MARCH 2025

THE INSOLVENCY PROFESSIONAL

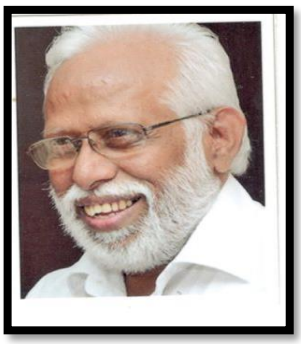
Your Insight Journal

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

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 thefrontline 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 Professionalsby 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.

BOARD OF DIRECTORS



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CASEBOOK

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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Reader,

Greetings, At IPA-ICMAI, our young team strives to be up to mark on both streams of our mandate – regulation and professional development.

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 IPA-ICMAI, we strive to make our publications relevant, informative, interesting and lucid. This issue of the 'Insolvency Professional – Your Insight Journal' has carries two interesting articles on insolvency process of personal guarantors to corporate debtors and two more articles on other interesting topics –

- ***Individual Insolvency Process of Guarantors to Corporate Debtor by R. Sugumaran, IP***
- ***Unresolved issues for personal guarantors under IBC by Dr. Biswadev Dash, IP,***
- ***Opportunities for mergers and amalgamations of assets under CIRP and liquidation processes by Sanjeev Pandey***
- ***Interplay of IBC and Limitation Act by M.L. Kabir, IP***

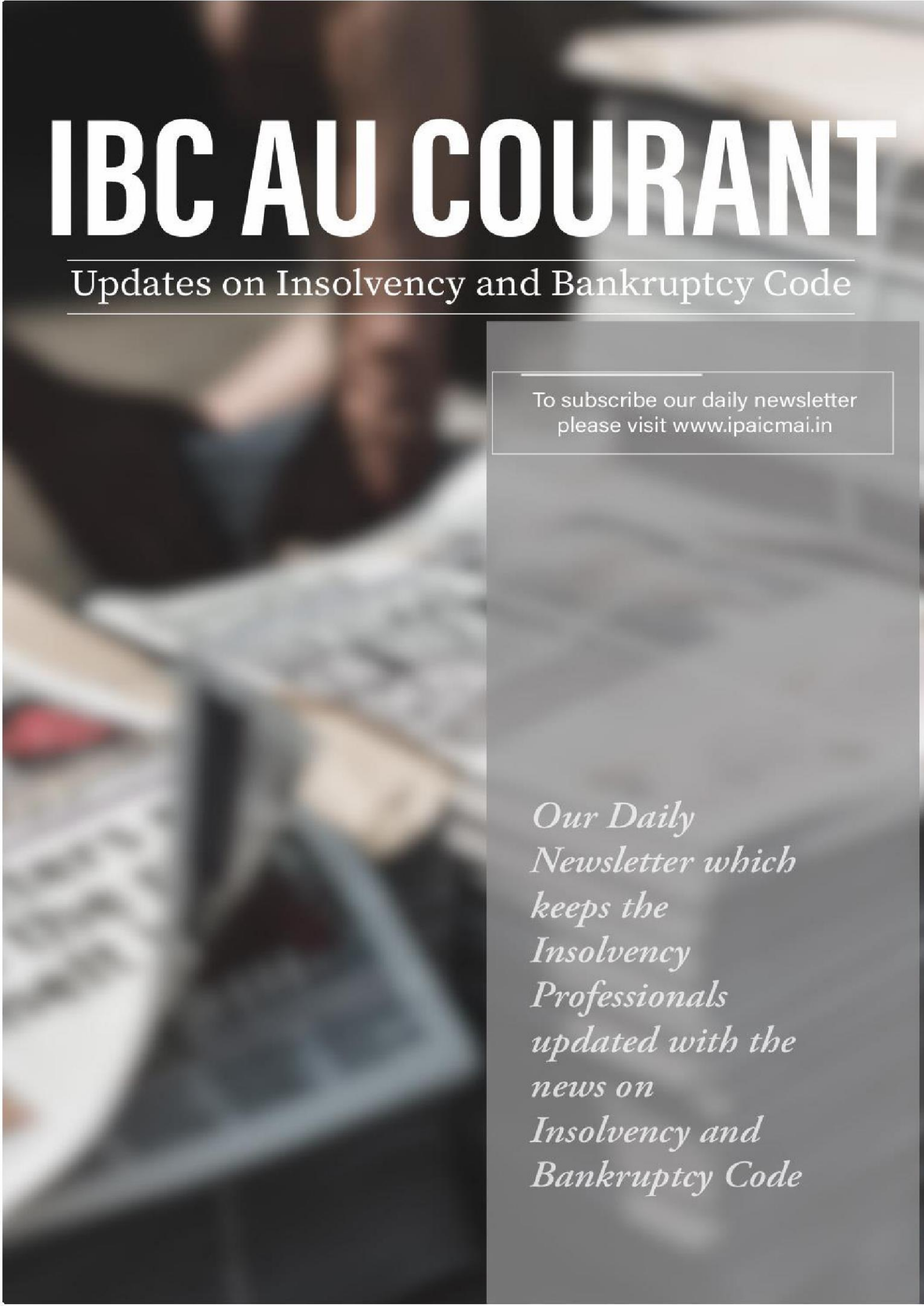
I am sure you will find all the articles interesting and useful. We welcome your responses to the published articles in this journal. You are welcome to write to publication@ipaicmai.in.

Wish you all happy reading.

Mr. G.S. Narasimha Prasad
Managing Director

PROFESSIONAL DEVELOPMENT INTIATIVES

MARCH 2025	
DATE	**EVENTS CONDUCTED**
March 3 to 7, 2025	Merit Certificate Course on "Insolvency & Bankruptcy Code in association with NIBSCOM for Bankers"
March 8, 2025	Webinar on "IPA Oversight: Grievance Redressal & Disciplinary Process at IPA & Legal Updates in IBC"
March 9, 2025	Workshop on "Compliances to be made by IPs under IBC, 2016"
March 13, 2025	Workshop on "Transaction Audit & Forensic Audit"
March 23, 2025	Workshop on "Judicial Pronouncements under IBC, 2016"
March 28, 2025	Workshop for "Insolvency Professionals"
March 30, 2025	Workshop on "Rising Haircuts under IBC, 2016"



IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy Code

ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

A STUDY INTO THE INTER-PLAY OF IBC 2016 WITH THE PROVISIONS OF THE LIMITATION ACT 1963

Mr. Mohammad Lutful Kabir
Insolvency Professional

Synopsis:

The Insolvency and Bankruptcy Code 2016 was designed to be a consolidated law on Insolvency and Bankruptcy as was envisaged in the BLRC Report to be a self-content law within itself having enforceability notwithstanding any provisions to the contrary in any other law for the time being in force. It is with this purpose that a 'non-obstante' clause was brought in under Sec – 238 which reads "The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law". However, even with the existence of such clause, cases have been plenty challenging the various provisions of the code while being in conflict with the provisions of other laws including Acts under Central and State judicatures. One of the most common conflicts that surfaced was its operation/interface with the Limitation Act 1963 as regards the time element of a debt in default that forms the basis of admission of a case under CIRP. In 2018 amendment the Code brought in Sect 238A which reads as "The provisions of the Limitation Act 1963(36 of 1963), shall, as far as may be, apply to the proceedings and appeals before the Adjudicating Authority, The National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be". This article attempts to analyze the working of these provisions through the lenses of various judicial pronouncements by the Supreme Court, NCLT & NCLAT in this regard and frame a set of principles & guidelines for the applicant while moving application to avoid future disputes and wastage of precious judicial time of the various Courts of Justice and thereby ensuring 'preventing oppression and suppression of fraud as well as to ward off redundant claims and proceedings and quicken diligence'.

I. Introduction:

The Insolvency and Bankruptcy Code 2016 was designed to be a consolidated law on Insolvency and Bankruptcy as was envisaged in the BLRC Report to be a self-content law within itself having enforceability notwithstanding any provisions to the contrary in any other law for the time being in force. It is with this purpose that a 'non-obstante' clause was brought in under Sec – 238 which reads *"The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".* However, even with the existence of such clauses, cases have been plenty challenging the various provisions of the code while being in conflict with the provisions of other laws including Acts under Central and State judicature. One

of the most common conflicts that surfaced was its operation/interface with the Limitation Act 1963 as regards the time element of a debt in default that forms the basis of admission of a case under CIRP. In the 2018 amendment, the Code brought in Sec 238A which reads as *"The provisions of the Limitation Act 1963(36 of 1963), shall, as far as may be, apply to the proceedings and appeals before the Adjudicating Authority, The National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be".* In this article we have made an attempt to analyze the working of all such provisions through the lenses of various judicial pronouncements by the Supreme Court, NCLT & NCLAT in this regard and frame a set of principles & guidelines for the applicant while moving application to avoid future disputes and wastage of precious judicial time of the various Courts of Justice and thereby ensuring '*preventing oppression and suppression of fraud as well as to ward off redundant claims and proceedings and quicken diligence*' as was set out to be the primary objective of promulgation of Sec 238A. However, before we delve into these guidelines set by the Apex Court, we shall first take a look into a couple of prominent case laws that paved the way for laying down these principles and guidelines in the matter of Limitation. The next section presents a short brief of some of those cases to help us comprehend the underlying logic and principles of such interplay between these two Acts i.e. IBC & Limitation.

II. Apex Court decisions in the matter of applicability of Limitation Act 1963 in IBC proceedings:

(i) B K Educational Services Pvt Ltd. Vs Parag Gupta & Associates – 2018 (10)TMI 777 SC – Considered to be a flagship case in interpretation and application of Limitation Law to IBC proceedings, the Apex Court laid down three important principles/guideline when it held that *(a) if the three year time limit has been crossed before filing of the petition for CIRP from the date of default, Sec 137 of the Limitation Act would be applicable making it time-barred for being admitted for CIRP; (b) Non-applicability of Sec 137 where there is condonation of delay under Sec 5 and (c) Sec 238A although being procedural in nature would still be applicable on a retrospective basis.*

(ii) Babulal Bhardarji Gurjar Vs Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. 2020(8) TMI 345 – SC Here, the Apex Court laid down a few important principles *i.e. (a) that the 'date of default' remains the triggering event for application for CIRP under the code and not the date of promulgation of the code; (b) that the clock of limitation starts ticking from the 'date of default'; (c) that the 'condonation of delay' for calculating the time barred period to be based on facts and clearly justifiable grounds; (d) that the extent to which Limitation Act 1963 would apply to the IBC Code where it held that Section 7 application is not for enforcing mortgage and hence Sec 62 of the Limitation Act would be inapplicable;*

(iii) Laxmipat Surana Vs Union Bank of India & Anr. 2021(3) TMI 1179 – SC Here, the Apex Court laid down a few important principles on *'acknowledgement of debt*' with respect to applicability of Sec 18 of the Limitation Act 1963 i.e. *(a) went on to define how entries in a balance sheet may amount to an acknowledgement of debt for the purpose of Sec 18; (b) how a fresh period of limitation to be computed from the acknowledgement of debt;* thereby bringing the default within the limitation period and hence being eligible for admission for CIRP;

(iv) Seshnath Singh & Anr. Vs Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr. 2021(3) TMI 1183 - SC *The* case also considered to be a flagship reference case for bringing further clarity on the matter of limitation as long as it relates to Sec 14 of the Limitation Act. Here, the Apex Court decisions were based on the principles i.e. *(a) that the term 'as far as may be' under Sec 238A must be interpreted to exclude the*

time spent in 'Bonafide proceeding' in a Court to arrive at the days lapsed for the purpose of limitation under section 14 in the absence of any express provision to exclude Sec 14 otherwise; (b) adoption of the harmonious interpretation between the object and intent of the Code to include any or all provisions of the Limitation Act to be applicable to IBC proceedings; (c) the expression 'court' in Sec 14(2) to be interpreted 'liberally 'and shall deem to include any forum for a civil proceeding including any tribunal or any forum under the SARFAESI.

