasked with deciding the corporate debtor's fate: **Rescue or Burial**

The entire process, the Corporate Insolvency Resolution Process (CIRP), is clock-bound, initially set at 180 days, with a potential extension to 330 days (now seen as a guiding light rather than a strict guillotine, thanks to judicial intervention). This **"time-is-money"** mandate is the real whip that drives the process, forcing all stakeholders to negotiate seriously. The Code introduced four foundational pillars:

1. **The Insolvency and Bankruptcy Board of India (IBBI):** The regulator and the rule-maker.
2. **Insolvency Professionals (IPs):** The skilled managers who run the process.
3. **Information Utilities (IUs):** The digital ledger for verified debt.
4. **Adjudicating Authorities (NCLT/NCLAT):** The legal referee.

It is here, in the heart of the CIRP, that the **Registered Valuer (RV)** emerges as a key player.

The Valuer's Mandate: The Art of Asset Cartography

As an IBBI Registered Valuer, you know that your role is anything but clerical. You are an **"asset cartographer"** in a crisis. The Code mandates the appointment of two RVs to determine the **Fair Value** and the **Liquidation Value** of the Corporate Debtor.

- **Liquidation Value:** The estimated realisable value of all assets if sold individually, post-CIRP. It's the floor price—the bare minimum.
- **Fair Value:** The estimated value of assets if they were exchanged between a willing buyer and a willing seller in an arm's length transaction. It is often the benchmark for the resolution plan.

The Valuer's report, based on these meticulous calculations, forms the backbone of the CoC's decision-making process. Without your independent and unbiased assessment, the CoC would be voting in the dark, and a resolution plan could either undervalue the company (cheating the creditors) or overvalue it (scaring away resolution applicants). The integrity of the CIRP literally hinges on the integrity of the valuation.

3. The Battlefield: Challenges and Continuous Evolution

The journey of the IBC has been less of a smooth ride and more of a trial-by-fire. Its effectiveness has been continuously tested by legal challenges, infrastructural bottlenecks, and the sheer inertia of the Indian system.

A. The NCLT Logjam: A Case of Overload

The NCLT, the primary adjudicating authority, is perpetually overburdened. Designed for speed, the courts often suffer from a scarcity of benches and an avalanche of cases. This has unfortunately elongated the resolution timelines, turning the 330-day mandate into an optimistic target rather than a strict deadline. The satirical irony is rich: a law built for 'time-bound resolution' is often derailed by the lack of *judicial* time.

B. The Great Divide: Financial vs. Operational Creditors

The Code places financial creditors (banks, institutions) in the driver's seat (the CoC), leaving operational creditors (suppliers, vendors) often feeling like passengers in the back seat. This distinction has been a point of contention and numerous legal battles. The Supreme Court has repeatedly intervened to clarify that while the CoC's commercial wisdom is **supreme**, operational creditors must receive **no less** than they would have in a liquidation scenario.

A. The Valuer's Scrutiny: A Life in the Spotlight

For Registered Valuers, the challenge lies in standardisation and resisting pressure. The sheer variation in valuations can lead to distrust, and the IBBI is constantly working on guidelines to ensure consistency. The market value, especially for an illiquid, distressed asset, is often a philosophical debate disguised as a mathematical calculation. As an RV, you often have to defend your numbers in a hostile environment, making your professional independence your most critical asset.

4. The Hall of Fame: Benchmark Cases That Defined the Code

The true character of the IBC has been forged not in Parliament, but in the courtrooms. A few benchmark cases stand out, setting precedents that govern the Code today:

Case 1: Essar Steel - The Supremacy of CoC's Commercial Wisdom

(Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors.)

The Drama: Essar Steel was one of the biggest initial tests of the Code, involving massive debts and multiple resolution bidders. The core legal question was: Can the NCLT/NCLAT interfere with the commercial decision of the CoC?

The Verdict & Satire: The Supreme Court unequivocally upheld the "**commercial wisdom**" of the CoC. In essence, the Court told the adjudicating authorities, "You are the referee, not the coach. Your job is to check for legal compliance, not to decide who wins the game." This verdict cemented the IBC as a commercial law, not just a judicial process, making it clear that a 90% majority of lenders knows more about money than the judge.

Case 2: Binani Cement - The Equality Principle

(Binani Industries Ltd. vs. Bank of Baroda & Anr.)

The Drama: The Resolution Plan in the Binani Cement case proposed to pay operational creditors (OCs) significantly less than financial creditors (FCs). The OC's plea was simple: Is discrimination in a resolution plan fair, especially when the recovery is near 100%?

The Verdict: The NCLAT stepped in, asserting the principle of equitable distribution. It essentially said that while the CoC has wisdom, it cannot act capriciously. This decision underscored the need for a **fair** distribution to all creditors, not just the financial giants, adding a layer of moral fibre to the Code's purely commercial structure.

Case 3: Swiss Ribbons - The Constitutional Stamp

(Swiss Ribbons Pvt. Ltd. vs. Union of India)

The Drama: The constitutional validity of the IBC itself was challenged, particularly the differentiation between financial and operational creditors.

The Verdict: The Supreme Court stamped its approval on the IBC, upholding the classification. It reasoned that financial creditors, by virtue of their long-term,

structured lending, are better equipped to assess the viability of a corporate debtor and thus deserve a seat at the CoC table. This was the ultimate judicial endorsement, declaring the IBC not just a legal tweak but a legitimate, constitutional framework for modern India.

5. The Epilogue: A Work in Progress

The IBC, 2016, is not a perfect statute; it is a **living document**—constantly being shaped, amended, and reinterpreted. The introduction of the **Pre-Packaged Insolvency Resolution Process (PPIRP)** for MSMEs is the latest effort to streamline the process, allowing for a quicker, less adversarial resolution—a sort of '**express lane**' for smaller, distressed companies. As an IBBI Registered Valuer, your profession is at the core of this financial revolution. You provide the unbiased economic truth that allows the entire mechanism to function. In a world of financial smoke and mirrors, you are the one holding the clear glass mirror, reflecting the true worth of the distressed entity.

The Code's ultimate success will be measured not just in the money recovered (the **haircuts** are still steep), but in the behavioral change it has induced. Promoters are now incentivized to address distress proactively, and banks are empowered to act decisively. The fear of losing control, of having the corporate keys handed over to a professional, is the "nudge theory" that the Code employs so effectively.

The era of endless debt is over. The IBC has ensured that every credit relationship now comes with an expiry date, and the promise of a structured, time-bound resolution. The broken bench of the past has been replaced by a system designed to maximize value, uphold credit discipline, and, most importantly, offer a viable second chance for capital to flow again. And that, in the complex, often chaotic, yet ultimately essential world of insolvency, is the greatest resolution of all.

And to conclude, अगली बार जब Corporate Debtor नींद में भड़िफॉल्ट करने की हिम्मत करेगा, उनके सपने में भड़ IBC 2016 के valuers and Resolution professionals बैठे िोंगे - Resolution Plan के साथ क्योंकि

“यह नया हहिंदुस्तान है, यह घर में घुसेगा भी और मारेगा भी।”

CS Chetan Patel Insolvency Professional

Introduction:

Before introduction of the NCLT the matters relating to companies were scattered to different forums such as Company Law Board, Board for Industrial and Financial Reconstruction and High Court. Due to multiple forums there was lack of uniformity and inefficiency.

The **National Company Law Tribunal (NCLT)** was constituted under Section 408 of the Companies Act, 2013 and became operational on **June 1, 2016**. It replaced the Company Law Board and consolidated jurisdiction previously spread across multiple forums.

