JULY 2026

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

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

IPA-ICMAI

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by "The Institute of Cost Accountants of India". We are 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 newsletternamely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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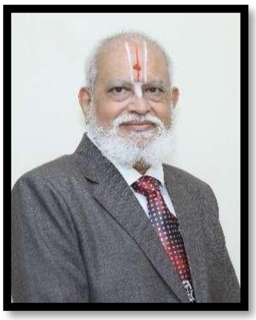

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FROM THE MANAGING DIRECTOR'S DESK

Dear Readers,

Welcome to the July 2026 edition of *The Insolvency Professional – Your Insight Journal*.

India's insolvency framework is undergoing significant reform. Key provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2026 came into effect on 26 May 2026. Once notified, the Creditor-Initiated Insolvency Resolution Process **(CIIRP)** will enable timely, creditor-led intervention under a debtor-in-possession model. The new cross-border and group insolvency frameworks will further align India's system with global standards.

In line with the amendments, the Insolvency and Bankruptcy Board of India **(IBBI)** amended its regulations, effective 2 June 2026, to enhance transparency and efficiency in corporate insolvency and liquidation processes, among other areas.

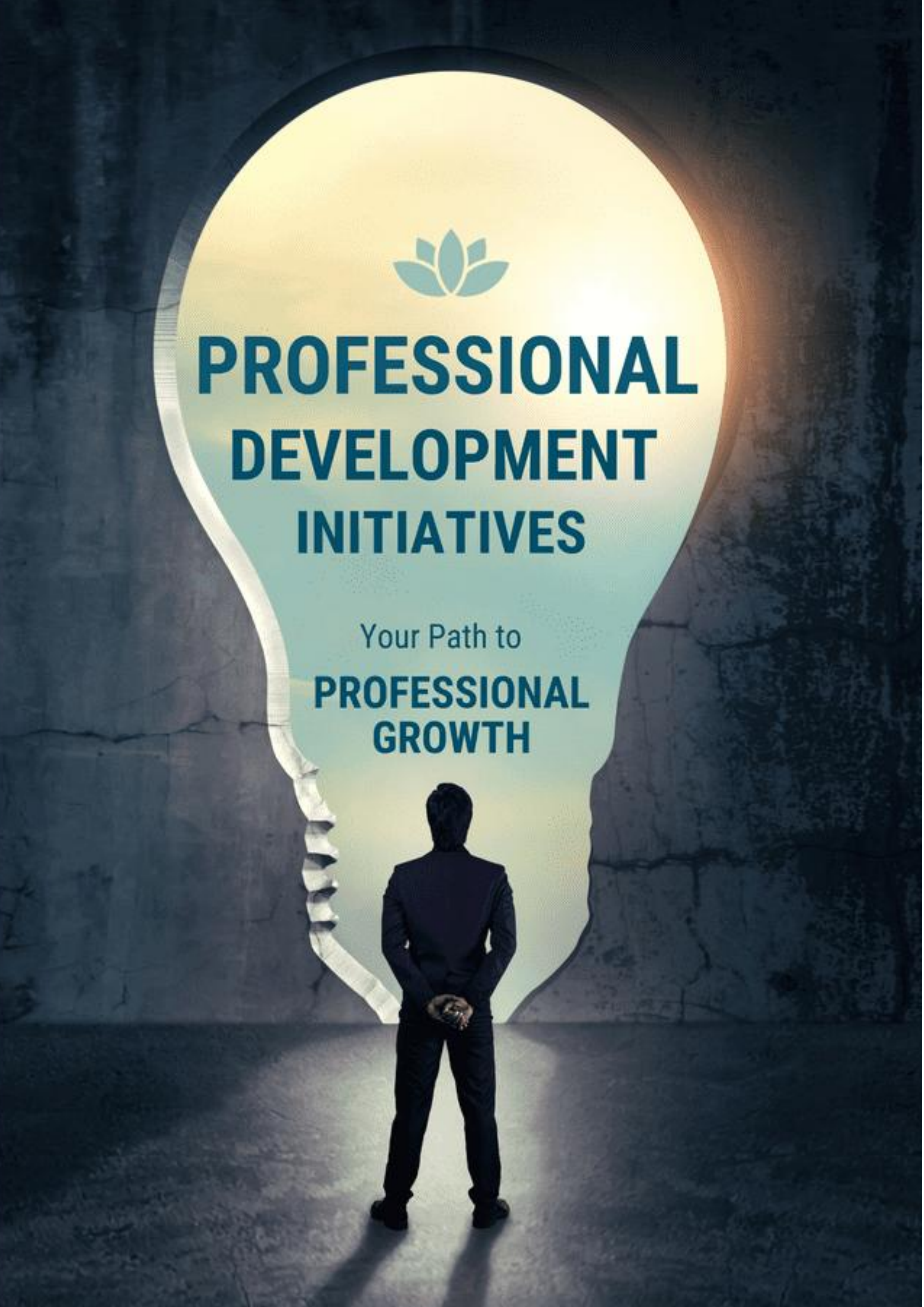
Furthermore, the Ministry of Corporate Affairs **(MCA)** is developing the Integrated Platform for Insolvency Ecosystem **(iPIE)**. This unified digital platform will enable end-to-end digital workflows, facilitate information exchange among authorised stakeholders, and reduce dependence on manual processes. The MCA has invited professionals, institutions, industry, and academia to submit suggestions on iPIE by 10 August 2026. I strongly encourage insolvency professionals to submit their comments in the prescribed format. Details are available in the "What's New" section of the MCA website and IBBI website.

As these structural shifts unfold, insolvency professionals must prepare proactively and familiarise themselves thoroughly with the practical implications of these amendments. Adapting to the operational nuances will be critical to executing processes smoothly and ensuring regulatory compliance.

In light of these developments in the insolvency framework, IPA-ICMAI continues to support the profession through nationwide programmes and webinars. I invite you to participate actively in these initiatives and share your expertise.

I trust you will find this edition insightful.

(Vinay Kumar Sanduja)
Managing Director, IPA-ICMAI



PROFESSIONAL DEVELOPMENT INITIATIVES

Your Path to PROFESSIONAL GROWTH

EVENT's CONDUCTED

JULY 2026	
DATE	**EVENT's CONDUCTED**
July 4, 2026	**A Learning Session on Implementation of Resolution Plan under IBC, 2016** – Industry Specific Perspectives was held on July 4, 2026, in online mode.
July 10, 2026	**An Advanced Workshop on Waterfall Mechanism under IBC, 2016** was held on July 10, 2026, in online mode.
July 13–17, 2026	**Certificate Course on Insolvency & Bankruptcy Code (With Special Focus on Latest Amendments)** was held from July 13–17, 2026**, at** NIBSCOM, Noida, in association with NIBSCOM.
July 18, 2026	**A Webinar Series on Interplay of IBC with Other Allied Laws** was held on July 18, 2026, in online mode.
July 24, 2026	**Seminar on Insolvency and Bankruptcy Code, 2016 – Recent Amendments under IBC** was held on July 24, 2026, in Mumbai, in collaboration with **IP Foundation, PVAI (Valuation Professional Organisation), and DiMax Restructuring.**
July 24, 2026	IPA-ICMAI, with the support of the Insolvency and Bankruptcy Board of India (IBBI), successfully organised a **Workshop for Insolvency Professionals (IPs) & Registered Valuers (RVs)** on July 24th, 2026 in Mumbai.
July 25, 2026	**A Workshop on Forensic Bootcamp: Investigating Avoidance Transactions under the IBC** was held on July 25, 2026.
July 31, 2026	The Indian Resolution Professional Association (IRPA), in association with IPA-ICMAI, successfully organised an insightful **Seminar on "IBC 2026 Updates: Recent Amendments to the Code and its Regulations"** July 31, 2026, in Chandigarh.
July 31, 2026	**A Sensitization Program on "Disciplinary Process under IBBI Oversight & Ethical Conduct for IPs"** was held on July 31st, 2026 in online mode.

GLIMPSE
OF EVENTS

IN PERSON EVENTS

CERTIFICATE COURSE ON INSOLVENCY & BANKRUPTCY CODE (WITH SPECIAL FOCUS ON LATEST AMENDMENTS), IN ASSOCIATION WITH NIBSCOM, HELD FROM 13–17 JULY 2026

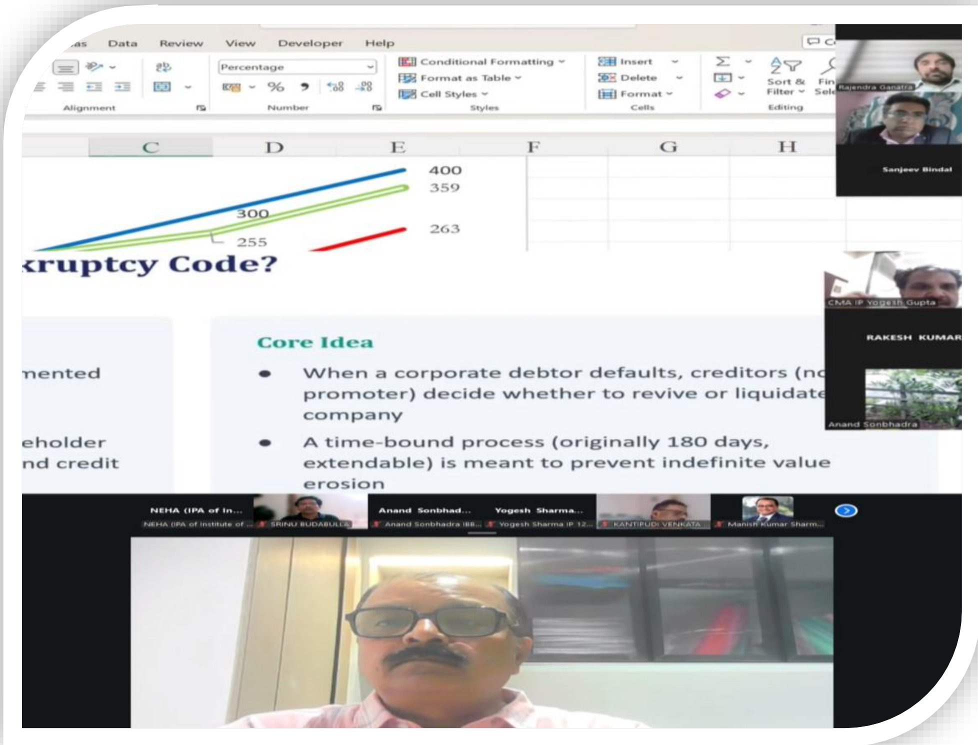
IPA-ICMAI, IN ASSOCIATION WITH IP FOUNDATION, PVAI VALUATION PROFESSIONAL ORGANISATION AND DIMAX RESTRUCTURING, ORGANISED THE SEMINAR ON IBC, 2016 – RECENT AMENDMENTS UNDER THE IBC ON JULY 24TH, 2026 IN MUMBAI.