(v) Tottempudi Salalith Vs State Bank of India & Ors. 2023 INSC 923- SC *In this case the Apex Court addressed a host of issues relating to interpretation and applicability of Limitation Act 1963 as well as some peripheral issues related to it starting from (a) 'date of default' with respect to Recovery Certificates issued by DRT, (b) whether acknowledgment of debt made after CIRP application is filed can be considered for extending the period of limitation under Sec 18 (c) can the settlement proposed during CIRP application pending for admission be treated as an acknowledgement under Sec 18; (d) could the Recovery Certificate issued in the year 2015 form the subject matter of an application under Sec 7 filed in 2019; (e) whether the period of limitation of 12 years for enforcement of a decree as per Article 136 of the Schedule of Limitation Act 1963 is also applicable to a Recovery Certificate decree etc.* The Apex Court expressed their views in all the above cases that were addressed and necessary direction was given to NCLAT to review its decision as regards the 3rd Recovery Certificate of 2015 with some guidance to treat the same in a particular manner without being considered as the basis of Sec 7 application like the other 2 Recovery Certificates which are clearly within the limitation period under the Act.

<u>We have tried to put the most relevant principles/guidelines/directions emanating from all the above cases in a tabular format for better understanding and easy reference</u>:

Case Situation/Issues	Principle/Guidelines/Direction	Case Reference
Can settlement proposed during CIRP application pending admission be treated as an acknowledgement of debt under Sec 18 of the Limitation Act 1963?	*- Once insolvency proceeding is initiated, any promise made to pay the debt cannot be treated to have cured the fault of limitation in a pre-existing condition.* *- A promise of this nature would constitute an independent cause of action.*	Tottempudi Salalith Vs State Bank of India & Ors. 2023 INSC 923-SC
What should be considered as Date of default in the case where Recovery Certificate is	*- Date of default has been considered to be the date from when the limitation period starts ticking.*	-BK Educational Services (2018)32SC

issued for the purpose of computing the limitation period?	*- Where Recovery Certificate is issued, the date of the Recovery Certificate from when the limitation period should start ticking.*	-Bhashdeo R Bhojwani V Abhyudoy Co-operative Bank. 2019 15SC
Can settlement proposed during CIRP application pending admission be treated as an acknowledgement of debt under Sec 18 of the Limitation Act 1963?	*- Since such proposal was not part of original pleading on which the CIRP was admitted, the same can't be the basis for computation of limitation.*	Reliance Asset Reconstruction Co. Ltd. V Poonja International 2021 59SC
Is the period of 12 years limitation for enforcing a decree as per Article 136 of the Limitation Act 1963 applicable to a Recovery Certificate issued under the RDB Act 1993?	*- In the event a Financial Creditor wants to pursue a recovery certificate as a deemed decree, he would get 12 years' time.* *- Extent of operation of a Recovery Certificate to go beyond filing of winding up petition alone but would retain the character of a decree to lodge a claim in an IBC proceeding.*	Kotak Mahindra Bank Ltd. A Balakrishnan & Anr. 2022 9SCC 186
Whether mentioning the debt in question as a Balance Sheet item could be considered to be acknowledgment of debt for computation of limitation under Sec 18 of the Limitation Act 1963?	*- a fresh period of limitation to be computed from such Balance Sheet entry date thereby bringing the default within the limitation period while being eligible for admission for CIRP*	Laxmipat Surana Vs Union Bank of India & Anr. 2021(3) TMI 1179 – SC
Whether Sec 238A could be interpreted to exclude the time spent in 'bonafide proceeding' in a Court to arrive at the days lapsed for the purpose of limitation under section 14? Whether SARFAESI proceedings to be eligible to be termed civil Court proceedings as meant under the Limitation Act 1963??	*- that the term 'as far as may be' under Sec 238A must be interpreted to exclude the time spent in 'bonafide proceeding' in a Court* *- the expression 'court' in Sec 14(2) to be interpreted 'liberally 'and shall deem to include any forum for a civil proceeding including any tribunal or any forum under the SARFAESI.* *- adoption of the harmonious interpretation between the object and intent of the Code to include any or all provisions of the Limitation Act to be applicable to IBC proceedings;*	Seshnath Singh & Anr. Vs Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr. 2021(3) TMI 1183 - SC

Note: The above table includes (but not being an exhaustive one) some major takeaways on principles and guidelines set out in various Apex Court decisions in relation to the interplay between the Limitation Act and IBC. These guidelines should be weighed with respect to the peculiarities of the subject case in question always.

Conclusion:

From the above, it becomes amply clear that we have come a long way in the matter of interpretation and application of the provisions of the Limitation Act with respect to IBC proceedings. Although the 2nd Amendment to IBC that brought in Section 238A has provided a solid foundation to the harmonious working of the code in tandem with the Limitation Act, it is the various court decisions that infused greater clarity to the subject to put many a doubt to rest in this regard. However, this process is still evolving and with the multi-faceted interpretations by the judiciary based on newer cases would continue to bring in challenges for all stakeholders in the IBC domain. Let's all embrace these challenges with a deeper understanding of the code and the Act, keeping in forefront the harmonious interpretation between the object and intent of the Code as was originally envisaged in the BLRC Report.

Reference & Resources: -

- Insolvency and Bankruptcy Code 2016 I 12 A, No.31, Acts of Parliament
- BLRC Report
- The Limitation Act 1963 Act No.36 of 1963
- Tottempudi Salalith Vs State Bank of India & Ors. 2023 INSC 923- SC
- BK Educational Services (2018)32SC
- Bhashdeo R Bhojwani V Abhyudoy Co-operative Bank. 2019 15SC
- Reliance Asset Reconstruction Co. Ltd. V Poonja International 2021 59SC
- Kotak Mahindra Bank Ltd. A Balakrishnan & Anr. 2022 9SCC 186
- Laxmipat Surana Vs Union Bank of India & Anr. 2021(3) TMI 1179 – SC
- Seshnath Singh & Anr. Vs Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr. 2021(3) TMI 1183 - SC

Mr. R.Sugumaran
Insolvency Professional

- **Abstract of the Article**:

Insolvency and Bankruptcy Code 2016 was enacted as a comprehensive code to consolidate laws relating to reorganisation and insolvency resolution of corporates, partnerships as well as individuals. While the focus of the IBC is primarily on corporate debtors, it also recognizes the importance of personal guarantors in the debt recovery process. Personal guarantors play a crucial role in securing loans and credit facilities provided to corporate entities. In this article, the legal status and implications of personal guarantors under the Insolvency and Bankruptcy Code,2016 are explored, in the context of corporate law.

Personal Guarantors, a perspective under IBC, 2016:

The Stressed Assets Management of ailing Corporates under the Insolvency and Bankruptcy Code, 2016 (IBC), is divided into the process of Corporate Insolvency Resolution Process (CIRP) and Liquidation. When sufficient funds are not generated in CIRP and Liquidation, the financial creditors look into personal guarantors for meeting the shortfall. IBC provides for initiation of action parallelly against the Corporates and Personal Guarantors at the same time to look for resolutions to revive the Corporates.

While the focus of the IBC is primarily on corporate debtors, it also recognizes the importance of personal guarantors in the debt recovery process. Personal guarantors play a crucial role in securing loans and credit facilities provided to corporate entities. In this article, the legal status and implications of personal guarantors under the Insolvency and Bankruptcy Code,2016 are explored, in the context of corporate law

Understanding Personal Guarantors:
Under IBC, Section 5(22) defines personal guarantor as an individual who is the surety in a contract of guarantee to a corporate debtor. A personal guarantor being an individual, provides guarantee in their personal capacity against the loans availed by the corporate debtor and as such, their liability is co-extensive with that of the corporate debtor.

In the normal course of business, promotors/ directors of the Company provide a guarantee for the repayment of a loan or credit facility taken by a corporate debtor. They undertake to fulfil the financial obligations of the corporate entity in case of default. They act as a secondary source of repayment for the lender and provide an additional layer of security. Vide Sections 94 and 95 of the IBC, a mechanism is provided for initiation of proceedings against the personal guarantors.

The National Company Law Tribunal conducts the proceedings of personal guarantee on the basis of applications made before it by the creditors or by the promoters of the Corporate Debtor who have given the personal guarantee for the loans availed by the Corporate Debtor. Section 134 of the Indian Contract Act stipulates that whenever the terms of borrowings are amended, similar amendments should also be applied to the terms of guarantee. The applicability of Section 134 of the Indian Contract Act does not arise here, as the guarantor is liable even, when the debtor is released on account of the approval of Resolution Plan by the Adjudicating Authority under the provisions of IBC. Here the Adjudicating Authority approves the Resolution Plan, and the creditors have no say and hence the approval of Resolution Plan is on account of Operation

of Law as decided in Maharashtra State Electricity Board Vs Official Liquidator**.**

The approved Resolution Plan normally has the clauses to extinguish all liabilities, claims, dues, and any waivers, reliefs, or exemptions of the Corporate Debtor. However, Personal Guarantors have no such privileges. Any approval of Resolution Plan u/s 31(1) of IBC does not absolve the Personal Guarantors, unless the approved Resolution Plan specifically waive the liability of Personal Guarantor Ref: Lalitkumar Jain vs Union of India. The creditors have the right to proceed against the Personal Guarantors to recover the deficit in recovery of debts from the Corporate Debtor as decided in *State Bank Of India v. V. Ramakrishnan.*

PROCESS OF INVOKING PERSONAL GUARANTEE:

When a corporate debtor is unable to pay back a loan, the creditor can initiate a ' Personal Guarantor Insolvency Resolution Process(PGIRP)' to recover the debt amount under Section 95 of IBC by filing a petition before the appropriate jurisdictional NCLT. Similarly, Under Section 94 of the IBC, a personal guarantor can file a petition for insolvency. When a PGIRP is initiated, the assets of the personal guarantor are placed under an interim moratorium under Section 96 of IBC. Personal Guarantor loses control of the assets attached to the loan when a moratorium is imposed. They cannot transfer or dispose of any assets. All other debtors are prohibited from pursuing legal proceedings against the Personal Guarantor with respect to loans and associated assets as well. Even in cases where petitions u/s 95 or 94 of IBC are pending before the Adjudicating Authority for more than 2 years, the interim moratorium remains. Ref: IDBI Trusteeship Services Limited Vs Thirumuruhan a Resolution Professional is appointed under Section 97 of IBC to come up with a Repayment Plan to pay back the debtors.

Personal Guarantors- Responsibilities:

IBC prescribes the role of Personal guarantors. More specifically, Personal Guarantors have the following role to play:

1. Personal guarantors are entitled to dispute the insolvency proceedings initiated against them. They are empowered to defend their case, provide evidence of repayment, or dispute the default alleged by the creditor.

2. Personal guarantors are required to disclose their assets, liabilities, and financial position during the insolvency process. They must provide accurate and complete information to facilitate the resolution process.

