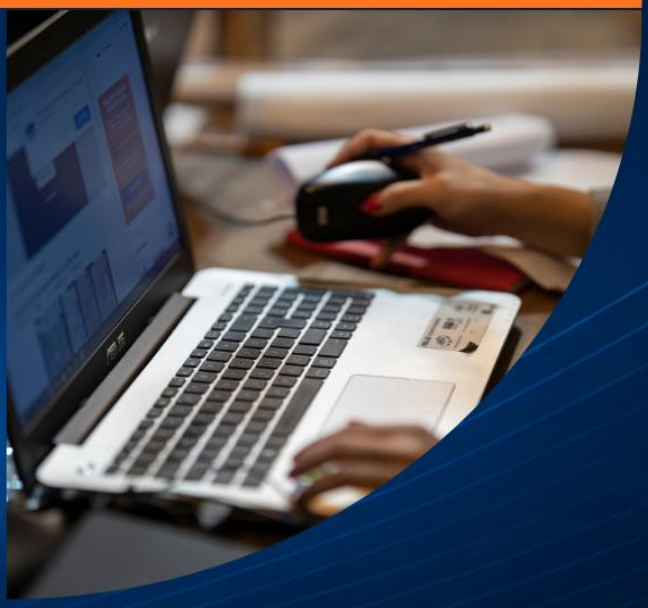
MAY 2026

INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA
(SECTION 8 COMPANY REGISTERED UNDER COMPANIES ACT 2013)
PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

IPA-ICMAI



OVERVIEW

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

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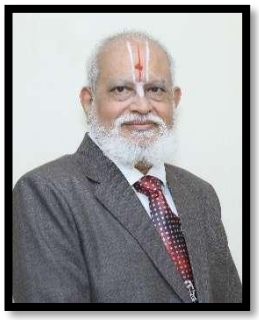

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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Reader,

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

The IBC has become 10 years old this month on 28th May, on which date, ten years ago, the Insolvency and Bankruptcy Code (IBC) became a new law, the new Code.

This ecosystem has grown rapidly, giving rise to several new species, viz., IPA, IU, IPE, etc., and a new profession, Insolvency Professionals (IP). IPs, starting with the initial experienced professionals who were already dealing with the process of resolving corporate stress earlier and were inducted as the first set of IPs, have blazed a remarkable trail of epoch-making resolutions, along with the other stakeholders of the ecosystem, generating capital in trillions of Rupees to banks that were struggling with the burden of NPAs. Indeed, as all regulators have acknowledged, IBC practitioners can claim significant credit for helping Indian Banks become among the healthiest banking geographies globally. Equally important changes are the stress on resolution leading to corporate revival and turnover and the remarkable change in debtor behaviour and outlook to credit discipline.

Aptly, the review of the decade gone by of the Insolvency and Bankruptcy regime has started in right earnest, including a critical appraisal. IPA-ICMAI co-organised a 'conclave IBC at 10' in March in Kolkata, which saw enthusiastic participation from a large number of professionals. At IPA-ICMAI, we are proud to have been part of this remarkable decade and played our due role as a frontline regulator and facilitator in these formative years.

I invite more and more professionals to contribute articles and opinions to the E-Journal on all aspects of the IBC ecosystem and related domains to enrich readers' knowledge base. At the same time, I would caution professionals against sending articles generated by Artificial Intelligence (AI) agents that merely restate known developments and rehash old rulings.

On my personal behalf, I extend my sincere best wishes to all the professionals and readers for a fulfilling and satisfying practice, as well as excellent health and peace of mind throughout.

Jai Hind.

Mr. G.S. Narasimha Prasad
Managing Director

MR. VINAY KUMAR SANDUJA APPOINTED AS MANAGING DIRECTOR, IPA- ICMAI

The Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI) is delighted to welcome **Mr. Vinay Kumar Sanduja** as its **Managing Director**, effective **June 01, 2026**.

A highly accomplished legal and regulatory professional with over 22 years of experience, Mr. Sanduja brings extensive expertise in insolvency law, arbitration, competition law, corporate restructuring, and dispute resolution. Throughout his distinguished career, he has contributed significantly to policy development, legal reforms, and institutional strengthening within India's insolvency and dispute resolution ecosystem.

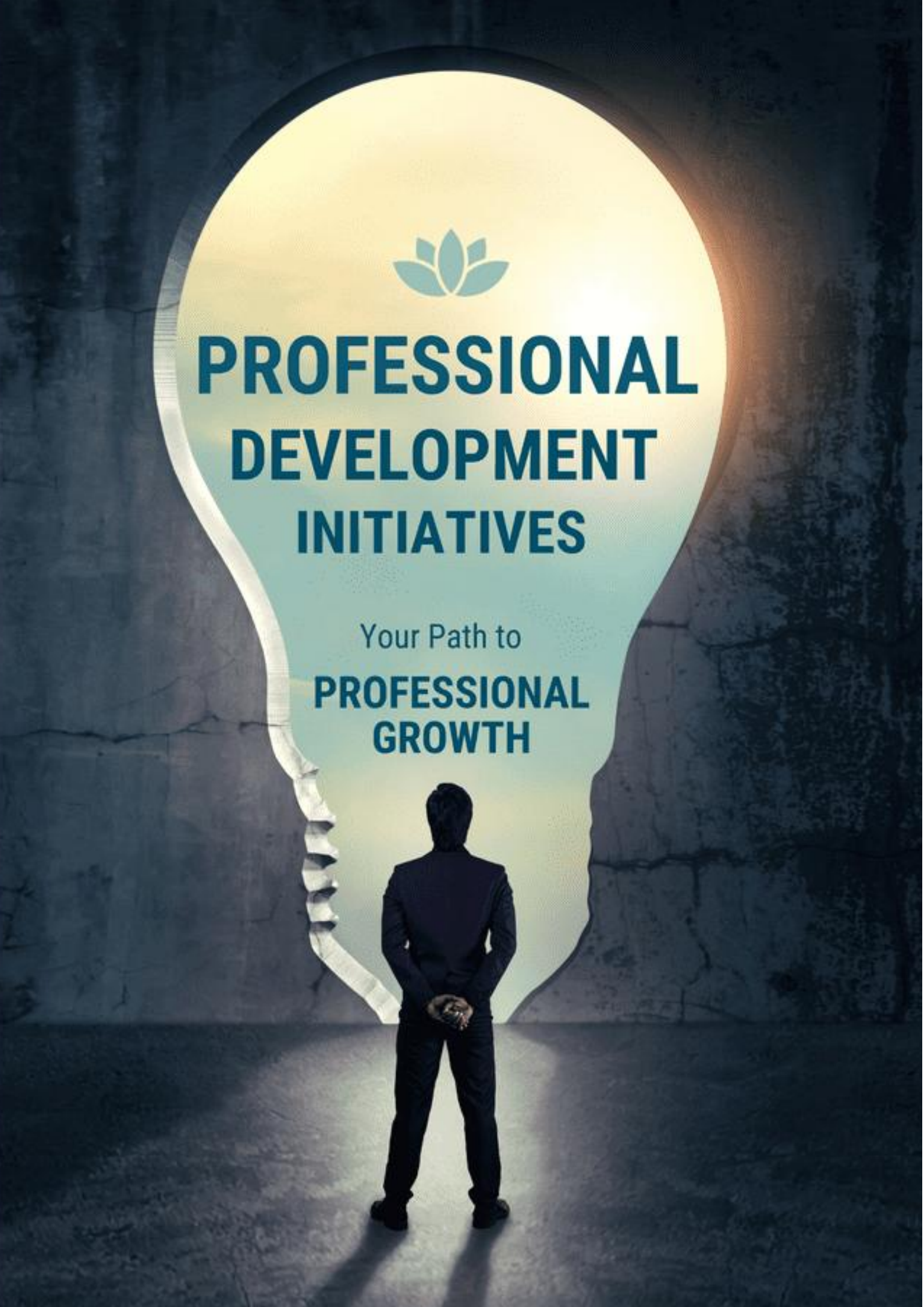
To mark this important occasion, IPA-ICMAI organised a welcome ceremony in the presence of:

- **Dr. Bhaskar Chatterjee**, Chairman
- **Ms. Divya Sharma**, Independent Director
- Esteemed Insolvency Professionals
- Institutional Partners and Distinguished Stakeholders

The event reflected the collective confidence and enthusiasm of the insolvency community as it welcomed Mr. Sanduja to this leadership role.

Under his guidance, IPA-ICMAI looks forward to further strengthening institutional excellence, advancing professional capacity building, contributing to policy evolution, and promoting global best practices in insolvency and bankruptcy administration.

