MAY 2025

INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

THE INSOLVENCY PROFESSIONAL

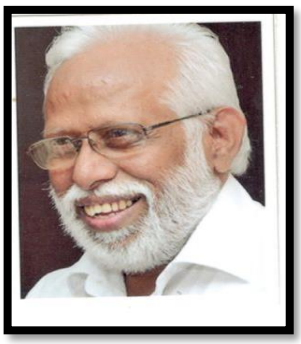
YOUR INSIGHT JOURNAL

THE INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

OVERVIEW

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

BOARD OF DIRECTORS



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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Professional,

Greetings to you from all of us in Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI). E-Journal is one of the publications regularly published by the Publications Desk of IPA-ICMAI. This journal seeks to carry interesting articles and opinions that not just inform but provide an enlightened insight into issues of vital interest in the domain of insolvency and bankruptcy, corporate restructuring and rejuvenation and related subjects. The profession of IPs, now getting out of infancy into adolescence, is continuously evolving with numerous rulings from the adjudicating authorities as well as constitutional courts apart from regulatory changes and hence demands a high level of attention of IPs in the midst of assignments and related preoccupations.

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

IPA-ICMAI looks to continually expand the horizons of knowledge and skillsets for IPs that would also help them professionally. The interactive meeting with senior representatives from Employee's Provident Fund Organisation (EPFO), Central Goods & Services Tax (CGST) department and commercial Bank organised by IPA-ICMAI in Bangalore in early May jointly with the local Chapter of ICMAI was one such event that saw good participation of professionals and interesting discussions.

This issue of e-Journal carries 6 interesting articles on varied topics in the IBC domain ranging from a review of Adjudicating Authority, a critical pillar of the IBC structure to a scholarly review of the most discussed court ruling on IBC in the last month – reversal of the resolution of Bhushan Steel. I hope you will find these articles useful and interesting as much to generate your responses and feedback.

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

Your rejoinder/ response/ feedback may be sent to publication@ipaicmai.in.
Wish you all happy reading.

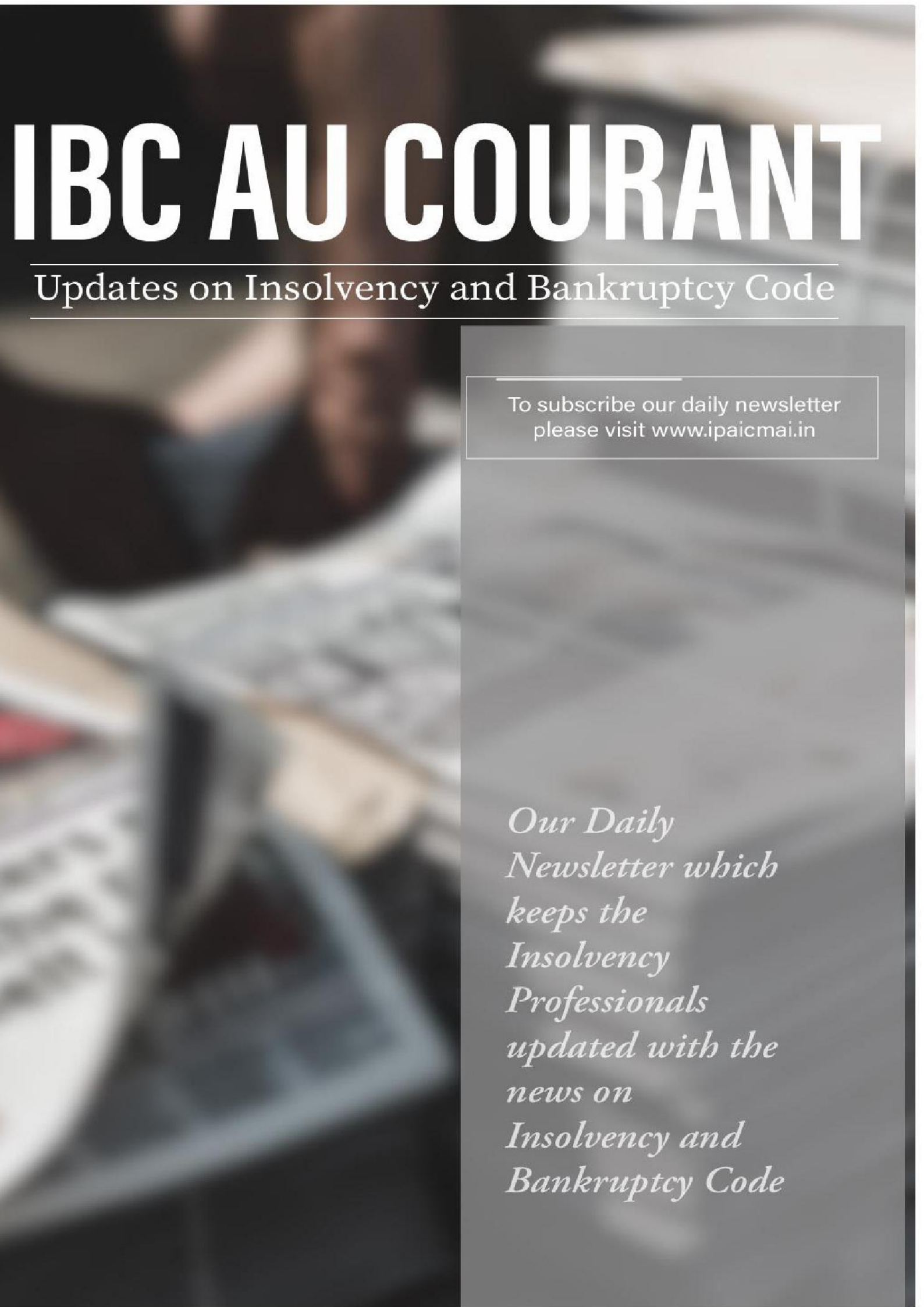
Mr. G.S. Narasimha Prasad
Managing Director

PROFESSIONAL DEVELOPMENT INTIATIVES

EVENTS CONDUCTED

MAY 2025

DATE	EVENTS CONDUCTED
May 2, 2025	A **Workshop on "Mastering the Information Memorandum under IBC, 2016"** held on May 2, 2025. This workshop provided insights into the Information Memorandum, its importance, and best practices. Participants gained a deeper understanding of the IM process. Expert sessions facilitated interactive learning.
May 5, 2025	The Insolvency Professional Agency of Cost Accountants of India successfully hosted the "**Roundtable on IBC with Stakeholders of the IBC Ecosystem**" at CMA Bhawan, Bengaluru on May 5, 2025. This exclusive event brought together industry experts, stakeholders, and thought leaders to discuss the latest developments, challenges, and opportunities in the Insolvency and Bankruptcy Code (IBC) ecosystem.
May 9, 2025	A **Advance Workshop on Liquidation** held on May 9, 2025. This workshop provided advanced insights and practical knowledge on liquidation under IBC, 2016. Topics like asset realization, distribution, and challenges were covered. Expert sessions and case studies enhanced participant understanding.
May 16, 2025	A **Workshop on Judicial Pronouncements under IBC, 2016** held on May 16, 2025. The workshop focused on key judicial pronouncements, including the Bhushan Power and Steel case. Expert analysis and discussions provided valuable insights. Participants gained a deeper understanding of the implications of these judgments.
May 24, 2025	A **Workshop on "Compliances to be made by IPs under IBC, 2016**." It **was** conducted on May 24, 2025. This workshop provided guidance on compliances required to be made by Insolvency Professionals under IBC, 2016. Topics like regulatory requirements and best practices were covered. Expert sessions facilitated interactive learning and Q&A.
May 30-31, 2025	IPA-ICMAI Organized a 2-Day **Advance Workshop on Successful Implementation of Resolution Plan** from May 30-31, 2025.



IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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

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

ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
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SUPREME COURT QUASHES JSW'S RESOLUTION PLAN FOR BHUSHAN POWER & STEEL, ORDERS LIQUIDATION

MR. RAVI GARG
Insolvency Professional

Synopsis:

The Supreme Court's landmark 2025 judgment in *Kalyani Transco v. Bhushan Power* overturned NCLAT's approval of JSW Steel's resolution plan, ordering liquidation due to multiple IBC violations. The Court found JSW ineligible under Section 29A for concealing past dealings, while the 540-day CIRP (vs mandated 270 days) and unfair treatment of operational creditors (9-12% recovery vs financial creditors' 41%) breached IBC's core principles. JSW's deliberate 900-day implementation delay, exploiting rising steel prices, constituted abuse of process. The ruling clarified PMLA's supremacy over IBC in asset attachments, quashing NCLAT's illegal stay on ED's proceedings. This decision reinforces statutory compliance, creditor equality, and timely resolution as non-negotiable pillars of India's insolvency framework.

Introduction

In a landmark ruling with far-reaching implications for India's insolvency framework, the Supreme Court of India, on May 2, 2025, overturned the National Company Law Appellate Tribunal's (NCLAT) approval of JSW Steel's resolution plan for Bhushan Power & Steel Ltd. (BPSL). The Court found multiple violations of the Insolvency and Bankruptcy Code (IBC), 2016, including gross delays, non-compliance with statutory timelines, and misuse of judicial processes by the Resolution Professional (RP), Committee of Creditors (CoC), and JSW Steel itself. The apex court directed the liquidation of BPSL, holding that the Corporate Insolvency Resolution Process (CIRP) had been vitiated by procedural lapses and collusion among stakeholders.

This case underscores the critical importance of adhering to statutory timelines and procedural fairness in insolvency resolutions. It also highlights the conflict between the IBC and the Prevention of Money Laundering Act (PMLA), where the Enforcement Directorate (ED) had attached BPSL's assets post-approval of the resolution plan. The Supreme Court's decision sets a strong precedent for future insolvency cases, ensuring that resolution applicants, creditors, and tribunals strictly comply with the IBC's mandate.

Background: The Fall of Bhushan Power & Steel

1. Initiation of Insolvency Proceedings

Bhushan Power & Steel Ltd. (BPSL) was among the 12 large corporate defaulters ("Dirty Dozen") identified by the Reserve Bank of India (RBI) in 2017 under the newly amended Banking Regulation Act, 1949. These companies accounted for nearly 25% of India's non-performing assets (NPAs), and the RBI mandated banks to initiate Corporate Insolvency Resolution Process (CIRP) against them under the IBC, 2016.

- Punjab National Bank (PNB) filed an insolvency petition against BPSL before the National Company Law Tribunal (NCLT).
- On July 26, 2017, the NCLT admitted the petition, appointed an Interim Resolution Professional (IRP), and initiated the CIRP.
- The Resolution Professional (RP) invited claims from creditors, admitting ₹47,204 crores in financial debt and ₹621 crores in operational debt.

2. The Bidding War and JSW's Emergence as the Highest Bidder

Three major players—JSW Steel, Tata Steel, and Liberty House—submitted resolution plans.

- In August 2018, the Committee of Creditors (CoC) evaluated the bids and JSW Steel

scored the highest based on its financial offer and feasibility.

- However, instead of declaring JSW as the highest bidder (H1), the CoC engaged in further negotiations, leading to a revised resolution plan submitted by JSW in October 2018.
- The CoC approved JSW's revised plan with 97.25% voting share, and the RP filed for NCLT approval in February 2019.

