OCTOBER & NOVEMBER 2024

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 solvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelinesissued 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.

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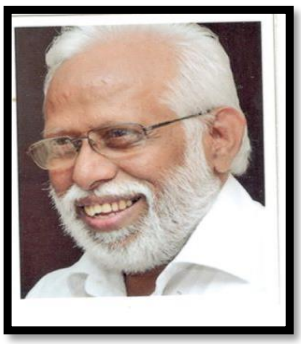

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CASEBOOK

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MESSAGE FROM THE DESK OF MANAGING DIRECTOR

Dear professional,

Greetings to you from all of us in Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI). Monthly Journal is one of the publications regularly published by the Publications Division of IPA-ICMAI. This journal seeks to carry interesting articles and opinions that not just inform but provide an enlightened insight into issues of vital interest in the domain of insolvency and bankruptcy, corporate restructuring and rejuvenation and related subjects. The profession of IPs, now getting out of infancy into adolescence, is continuously evolving with numerous court rulings from various 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 code, relevant laws and regulations as also new case laws. The equally important side of professional development is expression of a professional's knowledge and experience and competent 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.

IPA-ICMAI looks to continually expand the horizons of knowledge and skillsets for IPs that would also help them professionally. It organised a 6 day hybrid program 'Mediation Cohort', a certification program on mediation, the last two days of which were in person sessions involving roleplays. In the first week of January, 2025, IPA-ICMAI has organised a 4 day residential retreat at Alleppey, Kerala 'Deep Dive Into Resolution' that will bring together IPs, valuers, bankers, advocates, auditors, regulators, adjudicators and corporate executives in the same place to hear, discuss and deliberate on developments, challenges and opportunities in the IBC ecosystem as it gets out of infancy. I welcome all IPs and other professionals to register soon and join this event.

This is a double issue carrying 6 articles. The interesting articles include one that discusses the tricky point on liabilities attached a cluster of assets auctioned in CIRP on 'as is where is basis'. Another article has a detailed analysis of a particular judgement of the Supreme Court. The other interesting piece of CMA Bhaskaran discusses what is an asset in IBC! Other articles discuss interplay of IBC with other laws and a discussion on RBI's One Time Loan Restructuring Scheme.

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 INTIATIVES

OCTOBER & NOVEMBER 2024	
Date	**Events Conducted**
October 26, 2024	Workshop on Judicial Pronouncements under IBC, 2016
October 19, 2024	Workshop on Cross Border & Group Insolvency
October 10, 2024	Workshop on Forensic Audit & Transaction Audit
October 5, 2024	Workshop on Mediation & IBC Framework: Trajectory & Prospects
October 26, 2024	Workshop on Judicial Pronouncements under IBC, 2016
November 8, 2024	Workshop on Rising Haircuts under IBC, 2016.
November 9, 2024	Discussion on recent judgments delivered by Supreme Court and Latest IBBI Circulars under IBC, 2016
November 11, 2024	Mediation Cohort : BECOME A CERTIFIED MEDIATOR WITH COMPREHENSIVE INDUSTRY FOCUS
November 17, 2024	Workshop on Not Readily Realisable Assets
Date	**Upcoming Events**
November 28, 2024,	66th BATCH OF PRE-REGISTRATION EDUCATIONAL COURSE (Online Course)
January 04-08 ,2025	Residential Program: Resolving Insolvency In God's Own Country: Resolve|Rebuild|Renew

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RESOLVE | REBUILD | RENEW

ALLEPPEY|KERALA

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3. *OPEN AND FREE DISCUSSIONS*
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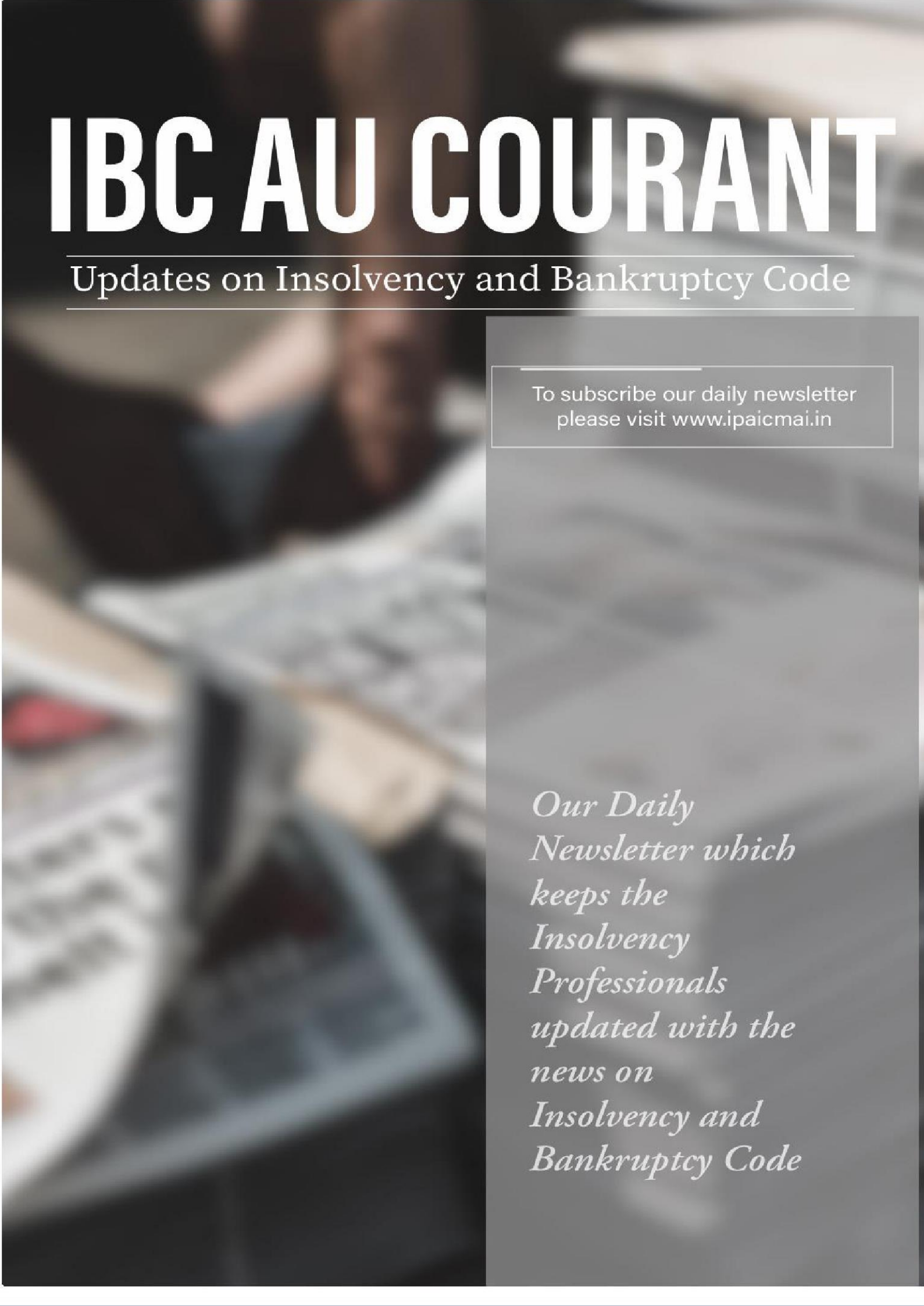

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Updates on Insolvency and Bankruptcy Code

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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
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Understanding Rbi's One-Time Loan Restructuring Scheme: A Comprehensive Guide

CA Hiten Ratilal Abhani
Insolvency Professional

INTRODUCTION:

In the wake of the unprecedented economic disruptions caused by the COVID-19 pandemic, governments and financial authorities worldwide have rolled out various measures to alleviate financial strains on businesses and individuals. The Reserve Bank of India (RBI), as the country's central banking institution, has been at the forefront of implementing policies aimed at stabilizing financial markets, supporting economic recovery, and safeguarding the interests of borrowers and lenders alike.

Among the initiatives introduced by the RBI, the One-Time Loan Restructuring Scheme stands out as a critical intervention designed to provide relief to borrowers facing financial distress due to the pandemic-induced economic slowdown. This comprehensive guide aims to delve into the nuances of RBI's restructuring scheme, exploring its objectives, eligibility criteria, procedural intricacies, and the broader implications for stakeholders in the Indian economy.

1. Understanding the Context: Before delving into the specifics of the restructuring scheme, it's essential to understand the context in which it was introduced. The COVID-19 pandemic wreaked havoc on global economies, disrupting supply chains, stifling demand, and triggering widespread job losses. In India, the imposition of nationwide lockdowns to curb the spread of the virus brought economic activities to a grinding halt, exacerbating existing vulnerabilities and exposing businesses to unprecedented challenges.

Amidst the economic turmoil, businesses across sectors faced liquidity crunches, plummeting revenues, and looming debt obligations. The prospect of default loomed large, threatening the survival of enterprises and amplifying systemic risks within the financial ecosystem. Recognizing the urgency of the situation, the RBI swiftly intervened to provide relief measures, including regulatory forbearance, liquidity injections, and the restructuring of loans, to cushion the impact on borrowers and lenders.

2. Objectives of the One-Time Loan Restructuring Scheme: At its core, the One-Time Loan Restructuring Scheme is driven by the overarching objective of preserving the viability of stressed assets while providing relief to borrowers grappling with financial distress. The scheme aims to achieve the following key objectives:

Preserving Business Viability: By offering a lifeline to distressed borrowers, the restructuring scheme seeks to prevent the untimely demise of otherwise viable businesses. By providing temporary reprieve from debt servicing obligations, businesses can weather the storm, retain employment, and contribute to economic recovery.

Mitigating Systemic Risks: Widespread defaults have the potential to trigger a cascading effect within the financial system, amplifying risks and impeding the flow of credit. By proactively addressing stress in the banking sector and preventing a surge in non-performing assets (NPAs), the restructuring scheme contributes to overall financial stability.

Ensuring Fair Treatment of Borrowers: The scheme embodies the principle of fairness and equity, ensuring that borrowers facing genuine financial distress are not unduly penalized for circumstances beyond their control. By offering tailored restructuring solutions, borrowers can navigate through turbulent times without bearing the brunt of punitive measures.

3. Eligibility Criteria for Loan Restructuring: The One-Time Loan Restructuring Scheme discussed here is specifically designed for borrowers who have been financially distressed due to the COVID-19 pandemic. Borrowers seeking restructuring must demonstrate that their financial difficulties are directly attributable to the adverse impact of COVID-19 on their business operations, such as revenue declines, supply chain disruptions, or operational challenges caused by lockdowns and restrictions. While the scheme primarily targets COVID-affected borrowers, the principles of loan restructuring could theoretically be extended to other categories of distressed borrowers under different schemes or circumstances. However, the specific scheme outlined here is tailored to address the unique challenges posed by the pandemic.

Additionally, the RBI has laid down stringent eligibility criteria to ensure that the scheme is targeted towards genuinely distressed borrowers while guarding against moral hazard. The key eligibility criteria include:

Adverse Impact Due to COVID-19: As mentioned, borrowers must demonstrate that their financial distress is directly linked to the pandemic's impact.

Timely Repayment Record: A history of timely repayment serves as a crucial determinant of eligibility. Borrowers with a track record of default or non-compliance may find it challenging to qualify for restructuring, as lenders prioritize borrowers with a demonstrated commitment to honoring their obligations.

Viability Assessment: Lenders conduct a comprehensive viability assessment to ascertain the feasibility of restructuring loans and the borrower's capacity to repay post-restructuring. This entails a thorough analysis of the borrower's financial statements, cash flow projections, business model, and sectoral dynamics to gauge the sustainability of the proposed restructuring plan.

Compliance with Regulatory Guidelines: Borrowers and lenders must adhere to the regulatory guidelines stipulated by the RBI regarding the restructuring process. Non-compliance with regulatory norms or attempts to circumvent the prescribed framework can jeopardize the restructuring process and expose parties to regulatory sanctions.

4. Differences from Traditional One-Time Settlement (OTS) Schemes: The One-Time Loan Restructuring Scheme introduced in response to the COVID-19 pandemic differs from traditional One-Time Settlement (OTS) schemes in several key aspects:

OBJECTIVE AND FOCUS:

- **One-Time Loan Restructuring Scheme:** The primary objective is to provide relief to borrowers who are facing temporary financial distress due to the pandemic while preserving the viability of otherwise sound businesses. The focus is on restructuring the loan terms to provide temporary relief rather than settling the loan at a reduced amount.
- **Traditional OTS Schemes:** Typically target borrowers unable to repay loans and are used to settle outstanding dues at a reduced amount.

