AUGUST 2025

INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

THE INSOLVENCY PROFESSIONAL

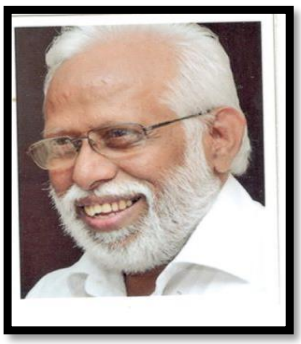
YOUR INSIGHT JOURNAL

IPA-ICMAI

OVERVIEW

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

BOARD OF DIRECTORS



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CASEBOOK

TABLE OF CONTENTS

BOARD OF DIRECTORS

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 brought out 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 IBC Amendment Bill, 2025 introduced in the Parliament last month and referred to the Parliamentary Committee for detailed review, is major milestone in the journey of the IBBI ecosystem of more than 8 years. The bill has been discussed in detail in many for a including the Roundtable organised by IPA-ICMAI in Delhi 3 weeks ago that received very enthusiastic response from many IPs. One of the articles in this issue of e-Journal carries an opinion on the implication of the amendment bill on IBC processes.

The recent amendments to the Continuous Professional Education (CPE) guidelines brought out by IBBI correctly afford more weightage progressively to in-person programs. We look forward to organising more in-person workshops on developments in the IBC ecosystem organised under the auspices of the Insolvency and Bankruptcy Board of India (IBBI) in the near future.

This is a bumper issue of e-Journal brings five 7 articles on very interesting and relevant topics (apart from a look at the amendment bill) like voluntary liquidation, definition of financial debt in a recent NCLT ruling, more realistic metric for success for participation in IBC processes and a review of CIRP of personal guarantors. 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

AUGUST 2025

DATE	EVENTS CONDUCTED
August 2, 2025	**A Workshop on "Interplay of IBC, 2016 with Allied Laws" was held on August 2, 2025.** This workshop provided insights into the interplay between IBC and allied laws, enhancing participants' understanding of the regulatory framework**.**
August 8, 2025	**A Workshop on "MSMEs & Pre-Pack Insolvency Resolution Process" was held on August 8, 2025.** This workshop focused on the application of pre-pack insolvency resolution process for MSMEs, providing practical knowledge and expert insights
August 18, 2025	**IPA-ICMAI successfully organized a Seminar on Insolvency and Bankruptcy Code, 2016, titled "Empowering Professionals | Resolving Insolvencies"** on August 18, 2025, in Chennai. The seminar facilitated discussion, knowledge sharing, and expert insights on IBC, 2016, through engaging sessions and interactive learning.
August 22, 2025	**A Roundtable – IBC Amendment Bill 2025 (Impact, Insights, Interpretations)** was Organised by IPA-ICMAI at Delhi Andhra Association on August 22, 2025. This roundtable discussion brought together experts to share insights and interpretations on the IBC Amendment Bill 2025, providing valuable perspectives on its impact.
August 23, 2025	**A Workshop on "Forensic Audit and Transaction Audit"** was held on August 23, 2025. This workshop equipped participants with the skills and knowledge to conduct forensic audits and transaction audits, enhancing their expertise in insolvency practices.
August 29th 2025	**IPA-ICMAI is organized a Workshop on "Corporate Insolvency Case Matrix" (Industry Wise Resolution)** on 29th August 2025.
August 30th 2025	**IPA-ICMAI organized a One-Day Conference on IBC 2016** on 30th August 2025 at Kochi in association with Kerala Insolvency Professional Forum. This conference aims to provide a platform for discussion, knowledge sharing, and expert insights on IBC 2016, featuring industry experts and thought leaders.

IBC AU COURANT

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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

Mr. Manohar Suman
Insolvency Professional

Synopsis

The treatment of personal guarantors under the Insolvency and Bankruptcy Code (IBC), 2016 has reshaped India's insolvency landscape. Holding guarantors liable for corporate debts enhances creditor confidence and ensures accountability. Judicial pronouncements and legislative clarity now allow parallel proceedings, balancing recovery with fairness and deterring misuse of corporate guarantees.

Introduction

The Insolvency and Bankruptcy Code (IBC), 2016 was enacted to streamline the process of insolvency resolution and promote a creditor-friendly ecosystem. While the Code initially focused on corporate debtors, significant amendments and judicial pronouncements have expanded its scope to include *personal guarantors to corporate debtors*. This inclusion has major implications for India's insolvency regime, especially concerning liability, recovery, and deterrence mechanisms. The outcome of such inclusion under IBC has been a subject of evolving legal and economic scrutiny.

1. Understanding Personal Guarantors in the Context of IBC

A personal guarantor is a natural person who provides a guarantee for the obligations of a corporate debtor. Under Section 5(22) of the IBC, a "personal guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor. These individuals—often promoters, directors, or key managerial personnel—bind themselves to repay debt in the event the corporate debtor defaults.

Legal Provisions Relevant to Personal Guarantors:

- **Section 60(2) of IBC:** Provides that insolvency/bankruptcy proceedings of personal guarantors to corporate debtors must be filed before the National Company Law Tribunal (NCLT) where the corporate debtor's insolvency is pending.
- **Section 95–100 (Part III of IBC):** Deal with initiation and adjudication of insolvency resolution processes against individuals and personal guarantors.

2. Evolution and Judicial Backing

a) Notification by Government (2019)

In November 2019, the Ministry of Corporate Affairs (MCA) notified that provisions of the IBC related to personal guarantors would come into effect from 1st December 2019. This allowed lenders to initiate insolvency proceedings directly against personal guarantors even when the corporate insolvency resolution process (CIRP) was underway.

b) Supreme Court in *Lalit Kumar Jain v. Union of India* (2021)

This landmark judgment upheld the 2019 notification and ruled that:

- Personal guarantors can be proceeded against independently.
- Approval of a resolution plan for a corporate debtor does not discharge the liability of a guarantor.
- Guarantor's liability is coextensive with that of the debtor under the Indian Contract Act, 1872.

Impact: This judgment reinforced the principle that guarantors are not immune from liability just because the principal borrower undergoes insolvency resolution.

3. Key Outcomes of Inclusion of Personal Guarantors under IBC

a) Increased Accountability
Corporate promoters can no longer escape liability by merely allowing their companies to undergo insolvency. If they provided a personal guarantee, they remain personally liable. This has curbed frivolous defaults and induced more caution among corporate promoters.

b) Parallel Proceedings Allowed
The IBC permits simultaneous proceedings against both corporate debtors and their personal guarantors. This enhances recovery chances for creditors and expedites debt resolution. The NCLT handles both cases, ensuring consistency and judicial efficiency.

c) Encouraging Settlements
Faced with the possibility of personal insolvency, many guarantors opt for out-of-court settlements. Lenders have greater negotiation power, often resulting in faster recoveries and less litigation.

d) Asset Freezing of Guarantors
Upon admission of a petition under Section 95, an Interim Moratorium under Section 96 is imposed, which bars any legal action against the personal guarantor's assets. This serves two purposes:

- Protects creditor interest.
- Prevents dissipation of assets.

e) Deterrence Against Abuse of Corporate Personality

Historically, promoters misused the separate legal entity status of a company to avoid personal responsibility. The inclusion of personal guarantors under IBC discourages such misuse, reinforcing the principle of equitable responsibility.

4. Practical Challenges and Concerns

a) Limited Asset Base of Guarantors
In many cases, guarantors lack sufficient personal assets to cover the liabilities. This limits recovery despite successful insolvency proceedings.

b) Judicial Overload
The NCLTs are burdened with a high caseload. Adding personal guarantor cases to their docket has further strained their functioning, causing delays.

c) Overlap with Other Laws
The IBC intersects with other legislation like the SARFAESI Act, DRT Act, and Companies Act. This occasionally causes jurisdictional and procedural ambiguities, particularly in enforcement and asset attachment.

d) Abuse of Moratorium
Some guarantors misuse the moratorium period to stall proceedings or transfer assets prior to initiation, frustrating creditor efforts.

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5. Case Law Analysis

a) *State Bank of India v. Ramakrishnan & Anr.* (2018)
Held that the moratorium under Section 14 of IBC does not apply to personal guarantors. This paved the way for independent action against guarantors even during CIRP.

b) *Lalit Kumar Jain v. Union of India* (2021)
As mentioned earlier, validated the 2019 notification. Clarified that a resolution plan under Section 31 does not extinguish the liability of personal guarantors.

c) *Kiran Shah v. Enforcement Directorate* (2022)
Held that proceedings against personal guarantors under IBC do not hinder or preclude action under other laws like the PMLA (Prevention of Money Laundering Act), reinforcing that guarantors are not shielded from other liabilities.

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6. Role of Resolution Professionals and NCLT

When insolvency proceedings are initiated against a personal guarantor:

- A **Resolution Professional (RP)** is appointed under Section 97.
- The RP examines the financial affairs, conducts a viability assessment, and may recommend repayment plans or liquidation.

- The **NCLT** evaluates the plan and either approves or rejects it based on feasibility and fairness.

