NOVEMBER 2025

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

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

IPA-ICMAI

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enroll there under insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhering to fair, just, and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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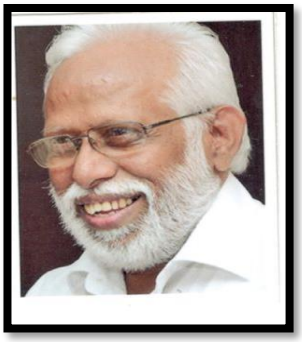

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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Reader

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

At Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI), our young team strives to be up to mark on both streams of our mandate – regulation and professional development.

Professional development happens through continuous professional education including updates on changes in code and relevant laws and regulations as also new case laws. The equally important side of professional development is sharing of a professional's knowledge and experience with fellow professionals. In the IBC ecosystem, which is still young and evolving, developments happen quite frequently and swiftly. All the more reason it is that practising professionals need to be keyed in always to be abreast of the latest developments. I invite more and more professionals to contribute articles and opinions to the E-Journal on all aspects that IBC ecosystem and related domains that will enrich the knowledge base of the readers.

IPA-ICMAI was incorporated on 30th November, 2016 and we celebrated the occasion of 9th Foundation Day on Friday, 28th November, 2025 in a well – attended program at SCOPE Complex Auditorium in Delhi. Mr. Sandip Garg, Whole Time Member at sectoral regulator, IBBI, graced the occasion as the Chief Guest. In his brief address he gave an insight into the reasoning and logic that went into the proposed amendments to IBC that are in the public space now awaiting consideration and approval by the Parliament. In the panel discussion that followed, Ms. Puja Bahri, Insolvency Professional and Chairperson of the Advisory Committee of IPA-ICMAI, quizzed and extracted spirited and well thought – out responses from eminent panelists - Dr. U.K. Chaudhary, President of NCLT Bar Association, Dr. Ashish Makhija, eminent lawyer, Mr. Kalur Srinivas, Executive Director at PTC Financial Services and Mr. Vikas Goel, General Manager (SARG) in SBI. Altogether, I believe it was a thought provoking 2.5 hours that gave the varying perspectives and implications of the proposed amendments. **I would like to record the deep sense of gratitude to the President and shareholder Directors representing ICMAI, our parent Institute and the Chairperson, Members and senior executives at IBBI, our regulator, for their continued support, guidance and encouragement that has been a source of strength to us in IPA-ICMAI.**

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

- Study of Direct Tax Code, 2025 for its implications on IBC, 2016
- A Case for Revisiting Dynepro Principle
- Challenges of Cross Border Insolvency in India
- A Case Study of a Successfully Completed Insolvency Resolution and
- Treatment of EBDITA in the Debtor undergoing Insolvency

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

Wish you all happy reading.

Mr. G.S. Narasimha Prasad
Managing Director

PROFESSIONAL DEVELOPMENT INITIATIVES

NOVEMBER 2025	
DATE	**EVENTS CONDUCTED**
November 1st , 2025	The Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI), in partnership with IP Net, successfully organized **the IBC Conclave 2025 on 1st November 2025** at the India Habitat Centre, New Delhi.
November 3rd - 6th & November 28th - 29th 2025	IPA-ICMAI organized in collaboration with Missing Bridge a unique, **specialized hybrid mediation training programme designed for insolvency professionals, legal practitioners, and corporate executives**. The 50-hour course was conducted virtually on **November 3rd - 6th , 2025**, followed by in-person sessions on **November 28th - 29th , 2025** in Delhi-NCR.
November 7th -9th , 2025	IPA-ICMAI organized a three-day **Webinar series on "Interplay of IBC with Other Laws – Overlaps & Practical Navigation"** from 7th -9th November 2025. The sessions featured experienced insolvency professionals as resource persons, offering deep insights into critical aspects of the Insolvency and Bankruptcy Code, 2016, and practical guidance on navigating overlaps with other laws.
November 14th, 2025	A focused **Learning Session on Real Estate Stress & Attachment of Assets under IBC** was organized on November 14th , shedding light on sector-specific stress factors and judicial perspectives relevant to real estate insolvency cases**.**
November21st–23rd, 2025	**3-day training program for insolvency professionals** Organized by IBBI jointly with all three Insolvency professional agencies from November 21st – 23rd , 2025.
November 28th, 2025	**IPA-ICMAI celebrated its Foundation Day on November 28th , 2025,** with a Seminar on "Insolvency Evolution: Preparing Professionals for the Future." The programme featured a distinguished panel of speakers who deliberated on the theme *"Creditor-Initiated Corporate Resolution Process."* Eminent experts and senior insolvency professionals shared valuable insights on emerging trends, regulatory expectations, and future skill requirements for the profession.

IBC AU COURANT

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ARTICLES

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Group Captain Rajendra Kumar Joshi (Retd.)
Insolvency Professional &Valuer

"The EBITDA Conundrum in Indian Insolvency" This article delves into the critical challenges and inconsistencies surrounding the application and interpretation of Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) in the Indian insolvency framework. EBITDA is frequently used as a key metric for determining the operational performance and valuation of a Corporate Debtor during the Corporate Insolvency Resolution Process (CIRP). However, the lack of standardized guidance under the IBC, 2016 leads to subjective application, impacting crucial decisions like the determination of the liquidation value and the viability of a Resolution Plan. The article critically analyzes recent case laws and regulatory needs to establish a more robust and transparent approach to using EBITDA for valuation in the Indian context."

Executive Summary:

The Supreme Court, in the *Kalyani Transco v. Bhushan Power & Steel Ltd. (BPSL)* case, approved the resolution plan but intentionally avoided deciding one major question: who owns the Earnings Before Interest, Tax, Depreciation, and Amortization (EBITDA) generated while the company is being restructured (the Corporate Insolvency Resolution Process or CIRP)? The huge profit of ₹11,800 crore made by BPSL during its CIRP put this gap in the law under the spotlight. Because the Insolvency and Bankruptcy Code, 2016 (IBC), is silent on this point, it creates confusion that threatens the main goals of the process which is getting the best value for the company and finishing the resolution quickly, as evidenced by the long court battles in cases like BPSL. Most international systems, like the US (Chapter 11) and UK (Administration), generally treat these interim profits as part of the total money available for creditors. To fix this, a regulatory solution is proposed: the Committee of Creditors (CoC) should be required to clearly state how they will handle EBITDA in the Request for Resolution Plan (RFRP), perhaps by holding the funds in a special trust or using them as temporary financing and then ensuring a fair distribution formula that benefits both the creditors and the Successful Resolution Applicant (SRA).

Analysis of the Supreme Court's Stance on EBITDA during CIRP

1. Introduction: Brief about Judgement

The challenge IBC ecosystem is facing for EBITDA during CIRP is a major sticking point in insolvency law means who gets to keep the operating profits of a company while it's being restructured? This may be called the EBITDA Conundrum (the 'EBITDA' is just a term for the company's operating profit before accounting for big expenses like taxes, depreciation and writing off intangibles). The Supreme Court's judgment in the BPSL matter, while sanctioning JSW Steel's resolution plan, chose not to adjudicate on the allocation of the significant EBITDA generated by the Corporate Debtor (CD) during the CIRP period. This strategic silence, as noted in the analysis, preserves a significant area of legal uncertainty. The confusion caused by this legal gap threatens the main goals of the IBC, 2016, which is fundamentally to achieve the maximization of the value of the assets of the Corporate Debtor and to ensure resolution (revival) over liquidation. The magnitude of the amount involved in BPSL ₹11,800 crore) underscores the importance of this legal vacuum. The judgment ultimately supported the resolution plan, which, due to the silence of the Request for Resolution Plan (RFRP), effectively meant the operating profits accrued to the company and, consequently, the SRA. By not determining the general principle, the Court has invited case-by-case litigation, which is antithetical to the IBC's goal of swift finality.

2. The Issue: The Right to Interim Profits

The core issue remains the legal ownership

of interim EBITDA. The central question is still the legal ownership of profits (EBITDA) made after the insolvency process begins. These funds come from the Corporate Debtor (CD)'s operations while it is being run as a 'going concern,' using assets that were originally funded by the pre-CIRP creditors' debt.

- **Claim by Creditors:** The creditors argue that this operating value is generated from their collateral and their risk, and therefore, it should be used either to reduce their losses or to cover CIRP costs, especially since they funded (or managed to fund) the interim operations.

- **Claim by SRA:** The SRA (the Successful Resolution Applicant -the successful buyer) argues that since they are purchasing the company as a 'going concern' a whole business all the assets, including accumulated cash reserves and EBITDA, should be transferred to them.

The absence of a specific provision creates the potential for a windfall (or *vice versa*) for the SRA (if they acquire significant accumulated profits without factoring them into the bid value *(or otherwise)*) or a financial shortfall for the creditors.

3. What Law Says and How it is Justified from Commercial Wisdom or Vice Versa

The Legal Gap and Precedence

The Insolvency and Bankruptcy Code (IBC) and IBBI regulations are silent on the EBITDA generated during the CIRP. The confusion caused by this legal gap threatens the main goals of the IBC, 2016, which is fundamentally to achieve the maximization of the value of the assets of the Corporate Debtor and to ensure resolution (revival) over liquidation. The most relevant Supreme Court precedent is **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. (2020)**. In *Essar Steel*, the Court established two foundational pillars:

1. **Supremacy of Commercial Wisdom:** The CoC's business decision regarding the resolution plan's distribution is non-justiciable (cannot be questioned by courts unless illegal).

2. **The "Clean Slate" Principle:** The SRA takes over the CD free from all claims *not* specified in the resolution plan.

   Critically, in the *Essar Steel* case, where the RFRP was also silent on interim profits, the court held that in the absence of a provision entitling creditors to the profits, there is no creditor entitlement. The *Kalyani Transco* judgment, in effect, upholds this approach by letting the status quo (profits remaining with the company/SRA) stand when the process document is silent. This reinforces the need for the CoC to proactively include this clause.

Justification and Counter-Justification

- **Commercial Justification (Pro-SRA/Going Concern):** The argument is that the SRA is purchasing the *entire* business enterprise, including its operational balance sheet at the time of takeover. Forcing the SRA to lose the cash flows generated by the business they are buying could discourage resolution applicants and reduce the overall resolution value, undermining the IBC's intent of revival over liquidation (affirmed in *Swiss Ribbons Pvt. Ltd. v. Union of India*).

- **Ethical/Fairness Justification (Pro-Creditor):** Conversely, retaining significant profits within the CD provides a financial safety net for the SRA, which was not part of the negotiated deal. This windfall is financed by creditors who are taking the haircut.

4. Comparing Law from Other Important Insolvency Regimes

Most mature insolvency regimes treat post-commencement profits as part of the 'insolvency estate' to be dealt with under the restructuring plan, ensuring transparency and fairness.

Regime	Procedure	Treatment of Interim Profits/EBITDA
United States (Chapter 11)	Debtor-in-Possession (DIP)	Post-petition earnings are part of the bankruptcy estate. They are used to fund operations and are ultimately accounted for in the Reorganization Plan, ensuring they benefit the creditor body.
United Kingdom (Administration)	Administrator manages CD	Trading profits are held for the benefit of creditors and are distributed according to the statutory order of priority after meeting the costs of administration.
Singapore (Judicial Management)	Judicial Manager appointed	Under the Insolvency, Restructuring and Dissolution Act (IRDA), the Judicial Manager takes control to rehabilitate the company. Similar to the UK, the company's property, including profits made during the moratorium, is managed to achieve the statutory objective of company survival or creditor arrangement, meaning the profits are part of the value available for the restructuring plan.