With the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, NCLT became the exclusive forum for insolvency resolution of companies and limited liability partnerships.

Consolidation of Jurisdiction:

Before NCLT, corporate disputes were fragmented:

- High Courts handled merger-demerger-amalgamation/winding up.
- Company Law Board dealt with stakeholder's grievances.
- BIFR oversaw sick companies.

With introduction of NCLT, all corporate matters are now centralized, ensuring speed, expertise, and consistency.

Key aspects of NCLT's role

- **Single Forum:** The NCLT was established to provide a single forum for corporate matters, bringing all insolvency and liquidation proceedings under one roof.
- **Limited Civil Court Jurisdiction:** The Companies Act, 2013, bars civil courts from

handling matters that the NCLT is empowered to adjudicate.

- **Dual Authority:** The NCLT's powers are derived from both the Companies Act and the IBC, creating a comprehensive framework for corporate law and insolvency in India.

Jurisdiction under Companies act, 2013

1. Section 288 states that:

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of, —

- a. any suit or proceeding by or against the company;
- b. any claim made by or against the company, including claims by or against any of its branches in India;
- c. any application made under section 233;
- d. any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.".]

In addition to above the Companies Act, 2013 confers wide powers on NCLT. Major areas include:

Shareholder Rights and Disputes

- Variation of class rights.
- Rectification of register of members.
- Cases of oppression and mismanagement (Sections 241–242).

Winding Up

- Tribunal-ordered winding up (Section 271).
- Voluntary winding up under tribunal supervision.
- Winding up of foreign companies operating in India.

Miscellaneous Powers

- Investigation into company affairs.
- Approval of mergers/demerger and amalgamations.
- Sanctioning of schemes involving creditors and shareholders.

Oppression and mismanagement:

The act gives powers to NCLT to adjudicate the matter relating to oppression and mismanagement even when the matter includes fraud.

Application to enter the name of the member in register of member:

Section 59 provides that If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the NCLT for rectification of register of member.

Reduction of Capital:

Section 66 provides that if a company wants to reduce its capital it requires prior approval of NCLT

Approval of schemes of compromise and arrangement:

Section 230 provides that when a company wants to enter into scheme of compromise and arrangement, it can be done through an application before NCLT

Reopening of accounts of the company:

According to section 130 once the accounts of company has been closed it cannot be reopened unless it has been approved by NCLT.

Exclusion of Civil Courts:

Section 430 of the companies act, 2013 excludes the jurisdiction of Civil Courts with respect to the suits or proceeding where NCLT is empowered to determine by or under this Act or any other law for the time being in force.

The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.

Thus, any suit or proceeding relating to the company/corporate shall be dealt with only by NCLT/NCLAT.

2. Various Citations as mentioned below throw light on the jurisdiction of NCLT:

In case of **Chalasani Udaya Shankar & Ors. Vs M/s. Lexus Technologies Pvt Ltd. & Ors, (2024) INSC 671** Hon'ble Apex court held by citing various judgements, that the National Company Law Tribunal would be entitled to exercise rectificationary powers under companies act 2013.

In case of **Shailja Krishna Vs Satori Global Ltd (2025) INSC 1065** Hon'ble Apex court widen the jurisdiction of NCLT by holding that NCLT can adjudicate on issues of fraud and coercion when these are central to the dispute.

In the case of **Shashi Prakash Khemka Vs. NEPC Micon (Now called NEPC India Ltd.) and Others** the Apex court held that however, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded. We are thus of the opinion that in view of the subsequent developments, the appropriate

course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013.

In case of **Gireesh Kumar Sanghi v. Sanghi Industries Ltd. and Ors. (2023) ibclaw.in 802 NCLAT**, Hon'ble NCLAT Chennai Bench clarified that "once the legislature has created a complete bar of the jurisdiction of the Civil Court by enacting Section 430 in the Act, now no civil court shall have the jurisdiction to entertain any suit or proceedings in respect of any matter which the Tribunal or Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force"

NCLT Rules, 2016:

It has been notified since July, 2016 which contains various definitions, prescribed format of applications/order, constitution of bench and its sitting, Institution of proceedings, General procedure, production of evidence, Issuance of Orders and disposal of cases etc.

It is pertinent to note that Rule 11 of the National Company Law Tribunal Rules, 2016 confers inherent power on NCLT to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal, which gives wide power to tribunal.

NCLT and Its Role in IBC 2016:

The NCLT has been set up under the Companies Act, 2013 and is a specialised forum-like body that deals with company matters like mergers, amalgamations, and, since the IBC came into play, insolvency cases. The IBC names the NCLT as the Adjudicating Authority (AA) for companies in financial distress, creating a focused place to sort out these issues efficiently.

The jurisdiction of NCLT under IBC aims to adjudicate all issues/disputes at one place, avoiding confusion across different courts and supporting the IBC's goals of saving asset value and encouraging business growth. However, this power isn't limitless it's shaped by the law and court decisions to prevent the NCLT from stepping into areas it shouldn't.

Jurisdiction of NCLT under Section 60(5) of IBC

Section 60(5) is the key rule defining the jurisdiction of NCLT under IBC. It says that, despite any other law, the NCLT can handle:

- (a) Any application or case involving the company in trouble (corporate debtor);
- (b) Any claims made by or against the company, including those involving its Indian subsidiaries; and
- (c) Any questions about priorities, laws, or facts tied to the insolvency or liquidation process of the company.

This rule gives the NCLT wide powers to tackle various issues that pop up during insolvency. For example, it can decide whether a claim is financial or operational, who gets to join the Committee of Creditors (CoC), or even settle disputes involving contracts or third parties if they're linked to the insolvency process.

The wording of Section 60(5) is broad to ensure all insolvency matters are covered, but this has led to debates about how far this power goes. Early on, the NCLT and the National Company Law Appellate Tribunal (NCLAT) saw it as a very powerful tool, like a "super gauntlet" from the Avengers movies. But the Supreme Court stepped in to set clearer boundaries, ensuring the NCLT doesn't overstep.

Various Citations as mentioned below through light on the jurisdiction of NCLT:

In case of **Avil Menezes v. Shah Coal (P) Ltd. (2021)**, the NCLAT supported the NCLT's ability to reclassify claims under Section 60(5), ensuring creditors are treated fairly.

The NCLT's role also interacts with other laws, like the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). In **Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. (2023)**, the Supreme Court said the jurisdiction of NCLT under IBC takes priority for insolvency issues.

In case of **Essar Steel India Ltd. v. Satish Kumar Gupta (2019)** Hon'ble Supreme Court

upheld the primacy of the Committee of Creditors (CoC) in approving resolution plans. NCLT's role was clarified as supervisory, ensuring compliance with statutory requirements.

Residuary jurisdiction:

The residuary jurisdiction of NCLT under IBC, as per Section 60(5), allows it to handle any disputes, claims, or legal questions directly related to a company's insolvency or liquidation process.

Pecuniary jurisdiction:

For insolvency matters under IBC, the NCLT admits cases where the default amount is ₹1 crore or more, as set by the central government.

Matters earlier dealt with under companies act, 2013 but later on substituted or omitted by IBC 2016

Revival and determination of sickness:

Section 253 to 269 of the Companies Act, 2013, used to deal with determination and revival of sick industries and matters relating to default of debts but after commencement of IBC 2016, it is omitted by Section 255, 11th Schedule.

In the present time,

1. A financial creditor can file corporate insolvency resolution process (CIRP) of a corporate debtor under section 7 of IBC, 2016.
2. An operational creditor can file corporate insolvency resolution process (CIRP) of a corporate debtor under section 9 of IBC, 2016
3. If the corporate debtor shows financial distress or is going to make a default in the near future it can initiate its own CIRP by filing an application under 10 of IBC.