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7. Trends and Data

While official nationwide statistics are still being aggregated, early data shows:

- Over 1,000 applications against personal guarantors were admitted across various NCLTs since 2019.
- Recovery rates, though modest in some cases, are better than pre-IBC regimes.
- Many promoters, including high-profile industrialists, have settled dues to avoid personal bankruptcy proceedings.

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8. International Perspective

In many jurisdictions like the UK and US, personal guarantors are liable even after corporate resolution. India's approach now aligns with these global standards. By recognizing and enforcing guarantees, the IBC boosts investor and creditor confidence in Indian markets.

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9. Policy Suggestions and Future Outlook

a) Strengthening Asset Tracing Mechanisms

To prevent guarantors from hiding assets, stronger surveillance and legal tools (like forensic audits, mandatory disclosures) are essential.

b) Dedicated Benches for Personal Guarantor Cases

To reduce delays and backlog, special benches or fast-track mechanisms could be set up under NCLTs.

c) Awareness and Legal Literacy

Many guarantors are unaware of the serious implications of giving corporate guarantees. Financial institutions and regulators must promote awareness through campaigns and due diligence mandates.

d) Amendments to Avoid Overlap

A clearer framework is needed to harmonize IBC with other legislations and avoid multiplicity of proceedings.

Conclusion

The inclusion of personal guarantors under the IBC has significantly altered the Indian insolvency landscape. By ensuring that promoters and directors cannot escape liability by hiding behind the corporate veil, the Code has restored a much-needed balance in debtor-creditor relationships.

This framework not only augments the chances of recovery for creditors but also deters wilful defaults and instills greater financial discipline in the corporate ecosystem. While challenges remain in enforcement and procedural delays, the legal and policy direction remains promising. Moving forward, more robust institutional support and judicial clarity will further solidify the effectiveness of this important aspect of IBC.

BANK PARTICIPATION IN IBC PROCEEDINGS AND THE NEED FOR A MORE REALISTIC SUCCESS METRIC

Mr. Ravindra Kumar Goyal
Insolvency Professional

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to streamline the resolution of corporate distress in India by providing a time-bound and creditor- controlled process. While Section 7 of the Code provides financial creditors (including banks) with a direct mechanism to initiate the Corporate Insolvency Resolution Process (CIRP), actual practice reveals that banks are often not the real drivers of CIRPs, especially in recent times. Rather, Operational Creditors (OCs) are increasingly initiating insolvency applications, particularly against companies where banks have already exhausted recovery through other mechanisms.

2. Current Patterns: When and How Banks Approach IBC

Initially, banks were among the primary initiators under Section 7, especially after the Reserve Bank of India's February 2018 circular mandating the resolution of stressed assets under IBC. However, this trend has shifted due to several factors:

• Pre-IBC Recovery Tools: Most banks resort first to the SARFAESI Act, DRT proceedings, or One-Time Settlements (OTS), which are relatively quicker, less litigation-prone, and often result in faster recoveries.

• Asset Realization Before IBC: By the time a CIRP is triggered (mostly by OCs or even ex-employees & or including Financial institutions, in particular PSBs & Private sector Banks), the primary security of banks has already been enforced. Assets like real estate, machinery, or receivables are often already sold or appropriated, rendering the corporate debtor asset-light or even defunct.

• IBC as a Last Resort: Banks turn to IBC only when other avenues fail or when they intend to pressurize promoters through the threat of loss of control.

• Limited Role in Defunct Firms: In cases where companies are already non-operational or defunct, banks are reluctant to file Section 7 petitions due to low or nil realisable value.

3. The Flawed Measure of IBC Success

The standard metric of IBC's success—recovery as a percentage of admitted claims—is increasingly misleading. The IBBI and RBI often present resolutions statistics showing that financial creditors recover approximately 30-40% of admitted claims, but these figures are problematic for two reasons:

• NPA-Date Disconnection: Many of these accounts have been classified as Non-Performing Assets (NPA) years before CIRP, with interest and penal charges continuing to accrue. By the time CIRP is admitted, the admitted claim (especially for banks) may be 3-5 times the actual debt outstanding as of the NPA date.

• Exclusion of Prior Recoveries: The statistics ignore recoveries already made by banks through SARFAESI auctions, OTS, or DRT orders before CIRP. Hence, if a bank recovered ₹50 crore pre-IBC (Post NPA) and only ₹10 crore in CIRP, the recovery rate reported will be shown as ₹ 10 crore out of ₹ 150 crore (admitted claim), which understates the total effectiveness of the enforcement ecosystem. It should have been

Rs 60 Crs. Here again, readers or the Analyst, or the Regulator, may question, IBC talks about Resolution, not Recovery, True . You will agree, we should talk about both, not any issue in Isolation, as this undermines the performance of IBC.

Recovery is looking Low, because assets have already been sold, the Industry is closed, and action is taken post lot many years of NPA. Only cases which are difficult, like ED / CBI / I tax Attachments, Nil Tangible assets, then what the stakeholders will get, one can just guess.

Example:

A company with a ₹40 crore loan defaulted in 2016 and was classified as NPA. Interest and charges accrued till 2022, making the claim amount ₹120 crore. The bank recovered ₹30 crore under SARFAESI by 2020 and finally received ₹10 crore in the 2023 CIRP resolution. Total recovery = ₹40 crore, actual exposure = ₹40 crore, but the reported IBC recovery rate would be 10/120 = 8.33%, which grossly misrepresents the Success of the IBC Code..

4. Defunct Companies and Asset-less Insolvency

Many CIRPs today involve companies that are already asset-less, struck-off, or without operations, leading to liquidation with no recoveries. Banks avoid filing for such cases as the cost of insolvency proceedings (public announcements, RP fees, valuers, etc.) far exceeds expected returns. However, operational creditors, who lack alternate remedies like SARFAESI, still trigger CIRPs in such cases, often resulting in zombie proceedings. But yes, if there are GST & other Statutory dues, CD gets rid of this by offering a minimal amount (Things which are settled between OC & CD). I do have a live example, also True, the community is aware, if anyone wants can ask me. Now, the recent Judgement of the Honourable Tribunal makes this process easier, as the IRP proposed by OC cannot be changed.

5. Reimagining the Success of IBC

Instead of using admitted claims vs. realised amount as a success metric, a better approach would be:

• Measure from NPA Date: Evaluate recovery from the time of NPA declaration (say 2016), aggregating all recoveries (SARFAESI, OTS, DRT, IBC) and comparing to principal dues.

• Cost vs. Time Efficiency: Consider reduction in average recovery time and enforcement cost as metrics.

• Business Continuity or Employment Retention: Success can also be gauged by how many companies were kept as going concerns or how many jobs were preserved.

• Institutional Confidence and Legal Certainty: IBC's contribution in restoring discipline among promoters and deterrence against wilful default should also be factored.

6. Conclusion

While IBC remains the strongest legal framework for the resolution of large corporate defaults, its success should not be judged in isolation or only from resolution values during CIRP. For banks, IBC is often the final act, with the bulk of asset recovery occurring before its invocation. Policymakers must recognize this and shift focus toward system-wide recovery analysis from the date of default, not just from admission under IBC. Additionally, ensuring quicker admission timelines, better valuation discipline, and preventing zombie insolvencies will strengthen the process further.

Mr. Umesh Ved
Company Secretaries

VOLUNTARY LIQUIDATION: A COMPREHENSIVE GUIDE

- **Voluntary Liquidation under the Insolvency and Bankruptcy Code, 2016: A Jurisprudential Overview**

The doctrine of corporate perpetuity is a well-established principle in company law jurisprudence globally. A company, once incorporated, is presumed to have a continuous existence and is not ordinarily dissolved except under exceptional circumstances. Traditionally, liquidation or winding up of a company has been considered a measure of last resort, often triggered by insolvency or an inability to meet financial obligations. However, it is imperative to recognize that liquidation is not always indicative of financial distress. There exist situations wherein the members of a solvent company may, for varied commercial or strategic reasons, collectively resolve to wind up the company's affairs. Such dissolution, initiated without external financial pressure, falls within the ambit of ***voluntary liquidation*.**

Prior to 2016, the legislative framework governing corporate dissolution in India was encapsulated within the Companies Act, 2013, which detailed the mechanisms of incorporation, management, and winding up. However, the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), brought about a paradigm shift by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. Significantly, Section 59 of the IBC introduced a dedicated provision for *voluntary liquidation* of corporate entities that are solvent, subject to compliance with the prescribed procedural and substantive conditions.

The operationalization of Section 59 is further reinforced by the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. These regulations provide detailed procedural guidance for companies seeking to undergo voluntary liquidation, including the appointment of a liquidator, public announcement for claims, preparation of reports, and distribution of assets.

This article endeavors to present a comprehensive legal analysis of the concept of voluntary liquidation as it stands under Indian law. It examines the statutory framework, regulatory mechanisms, and judicial pronouncements that shape the contours of this process. In doing so, it aims to highlight the evolving jurisprudence surrounding voluntary liquidation and its increasing relevance as a legitimate and strategic option for solvent corporate entities in India.

