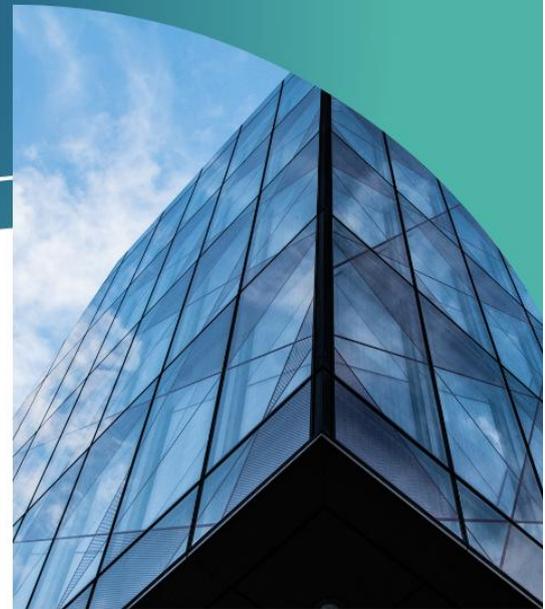


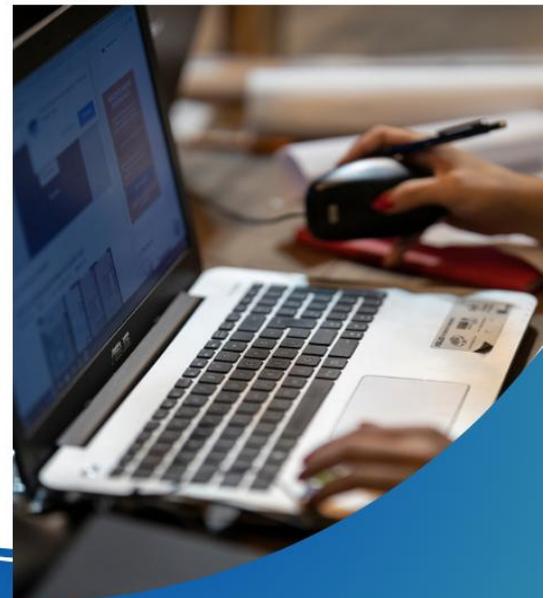


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# THE INSOLVENCY PROFESSIONAL YOUR INSIGHT JOURNAL



## 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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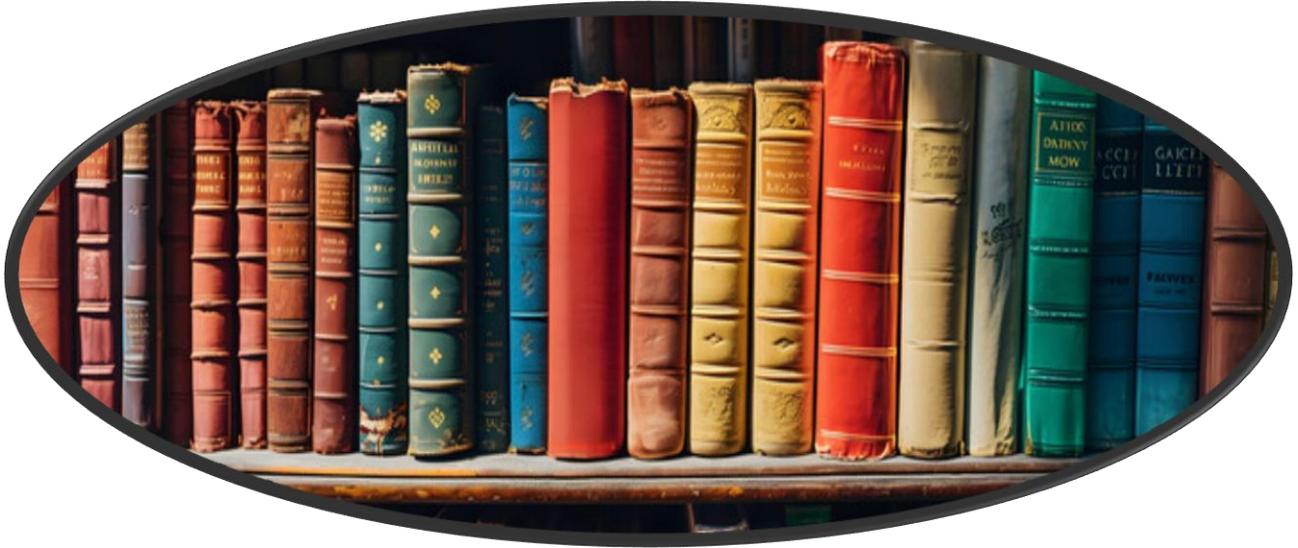


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## MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR



Dear Reader,

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

The Residential Program of IPA-ICMAI at Courtyard in the Marriott in Shillong, Meghalaya from 5<sup>th</sup> to 7<sup>th</sup> February, was successfully concluded at the valedictory graced by Shri Vaibhav Chaturvedi, Chief General Manager in RBI and RBI nominee on the Governing Board of IBBI. It was a well-attended program with deep discussions and thought-provoking ideas discussed in a structured yet flexible format among Insolvency Professionals, CMAs, corporate executives, reputed advocates, bankers and regulators, not only in the technical sessions but also over breakfast, lunch/ dinner and during breaks. A summary of the discussions during the technical sessions is included in this edition of the E-Journal. Organising an event of this nature demands a lot of dedicated manhours and consequently, one outcome is that the E-Journal for the months of January and February, 26 have been combined and is brought to you as a joint issue.

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 practising 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 Artificial Intelligence (AI) agent 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 –

- The Broken Clock – Undermining Legislative Intent Through Time Extensions under the IBC, 2016 by Dr. Biswadev Dash,
- A commentary on the much debated ruling by the Supreme Court on Bhushan Power & Steel Limited by Ashish Vyas, IP and RV
- Resolution Professional's Right to Fees by CA Manish Sukhani
- Expanding the Scope of 'Related Party' under IBC by Dr. Arvind Kumar Saxena
- Hybrid Insolvency Resolution – a Creditor-Led Indian Pre-Pack by Mr. Sanjeev Pandey
- A Critique on IBC (Amendment) Bill, 2025 by CA Sumit Kumar Jain
- Leveraging Third Party Funding for Facilitating Avoidance Transactions Clawback by Dr. S.K. Gupta.
- Directors not automatically liable for Company's GST dues if liquidator appointed by Mr. Jaykishan Rathi

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](mailto:publication@ipaicmai.in).

Wish you all happy reading.

**Mr. G.S. Narasimha Prasad**  
**Managing Director**



# PROFESSIONAL DEVELOPMENT INITIATIVES

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## EVENTS CONDUCTED

### JANUARY - FEBRUARY 2026

DATE	EVENTS CONDUCTED
January 2nd, 2026	An Executive Development Program (EDP) titled <b><i>“Liquidation under IBC: Evolving Strategies, Compliance &amp; Beyond”</i></b> was conducted on January 2 <sup>nd</sup> , 2026, focusing on the liquidation framework under the Insolvency and Bankruptcy Code, emerging strategies, compliance requirements, and practical challenges encountered during liquidation proceedings.
January 9th, 2026	A <b>Workshop on Professional Ethics, Liability &amp; Disciplinary Processes under IBBI Oversight</b> was held on January 9 <sup>th</sup> 2026, emphasizing ethical responsibilities of Insolvency Professionals, regulatory expectations, disciplinary mechanisms, and risk mitigation in professional practice.
January 21st, 2026	IPA-ICMAI jointly with IIPPI and ICSI IIP organized the <b>69<sup>th</sup> Batch of the Pre-Registration Educational Course (PREC)</b> in virtual mode from January 15 <sup>th</sup> to 21 <sup>st</sup> , 2026, providing aspiring Insolvency Professionals with structured training on the legal, procedural, and practical aspects of insolvency practice.
January 16th, 2026	A <b>Workshop on Sector-Specific Insolvency Challenges</b> was organized on January 16 <sup>th</sup> , 2026, offering insights into industry-specific issues, sectoral nuances, and tailored resolution approaches ` the IBC framework.
January 23rd, 2026	On January 23 <sup>rd</sup> , 2026, IPA-ICMAI organized a <b>Seminar on IBC in association with KIPF &amp; IBBI</b> in in-person mode, deliberating on contemporary developments under the Insolvency and Bankruptcy Code and strengthening stakeholder engagement within the insolvency ecosystem.
January 30th, 2026	A <b>Workshop on “Liquidation – Beyond the Last Resort”</b> was held on January 30 <sup>th</sup> , 2026, highlighting strategic considerations, value maximization approaches, compliance imperatives, and evolving perspectives on liquidation under the Insolvency and Bankruptcy Code.
February 5th -8th ,2026	The IPA-ICMAI Residential Programme: <b><i>“Unlocking the Secrets of Insolvency – The Scotland of the East”</i></b> was successfully conducted from <b>February 5th to 8<sup>th</sup>, 2026</b> in the serene city of Shillong. The programme was organised under the evolving framework of the Insolvency and Bankruptcy Code and witnessed enthusiastic participation from across the India
February 21st ,2026	A <b>Workshop on “Litigation – Tactical &amp; Strategic Control under IBC, 2016”</b> was conducted on <b>February 21<sup>st</sup> ,2026</b> with a focused objective to equip Insolvency Professionals with practical insights into managing litigation risks and procedural complexities within the insolvency resolution framework
February 28th, 2026	A <b>Workshop on Personal Guarantor Insolvency – Control &amp; Recovery Maximisation</b> was held on February 28 <sup>th</sup> , 2026.

# IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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# ARTICLES



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## Dr. Arvind Kumar Saxena Insolvency Professional

### Why the Law Is Tightening Its Grip, and How It Affects Real Businesses

#### Abstract

*The concept of a “Related Party” under the Insolvency and Bankruptcy Code (IBC), 2016, has evolved into one of the most decisive elements shaping India’s corporate insolvency framework. While the Code originally offered a structured definition borrowed from company law, judicial interpretation has steadily expanded its scope to safeguard the integrity of the Corporate Insolvency Resolution Process (CIRP). This paper examines how courts have moved from a narrow, technical reading to a purposive, substance-over-form approach to prevent promoters, insiders, and associated entities from influencing the CoC through indirect or engineered financial arrangements. Through practical, real-life inspired examples, the article highlights how friendly loans, group structures, debt assignments, and proxy creditors are increasingly being scrutinized to detect hidden control and conflicts of interest. The analysis demonstrates how this expanded interpretation directly impacts two critical areas—CIRP eligibility and voting rights—ensuring that only independent creditors drive the resolution process. Ultimately, the evolving doctrine of “Related Party” strengthens the IBC’s foundational promise: a transparent, creditor-centric, value-maximising insolvency regime that prevents back-door entry of promoters and preserves the sanctity of commercial decision-making.*

#### **A Deep Dive into How Relationships, Control and Hidden Influence Can Change the Fate of an Insolvency Case**

When the Insolvency and Bankruptcy Code (IBC) came into force in 2016, it brought a wave of hope. India had lived for decades under slow,

inefficient, and sometimes ineffective debt recovery systems. Sick companies continued to remain sick, dragging lenders, employees, vendors, and investors into a downward spiral. The IBC promised a new beginning clean, time-bound, creditor-driven rescue system.

But as with any law, people began to find loopholes. Promoters who had pushed companies to insolvency began searching for ways to stay involved in the process. Friendly lenders, relatives, and group companies started popping up with claims. Debt was assigned to entities just days before default. The familiar Indian “network of relationships”—strong in business, family, and society—quietly walked into the insolvency room.

The question suddenly became serious: **When does a creditor stop being a genuine creditor and become a “Related Party”?**

Because, under the IBC, this distinction can change the entire fate of a Corporate Insolvency Resolution Process (CIRP). A Related Party:

- **cannot file for CIRP,**
- **cannot vote in the Committee of Creditors (CoC),**
- **cannot influence approval or rejection of resolution plans, and**
- **cannot act as the promoter’s “unseen hand” inside the decision-making process.**

With time, courts discovered that this small phrase—*Related Party*—held enormous power. It could protect the entire CIRP from manipulation... or let it collapse if misinterpreted.

This article explores how the definition has evolved, how courts look beyond paperwork, and what this means for real companies, creditors, promoters, and insolvency

professionals. And we do it through practical, relatable examples that reflect how Indian businesses really operate—not in theory, but in everyday reality.

## 1. Why the Definition of “Related Party” Matters So Much

To understand the importance, we must revisit a basic principle of the IBC:

**The insolvency process must be decided by independent creditors who have no conflict of interest.**

Not relatives.

Not friends.

Not group companies.

Not entities controlled by promoters behind the scenes

Because these insiders might:

- try to block a resolution plan that brings a new buyer,
- support a low value bid that benefits the outgoing promoters,
- try to regain control of the company indirectly,
- manipulate voting outcomes,
- or create pressure on banks using their voting share.

The IBC has only one objective: **maximum value for all creditors.** This objective collapses if insiders start crowding the CoC.

That is why the law excludes Related Parties from voting—even if they are genuine creditors in terms of financial transactions.

## 2. A Real-Life Inspired Story: When Business Relationships Create Trouble

To make the concept easy for everyone, let’s move from legal theory to a human story.

### Meet Galaxy Auto Components Pvt. Ltd.

Galaxy Auto was a respected automobile parts

manufacturer supplying to several OEMs. But competition increased, and internal mismanagement made things worse. Delays, quality issues, and rising raw material costs pushed the company toward default. By late 2023, Galaxy had an overdue loan of ₹135 crore with multiple banks. Cash flow disappeared. Salaries were delayed. Vendors were not paid.

Finally, Sunrise Bank filed a Section 7 application under IBC, and the CIRP began.

When the Interim Resolution Professional (IRP) invited claims, an interesting chain of events unfolded.

### The Promoter’s Inner Circle Shows Up

Within a week, three unexpected financial creditors filed claims:

#### 1. The Promoter’s Uncle (Mr. R.K. Mehra)

He had given ₹18 crore as an unsecured loan during “difficult times.” No interest, no formal security, just a friendly arrangement.

#### 2. A Group Trading Company, “Mehra Commodities Ltd.”

This company—fully controlled by the promoter’s aunt and cousins—had purchased ₹22 crore of Galaxy’s debt from a small NBFC six months before default.

#### 3. A Finance Company Owned by the Promoter’s Childhood Friend

The finance company had advanced ₹14 crore to Galaxy without proper documentation, security, or credit appraisal. The loan was approved in a single meeting of the board.

All three claimed to be “independent financial creditors.”

On paper, they had loan agreements. On paper, money had been transferred. On paper, they passed the definition of “financial creditor.”

But the question was deeper:

### **Were they truly independent? Or were they extensions of the promoter?**

This is where the IBC's evolving understanding of "Related Party" became crucial.

### **3. What Does the Law Actually Say?**

Originally, Section 5(24) of the IBC defined "Related Party", largely borrowing from the Companies Act. It covered:

- directors and their relatives,
- key managerial personnel,
- holding and subsidiary companies,
- companies with common control,
- entities with significant influence.

However, promoters quickly realized that:

- If a relative doesn't directly lend but runs a separate firm,
- If a group company is held through a trust,
- If a friend buys debt from another creditor,
- If the promoter resigns before CIRP,
- If a company assigns debt to another controlled entity they could still enter the CoC indirectly.

But courts were sharp. They began applying a **purposive interpretation**, focusing on:

- who truly controls the entity,
- whether the transaction was commercially sound,
- whether the debt assignment happened to influence CIRP,
- whether the relationships showed signs of coordination,
- whether the creditor acted independently or as a proxy.

The Supreme Court's judgments, especially **Phoenix ARC, Anuj Jain (Jaypee)**, and **ArcelorMittal**, shaped this shifting landscape. Tribunals began looking at the "real intention" behind transactions—not just the legal form.

### **4. How Courts Identify a Related Party: The Practical Tests**

Here are the broad tests used by courts in real cases:

#### **Test 1: Who is the "mind" behind the entity?**

Is the company genuinely independent? Or is it controlled by the promoter through:

- family members,
- trustees,
- companies with shared directors,
- common funding sources?

#### **Test 2: Was the debt transaction commercially reasonable?**

Was there:

- due diligence?
- security?
- standard interest terms?
- board approval?
- independent decision-making?

If a large unsecured loan is given casually, it raises doubts.