3.NCLT Approval with Conditions (September 2019)

On **September 5, 2019**, the **NCLT approved JSW's plan** but imposed **several conditions**, including:

1. **Full Payment to Operational Creditors as per Amended IBC Provisions**

- The IBC was amended in 2019 to mandate that operational creditors must be paid at least the liquidation value of their dues.
- The NCLT directed JSW to ensure that:

  Operational creditors (suppliers, vendors, etc.) receive payments on par with financial creditors.

  The payment mechanism must comply with Section 30(2)(b) of the IBC, which requires that operational creditors be treated fairly.

- This condition was imposed because JSW's original plan had prioritized financial creditors, leaving operational creditors with minimal or delayed payments.

2. **No Interference by Ex-Promoters (Sanjay Singhal & Family)**

- The NCLT barred the erstwhile promoters (Sanjay Singhal and his family) from:
  - Interfering in BPSL's management post-resolution.
  - Claiming any control or ownership rights over the company.
- This was crucial because:
  - The Singhal family was accused of financial fraud, including siphoning funds from BPSL.
  - The Enforcement Directorate (ED) had attached BPSL's assets under the Prevention of Money Laundering Act (PMLA).
- The NCLT also imposed a penalty of ₹1 lakh on the Singhal family for seeking confidential details of the resolution plan without valid grounds.

3. **Distribution of Profits (EBITDA) Earned During CIRP Among Creditors**

- During the Corporate Insolvency Resolution Process (CIRP), BPSL continued operations and generated profits (EBITDA - Earnings Before Interest, Taxes, Depreciation, and Amortization).
- The NCLT directed that these profits must be distributed among creditors, citing:
  - The NCLAT's ruling in *Standard Chartered Bank vs. Satish Kumar Gupta* (2019), which held that profits during CIRP belong to creditors, not the resolution applicant.
  - Section 52 of the IBC, which mandates that excess profits must be used to repay creditors.
- This was a major blow to JSW, which wanted to retain these profits as part of its acquisition benefits.

Additional Conditions Imposed by the NCLT

- Suspension of Old Board of Directors: The previous management's powers remained suspended until the resolution plan was fully implemented.
- No Waivers for Statutory Dues: The NCLT refused to grant any waivers on tax liabilities, penalties, or regulatory dues, stating that JSW must comply with all legal obligations.

- Monitoring Committee Oversight: A steering committee (comprising lenders and the RP) was appointed to oversee the implementation of the resolution plan.

Why Were These Conditions Necessary?

1. Protecting Operational Creditors – Small vendors and suppliers were at risk of being left unpaid if financial creditors were prioritized.
2. Preventing Ex-Promoters from Regaining Control – The Singhal family's involvement could have derailed the resolution process.
3. Ensuring Fair Distribution of CIRP Profits – Creditors deserved a share in the profits generated during insolvency.
4. Upholding IBC's Objective – The NCLT's conditions reinforced the IBC's goal of maximizing asset value and ensuring equitable treatment of all stakeholders.

4. NCLAT's Modifications (February 2020)

JSW challenged some of these conditions before the **NCLAT**, which:

1. Removal of EBITDA Profit Distribution Requirement

JSW's Argument:

- Commercial Viability Concern: JSW contended that requiring distribution of EBITDA profits generated during CIRP would make the resolution plan commercially unviable. The company argued it had already offered substantial upfront payments (₹19,350 crores) to financial creditors.
- Legal Interpretation: JSW cited the Supreme Court's judgment in *Committee of Creditors of Essar Steel v. Satish Kumar Gupta* (2019), which held that resolution applicants are not automatically entitled to profits earned during CIRP but left room for case-specific determinations.
- Operational Practicality: The steel giant claimed that segregating and distributing these profits would create unnecessary administrative complexities and delay implementation.

NCLAT's Rationale for Removal:

- The appellate tribunal accepted JSW's position that the resolution plan already provided fair value to creditors through the upfront payment structure.
- It ruled that EBITDA distribution was not mandated by IBC provisions and should be evaluated based on the specific terms of each resolution plan.
- The tribunal noted that JSW's plan provided for payment of CIRP costs and operational creditors' dues, fulfilling the essential requirements under Section 30(2) of IBC.

2. Allowing JSW Unfettered Control Without Old Management Interference

JSW's Strategic Position:

- Clean Break Doctrine: JSW argued that for successful resolution, the company needed complete freedom from legacy issues and former promoter influence.
- Avoiding Implementation Delays: The steel maker contended that ongoing litigation by ex-promoters could derail the resolution timeline.
- Asset Protection: JSW emphasized that former promoter involvement might complicate matters given the ED's PMLA proceedings against them.

NCLAT's Modifications:

- The appellate tribunal upheld the prohibition on ex-promoter interference but relaxed some procedural restrictions.
- It clarified that JSW's control would be absolute and not subject to challenges from the old management regarding operational decisions.
- However, it allowed former promoters to pursue limited legal remedies regarding their personal guarantees and other non-interference matters.

3. Stay on ED's Provisional Attachment Under PMLA

The PMLA Conflict:

In October 2019, the Enforcement Directorate had:

- Attached BPSL's assets worth ₹4,025 crore under PMLA.
- Claimed these were proceeds of crime from alleged bank fraud by former promoters.
- This created a direct conflict with the IBC process where JSW's resolution plan had already been approved.

JSW's Legal Challenge:

- Primacy of IBC Argument: JSW contended that once NCLT approved the resolution plan, PMLA attachments should automatically cease under IBC's Section 32A (which provides immunity to new management).
- Commercial Uncertainty: The company argued the ED's actions created uncertainty that would deter future resolution applicants.
- Jurisdictional Conflict: JSW maintained that NCLAT had authority to prevent PMLA actions from derailing the approved resolution plan.

NCLAT's Controversial Decision:

- The tribunal granted a stay on ED's attachment order, allowing JSW to proceed with implementation.
- It ruled that IBC proceedings should take precedence over PMLA attachments in this case.
- The order created a significant precedent regarding the hierarchy between insolvency and anti-money laundering laws.

5. Appeals Before the Supreme Court

Multiple parties, including:

- Operational creditors (Kalyani Transco, Jaldhi Overseas, Medi Carrier)
- Ex-promoters (Sanjay Singhal)
- State of Odisha (for unpaid taxes) challenged the NCLAT's order, leading to the Supreme Court's intervention.

Key Legal Issues Before the Supreme Court

1. Systemic Failure in Adhering to IBC Timelines: The 270-Day Mandate

The Supreme Court's stern observation regarding CIRP delays exposes fundamental flaws in implementation:

- **Statutory Violation**: The original IBC timeline of 180 days (extendable by 90 days) was blatantly ignored, with the process stretching to 540 days without proper extensions.
- **RP's Dereliction of Duty**: The Resolution Professional's failure to:
  - File timely extension applications under Section 12(2)
  - Complete the process within the amended 330-day outer limit (post-2019)
  - Justify delays before NCLT.
- **Judicial Complicity**: Both NCLT and NCLAT overlooked these violations, setting dangerous precedent that undermined IBC's time-bound resolution philosophy.

2.Section 29A Non-Compliance: JSW's Disclosure Failures

The Court identified material omissions regarding:

- **Undisclosed Joint Venture (2008)**: JSW-BPSL-Jai Balaji consortium for Rohne Coking Coal block allocation.
- **Related Party Transactions**: BPSL and JSW Steel were associated as shareholders holding 24.09% and 49% equity,
- **Eligibility Affidavit Defects**: RP's failure to verify:
  - JSW's compliance with Section 29A(c)
  - Section 29A(h) (disqualified promoters)

3. Operational Creditors: The Sacrificial Lambs

Regulatory Violations

- Priority Payment Mandate: Violation of Regulation 38(1A) requiring "not less than liquidation value"
- Discriminatory Treatment:
  - Financial creditors: 41% recovery
  - Operational creditors: 9-12% recovery
  - Government dues: 3% recovery

Implementation Failures

- Delayed Payments: 78% of operational creditors waited 900+ days.
- Arbitrary Classification: Re-categorization of Jaldhi Overseas as "contingent creditor" by resolution applicant without due process
- No Representation: Exclusion from Monitoring Committee despite NCLT order

4. JSW's Abuse of Judicial Process: Strategic Delaying Tactics

- JSW delayed implementation for 900+ days, despite no legal stay.
- It failed to infuse promised equity (₹8,550 crores) on time.
- The CoC initially opposed JSW's delays but later accepted belated payments without justification.

5. IBC-PMLA Jurisdictional Conflict

- The ED attached BPSL's assets in October 2019, post-NCLT approval.
- The NCLAT stayed the ED's order, exceeding its jurisdiction.
- The Supreme Court ruled that NCLAT cannot interfere in PMLA matters.

<u>Supreme Court's Findings & Judgment</u>

1. Resolution Plan Was Non-Compliant with IBC

- The NCLT and NCLAT failed to ensure compliance with Section 30(2) (payment priorities) and Regulation 38 (plan feasibility).
- The CoC's approval was not based on "commercial wisdom" but on collusion with JSW.

2. JSW's Conduct Amounted to Abuse of Process

- JSW deliberately delayed payments while benefiting from rising steel prices.
- It misused court proceedings to avoid timely implementation.

3. Liquidation Ordered Due to Failed CIRP

- Since the Resolution Plan was non-compliant and delayed, the Supreme Court directed liquidation under Section 33 of IBC.
- Payments made by JSW shall be subject to refund if creditors challenge them.

4. NCLAT Overstepped Its Jurisdiction on PMLA

- The NCLAT had no authority to stay ED's PMLA order, as IBC tribunals cannot interfere in PMLA proceedings.
- This judgment marks a watershed moment in India's insolvency regime, ensuring greater accountability and legal compliance in future resolutions.