Voluntary Winding up

Before commencement of IBC 2016, a company had two options for winding up i.e. either under supervision of the tribunal or voluntarily as stated in section 270 of the Companies act, 2013, but after commencement of IBC this

provision has been substituted by Section 255 of IBC 11th Schedule (clause 9) and now a company can only be wound by tribunal.

Voluntary liquidation or liquidation under supervision of NCLT

Before commencement of IBC 2016, a company can liquidate or wind up voluntarily as per the provisions of Section 304 to 323 of the Companies Act, 2013, but after the commencement of IBC, this provision has been omitted by Section 255 of IBC 11th Schedule (clause 16).

Now a company can be liquidated under IBC in the following ways:

1. A company against whom an insolvency proceeding is going on may be liquidated by an order of tribunal. The tribunal if deems fit that the company cannot be revived by insolvency proceeding it may pass an order for liquidation of the company as per the provision of Section 33 of IBC.
2. A company that has not committed any default may initiate its own liquidation proceeding as per the provisions of Section 59 of IBC.

Cases Disposed from 01.11.2017 to 30.09.2024

NCLT has disposed total 45,636 cases from 01.11.2017 to 30.09.2024 under IBC, 2016 and around 300 average resolutions cases in one month. The amount involved in these case is 19,01,261/- Crores.

NCLT has disposed total 17,324 cases from 01.06.2016 to 30.09.2024 under section 230 - 232 (Merger & Amalgamation) of companies act, 2013

.(source: as per the data available on NCLT website.)

Challenges:

1. The major challenge is with introduction of NCLT case pending before CLB & High courts were transferred to NCLT. Moreover, NCT being

only forum for corporate cases, further fresh cases have also been filed before it. This leads to a significant backlog and pendency in disposal.

2. Vacancy of judicial members and technical members have not been timely filled.
3. Technical glitches in the e-filing system are also one of the challenges leading to delay.
4. 100% Digitization of NCLT is not yet achieved, even after 9 years we have not achieved dispensation of hardcopy/physical filing
5. Diverse practices among different benches are also challenged before stakeholders
6. The main object of IBC 2016 is to resolve the matter at the earliest, however, the timeline provided under IBC, 2016 has always been exceeded in most cases. Corporation of Insolvency Resolution Process took two to three years against 180+90 days, whereas liquidation process has also taken longer period against one year as envisaged in the Code. So, in to delay disposal is the biggest hurdle to achieve the purpose of IBC, 2016.

Improvement required:

1. Internal SOPs may be created to achieve homogeneous practices among all the NCLT forums across the nation which will also reduce period of disposal especially restoration of Companies, Compounding, Merger amalgamation etc.
2. Timely disposal may be achieved through ensuring sitting of benches as envisaged in rule in true spirit
3. Date/adjournment may be granted only in deserving cases to maintain discipline.
4. Cost may be imposed for continuous adjournment without valid reasons
5. The period between two hearings may be reduced to 15 days, which is more than 1 month in present scenario.
6. Bench members are retired judges who came from traditional judiciary/mindset of traditional courts who used to work as per civil procedure code and where adjournment is considered very

normal which is biggest hurdle to achieve expected disposal rate.

Conclusion

Through various landmark judgments, NCLT's jurisdiction has been shaped, clarified, and expanded. Under IBC, cases like Essar Steel and Swiss Ribbons reinforced creditor primacy and constitutionality. Under the Companies Act, disputes like Tata Sons highlighted its role in shareholder protection. Together, these rulings ensure NCLT remains the cornerstone of India's corporate legal framework, balancing insolvency resolution with corporate governance. NCLT plays an important role in India's financial health.

LIMITATION UNDER INSOLVENCY AND BANKRUPTCY CODE: A CRITICAL ANALYSIS OF SECTIONS 7 AND 95

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted with the objective of consolidating and amending laws relating to reorganisation and insolvency resolution in a time-bound manner. While speed and certainty are the cornerstones of the IBC framework, the concept of limitation plays an equally crucial role in ensuring that insolvency proceedings are not misused as a tool for revival of stale or time-barred claims. This research paper critically examines the law of limitation as applicable to insolvency proceedings, with specific focus on applications under Section 7 (corporate insolvency by financial creditors) and Section 95 (insolvency resolution against personal guarantors). The paper analyses statutory provisions, evolving judicial interpretations, and unresolved grey areas relating to computation of limitation, acknowledgment of debt, invocation of guarantees, and the co-extensive liability of guarantors. It argues that while judicial intervention has substantially clarified the legal position under Section 7, the jurisprudence under Section 95 is still evolving and requires doctrinal consistency to maintain predictability and fairness in insolvency proceedings.

I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 represents a paradigm shift in India's approach to insolvency law. Prior to its enactment, insolvency and debt recovery were governed by a fragmented legal regime, resulting in inordinate delays, erosion of asset value, and uncertainty for creditors and debtors alike. The IBC sought to address these concerns by introducing a creditor-driven, time-bound insolvency resolution mechanism aimed at maximisation of value and balancing of stakeholder interests.

A key feature of the IBC is its emphasis on strict timelines. The success of the insolvency framework depends not only on the speed of resolution after commencement of proceedings but also on the timely initiation of such

proceedings. This brings the law of limitation to the forefront of insolvency jurisprudence. Limitation determines whether a creditor's right to trigger insolvency exists at all and serves as a safeguard against abuse of the Code for recovery of long-forgotten or unenforceable debts.

The incorporation of the Limitation Act, 1963 into the IBC framework through Section 238A marked a decisive legislative intent to prevent resurrection of time-barred claims under the guise of insolvency proceedings. However, despite this statutory clarity, disputes frequently arise regarding the computation of limitation, particularly concerning the identification of the "date of default", the effect of acknowledgments, and the interaction between insolvency proceedings and other recovery or enforcement mechanisms.

This paper undertakes a comparative and analytical study of limitation as applicable to proceedings under Section 7 and Section 95 of the IBC. While the Hon'ble Supreme Court has largely settled the legal position under Section 7, applications against personal guarantors under Section 95 raise distinct conceptual and practical issues, necessitating deeper examination.

II. STATUTORY FRAMEWORK GOVERNING LIMITATION UNDER THE IBC

2.1 Section 238A and its Legislative Intent

Section 238A of the IBC provides that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings before the Adjudicating Authority, the Appellate Tribunal, and other forums under the Code. This provision was inserted retrospectively to remove doubts arising from early decisions which had permitted initiation of insolvency proceedings for debts that were otherwise time-barred.

The retrospective application of Section 238A reflects the legislative policy that insolvency is

not a mechanism for debt recovery simpliciter. Rather, it is a collective resolution process, and permitting time-barred claims would undermine commercial certainty and disrupt settled rights.

2.2 Concept of Default under the IBC

Under Section 3(12) of the IBC, “default” means non-payment of debt when the whole or any part of the instalment has become due and payable and is not paid. The occurrence of default is the foundational trigger for insolvency proceedings. However, for the purposes of limitation, the mere existence of default is insufficient; what matters is the date on which the right to apply accrues.

The difficulty lies in identifying this date in complex commercial relationships involving restructuring, moratoriums, acknowledgments, part-payments, and enforcement actions under other statutes such as the SARFAESI Act, 2002 or the Recovery of Debts and Bankruptcy Act, 1993.