In each system, there is an explicit mechanism to ensure post-commencement value is managed by the court-appointed officer (RP/Administrator/Judicial Manager) and allocated under a court-approved plan, preventing a surprise windfall.

5. Implications for Stake Holders (Corporate Debtors and Resolution Applicants) & Proposed Solution

The current uncertainty in IBC leads to:

1. **Protracted Litigation:** Delays implementation, as seen in the BPSL case, where the issue was litigated across multiple forums.
2. **Sub-Optimal Bids:** Resolution applicants must bid blind, assuming they may or may not retain the profits, leading to conservative offers and reduced recoveries for creditors.

Proposed Solution in the Spirit of IBC, 2016

To bring clarity and strengthen the IBC's framework, regulatory intervention by the IBBI is the most effective and time-bound solution, based on the following principles:

1. **Mandatory Clause in RFRP:** Regulation 36B and 38 of the CIRP Regulations should be amended to require the CoC to specify in the RFRP whether EBITDA (cash surpluses) generated during the CIRP will be:

   a) Used to meet CIRP costs, or

   b) Applied to repay Interim Finance (treating it as an operational receipt), or

   c) Ring-fenced in a Trust/Escrow Account for final distribution according to the approved

Resolution Plan. (Note -This method segregates the operational profits from the ongoing CIRP balance sheet, ensuring the amount is available for fair distribution without distorting the initial valuation on which the resolution applicants' bids are based).

2. **Incentivizing Formula:** The approved plan should include a distribution formula for the ring-fenced amount that serves to incentivize the SRA for timely implementation while compensating the creditors for their interim exposure. This upholds the principle of maintaining the 'going concern' while maximising value.

Example of a Suggested RFRP Clause:

To implement this, the RFRP document could include a mandatory clause, for instance:

Clause 1.4: Treatment of Interim Cash Surpluses (EBITDA) 'All net cash surpluses generated by the CD during the CIRP shall be credited to an Escrow Account managed by the RP. The Resolution Applicant must include in their Resolution Plan a specific, quantified proposal for the utilisation and distribution of this Escrow Balance. The distribution formula must allocate at least [X]% of the Escrow Balance to the Creditors (to be distributed as per the approved waterfall) and the remainder, if any, shall vest with the SRA upon plan implementation.'

Conclusion

The core issue is **fairness and predictability**. When a company starts making money during a crisis, that money is critical. By not having a simple, mandatory rule for how to handle that profit (EBITDA), the Indian legal system is essentially inviting people to sue, which slows down the entire process. The consensus is that a clear regulation is needed to require the lenders (CoC) to explicitly decide who gets the profit right at the start, making the process faster, fairer, and less likely to end up in a lengthy, expensive court fight.

The Supreme Court, by consciously leaving the question of EBITDA distribution open in *Kalyani Transco*, has issued a clear call for legislative or regulatory clarity. While previous rulings rightly respect the commercial wisdom of the CoC, that wisdom can only work effectively when applied within a clear and complete legal framework. The lack of a specific rule on interim profits invites unnecessary litigation, delays the resolution process, and puts the goal of maximizing value at risk. Adopting mandatory regulations that force the CoC to address and transparently allocate post-commencement profits, similar to international best practices, is the essential next step to strengthen the Indian insolvency regime and ensure timely, equitable, and final resolution.

References

1. Kalyani Transco v. Bhushan Power & Steel Ltd. Ors. (Supreme Court of India, Civil Appeal No. 1808 of 2020).
2. Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. (2020) 8 SCC 531.
3. Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17.
4. Insolvency and Bankruptcy Code, 2016 (Sections 30, 31).
5. US Bankruptcy Code, Title 11, Chapter 11 (Reorganization).
6. UK Insolvency Act 1986 (Administration).
7. Singapore's Insolvency, Restructuring and Dissolution Act 2018 (IRDA) (Judicial Management Provisions).

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Mr. Anil Kohli
Insolvency Professional

Case Summary/Synopsis

• Commencement & Appointment:

CIRP was initiated on 20 October 2023 on a Section 7 petition filed by Edelweiss Asset Reconstruction Company. Mr. Anil Kohli was appointed as Interim Resolution Professional (IRP) and later confirmed as Resolution Professional (RP).

• Company Profile:

GGPL, a subsidiary of GVK Energy Limited, operated a 464 MW dual-fuel combined cycle power plant at Peddapuram, Andhra Pradesh. Major shareholders included GVK (63.6%), IJM (20%), and IL&FS (14.83%).

Operations had been shut since April 2012 due to non-availability of natural gas.

• Total admitted claims during CIRP:

Secured financial creditors: ₹2,760 Crores

Key Assets:

- 268 acres of freehold land.
- Well-maintained 468.57 MW capacity plant with Alstom equipment.
- Potential recovery from regulatory claims and CER (carbon credit) entitlements
- GGPL had pending claims before regulators/discoms amounting to approx. ₹1400 Crores for unpaid capacity charges and other reimbursements. During the CIRP, RP refiled petitions before CERC along with additional claim of Rs 1900 Crores taking total claims to Rs. 3300 Crores i.e. an increase of 236%

Key Challenges for Corporate Debtor:

1. Fuel Constraint: Non-availability of natural gas, causing complete shutdown of the plant since 2015 and no near future prospects for availability of fuel.
2. Regulatory & Legal Disputes: Ongoing litigation with DISCOMs over capacity charges.
3. Financial Stress: Heavy debt burden reducing financial flexibility.
4. Investor Sentiment: Limited appetite and skepticism towards gas-based power assets in India.
5. Asset Preservation: Ensuring strict maintenance of sophisticated machinery during prolonged non-operation to avoid deterioration.

Resolution Process:

- First round of EOI (Dec 2023): Only one Resolution Plan was received and COC decided to explore market thereby inviting more EOIs.
- Second round of EOI (May 2024): 4 Resolution Plans were received.
- Negotiations took place and plans were put to vote. Radha Smelters Pvt. Ltd. emerged as Successful Resolution Applicant offering INR 211 Crores to SFCs.
- However, after extensive negotiations RA agreed to share 50% share to the Secured Financial Creditors in the recovery from Pending Litigations. Total amount recoverable is over Rs. 3,300/- Crores approximately. This is a key aspect of this Resolution Process providing an opportunity of substantial recovery of claims of SFCs. In addition, the RA was also convinced to hand over the amount lying in bank accounts of CD i.e. approx. Rs 10 crores which was also accumulated during CIRP.
- The plan was approved by the Committee of Creditors (CoC) with 100% vote share (Oct. 2024), reflecting complete creditor satisfaction and strong confidence in the proposed revival strategy.

- Hon'ble NCLT approved the plan on 6 March 2025, marking a rare successful resolution of a Stalled Gas-based power project.

- The Resolution Plan has been fully implemented under the supervision of the Monitoring Professional (erstwhile Resolution Professional)

The dedicated efforts of the RP were appreciated by all the Stakeholders in steering the process efficiently and effectively. This was also recognized by the PHD Chamber of Commerce and Industry and Mr. Anil Kohli was conferred with the Insolvency Deal of the year Award for Resolution of GVK Gautami Power Limited at the National Summit on Insolvency and Bankruptcy Code & Awards held on 20th September 2025.

INTRODUCTION

The Corporate Insolvency Resolution Process (CIRP) of GVK Gautami Power Limited (GGPL), a subsidiary of GVK Energy Limited (GEL) i.e., the Corporate Debtor (CD) or Company, commenced on October 20, 2023 and Mr. Anil Kohli was appointed as Interim Resolution Professional (IRP) and subsequently confirmed as Resolution Professional (RP) on November 20, 2023.

HISTORICAL BACKGROUND & BUSINESS PROFILE OF THE CORPORATE DEBTOR

GVK Gautami Power Ltd. (GGPL) is a part of the Hyderabad-based GVK group, which is one of the first Independent Power Plant developers in the country. The GVK group through GVK Power & Infrastructure Limited and its subsidiaries has substantial ownership interest in power generating assets and is also engaged in the building and developing of road projects, providing infrastructure facilities, exploration of oil & natural gas, operations, maintenance and development (OMD) of airport projects and exploration of coal mines. The group has 15 assets in its portfolio, out of which, seven assets are in power, four in highways, two are in mining and two in airports.

GVK Gautami Power Limited is a Public Limited Company. GVK Gautami Power Limited (GGPL) is engaged in the business of power generation using natural gas. It established one unit of dual fuel combined cycle power plant with a capacity of 464 MW at IDA Peddapuram, East Godavari District, Andhra Pradesh.

Based on natural gas allocation of 1.96 mmscmd (million metric standard cubic meters per day) from the Government of India, GGPL had established the said dual fuel combined cycle power plant with a capacity of 464 MW.

Gautami Power Plant was configured to operate on a combined cycle mode and could operate using either Natural Gas or High-Speed Diesel (HSD). The plant has two gas turbine generators and one steam turbine generator, all manufactured by Alstom, with a gross power output of approximately 464 MW (Having reached an actual operational capacity of 468.57 MW).GGPL entered into a 15-year Power Purchase Agreement (PPA) with Andhra Pradesh DISCOMs in relation to the Gautami power project on June 18, 2003. Subsequent to bifurcation of the state the PPA was both with Andhra Pradesh DISCOM and Telangana State DISCOM.

The actual cost of setting up the Gautami power project was Rs. 1,785.80 Crs, with a debt-to-equity ratio of 63:37. GGPL has financed the project cost through debt of Rs. 1,127.07 Crs obtained from various banks and financial institutions and Rs. 658.73 Crs as Equity

GGGPL commissioned its power plant in September 2006 and achieved Commercial Operation Date (COD) on June 5, 2009. A Power Purchase Agreement (PPA) for 464 MW was signed, valid for 15 years from COD, and expired in June 2024. The delay in commercial operations was due to GAIL's inability to supply natural gas to new plants in Andhra Pradesh. Subsequently, GGPL entered into gas supply agreements with Reliance and Niko (April 17, 2009) and a spot gas agreement with GAIL (April 6, 2009), following directions from the Government of Andhra Pradesh. However, due to non-availability of Natural Gas and in the absence of request to operate on alternate fuel, the plant had to undergo long-term preservation Thereafter, due to non- availability of inflow, GGPL had to face the financial Crisis.

In March 2013, RIL communicated that Gautami gas supplies would be curtailed completely, citing reduced production from KG-D6 basin and government policy. In absence of request to operate on alternate fuel, Plant was under long-

term preservation since June 2013 as per approved document long term preservation guidelines and plan "G1-OPNS-SOP- 8.00".

SCENARIO AS ON ICD

The plant was not operational and was kept under preservation mode and the plant was drawing power from the grid approximately @ 500 Kw which was needed for plant preservation activities.

The Clean Development Mechanism (CDM) allows emission-reduction projects in developing countries to earn certified emission reduction (CER) credits, each equivalent to one ton of Carbon- di-oxide (CO2).

Three of the group companies, i.e. GVK Industries Ltd (Phase II), GVK Gautami Power Ltd and Alaknanda Hydro Power Company Ltd were registered with United Nations Framework Convention on Climate Change (UNFCCC) and as such these projects are eligible for Certified Emission Reductions (CER) credits. These CERs can be traded and sold and used by industrialized countries to meet a part of their emission reduction targets under the Kyoto Protocol. The mechanism stimulates sustainable development and emission reductions, while giving industrialized countries some flexibility in how they meet their emission reduction limitation targets.