3. Personal guarantors are liable to repay the outstanding debt in case of default by the corporate debtor. If the insolvency proceedings result in a resolution plan or liquidation, the personal guarantor's assets may be utilized for repayment.

4. There is a moratorium period during the insolvency proceedings. This period provides them with protection against any recovery actions by the creditors.

Impact on Credit Rating and Future Borrowings:

The insolvency proceedings against the personal guarantors will result in downgrading of their credit rating resulting in negative impact on their borrowing capacity. The insolvency process and the subsequent bankruptcy proceedings will affect the financial status of the personal guarantor and also his status in society.

Applicability of Limitation Act:

The Limitation Act is applicable to the Personal Guarantors under the IBC as decided in Sushil Ansal vs State Bank of India. The limitation period begins from the date of default by the Corporate Debtor. If a demand notice is served on the personal guarantor, the limitation period begins from the date of service of the notice.

If the limitation period expires, the creditor cannot proceed and enforce the guarantee. If the personal guarantor waives such limitation period, the creditor can enforce the personal guarantee.

How Personal Guarantee is effected under IBC:

The individual /personal guarantee is covered under section 94 and 95 of IBC. Section 94 of IBC provides that a debtor may apply either by himself, or jointly with Partners, or through a Resolution Professional to the Adjudicating Authority for initiating an Insolvency Resolution Process under the Section 94 of IBC by filing an application to the National Company Law Tribunal.

In terms of the provisions envisaged under Section 95 of IBC, creditor(s) may either through themselves or through the Resolution Professional, file an application before the National Company Law Tribunal for initiating PGIRP proceedings of a personal guarantor. The said application is accompanied by such documents evidencing existence of the debt and other details as prescribed therein. An interim moratorium under Section 96 of IBC is imposed upon the personal guarantor upon filing of the petition under Section 94 or 95 of IBC.

When a corporate debtor is unable to pay back a loan, the creditor can initiate a ' Personal Guarantor Resolution Process' (PGIRP) to recover the debt amount (Section 95). When an application is filed under Section 94 or 95, the assets of the debtor and personal guarantor are placed under an interim moratorium (Section 96).

A debtor and/or personal guarantor loses control of the assets attached to the loan when a moratorium is imposed. They cannot transfer or dispose of any assets. All other debtors are prohibited from pursuing legal proceedings against them with respect to loans and associated assets as well.

According to Section 99 of Code, the Resolution Professional is mandated to examine the application filed under Section 94 or 95 of the Code within a period of ten days from the date of their appointment The Resolution Professional affords the personal guarantor an opportunity to prove the repayment of the debt along with documentary evidence such as bank transfer, encashment of cheque, signed acknowledgment of receipt, etc. which is claimed to be unpaid by the creditor.

The Resolution Professional is empowered under Section 99 (4) of the Code to seek further information or an explanation in connection with the application from the personal guarantor, creditor or any other person who in the opinion of the Resolution Professional may provide the relevant information. Hence, the information which the Resolution Professional is empowered to seek aids in effectively examining the application and submitting a report under Section 99 of IBC and submits a report to the NCLT recommending for approval or rejection of the said application. Thereafter, within a period of fourteen days from the date of submission of report by the Resolution Professional under Section 99 of IBC, the NCLT shall admit or reject the application as per the provisions of Section 100 of IBC.

In the event that the application under Section 94 or 95 of IBC is admitted by the NCLT, a moratorium under Section 101 of IBC is imposed. The aim and object of the moratorium under Section 101 of Part III and that of Section 14 under Part II of the Code which is applicable to CIRP of

corporate debtors is similar. Pursuant to imposition of moratorium under Section 101 of IBC, no legal proceedings can continue or be initiated against the personal guarantor in respect of any debt; and the personal guarantor is barred from transferring, alienating, encumbering or disposing of any of his assets or his legal rights or beneficial interest therein. Under Section 102, the Adjudicating Authority will issue public notice within a week from the date of its order of admission of personal guarantee under Section 100, calling for claims from all the creditors of the Personal Guarantor, setting a target date of 21 days. On receipt of claims from the creditors, the Resolution Professional will collate the claims under Section 104 and prepare the list of creditors within 30 days from the date of public notice.

The Personal Guarantor, in consultation with the Resolution Professional, prepare a Repayment Plan under Section 105 to settle the creditors by restructuring his debts. The Repayment Plan will involve authorisation of Resolution Professional to carry on the business of the guarantor, realise, dispose off and maintain or administer his assets. The Repayment Plan will include a justification for the preparation of such Plan and reasons to convince the creditors. It should also provide professional fees for the Resolution Professional and for other matters, if any.

Section 106 specifies that within 21 days from the last date of submission of claims by the Creditors, the Resolution Professional appointed under Section 97 or 98 would submit a report to the Adjudicating Authority. The report would ensure that the Repayment Plan is in compliance with all relevant laws, the report is feasible to implement and the report would include a provision to convene a meeting of creditors if required.

According to Section 115, the order of Adjudicating Authority approving the Repayment Plan will be binding on the Debtor and the Creditors. When the Repayment Plan is rejected under Section 114 by the Adjudicating Authority, the debtor and the creditors will file application for Bankruptcy of the Debtor under Chapter IV.

Role of Resolution Professional:

The Resolution Professional on appointment by the Adjudicating Authority u/s 94 or 95 of IBC, will prepare Report and submit within 10 days to the Adjudicating Authority.

On admission of PG CIRP by the Adjudicating Authority u/s 100 of IBC, the Resolution Professional will collate and prepare the list of creditors within 30 days from the date of publishing the notice calling for claims from the creditors.

The Resolution Professional will assist the Personal Guarantor to prepare the Repayment Plan for the creditors.

The Resolution Professional will convene the Meeting of the Creditors to place before them the Repayment Plan and get it approved by them.

The Resolution Professional will submit the Repayment Plan along with his Report to the Adjudicating Authority for its approval.

The Resolution Professional will monitor the implementation of the Repayment Plan.

The Resolution Professional will submit a report to the Adjudicating Authority in case if the Repayment Plan has not been completely implemented.

Role of NCLT:

Under the provisions of IBC, the Adjudicating Authority for personal guarantors is National Company Law Tribunal (NCLT). It appoints the Resolution Professional u/s 94 or 95 of IBC, if the petition filed is in order.

NCLT within 14 days from the date of receipt of the Report u/s 99 of IBC from the

Resolution Professional, either accepts or rejects the report u/s 100 of the IBC. By accepting the report, it admits the insolvency proceedings against the Personal Guarantor.

NCLT accepts or rejects the Repayment Plan u/s 115 of the IBC.

NCLT provides directions to the Resolution Professional for matters arising from the Repayment Plan.

NCLT provides extension of time to Resolution Professional u/s 117 of IBC for submission of report on the implementation of the Repayment Plan.

In case of Repayment Plan not fully implemented, on the report of the Resolution Professional, NCLT will pass an order that the Repayment Plan has not been fully implemented.

NCLT shall also make discharge orders on debts under Repayment Plan on the basis of the report of Resolution Professional.

In case, when the report of the Resolution Professional u/s 99 of IBC, is rejected on account of the petition amounting to defrauding the Creditors or when the Repayment Plan is rejected u/s 115 of IBC or when the Repayment Plan has not been implemented fully u/s 118 of IBC, the debtor or the creditors is/are enabled by the provisions of IBC, to file petition for Bankruptcy of the Personal Guarantor.

Bottlenecks in Personal Guarantee Cases:

Number of Personal Guarantor cases are going up in NCLT on account of failure of CIRP and shortfall in the realization in Resolution Plan and/or Liquidation. The cases before DRT in respect of Personal Guarantors are being transferred to NCLT, since the relevant CIRP cases are handled by NCLT. It increases the workload of NCLT.

Multiple cases against personal guarantors by different creditors are being filed in various NCLT Benches. This results in dragging the personal guarantor into multiple forums.

Legal Disputes are being raised in various forums which delay the process before NCLT.

Undue Delay in the process results in creditors not able to proceed against the Debtor on account of interim moratorium. This affects the credit recovery mechanism.

Taking advantage of the interim moratorium, Debtor indulges in filing vexatious petition u/s 94 of IBC, to delay recovery proceedings by the creditors.

Remedial Measures Required to remove the Bottlenecks:

1. Simultaneous filing of petitions for CIRP and Personal Guarantors u/s 7 or 9, or 10 and 95 before the Adjudicating Authority may be prescribed, whenever CIRP petitions are filed. Same Resolution Professional may be appointed for CIRP and Personal Guarantors. This will rationalize the legal process.
2. The statutory limit of Rs.1 Crore for CIRP may also be extended to PGIRP to minimize the litigations.
3. When the interim moratorium goes beyond 180 days, suitable mechanisms may be evolved to facilitate recovery by other creditors other than the applicant in Section 95 Petition.
4. The process for Section 94 Petitions may be streamlined to avoid vexatious petitions.

Conclusion:

While IBC provides for simultaneous and parallel proceedings of CIRP and PGIRP, it does not allow PGIRP against personal guarantors on different counts. Till admission of PGIRP, only a single petition is allowed against an individual personal guarantor, multiple petitions by different creditors are not entertained by the Adjudicating Authority. Ref: Indian Bank vs T Saravanan. After admission, based on the claims filed by the creditors, the Resolution Professional collate the claim for the

purpose of Repayment Plan. When the Adjudicating Authority rejects the petition u/s 94 or 95 of IBC, based on the reports of Resolution Professional or when the application was filed to defraud the creditors or the Adjudicating Authority does not approve the Resolution Plan or the Report of the Resolution Professional informs the Adjudicating Authority that the Resolution Plan has not been completely implemented, creditors or debtor will file application for Bankruptcy of the personal guarantor based on the order of the Adjudicating Authority.

Reference:

1. Insolvency and Bankruptcy Code, 2016.
2. Supreme Court Orders in Lalitkumar Jain vs Union of India and *State Bank of India v. V. Ramakrishnan.*
3. NCLT Chennai Daily Orders on Personal Guarantors.
4. Indian Contract Act,1872.

DISTRESSED MERGERS & ACQUISITIONS UNDER IBC 2016

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Synopsis

Introduction:
Distressed M&As involve buying or merging with financially troubled companies to resolve insolvency and unlock value. The **Insolvency and Bankruptcy Code (IBC) 2016** has become a key framework for facilitating such deals in India, significantly increasing the volume of distressed M&A transactions.

Legal and Regulatory Framework:

- The **Corporate Insolvency Resolution Process (CIRP)** is the core mechanism for resolving financial distress.
- **Section 29A** prevents defaulting promoters from reclaiming their companies.
- The **Committee of Creditors (CoC)** plays a crucial role in evaluating and approving M&A deals.
- The valuation process under IBC ensures fair pricing for distressed assets.

Types of Distressed M&A Transactions:

- **Resolution Plan:** New investors submit plans to restructure or acquire distressed companies.
- **Asset Sales & Slump Sales:** Business units are sold as a whole to maximize value.
- **Equity Acquisitions & Business Transfers:** Buyers gain control of financially troubled firms.
- **Pre-Packaged Insolvency (Pre-packs):** Available for MSMEs to facilitate quicker resolutions.
- **Debt Restructuring & Refinancing:** Alternative mechanisms to insolvency.