IPA-ICMAI, WITH THE SUPPORT OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI), ORGANISED A WORKSHOP FOR IPS AND RVS ON JULY 24TH, 2026, IN MUMBAI.

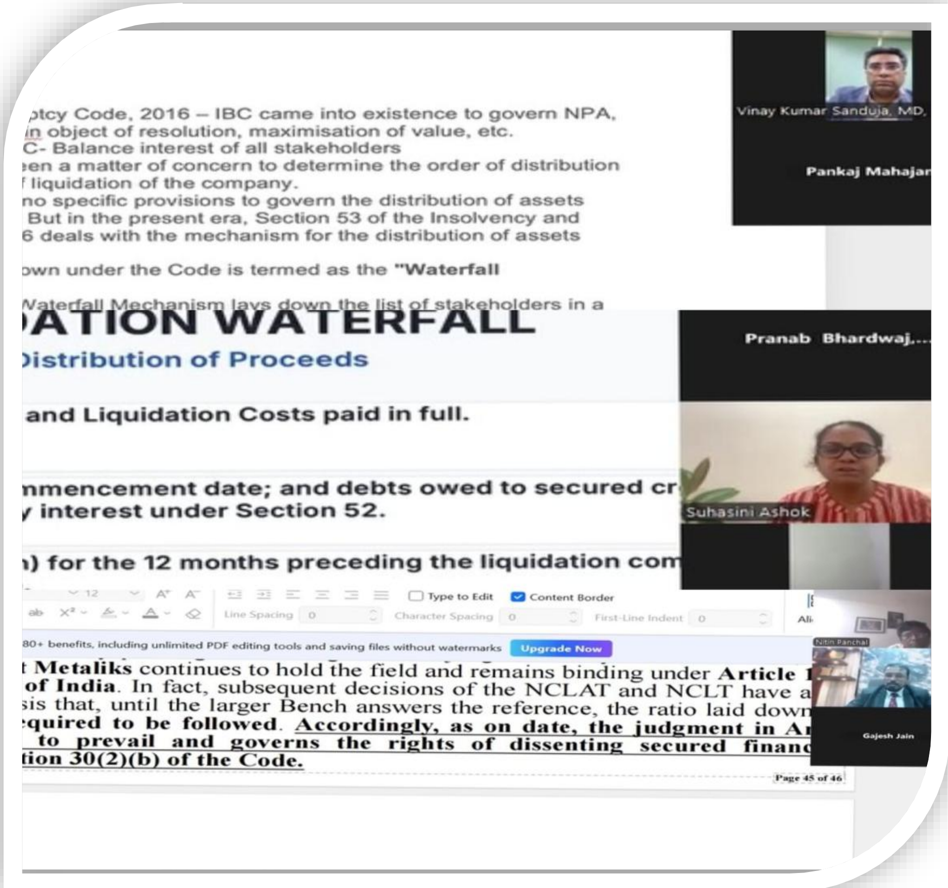
IPA-ICMAI IN ASSOCIATION WITH IRPA ORGANISED A SEMINAR ON "IBC 2026 UPDATES: RECENT AMENDMENTS TO THE CODE AND ITS REGULATIONS" JULY 31, 2026, IN CHANDIGARH.

ONLINE EVENTS

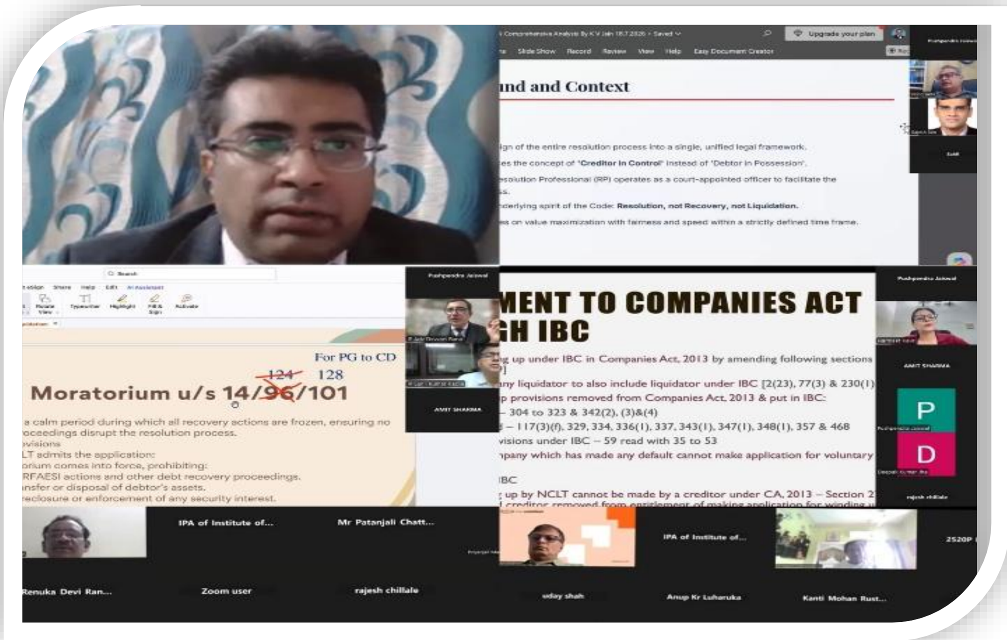
LEARNING SESSION ON IMPLEMENTATION OF RESOLUTION PLAN UNDER IBC, 2016 – INDUSTRY SPECIFIC PERSPECTIVES HELD ON JULY 4, 2026



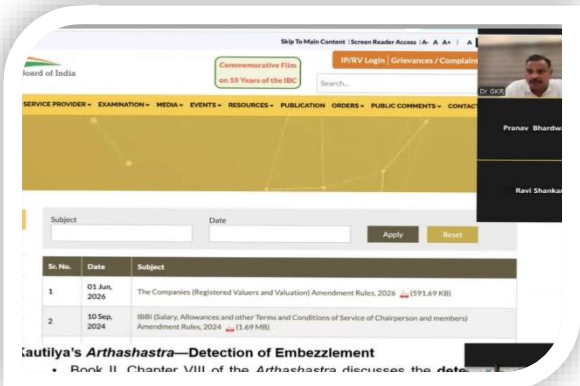
ADVANCED WORKSHOP ON WATERFALL MECHANISM UNDER IBC, 2016 HELD ON JULY 10, 2026

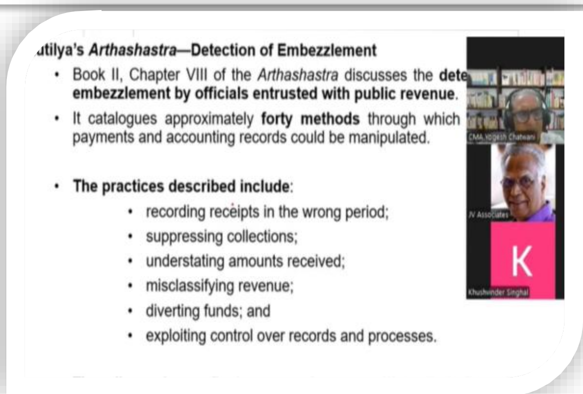


WEBINAR SERIES ON INTERPLAY OF IBC WITH OTHER ALLIED LAWS HELD ON JULY 18, 2026

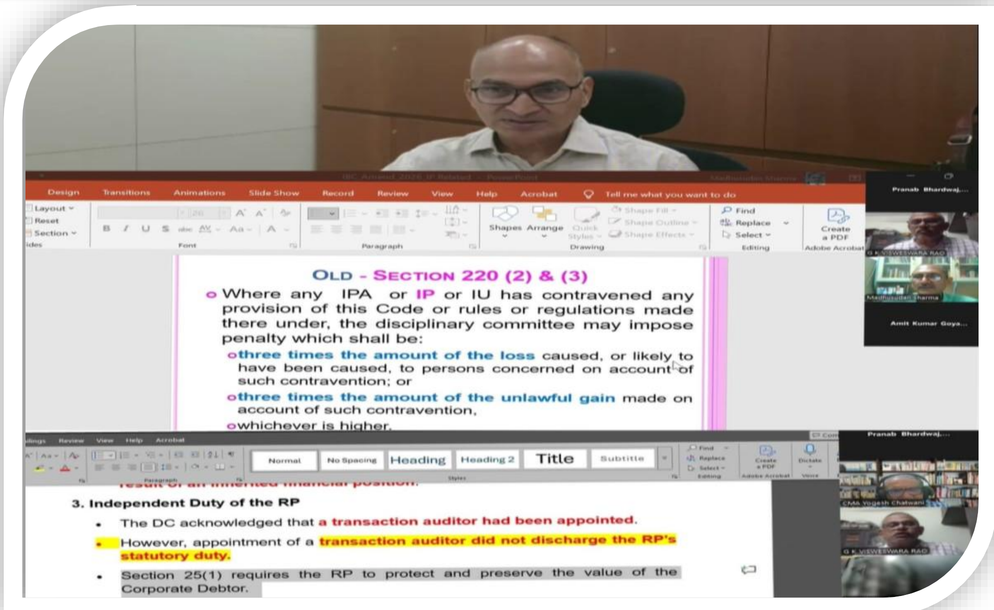


WORKSHOP ON FORENSIC BOOTCAMP: INVESTIGATING AVOIDANCE TRANSACTIONS UNDER THE IBC HELD ON JULY 25, 2026





A SENSITIZATION PROGRAM ON "DISCIPLINARY PROCESS UNDER IBBI OVERSIGHT & ETHICAL CONDUCT FOR IPs" HELD ON JULY 31ST, 2026



ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
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NCLT AT CROSSROADS: PROCEDURAL LAPSES UNDERMINING THE IBC

Mr. Balakrishnan Venkatachalam
(Insolvency Professional)

1. Introduction

The Insolvency and Bankruptcy Code, 2016 was designed as a creditor-driven, time-bound mechanism for corporate insolvency resolution. The National Company Law Tribunal (NCLT) is the sole Adjudicating Authority under IBC so far

Almost ten years on, IBBI data as of March 2026 reflects average resolution time of **716 days versus the statutory 330 days**, with cumulative recovery at 32.1%. While substantive law has evolved through amendments and Supreme Court rulings, procedural anomalies at NCLT level remain a key drag on efficiency. IBC stresses upon timeliness. Working days and holidays are given equal weightages. IBC timelines speak only "days". Time bound processes is one of the top reasons, why IBC is attractive to the stake holders. This objective of the code stands majorly defeated……. If there is one major cause for this …… it is the judiciary

The problem statement (with case details) and proposed solutions. This article examines recurring anomalies with case law and proposes reforms.