CIRP OF GVK GAUTAMI POWER LIMITED

The CIRP of GVK Gautami Power Limited was initiated on October 20, 2023. The following claims were admitted during CIRP:

Sr. No.	Category of Creditor	Admitted amount of Claims (Amount in Rupees)
1	Secured Financial Creditors	27,59,57,21,650
2	Operational creditors (other than Workmen and Employees and Government Dues)	9,23,847
	TOTAL	**27,59,66,45,497**

Guidelines followed in upkeeping and maintenance of the Plant during CIRP

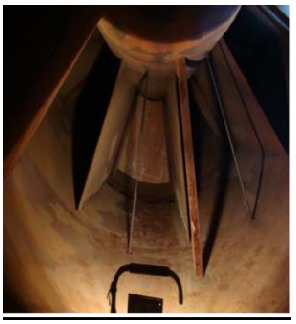
Despite closure of operations, efforts have been made to upkeep the plant and machinery of power plant. To administer this a maintenance mechanism have been adopted, whereby specific staff were deployed to oversee status and maintain a certain grade of excellence in the plant and machinery of Corporate Debtor. All efforts were made to preserve quality of these essential assets of the plant:

1. Gas Turbine
2. Steam Turbine
3. Water Steam Cycle
4. Balance of the plant
5. Electrical System

Some of the snapshots evidencing such maintenance measures are as under:





During the CIRP period, the plant, although non-operational since 2015, has been maintained to preserve its assets and operational readiness.

The Resolution Professional (RP) in consonance with COC ensured that the waste oil lying at the plant was sold through a transparent and competitive process, thereby achieving a competitive sale value. The proceeds from these sales were effectively utilized to meet critical financial requirements during the CIRP period. These include:

- Operational Costs: Ensuring the plant remains maintained and ready for future operations.
- Employee and Worker Payments: Timely salaries and wages to maintain workforce engagement and compliance with labor regulations.
- Renewal of various factory Licenses and insurances: Continuation of statutory and regulatory approvals necessary for plant operations.
- CIRP Expenses: Covering administrative and professional fees associated with the resolution process.

The transparent sale of waste oil at competitive market rates not only helped generate essential funds but also ensured that the plant's value was preserved for prospective resolution applicants.

This approach demonstrates how strategic monetization of byproducts during CIRP can support operational continuity, employee welfare, regulatory compliance, and overall resolution costs in a financially distressed enterprise.

Major Litigations:

Brief details of the matter are appended below-

1. GVK Gautami Power Limited ("GGPL") had filed the Petition on 31.10.2012 before the Andhra Pradesh Electricity Regulatory Commission ("Ld. APERC") against the Respondents (distribution companies of the undivided State of Andhra Pradesh – now AP Discoms and Telangana Discoms) inter-alia claiming the following:

S.No.	Claim	Amount (Rs.)
(i)	Capacity Charges with interest due for the period from 01.10.2006 to 05.06.2009	13,88,82,33,088
(ii)	Reimbursement of Gas Transportation Charges / Ship or Pay Charges paid/payable by GGPL under the Gas Transportation Agreement	11,34,54,286
(iii)	Reimbursement of Imbalance Charges paid/payable by GGPL to the Gas Suppliers	2,12,85,535

2. Subsequently, vide Judgment dated 31.12.2018 passed in WP (C) No. 15848 of 2015 & batch, the Division Bench of the High Court of Andhra Pradesh held that if a generating company has a composite scheme for generation and supply of electricity in more than one state, then any dispute involving such generating company shall lie before the Central Electricity Regulatory Commission ("Ld. CERC").
3. In terms of the above judgment, vide Order dated 19.01.2019, Ld. APERC had transferred the Petition and the IA to Ld. CERC for adjudication. On making enquiries with the staff of Ld. CERC as to why the said petition has not been listed, it was advised to formally file a separate petition (with the same content as that of the original petition) in the format of Ld. CERC, with the applicable fee.
4. Accordingly, the RP during the CIRP period has filed the petition afresh (with same content as that of the original petition) seeking interim relief before Ld. CERC, along with applicable fee as required under Regulation 6 of the CERC (Payment of Fees) Regulations, 2006 (as amended).
5. In the event of recovery, the Corporate Debtor would be entitled to recover the amounts as detailed above at table under Paragraph 1 of this Note along with carrying cost.

Towards the claim of GVK GPL, a petition was filed seeking the APERC to allow its claims to a tune of Rs.14,78,94,82,365/-. For the period from 01.10.2006 to 05.06.2009. The RP had sought details of capacity charges for the period beyond 2009 till expiry of PPA. As per the information provided by CD Office, the same could be claimed for the period 2013-2019 only, as during the

period 2009-2013, the plant was operational and post 2019, the CD stopped issuing provisional bills & undertaking to APDISCOM which is one of the requisites for claiming capacity charges. The CD has provided an amount of Rs. 19,26,27,84,318 that can be claimed from APDISCOM for which an application was required to be filed before CERC.

Key Investment Highlights that were offered to the PRA's during CIRP: -

1. Free hold land parcels under the ownership of GVK Gautami Power Limited is 268 Acres. The vicinity and locality of the plant premise is viable for transportation and further has decent market value.
2. The Plant possesses an operational capacity of 468.57 MW and has significant goodwill in the prevalent market.
3. Plant and Machineries installed by the company are its crown jewel. Most of these machines are of "ALSTOM", which is a reputed venture in the industry.
4. Despite being non-operational, the company boasts a subservient level of maintenance, therefore retaining most of its viability and capability. From spare parts to machines, all are of import quality and hence have always been talk of the town in this sector.

   As per the latest audited financial statement as on March 31, 2023, the company reported loss of Rs. 357.83 Crore.

RESOLUTION PROCESS OF THE CORPORATE DEBTOR:

1. In pursuance of the resolution passed in the 2nd meeting of the CoC, published FORM-G on 19.12.2023 inviting Expression of Interest (EOI), in the newspapers being Business Standard (English) Financial Express (English) and Andhra Prabha (Telugu- Andhra Pradesh wide circulation)
2. With an objective of getting maximum interests, a Marketing Strategist in terms of Regulation 36C of the IBBI (CIRP) Regulations, 2016, were also appointed. In furtherance of the said publication and reaching out to various PRA's of EOI's from five (5) Prospective Resolution Applicants (PRAs) were received.
3. However, pursuant to issuance of Request for Resolution Plan (RFRP), only one Resolution Plan was received which was much below the expected realization of COC members as well as the Liquidation value.
4. Also, another PRA had approached the RP requesting extension of time for submission of Resolution Plan. However, the COC was not inclined to allow such extension.
5. Thereafter, in the 7th COC Meeting the CoC discussed about the way forward to the Resolution Process by passing resolution for reissuance of FORM-G wherein a fresh FORM G was published on 07.05.2024.
6. Pursuant to the issue of Form G for the second time and approaching various PRA's for submission of EOI, 12 EOI's were received wherein upon issuance of RFRP, 4 Resolution Plans were received. The RP and his team conducted the due diligence of the Resolution Plans and also communicated the indicative curing/observations with the Resolution Applicants (RA's) and requested to respond to the same. In the 11th COC meeting the RA's were invited to attend the COC meeting for negotiation and discussion on the indicative curing/observations sent. It was discussed and decided by the members of the COC that the Fair Value should be considered for negotiations with the RAs and the same be kept as a benchmark for negotiation. Accordingly, discussions were conducted with the said RA's, and they were requested to submit their compliant Revised Resolution Plans on or before 22.08.2024 with the best possible financial proposals in a closed envelope which would be opened up before the concerned RA's and considered by COC for approval.
7. The 12th COC Meeting was convened wherein the three (3) Revised Resolution Plans which were received on or before 22.08.2024 were opened up before the COC members in presence of the concerned RA's. The COC was further apprised that the RP shall conduct due diligence on the Resolution Plans and the 13th COC meeting for evaluation of Resolution Plans and for consideration by COC for approval of Resolution Plans will be tentatively conducted on 30.08.2024.
8. The 13th meeting of the CoC was convened on 30.08.2024, wherein the compliant Resolution Plans submitted by M/s Radha Smelters Private

Limited, M/s Sherisha Technologies Private Limited and M/s Orissa Metaliks Private Limited along with their respective clarification/addendum sheets received by the Applicant were placed before the CoC for discussions whereas the Resolution Plan submitted by M/s Great Value Industries Limited was found to be non-compliant with the provisions of the Code and the Regulations framed thereunder and the same was not placed before the CoC. The COC presented a gist of the Resolution Plans; the distribution being offered under the Resolution Plans and the scores provided to each plan as per the agreed-upon evaluation matrix. Further, the members of the CoC evaluated the feasibility and viability of each Resolution Plan as per Regulation 39(3) of the IBBI (CIRP) Regulations, 2016.

9. The Resolution Plan dated 22.08.2024 submitted by Radha Smelters Private Limited along with the Addendum sheet dated 09.09.2024 was approved with 100% voting share by the members of the CoC vide e-voting which concluded on 08.10.2024.
10. Thereafter, in accordance with the RFRP, the Letter of Intent (LOI) was issued to the Successful Resolution Applicant (SRA), and the SRA was requested to submit the Performance Security within three working days. Pursuant to the receipt of Performance Security, the application for approval of Resolution Plan was filed before the Hon'ble NCLT.
11. The said application was considered for approval by Hon'ble NCLT and vide order dated 06.03.2025 the Hon'ble NCLT was pleased to approve the Resolution Plan of Radha Smelters Private Limited making the CIRP successful and thereby making the resolution of GVK Gautami Power Limited, a rare resolution process in the Gas Based Power sector.
12. The dedicated efforts of the RP were appreciated by all the Stakeholders in steering the process efficiently and effectively. This was also recognized by the PHD Chamber of Commerce and Industry and Mr. Anil Kohli was conferred with the Insolvency Deal of the year Award for Resolution of GVK Gautami Power Limited at the National Summit on Insolvency and Bankruptcy Code & Awards held on 20th September 2025.

PROCESS OF IMPLEMENTATION OF THE RESOLUTION PLAN:

The Resolution Professional was appointed as the Monitoring Professional and the Monitoring Committee was constituted with the Monitoring Professional, Representative of the SRA and representative of Edelweiss ARC(on behalf of the secured creditors) its members.

Monitoring Committee meetings were conducted in regular intervals and the Monitoring Professional ensured that all compliances post approval of Resolution Plan is completed.

The Resolution Plan has been successfully implemented.

CA. Karthik Natarajan
Insolvency Professional

The Dynepro Principle

In what has been termed as 'the Dynepro Principle', the Hon'ble National Company Law Appellate Tribunal, New Delhi ('the Hon'ble NCLAT')[1] had held that complex inter-party claims/counterclaims over third-party asset ownership which do not emanate as a direct consequence of the Company's insolvency fell outside the Adjudicating Authority viz. the Hon'ble National Company Law Tribunal ('the Hon'ble NCLT') under the Insolvency and Bankruptcy Code, 2016 ('the Code'). In other words, the Hon'ble NCLAT held that the Hon'ble NCLT could not decide disputes about ownership of such goods if there were competing claims. Instead, the parties had to go to other courts after waiting out the insolvency moratorium. We shall see the facts, the key arguments, the ratio of the judgement and the extant law and regulations under the Code, in the ensuing paragraphs.

To be sure, this judgement has held fort till date, *albeit* subsequent judgements emanating from none less that the Hon'ble Supreme Court have indeed refined and, in some cases, widened the scope of the Hon'ble NCLT's jurisdiction under Section 60(5)(c) of the Code, in the process creating a clearer distinction between what the Hon'ble NCLT can and cannot adjudicate, confirming that not all contractual disputes are outside its purview.