Key Opportunities:

1. **Low-cost acquisitions** – Investors can acquire assets at significantly reduced valuations.
2. **Turnaround potential** – Operational improvements and restructuring can restore profitability.
3. **Market expansion** – M&A deals allow rapid entry into new sectors and geographies.
4. **Technology/IP acquisition** – Buyers can obtain valuable patents and innovations at lower costs.
5. **Favorable regulatory environment** – IBC provides a structured and time-bound process.

Challenges:

- **Delays in CIRP** – The resolution process often exceeds the mandated 330-day limit.
- **Litigation risks** – Conflicts among creditors and legal hurdles slow down deals.
- **Cross-border insolvency** – Lack of a robust framework complicates international transactions.

Recent Trends & Future Outlook:

- High-profile cases like **Essar Steel, Bhushan Steel, and Jet Airways** highlight the role of M&As in resolving distress.
- **Special situation funds and alternative investment funds (AIFs)** are playing a growing role in financing distressed acquisitions.
- **Policy improvements** in resolution timelines, cross-border insolvency, and digital tools could enhance the effectiveness of the IBC framework.

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Conclusion:
The IBC has made distressed M&As a viable investment avenue in India, providing opportunities for investors to acquire assets, restructure businesses, and drive economic recovery. However, overcoming legal and

operational challenges will be key to maximizing the potential of these transactions.

1. Introduction And Context

Distressed Mergers and Acquisitions (MCAs) refer to the process where businesses or assets that are facing financial distress, such as bankruptcy or insolvency, are bought, sold, or merged with other companies as part of a resolution mechanism. Under the Indian Insolvency and Bankruptcy Code, 2016 (IBC), distressed MCAs have gained significant traction as an effective tool for resolving financial distress, unlocking value, and providing a fresh lease of life to struggling companies.

The IBC, enacted to streamline the insolvency resolution process and improve the ease of doing business in India, has proven to be a pivotal framework for distressed MCAs. Key provisions such as the Corporate Insolvency Resolution Process (CIRP) and liquidation processes offer mechanisms for stakeholders to resolve debts through mergers, acquisitions, or restructuring. Statistically, the volume of distressed MCA deals in India has increased substantially after the implementation of IBC, underscoring its relevance as a solution to corporate insolvencies. For instance, as per a report by PwC, the value of distressed asset deals surged by over 40% between 2017 and 2020, largely driven by the provisions of the IBC.

The challenges faced by companies leading to distress often involve poor management, over-leveraging, market shifts, and economic downturns. MCA transactions have thus emerged as one of the primary mechanisms to resolve such distress, offering opportunities for both resolution applicants and creditors to recover value from struggling entities.

2.Legal and Regulatory Framework

The IBC 2016 provides a structured and time-bound approach to distressed MCAs but also introduces several regulatory challenges. A critical provision under the IBC is Section 2GA, which restricts certain promoters and related parties from submitting resolution plans if they have been involved in the management of a defaulting company. This section aims to prevent delinquent promoters from regaining control of a distressed company, ensuring that new management, with fresh perspectives, takes over the resolution process.

The Committee of Creditors (CoC) plays a crucial role in approving the resolution plans, including those involving MCAs. The CoC assesses the feasibility and viability of the plans and ensures that creditors' interests are maximized. The valuation process under the IBC is another essential aspect. Registered valuers conduct valuations of the distressed assets, determining whether the proposed resolution plan offers a fair value to creditors. However, this valuation is not shared with potential buyers/investors.

The article now provides a streamlined overview that a layman reader can follow without getting overwhelmed by excessive detail, while still covering all the major aspects of the CIRP under the IBC, 2016 :-

Corporate Insolvency Resolution Process (CIRP) Under IBC 2016

The Corporate Insolvency Resolution Process (CIRP) is a key mechanism provided under the Insolvency and Bankruptcy Code (IBC), 2016, to resolve financial distress faced by corporate debtors. CIRP aims to maximize the value of assets, promote the reorganization of businesses, and protect the interests of stakeholders, primarily creditors. The process is designed to be swift and transparent, with a specific timeline and defined roles for all involved parties.

Here's a detailed overview of the CIRP and the various stages and procedural aspects involved in the process:

Initiation of Insolvency Process

The process begins when a corporate entity defaults on a payment of at least Rs. 1 Crore. Financial creditors, operational creditors, or

the corporate debtor itself can initiate the Corporate Insolvency Resolution Process (CIRP) by filing an application with the National Company Law Tribunal (NCLT). The entire resolution must be completed within 180 days, with a possible one-time extension of 90 days (maximum 270 days). Withdrawal of an application after admission requires 90% approval from the Committee of Creditors (COC).

Moratorium Period

Once CIRP begins, a moratorium takes effect that prevents new lawsuits, continuation of existing proceedings, recovery actions, and asset transfers. This protection lasts until the CIRP concludes with either a resolution plan or liquidation order. Certain proceedings before the Supreme Court and High Courts are exempt from this moratorium.

Management During Resolution

The NCLT initially appoints an Interim Resolution Professional (IRP), who may continue as the Resolution Professional (RP) or be replaced by the COC's decision (requiring 66% majority vote). From appointment, the IRP/RP takes control of the company, with the Board of Directors' powers suspended. The IRP/RP must protect asset value, maintain operations as a going concern, and ensure legal compliance.

Committee of Creditors (COC)

The COC comprises all financial creditors (except related parties, with certain exceptions). If no eligible financial creditors exist, the COC includes the 18 largest operational creditors, one workmen representative, and one employee representative. Major decisions require 66% approval, while routine matters need 51% approval.

Resolution Plan Process

Information and Evaluation

The RP prepares an Information Memorandum containing comprehensive company details and an evaluation matrix for assessing resolution plans. Only qualified applicants meeting criteria set by the RP with COC approval can submit resolution plans.

Eligibility Restrictions

Section 29A of the IBC disqualifies certain persons from submitting resolution plans, including those with non-performing assets, undischarged insolvents, willful defaulters, those barred by SEBI, those involved in preferential transactions, those with unpaid guarantees, and those with certain criminal convictions. Exemptions exist for financial entities and MSMEs.

Due Diligence and Valuation

Resolution applicants conduct due diligence within tight timeframes while maintaining strict confidentiality. Two key valuations are determined: liquidation value (worth if liquidated) and fair value (worth in arm's length transaction). These values are shared confidentially with COC members after resolution plans are received.

5. Formulation of the Resolution Plan

The key objective of CIRP is to formulate a **Resolution Plan** that seeks to resolve the company's financial distress, restructure its debts, and bring the company back to a position of financial stability. The **Resolution Professional (RP)**, appointed by the CoC, invites resolution applicants to submit their proposals for restructuring or acquiring the company.

A resolution plan can involve:

- Debt restructuring: Rescheduling the repayment of debts, reducing the principal, or negotiating more favourable terms.
- Sale of assets: Selling off non-core assets to raise funds to pay creditors.
- Equity infusion: Bringing in fresh capital to improve the company's financial health.
- Management changes: A change in the management or leadership to address

governance issues and improve operational performance.

The CoC evaluates all submitted resolution plans based on the maximization of creditor value. The plan must be approved by a majority of 66% of the voting rights in the CoC.

6. Approval of the Resolution Plan

Once a resolution plan is approved by the CoC, it is submitted to the NCLT for final approval. The NCLT reviews the plan to ensure it adheres to the legal and regulatory framework of the IBC, as well as the interests of all stakeholders.

The plan is approved by the NCLT if it meets the following criteria:

- It is in compliance with the provisions of the IBC and other applicable laws.
- It is feasible and viable.
- It maximizes the value for creditors, particularly the financial creditors.

If the resolution plan is approved, the company can proceed with the implementation of the plan. The resolution applicant then takes control of the company, and the process concludes.

7. Liquidation (If Resolution Fails)

If the CIRP does not result in a resolution plan being approved by the CoC, or if no feasible resolution plan is submitted, the company enters **liquidation**. In this case, the NCLT orders the liquidation of the company and appoints a **liquidator**.

The liquidator's role is to sell off the company's assets and distribute the proceeds among creditors as per the priority order established by the IBC

(G) Key Roles and Stakeholders in CIRP

Several key stakeholders are involved in the CIRP, and their roles are defined to ensure a fair and effective process:

- Corporate Debtor: The company under insolvency, whose management is suspended.
- Interim Resolution Professional (IRP): Manages the debtor's operations during the CIRP and forms the CoC.
- Resolution Professional (RP): After the appointment by the CoC, the RP manages the entire process of formulating and evaluating the resolution plan.
- Committee of Creditors (CoC): A group of financial creditors who approve or reject the resolution plan and guide the insolvency process.
- Resolution Applicants: Entities or individuals that submit a resolution plan for restructuring or acquiring the distressed company.
- Insolvency and Bankruptcy Board of India (IBBI): Regulates and monitors the insolvency process.
- National Company Law Tribunal (NCLT): The judicial authority that adjudicates insolvency cases and approves the resolution plan or liquidation.

The Corporate Insolvency Resolution Process (CIRP) under the IBC is designed to provide a time-bound, transparent, and structured mechanism for resolving financial distress in corporate entities. By giving creditors, the power to steer the resolution process and offering opportunities for debt restructuring, asset sales, and business turnaround, the CIRP aims to maximize asset value and protect the interests of all stakeholders. However, it is a complex and highly regulated process, where stakeholders must navigate strict timelines, financial evaluations, and potential conflicts, making expertise and careful management

essential to success.

Independent and accurate valuation of distressed assets by the acquiring company can be complex due to market volatility and the specific conditions of distressed companies. Further, valuations can go high if multiple bidders are vouching for the distressed company.

Additionally, **cross-border insolvency** issues often arise when distressed companies have international operations. While the IBC's framework doesn't address cross-border insolvencies, the **United Nations Commission on International Trade Law (UNCITRAL)** model laws and bilateral agreements/treaties with other countries and some case laws on Cross-border Insolvency deals provide some guidance. However, challenges remain for cross border transactions.

In comparison, other laws such as the **Companies Act, 2013** and **SARFAESI Act** offer alternate mechanisms for resolving financial distress, but they do not provide the same structured and creditor-centric approach as the IBC.

3. Types of Distressed MsA Transactions Under IBC

In the context of the IBC, various MCA strategies are employed to resolve distressed entities:

• **Resolution Plan:** This is the cornerstone of the distressed MCA process under the IBC, where a resolution applicant submits a comprehensive plan to restore the financially troubled company. The plan typically includes restructuring proposals, debt forgiveness, new investment, and changes in management.

• **Asset Sales and Slump Sales:** In cases of liquidation, liquidator of distressed companies may opt to sell entire business units in a slump sale or as a going concern, which can lead to quick resolutions. These sales can often fetch a better value than sale of individual assets under liquidation.

• **Business Transfers and Equity Acquisitions:** Acquiring an entire business or its controlling equity can be an effective way to resolve distress. Equity acquisition offers potential upside to acquirers who see value in turning around a troubled company. This can be achieved under IBC by way of Resolution plan or under the RBI's framework of Resolution of Stressed Assets. However, pre-existing debts are not wiped out under RBI's framework arrangements as against clean slate acquisition available under IBC.

• **Pre-packs:** The pre-arranged insolvency resolution process allows for the resolution process to be negotiated before a formal insolvency filing. This can be an efficient strategy, but it carries risks of opacity and potential biases in the resolution plan. Further, as of now, Pre-packs are only available for MSME businesses. Although, with revised definition of MSMEs, decent sized companies can be acquired through Pre-packs.

- **Debt Restructuring and Refinancing under RBI Prudential framework**: As part of distressed MCAs, debt restructuring or refinancing deals are also possible to facilitate smoother out of court workouts transactions and prevent the Company getting into liquidation.