2. Anomalies and Judicial Precedents

2.1 Parallel Proceedings at Multiple Benches

Section 60(1) vests exclusive jurisdiction in the NCLT bench where the corporate debtor's registered office is located. Yet registries admit petitions without deduplication.

Bank of India v. Raj Oil Mills Ltd. saw simultaneous petitions at Mumbai and Ahmedabad benches, resulting in appointment of two IRPs for the same Corporate Debtor. This shows anomaly of parallel CIRP filings at Mumbai and Ahmedabad for the same CD. NCLAT stayed the later admission, but four months were lost. This directly illustrates Sec 60(1) jurisdictional conflict and failure of registry to deduplicate.

Similar conflict arose in *Edelweiss ARC v. Synergies Dooray* where Hyderabad and Chennai benches entertained separate petitions for same Corporate Debtor. Upon appeal NCLAT ordered that first admission prevails when multiple benches admit, but for this an appeal had to be filed with the appellate authority. Highlights wasted judicial time due to lack of centralized check at filing stage.

SBI v. Jet Airways Demonstrates cross-border parallel proceedings and lack of protocol, delaying CIRP by 8 months. Reinforces need for group/cross-border coordination at NCLT level.

Furthermore, it is also seen that simultaneous cases have been registered against the same personal guarantor in the same NCLT bench. Case number CP(IB) No 92/BB/2025 and CP(IB) No 209/BB/2025 are being heard at NCLT Bangalore bench against the same personal guarantor. It is a fundamental concept that personal insolvency is person - centric and not debt - centric

2.2 Admission Without Progress

Section 16 requires IRP appointment at admission; Reg 17 mandates first CoC meeting within 30 days. In practice, many cases stall.

Lanco Infratech matter was admitted in August 2017 but remained dormant and finally liquidated in the year 2021. It got prolonged because of litigation over RP's eligibility and claim disputes. This shows how litigation on RP and/or claims can keep CIRP in limbo, eroding the value of the CD

Amtek Auto saw CoC approval of the Resolution Plan in April 2018 but NCLT gave its approval only in July 2020, by which time the resolution applicant withdrew citing delay as the reason for his withdrawal.

Bhushan Power In this matter there was a 12-month delay at Sec 31 stage due to ED attachments and ongoing AA queries.

2.3 Inconsistent Moratorium Interpretation u/s 14

The Explanation to Sec 14 excludes surety proceedings, but benches diverge on arbitration, tax, and NI Act matters.

Power Grid v. Jyoti Structures Mumbai NCLT stayed arbitration citing Sec 14 moratorium whereas in *Jharkhand Bijli v. IVRCL* the Hyderabad NCLT allowed arbitration to continue despite moratorium. Contradictory judgements prove inconsistency across benches on Sec 14 scope.

P. Mohanraj v. Shah Brothers held Sec 138 NI Act proceedings were stayed, yet benches continue to pass conflicting interim orders. SC ruling that Sec 138 NI Act is stayed by moratorium. Cited to show even after SC clarity, NCLT benches pass conflicting interim orders.

Pr. CIT v. Monnet Ispat ... In this matter NCLAT clarified that Tax assessments may continue but recovery cannot. This fine distinction is not uniformly applied across NCLT benches

2.4 Withdrawal Disparities u/s 12A

Section 12A permits withdrawal with 90% CoC approval.

The Hon'ble SC in the Swiss Ribbons v. UoI matter had to give a detailed step by step process for the Sec 12A withdrawal mechanism. SC upheld Sec 12A withdrawal mechanism. Despite SC validation, benches impose extra conditions delaying settlements.

In the matter of *Sterling SEZ* NCLT Kolkata took 11 months to allow withdrawal u/s 12A despite 100% CoC approval. Bench was insisting on proof of full payment, which was not in the scope of the AA. This had resulted in substantial delay and shows bench-level insistence on parameters that are outside the scope of AA, defeats purpose of 12A.

The Hon'ble SC in *Brilliant Alloys* clarified that 12A is permissible pre-CoC under inherent powers but Delhi NCLT in *EPC Constructions* refused such plea in 2023. Such lack of uniformity causes avoidable appeal delays

Treatment of withdrawal during liquidation also varies, as seen in *Kridhan Infra vs. GVR Infra* where Mumbai NCLT allowed 12A withdrawal during liquidation in contrast to Chennai NCLT. This highlights lack of uniform 12A withdrawal practice.

2.5 Delays in Resolution Plan Approval

In the matter of *K. Sashidhar v. Indian Overseas Bank* the Hon'ble SC limited the review of the Adjudicating Authority to Sec 30(2) compliance only. Yet benches conduct merits review. SC limited AA review to Sec 30(2) compliance only. The delay caused thus not only frustrates the prospective Resolution Applicant but also defeats the purpose of the Code

Essar Steel took 13 months from CoC approval to SC finality. Benchmark case showing how plan approval delay + NCLAT modifications undermine time-bound resolution. This is despite Essar being one of the TOP 12 cases initiated after RBI's initial involvement.

Similar is *Bhushan Steel* which faced 10-month delay at NCLT due to operational creditor objections on distribution. Shows NCLT entertaining challenges beyond Sec 30(2).

Jet Airways CoC approved the plan in October 2020, NCLT approval came after 9 months in June 2021. There have been multiple implementation litigation causing delay in ownership transfer and destroying the going-concern value.

2.6 Group Insolvency Vacuum

The Code lacks a group insolvency chapter. *Videocon Group* 13 group entities across benches, consolidated only after 1 year into CIRP. Prime example of group insolvency vacuum causing duplicate costs and affecting recovery. Videocon realized Rs 2,962 Cr, just 4.15% of claims.

In *Adel Landmarks* there were multiple housing groups of various projects of the CD in Delhi abd Chandigarh with no joint hearing till NCLAT in an appeal in 2021 gave directions. Shows coordination failure across benches for sector-specific groups.

In *Era Infra* the Holding and subsidiaries were admitted and heard at different benches. They were resolved separately leading to holding company resolution without subsidiary synergy and reducing combined value.

2.7 Registry Delays and Adjournments

NCLT Annual Report 2023 indicates average 18 adjournments per CIRP. Registry defects take 20–30 days to clear.

In SREI Infrastructure, CoC formation occurred on the 102nd day against the 30-day mandate. This was due to roster/registry issues. Shows anomaly of adjournments and administrative lag post-admission.

3. Suggestions for Reform

3.1 Technological/Administrative

1.CIN/PAN Deduplication: NCLT-IBBI-MCA integrated portal to auto-flag existing CIRP at filing stage. In fact all the relevant portals should talk to each other. Upon admission order CIN/PAN should get updated all across (benches, IT, MCA, RBI, RERA etc). Not just deduplication, this will also ensure that data / reports from various such sources show uniform data. Admission order to create national lock-in.

2. Registry and defects

- There should be a 48-hour time limit to complete the scrutiny. The monitoring mechanism (if any) of the registry MUST be well organised.
- Cause list across benches should have the same format. Supplementary cause list should be uploaded on time. Start time MUST be adhered to. There should be a logic in sequencing the cases in any particular cause list. The bench must be mandated to complete the list.
- E-portal of NCLT should be more robust. It should allow interaction between advocates/professionals and the registry.
- E-portal of NCLT must be common across all benches. Currently advocates/professionals need different login for each NCLT bench.

3.2 Procedural/Statutory

a. One common pain point is the time taken by NCLT in disposing applications filed u/s 7, 9 and 10. The average time taken by the benches is not published. The statutory time limit for accepting/rejecting Sec 7, 9 and 10 applications is 14 days. Let's consider a Corporate Debtor who has committed transactions that are questionable u/s 43, 45 and / or 49 at a particular time / date. Once an application has been filed with NCLT, the CD / the wrong doer stands to gain if there is delay in admission of the application. If the is heard and the order gets passed after 1 year of such transaction, then the transaction goes beyond the look back period that the IRP / RP can go. A two year delay will further push such related party transactions too beyond the scope of IRP / RP. The delay in admission benefits only the wrong doers and frustrates the creditors.

Where internationally this duration runs in weeks / days, our duration is far beyond. What could be the root cause for the delay in admission / rejection:

- Pre-admission delay: Sec 7/9/10 petitions sit with NCLT for months before the admission order. IBBI flagged this as a major cause for the overall delay.
- Defect curing: E-filing defects take 20-30 days to cure vis-a-vis 48 hours in Singapore.
- There is no standard operating procedure for the scope of registry in defect rectification process
- The statutory benchmark of 14 days has been ridiculed by the system.