ELIGIBILITY AND CONDITIONS:

- **One-Time Loan Restructuring Scheme:** Requires a demonstrated adverse impact due to COVID-19, a history of timely repayment, and a viability assessment to ensure the borrower's ability to repay post-restructuring.

- **Traditional OTS Schemes:** Generally do not require such specific linkages and are typically offered to borrowers who are unable to repay their loans and are looking to settle their outstanding dues at a reduced amount.

PROCEDURAL DIFFERENCES:

- **One-Time Loan Restructuring Scheme:** Involves a detailed procedural framework including submission of a restructuring proposal, evaluation by lenders, approval from regulatory authorities, and ongoing monitoring and reporting.
- **Traditional OTS Schemes:** Focus on a negotiated settlement amount and payment terms with the primary aim of recovering as much of the outstanding loan as possible.

REGULATORY OVERSIGHT AND COMPLIANCE:

- **One-Time Loan Restructuring Scheme:** Requires compliance with specific regulatory guidelines set by the Reserve Bank of India (RBI), including prudential norms, asset classification, provisioning requirements, and disclosure and reporting mandates.
- **Traditional OTS Schemes:** While they also require regulatory compliance, they are generally less complex in terms of procedural and regulatory requirements compared to the restructuring scheme.

5. Procedural Framework for Loan Restructuring: The restructuring process entails a series of procedural steps, each meticulously designed to ensure transparency, efficiency, and adherence to regulatory norms. While the specifics may vary depending on the nature of the loan, the borrower's profile, and the lender's policies, the overarching framework typically encompasses the following stages:

Submission of Restructuring Proposal: Borrowers initiate the restructuring process by submitting a formal proposal to the lending institution outlining their financial position, restructuring requirements, and proposed repayment plan. The proposal serves as a crucial document that provides insights into the borrower's current challenges, future prospects, and repayment capacity.

Evaluation by Lenders: Upon receiving the restructuring proposal, lenders undertake a thorough evaluation of the borrower's financial health, repayment track record, and the rationale behind the restructuring request. This involves scrutinizing financial statements, conducting cash flow analyses, and assessing the impact of restructuring on the lender's balance sheet.

Approval from Regulatory Authorities: Once the restructuring proposal is vetted and approved by the lending institution, it is submitted to the regulatory authorities, such as the RBI, for final approval. Regulatory oversight ensures compliance with prescribed guidelines, safeguards the interests of stakeholders, and maintains the integrity of the financial system.

Implementation of Restructuring: Upon receiving regulatory approval, lenders and borrowers proceed with the implementation of the restructuring plan, formalizing the revised terms and conditions through a legally binding agreement. This may involve modifications to the loan tenure, interest rates, repayment schedule, or moratorium on principal and interest payments, depending on the specific needs of the borrower.

Monitoring and Reporting: Post-restructuring, lenders are tasked with monitoring the performance of restructured loans and reporting any deviations from the agreed-upon terms to regulatory authorities. Regular monitoring ensures compliance with restructuring agreements, facilitates early detection of potential defaults, and enables timely intervention to mitigate risks.

6. Regulatory Framework and Compliance Requirements: Central to the effectiveness of the restructuring scheme is adherence to the regulatory framework

prescribed by the RBI. The regulatory framework encompasses a comprehensive set of guidelines, directives, and prudential norms aimed at promoting transparency, accountability, and stability within the financial system. Key aspects of the regulatory framework include:

Prudential Norms: The RBI imposes prudential norms and provisioning requirements on banks and financial institutions to ensure sound risk management practices, capital adequacy, and asset quality. Compliance with prudential norms is essential for maintaining the financial health and resilience of lenders engaged in restructuring activities.

Asset Classification and Provisioning: The RBI classifies loans based on their credit quality and mandates provisioning requirements to cover potential losses arising from default or impairment. Lenders are required to classify restructured loans appropriately and maintain adequate provisions to mitigate credit risks and safeguard their balance sheets.

Disclosure and Reporting Requirements: Transparency and disclosure play a pivotal role in fostering trust and accountability within the financial system. Lenders are mandated to disclose information regarding loan restructuring activities, asset quality, and provisioning levels in their financial statements and regulatory filings to facilitate market discipline and informed decision-making.

Regulatory Oversight and Supervision: The RBI exercises robust oversight and supervision over banks and financial institutions engaged in loan restructuring activities to ensure compliance with regulatory norms and safeguard the interests of depositors, investors, and other stakeholders. Regulatory interventions, including inspections, audits, and corrective actions, are deployed to address instances of non-compliance and mitigate systemic risks.

Additionally, the article refers to two specific RBI notifications that form the regulatory foundation for the One-Time Loan Restructuring Scheme:

1. **Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets):**

- Issued by the RBI on June 7, 2019. This framework provides comprehensive guidelines for the early identification, reporting, and resolution of stressed assets.

2. **Reserve Bank of India (Resolution of Stress in Micro, Small and Medium Enterprises (MSME) sector):**

- Issued on August 6, 2020, it provides guidelines on the restructuring of loans for MSME borrowers impacted by the COVID-19 pandemic.

7. Implications for Stakeholders: The One-Time Loan Restructuring Scheme has significant implications for various stakeholders across the financial ecosystem, including borrowers, lenders, regulators, investors, and the broader economy:

Borrowers: For borrowers facing financial distress, the restructuring scheme offers a lifeline to navigate through turbulent times, preserve business viability, and avoid the specter of default. By providing temporary relief from debt servicing obligations, the scheme enables borrowers to restructure their finances, stabilize operations, and chart a path towards sustainable recovery.

Lenders: For lenders grappling with the specter of rising NPAs and credit risks, the restructuring scheme offers a mechanism to proactively address stress in their loan portfolios, prevent asset deterioration, and shore up capital buffers. While restructuring entails short-term concessions, lenders stand to benefit from the preservation of viable assets and the restoration of borrower solvency over the long term.

Regulators: For regulatory authorities such as the RBI, the restructuring scheme presents a delicate balancing act between

mitigating systemic risks and maintaining financial stability. Regulatory oversight ensures compliance with prescribed guidelines, safeguards the interests of stakeholders, and fosters confidence in the financial system's resilience and robustness.

Investors: For investors and market participants, the restructuring scheme signals the authorities' commitment to addressing systemic vulnerabilities and supporting economic recovery. While restructuring activities may result in short-term volatility and provisioning impacts, the resolution of stressed assets enhances transparency, reduces uncertainty, and bolsters investor confidence in the long-term prospects of the economy.

Conclusion: The One-Time Loan Restructuring Scheme introduced by the RBI represents a pivotal intervention aimed at providing relief to borrowers facing financial distress in the aftermath of the COVID-19 pandemic. By offering flexibility in loan repayments, preserving the viability of stressed assets, and promoting financial stability, the scheme serves as a critical lifeline for businesses navigating through unprecedented challenges.

However, the success of the restructuring scheme hinges on effective implementation, transparent communication, and adherence to regulatory norms by all stakeholders. Borrowers must exercise prudence in assessing their eligibility, evaluating the long-term implications, and engaging constructively with lenders to navigate the restructuring process. Lenders, in turn, must conduct rigorous viability assessments, exercise due diligence in approving restructuring proposals, and ensure compliance with regulatory guidelines to mitigate risks and uphold the integrity of the financial system.

As the Indian economy embarks on the path to recovery, the collaborative efforts of borrowers, lenders, regulators, and policymakers will be instrumental in fostering resilience, restoring confidence, and laying the foundations for sustainable growth and prosperity in the post-pandemic era.

Sources / References:

1. RBI notification - "Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets)".

   RBI notification - "Reserve Bank of India (Resolution of Stress in Micro, Small and Medium Enterprises (MSME) sector)" for detailed guidelines on loan restructuring schemes and regulatory frameworks

Sale of A Group/Cluster of Assets Under Resolution Plan During CIRP

Mr. RAJEEV MAWKIN
FCA & Insolvency Professional

SYNOPSIS

At its commencement, the IB Code provided that under a corporate insolvency resolution process (**CIRP**), a resolution plan shall be submitted by prospective resolution applicants (**PRA**) **for the corporate debtor as a whole** and such process shall stand completed on approval of any one resolution plan by the Adjudicating Authority (**AA**) under the provisions of section 31 of the IBC. In this manner, the corporate debtor (**CD**) would be taken over by the successful resolution applicant (**SRA**) and all past liabilities relating to the CD shall stand extinguished on approval of the resolution plan. This concept was referred to as **"clean slate"** theory under IBC.

Later on, an amendment was made in IBC and a provision was introduced to allow the resolution professional (**RP**) to invite resolution plans for individual assets or group/cluster of assets of the CD. Thereafter, the RP started issuing request for resolution plan (**RFRP**) for individual asset or group/cluster of assets which included a condition that the assets of the CD were being sold under CIRP on "**As is where basis**".

A question arose that where the assets were sold by the RP on "**as is where basis**" under a resolution plan, whether all past liabilities relating to those assets sold to SRA will stand extinguished on approval of resolution plan by AA? Whether the "**clean slate**" theory will apply to such resolution process"?
In this Article, the author has attempted to address various issues that arise out of such a situation.

Brief background –
IBC Corporate Insolvency Resolution Process (CIRP) Regulations provide as follows-

"37. Resolution plan.

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -
....

(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets"

While various modes of sale of assets are provided in the IBC, let us try to analyse the effect of these IBC provisions on sale of a group/cluster of assets by the RP under a resolution plan during CIRP process.

After obtaining approval of the CoC, when an RP proposes to sell a group/cluster of assets under the CIRP process, then he is required to issue an RFRP for submission of resolution plan by the PRAs for sale of such group/cluster of assets in the manner provided in the RFRP. In most cases, where the RP invite PRAs to submit resolution plan for the sale of group/cluster of assets of CD under CIRP process, it is prominently displayed/mentioned in the RFRP that the sale of assets will be sold on ***"As is where basis" and "Whatever is where basis" and "No recourse basis"*** and so on.

By including such phrases in the RFRP, the RP informs all PRAs that the said assets are being sold in same physical state, as they exist at present, with all rights, titles, interests, obligations and liabilities attached to such assets. The PRAs are further obliged to conduct their own due diligence in order to determine the estimated value and status of such assets and also conduct their own enquiries regarding all rights, titles,

obligations and liabilities in relation to such assets.

It will be interesting to understand the significance, as well as, the legal interpretation of the phrase ***"As is where basis" and "Whatever is where basis" and "No recourse basis"*** in relation to group/cluster of assets which are sold by RP in such manner.

The interpretation of the phrase ***"As is where basis" and "Whatever is where basis" and "No recourse basis"*** was deliberated upon and decided by Hon'ble SC in the case of ***K C Ninan Vs Kerala State Electricity Board & Others*** (**Civil Appeal No 2109-2110 of 2004) – Judgement pronounced on 19/05/2023.**

Their Lordships held in para no. 138, 141 and 142 of this judgement as follows –

*"**138**. Thus, the implication of the expression **"as is where is" or "as is what is basis" or "as is where is, whatever there is and without recourse basis"** is not limited to the physical condition of the property, **but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property**, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for sale or any liability for the payment of dues, like water/service charges, electricity dues for power connection and taxes of the local authorities, among others."*

*"**141**. To conclude, all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate "as is where is" clause is incorporated in the auction sale agreement. **It is for the intending auction purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase**. In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues."*

*"**142**. In terms of the legal doctrine of **caveat emptor**, it becomes the duty of the buyer to exercise due diligence. A seller is not under an obligation to disclose patent defects of which a buyer has actual or constructive notice in terms of Section 3 of the Transfer of Property act, 1882. However, in terms of Section 55(1)(a), in the absence of a contract to the contrary, the seller is under an obligation to disclose material defects in the property or in the seller's title thereto of which he is aware and which a buyer could not with ordinary care discover for himself."*

It is relevant to mention here that in the case of ***K C Ninan Vs Kerala State Electricity Board & Others*** (***Supra***), the Hon'ble Supreme Court was dealing with the matter relating to sale of assets of a company ***under the provisions of the SARFASEI Act***. Therefore, it will be interesting to analyze how such a guiding principle, which was enunciated by Hon'ble Supreme Court in the case of ***K C Ninan Vs Kerala State Electricity Board & Others*** (***Supra***) in relation to the phrase ***"as is where is" or "as is what is basis" or "as is where is, whatever there is and without recourse basis***", will apply in case of sale of group/cluster of assets of the CD under the corporate insolvency resolution process (**CIRP**) of the CD under the provisions of IBC.

