

APRIL-JUNE 2025



INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

QUARTERLY DIGEST

IPA-ICMAI



CASE LAWS

ARTICLES

WEBINAR
EVENTS

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.

Newly Elected President of ICMAI for the year 2025-26



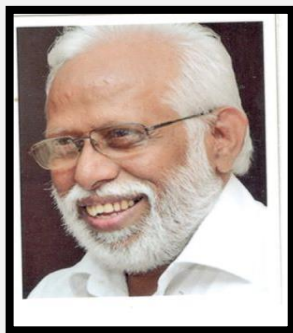
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IBC DOSSIER Bulletin on Landmark Judgments

CASEBOOK

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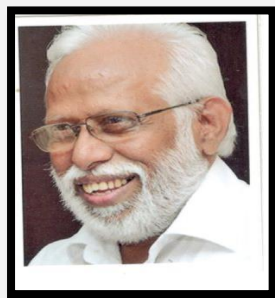
Mr. G.S. Narasimha Prasad

EDITORIAL TEAM

Ms. Karishma Rastogi
Mr. Ayush Goel
Ms. Neha Sen

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MESSAGE FROM THE DESK OF THE CHAIRMAN



Dear Readers,

It is with great enthusiasm and a deep sense of commitment that I present to you the First edition of our Quarterly Digest. This publication continues to serve as a vital platform for knowledge sharing, professional dialogue, and reflective discourse within the domain of insolvency and bankruptcy.

The landscape of insolvency resolution under the Insolvency and Bankruptcy Code (IBC), 2016 has matured significantly over the past years. With each passing quarter, we witness the framework being tested, refined, and enriched through landmark judgments, regulatory amendments, and practical innovations. As professionals entrusted with the task of upholding the objectives of the Code, it is our responsibility to remain agile, informed, and ethically grounded in our approach.

This edition of our First Quarterly Digest encapsulates thought-provoking articles, case analyses, and expert opinions that shed light on both emerging trends and persistent challenges in insolvency practice. It is heartening to note how our contributors—ranging from seasoned professionals to young researchers—continue to bring depth and clarity to complex issues, enriching the collective understanding of the insolvency ecosystem.

As we move forward, the role of Insolvency Professionals (IPs) becomes even more critical. In a rapidly evolving economy, IPs are not only custodians of financial discipline but also facilitators of business continuity, creditor confidence, and stakeholder equity. It is through their efforts that the ideals of the IBC—resolution over liquidation, timely intervention, and transparency—are realized in practice.

Let us continue to foster a community built on continuous learning, integrity, and shared purpose. I encourage all our readers to engage with the contents of this Quarterly Digest with curiosity and critical thought, and to actively contribute to the evolving discourse around insolvency and bankruptcy.

On behalf of the IPA-ICMAI, I extend my sincere appreciation to our editorial team, contributors, and readers for their sustained dedication and enthusiasm. Together, we are not just chronicling the development of a legal framework—we are shaping a more resilient, accountable, and efficient corporate environment.

**Warm regards,
Dr. Jai Deo Sharma
Chairman, IPA ICAI**

MESSAGE FROM THE DESK OF THE EDITOR AND MANAGING DIRECTOR



Hello Reader,

Greetings to you from Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI)!

We, at IPA-ICMAI, are very happy to present the first issue of the QUARTERLY DIGEST to our members, professionals, and all readers. IPA-ICMAI has been regularly publishing Au Curreant, a daily Newsletter, e- Journal, the monthly journal, IBC Dossier, a monthly publication on interesting relevant rulings, the annual publication that is normally released in January. We have been toying with this idea of a quarterly digest as a supplementary publication for about six months now. I am happy that it has been brought to fruition now.

The Digest is structured as a collection of the following put together in one place to help the reader get the best of the ideas presented by authors in The Insolvency Professional, the monthly journal, news updates and important judicial rulings during the past quarter. Accordingly, this edition of the QUARTERLY DIGEST carries.

- Five select articles from the monthly journals,
- An article by our editorial team briefly discussing the seminal rulings of the Hon. Supreme Court in the last eight years that have not only reaffirmed IBC in its critical parts that impinge on financial, economic and business framework in the country but have also interpreted the code to face the economic and business developments and hence enabled the IBC framework towards becoming effective in achieving the primary objective of timely resolution of stress in enterprises while protecting their value.
- Other Important rulings of the Supreme Court, NCLAT and NCLT during the quarter
- Other news updates and news about activities of IPA-ICMAI.

We are enthused by the regular flow of articles by professionals and are happy to publish them through our journals, it is important that these articles also generate healthy discussion and debate that benefit all of us – the author, the responder, and the publisher. Hence, we very much welcome responses of our readers to the articles published in QUARTERLY DIGEST. And we will be happy to publish responses/ comments/ opinions of readers in QUARTERLY DIGEST.

I compliment the editorial team of Karishma Rastogi Varshney, Ayush Goel and Neha Sen who have worked tirelessly to bring out QUARTERLY DIGEST. I'm sure they will continue with the same zeal to keep improving the quality of QUARTERLY DIGEST in terms of quality.

QUARTERLY DIGEST is also coming out in limited numbers in print. If any reader wishes to have a printed copy, s/he may contact Neha Sen at publication@ipaicmai.in.

Mr. G.S. Narasimha Prasad
Editor & Managing Director



PROFESSIONAL DEVELOPMENT INITIATIVES

ACTIVITIES BY IPA-ICMAI

S. NO	Program/ Event	No. of Programs
1	Workshop	11
2	Learning Session	1
3	Seminar	1
4	Roundtable	2
5	PREC (Pre-Registration Educational Course)	1
6	Executive Development Programme	1
7	Others	2
	Total	19

ONLINE PROGRAMS

A Workshop on Understanding the Waterfall Mechanism (Section 53 of IBC, 2016) was held on April 5th, 2025, with content like, Introduction to Section 53, Importance of Section 53, Other Relevant Provisions & Regulations of IBC, 2016, Applicability in CIRP & Liquidation, Distribution of Assets under Section 53, Challenges in Asset Distribution, Priority of Claims etc. The program received overwhelming appreciation from the participants, who benefited greatly from the insightful discussions.