But in this article, we would like to take a look at this issue from a different perspective. Admittedly, the Dynepro judgement of the Hon'ble NCLAT was upheld by the Hon'ble Supreme Court[2]. On paper this looks fine, but in practice, it causes serious hardship—especially for small businesses. Imagine raw materials worth lakhs or crores lying locked up in a corporate debtor's factory for years, deteriorating in quality or losing commercial value, whilst the actual owners (bailors) cannot access them. This is the "Dynepro principle," and this article argues why it may need a fresh look in today's commercial environment.

Issues emanating from the Dynepro Principle

It has been often seen that both practitioners and the Hon'ble Judiciary have made wide use of the Dynepro judgement to support their stance/decision. In the practice of insolvency, this has come to pose practical difficulties for operational creditors, especially the MSME category ones. For instance, in the widely prevalent job work industry, it is customary for the operational creditors to supply a company with materials and expect value addition on the same materials, to receive the intended finished goods. This activity generally takes the form of 'job work' or 'works contract'. In fact, section 2(68) of the CGST Act, 2017 defines 'Job work' as "any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly." This happens all the time in manufacturing industries. And God forbid, in a situation, where a company with possession of sizeable goods and materials belonging to various principals for the purpose of job work happens to go under the Corporate Insolvency Resolution Process ('CIRP'), then the Dynepro judgement becomes an impediment as chances are that it could become a tool for the stakeholders viz., the Resolution Professional, the Suspended Directors, the Financial Creditors and even the Hon'ble Judiciary to cite its ratio to the detriment of the aforesaid principals. And to make matters worse, what if principals happen to be hapless MSMEs who are already burdened with terrible business headwinds. So, what seems the be way out presently and what could be done to avoid hardship to such bailors in such circumstances. That is the aim of this

[1] **In Company Appeal (AT) (Insolvency) No. 229 of 2018 rendered on January 30, 2019 reported in [2019] ibclaw.in 24 NCLAT**
[2] **CA No. 2391 of 2019**

article, viz., to educate the principals/bailors as to the actions they could take under the extant regulations to protect their goods/materials and also to examine what changes could be tweaked to the extant regulations, if need be, to make them effective and to prevent genuine and unintended hardship.

Facts, Arguments and the Ratio of the Dynepro judgement

Dynepro Pvt. Ltd. acted got a job work order for manufacture of boiler steel drums from M/s G B Engineering, who as the principal also supplied materials to Dynepro. In turn, Dynepro sent these materials to M/s Cethar Ltd. with a back-to-back job work order to manufacture the said drums. Unfortunately for Dynepro, M/s Cethar Ltd. entered into CIRP, and its materials got stuck with the insolvent company. As a natural corollary, Dynepro knocked the doors of the Hon'ble NCLT with a prayer for return of its goods (which had significant value) as the principal, with facts and evidences in support of their claim.

It was argued by the Resolution Professional ('RP') of M/s Cethar Ltd. that Dynepro was merely trying to defraud M/s Cethar Ltd., b) Dynepro and M/s Cethar Ltd. were run by the same Promoters and Managing Director, who were related parties and c) they were now seeking to take advantage of their knowledge about the operations of the insolvent company. The RP also alleged that Dynepro had forged certain documentation in the process.

It was on the strength of these arguments by the RP that Dynepro seems to have lost their case all through viz., right upto the Hon'ble Supreme Court. Now, we do not seek to analyse this case on merits as the facts appear to be contrived in this matter, at least from a perusal of the connected orders[3].

Our gaze is solely restricted only to the ratio of the Hon'ble NCLAT in this matter. It seems that certain other parties had also made counter-claims to the same materials as claimed by Dynepro. Latching on to this important fact finding, the Hon'ble NCLAT held that *"therefore, we are of the view that the Adjudicating Authority cannot decide the disputed question of fact including claim and counter claim made by one or other party qua, any material in current case."*

In this article, our focus is solely on a moot and very fundamental point i.e., what if the facts, in another situation, were not contrived as it turned out in the subject case; in other words, what if the principals had a genuine claim over the materials lying with a company under CIRP as bailors? Would it not cause tremendous hardship to the bailors especially small units or MSMEs who will have to wait out the mandatory moratorium period and haplessly watch the fate and value of their goods lie in uncertainty? That is the intended reach of this article.

What remedies do such Principals have under the extant regulations?

In light of the Dynepro judgement, chances are that any RP might not entertain pleas to return the goods under bailment which are lying with the corporate debtor, moreso when there are counter-claims. Perhaps the Hon'ble Adjudicating Authority might also take the same view. So, what actions could a genuine claimant take under the extant regulations, in order to protect his claims over such bailment goods?

In the same Dynepro judgement, the Hon'ble NCLAT had held that it was open to the claimants to file a suit before appropriate forum claiming right and title over the material in question only after completion of the moratorium period of the CIRP and that for filing such suit claiming right over the material, the moratorium period had to be excluded for the purpose of counting the period of limitation. Thus, View 1 would be to wait out the CIRP moratorium period and then approach a suitable appellate forum to adjudicate on the title of the bailment goods, as suggested in the Dynepro judgement *supra*.

View 2 would be to file a claim as an operational creditor before the RP for the bailment goods. However, that would be leaving it to the RP's goodwill since technically, he/she may reject the claim on the basis that such goods were never part of the corporate debtor under CIRP. Which will bring the issue back to square one, in which case View 1 appears to be the sole remedy. Trying to knock the doors of appellate fora may not work here since there is a binding precedent in the Dynepro judgement. Further, a

[3] The orders appearing in public domain and also digested/analysed in public fora

forum such the MSME Facilitation Council may have limited impact given the over-arching bind of the Code over practically all other statutes.

In conclusion, it may seem that at present, under such circumstances, a genuine principal/bailor may be left in the lurch.

Why the Dynepro Principle may need to be relooked at?

In our considered and humble view, with utmost regard for the Hon'ble Judiciary, the Dynepro judgement was a correct one based on a strict and literal interpretation of the then extant Code. For sure, it is trite that the Code may not be used to settle contractual disputes. And it is equally fair to say that the then extant law has fairly remained static to this day, meaning thereby there is no change in the regulations connected to this vexed issue viz., Sections 60(5)[4] and 18(f) read with Explanation to section 18[5] of the Code.

Now, we know from reports[6] that the average duration for closing a CIRP yielding a resolution plan was 843 days in FY2024. That's almost 2.5 years. Why should the poor bailor suffer this delay? What if the goods became tampered/pilfered during the CIRP? Whether the RP/corporate debtor will recompense the said principal/bailor for such loss? What if the bailment goods were specialized in nature and needed specific protection protocols such as temperature, space and storage hygiene? And finally, what if those goods were to suffer expiry during the interregnum period?

What could be the possible options to remedy the situation, in such cases?

Possibility 1 – Hon'ble NCLT ought to make an exception and adjudicate on such claims and counterclaims

Section 18(f) of the Code exhorts the Interim RP to take custody and control of assets belonging to the corporate debtor under CIRP. And for this purpose, Explanation to section 18 clearly states that such assets **do not include** assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment. Thus, it is clear that the IRP cannot and should not take custody and control of assets under bailment as they do not belong to the corporate debtor.

Section 60(5)(c) reads as follows:

"Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –
******
(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

Can it be then said that the issue of claims/counter-claims over the third-party bailment goods 'arose out of' or 'were in relation' to the impugned CIRP?

In M/s Renuka Power Co. Ltd. vs. General Electric Co. [1994 AIR 860], the Hon'ble Supreme Court had the occasion to interpret the words 'arising out of' or 'in relation to'. The Hon'ble Apex Court had held that expressions such as 'arising out of' or 'in relation to' the contract were of the widest amplitude and content. In this connection, reference may be made to 76 Corpus Juris Secundum at pages 620 and 621, where it is stated that the term 'relate' is also defined as meaning 'to bring into association or connection with'. It has been clearly mentioned that 'relating to' has been held to be equivalent to or synonymous with as to 'concerning with' and 'pertaining to'. The expression 'pertaining to' is an expression of expansion and not of contraction. If that be the case, could one argue that the dispute between **two third parties over goods lying with the** corporate debtor indeed was in relation to the impugned CIRP especially if the corporate debtor happened to be at fault in any manner vis-à-vis the said bailment goods, given a wide interpretation of the term. In our view, that is far-fetched and may not be the correct view.

For section 60(5)(c) of the Code provides that the Hon'ble NCLT can entertain or dispose of any event or action arising out of, in relation to, effecting or hampering the insolvency resolution process. For sure, Hon'ble NCLT has

[4] Enumerating the areas where the Hon'ble NCLT shall have jurisdiction to decide i.e., what Hon'ble NCLT can and cannot adjudicate

[5] Dealing with the duties of the Interim Resolution Professional

[6] https://www.icra.in/CommonService/OpenMediaS3?Key=6962fa25-2d04-4a06-b6f7-dd98f9a6e8fe

the jurisdiction to intervene to the extent of removing any obstacle in the CIRP process for it to reach its logical end, which is approval of the resolution plan or liquidation. But Section 60(5) must be interpreted in the context of Section 25(2)(b) of the Code, which provides that the RP has to exercise the rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings. Certainly, the said goods did not belong to the corporate debtor; they happened to be lying in possession of the corporate debtor when the CIRP commenced, thereby triggering a moratorium.

Thus, one could argue and perhaps with force, that in the present situation at hand, the dispute is between two third parties over some goods which just happen to be in the custody of the corporate debtor under CIRP, as the bailee. The Hon'ble NCLT adjudicating the CIRP has got nothing to bother themselves about third-party disputes, as was indeed decided in the Dynepro judgement.

So, then it is well neigh unfeasible for the Hon'ble NCLT to adjudicate the dispute of the aforesaid impugned claims and counter-claims.

Suggestion 2 – Hon'ble NCLT must simply cede space to an appropriate forum to make such adjudication/determination of this vexed issue

The Statement of Objects and Reasons leading up to the enactment to the Code conveys a strong sense of the intent of the legislature. According to it, one of the key underlying purpose of enacting the Code was to balance the interests of all stakeholders. Viewed in the context of the third-party bailors/principals and their predicament as narrated hereinabove, surely the Code has both an obligation and the authority to come their rescue under the circumstances.

Yes, it is trite that Section 238 of the Code states that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But therein lies the catch. 'Notwithstanding anything inconsistent therein contained in any other law'. So, in the present situation, if it is certain that the Hon'ble NCLT will take its due time to adjudicate on the CIRP of the impugned corporate debtor, then, it follows suit that the subject dispute between 2 third-parties over the bailment goods need not be held ransom to the unconnected CIRP at hand. For it may lead to unintended economic hardship for the claimants involved and in suitably extreme cases, may even lead to creating insolvency situations of those claimant/s. That certainly may not what our Law framers would envisage or even desire.Therefore, it is suggested that in such a situation, where there is likely economic value erosion of bailment goods and if there are claims/counter-claims, then, there ought to be a mechanism for the Hon'ble NCLT to allow the title of the said goods be adjudicated by the appropriate forum and the verdict in such a matter may be honoured by way of handing over of goods to the successful claimant under the direction of the Hon'ble NCLT.Situation may get complicated if the RP were to argue that the impugned goods have been partly utilized in the actual manufacture process by the corporate debtor and that those goods were essential to the continuation of the corporate debtor as a going concern. In such a situation, we would argue that the said matter would clearly become in relation to the present CIRP and therefore, the Hon'ble NCLT gained locus to adjudicate on the claim/counter-claim.

In parting, we may state that as a regulator governing the subject of insolvency in India, the ld. IBBI has been utmost nimble-footed when it comes to being alive to the ever-changing dynamics of trade and trade practices when it comes to ensuing success of the fledgling insolvency regime in India. And therefore, it may be apposite for the ld. IBBI to do consider the situation envisaged above and how it may be remedied.