Introduction

In the fast-paced world of business, not every company ends in fanfare or failure. Sometimes, the most responsible decision is to step back and close shop — deliberately, lawfully, and with dignity. That's where **voluntary liquidation** comes in.

While the term may evoke images of financial distress, voluntary liquidation isn't always about collapse. It can be a strategic choice for companies looking to exit gracefully, maximize value, or restructure. Whether a business is thriving or struggling, voluntary liquidation offers a legal pathway to wind things up the right way.

- **The Basics: What Is Voluntary Liquidation?**

  Voluntary liquidation is the formal process by which a company's directors or shareholders decide to dissolve the business and wind up its affairs. Unlike compulsory liquidation — which is typically initiated by creditors through the courts — voluntary liquidation is an internal decision. It is a proactive approach to closing a company, often guided by legal, financial, or strategic motives.

- **Which solvent company has initiated voluntary liquidation under Section 59 of the IBC, 2016?**

  In accordance with the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code"), only those corporate persons who have not committed any default and are in a solvent financial position are eligible to initiate voluntary liquidation.

- **Who appoints the Voluntary liquidator?**

  The members (shareholders) of the company appoint the voluntary liquidator by passing a special resolution (usually requiring 75% approval).

- ## What are the tasks expected from the Voluntary Liquidator?

  Upon appointment, the Voluntary Liquidator shall undertake the following tasks and responsibilities in accordance with applicable company and insolvency laws:

I. Assumption of Control

Immediately upon appointment, the Voluntary Liquidator shall assume full control over the company's assets, affairs, and financial records. All powers of the directors shall cease, except insofar as the Liquidator may permit their continuance.

II. Realisation of Assets

The Liquidator shall take all necessary steps to identify, collect, safeguard, and realize the assets and property of the company, including the recovery of outstanding debts due to the company.

III. Settlement of Liabilities

The Liquidator shall determine and verify all claims and liabilities against the company and shall distribute the proceeds of asset realisation in accordance with the applicable statutory order of priority.

IV Distribution to Members (in MVL)

In a Members' Voluntary Liquidation, once all liabilities have been discharged in full, the Liquidator shall distribute the surplus assets to the company's members in accordance with their rights and interests.

V. Conduct of Investigations

Where required, the Liquidator shall investigate the affairs of the company and the conduct of its directors and officers to determine whether any misconduct, breach of duty, or transaction contrary to insolvency law has occurred.

VI. Maintenance of Records and Accounts

The Liquidator shall maintain accurate and comprehensive records of all receipts, payments, and transactions made during the course of the liquidation, and shall prepare periodic accounts and reports as may be required by law.

VII. Statutory Reporting and Notifications

The Liquidator shall ensure timely

compliance with all statutory filing requirements, including:

- Notification of the appointment to the Registrar of Companies and other relevant authorities;
- Submission of interim and final liquidation accounts;
- Reporting to creditors and/or members as required.

VIII. Final Meeting and Dissolution

Upon completion of the liquidation process, the Liquidator shall convene a final general meeting of members and/or creditors, present a final account of the liquidation, and cause the company to be formally dissolved in accordance with the law.

IX. Professional Conduct

The Liquidator shall act in a fiduciary capacity, exercise due care and diligence, and carry out all duties in good faith, impartially, and in the best interests of the creditors and members as applicable.

- **<u>PRESENT LEGAL FRAMEWORK</u>**

I. Preliminary Declaration by the Directors or Designated Partners

1. Prior to initiating voluntary liquidation, the directors of a company or the designated partners of an LLP, as the case may be, shall make a declaration verified by affidavit stating:

- That the voluntary liquidation is not being undertaken to defraud any person
- That the entity has no debt, or that it will be able to pay its debts in full from the proceeds of asset sale.

2. The said declaration shall be accompanied by:

- The audited financial statements and records of the company for the immediately preceding two financial years or since incorporation, whichever is shorter;
- A report of the valuation of assets, if any, prepared by a registered valuer.

The declaration shall be filed with the Registrar of Companies (ROC) in e-Form GNL-2.

II. Initiation of the Liquidation Process

3. A special resolution shall be passed in a general meeting of the members of the company, or in case of an LLP, with the consent of the majority of the partners, within four weeks of the declaration referred to above.
4. Where the Articles of Association provide for a fixed duration or occurrence of a triggering event, such condition shall be satisfied.
5. The resolution to liquidate, along with the appointment of a liquidator, shall be filed with the ROC in e-Form MGT-14 within the prescribed time**.**

III. Consent of Creditors (if applicable)

6. In cases where the corporate person has creditors, the said resolution shall be subject to approval by creditors representing at least two-thirds in value of the total outstanding debt.

7. Such approval shall be obtained within seven days of the passing of the special resolution.

IV. Commencement of Voluntary Liquidation

8. The date of passing the special resolution shall be deemed to be the commencement date of the voluntary liquidation.

9. From the date of commencement, the corporate person shall cease to carry on its business, except for the purpose of beneficial winding up.

V. Public Announcement by the Liquidator

10. Within five days of his appointment, the liquidator shall make a public announcement in Form A of Schedule I of the Regulations.

11. The announcement shall:

- Call for the submission of claims from stakeholders;
- Be published in one English newspaper and one vernacular language newspaper;
- Be uploaded on the website of the corporate person (if any) and on the website designated by the Board.

VI. Duties and Proceedings of the Liquidator

12. The liquidator shall prepare and submit a preliminary report within forty-five(45) days from the commencement date, which shall include:

- The capital structure of the corporate person;
- Estimates of assets and liabilities;
- Proposed plan for realization of assets and discharge of liabilities;
- Any other relevant information.

13. The liquidator shall preserve a copy of the report for a period of eight years.

14. The liquidator shall maintain such registers and books of account as may be prescribed and record all transactions and costs incurred.

VII. Claims and Stakeholder List

15. The liquidator shall receive, verify, and adjudicate claims submitted by stakeholders within a period of thirty (30) days of receipt.
16. Upon verification, a list of stakeholders shall be prepared within forty-five (45) days from the last date of receipt of claims.
17. In case of rejection of any claim, the creditor shall have a right to appeal to the Adjudicating Authority (National Company Law Tribunal)

VIII. Voluntary Liquidation Bank Account

18. The liquidator shall open a dedicated bank account in the name of the corporate person, followed by the words “in voluntary liquidation,” with a scheduled bank.
19. All receipts and payments exceeding Rs. 5,000/- shall be made via cheque or digital transfer only.

IX.Distribution of Proceeds

20. The liquidator shall distribute the net proceeds from the realization of assets, after deduction of liquidation expenses, to the stakeholders within six months from the date of realization.

X. Completion of Liquidation

21. The liquidator shall endeavor to complete the entire process of liquidation within a period of one year from the date of commencement.

22. Where the liquidation extends beyond one year, the liquidator shall:

a. Convene a meeting of contributories;
b. Submit a status report to the Adjudicating Authority;
c. Continue the process in accordance with the directions issued.

XI. Preparation and Submission of Final Report

23. Upon completion of the liquidation process, the liquidator shall prepare a Final Report containing:

a. A detailed account of the liquidation process;
b. Manner of asset disposal and proceeds distribution;
c. A statement of dissolution.

24. The Final Report shall be submitted to:

- The members/contributories;
- The Registrar of Companies;
- The Insolvency and Bankruptcy Board of India;
- And finally, to the Adjudicating Authority (NCLT) for passing of the dissolution order.

XII.Order of Dissolution and Filing with Registrar

25. Upon being satisfied, the NCLT shall pass an order of dissolution under sub- section (7) of Section 59 of the Code.

26. A copy of the dissolution order shall be filed by the liquidator with the Registrar of Companies within fourteen (14) days of receipt, after which the corporate person shall stand dissolved with effect from the date of such order.

Final Thoughts: A Respectable Exit

Voluntary liquidation is not always about failure. It can represent maturity, prudence, and responsibility. Whether closing a company after a successful run or winding down an enterprise that didn't work out, the voluntary route allows directors and shareholders to control the narrative and protect stakeholders.

Done right, it's not a retreat — it's a strategic step forward.

CA Shirish A Ruparel
Insolvency Professional

IPK Exports Pvt. Ltd. v. HSB Home Solutions Ltd.

Synopsis:

This article analyses the recent NCLT ruling in IPK Exports Pvt. Ltd. v. HSB Home Solutions Ltd. (2025), where the tribunal refused to treat an operational advance for goods as "financial debt," even after the parties signed a later loan agreement with interest. Relying on Minions Ventures Pvt. Ltd. v. TDT Copper Ltd. (2023), the NCLT reinforced the "origin governs" rule and the nature of a transaction is fixed at inception and cannot be upgraded later for strategic advantage under IBC. The piece examines the legal framework under Sections 5(7), 5(8) and 5(20), compares similar precedents, and questions whether this rigid approach overrides legitimate restructurings and contractual freedom. It also explores jurisdictional concerns, whether the RP/IRP should settle such classification disputes during claims verification rather than at the admission stage. The article closes by asking whether the Supreme Court will endorse this strict stance or carve out space for genuine conversions of operational debt into financial debt.

I. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) reshaped India's insolvency regime, drawing a sharp line between Financial Creditors and Operational Creditors. This distinction is crucial: Financial Creditors control the Committee of Creditors (CoC) and drive resolution, while Operational Creditors play a secondary role.

In IPK Exports Pvt. Ltd. v. HSB Home Solutions Ltd. (2025 ibclaw.in 1011 NCLT), the National Company Law Tribunal (NCLT) confronted a contentious question: Can an advance for goods, later documented as a loan with interest, be treated as "financial debt" under Section 5(8) of IBC?

The NCLT answered with a firm no, relying heavily on the earlier NCLAT ruling in Minions Ventures Pvt. Ltd. v. TDT Copper Ltd. (2023) to hold that the "origin of the transaction governs its character." This article critically examines IPK Exports, its reasoning, its reliance on Minions Ventures, and whether this rigid stance aligns with IBC's purpose.

II. The Legal Framework

IBC's definitions in Section 5 set the stage:

- **Section 5(7):** A Financial Creditor means any person to whom a financial debt is owed.
- **Section 5(8):** Financial Debt means a debt "disbursed against the consideration for the time value of money," including loans, bonds, debentures, and "any other transaction having the commercial effect of borrowing."
- **Section 5(20):** An Operational Creditor means a person to whom an operational debt is owed, typically suppliers of goods or services.

Why it matters: Only Financial Creditors can invoke Section 7 IBC, while Operational Creditors are restricted to Section 9. The

classification is not cosmetic but it determines who will drive the insolvency process and who gets a seat at the CoC table.

III. IPK Exports v. HSB Home Solutions: Facts & Findings

The facts were straightforward:

- Between 2011–12, IPK Exports advanced over ₹2 crore to HSB Home Solutions as payment for materials.

- Goods were never supplied. Years later, in 2022, the parties executed a loan agreement, with HSB promising to repay the money with 24% interest.

- IPK Exports filed a Section 7 application, claiming status as a Financial Creditor.

NCLT Delhi dismissed the petition. Relying on Minions Ventures, it held:
"An operational advance cannot morph into financial debt merely by execution of a subsequent loan document. Allowing this would undermine the IBC's carefully constructed distinction between operational and financial creditors."

The Tribunal effectively ruled that the nature of the debt is frozen by its origin, an advance for goods remains operational, no matter how it is later styled.

IV. Minions Ventures: The Precedent Behind IPK Exports

In Minions Ventures Pvt. Ltd. v. TDT Copper Ltd. (2023), the NCLAT faced an almost identical fact pattern: advances for goods were later labeled as loans. NCLAT refused to recognize the change, warning that such "upgrades" could open the door to abuse and allowing suppliers to transform into powerful financial creditors after the fact.
By citing Minions Ventures, the NCLT in IPK Exports reinforced the "origin governs" principle: look back to how the transaction began, not how it was later rebranded.

V. The Core Debate

IPK Exports pushes us to ask: When does IBC "lock in" the nature of a debt?
Two competing views exist:

1. **Static View:** Classification is judged at the time of filing the insolvency application. If by then it's a loan with interest, it's a financial debt.

2. **Tracing View:** Classification traces back to the original transaction. If it started as an operational advance, it stays that way.

NCLT chose the Tracing View, citing policy concerns: prevent cosmetic rebranding, keep operational creditors from slipping into the financial creditor category.
But this raises the question: Does rejecting reclassification override parties' freedom to renegotiate contracts?

VI. Comparative Precedents & Analogous Cases

Courts have dealt with similar classification issues:

- Debenture into Equity Conversion: When debentures convert into equity, the lender becomes a shareholder and loses creditor rights. Courts accept this because the conversion feature was present from inception.

- Equity into Debt Recharacterization: Conversely, courts are reluctant to treat equity as debt after the fact, unless repayment obligations existed from the beginning.

At first glance, these seem opposite: one allows the character of the instrument to change (debentures to equity), while the other resists change (equity to debt). The

key distinction is intent at inception. When conversion is built into the original deal, the change is expected and lawful; when a new label is slapped on years later without that built-in intent, tribunals are far more cautious.

VII. Critical Reflections

What if an operational debt is genuinely restructured into a loan after intense negotiation? For instance:

- The creditor agrees to a discount on the principal.
- The debtor agrees to pay interest, introducing time value of money.
- A new repayment schedule is signed.

In law, this is novation (Contract Act, 1872, Section 62): the old obligation is extinguished, and a new one is born.

Should this new loan count as financial debt? IPK Exports, following Minions Ventures, doesn't clearly separate:

- Sham reclassifications (to gain IBC leverage) from
- Genuine restructurings (done in good faith).

By applying "origin governs" too rigidly, the Tribunal risks:

- Ignoring legitimate restructurings. Bona fide settlements may be unfairly dismissed.
- Assuming manipulation by default. Every conversion is treated as suspect without deeper inquiry.
- Interfering in contractual autonomy. Parties' freedom to settle and redefine obligations risks being overridden.

Jurisdictional angle: The IBC already assigns the task of examining sham or dubious transactions to the Resolution Professional (RP) or Interim Resolution Professional (IRP) under Sections 43–51 (preferential, undervalued, extortionate transactions). Detailed fact-finding and testing of "real vs. sham" was meant to happen there and not at the admission stage by NCLT, and certainly not summarily.

Further, classification disputes raise even more nuanced issues: Does reclassifying an operational advance into a financial loan amount to a "preferential transaction"? If yes, shouldn't it be left to the RP/IRP during the claims-verification process instead of being ruled on at admission? If no, then does straight denial of admission risk rejecting the debt itself? Operational creditors can initiate insolvency under Section 9 if default occurs, so should their application really be questioned at the admission stage, or should the RP/IRP handle reclassification later when all claims are verified? These questions reveal the fine line between gatekeeping abuse and overstepping into merits prematurely.

VIII. Admission Stage & Supreme Court Guidance

In dismissing IPK Exports' Section 7 plea, the Tribunal effectively said the application couldn't pass the "financial debt" test on its face. This links to Supreme Court guidance:

- In Mobilox Innovations v. Kirusa (2018), SC held that if there is a plausible dispute, IBC is not the forum.
- NCLT has limited scope at admission and it cannot conduct a full-fledged fact trial. Its job is to see if the claim prima facie fits IBC's framework.

By refusing admission, IPK Exports signals that if a debt's original nature is operational and only later styled as a loan, the claim won't even enter the IBC process.

IX. Concluding Remark:– Navigating the

Tension

IPK Exports v. HSB Home Solutions cements the "origin governs" rule, drawing authority from Minions Ventures. Operational advances, no matter how later documented, won't morph into financial debt for Section 7 purposes.

This protects IBC from abuse, but also invites critique:

- Does it stifle genuine restructurings?
- Should tribunals presume manipulation, or demand proof?
- Are NCLT/NCLAT overstepping into fact-finding that the Code left to RPs at the initial stage?
- And critically, should reclassification disputes wait for the RP's investigation rather than trigger rejection at the threshold?

These are questions only the Supreme Court can ultimately settle. Will it uphold this strict stance or carve space for honest conversions of operational debt into true loans? For now, IPK Exports stands as the latest and perhaps strongest with expression of the "origin governs" doctrine.

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Synopsis

This is not an article focused on technicalities. It is essentially a follow up to an earlier article – IBC Process and the NCLT Role - *in the same journal about how delays in the NCLT* ***are reducing competitiveness*** *(and investments) in the Indian economy, especially the Industrial economy. The NCLT too has their legitimate complaints-****too many vested interests holding up the process through frivolous interventions****, and there is little they can do about it at present. To address these issues, the authorities have made a sincere effort to remove some of the core bottlenecks, bring the timelines back substantively from 716 days to the targeted period of a maximum of 330 days, and ensure more transparency and accountability in the process. Doing this would certainly inspire greater confidence in potential investors, both domestic and international, public and private and assure them that they are getting a better and clearer deal at competitive prices. It would also go a long way towards enhancing India's status in terms of the ease of doing business, particularly in manufacturing, where a concerted effort is being made by the Union Govt to court the major global supply chains. There are other significant issues at play, but the amendment of the IBC is certainly one achievable catalyst to streamline the said process.*

A: Introduction

The amendments to the IBC seek to tighten procedural discipline, empower creditors, curb litigation delays, clarify definitions, and modernise the framework in line with global best practices.(see illustration)

Driven by concerns over delayed admission of insolvency cases, disputes over moratorium scope, and value erosion during resolution and liquidation, the Bill follows three years of extensive stakeholder consultations, recommendations from the Insolvency Law Committee, and public feedback on a Government discussion paper.

Key proposals include:

- Introduction of a **creditor-initiated** insolvency resolution process with out-of-court initiation for genuine business failures.
- New frameworks for group insolvency to resolve complex corporate structures and cross-border insolvency to align Indian law with international standards.
- Measures to reduce delays, maximize asset value, and improve governance of all processes under the Code.