The recent amendment attempts to cure this ill by mandating the AA to document the reason for delay beyond 14 days. NCLT must admit within 14 days if debt and default are proven. Do you think this amendment shall reduce the time taken in admission / rejection of applications? It is to be seen.

b. Avoidable dependency on NCLT should be reduced. Petitions like quarterly reports of liquidator, application for appointment of AR, application for appointment of RP (replacing IRP) should be abolished. This will reduce the load on NCLT.

c. Hard timelines: Acceptance/Rejection of Section 7, 9 and 10 applications must be within 14 days. It is a pity to see advocates arguing to prove a debt/default. These should be system driven.

d. Information Utility: The only IU in the country NeSL has not been completely exploited. The systems and reports that are available with IU are very basic.

3.3 Institutional

1. Fill Vacancies: Of 83 sanctioned members, only about 48 have taken their roles. Full strength of members is the need of the hour.

2. Judicial Training: Quarterly NJA programs on commercial principles will add to the speed of disposal of applications.

3. Performance Dashboard: Bench-wise metrics should be published. Examples of parameters are

    - Application numbering till listing

- Application (Sec 7, 9 and 10) listing till acceptance / rejection OR Disposal
- Application for approval of Resolution Plan till its disposal
- Per day ineffective hearings (where only dates are given)
- Reserved for order till Order is pronounced.

4. IBC-Exclusive Benches: There must be dedicated hearings for IBC matter has practice globally. Reduce jurisdiction of heavy benches. Notify 1/3rd benches in other key cities as IBC-only to avoid roster clash with Companies Act matters.

<u>3.4 Others</u>

As of today there are no IBC exclusive benches. All the benches handle both Companies Act matters and IBC matters.

There are variances in the count of days of pendency of matters. For example Jaipur / Bangalore benches have a count of 480 to 580 days as against Mumbai / Prayagraj have a count of 670 to 740 days

There is a heavy concentration of IBC cases. Mumbai alone sees about 35% of all IBC admissions. This could be a prime reason for the 720 days of average time for CIRP

4. Conclusion

The key essence of IBC is the strict timelines. All stakeholders MUST be accountable to adhere with the timelines. No legislation has been able to fix timelines for the judiciary. The judiciary themselves must take it as their own initiative to bring about stricter timelines for themselves for the sake of justice. There are strict penalties imposed on all the stakeholders, for causing delays…but are there any accountability put on judiciary for causing avoidable delays? The objective of timeliness gets defeated nevertheless if anyone in the ecosystem is the cause of the delay.

While our nation has moved way ahead in the resent years, we are still lagging behind in certain critical areas that affect our judicial ecosystem. IBC has done quite well in adapting to the practical aspects. The number of amendments that IBC has gone through shows how dynamic the legislature is.

The anomalies cited above are largely procedural. Data shows every 100 day delay cuts recovery by about 3.5%. Swiss Ribbons and Essar Steel mandate commercial decisions to CoC and minimal AA intervention — this must translate to bench practice. With technological advancement, specialization, and strict and hard timelines, NCLT can lift recoveries toward 60% and resolution within 300 days, matching global standards.

Mr. Anup Kumar Pandey
(Insolvency Professional)

Pre-Admission Filter and Time-bound Admission

At present, admission of CIRP applications can be delayed due to incomplete material, disputed defaults, and lack of standardised pre-admission scrutiny, which affects certainty for creditors and debtors alike.

At present, admission of CIRP applications can be delayed due to incomplete material, disputed defaults, and the absence of a structured pre-admission verification process, resulting in uncertainty for both creditors and debtors. While the Adjudicating Authority is required to ascertain the existence of default before admission, significant judicial time is often spent on examining basic documentary and procedural compliance. A statutory pre-filing verification mechanism may therefore be introduced, requiring an independent Insolvency Professional drawn from a panel maintained by the IBBI to conduct a preliminary review and submit a concise verification report confirming the occurrence of default, completeness of the application and supporting documents, and the absence of any apparent jurisdictional or statutory bar. In the case of applications under Section 9, the report may additionally verify compliance with demand notice requirements and identify any prima facie pre-existing dispute, while for applications under Section 10 it may confirm valid corporate authorisation and the existence of genuine financial distress.

Such a mechanism could streamline the admission process, reduce avoidable litigation at the threshold stage, and assist the Adjudicating Authority in disposing of applications within a prescribed time frame.

Content of verification report

The Verification Report submitted by the independent Insolvency Professional in respect of an application under Section 7 of the Code may contain the following particulars:

- Particulars of the Applicant and Corporate Debtor, including their legal status and identification details.
- Confirmation of the existence of a financial debt, based on a review of the relevant loan agreements, sanction letters, security documents, guarantees, account statements and other supporting records.
- Verification of the occurrence of default, including:

  (a) the date of default;
  (b) the amount claimed to be in default;
  (c) the basis for computation of the default amount; and
  (d) Supporting documentary evidence.

- Confirmation as to whether the default is recorded with an Information Utility and, where available, whether the Information Utility records correspond with the claim made in the application.
- Verification that the application is complete in all material respects and is accompanied by the documents prescribed under the Code and the relevant rules and regulations.
- Details of any security interest created in favour of the applicant, including a summary of charges registered with the Registrar of Companies, if any.
- Confirmation that no CIRP, liquidation proceeding, or other insolvency process in respect of the corporate debtor is pending before any Adjudicating Authority, to the extent ascertainable from publicly available records.
- Identification of any apparent jurisdictional, statutory, or procedural bar to admission of the application.
- Confirmation that the proposed default amount satisfies the statutory threshold prescribed under the Code.
- A concluding opinion stating whether, based on the documents reviewed, there exists a prima

facie financial debt and default sufficient for consideration of admission under Section 7 of the Code.

Provided that the Verification Report shall not determine disputed questions of fact or law and shall not be binding upon the Adjudicating Authority.

The Verification Report submitted by the independent Insolvency Professional in respect of an application under Section 9 of the Code may contain the following particulars:

- Particulars of the Operational Creditor and Corporate Debtor, including their legal status and identification details.
- Confirmation of the existence of an operational debt, based on a review of invoices, purchase orders, work orders, delivery challans, service agreements, ledger accounts, acknowledgements, and other supporting documents.
- Verification of the occurrence of default, including:

(e) the date of default;
(f) the amount claimed to be in default;
(g) the basis for computation of the default amount; and
(h) supporting documentary evidence.

- Confirmation that the debt claimed satisfies the statutory threshold prescribed under the Code.
- Verification of issuance and service of the demand notice under Section 8 of the Code, including the mode of service and proof of delivery, wherever available.
- Confirmation as to whether any reply to the demand notice has been received from the Corporate Debtor and a summary of the contents thereof.
- Identification of any prima facie pre-existing dispute apparent from:

(i) correspondence exchanged between the parties;
(j) replies to the demand notice;
(k) pending suits, arbitration proceedings, or other adjudicatory proceedings; or
(l) other documents made available for review.

- Verification that the application is complete in all material respects and is accompanied by the documents prescribed under the Code and the relevant rules and regulations.
- Confirmation that no CIRP, liquidation proceeding, or other insolvency process in respect of the Corporate Debtor is pending before any Adjudicating Authority, to the extent ascertainable from publicly available records.
- Identification of any apparent jurisdictional, statutory, or procedural bar to admission of the application.
- A concluding opinion stating whether, based on the documents reviewed, there exists a prima facie operational debt and default and whether any apparent pre-existing dispute is discernible from the available records.

Provided that the Verification Report shall not adjudicate upon the existence or merits of any dispute and shall not be binding upon the Adjudicating Authority, whose power to determine the maintainability of the application shall remain unaffected.

Applications under Section 9 frequently involve disputes concerning the existence of an operational debt, service of the statutory demand notice, and the presence of a pre-existing dispute. At the admission stage, the Adjudicating Authority is often required to undertake a detailed examination of invoices, correspondence, proof of delivery, demand notices, and other supporting documents to determine whether the statutory requirements for initiation of CIRP have been satisfied. This process can result in delays and inconsistent outcomes, particularly where the documentary record is incomplete or inadequately presented.

To enhance efficiency and accountability, the Operational Creditor may be required to furnish a sworn affidavit to an independent Insolvency Professional empanelled with the IBBI, affirming the completeness and accuracy of all documents and information relied upon in support of the application, including the existence of the operational debt, occurrence of default, service of the demand notice, and disclosure of all material correspondence exchanged with the Corporate Debtor. The independent Insolvency Professional may thereafter conduct a preliminary verification and submit a report confirming compliance with statutory requirements, completeness of the application, and whether any prima facie pre-existing dispute is apparent from the documents made available for review.

Such a mechanism would not require the independent Insolvency Professional to adjudicate the merits of any dispute, which would remain within the exclusive jurisdiction of the Adjudicating Authority. Instead, it would serve as an objective screening process, ensuring that applicants remain accountable for the accuracy and completeness of their disclosures while assisting the Adjudicating Authority in identifying deficient, frivolous, or non-maintainable applications at an early stage. This would promote greater procedural certainty, reduce admission-stage delays, and discourage the misuse of Section 9 proceedings as a substitute for debt recovery actions.

The Verification Report submitted by the independent Insolvency Professional in respect of an application under Section 10 of the Code may contain the following particulars:

- Particulars of the Corporate Debtor, including its legal status, registered office, CIN, and principal business activities.
- Verification of the corporate authorisation for filing the application, including the relevant board resolution, shareholders' resolution (where required), and compliance with applicable provisions of law.
- Confirmation of the existence of financial distress and default, including:

(m) the date of default;
(n) the amount of debt and default;
(o) details of financial and operational liabilities; and
(p) supporting documentary evidence.

- Review of the latest financial statements, books of account, and records furnished by the Corporate Debtor to ascertain its financial position.
- Verification of the list of financial creditors, operational creditors, workmen, employees, and other stakeholders disclosed by the Corporate Debtor.
- Confirmation that the application is complete in all material respects and is accompanied by all documents and information prescribed under the Code and the relevant rules and regulations.
- Identification of any ongoing recovery, enforcement, arbitration, winding-up, liquidation, or insolvency proceedings involving the Corporate Debtor, to the extent ascertainable from available records.
- Identification of any apparent statutory or legal bar to the initiation of CIRP under Section 10, including any disqualification or restriction prescribed under the Code.
- Review of recent transactions disclosed by the Corporate Debtor that may warrant further examination during CIRP, including transactions with related parties, significant asset transfers, or unusual financial arrangements, without expressing any conclusive opinion thereon.
- Confirmation that the filing does not appear, on the basis of available records, to be solely intended to frustrate recovery proceedings or otherwise abuse the insolvency process.
- A concluding opinion stating whether, based on the documents reviewed, there exists prima facie evidence of financial distress and default and whether the application appears fit for consideration of admission under Section 10 of the Code.