2.3 Role of Sections 18 and 19 of the Limitation Act

Sections 18 and 19 of the Limitation Act play a pivotal role in insolvency jurisprudence. Section 18 provides that a written acknowledgment of liability, signed before the expiry of the limitation period, gives rise to a fresh period of limitation from the date of acknowledgment. Section 19 similarly extends limitation where part-payment is made within the prescribed period.

In insolvency proceedings, courts and tribunals have recognised various documents as valid acknowledgments, including balance sheet entries, one-time settlement proposals, revival letters, restructuring agreements, and compromise offers, provided they satisfy statutory requirements.

III. LIMITATION IN APPLICATIONS UNDER SECTION 7 OF THE IBC

3.1 Applicability of Article 137 of the Limitation Act

Applications under Section 7 of the IBC are governed by Article 137 of the Limitation Act, which prescribes a limitation period of three years from the date when the right to apply accrues. The Hon’ble Supreme Court authoritatively settled this position by holding

that the right to apply accrues on the date of default.

The Hon’ble Supreme Court, in the landmark case **B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates**, affirmed that the right to apply arises from the “date of default”, and not from the date when the loan account is classified as a Non-Performing Asset (NPA), or from the date of statutory demand notices or enforcement actions. The decision conclusively settled conflicting positions earlier adopted by different benches of NCLT and NCLAT.

This interpretation brought much-needed certainty to insolvency law, aligning the IBC with established principles of limitation applicable to applications before judicial and quasi-judicial authorities.

3.2 Determination of the Date of Default

The date of default is generally the date on which payment first became due and was not made. Courts have consistently rejected the argument that limitation should run from the date of classification of the account as a Non-Performing Asset (NPA). While NPA classification may be evidence of default, it does not constitute the default itself.

The Hon’ble Supreme Court’s interpretation in **Laxmi Pat Surana v. Union Bank of India (2021)** reinforced the principle that limitation begins from the earliest point of non-payment and continues as a recurring cause so long as the debt remains unpaid.

In practice, identifying the correct date of default requires careful examination of loan documents, repayment schedules, and transactional history. Any ambiguity is typically resolved against revival of stale claims, in keeping with the object of limitation law.

3.3 Effect of Acknowledgment and Recovery Proceedings

Judicial pronouncements have clarified that acknowledgment of debt within the limitation period resets the limitation clock for Section 7 applications. Importantly, the issuance of a recovery certificate by a competent court or tribunal has been recognised as giving rise to a fresh cause of action, thereby enabling initiation of insolvency proceedings within three years from the date of such certificate.

This principle was affirmed in *Dena Bank v. C. Shivakumar Reddy and Anr.* [\(2021\) ibclaw.in 69 SC](#), where the Hon'ble Supreme Court held that a written acknowledgment or part-payment constitutes a valid basis to extend limitation.

However, courts have cautioned that once limitation has expired, subsequent acknowledgments or proceedings cannot revive the debt. The IBC cannot be used to bypass the law of limitation or to re-agitate claims that have become unenforceable by passage of time.

IV. LIMITATION IN APPLICATIONS UNDER SECTION 95 AGAINST PERSONAL GUARANTORS

4.1 Distinct Nature of Personal Guarantor Insolvency

Proceedings under Section 95 of the IBC pertain to insolvency resolution of personal guarantors to corporate debtors. Although closely linked to corporate insolvency, such proceedings are conceptually distinct. The liability of a guarantor arises from the contract of guarantee and is governed by the principles of the Indian Contract Act, 1872.

While the liability of the guarantor is co-extensive with that of the principal debtor, the triggering of default for limitation purposes depends on invocation of the guarantee and failure of the guarantor to honour the demand.

4.2 Commencement of Limitation for Personal Guarantors

Unlike Section 7 proceedings, limitation for Section 95 applications does not automatically commence from the date of default of the principal borrower. Instead, it begins when the creditor invokes the guarantee and the guarantor fails to pay within the stipulated period.

Where a statutory or contractual demand notice provides a cure period, the default is deemed to occur upon expiry of such period. Consequently, limitation under Article 137 runs from that date.

4.3 Effect of Acknowledgment by the Principal Borrower

An important and evolving issue in Section 95 jurisprudence is whether acknowledgment of debt by the principal borrower extends limitation against the guarantor. Judicial trends

indicate that, in the absence of contractual exclusion, acknowledgment by the principal debtor binds the guarantor, given the co-extensive nature of liability.

In *State Bank of India v. Gourishankar Poddar and Anr.*, [\(2025\) ibclaw.in 17 NCLAT](#) it was held that Liability of the Corporate Debtor and the guarantor is simultaneous, meaning the guarantor's obligation arises after the Corporate Debtor's defaults on the payment of dues. **It further held that any acknowledgment of the debt by the principal borrower also serves as an acknowledgment by the guarantor under the Limitation Act.** The limitation period against the guarantor begins only when a formal demand is made specifically against them. Moreover, if the principal borrower continues making payments, and no demand is raised against the guarantor, the limitation period will not commence. This approach reinforces creditor rights but also raises concerns regarding fairness, particularly where guarantors are not directly involved in restructuring negotiations or acknowledgments executed by the corporate debtor.

4.4 Continuing Guarantees and Limitation

In cases involving continuing guarantees, particularly for revolving credit facilities, each valid demand and failure may give rise to a fresh cause of action. However, tribunals have consistently held that limitation cannot be artificially extended beyond statutory limits in the absence of acknowledgment or part-payment within time.

V. COMPARATIVE ANALYSIS OF SECTIONS 7 AND 95

While both Section 7 and Section 95 applications are governed by Article 137 of the Limitation Act, the computation of limitation differs significantly due to the nature of obligations involved. Section 7 focuses on default by the corporate debtor, whereas Section 95 hinges on invocation and breach of the guarantee.

Judicial clarity under Section 7 has reached a relatively settled stage, whereas Section 95 continues to witness divergent interpretations, particularly on the impact of acknowledgments, settlements, and proceedings against the corporate debtor.

A harmonised approach is essential to prevent forum shopping and ensure that insolvency

proceedings are not used strategically to exert pressure on guarantors for otherwise unenforceable debts.

VI. PRACTICAL IMPLICATIONS FOR INSOLVENCY PROFESSIONALS AND CREDITORS

From a practitioner's perspective, limitation analysis must be undertaken at the threshold stage. Creditors must meticulously document dates of default, invocation of guarantees, acknowledgments, and part-payments. Insolvency professionals, on the other hand, must scrutinise limitation issues to ensure that the insolvency framework is not diluted by admission of time-barred claims.

Failure to correctly compute limitation can result in dismissal of insolvency applications, wastage of resources, and erosion of creditor confidence in the insolvency regime.

VII. CONCLUSION

Limitation is not a mere procedural technicality under the Insolvency and Bankruptcy Code; it is a substantive safeguard that preserves the integrity of the insolvency framework. The incorporation of the Limitation Act into the IBC ensures that insolvency proceedings remain focused on genuine resolution of financial distress rather than recovery of stale claims.

While judicial pronouncements have brought substantial clarity to limitation under Section 7, the jurisprudence under Section 95 continues to evolve. There is a pressing need for consistent doctrinal principles governing invocation of guarantees, acknowledgment of debt, and

computation of limitation to balance creditor rights with fairness to guarantors.