A Workshop on "Role & Responsibilities of Authorized Representatives under IBC, 2016." was successfully held on April 11th, 2025. The program was highly appreciated for its insightful discussions and expert sessions, providing valuable knowledge to the participants.

The Pre-Registration Educational Course was conducted by our expert faculties from 14th -20th April 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.

A two-day Online Learning Session on "Unlocking the Power of Commercial Wisdom, Effective Decision-Making by CoC" was held From 26th to 27th April 2025 which discussed topics such as Analysis of Financial Statements, Identification of Red Alerts, Types of transactions under PUFE, Filing of application for Avoidance Transactions., Roles and Responsibilities of IP and Auditors, Remedies for Avoidance Transactions, Case laws related to Avoidance Transactions, Analysis of Valuation Report and Transaction Audit Report, Closure of Avoidance Transactions .

A Workshop on "Mastering the Information Memorandum under IBC, 2016" held on May 2, 2025. This workshop provided insights into the Information Memorandum, its importance, and best practices. Participants gained a deeper understanding of the IM process. Expert sessions facilitated interactive learning.

A Advance Workshop on Liquidation held on May 9, 2025. This workshop provided advanced insights and practical knowledge on liquidation under IBC, 2016. Topics like asset realization, distribution, and challenges were covered. Expert sessions and case studies enhanced participant understanding.

A Workshop on Judicial Pronouncements under IBC, 2016 held on May 16, 2025. The workshop focused on key judicial pronouncements, including the Bhushan Power and Steel case. Expert analysis and discussions provided valuable insights. Participants gained a deeper understanding of the implications of these judgments.

A Workshop on “Compliances to be made by IPs under IBC, 2016.” was conducted on May 24, 2025. This workshop provided guidance on compliances required to be made by Insolvency Professionals under IBC, 2016. Topics like regulatory requirements and best practices were covered. Expert sessions facilitated interactive learning and Q&A.

IPA-ICMAI organized a 2-Day Advance Workshop on Successful Implementation of Resolution Plan from May 30-31, 2025. This workshop aims to provide advanced insights and practical knowledge on successfully implementing resolution plans under IBC, 2016.

A Workshop on Not Readily Realisable Assets (NRRA) was conducted on June 6, 2025. This workshop focused on the treatment and management of Not Readily Realisable Assets under IBC. Participants gained insights into identifying, valuing, and realizing NRRA, and understanding the regulatory framework. Expert sessions facilitated interactive learning and Q&A.

An Executive Development Program “Navigating the NCLT & NCLAT Landscape” was organised by IPA-ICMAI from June 13 to 15, 2025. This program provided insights and practical knowledge on navigating the NCLT and NCLAT landscape. Participants learned about the roles and responsibilities of NCLT and NCLAT and gained a deeper understanding of the judicial processes and procedures. Expert sessions facilitated interactive learning and case study discussions.

A Workshop on “Insolvency of Personal Guarantors” - Evolving Landscape and Ground Realities was held on June 20, 2025. This workshop explored the evolving landscape and ground realities of insolvency of personal guarantors. Participants gained insights into the legal and regulatory framework and understood the implications of recent judgments and developments. Expert sessions facilitated interactive learning and Q&A.

IPA-ICMAI organized an Advance Workshop on “Avoidance Transactions under IBC, 2016”, from June 28 to 29 2025 covering topics such as analysis of financial statements, identification of red alerts, forensic audits, and jurisprudential developments. The workshop provided expert insights and practical knowledge on avoidance transactions. Key aspects of IBC Sections 43-51 were also discussed.

IN PERSON PROGRAMS

Mediation Cohort: Become A Certified Mediator with Comprehensive Industry Focus



The IPA-ICMAI, in association with Missing Bridge, successfully hosted the Mediation Cohort: Become A Certified Mediator with Comprehensive Industry Focus April 12th-19th, 2025, a comprehensive program empowering professionals to become certified mediators. The program was conducted in a hybrid format, with virtual sessions on April 12-13 & 15-16, and in-person sessions on April 18-19 at Hyderabad. This enriching experience brought together diverse experts, focusing on practical mediation techniques in key areas like IBC, Startups, and MSMEs, all aligned with the Mediation Act, 2023."

Workshop for Insolvency Professionals on 'Challenges Faced by Insolvency Professionals in Implementation of Resolution Plans'



"The IPA-ICMAI, in association with the Institute of Cost Accountants of India, Chandigarh Chapter (Panchkula & Mohali), successfully organized a Workshop for Insolvency Professionals on 'Challenges Faced by Insolvency Professionals in Implementation of Resolution Plans' on April 30th,

2025. The event, held at the Chandigarh Chapter of ICAI, aimed to enhance the skills and knowledge of Insolvency Professionals."

Roundtable on IBC with Stakeholder of the IBC Ecosystem



The Insolvency Professional Agency of Cost Accountants of India successfully hosted the ***"Roundtable on IBC with Stakeholder of the IBC Ecosystem"*** at CMA Bhawan, Bengaluru on May 5, 2025. This exclusive event brought together industry experts, stakeholders, and thought leaders to discuss the latest developments, challenges, and opportunities in the Insolvency and Bankruptcy Code (IBC) ecosystem.

Highlights From The 62nd National Cost and Management Accountants' Convention (NCMAC)-2025



Roundtable on Insolvency Insights: Navigating Challenges for best Practices vis-à-vis Statutory Authorities in association with Hyderabad Insolvency Professionals Association



A Roundtable on Insolvency Insights: Navigating Challenges for best Practices vis-à-vis Statutory Authorities in association with Hyderabad Insolvency Professionals Association was held on June 14, 2025, Hyderabad. This roundtable discussion brought together experts to share insights and best practices on navigating challenges with statutory authorities. Participants engaged in interactive discussions and gained valuable insights into managing relationships with statutory authorities and resolving disputes.