We extend our heartfelt congratulations and best wishes to Mr. Vinay Kumar Sanduja for a successful and impactful tenure ahead.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EVENTS CONDUCTED

MAY 2026	
DATE	**EVENTS CONDUCTED**
May 2nd, 2026	***A Workshop on Amendments to IBBI Regulations (IBBI Discussion Paper dated 15th April 2026)*** held on **May 2nd, 2026**, focusing on the proposed amendments under the IBBI Discussion Paper dated 15th April 2026.
May 04th & 10th, 2026	***4th Batch – 50 Hours Hybrid Mediation Training Program: Jointly organised by IPA-ICMAI and Missing Bridge*****,** virtual sessions held from **May 4th to 7th, 2026** and the in-person sessions conducted on **May 9th & 10th, 2026.**
May 10th, 2026	***A Workshop on "Managing Labour, Criminal and Money Laundering Risks as an Insolvency Professional"* on May 10th, 2026,** to enhance the practical understanding of Insolvency Professionals in handling complex legal and regulatory challenges.
May 15th & 16th, 2026	***A Two-day Certificate Training Program for Professionals under the IBC Ecosystem*** on **May 15th & 16th, 2026**, with IP Foundation & In. Corp was conducted in Bengaluru.The programme provided valuable insights into the evolving Insolvency and Bankruptcy Code (IBC) framework, with a strong focus on practical aspects, procedural nuances, and recent regulatory developments.
May 16th & 17th, 2026	***A Two-day Certificate Training Program for Professionals under the IBC Ecosystem* on May 16th & 17th, 2026, in Delhi-NCR.**The programme focused on strengthening professional understanding of the evolving Insolvency and Bankruptcy Code (IBC) framework, covering key practical aspects, procedural developments, and recent regulatory changes
May 23rd to 24th, 2026	**A *Two-Day Learning Session on "Resolution Process under IBC The Real Execution Strategy*" was held on May 23rd to 24th, 2026.** The programme covered advanced The First 7 Days: Setting the Command Center, Information Memorandum, CoC Management, Handling Promoters, Attracting Resolution Applicants (RAs), Negotiation Phase, Drafting a Resolution Plan.
May 29th, 2026	**An *Advanced Workshop on "Role of Authorised Representatives under 2016*" was held on May 29th, 2026.**

IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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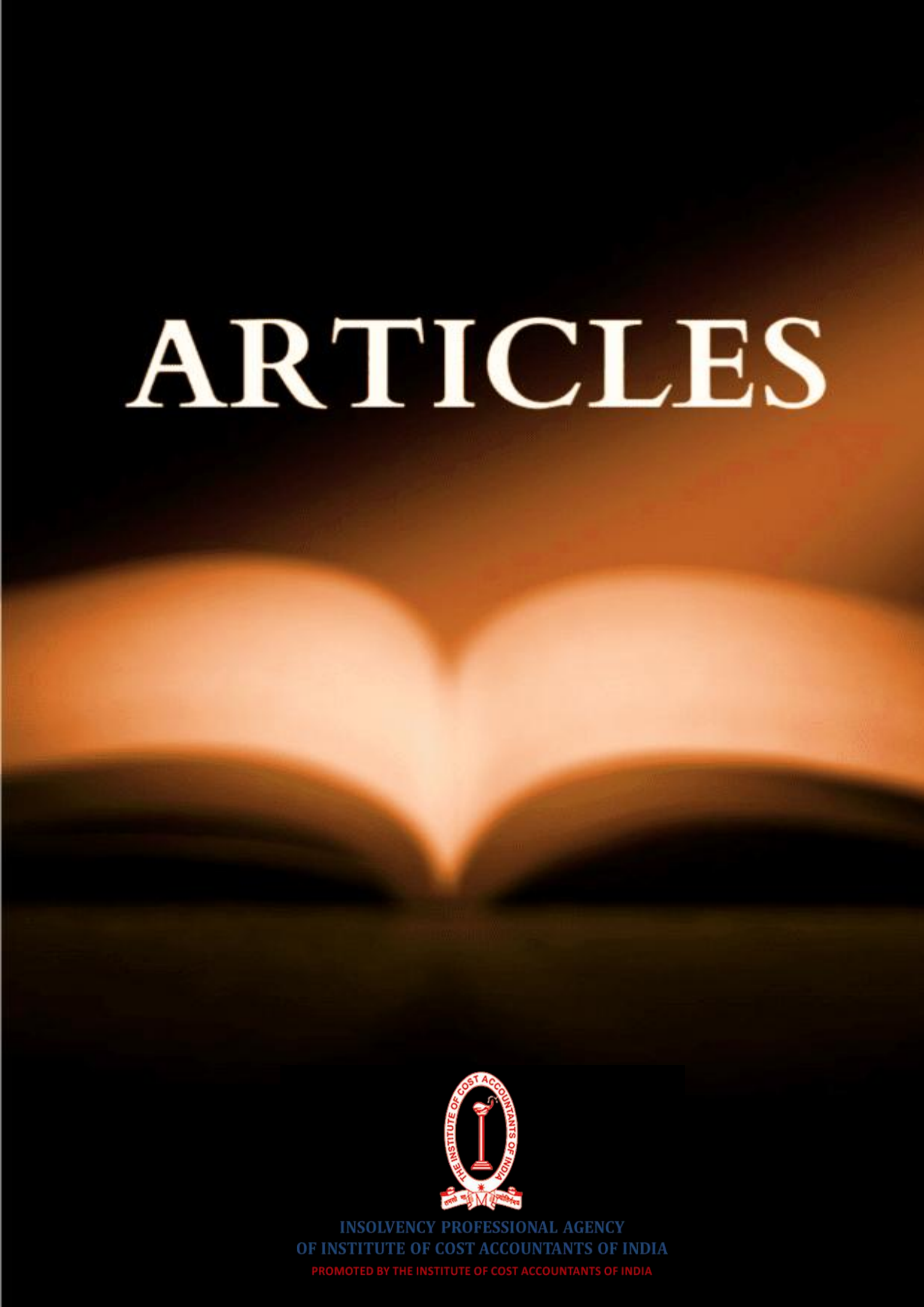
Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy Code

ARTICLES



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA
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MR. DINESH KUMAR SETH
Insolvency Professional

Synopsis

Resolution of Stressed assets under IBC have got a fillip due to execution of various Free Trade Agreements by the Government of India. It has opened the doors of direct investment by the member States of various bloc of nations as well as the individual signatory countries due to provisions of Investment Promotion and Cooperation that have been inscribed in the recent FTAs. The entry of foreign investors may result in increased participation and better value realisation for the stakeholders in the CIRP. However, in order to reap the full benefit, the Resolution Professionals have to provide detailed relevant information in the IM that generates interest from the Prospective Resolution Applicants at international level.

Free Trade Agreements (FTA) are bilateral agreements between India and the other nation/bloc of nations. The FTAs are generally considered to be beneficial for the trade relations between the signatory countries as the restrictions to trade of goods and services are removed by providing access to the markets of participating members. The urgency to do these agreements have increased due to geopolitical situations and restrictions being imposed by various countries on the export of goods that tilt balance of trade in their favour. In order to safeguard their interest and maintain the flow of supply chain, various nations have come forward to execute these bilateral agreements.

However, these agreements have inherent benefit for the resolution of stresses assets by inviting resolution applicants from the signatory countries that widen the scope of value discovery as well as the probabilities of turnaround.

India has been on a spree to execute Free Trade Agreements with various nations. The execution of the agreement has happened in the case of

1. UAE (United Arab Emirate) consisting of Dubai, Abu Dhabi, Sharjah, Ajman, Fujairah, Ras Al Khaimah & Umm Al Quwain
2. EFTA (European Free Trade Association) consisting of Norway, Switzerland, Iceland and Liechtenstein
3. European Union consisting of a bloc of 27 nations including Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherland, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.
4. UK (United Kingdom)
5. Australia
6. New Zealand
7. Oman
8. Singapore
9. Japan
10. South Korea
11. Sri Lanka
12. Thailand
13. Mauritius
14. Malaysia
15. USA (Not Finalised as Yet)

The execution has been/will be followed with the adoption of these agreements by the respective nations through their Parliament or other Legislative Bodies to bring them in force.

Investment Promotion Provisions of FTA

The FTAs that have been recently executed include Investment Provisions, whereby, the investment promotion and cooperation have been made a part of the agreement.

To illustrate the point, Chapter 7 of India-EFTA Agreement provides that.

(a) the EFTA States shall aim to increase foreign direct investment from investors of the EFTA States into India by 50 billion (US dollars) within 10 years from the entry into force of this Agreement and an additional 50 billion (US dollars) in the succeeding 5 years; and

(b) the EFTA States shall aim to facilitate the generation of 1 million jobs within 15 years in India from the entry into force of this Agreement, resulting from inflows of foreign direct investment from investors of the EFTA States into India.

Similarly, Chapter 9 of India-New Zealand agreement provides that.

New Zealand shall promote FDI from investors of New Zealand into India with the aim to increase such investment by US Dollars 20 billion within 15 years of the date of entry into force of this Agreement.

It should be noted that various concessions provided by India under the FTAs to EFTA and New Zealand hinges on the successful investment of the magnitude specified in the provisions and in case of non-compliance, the concessions can be reversed.

These provisions would encourage the enterprises in the jurisdictions of various signatories to invest in India either directly or through Joint Ventures. This would directly benefit the resolution and turnaround of stressed assets, as the advanced technologies and adequacy of capital would favour the Resolution Applicants from these jurisdictions to start their business with an established base at India.

India being a developing country has a shortage of capital as well as technical knowledge. The enterprises in the developed world, viz. Switzerland, UK, New Zealand are well capitalised and have advanced know how but constrained by the issue of demand. Thus, the requirements are complimentary in nature. Both the parties would have sufficient motivation to enter into a business situation, and this can alter the ratio of resolution vs liquidation in the context of IBC (Insolvency & Bankruptcy Code), 2016.

Generating Interest from Foreign Investors

In order to attract the foreign investors, the Resolution professionals need to prepare a Detailed Information Memorandum that can be used by the Prospective Resolution Applicants for discussion with their Board/Management Committee. The IM (Information Memorandum) should contain the details of the fixed assets including the details of the Plant & Machinery, as being exhibited under Liquidation proceedings. Further, the attractiveness of that industry should be elaborated in terms of their contribution to the supply chain. The depreciation of the currency is a real hazard for the foreign investor and therefore, the export potential of an industry can be an alleviating factor for committing the requisite investment. The attractiveness of an industry to the foreign investor can bring in increased value realisation for the creditors and therefore, the efforts made in this regard would definitely add value to the CD (Corporate Debtor).

In the next step, Invest India organisation should be encouraged to give due publicity about the CD as they have set up country desks for providing information about the investment in India to foreign enterprises. As the CIRP (Corporate Insolvency Resolution Process) is a time bound process, the RP (Resolution Professional) with the help of COC (Committee of Creditors) should give an opinion on the revival of the CD and the ensuing cost involved therein. This would help the investors with estimated cost and the viability of the CD. The Foreign currency regulations on account of investment, repatriation and other RBI regulations should be well documented for the benefit of the foreign investors.

Further, there are specific platforms created by various nations for promoting cross border collaboration. South Korea has established state funded trade and investment promotion agency **KOTRA (Korea Trade Investment Promotion Agency)** that facilitates international business and helps Korean SMEs expand globally. Similarly, Japan has established **JETRO (Japan External Trade Organisation)** that promotes mutual trade and investment between Japan and the rest of the world. These organisations through their India Offices frequently partner with local entities to host trade delegations, business-to-business (B2B) matchmakings, and cultural-business fairs. In order to generate substantial interest for the stressed asset under insolvency, the RP should touch base with them.

