MARCH 2026

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

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

IPA-ICMAI

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by the Institute of Cost Accountants of India. We are 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

DR. BHASKAR CHATTERJEE
CHAIRMAN& INDEPENDENT DIRECTOR

DR. DIVYA SHARMA
INDEPENDENT DIRECTOR

SHRI P. N. PRASAD
INDEPENDENT DIRECTOR

CMA SURAJ PRAKASH
INDEPENDENT DIRECTOR

CMA KAMAL NAYAN JAIN
DIRECTOR/INSOLVENCY PROFESSIONAL

CMA TCA SRINIVASA PRASAD
SHAREHOLDER DIRECTOR

CMA ASHWIN G DALWADI
SHAREHOLDER DIRECTOR

CMA (DR.) ASHISH P. THATTE
SHAREHOLDER DIRECTOR

CMA MANOJ KUMAR ANAND
SHAREHOLDER DIRECTOR

MR. G.S NARASIMHA PRASAD
MANAGING DIRECTOR

OUR PUBLICATIONS

IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

IBC DOSSIER

BULLETIN ON LANDMARK JUDGMENTS

QUARTERLY DIGEST

ANNUAL PUBLICATION

CASEBOOK

TABLE OF CONTENTS

BOARD OF DIRECTORS

INDEPENDENT DIRECTORS

Dr. Bhaskar Chatterjee
Mr. P.N. Prasad
Dr. Divya Sharma
CMA Suraj Prakash

SHAREHOLDER DIRECTORS

CMA TCA Srinivasa Prasad
CMA Ashwin G Dalwadi
CMA (Dr.) Ashish P. Thatte
CMA Manoj Kumar Anand

DIRECTOR/INSOLVENCY PROFESSIONAL

CMA Kamal Nayan Jain

EDITOR & PUBLISHER

Mr. G.S. Narasimha Prasad

EDITORIAL TEAM

Ms. Karishma Rastogi
Mr. Ayush Goel
Ms. Neha Sen

MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Reader,

Greetings to you from all of us in Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI)!

E-Journal, one of the publications regularly brought out by the Publications Desk of IPA-ICMAI, carries interesting articles and opinions that not just inform but provide an enlightened insight into issues of vital interest in the domain of insolvency and bankruptcy, corporate restructuring & rejuvenation and related subjects. The profession of IPs, now getting out of infancy into adolescence, is continuously evolving with numerous rulings from the adjudicating authorities as well as constitutional courts apart from regulatory changes and hence demands a high level of attention of IPs in the midst of assignments and related preoccupations.

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

I hope you will find the articles in this issue of E-Journal useful and interesting.

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

Your rejoinder/ response/ feedback may be sent to publication@ipaicmai.in.

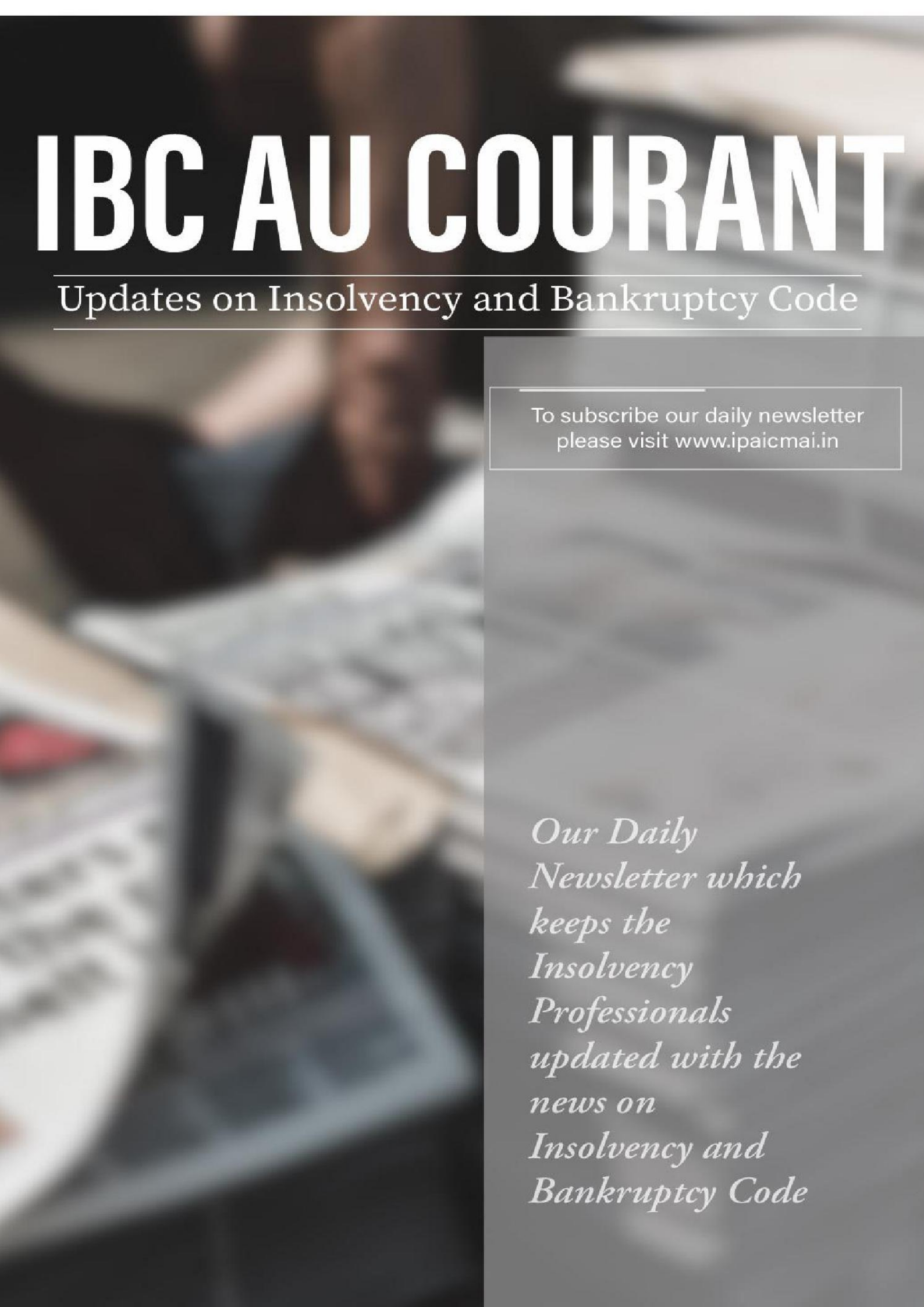
Wish you all happy reading.

Mr. G.S. Narasimha Prasad
Managing Director


PROFESSIONAL
DEVELOPMENT
INITIATIVES
Your Path to
PROFESSIONAL
GROWTH

EVENTS CONDUCTED

MARCH 2026	
DATE	**EVENTS CONDUCTED**
March 8th 2026	**A Workshop on Financial Modelling in CIRP & Valuation Conflicts was conducted on March 8th 2026, providing participants with practical insights into financial analysis, valuation challenges, and conflict resolution mechanisms within the CIRP framework.**
March 9th, 2026	**On March 9th, 2026, IPA-ICMAI jointly with the Professional Development & CPE Committee, ICMAI and ICMAI Registered Valuers Organisation celebrated International Women's Day: Women's Power – A Key Catalyst for Viksit Bharat 2047.**
March 12th, 2026	**IPA-ICMAI, in association with MIDC Industries Association, Nagpur, organized a Seminar on March 12th, 2026 on 'Reimagining MSME Survival: Strategic Use of Insolvency Framework under the Insolvency and Bankruptcy Code, 2016.**
March 14th -15th, 2026	**IPA-ICMAI organised a Two Days Certificate Training Program for Professionals under the IBC Ecosystem on March 14th & 15th, 2026, in Jaipur. The programme provided key insights into the evolving IBC framework, focusing on practical aspects and recent developments, and saw active participation from professionals.**
March 14th -15th, 2026	**Two Days Certificate Training Program for Professionals under the IBC Ecosystem organised by IPA-ICMAI in association with Edelweiss ARC and IP Foundation, held on March 14th & 15th, 2026, in Mumbai.**
March 21st ,2026	**A Workshop on "Use of Technology in CIRP & Liquidation" was successfully conducted on March 21st ,2026. The programme focused on digital transformation under the IBC, covering key aspects such as technology platforms in CIRP, digital tools for communication and compliance, and the use of technology in the liquidation process.**
March 28th, 2026	**IPA-ICMAI conducted a workshop on "Forensic & Transaction Audit under the Insolvency and Bankruptcy Code, 2016" on March 28th, 2026. The session focused on key audit aspects, identification of suspect transactions, and practical challenges faced by Insolvency Professionals, along with relevant legal and procedural insights**