- **Reverse Mergers:** Reverse mergers, where a distressed company merges into a financially stable one, are increasingly used to gain access to capital markets while resolving insolvency issues.

4.Due Diligence and Valuation Considerations

The due diligence process in distressed MCAs is crucial for identifying potential risks, hidden liabilities, and operational hurdles. Legal, financial, and operational due diligence must be thorough, focusing on the company's debt obligations, pending litigation, and asset valuation.

Due diligence in distressed companies is more challenging due to the limited availability of information and the time constraints imposed by the CIRP timeline. Information asymmetry between the distressed company and potential acquirers is a common issue, and forensic audits are frequently used to uncover hidden liabilities or fraudulent activities.

The valuation of distressed assets requires specialized methodologies. Valuation approaches like liquidation value, which estimates the potential proceeds from selling assets individually, and going concern value, which assesses the company's ongoing viability, are key components of MCA deals. These valuations are conducted by registered valuers who provide an independent and credible assessment.

5.Opportunities in Distressed MsAs under the Insolvency and Bankruptcy Code 2016

The distressed MCA landscape under the Insolvency and Bankruptcy Code (IBC) presents a unique set of opportunities for investors and acquirers. These opportunities stem from the growing regulatory framework, evolving market conditions, and specific characteristics of distressed companies. Below are some of the key opportunities available in distressed MCA transactions in India:

1. **Active Valuations and Strategic Asset Reorganization**

One of the most significant opportunities in distressed MCAs is the ability to acquire distressed assets at a significantly discounted price. The valuation of distressed assets often presents a compelling case for investors. In many cases, these assets can be acquired at liquidation value, providing the acquirer with a low-cost entry point.

Moreover, distressed companies often have underutilized or mismanaged assets that can be reorganized or revitalized through new management, investments, or strategic partnerships. A distressed MCA transaction allows acquirers to restructure these assets into productive entities, unlocking their true potential. For example, in asset-heavy industries like manufacturing, infrastructure, and real estate, distressed assets can be reorganized and repurposed for different business models, which may significantly increase their value.

2. **Reorganization Potential and Operational Turnaround**

Distressed companies frequently exhibit inefficiencies, poor management, or outdated business models. An acquirer with the right expertise can bring operational efficiencies, streamline processes, and implement best practices that significantly improve profitability and productivity.

The reorganization of distressed firms under MCA agreements allows acquirers to introduce new management structures, integrate modern technologies, and optimize supply chains. This turnaround potential is a major incentive for investors, as the cost of acquiring distressed assets is typically lower than the cost of starting a new business from scratch.

3.Access to New Markets and Expansion

Opportunities

For both domestic and foreign investors, distressed MCAs provide an excellent opportunity to enter new markets or expand their reach. Companies undergoing financial distress may already have an established market presence, customer base, and distribution channels. These market advantages can be leveraged by new owners to unlock growth opportunities without the need to build such infrastructure from the ground up.

In particular, MCAs involving distressed companies in growth sectors such as **technology, pharmaceuticals, consumer goods,** and automotive allow acquirers to rapidly penetrate high-demand markets. Investors can gain immediate access to a customer base and proprietary market knowledge that would be costly and time-consuming to develop independently.

4.Technology Acquisition and Innovation

Another unique opportunity in distressed MCAs is the acquisition of cutting-edge technology and intellectual property (IP) at a fraction of the cost. Many distressed companies possess valuable technological assets or proprietary IP that are not reflected in their financial performance due to operational inefficiencies or mismanagement.

For instance, in sectors like software, pharmaceuticals, or renewable energy, distressed companies may have developed valuable research and innovation, which can be acquired as part of the resolution process. The acquirer can not only utilize these technologies to drive innovation within their own operations but can also bring those technologies to market faster than it would take to develop them independently.

Furthermore, this technology acquisition can be a stepping stone for improving competitive advantage in industries that rely heavily on innovation, such as the technology and manufacturing sectors. Investors with the right expertise can recognize the potential in distressed companies' technological assets and lead them into new growth areas.

5. Favourable Regulatory Environment

The IBC has created a favourable regulatory framework that encourages distressed MCAs by providing clarity, transparency, and efficiency in the resolution process. The time-bound approach of the IBC mandates the completion of the Corporate Insolvency Resolution Process (CIRP) within 330 days, which means that the entire resolution process, including the approval of an MCA deal, takes place more swiftly than under traditional bankruptcy or insolvency procedures.

The government's and IBBI's ongoing efforts to streamline the insolvency process, improve creditor protections, and encourage the development of the distressed asset market make it an attractive destination for investors. In addition, recent reforms such as the introduction of pre-packaged insolvency resolution processes (pre-packs) have enhanced flexibility and expedited resolution, offering more options for investors seeking to maximize value through MCAs.

6.Access to Capital and Financing

The growing number of distressed MCAs in India has drawn the attention of private equity firms, venture capitalists, special situation funds, and institutional investors

looking for opportunities to acquire undervalued assets. These investors have the capital, expertise, and risk appetite to invest in distressed companies, thereby enabling the smooth execution of distressed MCA transactions.

Special Situation Funds (SSFs) and **Alternative Investment Funds (AIFs**) have become key players in the distressed asset space. These funds often specialize in financing distressed businesses and restructuring them through MCA transactions. In addition, the Indian government has been supportive of private investment into distressed assets, providing tax incentives and other financial benefits to stimulate investments.

7. **India's Fast-Growing Economy**

India's rapidly growing economy is one of the most attractive opportunities for investors in distressed MCAs. As the third-largest economy in Asia, India's market offers a vast consumer base, increasing urbanization, and a growing middle class with expanding purchasing power. For investors, acquiring distressed companies that cater to this growing market presents the opportunity to capture market share quickly and capitalize on economic growth.

The expanding middle class in India has led to increased demand in sectors like **consumer goods**, **technology**, **e-commerce**, and **financial services**, making these industries particularly attractive for distressed MCAs. Additionally, with India being one of the youngest populations in the world, investors can benefit from demographic trends that support long-term growth prospects.

8. **Favorable Demographic Trends**

India's young population is an important factor driving its economic growth, and it plays a key role in the future success of distressed MCAs. The demographic profile creates a demand for various services, such as **education**, **healthcare**, **technology**, and **financial services**. Acquiring distressed companies that cater to these sectors allows investors to tap into a rapidly growing and evolving market.

Furthermore, the youth-centric economy presents opportunities for businesses to innovate, develop new products, and engage in strategic partnerships to capitalize on changing consumer behavior. Distressed MCA transactions provide a vehicle for investors to gain quick access to these dynamic sectors and leverage their expertise to drive business transformation.

(G) Portfolio Diversification and Risk Mitigation

Investors who are looking to diversify their portfolios can benefit from distressed MCAs by adding different types of distressed assets to their portfolio. These assets, acquired at discounted prices, offer a unique opportunity for risk mitigation, as they can be integrated into larger, more diversified portfolios of operational businesses. By engaging in distressed MCAs, investors can reduce their exposure to traditional market risks and create a balanced portfolio with significant upside potential.

10.Synergies and Economies of Scale

Distressed MCAs present the opportunity to achieve economies of scale by consolidating operations, reducing overhead costs, and streamlining production and distribution networks. The acquirer may realize synergies by merging complementary businesses, which can lead to reduced costs, increased efficiency, and enhanced market competitiveness. These synergies can result

in increased profitability and improved cash flow, providing an attractive return on investment.

While distressed MCAs under the IBC offer several opportunities, there are also some challenges:

- **Delays in Resolution**: The IBC aims for timely resolution but delays in the CIRP process are common. As per IBBI data, the average time taken for a Resolution through CIRP is approx. 650 days. This is excluding time taken by the Insolvency Court to admit the petitions which can be anywhere between 3 months to 2 years. Legal battles, administrative bottlenecks, and the complexity of distressed assets often lead to extended timelines, hampering the efficiency of MCA transactions.
- **Litigation and Stakeholder Conflicts**: Disputes among creditors, especially with dissenting creditors who do not agree with the resolution plans, are common. The IBC attempts to address these conflicts, but they can still delay or hinder transactions. Frivolous litigation by erstwhile Promoters or other stakeholders is also an area of concern which causes delays and has not been addressed.
- **COVID-1G Impact**: The global pandemic led to a surge in distressed MCA activity, as many businesses faced severe financial distress. This crisis also revealed several vulnerabilities in the MCA process, such as liquidity challenges and market volatility.

Despite these challenges, distressed MCAs present significant opportunities for investors, both domestic and international. The IBC provides a clear and structured legal framework for resolving distress, enhancing transparency and investor confidence. Ethical considerations also play a vital role in ensuring fair outcomes for employees, creditors, and other stakeholders.

6. Recent Trends and Case Studies

In recent years, India has seen sector-specific MCA activity in distressed assets, with sectors like **steel, power, and real estate** dominating the landscape. Notable transactions, such as the resolution of the Essar Steel, Bhushan Steel, Electro steel Steel, insolvency and Jet Airways restructuring, demonstrate the potential of MCA to resolve corporate distress and maximize value for creditors.

Special situation funds and Alternative Investment Funds (AIFs) have become important players in the distressed MCA market, providing the necessary capital and expertise to facilitate these transactions.

7.Outlook and Recommendations

The future of distressed MCAs in India looks promising, driven by the evolving regulatory landscape, improving insolvency processes, and increased interest from investors.

However, to enhance the effectiveness of the IBC, several reforms are needed:

- **Timely Resolution:** Reducing delays in the CIRP process should be a priority to ensure that distressed MCAs can be executed swiftly.
- **Cross-Border Insolvency Mechanisms:** Addressing the challenges related to cross-border insolvency through international cooperation and bilateral agreements will further streamline the resolution process.
- **Increased Use of Technology:** Leveraging technology for due diligence, asset valuation, and resolution planning can reduce costs

and improve transparency with the continued growth of distressed MCAs, India's market presents immense potential for resolution applicants and investors. However, addressing the current challenges and fostering greater efficiency in the IBC framework will unlock even greater opportunities for distressed MCAs in the years to come.

Conclusion

The distressed MCA market under the IBC offers a wide array of opportunities for investors, from asset reorganization and technology acquisition to accessing growing markets and leveraging India's demographic advantages. The favorable regulatory environment, combined with India's fast-growing economy and young population, makes distressed MCAs a strategic investment choice for both domestic and foreign investors. By overcoming the challenges posed by distressed companies, investors can unlock significant value, drive operational improvements, and position themselves for long-term growth in a dynamic market environment.

BEYOND THE HEADLINES: UNRESOLVED ISSUES FOR PERSONAL GUARANTORS UNDER THE IBC

Dr. Biswadev Dash
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SYNOPSIS

The Insolvency and Bankruptcy Code (IBC) 2016, designed to streamline insolvency proceedings in India, has introduced a complex legal landscape for personal guarantors. Two landmark judgments, "Lalit Kumar Jain v. Union of India" and "Dilip B. Jiwrajka vs. Union of India & Ors.", have significantly clarified the liability and legal framework surrounding personal guarantors. This article provides an in-depth analysis of the legal controversies and landmark judgments surrounding personal guarantors under India's Insolvency and Bankruptcy Code (IBC). It examines the significant impact of key Supreme Court decisions, particularly Lalit Kumar Jain v. Union of India and Dilip B. Jiwrajka vs. Union of India & Ors., which have clarified crucial aspects of personal guarantors' liabilities and rights within the IBC framework. While these judgments have resolved some critical issues, the article also highlights persistent ambiguities and challenges that necessitate further legal and judicial consideration to ensure a balanced and effective insolvency resolution process. It also delves into the key findings of these landmark cases, highlighting their implications for creditors and guarantors alike. Despite these clarifications, certain ambiguities remain, particularly regarding jurisdiction issues, the status of personal guarantees post-resolution, and the interplay between the IBC and other relevant legislation. The article has three sections and concludes by emphasizing the ongoing need for legal refinement and judicial interpretation to ensure a fair and transparent system for all stakeholders involved.