#### **Test 3: Was the debt assigned just before default?**

Debt assignments close to insolvency often signal strategic moves to enter the CoC.

#### **Test 4: Did the creditor actively influence policy decisions?**

Even advisory influence or participation in strategy can make an entity "related."

#### **Test 5: Was the intention to influence the CIRP?**

If yes, the entity becomes a Related Party—even if technically separate.

### **5. Back to Galaxy Auto: What Happened?**

The IRP looked beyond documents and conducted a deep investigation. Here's what came out:

- The promoter’s uncle, Mr. Mehra, had no repayment schedule, no security, and no commercial justification.
- Mehra Commodities, the debt buyer, shared multiple directors with Galaxy’s promoter family.
- The childhood friend’s finance company had never given a loan of such size before—this was its first-ever “big loan.”

These facts were sufficient to treat them as Related Parties under the IBC.

### Impact?

All three claims were admitted BUT their voting rights were **rejected**.

Their combined 28% voting share became **zero**.

This single step changed the entire CIRP.

Without them, Sunrise Bank and another lender, Horizon Bank, controlled 92% voting share. They selected a strong resolution applicant. They rejected a low value bid that was allegedly linked to the old promoters. They ensured transparency.

If these related entities had voting rights, the outcome would have been completely different.

### 6. How “Related Party” Impacts CIRP Eligibility

Many people don’t realize a crucial rule:

**A Related Party cannot file a CIRP application under Section 7.**

Why?

Because a promoter could use a friendly creditor to push the company into insolvency deliberately, stop other creditors, and then submit a resolution plan through another friendly bidder.

This risk is real. It has happened earlier in India.

Courts saw it, understood it, and shut the door.

If Mehra Commodities or the childhood friend had tried to initiate CIRP against Galaxy Auto, their application would have been dismissed.

This ensures that only **genuine, independent creditors** can pull a company into the insolvency process.

### 7. Impact on Voting Rights: The Heart of the Issue

This is the most important consequence.

Even when a Related Party is admitted as a creditor:

- they sit in the meeting,
- they hear everything,
- they participate in discussions...

...but their vote **does not count**.

It’s like turning off their microphone at critical moments.

This prevents manipulation. It protects banking institutions. It preserves the sanctity of the “commercial wisdom” of the CoC.

Imagine if Mehra Commodities had voting rights:

- They could vote for a resolution plan favoring the promoter.
- They could block a genuine buyer with a 66% voting requirement.
- They could influence discussions subtly.

The law prevents this.

Their presence does not become a threat.

### 8. A Wider View: How This Affects the Indian Business Landscape

The expanded interpretation of “Related Party”

has major implications:

### 1. End of Informal, Friendly Credit

Earlier, promoters relied heavily on money from:

- relatives,
- cross-owned firms,
- sister concerns,
- family trusts,
- long-time friends.

Now these friendly loans may not secure voting rights.

They may even become suspicious in insolvency.

### 2. Corporate Structures Under Scanner

Complex webs of subsidiaries and associates—common in Indian business groups—are now being examined more critically.

Ownership alone is not the test. Control, influence, and behaviour are the key tests.

### 3. Better Protection for Banks and Independent Lenders

Now, CIRP outcomes reflect genuine commercial merit—not family strategy.

### 4. Greater Transparency and Documentation

Lenders are now insisting on:

- proper board resolutions,
- arm's length arrangements,
- clear security structures,
- audited financials.

This improves credit discipline in the market.

### 5. Promoters Lose Their Back-Door Access

This might feel harsh for some, but it's essential. IBC is designed to bring a fresh start—not allow old mistakes to repeat themselves.

## 9. Real-Life Patterns Observed in IBC Cases

Across major insolvency cases, the same patterns repeatedly emerged:

- Promoter resigns “just before” CIRP to avoid Related Party tag.
- Debt assigned to a sister concern to regain voting power.
- Large unsecured loans given without commercial rationale.
- Group companies suddenly appear as majority creditors.
- Friends or family-run companies buy debt at heavy discounts.
- Promoters influence lenders through indirect financing.

Courts have become wise to these tactics.

As a result, even indirect influence, hidden control, and beneficial ownership trigger the Related Party bar.

This widening net has made CIRP more honest and unbiased.

## 10. Another Practical Example: When “Simple Business Assistance” Becomes a Legal Trap

Consider another scenario:

### Silverline Textiles Ltd.

Its promoter, Rohan, often borrowed from his brother Priya's transport company, Apex Logistics. Apex supplied transport services but also gave short-term credit during cash flow crises.

Years later, when CIRP started, Apex claimed ₹25 crore.

On paper:

- the loan agreements existed,
- the invoices were genuine,

- the payments were real.

But the IRP noticed:

- Apex's entire business depended on Silverline,
- Rohan and Priya jointly made strategic decisions,
- the financial link was not independent,
- loans were not at arm's length.

Apex became a Related Party.

Its voting rights were removed.

This example mirrors numerous real IBC cases where casual inter-company support later became a legal liability under insolvency.

## 11. The Emotional Side of This Transformation

For many promoters, this feels unfair.

They argue:

- "We supported the company when no bank did."
- "We gave unsecured loans out of trust."
- "We did it for survival, not manipulation."

But the law has a different responsibility.

It must protect lenders, employees, suppliers, and the overall economy.

IBC is not about emotion. It is about fairness.

A promoter may have acted with good intentions, but once insolvency occurs, conflict of interest becomes the bigger issue.

Related Party rules ensure that decisions are unbiased, objective, and focused on value maximization.

## 12. The Philosophy Behind the Expanding Definition

At the core, the IBC's strengthening of the Related Party definition serves two goals:

### 1. Ensuring a Clean Slate for the Company

The resolution applicant should not face hidden influences from old promoters.

### 2. Protecting the CoC from Manipulated Voting

CoC decisions must reflect:

- commercial logic
- financial prudence
- market interest

—not emotional loyalty or personal connections.

Courts have repeatedly reminded us:

**IBC is a law of economic discipline. It cannot be misused for strategic re-entry by promoters.**

### 13. What Insolvency Professionals Must Do

IPs now have a huge responsibility. They must:

- investigate ownership layers,
- seek beneficial ownership details,
- examine debt assignment timelines,
- look at decision-making patterns,
- read between the lines,
- question unusually friendly financial arrangements.

The quality of CIRP depends on the IP's vigilance.

### 14. What Banks and Financial Institutions Must Do

Banks must:

- identify Related Parties early,
- challenge suspicious claims,
- file objections before the NCLT,
- ensure fair CoC formation,

- avoid giving undue influence to insider entities.

Many landmark judgments emerged because banks took a firm stand.

### **15. What Promoters Must Learn from This**

For promoters, the message is loud and clear:

- Keep business and family finances separate.
- Avoid “friendly loans” without documentation.
- Maintain arm’s-length transactions.
- Do not use group companies for debt assignments.
- Never assume a relative’s company will be treated as independent.

A new corporate discipline is emerging.

### **16. Conclusion: The Road Ahead for the IBC Ecosystem**

The expanding scope of “Related Party” is not a burden—it is a shield.

It ensures:

- transparency,
- fairness,
- independence,
- commercial wisdom,
- and efficient resolutions.

With every judgment, the law becomes stronger.

With every CIRP attempt, the learning improves.

India’s insolvency landscape is changing dramatically.

The blurry lines between personal relationships and business decisions are being redrawn.

The law wants clarity.

The economy demands discipline.

And creditors deserve fairness.

The stricter, broader understanding of “Related Party” is a powerful step toward that future.

It ensures that:

- those who created the problem cannot control the solution,
- those who are conflicted cannot influence decisions,
- those who are related cannot act as judges of their own cause,
- and those who want a clean recovery get a truly unbiased process.

This transformation strengthens the soul of the Insolvency and Bankruptcy Code.

It protects companies.

It protects creditors.

And ultimately, it protects India’s economic credibility.

**Mr. Ashish Vyas**  
**Insolvency Professional & Registered Valuer**

**Synopsis**

*The insolvency resolution of Bhushan Power & Steel Limited has tested the balance between procedural compliance and commercial finality under the Insolvency and Bankruptcy Code, 2016. Through its judgments dated May 2025 and September 2025, the Supreme Court has clarified that while strict adherence to statutory processes is mandatory, resolutions that have been substantially implemented must be accorded finality. The decisions reinforce the importance of robust compliance by insolvency professionals while restoring confidence among creditors and investors. Together, the rulings reflect a maturing insolvency jurisprudence aligned with value maximisation and certainty.*

**Introduction**

The Insolvency and Bankruptcy Code, 2016 (“IBC” or “the Code”) was enacted with the objective of consolidating and amending laws relating to reorganisation and insolvency resolution of corporate persons in a time-bound manner for maximisation of value of assets, promotion of entrepreneurship, availability of credit, and balancing the interests of all stakeholders.<sup>1</sup> Over the years, the Code has substantially altered India’s credit culture by shifting control from defaulting promoters to creditors and emphasising commercial decision-making.

However, the evolution of insolvency jurisprudence has not been linear. Certain cases have tested the resilience of the framework and exposed tensions between procedural compliance and commercial finality. Among them, the insolvency resolution of Bhushan Power & Steel Limited (“BPSL”) stands out as one of the most consequential.

The Supreme Court’s two orders — one dated 2 May 2025, directing liquidation, and the subsequent judgment dated 26 September 2025, restoring the approved resolution plan. This article analyses these decisions in conjunction and examines their implications for insolvency professionals, creditors, investor circles and the broader insolvency ecosystem.

**Factual Background of the Bhushan Power Resolution**

Bhushan Power & Steel Limited was one of the twelve large stressed accounts identified by the Reserve Bank of India in 2017 for initiation of insolvency proceedings under the IBC. The company had accumulated financial debt in excess of ₹47,000 crore and was admitted into Corporate Insolvency Resolution Process (“CIRP”) under Section 7 of the Code.

Following the invitation of resolution plans under Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”), the resolution plan submitted by JSW Steel Limited was approved by the Committee of Creditors (“CoC”) in 2019. The plan envisaged infusion of approximately ₹19,700 crore and revival of the corporate debtor as a going concern.

The plan was subsequently approved by the National Company Law Tribunal (“NCLT”) and upheld by the National Company Law Appellate Tribunal (“NCLAT”). Thereafter, implementation of the plan commenced, including substantial capital infusion and operational revival.

Despite approval, the resolution process was mired in litigation initiated by erstwhile promoters, certain operational creditors, state authorities, and the Enforcement Directorate (“ED”) under the Prevention of Money Laundering Act, 2002 (“PMLA”), leading to prolonged uncertainty.

**Supreme Court Judgment dated 2 May 2025: Emphasis on Procedural Compliance**

In its judgment dated 2 May 2025,<sup>2</sup> the Supreme Court set aside the resolution and directed liquidation of BPSL. The Court identified multiple procedural infirmities in the conduct of the CIRP.

- **Non-Compliance with CIRP Regulations**

The Court noted that the mandatory compliance certificate in Form H, as prescribed under Regulation 39(4) of the CIRP Regulations, had not been duly filed before seeking approval of the resolution plan. The filing of Form H is intended to certify compliance with all requirements of the Code and Regulations and serves as a critical safeguard.

- **Inadequate Verification under Section 29A**

The Court further observed deficiencies in the verification of eligibility of the resolution applicant under Section 29A of the Code. Given that Section 29A was introduced to prevent backdoor entry of erstwhile promoters (except in MSME cases) and other ineligible persons, strict adherence to its requirements was held to be non-negotiable.

- **Impermissible “Fait Accompli”**

A key concern expressed by the Court was that the resolution plan had been substantially implemented while legal challenges were pending. The Court characterised this as creating a *fait accompli*, thereby limiting judicial scrutiny and undermining statutory safeguards. The judgment underscored that procedural discipline is the backbone of the insolvency framework, and that even commercially viable outcomes cannot legitimise non-compliance with mandatory requirements.

**Market Impact and Systemic Concerns**

While the May 2025 judgment reinforced the importance of compliance, it also generated apprehension among stakeholders. The direction to liquidate a corporate debtor that had already been revived through significant capital infusion raised concerns regarding:

- Predictability of outcomes under IBC
- Risk exposure of resolution applicants
- Potential chilling effect on distressed asset investments

These concerns were particularly relevant in light of the Supreme Court’s earlier emphasis on commercial wisdom of the CoC in decisions such as *K. Sashidhar v. Indian Overseas Bank*<sup>3</sup> and *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*.<sup>4</sup>

**Supreme Court Judgment dated 26 September 2025: Restoration of Finality**

In its subsequent judgment dated 26 September 2025,<sup>5</sup> a three-judge bench led by the then Hon’ble Chief Justice of India B.R. Gavai revisited the matter and set aside the earlier liquidation order. The Court restored the approved resolution plan submitted by JSW Steel.

- **Principle of Finality**

The Court held that once a resolution plan has been substantially implemented, judicial intervention must be exercised with restraint. Endless reopening of concluded resolutions would defeat the objectives of certainty and value maximisation embedded in the Code.

- **Preservation of Going Concern Value**

The Court reiterated that liquidation is a measure of last resort under the IBC. Where a corporate debtor has been revived as a going concern through substantial investment, directing liquidation would lead to destruction of value, contrary to the legislative intent of the Code.

- **Protection of Bona Fide Resolution Applicants**

Recognising the investments made and risks undertaken by the resolution applicant, the Court emphasised that bona fide applicants acting within the framework of the Code should not be subjected to disproportionate uncertainty.

**The PMLA-IBC Interface: Removal of ED Attachment and Limited Judicial Determination**

The judgment of the Supreme Court dated 26 September 2025 records the involvement of the Directorate of Enforcement (ED) and proceedings under the Prevention of Money Laundering Act, 2002 (PMLA) as part of the factual and procedural background of the insolvency resolution of Bhushan Power & Steel Limited (BPSL). The Court notes that pursuant to a CBI FIR, the ED registered proceedings under PMLA and issued a Provisional Attachment Order dated 10 October 2019 attaching certain assets of the corporate debtor 6.

The provisional attachment was challenged by the successful resolution applicant, JSW Steel

Limited, before the National Company Law Appellate Tribunal (NCLAT), which stayed both the attachment and subsequently, the Supreme Court also stayed the provisional attachment order 7.

A significant and positive development is recorded in para 2.22 of the judgment. The Court refers to its earlier order dated 11 December 2024, passed on the basis of an affidavit filed by the ED, whereby the ED was directed to hand over control of the attached properties of BPSL to the successful resolution applicant. The Court treated such handover as restitution under Section 8(8) of the PMLA read with Rule 3A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016. This direction effectively removed the attachment and enabled the resolution plan to proceed with unencumbered control of the corporate debtor's assets.

The Court expressly clarified that, while directing restitution of the attached assets, it did not express any opinion on the interpretation of Section 32A of the Insolvency and Bankruptcy Code, 2016, or on the general powers of the ED to attach the property of a corporate debtor undergoing CIRP. Accordingly, the judgment records the removal of the ED attachment as a factual outcome facilitating implementation of the resolution plan, while leaving broader questions concerning the interface between IBC and PMLA open for consideration in an appropriate case.

### **Harmonising the Two Judgments: A Jurisprudential Continuum**

When read together, the May and September 2025 judgments do not represent a contradiction but rather delineate a two-stage jurisprudential framework:

1. Strict procedural compliance at the resolution stage, and
2. Respect for commercial finality post-implementation

This approach aligns with the Supreme Court's earlier observations in *Swiss Ribbons Pvt. Ltd. v. Union of India*,<sup>8</sup> where the Court emphasised that IBC is an economic legislation requiring balancing of competing interests.

### **Implications for Insolvency Professionals and Committees of Creditors**

The Bhushan Power decisions carry significant lessons for insolvency practitioners:

#### **• Heightened Compliance Expectations**

Resolution Professionals must ensure Robust verification under Section 29A, Timely filing of all statutory forms, Clear documentation of CoC deliberations and Avoidance of procedural shortcuts. Any lapse may expose the process to judicial intervention even at advanced stages.

#### **• Cautious Implementation Pending Litigation**

While the Code encourages time-bound resolution, implementation of plans during pendency of challenges must be carefully calibrated, supported by CoC resolutions and proper legal advice.