In *Tricolor Hotels Ltd. & Ors. v. Dinesh Jain & Ors.*, [\(2022\) ibclaw.in 439 HC](#), the Hon'ble Supreme Court elaborated on the meaning of "sufficient cause" for condonation of delay under the Limitation Act. The Court held that "sufficient cause" means an adequate reason preventing a party from approaching the court within the prescribed limitation period. Negligence, inaction, or lack of bona fide on the part of the applicant negates the possibility of condonation. The Court emphasized that limitation laws are founded on public policy to secure peace, suppress fraud, and quicken diligence. The maxim "dura lex sed lex" (the law is hard, but it is the law) applies, meaning courts have no power to extend limitation periods on equitable grounds beyond what the statute prescribes.

As insolvency law matures, a nuanced and principled application of limitation will be essential to uphold commercial certainty, protect stakeholder interests, and ensure that the IBC continues to function as an effective tool for insolvency resolution rather than a substitute for ordinary recovery mechanisms.

INSOLVENCY AND BANKRUPTCY CODE (IBC) 2016



CASE LAWS

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

Union Roadways Ltd. vs. ICE Steel 1 (P.) Ltd. [2025] 179 taxmann.com 506 (NCLAT- New Delhi)

Where there was a manifest dispute between parties over invoices against which payments made by corporate debtor were appropriated, NCLT had not committed any error in dismissing section 9 application filed by operational creditor.

The operational creditor was engaged in business of providing transportation and trucking services to the corporate debtor. The operational creditor raised 247 invoices for period 24-6-2019 to 24-2-2020 for a total amount of Rs. 3.57 crore against which only Rs. 10.08 lakh had been paid by the corporate debtor. The operational creditor sent a section 8 demand notice to the corporate debtor claiming Rs. 3.47 crore as principal component of operational debt along with Rs. 1.24 crore towards interest component amounting to a total operational debt of Rs. 4.72 crore including interest. The corporate debtor failed to respond to section 8 demand notice following which the operational creditor filed section 9 petition. The corporate Debtor filed a detailed reply denying liability and disputing claimed outstanding and interest claim for want of agreement/debit notes. Adjudicating Authority dismissed Section 9 application, noting disputes over validity and accuracy of invoices, appropriation of

payments, and interest component, and observing that claim amount was not crystallised and proceeding could not be used as a recovery mechanism.

Held that there was a manifest dispute between parties over invoices against which payments made by the corporate debtor were appropriated. Mere mention of interest claim in invoice without any mutually acceptable agreement between parties did not constitute sufficient basis for including interest component in computation of outstanding operational debt and that created a shadow of dispute in respect of operational debt. Since there were clear differences between parties on crystallised amount of operational debt, Adjudicating Authority had rightly adverted attention to issue of validity and accuracy of invoices which had led to a situation of non-crystallization of claim amount leading to spectre of disputed debt. Since defence raised by the corporate debtor in their reply filed in section 9 application was not illusory or moonshine, Adjudicating Authority had not committed any error in dismissing section 9 application filed by operational creditor.

Case Review: Order of National Company Law Tribunal, Mumbai Bench-V in Company Petition (IB) No. 603/MB/2021 dated 04.09.2024, affirmed.

SECTION 5(20) - CORPORATE INSOLVENCY RESOLUTION PROCESS – OPERATIONAL CREDITOR

Korea Trade Insurance Corporation (Ksure) vs. Amrit Polychem (P.) Ltd. [2025] 179 taxmann.com 510 (NCLAT- New Delhi)/[2025] 190 SCL 785 (NCLAT- New Delhi)

Where prior to assignment of debt by supplier of goods to appellant/insurance company, appellant had already been informed by corporate debtor about existing dispute between parties with regard to third

proforma invoice, since appellant was well aware of fact before stepping into shoes of supplier, impugned order passed by Adjudicating Authority dismissing section 9 application on grounds of pre-existing dispute was justified.

The respondent/corporate debtor had placed three purchase orders on JTC/supplier for supply of certain goods. The appellant was an insurance company

for supplier of goods-JTC. Due to non-receipt of payment by JTC, the appellant being insurer company reimbursed JTC as insured entity. Following this reimbursement, debt due from the respondent was assigned by JTC to the appellant. A demand notice was issued by the appellant to the corporate debtor. The corporate debtor replied to demand notice in which they denied claims raised by the appellant following which the appellant filed section 9 petition before Adjudicating Authority. Adjudicating Authority however dismissed section 9 application on grounds of pre-existing dispute. It was noted that prior to signing of Letter of Assignment (LoA) between JTC and the appellant, the respondent-corporate debtor had already notified the appellant about existing dispute between them and JTC with regard to third proforma invoice (PI).

Held that since notice of dispute was served upon the appellant though beyond stipulated ten days' period, nevertheless it was well before filing of Section 9 application. Since the appellant was well aware of fact before stepping into shoes of JTC that there was a pre-existing dispute between the corporate debtor and JTC, impugned order passed by Adjudicating Authority dismissing section 9 application on grounds of pre-existing dispute was justified.

Case Review: Order of National Company Law Tribunal, Mumbai Bench-IV in Company Petition (IB) No. 903/MB-IV/2022 dated 02.08.2023, affirmed

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

RCC E-Construct (P.) Ltd. vs. J. Ramkumar [2025] 179 taxmann.com 570 (NCLAT - Chennai)/[2025] 190 SCL 833 (NCLAT - Chennai)

NCLT is vested with power to recall its order in terms of Rule 11 of NCLT Rules, 2016 however, this power does not extend to reviewing its order after a substantial issue in matter has been decided.

The corporate debtor underwent insolvency, and its resolution plan was approved by NCLT. Meanwhile, homebuyers of the corporate debtor filed interlocutory application seeking execution of sale deed of their respective units of real estate developed by the corporate debtor. NCLT directed the appellant, claiming to be successful resolution applicant to act as per approved plan. The appellant later sought to recall of this order under Rule 11, alleging denial of opportunity and lack of adjudication. NCLT dismissed recall plea holding that Rule 11 cannot be used to

review an order passed on merits after participation.

Held that NCLT is vested with power to recall its order in terms of Rule 11 of NCLT Rules, 2016 but, this power does not include within its ambit, power to review its order after a substantial issue in matter has been decided. Since the appellant had voluntarily participated in proceedings and was directed upon to act as per approved resolution plan, none of ingredients as provided under Rule 11 was satisfied by grounds taken in recall application. Further, recall application was in shape of a review of order passed on merits after participation in proceedings by the appellant, same had been rightly rejected by NCLT, holding it to be not falling within ambit of Rule 11.

Case Review: Order of NCLT, Division Bench-1, Chennai, in IA(IBC)/660/(CHE)/2025 dated 28.04.2025, affirmed .

SECTION 105 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS – REPAYMENT PLAN

Satheesh Babu V.K. vs. Dileep K.P. [2025] 179 taxmann.com 573 (NCLAT - Chennai)

Where due to stay granted by Apex Court in respect of one of personal guarantor and due to pendency of liquidation proceedings, repayment plan could not be submitted by personal guarantors, order passed by NCLT permitting financial creditor to initiate bankruptcy proceeding was to be quashed and liberty was to be left open for personal guarantors to submit their repayment plan.

Insolvency resolution process was initiated against appellants who were personal guarantors to the corporate debtor. NCLT admitted application and personal guarantors were admitted into Interim Resolution Professional (IRP) proceedings. All personal guarantors were asked to submit repayment plans, but they failed to

submit same. NCLT by impugned order permitted the financial creditor to initiate bankruptcy proceeding. Appellants filed instant appeal contending that they could not submit repayment plan because one of personal guarantors got stay from Apex Court, remaining 4 cases were exactly similar and they were availing verdict of Apex Court which was delivered in Dilip B Jiwarajka v. Union of India [2023] 156 taxmann.com 304/[2024] 182 SCL 38 (SC), and that they were not sure of exact dues because of pendency of liquidation proceedings.