Let us take a step back and do a brief recall of the CIRP process under IBC. On a public announcement made by the IRP, the

creditors are requested to submit their claims in prescribed forms within 30 days of issue of such announcement and the IRP is required to collate and compile a list of creditors in order to constitute the CoC. Thereafter, a list of creditors is issued by RP wherein the voting share of creditors is mentioned and the process proceeds further from thereon. For identifying the PRA, the RP issues an EOI inviting eligible parties to participate in the CIRP process of the CD. Subsequently, an RFRP and IM inviting PRAs to submit resolution plan is issued. Once such resolution plans are received, they are deliberated upon and negotiated by the CoC and finally the resolution plan submitted by a particular resolution applicant is accepted by CoC and forwarded to AA for its approval. The resolution plan gets approved by AA and the CIRP process stands concluded.

The Hon'ble Supreme Court has expressed its view on '***clean slate'*** theory on approval of the Resolution Plan in several remarkable landmark judgements.

In this regard, a three Judge Bench of the Hon'ble Supreme Court in ***Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*****, (2021) 9 SCC 657** held as follows:

"102.1. *That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.* ***On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.***

102.3. Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

The Hon'ble Supreme Court in ***Essar Steel (India) Ltd. (CoC)*** **v.** ***Satish Kumar Gupta*****, (2020) 8 SCC 531** explained the position as under:

"107. For the same reason, the impugned NCLAT judgment in Standard Chartered Bank v. Satish Kumar Gupta [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the adjudicating authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. ***This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] must also be set aside on this count."***

Incidentally, the judgements referred to above, were delivered by Hon'ble Courts in relation to the corporate insolvency resolution process of the corporate debtor, where the corporate debtor was resolved

as a whole. Therefore, it will be interesting to find out if the "***clean slate***" theory will apply in case of corporate resolution process which involves sale of individual assets of CD or sale of a group/cluster of assets of CD under a resolution plan.

This view requires analysis as, on one hand, the claims are received and admitted by the RP ***for the corporate debtor as a whole*** (i.e. in relation to all dues of various creditors, which may or may not be related or unrelated to any specific asset of the corporate debtor), on the other hand, the assets of the CD undergoing corporate resolution may be sold in more than one group/clusters (i.e. maybe sold as cluster no. s1, 2 ,3 and so on) to different PRAs. Moreover, one also needs to apply the principle laid down by Hon'ble Supreme Court in the case of ***K C Ninan Vs Kerala State Electricity Board & Others*** (***Supra***) in relation to the phrase ***"as is where is" or "as is what is basis" or "as is where is, whatever there is and without recourse basis***" as the assets are sold by RP accordingly.

Therefore, three important questions emerge out of these discussions which are –

1) Whether the interpretation of the phrase ***"as is where is" or "as is what is basis" or "as is where is, whatever there is and without recourse basis***" upheld in the case of ***K C Ninan Vs Kerala State Electricity Board & Others*** (***Supra***) will have any resultant effect on the ***"clean slate"*** theory, with respect to approved resolution plan, upheld by the Courts?

2) Whether the "***clean slate***" theory upheld by the Courts, in respect of an approved resolution plan of a CD as a whole, will apply in case of sale of a group/cluster of assets of the CD, where such a resolution plan is also approved by the Adjudicating Authority?

3) Whether the successful resolution applicants (SRA), whose resolution plan is approved by the Adjudicating Authority, will be liable for settlement of past liabilities/dues of the corporate debtor under any circumstances?

So far as the principle upheld by Hon'ble Supreme Court in the case of ***K C Ninan Vs Kerala State Electricity Board & Others*** (***Supra***) relating to the interpretation of the phrase ***"as is where is" or "as is what is basis" or "as is where is, whatever there is and without recourse basis***" is concerned, the observation of the Court with respect to the rights, title, interests and obligations attached to an asset or a group/cluster of asset ***will hold its ground*** as the sale of group/cluster of assets was made by the RP on that basis. Therefore, there can be no doubt that the group/cluster of assets gets transferred to the SRA on approval of the resolution plan by AA with all rights, title, interests and obligations that existed at the point in time when the RP issued RFRP inviting PRAs to submit resolution plan for sale of group/cluster of assets.

However, we are also required to weigh such an interpretation against the backdrop of the ***"clean slate***" theory upheld by Courts under IBC.

When we consider the applicability of the "***clean slate***" theory as upheld by the Courts in case of CIRP process, the golden words, which were included in the judgements pronounced by Hon'ble Supreme Court, come to our guidance and are reproduced below –

***a) Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657 –**

"102.1. ..... On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.3. Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

***b) Essar Steel (India) Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531 –**

"107. …… A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor……. ***This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] must also be set aside on this count."***

From the extracts reproduced above, it would appear that although the principle laid down in the case of ***K C Ninan Vs Kerala State Electricity Board & Others*** (***Supra***) comes into play, ***yet its effect is nullified due to the provisions of the IBC.***

The reason for such a conclusion is that –

1) Under the provisions of IBC, the sale of the group/cluster of assets of the CD takes effect in the favour of the SRA due to and only on approval of the resolution plan by AA as per provisions of section 31 of the IBC.

2) The Courts have deliberated at length on the applicability and the effect of the provisions of section 31 of the IBC (relating to approval of a resolution plan) and have, consistently and conclusively, held that the approval of a resolution plan by the AA ***brings down the curtain on the resolution proceedings qua SRA***.

3) As a result, the SRA is entitled to take over the assets or group/clusters of assets for which resolution plan had been approved and "***Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued".***

In case the RP calls for only one plan to be submitted by each PRA for acquiring the CD as a whole, then a resolution plan submitted by any one PRA will be ultimately approved by the AA in respect of the CD. However, if the RP issues an RFRP inviting multiple resolution plans for various group/cluster of assets of CD, then multiple resolution plans will ultimately get approved for different SRAs. In effect, in both the processes, one resolution plan or multiple resolution plans, will be approved by the AA under the provisions of section 31 of IBC.

Therefore, it does not make any difference if the resolution plan is approved by the AA, for the whole or multiple assets of the corporate debtor. The only important and relevant consideration is the resolution plan being approved by AA. Once the resolution plan is approved by AA, the group/cluster of assets will be taken over by the SRA and ***all dues attached to such group/cluster of assets shall stand extinguished on approval of the resolution plan***.

Therefore, it will be prudent to conclude that the ***"clean slate"*** theory upheld by the Courts under IBC provisions would apply in all cases where the resolution plan is approved by AA. The approval of AA to a resolution plan is a conclusive stamp on the final adjudication of the resolution plan under the provisions of IBC.

Author's Views:

The sale of group/cluster of assets by the RP under a resolution plan, which is ultimately approved by AA, ***is the sole criterion*** under the IBC for the claim of immunity from all past liabilities. While the tag of "***as is where is basis***" does apply to all transactions where the assets are sold as such, the overall immunity provided by the provisions of section 31 of the IBC, relating to approval of resolution plan by AA, ***serves as an regional protective umbrella for the resolution process***. The SRA cannot be, and should not be, burdened with any past liabilities, whether relating to the business affairs of the CD or relating to any asset of the CD.

One more important provision of IBC is to be considered here. Section 238 of IBC has an overriding effect on all other laws. It provides a ***global protective umbrella*** to the transactions which happen on the IBC platform. Therefore, immense protection is available to the SRA with regard to immunity from past liabilities under this framework.

Having said that, I still can imagine a smile on my learned friend's face where they have different experiences to deal with.

"ASSET" under IBC: An Analysis

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SYNOPSYS:

The realization and valuation of assets are crucial in the insolvency resolution process. The term "a**sset**" is not specifically defined under IBC 2016 or any of the seven Acts specified under section 3(37) of the code. **In general** terms, an asset refers **to any kind of property**. According to the income tax act, assets include **property or rights of any kind.** The term "property" is defined under section 3(27) of the IBC, which is an inclusive definition. Therefore, it can be concluded that **property or rights of any kind could be considered as assets** for IBC proceedings. This interpretation aligns with the Hon'ble Supreme Court Judgment in the case of Victory Iron Works Ltd vs. Jithendra Lohia & Anr.

1. Framework

The Insolvency and Bankruptcy code 2016, which is divided into **5 parts**, contains provisions for the following:

Part I Preliminaries
Part II Insolvency Resolution and Liquidation for Corporate Persons
Part III Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms
Part IV Regulation of Insolvency Professionals
part V Miscellaneous Provisions

2. Definitions- Coverage

Words and Phrases used in IBC are defined in the following sections:

Section 3: Applicable throughout the Code, unless the context otherwise requires

Section 5: Applicable for **Part II only**

Section 79: Applicable for **Part III only**

Thus, section 3 in general applies to the entire Code, whereas, Sections 5 & 79 have only limited applications to the respective parts of the Code.

3. Assets

The term Asset is not specifically defined anywhere in IBC

Except that

i) **Section 79(14)** provides for exclusion of certain assets from **insolvency and bankruptcy proceedings** of Individual and partnership firms under Part III of the Code subject to certain conditions under the expression **"excluded Assets"**

"**Excluded assets"** for the purposes of this part includes—

(a) Unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation.

Conditions for Exclusion:

- The assets should not be encumbered
- Exclusion is only to the extent necessary for the personal use or employment, business or vocation (vocation means a way of living as believes to be suitable for One)

(b) Unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family.

Conditions for Exclusion:

- The assets should not be encumbered
- Exclusion is only to the extent necessary for the debtor and for his immediate family domestic needs (immediate family means his spouse, dependent children and dependent parent)

(c) Any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;

Conditions for Exclusion:

- The assets should not be encumbered Exclusion is only to the extent of Rs 1 lakh
- Exclusion is only if the assets cannot be parted with in accordance with religious usage of him or immediate family

(d) Any unencumbered life insurance policy or pension plan (irrespective of value) of the debtor or his immediate family;

Condition for Exclusion:

(e) An unencumbered single dwelling /residential unit owned by the debtor of such value as prescribed;

Conditions for Exclusion:

- The dwelling unit should not be encumbered
- Exclusion is only to the extent of Rs 25 lakhs in urban area and Rs 10 lakhs in Rural area (rural area as per section 2(o) of National Rural Employment Guarantee Act 2005)

ii) **Section 18** of the IBC, which provides for the duties of resolution professional, inter alia, gives an explanation that the term "Assets" shall not include the following.

- Assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
- Assets of any Indian or foreign subsidiary of the corporate debtor; and
- Such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

4. Now, **Section 3(37**) of the Code states that words and expressions used but not defined in this Code, but defined in the

- Indian Contract Act, 1872,
- Indian Partnership Act, 1932,
- Securities Contract (Regulation) Act, 1956,
- Securities Exchange Board of India Act, 1992,
- Recovery of Dets Due to Banks and Financial Institutions Act, 1993,
- Limited Liability Partnership Act, 2008 and
- Companies Act, 2013

shall have the **meanings respectively assigned to them in those Acts**.

Since the term assets is not defined in IBC, taking refuge in section 3(37), to find out a definition for the term **asset,** it could be seen that:

- Indian contract act 1872 -
  Not defined the term "assets"
- Indian Partnership Act 1932 -
  Not defined the term "assets"
- Securities Contract (Regulation) Act, 1956 -
  Not defined the term "assets"
- Securities Exchange Board of India Act, 1992- Not defined the term "assets"
- Recovery of Dets Due to Banks and -
  Not defined the term "assets"
- -Financial Institutions Act, 1993

- Limited Liability Partnership Act 2008 - Not defined the term “assets”
- Companies Act, 2013 - Not defined the term “assets”

Thus, neither IBC nor the seven acts specified under section 3(37) of IBC has defined the term Asset.

5. However, section 102(2) of the Income tax act 1961 defined the term asset to include “property or rights of any kind.

   Though it applies to chapter X-A of the Income Tax Act, the definition alludes to the fact that any property or right of any kind could be considered as an asset.

6. In common parlance also asset denotes property of any kind.

7. Based on the discussion above, since there is no specific definition of the term "asset" under IBC or in any of the seven acts specified in section 3(37) of the IBC, we can consider the definition given in the Income Tax Act, 1961, which includes "property or rights of any kind." In common language, "asset" typically denotes any kind of property. Therefore, it can be concluded that property or rights of any kind could be considered as assets for the purpose of IBC proceedings.