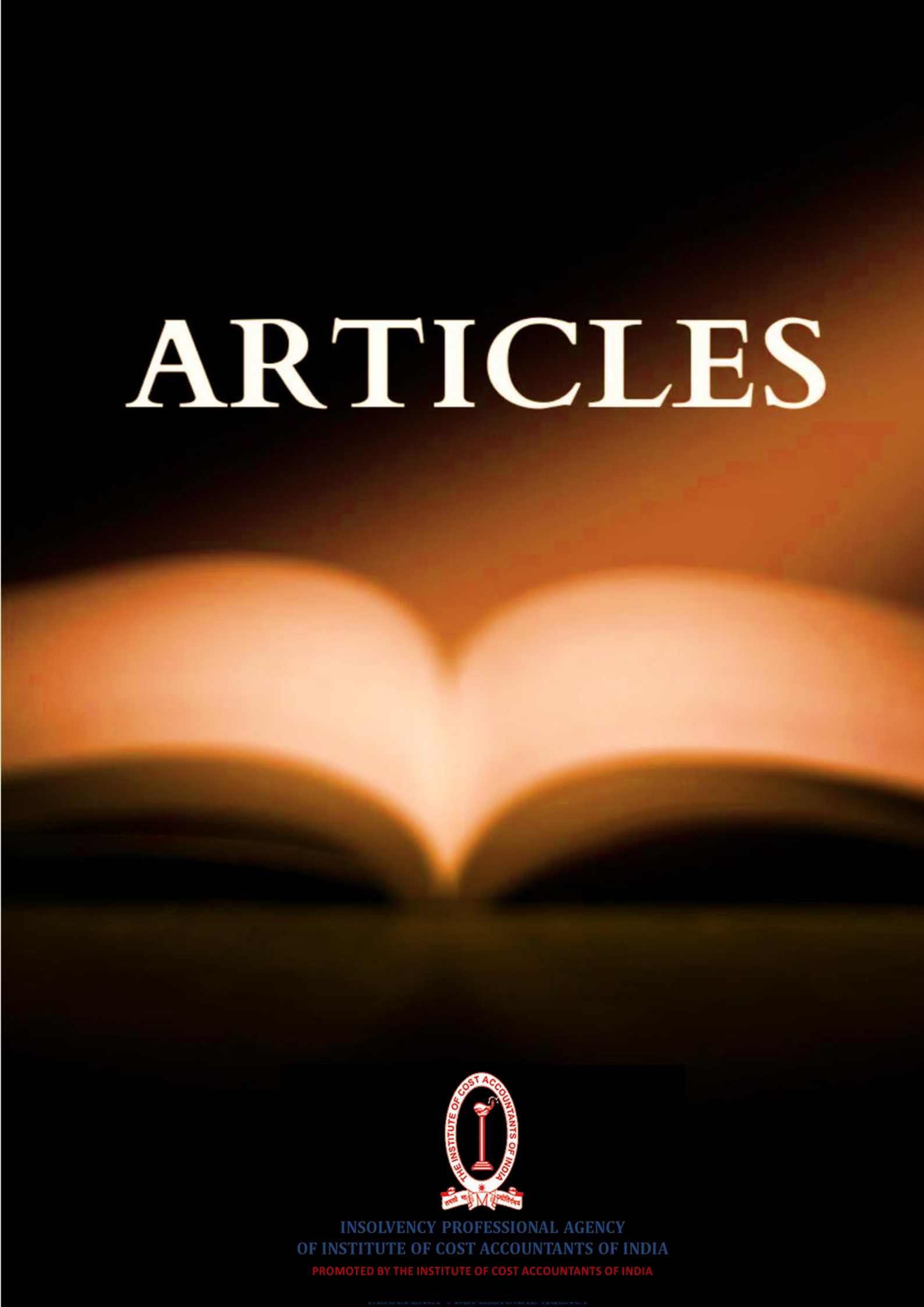
IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

To subscribe our daily newsletter
please visit www.ipaicmai.in

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
PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

WHY IPE'S ARE A BETTER CHOICE

Mr. Padmanabhan Nair
Insolvency Professional

Summary

The insolvency and Bankruptcy laws are here to stay despite numerous obstacles. At the policy level, numerous changes are being made via amendments which would definitely shorten and streamline the process. Now it is time to look at the structures and see as to whether they could be made more effective. So far, it has been the individual Insolvency Professional who has been holding all the facets together in a coordinated manner i.e. links with the Corporate Debtor,IBBI,NCLT various authorities, Public Utility et all. The job requires many facets which a single individual simply does not possess. Therefore, a lot of work has to be outsourced. It is also in the nature of things that an individual cannot be consistently there "day in and day out "the way a corporation can. A corporation also can possess the multifaceted skills needed to complete an assignment more effectively and with more accountability and control. This article explores all the facets, pros & cons.

A:INTRODUCTION

The IBBI has now started licensing IPE's as Insolvency Professionals but still the vast majority of IP's are individuals. Many of them have invested a lot of time and effort in becoming IP's and are not very keen to surrender their autonomy and fees to a company. However, Banks and Institutions have seen the value of empanelling IPE's and are increasingly moving in that direction.

So, what are the pros and cons? Does individual initiative and accountability get lost in corporatizing the Insolvency Professional activity? Or does having a corporate body allow better services to take place in a holistic manner? There are arguments on both sides. Let's us examine these a little more critically.

The Insolvency and Bankruptcy Board of India (IBBI) has tweaked norms to allow insolvency professional entities (IPEs), usually set up by a number of insolvency professionals (IPs), to also register as IPs and perform associated duties. Prior to the move, an IPE was only permitted to offer support services to an IP during the resolution of bad assets. The latest decision will encourage many partnership firms, including legal ones, to get themselves registered as IPEs and participate in the resolution of large toxic assets — something that can potentially be a lucrative business opportunity for them, according to some analysts. At the same time, it will help expedite the resolution of large, stressed firms, enable better management of such companies during the resolution period and help prevent assets from witnessing value erosion.

Currently, 140-150m IPEs and thousands of insolvency professionals are registered with IBBI. This increase in the trend of licensing IPE's as IP's comes from the realisation an IP takes on the tasks of an entire board of directors of a company undergoing insolvency proceedings, **it is not possible for an individual to complete every task necessary to resuscitate a company optimally** due to lack of time and specific expertise." The object of the Insolvency and Bankruptcy Code (IBC) is to revive a business and individuals serving as IPs might have limitations while dealing with the multifarious issues that pop up in a company's operations. IPEs usually have multifaceted skills which serve the overall objective better than a single individual. Corporate governance and risk management structures are somewhat in place and may help in streamlining the corporate debtor in a better way..

Institutional engagement for the corporate insolvency resolution process (CIRP) under the IBC is therefore increasingly the way to go. "Institutional appointment as IPE is a robust and reliable structure instils more credibility and confidence amongst the stakeholders. It would surely bring in more effectiveness and

professional approach in executing the CIRP," he said. This looks to be an enhancement in a series of changes in regulations undertaken by the IBBI to cut delays in the resolution of stressed firms and maximise the valuation of such assets. However, it is most important that the IPE gets formally integrated into the insolvency Act which right now only deals with IP's.

B:REGULATORY ASPECTS

Earlier definition under the code stated that An Insolvency Professional Entity (IPE) is in accordance with regulation 12 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, only if *"its sole objective is to provide support services to the insolvency professionals, who are its partners or directors; as the case may be"*. An IPE can provide only support services to the insolvency professionals who are its partners or directors. Thus, the role of IPE is clearly specified.

2. Section 206 of the Insolvency and Bankruptcy Code, 2016 (Code) prohibits a person from rendering services as an insolvency professional (IP) unless he is: (a) enrolled as a member of an Insolvency Professional Agency (IPA), and (b) is registered with the Insolvency and Bankruptcy Board of India (IBBI). Thus, no person other than a person registered as an IP with the IBBI can render services as an IP. An IPE is neither enrolled as a member of an IPA nor registered as an IP with the IBBI. It cannot act as IP under the Code.

The IBBI has put in place a framework for the recognition and operation of IPEs, but **act has not been modified suitably:**

- **Eligibility and Structure:** An IPE can be company, a registered partnership firm, or a limited liability partnership with a minimum net worth of ₹1 crore. A majority of its partners or whole-time directors must be registered IPs with IBBI.
- **Registration:** IPEs will register with the IBBI and the one Insolvency Professional Agency (IPA) and can act as IPs, provided they and their associated partners/directors meet the criteria of "fit and proper person"
- **Governance:** The regulatory framework wants to ensure that control of the IPE remains with IPs and not some powerful corporate entity. The IBBI is actively working on ensuring a balanced ownership structure among professional partners to ensure that there is no disproportionate control by a few.

  IPEs represent an institutional approach to the insolvency profession, leveraging the collective expertise and resources to manage the demanding and complex requirements of the IBC effectively. This negates the relative inability of Individuals to handle all these multifaceted aspects in a consistently effective manner .This gives the Institution or regulatory authority a lot of comfort as death ,regulation ,ill health or any personal exigency of an individual(as must happen from time to time) can be taken care by suitable substitution so that the process continues in a smooth manner.

C:ADVAN TAGES OF AN IPE AS AN IP

Let us list out some of these-Please also refer ANNEXURE

- **I) Pooled Expertise and Resources leading to varied skills:** An IPE typically has a pool of professionals, including chartered accountants, lawyers, and management experts-a diverse mx needed to smoothly carry out CIRP, liquidation & guarantee operations. A multi-disciplinary team is better equipped to handle the multifaceted and time-bound tasks involved in an insolvency process, from managing the corporate debtor's operations to verifying claims and inviting resolution plans. Many tasks can be done simultaneously by different individuals
- **Significantly Enhanced Capacity for Complex Cases:** IPEs are institutional frameworks so are designed to manage insolvency proceedings involving high stakes or complex legal and practical difficulties, which would be beyond the scope of a single individual IP.
- **Can handle Volume with some flexibility :** Much more resources and allotment of work can be flexible. The IPEs can engage a broad base

of resources, thereby providing a greater volume of quality services, and ensuring the smooth implementation of the Insolvency and Bankruptcy Code (IBC) timelines.