### **Broader Policy Implications**

From a systemic perspective, the September 2025 judgment restores confidence in India's insolvency regime by reaffirming that:

- Commercial wisdom of CoC will be respected
- Value-preserving resolutions will not be lightly disturbed
- The IBC framework is evolving through corrective jurisprudence

Such predictability is essential for attracting long-term capital into India's stressed asset market.

### **Conclusion**

The Bhushan Power & Steel case represents a defining moment in the evolution of India's insolvency jurisprudence. Through its twin judgments, the Supreme Court has clarified that procedural discipline and commercial finality are not competing principles but complementary pillars of the IBC.

While the Code demands rigorous compliance at every stage, it also protects genuine resolution efforts that revive distressed assets and preserve economic value. This balanced approach strengthens the credibility of the insolvency framework and reinforces India's commitment to a predictable, investor-friendly resolution regime.

## Footnotes / References

1. Statement of Objects and Reasons, Insolvency and Bankruptcy Code, 2016
2. *Bhushan Power & Steel Limited v. ...*, Supreme Court judgment dated 2 May 2025
3. *K. Sashidhar v. Indian Overseas Bank & Ors.* (2019) 12 SCC 150
4. *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.* (2020) 8 SCC 531
5. *Bhushan Power & Steel Limited v. ...*, Supreme Court judgment dated 26 September 2025
6. paras 2.11 and 2.14 of judgement of *Bhushan Power & Steel Limited v. ...*, Supreme Court dated 26 September 2025
7. paras 2.15 and 2.16 of judgement of *Bhushan Power & Steel Limited v. ...*, Supreme Court dated 26 September 2025
8. *Swiss Ribbons Pvt. Ltd. v. Union of India & Ors.* (2019) 4 SCC 17

## Mr. Sanjeev Pandey Insolvency Professional

India's insolvency ecosystem has matured significantly since the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC). While the Corporate Insolvency Resolution Process (CIRP) has introduced creditor discipline, market-based resolution, and institutional credibility, experience over the last several years indicates that value erosion often begins well before formal insolvency is triggered. This has renewed policy focus on hybrid insolvency mechanisms that combine the flexibility of out-of-court restructuring with the discipline and finality of statutory processes. To tackle this problem, the IBC Amendment Bill, 2026 placed before Parliament in the budget session propose to have a new framework for Creditor Initiated Insolvency Resolution Process.

In this article I have tried to examine the rationale and for hybrid insolvency processes in India, critically evaluates the limited success of the Pre-Packaged Insolvency Resolution Process (PPIRP), analyses the proposed creditor-led insolvency framework, and argues that such a framework could serve as a credible replacement for the Reserve Bank of India's prudential resolution mechanisms. The article situates hybrid insolvency as a necessary evolution in India's resolution architecture, rather than a departure from the IBC's foundational principles.

### 1. Insolvency Resolution and the Question of Timing

The Insolvency and Bankruptcy Code (IBC 2016) was designed as a response to systemic delays, fragmented enforcement, and weak creditor rights that characterised India's pre-2016 insolvency regime. By shifting control from debtors to creditors upon default, the Code sought to arrest value destruction and restore credit discipline.

However, empirical outcomes reveal a structural limitation: **formal insolvency is frequently initiated after economic value has**

**already dissipated.** By the time a corporate debtor enters CIRP, businesses often face liquidity exhaustion, operational disruption, loss of key managerial personnel, and diminished enterprise value. Insolvency law, no matter how robust, cannot easily recreate lost competitive advantage. In Indian context, the loss of enterprise value is further aggravated due to the adverse impact of a public announcement of insolvency, delays in admission and the lengthy CIRP process, which is taking more than 800 days on average as per latest available public data. This timing mismatch has prompted global insolvency systems to move upstream—towards **early intervention and preventive restructuring.** Hybrid insolvency processes represent this shift.

### 2. Understanding Hybrid Insolvency Processes

Hybrid insolvency mechanisms occupy the space between purely contractual workouts and full-scale insolvency proceedings. They are characterised by:

- early initiation, often at the stage of financial stress or imminent default,
- limited but structured judicial involvement,
- continued management of the debtor as a going concern under debtor in possession,
- collective decision-making by creditors, and
- a statutory pathway to formal insolvency in case of failure.

The defining feature of hybrid models is not procedural novelty, but **incentive alignment**—ensuring that stakeholders act early, transparently, and collectively, while retaining access to binding outcomes.

### 3. Lessons from India's Experience with Informal Resolution Frameworks

India's banking system has historically relied on regulatory and contractual mechanisms (also

called workouts) to resolve stress outside courts. While frameworks such as CDR, SDR, S4A, and later the RBI's prudential norms were well-intentioned, their effectiveness was limited.

Common shortcomings included:

- lack of enforceability across dissenting creditors (holdout problem),
- absence of time-bound outcomes,
- repeated restructurings with nil or limited concessions and without genuine deleveraging,
- fear of post-facto scrutiny by various investigative or vigilance agencies, and
- delayed reporting and recognition of stress.

These frameworks often postponed insolvency rather than prevented it. Hybrid insolvency seeks to overcome precisely these weaknesses by embedding informal resolution within a statutory architecture.

Pre-Pack Insolvency: Global Experience and Its Relevance to India's Hybrid Resolution Framework

As discussed in the preceding section on **Hybrid Insolvency Resolution Processes**, the central weakness of India's current insolvency architecture lies not in its statutory design but in **late-stage intervention**. By the time CIRP is triggered, enterprise value has often eroded beyond recovery. It is in this context that global experience with pre-pack insolvency transactions assumes particular relevance, not as a standalone solution, but as a **critical implementation tool within a creditor-led hybrid framework**.

Pre-packaged insolvency processes have emerged internationally as one of the most effective mechanisms for resolving corporate distress where **speed, value preservation, and execution certainty** are paramount. Their relevance to India must be evaluated not in isolation, but as part of the broader shift towards **early intervention, creditor control, and limited judicial intrusion**, which underpin the proposed hybrid insolvency model.

## 1. Core Design of a Pre-Pack Transaction and Its Alignment with Hybrid Insolvency

In mature insolvency regimes, particularly under English law, a pre-pack operates through administration. Insolvency practitioners are appointed and immediately execute a sale of the business or assets pursuant to a transaction substantially negotiated prior to insolvency. While the execution appears sudden, the process is typically preceded by extensive negotiations, valuation exercises, and creditor alignment.

This design closely mirrors the **hybrid insolvency philosophy outlined earlier**—namely, that meaningful restructuring should occur **before formal insolvency destroys value**, while retaining access to statutory safeguards. The pre-pack is not an alternative to insolvency law; it is an **accelerated execution mechanism within it**. Typical pre-pack outcomes include:

- sale of the business as a going concern,
- debt-for-equity swaps through creditor credit-bidding,
- separation of viable operations from unsustainable legacy liabilities, and
- recalibration of capital and governance structures in the successor entity.

Each of these outcomes aligns squarely with the objectives identified in the hybrid insolvency section: **value preservation, creditor primacy, and economic finality**.

## 2. Timing and Value Preservation: The Operational Core of Hybrid Insolvency

As highlighted earlier in the hybrid insolvency discussion, timing is the single most decisive variable in distressed situations. Once liquidity tightens, suppliers harden terms, customers lose confidence, and key employees exit. Legal remedies, however robust, cannot reverse commercial decay.

Pre-packs address this challenge by **compressing resolution timelines** and avoiding prolonged public uncertainty. The moratorium associated with insolvency proceedings protects the business from disruptive enforcement actions, while immediate execution stabilises operations. This directly complements the **early-intervention objective** of creditor-led hybrid insolvency, where resolution is sought at the stage of imminent default rather than post-collapse. For Indian policymakers and practitioners, this

reinforces the point that **hybrid insolvency must prioritise speed over procedural perfection**, without compromising oversight.

### 3. Statutory Execution and Reduced Challenge Risk

A key concern raised in debates on hybrid insolvency is the risk of misuse and post-facto litigation. Global pre-pack experience offers a valuable counterpoint.

In English pre-packs, transactions are executed by licensed insolvency practitioners acting as officers of the court. Their statutory duties—to act in the interests of creditors and obtain the best price reasonably obtainable—create a strong protective shield against later challenge. Courts are generally reluctant to interfere with commercial decisions taken by administrators who have complied with statutory and professional standards.

This feature is directly relevant to the proposed Indian hybrid framework, which similarly envisages **limited judicial involvement coupled with strong professional accountability**. Pre-packs demonstrate that reduced court supervision does not equate to reduced legitimacy—provided statutory guardrails are robust.

### 4. Connected-Party Safeguards and Indian Sensitivities

One of the most persistent criticisms of pre-packs, both globally and in India's PPIRP experience, relates to transfers to connected parties. Mature jurisdictions have addressed this through enhanced regulation.

In English law, pre-pack sales to connected parties are subject to heightened scrutiny, including independent valuation and evaluator oversight. The objective is not to prohibit such sales, but to ensure transparency, value justification, and creditor confidence.

This experience directly informs the **risk-mitigation architecture proposed in the hybrid insolvency section**, where promoter misuse is addressed through eligibility thresholds, disclosures, independent oversight, and automatic escalation into CIRP upon abuse. The lesson is clear: **design safeguards, do not abandon the tool**.

### 5. Functional Cram-Down Without Protracted Litigation

As discussed earlier, one of the limitations of both RBI's prudential framework and informal restructurings has been the inability to deal decisively with dissenting or economically irrelevant stakeholders. Pre-packs offer a practical solution. While administrators cannot unilaterally extinguish secured claims, pre-packs are often combined with:

- inter-creditor disposal mechanisms,
- schemes of arrangement,
- contractual release provisions, or
- debt exchange frameworks.

The result is a **functional cram-down**, achieved through transaction structuring rather than judicial compulsion. This aligns with the hybrid insolvency objective of **commercial resolution with legal finality**, without burdening courts with valuation disputes or prolonged hearings.

### 6. Structural Flexibility and Creditor-Led Customisation

Another theme emphasised in the hybrid insolvency section is the need for **structural flexibility**. Pre-packs exemplify this flexibility in practice. Consideration in pre-pack sales is not limited to cash. It may include credit bids, deferred consideration, equity instruments, or hybrid securities. Governance arrangements, minority protections, and upside participation for legacy stakeholders can be structured within the successor entity, provided valuation discipline is maintained. This adaptability is particularly relevant for India, where sectoral diversity, group structures, and lender consortia require bespoke solutions rather than rigid templates.

Perfect. A **boxed sidebar** is exactly what ICAI Journal editors like—tight, analytical, and pedagogical.

Below is a **publication-ready boxed sidebar**, written in a neutral but authoritative tone, explicitly cross-linked to your hybrid insolvency argument. It is designed to sit visually alongside the pre-pack section without interrupting narrative flow.

### 7. Why Indian PPIRP Diverged from Global Pre-Pack Models

The limited uptake of the Pre-Packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code, 2016, is often attributed to market unfamiliarity or conservatism. However, a closer comparison with global pre-pack models—particularly English pre-pack administrations—reveals **structural and design divergences** that explain the outcome more convincingly.

a. **Control Architecture: Debtor-Led vs Creditor-Led**

Global pre-pack models are fundamentally creditor-driven. Secured creditors typically control the transaction, often through credit bidding or enforcement-backed negotiation, with insolvency practitioners executing the sale. By contrast, PPIRP vested initiative and control primarily with the corporate debtor. Creditors were positioned as reviewers rather than drivers of the process, diluting confidence and trust and undermining incentives for early engagement. This divergence runs counter to the creditor primacy that underpins both CIRP and the proposed hybrid insolvency framework.

b. **Market Depth and Price Discovery**

Pre-packs in mature jurisdictions operate within deep and liquid distressed M&A markets, where competitive tension—actual or credible—supports valuation integrity. India's PPIRP, particularly for MSMEs, was introduced in a market lacking sufficient distressed capital participation. The Swiss challenge mechanism therefore became procedural rather than competitive, weakening creditor comfort on value maximisation.

c. **Insolvency Stigma Without Proportionate Benefit**

While global pre-packs minimise public visibility through speed and limited disclosure, PPIRP retained the formal character of insolvency under the IBC. For MSMEs dependent on trade credit, licences, and reputation, the stigma and commercial consequences often outweighed the perceived benefits of the process.

d. **Procedural Complexity Relative to Enterprise Size**

PPIRP imposed valuation, compliance, and professional engagement requirements comparable to CIRP, without offering commensurate advantages in control or

certainty. For smaller enterprises, this complexity proved disproportionate to outcomes, discouraging adoption.

e. **Misalignment with Creditor Incentives**

Most critically, PPIRP did not adequately address lender risk aversion arising from investigative scrutiny and accountability concerns. In global pre-pack regimes, statutory execution by insolvency professionals and well-developed jurisprudence provide comfort to creditors. PPIRP lacked comparable clarity and confidence.

The experience of PPIRP does not invalidate the concept of pre-packs or hybrid insolvency. Rather, it underscores a central lesson of this article: **hybrid insolvency mechanisms succeed only when they are creditor-led, incentive-aligned, and supported by credible statutory safeguards.** The proposed creditor-led hybrid insolvency framework seeks to precisely correct these design shortcomings.

**9. Relevance for India's Hybrid Insolvency Framework**

India's experience with PPIRP underscores a critical point made earlier: **hybrid insolvency must be creditor-led to scale.** The English pre-pack model succeeds not because it is informal, but because it is **decisively creditor-driven, professionally executed, and statutorily anchored.** For India's proposed creditor-led hybrid insolvency process, pre-packs should be viewed as:

**10. Proposed Creditor-Initiated Insolvency Resolution Process (CIIRP / CLRP)**

I remember a session in the CAFRAL's Inaugural IBC Conference held in January 2024 at Taj Colaba, for which I was given responsibility to organise, there was a session on "Prepackaged Insolvency" moderated by Mr. Sumant Batra, a leading Insolvency advocate of India. In the panel discussion, where the panel included some very prominent speakers, a suggestion was made that since RBI's Distress Resolution Framework failed to achieve much success, basically on account of holdout problems as well as non-binding nature of Resolution Plan approved under the framework, why not try to marry the provisions of RBI framework with a Insolvency court's binding approval, so as to

make it binding on all stakeholders and enforce a cram-down feature to make it work.

The IBC Amendment Bill, 2025 introduced a creditor-initiated, largely out-of-court resolution route (variously called CIIRP / CLRP / CrIIRP) aimed at earlier, faster remediation of stressed firms. Under the proposed scheme, specified financial creditors (typically a notified class or those holding a majority of financial debt) may trigger CIIRP after issuing a statutory notice to the corporate debtor and allowing a short cure/representation period (commonly 30 days). Initiation generally requires the support of a threshold of creditors — reported at around 51% by value — and a public announcement follows if uncontested.

In the proposed framework, the control of Corporate Debtor remains materially with creditors: the debtor can remain in possession but operates under creditor supervision. This can be achieved by appointing a Chief Restructuring Officer (who is a turnaround expert) by creditors (or the CoC) or Creditors may appoint the interim/resolution professional to carry out the supervision. The process is time-bound (drafts envisage completion within ~150 days, with a short extension window), failing which the matter converts into formal CIRP.

The Adjudicating Authority (NCLT) retains a supervisory role at trigger points — for disputes, grant of moratorium if any sought by creditors and final plan approval — ensuring statutory oversight while keeping routine negotiations outside heavy judicial involvement. Safeguards include notice to the corporate debtor, independent valuations and procedural checks to deter connected-party abuse and preserve creditor-value. The main argument in favour of the framework is that it aligns incentives for debtor to share information about distress early on and for timely creditor action and offers a statutory alternative to ad-hoc regulatory forbearance. This also takes care of holdout problem and ensure approved resolution plan is binding on all stakeholders. We may have to wait for the final print but from the available draft, it seems that CAFRAL conference idea of marrying RBI framework with IBC may have reached to the conclusion through this proposed amendment.

## **11. Addressing the Limitations of the RBI Prudential Framework through CIIRP**

The RBI's prudential framework for stressed asset resolution played a transitional role during the early years of the IBC. However, its limitations have become increasingly evident:

- it operates outside the insolvency statute,
- lacks binding finality,
- diffuses accountability across committees,
- encourages delay in recognition and decision-making, and
- often culminates in insolvency after significant value erosion.

A creditor-led insolvency process embedded within the IBC would offer a more coherent alternative—one legal framework, a unified escalation path, and clear consequences for failure. The proposed creditor-led insolvency framework represents a recalibration of India's resolution design. With the following core features:

- initiation at the stage of imminent default,
- debtor remaining in possession under supervision,
- creditors exercising strategic control over resolution,
- time-bound negotiation and restructuring, and
- structured escalation into CIRP upon failure.