Mr. Manohar Suman
Insolvency Professional

Synopsis

Cross-border insolvency poses complex challenges in India's globalized economy. Despite the Insolvency and Bankruptcy Code (IBC) being a progressive step, it lacks a comprehensive framework for handling multinational insolvency cases. Issues such as absence of reciprocity, limited judicial cooperation, asset tracing difficulties, and conflicting jurisdictional claims hinder efficient resolution. While the adoption of the UNCITRAL Model Law is under consideration, India's path forward demands a balance between protecting domestic interests and promoting global insolvency coordination for effective cross-border restructuring.

Introduction

Globalization has transformed corporate operations, allowing businesses to operate seamlessly across national borders. However, this interconnectedness also exposes companies to multiple legal jurisdictions when financial distress arises. Cross-border insolvency—where a debtor has assets, creditors, or operations in more than one country—presents unique legal, procedural, and jurisdictional challenges.

India, as one of the world's fastest-growing economies with substantial foreign investment and multinational presence, faces increasing instances of cross-border insolvency. Yet, despite the enactment of the Insolvency and Bankruptcy Code (IBC), 2016—a watershed reform in domestic insolvency law—India's framework for cross-border insolvency remains incomplete and fragmented.

This article examines the **challenges India faces in managing cross-border insolvency**, the **shortcomings of the current legal regime**, the **judicial approach**, and the **way forward** toward an efficient and internationally aligned system.

Understanding Cross-Border Insolvency

Cross-border insolvency occurs when insolvency proceedings involve foreign elements such as:

- The debtor's assets are located in multiple countries;
- Creditors reside in different jurisdictions;
- Insolvency proceedings are initiated in more than one country; or
- Recognition and enforcement of foreign insolvency orders are required.

An effective cross-border insolvency framework should ideally ensure:

1. **Cooperation** between domestic and foreign courts;
2. **Coordination** of concurrent proceedings;
3. **Protection** of creditors' interests globally; and
4. **Maximization** of the debtor's asset value.

The absence of a uniform system can lead to conflicting judgments, loss of value, prolonged litigation, and inequitable treatment of stakeholders.

Current Legal Framework in India

The **Insolvency and Bankruptcy Code, 2016** provides limited provisions addressing cross-border insolvency under **Sections 234 and 235**:

- **Section 234** empowers the Central Government to enter into **bilateral agreements** with foreign countries to enforce IBC provisions across jurisdictions.
- **Section 235** allows the resolution professional or liquidator to apply to an **Indian court for a letter of request** to a foreign court seeking assistance in matters related to assets located abroad.

However, **no bilateral agreements have been signed** to date under Section 234, and **Section**

235 has seen limited practical use, rendering these provisions largely ineffective.

Key Challenges in Cross-Border Insolvency in India

1. Absence of a Comprehensive Legal Framework

The most significant challenge is the lack of a comprehensive mechanism governing cross-border insolvency. While Sections 234 and 235 exist, they are procedural stopgaps rather than substantive law. The absence of mutual recognition of foreign insolvency proceedings leads to uncertainty and inconsistent outcomes.

For instance, if a company headquartered in Singapore but with assets in India enters insolvency, there is no clear legal pathway for Indian courts to recognize or coordinate with the foreign proceedings. This creates procedural delays and conflicting claims.

2. Non-Adoption of the UNCITRAL Model Law

Globally, the **UNCITRAL Model Law on Cross-Border Insolvency (1997)** serves as the foundation for harmonizing insolvency processes. Countries like the USA, UK, Singapore, and Japan have adopted it, ensuring predictability and cooperation.

India has considered adopting the Model Law, and the **Insolvency Law Committee (ILC)** in its **2018 report** recommended its incorporation with suitable modifications. However, legislative action remains pending. Without its adoption, India lacks reciprocity with major economies, limiting the ability to recognize and enforce foreign insolvency orders.

3. Jurisdictional Conflicts and Forum Shopping

Cross-border insolvency cases often lead to **jurisdictional disputes**—which court has the authority to control or distribute assets? In the absence of clear rules, debtors or creditors may engage in **forum shopping**, seeking jurisdictions with more favorable laws.

Such practices can undermine fairness, delay proceedings, and reduce recoveries for creditors. India's limited statutory guidance exacerbates these risks, especially in cases involving multinational groups with complex corporate structures.

4. Difficulties in Recognition and Enforcement of Foreign Judgments

Currently, recognition of foreign insolvency orders in India depends on the **Code of Civil Procedure, 1908** (Sections 13 and 44A) and bilateral treaties. However, these provisions are not tailored for insolvency matters.

This creates ambiguity in recognizing foreign insolvency administrators or liquidators, accessing assets in India, or enforcing moratoriums declared abroad. Conversely, Indian resolution professionals face challenges seeking recognition of domestic insolvency proceedings overseas.

5. Asset Tracing and Recovery Challenges

Tracing and recovering assets spread across multiple jurisdictions is complex, particularly where foreign courts are not bound to cooperate.

Resolution professionals face procedural hurdles in identifying, securing, and realizing assets located abroad. In the absence of reciprocal recognition mechanisms, they often rely on local laws or engage in separate litigation—diminishing asset value and increasing costs.

6. Protection of Domestic Creditors' Interests

While global cooperation is essential, India must also ensure protection for domestic creditors and stakeholders. Adopting a foreign insolvency order without adequate safeguards might disadvantage local claimants, especially small operational creditors.

Balancing **reciprocity and sovereignty** is thus a crucial policy challenge for India's cross-border insolvency regime.

7. Lack of Judicial Precedent and Experience

Cross-border insolvency is a relatively new field

for Indian courts. The absence of comprehensive jurisprudence results in inconsistent interpretations and limited guidance for practitioners.

While some progressive judgments have attempted to address the issue, judicial discretion alone cannot substitute a clear statutory framework.

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8. Group Insolvency Complexities

Many multinational corporations operate through intricate group structures with subsidiaries across jurisdictions. The IBC currently does not provide a mechanism for **group insolvency** or consolidated resolution, leading to fragmented proceedings and coordination difficulties.

Judicial Approach and Case Illustrations

Although statutory provisions are limited, Indian courts have demonstrated flexibility in handling cross-border insolvency issues through **case law**.

1. Jet Airways (India) Ltd. (2019)

This case marked a milestone in India's cross-border insolvency landscape. The **National Company Law Appellate Tribunal (NCLAT)** coordinated with a parallel insolvency proceeding in the **Netherlands** involving Jet Airways' offshore assets.

In an unprecedented step, the NCLAT allowed cooperation between the **Dutch administrator** and the **Indian resolution professional**, creating a **cross-border insolvency protocol** based on the principles of the UNCITRAL Model Law. This was a judicial innovation in the absence of statutory backing, demonstrating India's willingness to engage in international cooperation.

2. Macquarie Bank Limited v. Shilpi Cable Technologies Ltd. (2017)

Although primarily a domestic insolvency case, the **Supreme Court** emphasized the need for an inclusive and pragmatic interpretation of the IBC to align with global best practices—signaling judicial readiness to adopt progressive insolvency principles.

3. Videocon Industries Group Insolvency (2021)

The case underscored the challenge of **group insolvency**, as the NCLT struggled with consolidating proceedings involving multiple group companies. It highlighted the need for a legislative framework addressing both domestic and cross-border group insolvency scenarios.

Comparative Perspective

United States

The **U.S. Bankruptcy Code (Chapter 15)** incorporates the UNCITRAL Model Law, allowing recognition of foreign proceedings, cooperation with foreign courts, and protection of debtor assets globally.

United Kingdom

The **UK's Cross-Border Insolvency Regulations (2006)**, also based on the Model Law, enable automatic recognition of foreign insolvency proceedings from model law jurisdictions, ensuring predictability.

Singapore

Singapore's **Insolvency, Restructuring and Dissolution Act, 2018** adopts a modified Model Law, reflecting the city-state's role as a global financial hub. It balances openness with national interest protection—an approach India could emulate

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Proposed Framework for India

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 primarily includes an **enabling provision (Section 240C)** that empowers the Central Government to frame detailed rules for a cross-border insolvency framework, drawing on principles of the **UNCITRAL Model Law**. The Bill does not lay down the comprehensive framework itself in the statute, but provides the legislative authority to do so through delegated rules.

Proposed Amendments for Cross-Border

Insolvency

The key change is the introduction of a legal basis for a structured cross-border regime, a significant step beyond the previous limited and largely unused provisions (Sections 234 and 235) that relied on bilateral agreements.

- **Enabling Provisions**: The Bill inserts a new Section 240C, which grants the Central Government the power to make rules for the administration and conduct of cross-border insolvency proceedings. This allows for a flexible and adaptable framework to be developed and refined as needed.
- **Alignment with Global Standards**: The proposed framework is intended to align India's insolvency laws with global best practices, specifically the principles of the UNCITRAL Model Law on Cross-Border Insolvency. This aims to boost investor confidence and facilitate better recovery of assets located abroad.
- **Judicial Cooperation**: The new provisions are designed to facilitate greater cooperation and coordination between Indian and foreign courts/adjudicating authorities, enabling the exchange of information and synchronized actions to preserve asset value.
- **Recognition and Enforcement**: The framework would allow for the recognition of foreign insolvency proceedings and the enforcement of foreign insolvency-related orders within India, subject to certain carve-outs to protect local interests.
- **Designated Benches**: The government will be empowered to designate special benches within the National Company Law Tribunal (NCLT) with the appropriate infrastructure to handle complex international insolvency cases efficiently.

Current Status

The IBC Amendment Bill, 2025 was introduced in the Lok Sabha on August 12, 2025, and has since been referred to a select committee of the Parliament for detailed examination. The final operational details and effectiveness of the cross-border insolvency framework will depend heavily on the specific rules and regulations that the government prescribes once the Bill is enacted.

Emerging Concerns in Implementation

Even if India adopts the Model Law, practical challenges will persist:

- Determining **COMI** for complex multinational structures;
- Ensuring **capacity-building** of insolvency professionals and judges;
- Establishing **communication protocols** between courts;
- Addressing **tax and regulatory conflicts**;
- Protecting **public sector and sovereign interests** in cross-border cases.

A phased implementation strategy with pilot cases and judicial training could mitigate these issues.

The Way Forward

To strengthen India’s position in the global insolvency ecosystem, several measures are essential:

1. **Adopt a Comprehensive Cross-Border Insolvency Framework**
   Enacting provisions based on the UNCITRAL Model Law will provide clarity, predictability, and international credibility.
2. **Enhance Judicial Cooperation Mechanisms**
   Establishing formal communication channels and cooperation protocols between Indian and foreign courts can expedite resolution.
3. **Develop Bilateral and Multilateral Treaties**
   While Model Law adoption is crucial, bilateral agreements with major trading partners can provide additional assurance.
4. **Introduce Group Insolvency and Global Enterprise Provisions**
   Addressing group structures through a consolidated resolution process will enhance efficiency and asset recovery.
5. **Capacity Building and Specialization**
   Training NCLT and NCLAT judges, insolvency professionals, and legal practitioners in international insolvency principles will ensure smooth implementation.

6. **Protect Domestic Interests**
   Any cross-border framework should preserve public policy, sovereignty, and the rights of domestic creditors while promoting global harmonization.

Conclusion

India stands at a critical juncture in its insolvency evolution. While the **Insolvency and Bankruptcy Code, 2016** has revolutionized domestic insolvency, its silence on cross-border matters limits India's ability to effectively manage multinational insolvencies.

The **Jet Airways case** showcased the judiciary's proactive stance, but without legislative reform, such cooperation remains ad hoc. Adoption of the **UNCITRAL Model Law**, customized for India's needs, would align the country with international standards, attract foreign investment, and ensure equitable treatment of stakeholders across borders.