The finance minister, while presenting the Bill, underscored that the reforms will "facilitate faster, cost-effective insolvency resolution with minimal business disruption, improve investor confidence, and **strengthen India's position as a business-friendly jurisdiction."**

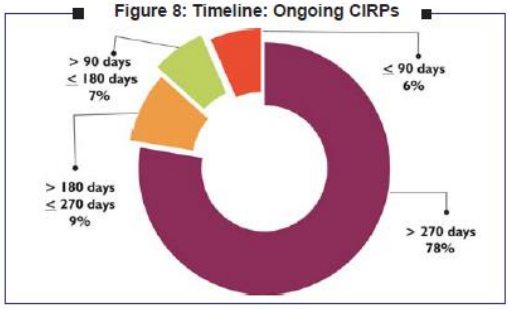
The Bill has been referred to a select committee for further deliberation and review. The amendments aim to modernize the IBC framework to align it with global best practices in insolvency and bankruptcy. The government aims to address the issue of delayed admission of insolvency cases, which leads to value erosion during the resolution process.

The Bill includes a new process allowing creditors to initiate insolvency proceedings, alongside a proposed mechanism for out-of-court resolution of genuine business failures. This strengthens the position of creditors by providing clearer rules and processes for their involvement in insolvency matters.

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: **Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25**

B:Core Changes:

1. Clauses 2 & 3

- **Clarification of Security interest :** Only rights created by mutual agreement/arrangement between parties count—not statutory liens such as tax dues. The authorities therefore cannot automatically claim "security interest" status by default. This is vital to get Resolution applicants on board, as one of the chief attractions is the waiving of pending statutory dues.
- **New "service provider" definition:** Expands regulatory reach to more entities supporting insolvency processes including consultants and outsourced professionals. However, IPE has not been placed as service provider.
- **Defines** 'Avoidance transaction' and 'fraudulent/wrongful trading' for consistent usage across Code.
- **Voting share recalibration:** Related party debt explicitly excluded from CoC vote-weight calculations.

2. Mandatory admission on proof of default (Clause 4)

- Adjudicating Authority shall **(not may)** admit a financial creditor's application if default is proven, provided no disciplinary proceedings exist against the proposed RP, and procedural compliance is met. NCLT discretion on the 14-day rule is removed, thereby enhancing admission.

  Records from financial institutions are conclusive proof of default without requiring additional papers from Complainant.
- Fourteen-day timeline strictly enforced with NCLT to provide written reasons for delay.

3. Operational and corporate applicant refinements (Clauses 5/6)

- Board empowered to demand additional info from operational creditors and corporate applicants.
- **Corporate debtors lose right to nominate interim resolution professionals**—a bid to avoid bias.
- **Sec 5(26)** broadened to allow the independent sale of assets for faster value realisation .

4. Withdrawal of admitted cases (Clause 8)

- Withdrawal post-admission is possible only with **90% CoC approval**, not allowed without CoC constitution, and certainly not after the first resolution plan invitation.
- Withdrawal application to be disposed of within 30-days.

5. Moratorium scope expansion (Clause 9&10)

- Clarifies that **sureties can't use subrogation rights to proceed against corporate debtor** during moratorium.
- Corporate Debtors cannot nominate the IRP as was the case previously .This was a cause of significant misuse earlier. The creditors or NCLT would nominate the same.

- Sureties cannot use subrogation rights against CD's during the moratorium to block the CIRP to transfer valuable assets to allied parties..

6. Transfers of Assets from guarantors during CIRP (Clause 17)

- Transfers of guarantor's assets (personal or corporate) is possible into CIRP if creditor has taken possession via enforcement methods.
- Requires CoC consent and, in certain cases, guarantor's CoC/creditor approval.

7. Settling Dissenting creditor payouts (Clause 18)

- **Minimum payout = Lower of liquidation value or Section 53 waterfall share**.
- Prevents dissenting creditors from blocking viable plans and enhances speedy consent in CoC process.

8. Modifying resolution plan approval to two phases (Clause 19)

- Adjudicating Authority can approve **implementation first** and **distribution later** (within 30 days).
- C**lean-slate principle**: all pre-plan claims are extinguished unless specified clearly in the order; grants/rights can't be suspended for past dues if obligations are met.
- New Insolvency Framework-Allows out of court settlement after CoC provides a 30 day notice and votes with 51% majority.RP would be appointed by CoC.

9. Merging CIRP/Liquidation process (Clauses 20–25, 33)

- **Moratorium extended into liquidation** to prevent piecemeal litigation. The CIRP and liquidation processes are gradually being integrated.
- **Restoration of CIRP from liquidation** made possible in exceptional cases (max 120 days).
- **The CoC remains relevant and supervises liquidation** for better commercial decisions.
- Timeline for liquidation: **180 days + one 90-day extension**.
- Claims process to be vetted better, right from CIRP stage.

10. Look-back period changes for PUFE transactions (Clauses 26–30)

This has been a constant problem when the process is initiated. Now two reforms have been instituted.

- Look-back starts from **initiation date (application filing)**, not admission date.
- Look-Back Covers all PUFE except fraudulent preferential, undervalued, and extortionate transactions—blocking strategic delays. Fraudulent means openly malafide and is a different case from the others.

11. Secured creditors' obligations (Clause 31–32)

- 14-day deadline to elect realisation outside liquidation.
- Requires **66% consent** of secured creditors on shared collateral.
- Must contribute to IRP/liquidation costs & workmen's dues when realizing outside process.
- Government dues **cannot claim priority with secured creditors** even if secured—two-year cap for higher priority.

12. Other important insertions (changes)

- **Section 47:** There is somewhat of a focused provision on PUFE transactions as far as RP

is concerned .However, Creditors can file avoidance/fraudulent transaction applications if RP/Liquidator fails to act for whatever reason.

- **Section 49 k:** Related-party asset transfers lose safe-harbor protection to some extent. So, transferring assets to related parties to exclude them from the resolution plan loses its value to a degree. It was earlier a method of getting valued assets out of the way.
- **Section 54C, 54F, 54L, 54N tweaked:** Pre-pack has not been a success due to lack of harmonization with CIRP rules. An effort would be made to achieve that harmonization, so that the pre-pack will be more effective.

13. Creditor-Initiated Insolvency – A new focus

- **Clause 44 – Section 65**: Penalties for fraudulent/malicious initiation now apply to **creditor-initiated insolvency resolution** cases as well.
- **Clause 46 – Section 67A**: Officers of corporate debtors can also be penalized through such creditor-initiated processes.

14. Fraudulent/Wrongful Trading – Applicability enlarged

- **Clause 45 – Section 66**: Liquidators can now file applications for fraudulent or wrongful trading **during liquidation**, not just CIR. Earlier this was only applicable for CIRP.

16. Dealing with Frivolous Proceedings

Clause 54 – Section 64 A/183A: Penalty for vexatious/frivolous filings has been provided for under Part III. This will deter such obviously malicious transactions, which have been a significant burden on the system.

16. IBBI Powers Expanded – "Service Providers" Regime to be expanded

- **Clauses 55, 59, 60**: Replaces multiple references with **"service provider"** definition—covers IPs, IPAs, IUs, and notified persons.
- **Clause 55** also: Clarifies IBBI can levy fees across all processes and IBBI has more leverage.
- Introduces **standards of conduct** for CoC & members.
- Widens regulation-making scope.
- **Clause 56**: Consequential amendment for creditor-initiated insolvency.

17. Information Utility Strengthening

- **Clause 57 – Section 214**: IBBI to set authentication procedure/timeline for debtors.
- **Clause 58 – Section 215**: Operational creditors must submit info to an IU before Sec 9 filing; debtors must authenticate or dispute info; silence is deemed authentication. This takes care of needless searching for documentation, often very old.

18. Disciplinary Process Overhaul

- **Clause 61 – Section 219**: IBBI can issue Show Cause Notice to any service provider on prima facie grounds.
- **Clause 62 – Section 220**: Multiple disciplinary committees possible; powers clarified (penalties, suspension, restitution); however, appeal to NCLAT allowed.

19. Insolvency & Bankruptcy Fund

- **Clause 63 – Section 224**: More contribution sources allowed; Central Govt can define broader uses.

20. Penalty for Code Contraventions

- **Clause 64 – Section 235A**: Allows AA to impose proportional penalties on application by IBBI/Govt/authorized person.

21. Rule & Regulation-Making Scope Widened

- **Clauses 65–66**: Powers have been provided now for "carrying out the purposes of the Code" (broader) and for matters linked to amendments. This would give IDBI a lot more leeway in regulation-making and thereby expedite implementation of various procedures.

22. Tech & Cross-Border Insolvency

- **Clause 67 – Sections 240B, 240C**:
- **240B**: Govt can notify e-portal for insolvency/bankruptcy processes.
- **240C**: Govt can make cross-border insolvency rules, adapt other laws, designate benches; rules to be placed before Parliament.

C. Group Insolvency

Until now, the Insolvency and Bankruptcy Code, 2016 contained no statutory mechanism for dealing with the insolvency of multiple companies belonging to the same corporate group in a coordinated manner. This was a major lacunae and meant that when a corporate group's members faced insolvency, courts and tribunals had to rely on treating essentially connected companies as individual legal entities, often stretching the limits of the Code, whereas in fact the assets, liabilities, and business operations were closely intertwined and could be resolved together.