This model preserves the commercial continuity of the enterprise while ensuring that creditors retain decisive influence over outcomes.

## **12. Implications for Insolvency Professionals**

For insolvency professionals, hybrid insolvency processes will require a shift in approach:

- from post-default administration to early-stage oversight,
- from litigation management to stakeholder facilitation,
- from asset realisation to value preservation, and
- from procedural compliance to commercial judgment.

Such processes expand the professional role while demanding higher standards of independence, financial literacy, and ethical responsibility. The critical skill required by IPs for successfully managing CIIRP would be

Turnaround management and Investment Banking skills.

### 13. Safeguards and Risk Mitigation

Concerns regarding misuse, regulatory arbitrage, and promoter opportunism are legitimate. These risks can be mitigated through:

- strict eligibility thresholds,
- enhanced disclosure requirements,
- independent oversight mechanisms,
- defined timelines, and
- automatic conversion into CIRP upon non-compliance.

Hybrid insolvency must be **conditional, supervised, and consequence-driven**.

### 14. Conclusion

As argued throughout this article, hybrid insolvency is not a dilution of the IBC but its natural evolution. Pre-pack insolvency, properly designed and embedded within a creditor-led hybrid framework, offers a proven method to **intervene earlier, preserve value, and deliver final outcomes**.

The global lesson is unambiguous: when timing, control, and accountability are aligned, insolvency law becomes a tool of resolution rather than liquidation. For India, the challenge lies not in reinventing pre-packs, but in **integrating their strengths into a coherent hybrid insolvency architecture** consistent with the objectives of the IBC.

A well-designed creditor-led hybrid insolvency process can:

- preserve enterprise value,
- reduce judicial burden,
- improve recovery outcomes, and
- promote responsible borrower and lender behaviour.

For insolvency professionals, regulators, and creditors alike, the challenge now lies not in debating the need for such frameworks, but in ensuring their careful and disciplined implementation.

## Dr Biswadev Dash Insolvency Professional

### Synopsis/Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted as a landmark reform to resolve insolvency in a time-bound manner, with the 180-day timeline (extendable to 330 days) as its cornerstone. This research article critically examines the pervasive practice of granting extensions beyond this statutory framework, arguing that it has fundamentally undermined the Code's efficacy. Through an analysis of adjudicatory trends, empirical data from the Insolvency and Bankruptcy Board of India (IBBI), and a comparative review of international insolvency regimes, the study identifies a systemic deviation from the principle of timeliness. The article posits that the absence of a statutory ceiling on extensions, coupled with liberal judicial interpretations of "sufficient cause," has effectively transformed the IBC from a swift resolution mechanism into a protracted civil-like proceeding. The findings reveal a significant gap between the Code's envisioned efficiency and its operational reality, where cases routinely extend to 500-700 days. The analysis concludes that without imposing a stringent, absolute outer limit on the total resolution timeline and recalibrating judicial discretion, the core objectives of value preservation and economic rejuvenation underpinning the IBC remain unattainable. The article offers targeted suggestions for legislative and judicial course-correction.

**Keywords:** Insolvency and Bankruptcy Code 2016, Timeliness, Corporate Insolvency Resolution Process (CIRP), Judicial Discretion, Time Extensions, Resolution Efficiency, Legislative Intent.

### 1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) emerged as a paradigm shift in India's corporate distress landscape. Its primary objective was to consolidate insolvency laws, promote entrepreneurship, and maximize the value of assets of distressed firms—all within a time-bound framework. The architecture of

the Corporate Insolvency Resolution Process (CIRP), capped at 180 days with a one-time extension of 90 days (later statutorily crystallized as a maximum of 330 days by the 2019 Amendment), was designed to balance the interests of debtors and creditors while ensuring economic efficiency. The underlying philosophy was clear: uncertainty and delay are destructive to asset value, and speed is of the essence.

However, a chasm has emerged between this legislative intent and ground-level implementation. The rigid timeline, intended to be the engine of the IBC, has become its most frequently amended component, not through statute, but through adjudicatory discretion. The National Company Law Tribunal (NCLT), empowered to grant extensions beyond 330 days for "sufficient cause" [Section 12(3)], has routinely allowed processes to extend into periods of 500, 700, and even over 1000 days. This practice has sparked a critical debate: has the quest for procedural comprehensiveness and consensus overridden the fundamental mandate of timeliness, thereby neutralizing the IBC's transformative potential?

This article argues that the culture of indefinite extensions has systematically vitiated the core efficacy of the IBC.

It transforms the process from a swift resolution mechanism to a drawn-out legal battle, diminishing asset value, discouraging creditor participation, and perpetuating economic inefficiency. The study delves into the rationale, scale, and impact of these extensions, situating the Indian experience within global best practices that emphasize strict adherence to timelines.

### 2. Statement of Problem with International Scenario

#### **The Indian Problem: The Elastic Timeline**

The problem is not the existence of an extension provision, but its application. The term "sufficient cause" remains undefined,

leading to expansive interpretations. Extensions are frequently granted for reasons including: pendency of litigation, complexities in valuation, the size of the corporate debtor, the discovery of fraud, or even the need to achieve a higher resolution value. While some reasons are genuine, their collective effect has been to normalize delay. Data from the IBBI reveals that the average time for resolution in many cases far exceeds 330 days, with a significant number languishing for years. This creates a perverse incentive for recalcitrant parties to engage in tactical litigation to trigger extensions, defeating the very purpose of a creditor-in-control and time-bound process.

### **International Counterpoints: The Primacy of Certainty**

Contrasting this with international frameworks highlights the Indian anomaly:

**United Kingdom (UK):** The UK's Insolvency Act 1986 does not prescribe a rigid statutory timeline for administration. However, the "light-touch" administration model and the pre-pack mechanism are designed for extreme speed, often concluding within weeks. The ethos is commercial efficiency, not judicial management of endless duration.

**United States (US):** Chapter 11 of the US Bankruptcy Code is often criticized for being debtor-friendly and potentially lengthy. However, it incorporates mechanisms like "debtor-in-possession" financing and strong judicial case management to expedite processes. Crucially, it does not start with a purportedly "mandatory" short timeline that is routinely ignored, setting more realistic expectations.

**Singapore:** Singapore's insolvency framework, particularly its judicial management process, mandates that a scheme must be approved within 180 days, with extensions granted only sparingly. The courts emphasize finality and are reluctant to allow open-ended processes.

**UNCITRAL Legislative Guide on Insolvency Law:** It unequivocally states that "an efficient insolvency regime should provide for speedy, efficient and impartial resolution of insolvency." It identifies delay as a key factor that destroys enterprise value and increases costs.

The international consensus underscores that predictability and finality are as important as the resolution itself. The Indian problem is the systemic erosion of a statutory timeline into a meaningless formality, creating the worst of both worlds: the illusion of speed at the outset and the reality of delay in execution.

### **3. Review of Relevant International Scenario Along with Literature and Background**

A rich body of literature examines the tension between timeliness and thoroughness in insolvency regimes. Djankov et al. (2008), in their seminal work on debt enforcement around the world, correlate efficient recovery rates with the speed of resolution. Delay is identified as a primary contributor to the destruction of asset value, as tangible assets depreciate, intangible assets (goodwill, IP) evaporate, and skilled human capital disperses.

The "creditor-in-control" model of the IBC was inspired by the UK's administration procedure. However, as Armour and Deakin (2001) note, the success of such models hinges on preventing strategic hold-ups and ensuring that the process does not become a playground for value-eroding litigation. The Indian experience shows that without stringent judicial discipline, the model is vulnerable to such hold-ups.

Westbrook (2004) argues that a key goal of modern insolvency law is "to preserve going concern value." This preservation is intrinsically time-sensitive. The longer a company remains in limbo, the more its going-concern value bleeds away, eventually leaving only liquidation salvage value. The frequent extensions under the IBC, often justified to "maximize value," ironically may be achieving the opposite by the time a resolution plan is approved.

*In the Indian context*, scholars like Chakrabarti and Sen (2018) initially hailed the IBC's time-bound nature. However, subsequent empirical analyses, such as those by Bhargavi and Gupta (2021), began documenting the rising trend of delays, attributing them to infrastructural bottlenecks at the NCLT, procedural complexities, and strategic behavior by parties. This article builds on this literature by framing the extension jurisprudence not

merely as an operational hurdle, but as a fundamental subversion of legislative intent that requires a doctrinal correction.

#### 4. How the Study is Undertaken

This research employs a mixed-methods approach:

- 1. Doctrinal Analysis:** A detailed examination of statutory provisions (IBC, especially Sections 12, 60), relevant amendments, and key judicial pronouncements from the NCLT, NCLAT, and the Supreme Court of India (e.g., Essar Steel, Surendra Trading, Babulal Vardharji) that have shaped the jurisprudence on time extensions.
- 2. Empirical & Data Analysis:** Analysis of publicly available data from IBBI newsletters, quarterly reports, and annual reports from 2017 to 2023. This includes tracking metrics like average resolution time, number of cases exceeding 270/330 days, and reasons cited for delays in annual reports.
- 3. Comparative Legal Analysis:** A focused comparison with the insolvency frameworks of the UK, US, and Singapore to contextualize the Indian approach to timelines and judicial discretion.
- 4. Critical Evaluation:** Synthesizing the above to critically evaluate whether the operational reality of the IBC aligns with its stated objectives of value maximization, time-bound resolution, and the promotion of credit culture.

#### 5. Findings from the Study

- 1. Normalization of Breach:** The 330-day timeline is more often breached than adhered to in complex cases. It has become a soft target, with extensions being seen as a routine procedural step rather than an exceptional relief.
- 2. Vague "Sufficient Cause":** Tribunals interpret "sufficient cause" with wide latitude. Reasons such as "to ensure a fair process," "to allow for better bids," "pending investigation," and "large number of stakeholders" are commonly accepted, with little scrutiny on whether the cause truly warrants derailing the statutory timeline.
- 3. The Liquidation Bias of Delay:** Prolonged

CIRP often leads to a depletion of the corporate debtor's value. In numerous instances, by the time the process concludes, the only feasible outcome is liquidation, which was precisely the scenario the IBC aimed to avoid. The data shows a correlation between longer CIRP durations and a higher probability of liquidation outcomes.

- 4. Erosion of Creditor Confidence:** The uncertainty and delay deter financial creditors, especially institutional investors, from using the IBC as a preferred tool for recovery, pushing them back towards bilateral negotiations or debt recovery tribunals, which the IBC was meant to supersede.
- 5. Judicial Infrastructure as a Contributing Factor, Not the Sole Cause:** While backlog at NCLTs is a genuine issue, the study finds that delays are often inscribed into the process itself through serial admission of extension applications, even before the matter reaches the final hearing stage for approval of a resolution plan.

#### 6. Analysis & Interpretation

The findings point to a critical doctrinal flaw. The IBC's design contains an internal contradiction: it mandates extreme speed but grants a discretionary safety valve ("sufficient cause") that lacks any objective standard or outer boundary. This has created a system where the exception has swallowed the rule.

The Supreme Court's judgment in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) was a pivotal moment. While clarifying that the 330-day timeline is mandatory, it also held that delays caused by litigation beyond the parties' control should be excluded. This "exclusion" principle, though pragmatically necessary, has been operationalized by tribunals to justify extensive periods of exclusion, effectively creating a parallel, uncapped timeline.

The analysis reveals a shift in the fundamental nature of the CIRP. It is no longer a swift, collective recovery mechanism but is increasingly resembling a supervised negotiation and litigation platform. The NCLT transitions from a timeline-enforcer to a process-manager overseeing protracted battles. This changes the incentive structure: resolution applicants may low-ball initial

offers, anticipating a depreciating asset base over time, while entrenched promoters may use delay as a strategy to regain control or force a lower settlement.

From an economic efficiency perspective, the cost of delay includes not just the explicit costs of administration and litigation, but the massive implicit cost of capital misallocation. Resources trapped in a non-performing, limbo-state company are denied to productive sectors of the economy, stifling growth.

## 7. Conclusion & Suggestions

The Insolvency and Bankruptcy Code, 2016, stands at a crossroads. Its celebrated timeline, the bedrock of its promised efficiency, has been rendered largely ineffective by a culture of open-ended extensions. To restore its efficacy, a decisive shift from discretionary delay to enforceable discipline is required.

### Suggestions:

**1. Legislative Amendment: Introduce an Absolute Outer Limit:** The Code must be amended to impose an absolute, non-extendable outer limit for the entire CIRP from the insolvency commencement date—for instance, 420 days. Any process not concluding within this period must automatically transition into liquidation, with very narrow, explicitly defined exceptions (e.g., a national emergency). This "sunset clause" will introduce real stakes.

**2. Statutory Definition of "Sufficient Cause":** Parliament should define "sufficient cause" exhaustively through an amendment or a schedule to the IBC. It should be limited to truly exceptional, external events like natural disasters or a stay order from a superior court, and not include operational complexities like valuation disputes or finding buyers.

**3. Strengthened Adjudicatory Mindset:** The NCLT and NCLAT must internalize that granting an extension is a failure of the process and must be treated with utmost circumspection. The burden of proof for "sufficient cause" must be high and squarely on the applicant.

**4. Front-Loaded and Strict Case Management:** The NCLT should adopt robust case management techniques from day one of the CIRP, setting strict, non-negotiable micro-deadlines for each step (constitution of CoC, invitation of EoIs, approval of plan) within the

macro timeline.

**5. Fast-Track Vertical for Delayed Cases:** Establish a dedicated bench or mechanism within the NCLT to exclusively hear cases that are within 60 days of the 330-day limit, to prevent them from slipping over due to hearing delays.

The promise of the IBC was a clean break from India's legacy of inefficient debt recovery. That promise can only be redeemed by restoring the sanctity of time. Without a statutory and cultural commitment to finality, the Code risks becoming just another protracted civil procedure, bearing the title of reform but delivering the outcomes of the past.

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## CA Manish Sukhani Insolvency Professional

### Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) relies heavily on the expertise and impartiality of Insolvency Professionals (IPs), who bear significant statutory and fiduciary duties. However, a recurring issue arises regarding the duration for which a Resolution Professional (RP) is entitled to receive remuneration, particularly during the transition phase between Corporate Insolvency Resolution Process (CIRP) and liquidation. A recent National Company Law Tribunal (NCLT) Mumbai order in *CA Manish Sukhani v. Shri Krishna Chamadia, Liquidator of PIK Resource India Pvt. Ltd.* (IA 1170 of 2025 in CP (IB) 549/MB/2020) has provided crucial clarification, stating that **an RP's right to professional fees extends until formal discharge after handing over charge to the liquidator**, rather than merely until the liquidation application is filed. This ruling has significant implications for insolvency professionals and the broader insolvency ecosystem.

### 1. Background and Context of the Case

The Resolution Professional filed the liquidation application before the Hon'ble NCLT in June 2024. The Hon'ble NCLT passed the liquidation order in August 2024, leaving a significant interim period during which the RP continued to perform his statutory duties.

Upon commencement of liquidation, the Liquidator refused to recognize the RP's fees for the interim period, contending that the CoC had not passed a specific resolution under Regulation 34B (3) approving any fees for the RP for the interim period and that in the absence of a resolution specifically covering the interim period, the RP's entitlement had ceased once the liquidation application was filed. The Liquidator, citing the advice of the Stakeholders Consultation Committee ("SCC"), which opined that the RP had "already completed his role" once the liquidation application was filed, interpreted the absence of a specific CoC resolution as a bar to further payment.

The RP, therefore, filed an Interlocutory Application under Section 60(5) of the IBC before the Hon'ble NCLT, Mumbai Bench, seeking directions for payment of his pending professional fees.

### 2. Relevant Statutory Provisions

Followings are the extracts of the key statutory provisions used in this article for quick reference by the readers –

**Regulation 25** of the INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016.

*An insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.*

**Regulation 34B** of the INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016.

***Fee to be paid to interim resolution professional and resolution professional.***

*(1) The fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.*

*(2) The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II:*

*Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.*

(3) After the expiry of period mentioned in clause 2 of Schedule-II, the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be.

(4) For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance-linked incentive structure as it deems necessary.

(5) The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.