Focus on Sectors creating Synergy between PRA and CD

Not all proposals would find favour with the foreign investors, therefore, the focus sectors under each FTA and/or major industry strengths

of the respective country should be taken into consideration for increasing the prospects of the revival of CD by a particular investor. ***To be specific, UAE has added food as a focus sector in FTA with India*** for obvious reasons, as the region largely imports food for its residents and India being a predominant agricultural economy and proximate to the UAE can serve the needs better. There are a good number of agricultural sector entities that face stress due to various reasons and have been admitted under IBC with little scope of resolution due to under capitalisation and low shock absorption capacity. The dedicated demand from UAE can help them keeping afloat and the investors from UAE have inherent need to keep them functional. This can be effectively utilised by the Resolution Professionals for proposing the food processing sector entities under stress to UAE investors with better chance of resolution.

Similarly, Switzerland under EFTA is renowned for its innovative and research oriented pharmaceutical industry while India is the generic pharma supplier to the world at large. The combination of the research at Switzerland and cost-effective manufacturing strength of India can help generate super normal profits for the combined entity. For this particular reason, the generic pharma players facing stress at India can be showcased to Swiss pharma players with higher chances of resolution. The commitment from EFTA Member countries to invest USD 100 Billion in India over the next 15 years would also push the enterprises to join hands with Indian entities.

On the other hand, Australia is a mining behemoth and has been supplier of coking coal that goes into manufacturing of steel. The investors from Australia can get interested in the entities involved in the power generation and ancillary activities along with the ferrous sector. This interest can extend to the shipping and logistics sector also for the smooth movement of goods between the boundaries of the two signatory nations.

Recently, UAE has partnered with India for storing their oil and gas at Indian soil, as India is one of the largest consumers of the same from UAE. The storage facilities will be built by UAE without any financial assistance from India. Due to geopolitical turbulences, both the entities are safeguarding their interests through this collaboration. However, the strategic players from India can take a benefit out of this development by supporting in the development of these facilities.

Conclusion

Resolution Professionals try various methods and employ umpteen means to generate interest from the prospective Resolution Applicants for resolution of entities under stress. However, the results have varied across time. Although, there is no one size that fits all and the sector, location, assets, technology and various other factors play role in bringing the PRAs (Prospective Resolution Applicants) at the table. Yet, generating interest from PRA is not enough as the value ascribed to the CD is the dominant factor in gathering requisite votes from the members of the COC. Free Trade Agreements with Investment provisions can help in getting PRA that are ready to pay economic/realisable value of the CD. Further, with long term capital infusion, the revival of the CD is also sustainable as the shock absorption capacity is enhanced due to the infusion of equity rather than outside debt. Most of the revival operations fail due to lack of sector knowledge and non-availability of adequate capital. The foreign investors as PRA fulfil these prerequisites and can act as white knights for the CD under resolution with fair value realisation to the creditors and sustainable revival for the benefit of all stakeholders.

OPERATIONAL CREDITORS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016: CHALLENGES, JUDICIAL TRENDS AND FUTURE OUTLOOK

MR. SUTANU SINHA
Insolvency Professional

Abstract

The Insolvency and Bankruptcy Code, 2016 ("IBC") transformed India's insolvency framework by replacing fragmented and delayed recovery mechanisms with a consolidated, time-bound and creditor-driven process.

Within this structure, operational creditors occupy a complex and often controversial position. Although operational creditors such as suppliers, vendors, employees, statutory authorities and service providers are essential to the functioning of a corporate debtor, they possess limited participation rights in insolvency resolution. The Committee of Creditors ("CoC") remains dominated by financial creditors, while operational creditors generally receive only minimum statutory protection.

This article examines the legal and practical treatment of operational creditors under the IBC. It analyses the recommendations of the Bankruptcy Law Reforms Committee ("BLRC"), statutory provisions, judicial developments and practical experiences emerging from major insolvency cases, particularly the RBI's "Dirty Dozen" accounts. It further examines the position of MSMEs, the impact of judicial decisions such as Swiss Ribbons, Mobilox and Essar Steel, and the continuing tension between value maximisation and equitable stakeholder treatment.

Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 marked one of the most significant commercial law reforms in India. Prior to the IBC, insolvency proceedings were governed through multiple statutes including the Sick Industrial Companies Act, the Companies Act, the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act. The multiplicity of forums resulted in delay, value destruction and low recoveries.

The IBC sought to create a unified insolvency framework focused upon time-bound resolution, preservation of enterprise value and maximisation of creditor recovery. The Code introduced the Corporate Insolvency Resolution Process ("CIRP"), under which the management of a defaulting company shifts to an insolvency professional and commercial decisions are taken by the Committee of Creditors.

However, IBC deliberately distinguishes between financial creditors and operational creditors. While operational creditors can initiate CIRP under Sections 8 and 9, they ordinarily do not possess voting rights in the CoC constituted under Section 21. This distinction has generated continuing debate regarding fairness, commercial practicality and constitutional validity.

Operational creditors frequently include suppliers, transporters, service providers, employees and government authorities whose contributions are indispensable to the survival of a business. Yet in many insolvency cases they receive only a small fraction of their admitted claims. The position of operational creditors therefore reflects one of the most debated aspects of the Indian insolvency framework.

Concept and Statutory Position of Operational Creditors that insolvency proceedings are not misused as ordinary debt recovery proceedings.

Despite this right to initiate CIRP, operational creditors generally remain excluded from commercial control of the insolvency process. Under Section 21, the CoC consists primarily of financial creditors. Operational creditors may attend meetings only in limited circumstances and ordinarily do not possess voting rights.

The legislative rationale is that financial creditors such as banks and financial institutions are better equipped to evaluate restructuring proposals, assess viability and take long-term commercial decisions. Operational creditors, by contrast, are viewed as entities primarily concerned with payment for goods and services.

BLRC Approach and Legislative Philosophy

The Bankruptcy Law Reforms Committee laid the intellectual foundation of the IBC. The Committee recognized that operational creditors are essential to the commercial ecosystem, particularly in industries dependent upon supply chains and trade credit. However, it consciously differentiated operational creditors from financial creditors.

According to the BLRC, financial creditors possess expertise in credit evaluation, restructuring and viability assessment. Operational creditors usually extend short-term trade credit in the ordinary course of business and may lack the institutional ability to coordinate restructuring decisions.

The Committee therefore recommended:

Both financial and operational creditors should be able to initiate insolvency proceedings; financial creditors should control the CoC; operational creditors should receive minimum statutory safeguards; and(operational creditors should receive at least liquidation value under a resolution plan.

This philosophy shaped the structure of the IBC. The Code prioritised speed, certainty and commercial decision-making by financial institutions while attempting to provide limited protection to operational stakeholders.

The BLRC also acknowledged the vulnerability of MSMEs, employees and trade creditors whose survival often depends upon timely payments. However, it stopped short of granting operational creditors substantive governance rights within the insolvency process.

Judicial Developments

Swiss Ribbons Pvt. Ltd. v. Union of India (2019)

Swiss Ribbons is the leading constitutional judgment concerning operational creditors. The principal challenge before the Supreme Court was whether differential treatment between financial and operational creditors violated Article 14 of the Constitution.

The Apex Court upheld the constitutional validity of the distinction. It held that financial creditors and operational creditors are not similarly situated. Financial creditors are involved in assessing the viability and financial structure of the corporate debtor from the beginning of the lending relationship, whereas operational creditors are primarily concerned with payment for goods and services.

The judgment validated:
- dominance of financial creditors in the CoC;
- limited participation rights of operational creditors; and
- differential treatment in resolution plans.

At the same time, the Court recognised that operational creditors must receive fair statutory protection under Section 30(2)(b).

Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.

The Supreme Court in Mobilox clarified the meaning of "pre-existing dispute" under Section 9. The Court held that insolvency proceedings are not substitutes for ordinary debt recovery litigation. Even a plausible dispute regarding the debt can defeat an operational creditor's insolvency application.

This judgment significantly influenced operational creditor litigation. While it prevented misuse of the IBC as a recovery mechanism, it also increased the burden upon operational creditors seeking to initiate CIRP.

Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta

Essar Steel became the most influential case concerning distribution under resolution plans. The Supreme Court held that equality of payment between financial and operational creditors is not mandatory. It reaffirmed the doctrine of CoC commercial wisdom and limited judicial interference with approved resolution plans.

The Court accepted that differential treatment may be commercially justified provided operational creditors receive the minimum amount required under Section 30(2)(b).

The decision strengthened the primacy of financial creditors while reinforcing only limited safeguards for operational creditors.

Other Important Decisions

In Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, the Supreme Court recognised the importance of preserving essential contracts and utility supplies during CIRP. The judgment indirectly

strengthened the position of operational creditors supplying critical services.

Similarly, decisions concerning electricity distribution companies and essential suppliers recognised that current dues during CIRP should generally be treated as insolvency resolution process costs, thereby encouraging continuity of supply.

Operational Creditors in RBI's "Dirty Dozen" Cases

In 2017, the Reserve Bank of India identified twelve major stressed accounts for immediate insolvency proceedings under the IBC. These accounts collectively represented a substantial portion of India's non-performing assets and included companies such as Essar Steel, Bhushan Steel, Alok Industries and Monnet Ispat etc.

The "Dirty Dozen" cases became the first major practical test of the IBC framework. They also revealed the structural disadvantages faced by operational creditors.

Across most major cases:
- financial creditors controlled the CoC and resolution process;
- operational creditors received minimal recoveries;
- many suppliers suffered haircuts exceeding ninety percent; and
- MSME vendors faced severe financial stress.

In several cases, operational creditors effectively received only liquidation value despite successful continuation of the corporate debtor as a going concern.