Held that since intervening the financial creditor had agreed to extend time period for submission of repayment plan, impugned order passed by NCLT would be quashed and appellants would be granted time to submit repayment plan.

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

State Bank of India vs. Dr. Jitendra Das Maganti [2025] 179 taxmann.com 575 (NCLAT - Chennai)/ [2025] 190 SCL 819 (NCLAT - Chennai)

The appellant-bank filed applications under section 95 against the respondents-personal guarantors of the corporate debtor. NCLT rejected said applications on ground of non-service of demand notice as contemplated by section 95(4)(b) read with Rule 7(1) and Form B of 2019 Rules.

Held that service of notice of demand under Rule 7(1) is a mandatory condition precedent for initiation of IRP under section 95. Since the respondents had admitted in their pleadings before Supreme Court in writ petitions filed by them challenging constitutional validity of sections 95-100 that demand notice was served upon them and that they were in knowledge of said

demand notice, finding recorded by NCLT qua service of demand notice and its knowledge, could be said to be faulted, and contrary to admitted case of respondents. Thus, very finding on basis of which conclusion had been drawn by NCLT that there was no service of demand notice on respondents and hence, proceedings under Section 95 would be vitiated, was unfounded and amounted to incorrect interpretation of entire records, therefore, impugned order was to be quashed and proceedings were to be remanded back to NCLT, to be proceeded further in accordance with law and to be decided on merits.

Case Review: Order of National Company Law Tribunal, Amaravati Bench in CP (IB) / 49 / 95 / AMR / 2022 dated 22.07.2024, Order of National Company Law Tribunal, Amaravati Bench in CP (IB) / 50 / 95 / AMR / 2022 dated 22.07.2024, set aside.

SECTION 60 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – ADJUDICATING AUTHORITY

Srinivas Kalluri vs. Birendra Kumar Agarwal [2025] 179 taxmann.com 576 (NCLAT - Chennai)

Where NCLT dismissed contempt petition filed against RP on ground that there was no deliberate or intentional contempt, since order which had been challenged by invoking section 19 of Contempt of Courts Act, 1971, was not an order of punishment, appeal against said order as prescribed under section 19 would not be maintainable.

The appellant had purchased units of immovable property under an agreement for sale from the corporate debtor, which was portrayed to have been leased out to them. However, sale deed of properties covered by agreement for sale could not be executed because of a dispute between Telangana State Housing Board and the corporate debtor, which was an issue

pending consideration before Apex Court. The appellant filed contempt petition alleging that RP had not incorporated details pertaining to units allegedly belonging to the appellant based on agreement for sale in information memorandum as per directions of Adjudicating Authority. Contempt petition was dismissed by impugned order on ground that there was no deliberate or intentional contempt.

Held that as against order of dismissal of a contempt petition, appeal as prescribed under section 19 would not be maintainable. Since order which had been challenged by invoking section 19 of the Contempt of Courts Act, 1971, was not an order of punishment, appeal would not lie under section 19. Whether thus, orders under challenge were not appealable orders under section 19.

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

State Bank of India vs. Bernard John [2025] 179 taxmann.com 583 (NCLAT- New Delhi)

Where corporate debtor's balance sheets contained clear and unequivocal acknowledgment of debt towards appellant bank. such acknowledgments validly extended limitation against personal guarantor and, thus, application filed by appellant- financial creditor under section 95 was well within limitation period.

The corporate debtor had availed loan facilities from the financial creditor. Personal guarantor of the corporate debtor executed a deed of guarantee in favour of the financial creditor. Account of the corporate debtor was classified as NPA and the financial creditor issued a demand-cum-recall notice to the corporate debtor and personal guarantor invoking personal guarantee and demanding repayment of dues. Insolvency proceedings were also initiated against the corporate debtor. The

financial creditor filed an application under section 95 against the personal guarantor. Adjudicating Authority dismissed said application on ground that same was barred by limitation and since balance sheets of the corporate debtor acknowledging debt were not signed by personal guarantor, they could not be treated as his acknowledgment under Section 18 of the Limitation Act. It was noted that limitation period of three years under article 137 of Limitation Act would, in ordinary course, expire unless extended by acknowledgment under section 18 of the Limitation Act.

Held that the corporate debtor's balance sheets contained clear and unequivocal acknowledgment of debt towards the appellant bank and these acknowledgments, by virtue of both Section 18 of the Limitation Act and Deed of Guarantee, validly extended limitation against Personal Guarantor. Thus, application filed by the appellant under section 95 was well within

limitation period. Further, personal guarantee was validly invoked by the financial creditor. Thus, impugned order

passed by Adjudicating Authority was to be set aside.

SECTION 5(7) - CORPORATE INSOLVENCY RESOLUTION PROCESS – FINANCIAL CREDITOR

EPC Constructions India Ltd. vs. Matix Fertilizers and Chemicals Ltd. [2025] 179 taxmann.com 650 (SC)

Where appellant's claim for redemption of cumulative redeemable preference shares arose from a contractual conversion of dues into share capital, appellant as a preference shareholder was not a creditor and thus not entitled to maintain an application under section 7, and classification in accounts or expiry of redemption period did not alter this legal position.

The appellant/EPCC had entered into engineering and construction contracts with the respondent for setting up a fertilizer complex. About Rs. 572.7 crores became due to the appellant under these contracts. Parties discussed converting a portion of receivables into a subordinate debt. The Respondent proposed converting up to Rs. 400 crores of outstanding dues into preference shares, the appellant's board approved conversion into 8% Cumulative Redeemable Preference Shares (CRPS), and the respondent thereafter allotted 25 crore CRPS of Rs. 10 each aggregating to Rs. 250 crores, on terms including cumulative 8% dividend and redemption at par at end of three years (with issuer's discretion to redeem earlier).

The appellant accepted and CRPS were issued accordingly. The appellant filed a petition under section 7 against the respondent for failure to pay redemption amount of about Rs. 310 crores claimed as payable on maturity of CRPS. NCLT dismissed section 7 application. NCLAT by impugned order dismissed appeal.

Held that CRPS were at a stage when redemption period had expired would not lend greater weight to case of the appellant. The appellant being a preference shareholder, was not a creditor and an application by it under section 7 was not maintainable. Treatment in accounts due to prescription of accounting standards will not be determinative of nature of relationship between parties as reflected in documents executed by them. Paid up money on shares being 'share capital' they do not constitute debt. Since shares could be redeemed only out of profits or with any amount kept apart for dividends which was not situation in instant case, further argument that redemption was due, was also not meritorious. Thus, appeal against impugned order was to be dismissed.

Case Review: Order of National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 1424 of 2023 dated 09.04.2025 (para 50) affirmed

SECTION 60 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – ADJUDICATING AUTHORITY

GLAS Trust Company LLC vs. Shailendra Ajmera [2025] 179 taxmann.com 663 (NCLAT - Chennai)

Where Company proposed a rights issue to increase its share capital while corporate debtor (CD), holding 25.41% shares, was

under CIRP, however, CD's shareholder sought to restrain Company from conducting EGM and altering CD's shareholding, since Company acted within its rights, application seeking to restrain company from convening its extraordinary general meeting or altering CD's shareholding was to be dismissed,

The corporate debtor (CD) was holding about 25.41 per cent shares in company 'A'. The CD was admitted to CIRP. RP had not attended meeting of board of company 'A'. Company 'A' had passed resolution to increase share capital through right issue at face value of shares and had issued notice calling for an extraordinary general body meeting of shareholders of company 'A'. The appellant, a shareholder of the CD, filed instant application seeking an order of interim injunction to restrain company 'A' from convening its extraordinary general body meeting and also to restrain it from reducing percentage of shareholding of the CD. It was noted that what was now proposed to be done by company 'A' was to increase its share capital through right issue and not through public offer, which implied that the CD as a shareholder of company 'A' would be offered such number of shares in proportion to its existing shareholding of 25.41 per cent in company 'A'.