### 3. Tribunal's Analysis

After hearing the parties and perusing the records, the Hon'ble NCLT, Mumbai Bench noted that the CIRP of the Corporate Debtor had continued till the passing of the liquidation order, and that the RP had conducted multiple meetings, and various other activities clearly indicating that he was still holding charge and performing his duties under the Code.

It observed that the RP had not been discharged from his duties. Consequently, he remained responsible for the Corporate Debtor's management and compliance until the date of the order. The Bench emphatically stated:

*"The fact remains that the CoC has not appointed any liquidator. Thus, the Applicant is bound to perform his duty unless he is discharged from the duties by handing over charge to the Liquidator... ..Since he has done his duty up to this stage, he is entitled for fee as per IBBI directives."*

The Tribunal rejected the Liquidator's argument that lack of an explicit CoC resolution negated the entitlement. It held that the RP's right to fees flows not from the discretion of the CoC but from the statutory framework of the Code and Regulations, particularly Regulation 34B(3) and Section 53(1)(a). The entitlement is co-extensive with performance, not dependent on further approval once the CoC ceases to function.

In conclusion, the Hon'ble NCLT directed the Liquidator to release the pending fee of the erstwhile RP within 30 days, recognizing it as part of CIRP costs having priority in distribution.

### 4. Analysis and Implications

The decision of the Hon'ble NCLT Mumbai Bench resonates strongly with established principles of insolvency jurisprudence and equity. It reaffirms three fundamental propositions:

- First, the role of an RP does not terminate upon filing of a liquidation application/ resolution plan application. The Code envisages a seamless transition where the RP continues to safeguard the corporate debtor's affairs until the liquidation order or a resolution plan order is passed and the liquidator or monitoring committee as the case may be assumes charge. This period cannot be treated as gratuitous.
- Second, the entitlement to remuneration is function-based, not form-based. As long as the RP performs duties - holds meetings, files reports, manages accounts, undertakes statutory compliance, etc., he is entitled to payment. The absence of a CoC resolution or SCC recommendation cannot override statutory entitlement.
- Third, denying payment for work done would undermine the policy objective of the minimum fee regime. The IBBI's intent was to eliminate exploitation, not to create new grounds for denial.

At its core, the order recognizes that the office of the Resolution Professional is not a mere administrative role but a continuing statutory function. Once appointed, the RP stands in the shoes of the management, acting as the custodian of the corporate debtor's assets, books, and legal obligations. Until the Tribunal passes a liquidation order or a resolution plan approval order and the newly appointed liquidator or monitoring committee formally assumes charge, the RP remains responsible for safeguarding the corporate debtor and complying with the Code. To expect the RP to carry this responsibility without remuneration would not only offend fairness but also contradict the structure of accountability embedded in the law.

Further, the decision implicitly strengthens institutional efficiency. When professionals are assured of fair compensation for the full span of their responsibilities, they are more likely to act decisively and with independence, ensuring continuity of process and protection of stakeholder interests. Conversely, if uncertainty over fees were allowed to persist, it could lead to premature disengagement, delays in handover, and deterioration in compliance during the transition to liquidation.

Thus, the judgment affirms a balanced and sustainable approach: that the value of insolvency professionals lies not only in the outcomes they achieve but in the integrity of the process they maintain. Protecting their right to reasonable remuneration is therefore not a matter of individual entitlement, it is an institutional necessity for the credibility and functionality of the insolvency regime itself.

## **5. The Broader Significance for Insolvency Practice**

Beyond the individual dispute, this ruling reinforces a critical principle underlying the insolvency regime that professional services rendered under statutory mandate must always attract reasonable remuneration. The Code does not envisage professionals functioning on goodwill or discretion; it envisions a structured ecosystem where competence, accountability, and fairness coexist.

The minimum fee structure introduced by the IBBI as per Regulation 34B of the CIRP Regulations was never intended as a tool for enrichment but as a safeguard against exploitation. In the years preceding its introduction, many insolvency professionals, especially those seeking early assignments, accepted cases for nominal or negligible fees. This undercutting not only eroded the dignity of the profession but also led to compromised administration of processes, dependence on dominant creditors, and potential conflicts of interest. The minimum fee schedule, therefore, serves as a protective floor ensuring that no professional undertaking a complex and high-risk statutory function is left uncompensated for essential work performed.

Further, Regulation 34B of the CIRP Regulations stipulates the minimum fee payable to the RP up to the stage of filing the application for approval of a resolution plan or for liquidation

of the corporate debtor, or as the case may be. The intent behind prescribing this temporal limit was to establish a balanced mechanism by ensuring that while an RP is guaranteed fair remuneration for the period of active engagement, the provision is not misused in situations where no substantive work is undertaken thereafter. In other words, the regulation seeks to protect both sides of the professional relationship: it safeguards the RP from being compelled to work without payment, and at the same time, it prevents billing which is not commensurate with the work undertaken, once the process has effectively concluded or when the corporate debtor possesses no assets to support such claims.

This principle finds direct reinforcement in Regulation 25 of the Code of Conduct under the IBBI (Insolvency Professionals) Regulations, 2016, which explicitly requires that:

*“An insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.”*

The regulation captures a delicate balance: professionals must not overcharge or exploit the estate, yet equally, they cannot be expected to serve without fair compensation.

Regulation 34B (3) is empowerment of the CoC to reduce the fee payable to the Resolution Professional for the interim period even lower than the minimum fee prescribed, if the circumstances so warrant, i.e., the work to be undertaken by the Resolution Professional fairly justifies reduced fee. It is not to be construed to mean that the default fee for the period after filing application for approval of a resolution plan or for liquidation is Zero. The spirit of this Order is to deconstruct this narrow interpretation of Regulation 34B (3). Seen through this lens, the Hon’ble NCLT Mumbai Bench’s decision gives practical effect to the Code of Conduct. By holding that the Resolution Professional remains entitled to fees until formal discharge, the Tribunal not only recognized the RP’s individual right but also upheld the ethical standard that no work performed under the Code should ever be gratuitous.

This affirmation is essential for maintaining professional independence. A reasonably remunerated insolvency professional is better positioned to act impartially, resist external pressures, and ensure procedural integrity. Conversely, uncertainty or denial of fees erodes motivation, delays compliance, and weakens the very foundation of the insolvency ecosystem.

## **6. Conclusion**

The Hon'ble NCLT Mumbai's judgment goes beyond the resolution of an individual fee dispute. It reaffirms the ethical and legal foundations of the insolvency regime: that no work under the IBC can be expected to be done for free, and that professional remuneration flows from statutory duty, not creditor discretion. By recognizing that the RP's entitlement continues until formal discharge, the Tribunal has preserved not only the spirit of the Code but also the dignity of the insolvency profession. It ensures that the transition from resolution to liquidation remains governed by equity, reason, and respect for professional service.

Ultimately, the decision of the Hon'ble Tribunal stands as a timely reminder that the health of the insolvency ecosystem depends as much on procedural efficiency as on the fair treatment of resolution professionals, the officers of the court - and in a system that prizes accountability, fairness begins with assurance of fair remuneration commensurate with the work undertaken by the professional.

# CIIRP UNDER THE IBC (AMENDMENT) BILL, 2025: A NEXT-GENERATION TOOL FOR CORPORATE RESCUE

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## **Abstract**

The Creditor-Initiated Insolvency Resolution Process (CIIRP), envisaged in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, represents a transformative step in India's approach to distressed enterprises. Bridging the divide between informal workout and the full-rigour Corporate Insolvency Resolution Process (CIRP), CIIRP promises early, supervised intervention without the disruption of immediate management displacement.

This article traces the genesis and rationale of CIIRP, its statutory design and key features, practical allocation of stakeholder roles, global context, and the challenges and prospects for its adoption. The goal is to analyse how CIIRP could reshape India's insolvency landscape for the better - if implemented wisely and collaboratively.

## **Part I: Genesis, Rationale, and Statutory Blueprint of CIIRP**

### **I. The Evolution of India's Insolvency Framework**

India's journey towards a modern insolvency regime has been defined by reform, learning, and the pursuit of balance between creditor rights and value preservation. The Insolvency and Bankruptcy Code, 2016 (IBC) was a milestone - replacing a fragmented set of laws (SICA, RDDBFI, SARFAESI, Companies Act) with a unified framework. At its core was the CIRP, introducing creditor primacy, strict timelines, and independent professional management.

However, practical experience since 2016 quickly revealed that CIRP's "one-size-fits-all" approach often proved too rigid or disruptive for companies showing only early distress. Cases that might have benefited from collaborative restructuring were thrust into adversarial resolution, triggering executive departures, stalling operations, and sometimes, value destruction outpacing recovery.

### **The Gaps in CIRP**

**Premature Triggers:** CIRP is frequently invoked in response to technical or minor defaults, where the company is fundamentally viable if given flexible relief and oversight.

**Management Displacement:** The automatic handover of control to insolvency professionals often demotivated capable promoters and dislocated teams, even when cooperation could have yielded better results.

**Market Signal Dangers:** Initiating CIRP can destroy enterprise value by signaling "insolvency" to creditors, suppliers, employees, and the wider market.

**Loss of Negotiation Space:** CIRP's adversarial setup deepened creditor-debtor rifts, cutting short any prospect of negotiated solutions.

**Inefficient Outcomes:** Many cases resulted in delayed resolutions or even liquidation, with minimal returns for stakeholders and broader economic shock.

### **II. The Case for Early, Court-Supervised Restructuring: Enter CIIRP**

Recognizing these pitfalls, lawmakers and insolvency experts argued for a mechanism enabling early-stage, statutory, court-supervised, and creditor-driven restructuring, but without the drastic consequences of immediate management removal. The IBC (Amendment) Bill, 2025, hence, introduces the CIIRP as a complementary, not substitute, instrument to CIRP.

### **Objectives of CIIRP**

**Empower Creditors:** Allow financial creditors, based on clear early distress signals (not only actual payment defaults), to initiate a process with enforceable legal backing.

**Preserve Management Continuity:** Permit the existing management to retain day-to-day control, subject to rigorous transparency and oversight.

**Minimize Disruption and Value Loss:** Avoid catastrophic signalling and operational turmoil, keeping businesses as “going concerns.”

**Structured Oversight:** Install an impartial resolution professional (RP) as process supervisor - not manager - to ensure compliance, information sharing, and good-faith negotiation.

**Faster, Flexible Solutions:** Impose tight timelines and accessible conversion mechanisms if the process is being abused or proves fruitless.

### III. Key Legal and Structural Features of CIIRP

#### 1. Triggers and Admission

**Eligibility:** Financial creditors may apply for CIIRP when a debtor shows “early signs of distress” - delays, covenant breaches, or emerging liquidity issues - as per thresholds set by the Insolvency and Bankruptcy Board of India (IBBI).

**Admission Process:** NCLT must review whether clear evidence exists for distress and whether informal negotiation has failed or proved unviable.

#### 2. Professional Supervision and Management Retention

**Role of RP:** The RP monitors compliance, verifies claims, collects data, and examines business conduct, but does not assume operational control.

**Management Duties:** While running the business, management is held to the highest standards of cooperation and disclosure, under potential penalty of conversion to CIRP if non-cooperative.

#### 3. Committee of Creditors (CoC) Oversight

The CoC (constituted as per IBC) steers the process: reviewing performance, considering restructuring proposals, and approving escalation to CIRP if milestones are missed.

#### 4. Tight Timelines and Conversion Triggers

Every phase of CIIRP must be completed within defined periods (to be specified by regulations); failure by management to cooperate or resolve means automatic escalation to CIRP.

### 5. Safeguards and Penalties

**Abuse Deterrence:** Amendment to Section 65 imposes severe penalties (up to Rs. 2 crore) for mala fide applications or attempts to game the system by creditors or debtors.

**Regulatory Oversight:** The IBBI sets standards, formats, and reporting instructions; NCLT remains final authority.

### Part II: CIIRP in Practice - Stakeholders, Safeguards, Global Parallels, and Implementation

#### I. Operationalizing CIIRP: New Responsibilities and Conduct

CIIRP’s success depends on the effective realignment of stakeholders’ roles: balancing creditor authority, managerial transparency, and professional neutrality.

##### A. Resolution Professional (RP)

Acts as a process monitor (not administrator), responsible for:

**Information symmetry:** Ensuring all material information reaches CoC and creditors.

**Verification:** Checking claims, financials, and business records.

**Reporting:** Promptly flagging non-cooperation, asset risks, or malpractice.

**Documentation:** Keeping a complete audit trail, vital if the case escalates to CIRP.

##### B. Creditors and CoC

**Initiation:** Credit applications must be bona fide, with clear supporting documents.

**Oversight:** CoC sets operational benchmarks, considers restructuring, and makes timely decisions.

**Vigilance:** Monitor for abuses - penal sanctions guard against “strategic filings” merely to pressure management.

##### C. Corporate Debtor / Management

**Duty of Cooperation:** Full transparency, timely documentation, and business continuity.

**Trust but Verify:** Understand that obstruction, non-disclosure, or asset depletion results in

immediate conversion to CIRP, at the cost of management control.

**Stakeholder Engagement:** Must pursue negotiated solutions within set timeframes.

#### D. Regulator (IBBI) and Adjudicator (NCLT)

**IBBI:** Issues rules, codes of conduct, process templates, and periodic reviews.

**NCLT:** Ensures discipline, adjudicates disputes, and authorizes or denies escalations.

## II. Safeguards, Fail-safes, and Risk Mitigation

Recognizing CIIRP's potential for both transformative rescue and opportunistic abuse, the Amendment Bill builds a series of protections:

**Expedited Timelines:** All process steps are strictly time-bound, to prevent delay and value-loss.

**Escalation Mechanism:** If the process is obstructed - by either party - it escalates to CIRP, with all attendant consequences.

**Penalties for Abuse:** Both creditors and debtors face financial and reputational consequences for dishonest conduct.

**Continuous Feedback Loop:** IBBI is mandated to refine the framework based on market usage and feedback - ensuring its practical relevance.

## III. International Comparisons: Learning from Global Practice

CIIRP's design is not an isolated concept; it draws inspiration from, and measures itself against, international best practices:

#### A. United States: Pre-Packaged and Pre-Negotiated Chapter 11

US law encourages early negotiation, continuous oversight, and management retention where possible, seeking to avoid destruction of viable firms.

Pre-packs, supported by court supervision, lead to quicker and less disruptive resolutions.

#### B. United Kingdom: Restructuring Plans

UK plans focus on cross-class creditor engagement, keep management in place, and structure judicial intervention for efficiency.

They minimize adversarial deadlock - an inspiration for CIIRP's collaborative framework.

#### C. Singapore: Judicial Management and Enhanced Pre-Packs

Early judicial management favours negotiated solutions, quick escalation only when cooperation fails, and strict professional discipline.

#### D. Lessons for India

**Cross-jurisdictional evidence is clear:** Such processes work best when timelines are immutable, incentives of all parties are aligned towards resolution, and court intervention is judicious but firm.

**Adapting to Indian realities:** India must couple robust statutory frameworks with practical training of insolvency professionals, rapid judicial response, and ongoing regulatory refinement. A culture of constructive negotiation must replace the adversarial reflexes that have historically dominated debt recovery in India.

## IV. Implementation Challenges and the Path Forward

Despite the careful statutory structuring, CIIRP's real-world success will depend on navigating certain significant challenges:

#### 1. Professional and Cultural Readiness

**Training and Standards:** Resolution Professionals must transition from being just administrators to sophisticated process stewards - requiring new training, ethical guidance, and support from the IBBI.

**Market Awareness:** Both creditors and corporate debtors must develop confidence that CIIRP is neither a loophole for irresponsible management nor a fast track for aggressive enforcement, but a balanced, solution-oriented approach.

#### 2. Judicial and Regulatory Capacity

**Strengthening the NCLT:** The anticipated increase in applications will test the National Company Law Tribunals' capacity and speed. Streamlined bench procedures, increased judicial manpower, and technology adoption are urgent needs.

**Dynamic Regulation:** The IBBI should be empowered and resourced for real-time monitoring, rapid issue of clarifications, and iterative improvement of CIIRP operational norms.

### 3. Preventing Misuse and Addressing Skepticism

**Robust Screening:** Admission criteria must be meaningful to filter out frivolous or strategic filings, and penalties for abuse must be strictly enforced and publicly communicated.