Provided that the Verification Report shall not determine disputed questions of fact or law and shall not be binding upon the Adjudicating Authority.

In applications under Section 10, the Corporate Applicant shall furnish to the independent Insolvency Professional a duly sworn affidavit affirming:

- That all information, records, and documents furnished in support of the application are true, complete, and correct to the best of its knowledge and belief.
- That no material information relating to the financial position, assets, liabilities, creditors, pending litigation, recovery proceedings, enforcement actions, or insolvency-related proceedings has been concealed or omitted.
- That the list of financial creditors, operational creditors, workmen, employees, and related parties furnished with the application is complete and accurate.
- That all material transactions undertaken during the prescribed look-back period, including related-party transactions, asset transfers, security creations, and significant payments, have been fully disclosed.
- That the application is being filed bona fide for the purpose of insolvency resolution and not with the intent to delay, defeat, frustrate, or

evade legitimate recovery or enforcement actions by creditors.

- That the Corporate Applicant undertakes to promptly provide any additional information or clarification sought by the independent Insolvency Professional during the verification process.
- That the deponent acknowledges that any wilful suppression, misrepresentation, or furnishing of false information may attract rejection of the application and such civil, regulatory, or penal consequences as may be prescribed under the Code.

The independent Insolvency Professional shall be entitled to rely upon such affidavit while conducting the verification process, without prejudice to his or her authority to seek further documents, explanations, or independent corroboration wherever considered necessary.

Such an affidavit would provide a clear evidentiary basis for the Adjudicating Authority, the Insolvency and Bankruptcy Board of India (IBBI), and other competent authorities to determine accountability in cases where an application is subsequently found to contain false statements, material omissions, suppression of facts, misleading disclosures, or misrepresentations. It would also facilitate the initiation of appropriate proceedings for the imposition of costs, damages, penalties, compensation, or other legal consequences prescribed under the Code or any other applicable law.

Further, the affidavit mechanism would discourage frivolous, vexatious, speculative, or mala fide insolvency filings by ensuring that applicants are placed under a continuing obligation of candour and full disclosure. This would strengthen the integrity of the insolvency commencement process, enhance confidence in the information placed before the Adjudicating Authority, and promote greater accountability among applicants seeking to invoke the provisions of the Code.

Charge Creation, Enforcement, And Verification

The law of charges in India constitutes the foundational architecture of corporate credit and security. It determines when a lender acquires a proprietary interest in a company's assets, how that interest is publicly recorded, and the manner in which it may be enforced upon default. Three distinct statutory regimes govern this domain:

- The Companies Act, 2013 — governing creation and public disclosure of charges;
- The SARFAESI Act, 2002 — governing enforcement and realization of security interests;
- The Insolvency and Bankruptcy Code, 2016 (through Information Utilities) — governing verification and authentication of debt records.

Dual Registration Obligation

For security interests created over corporate assets, lenders are subject to a cumulative dual-registration obligation — one under the Companies Act (with ROC) and one under SARFAESI (with CERSAI). These registrations are not alternatives; both are mandatory and serve distinct purposes.

Registry	Purpose	Consequence of Non-Registration
ROC (Companies Act, 2013)	Public disclosure and constructive notice	Charge void against liquidator and creditors
CERSAI (SARFAESI Act, 2002)	Priority protection and prevention of competing claims	Exposure to priority disputes with other secured creditors

Failure at either registration layer renders the security interest legally precarious — void as against third parties or subordinate in priority to subsequently registered creditors.

Doctrinal Role

The IU's role is informational verification, not enforcement. It maintains verified records of debts to enable:

- Creditors to verify the existence and current status of charges;
- Insolvency Professionals to obtain comprehensive, reliable debt information during

the Corporate Insolvency Resolution Process (CIRP);

- Reduction of information asymmetry, thereby supporting predictable and efficient insolvency outcomes.

NeSL (National e-Governance Services Limited) is India's first registered Information Utility, functioning as the primary debt-record repository in insolvency proceedings. Every user of an IU is entitled to receive, free of charge, an annual statement of all information pertaining to them maintained by the IU.

IU operates on the informational transparency doctrine. Verified, centralized debt records eliminate the information asymmetry that has historically impeded swift insolvency resolution in India and provide a tamper-proof basis for creditor claims.

- SARFAESI is enforcement-only — it does not create charges but enforces pre-existing, validly created security interests.
- Dual registration is a cumulative statutory obligation — ROC registration under the Companies Act and CERSAI registration under SARFAESI are not alternatives; both are mandatory.
- Statutory first charges prevail — a statutory first charge (e.g., under the EPF Act) is superior to SARFAESI rights and stands entirely outside its enforcement framework.
- Non-registration entails dual vulnerability — failure at ROC renders the charge void against third parties; failure at CERSAI creates exposure to priority disputes.
- Information Utilities reduce systemic asymmetry — IU-authenticated debt records support efficient CIRP outcomes and predictable creditor hierarchies.

Bridging The Evidentiary Gap: Beyond Information Utility Records In Sections 7, 9, And 10 Applications

Information Utilities (IUs) have undoubtedly reduced systemic information asymmetry within the insolvency ecosystem by maintaining authenticated financial information and debt records. IU-authenticated records facilitate greater efficiency in the Corporate Insolvency Resolution Process (CIRP), assist in establishing creditor claims, and promote certainty in determining creditor hierarchies. However, their utility at the threshold stage of proceedings under Sections 7, 9, and 10 of the Insolvency and Bankruptcy Code, 2016 remains limited.

While IU records may serve as evidence of debt and default, they do not, by themselves, conclusively address all issues that arise before the Adjudicating Authority, particularly in relation to the existence of disputes under Section 9, the completeness and accuracy of information furnished by applicants, or the broader factual matrix surrounding the alleged default. Consequently, the Adjudicating Authority is often required to undertake an independent examination of multiple records and pleadings before arriving at a prima facie satisfaction regarding admission.

In this context, a verification report prepared by an independent Insolvency Professional prior to the filing or admission of an application would significantly strengthen the evidentiary framework. Such a report could verify the existence and quantum of debt, occurrence of default, status of disputes, authenticity of supporting documents, and compliance with statutory requirements. An independent professional verification would provide a higher degree of certainty and reliability than reliance solely on IU records, thereby assisting the Adjudicating Authority in expeditious determination of applications while minimizing the risk of admission based on incomplete, inaccurate, or misleading information.

Further, such verification would enhance accountability of applicants and creditors, reduce frivolous or defective filings, and contribute to greater transparency and confidence in the insolvency resolution framework. It would also enable regulators and adjudicatory authorities to identify instances of misrepresentation, suppression of material facts, or wrongful initiation of insolvency proceedings, thereby preserving the integrity of the Code.

Mr. Tarun Arora
(Insolvency Professional)

Snippet

Security interest under the Insolvency and Bankruptcy Code 2016 ("**the Code**" for short) is a mixed bundle to, *inter alia*, include within its ambit the security and the obligation to pay. And there is a strong correlation between the security interest and the financial debt as defined under the Code because without the security interest there cannot be a financial debt. Further, security interest can exist without any obligation to pay or *vice versa*. The judgment of the National Company Law Appellate Tribunal ("**the Hon'ble NCLAT**" for brevity) in ***Vistra ITCL (India) Limited v. Vithal Madhukar Dahake & Ors.***[i] has not only revisited this distinction but has further clarifies the circumstances under which a security provider may be treated as a Financial Creditor versus other secured creditor.

The decision is of paramount importance because it intersects the security interest and differentiates the circumstances wherein the covenant to pay converts a mere third-party mortgage to a contract of guarantee.

This article deals attempts to decode the judgment of the Hon'ble NCLAT so as to provide its readers an understanding that as to when a mere third-party mortgage converts into the contract of guarantee.

Facts of the Case

One Aaditri Construction Private Limited ("**ACPL**", "**the Company**") borrowed funds through the issuance of 3,95,00,000 secured optionally convertible debentures of face value of Rs100 each aggregating to ₹395 crores. Pursuant to the subscription of debentures, approximately ₹340 crores were disbursed to ACPL by the debenture holders by subscribing to debentures having tenure of five years. Vistra ITCL (India) Limited, the appellant in the present appeal acted as Debenture Trustee by virtue of Debenture Trust Deed dated 03.08.2018. It is important to note that the Company, the Developer (Radius & Deserve Builders LLP), and the Promoters, *namely*, Mr. Sanjay Chhabria and Mrs. Ritu Chhabria were the signatories to the Debenture Trust Deed. Pertinently, no part of the disbursal was made to Radius Estate Projects Private Limited ("**Radius**", "**the Corporate Debtor" or "the CD"**). Although, the Corporate Debtor was neither the executant to the Original Debenture Trust Deed nor to the borrowing agreements between the Company and the debenture holders, it signed and executed the supplemental deeds, as explained hereinbelow.

Subsequently to execution of the Debenture Trust Deed, the Corporate Debtor executed:

1. A First Supplemental Indenture of Mortgage dated 29 March 2019; and
2. A Second Supplemental Indenture of Mortgage dated 16 April 2019.

Under these supplemental deeds, the Corporate Debtor mortgaged its properties in favour of the Debenture Trustee to secure the obligations arising under the Debenture Trust Deed.

However, the transaction did not stop at the creation of security, the Corporate Debtor, expressly agreed that it would discharge the "**Secured Obligations**" under the Debenture Trust Deed and further undertook that such obligations would not be permitted to fall into arrears.