<u>Reference</u>

NCLT order dated 5 September 2019 in CA(IB) No. 202(PB)/2017
NCLAT records in Company Appeal No. 957/2019
Supreme Court's final judgment dated 2 May 2025 in Civil Appeal No. 1808/2020

PERSONAL INSOLVENCY UNDER THE INSOLVENCY AND BANKRUPTCY CODE (IBC))

MR. PATANJALI CHATTOPADHYAY
Insolvency Professional

SYNOPSIS	When Corporate Person Becoming UNABLE TO PAY ITS DEBTS creditors may opt to initiate Personal Insolvency Resolution Process against the Personal Guarantor. The entire process has been placed in PART-iii of IBC code. The Supreme court in the Judgement **LALIT KUMAR JAIN** dealt with the challenge to the notification issued by the Central Govt extending Part III of the code.
INTRODUCTION	The Insolvency and bankruptcy code (IBC) is a comprehensive legislation that aims to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate person, partnership firm, and
	Individuals in a time bound manner. While the IBC primarily focusses on corporate insolvency .it also provide a framework for personal insolvency.it covers in Part III of this code and (sec **94 to sec 120**
	The IBC enacted in 2016 has 5 parts, where Part II relates to the Insolvency and a liquidation of the corporate person while part III deals with the Insolvency & resolution of & Bankruptcy for individuals and partnership firm. Also initially the section 2(e) of IBC read as unde: The provision of this code will apply to (a) any company (b) any other company (c) partnership firm & individuals. The Part (e) of this section was amended in 2018 (with effect 23-11-2017) to read as under, *The provision of the code will apply to (e)* ***Personal Guarantors to corporate debtors*** *(f)partnership firm and proprietorship firms (g)individuals ,other than persons referred in clause (e) There after by notification dt 15/11/2019 the Central Govt made part III of the code applicable to personal Guarantor of the Corporate Debtor.* **Who is personal Guarantor:** *Means an individual who is the surety in a contract of guarantee to a corporate Debtor sec 5(22).* ***Who is Corporate Guarantor****: Means a corporate person who is the surety in a contract of Guarantee to a Corporate Debtor. Sec 5(5A)* **1)Liability of Personal Guarantor: is not always co-extensive with that of the Principal Borrower**: Section 128 of Indian Contract Act lays down that the liability of

	the surety is co extensive with that of Principal Debtor unless it is otherwise provided **by the "**Contract Act. " Sec 134 says that surety is discharged by any contract between the creditor and the Principal Debtor ,by which the Principal Debtor is released, or by any act or omission of the creditor ,the legal consequences of which is the discharge of the Principal Debtor .Once Resolution Plan is accepted ,the *Corporate Debtor is discharged of liability .as a consequence the guarantor whose liability is co-extensive with the Principal Debtor ,ie corporate Debtor too is discharged of all liabilities* **,***But personal Guarantor* ***Can not discharged his liability****.* 2)**Discharge of a Principal Borrower by Operation of Law does not discharge the Guarantor:** **In this regard** the Supreme Court referred referred to the Judgement in the case of *Statebank of India vs Ramkrishnan& oths* where it was observed that the language of Sec 31 makes it clear that the approved plan is binding on the Guarantor ,and precluded any attempt to escape liability under the provision of Contract Act. Thereafter it was held that approval of Resolution Plan does not *ipso facto discharge* a personal Guarantor (of a Corporate Debtor)of her or his liabilities under the contract of Guarantee .As held by this court the release of discharge of a principal borrower from the debt owed by it to its creditor ,by an **Involountry process i.e by operation of Law** or due to liquidation or by insolvency proceeding does not absolve the Surety/guarantor of his or her Liability ,which arises out independent contract.

KEY FEATURES OF PERSONAL INSOLVENCY UNDER IBC	**1**.Thresold limit: The minimum amount of debt required to initiate personal Insolvency proceeding is Rs 1000.00 **2**.A creditor may apply either by himself, or jointly with other creditors, or through a resolution Professional to the Adjudicating authority. **3**.**Moratorium: Interim moratorium** shall commence on the date of the application in relation to all debts. **Moratorium: when** the application is admitted under section 100 A Moratorium shall commence to all debts and shall cease to have effect at the end of the period of 180 (one hundred eighty Days) beginning with the date of admission. **4**. **Insolvency professional:** Insolvency Professional is appointed to manage the affairs of the debtors and facilitate the Insolvency Resolution process. **5**.**Debt -Repayment Plan**: The Debtor is required to submit Repayment Plan in consultation with the Resolution Professional within 180 days from the date of admission of the Application. **6**. **Implementation & supervision of repayment plan: Debtor** will make payment to the creditor as per Repayment Plan with proper guidance and as per rules and regulation with advice of Resolution Professional. In the Personal Insolvency Process there were no provision for setting up the A Monitoring Committee to look after the Implementation
BENEFITS OF PERSONAL INSOLVENCY:	1.**Structured frame work**: The IBC provides a structured framework for Personal insolvency ensuring a fair and transparent process. 2.**Protection From Creditors**: The Moratorium period provides protection from creditors harassment and legal action. 3.**Debt Restructuring**: The debt repayment plan allows for debt restructuring, enabling the debtor to repay debts in a manageable manner.
CHALLENGES & LIMITATIONS:	**1.limited Precedents**: Personal Insolvency under IBC is a relatively new concept and very limited Jurisprudence. **2**.**Complexity**: The process can be complex and long drawn due to delay in preparation & submission of Repayment Plan by Debtor. **3**.**Social Stigma**: Personal Insolvency can carry a social stigma, making it challenging for debtors to come forward.

	4. **Free for legal restriction**: After expiry of 180 days Moratorium will lapse and debtor will free for transaction even if non submission of Repayment Plan which is not similar to CIRP process.
OP	*In the **Supreme court of India*** ***Lalit Kumar Jain ….petitioner*** *Union of India & ors ….Respondent* *In this Judgement the Supreme Court of India dealt I). with the challenge to the notification issued by Central Govt in Part Iii of the code to Personal Guarantors of Corporate Debtors.* *ii) Liability of the guarantor is not always coextensive with that of the principal Borrower.* *Iii)Discharge of principal Borrower by operation of law does not discharge the guarantor.*
ADJUDICATING AUTHORITY:	Ref to *sec 60 (1) The Adjucating Authority, in relation to Insolvency Resolution and Liquidation for corporate persons including corporate debtors and personal Guarantors thereof shall be **National Company Law Tribunal ha**ving territorial jurisdiction over the place where the registered office of the Corporate Debtor is located.* *Section 60(2)of the IBC prescribes that in the event of ongoing resolution process or the Liquidation process against the corporate debtor ,an application for resolution process against a corporate debtor ,an application for resolution process or Bankruptcy of the personal guarantor to the corporate debtor shall be filed with the concerned NCLT.*

Case Verdict:	1.What is the threshold for filling an application u/s 95 of the insolvency & bankruptcy Code ,2016 (IBC)against the Personal Guarantor, Rs 1 cr as provided in the sec 4 or Rs 1000/as provided in sec 78 of the IBC. Mudraksh Investment pvt ltd vs Gursev Singh NCLAT (NEW DELHI)	**CASE RATIO:** The Hon'ble Appellate Tribunal rejects the submission of the Appellate that the minimum amount of default would 1000/which will be fulfilled.
	2.High Court not to have exercised writ jurisdiction under the Article 226 Prior to submission of RPs Report U/S 99 of the IBC IN THE SUPREME COURT OF INDIA. BANK OF BARODA VS FAROOQ ALI KHAN AND OTHS.	**CASE RATIO:** 1.Adjudicating Authority does not adjudicate any point and need to decide jurisdictional question Regarding existence of debt before appointing Resolution professional. 2.The HIGH court does Not have exercised writ Jurisdiction Article 226, prior to submission of the Resolution Professional Report u/s 99.

Source:

1.Bare act By Commercial Publication

2.Taxman Limited Insolvency Examination BY Raghuram Manchi

3.IBC laws (insolvency Journal)

MR. PADMANABHAN NAIR
Insolvency Professional

IBC process and the NCLT Role

The purpose of this article is to explore the delays and issues relating to the NCLT and provide constructive suggestions as to how the process could be speeded up and made more reliable and consistent. This is inevitably linked to the Ease of Doing Business of the World Bank where India has an improved Ranking of 63 but a much lower judicial ranking of 163 and would like to improve it further to attract further investment and take advantage of the current opportunities

India's IBC faces challenges like judicial delays and low recovery for operational creditors among other things. The IBC is also a corollary of this and was set up to make takeover of running but "sick companies" easier.

.That would kickstart the economy in a big way as the reborn entity does not have to go through elaborate start up procedures which may take as much as 3-5 years for large manufacturing units. The "enforcement of contracts" broadly relating to judicial systems and ability to recover dues and get in and out of companies in a suitable manner. All this affects investment and thereby the economy of the country.

A.INTRODUCTION

The Standing Committee on Finance (17th Lok Sabha) released its Report on the action taken by the Government in response to the implementation of the Insolvency and Bankruptcy Code –

The Committee raised concerns over prolonged delays at NCLT, noting that exceeded the statutory 330-day limit, causing inefficiencies in the insolvency resolution
process.

Ref: Pitfalls and Solutions (https://eparlib.nic.in/handle/123456789/2975951?view_type=search).

The report focuses especially on the judicial/quasi-judicial affecting the functioning of the IBC regarding the underlying and ongoing challenges and the proposed course of action envisaged by the operating system. One of the key issues was the matter of **inordinate** Delays at NCLT and Non-Adherence to the 330-Day CIRP Timeline which has been much exceeded.

According to Economic Times Report(based on MCA data) dated 6th August 2024:

The average time taken for an insolvency resolution process at the National Company Law Tribunal (NCLT) was 716 days in the last fiscal, higher than 654 days recorded in 2022-23, according to official data. The data provided by the corporate affairs ministry to Rajya Sabha on Tuesday showed that in 2021-22, the average time taken for a resolution was 557 while the percentage of realisable amount compared to admitted claims stood at 23 per cent during the same period. As per the Insolvency and Bankruptcy Code (IBC), the stipulated resolution time for a case is 330 days, including litigations."

Read more at: https://economictimes.indiatimes.com/news/india/on-average-resolution-of-cases-under-ibc-took-716-days-at-nclt-in-2023-24-

govt/articleshow/112325598.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

This is a cause of serious concern. In 2020 on ease of doing business in the parameter of "enforcement of contracts" **India has a pretty low ranking of 163**.This is against an **overall rank of 63(REF ANNEXURE).**It is to counter this that the government is pushing the insolvency agenda. As this is directly related to the judicial process, the authorities have every reason to be concerned.

We must remember that it is much easier to take over a running company than start a new one which usually has a 3–5-year lead time with attendant costs. If the only issue is the management, technology, finance etc. and a new, stronger management **can get a readymade operation**, many would be ready to do so, provided the process of takeover is fast and there are no further liabilities. The code has attempted to resolve many of these issues within established parameters, but there still remain many roadblocks.

Whilst there are many other aspects of slowing down the process such as coordination of stakeholders, lack of awareness particularly in government departments, asset valuation issues, fraud and misuse etc. The intent of this article is to focus on the judicial aspect especially the NCLT and streamlining of the procedures.

Eight years on, while the IBC has had some achievements, it is still stuck by issues like high case backlog, delays in admission and resolution, and steep haircuts for creditors. In the recent past, various stakeholders, including RBI and the Parliament's Standing Committee on Finance, also flagged concerns and the need to rethink the IBC's design as it was not showing significant improvement in creditor recovery after some early successes.

Whilst the Ministry of Corporate affairs and IBBI are looking at continuously looking to streamline the procedures at the policy and operational level, **there is no doubt that the average time and percentage of resolution has been slipping drastically in many cases**. This means that a company which could be revived easily slips into liquidation as the time taken puts the often-sick company beyond redemption, the brand and markets go away, and the technology and machinery get outdated. This is particularly true of service companies where the real strength of the company is the brand, market and often platform technology which could get outdated in a year. Manufacturing companies at least have land, building and machinery which often last a lot longer

B: OBSERVATIONS AND ANALYSIS

Some data would bring all this out much of which has been drawn mainly from the IBBI newsletter of March 25th, 2025, the most updated information available

Table I: Status of corporate insolvency resolution process

Sl. No.	Particulars	From Oct 2016-March 31, 2024	In 2024-25	Total (As on March 31, 2025)
1.	**Total number of IBC cases admitted**	**7,584**	**724**	**8308**
2.	**Total CIRPs cases Closed**	**5,667**	**715**	**6382**
3.	Closure by: Appeal/Review/Settled/Others	1,177	99	1276
4.	Withdrawal u/s 12A	1,083	71	1154
5.	Approval of Resolution Plan	935	259	1194
6.	Commencement of Liquidation	2,472	286	2758
7.	**Ongoing CIRPs**	**1,917**	**NA**	**1926**

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

i) As seen above the Code has resolved 1194 CDs through resolution plans. Further,1276 cases have been settled through appeal, review or settlement and 1154 cases have been withdrawn under section 12A. The Code has 2758 CDs for liquidation. The resolved CDs resulted

inrealisation of approx 32.8% as against the admitted claims

Till March 2025, 1374 CDs have been completely liquidated. How many could have been saved <u>with timely resolution</u> is a matter for conjecture.