- **Negotiation Flexibility:** IPEs can much better negotiate fees consistent with their broader resources and comprehensive service offerings, providing a more flexible approach to fee arrangements compared to individual IPs, whose fees are subject to certain regulations. They have greater bargaining power and institutions and banks are much more likely to pay more as they are better assured of quality and consistent services. No individual can be that consistent.

- **Accountability:** IPEs can be better liable for all acts or omissions of their partners or directors acting as IPs during their association with the entity. The very nature of this structure promotes a higher level of accountability and professional standards. The IPE being an entity can also better protect itself legally should such a need arise during the course of an assignment, which is very frequent.

There is however the issue of properly incorporating the IPE into the Act .Right now it is not there specifically **as Insolvency Professional Entity (IPE) acting as an Insolvency Professional (IP)** .This issue, **centered on whether an entity**, rather than just an individual, could legally assume the role of an IP under India's Insolvency and Bankruptcy Code (IBC) has to be legally and statutorily sorted out.

D:THE CASE AGAINST IPE'S-DISADVANTAGES

The case against IPEs acting as IPs stemmed from several points:

- **Legal Interpretation:** The term "person" in the IBC includes entities like LLPs and companies, initial regulations only allowed individuals to register as IPs, creating a conflict in interpretation. This would need to be changed

- **Accountability:** The accountability norms, particularly in a large organisation could be an issue for a Regulatory authority. There are concerns about the lack of specific regulations regarding IPE ownership, governance, and capital structure, which could lead to imbalances in and individual accountability. They are trying to counter this by fixing a specific IP (usually Director of the company) as responsible for a particular assignment.

- **Delegation of Core Duties:** Core duties being delegated to third-party firms (not recognized IPEs), are an issue sometime, and whilst individuals also do this, the matter can be much better identified by the authorities as against the more complex functioning of a corporation. Tie-in arrangement" and transfer pricing to subsidiary companies could also be an issue, but only if they affect the overall service provision during the assignment. But fixing specific accountability and responsibility is more of an issue than with a single individual.

E:EVOLUTION OF CODE-CIRP,LIQUIDATION OTHER ASPECTS-CURRENT SCENARIO

The legal landscape has since evolved, with the IBBI and the National Company Law Tribunal (NCLT) clarifying the regulations.

- **Regulations were modified** to allow IPEs to register and act as IPs, acknowledging their potential to enhance efficiency and provide a broader range of services due to their institutional framework and pool of in-house resources.

- **NCLT rulings** have approved the appointment of IPEs as RPs, recognizing the IBBI's power to regulate and register such entities, and that an IPE (such as an LLP) falls under the definition of "person" in the IBC. There is only a need to modify the legislation and regulatory policies to adapt to a corporate entity as IP

- **Specific rules are now being made to govern IPEs** on matters like disciplinary proceedings (notices are issued to the authorized partner/director) and the limit on the number of assignments (IPEs can handle more than the cap placed on individual IPs).

- The IBBI continues to refine the governance framework for IPEs to address concerns about ownership concentration and ensure fairness and equity.

In conclusion, the initial "case" against IPEs has been largely resolved through regulatory amendments and judicial clarification, enabling them to act as full-fledged insolvency professionals under the IBC. Regulatory and operational oversight is the chief disadvantage and once this is corrected, then the case for IPE's appears overwhelming.

F:WHAT ARE INDIVIDUAL IP'S TO DO?

Looking at the current scenario, it is pretty clear that sooner or later, the average Individual IP just does not have the bandwidth either by skill, reach or financial resources to handle larger or even medium assignments. The skill diversity and need for time commitment are just too great. A few (maybe 10-20%) of IP's have an individual staff, as they are discharging other functions as CA's, Advocates etc. They are practically firms masquerading as individual IP's .They can continue, but as time goes on, their scope may be reduced somewhat…

The rest should look to band together and form IPE's, preferably with a divergence of skills. That would serve their interests better. All need not contribute the same amount and there could be one or two dominant partners. The point is that they have access to a diverse range of skills which could serve them and the overall spectrum of insolvency better

G:CONCLUSION

To sum up, it is pretty clear that though there is some merit in retaining individual IP's(particularly in the fixing of accountability and transparency) for the vast majority of individuals, it is better to band together into entities .IBBI could facilitate this process by enacting regulations and facilitating laws that help the overall process. With this, it is expected that much more could be done in the insolvency space with much better accountability and transparency(once the rules are fixed).Regulatory oversight is also easier as there would be **significantly fewer entities** to regulate !

On balance therefore, there seems to be a definite case for moving towards institutional and corporate entities in the insolvency space.

SCHEME OF COMPROMISE AND ARRANGEMENT UNDER SECTION 230 OF THE COMPANIES ACT DURING THE CORPORATE INSOLVENCY RESOLUTION PROCESS – POSSIBLE?

Dr. CMA M. Govindarajan
Insolvency Professional

SYNOPSIS

Section 230 of the Companie Act, 2013 provides for sanction of a compromise and arrangement. The provisions of the Insolvency and Bankruptcy Code, 2016 also provides that a scheme of compromise and arrangement can be entered into by a corporate debtor enters into the stage of liquidation. The same cannot be brought into effect when the company is in corporate insolvency resolution process. The same has been confirmed by the Adjudicating Authority in the case law in 'N.K. Kuriyan v. K. Eswara Pillai and Kosamattam Finance Limited' – CP(IB)/06/KOB/2022 – NCLT, Chennai, decided on 06.03.2026.

Scheme of compromise and arrangement under Companies Act

Section 230(6) of the Companies Act, 2013 ('Act' for short) provides that where, at a meeting held in pursuance of compromise and arrangement, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016 ('Code' for short), as the case may be, and the contributories of the company.

Assessment of compromise and arrangement scheme

Regulation 39BA of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations' for short) provides for assessment of compromise or arrangement. Regulation 39BA (1) provides that while deciding to liquidate the corporate debtor under section 33, the committee shall examine whether to explore compromise or arrangement as referred to under sub - regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee's recommendation to the Adjudicating Authority while filing application under section 33. Regulation 39BA (2) provides that where a recommendation has been made under sub-regulation (1), the resolution professional and the committee shall keep exploring the possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority.

Conditions for compromise and arrangement

Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 provides that where a compromise or arrangement is proposed under section 230 of the Act, it shall be completed within 90 days of the order of liquidation. The liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee under regulation 39BA of the Regulations. the liquidator shall not file such proposal after expiry of 30 days from the liquidation commencement date. The ineligible Resolution applicants shall not be a party to such scheme. The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

A conjoint reading of Section 230(6) of the Companies Act, 2013, Regulation 39BA of the CIRP Regulations, 2016 and Regulation 2B of the Liquidation Process Regulations, 2016 makes it abundantly clear that the exploration of a compromise or arrangement under Section 230 is statutorily contemplated only in the context of liquidation.

Issue

According to above section/Regulations a compromise and arrangement can be sanctioned only during or before the liquidation and not during the course of Corporate Insolvency Resolution Process. The issue to be discussed in this article is as to whether a scheme or arrangement can be sanctioned and implemented during the course of corporate insolvency resolution process, with reference to decided case law.

Case law

In **'N.K. Kuriyan v. K. Eswara Pillai and Kosamattam Finance Limited'** – CP(IB)/06/KOB/2022 – NCLT, Chennai, decided on 06.03.2026, the Corporate Debtor, Mangomeadows Agricultural Pleasure Land Private Limited, established the world's first man-made Agricultural Theme Park, recognised by the Limca Book of Indian Records, showcasing biodiversity from 45 countries and ecosystems replicating natural habitats, along with depictions of Indian civilisation, customs, and art. Due to floods in 2018 and 2019 in Kerala and COVID -19, the corporate debtor was compelled to close the business for 2 years. The Corporate Debtor has to maintain the park despite no revenue at the cost of Rs.15 lakhs per month and to support 300 employees.

The second respondent, Kosamattam Finance Limited initiated corporate insolvency resolution process ('CIRP' for short) against the corporate debtor alleging default in repayment of the financial debt. Shri N.K. Kurian, the suspended director of the corporate debtor filed a writ petition before the High Court in WP © 7444 of 2022 challenging the Section 7 proceedings. The High Court disposed the writ petition by directing the writ petitioner to file objections before the Adjudicating Authority. The Adjudicating Authority admitted the Section 7 application on 25.01.2023 and appointed K. Eswara Pillai as Interim Resolution Professional.

The CIRP was initiated. As the result of the proceedings a resolution plan submitted by Torrion Impex India Private Limited was approved by the Committee of Creditors by a 98.69% vote. The applicant N.K. Kurian filed two I.A.s viz. IA(IBC)/115/KOB/2024 with the prayer to set aside the decisions taken in the meeting of the 13th Committee of Creditors' ('CoC' for short) meeting on 23.02.2024 and IA(IBC)/255/KOB/2025 with the prayer to set aside the decision of the minutes of the meeting of CoC dated 20.03.2025 and all actions and declare the same as fraudulent.

