

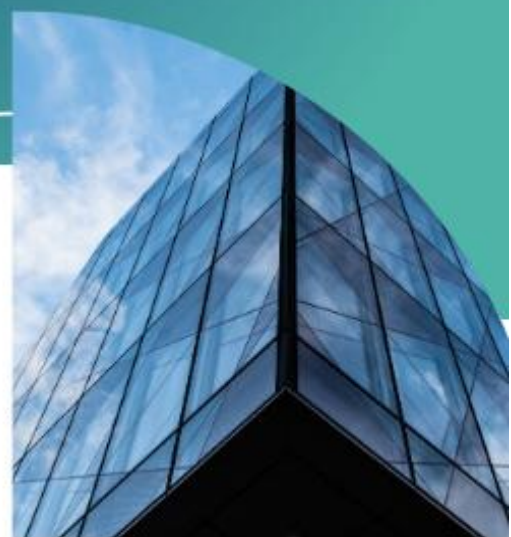
JULY 2025



INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL



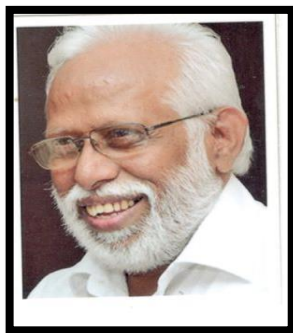
IPA-ICMAI



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.

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CASEBOOK

TABLE OF CONTENTS

BOARD OF DIRECTORS

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- ❖ *Message From the Desk of Managing Director.....6.*
- ❖ *Event's Conducted in May 2025.....8*
- ❖ *Articles.....9*
- ❖ *Group Insolvency and Cross-Border Insolvency: Legal Framework, Global Best Practices, and the Road ahead.....11*
- ❖ *Emerging Trends and Future Outlook of Insolvency Laws and Practice.....17*
- ❖ *Valuation of Non-Performing Assets (Npas) For Resolution Under Ibc: Principles, Practice, And Cirp Case Examples.....22*
- ❖ *Outcome Of Personal Guarantors To Corporate Debtors Under IBC In India.....28*
- ❖ *Learning For Insolvency Professionals In Pg To Cd Cases From Recent Judicial Pronouncements.....35*
- ❖ *Case Law43*
- ❖ *Guidelines For Article.....51*

MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Reader,

Greetings to you from all of us Team IPA-ICMAI.

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

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

- On Group Insolvency by Ravi Garg IP
- Valuation of Non- Performing Assets of Banks by Mayank Sharma RV
- An Overview of Emerging Trends Prospects for Insolvency Practice by Krit Narayan Mishra,
- Learnings From Case Laws on Insolvency Proceedings on Personal Guarantor (PG) to Corporate Debtor (CD) by CA Manoj Kumar Anand, IP,
- IBC as a Tool for Indian Practicing Valuers by N. Sivapiran, RV

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

I wish you all happy reading.

Mr. G.S. Narasimha Prasad
Managing Director



PROFESSIONAL DEVELOPMENT INITIATIVES

EVENTS CONDUCTED

JULY 2025

| DATE | EVENTS CONDUCTED |
|------------------|--|
| July 4, 2025 | A Workshop on "Mediation as a Strategic Tool in Resolving Insolvency Disputes under IBC" was held on July 4, 2025. This workshop provided insights into the use of mediation as a strategic tool in resolving insolvency disputes under IBC. Expert sessions facilitated interactive learning and Q&A. |
| July 11, 2025 | A Workshop on "Disciplinary Aspects & Governance under IBC, 2016" was held on July 11, 2025. This workshop focused on disciplinary aspects and governance under IBC, 2016, providing participants with a deeper understanding of the regulatory framework. |
| July 18, 2025 | A Workshop on "Cross Border & Group Insolvency under IBC" July 18, 2025. This workshop explored the complexities of cross-border and group insolvency under IBC, providing expert insights and practical knowledge |
| July 21-27, 2025 | The 68th Batch of Pre-Registration Educational Course (Online Course) was conducted by our expert faculties from 21 st -27 th July 2025, who shared their knowledge, enriching experiences, practical aspects, and guidance to function as an effective and efficient Insolvency Professional (IP). The Course enhanced the knowledge base, sharpened management skills, and provided efficiency in advocacy, code of conduct, and handling insolvency effectively. |
| July 26-26, 2025 | IPA-ICMAI successfully conducted an Advanced Workshop on "IBC Practices and Regulatory Landscape" , from July 26 to 27 2025 covering key topics such as, Latest judicial pronouncements and their impact on Ips, Recent amendments in IBC and model timelines, Practical masterclass on drafting key IBC documents, Intersections and challenges in IBC practice, including PMLA, SEBI, and ED orders, tax claims, and real estate insolvency. The workshop provided expert insights and practical knowledge, equipping participants with the skills to navigate complex insolvency cases |



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Updates on Insolvency and Bankruptcy Code

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ARTICLES



INSOLVENCY PROFESSIONAL AGENCY
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GROUP INSOLVENCY AND CROSS-BORDER INSOLVENCY: LEGAL FRAMEWORK, GLOBAL BEST PRACTICES, AND THE ROAD AHEAD

MR. RAVI GARG Insolvency Professional

Introduction

The increasing complexity of corporate structures, multinational corporations and globalization of businesses have necessitated robust legal frameworks for **Group Insolvency** (insolvency of multiple entities within a corporate group) and **Cross-Border Insolvency** (insolvency involving assets and creditors across jurisdictions). While India has made significant strides with the **Insolvency and Bankruptcy Code (IBC), 2016**, gaps remain in addressing group insolvency and cross-border cases.

1. Indian Legal Framework for Group and Cross-Border Insolvency

a) Group Insolvency under IBC

- The IBC does not explicitly recognize "**group insolvency**". The IBC treats each corporate debtor as a separate entity, with no provisions for consolidated proceedings.
- The **Insolvency Law Committee (ILC) 2019 Report** recommended a "**modified universalism**" approach for cross-border cases but did not propose a formal group insolvency framework. Further also suggested exploring "**procedural coordination**" for group insolvency but did not propose substantive consolidation.
- **Section 234-235 of IBC** allows cooperation with foreign jurisdictions but lacks detailed provisions for consolidated proceedings.
- **Section 60(2) of IBC**: Allows for joint hearings of insolvency cases involving the same corporate debtor or related parties but stops short of true group insolvency resolution.
- **Fragmented resolution** leads to value destruction.
- **Conflicting resolutions** for interlinked entities (e.g., holding and subsidiary companies).
- No mechanism for joint resolution of group companies, leading to asset stripping, inconsistent resolutions, and delays due to consolidation attempt initiated by COC i.e. KSK Mahanadi Power Project.

There are many IBC cases such KSK Mahanadi Power Project and its subsidiaries, Sinnar Thermal Power Plant and its subsidiaries are example of such complex corporate structures (holding companies, subsidiaries, joint ventures), Operational interdependence (shared assets, supply chains, guarantees), and financial entanglement (cross-defaults, common creditors). Inshort highlight of some of key challenges faced by KSK Mahanadi Power : -

KSK Mahanadi Power Company Limited (KSKMPCL), which operates an 1,800 MW power plant in Chhattisgarh, entered the Corporate Insolvency Resolution Process (CIRP) in 2019.

Key Challenges: The operational viability of the plant was heavily reliant upon:

1. Raigarh Champa Rail Infrastructure Pvt. Ltd., its subsidiary, for railway siding and coal transportation.
2. KSK Water Infrastructures Private Limited (KWIPL), another subsidiary, for water supply.
3. Transmission infrastructure is owned by an affiliated company.

Key Issues:

Issues Arising from the Absence of a Group Insolvency Framework:

KSK Mahanadi Power and its subsidiaries underwent separate insolvency proceedings.

There were no legal provisions to ensure continuous support from its subsidiaries for coal and water supply during the insolvency proceedings of KSKMPCL.

Multiple litigations arose during the CIRP period between the parent company and its subsidiaries regarding consistent supply of raw materials, payment of invoices, agreement terms and conditions, and the consolidation of the CIRP process, leading to delays.

The lack of a unified resolution process resulted in fragmented outcomes and loss of operational synergies. Lenders of KSK Mahanadi and its subsidiaries expressed concerns about the interdependent operations, fearing asset devaluation due to piecemeal sales and non-cooperation among lenders in consolidation efforts.

Moreover, if a Group Insolvency Framework was agreed upon by lenders and the resolution professional, it can lead to significant savings in several areas, including costs associated with the Corporate Insolvency Resolution Process (CIRP), litigation expenses, and manpower required to manage the CIRP process. It also facilitates the consolidation of claims related to intercorporate guarantees and ensures the smooth operation of the corporate debtor. This approach fosters greater confidence among the community of resolution applicants and enables the maximization of value for stakeholders.

Ultimately, KSK Mahanadi was resolved as a standalone corporate debtor under CIRP on February 13, 2025, following extensive litigation concerning the consolidation of CIRP with its subsidiaries. Further the successful resolution applicant (RA) of KSK Mahanadi has resolved the CIRP with lender by giving the 12 A proposal to lenders. Additionally, the RA may intend to pursue the acquisition of another subsidiary, either through CIRP or the 12A mechanism. However, the CIRP proceedings for Raigarh Champa Rail Infrastructure Pvt. Ltd remain unresolved.

The situation faced by KSK Mahanadi Power Company Limited highlights the critical need for a robust Group Insolvency Framework. In the absence of such a framework, the insolvency proceedings of interconnected corporate entities can lead to inefficiencies and value destruction, impacting the stakeholders involved. Therefore, implementing a Group Insolvency Framework help in Operational Synergy and Value Maximization, Efficient Resolution Process, minimize litigation and operational disruptions, reducing the risk of power outages or other public service interruptions. This would reduce ambiguity, ensure consistency in the application of insolvency laws, and empower resolution professionals to make decisions that consider the collective interests of the group entities.

b) Cross-Border Insolvency under IBC

Cross-border insolvency under India's Insolvency and Bankruptcy Code (IBC) is a complex area that deals with insolvency proceedings involving assets or parties located in multiple jurisdictions. The IBC is India's primary legislation for insolvency resolution but does not explicitly address cross-border insolvency issues. However, there have been discussions and initiatives to incorporate a framework for cross-border insolvency, primarily based on the UNCITRAL Model Law on Cross-Border Insolvency.

- **Section 234 & 235:** Enable agreements with foreign countries for enforcing insolvency resolutions but remain underutilized.
- India has not adopted the **UNCITRAL Model Law on Cross-Border Insolvency (1997)**, unlike the US (Chapter 15), UK, and Singapore.
- **Jet Airways (2019):** Highlighted the need for cross-border cooperation as creditors sought assets in multiple countries.
- Highlighted the need for cross-border cooperation as creditors sought assets in India, the Netherlands, and other jurisdictions.

Key Issues:

- **Asset Location:** Determining the location of assets and their legal status across

different jurisdictions can be challenging, affecting asset recovery and distribution.

- **Recognition of Foreign Proceedings:** There is a need for clear guidelines on when and how foreign insolvency proceedings are recognized in India, and vice versa.
- **Coordination between Courts:** Effective coordination between courts in different jurisdictions is crucial to avoid contradictory rulings and ensure efficient and fair insolvency proceedings.
- **Creditor Rights:** Balancing the rights and priorities of domestic and foreign creditors can be contentious, particularly in terms of asset distribution.
- **Jurisdictional Challenges:** Cross-border insolvency involves multiple legal systems, leading to conflicts of jurisdiction, recognition of proceedings, and enforcement of judgments.

Key Requirements for India

- **Adoption of UNCITRAL Model Law:** Implementing the UNCITRAL Model Law on Cross-Border Insolvency can provide a structured approach for handling cross-border cases, fostering cooperation and coordination between jurisdictions.
- **Mutual Recognition Agreements:** Establishing agreements with other jurisdictions for mutual recognition and enforcement of insolvency proceedings can facilitate smoother resolution processes.
- **Judicial Training and Coordination:** Training judges and insolvency professionals on cross-border issues and encouraging judicial cooperation can enhance the effectiveness of cross-border insolvency processes.
- **Legislative Amendments:** Amending the IBC to explicitly address cross-border insolvency issues can provide clarity and direction in handling such cases.