Just to understand the situation, some more data is put forward

Table II: Pre and post-admission case disposal and realistion

Particulars	Number	Impact
Pre-admission case disposal*	**30,310**	Rs. 13,78,423 crore of underlying default addressed
Post-admission case disposal#	**4,502**	
Resolution#	*1,194*	Rs. 3,88,904 crore realised
Settled/ withdrawn/ closed#	*2,430*	Rs. 1,03,806 crore
Liquidation completed#	*878*	Rs. 9,330 crore realised
Total Disposal	**34,812**	

*Notes: * Figures as per NCLT Data; # Figures as per IBBI Data*

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

ii) Further details regarding the progress are shown in the following two tables just to get the overall picture

Table 1: Details of CIRP cases as on March 31, 2025

CIRP cases	Number
Admitted	8308
Closure:	
Withdrawn under section 12A	1154
Closed on appeal or review or settled	1276
Resolution plans approved	1194
Liquidation orders passed	2758
Ongoing CIRP cases	1926

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

Table 2: Outcome of CIRPs, initiated Stakeholder-wise, as on March 31, 2025

Outcome	Description	CIRPs initiated by/for				
		FCs	OCs	CDs	FISPs	Total
Status of CIRPs	Closure by Appeal/Review/ Settled	402	863	11	0	1276
	Closure by Withdrawal u/s 12A	343	803	8	0	1154
	Closure by Approval of Resolution Plan	725	383	82	4	1194
	Closure by Commencement of Liquidation	1290	1172	296	0	2758
	Ongoing	1133	678	114	1	1926
	Total	**3893**	**3899**	**511**	**5**	**8308**
CIRPs yielding Resolution Plans	Realisation by Creditors as % of Liquidation Value	187.0	128.0	144.9	134.9	170.1
	Realisation by Creditors as % of their Claims	33.2	25.2	18.1	41.4	32.8
	Average Time taken for Closure of CIRP	723	724	577	677	713
CIRPs yielding Liquidations	Liquidation Value as % of Claims	5.3	8.2	8.1	-	6.0
	Average Time taken for order of Liquidation	518	511	455	-	508

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

No doubt the CIRP framework has matured somewhat but it also highlights delays in various steps including the admission process. A major factor behind the reduced rate of CIRP admittance appears to **be the time taken by the Adjudicating Authority (AA) to process applications**, a concern that has been widely acknowledged in regulatory discussions.14

iii) Timelines for ongoing CIRP's

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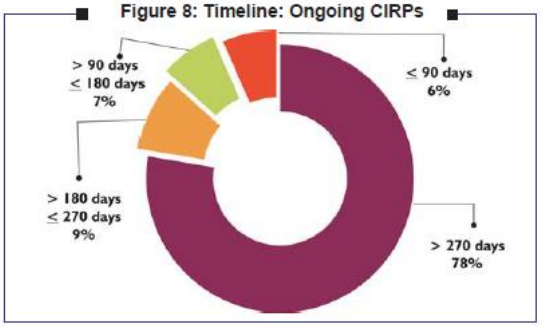
C.4.2 For Ongoing CIRPs

The status of ongoing CIRPs in terms of time taken, as of March, 2025, is presented in Figure 8.

Figure 8: Timeline: Ongoing CIRPs



Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

We see that as of March 2025 we see that 1194 CIRPs, which have yielded resolution plans by the end of March 2025 took average 597 days (**after excluding the time of the AA**) for conclusion of

process,. **This is the most important point for purposes of these article**. **<u>We are excluding the time taken by the AA.</u>** Similarly, the 2758 CIRPs, which ended up in orders for liquidation, took on average 508 days. Moreover, 1374 liquidation processes, closed by submission of final reports took on average 646 days for closure. Also, 1704 voluntary liquidation processes, closed by submission of final reports, took on average 401 days for closure.

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Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

<u>C: SUGGESTED COURSES OF ACTION</u>

So, what can be done about this?? As mentioned above, the purpose of this article is to discuss the judicial aspects, though there are many other aspects as studied by the MCA & Valuation Standards Board. There are a lot of procedures which could be followed by the NCLT and judicial authorities which could speed up matters and avoid unnecessary load on judges.

Some of the suggested remedies could be

1. Streamlining the admission process could help enhance value realization and optimize costs for all stakeholders. Therefore, going forward, improving efficiency at the admission stage would really ick start the process expeditiously and streamline the process overall.

2. **Give more legislative teeth to mediation**. It should be ensured that mediation is a serious legislative business, and given that both parties have agreed to it, there is no room to change their minds later. At present mediation is being treated more like a "casual armchair discussion or conference" not something which is legally binding. Once it is clear that mediation **<u>has serious legal teeth</u>** with limited recourse to appeal, a very large number of cases (maybe as high as 80%) where the differences are not "deal threating red lines" would get resolved.This would allow the more serious and complicated cases to be handled by the NCLT in more depth, certainly with more quality and speed

3. **Increase the bandwidth urgent**-This would involve increasing the legislature by way of more courtrooms and increased judge strength. Also, the technology backup inclusive of AI to enable smoother hearing and processing of cases.

The effectiveness of the IBC framework is significantly constrained by the limited number of NCLT and NCLAT benches handling insolvency cases. The NCLT currently has only 15 benches with a limited number of judicial and technical members, leading to a backlog of cases and extended waiting periods. The sheer volume of pending cases, coupled with a high number of new CIRP filings, has overwhelmed the judicial infrastructure. The lack of adequate judicial manpower results in delays at every stage, from

admission to resolution plan approval, ultimately defeating the IBC's objective of time-bound resolution.

4. **Experience of Judicial Authority**-To have two fresh judges or a wholesale change in the NCLT disrupts all the past learning about the case and reinvents the wheel. One judge should always remain whilst the others have changed, which keeps the learning intact on existing cases. If there are two new judges, then the whole case may have to be revisited. This applies to the documentation staff and general administrative setup as well, but it is the judges who tend to get transferred regularly.

5. **Preparation of standardized checklist** to clear routine cases-This would particularly help when it relates to standard objections, documentation and Interlocutory applications. Could shorten the time thus , leaving the judges to focus their attentions on really important matters like Resolution plans, PUFE transactions etc.

6.**Two tier system**-Maybe there could be a 2 Tier system in the NCLT's whereby the resolution plans would be heard by senior judges and other routine matters to be heard by a separate bench (under NCLT only) of relatively junior judges. In this way, the juniors gain expertise and experience in NCLT matters and can take over from the seniors when the time comes

7. Individual Insolvency/PG -Take Individual insolvency cases and maybe minor personal guarantees out of the equation as far as NCLT's are concerned or get it subordinated to a bench under the NCLT. These would obviously be less complicated and would not need the high level of judicial discernment needed in many CIRP cases. In the few cases where really large amounts are involved ,a funding limit says INR 50 cr could be kept which goes to the main NCLT bench. These would definitely not exceed more than 5-10% of the cases, thereby again increasing the quality of scrutiny and due diligence by the judiciary.

8. Ensuring computerization and digitization of court processes to the extent possible, including proper use of enhanced AI tools to settle very routine matters. Machines can work 24x 7 whereas humans cannot and clear out a lot of the arrears, stuck in routine procedure and documentation.

9. SEC 10 cases –procedure could be eased

There could be a case for Section 10 CIRP's to be delegated and approved in a less formal and speedier manner, as the **cooperation levels are very different** and hence these types of judicial resources are not needed. The lender's interest is taken care of by CoC so basically, it is only the adherence to other provisions of the Act and interests of operational creditors that need to be looked at carefully.

10. A secondary market for resolution assets could also reduce the number of liquidation cases piled up at the NCLT. Instead, the assets which are market worthy could be disposed of easily and efficiently as the market price automatically determines the value. This is distinctly different from the auction, which is an interventionist process and subject to judicial overview.

D. INTERLOCUTORY APPLICATIONS AND CAPACITY BUILDING

The insolvency resolution process is often delayed due to prolonged legal battles, multiple
appeals, and numerous interlocutory applications (IAs) filed before NCLT and NCLAT.
Obviously Stakeholders, including financial and operational creditors, resolution applicants, and even suspended directors, would look at their own interests and frequently challenge various aspects of the process, from the admission

of CIRP to the approval of resolution plans. It also **burdens the judiciary with frivolous objections and prevents swift resolution**. Therefore, the IA process would need to be streamlined.

CONCLUSION

Strengthening timeline adherence under IBC requires a multi-pronged approach, addressing judicial delays, procedural roadblocks, creditor decision-making, and stakeholder cooperation. Efficient court processes, digitization and use of AI, and stricter focus on important compliance measures will enhance recovery rates and reduce delays .

These have been enumerated above and focused on making the IBC a more efficient process thereby enthusing investors to submit resolution plans. It must never be forgotten that the real purpose of the code is to **enhance India's economic growth by enhancing investment and entrepreneurship**. This

5/13/25, 9:11 AM Doing Business in India - World Bank Group

Topics	DB 2020 Rank	DB 2020 Score	DB 2019 Score	Change in score (% points)
Overall	63	71.0	67.5	3.5
Starting a Business	136	81.6	81.0	0.6
Dealing with Construction Permits	27	78.7	72.1	6.6
Getting Electricity	22	89.4	89.2	0.2
Registering Property	154	47.6	47.9	0.3
Getting Credit	25	80.0	80.0	..
Protecting Minority Investors	13	80.0	80.0	..
Paying Taxes	115	67.6	65.4	2.2
Trading across Borders	68	82.5	77.5	5
Enforcing Contracts	163	41.2	41.2	..
Resolving Insolvency	52	62.0	40.8	21.2

is best done by the taking over of ready-made companies by new and more capable managements, rather than reinventing the wheel. There is a huge socio-economic benefit also in that the normal employees do not get disrupted and the families remain stable. ..

These process are **inevitably linked to the Ease of Doing Business** Ranking which enthuses both domestic and international investors to get provide substantial investment and technological innovations, **and "enforcement of contracts"** which means essentially the speed and stability of judicial decisions, is a very fundamental part of this

Hence importance and relevance of this article.

ANNEXURE-WORLD BANK-EASE OF DOING BUSINESS

Source: World Bank

The World Bank's Ease of Doing Business index is a ranking system that assesses the regulatory environment for businesses in different countries. A higher ranking (lower numerical value) indicates a more business-friendly environment with simpler regulations and stronger property rights.

TIME IS MONEY: EXAMINING DELAYS IN CIRP AND THE PATH TO A QUICKER RESOLUTION

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Abstract

The Corporate Insolvency Resolution Process (CIRP), established under the Insolvency and Bankruptcy Code (IBC) of 2016, was designed as a time-sensitive framework to rehabilitate financially troubled enterprises and optimize stakeholder value. Nonetheless, in practice, significant delays have emerged as a persistent problem, compromising the fundamental aims of the Code. This paper statistically overviews the CIRP process, examines the reasons for delay in CIRP, and provides suggestions from national and International jurisdictions to facilitate the timely resolution of distressed companies.