This came to a head with the decision of the NCLT Mumbai Bench in State Bank of India v. Videocon Industries Ltd., (2019), where for the first time in India a consolidated (CIRP) **was ordered for 13 of the 15 Videocon group companies**. The Bench drew on a Report of the Insolvency Law Committee (2018), which had initially suggested deferring the idea of group insolvency, but realised the urgency of Videocon and its relevancy to cutting procedural delays. Therefore, the "14-factor fact test" was conceptualized to determine when consolidation would be justified. The following parameters were included:

1.Common Control
2.Common directors
3.Common assets
4.Common liabilities
5.Inter-dependence
6.Inter-lacing of finance
7.Pooling of resources
8.Co-existence for survival
9.Intricate link of subsidiaries
10.Inter-twined accounts
11.Inter-looping of debts
12.Singleness of economics of units
13.Common Financial Creditors
14.Common group of Corporate Debtors

With these amendments, the Central Government would be empowered now to make rules for Group insolvency. This would allow for a much faster process as, in India at least, many of the companies have cross connections and shareholdings from various families and prominent individuals, and management control essentially remains common. So, with ONE hearing and ONE resolution plan, 7-8 companies could be resolved simultaneously.

The objective of the cross-border insolvency framework is to extend the reach of the IP in India **to the overseas assets of Indian entities**. Such outreach will not be possible unless the provisions for group insolvency are extended in cross border cases.

D: CONCLUSION

In terms of time taken for conclusion of various proceedings under the IBC, **the NCLTs are the ones that take the most time**.. It has been seen that they are already overburdened with the IBC cases, which eventually leads to delays in the processes. Therefore, there is a need to de-clog the NCLTs.. If the matter is purely administrative, it may be passed on to either IPAs or IBBI, with power to refer matters to NCLTs if needed.
There is also a need to get the waterfall

mechanism of Sec 53 more streamlined between competing creditors. This has not been done fully though the mechanism for dissenting creditors has been fully addressed. However, Government Dues are not secured debt now and the contradiction of Rainbow papers case has been resolved.

Another issue is Contractual priorities which form the very basis of a creditor's comfort in a distress situation. As such, the absence of clarity w.r.t. the contractual priorities may defeat the commercial basis of such contracts and demotivate the lenders. Such a situation would of course adversely affect the credit ecosystem. Hence, it is important to uphold these contractual priorities in resolution as well as liquidation.

Ultimately, a well drafted legislation which would make procedures clear, declog the NCLT and empower IDBI a lot more. Hopefully, this will lead to shorter timelines and a superior quality of decision-making.

We now await feedback from the select committee.

ANNEXURE A

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

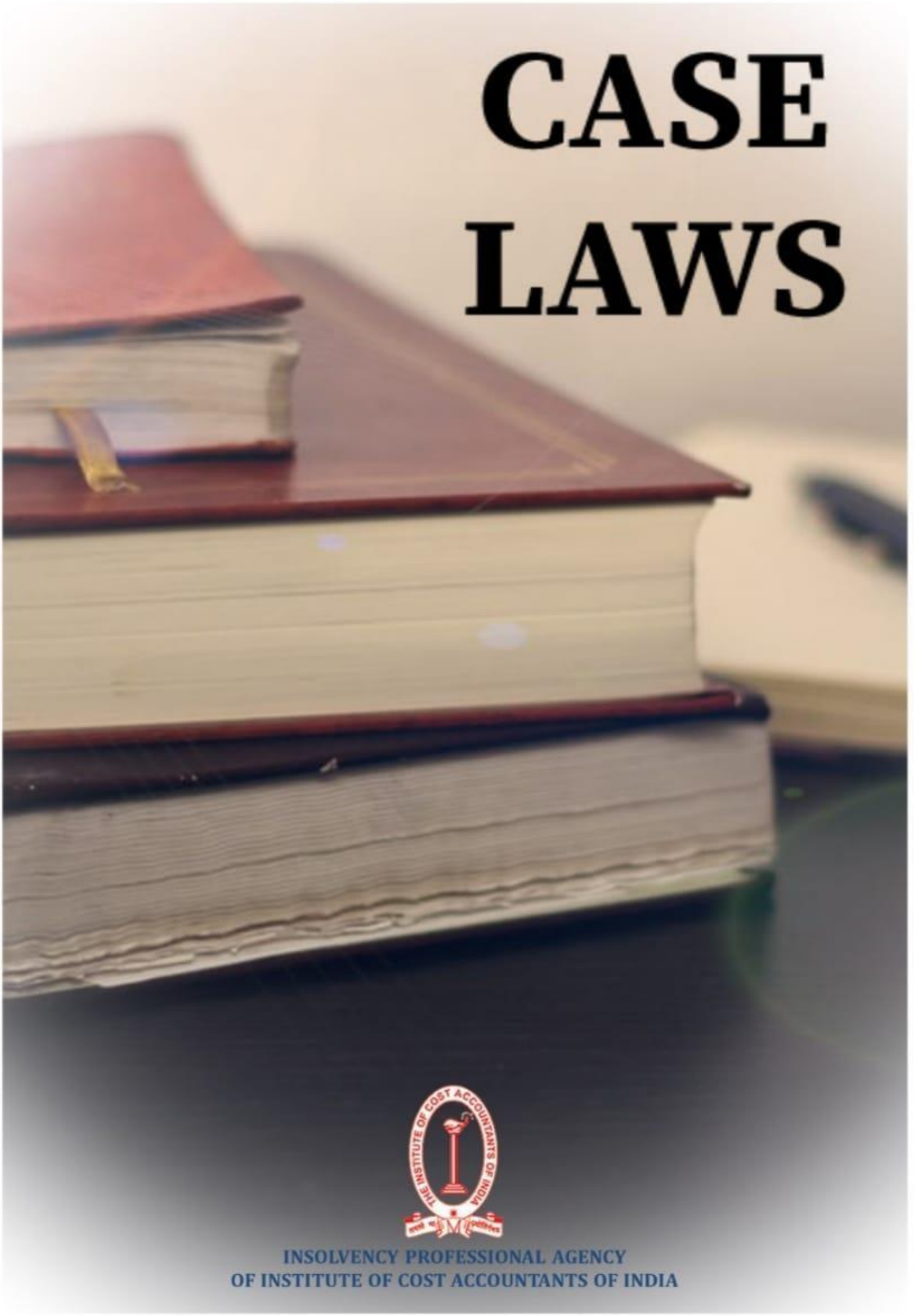
Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

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.

ANNEXURE B

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



CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

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

Wakai Hospitality (P.) Ltd. vs. Ms. Palak Desai [2025] 175 taxmann.com 53 (NCLAT- New Delhi)

Where appellant-licensee had been granted a license by corporate debtor in respect of commercial premises but during moratorium appellant neither paid license fees to corporate debtor nor vacated premises after termination of Leave and License Agreement (LLA), since RP was duty bound to act in accordance with IBC and to take over assets of corporate debtor, RP was entitled to take legal action against appellant for recovery of money and vacation of premises.

The appellant was granted a license by the corporate debtor in respect of commercial premises for a period of five years under a Leave and License Agreement (LLA). Meanwhile CIRP was initiated against the corporate debtor and respondent No.1-Resolution Professional (RP) also sought payment of rentals under LLA from the appellant. Since the appellant failed to pay any license fees from very commencement of LLA, RP filed an application before the Adjudicating Authority seeking. directions for handover of vacant and peaceful possession of licensed premises by the appellant as well as payment of alleged outstanding license fees. The Adjudicating Authority by impugned order directed the appellant to vacate premises and pay alleged outstanding license fees. It was noted that RP was duty bound to act in accordance with IBC and according to which liquidator was supposed to take over assets of the corporate debtor.

Held that since RP had given due notice to the appellant for termination of LLA after obtaining approval of CoC and since the appellant had failed to make payment as per notice, RP was entitled to terminate LLA. Since appellant had neither vacated premises nor repaid money to the corporate debtor, RP was entitled to take legal action against the appellant. RP during moratorium could terminate LLA and was entitled to take legal action against the appellant and, therefore, impugned order passed by NCLT was to be upheld.

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

Alok Gaur v. State Bank of India [2025] 175 taxmann.com 124 (NCLAT- New Delhi)

Where debt owned by corporate debtors to lenders was not evaporated upon failure of restructuring agreement, mere fact that holding company had taken liability to discharge debts of corporate debtor, would not in any manner prohibit lenders to take proceedings under section 7 against corporate debtor, whose debts were in default, due to failure of restructuring proposal.

JCCL, a wholly owned subsidiary of JAL, availed various credit facilities from SBI. JCCL defaulted in payment of loans and SBI filed a section 7 application to initiate CIRP against JCCL. The appellant, suspended director of JCCL, challenged admission of section 7 application on ground that default stood waived under restructuring framework. It was further submitted that entire debt of JCCL had been transferred to its holding company i.e., JAL and there was no debt due on JCCL to initiate any CIRP against JCCL.