In the first IA the applicant alleged that the Resolution Applicant lacked the requisite net worth and eligibility under Section 29A, and that the process was vitiated by fraud and collusion. The said plan was subsequently withdrawn prior to the approval by Adjudicating Authority. In the 12th Committee of Creditors meeting, a proposal of compromise and arrangement under Section 230 of the Companies Act, 2013, was discussed. The said proposal was rejected without proper consideration. The applicant alleged that a similar proposal supported by Respondent No. 2, who holds the majority voting share, was approved in the 13th CoC meeting dated 23.02.2024. Therefore, the applicant filed the IA 115 of 2024 with the prayer to set aside the decision of 13th CoC meeting.

In the second IA, the applicant alleged the resolution plan submitted before the CoC, as per the directions of Adjudicating Authority on 28.02.2025 was rejected in the 15th CoC meeting. The applicant submitted the following before the Adjudicating Authority-

- The compromise and arrangement proposed under Section 230 was not in compliance with the mandatory procedure prescribed under the Companies Act, 2013, including requirements of notice, advertisement, and approval by the requisite majority of creditors.

- The Resolution Professional and Respondent No. 2 acted in concert in advancing the proposal.

Therefore, the applicant prayed the Adjudicating Authority to set aside the impugned decisions of CoC and to pass appropriate orders.

The Resolution Professional ('RP' for short) denied the allegations of the applicant. The RP denied the allegations regarding lack of net worth. In the 5th Committee of Creditors meeting held on 21.07.2023, both revised plans were discussed and put to a vote. In the e-voting concluded on 25.07.2023, the plan of Torrion Impex India Private Limited was approved with 98.69% voting share. A Letter of Intent was issued, subject to this Adjudicating Authority's approval and submission of performance security. The RP filed an application before the Adjudicating Authority for its approval. But the

Resolution Applicant withdrew its resolution plan and demanded the refund of Earnest Money Deposit already paid. The same was rejected and forfeited. New Form G was published inviting resolution plan.

The Financial Creditor submitted a resolution plan incorporating a scheme of merger and amalgamation which was approved by the CoC since there is no resolution plan submitted by a voting share of 98.69%. The RP filed IA(IBC)/119/KOB/2025 placing on record the minutes and voting results, which was allowed on 04.04.2025. The Financial Creditor further submitted that due to repayment difficulties, the Applicant himself proposed management participation by Respondent No.2, formalized through an agreement dated 30.07.2018.

With respect to the 13th Committee of Creditors meeting, Respondent No.2 contended that in the absence of viable resolution plans and after repeated publication of Form G, liquidation was the only available option. The CoC's decision is stated to be lawful.

The Adjudicating Authority heard the submissions of both the parties. The Adjudicating Authority is also to consider the third matter in CA(CAA)/03/KOB/2024, pertains to the Scheme of Compromise and Arrangement approved in the 13th Committee of Creditors meeting.

The Adjudicating Authority analysed the provisions of section 230(6) of the Companies Act, 2013, Regulation 39BA of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Regulation 2B of IBBI (Liquidation) Regulations, 2016. The Adjudicating Authority observed the following in regard to the above legal provisions-

- Regulation 39BA specifically mandates that while deciding to liquidate the Corporate Debtor under Section 33 of the Code, the Committee of Creditors shall examine whether to explore a compromise or arrangement, and such recommendation is to accompany the application for liquidation.

- Regulation 2B expressly provides that a compromise or arrangement under Section 230 shall be completed within 90 days of the order of liquidation under Section 33.

- Thus, the statutory framework specifically situates a scheme under Section 230 at the post-liquidation stage.

The Adjudicating Authority observed even though liquidation proceedings were sought initially the same was not proceeded. The corporate debtor is only under the CIRP and has not entered into the stage of liquidation. The Adjudicating Authority further observed that permitting a Section 230 scheme during the Corporate Insolvency Resolution Process, in the absence of a liquidation order, would amount to conflating two distinct statutory processes and would defeat the structured scheme of the Code.

The CoC, in its 13th meeting dated 23.02.2024, proceeded to consider and approve a Scheme of Compromise and Arrangement even though no liquidation order had been passed by this Adjudicating Authority. In the absence of such a statutory requirement, the consideration of a compromise or arrangement at this stage is legally untenable and premature.

The Adjudicating Authority held that the Scheme of Compromise and Arrangement approved in the 13th CoC meeting is legally untenable at this stage, as the Corporate Debtor is still under the CIRP and not under liquidation. The statutory preconditions for invoking Section 230 in conjunction with the Code have not been satisfied. Consequently, the Adjudicating Authority held that consideration of CA(CAA)/03/KOB/2024 at this juncture is premature and cannot be sustained in law.

The said scheme was submitted by the Financial Creditor itself, which holds 98.69% of the voting share in the Committee of Creditors. The same scheme was thereafter approved by the very same Financial Creditor by exercising its overwhelming voting share, while the other member of the Committee of Creditors, holding 1.31% voting share, voted against the scheme. Thus, the Adjudicating Authority held that the approval was secured solely on the strength of the dominant voting power of the scheme proponent itself.

Then the Adjudicating Authority analysed the Memorandum of Association of the Financial Creditor. Its principal objects include carrying on Non-Banking Financial Corporation activities, acting as a depository participant, insurance composite corporate agent, mutual fund distributor, commission agent, business

correspondent of banks and financial institutions, money transfer and foreign exchange services, leasing advisory and financial consultancy services, and other allied financial activities. The Corporate Debtor is also engaged in operating an agricultural theme park of a specialised and unique nature.

The Scheme, in effect, contemplates the Financial Creditor acquiring control over and continuing the business of the Corporate Debtor as a going concern. However, there is no material placed on record to demonstrate that the Financial Creditor possesses the technical competence, sectoral experience, managerial framework, or strategic alignment necessary for operating and reviving such a specialised business undertaking.

The Adjudicating Authority observes that the Code though creditor-driven, is fundamentally premised on the revival of the Corporate Debtor as a going concern through a viable and feasible plan that maximises value. The continuation of the insolvency process does not confer any special benefit on the creditor, nor does it impose any additional demerit on the Suspended Directors, except for the restrictions and limitations provided under law.

Conclusion

A scheme of compromise and arrangement cannot be entered into when the company is under CIRP. The provisions of the Act and Regulations of the Code do not allow the scheme of compromise and arrangement unless the company enters into the liquidation stage.

REVIVAL OF CLASS ACTION JURISPRUDENCE IN INDIA

Mr. Manoj Kumar Anand
Insolvency Professional

A Doctrinal and Comparative Analysis of the Jindal Poly Films Case under Section 245 of the Companies Act, 2013

ABSTRACT

Section 245 of the Companies Act, 2013 introduced a statutory class action mechanism intended to strengthen investor protection and corporate accountability in India. Despite its wide language, the provision remained largely dormant for nearly a decade. The February 2026 admission of a class action petition in Ankit Jain & Ors. v. Jindal Poly Films Limited & Ors. by the National Company Law Tribunal (Principal Bench, New Delhi) marks a watershed in Indian corporate jurisprudence.

This article analyses **Section 245 of the Companies Act, 2013**, examining the derivative action debate before the Tribunal and its implications for directors and professionals such as auditors, company secretaries, cost accountants, CFOs, engineers, and other experts, while comparing the position with the US, UK, and Singapore to argue that India is developing its own structured class action framework.
Keywords: Section 245, Class Action, Minority Protection, Corporate Governance, Derivative Action, NCLT.

1. INTRODUCTION

The Companies Act, 2013 marked a major shift in Indian corporate regulation by strengthening transparency, accountability, and minority shareholder protection, particularly through Section 245, which introduced a statutory class action mechanism for members and depositors (excluding secured creditors like banks and debenture holders). For nearly a decade the provision remained largely unused due to lack of judicial interpretation, but this changed in February 2026 when the NCLT Principal Bench admitted a class action in Ankit Jain & Ors. v. Jindal Poly Films Limited & Ors.. The decision is significant as it clarifies that Section 245 operates independently of derivative action principles, allows compensation claims even if benefits ultimately accrue to the company, and can extend to past transactions.

2. SATYAM SAGA GAVE BIRTH TO SECTION 245 AS CLASS ACTION SUIT AS PART OF COMPANIES ACT 2013 AMENDMENTS.

In January 2009, Satyam Computer Services Ltd., one of India's leading IT companies, admitted to massive financial fraud involving inflated revenues, fictitious assets, and manipulated balance sheets. The confession by its Chairman revealed accounting irregularities exceeding ₹7,000 crore. The scandal shook investor confidence not only in India but globally. Notably, while U.S. investors-initiated class action suits in American courts under securities laws, Indian shareholders lacked an equivalent statutory mechanism. Even prior to Satyam, the J.J. Irani Committee (2005) had recommended modernizing corporate law to incorporate global best practices. The Companies Bill, 2009 (later 2013 Act) introduced the concept of class action under Clause 211, which eventually became Section 245. The inclusion of professional liability reflects lessons drawn from Satyam, where auditor oversight was central to the fraud narrative. The inclusion of auditors and experts is particularly noteworthy. Unlike Sections 241–242, which focus primarily on oppression and mismanagement, Section 245 explicitly extends potential liability to third-party professionals.