Essar Steel highlighted the debate most sharply. Operational creditors argued that they were treated unfairly despite substantial value maximisation achieved through the resolution process. However, the Supreme Court ultimately upheld the commercial discretion of the CoC.

Similarly, in Alok Industries and Monnet Ispat, operational creditors reportedly suffered near-complete erosion of claims. These experiences demonstrated that although the IBC improved overall recovery rates compared with the pre-IBC regime, the gains accrued disproportionately to financial institutions.

MSMEs and Operational Creditors

MSMEs constitute a substantial proportion of operational creditors in Indian insolvency proceedings. Many small businesses supply raw materials, logistics, manufacturing inputs and specialised services to large corporate entities. Their financial survival often depends upon regular payment cycles.

Despite their economic importance, MSME operational creditors remain ordinary operational creditors under the IBC. The Code does not provide them:

- voting rights in the CoC;
- enhanced priority under Section 53; or
- guaranteed parity with financial creditors.

In practice, some protection is provided because resolution professionals and CoCs may continue dealing with critical suppliers during CIRP. Current dues incurred during the insolvency period are generally treated as CIRP costs and therefore receive priority payment.

The IBC has, however, introduced certain protections for MSME corporate debtors themselves. Section 240A relaxes eligibility restrictions under Section 29A, thereby permitting promoters of MSMEs to submit resolution plans. The introduction of the Pre-Packaged Insolvency Resolution Process ("PPIRP") for MSMEs also reflects legislative recognition of the vulnerability of smaller enterprises.

Nevertheless, MSME operational creditors continue to face severe bargaining disadvantages in large insolvency proceedings.

Challenges Faced by Operational Creditors

1. Lack of Decision-Making Power

Operational creditors remain largely excluded from negotiation and voting within the insolvency process. Their inability to influence resolution plans significantly weakens their bargaining position.

2. Heavy Haircuts

In many CIRPs, operational creditors receive only a small percentage of admitted claims. Since secured financial creditors dominate the debt structure and distribution waterfall, operational creditors frequently receive only liquidation value.

3. Delay and Litigation

Operational creditors often face prolonged litigation regarding claim verification, pre-existing disputes and distribution mechanisms. Smaller suppliers may lack the financial ability to sustain lengthy proceedings.

4. Structural Subordination

The distribution waterfall under Section 53 places operational creditors below insolvency resolution costs, secured creditors and unsecured financial creditors. This statutory structure substantially limits recoveries.

5. Vulnerability of MSMEs

MSME suppliers are particularly vulnerable because they often depend heavily upon a limited number of large corporate customers. Significant haircuts or delayed payments may threaten their commercial survival and become bankrupt themselves.

Recovery Trends and Emerging Developments

IBBI data indicates that the IBC has substantially improved recovery rates and strengthened credit discipline within the Indian economy. Resolution under the IBC has generally produced better outcomes for financial creditors than earlier insolvency mechanisms.

However, the same data reveals a clear asymmetry:
• financial creditors recover substantially higher amounts than operational creditors;
• operational creditors frequently receive only nominal payments; and
• unsecured trade creditors remain highly vulnerable.

Over time, certain improvements have emerged. Amendments to CIRP Regulations and judicial scrutiny have increased focus upon "fair and equitable treatment" of operational creditors. Courts have also recognised the commercial necessity of protecting essential suppliers and preserving supply chains during CIRP.

Nevertheless, the core architecture of the IBC continues to prioritise enterprise value maximisation and commercial wisdom of financial creditors over distributive equality.

Future Outlook and Possible Reforms

The future development of the IBC may require a more balanced approach between insolvency efficiency and stakeholder fairness. Excessive dilution of financial creditor control could undermine credit markets and restructuring efficiency. However, a system that consistently imposes devastating losses upon operational creditors may damage supply chains and discourage trade credit.

Possible reforms may include:

- consultative participation rights for large operational creditors;
- enhanced transparency in distribution decisions;
- special protection mechanisms for MSME suppliers;
- Payment of past dues to critical vendors, who continue during CIRP to keep the corporate debtors as a going concern;
- statutory recognition of critical vendors; and
- Stronger fairness review standards for discriminatory treatment.

Any reform must balance commercial efficiency with broader economic fairness. Operational creditors, especially suppliers and MSMEs, are integral to enterprise value creation and business continuity. Their continued marginalisation may weaken confidence in the insolvency framework.

Conclusion

The Insolvency and Bankruptcy Code, 2016 fundamentally transformed India's insolvency regime by introducing a consolidated, creditor-driven and time-bound framework. The Code strengthened recovery culture, improved credit discipline and significantly enhanced the effectiveness of insolvency resolution.

At the same time, the position of operational creditors remains one of the most debated aspects of the IBC. The legislative framework, based upon BLRC recommendations, consciously prioritised financial creditor control and commercial decision-making. Judicial decisions such as Swiss Ribbons and Essar Steel

upheld this distinction as constitutionally valid and commercially rational.

However, practical experience—particularly in the RBI's "Dirty Dozen" cases and thereafter — demonstrated that operational creditors often bear disproportionate losses despite being indispensable to business continuity.

Suppliers, MSMEs and trade creditors remain structurally disadvantaged because they generally lack CoC control, possess limited bargaining power and occupy a lower position within the statutory distribution waterfall.

Although regulatory amendments and evolving jurisprudence have gradually improved safeguards for operational creditors, the IBC continues to prioritise enterprise value maximisation and financial creditor confidence over distributive equality.

The long-term legitimacy of the insolvency framework may ultimately depend upon achieving a more balanced approach that preserves efficiency while ensuring meaningful protection for operational stakeholders who sustain the productive economy.

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BEYOND THE COURTROOM: CREDITOR-INITIATED OUT-OF-COURT INSOLVENCY UNDER IBC(AMENDMENT) 2026 AND THE EMERGING ARCHITECTURE OF RESOLUTION IN INDIA

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Synopsis:

The introduction of the Creditor-Initiated Insolvency Resolution Process (CIIRP) marks an important shift in India's insolvency framework towards earlier intervention and value preservation. This article examines the structure and practical implications of CIIRP, including its creditor-driven approach and debtor-in-possession model. It analyses key challenges such as information flow process, inter-creditor coordination, valuation issues, and stakeholder protection. The article further evaluates whether effective implementation and regulatory clarity can enable CIIRP to move the insolvency ecosystem from a reactive resolution model towards a more proactive and efficient framework.

Abstract:

A decade after the Insolvency and Bankruptcy Code, 2016 reshaped India's Banking and Financial landscape, the system arrived at an uncomfortable paradox, a law designed for speedy recovery system had grown slow, and a process meant to preserve value of assets/business was, in too many cases, consuming it. The average Corporate Insolvency Resolution Process (CIRP) was taking well over 600 days to conclude — more than twice the statutory timeline — while creditors were absorbing haircuts averaging 67% on admitted claims. Against this backdrop, the Insolvency and Bankruptcy Code (Amendment) Act, 2026, enacted in April 2026, introduces a structurally significant new process: the "Creditor-Initiated Insolvency Resolution Process (CIIRP)", introduced in the new Chapter IV-A (Sections 58A to 58K). The CIIRP proposed to be a bold attempt of out-of-court, pre-admission resolution — a mechanism where specified financial creditors, commanding at least 51% of the financial debt, can trigger a structured negotiation process without the immediate intervention of the Adjudicating Authority.

Unlike CIRP, the debtor's management remains in possession under professional supervision, the moratorium is not automatic, and the prescribed timeline of 150 days (extendable once by 45 days) creates pathway for the business and the lender to take immediate action by protecting the value of the assets/business. This article tries analyse and examines CIIRP in respect of the legislative intent, operational process , and impact on the stakeholder (creditors, debtors and Insolvency Professional).

SECTION I

Why Another Insolvency Reform?

Picture a mid-sized TMT manufacturer in Durgapur — named as " Durgapur Metallics Private Limited" — with ₹200 crore in bank loans, mounting receivables from few distressed real estate companies, and a functional business that has been generating cash, albeit weakly, for the past two years and got some good order for few big infra- projects. The promoters are not absconding, the banks are cooperative, and both sides understand that restructuring — through a haircut, extended repayment terms, and fresh working capital — would yield a better outcome than liquidation. Yet the moment a formal insolvency petition is admitted, everything changes. Control moves away from the promoters, and a moratorium places the company in a legal ICU. Employees become uneasy, suppliers tighten/stop credit, and customers quietly shift to competitors. By the time RP has collected claims, the CoC formed, and a resolution plan negotiated and approved, the company that lenders were trying to save may well have become a shadow of itself.

This is not merely hypothetical; it reflects much of India's insolvency experience over the last decade. The IBC transformed the landscape by curbing wilful defaults, empowering creditors, and delivering stronger recoveries than earlier regimes such as SICA/ DRT. But over time,

procedural gaps increasingly became litigation opportunities, adding delays to a system already under strain.

"The IBC was not designed to be a business-management system. It was designed to resolve insolvency quickly and preserve value. When those two objectives began pulling against each other, reform became inevitable."

The Insolvency and Bankruptcy Code (Amendment) Act, 2026, which received Presidential assent in April 2026, is therefore not a response to a specific failure. It is a more considered acknowledgment that the formal adjudication pathway — the CIRP — should be a last resort for genuinely contested distress situations, not the default channel for every financial stress scenario. CIIRP is the legislature's attempt to create a serious alternative.

SECTION II

IBC at a Crossroads: Lessons from a Decade of Experience

❖ *Where the Code Delivered*

The behavioural impact of the IBC is significant. By September 2024, about 8,000 cases had been admitted into CIRP, but pre-admission resolutions are even more striking — until March 2024, over 28,000 cases involving defaults worth roughly ₹10.22 lakh crore were withdrawn or resolved before NCLT admission, largely because creditors faced the credible threat of IBC proceedings. This shows the law working as intended: a deterrent that enforces discipline, not just a resolution tool. The ratio of resolutions to liquidations also rose markedly, from about 21% in 2017–18 to 61% in 2023–24. Gross NPAs at scheduled commercial banks fell from around 11.2% in March 2018 to about 2.8% by March 2024. While this owes to several factors—RBI-led asset quality recognition, restructuring frameworks, and economic recovery—the IBC played a material role by strengthening recovery mechanisms and credit discipline.