**Safeguarding against Stigma:** Regulatory and market messaging must make clear that CIIRP is a sign of proactive, responsible crisis management - not imminent failure - so that reputation, customer trust, and enterprise value are preserved.

### 4. Feedback, Data, and Course Correction

**Active Oversight:** The success of CIIRP must be measured through transparent data: percentage of early resolutions, business survival rates, stakeholder satisfaction, and instances of abuse.

**Policy Evolution:** Guided by this evidence, policymakers must remain agile, prepared to recalibrate thresholds, roles, or incentives as market realities evolve.

## V. Synthesis and Way Forward

CIIRP, as conceived in the IBC (Amendment) Bill, 2025, is much more than just another procedure: it embodies a philosophy of early intervention, negotiation, and the preservation of value through measured, court-backed collaboration. Critically, it fills the vacuum between informal, non-statutory workouts and the high-stakes adversarial world of CIRP - offering creditors a remedy that is both swift and sensitive, and giving debtors an incentive to engage honestly at the first signs of trouble.

To realize its potential, however, mindset transformation is essential:

- **Creditors** must exercise commercial wisdom to distinguish between “can be salvaged” and “must be enforced,” avoiding the temptation to escalate for leverage or short-term gain.
- **Corporate management** must shed fears of inevitable loss of control, embracing CIIRP as a framework for transparent rescue.

- **Professionals and regulators** must anchor the process in integrity, capability, and relentless commitment to enterprise value maximization combined with fairness for all parties.
- **The judiciary** must respond with urgency - streamlining dispute resolution while preventing abuse.

If these cultural and institutional shifts occur, CIIRP could stand among the most progressive reforms globally - a testament to India’s ability to adapt the best of international practice to local realities, and an instrument of national economic resilience.

### Conclusion: A Transformative Opportunity

India’s insolvency reforms have steadily moved towards greater coherence, efficiency, and fairness. With CIIRP, the country stands on the threshold of a third generation of insolvency practice: one rooted in early diagnosis, professional stewardship, and trust - but equipped with robust tools to penalize abuse and ensure credible outcome. Implemented in its true spirit, CIIRP will not only conserve value for creditors, employees, other stakeholders and the broader economy, but also set new standards for responsible corporate conduct - demonstrating that prevention, not just cure, is the hallmark of a modern legal regime. The coming years will reveal whether India’s institutions - legal, regulatory, financial, and managerial - can work in concert to make this vision a reality.

This article analyses CIIRP based on the provisions of the IBC (Amendment) Bill, 2025, as introduced, and does not account for any subsequent notifications, rules, or judicial interpretations.

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# DIRECTORS NOT AUTOMATICALLY LIABLE FOR COMPANY'S GST DUES IF LIQUIDATOR APPOINTED

## Mr. Jaykishan Rathi Insolvency Professional

The Madras High Court disposed of the writ petition, vacating the attachment of the petitioners' (directors') bank accounts. This decision allows the directors to make a representation to the authorities, arguing they are not liable for the company's GST dues incurred during liquidation, as a liquidator had been appointed, aligning with the conditional liability under Section 88(3) of GST Enactments.

### Text of Judgement of Madras High Court:

1. The petitioner appears to be the Directors of the Company under liquidation, viz., M/s. Infinitas Energy Solutions Private Limited. It appears that proceedings under IBC, 2016 came to be initiated against the said Company, and therefore, the fourth respondent herein was appointed as an Interim Resolution Professional (IRP) on 08.09.2017.
2. Subsequently, by an order dated 06.02.2019, in C.P.No.558/1B/CB/2017, the aforesaid Company was ordered to be liquidated and the fourth respondent herein was appointed as a Liquidator of the said Company.
3. It further appears that the business of the said Company was carried on thereafter even during the period of April, 2019 and March, 2021, in respect of which certain tax liability is said to have been incurred by the said Company under liquidation.
4. In respect of those tax liability incurred by the said Company under liquidation, impugned recovery proceedings has been initiated by attaching the Bank account of the petitioners maintained with the third respondent-Bank on the ground that the petitioner and the Directors as per the records maintained by the Corporate Affairs Department.
5. According to the petitioner, they are no longer associated with the said Company under liquidation, as, the said Company is in charge of the fourth respondent, who was initially appointed as Interim Resolution Professional by order dated 08.09.2017 and later on, appointed as a Liquidator of the said Company by order dated 06.02.2019.
6. The facts on records also reveal that tax amount has also been recovered from the credit ledger maintained by the said Company and that the said Company is in arrears of interest and penalty as confirmed by orders passed by the Assessing Officer. There is no justification on the part of the respondent-Income Tax Department to attach the respective petitioner's Bank account, who are the individual Directors of the said Company under liquidation for the mandate of Section 88(3) of the respective GST Enactments.
7. For the sake of clarity, Section 88 of the respective GST enactment is reproduced below:  
***"Section 88 Liability in case of company in liquidation"***
  - a. When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.
  - b. The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
  - c. When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax Writ Appeal due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless

he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.”

- d. Therefore, it is open for the petitioner to move suitable application before the respondents Nos.1 and 2 to extricate themselves from the liability in the impugned order. The petitioners are therefore given liberty to file suitable application within 15 days from the date of receipt of a copy of this order. The respondent shall thereafter pass appropriate orders on merits as expeditiously as possible preferably within a period of 15 days.
- e. Needless to state the petitioner shall be heard before passing final order.
- f. The attachment of the petitioner’s bank account(s) shall also stand vacated subject to the order to be passed.
- g. This Writ Petition is disposed of with the above observations. No costs. Connected W. M. Ps are closed.

#### Summary of Facts and Dispute:

- **Impugned Action:** Recovery proceedings were initiated by attaching the personal bank accounts of the petitioners, who were directors of M/s. Infinitas Energy Solutions Pvt. Ltd., a company under liquidation. This action was taken for tax liability incurred by the company between April 2019 and March 2021, despite a liquidator being appointed on February 6, 2019.
- **Petitioner's Argument:** The petitioners contended that they were no longer associated with the company after the appointment of the Interim Resolution Professional on September 8, 2017, and subsequently the Liquidator on February 6, 2019. They argued that the company was under the charge of the Liquidator and their personal bank accounts could not be attached for the company's liabilities.
- **Core Question of Law:** Whether individual directors of a company under liquidation can be held jointly and severally liable for the company's unrecovered tax, interest, or penalty, or if Section 88(3) of the GST Enactments provides an avenue for them to prove non-recovery is not attributable to their gross neglect, misfeasance, or breach of duty.

#### Key Legal Issues & Findings:

#### Interpretation of Director's Liability under Section 88 of GST Enactments

The Court considered the provisions of Section 88 of the GST Enactments regarding the liability of a company in liquidation. No specific precedents were cited by the Court.

- **Liquidator's Duty:** Section 88(1) mandates a liquidator to inform the Commissioner of their appointment within thirty days.
- **Commissioner's Inquiry:** Section 88(2) requires the Commissioner to notify the liquidator of the amount sufficient to cover any existing or future tax, interest, or penalty payable by the company.
- **Directors' Conditional Liability:** Section 88(3) provides that directors of a private company that is wound up, and whose tax, interest, or penalty cannot be recovered, shall be jointly and severally liable for such payment, unless they prove to the Commissioner's satisfaction that such non-recovery is not attributable to their gross neglect, misfeasance, or breach of duty.

#### Ruling:

- **Outcome:** The attachment of the petitioners' bank accounts is vacated.
- **Directions:** The petitioners are granted liberty to file a suitable application before respondents 1 and 2 within 15 days to extricate themselves from liability. The respondents must then pass appropriate orders on merits, expeditiously, preferably within 15 days, after hearing the petitioners.
- **Liberty:** The Revenue is implicitly granted liberty to proceed against the directors based on the outcome of their application and the Commissioner's assessment under Section 88(3).

#### Key Points:

- The Madras High Court ruled that directors of a company undergoing liquidation are not automatically liable for the company's Goods and Services Tax (GST) dues.
- Liability for GST dues can only be imposed on directors if specific statutory conditions outlined in Section 88 are met.
- This ruling clarifies the extent of directors' financial responsibilities during a company's liquidation process, potentially influencing future cases involving corporate insolvency.

#### Case Name :

**N. Ramkhuar Narasimhan Vs Assistant Commissioner (ST) (Madras High Court) W. P. No.50528 of 2025**

# LEVERAGING THIRD PARTY FINDING FOR FACILITATING AVOIDANCE TRANSACTIONS CLAW BACK

**Dr. S K Gupta**  
**Managing Director**  
**ICMAI Registered Valuers Organization**

## The Perspective

Corporate insolvency and bankruptcy are critical issues that impact the financial stability and operational viability of businesses. In India, the Insolvency and Bankruptcy Code, 2016 (“Code”) serves as a comprehensive framework to address insolvency and ensure timely resolution. During insolvency or liquidation proceedings, the primary goal is to maximize the recovery of assets of the Corporate Debtor and distribute them fairly among stakeholders, ensuring that creditors are paid in accordance with their priority and shareholders receive their share of any remaining assets. Here comes the role of avoidance transactions, which is aimed to undo all the prior transactions that were undertaken to benefit any particular creditor/set of creditors that harm the interest of all other creditors. By avoiding such transactions, the Code endeavours to maximise the assets of the Corporate Debtor and hence accords more protection to the creditors. The Insolvency Code contains four types of avoidance transactions, which are preferential, undervalued, fraudulent and extortionate credit transactions, covered under Sections 43, 45, 66 and 50 of the Code, respectively.

## Avoidance transactions

Avoidance transactions are financial dealings undertaken by a corporate debtor before insolvency that unfairly deplete its assets, harming the collective interest of creditors and undermining the goal of equitable asset distribution. These include preferential transactions under section 43, where a creditor is given an advantage over others, undervalued transactions under section 45, involving asset transfers for significantly less than market value, extortionate credit transactions under section 50, characterized by unconscionably high interest or charges, and fraudulent or wrongful trading under section 66, which address the intentional fraud or continued

operations with no reasonable prospect of avoiding insolvency. Pursuing these cases requires resources and time, making TPF a valuable enabler for recovery optimization.



The underlying principle behind avoiding such transactions is to protect the general body of creditors as a whole, to prevent unfair advantage being conferred on certain creditors at the cost of others, and to maximise the overall pool of assets available in the insolvency resolution and liquidation processes. Such transactions may be “avoided” by the adjudicating authority (AA) upon an application made by the resolution professional (RP) or the liquidator. Under Section 25(2)(j) IBC, the RP must apply for avoidance of transactions by Chapter III.

The IBC treats avoidance proceedings as separate from and independent of the CIRP proceedings.<sup>146</sup> The CIRP is usually completed prior to the adjudication of the avoidance applications in the matter, either by way of approval of the resolution plan submitted by the Successful Bidder, or, by the passing of an order for liquidation where there is no Successful Bidder. Upon conclusion of the CIRP, the IP stands discharged. If the debtor is ordered to liquidation, the liquidator carries the avoidance application forward. In case a resolution plan is approved, the IBC requires that the resolution plan provide for the manner in which: (a) avoidance proceedings will be pursued after the approval of the plan; and (b) the proceeds, if any, from such proceedings will be distributed

## **Distribution of Proceeds**

At present, there is a lack of clarity in the IBC about whether the proceeds recovered from avoidance actions can be shared with parties other than the debtor's creditors. The IBC is silent on how such recoveries should be treated. In considering this question, the 2020 Report observed that: In most cases it may be better suited to distribute recoveries amongst the creditors of the corporate debtor. While the Committee agreed on this principle, it noted that factual factors such as - the kind of transaction being avoided, party funding the action, assignment of claims (if any), creditors affected by the transaction or trading, etc. - may need to be taken into account when arriving at a decision regarding distribution of recoveries. Thus, it was recommended that instead of providing anything prescriptive in this regard, the decision on treatment of recoveries may be left to the adjudicating authorities.

## **The challenge in dealing with PUF**

The claw back of value lost by a debtor's estate due to avoidance transactions is a notoriously fact-intensive, time-consuming and expensive affair. Avoidance claims that are high-value and meritorious can be among the most valuable assets of an insolvent debtor. For creditors under the IBC, these actions can take even more significance. Avoidance actions can therefore present a vital avenue to reduce creditor haircuts and improve recoveries. Globally, the most significant impediment in the pursuit of avoidance actions has been the unavailability of funds to pursue these claims. RPs and liquidators often have limited financial resources as their fees and expenses are paid from the corporate debtor's estate, which is stressed or lacking sufficient cash. TPF can fund legal proceedings against promoters or third parties by covering all associated legal costs upfront, such as counsel fees, court fees, and other dispute-related expenses, in exchange for a share of the recovery, if successful.

## **Third Party Funding**

Third Party Funding (TPF) is an arrangement where a funder, who is not a party to the dispute, provides monetary support to one of the parties. If the funded party's claim is successful, the funder typically receives a portion of the amount awarded or recovered.

Third Party Funding ("TPF") also known as Litigation financing, is the non-recourse funding of litigation costs of a party by a funder in exchange for a share in the monetary award of the litigation, if successful.

## **Short description of models for funders' return**

There are three common structures of a third-party funding transaction:

- the claimant holds the proceeds from its claim(s) in a trust, in which the third party funder is one of the beneficiaries;
- the claimant assigns the proceeds from its claim(s) to the third party funder; or
- the claimant assigns the claim(s) in itself to the third party funder.

## **Who are the funders?**

In addition to specialized third party funders, investment banks, hedge funds, insurance companies and pension funds also invest in legal claims as an asset class.

## **Third party funders considerations**

The general view in the TPLF industry is that a case must have at least a 60% prospect of success to be considered for funding. The ideal case for a funder is one that offers a quick result and a good return. If the litigation involves doubtful legal issues or contentious facts, funders will find the outcome of the case to be unpredictable, with the added disadvantage that there will be appeals. Such a case spells uncertainty, delay and expense. From the funders' perspective therefore, the most essential part of the funding process is the due diligence. Funders must have enough information to assess the potential risks involved in the case, including the adequacy of evidence and issues with enforceability. The case duration is important to funders for two reasons: First, the capital invested by the funder is tied up in the litigation and not deployed elsewhere. The longer the case duration, the greater the opportunity cost to the funder.<sup>132</sup> Second, the longer the case goes on, the more likely it becomes that the case will be litigated rather than settled early.

A third party funding market will offer a new avenue for financing avoidance claims and

incentivise IPs to investigate and pursue avoidance actions with more intensity – substantially enhancing recoveries for creditors. If a settlement mechanism for avoidance actions is introduced, the presence of a well-resourced funder will encourage settlements. TPLF can thus give the avoidance transactions framework more teeth. A stronger avoidance regime will mean that promoters and managers are more likely to be held accountable for executing dubious transactions in the vicinity of insolvency. In the longer term, greater accountability can have a deterrent impact and improve corporate culture among Indian companies. In addition to improvements in the avoidance framework, this can also help reduce the delays and backlogs in adjudication, as the presence of funders will push more cases to be settled outside of tribunals.

### ***Synergy between TPF and the IBC***

RPs and liquidators often have limited financial resources as their fees and expenses are paid from the corporate debtor's estate, which is stressed or lacking sufficient cash. TPF can fund legal proceedings against promoters or third parties by covering all associated legal costs upfront, such as counsel fees, court fees, and other dispute-related expenses, in exchange for a share of the recovery, if successful. TPF's integration with the IBC provides strategic synergies, particularly in terms of improving price discovery and creditor recoveries. Under the IBC, RPs and liquidators are usually resource-constrained in pursuing avoidance claims that are a small fraction of total recoveries but can potentially recover billions. TPF provides non-recourse funding, takes on all of the downside risk, and has a success based return from the proceeds for its investment.

This process builds a deeper secondary market for distressed assets that leads to more competitive resolution plans. For example, Hindustan Construction Company Ltd. received litigation funding where TPF funded the arbitration claims during the CIRP process, which helped improve valuations and recovery values for the assets. Similarly, in the Patel Engineering insolvency, TPF provided funding to resolve disputes, which was part of TPF's function of creating or preserving a going concern. This was helpful because it allowed for litigation funding without using the estate's funds but still helped ensure the estate complied with IBC imperatives of maximisation of value.