Ultimately, a well-structured cross-border insolvency regime will reinforce India's commitment to transparency, efficiency, and global economic integration—hallmarks of a mature and resilient legal system.

Dr. Biswadev Dash
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Synopsis/Abstract

The friction between India's taxation regime and its insolvency framework has been a subject of intense judicial debate since the inception of the Insolvency and Bankruptcy Code (IBC) in 2016. The core conflict revolves around the priority of "Crown Debts"—specifically, whether tax dues hold the status of a "secured creditor" or fall lower in the "waterfall mechanism" under Section 53 of the IBC. While the Supreme Court's *Ghanashyam Mishra* judgment established the "clean slate" theory, the subsequent *Rainbow Papers* ruling reintroduced ambiguity by classifying statutory tax charges as "security interests." This article analyzes how the proposed Income Tax Bill, 2025 (referred to herein as the Direct Tax Code or DTC 2025), in conjunction with the IBC (Amendment) Bill, 2025, resolves this legislative impasse. It examines the transition from Section 178 of the Income Tax Act, 1961, to Clause 322 of the DTC 2025, establishing the clear supremacy of the IBC and restoring certainty to the insolvency resolution process.

Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons. A central pillar of the IBC is the "waterfall mechanism" under Section 53, which dictates the order of priority for distributing liquidation assets. Historically, "Crown Debts" (dues payable to the government) enjoyed priority under common law. However, the IBC deliberately lowered this priority to the fifth position (Section 53(1)(e)), placing government dues below the claims of secured financial creditors and workmen.

Despite this legislative intent, the Income Tax Department has frequently challenged this hierarchy, leveraging provisions of the Income Tax Act, 1961, to claim priority over other creditors. This struggle created a "conflict of laws" scenario, delaying resolution plans and eroding asset value. With the introduction of the new Income Tax Bill, 2025 (DTC 2025) and concurrent amendments to the IBC, the legislature has moved to decisively settle this conflict.

Statement of Problem

The fundamental legal problem lies in the conflicting "non-obstante" clauses found in both the Income Tax Act, 1961, and the IBC, 2016.

1. **Section 178 of the Income Tax Act** mandates that a liquidator must set aside assets sufficient to meet tax liabilities before paying other creditors.

2. **Section 238 of the IBC** asserts that the Code's provisions override any other law in force.

While the legislature amended Section 178(6) of the Income Tax Act to yield to the IBC, judicial interpretation became muddied when tax authorities argued that statutory charges created "by operation of law" (e.g., VAT or Income Tax attachment) effectively made them "secured creditors." If accepted, this interpretation would elevate tax dues to the second position in the waterfall mechanism (Section 53(1)(b)), bypassing the fifth-priority status intended by Parliament and significantly reducing recovery for financial lenders.

Old Provisions Under Income Tax Act, 1961

Under the **Income Tax Act, 1961**, the interaction with company liquidation was governed primarily by **Section 178**.

- **Notification Requirement:** The liquidator was required to notify the Assessing Officer (AO) of their appointment within 30 days.
- **Restriction on Assets:** The AO would then notify the liquidator of the amount sufficient to provide for any tax liability. Under Section 178(3), the liquidator was barred from parting with any assets of the company until this tax amount was set aside.

- **The Conflict:** Prior to the IBC, this provision gave the tax department a distinct advantage. Even after the IBC was introduced, tax authorities utilized **Section 220** and **Section 222** (Recovery of Tax) to attach assets of a corporate debtor, arguing that these attachments created a "security interest" that survived the moratorium.

  Although Section 178(6) was amended to state that the section shall have effect *subject to the provisions of the IBC*, the lack of clarity on the definition of "security interest" allowed the conflict to persist.

How the Issue Was Referred to Supreme Court (Case Law Analysis)

The judiciary has oscillated between two distinct interpretations, leading to significant uncertainty.

1. The "Clean Slate" Doctrine: Ghanashyam Mishra and Sons vs. Edelweiss Asset Reconstruction Company (2021)

In this landmark judgment, the Supreme Court held that once a Resolution Plan is approved, all past claims—including statutory dues owed to the Central or State Government—are extinguished if they are not part of the plan.10 The Court emphasized that the tax department is an "Operational Creditor" and cannot initiate recovery proceedings for past dues, reinforcing the "Clean Slate" theory.

2. The Disruption: State Tax Officer vs. Rainbow Papers Ltd. (2022)

The legal landscape was destabilized by the Rainbow Papers judgment.11 The Supreme Court, analyzing the Gujarat VAT Act, held that because the state act created a "first charge" on the property for unpaid taxes, the State was a "Secured Creditor" under the IBC (Section 3(30)).12 Consequently, the Court ruled that the state's dues could not be treated as mere operational debt and must be paid in full if secured financial creditors were being paid.

- **Impact:** This ruling effectively bypassed the Section 53 waterfall mechanism, encouraging Income Tax and GST authorities to claim "secured creditor" status based on statutory charges, thereby jeopardizing the recovery of banks and financial institutions.

How Direct Tax Code 2025 (and IBC Amendment) Resolved the Issue

The "DTC 2025" (Income Tax Bill, 2025) and the concurrent **IBC (Amendment) Bill, 2025** have adopted a two-pronged legislative approach to nullify the *Rainbow Papers* precedent and restore the primacy of the financial creditor.

1. The IBC (Amendment) Bill, 2025: Redefining Security Interest

The primary resolution comes through a targeted amendment to the IBC, which the DTC 2025 supports:

- **Clarification of Section 3(31):** The Amendment introduces an explanation to the definition of "security interest." It explicitly states that a security interest *must be created by a consensual transaction between parties* (e.g., a loan agreement). It **excludes** interests created merely by "operation of law" (such as a statutory tax charge).

- **Effect:** This legislative change directly overrules the *Rainbow Papers* judgment. A statutory charge under the Income Tax Act or GST Act no longer qualifies the government as a "secured creditor."

3. Clause 322 of the Income Tax Bill, 2025 (DTC)

The new Tax Code internalizes the supremacy of the IBC, removing the need for retrospective interpretation.

- **Explicit Subordination:** Unlike Section 178 of the old Act, **Clause 322** of the DTC 2025 is drafted with the IBC in mind. It retains the requirement for the liquidator to notify the tax officer but includes an explicit *caveat* from the outset that these provisions are **subject to the Insolvency and Bankruptcy Code, 2016.**

- **Removal of Criminal Liability:** Under the old Section 276A, liquidators faced potential imprisonment for failing to set aside tax dues. The DTC 2025 removes this criminal sanction, retaining only personal financial liability. This aligns with the insolvency profession's need for protection from harassment while performing statutory duties under the IBC.

Resolution Summary: The DTC 2025 and IBC Amendment 2025 essentially codify the *Ghanashyam Mishra* position: Tax dues are operational debts (or 5th priority liquidation debts) and cannot strictly claim "secured"

status via statutory charges.

After Direct Tax Code: Is There Still Something Left Unclear?

While the legislative intent is now clear, potential areas of friction remain:

1. **The "Two-Year" Window (Section 53(1)(e)(i)):** The legislative amendments clarify that government dues are unsecured. However, Section 53(1)(e)(i) grants priority to government dues for the **two years preceding the liquidation commencement date**. Ambiguity may persist regarding the calculation of this period—specifically, does it cover the "assessment year" or the actual "financial year" of default? Disputes may arise over whether penalties and interest accrued during this two-year window also command priority or if they fall to the bottom of the waterfall.
2. **Pre-CIRP Attachments:** If the Income Tax Department attaches a property *years before* the insolvency initiation, they may argue that the attachment constitutes a perfected claim separate from the "statutory charge" definition. Courts may still need to decide if pre-existing attachments are automatically vacated upon the commencement of the moratorium, or if they require specific adjudication.
3. **Cross-Border Insolvency:** The DTC 2025 does not fully detail the tax treatment of cross-border insolvency proceeds, an area where the IBC is still evolving.

Conclusion & Suggestions

The introduction of the Income Tax Bill, 2025, and the IBC (Amendment) Bill, 2025, marks a decisive victory for the economic logic of the Insolvency and Bankruptcy Code. By statutorily excluding "operation of law" charges from the definition of "security interest," the legislature has affirmed that the state must step back to allow the revival of distressed assets. The DTC 2025 harmonizes with this vision by explicitly subjecting the liquidator's tax obligations to the IBC framework.

Suggestions:

- **Standard Operating Procedure (SOP):** The CBDT should issue a strict SOP for tax officers, directing them to file claims as Operational Creditors promptly upon the announcement of a moratorium, rather than attempting coercive recovery.
- **Clarify "Dues":** The term "government dues" in Section 53 should be explicitly defined to exclude penal interest during the insolvency period to further aid recovery.
- **Training:** Insolvency Professionals and Tax Officers require joint training workshops to understand the new Clause 322 boundaries to prevent needless litigation.

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2. *The Income Tax Act, 1961* (Act No. 43 of 1961).
3. *The Income Tax Bill, 2025* (Proposed), Clause 322.
4. *The Insolvency and Bankruptcy Code (Amendment) Bill, 2025*.
5. *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* (2021) SCC Online SC 313.
6. *State Tax Officer v. Rainbow Papers Ltd.* (2022) SCC Online SC 1162.
7. *Paschim Anchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.* (2023) SCC Online SC 842.
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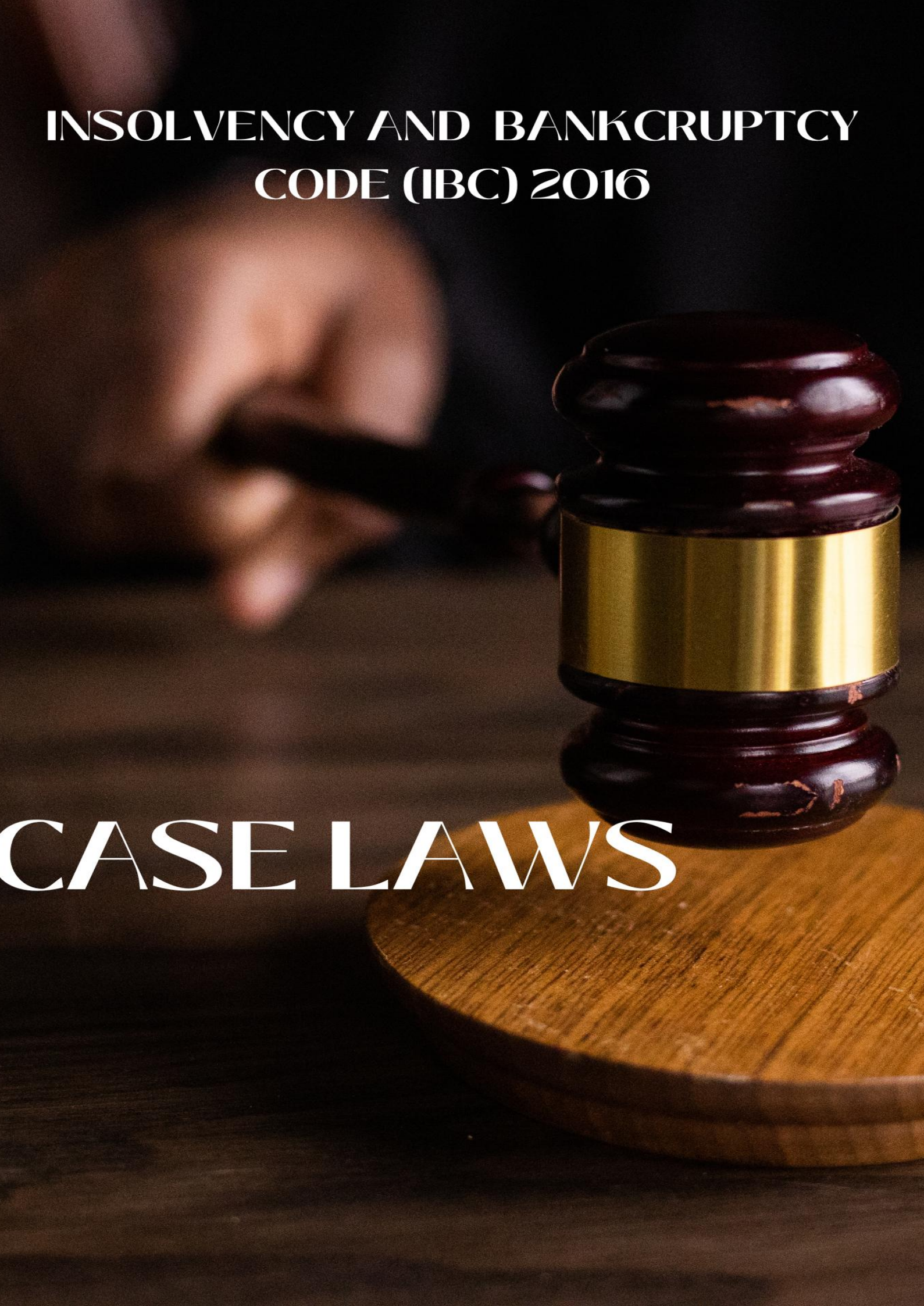
INSOLVENCY AND BANKCRUPTCY CODE (IBC) 2016