ACPL subsequently committed defaults under the Debenture Trust Deed and failed to redeem the debentures despite issuance of an Event of Default Notice. It is to be noted that upon the default, the Debenture Trustee was contemplating to initiate Section 7 against the CD, however, in meantime, another financial creditor of the CD initiated the CIRP proceedings, pushing the Corporate Debtor into the rigours of the Insolvency Code.

Thereafter, upon commencement of CIRP, Vistra filed a claim of approximately ₹874 crores as a Secured Financial Creditor. The Resolution Professional classified Vistra merely as an "Other

Secured Creditor". This classification was upheld by the Ld. Adjudicating Authority and same was challenged before the Hon'ble NCLAT.

The Hon'ble NCLAT framed the following issues:

The Hon'ble Tribunal considered the following questions to address the issues raised in appeal:

1. Whether direct disbursal to the Corporate Debtor is a mandatory prerequisite for classification of a debt as "financial debt" under Section 5(8) of the IBC?
2. Whether the Appellant qualifies as Financial Creditor under Section 5 (7) r/w Section 5(8) of the Code? Further, Whether the Appellant's claim was a "secured financial debt"?
3. Whether the "covenant to pay" in the Mortgage Deed create an enforceability guarantee or merely secures the mortgage?
4. Whether a "covenant to pay" for the debt disbursed by the Appellant to a third party (APCL) undertaken by the Corporate Debtor amounts to a contract of guarantee under Section 126 of the Indian Contract Act, 1872?
5. Whether the liability of the Corporate Debtor under "covenant to pay" is only limited to the extent of mortgage provided by it?

Ratio Decidendi

A. Direct Disbursal to the Corporate Debtor is Not an Absolute Requirement

The Hon'ble NCLAT observed that Section 5(8) of the IBC merely requires that the debt be "**disbursed against consideration for the time value of money**" and that the provision does not expressly require that the disbursal must be made directly to the Corporate Debtor.

Further, the Hon'ble Tribunal held that direct disbursal may be a relevant factor for examining the nature of a transaction i.e., whether the transaction in question is a financial debt or not; but it is not an indispensable statutory requirement so as to qualify to mean that only when the disbursal is made directly to the Debtor in question, the debt would be classified as financial debt and not otherwise. Therefore, what remains paramount is the existence of a debt carrying the commercial effect of borrowing and not the direct disbursal to the Debtor in question.

This finding is significant because it recognises commercial realities where funds may be disbursed to one entity while repayment obligations and mortgage are assumed/provided by another.

B. Mere Creation of Security is Insufficient

The Hon'ble Appellate Tribunal distinguished the principle laid down by the Hon'ble Supreme Court in ***Anuj Jain v. Axis Bank Ltd.***[ii] with that of the matter at hand on an important distinction that a mere third-party mortgage, without assuming the payment obligation, does not create a financial debt as opposed to creation of mortgage and covenant to pay in the current case.

It shall be worthwhile to mention that the ruling cements that, a creditor who merely holds security over assets of the Corporate Debtor may qualify as a secured creditor but not necessarily as a financial creditor. Accordingly, the existence of a mortgage by itself cannot propel a creditor into the Committee of Creditors.

C. Covenant to Pay Converts Security into a Guarantee

The most significant aspect of the judgment lies in the Hon'ble Tribunal's interpretation of the covenant to pay contained in the Supplemental Indentures of Mortgage.

To reiterate the facts, the Corporate Debtor expressly undertook:

- to discharge the secured obligations;
- to remain bound by the Debenture Trust Deed; and
- not to permit the secured obligations to fall into arrears.

The Hon'ble Appellate Tribunal held that these obligations went far beyond a mere security arrangement, as the Corporate Debtor, by assuming responsibility for repayment of the debt in the event of default, stepped into the shoes of a guarantor.

The covenant therefore satisfied the

requirements of a contract of guarantee under Section 126 of the Indian Contract Act, 1872. The extract of Section 126 of the Contract Act, 1872 is reproduced hereinbelow to clarity:

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Consequently, it was held that the debt assumed the character of a financial debt under Section 5(8) of the IBC.

D. Relationship with Anuj Jain

It is important to note that the Hon'ble Appellate Tribunal did not break the rule of judicial discipline and neither did overrule or overlook the judgment of Hon'ble Apex Court in Anuj Jain, it indeed, distinguished it on a relevant issue of whether there was an obligation to pay in matter of Anuj Jain versus as in the current case. Therefore, to say that in matter of Anuj Jain, there was a creation of third matter mortgage, however, there was not obligation to make good the default. Whereas in the current case before the Hon'ble Appellate Tribunal the ingredients were different, i.e., there was an obligation/covenant to pay in the event of default. Thus, the Hon'ble Appellate Tribunal held that covenant to pay creates a contract of guarantee and further that the liability of the surety is co-extensive with that of the principal borrower.

This distinction ultimately determined the outcome.

E. Reliance on China Development Bank

The Hon'ble Appellate Tribunal drew support from the Hon'ble Supreme Court's decision in ***China Development Bank v. Doha Bank QPSC***[iii].

In that case, a covenant requiring the corporate debtor to satisfy shortfalls after enforcement of security was held to amount to a guarantee. Applying the same principle, the Hon'ble Appellate Tribunal concluded that the Corporate Debtor had undertaken a legally enforceable obligation to discharge the liabilities of ACPL and therefore assumed the character of a surety, whose liability was co-extensive with that of ACPL by virtue of Section 128 of the Indian Contract Act, 1872.

F. Non-Invocation of Guarantee is Not Fatal

Another equally important aspect of the judgment is the Hon'ble Tribunal's observation that invocation of the guarantee is not a prerequisite for admission of a claim during CIRP. The existence of a financial debt is the relevant consideration. Accordingly, it was held that once the contractual arrangement demonstrates the existence of a debt and a corresponding obligation to pay, the creditor's claim cannot be rejected merely because a formal invocation notice has not been issued.

The Principle Emerging from the Decision

The judgment establishes certain principles that (a) the decisive factor is not the destination of the money but the existence of an enforceable obligation to repay it or to make it good in the event of default, (b) the covenant to pay demonstrates an intention to discharge the liability of the principal borrower, thereby transforming the transaction from a mere mortgage to the contract of a guarantee, (c) once such a guarantee exists, the debt assumes the commercial effect of borrowing and falls within the ambit of financial debt under Section 5(8) of the IBC.

The emphasis therefore shifts from the mechanics of disbursal to the substance of the obligation undertaken.

Conclusion

Third party mortgages are common in commercial world, where often the small to mid-sized companies rely on third parties to pump in the securities as and when the promoter groups fall short. Interestingly, the banks as well rely on third-party securities and lend money to the needy businesses. Therefore, to entirely rule out third-party mortgage is not correct rather the nuance it carries with itself matters the most.

The decision in ***Vistra ITCL (India) Limited v. Vithal Madhukar Dahake & Ors.*** represents a pragmatic and commercially realistic interpretation of financial debt under the IBC.

The ruling clarifies that:

1. Mere creation of security does not create a financial debt.
2. An express covenant to pay may transform a security provider into a guarantor.
3. Direct disbursal to the Corporate Debtor is not an indispensable requirement.
4. The commercial effect of borrowing remains the governing consideration.
5. Non-invocation of the guarantee does not extinguish the underlying financial debt.

The judgment therefore reiterates a fundamental principle of insolvency law: **substance prevails over form.** Where the Corporate Debtor undertakes a binding obligation to repay another's debt, the existence of financial debt is determined by that obligation Sand not merely by the flow of funds.

iVistra ITCL (India) Limited v. Vithal Madhukar Dahake & Ors., Company Appeal (AT) (Ins.) No. 1110 of 2024, judgment dated 24 February 2026 (NCLAT Principal Bench).

iiAnuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401.

iiiChina Development Bank v. Doha Bank QPSC & Ors., (2025) 7 SCC 729.

CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

Gujarat Industrial Development Corporation vs. Gujarat Hydrocarbons and Power SEZ Ltd. [2026] 186 taxmann.com 103 (Gujarat)

Where appellant, as lessor, terminated a 99-year lease and initiated eviction against a corporate debtor during CIRP despite a moratorium under Section 14, such termination and eviction proceedings were held impermissible as any action that would deplete corporate debtor's assets or affect its status as a going concern is statutorily frozen during moratorium, thus orders of termination and eviction were rightly quashed.

The appellant-GIDC had leased land to the respondent-corporate debtor for 99 years. CIRP was initiated against the corporate debtor, and a moratorium under section 14 was declared. Despite the moratorium, the appellant terminated the lease citing persistent breaches and thereafter passed an eviction order under Section 5 of the Public Premises Act, following a Section 4(1) notice. The corporate debtor filed a writ petition challenging termination and eviction as contrary to Section 14. Single Judge allowed writ petition and set aside termination and eviction.

Held that since termination of lease was triggered by insolvency proceedings, resultantly, termination was on the ground of insolvency alone. Since re-entry in terms of the terms and conditions of the lease deed, would not be permitted or stand prohibited in view of clause (d) of sub-section (1) of Section 14, inasmuch as, recovery of any property by the lessor which was in occupation or possession of the corporate debtor, was impermissible. Since statutory freeze during the moratorium period was to ensure that status of a corporate debtor as a 'going concern' was not hampered during insolvency proceedings and any 'proceeding' which would result in assets of the corporate debtor being depleted, which would directly impact CIRP, might be arrested. Thus, termination of the lease agreement nor eviction 'proceedings' under the Public Premises Act were permissible during the moratorium period. Explanation to sub-section (1) of Section 14 being clarificatory, in any case, would not envelop whole sub-section (1) of Section 14, intent of which was to ensure that status of a corporate debtor as a 'Government concern', was not hampered on account of varied situations during CIRP. Since there was no ipso facto clause giving rise to any right to the lessor to terminate the lease deed merely on default in payment of annual rent, orders of termination of lease and eviction of lessee, therefore, had been rightly quashed by the Single Judge.