Held that since restructuring had failed and

neither debt of JAL, nor debt of JCCL had been discharged, initiation of CIRP proceedings against JAL could not be a ground to contend that no proceedings could be initiated against JCCL. Failure of restructuring agreement, debt, which was owned by JCCL to lenders did not evaporate and mere fact that JAL had taken liability to discharge debts of JCCL did not in any manner prohibit lenders to take proceedings under section 7 against JCCL, whose debts were in default, due to failure of restructuring proposal. Therefore, no merit was there in appeal and same was to be dismissed.

Case Review: Order of NCLT(Allahabad) in CP(IB) No.26/ALD/2023 with IA No.583/2023, dated 22.07.2024, affirmed.

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

Jsw Steel Ltd. vs. Sanjay Singhal [2025] 175 taxmann.com 248 (SC)/[2025] 189 SCL 159 (SC)

Where appellant alleged that it had right to file a review petition against Supreme Court's judgment in Kalyani Transco v. Bhushan Power and Steel Ltd. [2025] 174 taxmann.com 155 (SC), since limitation period for filing a review petition had not yet expired and steps were being taken to file a review petition, in interest of justice and in order to avoid future legal complications, an order of status quo be maintained in proceedings before NCLT until review petition was filed and decided by Supreme Court.

The appellant submitted that it had a right to file a review petition against judgment of Supreme Court in Kalyani Transco v. Bhushan Power and Steel Ltd. [2025] 174 taxmann.com 155 (SC) and, that limitation period for filing a review petition had not yet expired. It was noted that steps were being taken to file a review petition and resolution plan of JSW as approved by CoC was rejected in Kalyani Transco v. Bhushan Power and Steel Ltd. (supra).

Held that in view of facts, without expressing any opinion on merits of matter and to avoid future legal complications, an order of status quo regarding proceeding before NCLT was to be issued, pending disposal of review petition(s) to be filed and considered by Supreme Court.

SECTION 42 - CORPORATE LIQUIDATION PROCESS - APPEAL AGAINST DECISION OF

T.Sivasankar vs. Managing Director [2025] 175 taxmann.com 370 (Madras)/[2025] 189 SCL 208 (Madras)

Where against order of liquidator rejecting claims of petitioners-operational creditors, appropriate course of action would have been to prefer an appeal under Section 42, but instead, petitioners had chosen to file instant writ petition, said petition was not maintainable in view of availability of an efficacious alternative remedy under IBC.

During CIRP proceedings, liquidation process of the corporate debtor was ordered, and liquidator was appointed. Petitioners claimed to be employees of the corporate debtor and submitted their claim as operational creditors with Liquidator. Liquidator vide impugned order rejected claim of petitioners on ground that they did not fall within definition of "workmen" under Section 53(1)(b)(i), and further noted that 1st and 3rd petitioners had resigned from service in year 2014, nearly four years prior to initiation of liquidation order. It was noted that if petitioners were aggrieved by said rejection, appropriate course of action would have been to prefer an appeal under Section 42, instead, petitioners had chosen to file instant writ petition, which was not maintainable in view of availability of an efficacious statutory remedy.

Held that IBC is a codified and time-bound legislation enacted to ensure expeditious resolution or liquidation of corporate debtors, with specific timelines prescribed at each stage. Therefore, instant writ petition was liable to be dismissed as not maintainable, in view of availability of an efficacious alternative remedy under provisions of IBC. Petitioners, bypassing statutory mechanism, had misused process of law and unnecessarily consumed valuable judicial time, accordingly, instant writ petition was to be dismissed.

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

Deepak Raheja vs. Union of India [2025] 175 taxmann.com 389 (Karnataka)

Where loan account of corporate debtor was assigned by financial creditor to reconstruction company 'O' and corporate debtor was made aware of such transfer and silence of corporate debtor was in vindication of such transfer, thus, submission of corporate debtor that he was not even made aware of this was contrary to record, as document appended to statement of objections clearly indicates knowledge of appellant of such transfer, and accordingly, instant appeal against order of Single Judge, dismissing petition challenging assignment, was to be dismissed.

The respondent-financial creditor sanctioned loan of Rs. 450 crores to the appellant-corporate debtor. Disputes arose between parties. Thus, financial creditor filed an application before NCLT invoking section 7 of IBC. Thereafter, loan account of the corporate debtor was assigned by the financial creditor to a reconstruction company 'O'. The corporate debtor filed writ petition before Single Judge challenging assignment of its loan as legally invalid and unsustainable. According to the corporate debtor, assignment had been effected on 27.12.2022 without prior notice or intimation to the appellant. Single Judge by impugned order dismissed said petition. It was noted that requirement of law can only be an intimation, not a prior notice. In instant case notice/intimation of assignment dated 27.12.2022 had been issued to the corporate debtor. The corporate debtor was notified on 27.12-2022 that assets would be transferred to 'O'. Thus, the corporate debtor was made aware of such transfer and silence of the corporate debtor was in vindication of such transfer from financial creditor in favour of 'O' and submission that the corporate debtor was not even made aware of this was contrary to record, as document appended to statement of objections clearly indicates knowledge of the corporate debtor of such transfer.

Held that instant appeal against impugned order of Single Judge was to be dismissed.

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

Adani Power Ltd. vs. Shapoorji Pallonji And Co. (P.) Ltd. [2025] 175 taxmann.com 413 (SC)

Where NCLAT vide impugned order upheld approval of resolution plan passed by NCLT and held that resolution plan, as approved, was binding on all and could not be made subject matter of arbitration or any other proceeding, since there was no ambiguity in observations and directions recorded by NCLAT, impugned order passed by NCLAT was justified.

NCLAT vide impugned order upheld approval of resolution plan passed by NCLT and held that resolution plan, as approved, was binding on all and could not be made subject matter of arbitration or any other proceeding.

Held that there was no ambiguity in observations and directions recorded by NCLAT. Claim of the respondent no. 1, which had been categorized by RP as a 'contingent liability' could continue with arbitration proceedings for adjudication of its claim and quantification thereof, if they so wish and choose to do so. Claim even if allowed in favour of Respondent No. 1 would have no bearing on rights and obligations of the appellant, which were in terms of resolution plan and, therefore, the appellant could not be saddled with any liability except what was mentioned in resolution plan.

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 – CORPORATE LIQUIDATION PROCESS - INITIATION OF

Lavender Infraprojects (P.) Ltd. vs. Nishit Badola [2025] 175 taxmann.com 576 (Delhi)

Where appellant challenged an ex parte order passed by a Single Judge in a writ petition, which allowed IRP (who was functus officio) in CIRP of 'TCS' to take over property claimed to be owned by appellant, however, appellants were not named in petition nor given a chance to respond, since appellant's substantial rights were affected, appellants were directed to approach Single Judge to seek impleadment in underlying writ petition and simultaneously file an appropriate application seeking recall/clarification/modification or review of impugned order.

Appellants filed present letters patent appeal against common ex parte order passed by the Single Judge in underlying writ petition whereby the Single Judge had allowed proposal filed by functus officio IRP in CIRP of 'TCS' to take over property located at Hotel Plot, claimed to be owned and in exclusively possession of the appellant. The appellants' case was that CIRP qua 'TCA' stood quashed and office of IRP was rendered functus officio, however, IRP, who had admittedly demitted office, continued to pursue matters regarding a CIRP which was non est as on date. Appellants further alleged that they were not arrayed in memo of parties nor were they ever called upon to answer issues raised in underlying writ petition. However, without having heard appellants, ex parte impugned order was passed in writ petition

containing drastic and detrimental civil action of not only taking over of possession of properties claimed to be owned and in exclusively possession of appellants but also simultaneously allowed sale of such properties.

Held that such direction ought to have been passed after considering or hearing appellants too. Therefore, it would be appropriate to direct appellants to approach the Single Judge seeking their impleadment in underlying writ petition and simultaneously file an appropriate application seeking recall/clarification/modification or review of impugned order so as to enable the Single Judge to re-consider grievances raised by appellants after giving due opportunity to them.

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

Bafna Pharmaceuticals Ltd. vs. Assistant Commissioner of Provident Fund [2025] 175 taxmann.com 599 (Madras)

Where corporate debtor was admitted into CIRP and resolution plan was approved by NCLT, writ petition filed by petitioner bypassing such framework was not maintainable.

The petitioner - corporate debtor was admitted into Corporate Insolvency Resolution Process (CIRP). A resolution plan was subsequently approved by NCLT.

The petitioner challenged recovery notice issued by the respondent wherein interest under section 7Q and damages under section 14B were levied. The petitioner was directed to remit a sum within ten days, failing which recovery proceedings under Paragraph 32(a) of EPF Scheme, 1952 were to be initiated. The petitioner filed writ petition.

Held that since Insolvency and Bankruptcy Code, 2016 is a complete code providing for a specialised adjudicatory mechanism, writ petition filed by petitioner bypassing such framework was not maintainable.

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

Ashok Harry Pothen vs. Authorised Officer [2025] 175 taxmann.com 631 (Kerala)

Bar against any claim outside resolution plan would apply only to a claim vis-a-vis corporate debtor and not to a person who claims that he was in agreement with corporate debtor.