The procedural framework is detailed in the National Company Law Tribunal Rules, 2016, notified on July 21, 2016. Key rules for class actions are Rules 84 to 87 outlining filing, thresholds, and processes. Since inception only amendment was carried as on May 8, 2019 in Rule 84 which clarified mandatory minimum requirements for members and depositors for initiating representative complaints as follows;

3. Section 245 – Companies Act, 2013 *(Class Action by Members or Depositors)*

1) **Section 245(1)** Such number of member(s) or depositor(s), as prescribed, may file an application before the Tribunal if they are of the opinion that the management or conduct of

affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors. They may seek the following orders:

a) To restrain the company from committing an act ultra vires the memorandum or articles;
b) To restrain breach of provisions of memorandum or articles;
c) To declare a resolution altering MOA/AOA as void if passed by suppression/misstatement;
d) To restrain the company and its directors from acting on such resolution;
e) To restrain the company from doing any act contrary to this Act or any other law;
f) To restrain action contrary to members' resolution;
g) To claim damages or compensation from:

- ✓ Company or directors (including former directors)
- ✓ Auditors (including audit firm and partners)
- ✓ Experts, advisors, consultants for incorrect/misleading statements

(h) Any other remedy as Tribunal deems fit.

2) **Section 245(3)** Application shall be filed by such number of members/depositors as prescribed under **Rule 84, NCLT Rules, 2016** as follows;

1. An application under sub-section (1) of section 245 shall be filed in Form No. NCLT-9.
2. A copy of every application filed under sub-rule (1) shall be served on the company, other respondents and all such persons as the Tribunal may direct.
3. ..
4. Where any application is filed by a person other than a member or depositor, the Tribunal shall not entertain such application.
5. The Tribunal may, while considering the application, permit any other member or depositor to join the application.
6. Where the Tribunal admits the application, it shall give public notice to all members or depositors of the class.

3) **Threshold for Class Action Section 245(3) read with Rule 84(3), NCLT Rules, 2016 ;**

Category	Minimum Number Requirement	Alternative Percentage Requirement	Special Condition / Note
Company having Share Capital (Unlisted)	Not less than **100 members**	Not less than **10% of total number of members**, whichever is less	OR member(s) holding **10% of issued share capital** Applicants must have **paid all calls and other sums due**
Company having Share Capital (Listed Company)	Not less than **100 members**	Not less than **2% of total number of members**, whichever is less	OR member(s) holding **10% of issued share capital** (calls paid)
Company not having Share Capital	Not less than **1/5th of total number of members**	Not Applicable	—
Depositors	Not less than **100 depositors**	Not less than **10% of total number of depositors**, whichever is less	OR depositor(s) to whom company owes **10% of total deposits**

4) **Section 245(4)** Tribunal shall consider:
(a) whether the member or depositor is acting in good faith in making the application;

(b) any evidence before it as to the involvement of any person other than directors or officers of the company on any matter provided in clauses (a) to (f) of sub-section (1);

(c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

(d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;

(e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be, likely to be—

(i**)** authorised by the company before it occurs;or

(ii) ratified by the company after it occurs.

(f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be, likely to be ratified by the company. Rule

5) **Section 245(5)** If application is admitted:
   - ✓ Public notice shall be issued to all members/depositors of the class
   - ✓ Similar applications shall be consolidated
   - ✓ Class members may opt out
   - ✓ Tribunal may appoint lead applicant
   - ✓ Costs may be defrayed by company/person responsible

6) **Section 245(6)** Order shall be **binding** on:
   - ✓ Company
   - ✓ Members
   - ✓ Depositors
   - ✓ Auditors (including audit firm & partners)
   - ✓ Experts/advisors involved

   Note; Section 2 (38) of Companies Act, 2013 "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

7) **Section 245(7)** Frivolous or vexatious application;
   a. **Non-compliance of Order:** Companies can be fined between ₹5 lakh and ₹25 lakh, and officers in default may face up to 3 years imprisonment and/or a fine up to ₹1 lakh.
   b. **Frivolous Claims:** If an application is found to be vexatious, the Tribunal may reject it and order the applicant to pay up to ₹1 lakh in costs.

8) **Section 245(8)** Section 245 does **not apply to Banking Companies.**

9) **Opt-Out Form**: As per Rule 86 of the NCLT Rules, 2016, opting out is possible at any time after the class action begins, but with Tribunal permission.
   a. The form used is NCLT-1
   b. The public notice itself specifies the deadline and address for submission.
   c. Instructions in the notice guide where and how to submit the form.
   d. If the notice requirements are not followed, you are deemed included in the class by default.
   e. Permission: The Tribunal approves the opt-out request.

4. FACTUAL BACKGROUND OF THE JINDAL POLY DISPUTE

The petition alleged that the company engaged in structured related party transactions involving promoter-linked entities, trusts, and investment arms, whereby Optionally Convertible Preference Shares (OCPS) and Redeemable Preference Shares (RPS) were issued or transferred at valuations significantly below their intrinsic and fair market value, while interest-free loans granted to associate companies were subsequently written off, allegedly resulting in a diversion of value from the listed company to promoter-controlled entities at the expense of minority shareholders and also resulted in erosion of shareholder value estimated at approximately ₹2,500–₹2,700 crore.

Legally, the petition framed the alleged wrongdoing as systemic and collectively prejudicial to members rather than merely a derivative corporate injury, thereby invoking Section 245 of the Companies Act, 2013 to seek class-wide remedies such as reversal of the impugned transactions, restitution of losses, and compensation from the company, directors, and associated advisors under Section 245(1)(g).

The petitioners' collective shareholding of 4.99% satisfied the statutory threshold under Section 245(3), strengthening the legitimacy of the class action claim. Following admission of the petition, the Tribunal directed issuance of public notice under Rule 87 of the NCLT Rules, 2016 (Form NCLT-13) to invite other shareholders to join the class, though the notice has not yet been issued and the timing of such issuance remains under consideration before the appellate forum.

5. INTERNATIONAL PERSPECTIVE AND COMPARISON

1) **India vs United States: The Aggressive Litigation Model**

The United States represents the most developed and assertive class action regime, primarily governed by **Federal Rule of Civil Procedure 23**. The system distinguishes strictly between **direct and derivative actions**, particularly under the **Tooley doctrine**.

Key features include contingency fee arrangements, availability of punitive damages, extensive discovery, and a strong securities class action culture. Courts apply a rigid test: if the injury is to the **company**, the claim is **derivative**; if the injury is to **shareholders**, it becomes a **class action**. Multi-billion-dollar settlements such as **Enron** and **WorldCom** demonstrate the scale of exposure under the U.S. model.

Indian Contrast:

India's framework differs significantly. Contingency fees, punitive damages, jury trials, and expansive discovery are largely absent, and proceedings are tribunal-driven. Importantly, **Section 245 of the Companies Act, 2013** allows compensation even where benefits ultimately accrue to the company. This marks a departure from the rigid American derivative doctrine and suggests a **hybrid model combining derivative accountability with collective investor protection**. However, the jurisprudence is still evolving and may be tested by higher courts.

2) **India vs United Kingdom: Conservative Judicial Filtering**

Under the **Companies Act 2006 (Sections 260–264)**, the UK permits derivative claims against directors for negligence, breach of duty, or default. However, such claims require **early court permission** and undergo strict judicial screening to prevent speculative litigation. The UK framework focuses on **fiduciary accountability rather than collective damages**, and securities class actions remain limited.

Indian Contrast:

Section 245 is comparatively broader. It allows actions not only against directors but also **auditors, experts, and advisors**, permits **depositors to initiate proceedings**, and provides for **both preventive and compensatory remedies**. While UK courts maintain a cautious approach, India's statutory framework is more expansive, though still evolving through judicial interpretation.

3) **India vs Singapore: Structured but Controlled Litigation**

Singapore permits derivative actions under **Sections 216 and 216A of the Singapore Companies Act**, subject to **prior court leave**, a **good faith requirement**, and strong judicial oversight. Oppression remedies are commonly used, and litigation remains controlled to prevent abuse.

Indian Contrast:
India does not impose a similar structured leave requirement under Section 245 but instead introduces **threshold requirements such as the 2% shareholding rule for listed companies**. The provision also allows actions against **third-party professionals** and provides broader compensatory relief. However, Singapore's enforcement remains more efficient due to its streamlined commercial court system.

6. CONCLUSION

The admission of the class action petition against **Jindal Poly Films Limited** under Section 245 of the Companies Act, 2013 marks a transformative moment in Indian corporate litigation. For more than a decade since the enactment of the Companies Act, 2013, Section 245 remained largely dormant — powerful in text but limited in practical activation. The February 2026 NCLT order signals a decisive judicial shift: Indian tribunals are now willing to operationalize collective investor protection in a meaningful way.

What If the Supreme Court Upholds This Interpretation?

If the Hon'ble Supreme Court affirms the NCLT's interpretation of Section 245, the structural consequences could be transformative.

A. Shareholder Litigation Strategy

Minority shareholders may increasingly bypass Sections 241–242 (Oppression & Mismanagement) and invoke Section 245

directly.

Possible outcomes include:

- Greater use of collective investor litigation.
- Increased institutional investor activism.
- Emergence of structured securities disputes in India.
- Development of jurisprudence around compensation standards.

India may not reach U.S.-scale litigation volumes, but it may witness disciplined expansion of class-based remedies.

B. Director Accountability

Directors may face:

- Greater scrutiny of related party transactions.
- Enhanced documentation obligations.
- Heightened fiduciary exposure.
- Personal risk in compensation proceedings.

Board decision-making may become more compliance-driven and risk-sensitive.

C. Valuation Scrutiny

Registered valuers could see their reports subjected to:

- Judicial examination of DCF assumptions.
- Scrutiny of discount rate methodologies.
- Forensic review of fairness opinions.
- Investigation into related-party pricing frameworks.