₹3.99 Trillion	Realised by creditors under approved resolution plans (to Sep 2025)
67%	Average haircut on admitted claims (IBBI data, Sep 2025)
603 Days	Average CIRP duration (vs 270-day statutory limit)
28,818 Cases	Resolved pre-admission under threat of IBC (to Mar 2024)

❖ *The Cracks in the System*

The numbers above tell a success story, but they also expose a limitation. Haircuts of nearly 67% in many cases suggest that businesses often enter formal insolvency only after significant value has already eroded. By the time CIRP begins, assets are already strained, operations suffer, and disputes run deep. Delays have compounded this challenge. Although the IBC envisaged a 180-day process with a possible 90-day extension, completed CIRPs have averaged about 603 days (excluding excluded periods). Constraints at the NCLT and protracted litigation have often eroded, rather than preserved, value. Crucially, not every distressed situation is contested; many involve cooperative debtors and multiple creditors who face coordination challenges rather than outright conflict. The proposed CIIRP framework seeks to fill this gap by enabling earlier, better-structured resolutions before value is lost.

SECTION III

Understanding the New Creditor-Initiated Insolvency Resolution Process

❖ *Legislative Framework*

The newly introduced CIIRP framework has been inserted through Chapter IV-A of the IBC, covering Sections 58A to 58K. The approach appears deliberate. Instead of modifying the existing CIRP framework, the legislature has created a separate pathway with its own operating framework. While CIIRP borrows certain concepts from the Pre-Packaged Insolvency Resolution Process (PPIRP) introduced for MSMEs in 2021, it moves beyond that model by extending its reach to a wider category of corporate debtors, subject to prescribed asset or income thresholds.

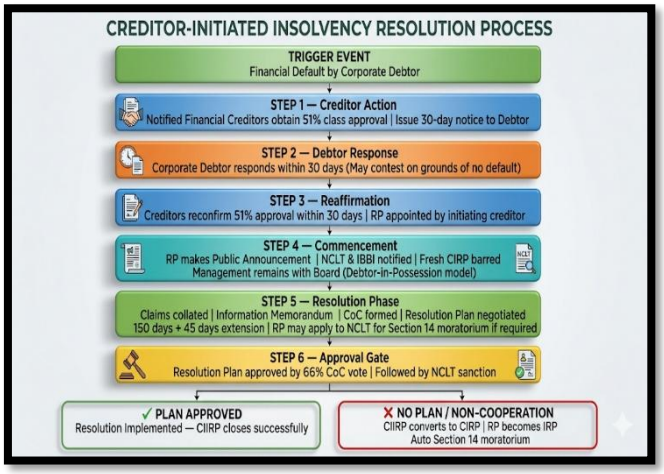
❖ ***Who Can commence the process***

Only notified financial creditors are permitted to initiate the process. Where a creditor belongs to a recognised class, it must first secure the support of other creditors in that class holding at least 51% of the debt by value. The logic is simple: a single lender should not be able to trigger the process on its own. The requirement ensures that CIIRP begins only when there is meaningful agreement among major lenders. In practical terms, this makes the framework more suitable, at least initially, for bank-led consortium structures rather than widely dispersed debt arrangements.

❖ ***Process Flow***

The initiating creditor must issue a notice to the corporate debtor, giving it at least 30 days to respond. If the creditor chooses to proceed after the response window closes, it must again obtain 51% class approval within a further 30 days. This two-stage approval mechanism ensures that creditor intent is actively reaffirmed after the debtor has had its say.

The initiating creditor then appoints a Resolution Professional (RP), who makes a public announcement, triggering formal commencement of CIIRP. Importantly, this public announcement — not a court order — marks the start of the process. The Adjudicating Authority is notified, and fresh CIRP applications against the same debtor are barred.



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❖ ***Debtor-in-Possession Architecture***

The most important design choice in CIIRP is the retention of management by the corporate debtor's board. Unlike CIRP, where management is displaced on admission, in CIIRP the Board continues to function subject to RP oversight. The RP attends Board meetings and has the authority to intervene when Board actions are inconsistent with the resolution process. Fraudulent conduct during CIIRP attracts monetary penalties. This is, for the first time in the mainstream IBC framework, a genuine debtor-in-possession model.

The moratorium question is handled differently as well. There is no automatic Section 14 moratorium on commencement. The RP must apply to the Adjudicating Authority if a moratorium is warranted — for instance, to protect assets from enforcement action. This gives the process flexibility but also places a judgment call on the RP and the CoC at the very outset.

❖ ***Exit and Conversion***

The framework also builds in a clear safeguard. If a resolution plan is not approved within 150 days (extendable once up to 195 days), or if the corporate debtor's management does not cooperate effectively during the process, the matter shifts into a regular CIRP. In such cases, the RP automatically assumes the role of IRP, the standard moratorium under Section 14 comes into effect, and the costs incurred during CIIRP continue into the CIRP process. Importantly, the CoC can also seek conversion at any stage before the timeline ends. This ensures that CIIRP remains a negotiated route, but with the formal CIRP mechanism always available in the background as a credible enforcement tool.

SECTION IV

Why the Reform Matters: Economic and Commercial Logic

The rationale behind CIIRP is straightforward: intervene before value erosion begins. IBC data consistently shows that when companies enter insolvency after prolonged distress, recoveries decline sharply. Nearly 40% of CIRPs ending in approved resolution plans involved legacy BIFR entities or defunct businesses, where creditor recoveries averaged only about 18.74% of admitted claims. Earlier intervention in operationally viable businesses, however, generally preserves greater value. The lesson is clear: "*enterprise value is not static*". Time itself becomes a risk factor. Delays can weaken

customer relationships, disrupt suppliers, and erode managerial and employee confidence. By the time formal insolvency begins, a substantial portion of value may already be lost.

CIIRP seeks to change this approach. By avoiding NCLT admission as the compulsory first step, it creates a structured yet less adversarial setting for negotiations. While retaining the discipline of the IBC framework through the RP, information-sharing obligations, and creditor oversight, the debtor-in-possession model minimizes operational disruption. The objective is straightforward- "**resolve distress while the business is still functioning, rather than trying to rescue value after it has substantially eroded**".

Parameter	CIRP	CIIRP
Initiation	Application to NCLT by creditor or debtor upon default	Notice by notified financial creditors with 51% class approval; no NCLT admission required at outset
Judicial Involvement	High — NCLT admission essential; all major steps require AA orders	Limited — NCLT notified but not primary forum; involved only for moratorium, challenge, plan sanction, or conversion
Management Control	Suspended on admission; IRP takes over operations	Board retains control (debtor-in-possession); RP supervises and may intervene
Moratorium	Automatic Section 14 moratorium on admission	Optional — RP may apply to NCLT for moratorium; not automatic
Timeline	180 days + 90 days extension (statutory); average ~603 days in practice	150 days + 45 days (one extension only); conversion to CIRP if exceeded
Cost	Higher — IRP/RP fees, professional costs, often prolonged	Expected lower — shorter duration, no NCLT admission costs, operational continuity reduces information costs
Creditor Control	CoC formed after admission; 66% vote for plan approval	51% class approval to initiate; CoC formed early; 66% to approve plan; CoC can seek CIRP conversion anytime
Value Preservation	Risk of value erosion during admission, interim period, and protracted process	Management continuity and early resolution design aimed at preserving going-concern value
Eligibility	All corporate debtors with minimum default threshold	Specified debtors meeting asset/income thresholds notified by Central Government

International experience offers valuable lessons in this area. Frameworks such as the Scheme of Arrangement in the United Kingdom, Chapter 11 in the United States, and restructuring mechanisms in Singapore increasingly allow businesses to continue operating during restructuring, while creditors retain oversight. India adopts a more creditor-centric approach, shaped by its own commercial and enforcement realities. Yet the broader principle remains the same: restructuring should occur before a business enters a fully formal court process, with judicial intervention serving as the final step rather than the starting point.

SECTION V
Stakeholder Implications

Stakeholder	CIIRP Impact & Implications
Financial Creditors	Primary beneficiaries of CIIRP. Gain structured resolution tool without NCLT admission costs. Must secure 51% class approval — demands early inter-bank coordination.
Operational Creditors	Not eligible initiators. Position is relatively precarious; no automatic moratorium shield. Regulatory clarification on protections required.
Corporate Debtors	Retain management under debtor-in-possession model. Reduced incentive for frivolous challenges due to CIRP conversion risk on adverse NCLT order.
Insolvency Professionals	More demanding supervisory role — attending board meetings, facilitating negotiations, managing CoC, all without full management authority. New IBBI conduct standards apply.
Registered Valuers	Face information asymmetry risk; management-controlled data in debtor-in-possession context. Compressed 150-day timeline demands rapid, defensible valuation methodology.
NCLT / Courts	Reduced front-end role; called upon only for moratorium, challenge, plan sanction, or conversion. 3-month NCLAT appeal disposal mandate aims to curb tactical delays.
IBBI / Regulators	Must issue rapid, detailed CIIRP regulations. Conduct standards for IPs and valuers, information rights framework, and CoC governance rules are urgently needed.
Distressed Investors	Negotiated track with management continuity may improve quality of resolution plans and asset information, attracting better bids from ARCs and stressed asset funds.