8. In the context of the Insolvency and Bankruptcy Code (IBC), it's important to note that Section 3(27) defines the term "property" to include money, goods, actionable claims, land, and every type of property located in India or outside India. It

9. also encompasses all forms of interest, whether present, future, vested, or contingent, that are related to the property.

10. Since this is an inclusive definition and not an exhaustive one, property or rights of any kind could be termed as an asset for the purpose of IBC proceedings.

11. The above analysis aligns with the judgment in the case of Victory Iron Works Ltd versus Jithendra Lohia & Anr. The Honorable Supreme Court affirmed the decision of NCLT and NCLAT, stating that a bundle of rights and interests that the Corporate Debtor has in the immovable property constitute an "Asset" to be included in the information memorandum by the resolution professional and to take custody and control of the same.

    In the same case, the Honorable Supreme Court held that assets owned by a third party but in possession of the Corporate Debtor under a contractual agreement are excluded from the definition of assets only in section 18 of the IBC, and not in section 25. This is due to the fact that, the explanation under Section 18 starts with a caveat, "for the purposes of this Section." This clarification aligns with the principle that shareholders do not own the company's assets.
    "It can be inferred that the lack of a specific definition of the term "asset" under the IBC may not be a failure of the legislation, but rather a deliberate choice not to define the term. This allows for flexibility in interpreting what can be considered an asset under the law."

Reference:

1. Bare Acts-IBC

2. Judgment dated 14thMarch, 2023 of Hon’ble Supreme Court in the matter of Victory Iron

Works Ltd. Vs. Jitendra Lohia & Anr.

Analysis of the Hon'ble Apex Court judgment in V.S. Palanivel vs. P. Sriram, Liquidator: Implications for Insolvency Professionals

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INTRODUCTION

The Hon'ble Supreme Court of India ("**Apex Court**"), in the landmark judgment **V.S. Palanivel vs. P. Sriram, Liquidator & Ors. (CIVIL APPEAL NOS. 9059-9061 OF 2022)**[1], addressed crucial legal questions arising from liquidation proceedings under the IBC[2]. The judgment was delivered by Hon'ble Justice Hima Kohli, the said judgment explored important issues related to the auction sale process, time extensions for the payment of sale consideration, the impact of the COVID-19 pandemic on statutory timelines, the liquidator's compliance with regulations, and the role of stakeholders in liquidation.

This article provides an extensive analysis of the judgment, explaining its significance for insolvency professionals and stakeholders involved in corporate insolvency proceedings. By dissecting the judgment into its essential parts, this article will cover the background of the case, the legal questions raised, the rationale behind the Hon'ble Apex Court's decision, and the implications or take aways for the practice of insolvency professionals.

1. Background and Facts of the Case

The appellant, V.S. Palanivel, was a shareholder and former managing director of Sri Lakshmi Hotels Private Limited ("***corporate debtor***"). The corporate debtor had defaulted on loans from its financial creditor, leading to liquidation proceedings under the IBC. After no resolution plan could be approved by the Committee of Creditors ("**CoC"**), the Hon'ble National Company Law Tribunal ("***NCLT"***), Chennai Bench, had ordered the liquidation of the corporate debtor in 2019.

P. Sriram, CS, was appointed as liquidator in this case, who initiated the auction of the corporate debtor's immovable property to recover dues. In the first auction, no bids were received, prompting the liquidator to lower the reserve price and schedule a second auction. **KMC Speciality Hospitals (India) Ltd ("KMC or auction purchaser")** emerged as the successful bidder in the second auction. However, complications arose when the auction purchaser delayed the payment of the balance sale consideration beyond the 90-day period prescribed by the IBC regulations[3].

The appellant filed appeals challenging the auction process and the liquidator's conduct. His principal contentions revolved around the liquidator's violation of Insolvency and Bankruptcy Board of India (IBBI) regulations[4], failure to constitute a Stakeholders' Consultation Committee (***SCC***)[5], undervaluation of the property, and the extension of time granted to the auction purchaser for payment of the sale consideration. The Hon'ble NCLT as well as NCLAT[6] upheld the liquidator's actions, leading to the appeals before the Hon'ble Supreme Court.

[1] 2024 INSC 659,
[2] Insolvency and Bankruptcy Code, 2016
[3] IBC Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016 read with Schedule I
[4] Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016
[5] As required in regulation 31A of IBBI (Liquidation Process) Regulations, 2016
[6] National Company Law Appellate Tribunal

2) Key Legal Issues in the Case

Several pertinent legal issues were brought before the Hon'ble Supreme Court, all of which hold significant implications for the insolvency framework under the IBC:

Time Extension for Payment of Sale Consideration

The principal issue was whether the auction purchaser, KMC, herein, was entitled to an extension for the payment of the balance sale consideration due to the disruption caused by the COVID-19 pandemic. Under regulation 33 of the IBBI (Liquidation Process) Regulations, 2016 ("***IBBI liquidation regulation"***), read with Rule 12 of Schedule I of the said regulations, the auction purchaser is required to deposit the balance sale consideration within 90 days. In this case, KMC failed to make the payment within the prescribed period due to the COVID-19 pandemic and sought an extension.

In this case, the auction purchaser failed to meet the deadline, citing the unprecedented disruptions caused by the COVID-19 lockdown as the primary reason for the delay. The liquidator granted an extension based on the pandemic's extraordinary circumstances, which was also supported by Hon'ble NCLT and NCLAT. The appellant contended that this violated the IBC's strict timelines and sought the cancellation of the auction.

Applicability of the COVID-19 Lockdown to Liquidation Proceedings

The Hon'ble Apex Court in this case addressed the issue whether the relief provided by the Court's **suo motu**[7] orders on the extension of limitation periods during the pandemic could apply to liquidation processes under the IBC. The Hon'ble Apex Court in **Suo Motu Writ Petition (C) No.3 of 2020 in 'Cognizance for Extension of Limitation, In Re', reported as (2020) 19 SCC 10** issued during the COVID-19 situation, extended statutory limitations due to the COVID-19 pandemic to safeguard litigants' rights.

The core issue involved or question before the Hon'ble Apex Court was whether this extension could be invoked in cases of liquidation proceedings like the present, where an auction purchaser delayed payment of the balance sale consideration.

a) Compliance with IBBI Regulations on Auction Process

Another crucial issue was whether the liquidator followed the procedural requirements outlined in the IBC and IBBI liquidation regulations during the auction process. Specifically, it was the bone of contention and argument by the Appellant that the liquidator violated **Regulation 31A**[8] by failing to consult a Stakeholders' Consultation Committee (***SCC***) when deciding on matters such as the auction reserve price.

b) Reserve Price Reduction and Allegations of Undervaluation

The appellant also raised the issue of the liquidator reducing the reserve price by 25% for the second auction after the first auction failed to attract bidders. This reduction, in the appellant's view, resulted in the undervaluation of the corporate debtor's property, leading to a lower realization for the creditors and shareholders.

The Hon'ble Apex Court also determined the issue whether the liquidator's actions complied with the IBC and whether such a reduction was permissible under the law.

3) Legal Analysis of the Supreme Court Judgment

The Hon'ble Apex Court, in its detailed judgment, addressed each of the issues raised and provided critical clarifications for insolvency professionals and other

[7] Suo Motu Writ Petition (Civil) No. 3 of 2020

[8] IBBI (Liquidation Process) Regulations, 2016

stakeholders involved in the liquidation process.

Extension of Time for Payment of Sale Consideration

The Hon'ble Apex Court upheld the NCLAT's decision to grant an extension to the auction purchaser, recognizing the unprecedented impact of the COVID-19 pandemic. It ruled that the pandemic's extraordinary circumstances justified the delay in depositing the balance sale consideration. The Court relied on its earlier Suo Motu orders extending limitation periods due to the nationwide lockdown and cited Regulation 47A of the liquidation process regulation, which allows for the exclusion of the lockdown period from any prescribed timeline under the IBC.

The Court also upheld that the liquidator, under such extraordinary circumstances, had the discretion to accommodate delays in payment, provided the extension was reasonable and did not cause harm to the interests of the creditors or other stakeholders.

Key Take Away for Insolvency Professionals:

This decision reinforces the idea that insolvency professionals should exercise reasonable discretion when faced with external disruptions, such as the pandemic. It also emphasizes the importance of considering broader national or global circumstances while balancing the interests of creditors and stakeholders.

Application of the Suo Motu Orders to Liquidation Proceedings

The Hon'ble Apex Court held that the Suo Motu orders passed by the Hon'ble Apex Court extending limitation **periods applied to liquidation proceedings under the IBC**. The Hon'ble Apex Court clarified that its orders were intended to benefit all litigants and parties affected by the pandemic, including those involved in insolvency processes. The auction purchaser, being an essential party to the liquidation process, was entitled to relief under these orders.

The Hon'ble Apex Court further emphasized that the COVID-19 lockdown disrupted business activities nationwide, **which justified a lenient approach toward statutory deadlines**. The liquidator's decision to seek an extension was deemed consistent with the Hon'ble Apex Court's orders and the provisions of the IBC.

Key Take Away for Insolvency Professionals:

Insolvency professionals must recognize the applicability of general relief orders, such as those passed during the pandemic or under specifical circumstances, to IBC proceedings. They should remain vigilant about external factors affecting statutory deadlines and ensure compliance with Apex Court and IBBI directives.

a) Liquidator's Compliance with IBBI Regulations

The appellant's contention that the liquidator violated regulation 31A of the liquidation process regulations by failing to consult the SCC was dismissed. The Hon'ble Apex Court clarified that **while the liquidator is required to consult the SCC, the advice of the SCC is not binding**. The liquidator retains the discretion to make decisions in the best interest of the liquidation process, provided reasons for deviating from the SCC's advice are recorded.

In this case, the liquidator had acted in accordance with the IBC and had validly reduced the reserve price for the second auction after the first auction failed. The liquidator's actions were found to be within the ambit of the IBBI regulations.

Key Take Away for Insolvency

Professionals:

Insolvency professionals must ensure that they consult with stakeholders as required under the IBC, but they are not bound by their advice. It is crucial to document decisions meticulously and provide valid reasons for any deviations from stakeholder recommendations.

Reserve Price Reduction and Valuation Concerns

The Hon'ble Apex Court rejected the appellant's argument that the reduction in the reserve price amounted to undervaluation on the finding that the IBBI regulations, specifically Rule 4A of Schedule I to regulations[9], allow the liquidator to reduce the reserve price by up to 25% if an auction fails to attract bidders. The liquidator had adhered to this provision and reduced the reserve price accordingly for the second auction.

Furthermore, the Hon'ble Apex Court also recognized that the liquidation value of assets, as determined by registered valuers, can fluctuate based on market conditions. The Hon'ble Court also noted that the liquidator had acted prudently by reducing the reserve price to facilitate the sale, which was in the best interest of the creditors and stakeholders.

Key Take Aways for Insolvency Professionals:

Liquidators should follow the IBBI regulations concerning reserve price reductions but must ensure that the reduction is reasonable and justifiable based on market conditions. Valuation is a critical aspect of the auction process, and liquidators must carefully document the rationale behind reserve price adjustments.

4) Implications of the Judgment for Insolvency Professionals

This judgment provides essential guidance for insolvency professionals managing the liquidation process under the IBC. Several key takeaways from the judgment can inform the conduct of insolvency professionals and ensure that liquidation proceedings are conducted in compliance with the IBC and the IBBI regulations.

a) Finality of the Auction Sale

The Hon'ble Apex Court also emphasized the finality of the auction sale. Since the auction was concluded, and the sale deed had been executed in favor of the auction purchaser, there was no merit in the appellant's prayer for setting aside the sale. The Hon'ble Apex Court underscored the importance of ensuring the certainty and finality of liquidation sales to maintain the credibility of the process under the IBC.