CASE LAWS

Amit Nehra vs. Pawan Kumar Garg [2025] 178 taxmann.com 254 (SC)/[2025] 190 SCL 209 (SC)

Where appellants/homebuyers had paid nearly entire sale consideration for apartment in a project of corporate debtor and submitted their claim, which was duly verified and admitted by Resolution Professional, they could not be treated as belated claimants entitled only to refund of 50 per cent of their principal deposit under resolution plan, but were entitled to possession of their allotted apartment.

Appellants booked an apartment in a project of the corporate debtor and paid almost entire sale consideration. However, the corporate debtor failed to deliver possession within agreed period. Meanwhile, CIRP was initiated against the corporate debtor and appellants submitted their claim before Resolution Professional. Resolution Professional published list of financial creditors, wherein appellants' name was reflected, with their claim duly admitted. Resolution plan submitted by successful resolution applicant was approved by NCLT. As per resolution plan, treatment of homebuyer claims was governed by clause 18.4, with distinct provisions for timely claims and belated claims. Despite admitted inclusion of appellants' claim in list of financial creditors, possession of allotted apartment was not delivered. Appellants approached Adjudicating Authority seeking directions to Resolution Professional and Successful Resolution Applicant for execution of conveyance deed and handover of possession. NCLT held that appellants claim was to be dealt with strictly in accordance with clause 18.4(xi) of resolution plan, entitling them only to refund of 50 per cent of principal sum. NCLAT affirmed decision of NCLT.

Held that since appellants had paid nearly entire sale consideration, submitted their claim, and had it duly verified and admitted by Resolution Professional, they could not be treated as belated claimants entitled only to refund of 50 per cent of their principal deposit under clause 18.4(xi) of resolution plan but were entitled to possession. Therefore, judgment of NCLAT as well as order of NCLT were to be set aside and respondents were to execute conveyance deed and hand over possession of apartment to appellants.

Case review: Order of NCLAT, New Delhi in Amit Nehra v. Pawan Kumar Garg [CAAT(I)-1365-2023, dated 10-01-2025] (para 39) set aside.

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

Mansi Brar Fernandes vs. Shubha Sharma [2025] 178 taxmann.com 359 (SC)/[2025] 190 SCL 230 (SC)

Where appellant entered into a Memorandum of Understanding (MoU) with corporate debtor for purchase/buy-back of four apartments in its project and paid a sum as part consideration, since MoU was in substance a buy-back contract, not an agreement to sell flats, appellant was a speculative investor, disentitling her from invoking section 7.

The appellant entered into a Memorandum of Understanding (MoU) with the corporate debtor for purchase/buy-back of four apartments in its project and paid a sum of Rs. 35 lakhs through cheque as part consideration. MoU contained a buy-back clause that was entirely at option of the corporate debtor. If buy-back option was not exercised, the appellant was entitled to receive possession of flats without payment of any additional amount. Despite MoU having been extended twice, neither flats were delivered, nor payment was made. The appellant thereafter initiated section 7 proceedings in capacity as an allottee/financial creditor. NCLT admitted application. On appeal, NCLAT reversed admission of application by holding that the appellant was a speculative investor and not a genuine homebuyer/financial creditor.

Held that If agreement substitutes possession with a buyback or refund option, or any other special arrangement, allottee is likely a speculative investor. Since agreement stipulated

a buyback whereby amount invested by the appellant would be returned with an additional amount as premium within 12 months, the appellant's true interest lay in assured returns, not possession and, therefore, the appellant was a speculative investor, disentitling her from invoking section 7. Since MoU was in substance a buy-back contract, not an agreement to sell flats thus, finding of NCLAT treating the appellant as a speculative investor warranted no interference.

Case Review: Ankit Goyat v. Sunita Agarwal [2021] 131 taxmann.com 219/168 SCL 829 (NCL-AT) and Shubha Sharma v. Mansi Brar Fernandes [Company Appeal (AT) (Insolvency) No. 83 of 2020, dated 17-11-2020] (Para 18.8) affirmed.

SECTION 219 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES - SHOW CAUSE NOTICE TO

Chandra Prakash Jain vs. Insolvency and Bankruptcy Board of India (IBBI) [2025] 178 taxmann.com 418 (Gujarat)/[2025] 190 SCL 369 (Gujarat)

Where Petitioner-Insolvency Professional Agency (IPA) filed writ petition challenging order by Disciplinary Committee suspending his registration, Notice was to be issued to relevant parties and effect and execution of order by Disciplinary Committee would remain stayed till next date of hearing.

Disciplinary Committee of IBBI passed an order suspending registration of the petitioner, an Insolvency Professional Agency (IPA) for a period of six months. The petitioner filed instant petition challenging said order on ground that proceedings initiated pursuant to show-cause notice issued under section 219 were erroneous as notice was issued by Chief General Manager of IBBI and not by Board itself. Further, if impugned order was perused, same was passed by full-time member of IBBI who was party to investigation, which was against regulation 3(1) of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017. In relation to maintainability of instant petition, it was submitted that there was no appeal prescribed under Code and only remedy was to file petition under Article 226 of Constitution of India.

Held that considering submissions, Notice was to be issued, returnable on 03.11.2025, and effect and execution of order by Disciplinary Committee would remain stayed till next date of hearing,

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

Ellison Oil Field Services (P.) Ltd. vs. CITOC Ventures (P.) Ltd. [2025] 178 taxmann.com 558 (NCLAT- New Delhi)

Where GST dept. after filing of claim, had become an operational creditor, it had a right to assign its debt and, therefore Tribunal rightly dismissed appellant's challenge to debt assignment.

The corporate debtor was admitted to CIRP. The respondent No. 2-Assistant Commissioner of Central GST and Excise Division submitted its claim. Respondent No. 2 was admitted as a member of CoC of the corporate debtor with a voting share of 12.76 per cent. Later, Respondent No. 2 assigned its debt to R1. RP acknowledged said transfer of debt and created a revised list of creditors of the corporate debtor. The appellant filed an application before NCLT to declare that assignment deed and assignment of debt of Respondent No. 2 in favour of R1 was void and unenforceable. NCLT by impugned order held that in view of regulation 28, RP had not committed any error in taking note of such transfer of debt by Respondent No. 2 in favour of R1.

Held that since Respondent No. 2, after filing of claim, had become an operational creditor, it had a right to assign its debt. Since Respondent No. 2 had assigned its debt in favour of R1 who had agreed to reimburse entire amount without any discount, Tribunal had not committed any error in dismissing application of the appellant challenging assignment of debt by way of debt

assignment agreement.

Case Review: order of NCLT(Mumbai) in I.A No. 2277 of 2024, dated 21-08-2024 (para 43) affirmed.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM - GENERAL

Harry Dhaul vs. Regional Provident Fund Commissioner - II [2025] 178 taxmann.com 559 (NCLAT- New Delhi).

Where EPFO submitted claims based on an Area Enforcement Officer's Report made after initiation of moratorium in case of corporate debtor, such claim was not enforceable; mere submission of affidavit by SRA undertaking to pay these claims would not render claim valid as it violated law enshrined in section 14(1),

The corporate debtor was admitted into CIRP and moratorium came into effect on same date. Thereafter public announcement was made inviting claims by 22-6-2022. EPFO submitted its claim for first time based on Area Enforcement Officer's Report (AEOR) with RP. on 6-3-2023. RP rejected said claim. NCLT directed RP to verify claim of EPFO as per law. Meanwhile, SRA submitted an affidavit before NCLT undertaking to pay principal amount of EPFO dues. NCLT thereafter, by impugned order approved resolution plan, recording these payment modalities for EPFO dues.

Held that since demand made by EPFO was based on an report made after initiation of moratorium, such demand was not enforceable. Merely because SRA had given an affidavit undertaking to pay these claims, this undertaking did not render claim valid as it violated law enshrined in section 14(1). Thus, undertaking given in affidavit being contrary to law and therefore ab initio invalid could not be made enforceable by an order of NCLT.

***Case Review*:** NCLT (Mumbai) in I.A No. 2475 of 2023 in CP(IB) No. 2520/MB/V/2018, dated 3-7-2024 (para 21) set aside.

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

NTPC Ltd. vs. Directorate of Enforcement [2025] 178 taxmann.com 599 (Delhi)

Where petitioner, SRA of corporate debtor, filed petition seeking quashing of all proceedings arising from a complaint in regard to corporate debtor, since there was no summoning order passed against petitioner, but only a notice had been given for collecting further information, petition was to be disposed of with directions to petitioner to appear before Trial Court and bring to its notice aforesaid facts along with order of NCLT and immunity granted thereunder.

Ther corporate debtor i.e., JPL was admitted into CIRP and the petitioner-NTPC Ltd. participated as a bona fide resolution applicant in CIRP of JPL. Resolution Plan submitted by the petitioner was approved by NCLT and the petitioner became 50 per cent shareholder of the corporate debtor. Meanwhile, Special Judge took cognizance of offences under section 3 of Prevention of Money Laundering Act, 2002 against the corporate debtor and directed issuance of notice to the petitioner to appear on behalf of the corporate debtor. The petitioner filed present petition under section 482 of Cr. P.C. for quashing of all proceedings arising from complaint in regard to the corporate debtor. It was noted that NCLT had passed an order approving resolution plan submitted by the petitioner and had explicitly granted immunity from prior offences under section 32A.

Held that the petitioner being a successful resolution applicant, could not be considered as a successor of the corporate debtor. Since there was no summoning order passed against the petitioner, but only a notice had been –given for collecting further information, instant petition was to be disposed of with directions to the petitioner to appear before trial court and bring to its notice aforesaid facts along with order of NCLT and immunity granted thereunder. Further, Trial Court was to be directed to consider submissions and pass appropriate orders, clarifying whether NTPC was to be arrayed as an accused and in case, no case was made out against NTPC, then speaking reasoned order in this regard, be made by Special Judge.