Held that if CD considered that it was necessary for it to sustain value of its shares in company 'A' and also to retain whatever control its shareholding in company 'A' might grant it, then it was well within its right to purchase shares when they were offered for purchase. If CoC of the CD chose not to purchase any shares that would be in offer, it would be its decision that might eventually alter its shareholding in company 'A' where company 'A' did not play a role. Therefore, notwithstanding order of status quo passed by NCLT, decision to alter shareholding of the CD in company 'A' rested with it and not with company 'A'. Thus, instant application filed by the CD to restrain company 'A' from convening its extraordinary general meeting and also to restrain it from reducing percentage of shareholding of CD in company 'A' was to be dismissed.

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS – FINANCIAL DEBT

Meck Pharmaceuticals and Chemicals (P.) Ltd. vs. Accurate Infrabuild (P.) Ltd. [2025] 179 taxmann.com 684 (NCLAT-New Delhi)

Where financial creditor had failed to muster clinching proof and evidence in terms of financial records to show that sum advanced by them to corporate debtor was indisputably interest-bearing and that interest had continued to accrue and was being realized as consideration for time value of money, sum advanced by financial creditor to corporate debtor did not satisfy ingredients of financial debt of disbursement, time value of money and commercial effect of borrowing, and thus, instant section 7 petition by financial creditor was to be dismissed,

The appellant-financial creditor advanced loan of Rs. 1 crore to the respondent, a real estate company for construction of a project 'Madina Heights'. The respondent assured to repay loan with interest @ 18 per cent

per annum besides offering 15 per cent share in profit of project. However, the respondent failed to repay loan. The appellant issued demand notice. Since payments were still not forthcoming from the respondent, the appellant filed a section 7 petition seeking admission of the respondent into corporate insolvency resolution process which was rejected by the Adjudicating Authority as non-maintainable. It was an admitted fact that there was no written contract or agreement governing terms and conditions by which sum was advanced by appellant and disbursed to account of the respondent.

Held that since the appellant had failed to muster clinching proof and evidence in terms of financial records to show that sum advanced by them was indisputably interest-bearing and that interest had continued to accrue and was being realized as consideration for time value of money, sum advanced by the appellant to the

respondent did not satisfy ingredients of financial debt of disbursal, time value of money and commercial effect of borrowing. Further, said project was still in progress and compliances, both procedural and regulatory were still pending and hence no occasion for default could be said to have occurred as debt was not due or payable. Thus, debt and default not having been clearly established, there was no infirmity

in impugned order rejecting Section 7 application.

Case Review: Order dated 17.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-II) in Company Petition (IB) No. 122 of 2022, affirmed.

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS – FINANCIAL DEBT

UCO Bank vs. Debashish Nanda, Resolution Professional Bulland Buildtech (P.) Ltd. [2025] 179 taxmann.com 688 (NCLAT- New Delhi)

Where homebuyer entered into tripartite agreement with bank and real estate company, under which financial facility was extended by bank to homebuyer and amount was paid to real estate company, since none of clauses in Tripartite Agreement cast any obligation of corporate debtor to make repayment of loan to Bank, claim submitted by Bank in 'Form-C' was not covered in definition of claim under Section 3(6).

The corporate debtor, a Real Estate Company was engaged in a residential project 'Bulland Elevates'. Several unit holders (borrowers) in said project had entered into Tripartite Agreement with the appellant-bank and the corporate debtor under which financial facility was obtained by unitholders for purchase of units. Meanwhile, CIRP against the corporate debtor was initiated. In said CIRP, the appellant also filed its claim in 'Form-C' on basis of home loans sanctioned to 45 unitholders. Resolution Professional (RP) of the corporate debtor declined to accept claim of the appellant. The appellant thus filed an application praying for direction to RP to verify/consider/admit claim of the appellant. NCLT vide impugned order rejected the appellant's application and approved resolution plan in CIRP of the corporate debtor. It was noted that the corporate debtor had neither applied nor availed any financial assistance from the appellant, Amount was sanctioned by the

appellant to unit holders and on instructions of unit holders amount was paid to the corporate debtor. As per various clauses of Tripartite Agreement entered into unit holder, the appellant and the corporate debtor, there was no liability of the corporate debtor to repay amount which was sanctioned and disbursed to homebuyer by the appellant, and thus, there was no financial debt owned by the corporate debtor to the appellant. Coming to decrees obtained by the appellant from DRT against home buyers and the corporate debtor, it was clear that decrees were obtained by the appellant, even prior to commencement of CIRP and in claim form, the appellant had not based its claim on basis of decree; claim of financial debt was based only on sanctioned letter and Tripartite Agreement.

Held that it was not open for the appellant to claim acceptance of its claim on basis of said decrees with regard to which claim was never raised before NCLT. Therefore, NCLT did not commit any error in rejecting application filed by the appellant. Further since, the appellant had also not made out any ground to establish that plan approved by the CoC and NCLT in any manner was non-compliant of Section 30(2), and thus, there was no error in order of NCLT approving resolution plan. In view of above forgoing discussions and conclusions, instant appeal against impugned order of NCLT was to be dismissed.

Case Review: NCLT's order dated 08.01.2024 in I.A. No. 4347/2023 and NCLT's order dated 09.07.2024 passed in I.A. No. 1449/2022, affirmed.

**SEMINAR ON THE INSOLVENCY & BANKRUPTCY CODE AMENDMENT
BILL 2025 & ROLE OF INSOLVENCY PROFESSIONALS AS OFFICERS OF COURT (MUMBAI)**



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RESIDENTIAL PROGRAM

SHILLONG

**"UNLOCKING THE SECRETS OF INSOLVENCY"
IN THE SCOTLAND OF EAST INDIA - SHILLONG**



FEBRUARY 5TH TO 8TH, 2026

COURTYARD BY MARRIOTT SHILLONG



**INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA**

**SECTION 8 COMPANY REGISTERED UNDER COMPANIES ACT 2013
PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

ABOUT US

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a frontline regulator registered with the Insolvency and Bankruptcy Board of India.

IPA-ICMAI has professional members enrolled with it from versatile disciplines, which include CMA, CS, CA, Bankers, Lawyers, Management Experts, etc. IPA-ICMAI ensures continuous growth of the professional members as a part of the continuous learning process.

Activities of IPA-ICMAI to facilitate continuous professional development of the entire professional community across India, to develop the profession and advocacy of the young profession of Insolvency and Bankruptcy, include -

PUBLICATIONS

- IBC Au-Courant (Daily Newsletter)
- Annual Publication
- Quarterly Digest
- IBC Dossier (Bulletin on landmark judgments)
- Monthly E-Journal
- IBC Case Books

PROGRAMS

- Webinars, Roundtables, Conferences, and Workshops.
- Preparatory Education Course for the Limited Insolvency Examination.
- Training programs, and certificate courses related to insolvency and bankruptcy for professionals and stakeholders of the IBC domain.
- Annual Residential Event for professionals and stakeholders.

RECENT INITIATIVES

- Podcast engaging experienced professionals sharing their insights and experiences.
- Research Projects by professionals and research scholars in relevant topics in the domain of Insolvency and Liquidation.