SECTION VI

CIIRP PROVISIONS: CHAPTER IV-A-SECTION BY SECTION SUMMARY

CIIRP STATUTORY PROVISIONS: SECTION-BY-SECTION SUMMARY

Section	Subject Matter	Brief Summary
Section 58A	Definitions	Introduces key definitions and the scope of terms applicable specifically to CIIRP.
Section 58B	Initiation of CIIRP	Specifies who can initiate the process and prescribes eligibility conditions, including creditor approval requirements.
Section 58C	Filing of Application	Governs the application process before the Adjudicating Authority and the required documentation.
Section 58D	Admission or Rejection	Provides the procedure for examination and admission/rejection of the CIIRP application by the NCLT.
Section 58E	Appointment of Resolution Professional	Deals with appointment of the Resolution Professional (RP) and related procedural aspects.
Section 58F	Duties and Functions of RP	Sets out the responsibilities of the RP, including monitoring, information management, claim collation, and process supervision.
Section 58G	Committee of Creditors (CoC)	Provides for constitution of the CoC and its powers within the CIIRP process.
Section 58H	Preparation and Consideration of Resolution Plan	Covers preparation, evaluation, and approval of the resolution plan.
Section 58I	Approval of Resolution Plan	Deals with submission and approval of the resolution plan by the Adjudicating Authority.
Section 58J	Conversion into CIRP	Provides for conversion of CIIRP into regular CIRP if timelines are not met or other specified conditions arise.
Section 58K	Miscellaneous / Ancillary Provisions	Covers residual provisions and operational matters required for implementation of CIIRP.

(image generated through Gemini)

SECTION VII
Potential Challenges and Unanswered Questions

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CIIRP brings important advantages, but it also raises practical challenges. One of the key concerns is information flow. Since management continues to remain in control, the effectiveness of the process depends heavily on timely and accurate sharing of financial and operational information with the Resolution Professional and creditors. This makes transparency and verification mechanisms critical.

Coordination among creditors may also be challenging. While the 51% approval requirement promotes collective decision-making, achieving alignment among banks, ARCs, NBFCs, and other lenders with differing interests may not always be easy. Questions relating to the rights of dissenting creditors and the scope of participation within the process may also require further regulatory or judicial clarity. Finally, the effectiveness of CIIRP will depend significantly on how eligibility thresholds are designed, as very narrow or very broad coverage could limit the framework's intended purpose.

SECTION VIII

Judicial Perspective: Will Less Court Mean Better Resolution?

One of the more interesting aspects of CIIRP is what it reveals about the legislature's view of the judiciary's role in insolvency resolution. By removing mandatory NCLT admission at the initial stage, the Act acknowledges a practical

reality: judicial intervention is often most effective in contested situations, while restructuring works better when driven by commercial considerations rather than procedural processes. The NCLT remains central to CIIRP, retaining jurisdiction over challenges to initiation, moratorium applications, plan sanction, and conversion decisions. But it is no longer the first mover, marking a significant shift in institutional design. Whether this delivers faster outcomes will depend largely on judicial response. Questions that shaped IBC jurisprudence since 2016 are likely to re-emerge in new forms: what constitutes management non-cooperation sufficient for conversion, whether dissenting creditors can challenge plans on grounds of commercial unfairness, and what standards apply to CIIRP plan approvals.

"A mechanism designed to bypass the courtroom at initiation will only succeed if the courtroom, when it does become relevant, moves with the urgency the process demands."

The Amendment Act also introduces a three-month timeline for NCLAT appeals. Beyond reducing delays, it reflects a broader legislative intent that judicial intervention should facilitate, rather than slow, the resolution process.

SECTION IX

Future Outlook: Is This India's Next Major Insolvency Evolution?

The honest answer, at this stage, is cautiously optimistic. CIIRP's long-term impact will depend not only on the statute itself, but also on implementation — including government notifications, IBBI regulations, and the willingness of lenders to adopt a new process while CIRP remains available as a fallback. For MSMEs and mid-market businesses, the implications could be particularly significant. The earlier pre-pack framework saw limited success, but CIIRP, if extended through eligibility notifications, may create a more practical and scalable pathway for resolving financial stress before value erosion accelerates. The reform also arrives at a time when India's distressed asset ecosystem is becoming more sophisticated. ARCs, stressed asset funds, and institutional investors today operate with greater maturity and may find CIIRP's negotiated structure attractive, especially where management remains involved, information quality improves, and timelines are shorter.

Alongside cross-border and group insolvency reforms, CIIRP has the potential to become more than a procedural change. If implemented effectively, it could help shape a more resilient, coordinated, and future-ready insolvency framework for India's evolving economy.

SECTION X

Conclusion

The true measure of an insolvency framework lies not only in resolving failure, but in preventing value destruction before failure becomes unavoidable. In that sense, CIIRP marks an important shift—from reacting to distress after damage has occurred to addressing it early enough to preserve businesses, jobs, and enterprise value.

The road ahead will bring practical challenges as regulations evolve and market participants adapt. Yet the direction is both necessary and encouraging. An economy aspiring to become one of the world's largest cannot depend solely on mechanisms designed for collapse; it also needs systems that preserve confidence, support recovery, and sustain continuity.

India's growth story will ultimately be shaped not just by businesses that succeed, but by how effectively viable businesses are guided through financial stress. If implemented with clarity and discipline, CIIRP could become more than an insolvency reform—it may emerge as a foundation for a stronger, more resilient, and globally competitive economic future.

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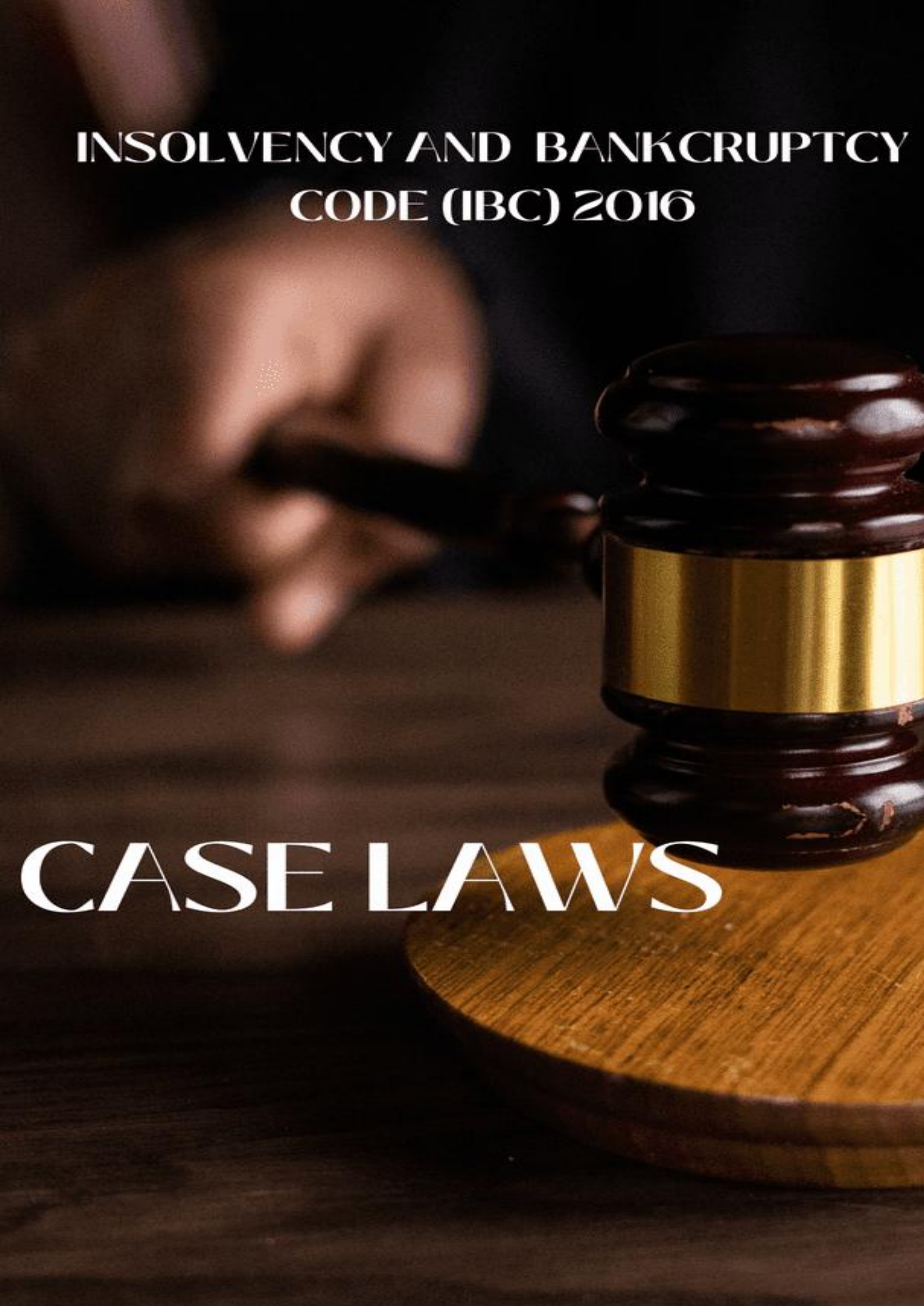

CASE LAWS

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

Insolvency and Bankruptcy Board of India vs. Truvisory Insolvency Professionals (P.) Ltd. [2026] 184 taxmann.com 11 (NCLAT- New Delhi)

Where IBBI filed an appeal with 103 days' delay before Appellate Tribunal against approval of a resolution plan, section 198's non obstante clause was found irrelevant to limitation prescribed by section 61, and as delay exceeded maximum condonable period, Appellate Tribunal could not condone it and appeal was not maintainable.

The appellant-IBBI filed an appeal challenging NCLT's order approving a resolution plan. Filing entailed a delay of 103 days. IBBI filed application seeking condonation of delay, which Respondent No. 2 opposed on ground that delay exceeded statutory outer limit of 45 days under Section 61(2). The appellant contended that, by virtue of Section 198's non obstante clause, delay in filing appeal could be condoned and that Appellate Tribunal could exercise Adjudicating Authority's power; reliance was placed on Section 16(4).

Held that section 198 can have no relevance with regard to Section 61, which provides for limitation for filing an Appeal. Power of condonation by Adjudicating Authority is clear indicator that when a function is entrusted to Board and same is not performed within time, that can be condoned and purpose is that such delay can have no fatal effect on proceedings. Appellate Tribunal can also exercise jurisdiction, which is vested in Adjudicating Authority, but power has been given for specific purpose and object to relevant Adjudicating Authority, which can never be intended to contemplate condonation of delay under Section 61 by Appellate Tribunal. Thus, delay in filing appeal being beyond condonable period, which was of 103 days, could not be condoned.