Introduction

The Indian legal landscape surrounding personal guarantors under the Insolvency and Bankruptcy Code (IBC) 2016 has been a subject of ongoing debate and legal scrutiny. While the IBC aims to facilitate a smooth and efficient resolution process for corporate debtors, the implications for personal guarantors, who often act as financial backstops, have been a source of considerable uncertainty. This article examines the impact of two landmark judgments, **"Lalit Kumar Jain v. Union of India"** and **"Dilip B. Jiwrajka vs. Union of India & Ors."**, which have provided significant clarity on the legal status and liabilities of personal guarantors under the IBC. These cases have shed light on crucial aspects of personal guarantor liability, but certain ambiguities remain, necessitating further legal refinement and judicial interpretation. The Insolvency and Bankruptcy Code (IBC), enacted in 2016, was established to streamline and consolidate India's insolvency laws, creating a more efficient and time-bound framework for resolving insolvency. This code also extends its provisions to personal guarantors, who are individuals who provide guarantees for the obligations of a corporate debtor. The application of the IBC to personal guarantors has been a complex and contentious legal area, marked by significant debates and judicial interpretations. Landmark judgments by the Supreme Court of India, most notably in *Lalit Kumar Jain v. Union of India* and *Dilip B. Jiwrajka vs. Union of India & Ors.*, have played a crucial role in shaping the

legal landscape for personal guarantors under the IBC. However,despite these pivotal rulings, several ambiguities and challenges persist, necessitating ongoing legal and judicial scrutiny.

I. Landmark Judgments and Their Impact

The Supreme Court of India has delivered two landmark judgments that have significantly influenced the legal framework governing personal guarantors under the IBC.

A. Lalit Kumar Jain v. Union of India (2021)

- **Overview**
  - This case addressed the fundamental question of the validity of the notification issued by the Central Government, which brought personal guarantors of corporate debtors under the purview of the IBC.
  - The Supreme Court's judgment, delivered on May 21, 2021, provided critical clarifications on the legal position of personal guarantors in the context of corporate insolvency.
- **Key Findings**
  - The Supreme Court upheld the constitutional validity of the notification, affirming the legislative competence to implement the provisions of the IBC in a phased manner.
  - The ruling clarified that personal guarantors could be subjected to insolvency proceedings independent of the insolvency resolution process of the corporate debtor.
  - A significant aspect of the judgment was the determination that the approval of a resolution plan for the corporate debtor does not automatically discharge the personal guarantor's liability. The guarantor's liability remains intact, and creditors retain the right to pursue recovery proceedings against personal guarantors, even after the corporate debtor's resolution plan has been approved.
  - This ruling reinforced the principle of co-extensive liability, derived from Section 128 of the Indian Contract Act, 1872, emphasizing that personal guarantors are subject to the same legal scrutiny as corporate debtors.
- **Implications**
  - This judgment has significant implications for creditors, as it strengthens their position by ensuring that they can pursue the personal assets of guarantors in insolvency proceedings, thereby enhancing the effectiveness of the IBC.
  - It also underscores the importance for personal guarantors to fully comprehend the risks associated with providing guarantees, as their personal assets are at risk if the corporate debtor defaults.
  - The decision has broader implications for India's credit culture, promoting more responsible lending practices and ensuring that guarantors cannot evade liability simply because the corporate debtor is undergoing insolvency.
  - The ruling aligns with international insolvency best practices, reflecting principles found in the UK Insolvency Act 1986, the US Bankruptcy Code, Singapore’s insolvency regime, and the UNCITRAL Model Law on Cross-Border Insolvency.

B. Dilip B. Jiwrajka vs. Union of India & Ors. (2023)

- **Overview**

o This case further examined the constitutional validity of Sections 95 to 100 of the IBC, which pertains to the insolvency resolution process for personal guarantors.

o The Supreme Court's ruling, delivered on November 9, 2023, provided additional clarity on the procedural aspects and safeguards available to personal guarantors under the IBC.

- **Key Findings**

o The Supreme Court upheld the constitutional validity of these sections, confirming that personal guarantors are treated as a distinct category under the IBC, with specific provisions applicable to them.

o The judgment clarified the role of the resolution professional, emphasizing that their role is administrative, not adjudicatory, under Section 99 of the IBC, ensuring compliance with Article 14 of the Constitution.

o The interim moratorium under Section 96 of the IBC was deemed constitutional, although concerns about its impact on guarantors' rights were acknowledged.

- **Implications**

o This ruling reinforces the legal framework governing personal guarantors, providing clarity on their rights and obligations within the insolvency resolution process.

o It addresses the procedural aspects of insolvency applications involving personal guarantors, aiming for a more streamlined and efficient process.

o The judgment also sought to ensure compliance with principles of natural justice and procedural fairness, addressing concerns raised about due process.

II. Persistent Ambiguities and Challenges

Despite these landmark judgments and the clarifications, they provide, several areas of ambiguity and challenges remain regarding personal guarantors under the IBC, creating complexities for stakeholders and necessitating further legal and judicial intervention.

A. Procedural Complexities

- The practical coordination of insolvency proceedings between the corporate debtor and the personal guarantor continues to present challenges, even with clarifications on jurisdiction.

- Part III of the IBC, which deals with personal guarantors, includes additional procedural steps, such as the appointment of a resolution professional and an interim moratorium before admission, unlike Part II, which deals with corporate debtors. These procedural differences may lead to inefficiencies and delays in the resolution process.

- There are ongoing concerns about whether personal guarantors are afforded a fair opportunity to contest actions like the interim moratorium, raising questions about due process and natural justice. Legal analyses have highlighted potential violations of principles of natural justice, suggesting that guarantors may be "condemned unheard."

- The low threshold for initiating IBC applications, set at Rs. 1000 under Section 78, could lead to a flood of cases, potentially overwhelming adjudicating authorities and adversely affecting the efficiency and fairness of the process.

B. Scope and Extent of Liability

- While the Supreme Court has affirmed that personal guarantors are independently liable, uncertainty persists regarding the precise quantum of liability, particularly in cases where the corporate debtor's resolution plan involves a reduction of the total debt. Courts are yet to establish a uniform approach to determining the liability of personal guarantors in situations where a significant portion of the debt is written off in a corporate resolution.

- The precise scope of co-extensive liability in various contractual scenarios can still lead to disputes, especially with variations in guaranteed agreements and their interplay with other contractual obligations.

C. Asset Recovery and Legal Recourse

- Effectively tracing and recovering assets from personal guarantors, especially in complex cases involving intricate financial structures or offshore assets, remains a significant hurdle. This is particularly challenging concerning the recovery of assets that may have been transferred prior to the initiation of IBC proceedings.

- Personal guarantors often argue for stronger legal recourse to contest claims under the IBC, particularly when the corporate debtor's debt is significantly reduced or waived in an approved resolution plan. The extent to which they can challenge claims and seek relief remains an area of concern.

D. Interaction with Other Laws

- The interplay between the IBC and other existing laws, such as the Indian Contract Act, 1872, can lead to interpretational challenges and complexities. The application of general contract law principles in specific insolvency contexts may still generate ambiguity.

- It is unclear how personal guarantors' rights to subrogation, as per Section 140 of the Indian Contract Act, are affected when the corporate debtor's liability is discharged.

E. Potential for Double Recovery

- There are ongoing debates about whether creditors can recover from both the corporate debtor and the personal guarantor, potentially leading to unjust enrichment and procedural confusion. The courts have not fully addressed the risk of creditors recovering more than what is due through simultaneous proceedings against both parties.

F. Moratorium and Resolution Plans

- Ambiguity exists regarding the application of moratorium provisions to personal guarantors under the IBC. Courts have issued varying interpretations on whether personal guarantors are entitled to similar protections as corporate debtors, causing inconsistencies in insolvency proceedings.

- While resolution plans approved under the IBC are binding on all stakeholders, the question of whether they also bind personal guarantors remains debated.

Some judgments suggest that guarantors remain liable irrespective of the corporate resolution, whereas others hint at possible discharge if the debt is fully satisfied.

III. Avoidance Transactions and Recovery

- The IBC also contains provisions addressing avoidance transactions, which are transactions undertaken by the corporate debtor before the initiation of the Corporate Insolvency Resolution Process (CIRP). These transactions, which may include preferential, undervalued, extortionate, and fraudulent transactions, can significantly impact the value of the corporate debtor's assets.
- Resolution professionals (RPs) or liquidators are obligated to identify and file applications concerning these avoidance transactions before the Adjudicating Authority (AA), seeking appropriate relief under the Code. As of the end of September 2024, 1,326 avoidance transaction applications involving a substantial amount of ₹3.76 lakh crore had been filed with the AA.
- The Adjudicating Authority (AA) has the power to order the amount involved in avoidance transactions to be clawed back, contributing to the recovery of funds for creditors.
- The IBC has facilitated direct recovery through resolution and liquidation processes. Recovery from avoidance transactions further augments this recovery for the benefit of creditors.

The landmark judgments in **"Lalit Kumar Jain v. Union of India"** and **"Dilip B. Jiwrajka vs. Union of India & Ors."** have undoubtedly provided a much-needed framework for understanding the legal position of personal guarantors under the IBC. These judgments have clarified the principle of co-extensive liability, the constitutional validity of relevant provisions, and the distinct treatment of personal guarantors within the insolvency resolution process. However, despite these advancements, certain areas of ambiguity persist, particularly regarding jurisdiction, the status of personal guarantees after resolution plans, and the interaction with other relevant laws. Addressing these ambiguities through further legal refinement and judicial interpretation is crucial for ensuring a fair and transparent system for all stakeholders involved in insolvency proceedings. The ongoing evolution of the legal landscape necessitates continued vigilance and understanding from creditors, guarantors, and legal practitioners alike.