Case Study: Jet Airways Insolvency

The Jet Airways insolvency case is a notable example illustrating the complexities of cross-border insolvency under the IBC. The airline had significant operations not only in India but also internationally, with

substantial assets and creditor claims in multiple jurisdictions, particularly in the Netherlands.

Key Highlights of the Case:

- **Dual Proceedings:** Insolvency proceedings were initiated both in India and the Netherlands, leading to coordination challenges between jurisdictions.
- **Jurisdictional Conflicts:** The dual proceedings led to jurisdictional conflicts, as both Indian and Dutch authorities had stakes in the insolvency process. The Dutch administrator initially sought to secure and manage Jet Airways' assets located within the Netherlands, which required coordination with Indian proceedings.
- **Asset Recovery and Distribution:** Issues arose regarding the recovery and distribution of assets located abroad, requiring cooperation between the Dutch and Indian proceedings.

Resolution efforts:

- Recognizing the need for coordination, the Dutch administrator and Indian Resolution Professional worked together to manage the assets and creditor claims.
- This cooperation illustrates the practical need for a cross-border insolvency framework that allows for recognition and joint management of insolvency proceedings.
- The courts in both jurisdictions facilitated communication between the administrators, which was essential to preventing asset dissipation and ensuring an orderly process.

The case catalyzed discussions on the need for a comprehensive cross-border insolvency framework in India. It emphasized the importance of international legal cooperation and the potential adoption of international best practices to streamline such complex proceedings. By adopting international best practices and frameworks like the UNCITRAL Model Law, India can enhance its ability to manage cross-border insolvency cases, providing greater certainty and protection for creditors and stakeholders involved in such

proceedings.

Practices

2. Comparative Analysis of Global Best

A. Group Insolvency Models Across Jurisdictions

| Country | Legal Framework | Key Features | Lessons for India |
|--|---|--|---|
| European Union (EU Insolvency Regulation 2015) | Group Coordination Proceedings | <ul style="list-style-type: none">- Allows joint handling of insolvent group companies.- Court-appointed "group coordinator" for procedural efficiency. | India could adopt a " modified group coordination " approach under NCLT supervision. |
| United Kingdom (Enterprise Act 2002) | Administration Proceedings | <ul style="list-style-type: none">- Permits group-wide restructuring.- "Light-touch" administration for subsidiaries. | India could introduce group administration provisions under IBC. |
| Singapore (Omnibus Insolvency Act 2018) | Substantive Consolidation | <ul style="list-style-type: none">- Courts can order pooling of assets/liabilities for group companies.- Single resolution professional for the entire group. | India should allow selective consolidation where financial entanglement exists. |
| United States (Chapter 11 Bankruptcy Code) | Substantive Consolidation (Judicial Discretion) | <ul style="list-style-type: none">- Courts can merge assets/liabilities if entities are financially inseparable.- Used in cases like Lehman Brothers (2008). | India's NCLT could be given similar discretionary powers . |

B. Cross-Border Insolvency Models

| Country | Legal Framework | Key Features | Relevance to India |
|---|--|--|---|
| UNCITRAL Model Law (1997, Revised 2013) | Adopted by 50+ countries (US, UK, Singapore, etc.) | <ul style="list-style-type: none">- Automatic recognition of foreign insolvency proceedings.- Cooperation between domestic and foreign courts. | India must adopt this to ease cross-border cases like Jet Airways. |
| US Chapter 15 (Based on UNCITRAL Model Law) | Part of US Bankruptcy Code | <ul style="list-style-type: none">- Foreign representatives can directly seek relief in US courts.- Fast-track recognition process. | India should implement a similar fast-track mechanism under IBC. |
| Germany (ESUG 2012) | Cross-Border Insolvency Act | <ul style="list-style-type: none">- Allows insolvency administrators to coordinate with foreign courts.- Protects local creditors while recognizing foreign claims. | India could introduce bilateral treaties for smoother enforcement. |
| UK (Cross-Border Insolvency Regulations 2006) | Based on UNCITRAL Model Law | <ul style="list-style-type: none">- Foreign insolvency proceedings recognized automatically.- UK courts can assist foreign representatives. | NCLT should have similar powers to recognize foreign proceedings. |

3. Key Challenges and Roadblocks in Implementing Group & Cross-Border Insolvency in India

A. Legal and Structural Roadblocks

- No statutory recognition of group insolvency under IBC, creating significant barriers to efficiently managing insolvency cases involving interconnected corporate entities.
- Jurisdictional conflicts between NCLT and foreign courts regarding jurisdiction, complicating the coordination and execution of insolvency proceedings across borders.
- The lack of comprehensive agreements for the mutual enforcement of foreign judgments further complicates cross-border insolvency processes, resulting in administrative delays and legal uncertainties.

B. Operational Challenges

- Coordination issues between multiple resolution professionals to overseeing different entities within a corporate group is challenging, often leading to inefficiencies and inconsistent outcomes.
- Valuation complexities for multinational assets due to differing legal standards and market conditions across jurisdictions, affecting asset distribution and recovery strategies.
- Delays in recognition and enforcement of foreign insolvency proceedings within India, which hampers timely resolution and asset management.

C. Judicial and Regulatory Hurdles

- Lack the specialized knowledge required to handle complex cross-border insolvency cases, which can lead to inconsistent rulings and prolonged proceedings.
- The current framework does not offer fast-track procedures for urgent insolvency cases, resulting in prolonged resolutions that adversely impact stakeholders.

4. Case Examples and Need for Reform

a) Notable Cases in India

1. **Jet Airways (2019):** This case exemplifies the complexities of cross-border insolvency, involving creditors from both the Netherlands and India, highlighting the challenges in coordinating international creditor claims.
2. **Videocon Group (2020):** The insolvency proceedings for multiple companies within this group were initiated under the Corporate Insolvency Resolution Process (CIRP), yet lacked a consolidated approach for resolution, underscoring the need for a framework addressing group insolvency.
3. **Lanco Infratech (2017):** The company faced cross-border debt challenges with creditors in Singapore, illustrating the difficulties in handling international debt issues within the current legal framework.

b) Key Reforms Needed

- There is a pressing need for amendments to the Insolvency and Bankruptcy Code (IBC) to explicitly address group and cross-border insolvency, ensuring a more comprehensive legal framework.
- Establishing bilateral treaties with major trading partners would facilitate the mutual recognition and enforcement of insolvency judgments, streamlining cross-border insolvency processes.
- Creating dedicated benches within the NCLT for handling cross-border cases could enhance judicial expertise and expedite resolutions in complex international insolvency matters.

Conclusion: The Road Ahead

India must align its insolvency regime with global best practices by:

- Adopting UNCITRAL Model Law for cross-border insolvency.
- Introducing group insolvency provisions under IBC.

- Enhancing judicial cooperation and training on international insolvency laws.
- Establish specialized NCLT benches for cross-border cases.
- With increasing global integration, a robust legal framework for group and cross-border insolvency is no longer optional but a necessity for India's economic growth.

India's insolvency framework must evolve to handle complex corporate groups and globalized businesses. By adopting global best practices (like the UNCITRAL Model Law and EU-style group coordination), India can ensure:

- Faster resolutions for multinational insolvencies.
- Higher recovery rates for creditors.
- Greater investor confidence in India's insolvency regime.

The time for reform is now—delays will only lead to more cases like Jet Airways, where the lack of a legal framework causes inefficiencies and losses.

MR. KRIT NARAYAN MISHRA Insolvency Professional

The Insolvency and Bankruptcy Code (IBC), enacted in India in 2016, represents a watershed moment in the nation's economic legislative history. Designed to consolidate and streamline the previously fragmented and often inefficient insolvency framework, the IBC has aimed to create a transparent, time-bound, and market-driven mechanism for resolving corporate distress. This comprehensive legislation seeks to balance the interests of various stakeholders, including creditors, debtors, employees, and the government, while promoting entrepreneurship and economic growth.

As the IBC matures, it is essential to evaluate its impact, identify emerging trends, and anticipate future developments. This article explores these emerging trends and their implications for insolvency law and practice in India, considering recent judicial pronouncements, technological advancements, global influences, and ongoing institutional reforms.

Emerging Trends in Insolvency Laws

1. Emphasis on Speed and Efficiency

One of the primary objectives of IBC is to ensure that insolvency proceedings are resolved expeditiously. The code prescribes a strict timeline of 180 days for the completion of the Corporate Insolvency Resolution Process (CIRP), extendable by a maximum of 90 days, with the intention of minimizing value erosion and maximizing recovery for creditors.

Judicial Recognition and Enforcement:

The judiciary has played a critical role in upholding the importance of timelines in the IBC. In the landmark case of *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court affirmed the constitutional

validity of the IBC and emphasized the significance of adhering to the prescribed timelines. The court recognized that delays in the resolution process not only erode the value of the assets but also undermine the confidence of investors and creditors.

Technological Advancements:

Technology has emerged as a key enabler in accelerating the resolution process. The Insolvency and Bankruptcy Board of India (IBBI) has launched various digital initiatives, such as the e-filing portal and the online database of insolvency professionals, to enhance transparency and efficiency. Virtual hearings and online meetings have also become increasingly common, particularly in the wake of the COVID-19 pandemic, further streamlining the proceedings and reducing delays.

Future Outlook:

To further enhance speed and efficiency, the government is considering the establishment of dedicated insolvency courts and tribunals with specialized expertise. Additionally, efforts are underway to promote the use of technology-driven solutions, such as artificial intelligence and machine learning, to automate routine tasks, improve data analysis, and facilitate faster decision-making.

3. Rise of Pre-Packaged Insolvency Resolutions

Pre-packaged insolvency resolutions (pre-packs) have emerged as a promising alternative to the traditional CIRP, offering a more streamlined and efficient approach to resolving corporate distress. A pre-pack involves a debtor and its creditors agreeing on a restructuring plan before initiating formal insolvency proceedings, thereby

reducing the time, cost, and disruption associated with the CIRP.

Legal Framework and Adoption:

In 2021, Section 54A was inserted into the IBC, introducing a pre-pack framework specifically for Micro, Small, and Medium Enterprises (MSMEs). This amendment recognizes the unique challenges faced by MSMEs and aims to provide them with a more accessible and efficient resolution mechanism. While pre-packs are still in their initial stages of adoption in India, they have shown promise in several cases, particularly in sectors such as real estate and manufacturing.

Advantages and Limitations:

Pre-packs offer several advantages, including faster resolution, lower costs, and greater control for the debtor and creditors. However, they also have certain limitations, such as the need for consensus among all stakeholders and the risk of information asymmetry. To address these concerns, the IBBI has issued detailed guidelines to ensure transparency, fairness, and stakeholder participation in pre-pack resolutions.

The COVID-19 Pandemic and Pre-Packs:

The COVID-19 pandemic has further accelerated the adoption of pre-packs in India. As businesses faced unprecedented challenges and liquidity constraints, pre-packs provided a viable option for restructuring debt and preserving viable enterprises.

Future Development:

Experts anticipate that pre-packs will become increasingly popular in India, particularly for MSMEs and other businesses seeking a more efficient and less disruptive resolution process. However, it is important to address the existing limitations and strengthen the regulatory framework to ensure the integrity and effectiveness of pre-packs.

3. Cross-Border Insolvency and International Cooperation

With the increasing globalization of trade and finance, cross-border insolvency has become a critical issue for many countries, including India. Cross-border insolvency arises when a debtor has assets and creditors in multiple jurisdictions, requiring coordination and cooperation among different legal systems to ensure a fair and efficient resolution.

Legal Developments:

India has taken several steps to address the challenges of cross-border insolvency. Section 234 and 235 of the IBC empower Indian courts to enter into agreements with foreign countries to facilitate the recognition and enforcement of insolvency proceedings. However, these provisions are limited in scope, and there is a need for a comprehensive legal framework to address all aspects of cross-border insolvency.