The judgment reinforces the principle that once an auction sale is completed and the sale deed is executed, it is final and binding. Insolvency professionals should ensure the completion of all sale-related formalities to avoid protracted litigation.

b) Flexibility in Auction Timelines

The Hon'ble Apex Court decision to uphold the extension of time for the auction purchaser underscores the importance of flexibility in managing auction timelines, particularly during unforeseen circumstances like the pandemic. Insolvency professionals must be proactive in assessing the impact of external events on the liquidation process and should seek appropriate relief from adjudicating authorities when necessary. Though the judgment is specific to certain facts and circumstances, but auction timelines flexibility may not be always available to liquidator as an escape for its delayed action otherwise.

c) Time Value of Money and Compensation for the Same is must

The Hon'ble Apex Court, while upholding the auction process and granting an extension in accordance with its order in the Suo Moto Writ Petition, noted that the

[9] IBBI (Liquidation Process) Regulations, 2016

auction purchaser, KMC, had managed to withhold/retain the balance payment of auction money and differential of Rs. 10 crore for approximately six months. Consequently, the Hon'ble Apex Court directed that an additional amount of Rs. 5 crore, with interest, be deposited with the liquidator to enhance asset value and maximize the benefits of liquidation.

Balancing Stakeholder Interests with Practical Realities

While the liquidator is required to consult stakeholders through the SCC, this judgment reaffirms the liquidator's discretion in making final decisions. Insolvency professionals should always aim to strike a balance between adhering to stakeholder recommendations and ensuring that the liquidation process remains efficient and expedient.

Importance of Documenting Decisions

The judgment highlights the need for insolvency professionals to maintain meticulous records of all decisions, especially when they deviate from stakeholder advice or when unforeseen circumstances require adjustments to the auction process. Proper documentation is essential to defend the liquidator's actions in potential legal challenges.

Compliance with Valuation Regulations

Liquidators must strictly comply with the IBBI regulations regarding the valuation of assets and reserve price reductions. Valuation is a contentious issue, and insolvency professionals must work closely with registered valuers to ensure that the auction prices reflect the true market value of the assets while being mindful of the liquidation timelines.

Navigating Complexities of the Pandemic

The Hon'ble Court's reliance on Regulation 47A and its Suo Motu orders on limitation underscores the unique challenges posed by the pandemic. Insolvency professionals should remain informed about evolving legal interpretations of such situations and apply them judiciously to protect the interests of all stakeholders.

5. Conclusion and Way Forward

The Hon'ble Apex Supreme Court's ruling in **V.S. Palanivel vs. P. Sriram, Liquidator** is a landmark judgment that provides significant clarity on the powers and responsibilities of liquidators under the IBC. It also offers critical insights into how insolvency professionals should navigate external disruptions, such as the COVID-19 pandemic, and comply with the legal framework governing liquidation.

For insolvency professionals, this judgment serves as a valuable precedent on the flexibility of auction timelines, the importance of stakeholder consultation, and the need to comply with valuation regulations. By adhering to the principles outlined in this judgment, insolvency professionals can ensure that liquidation proceedings are conducted efficiently, transparently, and in the best interest of the stakeholders.

This judgment also reiterates the importance of understanding and applying the provisions of the IBC in a dynamic and flexible manner, especially during times of unforeseen challenges. Insolvency professionals must continue to stay updated on evolving legal interpretations and best practices to ensure the smooth conduct of liquidation proceedings in the future.

Interplay between Insolvency and Bankruptcy Code (IBC) and Other Legislations

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The unshackling of Indian economy in the 90's provided the much needed impetus to aspirations of Indian Entrepreneurs to fly sky-high, with not all of them getting successful in their well-intended endeavours, putting lot of precious private capital at risk. A well-balanced legal framework fostering the entrepreneurial activity and ensuring impersonal protection of productive assets so created along with protection of the rights of the those who provide the much needed finance was much needed. Legal framework in India responded to these challenges and various laws were enacted to this end. In the long series of those legal enactments, The Insolvency and Bankruptcy Code (IBC), 2016, has become one of the most prominent reforms in the Indian legal and financial framework, aimed at ensuring the timely resolution of insolvency and bankruptcy cases. Prior to its enactment, India's insolvency resolution process spanned across multiple statutes, including the Companies Act, 1956/2013, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, and the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993, among others. The multiplicity of laws and forums birthed a fragmented system, leading to protracted delays and inefficiencies in resolving insolvency matters. The IBC intended to consolidate these laws, thereby providing a cohesive framework for corporate, personal, and partnership insolvencies.

However, as the IBC operates in conjunction with several pre-existing laws, its implementation has seen an intricate interplay with other legislations. These interactions have raised questions about jurisdiction, procedural precedence, and the harmonization of rights and obligations under different legal regimes. This article delves into how the IBC interacts with other key laws in India, examining both conflicts and synergies, and highlighting landmark rulings that have shaped the legal landscape.

IBC and the Companies Act, 2013

The Companies Act, 2013, regulates corporate governance, incorporation, and the winding-up of companies in India. Before the IBC's advent, the winding-up process under the Companies Act was a cumbersome exercise , involving long delays due to multiple judicial interventions, inadequate expertise, and a lack of coordination between regulatory authorities.

1. **Transition to IBC**: The Companies Act, particularly under Section 271, contained provisions for winding up a company. However, these provisions often resulted in extended litigations and delays in settling the claims of creditors. The IBC was introduced to replace the inefficient winding-up provisions, providing a specialized framework for insolvency and liquidation. The IBC's goal is to ensure time-bound insolvency resolution (within 180 days, extendable to 270 days), unlike the lengthy winding-up proceedings under the Companies Act.

2. **Jurisdictional Changes**: After the enactment of the IBC, the jurisdiction of insolvency matters shifted from the High Courts to the National Company Law Tribunal (NCLT). The NCLT, which was initially established under the Companies Act, now serves as the adjudicating authority for corporate insolvency resolution processes under the IBC as well.

3. **Case Law**: In the landmark judgment of **Swiss Ribbons Pvt Ltd v. Union of India** (2019), the Supreme Court upheld the

constitutional validity of the IBC and emphasized that the IBC overrides previous laws, including the Companies Act, where insolvency resolution is concerned. The court also clarified that IBC's provisions for corporate debtors take precedence over the winding-up provisions of the Companies Act.

4. **Challenges under the Companies Act**: The primary challenge under the Companies Act was the multiplicity of laws and authorities, which often conflicted with one another, resulting in inconsistent judgments. The IBC seeks to provide a unified framework for resolving corporate insolvencies in a manner that is quicker, more efficient, and fair to all stakeholders.

IBC and SARFAESI Act, 2002

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002, is another significant law governing the rights of secured creditors in India. The SARFAESI Act allows secured creditors, primarily banks and financial institutions, to enforce their security interests without the need for court intervention, by taking possession of assets or selling collateral to recover dues.

1. **Rights of Secured Creditors**: The SARFAESI Act empowers secured creditors to take possession of collateral and sell the assets of the borrower in case of default. This law allows banks to bypass the lengthy process of debt recovery through courts, which was a common issue before its enactment.

2. **Conflicts with IBC**: The IBC introduced a significant shift in the priority of claims during the insolvency resolution process. Under the IBC, once a company enters the Corporate Insolvency Resolution Process (CIRP), a moratorium is imposed, and all recovery proceedings, including those under SARFAESI, must be stayed. This leads to a conflict between the rights of secured creditors under SARFAESI and the collective insolvency resolution framework of the IBC, where the interests of all stakeholders, including operational creditors and employees, must be considered.

3. **Judicial Precedents**: In **ICICI Bank Ltd. v. Innoventive Industries Ltd.** (2018), the Supreme Court held that the IBC overrides SARFAESI in cases where a corporate debtor is undergoing insolvency resolution. Once the CIRP is initiated, secured creditors cannot enforce their rights independently under SARFAESI, as the IBC promotes a collective resolution process.

4. **Harmonization**: While the IBC and SARFAESI Act seem to conflict, the courts have clarified that SARFAESI can be invoked by secured creditors only if the debtor has not entered the insolvency process under IBC. Post-IBC initiation, the resolution professional has control over the assets, and the SARFAESI proceedings are stayed to ensure a holistic resolution approach.

The IBC and SARFAESI Act, though distinct in their objectives, now operate in tandem, with the IBC taking precedence once insolvency is triggered. This ensures that secured creditors' rights under SARFAESI are balanced against the broader objective of corporate revival under IBC.

IBC and RDDBFI Act, 1993 (Recovery of Debts Due to Banks and Financial Institutions Act)

The RDDBFI Act, 1993, was enacted to provide an expedited process for recovering debts owed to banks and financial institutions through the establishment of Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs). Before the enactment of the IBC, the RDDBFI Act served as the primary tool for debt recovery in India.

1. **Objectives of RDDBFI**: The RDDBFI Act aimed to improve the efficiency of debt recovery by providing banks and financial institutions with a forum—DRTs—dedicated to resolving disputes related to unpaid debts. This mechanism was created to expedite cases that were previously bogged down by the general civil court system.

2. **Overlaps with IBC**: The IBC and RDDBFI Act serve different purposes. The IBC focuses on the resolution or liquidation of a corporate debtor's financial distress, ensuring a holistic treatment of the debtor's assets and liabilities, whereas the RDDBFI Act aims at recovering debts by individual creditors, often ignoring the collective interests of all stakeholders.

3. **IBC Superseding RDDBFI**: Once a corporate insolvency resolution process (CIRP) is initiated under the IBC, any proceedings under the RDDBFI Act must be suspended due to the automatic moratorium imposed by the IBC. This has led to instances where creditors who had initiated actions under the RDDBFI Act had to shift to the IBC process to recover dues. The courts have clarified that the IBC, being a later and more specialized statute, supersedes RDDBFI when there is a conflict.

4. **Case Law**:In **Bank of Baroda v. Kotak Mahindra Bank Ltd.** (2019), the Supreme Court emphasized that the IBC overrides the RDDBFI Act when insolvency proceedings are triggered. Debt recovery proceedings before the DRT, once the CIRP is initiated, cannot continue without the leave of the insolvency tribunal.

5. **Harmonization and Practical Impact**: While both laws are geared toward creditor recovery, the IBC emphasizes a collective approach, while the RDDBFI Act focuses on individual creditor rights. The priority of IBC over RDDBFI ensures that any recovery process that could harm the interests of the collective pool of creditors is curtailed, promoting a balanced resolution process.

IBC and Arbitration Act, 1996

The Arbitration and Conciliation Act, 1996, provides for the resolution of commercial disputes through arbitration, an alternative dispute resolution mechanism that avoids the formal judicial process. With the rise of arbitration in commercial disputes, the question of how arbitral proceedings and awards fit within the framework of IBC has been a key area of legal development.

1. **Impact of Moratorium on Arbitration**: One of the most significant issues arises when a company undergoing insolvency is also involved in arbitration proceedings. Section 14 of the IBC imposes a moratorium that stays all legal proceedings, including arbitration, as soon as the insolvency resolution process begins. This effectively halts any ongoing arbitration against the corporate debtor.

2. **Stay on Arbitration Once Insolvency Commences**: The moratorium under the IBC prevents any further adjudication of claims through arbitration once insolvency proceedings begin. However, arbitration proceedings initiated by the corporate debtor are generally allowed to continue. This balance is critical in ensuring that while creditors cannot pursue their individual claims, the debtor company can continue to assert its rights and recover dues that could improve the prospects of resolution.

3. **Treatment of Arbitral Awards**: If an arbitral award is passed before the initiation of the CIRP, it is treated as a debt that must be filed with the resolution professional as part of the insolvency claims. Post-CIRP, arbitral awards are subject to the resolution plan's approval and the waterfall mechanism for debt distribution in the event of liquidation.

4. **JudicialPrecedents**:
   In **Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt Ltd.** (2017), the Supreme Court held that arbitration proceedings involving a corporate debtor should be suspended once a moratorium under Section 14 of the IBC is imposed. The court reiterated that any claims, whether adjudicated or pending adjudication, must be routed through the insolvency process.

The interplay between IBC and the Arbitration Act demonstrates the IBC's broad reach in resolving insolvency matters by staying external proceedings that may interfere with the unified resolution process.

IBC and Labour Laws

The interplay between the IBC and labor laws is particularly sensitive, as it affects the rights and livelihoods of workers employed by companies undergoing insolvency. Labor laws in India provide protections for wages, severance pay, and working conditions, and the IBC must reconcile these protections with the need to resolve insolvency efficiently.

1. **Impact on Employment Contracts**: When a company enters insolvency, one of the first concerns is the fate of the employees. The IBC ensures that employee dues are treated as part of the claims filed with the resolution professional. Under the IBC's waterfall mechanism, workmen's dues and wages are given a priority in the distribution of assets during liquidation.

2. **Employee Dues Under IBC**: The IBC specifies that wages and unpaid dues of employees, for a period up to 24 months preceding the insolvency commencement date, must be prioritized. These dues rank high in the hierarchy of payments, following only insolvency resolution costs and secured creditors. However, beyond the 24-month period, employee dues rank lower in priority.