The Perspective

The earlier Indian Insolvency and bankruptcy framework was significantly fragmented, arising from various legal forums, which led to ambiguity and uncertainty in terms of jurisdiction and process. The Insolvency and Bankruptcy Code (IBC), 2016 provides a systematic and timely procedure for addressing insolvency and bankruptcy matters. The IBC was implemented to optimize the insolvency procedure facilitating expedited resolutions of distressed companies. The principal objectives of the IBC are to maximize asset value, foster entrepreneurship, safeguard creditors' rights, and enhance credit accessibility within the economy while balancing the interest of all stakeholders.

The Corporate Insolvency Resolution Process (CIRP)

Addressing insolvency has been termed the Chakravyuha challenge for the Indian economy.The CIRP is a legal procedure commenced under the IBC to break that Chakravyuha to address corporate insolvency matters. It is a systematic process that facilitates resolution of financially troubled organizations within the stipulated timelines.

The Corporate Insolvency Resolution Process (CIRP) commences upon a corporate debtor's default, permitting a financial creditor, operational creditor to initiate insolvency proceedings. The Adjudicating Authority on admission of the application designates an Interim Resolution Professional (IRP) to oversee the debtor’s operations and establish a Committee of Creditors (CoC) consisting of financial creditors. The Committee of Creditors (CoC) may either affirm the Insolvency Resolution Professional (IRP) as the Resolution Professional (RP) or designate a different individual. The RP acts as the process manager and supervises the CIRP, during which resolution applicants submit resolution proposals. The CoC assesses and approves a feasible and appropriate resolution plan. If a feasible resolution plan is not received / submitted within the stipulated

timeframe, the Adjudicating Authority mandates the liquidation of the corporate debtor.

During the CIRP the Resolution Professional has to follow a robust compliance process and to ensure adherence to Code and Regulations with the objective of promoting transparency and accountability during the resolution process.

Corporate Insolvency Resolution Process (CIRP): A Statistical Overview

Analysis of the CIRP data as per the latest statistics, as shown in the IBBI Quarterly Newsletter for the period of October to December 2024 reveals that the overall number of admitted CIRPs has risen to 8,175, with 1,983 cases now active, representing 24.25% of the total. The percentage of delayed resolutions beyond the designated resolution timeframe accounts for over 74% of concluded cases.

Examining Delays in CIRP

The delays observed in a substantial number of resolved CIRPs are due to procedural intricacies, litigation-driven extensions, and the capacity limitations of adjudicatory bodies defeating the objectives of the IBC. Some key reasons leading to delays in completion of CIRP are as under :

- Inadequate or Lack of proper perspective and understanding with regard to the intent, objectives, Provisions of the IBC amongst the Resolution professionals and member of the committee of creditors often add to such delays.
- Multiple objections to the resolution plan filed by the various stakeholders lead to delays in CIRP
- Sometimes Multiple objections are filed by the various stakeholders even before resolution plan is approved by the creditors
- Due to non-cooperation from the Corporate Debtor the process of corporate insolvency resolution gets derailed
- It is also observed that often multiple stakeholders approach the adjudicating authority with similar objections.
- The CIRP also gets delayed due to inadequate number of NCLT members , Lack of expertise of members in IBC matters
- It has also been observed that rejection of claims by resolution professional based on technicalities and delays without giving reasons often leads to protracted litigation by the creditors.

Path to a Quicker Resolution

The essence of IBC is time bound resolution while balancing the interest of all stakeholders. There is an imperative need for reducing delays in CIRP. Following suggestions would facilitate timely resolution of distressed companies.

- A Screening Mechanism should be implemented to scan out frivolous interim applications which lead to avoidable delays. Penalties should be prescribed for filing frivolous or vexatious applications to discourage such practices and streamline the process.
- The Adjudicating authority should hear all objections only at the stage of consideration of the resolution plan

before passing order for approval of resolution plan. This will save judicial time by avoiding multiple indulgences in the same matter without affecting the rights of stakeholders

- For routine matters such as extensions of time, replacement of resolution professionals, and applications under Section 19 of the Code etc. A fast-track procedures should be introduced so that these matters do not cause unnecessary delays.

- Section 96 of the Code may be considered to be amended to prevent avoidable misuse of the interim moratorium by guarantors to delay recovery actions.

- Data analytics tools should be used to facilitate identification of changes, trends, patterns and discrepancies in asset declarations, while detecting potential fraudulent transfers or hidden assets.

- Mandatory training in practical aspects of Insolvency law through case studies of Insolvency and Bankruptcy law practices prevailing in other jurisdictions should be mandated for Members of NCLT and NCLAT

- A dedicated bench of the Supreme Court should be constituted to hear IBC matters on priority.

- NCLT's should also have IBC dedicated benches which should take up admission cases on priority. These changes will increase transparency and efficiency,

- The resolution professionals should be mandated to provide sufficient reasons for rejection of any claim. This will help the creditors to understand the reasoning and reduce litigation

- The minutes of the meeting of the committee of creditors in which feasibility and viability of the resolution plan has been discussed should form part of Form H (form in which resolution professional presents resolution plan for approval of the adjudicating authority) for helping the adjudicating authority to better understand the underlying thought process and reasoning behind approval of the resolution plan by the C0C and expedite the approval process.

- RP should make Strategic use of artificial intelligence for monitoring of compliance and identification of preferential transactions making the process more efficient.

- Using and leveraging mediation and arbitration during CIRP has the potential to resolve disputes faster and reduce court burden.

- Hearings at a stretch would expedite the CIRP decision making process. Multiple adjournments lead to delays in approval of resolution plans.

- RP should use Electronic Case Management Systems which can facilitate real-time updates and efficient handling of cases

- IBBI should consider auto-populate fields from existing data and revise some of the forms for reducing data duplication thus reducing compliance burden of RP

- Response of the corporate debtor to the issues raised in CIRP application should be mandated by stipulating a timeline failing which the AA would be authorized to assume the occurrence of the default and initiate the CIRP proceedings accordingly.

- Introduction of a pre-packaged insolvency resolution process (PPIRP) for large corporates also can help reduce the delays. This will motivate and incentivize the promoters to constructively engage with creditors, discuss restructuring / resolution plan possibly even before occurrence of any default.

- There are many large corporations that have a complex group structure. There is an imperative need for operationalizing a workable framework for group insolvency.

- Appointment of an additional Insolvency Professional (AIP) to handle compliance-related tasks for large insolvency cases (i.e. debt size exceeding a certain amount) in addition to the RP would facilitate more efficient corporate insolvency resolution process with better outcomes.

Learning from International Jurisdictions

Valuable lessons can be learned from the measures to address delays in their insolvency processes implemented by several countries:

- **United States (Chapter 11 Bankruptcy):** The U.S. system emphasizes pre-packaged bankruptcy plans where debtors and creditors negotiate terms before filing, significantly reducing court involvement and time taken for resolution. Debtor-in-possession insolvency resolution structure helps the companies maintain operations during the insolvency process leading to expedited resolutions.

- **United Kingdom (Administration):** UK has a streamlined administration process wherein appoints an Administrator is expeditiously appointed to manage the company's affairs, helping to expedite the resolution.

- **Singapore (Insolvency, Restructuring, and Dissolution Act):** Singapore's framework offers mechanisms for expedited debt restructuring once a restructuring application is filed. The Act encourages mediation and arbitration as alternative dispute resolution mechanisms to speed up the process.

Conclusion

The IBC seeks to redress distress of the companies in a time bound manner while balancing the interest of all the stakeholders. However, the data and experience over the last 8 years of IBC reflects unrequited delays in the resolution process, which were the primary reason for failure of the earlier insolvency laws. The delays in CIRP result in undesired implications in terms of huge haircuts, commercial uncertainty, and the erosion of the value of assets bringing about changes as suggested could help in realizing the Objectives of the Code.

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ANALYSING WHETHER DISQUALIFICATION UNDER SECTION SECTION 164(2)(A) OF THE COMPANIES ACT, 2013 AUTOMATICALLY TRIGGERS SECTION 29A(E) INELIGIBILITY UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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Backdrop & Context

The insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 ('IBC') aim to ensure responsible corporate rescue, but questions arise when the same yardstick is applied across different legal frameworks, often running in parallel. A recurring legal puzzle is whether a director disqualified under Section 164(2)(a) of the Companies Act, 2013 — typically for non-filing of financial statements or annual returns — automatically becomes ineligible to submit a resolution plan under Section 29A(e) of the IBC. While the legislative language appears aligned in spirit, judicial interpretations have painted a more complex picture. This article delves into the evolving jurisprudence, analyzing key judgments and conflicting views therefrom to assess whether a statutory disqualification in company law should be mirrored in the extant insolvency regime. The author would like to restrict his focus to clause (e) of section 29A of the IBC.

Relevant Legal Provisions

Section 164(2)(a) of the Companies Act, 2013 reads as "No person who is or has been a director of a company which has not filed financial statements or annual returns for any continuous period of three financial years shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so

Section 29A(e) of the IBC stipulates that "A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is disqualified to act as a director under the Companies Act, 2013". Amidst this cauldron of legalese lies the answer to a vexed yet fundamental question which is "whether a director who meets the rigors of disqualification under section 164(2)(a) of the Companies Act, 2013 automatically becomes disqualified under the IBC, 2016 or whether such disqualification triggers only if an official order to that effect was passed by the relevant competent authorities?", especially since the extant jurisprudence on this question provides contrasting views.

Contrasting Judicial Precedents

i) View 1 - disqualification need to be formally determined or notified by a competent authority
ii) View 2 - strict automatic disqualification follows

View 1

"**There is no concept of deemed disqualification of resolution applicants; specific orders from the competent authorities are necessary for such disqualification**" says the Hon'ble Supreme Court of India in its landmark judgement rendered in May 2023, in M/s M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder and Anr. (Civil Appeal Nos. 1682-1683 of 2022) [MANU/SC/0517/2023] [2023 SCC Online SC 574].

Relevant facts of the case & Key contentions: It was alleged that Mr. M.K. Rajagopalan, who was a resolution applicant in a Corporate Insolvency Resolution Process ('CIRP'), had to be disqualified u/s 29A of the IBC read with section 164(2)(b) of the Companies Act, 2013, for being a director in M/s International Aviation Academy Private Limited, whose audited financial statements showed that for FYs 2010-2011 to 2017-2018, Rs. 12,03,000 had been collected as "share application money pending allotment" and had not been refunded.

The key contention was that such failure would attract disqualification by law and by extension, render the said individual ineligible to submit a resolution plan under IBC.

Key insights from the Hon'ble Apex Court's decision:

- Disqualification was not automatic unless the competent authority viz. Registrar of Companies made a formal determination and issued a disqualification order, one could not assume ineligibility based on mere allegations.
- The Hon'ble Court placed weight on the fact that the Director Identification Number ('DIN') of the said individual was marked as "active compliant", reinforcing its understanding that no official disqualification was in place.

Thus, the Hon'ble Apex Court recorded its disapproval for the concept of "deemed disqualification" under the Companies Act, 2013.

View 2

Per contra, in a recent judgement dated January 6, 2025, the Hon'ble National Company Law Appellate Tribunal ('NCLAT'), Principal bench, New Delhi took a different view on this vexed issue in case of M/s Fortune Chemicals Ltd vs. Mr. Ashok Kumar Jaiswal & Anr. [Company Appeal (AT) (Insolvency) No. 1263 of 2022.]