The UNCITRAL Model Law:

To address this gap, the Indian government is considering the adoption of the UNCITRAL Model Law on Cross-Border Insolvency, which provides a framework for cooperation and coordination among courts and insolvency administrators in different jurisdictions. The adoption of the Model Law would align India's insolvency framework with international best practices and facilitate greater cooperation in cross-border insolvency cases.

Landmark Cases:

The *Jet Airways* case highlighted the complexities of cross-border insolvency and the need for a clear legal framework. The case involved multiple jurisdictions and highlighted the need for coordination between Indian courts and foreign courts to resolve the insolvency proceedings effectively.

Future Outlook:

The adoption of the UNCITRAL Model Law is expected to significantly improve India's ability to handle cross-border insolvency cases and foster greater international cooperation. This would enhance India's attractiveness as a destination for foreign investment and trade.

4. The Growing Importance of Individual Insolvency

While the IBC primarily focuses on corporate insolvency, it also includes provisions for individual insolvency. However, the individual insolvency framework has not been as widely used as the corporate insolvency framework. There is a growing recognition of the need to strengthen the individual insolvency framework to provide relief to individuals burdened by debt and promote financial inclusion.

Challenges and Reforms:

The existing individual insolvency framework faces several challenges, including a lack of awareness, complex procedures, and limited access to credit counseling and financial literacy. To address these challenges, the government is considering reforms to simplify the procedures, enhance access to credit counseling, and promote greater awareness of the individual insolvency framework.

Digital Platforms and Accessibility:

The use of digital platforms to facilitate individual insolvency proceedings could significantly improve accessibility and efficiency. Online filing of claims, virtual hearings, and digital record-keeping could streamline the process and reduce costs for both debtors and creditors.

Future Outlook:

A strengthened individual insolvency framework would not only provide relief to individuals burdened by debt but also promote financial inclusion by allowing them to start afresh.

5. ESG (Environmental, Social, and Governance) Considerations in Insolvency

Increasingly, Environmental, Social, and Governance (ESG) factors are gaining prominence in insolvency proceedings globally, and India is beginning to see this trend as well. ESG considerations focus on

ethical and sustainable business practices.

Impact on Asset Valuation:

ESG factors are becoming relevant in valuing assets during insolvency. For instance, assets in polluting industries or companies with poor labor practices may be devalued due to potential environmental liabilities or social risks.

Resolution Plans and Sustainability:

Resolution plans that prioritize ESG factors may be more attractive to creditors and investors. For example, a plan that includes investments in clean technology or improves labor conditions may be viewed favorably.

Regulatory Developments:

As ESG becomes more mainstream, Indian regulators may start incorporating ESG considerations into insolvency regulations. This could include mandating ESG disclosures during CIRP or providing incentives for resolution plans that promote sustainable practices.

Stakeholder Activism:

Stakeholder groups, including employees, local communities, and environmental organizations, are increasingly engaging in insolvency proceedings to ensure that their concerns are addressed. This could lead to more pressure on companies to adopt ESG-friendly practices during restructuring.

Future Outlook:

The integration of ESG factors into insolvency proceedings is still in its initial stages in India, but the trend is expected to grow as stakeholders become more aware of the importance of sustainable business practices.

6. Challenges Faced by Insolvency Professionals (IPs)

Insolvency professionals are at the forefront of the IBC process, playing a critical role in managing the CIRP and ensuring its success. However, IPs often face numerous challenges in discharging their duties.

Information Asymmetry:

One of the biggest challenges faced by IPs is information asymmetry. Debtors may not always provide complete and accurate information, making it difficult for IPs to assess the true financial position of the company.

Stakeholder Conflicts:

IPs often have to navigate conflicting interests among various stakeholders, including creditors, debtors, employees, and government authorities. Balancing these interests and reaching a consensus can be challenging.

Limited Resources:

IPs may face limitations in terms of resources, including financial resources, expertise, and infrastructure. This can hinder their ability to conduct thorough investigations, manage the CIRP effectively, and maximize value for creditors.

Legal and Regulatory Complexities:

The IBC is a complex piece of legislation, and IPs must navigate numerous legal and regulatory requirements. This can be time-consuming and challenging, particularly for IPs who are new to the profession.

Ethical Dilemmas:

IPs often encounter ethical dilemmas in the course of their work. They must act with integrity, transparency, and impartiality, even when faced with pressure from stakeholders or conflicting interests.

Capacity Building and Training:

Addressing the challenges faced by IPs requires continuous capacity building and training. The IBBI and other stakeholders need to provide IPs with the necessary resources, guidance, and support to enable them to discharge their duties effectively.

Future Outlook:

The role of IPs is expected to become even more critical as the IBC matures and more complex insolvency cases arise. Addressing the challenges faced by IPs will be essential to ensure the success of the IBC and promote a healthy insolvency ecosystem in

India.

7. Emerging Trends in NCLT and NCLAT Decisions

Decisions made by the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) continue to shape and refine insolvency law in India. Several key trends can be observed in these decisions:

Emphasis on Operational Creditors:

There has been an increased focus on protecting the rights of operational creditors, such as suppliers and vendors. The NCLT and NCLAT have emphasized that operational creditors should be treated fairly and equitably in the resolution process.

Judicial Scrutiny of Resolution Plans:

The NCLT and NCLAT have been increasingly scrutinizing resolution plans to ensure that they comply with the provisions of the IBC and protect the interests of all stakeholders. This scrutiny has led to the rejection of several resolution plans that were deemed to be unfair or inequitable.

Adherence to Timelines:

The NCLT and NCLAT have consistently emphasized the importance of adhering to the timelines prescribed in the IBC. They have taken a strict view of delays and have penalized parties that have caused undue delays in the resolution process.

Balancing Stakeholder Interests:

The NCLT and NCLAT have played a crucial role in balancing the interests of various stakeholders, including financial creditors, operational creditors, employees, and the government. They have sought to ensure that all stakeholders are treated fairly and equitably in the resolution process.

Use of Technology:

The NCLT and NCLAT have increasingly embraced technology to improve the efficiency and transparency of their proceedings. E-filing, virtual hearings, and

online case management systems have become more common, reducing delays and improving access to justice.

Future Outlook:

Decisions by the NCLT and NCLAT will continue to shape and refine insolvency law in India. It is important for all stakeholders to stay abreast of these decisions and understand their implications for insolvency practice.

Future Reforms and the Way Forward

To ensure the continued effectiveness of the IBC and address the emerging challenges, the following reforms could be considered:

- **Strengthening the Pre-Pack Framework:** Streamlining regulations, providing greater clarity on eligibility, and increasing transparency in pre-pack proceedings will promote their adoption and success.
- **Enhancing Cross-Border Insolvency Cooperation:** Enacting comprehensive legislation aligned with the UNCITRAL Model Law will facilitate smoother resolution of cross-border cases.
- **Promoting Financial Literacy:** Implementing financial literacy programs and expanding access to credit counseling services will help individuals avoid debt traps.

- **Integrating ESG Considerations:** Developing guidelines for incorporating ESG factors into insolvency proceedings will promote sustainable business practices.
- **Building Capacity of Insolvency Professionals:** Providing IPs with ongoing training, resources, and support will enhance their expertise and effectiveness.
- **Improving Data Collection and Analysis:** Strengthening data collection and analysis will allow for better monitoring of the insolvency ecosystem and identification of emerging trends.

Conclusion

The IBC has transformed the landscape of insolvency law and practice in India, creating a more efficient, transparent, and market-driven resolution mechanism. As the IBC matures, it is important to recognize and address emerging trends and challenges. By embracing technology, promoting innovation, strengthening institutions, and fostering international cooperation, India can further enhance its insolvency framework and create a vibrant and resilient economy. The active involvement of all stakeholders, including the government, regulators, insolvency professionals, and the judiciary, will be critical to realizing this vision and ensuring that India remains a global leader in insolvency resolution.

VALUATION OF NON-PERFORMING ASSETS (NPAS) FOR RESOLUTION UNDER IBC: PRINCIPLES, PRACTICE, AND CIRP CASE EXAMPLES

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Synopsis

This article explores the valuation of Non-Performing Assets (NPAs) for resolution under India's Insolvency and Bankruptcy Code (IBC), emphasizing the processes, practical challenges, and best practices. It discusses the regulatory framework, key methodologies, and nuances of valuation from real-world Corporate Insolvency Resolution Process (CIRP) cases, including prominent examples like Essar Steel and Bhushan Steel. The narrative highlights the role of valuers, the importance of fair and liquidation values, and legal precedents around value disputes, offering a pragmatic perspective for professionals and stakeholders involved in insolvency resolution.

Introduction

The exponential growth of Non-Performing Assets (NPAs) had threatened the stability of India's financial and banking sector prior to the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016. The IBC enabled a unified and time-bound mechanism for the resolution of distressed companies, centering on effective asset valuation to ensure optimal recovery for creditors while preserving economic value^{[5][6][7]}. Accurate valuation underpins every major decision in the CIRP, from plan formation to asset monetization and liquidation.

The Regulatory Framework for Valuation under IBC

Statutory Mandates

- **IBC Regulations:** The IBBI (CIRP) Regulations, 2016 require appointment of two registered valuers for every CIRP case. These valuers must independently determine the fair value and liquidation value of the corporate debtor's assets.
- **Asset Classes:** Valuation must cover three main asset classes:
 - Plant and Machinery (P&M)
 - Land and Building (L&B)
 - Securities and Financial Assets
- **Physical Verification:** Mandatory on-site physical verification of assets before report submission.
- **Discrepancy Rectification:** If a 25% difference exists between valuations, a third valuer may be appointed. The average of the two closest values is considered final.

Key Definitions

- **Fair Value:** The estimated realizable price of assets in an arm's length transaction on the insolvency commencement date.
- **Liquidation Value:** The estimated realizable value if the assets were to be liquidated on the insolvency commencement date with less-than-optimal market exposure.

Valuation Methodologies for NPAs under IBC

Valuation combines principles from accounting, finance, law, and practical

judgment. Some principal methods include:

- **Discounted Cash Flow (DCF):** Projects future cash flows and discounts them to present value, suited for going-concern businesses with predictable cash flows.
- **Market Approach:** Considers sale prices of comparable assets, adjusted for differences in location, condition, and market circumstances.
- **Cost Approach:** Estimates asset value based on the cost to replace or reproduce the asset minus depreciation. Useful for unique or highly specialized assets.
- **Liquidation Value:** Focuses on what can realistically be recovered through a piecemeal or going-concern sale under distress.

The choice of approach, inputs, and assumptions—such as discount rates, future asset utility, and market context—require sound professional judgment and sector expertise.

Practical Process of Valuation of NPAs under IBC

- **Site Visit (or the Attempt to Make One)**

Most CIRP units are shut or semi-functional. Valuers often require help from the Resolution Professional (RP) to gain entry.

They check asset conditions: rusted machinery, idle warehouses, or damaged inventory.

In cases like Alok Industries, machinery was in decent shape but unused for years—valuation required factoring in reconditioning costs.

****Pro Tip**:** Carry engineers and technical consultants for large manufacturing units.

- **Document Access & Verification**

Title deeds for land, equipment invoices, lease agreements, etc., may be missing or disputed. Rcom's assets, for instance, included telecom towers where ownership was unclear and tower-sharing arrangements were outdated.

****Common Adjustments**:**

- Apply haircut to asset value if documentation is unclear or disputed.
- Value only the unencumbered portion of the asset.

- **Cross-Checking Fixed Asset Register vs. Reality**

A common issue: what's on paper isn't what's on site.

Example: A garment exporter under CIRP listed 300 sewing machines. Only 180 were found in usable condition.

****Adjustment**:**

- Exclude or heavily discount missing/non-functional assets.
- For semi-working assets, apply depreciation + refurbishment adjustment.

- **Dealing with Overstatement in Books**

Valuers often encounter inflated asset values in company books, especially for goodwill, brand value, or WIP (Work-in-Progress).

In Bhushan Power & Steel, brand value was exaggerated, and most buyers did not factor it into the bid.