Case Review: Order of National Company Law Tribunal, Mumbai in IA No.53 of 2025 in C.P. (IB) No.77/MB/2024, Dated 13.08.2025, affirmed.

SECTION 18 - CORPORATE INSOLVENCY RESOLUTION PROCESS – INTERIM RESOLUTION PROFESSIONAL - DUTIES OF

Kotak Mahindra Bank Ltd. vs. Anil Tayal [2026] 184 taxmann.com 13 (NCLAT- New Delhi)

Where appellant-bank, a financial creditor in CIRP, sought to withdraw its admitted claim after CoC constitution and IRP held there was no express provision allowing such withdrawal during CIRP, it was clarified that under Regulation 12A, a creditor may update or withdraw its claim but only Adjudicating Authority has power to decide such requests, thus NCLT's order that withdrawal is not permitted was incorrect and impugned order was set aside for fresh consideration.

CIRP was initiated against the corporate debtor and the appellant-bank, as a financial creditor, filed its claim, which IRP verified and admitted. IRP constituted CoC and held its first meeting, which the appellant attended. On the same day, the appellant emailed seeking withdrawal of its claim and reiterated that it wished to withdraw as a financial creditor and not participate in CoC. IRP informed the appellant that there was no express provision permitting withdrawal during CIRP and that he lacked adjudicatory power and advised the appellant to approach Adjudicating Authority. IRP filed an application before the Adjudicating Authority seeking directions either requiring the appellant to act as a CoC member in conformity with Code and Regulations, or in

alternative permitting reconstitution of CoC by allowing withdrawal of the appellant's admitted claim. Adjudicating Authority dismissed said application, observing that there was no provision in Code to direct or permit a claimant to withdraw its claim.

Held that a creditor who has filed a claim is duty bound to update its claim, if same has been satisfied either fully or partly, as provided under Regulation 12A of CIRP Regulations of 2016 and this updation would also include 'withdrawal' of claim by such Creditor. However, as no such power of adjudication is available with IRP or RP, as the case may be, a decision in this regard has to be taken by Adjudicating Authority. Thus, NCLT was not justified in observing that there was no provision in Code for withdrawal of claim as a creditor may very well update his claim even by withdrawing it, as provided under Regulation 12A of CIRP Regulations of 2016. Thus, impugned order passed by NCLT was to be set aside and matter was to be remanded back to NCLT to dispose of application filed by the appellant afresh after providing an opportunity of being heard to parties.

Case Review: Order of NCLT, Mumbai in IA No. 3965 of 2023 in C.P. (IB)/860 (MB) 2021, dated 11.03.2024, reversed.

SECTION 30 - CORPORATE INSOLVENCY RESOLUTION PROCESS – RESOLUTION PLAN - SUBMISSION OF

Employees Provident Fund Organisation vs. IPE-NPV Insolvency Professionals (P.) Ltd. [2026] 184 taxmann.com 246 (NCLAT- New Delhi)

Where EPFO's claim for provident fund dues was not supported by any assessment under Section 7A(1) of EPF Act and no order had been challenged regarding time granted for claim submission, claim could not be admitted, and once resolution plan was approved, Tribunal declined to issue further directions as prayed by EPFO.

The appellant-EPFO filed an application before Adjudicating Authority seeking directions to IRP to consider its provident fund dues claim and related reliefs concerning priority and processing of claim. Adjudicating Authority dismissed said application observing that claim had not been supported by any determination/assessment order under Section 7A(1) of EPF Act and, therefore, no amount could be treated as due and payable for admission of claim. However, Adjudicating Authority granted 15 days to EPFO to file claim in prescribed form and to furnish relevant departmental orders creating demand. On appeal, EPFO stated that it had filed claim within 15 days with relevant orders and sought directions to RP to consider/release dues, while RP submitted that a resolution plan had already been approved on 30.01.2026.

Held that when claim, which was filed by the appellant was not based on any assessment under Section 7A(1) of EPF Act, claim could not be admitted. Since no appeal had been filed challenging 15 days' time granted to the appellant by Adjudicating Authority and appeal had been filed by only EPFO Department, there was no reason to take any different view in instant appeal. Any subsequent event consequent to order could not be a subject matter of instant appeal and submission of appellant that certain directions issued to RP could not be accepted. More so, as submitted by RP, plan having been approved on 30.01.2026, at this stage, not any direction as prayed by appellant could be issued.

Case review: Order of National Company Law Tribunal, mumbai in I.A. (IBC) 3126/MB/2025 Order dated 13.08.2025, affirmed.

SECTION 60 – CORPORATE PERSON'S ADJUDICATING AUTHORITIES – CORPORATE INSOLVENCY RESOLUTION PROCESS

Mehsana Urban Co - operative Bank Ltd. vs. Swastik Ceracon Ltd. [2026] 184 taxmann.com 285 (NCLAT- New Delhi)

Where appellant bank filed its claim in CIRP of corporate debtor and received substantial payment under approved resolution plan, unilateral adjustment of dividend and share value held by corporate debtor towards appellant's dues was impermissible, and NCLT rightly directed refund of Rs. 56 lakhs with interest from date of SRA's application, as provisions of Multi-State Cooperative Societies Act do not override IBC.

The corporate debtor was admitted into CIRP. The appellant bank had filed its claim in CIRP, which was admitted. The corporate debtor held equity shares of the appellant bank, which were assets of the corporate debtor. A resolution plan was approved, under which the appellant was proposed more than Rs. 5 crores against its admitted claim. Post-approval, SRA took control of the corporate debtor. Dividends on those shares were declared for multiple years. The appellant unilaterally adjusted dividends and value of shares aggregating Rs. 56 lakhs during CIRP and after plan approval towards its dues. SRA filed an application before NCLT seeking directions to the appellant to refund said amount with interest. NCLT by impugned order directed appellant to refund said amount with 10% per annum interest from respective adjustment dates.

Held that Section 121 of Multi-State Cooperative Societies Act, 2002, which excludes applicability of Companies Act, 2013, on Multistate Cooperative Societies cannot be read to mean that provisions of IBC are not applicable with respect to Multistate Cooperative Societies. Section 84 of Multi-State Cooperative Societies Act, 2002, which provides for reference of dispute cannot override provisions of Section 60(5)(c) of IBC, which are under overriding effect by virtue of Section 238. Since appellant had filed its claim in CIRP of corporate debtor, which claim was admitted and it had received substantial amount under resolution plan, appellant could not be heard to contend that NCLT had no jurisdiction. Since shares of appellant held by the corporate debtor were assets of the corporate debtor, NCLT had rightly directed the appellant to refund amount of Rs. 56 lakhs, which was unilaterally set off by the appellant from share/dividend account of the corporate debtor. However, payment of interest on refund amount of Rs. 56 lakhs directed by NCLT with 10% interest ought to be given from date of filing of application by SRA.

Case Review: Order dated 30.10.2025 passed by NCLT in I.A.370/AHM/2025 in C.P. (IB) No. 175/9/AHM/2018, Partly affirmed.

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

Subham Capital (P.) Ltd. vs. Vedic Realty (P.) Ltd. [2026] 184 taxmann.com 470 (NCLAT- New Delhi)

Where appellant-NBFC had filed section 7 application and, after breach of a settlement agreement following withdrawal of an earlier Section 7 petition, a fresh cause of action arose entitling appellant to file a new Section 7 application, it was held that written contracts are not mandatory to establish financial debt and Adjudicating Authority erred in dismissing application despite clear evidence of debt and default exceeding threshold, warranting admission of CIRP.

The appellant-financial creditor (an NBFC) had extended interest-bearing financial assistance to the respondent-corporate debtor. The corporate debtor acknowledged liability through confirmation letters, loan-renewal acknowledgments, demand promissory notes, and issued post-dated cheques towards repayment of principal and interest. After last repayment in April 2021, the corporate debtor defaulted and the appellant issued a recall notice in March 2022. The appellant filed a Section 7 application. Parties then executed a Settlement Agreement under which the corporate debtor acknowledged outstanding and agreed to a repayment schedule, leading to withdrawal of Section 7 application. Upon breach of settlement, the appellant filed a fresh Section 7 application. Adjudicating Authority dismissed said fresh petition on grounds that, after withdrawal of earlier petition without leave to file afresh, a new petition on same subject matter was not maintainable and prior withdrawal amounted to abandonment; and that an explicit written loan agreement was necessary for an NBFC to substantiate existence of financial debt.

Held that RBI Fair Practices Circulars do not prevail over IBC proceedings and therefore not mandatory for any NBFC to furnish any written financial contract or a written agreement between parties to substantiate a financial debt in terms of scheme of IBC. Once Adjudicating Authority had permitted the appellant to withdraw first Section 7 petition, all proceedings taken therein stood wiped out and fresh petition under Section 7 of IBC was not barred as principles of res judicata were inapplicable. When debt and default was adequately demonstrated basis records made available before Adjudicating Authority by the appellant, Adjudicating Authority failed to appreciate evidence and material produced before it proved that a debt had arisen, that a default had occurred and default was above prescribed threshold. Since all pre-requisites for filing a Section 7 petition stood fulfilled, Adjudicating Authority committed an error in not admitting the corporate debtor into CIRP for having defaulted in repaying a financial debt which was above threshold limit. Therefore, impugned order was to be set aside, and Adjudicating Authority was to be directed to pass an order of admission of Section 7 application under IBC.

Case Review: Subham Capital (P.) Ltd. vs. Vedic Realty (P.) Ltd. [2024] 169 taxmann.com 466 (NCLT - Kolkata)/ [2025] 187 SCL 548 (NCLT - Kolkata) [23-09-2024], reversed.

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

Lamba Exports (P.) Ltd. vs. Dhir Global Industries (P.) Ltd. [2026] 184 taxmann.com 536 (SC)

Where a non-speaking order dismissing a SLP arising from a civil revision concerning an Agreement to Sell was sought to be recalled on grounds of subsequent insolvency proceedings and settlements under section 12A, such post-disposal Miscellaneous Application was not maintainable, as it did not pertain to correction of clerical or arithmetical errors, nor could subsequent developments retroactively affect previous adjudication, and no fraud or suppressed representation was established, thus Miscellaneous Application seeking recall was dismissed.