Seminar on "Balancing Interest of Stakeholders under the processes of IBC



Seminar on "Balancing Interest of Stakeholders under the processes of IBC" Conducted by IPA-ICMAI in association with the Cochin Chapter of ICMAI on June 20, 2025. This seminar focused on balancing the interests of stakeholders under the processes of IBC. Participants gained insights into the competing interests of stakeholders and learned strategies for balancing these interests in a fair and transparent manner. Expert sessions facilitated interactive learning and case study discussions.

IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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

**Our Daily Newsletter which keeps the Insolvency
Professional Updated with the News on Insolvency
and Bankruptcy Code**

ARTICLES



MS. KARISHMA RASTOGI
SECRETARY OF THE COMPANY AND COMPLIANCE OFFICER
IPA OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



The Insolvency and Bankruptcy Code, 2016 (IBC), has redefined India's corporate and financial landscape by introducing a streamlined and time-bound process for resolving insolvency. Since its enactment, the IBC has significantly influenced corporate governance, credit culture, and distressed asset management in India. While **Insolvency Professionals (IPs)** occupy a pivotal position in managing Corporate Insolvency Resolution Processes (CIRPs) and Liquidation, a much wider ecosystem of professionals supports the functioning of the IBC.

For young professionals who are not registered as IPs, there are abundant career opportunities in legal advisory, financial services, compliance, valuation, forensic audit, investment advisory, and research. This article explores in depth the non-IP career avenues for young professionals under the IBC, highlighting skill requirements, roles, challenges, and future prospects.

While IPs are central to the process, they require the support of a multidisciplinary team to manage different aspects of insolvency resolution. Some reasons for growing non-IP opportunities include:

- **Specialized support functions:** Valuation, forensic audits, legal representation, and financial restructuring cannot be solely handled by IPs.
- **Increasing complexity of cases:** Large corporate insolvencies involve multiple creditors, cross-border transactions, and complicated financial structures.
- **Judicial and Regulatory Interactions:** Lawyers, company secretaries, and

Compliance professionals are needed to manage hearings, filings, and regulatory compliance.

- **Investor interest in Distressed assets:** Investment bankers, financial advisors, and consultants help resolution applicants in bidding and structuring deals.

1. LEGAL OPPORTUNITIES UNDER IBC : ADVOCATES AND LAW FIRMS

The IBC has generated a substantial demand for lawyers specializing in insolvency and corporate law. Young advocates can explore:

a) Litigation and Representation:

- **NCLT/NCLAT Practice:** Represent financial creditors, operational creditors, or corporate debtors in insolvency petitions, appeals, and applications.
- **Avoidance Transactions:** File or defend applications for preferential, fraudulent, or undervalued transactions.
- **Liquidation & Distribution Matters:** Represent stakeholders in liquidation disputes.

b) Advisory Roles:

- **Drafting and reviewing resolution plans** for legal compliance.
- **Advising resolution applicants** on regulatory risks and approvals.
- **Structuring cross-border insolvency transactions.**

c) Corporate Law Support:

- Advising companies on preventive restructuring and pre-packaged insolvency.
- Drafting settlement agreements for out-of-court restructuring.

Career Path: Young advocates can start as associate's in law firms specializing in insolvency, gradually building a strong NCLT/NCLAT litigation practice.

2. FINANCIAL AND ADVISORY ROLES UNDER IBC:

a) Financial Consultants and Analysts: Resolution applicants often require Financial Advisors to:

- Conduct business valuation and due diligence of distressed companies.
- Prepare financial models to evaluate feasibility of resolution plans.
- Analyze liquidation vs. resolution outcomes for creditors.
- Identify restructuring opportunities for reviving stressed businesses.

b) Investment Bankers and Transaction Advisors

- Advising investors on bidding strategies for distressed companies.
- Negotiating debt restructuring with creditors.
- Facilitating fundraising for resolution applicants.
- Identifying strategic or financial investors for resolution plans.

c) Turnaround and Management Consultants

- Business process restructuring to make operations viable post-resolution.

- Cost optimization and revenue enhancement strategies.
- Market analysis for repositioning companies after resolution

3. VALUATION AND REGISTERED VALUERS

Valuation plays a central role in determining fair and liquidation values. Opportunities for young valuation experts include:

- Working as analysts assisting Registered Valuers.
- Providing research support in determining enterprise value.
- Young professionals can begin as analysts before obtaining registration as valuers.

4. FORENSIC AUDITORS AND INVESTIGATION SPECIALISTS

The IBC empowers resolution professionals to identify and report fraudulent, preferential, or undervalued transactions. This has led to a surge in demand for forensic auditors. Young professionals can:

- Trace fund diversions and investigate related-party transactions.
- Prepare forensic audit reports.
- Assist in recovery of wrongfully transferred assets.

5. COMPLIANCE AND COMPANY SECRETARIAL ROLES

Company Secretaries (CS) play an essential role during CIRP:

- Preparing and filing statutory forms with ROC, IBBI, and NCLT.
- Drafting notices, minutes, and resolutions for CoC meetings.
- Ensuring adherence to corporate governance norms.

6. ACCOUNTING AND TAXATION EXPERTS

Complex tax issues arise during CIRP, CMAs and CAs can assist companies and resolution applicants in these matters.

- Treatment of GST and other indirect taxes.
- Carry-forward and set-off of tax losses.
- Determination of contingent liabilities.

7. OPPORTUNITIES IN RESEARCH, TRAINING, AND POLICY ADVISORY

The IBC is evolving, creating opportunities for researchers and policy advisors:

- Working with think tanks and industry associations.
- Publishing articles and research papers.
- Conducting training workshops for professionals.

8. OPPORTUNITIES IN TECHNOLOGY AND DATA ANALYTICS

The growing use of technology opens avenues:

- Data Analytics: Detecting early signs of stress.
- Virtual Data Rooms: Managing data security for bidders.
- Forensic Tools: Using AI for fraud detection.

HOW YOUNG PROFESSIONALS CAN ENTER INTO THE IBC ECOSYSTEM

The Insolvency and Bankruptcy Code (IBC) has created a dynamic ecosystem that integrates legal, financial, and strategic disciplines to resolve distressed assets and corporate insolvency cases. For young professionals aspiring to build a career in this domain, there are several practical and

impactful pathways to enter and grow within the IBC framework.