****Solution**:** Eliminate notional items or

value them conservatively using real market comparable or write-downs.

• Assessing Marketability

Just because something exists doesn't mean it will sell.

For example, textile looms in Surat may have a local market but may be worthless in Jharkhand due to logistics.

****Valuer's Action**:**

- Talk to secondary asset dealers and auctioneers.
- Discount value for logistic costs, dismantling, and resale feasibility.

• Valuation Method Selection: Practical Application

Rather than theory-based choices, valuers use what works given the facts on ground.

| Method | Used When | Example |
|---|---------------------------------------|-------------------------------------|
| DRC (Depreciated Replacement Cost) | Plant/machinery with no income stream | Power plants under CIRP |
| NAV (Net Asset Value) | Real estate-heavy firms | Real estate developers |
| Scrap/Salvage Value | Worn-out or dismantled assets | RCom's defunct switches |
| DCF(Discounted Cash Flow) | Only when revival is feasible (rare) | Essar Steel with ArcelorMittal plan |

Practical Aspects and Challenges of NPA Valuation

Information Asymmetry and Data Validation

Valuers often struggle with incomplete documentation, outdated asset registers, legal disputes over title, or encumbered collateral. Physical verification becomes critical to check the existence and condition of assets, detect obsolete equipment, or uncover previously unrecorded assets.

Business Environment and Going Concern Assumptions

The context—whether the company is a “going concern” or to be liquidated—raises valuation complexities. When operations are ongoing, the enterprise may command higher value. However, a loss of market contracts, reputational damage, or regulatory constraints can force valuers to revert to asset break-up or liquidation values.

Disputes and Stakeholder Expectations

Under-valuation or over-valuation can spark objections from creditors, promoters, or even successful applicants, as seen in many CIRP cases. A conservative valuation risks leaving value on the table, while inflated values might lead to rejection of feasible resolution plans or failed liquidations.

Legal and Regulatory Compliance

Disputes may lead to litigation or regulatory scrutiny, especially if perceived to cause loss of public money or unfair gains for any party. Parallel valuations (by lenders, companies, or government agencies) may add to confusion and dispute.

CIRP Case Examples: NPA Valuation in Action

1. Essar Steel (SBI and Other Creditors)

Background: Essar Steel defaulted on debts exceeding ₹49,000 crore. The CIRP saw multiple valuation rounds and arguments about asset utility, steel plant viability, and sectoral adjustments.

Valuation Outcome: Dual valuer system was implemented, estimating both fair and liquidation values; lively debates ensued over the “going concern” status and assumptions for steel price projections. The final resolution saw ArcelorMittal acquire the company for ₹42,000 crore, delivering a high recovery ratio for creditors and setting benchmarks for process transparency.

2. Bhushan Steel (PNB and Other Creditors)

Background: Bhushan Steel had an outstanding debt of around ₹48,000 crore. Its valuation captured the value of ongoing operations, land, and machinery.

Valuation Outcome: The successful plan by Tata Steel, at ₹35,200 crore, managed to recover a substantial portion of outstanding dues, reflecting higher-than-expected value due to robust steel sector demand and strategic buyer interest.

3. Jaiprakash Associates (ICICI Bank)

Background: With heavy exposure to real estate and construction, the NPA was resolved through asset monetization. The sale of the company’s cement business to UltraTech Cement for ₹16,189 crore contributed to debt reduction.

Valuation Outcome: The pragmatic approach of selling asset clusters rather than piecemeal liquidation enabled higher realization and faster resolution.

4. Suzlon Energy (Axis Bank)

Background: Faced with high debt and sectoral decline, Axis Bank and other creditors turned into a debt restructuring plan rather than outright sale or liquidation.

Valuation Outcome: A hybrid approach, involving debt-equity conversions, restructuring, and ongoing business activity, preserved value for all stakeholders compared to fire-sale liquidation.

5. CIRP Valuation Dispute Example

In a notable case (Shri Madhukar Shetty v. Bank of Baroda), major discrepancies emerged among various valuations: one valuer placed real estate at ₹413cr, another at ₹142cr, the company’s own books at ₹210cr, and the government’s Ready Reckoner at ₹260cr. The case highlighted the importance of transparent, robust valuation methodology and comprehensive review of all available data.

Lessons and Best Practices from Real-World Resolution

1. Planning and Process

- Timely appointment of valuers is essential, ideally within seven days of IRP/RP appointment.
- All relevant information—physical asset details, loan documentation, legal encumbrances—must be compiled in advance.

2. Multidimensional Analysis

- Valuation reports should corroborate or reconcile with company balance sheets, earlier valuations, and public

benchmarks (e.g., circle rates, government valuations).

- Use scenario analysis and sensitivity checks to account for fluctuating sectoral conditions or unique business risks.

3. Stakeholder Management

- Valuation reports must be clear and defensible before the Committee of Creditors (CoC), the Adjudicating Authority, and all stakeholders.
- Preparing for objections or legal challenges—by documenting process, assumptions, and deviations—is critical.

4. Avoiding Pitfalls

- **Undervaluation** may result in abnormal gains for resolution applicants and losses for creditors.
- **Over-valuation** can delay creditor recoveries and stall CIRP or liquidation, causing reputational harm to valuers and professionals^[3].

5. Use of Technology and Independent Audit

- Leveraging asset tracking tools, audit software, and third-party verifications can enhance process authenticity and reduce fraud or error risk^{[3][1]}.

Evolution in Practice and Outcomes

Adoption of transparent, auditable, and fair valuation practices has, with the advent of the IBC, dramatically improved NPA recovery rates and instilled confidence in the resolution ecosystem. Data indicate that IBC-enabled processes are responsible for over 61% of gross NPA recoveries in recent years—

substantially outpacing other recovery mechanisms^{[11][12]}. The system is not without pitfalls, including delays due to valuation disputes or asset sale complexities, but its dynamic evolution bodes well for both creditors and the wider economy.

Conclusion

The valuation of NPAs under the IBC is not just an accounting requirement—it directly determines the fate of distressed companies, the recoveries for creditors, and the realignment of India's industrial landscape. CIRP case studies reveal that success depends on timely, transparent, and defensible asset valuation, robust professional judgment, and proactive engagement with all stakeholders. As insolvency law and markets evolve, ongoing investment in valuer training, technological adoption, and strong regulatory oversight will remain central to the successful resolution of NPAs^{[2][3][4]}.

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Synopsis:

This article explores the strategic role of the Insolvency and Bankruptcy Code (IBC), 2016, as a transformative tool for Indian Practicing Valuers (PVs). Using the 5W+1H framework—What, why, When, Where, Who, and How—it analyses the legal, procedural, and professional implications of valuation in corporate insolvency. Through real-world case studies across sectors like real estate, manufacturing, and IT, the paper highlights the importance of accurate, time-bound valuations. It also outlines the responsibilities of Registered Valuers (RVs), the methodologies used, and their impact on resolution outcomes. The article positions IBC as a structured and empowering platform that elevates the role of PVs in India's evolving financial ecosystem.

Introduction

India's financial landscape has seen transformative reforms, notably the Insolvency and Bankruptcy Code (IBC), 2016, which introduced time-bound resolution of corporate distress, improved credit discipline, and enhanced investor confidence.

Registered Valuers (RVs)—especially from engineering, finance, and real estate domains, have become crucial in insolvency proceedings. Valuation, once auxiliary, now plays a strategic role in asset realization and resolution planning. The accuracy and independence of PVs directly impact key financial benchmarks like fair market and

liquidation values, critical to viable resolution plans.

Despite its significance, valuation under IBC faces challenges such as inconsistent methodologies, limited regulatory clarity, and uneven application.

This article uses a structured 5W+1H framework - What, why, When, Where, Who, and How - to explore:

- Scope and importance of valuation,
- Timing in insolvency processes,
- Key stakeholders, challenges, and
- Implementation of valuation standards.

Drawing on case law from the NCLT and NCLAT, the article blends theory with practice to offer insights for valuers, resolution professionals, and regulators, highlighting IBC's growing relevance to the valuation profession within India's evolving financial ecosystem.

Abstract

The **IBC, 2016** has emerged as a transformative force in India's financial and legal systems. For RVs—particularly those specializing in land, building, and plant & machinery—IBC offers a structured, legally mandated framework to play a critical role in the insolvency resolution process.

This article employs the **5W + 1H analytical framework** to explore the IBC's relevance as a professional instrument for PVs. Through real-world case studies, it demonstrates the practical application of valuation across diverse asset classes. The analysis further delves into statutory compliance requirements, valuation

methodologies, stakeholder interactions, and the impact of jurisdictional and sector-specific factors.

By doing so, the article positions the IBC as a foundational framework that not only elevates the role of PVs but also anchors their contributions within India's evolving insolvency landscape.

1. What: IBC as a Structured Valuation Tool

The IBC, 2016 has established valuation as a vital, time-bound process within corporate insolvency, promoting transparency and stakeholder confidence. It mandates two Registered Valuers to independently determine Fair Value (FV) and Liquidation Value (LV), which guide the Committee of Creditors (CoC) in evaluating resolution plans. No longer is a peripheral task, valuation under the IBC now a strategic, legally recognized tool central to resolving financial distress.

Case Study – Real Estate Sector (Amrapali Group)

- **Background:** The Amrapali Group defaulted on large-scale housing projects, leaving thousands of homebuyers in financial and legal limbo.
- **Valuer's Role:** RVs were engaged to assess unsold inventory, incomplete residential units, and associated land parcels.
- **Outcome:** The valuation reports were instrumental in facilitating the transfer of stalled projects to **NBCC (India) Ltd.** for completion.
- **Key Insight:** In complex real estate insolvencies, accurate valuation helps estimate recovery potential and supports strategies for compensating affected stakeholders—especially homebuyers.

2. Who: Valuers and Stakeholders Involved

Effective valuation under the IBC requires coordination among multiple stakeholders, each playing a distinct yet interconnected role. At the center of this process are the RVs —professionals accredited by a Registered Valuer Organization (RVO) and certified by the IBBI. These valuers operate under the regulatory framework of the Companies (RVs and Valuation) Rules, 2017, and are responsible for providing independent, accurate assessments of asset values.

Key stakeholders involved in the valuation process include:

- **Resolution Professional (RP):** Oversees and coordinates the valuation process as part of the insolvency proceedings.
- **Committee of Creditors:** Relies on valuation outcomes to assess the feasibility and financial merits of resolution plans.
- **Corporate Debtor:** Provides the valuer with access to critical operational, financial, and asset-level data.
- **Adjudicating Authority (NCLT):** Ensures compliance with IBC provisions and adjudicates valuation-related disputes when necessary.

Case Study – Industrial Assets (ABG Shipyard Ltd.)

- **Background:** ABG Shipyard Ltd., once India's largest private shipbuilder, became financially distressed due to underutilized, capital-intensive infrastructure.
- **Valuer's Role:** The RVs were tasked with valuing complex assets including dry docks, cranes, fabrication yards, and shipbuilding machinery.
- **Challenge:** Many assets had high capital costs but limited immediate commercial viability.

- **Outcome:** The resolution plan's pricing and recovery projections were closely tied to the valuation reports.
- **Key Insight:** Valuing large-scale industrial infrastructure requires multidisciplinary expertise, combining engineering insight with financial and market-based approaches.

3. When: Timeliness of Valuation in CIRP

Timely valuation is a critical requirement under the Corporate Insolvency Resolution Process (CIRP), directly influencing the efficiency, compliance, and credibility of the resolution process. According to **Regulation 27 of the CIRP Regulations:**

- The RP must appoint **two RVs within seven days of their own appointment**, and in any case, **no later than the 47th day** from the **Insolvency Commencement Date**.
- The valuation reports must be finalized and submitted **prior to the preparation of the Information Memorandum**, which forms the basis for inviting resolution plans.

Failure to adhere to these timelines can jeopardize the statutory deadlines for resolution (180 days, extendable up to 330 days), leading to **non-compliance risks, delayed outcomes, and reduced confidence among creditors and investors**.

Case Study – MSME Assets (Lanco Infratech Ltd.)