The dispute arose from an Agreement to Sell dated 13.08.2021 concerning a mortgaged property owned by the respondents. The applicant, claiming rights under the agreement, alleged it paid Rs. 30 lakhs as earnest money, Rs. 1.20 crores to Respondent No. 4 Bank towards the upfront amount for a proposed OTS, and an

additional Rs. 30 lakhs to Respondent Nos. 1 to 3. The respondents issued a legal notice on 25.03.2022 asserting that the proposed OTS was not accepted by the Bank and sought to resile from the agreement, while the applicant-maintained readiness and willingness. The applicant filed a suit for specific performance with consequential reliefs, and obtained interim injunction from the Trial Court on 19.07.2022, which was set aside in appeal by the Additional District Judge on 06.09.2022. The High Court dismissed the applicant's civil revision on 06.05.2024, noting the agreement's contingent nature upon the Bank's OTS acceptance, the Bank not being a party, and the absence of a prima facie case for interim injunction; the underlying suit remained pending and only interlocutory orders were in challenge. The applicant filed an SLP. On 04.06.2024, notice issued with deposit directions. The SLP was dismissed by a non-speaking order dated 25.02.2025. On a miscellaneous application before the Supreme Court.

Held that a post-disposal Miscellaneous Application to recall a non-speaking order dismissing a Special Leave Petition is not maintainable where it does not seek correction of any clerical or arithmetical error or where directions contained in an executory order of Court have not become impossible of implementation by reason of subsequent events. Where SLP arose from a suit-based dispute concerning an Agreement to Sell and correctness of order passed by High Court in Civil Revision, a Miscellaneous Application seeking recall of order dismissing SLP on basis of later developments in insolvency proceedings, including proposal for One Time Settlement, subsequent settlement, decision of Committee of Creditors, and order passed by National Company Law Tribunal under Section 12A could not be examined collaterally in a Miscellaneous Application filed in a disposed of SLP arising out of a civil revision. Where order dismissing SLP was a non-speaking order, it could not be said that dismissal turned upon any specific representation which was alleged to have been suppressed and, therefore, order could not be recalled on ground that fraud was practiced upon Court. Subsequent developments in another forum, howsoever strongly relied upon by the applicant, could not retroactively render earlier adjudicatory exercise vulnerable in a disposed of SLP. In a Miscellaneous Application arising out of a disposed of SLP in a civil revision concerning an Agreement to Sell, Court could not be called upon to sit over comparative financial attractiveness of rival offers or to substitute its own view for business decision taken by CoC in statutory process under Code. Therefore, Miscellaneous Application seeking recall of order dismissing SLP was to be dismissed.

Case Review: Order of High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 3916 of 2022, Dated 06.05.2024, affirmed.

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

Jagi Mangat Panda vs. Srei Equipment Finance Ltd. [2026] 184 taxmann.com 594 (NCLAT- New Delhi)

Where a personal guarantee deed required invocation as a precondition to maintain a Section 95 application against appellant as guarantor and Form B notice under Rule 7(1) did not constitute such invocation nor was a prior invocation notice relied upon before Adjudicating Authority, admission of the Section 95 application was unsustainable and accordingly set aside.

The corporate debtor obtained loan facilities from financial creditor and the appellant, as personal guarantor, executed a deed of

guarantee. The corporate debtor committed default and CIRP commenced. The financial creditor issued a demand notice to personal guarantor in Form B under Rule 7(1). The financial creditor filed a Section 95 application; an RP was appointed and submitted a report under Section 99 recommending admission. Personal guarantor objected that guarantee had not been invoked as required by Clause 3(a) of deed of guarantee and that there was non-compliance with Rule 3(e), contending Form B notice did not amount to invocation. Adjudicating Authority admitted Section 95 application, holding that Form B notice under Rule 7(1) itself constituted invocation and that a separate invocation notice was not required.

Held that a Section 95 application against a personal guarantor is not maintainable in absence of prior invocation of personal guarantee. A Form B demand notice under Rule 7(1) does not itself constitute invocation under Rule 3(e). The financial creditor cannot, at appellate stage, rely on an alleged earlier invocation notice dated 11.06.2019 that was neither pleaded in Section 95 application nor relied upon before Adjudicating Authority. Thus, order passed by Adjudicating Authority admitting Section 95 application was to be set aside.

Case Review: Order dated 22.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court III in IB-337(ND)/2022), set aside.

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

Vishal Ganpat Shinde vs. Union of India [2026] 184 taxmann.com 659 (Bombay)

Where CIRP was initiated and IRP filed a section 12-A withdrawal application pursuant to settlement, but NCLT refused withdrawal due to objections of majority financial creditors, and since CIRP proceedings are in rem and IRP, along with objecting creditors, were heard, there was no violation of principles of natural justice; consequently, writ petitions were not maintainable in view of alternative remedy under section 61 and were to be dismissed.

IRP was initiated against the corporate debtor on application by petitioner–financial creditor and IRP was appointed. IRP filed application under section 12-A for withdrawal of CIRP pursuant to settlement between the financial creditor and suspended director. Objecting banks/financial creditors opposed withdrawal. NCLT, after hearing objecting financial creditors and IRP, refused withdrawal in view of objections of substantial majority of financial creditors.

Held that since upon admission of CIRP, proceedings become in rem and IRP assumes control of the corporate debtor, and all relevant stakeholders including IRP and objecting financial creditors were heard, there was no violation of principles of natural justice. Therefore, writ petitions challenging NCLT's order were not maintainable in view of alternative remedy under section 61 and same were liable to be dismissed.

SGN Universal Construction Company (P.) ltd. vs. Shailendra Kumar Singh [2026] 184 taxmann.com 719 (NCLAT- New Delhi)

Section 238 of Code gives overriding effect over inconsistent laws, including Arbitration & Conciliation Act, 1996, upon CIRP admission, determination of claims and stakeholder rights falls within domain of Resolution Professional at initial stages of CIRP.

The corporate Debtor was developing a real estate project comprising Towers 3, 4 and 5. The appellant claimed that, due to outstanding dues, the corporate debtor, by a Development Rights Agreement, a registered Power of Attorney and an Addendum, conferred on it extensive, irrevocable and exclusive development and alienation rights in Tower 5. The appellant stated it had spent about Rs. 11 crores and completed about 80–85% construction of 17 floors of Tower 5 - Homebuyers of Towers 3 and 4 filed a Section 7 application - Appellant filed I.A. in Section 7 proceedings, limited to placing on record High Court and arbitral orders and seeking avoidance of conflict. Adjudicating Authority passed two orders: (i) admitting Section 7 application after examining existence of debt, default and statutory threshold, and (ii) disposing of I.A. by stating it would be considered along with Section 7. In admission order, it recorded that 40 homebuyers collectively represented 356 flats and, assuming all units in concerned towers had been sold for analysis, threshold under second proviso to Section 7(1) stood satisfied. It also noted Section 238's primacy over arbitration and that interim orders in arbitration were not in rem. The appellant contended that, despite no notice or pleadings on its rights, Adjudicating Authority included Tower 5 units while computing threshold and made adverse observations regarding 2017 agreement and 2020 addendum and their susceptibility to avoidance doctrines.

Held that since CIRP was sought by homebuyers against Corporate Debtor with respect to project and not against any specific Tower, computation of threshold by taking into account all units in project, including Tower 5, was correct. Since Section 238 of Code gives overriding effect over inconsistent laws, including Arbitration & Conciliation Act, 1996, upon CIRP admission, determination of claims and stakeholder rights falls within domain of Resolution Professional at initial stages of CIRP. Since Adjudicating Authority had not given its findings, not even preliminary finding, about appellant's alleged rights or claims over Tower 5, questions regarding Tower 5/development rights were to be relegated to CIRP for consideration by Resolution Professional under Sections 3(27), 18(f) and 25(2)(a) and not adjudicated at admission stage. Therefore, impugned order passed by Adjudicating Authority was to be upheld.

Case Review: Order of National Company Law Tribunal, New Delhi, Court-IV in CP (IB) No. 62(ND)/2024, dated 19.11.2024, affirmed.

4TH BATCH –MEDIATION TRAINING PROGRAM: JOINTLY WITH MISSING BRIDGE THE IN-PERSON SESSIONS CONDUCTED ON MAY 9TH & 10TH, 2026.

TWO DAYS CERTIFICATE TRAINING PROGRAM FOR PROFESSIONALS UNDER THE IBC ECOSYSTEM IN ASSOCIATION WITH IP FOUNDATION AND IN.CORP, HELD ON MAY 15TH & 16TH, 2026 IN BENGALURU.

TWO DAYS CERTIFICATE TRAINING PROGRAM FOR PROFESSIONALS UNDER THE IBC ECOSYSTEM HELD ON MAY 16TH & 17TH, 2026 IN DELHI-NCR.

GUIDELINES FOR ARTICLE

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

1. *The article should be original, i.e., not published/broadcasted/hosted elsewhere, including any website. A declaration in this regard must be submitted to IPA-ICMAI in writing at the time of submission.*
2. *The article may be topical and address matters of current interest to professionals and stakeholders.*
3. *It may preferably introduce stakeholders to new knowledge areas or present innovative ideas relevant to the profession.*
4. *The length of the article may be 2500–3000 words.*
5. *The article should include an Abstract of approximately 200–250 words.*
6. *The article should contain clear, concise, and engaging headings.*
7. *Authors may provide a list of references, if any, at the end of the article.*
8. *A brief author profile, along with e-mail ID, postal address, contact number, and the required declaration of originality, must be submitted with the article.*
9. *The article must adhere to ethical standards, with plagiarism not exceeding 10% and AI-generated content limited to a maximum of 20% similarity, ensuring originality of the author's work.*
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    - ***c) Font:*** *Use Cambria, 12-point font.*
    - ***d) Line Spacing:*** *1.5 Line-spaced.*
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