One of the most effective ways to begin is by acquiring specialized knowledge through professional certifications. Programs recognized by institutions like the **IPA-ICMAI**, the Insolvency and Bankruptcy Board of India, the Indian Institute of Corporate Affairs, other IPAs etc. offer structured learning and industry-recognized credentials. These certifications provide a strong foundation in Insolvency Law, Resolution Processes, and the economic principles underpinning distressed asset management.

Practical experience is equally important. Young professionals should aim to work with **IPAs**, law firms, accounting firms, or Insolvency Professional Entities (IPEs) that handle IBC-related cases. These organizations offer exposure to real-world corporate insolvency resolution processes, including drafting resolution plans, managing stakeholders, and navigating the National Company Law Tribunal (NCLT) proceedings. Interning or working in such firms allows young aspirants to observe and contribute to complex insolvency cases under the guidance of experienced professionals.

Another crucial step is to build a strong professional network. Attending IBC-focused seminars, webinars, workshops, and conferences can help young professionals connect with insolvency professionals (IPs),

legal experts, regulators, and industry practitioners. These events not only offer insights into evolving legal frameworks and case law but also provide networking opportunities that can lead to internships or full-time roles.

Moreover, young professionals must strive to develop multidisciplinary skills. The IBC domain is not confined to law alone; it intersects with finance, accounting, valuation, and business strategy. A strong understanding of company balance sheets, debt restructuring, legal compliance, and commercial negotiation can significantly enhance a professional's contribution and value in this space.

CONTRIBUTION OF IPA ICAI TO IBC ECO-SYSTEM

The IPA ICAI plays a significant role in strengthening the Insolvency and Bankruptcy Code (IBC) ecosystem in India by conducting a wide range of courses and training programs. These initiatives are designed to build professional competence among insolvency professionals (IPs), young professionals, and other stakeholders involved in corporate restructuring and resolution processes. The courses conducted by IPA of ICAI are in alignment with the regulatory framework laid down by the Insolvency and Bankruptcy Board of India (IBBI).

1. Pre-Registration Educational Course (PREC)

This is one of the most important courses conducted by IPA of ICAI for aspiring Insolvency Professionals. As mandated by the IBBI, every individual who seeks registration as an IP must undergo a 50-hour Pre-Registration Educational Course. This course covers the foundational aspects of the Insolvency and Bankruptcy Code, 2016, and provides a structured learning framework through lectures, case studies, and group discussions. The PREC is conducted in both physical and virtual modes and aims to enhance the conceptual clarity and practical skills of participants.

2. Continuing Professional Education (CPE)

To ensure that registered Insolvency Professionals stay updated with the evolving legal and regulatory landscape, IPA-ICAI conducts **Continuing Professional Education programs**. These are periodic workshops, seminars, and webinars that cover advanced topics such as resolution plans, cross-border

insolvency, group insolvency, valuation techniques, forensic audits, and legal updates. These programs contribute to the mandatory CPE credit requirements for registered professionals under the IBBI norms. The following courses are conducted as CPE Programs:

Certificate Courses Learning Sessions, Masterclasses and Workshops, IPA of ICAI also offers specialized certificate courses that delve deeper into niche areas within the insolvency domain.

These courses are also conducted in collaboration with leading institutions where academicians, legal experts, and insolvency practitioners take the session. They provide an opportunity for hands-on learning and exposure to real-world scenarios.

3. Orientation and Awareness Programs

To create awareness among students, professionals, and other stakeholders, the IPA organizes **orientation programs, awareness sessions, and panel discussions** on various aspects of the IBC. These programs are particularly useful for young professionals who are exploring career options in insolvency, restructuring, and resolution.

4. Mock Test Series and Preparatory Classes

For candidates appearing for the Limited Insolvency Examination (LIE) conducted by IBBI, IPA ICAI conducts **mock test series, doubt-solving sessions, and revision classes**. These are structured to help candidates understand the exam pattern, assess their readiness, and focus on key areas.

5. Residential Programs in Pondicherry and Kerala

IPA ICAI has also conducted **residential training programs in Pondicherry and Kerala**, in-person learning retreats aimed at deepening the understanding of the Insolvency and Bankruptcy Code (IBC), 2016. These programs are particularly curated for **all stakeholders of IBC, i.e. Insolvency Professionals (IPs), young professionals, bankers, lawyers, and**

corporate stakeholders (Delegates from PSU, Law Firms, IPEs and Ministries) who are either practicing under or engaging with the IBC framework.

Key Features of the Residential Programs:

- a) **Holistic Learning Experience:** These multi-day residential programs offer participants an opportunity to engage in **comprehensive discussions on practical and legal aspects of insolvency resolution**, including Corporate Insolvency Resolution Process (CIRP), liquidation, valuation, resolution plan evaluation, avoidance transactions, and emerging trends such as cross-border insolvency.
- b) **Expert Faculty:** The sessions are led by **eminent professionals**, including senior Insolvency Professionals, NCLT/NCLAT practitioners, IBBI officials, forensic auditors, and retired judges. Their practical insights and real-case analysis provide participants with applicable knowledge for real-time challenges.
- c) **Serene Learning Environment:** Locations such as **Pondicherry and Kerala** are specifically chosen for their tranquil atmosphere, promoting deeper engagement and reflective learning. Away from the distractions of urban life, participants benefit from both professional development and mental rejuvenation.
- d) **Professional Networking and Collaboration:** The residential setting also creates ample scope for **networking**, allowing professionals from diverse backgrounds—chartered accountants, cost accountants, company secretaries, lawyers, and bankers—to connect, share experiences, and explore collaborative opportunities in the IBC ecosystem.

- e) **CPE Credit Compliance:** Participation in these residential programs also contributes to the **Continuing Professional Education (CPE)** requirements mandated by the IBBI, helping IPs maintain their professional standing.