- **Background:** Lanco Infratech Ltd., a diversified infrastructure group, entered insolvency with multiple subsidiaries spread across states.
- **Valuer's Role:** RVs were tasked with classifying and valuing both core and non-core assets, including numerous MSME-linked units.

- **Challenge:** The exercise was complicated by fragmented records, scattered documentation, and incomplete financial data.
- **Outcome:** The timely valuation enabled the CoC to identify and reject undervalued resolution bids.
- **Key Insight:** Prompt and structured valuation enhances process momentum and supports informed, defensible decision-making during insolvency proceedings.

4. Where: Geographic and Jurisdictional Scope

The IBC 2016 is applicable **uniformly across India**, encompassing corporate entities and individuals across all states and union territories. Jurisdictionally, **corporate insolvency matters** fall under the purview of the NCLT, while **personal and partnership insolvencies** are adjudicated by the **Debt Recovery Tribunals**. Valuation conducted under IBC is legally recognized and enforceable within these forums.

RVs are often required to perform **on-site inspections across varied geographies**, including dense urban commercial centres, remote industrial clusters, and even virtual platforms for assessing **intangible assets**. In certain cases, **cross-border valuation** may be necessary—demanding familiarity with **international insolvency frameworks, bilateral treaties, and jurisdictional valuation standards**.

Case Study – Urban Office Properties (Jet Airways Ltd.)

- **Background:** Jet Airways, during its insolvency proceedings, held a portfolio of tangible and intangible assets, including urban office properties and airport slot rights.

- **Valuer's Role:** The RVs assessed leased office spaces, leasehold improvements, and intangible rights associated with airport slots.
 - **Challenge:** The valuation required accurate classification and differentiation between real estate and operational intangibles, each governed by different value determinants.
 - **Outcome:** The valuation enabled the separation of high-value assets from operational liabilities, aiding strategic resolution planning.
 - **Key Insight:** **Location-specific expertise and sectored familiarity** are essential for producing reliable and contextually relevant valuations.
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5. Why: Significance of IBC for Valuers

The **IBC, 2016**, has transformed the role of valuers from ancillary consultants to **integral participants** in the financial resolution ecosystem. Valuation is no longer a discretionary input—it is a **statutory obligation**, and its accuracy and reliability significantly influence the **outcome of resolution plans**.

For PVs, the IBC framework offers several professional advantages:

- **Consistent opportunities** through recurring assignments in CIRPs and liquidation processes.
 - **Formal recognition** and credibility under the regulatory oversight of the **IBBI** and adjudication by the **NCLT**.
 - **Diverse exposure** to complex asset classes, including intellectual property, infrastructure assets, and financial instruments.
 - **Enhanced professional visibility** in high-value, nationally significant insolvency proceedings.
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Case Study – IT & IP Valuation (Videocon Group)

- **Background:** Videocon Group, once a major conglomerate, owned a range of digital assets and intellectual property.
 - **Valuer's Role:** RVs conducted detailed assessments of **brands, trademarks, and software licenses** held by the group.
 - **Challenge:** The absence of adequate market comparable and the need to align with **cross-border valuation standards** created complexity.
 - **Outcome:** The IP valuation reports enabled **improved realization** of intangible assets as part of the resolution plan.
 - **Key Insight:** As insolvency cases increasingly involve **technology-driven portfolios**, valuers must engage in **continuous learning and up skilling** to remain effective in evaluating non-physical, knowledge-based assets.
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6. How: Valuation Methodology and Regulatory Compliance

Under the **IBC, 2016**, valuation must be carried out in accordance with internationally recognized standards, tailored to the nature and classification of the asset. The process is governed by the **Companies (RVs & Valuation) Rules, 2017** and supervised by the **IBBI** to ensure uniformity, credibility, and regulatory compliance.

RVs are required to apply one or more of the following **globally accepted valuation approaches**, based on asset characteristics:

- **Market Approach:** Used when active markets exist; involves comparison with similar assets recently transacted.
- **Income Approach:** Applicable where future income streams can be reasonably estimated; often used for businesses, IP, and financial instruments.

- **Cost Approach:** Suitable for assets where replacement or reproduction cost is the most relevant indicator, such as plant and machinery or infrastructure.

Valuation reports must be **independent, objective, and well-documented**, with clear justification for the methodology adopted, assumptions made, and limitations encountered. Adherence to timelines and documentation standards is critical, as valuation reports are subject to scrutiny by the **CoC** and **Adjudicating Authorities** (e.g., NCLT).

| Valuation Approach | Description | Use Case Example |
|------------------------|--|-----------------------------------|
| Market Approach | Based on observable prices of similar assets in open markets | Urban land, commercial property |
| Cost Approach | Replacement cost less depreciation | Machinery, construction equipment |
| Income Approach | Present value of future cash flows | IT, brand IP, leasehold assets |

Valuers' Responsibilities and Case Insight

RVs operating under the IBC framework must adhere to strict professional and regulatory standards to ensure credibility and consistency in their valuation outputs. Key responsibilities include:

1. **Maintaining Independence:** RVs must remain free from any conflict of interest and avoid influence from stakeholders involved in the insolvency process.
2. **Transparent Methodology:** All data sources, valuation assumptions, and methodologies must be clearly documented and defensible.
3. **Timely Submission:** FV and LV reports must be submitted to the **Resolution**

Professional and shared with the **CoC** as per prescribed timelines.

Case Study – Retail Chain Valuation (Future Retail Ltd.)

- **Background:** The insolvency of Future Retail Ltd. involved a widespread network of retail outlets characterized by high inventory levels and leased store interiors.
- **Valuer's Role:** The RVs were tasked with assessing **retail stock, interior furnishings, and leasehold improvements**.
- **Challenge:** The valuation was complicated by **rapid asset depreciation**, fluctuating inventory prices, and **volatile retail market conditions**.
- **Outcome:** The valuation provided the CoC with a **realistic estimate of potential recoveries**, improving the quality of decision-making.
- **Key Insight:** Valuation in the retail sector demands a **granular understanding of lease models, depreciation trends, and inventory volatility**.

Conclusion

The **IBC, 2016** has fundamentally reshaped the valuation landscape in India, establishing a codified, structured, and opportunity-rich framework for PVs. It calls for a high degree of **technical accuracy, sector-specific insight, ethical integrity, and interdisciplinary competence**. Valuers have transitioned from peripheral roles to become **strategic contributors** in corporate revival and resolution processes. As the insolvency ecosystem continues to evolve, **ongoing learning, skill enhancement, and regulatory awareness** will be essential for valuers to maintain relevance and maximize their professional impact.

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LEARNING FOR INSOLVENCY PROFESSIONALS IN PG TO CD CASES FROM RECENT JUDICIAL PRONOUNCEMENTS.

CA MANOJ KUMAR ANAND Insolvency Professional

The Insolvency and Bankruptcy Code, 2016 (IBC) marks a pivotal juncture in India's evolution towards a robust financial and legal framework. Enacted to consolidate and streamline the nation's insolvency procedures, the Code has markedly enhanced the resolution of distressed assets while bolstering creditor confidence. Its implementation has not only fortified institutional accountability but has also played a significant role in elevating India's standing in global ease of doing business rankings.

A significant milestone was achieved on December 1, 2019, with the enactment of provisions pertaining to personal guarantors of corporate debtors, thereby expanding the ambit of the Code. The IBC is in a state of continual evolution, shaped by amendments and judicial interventions that reflect its adaptability to real-world challenges and its critical role in fostering a more resilient economy.

Since the activation of individual insolvency provisions under the IBC, the legal landscape has witnessed intense scrutiny and transformative developments. Numerous petitions have been presented before the Supreme Court and the National Company Law Appellate Tribunal (NCLAT) challenges.

the constitutional and interpretative boundaries of the law.

These cases have frequently revolved around the intricate balance between the rights of personal guarantors and the enforcement prerogatives of creditors. Through a series of landmark rulings, the Supreme Court, and the National Company Law Appellate Tribunal (NCLAT) have delineated the contours of individual insolvency jurisprudence, thereby providing coherence to complex legal issues.

The judiciary has addressed critical matters, including the stringent 180-day moratorium period, the extent of authority conferred upon resolution professionals, and the enforceability of actions against personal guarantors. These judicial pronouncements have not only elucidated ambiguities but have also reinforced the integrity of the insolvency framework. Consequently, stakeholders now navigate a legal environment that is more predictable, transparent, and aligned with the fundamental objectives of the Code. According to the latest statistics published in the IBBI Newsletter for the quarter ending March 25, the number of cases pertaining to personal guarantors to corporate debtors is as follows:

| Total Applications filed till 31.03.2025 (PG to CD) | | |
|---|-------|----------|
| Sec 95 applications | 3,260 | |
| Sec 94 applications | 546 | 3,806 |
| NCLT | 3,755 | |
| DRT | 51 | 3,806 |
| Total Amount Involved (In Crores) | | 2,40,794 |
| Repayment Plans approved (in No) | | 26 |
| Amount Recovered (In Crores) | | 102.78 |
| Amount recovered % against admitted debt | | 2.16% |
| Repayment Plan approved cases (in no's) | | 0.74% |
| Total Applications filed till 31.03.2025 (Bankruptcy) | | |
| Sec 122 applications (Creditor) | 60 | |
| Sec 123 applications (Debtor) | 2 | 62 |
| NCLT | 61 | |
| DRT | 1 | 62 |
| Orders Passed | | Nil |

The enormous no of cases casts considerable responsibility on RP to **run the process with utmost clarity & precision**. An attempt is made to **clarify this judicial interpretation as these stands today**. In the days to come, these may change as the law is new and evolving and sometimes revolving also. These are as follows;

1) **NCLT can't adjudicate at admission stage.**

1. Central Bank of India Vs. Deepen Arun Parekh Reinforces IBC Protocols (I.A. No. 3608 of 2024 IN Comp. App. (AT) (Ins.) No. 697 of 2024 Dated **22.05.2024**)
2. CBI filed sec 95 application which was dismissed on the ground of failed CDR.
3. NCLAT dismissed the NCLT on the following 4 rational;
 - i) RP appointment is must as per sec 95-100 & bypassing the appointment of an RP disregards the legislative intent, which aims to ensure a structured, evidence-based process for insolvency resolutions.
 - ii) Premature adjudication disrupts the IBC's procedural flow and may lead to uninformed judicial decisions & should start at sec 100 stage only as by that time complete facts (Sec 99 Report) are with them.
 - iii) PG has legal rights only during hearing u/s 100 only & not before that.
 - iv) Prescribed procedures should be strictly adhered otherwise integrity of process is compromised.
4. Based on above Principal Bench issued written instructions to all NCLT Benches to accept all applications without listening to any objections as held NCLT-Bench 2,ND as on 26.11.2024 in 3 cases

of Pradeep, Sanjeev, Rajeev Jain (IA-5092,5093 & 5094)

5. A Division Bench comprising Chief Justice N.V. Anjaria and Justice K.V. Aravind of Karnataka High Court Division Bench have also held in the case of Buoyant Technology Constellations Pvt. Ltd vs Myanta Reallty (2024 Supreme Online (KAR) 38614) that Registrar of NCLT has no power to examine maintainability of petition for initiation of insolvency proceedings u/s 95

2) **Moratorium is only for 180 days>Held by NCLAT.**

- i) Anil Kumar v. Mukund Choudhary
 1. Company Appeal (AT) (Insolvency) No. 38 of 2025
 2. Judgment Date: January 28, 2025
 3. Bench: Justice Ashok Bhushan (Chairperson), Barun Mitra (Member - Technical), Arun Baroka (Member - Technical)
4. **Summary:**
5. The National Company Law Appellate Tribunal (NCLAT) addressed whether the 180-day moratorium period under Section 101(1) of the Insolvency and Bankruptcy Code (IBC) is mandatory or directory and if it can be extended by the Adjudicating Authority or the Appellate Tribunal.
6. **Key Findings:**
7. **Mandatory Nature of the 180-Day Moratorium:** The NCLAT held that the 180-day moratorium period specified in Section 101(1) of the IBC is mandatory. The statutory scheme clearly indicates that this period cannot be extended by the Adjudicating Authority or the Appellate Tribunal.
8. **No Jurisdiction to Extend Moratorium:** The Tribunal emphasized

that when the statute provides a specific cessation date for the moratorium, neither the Adjudicating Authority nor the Appellate Tribunal has the jurisdiction to extend it. Any extension would be against the statutory intent of Section 101(1).