3. **Judicial Precedents**:

   In **J.K. Jute Mills Company Ltd. v. Surendra Trading Co.**, the Supreme Court acknowledged the importance of ensuring that employee dues are adequately protected under the IBC's resolution and liquidation processes. The court highlighted that while financial creditors have significant control during insolvency resolution, the interests of employees and workmen cannot be ignored.

4. **Challenges**:
   The primary challenge in balancing IBC and labor laws lies in ensuring that workers' rights are respected while allowing for an efficient insolvency process. Workers often face delays in the payment of dues during insolvency, and in some cases, liquidation may leave employees with limited or no compensation if asset value is insufficient.

   The IBC's treatment of employee claims seeks to balance workers' interests with the financial realities of the debtor company, but continuous judicial oversight is necessary to ensure fair outcomes.

IBC and Tax Laws

The interaction between IBC and tax laws presents a unique challenge, as tax authorities often hold claims against corporate debtors, whether in the form of unpaid taxes, penalties, or interest. The treatment of these claims during the insolvency resolution process is an area of ongoing legal development.

1. **Tax Authorities as Operational Creditors**: Under the IBC, tax authorities are treated as operational creditors, meaning their claims are typically subordinated to those of financial creditors. This has led to situations where the government's tax dues are either significantly reduced or written off altogether in the resolution plan.

2. **Moratorium on Tax Proceedings**: Similar to other legal proceedings, tax recovery actions are stayed once the moratorium under Section 14 of the IBC is invoked. This means that tax authorities cannot pursue recovery actions, enforce penalties, or initiate prosecution during the insolvency resolution process.

3. **Treatment of Tax Dues in Liquidation**: In the event of liquidation, tax dues rank lower in priority than secured creditors and workmen's dues under the waterfall mechanism in Section 53 of the IBC. This often leads to tax authorities recovering only a fraction of their dues, particularly in cases where the company's assets are insufficient to cover all claims.

4. **Judicial Precedents**: In **Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.**, the Supreme Court upheld that tax dues are subject to the resolution process under IBC and must be dealt with according to the priority specified in the Code. The court ruled that IBC's provisions override conflicting provisions in tax laws when insolvency is involved.

The IBC's approach to tax dues has been a source of contention, as it often requires tax authorities to compromise their claims for the broader goal of corporate revival or liquidation.

IBC and Cross-Border Insolvency

As India's economy becomes more integrated with the global market, cross-border insolvency has emerged as a critical issue. While the IBC does not yet have a comprehensive framework for cross-border insolvency, it contains provisions (Sections 234 and 235) that allow the Indian government to enter into bilateral agreements with foreign countries for mutual recognition of insolvency proceedings.

1. **Need for a Cross-Border Insolvency Framework**:
The absence of a comprehensive framework for cross-border insolvency has led to legal uncertainty for multinational corporations with operations in India. The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, which provides a uniform legal framework, has been recommended for adoption in India, but it has not yet been implemented.

2. **Judicial Developments**: In **Jet Airways (India) Ltd. v. State Bank of India**, the NCLT made significant strides in cross-border insolvency by recognizing parallel insolvency proceedings in the Netherlands and coordinating with Dutch insolvency administrators. This case highlighted the need for formal rules on cross-border insolvency to ensure cooperation between jurisdictions.

3. **Future Prospects**: The government is expected to introduce legislation to implement the UNCITRAL Model Law in the near future, which would provide certainty for companies and creditors involved in cross-border insolvencies. This would align India's insolvency framework with international standards, facilitating better coordination with foreign jurisdictions.

The Insolvency and Bankruptcy Code, 2016, represents a paradigm shift in India's approach to resolving financial distress, creating a cohesive framework for insolvency and liquidation. Its interplay with other legislation, including the Companies Act, SARFAESI Act, RDDBFI Act, Arbitration Act, labor laws, tax laws, and the emerging domain of cross-border insolvency, highlights the complex legal ecosystem in which it operates.

While the IBC has been successful in streamlining insolvency proceedings and prioritizing the resolution of distressed companies, its integration with other laws

requires ongoing judicial interpretation and legislative refinement. Courts have played a pivotal role in harmonizing the conflicts between IBC and other legal regimes, ensuring that the Code remains the primary tool for insolvency resolution while respecting the rights and obligations created under other statutes.

Looking ahead, the challenge will be to further refine the IBC, particularly in the areas of cross-border insolvency, labor law harmonization, and tax law integration. As the Indian economy continues to grow and evolve, the IBC must adapt to ensure that it remains an effective mechanism for resolving financial distress, while balancing the interests of all stakeholders.

CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

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

Sansar Investment & Finance Company (P.) Ltd. v. Atlantic Spinning & Weaving Mills Ltd. [2024] 165 taxmann.com 90 (NCLAT - Chennai)

Where during pendency of an appeal against order of NCLT rejecting application of appellant against rejection of it claim by RP order of liquidation had already been passed by NCLT and appellant decided to challenge order appointing liquidator under section 42, instant appeals challenging NCLT's order had been rendered infructuous and was to be dismissed with liberty to prefer appeal under section 42.

The appellant-company had given financial assistance to the corporate debtor. The appellant-company filed an application before NCLT challenging Resolution Professional's decision to reject its claim due to lack of substantial evidence and discrepancies in documents. However, NCLT dismissed said application. The appellant-company filed instant appeals against impugned orders passed by NCLT. However, during pendency of appeals, order of liquidation had already been passed by NCLT. The appellant submitted that it would prefer an appeal under section 42 by challenging order appointing liquidator.

Held that in view of facts, instant appeals had been rendered infructuous and was to be dismissed with liberty to prefer appeal under section 42.

SECTION 12 - CORPORATE INSOLVENCY RESOLUTION PROCESS - TIME-LIMIT FOR COMPLETION OF

Sanjay Kumar Aggarwal v. Stakeholders Consultation Committee of Punjab Basmati Rice Ltd. [2024] 165 taxmann.com 94 (SC)

Where in liquidation proceedings of corporate debtor NCLT granted an exclusion of period but liquidation process was not completed within six months, liquidator was not eligible for higher percentage of fees as per regulation 4 of IBBI (Liquidation Process) Regulations, 2016.

A liquidation order was passed against the corporate debtor. Later, the appellant-liquidator filed an application before NCLT for purpose of calculation of his fees. NCLT by order dated 1-11-2021 granted an exclusion of period from 15-03-2020 to 02-10-2021 due to Covid-19 lockdown. Thereafter, an application was filed by Ex-Management of the corporate debtor before NCLT, wherein a stay on e-auction of properties was granted by NCLT on 09-11-2021. The respondent-stakeholders consultation committee (SCC) filed an application before NCLT on ground that there was no valid restriction available to the Liquidator to not to act during period from 3-10-2021 to 8-11-2021 and there was no hindrance to liquidation process during this period and, therefore, NCLT erred in granting exclusion of period consumed in adjudication of subject, instead of period consumed while auction was under stay. NCLT vide impugned order rejected said application and held that total time consumed in liquidation proceedings was 174 days and, thus, Liquidator was eligible for higher percentage of fees, as liquidation process was completed within six months, as per regulation 4 of IBBI (Liquidation Process) Regulations, 2016. Respondent filed appeal before NCLAT. NCLAT vide impugned order held that there was no valid restriction available to Liquidator to not to act during period from 03-10-2021 to 08-11-2021 and, thus, same was to be added to liquidation period of 174 days and period consumed in liquidation process was to be determined as 211 days. NCLAT further held that liquidation process was not completed within six months and, therefore, liquidator was not eligible for higher percentage of fees

as per regulation 4 of IBBI (Liquidation Process) Regulations, 2016. Liquidator challenged NCLAT's order before Supreme Court.

Held that there was no need to interfere with NCLAT's order, as said order gave no reflection on capabilities of liquidator and, therefore, instant appeal was to be dismissed.

SECTION 60 - CORPORATE PERSON'S ADJUDICATING AUTHORITES - ADJUDICATING AUTHORITY

BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. [2024] 165 taxmann.com 157 (SC)

Liability of surety and principal debtor is co-extensive and financial creditor has remedies available to recover amount payable by principal borrower by proceeding against both or any of them and, thus, creditor can proceed against guarantor first without exhausting its remedies against principal borrower; financial creditor recovers a part of amount guaranteed by a surety and agrees not to proceed against surety for balance amount, that will not extinguish remaining debt payable by principal borrower and, therefore, financial creditor can always proceed against principal borrower to recover balance amount

The corporate debtor secured a Rs. 100 crore loan from a respondent No. 1-financial creditor. Said loan was secured by a mortgage made by the corporate debtor of its leasehold land and a corporate guarantee from its parent company i.e., ACIL. Due to default committed by corporate debtor, financial creditor invoked ACIL's guarantee and initiated Corporate Insolvency Resolution Process (CIRP) against ACIL. Thereafter, a claim filed by the financial creditor was reassessed to Rs. 241.27 crores but appellant-successful resolution applicant (SRA) had paid only Rs. 38.87 crores in settlement. Subsequently, the financial creditor filed another application under section 7 against the corporate debtor based on same debt, which the corporate debtor resisted, arguing it was barred by principle of estoppel and law of limitation. NCLT rejected corporate debtor's plea and initiated CIRP. Corporate debtor's appeal to NCLAT was dismissed.

Held that liability of surety and principal debtor is co-extensive and financial creditor has remedies available to recover amount payable by principal borrower by proceeding against both or any of them and, thus, creditor can proceed against guarantor first without exhausting its remedies against principal borrower. If creditor recovers from surety a part of amount guaranteed by surety and agrees not to proceed against surety for balance amount, that will not extinguish remaining debt payable by principal borrower and, therefore, creditor can proceed against principal borrower to recover balance amount. Contract between creditor and surety is independent and approval of resolution plan of principal borrower would not amount to discharge of surety. Financial creditor can always file separate applications under section 7 against corporate debtor and corporate guarantor; applications can be filed simultaneously as well. A holding company is not owner of assets of its subsidiary and, therefore, assets of subsidiaries cannot be included in resolution plan of holding company. By virtue of CIRP process of ACIL, the corporate debtor did not get a discharge and its liability to repay loan amount to extent to which it was not recovered from corporate guarantor was not extinguished, therefore, payment of Rs. 38.87 crores to financial creditor under resolution plan of ACIL would not extinguish liability of the corporate debtor to pay entire amount payable under loan transaction after deducting amount paid on behalf of corporate guarantor in terms of its resolution plan. Thus, impugned order passed by NCLAT could not be faulted.

Case Review: Kanwar Raj Bhagat v. Gujarat

Hydrocarbons and Power SEZ Ltd. [2024] 165 taxmann.com 156 (NCLAT - New Delhi), affirmed

SECTION 33 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

C. Sivasami v. A.R. Ramasubramania Raja [2024] 165 taxmann.com 206 (NCLAT - Chennai)

Where appellant-SRA of corporate debtor was required to deposit a certain amount under resolution plan, but failed to deposit entire amount within stipulated time, considering stand taken by Liquidator that no other resolution plan was received and, to meet objective of CIRP proceedings, appellant was granted one last opportunity to deposit required amount with aim of ensuring corporate debtor's revival.

CIRP was initiated against the corporate debtor and resolution plan submitted by appellant-SRA was approved by NCLT, subject to condition that he would deposit a sum of Rs. 10.11 crores. The appellant had deposited a certain sum but he could not deposit balance amount within stipulated time period. Consequently, NCLT ordered liquidation of the corporate debtor and appointed a respondent as Liquidator. The appellant alleged that when an application for liquidation of the corporate debtor was under consideration, he was able to identify a potential investor and mobilize funds and, thus, he filed an application before NCLT to deposit balance amount as per approved resolution plan and to stay liquidation proceedings. However, said application was rejected by NCLT vide impugned order. It was noted that even after one year from date of liquidation, Liquidator had not been able to find a buyer for the corporate debtor. It was further noted that respondent had unanimously expressed that he would not object if appeal itself was allowed and the appellant was permitted to deposit balance sum within a fixed timeline.

NCLAT can extend its powers under section 60(5) to meet out ends of justice in order to avoid liquidation of corporate debtor. Owing to resolution plan submitted by the appellant and approved by NCLT, the corporate debtor was expected to revive back in and to reach status of being a going concern, considering that no other resolution plan had been received by the Liquidator. In view of facts and provisions to section 60 sub-section (5), the appellant was provided with last opportunity to deposit amount into bank account of liquidator and to meet objective of CIRP.