CONCLUSION

The IBC has opened diverse professional opportunities beyond Insolvency Professionals. Lawyers, financial analysts, valuers, forensic auditors, company secretaries, and management consultants are integral to successful insolvency resolution. For young professionals, the IBC ecosystem offers intellectually stimulating work, exposure to high-value corporate transactions, and significant career growth potential. By building expertise, networking, and staying updated, they can become indispensable contributors to India's evolving insolvency framework.

MR. DENDUKURI ZITENDRA RAO Insolvency Professional



I intend to start with a declaration that I am determined to not to use Chat GPT to improve the English vocabulary of this article. The reason is simple. I wanted to unfurl my heart and bring my emotions into my own words. Having enrolled as a registered Insolvency Professional in March 2020; COVID took the first 2 years to credit without any on hand experience of the IBC, 2016. Having handled one file of Corporate Insolvency Resolution Process (CIRP) and couple of cases of Individual Insolvency Resolution Proceedings; I came to the conclusion that I can reduce my thoughts into a write up that deserve the title that I have accorded

The Driver

In the lone Section 9 case of CIRP handled by me I had to submit a Memo to Honourable Adjudicating authority highlighting an important aspect which goes as *"It is submitted that the members of COC paid the Resolution Professional Fee of Rs.X falling to the share of A Bank and Rs. Y falling to the share of B Bank. These are as per the claims raised by the Resolution Professional after **waiving off 73% of the fee fixed** with an objective to settle the issue amicably"*. Thus, the point that I am driving is that an RP is entitled for the **motivation** to pursue the profession. In the other proceedings under Sec.100 of IBC, 2016; the PUNYA KALAM of 180 days passed away without the Personal Guarantor (PG) coming to the negotiating table with the Committee of Financial Creditors. The experiences of the RP in the pursuit affirms the DOCTRINE that I am advocating – the MOTIVATION. In general parlance it is known fact that a Resolution Professional has been conferred the title as an **officer of the court** by the inferences of the trend setting enactment called IBC,2016. Does he or she get such treatment is the question?

The Backdrop

Before coming to certain conclusive statements - let me narrate the facts of the case. In an appointment as Interim Resolution Professional effected by Hon.NCLT; the Operational Creditor funded Rs.1 lakh as against Rs.2 lakhs ordered for to meet the CIRP costs that commenced in October 2022. In due course the Committee of Creditors (CoC) was constituted, and the status of appointment has been upgraded to Resolution Professional (RP) with a respectable remuneration which is in line with the minimum fee prescribed by the Regulator i.e., IBBI. The custodial formalities were also complied with by the RP. In the meantime, the Corporate Debtor challenged the proceedings at the Appellate Authority and obtained stay in November 2022. The orders of National Company Law Appellate Tribunal (NCLAT) scrolled down the wordings ***"In the meantime, further proceeding shall remain stayed"***. The order does not talk about the custody of CD. Thereafter NCLAT dispose off the petition in July 2023 that is after a time span of **almost 7 months** and set aside the original orders of Adjudicating Authority. Aptly the orders of Honorable NCLAT did talk about the protection to the rights of RP as *"At this stage, Counsel for the RP has submitted that he may be permitted to file an appropriate Application before the Tribunal for claiming the cost incurred by the RP during this proceeding. We order accordingly"*. IBC, 2016 concludes without any ambiguity that **Costs include the Fee** as well. In the meantime, RP has been accomplishing all the designated, scheduled and other fallout tasks such as filing the progress reports, attending to the adjournments of NCLAT and even attended to the police station also in connection with a development concerned with CD since the RP is in continuous custody of the CD. Once NCLAT had set aside the CIRP proceedings - in all

sincerity the RP has handed over the Factory keys to the CD and filed the closure petition. The same was taken on record. In the process Honorable NCLT is kind enough to entertain the RP's plea for settlement of fee and other Insolvency Resolution Process costs. The legal counsel of one of the members of the CoC brought to the attention of the Honorable NCLT that in one case supreme court did not allow Fee to RP during the period of stay. The counter filed says that *"It is settled law that from the date of stay till the date of the order setting aside the final order, the IRP/RP is not entitled to any fee"*. My legal friend of that Institution was not concerned about co-relate the facts of the case. The relevant case particulars also were not given in the counter.

Core Issue

Learned members of the Committee of Creditors were also aware of the fact that the regulator has prescribed the minimum fee to be paid to the Resolution Professional. Still they were not willing to pay the Monthly Fee fixed for the Resolution Professional in the First CoC Meet. Their reasoning is the stay proceedings by the NCLAT. The matter reached Hon.NCLT which has been advising for settlement of the issue between CoC and the RP. Perhaps, the objecting member of CoC was of the view that the RP was not occupied with during the period of stay. The fact of submission of periodical progress reports and attending to the police station at times of a crisis are not been given any consideration by the member institution.

Statutory Stand

- Section 25 (1) carries the terms "It shall be the duty of the resolution professional to PRESERVE and PROTECT the assets"
- Section 25 (2) (a) talks about the RPs Role with respect to custody and control of all the assets of the corporate debtor
- Section 5(13)(b) talks "the fees payable to any person acting as a resolution professional" forms part of "insolvency resolution process costs"

- Regulation 34B(5) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 strengthens the point that the Fee to be paid to Interim Resolution Professional and Resolution Professional shall be included in the insolvency resolution process costs.
- Clause 2 (d) of Schedule II of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 talks about the period for which the fee has to be paid saying that "The minimum fixed fee shall be applicable for the period from appointment as interim resolution professional or resolution professional till the time of order for CLOSURE of Corporate Insolvency Resolution Process"

Experience is contradicting

My claim was only around Rs. 8 lakhs. The attitude of the institution really pained me. I am unable to understand as to without any consideration why should I continue to be the custodian of the CD. As cited in the early part of the write up – I had to settle the issue for **27%** of the claim lodged. In spite of such powerful provisions in the IBC, 2016 ; I am to reconcile with the institutions only to put a full stop to the ongoing inconvenience to the judiciary and to wrap up the pending agenda of the CIRP.