9. **Conclusion:**

10. The NCLAT concluded that the 180-day moratorium period under Section 101(1) of the IBC is strict and cannot be extended by any authority. This decision underscores the importance of adhering to the timelines prescribed in the IBC to ensure the efficiency and efficacy of the insolvency resolution process.

Mukund Choudhary filed appeal before SC challenging the Legal Validity of Sec 101 & SC adjudicated as follows;

3) **Moratorium is only for 180 days>Upholding NCLAT order (SC).**

1. Mukund Choudhary filed appeal before SC challenging the Legal Validity of Sec 101 & SC adjudicated as follows;

2. Writ Petition (Civil) No. 114/2025 & C.A. No. 1576/2025

3. Judgment Date: 14th February 2025

4. Bench: Hon'ble Chief Justice, Hon'ble Mr. Justice Sanjay Kumar

5. **Summary:**

The Supreme Court of India addressed a writ petition filed by Mukund Choudhary challenging the constitutional validity of Section 101 of the Insolvency and Bankruptcy Code (IBC), 2016, which prescribes a 180-day limit for the moratorium period in individual insolvency cases.

6. Key Findings:

- i) The Court clarified that the **moratorium's purpose in individual insolvency differs from corporate insolvency.** While corporate

insolvency focuses on the rehabilitation and revival of the corporate debtor through resolution plans, individual insolvency serves different objectives. The Court dismissed the writ petition, upholding the constitutional validity of Section 101 and affirming the mandatory nature of the 180-day moratorium period.

- ii) However, the Court **noted concerns raised about creditors potentially gaining an unfair advantage** after the moratorium's end and directed the issue for further consideration in the related civil appeal, returnable in the week commencing 28th April 2025.

4) **Demand Notice under IBC isn't valid Revocation of Guarantee.**

1. **State Bank of India v. Deepak Kumar Singhania**

Company Appeal (AT) (Insolvency) No. 191 of 2025

(Arising out of Order dated 28.11.2024 passed by the NCLT, Allahabad Bench, in CP (IB) No. 74/ALD/2022)

Judgment Date: 28th February 2025

Bench: Justice Ashok Bhushan (Chairperson), Barun Mitra (Member - Technical), Arun Baroka (Member - Technical)

2. Key Findings:

- i) The case involves an appeal filed by the State Bank of India (SBI) against an order passed by the National Company Law Tribunal (NCLT), Allahabad Bench, on 28.11.2024. SBI has filed an application under Section 95 of the Insolvency and Bankruptcy Code (IBC) against Mr. Deepak Kumar Singhania, a personal guarantor for LML Ltd., which is under liquidation. SBI issued a demand notice on 04.05.2022 for an unpaid debt of ₹125.05 crores, but the NCLT rejected the application, stating that

the mandatory requirement of invoking the personal guarantee had not been fulfilled.

- ii) The core issue was whether the demand notice under Rule 7(1) of the 2019 Rules could be considered a valid invocation of the personal guarantee. SBI argued that the demand notice itself served as the invocation of the guarantee. However, the NCLT and the NCLAT (appellate tribunal) ruled that a separate invocation of the guarantee, as required by the Deed of Guarantee, must occur before issuing the demand notice. Without this invocation, the personal guarantor cannot be considered in default, and the application under Section 95 is not maintainable.

3. Conclusion:

The NCLAT upheld the NCLT's decision and dismissed SBI's appeal, confirming that the demand notice alone does not satisfy the legal requirement for invoking a personal guarantee under the IBC and the 2019 Rules.

5) Direct Bankruptcy allowed for RP's non-appearances & defective report.

1. NCLT, Ahmedabad, dismissed an application filed by PG under Section 94 due to the Resolution Professional's (RP) failure to submit a complete and proper report, inadequate service of notes to all 24 respondents, and lack of scrutiny of creditors' claims, guarantees, and pending litigation. The tribunal observed that the application seemed aimed at securing a moratorium under Section 96 to delay recovery actions initiated by creditors under SARFAESI and arbitration. Rejecting the RP's report under Section 100, the NCLT allowed objecting creditors to pursue bankruptcy proceedings under Chapter IV of the IBC, disposing of the case with liberty to the creditors. The order was passed on 06/05/2025 in the Case

No.: C.P.(IB)/39(AHM)2022 of Neel Praful Bhalakia vs Canara Bank & Others (24 respondents in total)

6) High Courts should avoid interfering in NCLT/NCLAT Proceedings under Article 226.

Bank of Baroda v. Farooq Ali Khan & Ors.

Civil Appeal No. 1577 of 2025

Judgment Date: 15th February 2025

Bench: Hon'ble Justice P.S. Narasimha, Hon'ble Justice Manoj Misra

1. Summary:

- i) In this landmark ruling, the Supreme Court of India overturned the Karnataka High Court's interference in the personal insolvency proceedings initiated by Bank of Baroda against Farooq Ali Khan, a personal guarantor for Associate Décor Limited. The NCLT, Bengaluru, had appointed a resolution professional under Section 95 of the Insolvency and Bankruptcy Code (IBC), 2016, to assess the case. Khan challenged this action before the Karnataka High Court, which stayed the proceedings.

2. Key Findings:

- i) The Supreme Court held that the High Court overstepped its jurisdiction by intervening in an ongoing statutory process under the IBC. The Court emphasized that the resolution professional's assessment is an essential step and that the High Court's premature interference disrupted the IBC's framework.
- ii) The Court ruled that the specialized tribunals — NCLT and NCLAT — are the designated forums for handling insolvency matters and that High Courts should avoid interfering under Article 226 unless exceptional circumstances exist.

3. Conclusion:

- i) The Supreme Court set aside the Karnataka High Court's order, reinstated the insolvency proceedings before the NCLT, and directed it to expedite the matter. This judgment reinforces the principle of non-interference by High Courts in specialized IBC processes to maintain the efficiency and integrity of the insolvency resolution framework.

7) **IBC Moratorium U/S 96 IBC Doesn't Extend Regulatory Penalties Imposed for Non-Compliance with Consumer Protection**

Saranga Anil Kumar Aggarwal v. Bhavesh Dhirajlal Sheth & Ors. is 2025 INSC 314 on 4 March 2025

1. *Key Features*

- *The penalties imposed by the NCDRC are regulatory in nature and do not constitute "debt" under the IBC.*
- *The Bench emphasized that the objective of the IBC is to provide a mechanism for resolving financial distress, not to nullify obligations arising under regulatory statutes.*
- *The Apex Court in this case, was to adjudicate whether execution proceedings under Section 27 of the Consumer Protection Act, 1986 (CPA), can also be stayed during an interim moratorium under Section 96 of the IBC.*
- ***A distinction between debt recovery proceedings and punitive actions needs to be created, and therefore all criminal liabilities do not fall within the scope of the moratorium unless explicitly covered under the IBC.***
- *Consequently, penalties imposed by regulatory bodies in the public interest cannot be stayed merely because insolvency proceedings are ongoing &*

directed to deposit within a period of 8 weeks.

8) **Application for Individual Insolvency can be made even in the absence of CIRP/Liquidation**

1. In the case of ***Mahendra Kumar Jajodia versus State Bank of India, Civil Appeal No. 1871/2022***) SC Date of Judgement ***06.05.2022 NCLAT*** it was held that **even in the absence of any pending Corporate Insolvency Resolution Process or Liquidation proceedings, the application under Section 95(1) of the Insolvency Bankruptcy Code, 2016 against the Individual guarantors of the Corporate Debtor is maintainable** by the virtue of Section 60(1) of the Code before the National Company Law Tribunal having territorial jurisdiction over the place where the Registered office of the Corporate Individual is located.

9) **Application for Individual Insolvency can be made even if simulations CIRP proceedings or otherwise proceedings going on at DRT etc.**

1. Honorable SC also dealt in detail the maintainability of simultaneous application against PG of CD alongwith CIRP proceedings or otherwise proceedings going on at DRT as an Individual in the case of *State Bank of India versus V. Ramakrishnan & Anr.*" (2018) 17 SCC 394 and concluded that application against PG of CD can be filed along with CIRP and if any proceeding against PG as an Individual is pending at DRT under Presidency act etc. then it shall be transferred to NCLT where CIRP is going on.

10) **No right of Subrogation to PG**

1. In the case of Mr. Vikas Aggarwal Vs. Asian Colour Coated Ispat Limited and Ors. [CA(AT)(Ins.) No.1104, 1105, 1107& I 108 of 2020] dated 1st March 2024, Resolution Plan assigns whole Debt to SPV of SRA. NCLAT didn't allow right of subrogation to PG after examining the whole Code although inherent in sec 140 & 141 of the Contract act 1872 and judicial interpretation of exceeding Sec 238' under IBC 2016.

11) **Whether Guarantees against Corporate Guarantor can also be revoked.**

- In the case of Laxmi Pat Surana v. Union Bank of India & Anr. (2021) ibclaw.in 53 SC honourable SC answered following 2 questions.
- Q Whether on **Sec 7 proceedings against Corporate Guarantor** against Guarantees given to other than Corporate Person can be initiated or not
- A **Yes** Because definition of financial debt u/s 5(8) includes such debt read with definition of default u/s 3(12).
 - In this case honourable SC also answered question on Limitation as follows;
 - Q The default was committed as on 30.1.2010 and application was filed as on 06.12.2019 (After 9+ years)
 - A Since **Principal borrower has acknowledged debt on 8.12.2018** and application filed as on 06.12.2019 hence no time barred

12) **Beneficiary under an Individual guarantee is entitled to file an application under Section 95**

1. In the case of Krishan Kumar Jajoo vs. Piramal Enterprises Ltd. – NCLAT Delhi Judgment, the National Company Law Appellate Tribunal (NCLAT), Delhi, ruled that a **beneficiary under an Individual guarantee is entitled to file an application under Section 95** of the

Insolvency and Bankruptcy Code (IBC), 2016.

2. Piramal Enterprises Ltd., having acquired the rights to a facility originally extended to Hema Engineering Industries Ltd. (HEIL), initiated Individual insolvency proceedings against Krishan Kumar Jajoo, a guarantor.
3. The facility had undergone multiple assignments and name changes following corporate mergers.
4. Jajoo challenged the proceedings on several grounds, including lack of privity of contract, invalid appointment of the Resolution Professional, lack of board authorization, and sufficient existing securities.
5. The NCLAT dismissed these objections, affirming that Section 95 of IBC allows a creditor to apply directly, even if the guarantee was executed in favor of a security trustee. It emphasized that the creditor remains a beneficiary entitled to enforce the guarantee. The tribunal rejected the claim of lack of board authorization, stating that ratification was sufficient, and upheld the appointment of the Resolution Professional. It found no merit in the arguments regarding improper invocation or assignment of the facility, especially given that the guarantee expressly allowed enforcement by successors and assignees. Ultimately, the tribunal supported the continuation of proceedings against the Individual guarantor despite the corporate debtor being under liquidation.

13) **No relief against sec 138 (Cheque Bounce Proceedings) proceedings under NI Act during interim moratorium u/s 96**

1. In a landmark judgment, the Supreme Court dealt with a batch of criminal appeals and writ petitions involving the question of **whether proceedings under Section 138 of the Negotiable Instruments (NI) Act (cheque bounce cases) should be stayed if the accused has initiated Individual**

insolvency proceedings under Section 94 of the Insolvency and Bankruptcy Code (IBC), 2016. The appellants argued that the interim moratorium under Section 96 of the IBC should automatically stay such criminal proceedings. They contended that the moratorium is designed to prevent further financial destabilization of the debtor and applies to all debts, thus including cheque bounce cases which are essentially debt recovery mechanisms.