Facts of the case: M/s Fortune Chemicals Ltd ('the Appellant') had submitted a resolution plan during the CIRP of M/s Aarya Industrial Products Pvt. Ltd. along with an earnest money deposit ('EMD') of Rs. 25 lakhs. The key events are listed as follows:

- Resolution plan submitted by the Appellant on February 19, 2021.
- Resolution Professional ('RP') rejected the said plan on April 3, 2021, citing non-compliances.
- EMD refunded on May 10, 2021, upon the Appellant's request.
- Appellant filed Interlocutory Application seeking reconsideration on October 1, 2021 i.e., nearly 6 months later.

Key contentions of both sides: The Appellant contended that it was the sole bidder and willing to submit a compliant plan, arguing against liquidation.

However, the Respondent RP maintained that the Appellant was ineligible under Sections 29A(e) and (j) of the IBC, due to a disqualified director in control, along with procedural lapses and non-compliance with statutory requirements. One Mr.

Avanish Kumar Singh was a director in two companies, namely, M/s Fortune Chemicals Ltd. i.e., the Appellant and M/s Gomtidhara Agro & Dairy Products Pvt. Ltd. ('GADPPL') which was incorporated on February 28, 2014 and since then, it had not filed its financial statements or annual returns. Thus, Mr. Avanish Kumar Singh became disqualified to be appointed a director of any other company as per provisions of Section 164(2)(a) of Companies Act, 2013 for a period of five years with effect from December 1, 2017 (i.e. the date on which GADPPL failed to file financial statements and annual returns for a continuous period of three financial years). As a connected person, Mr. Singh's disqualification rendered the Appellant ineligible to submit a resolution plan u/s 29A of the IBC.

Key insights from the Hon'ble NCLAT's decision

- Appellant was ineligible u/s 29A(e) of the IBC, due to being connected with a disqualified director (Mr. Singh).
- Reinforced that CoC's decision is non-justiciable and thus, the ld. CoC's commercial decision to liquidate was upheld.

This judgment reinforces the interpretation that disqualification under Section 164(2)(a) of the Companies Act, 2013 — if established — automatically disqualifies a person from being a resolution applicant under Section 29A(e) of IBC.

Author's comments

At this juncture, it bears vital notice to emphasize here that section 29A was inserted into the IBC vide the IBC (Amendment) Bill, 2017, which was ultimately enacted as Act 8 of 2018, with retrospective effect from November 23, 2017. The need for its introduction can be traced to the Statement of Objects and Reasons appended to the said amendment, which read as follows:

Quote

The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that ***persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors****. (emphasis supplied)*

Unquote

In its judgement in M/s Chitra Sharma and ors vs. Union of India [WP (Civil) No. 744 of 2017], the Hon'ble Apex Court had weighed in on the introduction of section 29A into the IBC. At para 31 thereof, the Hon'ble Apex Court records thus:

Quote

Parliament has introduced Section 29 A into the IBC with a specific purpose. The provisions of Section 29 A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process.

……

Parliament was evidently concerned over the fact that persons whose misconduct has contributed to defaults on the part of bidder companies misuse the absence of a bar on their participation in the resolution process to gain an entry. Parliament was of the

view that to allow such persons to participate in the resolution process would undermine the salutary object and purpose of the Act. *It was in this background that Section 29 A has now specified a list of persons who are not eligible to be resolution applicants. (emphasis supplied)*

Unquote

In section 4 of the Report on the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design, issued in November 2015, a case was made for the establishment of the Insolvency and Bankruptcy Board of India ('IBBI'), an important bedrock of which was "to create the perception that India had a swift and competent bankruptcy process". And indeed, the ld. IBBI has been ever so nimble footed in its approach to adapt the IBC to the growing needs of the economy. And to this end, it also becomes very vital to ensure that the same IBC does not become hostage to lack of speedy and timely legal implementation in certain other concomitant regulatory frameworks, as this would throttle the effectiveness of the IBC and put fetters on its continued progressive march.

Whilst it is imperative to ensure that there is wider participation of resolution applicants, it must well be kept in mind that section 29A was introduced in the IBC to disqualify all those persons, who had contributed in the downfall of the corporate debtor or were unsuitable to run the company because of their antecedents,whether directly or indirectly.

UNDERSTANDING RECENT CHANGES IN THE AUCTION AND PRIVATE SALE PROCESSES UNDER IBC

CA NITESH KR. MORE
Insolvency Professional

The Insolvency and Bankruptcy Code has recently witnessed significant updates aimed at refining the processes associated with the auction and private sale of assets belonging to corporate debtors in liquidation. These updates underscore the importance of transparency, accountability, procedural clarity, and maximization of asset value for creditors. Given the complexity and critical nature of insolvency proceedings, these amendments are intended to instill greater confidence among stakeholders, ensuring that the processes followed during liquidation are not only fair and equitable but also efficient and value-driven. The modifications provide enhanced guidelines and stringent compliance requirements for liquidators, thereby reinforcing their roles and responsibilities. Additionally, these changes facilitate broader participation from potential bidders through clearer rules, structured timelines, and improved accessibility, ultimately leading to increased competition and optimal realization of asset values.

Auction Process Under IBC

The auction process remains the primary means of liquidating corporate debtor assets and is meticulously outlined in Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Schedule I provides detailed, step-by-step procedures that liquidators must strictly adhere to when conducting auctions. It includes guidelines on timelines, preparation of comprehensive public notices, managing earnest money deposits, undertaking bidder due diligence, and ensuring transparent bidding processes. The regulations also clearly specify criteria for setting reserve prices, conditions for reducing these prices, the permissible platforms for conducting e-auctions, and the mechanisms for handling multiple auction rounds to maximize asset realizations. These exhaustive procedural guidelines ensure uniformity, fairness, and accountability throughout the auction process, promoting stakeholder trust and significantly enhancing the efficiency and effectiveness of asset liquidation.

1. Public Notice for Auctions

- **Initial Notice**
  Liquidators are mandated to issue a public notice announcing the first auction within 45 days from the liquidation commencement date. The consultation committee may, however, advise an extension.
- **Subsequent Notices**
  If the initial auction fails, subsequent notices must be issued within 15 days from the failed auction unless advised otherwise by the committee.
- Notices should explicitly inform bidders about eligibility under Section 29A of IBC, requiring an undertaking to prevent disqualification risks and potential forfeiture of earnest money deposits.

2. Auction Timeline

- Each auction process must be strictly completed within 35 days of issuing the public notice. This streamlined timeline ensures efficiency and quick realization of assets.

3. Conducting Due Diligence

- Prospective bidders are granted comprehensive access to assets for thorough inspection and due diligence. Liquidators must proactively facilitate this process, providing necessary documentation and clarifications.

4. Earnest Money Deposit (EMD)

- To secure participation, bidders must deposit earnest money at least two days before the auction. The deposit must not exceed 10% of the asset's reserve price, emphasizing fairness and bidder commitment.

5. Marketing Strategy and Execution

- Liquidators must devise and implement a strategic marketing plan, potentially involving professional marketers. The plan typically includes well-targeted advertisements, detailed asset information sheets, public notices, and engagement with intermediaries or agents.

6. Terms and Conditions for Auctions

- Reserve prices are critically determined based on valuations as per regulation 35. If an auction fails, the reserve price may decrease incrementally up to 10%, or even up to 25% upon committee advice, thereby balancing asset value preservation and successful asset disposal.
- Liquidators are explicitly prohibited from imposing any non-refundable fees for auction participation, thus ensuring broader bidder participation.

7. E-Auctions and Physical Auctions

- From April 1, 2025, auctions must exclusively occur via the eBKray electronic platform, enhancing transparency by displaying the highest ongoing bids. Exceptions, however, require specific approval from the adjudicating authority.
- Physical auctions may be held, subject to adjudicating authority approval, particularly when such auctions are anticipated to yield higher realizations.

8. Multiple Auction Rounds

- To maximize value realization, liquidators have the option to conduct several rounds of auctions. Each round aims at progressively increasing asset value and attracting more competitive bids.

9. Auction Completion Procedures

- Upon the auction's conclusion, the highest bidder is obligated to fulfill payment within 90 days, or within the duration specified in the auction notice.
- Liquidators must verify the eligibility of the highest bidder within three days of declaring them, consulting with the committee before finalizing the successful bidder. If ineligibility is confirmed, the bidder's deposit is forfeited, and the next highest bidder may be considered following the same verification process.
- Payments delayed beyond 30 days accrue interest at 12% per annum. Non-payment within the prescribed period results in auction cancellation.

10. Finalization and Asset Transfer

- After full payment, a certificate of sale or deed is executed by the liquidator, formally transferring the asset ownership and facilitating physical asset delivery according to the terms stipulated in the sale agreement.

Private Sale Process Under IBC

Under certain conditions, private sales may be utilized as an alternative mechanism for asset disposal, particularly suitable for perishable items or rapidly depreciating assets, or under special authorization from adjudicating authorities. The private sale process provides flexibility and speed in situations where traditional auction methods may not be practical or effective. Typically, private sales are considered in scenarios involving assets that risk

significant value erosion if not sold immediately, such as perishable goods, high-depreciation assets, or items susceptible to theft or damage.

Private sales require explicit approval from the adjudicating authority, ensuring robust oversight and preventing potential conflicts of interest or collusion. Liquidators must establish clear justification for opting for private sales, demonstrating the urgency, suitability, and potential for enhanced asset realization. To maintain integrity and transparency, the liquidator must meticulously document the entire private sale process, including the identification and engagement with prospective buyers, negotiations, pricing strategies, and terms of the transaction.

Moreover, the regulations prohibit liquidators from conducting private sales with related parties or professionals appointed by them unless specifically authorized by the adjudicating authority. Liquidators are obligated to vigilantly monitor and report any suspicion of collusion between potential buyers, related parties, or creditors, submitting detailed reports for the adjudicating authority's review and appropriate action.

Through these stringent and structured guidelines, the private sale process under IBC ensures that asset disposal remains transparent, accountable, and aligned with the overarching objective of maximizing creditor value.

Conditions Permitting Private Sales

- Assets eligible for private sale typically include those prone to rapid deterioration or loss in value if not promptly sold.
- Prior explicit approval from the adjudicating authority is mandatory.
- Strict regulations exist to prevent sales involving related parties or appointed professionals without the adjudicating authority’s specific permission.

Preventing Collusion

- Liquidators must vigilantly monitor for potential collusion among buyers, related parties, or creditors. Any suspicion of collusion mandates immediate reporting to the adjudicating authority for corrective measures and appropriate intervention.

Executing Private Sales

- Liquidators must design an effective strategy for identifying and directly approaching potential buyers. This strategy can include direct negotiations, leveraging networks of retail channels, or other innovative methods designed to maximize asset sale returns.
- Upon reaching an agreement, the confirmation of private sales must involve consultation and explicit approval from the consultation committee, ensuring oversight and transparency.