Claim for Costs

I am aware of the doctrine that runs as *No body should enrich at the cost of Others*. It is my turn to digest a bit of unusual process of due diligence stipulation by one of the members of Committee of Financial Creditors. It is the case of Individual Insolvency Resolution Process (IIRP) and even the minimum fee criterion is not fixed for by the IBBI specifically for IIRPs. The Financial Creditors are in no mood to adopt the Schedule II of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. I agree with the argument that it is matter of consensus between the RP and the Institution involved when it comes to the Fee issue. But the

bitter side of the experience is with reference to the Out-of-Pocket Expenses (OPE) claim. In normal trends the whole spent for the entire IIRP period of say 180 days or so will be around maximum of Rs.50K which includes Paper advertisement costs as well. The other burn would be on account of Conveyance, Stationery, Postage, Photocopy expenses, Notary Charges and Office administration charges if any etc.. As cited earlier – it will not be an avenue for making money for the matured professionals. But when an Institution demanded for **line-item wise** expenses; it is as if I have to furnish every single item such as Rs.30/- of postage or Rs.20/- of Parking Fee or Rs.20/- of Water Bottle or Rs.5/- of Photocopying expenses. I felt that there should be an amicable understanding in this regard.

फ्रीलिंग्स समझो ना (Understand the Feelings)

Yes – The sub title is apt for the concluding paras of this write-up. In the first instance I felt very much embarrassed to argue before the judiciary for the cause of **self than the IBC,2016**. I am unable to appreciate the thought process of the institution that reminds me of the time and motion study-based wage mechanism of FW Taylor times even for the CIRP/IIRP assignments under IBC, 2016. As such the responsibility has fully been assumed by the RP who helps the institutions to clean up their stinky debts in a systematic manner by contributing his might to maximise the recoveries. The time and remuneration aspects cannot be adjusted in a **linear** mode. The stakeholders of CoC should realise that the remuneration is been paid for the **responsibility undertaken** and quantification of the same is tough task and unjust. There is no scientific instrument that can ascertain the quantitative aspects of the **thought process**. Interestingly IBC 2016 also makes the Fee as a part of Insolvency Resolution process costs implying the dynamic principle that it is not an “Office of Profit” for the RP but an obligation of social cause.

Few Suggestions

It is time that IBBI comes with much more **detailed guidelines** in respect of compensation to the RP. The broader segments can be that of Insolvency of Corporates, Insolvency of Individuals, Stay Period aspects etc.. Similarly, whenever the difference of opinion emerges between the RP and the CoC; the lord ship can step in to adjudicate the **“Question of Reasonability”**. Similarly in regard to OPE claims that exceeding a substantial amount of Rs.2K can be mandated to be substantiated with the necessary supporting documents. Secondly the tracking of line-item wise burn is bit inconvenient to the RP particularly the consumption of office infrastructure of the RP. Hence certain allowances such as secretarial expenses and office maintenance expenses can come in the said guidelines as a lump sum amount.

If not

In my other profession as a Cost Accountant in Practice - I keep hearing in the conventional Industry that the skilled work force is gradually diminishing and this trend is giving the Factories a big concern at productivity. Similar trends may emerge in the profession of Insolvency as well. It is cited that IBBI the regulator, NCLT the Adjudicating Authority, the Information Utility (IU) and the Insolvency Professional (IP) are the four pillars of IBC,2016. Can we afford to have one of the pillars of a building becoming weak ? It will be reality with regard to Insolvency Professional if the concerns are not addressed.

In Conclusion

I only wish that some of the aspects discussed in this article may at least be taken up for Research studies. Thereby the findings of the studies can occupy space in the future enactments or guidelines giving little more **motivation** to the professionals practicing the Insolvency Laws. Thus, the Insolvency Professionals (IP) will get the required ammunition to sustain and safeguard the spirit of IBC,2016.

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



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Abstract

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

The Perspective

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

The Corporate Insolvency Resolution Process (CIRP)

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

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

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

Corporate Insolvency Resolution Process (CIRP): A Statistical Overview

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

Examining Delays in CIRP

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

- Inadequate or Lack of proper perspective and understanding with regard to the intent, objectives, Provisions of the IBC amongst the Resolution professionals and members of the committee of creditors often add to such delays.
- Multiple objections to the resolution plan filed by the various stakeholders lead to delays in CIRP
- Sometimes Multiple objections are filed by the various stakeholders even before resolution plan is approved by the creditors

- Due to non-cooperation from the Corporate Debtor the process of corporate insolvency resolution gets derailed
- It is also observed that often multiple stakeholders approach the adjudicating authority with similar objections.
- The CIRP also gets delayed due to inadequate number of NCLT members , Lack of expertise of members in IBC matters
- It has also been observed that rejection of claims by resolution professional based on technicalities and delays without giving reasons often leads to protracted litigation by the creditors.

Path to a Quicker Resolution

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

- A Screening Mechanism should be implemented to scan out frivolous interim applications which lead to avoidable delays. Penalties should be prescribed for filing frivolous or vexatious applications to discourage such practices and streamline the process.
- The Adjudicating authority should hear all objections only at the stage of consideration of the resolution plan before passing order for approval of resolution plan. This will save judicial time by avoiding multiple indulgences in the same matter without affecting the rights of stakeholders
- For routine matters such as extensions of time, replacement of resolution professionals, and applications under Section 19 of the Code etc. Fast-track procedures should be introduced so that these matters do not cause unnecessary delays.