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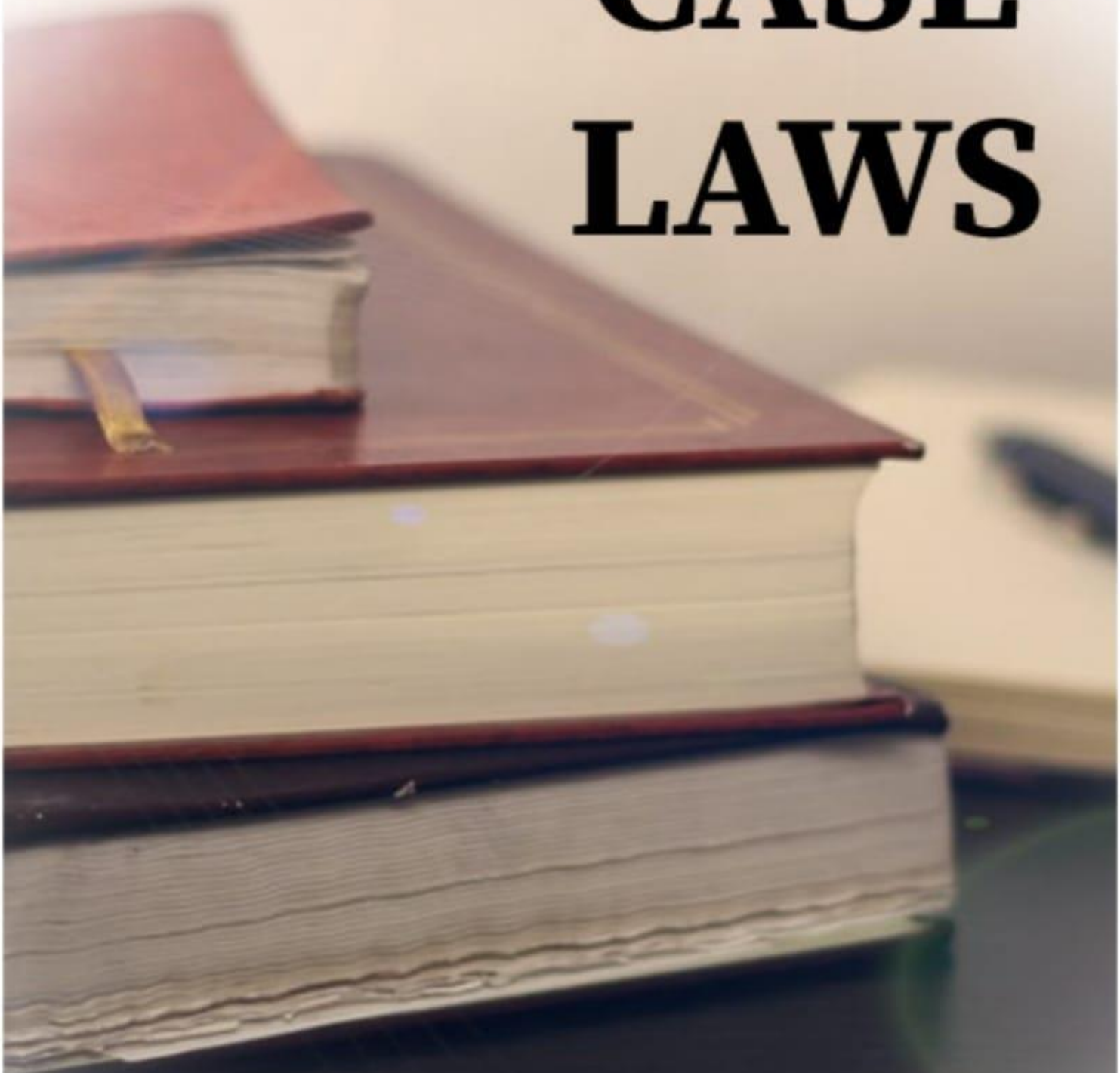
CASE LAWS



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 52 - CORPORATE LIQUIDATION PROCESS - SECURED CREDITOR IN

Shikshak Sahakari Bank Ltd. v. Jagdish Kumar Parulkar [2025] 170 taxmann.com 70 (NCLAT- New Delhi)

Where appellant, a secured creditor, failed to pay full liquidation costs and did not demonstrate compliance with regulation 21A(2) of IBBI and 90-day period from liquidation commencement date was also lapsed without payment of requisite costs, since appellant was obligated to pay its share under section 53(1)(a) and 53(1)(b)(i), there was no infirmity in orders of NCLT directing appellant to pay liquidator's fee.

CIRP against the corporate debtor commenced and a liquidation order was passed. Respondent-liquidator issued a public announcement. The appellant, a secure creditor filed its claim while explicitly opting not to relinquish its security interest over certain assets. The Liquidator requested the appellant to pay CIRP costs, liquidation costs, and liquidator's fee as per regulation 21A and filed an application before NCLT. NCLT by impugned order directed the appellant to pay liquidator's fee.

Held that secured creditor is mandatorily obligated to pay its share as per section 53(1)(a) and 53(1)(b)(i), which provides for distribution of assets from sale of liquidation assets in order of priority. Regulation 21A(3) of Liquidation Process Regulations, 2016, provides that where a secured creditor fails to comply with sub-regulation (2),asset, which is subject to security interest, shall become part of liquidation estate. The Appellant neither paid full liquidation costs nor demonstrated compliance with regulation 21A(2) and, 90-day period from liquidation commencement date was also lapsed without payment of requisite costs therefore, there was no infirmity in orders of NCLT directing the appellant to pay liquidator's fee.

Case Review : Uco Bank v. Narendra Solvex (P.) Ltd. [2024] 169 taxmann.com 756 (NCLT - Mum.), affirmed.

SECTION 33 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

Svamitva Landmarks v. Committee of Creditors of Associate Decor Ltd. [2025] 170 taxmann.com 110 (SC)

Supreme Court upheld order of NCLAT holding that NCLT had exceeded its jurisdiction in directing RP to consider resolution plan of a new applicant, who had submitted its plan after expiry of last date for submission and that too after completion of CIRP period.

CIRP was initiated against the appellant-corporate debtor and resolution plan of successful resolution applicant (SRA) was approved by CoC with 100 per cent voting share. RP filed an application before NCLT seeking approval of said resolution plan. Subsequently, after completion of CIR process another resolution plan was submitted to RP who rejected said plan on grounds that last date for submission of resolution had already expired on 7-12-2019, and even statutory period of 330 days had also expired on 16-3-2020 and, therefore, plan filed on 27-5-2020 i.e. after lapse of more than 5 months from last date could not be considered. However, NCLT directed RP to place said plan along with resolution plan submitted by SRA before CoC for its consideration. RP submitted that NCLT had erred in holding that delayed claims could be filed at any time. NCLAT by impugned order held that NCLT had exceeded its jurisdiction in directing RP to consider resolution plan of a new applicant, who had submitted its plan after expiry of last date for submission and that too after completion of CIRP period and order passed by NCLT being unjust, illegal and unwarranted was to be set aside.

Held that there was no reason to interfere with impugned order and, therefore, appeals were to be dismissed.

Case Review : Committee of Creditors of Associated Décor Ltd. v. Svamitva Landmarks [2023] 147 taxmann.com 353 (NCLAT-Chennai) affirmed.

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

Yashdeep Sharma v. Tara Chand Meenia, Resolution Professional for Maha Associated Hotels (P.) Ltd. [2025] 170 taxmann.com 151 (NCLAT- New Delhi)

Where there was no patent irregularity found in conduct of CIRP proceedings by RP, nor any facts and circumstances placed on record that substantiated that appellant-suspended management of corporate debtor was prevented by RP/CoC from effectively participating in CoC deliberations, decision of NCLT approving resolution plan of SRA was not to be interfered with.

CIRP was initiated against the corporate debtor. The RP invited resolution plans and CoC approved resolution plan of SRA, which was further approved by NCLT vide impugned order. The appellant filed appeal on ground that RP had failed to conduct CIRP proceedings of the corporate debtor with due diligence and in a manner marred by irregularities. The appellant alleged that CoC had wrongfully adopted Swiss Challenge Method and had only screen shared resolution plan during CoC meeting, which prevented effective discussion of resolution plans by CoC and suspended management. It was noted that in 52nd CoC meeting, CoC in exercise of its commercial wisdom had decided to adopt Swiss Challenge method for approval of resolution plan. Further, all PRAs had been given opportunity to present their plan in CoC meeting and, after threadbare discussion, they were given opportunity to improve their plan value consideration.

Held that opinion expressed by CoC, after due deliberations in meetings and through voting as per voting shares, was a collective business decision and, that decision of CoC's commercial wisdom was non-justiciable, except on limited grounds as were available for challenge under section 30(2) or section 61(3). There was no patent irregularity found in conduct of CIRP proceedings by RP, nor any facts and circumstances placed on record that substantiated that appellant in their capacity as suspended management, had been prevented by RP/CoC from effectively participating in CoC deliberations. Thus, NCLT did not commit error in approving resolution plan of SRA.

Case Review: UVA Engineers (P.) Ltd. v. Mahaassociated Hotels (P.) Ltd. [2025] 170 taxmann.com 72 (NCLT - JP), affirmed.

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

Chandra Prakash v. Insolvency and Bankruptcy Board of India [2025] 170 taxmann.com 226 (Delhi)

Where petitioner-IP engaged a firm, owned by his brother without making CoC aware of fact that said firm was a related party and furthermore, petitioner had submitted a valuation report without approval of CoC, petitioner violated section 28(1)(f) of IBC and

regulation 34 of CIRP Regulations and thus, one year suspension of petitioner's registration as an IP was justified.

Corporate Insolvency Resolution Process (CIRP) against the corporate debtor was admitted and the petitioner was appointed as Resolution Professional (RP). Respondent-IBBI initiated inspection against the petitioner. IBBI issued a show cause notice (SCN) against the petitioner on ground that the petitioner had engaged a firm, IC, owned by his brother for professional support services without proper disclosure, submitted valuation report without approval of CoC and failed to take action against defaulter for non-payment of water charges. IBBI suspended petitioner's registration as an IP for one year. The petitioner filed instant petition seeking setting aside impugned order.

Held that while CoC had approved appointment of IC in its 13th meeting, it was not made aware of fact that IC was a related party of the petitioner and, thus, prior approval required under section 28(1)(f) had not been complied with. Fee of valuer appointed by the petitioner was not ratified by CoC and, thus, the petitioner violated regulation 34 of CIRP Regulations. Since petitioners had in fact initiated necessary action against defaulter, finding in impugned order to that limited extent was erroneous, however, since one year suspension of the petitioner stood supported by at least two valid grounds, petitioner's plea to set aside suspension order, in its entirety, could not be granted.

SECTION 12A - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

Join Up Corporation v. R. Sugumaran [2025] 170 taxmann.com 266 (NCLAT - Chennai)

Application for withdrawal under section 12A has to be necessarily made by applicant who has initiated CIRP by filing application under sections 7, 9 or 10.

The appellant had filed a petition under section 9 against corporate debtor and, same was admitted by NCLT. IRP collated claims from creditors and constituted CoC with sole secured financial creditor, i.e., TMBL. CoC, with only one creditor, TMBL, decided to initiate liquidation however, later a settlement between TMBL and the corporate debtor was approved. IRP filed an application for withdrawal of CIRP under section 12A, which NCLT allowed, dismissing section 9 petition as withdrawn.

Held that application for withdrawal as per Regulation 30A read with section 12A has to be necessarily made by applicant who has initiated CIRP by filing application under section 7, section 9 or section 10. Form "FA" submitted by IRP in proceedings before NCLT showed that it was signed by sole CoC Member and not applicant however, NCLT had overlooked and ignored fact that Form 'FA' had not been signed by applicant of application under section 9. Since, Form 'FA' was not proper and, was not as prescribed under provisions of regulation 30A of IBBI (CIRP) Regulations, 2016 and section 12A, withdrawal of CIRP was not correct as per Law, and thus, impugned order was to be set aside.

Case Review : R. Sugumaran v. Safire Machinery Company (P.) Ltd. [2025] 170 taxmann.com 228 (NCLT- Chennai) reversed.

SECTION 12A - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

Gunasekaran v. Join up Corporation 2025] 170 taxmann.com 363 (SC)

An application for withdrawal under section 12A has to be necessarily made by applicant who has initiated CIRP by filing application under sections 7, 9 or 10.