Pursuant to provisions of the Insolvency & Bankruptcy Code, IPA-ICMAI performs the following functions, namely:

1. Grant membership to persons who fulfil all requirements.
2. Lay down standards of professional conduct for its members.
3. Monitor the performance of its members.
4. Safeguard the rights, privileges, and interests of its members.
5. Suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its byelaws.
6. Redress the grievances of consumers against insolvency professionals who are its members.
7. Publish information about its functions, list of its members, performance of its members, and such other information as may be specified by regulations.
8. Professional Development of its members
9. Development of the Profession of Insolvency & Bankruptcy

IPA-ICMAI has demonstrated a strong record of conducting maximum inspections of its professional members nationwide, aiming to enhance their performance in line with best practices.



“IBC in the Hills”

A Journey of Insight and Renewal

Amidst the serene landscapes of Shillong, this residential program under the Insolvency and Bankruptcy Code (IBC) offers stakeholders a rare blend of learning and reflection. Far from the bustle of board rooms and Court halls, participants will engage with the evolving IBC framework through curated sessions, interactive case studies, and collaborative dialogue.

Set against nature’s quiet wisdom, the program fosters clarity, resilience, and strategic thinking—qualities essential for insolvency professionals, company secretaries, legal officers, financial stakeholders and corporate leaders. Shillong’s tranquil environment complements the program’s goal: to inspire ethical practice, strengthen regulatory understanding, and build synergy among stakeholders.

Beyond technical learning, the program emphasizes community and connection. Shared experiences—whether in workshops, cultural exchanges, or informal discussions—will deepen professional bonds and encourage collective responsibility in shaping India’s insolvency ecosystem.

Here, nature becomes a silent mentor, reminding us that reform is not just procedural—it is personal, purposeful, and deeply human.

ABOUT THE PROGRAM

The Residential Program in Shillong is designed to provide participants with an immersive environment to advance professional skills, expand strategic thinking, and build meaningful peer networks.

Set against the serene hills of Meghalaya, the program combines experiential sessions, expert-led workshops, and interactive learning, allowing participants to reflect, learn, and collaborate away from routine pressures.

This program brings together thought leaders, industry practitioners, and emerging professionals seeking structured growth and a deeper understanding of contemporary issues and future-ready leadership.

Program Highlights

- ✓ Three-day curated learning experience
- ✓ Limited cohort for impactful interaction
- ✓ Case-based sessions and simulations
- ✓ Fireside conversations with industry experts
- ✓ Guided reflective exercises
- ✓ Peer group learning circles
- ✓ Evening networking & cultural experiences

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This program is ideal for:

- Insolvency Professionals
- Senior executives looking to refresh leadership perspective
- Mid-career professionals seeking strategic capability enhancement
- Founders, entrepreneurs & decision-makers
- Practitioners in finance, consulting, policy, and governance
- Professionals preparing for leadership transition

INCLUSIONS

- ✓ Accommodation with all meals (Double Occupancy) (3 days and 3 nights)
- ✓ Technical sessions and Panel Discussions
- ✓ Program materials & stationery
- ✓ Local experience/activity
- ✓ Certificate of Participation

Not Included:

- X Travel to/from the venue
- X Cost of additional stay/ travel arranged on exclusive individual basis.
- X Personal expenses
- X Flight Tickets

PARTICIPATION FEES : ₹ 65,000/- PLUS GST AS APPLICABLE

ADDITIONAL OFFERS

Fee Structure	Discount/Incentives (₹)	Net Fees (₹) (GST As Applicable)
Individual alone (Room Sharing Basis)	20,000	45,000
Early Bird Incentive (Up to 31 st December 2025)	5,000	60,000
Student Offer	2500	62,500
Group Incentive (Minimum 4 in a group)	3000	62,000
Referral Incentive	3000	62,000

TERMS AND CONDITIONS

1. Entry is strictly by registration.
2. Extra fee of Rs. 15000 will be charged for the accompanying children above 5 years.
3. Group registrations are allowed for four or more delegates.
4. "Individual alone" Registration will be on twin sharing basis.
5. Cancellation or refund of the registration fees is not permissible. However, it may be transferable on request of the delegate in exceptional circumstances, with the approval of IPA-ICMAI.
6. Flight charges not included in the participant fees.
7. The pick and drop facility from/to the airport can be arranged on demand with charges payable directly to the driver.
8. Rs.3000/- will be offered as referral discount to participant who refers another professional (Not an Insolvency Professional). Discount will be provided after referral registration.
9. Additional offer cannot be combined and only one can be availed.
10. The last date for early bird discount is 31st December 2025.

REGISTRATION PROCESS & ACCOUNT DETAILS

1. Make the Payment
2. Click on the link to Register.
3. Send a Confirmation mail to assistantmanager@ipaicmai.in

The details of the Bank Account where remittances can be made are as follows:

Beneficiary Name - Insolvency Professional Agency of Institute of Cost Accountants of India

Name of the Bank- Indian Bank

Address of Bank- Defence Colony, New Delhi - 110024

Bank Account No. – 6486054958

IFSC Code- IDIB000D008

GSTIN of IPA of ICAI is 07AAECI3186J1ZC.

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CPE/CEP HOURS :

10 HOURS FOR CMA MEMBERS

15 HOURS FOR INSOLVENCY PROFESSIONALS

15 HOURS FOR REGISTERED VALUERS

SCHEDULE OF THE PROGRAM

THURSDAY, 5TH FEBRUARY 2026

1400 - 1600 Hours	Inaugural Session
1600 - 1700 Hours	IBC 2.0 – Expectation of stakeholders - Met and Awaited
1700 - 1800 Hours	Pole position of financial creditors in IBC process - A SWOT Analysis
1900 - 2000 Hours	Fireside Chat

FRIDAY, 6TH FEBRUARY 2026

0700 - 0800 Hours	Yoga & Spiritual Session
0800 - 0930 Hours	Breakfast
0930 - 1100 Hours	Role of Insolvency Professional in Pre- CIRP Settlements- 30,000+ cases Pre- IBC
1100 - 1200 Hours	Market Place for IBC Assets/Securities
1200 - 1300 Hours	Research Project Presentations
1300 - 1400 Hours	Lunch
1400 -1530 Hours	Stalemates in IBC - Creative Solutions
1530 - 1630 Hours	Interim Finance in Insolvency-Fresh Look

SATURDAY, 7TH FEBRUARY 2026

0700 - 0800 Hours	Yoga Session
0800 - 1000 Hours	Breakfast
1000 - 1130 Hours	Resolving Complex Corporate Structures – Handling Inter-Group Loans and Guarantees
1130 - 1300 Hours	Domain Specific Challenges in IBC - Real Estate and Services Sector
1300-1400 Hours	Lunch
1400-1530 Hours	Valuation Conundrum of Assets in Insolvency and Liquidation
1530-1700 Hours	Valedictory Session
1900 Hours onwards	Gala Dinner and Musical Night

"UNLOCKING THE SECRETS OF INSOLVENCY" SCOTLAND OF EAST "SHILLONG"



INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

(A SECTION 8 COMPANY REGISTERED UNDER COMPANIES ACT 2013)

(PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA)

FOR MORE DETAILS PLEASE CONTACT :

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MR. PRANAB BHARDWAJ ON 7678494704 OR ASSISTANTMANAGER@IPAICMAI.IN**

GUIDELINES FOR ARTICLE

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

✓ *The article should be original, i.e., not published/broadcasted/hosted elsewhere including any website. A declaration in this regard should be submitted to IPA- ICAI in writing at the time of submission of article.*

✓ *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.*

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✓ *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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