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

Rajjath Goel vs. Maxworth Infrastructure (P.) Ltd. [2025] 178 taxmann.com 600 (NCLAT- New Delhi)

Where a Civil Suit had already been filed by operational creditor where same amount was treated to be due on corporate debtor, there was a pre-existing dispute between parties and, therefore, application under section 9 could not have been admitted.

The operational creditor launched a residential project "Aashray". A Term Sheet was executed between the operational creditor and the corporate debtor, where entire project along with land and license was agreed to be purchased by the corporate debtor. Amount of Rs.12.76 crores was claimed as debt outstanding amount on the corporate debtor. The operational creditor thus, filed an application under Section 9, which was admitted by NCLT by impugned order. NCLT noticed contention of the corporate debtor regarding pendency of Civil Court, however, it had brushed aside said argument observing that Suit could not be come in way of prosecuting Section 9 petition. It was noted that instant was a case where pre-existing dispute between parties was writ large, more so Civil Suit had already been filed by the operational creditor where same amount was treated to be due on the corporate debtor for which demand notice had been subsequently issued. Suit was filed more than one and a half year before issuance of demand notice under section 8 of IBC in which Suit written statement was also filed, disputing claim set up in plaint.

Held that instant was a clear case of pre-existing dispute between parties, accordingly, impugned order passed by NCLT was unsustainable and thus, same was to be set aside.

Case Review: NCLT's order dated 21.08.2024 in CP No.224/(PB)/2024 (Para 44) reversed.

SECTION 238 - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

State Bank of India vs. Rakesh Hariram Agarwal [2025] 178 taxmann.com 601 (NCLAT- New Delhi)[23-09-2025]

Where personal guarantor acknowledged its liability on 05.09.2019, and if limitation period was computed from 05.09.2019, it would expire on 05.09.2022 and, thus, PIRP petitions filed respectively in November and December 2022, after excluding COVID 19 period, were within limitation period and maintainable.

The appellant-financial creditor advanced loan to the principal borrower to which two personal guarantors, i.e. respondents had given a personal guarantee. Account of the principal borrower was declared as NPA. Thereafter, the principal borrower laid a debtor's insolvency petition under section 10. Subsequently, the financial creditor filed petitions under section 95 to initiate personal insolvency proceedings (PIRP) against both respondents. NCLT dismissed both section 95 applications on ground of limitation. It was noted that date of default was 28-2-2014. Further, after loan account was notified by the financial creditor as NPA, the financial creditor had initiated proceedings before DRT for recovery. Therefore, entire debt became subject matter of a litigation and therefore, no bar of limitation could intervene. It was not in dispute that on 22.03.2018, DRT had issued a recovery certificate based on OTS as approved by the financial creditor, and it pushes terminus a quo for computing limitation for initiating an action under IBC to date of this recovery certificate. Subsequently, on 20.11.2018, the principal borrower had filed a petition under Section 10 wherein it had admitted its liability to financial creditor - This constitutes an acknowledgement of debt in law, and it pushes date of commencement of limitation to 20.11.2018. This was followed by balance sheet of principal borrower for year ending 31.03.2019 signed by board of its directors on 05.09.2019 where it had acknowledged its debt to financial creditor.

Held that if limitation period was computed from 05.09.2019, it would expire on 05.09.2022. However, in instant case, both petitions to initiate PIRP were filed respectively in November and December, 2022 and said dates fell within Covid times when Supreme Court in Cognizance for Extension of Limitation, in re [2021] 132 taxmann.com 123/168 SCL 784 (SC) had frozen time for limitation to run on any cause for an action. Thus, both PIRP were laid in

time, and accordingly, impugned orders of NCLT were to be set aside.

Case Review: Order of NCLT dated 09.12.2024 in C.P (IB) 15 of 2023 and C.P.(IB) 62 of 2023 (Para 22) reversed.

SECTION 7 - CORPORATE INSOLVENCY RESOLUTION PROCESS – INITIATION BY FINANCIAL CREDITOR

Parsvnath Developers Ltd. vs. Union of India [2025] 178 taxmann.com 624 (Delhi)

Where notice of application under section 7 was duly served on corporate debtor and despite service of said notice, corporate debtor had neither filed reply to said application nor any application seeking enlargement of time to file reply, petition filed against admission of section 7 application was to be dismissed.

The financial creditor filed application under section 7 against the corporate debtor. NCLT allowed said application for revival of company petition. The corporate debtor filed instant petition under article 227 of Constitution of India contending that impugned order was passed in violation of principles of natural justice to extent that the petitioner was not granted an opportunity to file formal reply to application under section 7.

Held that since notice of application under section 7 was duly served on the petitioner and despite service of said notice, petitioner had neither filed reply to said application nor any application seeking enlargement of time to file reply, instant petition was nothing but a matter of speculation and forum hunting aimed at protracting proceedings pending before NCLT and, therefore, instant petition was to be dismissed.

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

Kalyani Transco vs. Bhushan Power and Steel Ltd. [2025] 178 taxmann.com 647 (SC)

Where neither RfRP nor Resolution Plan dealt with distribution of EBITDA generated during CIRP, permitting erstwhile promoters or CoC to raise an argument in that regard at such a belated stage would amount to doing violence to very intention with which IBC was enacted.

CIRP was initiated against the corporate debtor. Resolution plan submitted by JSW was approved by CoC and Adjudicating Authority with certain conditions. NCLT directed distribution of Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) generated during CIRP amongst creditors of the corporate debtor. NCLAT set aside direction of NCLT and held that since Request for Resolution Plan (RfRP) was silent on treatment of EBITDA generated during CIRP, EBITDA would remain with the corporate debtor. Meanwhile, CBI and ED initiated proceedings against the corporate debtor and its erstwhile management for large scale siphoning and diversion of funds. ED also provisionally attached assets of the corporate debtor. CoC and SRA-JSW were of view that unless assets of the corporate debtor were released and issue of criminal proceedings clarified, implementation of Resolution Plan would not be possible.

Held that ex-promoters of the corporate debtor had locus to maintain appeal as 'persons aggrieved' under section 62. Contention of appellants that there was inordinate and deliberate delay in implementing Resolution Plan by SRA-JSW was without substance. Where plan was ultimately implemented with CoC's approval and both CoC and SRA had made consistent efforts, delay was not a ground to set aside plan. Since neither RfRP nor Resolution Plan dealt with distribution of EBITDA, permitting erstwhile promoters or CoC to raise an argument in that regard at such a belated stage would amount to doing violence to very intention with which IBC was enacted. Contention of either ex-promoters-cum-directors of the corporate debtor or CoC in that regard was not sustainable.

Case Review: JSW Steel Ltd. v. Mahender Kumar Khandelwal [2020] 114 taxmann.com 428 (NCL-AT) (para 191) affirmed.

Singamasetty Bhagavath Guptha vs. Allam Karibasappa [2025] 178 taxmann.com 717 (SC)

Where District Court considered matter in detail and passed an order cancelling sale deed executed by official receiver in respect of appellant's property and said order was reversed by High Court vide impugned order, High Court committed a jurisdictional error in not reappreciating documentary evidence adduced before trial court, which as an appellate court High Court was bound to undertake, and thus, appeal against order of High Court was to be allowed.

The appellant and respondent were shareholders / partners in partnership firm 'G'. The appellant, in view of his family's indebtedness at relevant time, sent a letter to convenor of firm offering to sell to any of willing partners. The respondent accepted the appellant's offer and endorsed his acceptance. While parties were in process of deliberations, some of creditors of the appellant filed insolvency proceedings before District Court, in which the appellant was arrayed as party. District Court declared the appellant insolvent and appointed a receiver to take over appellant's assets. District Court also directed official receiver to execute a transfer deed in favour respondent. In terms of District Court order, official receiver transferred share of the appellant, and transfer came to be registered on 11.03.1983. Some dispute was pending before High Court regarding one property. Meanwhile, insolvency process as a whole was annulled. High Court remanded matter back to District Judge for fresh adjudication. On remand, the appellant preferred an application under Section 151 of Code of Civil Procedure, seeking cancellation of sale deed executed by official receiver. Said application was allowed by District Court. High Court held that, notwithstanding annulment of insolvency against the appellant, sale deed was valid. It was noted that transfer deed was executed on basis of order passed by District Court.

Held that when said order was set aside and matter was remanded back to District Court for reconsideration in view of subsequent annulment order, High Court was not justified in reversing findings of District Court on ground that transfer deed remained unchallenged. High Court committed a serious error in drawing these conclusions. Apart from mistake, High Court also committed a jurisdictional error in not reappreciating documentary evidence adduced before trial court, which as an appellate court High Court was bound to undertake. Thus, instant civil appeal against judgment and order passed by High Court was to be allowed.

Case Review: Miscellaneous First Appeals M.F.A. No. 2873/2004 and M.F.A. No. 2706/2004, dated 25.02.2011 (Para 28) reversed.

IPA - ICMAI, IN PARTNERSHIP WITH IP NET ORGANIZED THE IBC CONCLAVE 2025 ON 1ST NOVEMBER 2025

3-DAY TRAINING PROGRAM FOR INSOLVENCY PROFESSIONALS ORGANIZED BY IBBI JOINTLY WITH ALL THREE INSOLVENCY PROFESSIONAL AGENCIES FROM NOVEMBER 21–23, 2025.

DAY 1

DAY 2


TRAINING
for
INSOLVENCY PROFESSIONALS


Insolvency and Bankruptcy Board of India
TRAINING
for
LVENCY PROFESSIONALS


Insolvency and Bankruptcy Board of India
TRAINING
for
INSOLVENCY PROFESSIONALS


INTRODUCTION
Appointment of IRP as proposed (Sec 16):
By Financial Creditor
By Operational Creditor


TRAINING
for
INSOLVENCY PROFESSIONALS

DAY 3

FOUNDATION DAY PROGRAM OF IPA-ICMAI: SEMINAR ON INSOLVENCY EVOLUTION: PREPARING PROFESSIONALS FOR THE FUTURE ON NOVEMBER 28, 2025


Mr. Vikas Goyal
Dr. U.K. Chaudhary


ON THE OCCASION OF FOUNDATION DAY OF IPA-ICMAI
SEMINAR ON INSOLVENCY EVOLUTION
PREPARING PROFESSIONALS FOR THE FUTURE
DISCUSSION ON UNLOCKING VALUE THROUGH CREDITOR-INITIATED CIRP
AND OTHER PROPOSED AMENDMENTS


ON THE OCCASION OF FOUNDATION DAY OF IPA-ICMAI
SEMINAR ON INSOLVENCY EVOLUTION
PREPARING PROFESSIONALS FOR THE FUTURE
DISCUSSION ON UNLOCKING VALUE THROUGH CREDITOR-INITIATED CIRP
AND OTHER PROPOSED AMENDMENTS
Mr. Kalur Srinivas


SCOPE
ON THE OCCASION OF FOUNDATION DAY OF IPA-ICMAI
SEMINAR ON INSOLVENCY EVOLUTION
PREPARING PROFESSIONALS FOR THE FUTURE
DISCUSSION ON UNLOCKING VALUE THROUGH CREDITOR-INITIATED CIRP
AND OTHER PROPOSED AMENDMENTS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Goyal


SCOPE
Mr. Vikas Goyal


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Mr. Vikas Goyal

PODCAST SERIES FOR INSOLVENCY PROFESSIONALS "UNRAVELLING THE MYSTERIES OF INSOLVENCY"

EPISODE 1

FEATURING THE EXPERTISE OF MS. POOJA BAHRY
INSOLVENCY PROFESSIONAL

EPISODE 2

FEATURING THE EXPERTISE OF MR. HARSHAD DESHPANDE
INSOLVENCY PROFESSIONAL

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

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

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

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

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

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

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

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

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

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

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

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