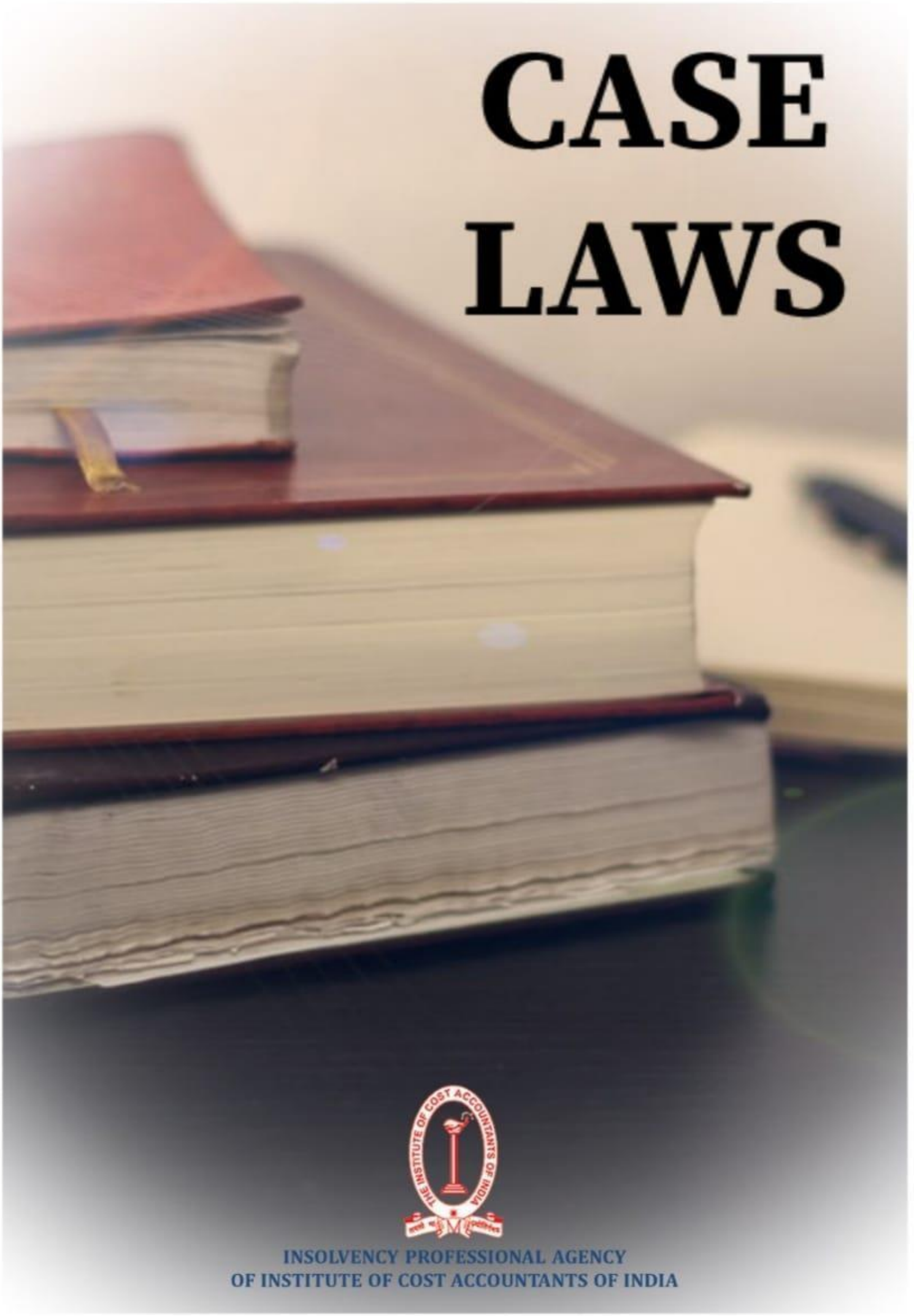
Completing Private Sales

- Sales are completed following the established terms and conditions, with asset delivery contingent upon full receipt of payment from buyers.

Conclusion

Recent amendments under the IBC significantly refine the asset sale process during liquidation, emphasizing transparency, procedural efficiency, and creditor value maximization. These changes address long-standing concerns regarding delays, inefficiencies, and potential manipulations during asset liquidation processes. By establishing clear, detailed, and enforceable guidelines, the IBC amendments facilitate more predictable outcomes, reducing uncertainties for creditors and stakeholders. Whether through structured auctions or regulated private sales, these updated processes aim to ensure swift, equitable, and transparent asset liquidation, ultimately serving the best interests of creditors, debtors,

investors, and all other stakeholders involved. These enhancements are pivotal for maintaining market confidence, promoting ethical standards, and improving overall economic stability and effectiveness within insolvency resolution practices.



CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 36 - CORPORATE LIQUIDATION PROCESS - LIQUIDATION ESTATE

Stesalit Ltd. v. Union of India [2025] 172 taxmann.com 33 (Calcutta)

Dues for welfare of workers is not permissible to be included in liquidation estate and is to be utilized only for payment of dues of such workers in full.

The petitioner company, which had been taken over by new management under CIRP, remained active. Thereafter, respondent No. 4, ex-employee of the petitioner company had resigned and filed an application under provisions of Payment of Gratuity Act, 1972, which was allowed by Controlling authority and directed petitioners to pay gratuity with interest to ex-employee of petitioner company. Petitioners filed a writ petition, arguing that controlling authority had wrongly allowed ex-employee's claim without considering that company was now under CIRP, governed by Insolvency and Bankruptcy Code, 2016. It was noted that Respondent No. 4's gratuity claim had been considered, although entire claim was admitted, but only Rs. 38,808.43 was approved under CIRP.

Held that CIRP is a recovery mechanism for creditors unlike liquidation which is a way to end a company's life. Dues for welfare of workers were not permissible to be included in liquidation estate and was to be utilized only for payment of dues of such workers in full. Since no specific fund had been maintained for such a purpose by company, entire dues of workers would not come under 'liquidation assets' and, a worker would be entitled to his total dues from assets of the company, with such claim being above claims of other creditors. Where company had never closed down, as the petitioner company had been taken over by new management under CIRP and remained active, jurisdiction of concerned authority had never been ousted and controlling authority had jurisdiction to decide issue of gratuity, as company had never closed down.

SECTION 96 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - INTERIM MORATORIUM

Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth [2025] 172 taxmann.com 145 (SC)

Penalties imposed by NCDRC under consumer protection laws are regulatory in nature and do not constitute "debt" under IBC; moratorium under Section 96 does not extend to regulatory penalties imposed for non-compliance with consumer protection laws.

The appellant was engaged in real estate development and had several pending consumer complaints before the NCDRC (National Consumer Disputes Redressal Commission) filed by homebuyers alleging delay in possession, deficiency in service, and breach of contractual obligations. The NCDRC allowed the complaints and directed the appellant to complete construction, obtain the requisite occupancy certificate, and hand over possession and imposed 27 penalties on the appellant for deficiency in service by failing to deliver possession within a reasonable time. The respondent, as decree holders, subsequently filed execution applications seeking execution of the order of the NCDRC as the appellant failed to comply with the directions of the NCDRC. Subsequently, the appellant, facing insolvency proceedings before the National Company Law Tribunal under the IBC, moved an application before the NCDRC seeking a stay of execution proceedings. The appellant in the application before the NCDRC sought to contest the execution on various grounds, including financial

distress, adverse market conditions in the real estate sector, and its ongoing insolvency proceedings. The appellant contended that it had entered into settlement agreements with several decree holders and had already made significant payments, satisfying a substantial portion of the execution claims. However, some instalment payments were delayed due to reasons beyond its control, particularly adverse economic conditions in the real estate sector. The appellant also contended that it was one of the personal guarantors to credit facilities extended to A by the State Bank of India (SBI). Due to an alleged default in repayment, insolvency proceedings under section 7 of the IBC were initiated against A before the NCLT, Mumbai Bench. Additionally, SBI initiated proceedings under section 95 of the IBC against the appellant, the proprietor of the Judgment Debtor. Consequently, an interim moratorium was triggered against the appellant as per section 96, which the appellant claimed barred further legal proceedings, including the ongoing execution proceedings before the NCDRC. The NCDRC vide the impugned order rejected this application, holding that consumer claims and the penalty imposed did not fall within the moratorium under the IBC.

Held that penalties imposed by NCDRC are regulatory in nature and arise due to non-compliance with consumer protection laws and they are distinct from "debt recovery proceedings" under IBC. Section 96 is more limited in its scope, staying only "legal actions or proceedings in respect of any debt". Moratorium under section 96 does not extend to regulatory penalties imposed for non-compliance with consumer protection laws. Penalties imposed by NCDRC arising from a consumer dispute, are not in nature of ordinary contractual debts but rather serve to compensate consumers for loss suffered and to deter unethical business practices and, therefore, such damages are covered under 'excluded debts' as per section 79(15) and they do not get benefit of moratorium under section 96

Case Review : Order of NCDRC, New Delhi in EA-140-2019, dated 7-2-2024. affirmed.

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

Arena Superstructures (P.) Ltd. v. State of U.P. [2025] 172 taxmann.com 273 (Allahabad)

NCLT does not have power to issue direction to Noida Authority to revalidate layout map; Where a developer 'ASPL' after getting layout map sanctioned from NOIDA Authority, collected money from homebuyers, and instead of completing project syphoned away money from homebuyers and thereafter orchestrated insolvency just to get out of any civil and legal consequences, there was no other recourse but to refer instant matter to Enforcement Directorate (ED), which was competent to investigate.

The petitioner developer 'ASPL' was allotted a plot under Sports City project in Noida through a sub-lease deed. In terms of lease deed ASPL had to pay land premium in 16 half yearly instalments along with interest and other dues. ASPL had defaulted on payment, however for reasons best known to NOIDA Authority, they did not ever ask ASPL to pay outstanding dues. Subsequently, ASPL started developing residential apartments and after getting layout map sanctioned, collected money from homebuyers, and instead of

completing project syphoned away money from homebuyers and thereafter orchestrated insolvency just to get out of any civil and legal consequences.

Held that NCLT does not have power to issue direction to Noida Authority to revalidate layout map; this power is only with Supreme Court and High Court under Article 226 of Constitution of India. Since apparently a fraud had been played by management of ASPL and money had been misappropriated/syphoned off, hence Court could not blindly give seal to order passed by NCLT approving reverse insolvency of ASPL. In facts and totality of circumstances, there was no other recourse but to refer instant matter to Enforcement Directorate (ED) to investigate. ED must also ensure fair investigation, as provided in law, to retrieve siphoned/laundered money by erstwhile management of company and further ED would make all endeavours to find out trail of syphoned/misappropriated money so that same would be brought back into company and with that outstanding dues of NOIDA Authority, State Government, additional compensation to farmers and other dues would be paid off.

SECTION 42 - CORPORATE LIQUIDATION PROCESS - APPEAL AGAINST DECISION OF LIQUIDATOR

Asean International Ltd. v. Sanjeev Maheshwari [2025] 172 taxmann.com 405 (NCLAT- New Delhi)

Where liquidator rejected claim of appellant and appellant failed to follow prescribed remedy under section 42, appellant could not seek relief through Section 60(5).

The appellant supplied bunkers, fuels, fresh water, oil etc. to three vessels owned by the corporate debtor. The appellant filed its claim before liquidator. Liquidator rejected claim on ground that it was submitted beyond two months from last date fixed for submission of claim as per public announcement. Appellant did not take any steps to challenge decision of the liquidator. It was noted that the appellant had clearly failed to file their claim, including interest on account of delayed payment, within time laid down in terms of regulation 16 of Liquidation Process Regulations, 2016, which led to rejection of claim filed before liquidator.