Empirical data demonstrates that avoidance recoveries under IBC are a limited pursuit, which provides an increasing gap between fair value assessments and actual realisations. TPF assists in closing this gap by funding prolonged proceedings. There are plenty of examples around the world, such as the UK Carillion insolvency process, where the TPF funded claims process shows a significant uplift in potential realisations for creditors. In India, the National Company Law Appellate Tribunal (NCLAT) in the *Archernar Brand Technologies* case allowed defensible petitioners and creditors to be included in the proceedings through the scheme and, in doing so, created a path indirectly for TPF by allowing a wider range of petitioners and creditors to compete.

The Insolvency and Bankruptcy Board of India (IBBI) may consider registering third-party funders adopting the guidance of Hong Kong's Code of Practice for Third Party Funding of Arbitration and Singapore's model, with regulatory parameters that impose a cap on success fees of approximately 30%, and limit controls over proceedings to maintain RP's independence

### **Litigation funding – International scenario**

Litigation funding was generally limited to common law jurisdictions like United Kingdom (UK), United States and Australia until recently, but it has seen a significant expansion in recent years. Countries such as Germany, Hong Kong and Singapore have also taken measures to remove legal impediments to Third Party Funding. These jurisdictions have clearly recognised the benefits of the concept, which includes a more effective recovery mechanism, and easier access to justice.

### **Government considers IBC amendments to enable third-party funding in avoidance transactions.**

The Government is reportedly considering amendments to the Insolvency and Bankruptcy Code to permit third party funding for pursuing avoidance and fraud related transactions such as preferential, undervalued, fraudulent and extortionate transactions. This could mark a significant shift in how recoveries are pursued under the IBC framework. At present, Resolution Professionals and creditors are responsible for initiating and pursuing such

proceedings.

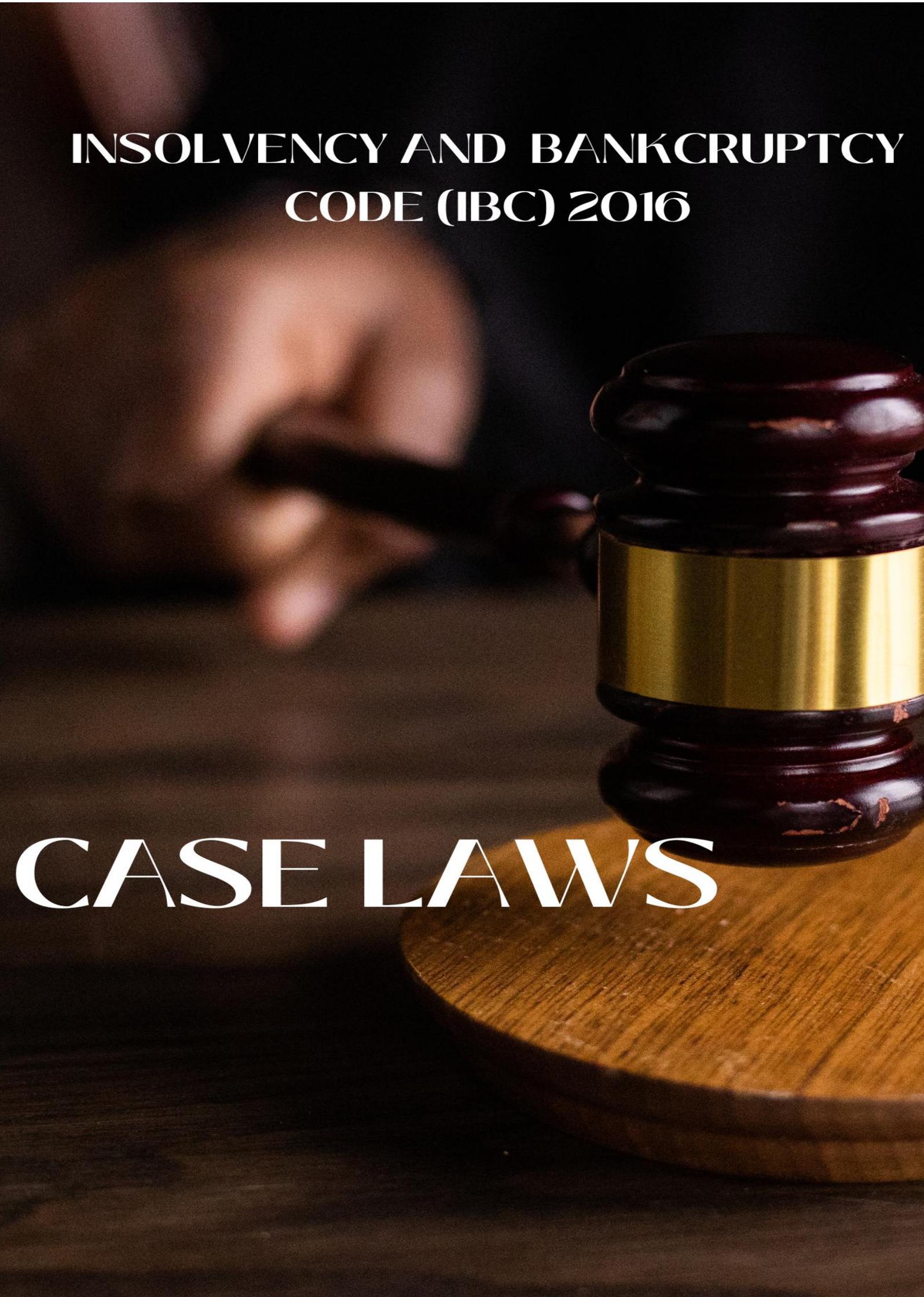
However, these cases are often complex, time consuming and expensive. In many instances, lack of resources or commercial viability results in such claims not being pursued aggressively or being left unresolved after completion of the resolution process. The proposed reform would allow specialised entities or litigation funders to finance and pursue these claims, typically in return for a share in recoveries. This may ensure continuity of proceedings even after the resolution plan is approved or liquidation commences, thereby maximising value for creditors. If implemented, this move could strengthen the enforcement ecosystem under the IBC by improving asset recovery, enhancing accountability in fraud cases and aligning commercial incentives with long term recoveries.

## Conclusion

TPF can transform Avoidance Recoveries under IBC by enabling RPs to pursue high-cost legal actions during insolvency proceedings without diverting essential resources from the CIRP. This financial support allows creditors to recover value from disputed claims and avoidance transactions that might otherwise be abandoned due to financial constraints. Although India lacks a formal regulatory framework for third-party funding, judicial pronouncements have generally upheld the permissibility of such arrangements, signaling a positive shift toward greater creditor empowerment. Hence, Third-Party Funding stands as a pragmatic solution bridging resource gaps and strengthening India's insolvency resolution framework.

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**INSOLVENCY AND BANKRUPTCY  
CODE (IBC) 2016**

**CASE LAWS**

## SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

### **A A Estates (P.) Ltd. vs. Kher Nagar Sukhsadan Co-operative Housing Society Ltd. [2025] 181 taxmann.com 5 (SC)**

*I. Where Society terminated developer's engagement under development agreements due to persistent non-performance, such termination was lawful, effective, and unrelated to developer's insolvency, and because no proprietary or contractual right survived with corporate debtor at initiation of second CIRP, NCLT lacked jurisdiction to interfere under Section 60(5)(c), as continuation of redevelopment was not significant to CIRP success.*

*II. Moratorium under section 14 protects only existing, enforceable, and subsisting rights; it does not protect inchoate or forfeited rights arising from default or non-performance.*

The corporate Debtor, a developer, entered into a redevelopment agreement with a housing society but failed to complete project within agreed timeline. Although a supplementary agreement in 2014 extended deadline and revised compensation, redevelopment still did not begin due to disputes. CIRP proceedings were initiated twice, first in 2019 but later set aside due to settlement and again in 2022. Meanwhile, society terminated developer's contract, appointed a new developer, and executed a fresh agreement in 2023. However, due to ongoing second CIRP and moratorium under section 14, necessary permissions for new developer were revoked. Society then filed a writ petition seeking approvals, which High Court granted, leading to present appeal.

I. Held that termination was not occasioned by insolvency of the corporate debtor but by its persistent non-performance and, therefore, termination was based on legitimate grounds unrelated to insolvency. Redevelopment agreement was not sole or life-sustaining contract of the corporate debtor and, therefore, continuation of this particular redevelopment was not significant to success of CIRP. Termination of contract neither arose from insolvency nor imperilled the corporate debtor's survival and, therefore, it was a lawful termination for non-performance, falling outside jurisdiction of NCLT under Section 60(5)(c). No subsisting contractual or proprietary right survived in favour of the corporate debtor on date of initiation of second CIRP and, therefore, NCLT lacked jurisdiction under Section 60(5)(c) to interfere with such termination.

II. Held that moratorium under section 14 protects only existing, enforceable, and subsisting rights. Moratorium does not extend to inchoate or forfeited rights arising from default or non-performance. Development rights of a defaulting developer who neither secured possession nor undertook any redevelopment activity cannot be elevated to status of an 'asset' or 'property' within meaning of section 3(27). Where Development Agreement and Supplementary Agreement between the corporate debtor and society stood terminated prior to initiation of CIRP, no subsisting or enforceable right survived in favour of the corporate debtor and, thus, said agreements did not constitute 'assets' or 'property' of the corporate debtor within meaning of section 14.

## SECTION 33 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

### **Shri Karshni Alloys (P.) Ltd. vs. Ramakrishnan Sadasivan [2025] 181 taxmann.com 335 (SC)**

*Where appellant accepted and acted upon order of NCLT granting him extension of time to make payment for purchase of assets of corporate debtor but failed to make payment*

*by due date, appellant could not seek to approbate and reprobate at this stage by assailing forfeiture clause in said order, having accepted and acted upon extension granted thereunder.*

Corporate insolvency resolution process (CIRP) against the corporate debtor was initiated but pursuant to order passed by Adjudicating Authority, liquidation process of the corporate debtor commenced and respondent was appointed as liquidator. The appellant made an offer of Rs. 105.21 crores to liquidator to purchase assets/plant of the corporate debtor at Raichur as a going concern. NCLT allowed application filed by liquidator and directed the appellant to pay sale consideration within 15 days from date of receipt of said order. Appellant sought extension of time to make balance payment. NCLT granted extension of time directing the appellant to strictly comply with timelines and any deviation from same would result in forfeiture of entire amount paid by the appellant. Admittedly, the appellant failed to abide by extended timelines. However, it paid a further sum, thereby bringing total

amount paid by it to Rs. 37.80 crores. Stakeholders decided to enforce forfeiture of entire payment made by the appellant. The appellant challenged forfeiture on ground that after forfeiture, assets/plant of the corporate debtor were sold for a much higher price and, thus, there was no actual loss suffered by stakeholders. NCLT dismissed application. NCLAT also dismissed appeal.

Held that NCLT was fully justified in adding forfeiture clause that if the appellant deviated from timelines as set out in order, entire amount paid by it was liable to be forfeited. Since, the appellant had accepted and acted upon extension order by making further payment but failed to make full payment by due date, the appellant could not seek to approbate and reprobate at this stage by assailing forfeiture clause in said order, having accepted and acted upon extension granted thereunder. Thus, there being no merit in contentions advanced on behalf of the appellant, appeal was to be dismissed.

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

**Sanjay Jhunjhunwala vs. Piramal Finance Ltd. [2025] 181 taxmann.com 340 (Calcutta)**

*Where proceeding under Section 95 against petitioner-guarantors was pending before National Company Law Tribunal (NCLT), if petitioners were aggrieved by any steps taken therein, petitioners had an adequate remedy before National Company Law Appellate Tribunal, writ petition challenging invocation of jurisdiction of NCLT by financial creditor was not maintainable.*

Petitioners were guarantors who have provided personal guarantees securing Credit Facilities availed by the principal borrower. Petitioners filed instant writ

alleging that despite principal borrower having cleared entire outstanding amounts due and payable along with penal interest, the respondent-financial creditor had illegally instituted personal insolvency proceedings against petitioners. It was noted that proceeding under Section 95 was pending before National Company Law Tribunal (NCLT) and if petitioners were aggrieved by any steps taken therein, petitioners had an adequate remedy before National Company Law Appellate Tribunal.

However, petitioners without taking appropriate steps before appropriate forum, had filed instant writ petition, which was not maintainable.

Held that instant writ challenging invocation of jurisdiction of NCLT by

financial creditor was to be dismissed.

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

### **Saraswati Wire and Cable Industries vs. Mohammad Moinuddin Khan [2025] 181 taxmann.com 341 (SC)**

*Where no dispute existed on date of issuance of demand notice by operational creditor that could warrant withholding of operational debt due and payable by corporate debtor and subsequent defence of pre-existing disputes sought to be put forth by corporate debtor was mere moonshine and had no credible basis or foundation, order passed by NCLAT setting aside admission of application under section 9 by NCLT was to be set aside.*

The corporate debtor placed purchase orders on the operational creditor for supply of pipes and cables for its projects. The operational creditor raised invoices and the corporate debtor made payments on strength of said invoices. The operational creditor issued demand notice under section 8 claiming outstanding amount. The corporate debtor in its reply to said demand notice raised dispute regarding quality and quantity of goods supplied by the operational creditor. However, it was an admitted fact that even after issuance of demand notice by the operational creditor,

corporate debtor continued to make payments to the operational creditor. The operational creditor filed an application under section 9. NCLT admitted said application on ground that there was no pre-existing dispute. On appeal, NCLAT set aside order of admission passed by NCLT on ground that there was a pre-existing dispute between parties as to operational creditor's debt.

Held that there was no dispute worth name existing as on date of issuance of demand notice by the operational creditor warranting withholding of operational debt due and payable by the corporate debtor. Since minor issues raised by the corporate debtor obviously did not have effect of either stopping further supplies by the operational creditor or further payments to the operational creditor by the corporate debtor, defence of pre-existing disputes sought to be put forth by the corporate debtor was mere moonshine and had no credible basis or foundation. Therefore, NCLAT having lost sight of critical facts while dislodging order of admission passed by NCLT, order of admission passed by NCLT was to be restored.

## SECTION 16 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL - APPOINTMENT AND TENURE OF

### **Jacob P.P vs. National Company Law Tribunal [2025] 181 taxmann.com 578 (Kerala)**

*Where homebuyers, financial creditors, filed a section 7 application against a developer and proposed an IRP with requisite consent and no disciplinary proceedings pending, NCLT could not substitute another professional by merely citing multiple*

*ongoing assignments and Regulation 22 if proposed professional were within statutory limits, thus, NCLT was required to appoint proposed professional as per section 16 mandate.*

Petitioners, homebuyers, filed application under section 7 for initiating CIRP against developer, the corporate debtor. Petitioners proposed one, J as Interim Resolution

Professional with Form-2 consent and a declaration that no disciplinary proceedings were pending. NCLT admitted application and commenced CIRP. However, NCLT declined to appoint proposed professional by relying on Regulation 22 and citing that he was handling multiple ongoing assignments and instead appointed another professional as IRP. It was noted that proposed professional was engaged as an IRP only in 7 matters, out of which in one matter a withdrawal application had been filed and in another liquidation proceedings were almost completed.

Held that regulation No. 7B which deals with number of assignments an Insolvency Professional could have at one point only mandates that resolution professional shall not hold more than ten assignments in aggregate. Thus, resolution professional proposed by petitioners never had any assignment in violation of Regulation 7B or Clause 22 of First Schedule to Regulation, 2016. Since based on sections 10 and 16, it was incumbent on part of NCLT to appoint resolution professional as proposed in application under section 10, impugned order of NCLT, declining to appoint interim resolution professional was to be set aside.

## SECTION 9 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR

### **Kotak Mahindra Bank Ltd. vs. State of Maharashtra [2025] 181 taxmann.com 580 (Bombay)**

*Where an application under section 9 was already filed by operational creditor against principal borrower, which was admitted, any application filed by guarantor before DRT under section 95 read with section 179 of IBC would not be maintainable, as section 60(2) of IBC becomes operational.*

The petitioner operational creditor granted loan to principal borrower, which was guaranteed by the respondents by giving their personal guarantees. The petitioner initiated proceedings under SARFAESI Act. Respondents initiated collusive proceedings only to stall proceedings under SARFAESI Act. Against this, an application was filed by the respondent no. 3 under section 95

before DRT. The petitioner filed instant writ petition contending that jurisdiction to entertain application under IBC now lies with NCLT and not DRT. It was noted that an application under section 9 was already filed by the operational creditor against the principal borrower, which was admitted.