- Section 96 of the Code may be considered to be amended to prevent avoidable misuse of the interim moratorium by guarantors to delay recovery actions.
- Data analytics tools should be used to facilitate identification of changes, trends, patterns and discrepancies in asset declarations, while detecting potential fraudulent transfers or hidden assets.
- Mandatory training in practical aspects of Insolvency law through case studies of Insolvency and Bankruptcy law practices prevailing in other jurisdictions should be mandated for Members of NCLT and NCLAT
- A dedicated bench of the Supreme Court should be constituted to hear IBC matters on priority.
- NCLT's should also have IBC dedicated benches which should take up admission cases on priority. These changes will increase transparency and efficiency,
- The resolution professionals should be mandated to provide sufficient reasons for rejection of any claim. This will help the creditors to understand the reasoning and reduce litigation
- The minutes of the meeting of the committee of creditors in which feasibility and viability of the resolution plan has been discussed should form part of Form H (form in which resolution professional presents resolution plan for approval of the adjudicating authority) for helping the adjudicating authority to better understand the underlying thought process and reasoning behind approval of the resolution plan by the COC and expedite the approval process.
- RP should make Strategic use of artificial intelligence for monitoring of compliance and identification of preferential transactions making the process more efficient.
- Using and leveraging mediation and arbitration during CIRP has the potential to resolve disputes faster and reduce court burden.
- Hearings at a stretch would expedite the CIRP decision making process. Multiple adjournments lead to delays in approval of resolution plans.
- RP should use Electronic Case Management Systems which can facilitate real-time updates and efficient handling of cases
- IBBI should consider auto-populated fields from existing data and revise some of the forms for reducing data duplication thus reducing compliance burden of RP
- Response of the corporate debtor to the issues raised in CIRP application should be mandated by stipulating a timeline failing which the AA would be authorized to assume the occurrence of the default and initiate the CIRP proceedings accordingly.
- Introduction of a pre-packaged insolvency resolution process (PPIRP) for large corporates also can help reduce the delays. This will motivate and incentivize the promoters to constructively engage with creditors, discuss restructuring / resolution plan possibly even before occurrence of any default.
- There are many large corporations that have a complex group structure. There is an imperative need for operationalizing a workable framework for group insolvency.
- Appointment of an additional Insolvency Professional (AIP) to handle compliance-related tasks for large insolvency cases (i.e. debt size exceeding a certain amount) in addition to the RP would facilitate more

efficient corporate insolvency resolution process with better outcomes.

Learning from International Jurisdictions

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

- **United States (Chapter 11 Bankruptcy):** The U.S. system emphasizes pre-packaged bankruptcy plans where debtors and creditors negotiate terms before filing, significantly reducing court involvement and time taken for resolution. Debtor-in-possession insolvency resolution structure helps the companies maintain operations during the insolvency process leading to expedited resolutions.
- **United Kingdom (Administration):** UK has a streamlined administration process wherein appoints an Administrator is expeditiously appointed to manage the company's affairs, helping to expedite the resolution.
- **Singapore (Insolvency, Restructuring, and Dissolution Act):** Singapore's framework offers mechanisms for expedited debt restructuring once a restructuring application is filed. The Act encourages mediation and arbitration as alternative dispute resolution mechanisms to speed up the process.

Conclusion

The IBC seeks to redress distress of the companies in a time bound manner while balancing the interest of all the stakeholders. However, the data and experience over the last 8 years of IBC reflects unrequited delays in the resolution process, which were the primary reason for failure of the earlier insolvency laws. The delays in CIRP result in undesired

implications in terms of huge haircuts, commercial uncertainty, and the erosion of the value of assets bringing about changes as suggested could help in realizing the Objectives of the Code.

References

- A fable from the Mahabharata depicts the capacity to enter but not escape, resulting in dire repercussions.
- Chapter 02, Economic Survey 2015-16 'from socialism with restricted entry to 'marketism' without exit.
- https://meconomictimes.com.cdn.ampproject.org/c/s/m.economictimes.com/news/economy/policy/ibcs-recovery-woes-how-india-can-fix-the-leaks-and-not-just-patch-the-cracks/amp_articleshow/119470952.cms
- <https://www.taxscan.in/missed-timelines-of-corporate-insolvency-proceedings-a-trouble-maker-to-distress-companies/395855/>
- <https://www.taxscan.in/missed-timelines-of-corporate-insolvency-proceedings-a-trouble-maker-to-distress-companies/395855/>
- wordpress.com/2023/02/22/reducing-time-for-admitting-cirp-applications-under-the-ibc-will-it-undermine-judicial-intervention-in-the-insolvency-process/
- <https://acuitylaw.co.in/revision-of-cirp-regulations-to-streamline-corporate-insolvency-resolution-process/>
- Renuka Sane, Low IBC recoveries are a worry. But solutions lie in cutting court delays, not blaming CoC, The Print
- Anish Mashruwala and Anmol Narang, the new Indian insolvency regime: effective, or is the jury still out?, Lexology (Jan. 13, 2023)
- <https://www.taxscan.in/missed-timelines-of-corporate-insolvency-proceedings-a-trouble-maker-to-distress-companies/395855/>
- <https://www.reedlaw.in/post/need-to-reduce-the-insolvency-resolution-time-under-ibc>
- <https://www.financialexpress.com/business/banking-finance/learnings-from-ibc-suggest-need-for-some-course-correction-says-rbi-chief-3362179/>
- <https://legal.economictimes.indiatimes.com/news/law-policy/experts-see-potential-for-streamlined-insolvency-process-in-ibbis-mandatory-mediations-for-operational-credit>

MR. PADMANABHAN NAIR Insolvency Professional



IBC process and the NCLT Role

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

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

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

A.INTRODUCTION

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

The Committee raised concerns over prolonged delays at NCLT, noting that 64%

of CIRPs exceeded the statutory 330-day limit, causing inefficiencies in the insolvency resolution process.