2. The Supreme Court, however, ruled that the **moratorium under Section 96 IBC does not extend to criminal proceedings under Section 138 of the NI Act.** It drew a distinction between debt enforcement and penal liability, emphasizing that the latter serves a public interest in maintaining the integrity of commercial instruments like cheques. The court reaffirmed previous decisions, including *P. Mohanraj v. Shah Brothers*, and clarified that while civil recovery proceedings may be stayed under IBC, criminal prosecution under the NI Act stands on a different footing. Consequently, the court upheld the decisions of lower courts that refused to stay cheque bounce cases during the pendency of Individual insolvency proceedings.

14) **NCLAT held that NCLT must independently assess the facts and evidence in sec 99 Report.**

- 2.1. The National Company Law Appellate Tribunal (NCLAT), Delhi, in ***Rajani Ajay Gupta Vs Indian Bank, Comp. App. (AT) (Ins.) Nos. 2184, 2228, 2229, 2243, 2259 & 2260 of 2024, NCLAT Delhi (2025)***, ruled that the Adjudicating Authority (NCLT) cannot mechanically admit an insolvency application under Section 100 of the IBC based solely on the Resolution Professional's (RP) report but **must independently assess the facts and evidence.** The case involved personal guarantors challenging NCLT's admission of

Indian Bank's Section 95 application, disputing the debt calculation and highlighting recoveries from asset sales. NCLAT, citing *Dilip Jiwrajka Vs Union of India* (2024), held that NCLT failed to examine **critical issues like adjusted debt amounts and procedural lapses in the RP's report**, setting aside the order and directing a fresh evaluation. The factual matrix was that bank failed to prove the exact debt owed by the corporate debtor in a prior Section 7 application (which was later withdrawn). And the RP's report ignored key facts, including realization of ₹6 crore from asset sales and a property worth ₹1.66 crore still held by the bank. The judgment **reinforces that adjudicating authorities must apply judicial scrutiny rather than rubber-stamping RP reports**, especially in guarantor insolvency cases involving recoveries.

15) **Acknowledgment of Debt: The OTS proposal was considered an unequivocal admission of liability, satisfying the requirement under Section 18 of the Limitation Act, 1963, which extends the limitation period for recovery.** (*State Bank of India Vs S R Timber Products Private Limited, CP (IB) No. 27/KB/2024 (NCLT Kolkata)*)).

1.1. **Background and Facts**

- 1.2. **The case involved a petition filed by State Bank of India (SBI), the Financial Creditor (FC), under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, seeking the initiation of Corporate Insolvency Resolution Process (CIRP) against S R Timber Products Private Limited, the Corporate Debtor (CD).** The FC claimed a total debt of **₹111,70,27,214.78** (One Hundred Eleven Crore Seventy Lakh Twenty-Seven Thousand Two Hundred Fourteen and Seventy-Eight Paise) due from the CD.

1.3. Key Submissions by the Financial Creditor

1.3.1. Sanction of Credit Facilities:

- The CD was applied for working capital credit facilities on **21.01.2008** for business expansion.
- The FC sanctioned credit facilities amounting to **₹1,300 Lacs** (₹13 Crore) via a letter dated **28.03.2008**, which included a **Cash Credit facility of ₹400 Lacs** and other non-fund-based limits.

1.4. Default and OTS Proposal as Acknowledgment of Debt:

- The CD defaulted on repayment obligations, leading to the accumulation of the claimed debt.
- On **30.03.2023**, the CD submitted a **One Time Settlement (OTS) proposal** to the FC, which was treated as a **clear acknowledgment of both the debt and the default**.

1.5. NCLT's Findings and Decision

- **Acknowledgment of Debt:** The OTS proposal was considered an **unequivocal admission of liability**, satisfying the requirement under **Section 18 of the Limitation Act, 1963**, which extends the limitation period for recovery.
- **Threshold and Default:** The debt amount far exceeded the **minimum threshold of ₹1 Crore** required for initiating CIRP under IBC.
- **Limitation Not Barred:** Since the OTS proposal was made within the limitation period, the petition was held to be maintainable.

1.6. Final Order

- The NCLT Kolkata **admitted** the petition (CP (IB) No. **27/KB/2024**) under **Section 7 of IBC**, initiating CIRP

against S R Timber Products Private Limited. The tribunal held that the **OTS proposal was conclusive proof of debt and default**, making the application complete in all respects.

1.7. Significance of the Judgment

- Although this Judgement is with reference to Sec 7 judgement, it holds validity for Sec 95 application also.
- **OTS as Admission of Liability:** The ruling reinforces that an OTS proposal by a corporate debtor can be treated as an **acknowledgment of debt**, making it easier for creditors to initiate insolvency proceedings.
- **Limitation Implications:** The decision clarifies that such acknowledgments reset the limitation period under the **Limitation Act, 1963**, preventing debtors from escaping liability on technical grounds.
- **Precedent for Financial Creditors:** The judgment serves as a **key precedent** for banks and financial institutions seeking to recover dues through IBC proceedings.

16) No withdrawal u/s 12A when Other Creditors Object.

- 1) In the case of Himanshu Singh vs. HDFC Bank Ltd. and Anr., Company Appeal (AT) (Insolvency) No. 336 & 337 of 2025, decided on March 5, 2025, Himanshu Singh appealed against the initiation of the Corporate Insolvency Resolution Process (CIRP) by HDFC Bank Ltd. The NCLAT addressed the issue of whether other creditors can object to a CIRP withdrawal application filed under Section 12A of the Insolvency and Bankruptcy Code (IBC).

- *The tribunal concluded that other creditors are permitted to object to such withdrawal applications. This decision underscores the*

principle that the CIRP is intended to benefit all creditors, not just the applicant creditor and the corporate debtor. Therefore, the interests of all creditors must be considered before allowing the withdrawal of a CIRP application. This judgment highlights the NCLAT's commitment to ensuring that the CIRP process remains equitable and considers the rights of all stakeholders involved. Although this Judgement is with reference to CIRP process but it may hold significance for Sec 95 application also where original applicants may try to withdraw keeping other creditors in demo.

CASE LAWS



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 33 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

Anup Kumar Singh v. Union of India [2025] 174 taxmann.com 12 (Calcutta)

Where proceeding under FEMA was initiated much prior to order of liquidation of corporate debtor but in terms of section 33(5) once an order for liquidation was passed, no suit or other legal proceeding shall be instituted by liquidator on behalf of corporate debtor with prior approval of Adjudicating Authority and, therefore, provisional seizure order passed under FEMA in respect of assets of corporate debtor could not have been passed.

CIRP of the corporate debtor was admitted and subsequently, liquidation order was passed. The liquidator of the corporate debtor received a provisional seizure order issued by respondent-ED under section 37A of FEMA in respect of assets of the corporate debtor.

Held that mere fact that proceeding under FEMA was initiated in 2016 before Section 14 of IBC came into operation in 2018 would be irrelevant as Section 14 speaks not only about initiation, but also about continuation of pending suits or proceedings. After liquidation order, the corporate debtor might be sold as a going concern or assets might be sold and, therefore, once CIRP was admitted, assets on the corporate debtor could not be attached; they would be sold in CIRP or in liquidation. Provisions of IBC would override provisions of other Acts like FEMA. Since proceeding under FEMA was initiated much prior to order of liquidation but in terms of section 33(5) once an order for liquidation was passed no suit or other legal proceeding shall be instituted by liquidator on behalf of the corporate debtor with prior approval of Adjudicating Authority, impugned provisional seizure order could not have been issued.

SECTION 8 - CORPORATE INSOLVENCY RESOLUTION PROCESS – DEMAND BY OPERATIONAL CREDITOR

Visa Coke Ltd. v. Mesco Kalinga Steel Ltd. [2025] 174 taxmann.com 22 (SC)

Where demand notice under section 8 was sent to Key Managerial Personnel (KMP) of corporate debtor at its registered office address and in official capacity, same could be construed as a deemed service of demand notice as required under section 8 and approach of NCLT and NCLAT in rejecting section 9 petition on technical ground that no notice was sent to corporate debtor was incorrect and unsustainable in law.

The appellant-operational creditor and the respondent-corporate debtor entered into a contract for sale and purchase of Low Ash Metallurgical Coke (LAM Coke). The appellant supplied LAM Coke to the respondent. However, the respondent failed to make payment. The appellant issued a

legal notice to the corporate debtor through its director, demanding outstanding payment. Since no response was received, the appellant issued a demand notice in Form 3 to the corporate debtor at its registered address through its Key Managerial Personnel (KMP) demanding payment of amount due. Hence, the appellant filed a petition under section 9 against the corporate debtor. NCLT dismissed said petition observing that alleged demand notice was addressed/sent to KMP and no demand notice as required under section 8 was sent to the corporate debtor. Said decision was also affirmed by NCLAT.

Held that a demand notice under section 8 can be addressed and delivered to the corporate debtor through its KMP. Notice sent by the appellant to KMP of the

corporate debtor in their official capacities at registered office address of the corporate debtor, clearly established that same was issued to the corporate debtor in respect of operational debt due and payable by them. Such notice could be construed as a deemed service of demand notice as required under section 8, therefore, approach of NCLT and NCLAT in rejecting section 9 petition on technical ground that no notice was sent to the corporate debtor was incorrect and

unsustainable in law.

Case Review: Order passed by NCLAT, Principal Bench, New Delhi in Visa Coke Ltd. v. Mesco Kalinga Steel Ltd. [Comp. Appeal (AT)(Ins.) No. 247 of 2023 dated 03-10-2024] set aside

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

Sandeep Jain v. IDBI Trusteeship Services Ltd. [2025] 174 taxmann.com 51 (SC)

Where corporate debtor had failed to repay its debt and financial creditor had successfully proved existence of debt and default, meeting requirements under section 7, Adjudicating Authority had rightly admitted section 7 application filed by financial creditor.

The corporate debtor had issued non-convertible debentures to the financial creditor. However, due to a default, the financial creditor issued a notice to the corporate debtor and filed section 7 application. Adjudicating Authority admitted said application. The appellant

challenged said order before NCLAT. NCLAT held that there was a debt and default, which had been acknowledged from time to time by the corporate debtor and that financial creditor had succeeded in proving debt and default and ingredients under section 7 were fulfilled and, thus, order passed by Adjudicating Authority admitting section 7 application did not require any interference.

Held that there was no error in view taken by NCLAT, thus appeal against impugned order was to be dismissed.

Case Review: Sandeep Jain v. IDBI Trusteeship Services Ltd. [2025] 174 taxmann.com 50 (NCLAT-New Delhi), affirmed.

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

Naren Sheth v. Axis Bank Ltd. [2025] 174 taxmann.com 98 (SC) images

Time taken in obtaining certified copy can very well be treated as sufficient cause for condoning of delay in filing appeal beyond 30 days, but within condonable period of 15 days.

The respondent filed an appeal with a 15-day delay and requested condonation.

However, the appellant argued that copy submitted was a free copy, not a certified one obtained with required fee. NCLAT vide impugned order held that respondent had applied for a certified copy of order on 08.04.2024 and was given application No. D-0005 and certified copy of impugned order was given on 15.04.2024 and was annexed with instant appeal and bearing same application number. NCLAT further held that since time taken in obtaining

certified copy could very well be treated as sufficient cause for condoning of delay in filing appeal beyond 30 days, but within condonable period of 15 days, thus delay was to be condoned.

Held that in view of facts, no case had been made out to entertain appeal, appeal was to be dismissed.

Case Review: Axis Bank v. Naren Sheth [2025] 174 taxmann.com 97 (NCLAT- New Delhi), affirmed.

SECTION 140 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INDIVIDUAL/FIRM'S BANKRUPTCY - BANKRUPT, DISQUALIFICATION OF

CA V. Venkata Sivakumar v. Insolvency and Bankruptcy Board of India (IBBI) [2025] 174 taxmann.com 152 (SC)

Power to suspend Resolution Professional is bestowed by regulation 23A of Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, read with section 140 of IBC and said regulation 23A does not violate Articles 14, 19 and 21 of Constitution of India.