Valuation reports may increasingly be treated as litigation-sensitive documents rather than routine compliance outputs.

D. Audit Risk Exposure

Auditors may encounter:

- Joint and several liability exposure under Section 245.
- Increased litigation targeting audit firms.
- Higher peer review and documentation standards.
- Potential cross-proceedings under Section 447 (fraud) in extreme scenarios.

Audit committees may demand greater defensibility and audit trail rigor.

E. Corporate Governance Compliance

Companies may respond by:

- Strengthening internal controls.
- Improving related party transaction approval frameworks.
- Enhancing board independence.
- Increasing disclosure transparency.
- Engaging independent valuers more robustly.

Governance practices may progressively align with global best practices.

F. Is India Moving Toward a U.S.-Style Class Action Culture?

Not entirely.

India is not replicating the American class action culture. Nor is it following the UK's cautious derivative model or Singapore's tightly controlled approach in entirety.

Instead, India appears to be designing its own jurisprudential architecture — rooted in statutory design, shaped by tribunal interpretation, and influenced by global best practices.

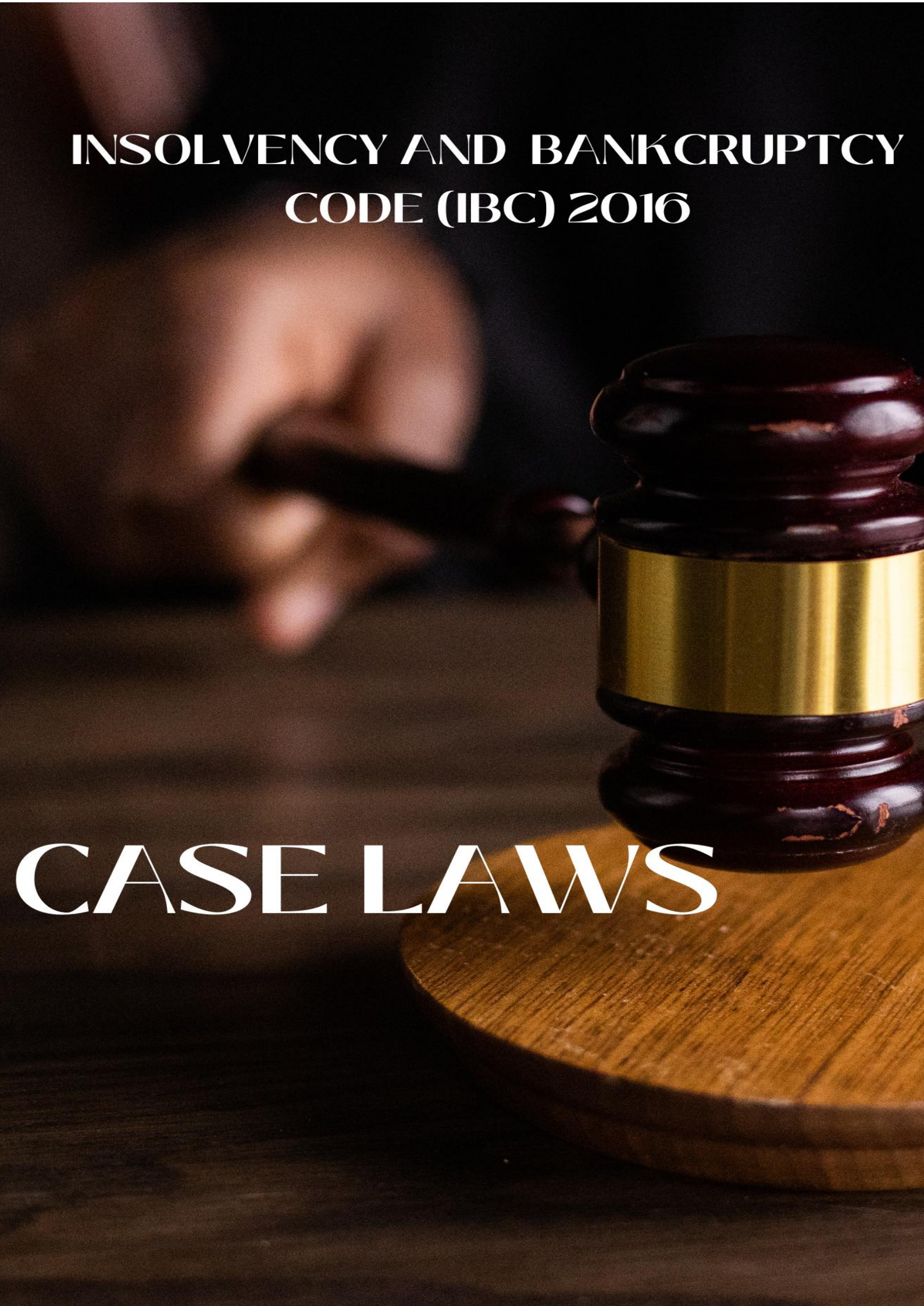
Section 245 may well mark the beginning of a more assertive, structured, and mature phase of shareholder enforcement in Indian corporate law.

FOOTNOTES

1. **Citation;** ***Sec 245, 241-243 of Companies Act 2013 and Ankit Jain & Ors. v. Jindal Poly Films Limited & Ors. Order under section 245.Case Number: Ivn. P 05/2024, Ivn. P 07/2024 In CP No. 58/245/PB/2024***
2. **Companies Act, 2013, s. 245.**
3. **Companies Act, 2013, ss. 241–242.**
4. **National Company Law Tribunal Rules, 2016, r. 84(3)(ii)(b).**
5. **Ankit Jain & Ors. v. Jindal Poly Films Limited & Ors., CP No. 58/245/PB/2024 (NCLT, Principal Bench, Feb. 2026).**
6. **Tooley v. Donaldson, Lufkin & Jenrette Inc., 845 A.2d 1031 (Del. 2004).**
7. **Companies Act 2006 (UK), ss. 260–264.**

   Companies Act (Singapore), s. 216A.

INSOLVENCY AND BANKCRUPTCY CODE (IBC) 2016



CASE LAWS

SECTION 3(12) - FINANCIAL DEBT

UV Asset Reconstruction Company ltd. vs. Electrosteel Castings Ltd. [2026] 182 taxmann.com 85 (SC)

Where a promoter's undertaking merely required it to arrange infusion of funds to enable borrower to comply with financial covenants, such 'see-to-it' obligation did not amount to a guarantee under section 126 of Contract Act, and payment made as promoter did not create any guarantee; consequently, no financial debt was owed by promoter under section 3(12) of IBC and concurrent findings of NCLT and NCLAT were rightly affirmed.

ESL availed financial assistance from SREI. ECL being promoter of ESL executed a Deed of Undertaking whereby it undertook a limited obligation to arrange for infusion of funds into ESL. NCLT admitted application filed by SBI, one of lenders of ESL, under section 7 and approved resolution plan submitted by Vedanta for acquisition of ESL. SREI issued an unconditional 'no due certificate' to ESL certifying that dues owned by ESL to SREI stood fully discharged. However, SREI subsequently claimed that it had been allotted reduced amount of shares upon conversion of balance debt and executed a Deed of Assignment in favour of ARC, purporting to assign residual debt. ARC filed an application under section 7 before NCLT asserting that a residual financial debt remained payable by ESL despite implementation of resolution plan and ECL had furnished a corporate guarantee for debt of ESL. NCLT by impugned order held that entire admitted debt of ESL stood repaid and discharged in full, pursuant to approval of resolution plan, and that there was no surviving debt to be enforced against ECL.

Held that 'See to it' guarantee does not include an obligation to enable principal debtor to perform its own obligation and such an arrangement would not be a guarantee under section 126 of Indian Contract Act. Payment by ECL to the appellant was not made on account of any contractual obligation, said payment was made in its capacity as a promotor of ESL and such payment by itself did not give rise to any contract of guarantee, particularly when there was no contractual obligation of guarantee in deed of undertaking. Therefore, concurrent findings of NCLT and NCLAT that clause 2.2 of Deed of Undertaking does not constitute a contract of guarantee and that ECL cannot be treated as guarantor for financial facilities availed by ESL were to be concurred with.

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

UV Asset Reconstruction Company Ltd. vs. Electrosteel Castings Ltd. [2026] 182 taxmann.com 227 (NCLAT- New Delhi

Where ECL executed a Deed of Undertaking to facilitate infusion of funds into ESL after sanction of loan by SREI and created a mortgage, but was not a guarantor for ESL's financial facilities from SREI, and approval of ESL's Resolution Plan extinguished debt only qua Corporate Debtor and did not ipso facto bar recourse against third parties in law, rejection of section 7 application against ECL was justified.

ESL was sanctioned about Rs. 500 crores by SREI on 26-7-2011 under a Rupee Loan Agreement requiring promoter undertakings to infuse funds on breach of financial covenants. ECL, a promoter holding about 34 per cent in ESL, executed a Deed of Undertaking on 27-7-2011 as an 'Obligor' to arrange infusion of funds into ESL, and by a Supplementary Agreement dated 21-11-

2011 agreed to create a mortgage. An exclusive mortgage by deposit of title deeds over ECL's factory land in Tamil Nadu was created on 23-11-2011. ESL defaulted in 2013 and loan was restructured. ECL paid about Rs. 38 crores to SREI in June/July 2017. A section 7 application against ESL was admitted on 21-7-2017. SREI's claim of about Rs. 577.90 crores was admitted. Resolution Plan submitted by Vedanta was approved on 17-4-2018. On 30-6-2018, SREI assigned to UV ARC loans and all rights under financing documents relating to ESL. The appellant filed a section 7 application against ECL before NCLT, Cuttack. NCLT rejected application holding that ECL was not a guarantor and that liability stood extinguished upon approval of Resolution Plan.