The petitioner had availed a loan from respondent bank. Loan was secured by mortgage of an item of property belonging to the petitioner. The petitioner had entered into an agreement with a company known as 'H,' for joint development of said property. 'H', was subject matter of proceedings before NCLT under provisions of Insolvency and Bankruptcy Code and a resolution plan had now been approved in respect of 'H'. The petitioner filed instant writ claiming that joint venture with him was also a part of resolution plan and therefore respondent bank could not proceed against property of the petitioner under provisions of SARFAESI Act. It was noted that bar against any claim outside resolution plan would apply only –to a claim vis-a-vis the corporate debtor and not to a person like the petitioner who claims that he was in agreement with the corporate debtor. Right of the respondent bank to proceed against property which had been mortgaged by the petitioner was thus not affected in any manner by any resolution plan in respect of 'H', especially when the

respondent bank was not even a party to proceedings before NCLT or resolution plan. Held that there was no merit in contention taken by the petitioner that since the petitioner was in agreement with 'H', for development of property and since a resolution plan had been sanctioned in respect of 'H', the respondent bank must be restrained from continuing proceedings under SARFAESI Act. Therefore, instant writ petition failed and same was to be dismissed.

SECTION 36 - CORPORATE LIQUIDATION PROCESS - LIQUIDATION ESTATE

Yarn Sales Corporation vs. Punjab State Power Corporation Ltd. [2025] 175 taxmann.com 683 (NCLAT- New Delhi)

Past electricity dues of corporate debtor cannot be claimed for purpose of grant of new electricity connection to successful bidder in liquidation auction.

The corporate debtor was admitted to liquidation and liquidator made public announcement for sale of assets of the corporate debtor by way of auction. The appellant was highest bidder, and property was sold to the appellant. Since, property in question had an electricity connection which was disconnected due to non-payment of electricity dues, the appellant filed an application before the Adjudicating Authority for issuance of necessary direction for release of new electricity connection in its name. Adjudicating Authority by impugned order dismissed said application.

Held that past dues of electricity could not be claimed for purpose of granting a new electricity connection since, there was a patent error in approach of Adjudicating Authority in dismissing appellant's application, impugned order was to be set aside.

Case Review: Order of NCLT(Chandigarh) in I.A. No. 962 of 2022 filed in CP (IB) No. 160/Chd/PB/2018, dated 01-12-2023, reversed.

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

Twentyone Sugars Ltd. vs. Maharashtra State Electricity Distribution Co. Ltd. [2025] 175 taxmann.com 704 (NCLAT-New Delhi)

Successful resolution applicants (SRA) was not liable for pre-CIRP electricity dues as all pre-existing debts without filed claims stand extinguished upon resolution plan approval.

The corporate debtor was admitted to CIRP. Resolution plan filed by the appellant was approved by NCLT. The appellant took over the corporate debtor and realised that electricity connection had been disconnected and it wrote to the respondent for its restoration. However, the respondent refused to restore electricity without clearing pre-CIRP dues. The appellant agreed to make payment of electricity dues under protest. Later, the appellant filed an application seeking refund of amount paid. NCLT dismissed said application.

Held that the respondent could not be permitted to benefit from its own failure to file claim and coercing appellant to pay pre-CIRP dues for restoring electricity. Even if payment was not made by the appellant under protest and so was made only because of compulsion due to coming season then also Respondent was barred from seeking arrears of amount that stood extinguished by operation of law as a precondition for restoring the appellants' electricity connection. Since the respondent insisted for payment of pre-CIRP amounts that stood extinguished by way of Resolution Plan, instant matter was directly

related to resolution process as failure of respondent to refund pre-CIRP amounts paid to it would negatively impact revival of corporate debtor and, therefore, instant appeal was to be allowed - Held, yes [Paras 18 and 21]

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Case Review: Order of NCLT- Mumbai Bench in IA No.32/2021 in CP(IB) 1767/MB/2017), dated 10-1-2023, set aside

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

Maharashtra State Electricity Distribution Company Ltd. vs. Twentyone Sugars Ltd. [2025] 175 taxmann.com 705 (SC)

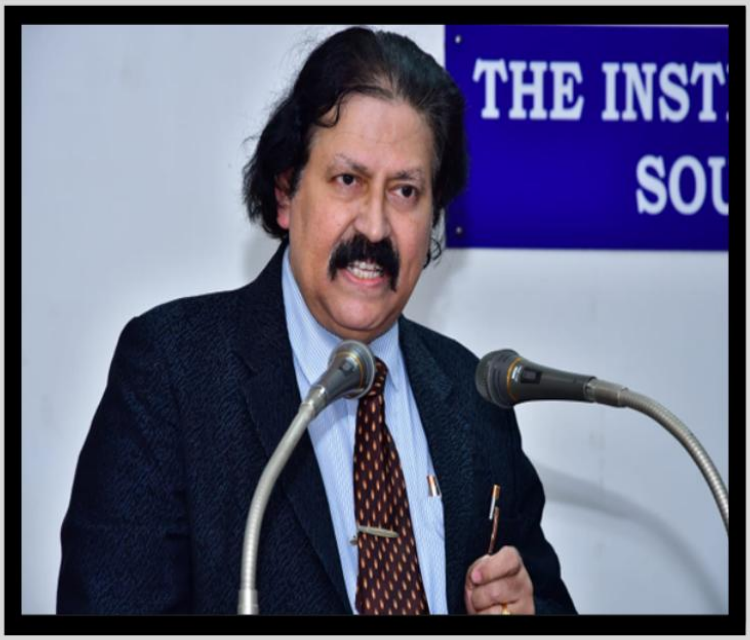
Successful resolution applicant (SRA) was not liable for pre-CIRP electricity dues as all pre-existing debts without filed claims stand extinguished upon resolution plan approval.

The corporate debtor was admitted to CIRP. Resolution plan filed by the appellant was approved by NCLT. The appellant took over the corporate debtor and realised that electricity connection had been disconnected and it wrote to the respondent for its restoration. However, the respondent refused to restore electricity without clearing pre-CIRP dues. The appellant agreed to make payment of electricity dues under protest. Later, the appellant filed an application seeking refund of amount paid. NCLT dismissed said application. On appeal, NCLAT held that respondent could not be permitted to benefit from its own failure to file claim and coercing appellant to pay pre-CIRP dues for restoring electricity. It was further held that since the respondent insisted for payment of pre-CIRP amounts that stood extinguished by way of Resolution Plan, instant matter was directly related to resolution process as failure of the respondent to refund pre-CIRP amounts paid to it would negatively impact revival of the corporate debtor.

Held that no error not to speak of any error of law could be said to have been committed by NCLAT and, therefore, appeal was to be dismissed.

Case review: Order of NCLAT in Twentyone Sugars Limited v. Maharashtra State Electricity Distribution co Ltd. [2025] 175 taxmann.com 704, affirmed.

SEMINAR ON INSOLVENCY AND BANKRUPTCY CODE 2016, ORGANIZED BY IPA ICMAI ON AUGUST 18, 2025, AT CMA BHAWAN, CHENNAI.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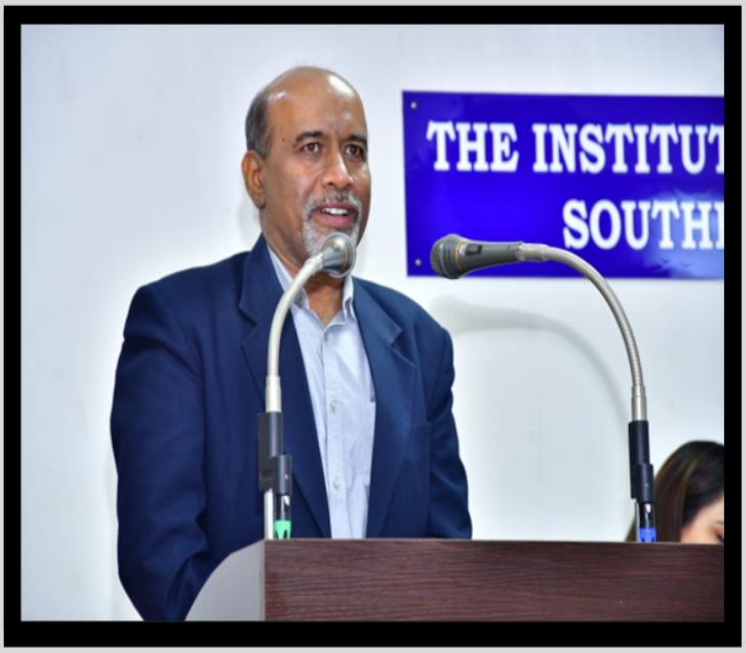
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ROUNDTABLE ON IBC AMENDMENT BILL 2025" ON 22ND AUGUST 2025 AT ANDHRA ASSOCIATION, LODHI ROAD, NEW DELHI.


ఆంధ్రా అసోసియేషన్, ఢిల్లీ (ఎట్టర్)
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