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

DSP Asset Managers (P.) ltd. vs. Grant Thornton India (Bharat) LLP [2026] 186 taxmann.com 113 (NCLAT- New Delhi)

Where Appellant, an asset manager, held NCDs issued by ITNL (subsidiary of IL&FS) which were guaranteed by IL&FS and following default and supersession of IL&FS Board, a resolution framework was initiated and a Claims Management Advisor (CMA) invited claims, however, appellant failed to exercise due diligence and did not file its claim against ILFS within multiple extended deadlines despite ample opportunity, and no cogent reason for late filing was provided, dismissal of Appellant's plea for condonation of delay in filing of their claims in respect of ILFS was justified as admitting late claims would encourage similar belated requests.

ITNL, a subsidiary of ILFS, had issued Non-Convertible Debenture (NCD) to the appellant, an asset manager of a mutual fund which had been subscribed to by retail investors and salaried persons. ILFS had guaranteed ITNL's payment obligations. ITNL defaulted, and ILFS's board was superseded under Sections 241–242, and a new Board constituted. Thereafter, the insolvency process of ILFS commenced. A resolution framework akin to a CIRP was directed, and a Claims Management Advisor (CMA) was appointed, who issued a public announcement inviting claims for ILFS and group entities. The deadline for filing claims was 18.08.2022. While claims had been filed in respect of group entities of ILFS, no claim forms were submitted in so far as ILFS was concerned. The appellant had filed their claim belatedly in respect of the insolvency resolution process of ILFS on 05.06.2023, which was more than ten months beyond the final deadline set for filing of claims. In such circumstances, when the deadline of filing claims was extended six times from May 2019 to August 2022 and yet the appellant slept over in filing their claims, they had clearly failed to exercise requisite diligence in filing claims within the stipulated time-frame. Further, prima facie, CMA did not enjoy any discretion in admitting belated claim of the appellant after extended period. Even at this belated stage, CMA did not reject the claim but stated that it needed approval of the new Board of ILFS to admit the claim. The appellant had clearly failed to discharge their obligation to lodge claims within the prescribed time period. In these circumstances, allowing the belated claim of the appellant would open floodgates of multiple such claims. The appellant had failed to provide any plausible justification for delay in filing their claims. The appellant, because of their inaction, could not prejudice creditors who had filed their claims in a timely manner to their detriment.

Held that the Adjudicating Authority had not committed any error in not acceding to the request of the appellant for admission of their belated claims, and thus, the instant appeal was to be dismissed.

Case Review: Order of NCLT, Mumbai Bench-I in C.A. No. 19/2024 in C.P. No. 3638/MB/2018 dated 13.05.2024, affirmed

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM

Indian Bank vs. Anshul Gupta, Liquidator of Topsgroup Services & Solutions Ltd. [2026] 186 taxmann.com 114 (NCLAT-New Delhi)

Where during moratorium under CIRP a tax refund of Rs. 4.66 crores was credited to corporate debtor's current account with Indian Bank and RP requested transfer to CIRP account at Yes Bank, Indian Bank could not retain or refuse transfer, was obligated to remit proceeds as directed, and NCLT rightly denied recall of its order since realisation of bank's security interest is a matter for liquidator to consider according to law.

CIRP of the corporate debtor commenced on 19.02.2021 on a Section 7 application, and moratorium was imposed. During the moratorium, about Rs. 4.66 crores were credited to the corporate debtor's current account with Indian Bank as Income Tax refund, which the bank retained. RP repeatedly requested that Indian Bank transfer the refund to the CIRP account maintained with Yes Bank. When the amount was not transferred, RP filed I.A. 2967/2021 seeking a direction to transfer about Rs. 4.66 crores to the CIRP account. On 20.12.2022, NCLT directed Indian Bank to transfer about Rs. 4.66 crores to the corporate debtor's liquidation account with Yes Bank. Indian Bank did not comply. On 19.05.2023, Indian Bank filed I.A. 2481/2023 seeking recall of the 20.12.2022 order, citing unnoticed service at base branch and asserting that tax refund formed part of its secured receivables and that it had not relinquished its security. On 19.12.2024, NCLT dismissed I.A. 2481/2023 and again directed remittance.

Held that the amount having been received during the CIRP process in the corporate debtor's account, the amount belonged to the corporate debtor, even though as receivable from Income Tax Refund, and the appellant bank could not have denied transferring the amount in the corporate debtor's account maintained by RP. Indian Bank could not have refused to transfer the amount in the corporate debtor's account and it was not open for the appellant to put a condition for transfer into any account of its choice when the CIRP account was maintained in Yes Bank and all amounts belonging to the corporate debtor were parked in said account, Indian Bank was obliged to transfer the amount in bank as indicated by RP. There was no ground to recall the order dated 20.12.2021, hence, NCLT did not commit any error in rejecting I.A. No. 2481/2023 filed by the appellant. The question of realisation of its security and the claim which the appellant was entitled to receive were questions which need to be considered and examined by the liquidator in accordance with law.

Case Review: Orders of National Company Law Tribunal, Mumbai Bench, in I.A. No.2481/2023 and I.A. No.2074/2023, dated 19.12.2024, affirmed.

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

Alpha Corp Development (P.) Ltd. vs. Greater Noida Industrial Development Authority (GNIDA) [2026] 186 taxmann.com 142 (SC)/[2026] 192 SCL 872 (SC)

Where EIL was main driving force behind project development through subsidiaries, lifting of corporate veil was justified to treat project development rights of subsidiaries as part of CIRP of corporate debtor subject to GNIDA's rights, and GNIDA due to its own lapses was not entitled to recover penal charges and interest beyond principal dues; further, approval of Alpha's resolution plan for Earth Copia was valid as majority homebuyers supported it and Earth Buyers Association for Justice had no locus to object, thus NCLAT's order was set aside and resolution plans of Alpha and Roma were restored.

EIL was the developer of three projects on lands leased by GNIDA to its subsidiaries and one project on freehold land in Gurugram. CIRP was initiated against EIL. CoC approved resolution plans of Roma and Alpha, which were approved by NCLT. NCLAT set aside approvals, holding that leasehold and development rights of subsidiaries could not be treated as assets of EIL and GNIDA-leased lands could not be transferred without GNIDA's permission.

Held that since EIL was the main driving force in development of projects and payment of GNIDA dues and subsidiary companies were inextricably connected with EIL, it was a fit case for lifting the corporate veil and treating project development rights of subsidiaries as part of CIRP of the corporate debtor, subject to GNIDA's rights as lessor. Since GNIDA failed to monitor development of projects and to take timely measures to realise its dues, it was not entitled to levy penal interest, penal charges and time-extension penalties and was entitled to recover only principal amounts due after deducting such charges. Since GNIDA was responsible for litigation to a great extent, it was not entitled to any interest on principal amounts due for an additional period of twenty-four months during which successful resolution applicants were required to clear its dues. Since Earth Copia was on freehold land and had nothing to do with GNIDA, NCLAT erred in setting aside approval of Alpha's entire resolution plan without noticing that NCLT's order also approved said plan in relation to Earth Copia. Since the majority of homebuyers of Earth Copia voted in favour of Alpha's resolution plan, individual homebuyers forming part of the dissenting minority could not oppose the majority-approved resolution plan. Earth Buyers Association for Justice had no locus to seek intervention and again raise objections to the approval of resolution plans of Alpha and

Roma. Therefore, NCLAT's order was liable to be set aside, and NCLT-approved resolution plans of Alpha and Roma were to be restored.

Case Review: Order of National Company Law Tribunal, Bench III, New Delhi, dated 05.04.2021 in C.A. No. 751 of 2019 in CP(IB)-401(ND)/2017 and Deepak Khanna v. Earth Infrastructure Ltd. [2023] 157 taxmann.com 59 (NCLT - New Delhi), affirmed; Greater Noida Industrial Development Authority (GNIDA) v. Roma Unicon Designex Consortium [2023] 157 taxmann.com 60 (NCLAT- New Delhi), set aside.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM

Dhanlaxmi Bank Ltd. vs. Mohammed Javed Sultan [2026] 186 taxmann.com 373 (SC)/[2026] 267 COMP CASE 121 (SC)

Where Bank sanctioned a loan to corporate debtor for purchasing a commercial unit and funds were disbursed directly to builder under a quadripartite agreement involving obligations relating to construction and transfer of property, dispute was predominantly contractual in nature rather than a straightforward financial lending, making DRT appropriate forum for disputes, so using Code for recovery was held impermissible and NCLAT rightly set aside NCLT's admission of insolvency application.

The appellant/Bank sanctioned a loan to the corporate debtor (CD) for purchasing a commercial unit. A quadripartite agreement was executed among Bank, CD, builder, and WBHIDCL, under which the CD instructed Bank to disburse the sanctioned loan directly to the builder. The CD defaulted in repayment, and Bank initiated proceedings under the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 before DRT against the CD, the builder, and guarantors for recovery of the loan amount. DRT held that the Bank's charge continued irrespective of the sale deed executed in favour of a third party, appointed a receiver to take possession from the third party, and directed the builder to deposit the loan amount. The builder deposited the loan amount. Bank filed a winding up petition against the CD under the Companies Act, 1956, which was transferred to NCLT and treated as a petition under Section 7 of the IBC. NCLT held that debt and default were proved beyond reasonable doubt, admitted the petition, and initiated CIRP against the CD. NCLAT held that the Bank did not directly disburse the loan to CD and, therefore, could not be termed a financial creditor under Section 7, observed that the Bank had indulged in forum shopping and that the Code could not be used as a recovery mechanism, and set aside NCLT's order.

Held that since the loan amount was directly disbursed to the builder and the quadripartite agreement indicated that the builder had significant obligations concerning construction, delivery and transfer of the subject property, the transaction could not be viewed in isolation as a simple financial lending arrangement between Bank and the CD. Since the dispute between the parties was predominantly contractual in character involving competing claims relating to transfer of property and associated obligations, facts disclosed a dispute which was predominantly contractual in nature and was subject matter of proceedings before DRT, which was appropriate forum for recovery. Permitting invocation of the Code in cases such as the instant one would amount to converting insolvency proceedings into a coercive mechanism for recovery, which was impermissible. Therefore, NCLAT was justified in setting aside the order of NCLT admitting CIRP application.

Case Review: Mohammed Javed Sultan v. M/s. Emerald Mineral Exim Pvt. Ltd. [2023] 155 taxmann.com 671, affirmed.