Held that ECL was not a 'guarantor' to SREI for financial facilities availed by ESL. Approval of ESL's Resolution Plan resulted in extinguishment of debt only qua the corporate debtor and did not ipso facto extinguish claims against third parties in law. In view of ECL not being a guarantor, rejection of section 7 application was justified.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM - GENERAL

Consortium led by Syonira Invecast (P.) Ltd. vs. Employees' Provident Fund Organisation [2026] 182 taxmann.com 271 (NCLAT- New Delhi)

No assessment proceedings can be continued by EPFO after initiation of moratorium under section 14(1) of IBC and further no claim on basis of assessment carried out during moratorium period can be pressed by EPFO.

CIRP of the corporate debtor commenced on 04.07.2019, and moratorium under section 14 remained in force till 09.11.2021, when Resolution Plan came to be approved. Notwithstanding subsistence of moratorium and subsequent approval of Resolution Plan, EPFO raised demands on basis of assessment proceeding which culminated in order dated 06.04.2021. Thereafter EPFO issued a notice to the Corporate Debtor, claiming fresh dues amounting to Rs. 62.09 lakh were to be paid by the corporate debtor. Said demands were founded upon proceedings and determinations undertaken during moratorium period, and no claim in respect thereof was ever filed during CIRP.

Whether proceedings before EPFO would fall in category of "proceedings before other authority" and Section 14 (1) (a) clearly indicates a bar against initiation of proceeding by EPFO Authorities during moratorium period. When no demand could be made on basis of any inspection or assessment carried out during moratorium, there was no ground to sustain claim sought to be enforced by EPFO through its post-CIRP notices and summons, nor there was any merit in cross appeal filed by EPFO seeking priority treatment of such claims. Thus, instant appeal against NCLT's refusal to quash EPFO's post-moratorium demands, was to be allowed.

Case Review: order of NCLT in IA No. 1745 of 2022 in C.P. No. 281/MB/C-III/2019 dated 09.10.2024, partly reversed.

SECTION 3 - CORPORATE INSOLVENCY RESOLUTION PROCESS – RESOLUTION PLAN - APPROVAL OF

Employees Provident Fund Organisation vs. Subhlaxmi Investment Advisory (P.) Ltd [2026] 182 taxmann.com 282 (NCLAT- New Delhi)

Where CIRP was initiated and moratorium imposed, EPFO's subsequent assessment proceedings and resultant claim could not be pursued or mandatorily admitted, and since RP included existing EPFO claim in information memorandum and SRA made proportionate provision, with resolution plan approved by CoC and adjudicating authority and nothing being due to EPFO as per books on CIRP commencement, EPFO's appeal challenging adequacy of plan allocation did not merit intervention.

CIRP was initiated against the corporate debtor and EPFO was duly intimated of moratorium. EPFO filed a letter-claim of about Rs. 0.50 lakh (not in prescribed form), later initiated enquiry and crystallised about Rs. 18.33 lakhs during moratorium. Resolution applicant proposed a plan of about Rs. 45 lakhs with Rs. 0.05 lakh provided towards EPFO with a contingency cap.

CoC approved plan with 100 per cent voting, which was also approved by Adjudicating Authority. EPFO appealed under section 61 alleging inadequate provision.

Held that after initiation of CIRP and imposition of moratorium under section 14, no assessment proceedings can be initiated or continued by EPFO under sections 7A, 7Q and 14B of the EPF & MP Act, 1952 and no claim based on such assessment can be admitted in CIRP. Clean-slate principle under section 31 extinguishes claims not forming part of resolution plan, and EPFO's reliance on section 36(4)(a)(iii) and PF full-payment jurisprudence was inapplicable on facts. Nominal provision/contingency for PF dues is permissible when CoC exercises commercial wisdom and no employees have raised claims. Thus, approval of resolution plan was legally sustainable vis-à-vis EPFO's challenge.

Case Review: Order passed by "Adjudicating Authority (National Company Law Tribunal, Cuttack Bench, Cuttack, in IA (IB) (Plan) No. 3/CB/2024 in CP (IB) No. 14/CB/2021 dated 28-3-2025, Affirmed **.**

SECTION 63 - CIVIL COURT NOT TO HAVE JURISDICTION

Sara Chemicals and Consultants vs. Rayaprolu Prabhakar Sreenivas [2026] 182 taxmann.com 300 (Bombay)

Under section 63 there is an express bar against Civil Court entertaining any suit or proceeding in respect of any matter on which NCLT or NCLAT has jurisdiction.

The Execution Application was filed for execution of the arbitral award for payment by the Award debtor in favour of the Execution Applicant. The Execution Applicant sought to implead the ex-directors of the dissolved Award Debtor and its erstwhile Resolution Professional and to execute the award against them in their personal capacities on the ground that the proceedings under the IBC were fraudulent and only intended to defeat the claim of the Execution Applicant and frustrate the Award. The proposed Respondents raised an objection as to the maintainability of the application and the jurisdiction of the Civil Court.

Held that under section 63 there is an express bar against Civil Court entertaining any suit or proceeding in respect of any matter on which NCLT or NCLAT has jurisdiction. Where NCLT had dissolved the award debtor company, Civil Court had no

jurisdiction to execute the arbitral award against ex-directors of dissolved company and to proceed with instant application seeking impleadment of ex-directors as parties to execution application.

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

Elegna Co-Op. Housing and Commercial Society Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. [2026] 182 taxmann.com 384 (SC)

Where existence of a financial debt owed to financial creditor was undisputed and corporate debtor had persistently acknowledged default, NCLAT was justified in admitting corporate debtor into CIRP.

Homebuyers' societies or welfare associations cannot litigate on behalf of allottees or claim representative status before adjudicatory fora absent explicit statutory recognition or legally valid authorisation.

The corporate debtor availed loan from original lender for purpose of developing a residential-cum-commercial project.

Original lender transferred all its rights in said loan to the financial creditor. The financial creditor filed petition under section 7 seeking initiation of CIRP against the corporate debtor. NCLT dismissed section 7 petition holding that IBC was being invoked as a recovery mechanism rather than as a tool for insolvency resolution. NCLAT, by impugned order, set aside order of NCLT and directed admission of section 7 application, thereby initiating CIRP against the corporate debtor. NCLAT, however, rejected the intervention application filed by society of home buyers, holding that the society lacked locus standi as it was not a party to the financial transaction forming the subject matter of the appeal.

Held that since existence of a financial debt owed to the financial creditor was undisputed and the corporate debtor had persistently acknowledged default, NCLAT was justified in admitting the corporate debtor into CIRP.

Held that right to initiate or participate in CIRP flows from debt transaction and statute, not from associative or representational interest. A society is a distinct juristic entity separate from its members; Unless it has itself advanced funds, executed allotment agreements, or received allotments, it cannot claim the financial creditor status. Homebuyers' societies or welfare associations are ordinarily constituted for maintenance and management of common facilities and thus, their office-bearers cannot litigate on behalf of allottees or claim representative status before adjudicatory fora absent explicit statutory recognition or legally valid authorisation. Where appellant-Society was neither a financial nor an operational creditor, no statutory right of appeal inhered in appellant.

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

Assistant Commissioner of Income-tax vs. Uttam Value Steels Ltd. [2026] 182 taxmann.com 410 (SC)

SLP dismissed against order of High Court that where petitioner challenged notices issued by Revenue under section 153C of Income tax Act against petitioner on ground that after approval resolution plan no proceedings in respect of any dues relating to period prior to approval of resolution plan could be continued or initiated, notices issued by revenue were to be quashed and set aside.

CIRP was initiated against the petitioner-corporate debtor and resolution plan was approved by NCLT, which included a full waiver of all tax and tax-related interest dues pertaining to period prior to commencement of CIRP. Meanwhile, revenue initiated proceedings under section 153C of Income-tax Act in respect to

assessment years 2013-14 to 2018-19 and, also issued notices under section 143(2) and 142(1) of Income tax Act for assessment year 2019-20 on ground that it had conducted search and seizure action under section 132 of Income-tax Act against group i.e., 'V' prior to commencement of CIRP against the petitioner, in which revenue found that certain companies associated with "V." were involved in bogus transactions and falsified their accounting records and, said companies were also reported to have engaged in transactions with the petitioner. The petitioner filed writ petition seeking to quash and set aside proceedings, including all notices and communications received from revenue on ground that section 31 explicitly made resolution plan binding on revenue. High Court held that all dues which are not part of resolution plan would stand extinguished and no person would be entitled to initiate or continue any proceedings in respect of any claim for any such due and, thus, no proceedings in respect of any dues relating to period prior to approval of resolution plan can be continued or initiated. Further, resolution plan, upon its approval, brought a quietus to all claims pursued or capable of being pursued by revenue against the petitioner for any operation prior to CIRP. Moreover, revenue's action in initiating proceedings under section 153C after approval of resolution plan, was wholly misconceived and untenable and, thus, same was to be quashed and set aside.