SECTION 3(12) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEFAULT

Rita Malhotra v. Orris Infrastructure (P.) Ltd. - [2024] 164 taxmann.com 232 (NCLAT- New Delhi)

Where appellants had applied for office space with corporate debtor under assured return scheme, appellants held status of allottee and having filed section 7 application they were mandatorily required to comply with threshold limit under second proviso to section 7(1).

Respondent-corporate debtor floated a scheme to develop/construct a commercial building/complex. Appellants under assured investment return plan, applied for office space under an assured return scheme and entered into an agreement with the corporate debtor which guaranteed monthly assured return on investment. The corporate debtor breached agreement and failed to make payment

towards return on investment and petition under section 7 was filed by the appellants against the corporate debtor. However, a settlement was reached between parties and petition was withdrawn in view of cheques issued for payment till June 2019 but the corporate debtor defaulted again, leading the appellants to revive CIRP petition. NCLT vide impugned order rejected said application on ground that an application should be filed jointly by not less than one hundred allottees or not less than 10 per cent of total number of allottees creditor of same class and instant application was filed by only 2 allotees out of 504 allottees and, therefore, appellants did not satisfy threshold for filing application under section 7. Appellants challenged NCLT's order on ground that they were claiming an amount which had become due and payable on account of Monthly Assured Return (MAR) Plan and, therefore, threshold provided under second proviso to section 7(1) was not applicable.

Held that on a plain reading of provisions contained in section 2 of RERA Act, a commercial space/unit allottee is covered under purview of 'allottee' under RERA and by virtue of Explanation (ii) to section 5(8)(f) same interpretation is to be adopted for an 'allottee' under IBC. NCLT had correctly held that even a commercial space or unit allotted to Assured Returns Class of Creditors was also covered in ambit of an allottee. Appellants could not be said to go out of definition of 'allottee' merely because they were part of MAR plan or that they should be treated in a different category wherein they were not required to comply with second proviso to section 7(1). Appellants continued to hold status of 'allottees' and having filed section 7 application, they were mandatorily required to comply with second proviso to section 7(1). Since parameters of section 7 application had not been complied with, section 7 application was non-maintainable and, thus, appeal was to be dismissed.

Case Review : Ms. Rita Malhotra v. Orris Infrastructure (P.) Ltd. [2023] 154 taxmann.com 471 (NCLT - New Delhi), affirmed.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

Vasan Healthcare (P.) Ltd. v. India Infoline Finance Ltd. [2024] 165 taxmann.com 237 (Madras)

After insertion of section 32A of IBC by way of amendment with effect from 28-12-2019, corporate debtor can not be prosecuted for prior liability after approval of resolution plan; but this protection under section 32A of IBC is restricted only to corporate debtor and not its directors who were in-charge of affairs of company when offence was committed.

For purchase of medical equipments, petitioner-company borrowed loan from respondent finance company-IIFL. To discharge liability, Managing Director/Authorised Signatory of the petitioner company issued cheques. Cheques, on presentation for collection, returned stating reason 'Funds insufficient' Therefore, complaint under section 138 of NI Act was filed against accused company and its directors. The petitioner vide instant petition under section 482 of Cr.PC seeking to quash criminal complaint on ground that insolvency resolution process had been initiated against the petitioner company and the petitioner company had been taken over by successful resolution applicant and claims of creditors were settled under approved resolution plan on condition that all civil and criminal litigations, investigations, claims, dispute, pending, present or future would stand extinguished. It was noted that after insertion of section 32A of IBC by way of amendment with effect from 28-12-2019, the corporate

debtor cannot be prosecuted for prior liability after approval of resolution plan. However, protection under section 32A is restricted only to the corporate debtor and not its directors who were in-charge of affairs of company when offence was committed or signatory of cheque.

Held that since in instant petition only the petitioner, corporate debtor was seeking quashing of criminal complaint, instant petition under section 482 of Cr. PC was to be allowed.

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

Bhanwar Lal Jajodia v. State Bank of India [2024] 165 taxmann.com 393 (Calcutta)

Where a wilful default can only take place in respect of guarantors when guarantee was taken on or after 9-9-2014, however, petitioner's guarantee was signed on 28-3-2014, clause 2.6 under RBI Master Circular dated 1-7-2015 was inapplicable to them and, therefore, decision by Wilful Defaulter Identification Committee, declaring petitioner guarantor as wilful defaulter, which was upheld by Review Committee was legally incorrect and was to be set aside.

The petitioner stood as a guarantor for a loan taken by a borrower-company from respondent-SBI bank. Later, the petitioner and borrower company was declared a wilful defaulter by SBI's Wilful Defaulter Identification Committee. Despite filing a representation, Review Committee upheld said decision. Later, borrower-company entered into insolvency proceedings, and resolution plan was approved and its remaining debt was assigned to a NBFC i.e., 'DTIPL'. The petitioner filed instant writ petition on ground that as per Clause 2.6 of Master Circular dated 1-7-2015, Wilful Defaulter proceedings could not have been initiated against the petitioner, as said Clause specifically states that such proceedings against personal guarantors could be initiated only in respect of guarantees which were given on and after 9-9-2014. It was noted that bank, in its written notes, had categorically admitted that deed of guarantee was executed on 28-3-2014. It was further noted that treatment as a wilful default could only take place in respect of guarantors when guarantee was taken on or after 9-9-2014, but the petitioner executed deed of guarantee on 28-3-2014 and, thus, clause 2.6 under RBI Master Circular dated 1-7-2015 did not apply to the petitioner at all and as such, declaration of petitioner as a wilful defaulter in capacity of a personal guarantor was bad in law.

Held that impugned order passed by Review Committee, which confirmed decision of Wilful Defaulter Identification Committee that the petitioner was a wilful defaulter under RBI Master Circular, dated 1-7-2015 was to be set aside.

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

Aryan Constructions v. Punjab National Bank Ltd. [2024] 165 taxmann.com 567 (Delhi)

Once a resolution plan is approved, it binds all creditors, and corporate debtor's assets were protected from criminal prosecution and attachment.

The corporate debtor was admitted into corporate insolvency resolution process (CIRP) by NCLT. Thereafter, claims amounting

to approximately Rs. 47,000 crores from financial creditors and Rs. 620 crores from operational creditors were admitted and resolution plan, was approved by NCLT with certain conditions, included admission of Rs. 350 crores for operational creditors, after a 52.31 per cent reduction. The petitioner filed instant writ petition seeking directions for respondent banks to take steps to protect interests of bona fide creditors, including recovering assets worth over Rs. 4,000 crores siphoned off by the corporate debtor's former promoters including but not limited to assets of over Rs. 4000 crores attached by Directorate of Enforcement. It was noted that upon an acquisition under a CIR Process by a resolution applicant, the corporate debtor and its assets were not derived or obtained through proceeds of crime under Prevention of Money Laundering Act, 2002 (PMLA) and need not be subject to attachment by ED after approval of resolution plan by NCLT.

Held that if the corporate debtor was undergoing investigation by Central Bureau of Investigation (CBI), Serious Fraud Investigation Office (SFIO) and/ or Directorate of Enforcement (ED), such investigations were separate and independent of Corporate Insolvency Resolution Process (CIR Process) under IBC and both can run simultaneously and independent of each other.

Once CIRP proceedings are initiated and resolution plans were approved, adjudication of claim of creditors could only be in accordance with IBC. Every creditor or stakeholder was bound by resolution plan approved by NCLT/NCLAT, irrespective of fact whether they have consented to it or not. There was no escape from conclusion that once resolution plan was approved, assets of corporate debtor in hand of resolution applicant stood shielded from criminal prosecution and attachment. Since the petitioner had failed to establish grounds for Court to issue any prerogative writs, instant petition was to be dismissed.

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

K.M. Sebastine (Kalarithara Michael Sebastine) Personal Guarantor of Schifflies India Ltd. v. State Bank of India - [2024] 165 taxmann.com 518 (NCLAT- New Delhi)

Where respondent bank filed an application under section 95 against appellant, who was personal guarantor, on grounds of debt and defaults and said application was filed within period of limitation as per section 18 of Limitation Act, 1963 and, thus, there was no error in NCLT's order in admitting section 95 application.

The appellant had provided a personal guarantee for a loan given to a corporate debtor by respondent bank. Corporate Insolvency Resolution Process (CIRP) was already underway against the corporate debtor. Later, the respondent bank filed an application under section 95, claiming a debt and default by personal guarantor, leading to appointment of a Resolution Professional (RP) by NCLT. RP submitted a report under section 99 and, on basis of this, application was admitted under section 100. The appellant challenged NCLT's order on ground that an application was time-barred since notice invoking corporate guarantee was issued on 26-8-2014, but application was only filed in 2022. It was noted that the corporate debtor had offered proposals for a One Time Settlement (OTS) on 28-11-2016 and 7-9-2017. It was further noted that respondent bank also filed an application against the

corporate debtor and other Personal Guarantor, which was decreed in favour of respondent by DRT on 28-1-2019.

Held that since there was extension of limitation under section 18 of Limitation Act, 1963, application filed under section 95 was well within time and, there was no error in NCLT's order in admitting section 95 application.

Case Review: State Bank of India v. K.M. Sebsatine [2024] 165 taxmann.com (NCLT - New Delhi) affirmed.

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

Asian Colour Coated Ispat Ltd. v. Asstt. Commissioner of Income-tax - [2024] 165 taxmann.com 641 (Delhi)

Where Income Tax Deptt. issued a notice under section 148 of Income-tax Act, 1961 to petitioner company for reopening assessment for Assessment Year 2014-15, claiming escaped income assessment, since Income Tax Dept. had not lodged its claim during CIRP due to pendency of assessment proceedings, impugned reopening notice was to be quashed.

The petitioner company involved in steel manufacturing and trading, had faced a financial creditor's application under Section 7, which led to appointment of an Interim Resolution Professional (IRP) and imposition of moratorium. Thereafter, a Resolution Plan submitted by SRA was approved by NCLT. Despite said approval, the petitioner received a notice under Section 148 of Income Tax Act for Assessment Year 2014-15. The petitioner filed instant writ petition challenging notice issued by Respondent No.1- comm. of Income Tax Deptt. under section 148 of Income-tax Act, 1961 for Assessment Year 2014-15. It was noted that respondents had not questioned validity of Resolution Plan at any stage. It was further noted that resolution plan was approved by NCLT in respect of the petitioner company, Income Tax Deptt. was clearly constrained from submitting any claims during Corporate Insolvency Resolution Process (CIRP) since at that time assessment proceedings were yet to be concluded and, reassessment proceedings in respect of escaped income could not be initiated.

Held that in view of fact that it was not case of respondent that NCLT had been moved for purposes of recall of its order approving Resolution Plan and, it was also not their case that Resolution Plan, which effectively closes any claim or demand against the petitioner should be set aside. Therefore, impugned notice issued under section 148 for relevant assessment year was to be quashed and set aside.

SECTION 33 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

Isolux Corsan India Engineering and Construction (P.) Ltd v. State of Bihar [2024] 165 taxmann.com 721 (Patna)

Where reassessment order against assessee-corporate debtor under liquidation was passed without serving notice to Liquidator said order suffered from defect and was to be set aside and matter was to be considered on merits after allowing liquidator to file proper claim..

The petitioner-Liquidator, appointed by NCLT to represent assessee-corporate debtor under liquidation, filed writ petition challenging re-assessment order for year 2012-2013 passed by Tax Department. Liquidator argued that no notice of reassessment was issued due to which it could not participate in reassessment and there were also claims of refund which were being prosecuted for years 2013-2014 to 2015-2016 before appropriate authority. It was stated that, there should be a proper assessment proceeding taken with participation of the petitioner. It was noted that all notices were issued to e-mail of the corporate debtor after Liquidator was appointed, which made it clear that Liquidator was never informed of re-assessment proceeding.

Held that reassessment order suffered from defect of the corporate debtor having not been heard. Liquidator should be noticed and participated in reassessment proceedings and, therefore, reassessment order was to be set aside only for violation of principles of natural justice. Matter should be considered on merits and an assessment order passed, which again had to be enforced only by filing a proper claim before Liquidator.