SECTION 19 - CORPORATE INSOLVENCY RESOLUTION PROCESS - PERSONNEL TO EXTEND COOPERATION TO INTERIM RESOLUTION PROFESSIONAL

Sanjeev Kumar Arora vs. Deepak Thukral [2026] 186 taxmann.com 536 (NCLAT- New Delhi)

Where RP sought directions against erstwhile statutory auditor to furnish inventory details, working papers and complete pending audit under section 19, statutory auditor could not be treated as person associated with management of corporate debtor and, absent proof that requested records were in his custody or access, he could not be compelled to furnish documents or complete audit, thus impugned directions issued by Adjudicating Authority were liable to be set aside.

CIRP was initiated against the corporate debtor, and RP sought directions against the appellant, erstwhile statutory auditor, to furnish inventory details, working papers and documents relating to limited review report and to complete statutory audit. Adjudicating Authority directed the appellant to cooperate and complete the pending audit.

Held that under section 19(1), IRP/RP can seek assistance only from persons associated with management of the corporate debtor and only in relation to information necessary for managing the corporate debtor as going concern or protecting its properties. Information sought must also be shown to be in custody or access of the person from whom it is sought. Statutory auditor, by nature of his role, could not be treated as a person associated with management of the corporate debtor and, since the appellant had informed RP that records were with the corporate debtor, it was futile to compel production of documents which he might not possess. Therefore, the impugned order passed by the Adjudicating Authority was liable to be set aside.

Case Review: Order of NCLT, Chandigarh Bench in I.A. 69 of 2019 in CP (IB) No.155/Chd/Hry/2018 order dated 21-10-2022, set aside.

SECTION 52 - CORPORATE LIQUIDATION PROCESS - SECURED CREDITOR IN

State Tax Officer, State of Gujarat vs. Jaykumar P. Arlani [2026] 186 taxmann.com 542 (NCLAT- New Delhi)

Where appellant authority filed a claim in corporate liquidation for VAT and CST dues and contemporaneously communicated to create a statutory first charge under Section 48 of GVAT Act, VAT dues alone were entitled to secured creditor treatment as CST Act provided no such charge, and since appellant did not exercise its right to realise security interest, it was deemed to have relinquished that right, and liquidator was required to ascertain and satisfy VAT dues from third respondent bank.

The appellant, State Tax Department, filed a claim in liquidation of the corporate debtor for VAT and CST dues. The appellant asserted a statutory first charge under Section 48 of the GVAT Act but marked the security interest column in claim forms as 'N.A.' The liquidator admitted the claim as operational statutory dues for want of proof of security. The appellant objected, asserting that its dues should be treated as secured and that distribution required reconsideration. Adjudicating Authority declined to treat the appellant as a secured creditor on the ground that the statutory charge was not registered, and no security was disclosed in claim forms.

Held that the appellant was entitled to be treated as a secured creditor only for VAT dues and not for CST dues, as there was no specific provision in the CST Act which created a statutory first charge as in Section 48 of the GVAT Act. Appellant was not required to register a charge under Section 77(3) of the Companies Act, 2013 to prove security interest created for purposes of Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016. Since the appellant was aware that it was a secured operational creditor, insisted that it be treated thus, yet it did not exercise the option available to it under Section 52(1)(b), then by virtue of the proviso to Regulation 21A (1) it was deemed to have relinquished its right to realise security interest. The appellant was to be treated as a secured operational creditor vis-a-vis its VAT dues and as an operational creditor-government dues for its CST dues. Liquidator was, therefore, required to ascertain the amount payable to the appellant if it were to be treated as a secured operational creditor for its VAT dues, recall such sum from the third respondent as may be necessary to satisfy the appellant from the third respondent bank.

Case Review: Order of NCLT, Ahmedabad in I.A. No. 1077 of 2023 in C.P. (IB) No. 563/9/04.01.2023, NCLT/AHM/2019, dated 19.02.2025, modified.

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

Angelwoods Apartment Allottees Association vs. M Lalitha [2026] 186 taxmann.com 548 (SC)/ [2026] 192 SCL 854 (SC)/ [2026] 267 COMP CASE 423 (SC)

Where respondent No. 1, claiming to be a financial creditor, filed and refiled an appeal against NCLT approval of a resolution plan with substantial delays and without a certified copy of the NCLT order, never seeking exemption or timely compliance with procedural norms, filing and refiling was incurably defective and the appeal ought to have been rejected at threshold, making NCLAT's condonation and acceptance unsustainable.

NCLT approved the resolution plan submitted by the appellant-allottees association in respect of the corporate debtor. The respondent No. 1, mother of the suspended director of the corporate debtor and claiming to be a financial creditor, challenged the approval by e-filing an appeal under Section 61 before NCLAT on the last day of limitation. NCLAT registry communicated defects. Time to cure defects under Rule 26(2) of NCLAT Rules was 7 days, but the appeal was refiled only after 150 days. Upon refiling, multiple defects still remained, including that the appeal was not accompanied by a certified copy of the NCLT order as required by Rule 22(2). NCLAT allowed both delay condonation applications.

Held that since the Respondent No. 1 did not even apply for a certified copy of NCLT's order till 21.04.2025, long after refiling of appeal on 10.03.2025 and did not even choose to file an application for exemption from filing such certified copy at any point, be it at time of filing appeal or its refiling, filing/refiling of appeal by the Respondent No. 1 was incurably tainted and same ought to have been rejected at threshold. NCLAT ought not to have extended such indulgence to Respondent No. 1, without first ascertaining whether her appeal was instituted in accordance with norms. NCLAT totally lost sight of these vital aspects while considering two applications filed by Respondent No. 1 seeking condonation of delay in filing and refiling of appeal. Therefore, the order passed by NCLAT was to be set aside.

Case Review: M. Lalitha v. K. Parameswaran Nair RP, Samson and Sons Builders and Developers Pvt. Ltd. [2026] 185 taxmann.com 174 (NCLAT - Chennai), set aside.

INVITATION OF STAKEHOLDER SUGGESTIONS ON THE INTEGRATED PLATFORM FOR INSOLVENCY ECOSYSTEM (IPIE)

iPIE: Transforming the Insolvency Ecosystem through Digital Integration

The Ministry of Corporate Affairs (MCA) is developing the Integrated Platform for Insolvency Ecosystem (iPIE) as a unified digital platform to bring together various stakeholders, processes and technology systems operating under the Insolvency and Bankruptcy Code, 2016. The platform aims to facilitate seamless information exchange, reduce manual processes and provide a secure, transparent and efficient digital experience across the insolvency lifecycle.

The proposed iPIE will integrate key stakeholders and institutions of the IBC ecosystem and support digital processes such as case management, claims management, stakeholder coordination, compliance, resolution, liquidation and reporting. Stakeholders have been invited to submit their comments and suggestions in the prescribed format by August 10, 2026.

For the complete document and detailed information, please visit: ***Invitation of Stakeholder Suggestions on the Integrated Platform for Insolvency***

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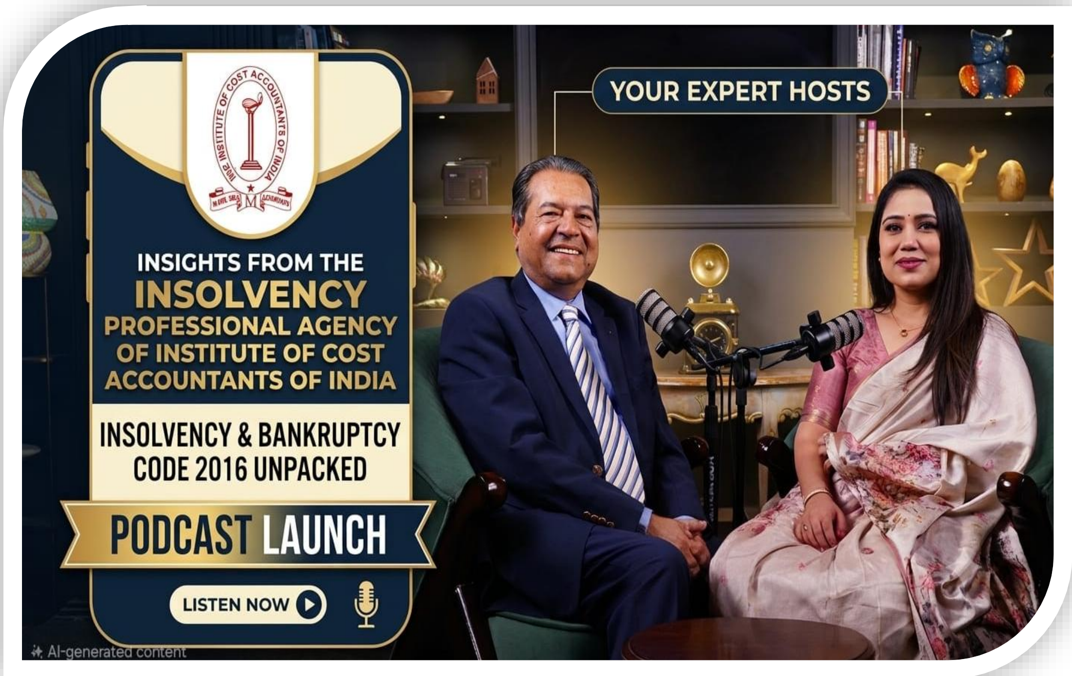

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2. The article may be topical and address matters of current interest to professionals and stakeholders.
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4. The length of the article may be 2500–3000 words.
5. The article should include an Abstract of approximately 200–250 words.
6. The article should contain clear, concise, and engaging headings.
7. Authors may provide a list of references, if any, at the end of the article.
8. A brief author profile, along with e-mail ID, postal address, contact number, and the required declaration of originality, must be submitted with the article.
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   - ***c) Font:*** *Use Cambria, 12-point font.*
   - ***d) Line Spacing:*** *1.5 Line-spaced.*
   - ***e) Margins****: 1-inch margins on all sides.*
   - ***f) Footnotes:*** *Cambria 10 -Point size*
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   - ***h) Columns:*** *Two columns*

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