Held that since section 42 provides a clear remedy to the appellant which remedy has not been resorted to, the appellant could not seek same relief by invoking provisions of section 60(5). The appellant having failed to challenge rejection of their claims within 14 days timeline prescribed under section 42, the appellant had indirectly sought to revive their claim by filing a petition under section 60(5). Since liquidator had not committed any error in trying to complete liquidation process, appeal against impugned order was to be dismissed.

Case Review: Asean International Ltd. v. Sanjeev Maheshwari [2025] 172 taxmann.com 319 (NCLT- Mum.), affirme

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM

Maharashtra State Electricity Distribution Company Ltd. v. Ravi Sethia Resolution Professional of Morarjee Textiles Ltd. [2025] 172 taxmann.com 449 (NCLAT- New Delhi)

Where during CIRP against a corporate debtor, appellant-electricity distribution company disconnected electricity connection of corporate debtor due to non-payment of outstanding dues, since statutory provisions did not contain any prohibition in payment

towards supply of essential goods during CIRP, NCLT's direction to appellant not to discontinue electricity connection necessary for running manufacturing facilities of corporate debtor was to be upheld.

CIRP was initiated against the corporate debtor. The appellant-electricity distribution company filed its claim towards unpaid bills of electricity supplied prior to CIRP. The appellant issued notices under section 56 of Electricity Act, 2003 informing that if current electricity dues of the corporate debtor were not paid, the appellant would disconnect their electricity supply. Subsequently, the appellant disconnected electricity connection of the corporate debtor. NCLT by impugned order directed the appellant not to discontinue electricity connection necessary for running manufacturing facilities of the corporate debtor. It was noted that as per statutory scheme, the corporate debtor was entitled to receive essential services during moratorium and even if payment had not been made, that would form part of CIRP costs. Further, RP himself had written to the appellant, stating that the corporate debtor would take steps to clear electricity dues.

Held that non-payment of electricity dues could not be a ground to discontinue electricity which was a clear mandate by section 14(2), therefore, order of NCLT directing the appellant not to discontinue electricity connection necessary for running manufacturing facilities of the corporate debtor was to be upheld.

Case Review : Axis Bank Ltd. v. Morarjee Textiles Ltd. [2025] 172 taxmann.com 365 (NCLT - Mum.) affirmed**.**

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM – GENERAL

Vishnoo Mittal v. Shakti Trading Company [2025] 172 taxmann.com 452 (SC)

Where appellant-director of corporate debtor had drawn cheques in favour of respondent-trading company which were dishonoured and respondent filed complaint against appellant under section 138 of NI Act, in view of fact that cause of action for offence under Section 138 of NI Act arose after imposition of moratorium against corporate debtor and appellant was suspended from his position as director of corporate debtor as soon as IRP was appointed, complaint against appellant was to be quashed.

The appellant was director of the corporate debtor. A contract was executed between the corporate debtor and respondent-trading company where respondent was to function as a super stockist of the corporate debtor. In consequence of business relationship between two companies, the appellant, in his capacity as director of the corporate debtor, had drawn eleven cheques in favour of the respondent. However, said cheques were dishonoured. A complaint was filed against the appellant for offence under section 138 of NI Act. Meanwhile, insolvency proceedings against the corporate debtor commenced and a moratorium under section 14 was imposed. The appellant approached High Court seeking quashing of proceedings initiated under section 138 of NI Act against the appellant. High Court by impugned order dismissed the appellant's petition. It was noted that cause of action for offence under Section 138 of NI Act arose after imposition of moratorium. Further, when notice was issued to the appellant, he was not in charge of the corporate debtor as he was suspended from his position as director of

the corporate debtor as soon as IRP was appointed and, thus, it was not possible for the appellant to repay amount in light of section 17 of IBC.

Held that High Court ought to have quashed case against the appellant by exercising its power under section 482 of CrPC. Therefore, impugned order passed by High Court was to be set aside and complaint pending before CJM filed by respondent against the appellant was to be quashed.

Case Review : Order of Single Judge of the Punjab and Haryana High Court, in Vishnoo Mittal v. Shakti Trading Co. CRM-M No. 10624/2020 (O&M) dated 21-12-2021, set aside.

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

Himanshu Singh v. Union of India [2025] 172 taxmann.com 530 (SC)

Where in respect of subvention scheme, builders-cum-developers defaulted in payment of EMI/pre-EMI to banks, when homebuyers had not yet been granted possession of their units, in view of possible collusion between builders and banks, CBI was directed to constitute a SIT to uncover nexus between banks/financial institutions and builders-cum-developers.

Disbursement of funds by banks was made to builders-cum-developers through subvention schemes for various housing development projects. There were three parties to subvention schemes, aggrieved homebuyers, builders-cum-developers, and banks/financial institutions. Aggrieved homebuyers purchased units in some or other development projects launched by builders-cum-developers. Through subvention scheme, builders-cum-developers advertised that they would pay EMI/pre-EMI of loans taken by homebuyers to purchase said units in their development projects, till specified cut-off taken or till date of possession, depending on terms of each tripartite agreement. Homebuyers obtained loans from respondent-banks. In furtherance of these tripartite agreements, banks disbursed majority of loan amounts to builders-cum-developers upfront. In 2018 and 2019, when builders-cum-developers defaulted on required EMI/pre-EMI payments, banks began to demand payments from homebuyers. At time of demanding payment from them, homebuyers had not still received possession of their purchased units. In fact, development projects were still under construction, incomplete, or had not even begun construction till then. Owing to this, CIRP proceedings commenced under IBC against builders-cum-developers, before various National Company Law Tribunals across those regions. Aggrieved by banks claiming monthly instalments from them, homebuyers approached High Court of Delhi for a writ of mandamus, inter alia, directing, banks to charge EMI/pre-EMI payments from builders-cum-developers, not homebuyers and to refund already recovered amount to homebuyers and recover it from builders-cum-developers. High Court, vide a common judgment dismissed writ petitions owing to alternate remedy available before Real Estate Regulatory Authority. Challenging same, homebuyers approached Supreme Court.

Held that there was a possible collusion between builders-cum-developers and

banks/financial institutions. In such circumstances, it was necessary to constitute a Special Investigation Team (SIT) to uncover nexus between banks/financial institutions and builders-cum-developers with respect to development projects where homebuyers had paid substantial amounts and where development projects had not even been launched, had not completed construction, or had not begun construction. Standing Counsel for Central Bureau of Investigation (CBI) was directed to remain present in Court for purpose of constituting an SIT.

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

Vaibhav Goel v. Deputy Commissioner of Income-tax [2025] 172 taxmann.com 601 (SC)

Where income tax dues of corporate debtor for assessment years 2012-13 and 2013-14 were not part of approved Resolution Plan, same stood extinguished and, therefore, subsequent demand raised by Income Tax Department for assessment years 2012-13 and 2013-14 was invalid and could not be enforced.

CIRP was initiated against the corporate debtor. The appellant-Joint Resolution applicants submitted a resolution plan which was approved by NCLT. Income tax dues of the corporate debtor for assessment years 2012-13 and 2013-14 were not part of approved resolution plan. However, Income Tax Department raised demand for said assessment years. NCLT rejected the appellant's application for declaring demands as invalid and NCLAT by impugned order affirmed said order of NCLT.

Held that income tax dues of corporate debtor owed to Central Government for assessment years 2012-13 and 2013-14 were not part of approved Resolution Plan, thus, same stood extinguished and subsequent demand raised by Income Tax Department for assessment years 2012-13 and 2013-14 were invalid and could not be enforced.

Case Review: Vaibhav Goel v. Dy. CIT [2022] 138 taxmann.com 215 (NCLAT- New Delhi), set aside.

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

Krishan Kumar Jajoo v. Piramal Enterprises Ltd. [2025] 172 taxmann.com 718 (NCLAT- New Delhi)

Where security trustees were holding 'security' not for themselves, but on behalf of, and for benefit of financial creditor/lender, lenders could enforce security documents even if he was not a party to trusteeship agreement and, thus, financial creditor had right to initiate PIRP against personal guarantor even without being a party to trusteeship agreement.

Vide impugned order personal insolvency proceedings were initiated by NCLT against the appellant / personal guarantor to the

corporate debtor. The guarantor challenged proceedings contending that there was no privity of contract between parties, as deed of guarantee was executed by guarantor in favour of Security Trustee and not with lender. Further, there was no valid Board resolution to show that lender was authorized to file its application under section 95.

Held that in terms of Security Trusteeship Agreement and Facility Agreement, it was clear that security trustees were holding 'Security' not for themselves, but on behalf of, and for benefit of financial creditor/lender, and lenders, could therefore, enforce security documents even if he was not a party to trusteeship agreement. From definition of financial creditor under section 5(7), it was clear that creditor was within his right to initiate section 95 application and could not escape his obligations thereunder. Since guarantor did not raise any objection regarding Board Resolution, it could not be said that there was no valid Board Resolution to show that lender was authorised to file its application under section 95. It was prerogative of creditor to initiate insolvency process against principal borrower or guarantor or both and, thus, guarantor's proposition that since adequate securities were available to lender to recover outstanding debt from principal borrower, no case was required to be initiated against the guarantor was not convincing.

Case Review: Piramal Enterprises Ltd. v. Krishan Kumar Jajoo [2025] 172 taxmann.com 565 (NCLT-New Delhi), affirmed.

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

State Bank of India v. Deepak Kumar Singhania [2025] 172 taxmann.com 840 (NCLAT- New Delhi).

Demand Notice issued under rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019 cannot be treated as a Notice for invocation of guarantee for purpose of filing section 95 application by creditor.

The appellant, financial creditor bank had provided financial assistance to the corporate debtor, in which personal guarantees were given by company's promoters. Meanwhile, the corporate debtor was ordered to be liquidated. During pendency of said application, the appellant issued a demand notice under rule 7 upon respondent, personal guarantor, calling upon to make payment. Since no response was received from the respondent, an application under section 95 was filed by the appellant. Adjudicating Authority held that the appellant having failed to invoke guarantee, application filed under section 95 did not satisfy mandatory pre-requisite for issuing a legally valid demand notice under rule 7(1) for filing such application.Held that guarantor with regard to whom guarantee has not been invoked, would not be a debtor and no default could be committed by guarantor unless guarantee was invoked as per terms of deed of guarantee. Thus, insolvency resolution process against a guarantor, against whom debt had not become due, was not understandable. A personal guarantor becomes a debtor only when guarantee is invoked, making him liable to make payment to lender. A demand Notice issued under rule 7(1) cannot be treated as a notice for invocation of guarantee for purpose of filing section 95 application by the creditor. Since default before issuance of notice under rule 7(1), must exist on part of guarantor, notice under rule 7, sub-rule (1) was not a notice, invoking guarantee, thus, there was no error in order of Adjudicating Authority, rejecting section 95 application filed by the appellant.

Case Review: State Bank of India v. Deepak Kumar Singhania [2025] 172 taxmann.com 681(NCLT- Allahabad) affirmed).

IPA-ICMAI, successfully hosted the "Roundtable on IBC with Stakeholders of the IBC Ecosystem" at CMA Bhawan, Bengaluru on May 5, 2025.

HIGHLIGHTS FROM THE 62ND NATIONAL COST AND MANAGEMENT ACCOUNTANTS' CONVENTION (NCMAC)-2025

GUIDELINES FOR ARTICLE

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

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

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

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

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

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

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

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

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

✓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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