Held that there was gross delay of 359 days in filing SLP which had not been satisfactorily explained by revenue and court found no good ground to interfere with impugned order of High Court and, thus, SLP was to be dismissed on ground of delay as well as merits.

Case Review: SLP dismissed against Uttam Value Steels Ltd. v. Assistant Commissioner of Income-tax [2024] 166 taxmann.com 493 (Bombay)/[2024] 186 SCL 70 (Bombay).

SECTION 60 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

Gloster Ltd. vs. Gloster Cables Ltd. [2026] 182 taxmann.com 565 (SC)

Where NCLT, while adjudicating GCL's application under Section 60(5) and plan approval, declared title in 'Gloster' trademark in favour of SRA without a specific, pleaded application under sections 43 or 45, such findings were beyond jurisdiction, violated principles of natural justice, and amounted to modifying the scope of the approved resolution plan, hence impermissible.

The corporate debtor was admitted into CIRP and resolution plan submitted by appellant-SRA was approved by CoC. During pendency of approval, GCL filed an application under section 60(5) seeking exclusion of rights in 'Gloster' trademark from assets of the corporate debtor. NCLT dismissed GCL's application and held that 'Gloster' trademark was corporate debtor's asset. It was also noted that transactions during BIFR restraint conferred no title, assignment dated 20-09-2017 was hit by section 43 and undervalued under section 45(2)(b), and registration dated 17-09-2018 was hit by section 14(1)(b), and approved SRA's plan. NCLAT held NCLT had jurisdiction under section 60(5)(c) but erred on assignment issue and that action under sections 43, 45, 46 and 66 could not be taken absent specific RP application with pleadings and material.

Held that while adjudicating GCL's application NCLT could not have declared title in trademark 'Gloster' in favour of SRA. Any grant of rights over and above those recognised in approved plan amounted to modification of plan. NCLT could not have resorted to enquiry under sections 43 and 45 while adjudicating GCL's application. If a transaction is sought to be set aside as

preferential or undervalued, application must plead basis and put opposite party on notice. Findings of NCLT were perverse, violative of natural justice and beyond scope of enquiry.

Case Review:

Jayanta Kumar Panja v. Fort Gloster Industries Ltd. [2020] 118 taxmann.com 546 (NCLT - Kolkata), partly reversed; Gloster Cables Ltd. v. Fort Gloster Industries Ltd. (Company Appeal (AT) (Insolvency) No. 1343 of 2019) dated 25-1-2024, partly reversed.

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

S.G. Mittal Enterprises (P.) Ltd. vs. Satara Sahakari Bank Ltd. [2026] 182 taxmann.com 566 (Bombay)

NCLT and NCLAT have independent and effective jurisdiction to punish for contempt of their own orders, including orders passed while exercising jurisdiction under IBC and once such contempt jurisdiction is vested in NCLT, High Court ought not to exercise parallel contempt jurisdiction under section 10 of Contempt of Courts Act, 1971.

The petitioner/Corporate Debtor and the respondent No. 1/Bank agreed to amicably settle the dispute and thereafter settled it by agreeing to payment of certain amount and in that regard executed and signed the Consent Terms. The NCLT took Consent Terms on record and disposed the proceedings filed by respondent No. 1/Bank against petitioner vide order in terms of the Agreement. The petitioner made payment of entire consideration in accordance with the schedule set out in the Consent Terms. However, despite receiving the full agreed-upon settlement amount, the respondent No. 1/Bank with its letter demanded payment of alleged balance amount thereby disregarding the Consent Term and the NCLT's order. The petitioner filed the present Contempt Petition.

Held that NCLT and NCLAT have independent and effective jurisdiction to punish for contempt of their own orders, including orders passed while exercising jurisdiction under IBC and once such contempt jurisdiction is vested in Tribunal, High Court ought not to exercise parallel contempt jurisdiction under section 10 of Contempt of Courts Act, 1971. Contempt jurisdiction is plenary and self-contained and once contempt powers are conferred by statute, they vest in Tribunal as an institution and apply to all proceedings before it irrespective of whether Tribunal is exercising jurisdiction under Companies Act, IBC, or any other law for time being in force. Contempt proceedings cannot be used as a substitute for execution or enforcement of orders nor for resolving disputes arising from Consent Terms, especially when compliance depends on disputed facts or interpretation and in that case contempt jurisdiction may not be appropriate. Any supervisory intervention if required can be exercised only under Articles 226 and 227 of Constitution of India and such supervisory jurisdiction is distinct from contempt jurisdiction and cannot be invoked by filing a Contempt Petition. Therefore, present Contempt Petition was not maintainable at threshold and was liable to be dismissed.

SECTION 63 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – CIVIL COURT NOT TO HAVE JURISDICTION

Roseland Buildtech (P.) Ltd. vs. Vihaan 43 Reality Pvt Ltd [2026] 182 taxmann.com 578 (Delhi)

The plaintiff/corporate debtor had availed a term loan from defendant no. 2 under a loan agreement. Defendant no. 1 filed a petition under section 7 before NCLT alleging default,

asserting that loan stood assigned to it by defendant no. 2 under a Business Transfer Agreement (BTA). Plaintiff instituted civil suit seeking, inter alia, a declaration that loan stood fully discharged and that no amounts were due to defendant nos. 1 or 2 and a declaration that BTA was null, void-ab-initio and not enforceable or binding on plaintiff. Defendant no. 1 moved an application under Order VII Rule 11 of CPC to reject plaint on ground that suit was barred by sections 63 and 231 of IBC and that issues such as existence of debt, validity of BTA/assignment, and allegations of fraud/forgery/collusion fell within NCLT's domain under sections 65, 75 and 60(5)(c) read with NCLT Rules, 2016.

Held that since NCLT had jurisdiction over matters involved in instant suit and to answer questions involved in instant suit, bar provided for under section 63 and 231 of IBC applied. Thus, I.A. filed by defendant no. 1 under Order VII Rule 11 of CPC was to be allowed and plaint was to be rejected.

SECTION 220 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 – INSOLVENCY PROFESSIONALS - PUNISHMENT FOR CONTRAVENTION

Vivek Raheja vs. Insolvency and Bankruptcy Board of India [2026] 182 taxmann.com 790 (Delhi)

Where IBBI suspended registration of appellant as an Insolvency Professional on ground of contravention of provisions of Code and Regulations, and High Court found no jurisdictional error or perversity in findings recorded by IBBI, impugned order of High Court did not warrant any interference.

The appellant was appointed as Resolution Professional of the corporate debtor. Respondent issued a show cause notice and, exercising powers under section 220(2), suspended appellant's registration as an Insolvency Professional for a period of two years. The appellant filed a writ petition seeking to quash respondent's order. Single Judge dismissed writ petition, upholding the respondent's determination, rejecting plea that first show cause notice operated as res judicata against second show cause notice, and holding that the appellant could not be exonerated of statutory obligations under section 30(2) and Code of Conduct. The appellant's review petition was dismissed, recording that grounds raised were either already considered or had not been urged when writ petition was adjudicated.

Held that in view of statutory scheme of the Code and Code of Conduct for Insolvency Professionals, the appellant was under obligation to ensure compliance with

provisions of the Code and Regulations made thereunder, including sections 29A and 30(2). Submissions on merits, which were not argued before Single Judge in writ petition, could not be examined for first time in appeal. In absence of any jurisdictional error or perversity in disciplinary order passed by respondent, impugned judgment did not warrant interference. Therefore, observations and conclusions in impugned judgment were justified and did not call for any interference in appeal.

Case Review: Order of High Court (Single Judge) in W.P.(C) 2894/2024 dated 7-8-2024 and Order of High Court (Single Judge) in Review Petition No. 370/2024 dated 7-10-2024, affirmed.

ON 9 MARCH 2026, IPA-ICMAI JOINTLY WITH THE PROFESSIONAL DEVELOPMENT & CPE COMMITTEE, ICMAI AND ICMAI REGISTERED VALUERS ORGANISATION CELEBRATED INTERNATIONAL WOMEN'S DAY: WOMEN'S POWER – A KEY CATALYST FOR VIKSIT BHARAT 2047.

TWO DAYS CERTIFICATE TRAINING PROGRAM FOR PROFESSIONALS UNDER THE IBC ECOSYSTEM ORGANISED BY IPA-ICMAI, HELD ON MARCH 14TH & 15TH, 2026, IN JAIPUR.

TWO DAYS CERTIFICATE TRAINING PROGRAM FOR PROFESSIONALS UNDER THE IBC ECOSYSTEM ORGANISED BY IPA-ICMAI IN ASSOCIATION WITH EDELWEISS ARC AND IP FOUNDATION, HELD ON MARCH 14TH & 15TH, 2026, IN MUMBAI.

IPA-ICMAI IN ASSOCIATION WITH MIDC INDUSTRIES ASSOCIATION, NAGPUR, ORGANIZED A SEMINAR ON MARCH 12TH ,2026 ON 'REIMAGINING MSME SURVIVAL: STRATEGIC USE OF INSOLVENCY FRAMEWORK UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

GUIDELINES FOR ARTICLE

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

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

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

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

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

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

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

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

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

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

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

***Disclaimer:** The information contained in this document is intended for informational purposes only and does not constitute legal opinion, advice, or any advertisement. This document is not intended to address the circumstances of any particular individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a particular situation. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein. Contents of the articles in this publication or intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances. The Contents of the articles and opinions expressed therein are of the authors and do not reflect the views of IPA-ICMAI*