The petitioner, a member of ICAI and IBBI, was appointed as a liquidator but was denied authorization for assignment under Regulation 7A of IBBI Regulations by IIP. Later, complaints were filed against him for sharing confidential information, leading to disciplinary proceedings by IBBI and IIP. The petitioner filed a writ petition challenging constitutional validity of Regulation 23A, claiming it gave unchecked

powers to Authorities. High Court vide impugned order dismissed said petition on ground that it was barred by constructive res judicata and upheld Regulation 23A, ruling that suspension during disciplinary proceedings was automatic and hardship was not a valid ground to question regulation's constitutionality. The petitioner challenged constitutional validity of provisions related to suspension of Resolution Professionals.

Held that power to suspend is bestowed by regulation 23A of Model Byelaws and Governing Board of Insolvency Professional Agencies Regulations, 2016, read with section 140 of IBC and this regulation does not violate Articles 14, 19 and 21 of Constitution of India, therefore, special leave petition was to be disposed of.

Case Review: CA V. Venkata Sivakumar v. Insolvency and Bankruptcy Board of India (IBBI) [2024] 160 taxmann.com 502 (Madras) affirmed.

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

Kalyani Transco v. Bhushan Power and Steel Ltd. [2025] 174 taxmann.com 155 (SC)

Where JSW submitted revised consolidated resolution plan with addendum under garb of complying with amendments made in CIRP Regulations, 2016, and same were approved

by CoC, however, JSW even after approval of its plan, willfully contravened and not complied with terms of said approved resolution plan for a period of about two years, same being in flagrant violation and contravention of expressed provisions of IBC and CIRP Regulations, resolution plan of JSW as approved by CoC was to be rejected.

CIRP was initiated against the corporate debtor. CoC approved resolution plan

submitted by JSW. NCLT approved said resolution plan. NCLAT vide impugned order upheld order passed by NCLT. It was noted that Resolution Professional had utterly failed to discharge his statutory duties contemplated under IBC and CIRP Regulations during course of entire CIRP proceedings of the corporate debtor. CoC had failed to exercise its commercial wisdom while approving resolution plan of JSW, which was in absolute contravention of mandatory provisions of IBC and CIRP Regulations. CoC also failed to protect interest of creditors by taking contradictory stands and accepting payments from JSW without any demurer. JSW after securing highest score in evaluation matrix in meeting of CoC, submitted revised consolidated resolution plan with addendum under grab of complying with amendments made in CIRP Regulations, 2016, and got same approved from CoC. However, JSW, even after approval of its plan, willfully contravened and did not comply with terms of said approved resolution plan for a period of about two

years, which had frustrated very object and purpose of IBC, and consequently had vitiated CIR proceedings of the corporate debtor.

Held that since resolution plan of JSW as approved by CoC did not confirm requirements referred to in sub-section (2) of section 30, same being in flagrant violation and contravention of expressed provisions of IBC and CIRP Regulations, said resolution plan therefore was liable to be rejected by NCLT under sub-section (2) of section 31. Impugned order passed by NCLAT was to be set aside and resolution plan of JSW as approved by CoC was to be rejected. NCLT was to be directed to initiate Liquidation Proceedings against the corporate debtor under Chapter III of IBC and in accordance with law.

Case Review: JSW Steel Ltd. v. Mahender Kumar Khandelwal [2020] 114 taxmann.com 428 (NCL-AT), set aside.

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

Tata Steel Ltd. v. Raj Kumar Banerjee [2025] 174 taxmann.com 360 (SC)

NCLAT has no power to condone delay beyond period stipulated under section 61(2); once prescribed and condonable periods (i.e., 30 + 15 days) expire, NCLAT has no jurisdiction to entertain appeals, regardless of reason for delay.

Resolution plan submitted by the appellant in respect of the corporate debtor was approved by Committee of Creditors (CoC) and, subsequently by NCLT. Respondent, an erstwhile minority shareholder of the corporate debtor, preferred an appeal under section 61 to set aside order passed by NCLT. Along with appeal, he also filed an

interlocutory application praying for condonation of delay in filing same. NCLAT vide impugned orders, condoned delays and allowed said application. The appellant challenged maintainability of appeal on ground that it was filed beyond 45 days period prescribed under section 61(2). It was noted that order approving the appellant's resolution plan for the corporate debtor was passed by NCLT on 07.04.2022 and limitation period for filing appeal expired on 7-5-2022 however, respondent No. 1 filed appeal not only beyond prescribed period of 30 days but also condonable period of 15 days, i.e., on 22-5-2022.

Held that once prescribed and condonable periods (i.e., 30 + 15 days) expired, NCLAT had no jurisdiction to entertain appeals,

regardless of reason for delay. Appeal filed on 23.05.2022 was barred by limitation and therefore, order passed by NCLAT condoning delay in filing appeal was ultra vires and liable to be set aside.

Case Review: Raj kumar banarjee Minority shareholder of Rohit Ferro Tech. Ltd. v. Supriyo kumari chaudhuri Resolution Profession of Rohit Ferro Tech. Ltd. [2025] 172 taxmann.com 863 (para 14), reversed.

SECTION 43 - CORPORATE INSOLVENCY RESOLUTION PROCESS - PREFERENTIAL TRANSACTIONS AND RELEVANT TIME

Ankit Bhuwalka v. IDBI Bank Ltd. [2025] 174 taxmann.com 397 (Mumbai (Bombay))

Where petitioner, a company director, was declared a wilful defaulter by respondent bank, petitioner challenged said action, citing lack of access to key documents and a fair hearing, since personal hearing could not be construed to be meaningful with petitioner having his hands tied behind by withholding necessary documents, show cause notice and orders passed by respondent bank were to be set aside.

CIRP was initiated against a company. Transaction Audit Report (TAR) was prepared by auditors at behest of Resolution Professional (RP) of the corporate debtor. Based on findings in TAR, RP filed an application before NCLT, alleging that certain fraudulent transactions, including related party transaction between the corporate debtor and its group company had taken place. Placing reliance solely on TAR, respondent bank proceeded to declare petitioner as wilful defaulter. Petitioner filed a petition

seeking quashing of show cause notice.

issued by bank and order passed by Wilful Defaulter Committee of bank on grounds that he was deprived of a substantial opportunity of being heard, as documents based on which decision to declare him as Wilful Defaulter was taken were not provided to him and report relied upon by the respondent was held by NCLT to be based on surmises and conjectures. It was noted that without providing required documents or replying to requests made by petitioners, WDC proceeded to take a decision to declare petitioner as wilful defaulter.

Held that personal hearing could not be construed to be meaningful with petitioner having his hands tied behind in context of respondent withholding necessary documents and expecting to offer his comments. Thus, show cause notice and orders passed by bank were to be set aside. However, bank was at liberty to issue fresh show cause notice to petitioner by making proper disclosure of material and information on which show cause notice was based - Held, yes [Paras 27, 28 and 32]

SECTION 12A - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF

Kalyan Muppaneni v. K. Computers [2025] 174 taxmann.com 665 (SC)

Where appeal filed by appellant/erstwhile director of corporate debtor seeking directions for respondent/operational creditor to withdraw proceedings under section 9 was dismissed on ground that decision to continue or withdraw lay solely with operational creditor, since appellant had placed on record settlement agreement and application for withdrawal of company

petition, it was open to IRP to proceed in accordance with law and, if deemed appropriate, file an application under section 12A for withdrawal of company petition.

NCLT admitted an application under section 9 and appointed IRP. NCLAT set aside order of NCLT admitting application under section 9. The operational Creditor filed petition under section 9 for initiation of CIRP against the corporate debtor. After admission of application, the appellant-suspended

director of the corporate debtor filed an application seeking a direction against the operational creditor to withdraw application filed under section 9. NCLAT vide impugned order held that master of proceedings was respondent itself, and choice to proceed and pursue proceedings was exclusively vested upon him, as to whether he wanted to continue to pursue relief sought or to withdraw it under changed circumstances and, therefore, appeal filed by appellant against order of NCLT directing respondent to withdraw proceedings initiated by it under

section 9 was to be dismissed.

Held that since the appellant had placed on record settlement agreement and application for withdrawal of company petition, it was open to IRP to proceed in accordance with law and, if deemed appropriate, file an application under section 12A.

Case Review: Kalyan Muppaneni v. K. Computers [2025] 170 taxmann.com 660 (NCLAT - Chennai) (para 4) modified.

SECTION 31, OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF -

Praveen Arya v. Anju Agarwal [2025] 174 taxmann.com 1086 (SC)

Where resolution plan approved by CoC offered 100 per cent refund of principal amount to appellants, commercial space buyers, since payment offered to appellants in resolution plan did not violate provisions of section 30(2)(b), there were no sufficient grounds to interfere with order approving resolution plan.

CIRP was initiated against the corporate debtor. Appellants were commercial space buyers in a project of the corporate debtor. Meanwhile, CIRP was initiated against the corporate debtor and appellant's claims were admitted. Resolution plan submitted by successful resolution applicant (SRA) was approved by Adjudicating Authority. The Appellant filed appeal challenging order approving resolution plan. NCLAT vide impugned order rejected said

application on ground that claims of appellants had been admitted and were dealt in resolution plan and, SRA had offered 100 per cent refund of principal amount with alternative proposal for commercial space. NCLAT further held that payment offered to appellants in resolution plan did not violate provisions of section 30(2)(b), there were no sufficient grounds to interfere with order approving resolution plan.

Held that in view of facts, there were no good grounds to interfere with impugned order, however, it would be open to appellants to raise aspect of non-payment in terms of resolution plan before authorities in accordance with law.

Case Review: Praveen Arya v. Anju Aggarwal [2025] 174 taxmann.com 881 (NCLAT - New Delhi), affirmed.

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against the corporate debtor and appellants claims were admitted. Resolution plan submitted by successful resolution applicant (SRA) was approved by Adjudicating Authority. The appellant filed appeal challenging order approving resolution plan. NCLAT vide impugned order rejected said application on ground that claims of the appellants had been admitted and were dealt in resolution plan and, SRA had offered 100 per cent refund of principal amount with alternative proposal for commercial space. NCLAT further held that payment offered to the appellants in resolution plan did not violate provisions of

section 30(2)(b), there were no sufficient grounds to interfere with order approving resolution plan.

Held that in view of facts, there were no good grounds to interfere with impugned order. However, it would be open to appellants to raise aspect of non-payment in terms of resolution plan before authorities in accordance with law.

Case Review: Praveen Arya v. Anju Aggarwal [2025] 174 taxmann.com 881 (NCLAT -New Delhi), affirmed.

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

Romi Datta v. Sigma Supply Chain Solutions (P.) Ltd. [2025] 174 taxmann.com 1089 (SC)

Where there had been a settlement between parties and entire outstanding number of operational creditors had been settled, impugned order passed by Appellate Tribunal was to be set aside.

The corporate debtor had entered into a service agreement with the operational creditor for handling, storage, maintenance, administration, distribution and arrangement of goods of the corporate debtor kept in warehouses. The operational creditor had claimed that outstanding amount remained unpaid and had issued a demand notice under section 8 to the corporate debtor demanding payment. In response, the corporate debtor had sent a notice of dispute denying its liability and claiming that there were pre-existing disputes between parties. The operational creditor had filed an application under section 9 against the corporate debtor claiming an amount as due and payable by the corporate debtor. Adjudicating Authority admitted section 9 application. The appellant, shareholder of corporate debtor had challenged said order. Appellate Tribunal vide impugned order held that the

corporate debtor had failed to produce plausible evidence to corroborate that there was a pre-existing dispute between parties, thus, Adjudicating Authority had not committed any error in admitting application under section 9. It was noted that there had been a settlement between parties and entire outstanding of operational creditor had been settled.

Held that in view of aforesaid, nothing remained further to be done and, therefore, impugned order passed by Appellate Tribunal was to be set aside.

Case Review: Romi Datta v. Sigma Supply Chain Solutions (P.) Ltd. [2025] 174 taxmann.com 882 (NCLAT -New Delhi), set aside.

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