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

Su-Kam Power System Ltd. v. State of Himachal Pradesh [2024] 166 taxmann.com 14 (Himachal Pradesh)

Where acquisition plan of a company in liquidation was approved by NCLT and Department of State Taxes & Excise marked red entries/charge over properties of said company on account of dues recoverable for arrears of taxes, in view of fact that all claims of arrears stood extinguished after sale of assets of said company in liquidation through acquisition plan approved by NCLT, a writ of mandamus was to be issued directing tax authorities to remove its red entries/charge on subject properties.

CIRP was initiated against the petitioner company. Later, liquidation was initiated against the petitioner and a liquidator was appointed. Department of State Taxes & Excise filed a claim of arrears of taxes with the liquidator. Said department requested Deputy Director, District Industries Centre to mark charge/red entry of Government dues in land revenue record pertaining to properties of petitioner and properties were charged and marked with red entries. Claim of said department was admitted by liquidator and it issued a public notice inviting bids from prospective applicants to take over company. Present management of company participated in e-auction process and was highest successful bidder and submitted an acquisition plan for taking over company which envisaged no further claims by said department. NCLT approved said plan and certificate of sale was issued to management. The petitioner filed instant writ petition on grounds that in spite of petitioner writing letters to tax Authorities regarding order of NCLT approving acquisition plan and pointing out that their claim was extinguished by operation of law, said red entries were not removed. It was noted that said department was estopped from continuing red entry/charge on said properties, since they neither objected to

acquisition plan nor challenged order of NCLT approving acquisition plan.

Held that when IBC permits sale of assets of a company in liquidation as a going concern under regulation 32(e) & 32A of IBBI Regulations and in such an e-auction conducted by liquidator, acquisition plan made by current management was approved by NCLT and sale certificate was also issued, all claims of said department stood extinguished. Action of said department in continuing said red entry/charge was clearly illegal and arbitrary, therefore, instant writ petition was to be allowed and a writ of mandamus was to be issued directing deputy director to remove its charge/red entries/claim for tax dues on said properties, from revenue record.

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

West Bengal Power Development Corporation Ltd. v. Ujaas Energy Ltd. [2024] 166 taxmann.com 138 (Calcutta)

Where petitioner-financial creditor filed a counter claim before Arbitrator against corporate debtor - claimant and a resolution plan of corporate debtor under CIRP was approved by NCLT which stated that any pending counter claims in arbitration would stand extinguished, in view of extinguishment of pending counter claims, Arbitrator vide interim order arrived at legally correct findings in dismissing said claims on ground of such approval and, thus, petition filed against interim order was to be dismissed.

The petitioner, public sector undertaking, floated an e-tender. The respondent/claimant participated in tender and came out successful. CIRP was initiated against respondent by NCLT and RP was appointed. The respondent subsequently invoked arbitration clause in agreement between parties and made claims before Arbitrator. The petitioner filed counter claims. NCLT approved a resolution plan, which stated that all pending counter claims in arbitration would extinguish after approval. The respondent filed an application under section 31(6) seeking dismissal of counter claim on ground that all claims against the respondent were extinguished by virtue of said approval. The arbitrator passed impugned interim award allowing said application and dismissing counter claim. The petitioner filed instant petition challenging interim award on grounds that counter claims were not limited to pre-CIRP but extended to future losses and would fall beyond authority of RP and outside resolution plan. It was noted that the petitioner was a financial creditor vis-a-vis respondent and was duty-bound to make all claims before RP. Pre-CIRP and intra-CIRP claims came within purview of resolution plan although post-CIRP claims would not be covered by resolution plan.

Held that clause 2.4.1 of said resolution plan stated that pending counter claims in arbitration would stand extinguished and said clause was binding on petitioner in terms of section 31, in terms of section 31, claims incorporated in petitioner's counter claims before Arbitrator stood finally extinguished with approval of resolution plan and need not or could not be further adjudicated by Arbitral Tribunal. Since the Arbitrator arrived at plausible and legally correct findings in dismissing counter claims, no ground for interference with impugned interim award was made out and, thus, instant petition was to be dismissed.

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

Rohit J. Vora v. Insolvency & Bankruptcy Board of India [2024] 166 taxmann.com 181 (Bombay))

IBBI is empowered to form a Disciplinary Committee under section 220(1) to consider reports from Investigating Authority submitted under section 218(6); it is permissible to constitute a Disciplinary Committee consisting of either a Single Whole-Time Member or more than one whole-time member of IBBI.

The petitioner was appointed as an Insolvency Professional (IP) by the Insolvency and Bankruptcy Board of India (IBBI). On the basis of an investigation report submitted by the Investigating Authority, the IBBI through its Deputy General Manager had issued a show cause notice (SCN) to the petitioner under section 219, calling upon the petitioner to show cause why action as indicated in the show cause notice, which included an action of cancellation of the petitioner's registration, should not be taken. The petitioner had responded to the show cause notice and, on that basis, the Disciplinary Committee comprising of a single whole-time member adjudicated the same and suspended the petitioner's registration for a period of one year. The petitioner filed instant writ petition before High Court on ground that since the show cause notice was adjudicated by a Single Member of the Disciplinary Committee, was contrary to the proviso to Section 220, thus, the order impugned was vitiated. The petitioner further alleged that, since the expression "members of the Disciplinary Committee" appearing in the proviso to section 220(1) refers to more than one member, the Disciplinary Committee cannot consist of only a single member.

Held that IBBI is empowered to constitute a Disciplinary Committee for considering reports of Investigating Authority that have been submitted under section 218(6). Proviso to section 220(1) does not seek to provide number of members who should constitute Disciplinary Committee. Expression "member(s)" in regulation 2(1)(c) of Regulations of 2017 is a clear indicator of intention of rule-makers that a Disciplinary Committee envisaged under section 220(1) could be either a single member committee or may comprise of members more than one. Regulation 2(1)(c) of Regulations of 2017 merely requires members of Disciplinary Committee to be whole time member of IBBI. Therefore, it would be permissible to constitute a Disciplinary Committee consisting of either a Single Whole-Time Member or more than one whole-time member of IBBI.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

Edelweiss Asset Reconstruction Co. Ltd. v. Meeti Developers (P.) Ltd. - [2024] 166 taxmann.com 544 (Bombay)

Where defendant company created security interest in favour of plaintiff-lender for its financial assistance but on default of defendant, plaintiff filed an insolvency petition and a suit, plaintiff also filed an interim application proposing some amendments to enforce its mortgage and to preserve security created by defendant, also, assailing execution of subsequent developments by defendant, said application was to be partly allowed as amendment to extent it partook character of enforcement security interest was not to be allowed in view of moratorium and rest amendment was to be permitted.

The defendant / company 'M' entered into a development agreement with a society 'K' to redevelop society premises i.e. free sale area. The defendant approached company 'E', predecessor of plaintiff / asset reconstruction

company, to advance a loan and financial assistance in form of Non-Convertible Debentures (NCD's) was issued by defendant. Issuance of NCDs was secured by a security/mortgage over said premises created by the defendant in favour of 'E' and a debenture trust deed was executed. On defaults committed by the defendant, the plaintiff filed an insolvency petition against the defendant before NCLT which was admitted and moratorium was imposed. The plaintiff withdrew said petition. Society terminated development agreement with the defendant. Society executed a development agreement with company 'AL'. The plaintiff instituted a suit asserting its rights under said deed and seeking to enforce its mortgage. The plaintiff also filed instant interim application proposing amendments to restrain defendants from selling, transferring, creating third party rights and dealing in any manner with said premises and assailing execution of subsequent development agreement.

Held that bar under section 14(1)(c) would operate with full force on proposed amendment to extent the plaintiff proposed to enforce security interest i.e. proposing to restrain the defendants from creating third party rights and dealing with said premises. By way of proposed amendment, the plaintiff sought to incorporate averments regarding collusion between the defendants and assailing execution of subsequent development agreement between which would not strictly fall within ambit of enforcement of security interest. Since principle of severability would be required to be applied, part of proposed amendment which did not fall within ambit of prohibition under section 14(1)(c) could be permitted to be incorporated. Interim application was to be partly allowed; proposed amendment to extent it partakes character of enforcement security interest, was not to be allowed and amendment to incorporate rest of averments in schedule of amendment was to be permitted.

SECTION 53 - CORPORATE LIQUIDATION PROCESS - ASSETS DISTRIBUTION OF

Commercial Tax Department v. Mrs. Teena Saraswat Pandey [2024] 166 taxmann.com 638 (NCLAT- New Delhi)

Where resolution plan was approved by RP and NCLT however, appellant-Commercial Tax Department's statutory demand was deemed a first charge on corporate debtor's property and should have been treated as a secured debt, giving it priority over other debts in resolution plan, since appellant having been treated as operational creditor and, allocation of amount in resolution plan could not be said to be in violation of section 30 (2)(b) thus, no ground had been made to interfered with impugned order.

CIRP was initiated against the corporate debtor and respondent was appointed as RP. A resolution plan submitted by a Successful Resolution Applicant (SRA) was approved by CoC with 90.41 per cent voting share. Later, liquidation and fair values of the corporate debtor were reported and Liquidation value of the operational creditors was 'NIL' and, therefore, resolution applicant proposed 'NIL' payment to the operational creditors. RP sought NCLT's approval for resolution plan, which was further approved by NCLT. The appellant-Commercial Tax Department of Madhya Pradesh alleged that statutory demand of the appellant was to be treated as first charge on property of the corporate debtor and, thus, it should have been considered as a secured debt and should have been given priority over other debts in the resolution plan. In case of State Tax Officer Vs. Rainbow Papers Limited [2020] it was noted that while interpreting section 48 of GVAT Act vis a vis section 37 of MVAT Act, section 37 of MVAT was made subject to any provision regarding creation of first charge in any central act, thus, provisions of section 48 of GVAT Act and Section 37 of MPVAT Act were not pari

materia.

Held that section 53 itself provides waterfall mechanism which may be treated to be law which has been contemplated under section 37 of MVAT Act, 2002. Provision of section 37 of MVAT itself contemplated that section 37 was subject to any provision in Central Act and thus, no benefit could be given to the appellant on basis of decision in case of Rainbow Papers. The appellant having been treated as an operational Creditor, allocation of amount in resolution plan could not be said to be in violation of section 30 (2)(b), thus, no ground had been made to interfered with impugned order.

Case Review: Order of NCLT (Indore) in CP (IB) No. 6 of 2020, dated 26.03.2021 [2024] 166 taxmann.com 637 (NCLT - INDORE) (para 24) affirmed

SECTION 217 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES - COMPLAINTS AGAINST

Sarish Mittal v. National Company Law Tribunal [2024] 166 taxmann.com 702 (Punjab & Haryana)

Where RP was found guilty of technical deficiencies which did not cause any prejudice or loss to any stakeholder of corporate debtor and CoC had not raised any objection regarding appointment of RP, IBBI was justified in taking lenient view and cautioning RP to be more careful in future while handling process under IBC.

The corporate debtor was admitted into CIRP and respondent No. 2 was appointed as RP. The petitioners, suspended directors of the corporate debtor, filed complaint against RP before IBBI alleging various malafides, misrepresentations and fraud on part of RP. The IBBI appointed Inspecting Authority (IA) to conduct inspection against RP and Show cause notice (SCN) was issued to RP for alleged contravention of various provisions of Insolvency and Bankruptcy Code and IBBI (Insolvency Professionals) Regulations, 2016. On receipt of report of IA, a Disciplinary Committee was constituted to consider report of IA. Deficiencies, as noticed and conceded by RP, were found to betechnical in nature and, therefore, IBBI while taking a lenient view cautioned RP to be more careful in future while handling process under Code. Petitioners filed an application before NCLT on ground that IBBI had found RP guilty of misconduct and, therefore, he should be removed. However, NCLT vide impugned order dismissed all applications on ground that NCLT did not deem it appropriate to delve into issues as raised against with order passed by IBBI. Petitioners filed writ petition seeking directions to NCLT to decide all applications seeking removal of RP. It was noted that no prejudice or loss had been caused to any of stakeholders of the corporate debtor by non-disclosure of relationship and moreover CoC had not raised any objection regarding appointment of RP and resolution plan had been approved by CoC and was pending approval before NCLT.

Held that the Disciplinary Committee had not merely proceeded on account of acceptance of its jurisdiction by RP but also considered matter with reference to applicable provisions and relevant judgments. Petitioners were unable to point out any illegality or irregularity in procedure followed by respondent-IBBI in deciding complaint filed by petitioners while looking into all material aspects as raised by complainant and, thus, there was no ground for remanding matter for a fresh decision by IBBI.

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

✓ 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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