Held that since section 60(2) becomes operational, no proceedings before DRT under section 95 read with section 179 would be competent or maintainable. Therefore, applications filed by respondent no. 3 before DRT were not maintainable or competent and DRT should have either dismissed applications for want of jurisdiction or transferred same to NCLT. Since DRT had no jurisdiction to entertain respondent's application, even order made by DRT would be without jurisdiction.

## SECTION 5(21) - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

### **Jatinder Oberoi vs. Narendra Singh Chhabra [2025] 181 taxmann.com 624 (NCLAT- New Delhi)**

*Where OPAL had transferred its entire responsibility for procurement of orders, supply of goods, issue of invoices and receipt of payment from customers to operational creditor, operational creditor was in effect*

*operational debtor of corporate debtor and, thus, an application filed by operational creditor for non-payment of dues by corporate debtor was to be admitted.*

The corporate debtor had approached the operational creditor for purchase of polymer raw material manufactured by OPAL, for which the operational creditor

acted as an authorized agent of OPAL under a Consignment Stockist Agent (CSA) Agreement and a Domestic Channel Partner Agreement (DCA). Based on these arrangements, the operational creditor supplied polymer raw materials to the corporate debtor under various invoices, against which only part payments were made by the corporate debtor. The operational creditor filed an application under section 9 which was admitted by NCLT. The appellant, suspended director of the corporate debtor challenged order passed by NCLT on grounds that the operational creditor had no right to initiate proceedings under section 9.

Held that in terms of DCA agreement OPAL had transferred its entire responsibility for procurement of orders, supply of goods, issue of invoices and receipt of payment from customers to the operational creditor. Transfer of all responsibility and risks associated with business to the operational creditor made them in effect the operational debtor of the corporate debtor. Since the corporate debtor had failed to pay principal amount for certain goods to the operational creditor, such an amount would qualify as an operational debt and an application filed by the operational creditor under section 9 would be maintainable. Since there was no infirmity in order passed by NCLT, appeal was to be dismissed.

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## SECTION 32A - CORPORATE INSOLVENCY RESOLUTION PROCESS – PRIOR OFFENCES ETC. - LIABILITY FOR

### **Milan Textile Enterprises (P.) Ltd. vs. Initiating Officer, Deputy Commissioner of Income -tax [2025] 181 taxmann.com 739 (Madras)**

*An NCLT-approved Resolution Plan acts as an "impregnable firewall," protecting a corporate debtor's property from Benami Act attachments related to offenses committed before Corporate Insolvency Resolution Process (CIRP).*

The petitioner company purchased petition-mentioned property vide sale deed. Deputy Commissioner of Income Tax (Benami Prohibition) formed opinion that said property was being held benami by petitioner. Hence, provisional attachment order under Section 24(3) of 1988 Act was issued restraining petitioner from transferring or charging said property. Thereafter, CIRP was ordered to be initiated against the petitioner and insolvency resolution plan in respect of the petitioner was also duly approved by NCLT.

Meanwhile, Adjudicating Authority under 1988 Act confirmed attachment. The petitioner vide instant writ challenged said order on ground that no action could be taken against property of petitioner in relation to an offence committed prior to commencement of CIRP, where such property was covered under Resolution Plan which results in change in control of the corporate debtor. It was noted that section 32A talks about property of the corporate debtor and it includes and encompasses all properties of the corporate debtor whatever be their character.

Held that by virtue of section 238 of Code, provisions of IBC, 2016 will prevail over PBPT Act, 1988. Section 32A(2) read with Section 238 of IBC would stand as an impregnable shield against any action that may be taken against property of the corporate debtor; in fact, it pre-empts taking of any such action. Resolution plan approved by NCLT would act as an impregnable fire wall. Thus, instant writ petition was to be allowed on these terms.

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## SECTION 95 - CORPORATE INSOLVENCY RESOLUTION PROCESS - PERSONAL GUARANTOR OF CORPORATE DEBTOR

**Saranga A. Aggarwal vs. State Bank of India [2025] 181 taxmann.com 789 (NCLAT- New Delhi)**

*Where Adjudicating Authority permitted amendment in section 95 petition filed by SBI against personal guarantor of corporate debtor to change date of default, since Adjudicating Authority had already granted liberty to personal guarantor to file a reply to amended petition, personal guarantor should raise all objections in reply including question of limitation for invocation of guarantee.*

SBI extended credit facilities to the corporate debtor and the appellant along with other personal guarantors jointly executed guarantee agreement. The corporate debtor defaulted in payment of debt and its account was declared as NPA. A notice under section 13(2) of SARFAESI Act was issued to the corporate debtor and guarantor for recalling total outstanding

liability. Personal guarantor acknowledged liability. A notice under Form B was issued by SBI to the appellant and section 95 application was filed. Adjudicating Authority allowed SBI to file an additional affidavit. SBI filed application seeking amendment in section 95 petition to change date of default which application was objected by the appellant. Adjudicating Authority by impugned order allowed amendment application permitting SBI to change date of default.

Held that since adjudicating authority had already granted liberty to the appellant to file a reply to amended petition, it was open for the appellant to raise all its objections including question for invocation of guarantee as barred by time. By permitting amendment of date of default as 05.04.2016, Adjudicating Authority had not committed any error and thus, there was no ground to interfere with impugned order.

## SECTION 66 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR WRONGFUL TRADING

**Aaj Ka Anand Publications LLP vs. Vineeta Maheshwari [2025] 181 taxmann.com 804 (NCLAT- New Delhi)**

*Where there was a fraudulent design of constituting LLP to take over business of corporate debtor and execution of leave and license agreement by corporate debtor to LLP was done so as to keep assets of corporate debtor away from creditors, said transaction was to be declared as fraudulent and contribution was to be directed from LLP and suspended directors of corporate debtor.*

The corporate debtor had obtained various financial facilities from SBI and other banks, Default was committed by the corporate debtor in repayment of its debt. A notice under section 13(2) of SARFAESI Act was issued to corporate debtor and its guarantors. The corporate debtor was prohibited from transferring, by way of sale, lease or otherwise, any of secured assets. State Bank of India filed an application

under section 7 on 12-4-2021 claiming a default of Rs. 248.47 crores. Subsequently, the corporate debtor and its LLP executed a deed for usage granting rights of tradename, trademark, brand name and plant and machinery for a consideration of Rs. 15 lakhs. Resolution Professional filed an application under section 66 praying for various reliefs. Adjudicating Authority after hearing parties, by impugned order had allowed application.

Held that both agreements were in violation of statutory restraint under section 13(13) of SARFAESI Act and both agreements were liable to be ignored being non-est, having been in violation to above statutory provision. Since there had been categorical pleading in application under section 66 and sufficient materials had been brought by Resolution Professional to prove ingredients under section 66(1), Adjudicating Authority had rightly returned finding that ingredients of section 66(1)

were fully proved. Since sequence of events clearly indicated and proved fraudulent design of constituting LLP to take over business of the corporate debtor, execution of leave and license agreement by the corporate debtor to LLP was done so as to keep assets of the corporate debtor away from creditors. Adjudicating Authority was

exercising jurisdiction under section 66, after finding transaction fraudulent and directed contribution which was in relation to recovery which had to be made from liquidation estate, there was no error in direction of Adjudicating Authority directing contribution of Rs. 1.37 crores from respondents.

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

**Mehar Bhoomi Bhawan Pvt Ltd. (Formerly Known as Mehar Footwear Pvt Ltd.) vs. Shashi Bhushan Prasad, RP of Angad Infrastructure Pvt Ltd. [2025] 181 taxmann.com 882 (NCLAT- New Delhi)**

*When Resolution Professional as well as CoC after thoroughly examining eligibility had approved Resolution Plan, reconstituted CoC which has no authority to say that Resolution Applicant was not eligible to submit Resolution Plan*

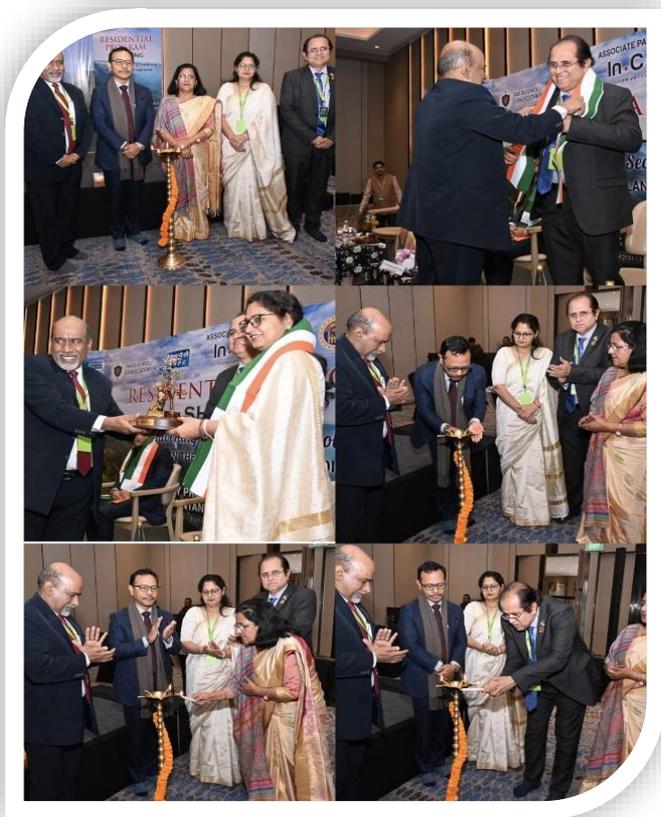
In CIRP of the corporate debtor, CoC approved resolution plan of successful resolution applicant (SRA), i.e, the appellant with 100 per cent vote share. Thereafter, one of financial creditor 'SICOM' assigned its debt to 'Indo Jatalia' and consequently, CoC was reconstituted. Consequent to decision taken by reconstituted CoC, RP filed an application before NCLT for withdrawal of application filed for approval of Resolution Plan of the appellant on ground that there had been a change in constitution of CoC and 'Indo Jatalia' being new member of CoC did not have opportunity to deliberate / assent / dissent to proposed Resolution plan. It was noted that Resolution Plan which had been approved by CoC was clearly binding on CoC and mere fact that 'Indo Jatalia' had been inducted in CoC which was reconstituted would have no bearing on Resolution passed by 100% CoC. Further, there was no occasion for giving opportunity to 'Indo Jatalia' to deliberate assent or dissent Resolution Plan which was approved on 23.10.2019 whereas 'Indo Jatalia' came into CoC only after order dated 24.04.2024. It was further noticed that after

plan approval application was submitted before NCLT, CoC could not have taken any decision which might affect pending Resolution Plan. It was also noted that requirement of Clause 5(iv) was with respect to Resolution Applicant when Applicant was a consortium. Present was not a case where Resolution Plan was submitted by a consortium rather Expression of Interest as well as Resolution Plan both were submitted by a registered incorporated body i.e. a company. Hence, there was no applicability of Clause 5.

Held that when RP as well as CoC after thoroughly examining eligibility had approved Resolution Plan, it does not lie in mouth of reconstituted CoC which has no authority to convene a meeting affecting a Resolution Plan already approved to say that Resolution Applicant was not eligible to submit Resolution Plan. Accordingly, impugned order by NCLT remanding Resolution Plan to CoC for reconsideration, was to be set aside.

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## DAY 1



The inaugural session of the residential programme was held in the serene setting of Shillong, with participation from Insolvency Professionals, senior bankers, regulators, academicians, and stakeholders from the BFSI and legal ecosystem. The programme commenced with **Mr. James Pangsang Kongkal Sangma, Chairman, MIDC, as Chief Guest, and Mr. G. S. Narasimha Prasad, Managing Director, IPA-ICMAI**, who highlighted the role of structured insolvency frameworks in promoting industrial growth and economic resilience.

**The Guests of Honour included Ms. Manorama Kumari, former Member, NCLT; CMA Chittaranjan Chattopadhyay, Central Council Member, ICAI; and Dr. Divya Sharma, Independent Director, IPA-ICMAI.** CMA Chattopadhyay described the programme as a milestone—the third residential programme and the first in the North-East—and emphasized IPA-ICMAI's growing contribution to India's insolvency ecosystem.

### Ms. Manorama Kumari appreciated IPA-ICMAI's

Capacity-building initiatives and shared insights on proposed IBC amendments addressing timelines, CIRP, MSMEs, and regional concerns. She highlighted the importance of such programmes in building confidence among North-Eastern businesses.

The first technical session, "Insolvency as an Economic Sanitizer," was delivered by **Mr. Jitendra Lohia**, who stressed early stress detection and timely intervention. This was followed by a panel discussion on the role of financial creditors, featuring representatives from **RBI, Axis Bank**, and insolvency professionals.

The programme is supported by esteemed partners, including Insolvency Law Academy, NHPC Limited, InCorp, Mazagon Dock Shipbuilders Limited, and RRR Insolvency Service Experts LLP. It will continue over the next two days with sessions on valuation, interim finance, IBC 2.0, and sector-specific challenges, reaffirming IPA-ICMAI's commitment to strengthening India's insolvency framework.



DAY 2

The second day of the residential programme organised by IPA-ICMAI featured focused and practice-oriented discussions on pre-insolvency resolution, sector-specific challenges, valuation complexities, and interim finance under the IBC.

The day began with a morning yoga session, reflecting the programme’s holistic approach by integrating wellness with professional learning. This was followed by expert-led sessions with active participation from Insolvency Professionals, bankers, PSU executives, and restructuring specialists.

The first session on **\*\*Pre-CIRP Settlements\*\*** by Sutanu Sinha and Sujata Chattopadhyay highlighted the importance of early stress detection and timely stakeholder coordination to preserve value and avoid formal insolvency.

A panel on **\*\*Domain-Specific Challenges in IBC\*\*** featuring Jayesh Sanghrajka, Madhusmita Paney, and M. K. Jain discussed sectoral complexities in real estate, infrastructure, power, and public projects, emphasizing the need for customized resolution strategies.



The post-lunch session on **\*\*Asset Valuation\*\*** by B. Sankarnarayanan and G. K. Raju examined practical valuation challenges, stressing transparency, professional judgment, and market realities.

The final session on **\*\*Interim Finance\*\*** by Deepika Bhugra Prasad and Jitendra Palande highlighted its critical role in sustaining corporate debtors as going concerns, along with statutory safeguards and creditor oversight.

Day Two concluded with high engagement and insightful discussions, reinforcing IPA-ICMAI’s commitment to capacity building and sector-aware insolvency practices. The programme will conclude on Day Three with sessions on IBC 2.0, stressed asset markets, and strategic solutions.



# HIGHLIGHTS OF THE RESIDENTIAL PROGRAM - “UNLOCKING THE SECRETS OF INSOLVENCY” IN SHILLONG, MEGHALAYA FROM 5<sup>TH</sup> TO 8<sup>TH</sup> FEBRUARY 2026

## DAY 3

The third and concluding day of the Residential Programme “Unlocking the Secrets of Insolvency”, organised by IPA-ICMAI, featured insightful discussions on insolvency stalemates, IBC 2.0, and market-based solutions for stressed assets.

A panel on “Stalemates in IBC – Creative Solutions” with Sanjeev Ahuja and Dr. U. K. Chaudhary examined the effectiveness of the IBC. While concerns were raised regarding procedural delays and institutional capacity, Dr. Chaudhary highlighted the Code’s success in strengthening credit discipline, noting significant recoveries, including substantial pre-admission settlements and resolutions amounting to nearly ₹4.8 lakh crore. He reiterated that insolvency is an economic process focused on resolution and value maximisation.



The technical session on “IBC 2.0 – Expectations of Stakeholders” by Sutanu Sinha, Jayesh Sanghrajka, and G. S. Narasimha Prasad reviewed the Code’s progress and identified the need for stronger timelines, reduced judicialisation, improved valuation consistency, MSME-focused frameworks, and cross-border insolvency mechanisms, aligning implementation with the original BLRC vision.

The post-lunch session on “Market Place for IBC Assets and Securities” highlighted transparent asset discovery and competitive platforms to enhance value realisation.

The programme concluded with a Gala Dinner and Musical Night, marking the successful culmination of a content-rich and impactful three-day residential initiative.



# 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- ICMAI 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.*

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

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

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

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

✓ *In case the article is found not suitable for publication, the same shall not be published.*

✓ *The articles should be mailed to "publication@ipaicmai.in."*

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