The respondent had filed a petition under section 9 against the corporate debtor and, same was admitted by NCLT. The IRP collated claims from creditors and constituted CoC with sole secured financial creditor, i.e., TMBL. CoC, with only one creditor, TMBL, decided to initiate liquidation. However, later a settlement between TMBL and corporate debtor was approved. Application was filed for withdrawal of CIRP under section 12A, which NCLT allowed, dismissing section 9 petition as withdrawn. The respondent challenged NCLT's order. NCLAT vide impugned order set aside NCLT's order on ground that application for withdrawal as per Regulation 30A read with section 12A has to be necessarily made by applicant who has initiated CIRP by filing application under section 7, section 9 or section 10. NCLAT further held that form 'FA' was not proper and was not as prescribed under provisions of regulation 30A of IBBI (CIRP) Regulations, 2016 and section 12A, thus, withdrawal of CIRP was not correct as per Law.

Held that appeal filed against NCLAT's order was to be dismissed.

Case Review : Join Up Corporation v. R. Sugumaran [2025] 170 taxmann.com 266 (NCLAT - Chennai), affirmed.

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

Calyx Chemicals and Pharmaceuticals (P.) Ltd. v. Ravindra N. Athavale [2025] 170 taxmann.com 452 (NCLAT- New Delhi) image

Adjudicating Authority is not empowered to modify resolution plan approved by Committee of Creditors and in event of Adjudicating Authority finding that approved resolution plan requires certain modifications, it can only make suggestions regarding modification of plan to CoC but cannot unilaterally modify plan

The Corporate Debtor was admitted into the rigours of the Corporate Insolvency Resolution Process (CIRP) on 6-2-2018. The resolution plan submitted by the Successful Resolution Applicant (SRA) was approved by the Adjudicating Authority with 77.8 per cent voting share on 16-4-2019 following which the new management i.e., Appellant took over the management and ownership of the Corporate Debtor. Challenge to the resolution plan of the SRA was dismissed by the NCLAT on 30-8-2019. The orders of the NCLAT upholding the resolution plan were also affirmed by the Supreme Court on 20-2-2020.

On 9-3-2020, one of the ex-employees of the Corporate Debtor-H, enquired from the present Appellant-SRA regarding the claim filed by him before the Resolution Professional (RP). On 17-3-2020, a self-explanatory reply was sent by the Appellant informing H that no claim was payable to him as per approved resolution plan as there was no provision in the plan for payment to those ex-employees like him who were not on the payroll of the Corporate Debtor as on 6-2-2018. IA Nos. 2260 and 2943 of 2022 were filed by ex-employees i.e., H and D seeking payment of gratuity. The Adjudicating Authority by impugned orders allowed said IAs. On appeal :

Held that once resolution plan is approved by the Adjudicating Authority, same becomes

binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in resolution plan. No surprise claims should be flung on Successful Resolution Applicant (SRA) in a belated manner. Adjudicating Authority is not empowered to modify resolution plan approved by Committee of Creditors and in event of Adjudicating Authority finding that approved resolution plan requires certain modifications, it can only make suggestions regarding modification of plan to CoC but cannot unilaterally modify plan. When resolution plan did not provide for payment of gratuity for ex-employees who were not on payroll on the corporate insolvency resolution date and approval of same had acquired finality, said employees could not be paid after lapse of more than five years since approval of resolution plan.

Case Review : Ravindra N. Athavale v. Calyx Chemicals and Pharmaceuticals Limited [2025] 170 taxmann.com 362 (NCLT - Mum.) and Dnyanaba Namdeo Karande v. Calyx Chemicals and Pharmaceuticals Limited [2025] 170 taxmann.com 327 (NCLT - Mum.), reversed..

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

Gangakhed Sugar and Energy Ltd. v. Central Bureau of Investigation [2025] 170 taxmann.com 526 (Delhi)

Where approval of resolution plan resulted in a new management taking over control of petitioner-corporate debtor, petitioner could not be prosecuted for alleged offences committed by erstwhile management and directors of petitioner prior to approval of resolution plan and thus, petitioner would be entitled to immunity from prosecution..

The petitioner-corporate debtor had availed credit facilities from respondent bank. Since, the petitioner failed to repay loan, respondent bank filed application under section 7 to initiate CIRP against the petitioner and, same was admitted. During pendency of CIRP, the respondent filed a complaint against the petitioner, alleging that the petitioner had committed fraud by availing loan facilities. Subsequently, an FIR was registered against the petitioner for offences punishable under section 120B, read with section 420 of IPC and section 13(2), read with section 13(1)(d) of Prevention of Corruption Act. However, resolution plan of petitioner was approved by NCLT.

The petitioner filed petition to quash FIR. It was noted that prior to registration of FIR, CIRP was initiated against the petitioner and during pendency of investigation in said FIR, resolution plan submitted by resolution applicant was approved.

Held that since resolution plan resulted in change of management/control of the corporate debtor, the petitioner could not be prosecuted for alleged offences committed by erstwhile management/directors prior to approval of resolution plan, thus, the petitioner was entitled to immunity from prosecution in relation to impugned FIR and investigation under section 32A and, therefore, petition was to be allowed and FIR was to be quashed..

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

Seeta Shah v. ICICI Bank Ltd. [2025] 170 taxmann.com 815 (NCLAT- New Delhi)

Where resolution plan of principal borrower clearly contemplated that guarantee in favour of financial creditor would continue and would not be discharged NCLT rightly admitted section 7 application against corporate debtor/guarantor.

The appellant bank had extended financial the appellant/ corporate debtor had executed corporate guarantee for securing credit facility extended by the financial creditor to the principal borrower. Principal borrower committed default in repayment. Thus, the corporate guarantee of the corporate debtor was invoked. No payment having been made by the corporate debtor, a section 7 application was filed by the financial creditor against the corporate debtor. NCLT by impugned order admitted said petition. The corporate debtor by instant appeal challenged NCLT's order on ground that the principal borrower had already been in CIRP and in view of entire debt of principal borrower being discharged by approval of resolution plan of principal borrower, the corporate guarantor stood discharged. Further, as per clause 33 of the corporate guarantee, in event outstanding of borrower was less than Rs.218 crore, guarantee would fall off.

It was noted that resolution plan of principal borrower clearly contemplated that guarantee in favour of the financial creditor would continue and would not be discharged. Also, the Supreme Court in its various judgements clearly lays down that by approval of resolution plan guarantor was not absolved from its liability to financial creditors. Further, initiation of proceeding against the principal borrower for admitted claim of Rs.294 crore itself proves that debt of principal borrower was more than Rs.218 Crores, and thus, clause 33 of corporate guarantee was not applicable and the corporate debtor could not claim that it was discharged from debt.

Held that NCLT after considering all relevant aspects of matter had admitted section 7 application against the corporate debtor / guarantor, in which there was no infirmity, accordingly, instant appeal was to be dismissed.

Case Review : ICICI Bank Ltd. v. Ushdev Engitech Ltd. [2025] 170 taxmann.com 692 (NCLT - Mum.), affirmed

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 – CORPORATE LIQUIDATION PROCESS - INITIATION OF

Nimmagadda Surya Pradeep Bio-Tech (P.) Ltd. v. Kamineni Steels & Power India (P.) Ltd. [2025] 170 taxmann.com 863 (NCLAT - Chennai)

Where appellant, a successful bidder in liquidation proceedings, failed to pay entire amount of sale consideration, since appellant had made genuine efforts to deposit amount but could not do so and subsequent successful bidder had remitted entire sale consideration and sale certificate had been issued, appellant was to be refunded 75 per cent of EMD amount deposited by it.

The appellant was determined to be a successful bidder in liquidation proceedings of the corporate debtor. However, the appellant defaulted in remittance of amount

which was settled due to be paid under terms and conditions of tender document. NCLT by impugned order rejected prayer of the appellant to grant extension of time to pay balance amount and directed the liquidator to forfeit EMD of Rs. 5 crores paid by it.

Held that since subsequent sale of the corporate debtor (CD) as a going concern had been confirmed and sale consideration which was of much higher amount had been accepted, plea of extension of time made by the appellant beyond period of 90 days could not be considered. Since, the appellant had made genuine efforts to deposit amount but could not do so and subsequent successful bidder had remitted entire sale consideration and sale certificate had been issued, the appellant was to be refunded 75 per cent of EMD amount.

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

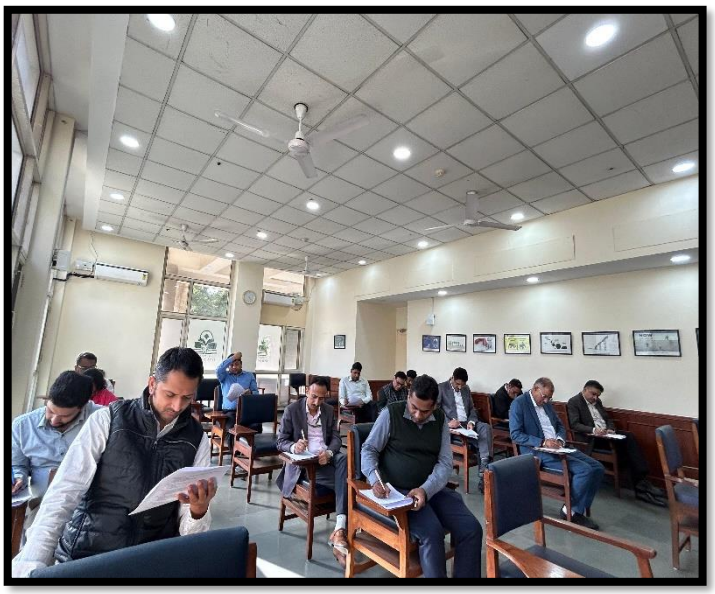
Independent Sugar Corporation Ltd. v. Girish Sriram Juneja 2025] 170 taxmann.com 868 (SC)

A resolution plan involving a combination requires prior approval from Competition Commission of India (CCI) before Committee of Creditors (CoC) can consider and approve it, as mandated under section 31(4) of IBC.

CIRP was initiated against the corporate debtor, and resolution plans were submitted by the appellant (unsuccessful resolution applicant) and AGI (successful resolution applicant). AGI's acquisition of the corporate debtor would create an 80-85 per cent market share in F&B segment and 45-50 per cent in alco-beverage segment, raising anti-competition concerns. The appellant objected to CoC's approval of AGI's resolution plan citing lack of prior CCI clearance, as required under section 31(4) of IBC. Despite objection, CoC approved AGI's plan with 98 pe recent votes. CCI approval was obtained only later, subject to divestment conditions. NCLT upheld CoC's approval, citing subsequent compliance. NCLAT upheld said decision, ruling that prior CCI approval was directory, not mandatory.

Held that a resolution plan involving a combination requires prior CCI approval before CoC approval, as mandated under section 31(4) of IBC. Section 29(1) of Competition Act mandates issuance of a Show Cause Notice (SCN) to parties to combination if CCI forms a prima facie opinion that combination is likely to cause or has caused AAEC in relevant market. Whether CCI's failure to issue a mandatory SCN under section 29(1) to all affected parties, including corporate debtor, constituted a major procedural lapse - Held, yes - Whether AGI's resolution plan, lacking prior CCI clearance, violated sections 30 and 34 of IBC and therefore, being legally unsustainable had to be set aside.

Merit Certificate Course on Insolvency and Bankruptcy Code in Association with NIBSCOM, held from March 3rd to 7th, 2025.



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

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

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

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

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

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

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

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

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