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

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

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

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

Read more at:
https://economictimes.indiatimes.com/news/india/o-n-average-resolution-of-cases-under-ibc-took-716-days-at-nclt-in-2023-24-govt/articleshow/112325598.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

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

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

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

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

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

B: OBSERVATIONS AND ANALYSIS

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

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

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

i) As seen above the Code has resolved 1194 CDs through resolution plans. Further, 1276 cases have been settled through appeal, review or settlement and 1154 cases have been withdrawn under section 12A. The Code has 2758 CDs for liquidation. The resolved CDs resulted in realisation of approx 32.8% as against the admitted claims

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

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

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

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

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

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

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

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

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

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

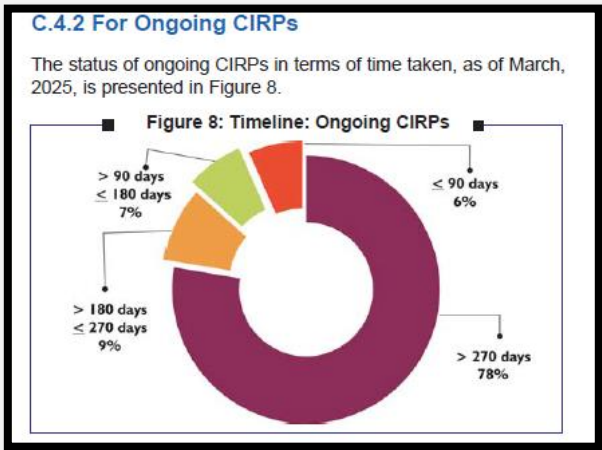
Table 2: Outcome of CIRPs, initiated Stakeholder-wise, as on March 31, 2025

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

Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

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

iii) Timelines for ongoing CIRP’s



Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

We see that as of March 2025 we see that 1194 CIRPs, which have yielded resolution plans by the end of March 2025 took

average 597 days (after excluding the time of the AA) for conclusion of process,. **This is the most important point for purposes of these articles. We are excluding the time taken by the AA.** Similarly, the 2758 CIRPs, which ended up in orders for liquidation, took on average 508 days. Moreover, 1374 liquidation processes, closed by submission of final reports took on average 646 days for closure. Also, 1704 voluntary liquidation processes, closed by submission of final reports, took on average 401 days for closure.

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Source: Insolvency and Bankruptcy Newsletter IBBI Mar 25

C: SUGGESTED COURSES OF ACTION

So, what can be done about this?? As mentioned above, the purpose of this article is to discuss the judicial aspects, though there are many other aspects as studied by the MCA & Valuation Standards Board.

There are a lot of procedures which could be followed by the NCLT and judicial authorities which could speed up matters and avoid unnecessary load on judges.

Some of the suggested remedies could be

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

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

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

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

ultimately defeating the IBC's objective of time-bound resolution.

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

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

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

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

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

9. SEC 10 cases -procedure could be eased

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

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

D. INTERLOCUTORY APPLICATIONS AND CAPACITY BUILDING

The insolvency resolution process is often delayed due to prolonged legal battles, multiple

appeals, and numerous interlocutory applications (IAs) filed before NCLT and NCLAT.

Obviously Stakeholders, including financial and operational creditors, resolution applicants, and even suspended directors, would look at their own interests and frequently challenge various aspects of the process, from the admission of CIRP to the approval of resolution plans. It also burdens the judiciary with frivolous objections and prevents swift resolution.

Therefore, the IA process would need to be streamlined.

CONCLUSION

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

These have been enumerated above and focused on making the IBC a more efficient process thereby enthusing investors to submit resolution plans. It must never be forgotten that the real purpose of the code is to **enhance India’s economic growth by enhancing investment and entrepreneurship**. This is best done by the taking over of ready-made companies by new and more capable managements, rather than reinventing the wheel. There is a huge socio-economic benefit also in that the normal employees do not get disrupted and the families remain stable.

These process are **inevitably linked to the Ease of Doing Business** Ranking which

enthuses both domestic and international investors to get provide substantial investment and technological innovations, **and “enforcement of contracts”** which means essentially the speed and stability of judicial decisions, is a very fundamental part of this Hence importance and relevance of this article.

ANNEXURE-WORLD BANK-EASE OF DOING BUSINESS

Source: World Bank

Doing Business in India - World Bank Group				
Topics	DB 2020 Rank	DB 2020 Score	DB 2019 Score	Change in score (% points)
Overall	65	71.0	67.5	3.5
Starting a Business	136	61.6	61.0	0.6
Dealing with Construction Permits	27	78.7	72.1	6.6
Getting Electricity	22	89.4	89.2	0.2
Registering Property	154	47.6	47.9	0.3
Getting Credit	25	80.0	80.0	-
Protecting Minority Investors	13	80.0	80.0	-
Paying Taxes	115	67.6	65.4	2.2
Trading across Borders	68	82.5	77.5	5
Enforcing Contracts	163	41.2	41.2	-
Resolving Insolvency	52	62.0	40.8	21.2

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

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Abstract

Insolvency regimes globally are undergoing a profound transformation due to increased economic interdependence, complex transnational corporate structures, and the rising volume of cross-border defaults. While the Insolvency and Bankruptcy Code, 2016 (IBC), represents a transformative leap for domestic insolvency resolution in India, its present inability to address cross-border insolvency in a comprehensive and legislatively cohesive manner is a material deficiency in India's legal and economic architecture. This article explores the doctrinal evolution of cross-border insolvency, critically evaluates the UNCITRAL Model Law as the global standard, examines the Indian framework (statutory and jurisprudential), and recommends a multi-dimensional reform path that combines legislative adoption with treaty-building, judicial capacity enhancement, and regulatory convergence. India's ambition to be a global investment and insolvency jurisdiction hinges on the maturity of its legal responses to cross-border distress, which is no longer the exception but the norm.

1. Introduction: The Globalization-Insolvency Conundrum

The convergence of capital markets, liberalization of investment regimes, and global expansion of corporate footprints have rendered the boundaries of domestic insolvency law increasingly porous. Insolvency of entities like **Lehman Brothers**, **Nortel Networks**, and **Jet**

Airways revealed that the existing national insolvency regimes—designed for domestic disputes—are ill-equipped to manage the intricate web of multinational asset locations, creditor claims, and overlapping jurisdictions.

Cross-border insolvency represents the legal, institutional, and operational challenge of resolving insolvencies where the debtor, its assets, creditors, or proceedings span multiple legal regimes. The Indian context—marked by exponential growth in outbound investments and increasing foreign portfolio and direct investments—makes cross-border insolvency a matter of both legal urgency and strategic significance.

2. Definitional Contours and Conceptual Foundations

Cross-border insolvency may be defined as the condition arising when:

- An insolvent debtor has assets in more than one country;
- Creditors are located across jurisdictions;
- Multiple proceedings are initiated in different countries; or
- There is a need for foreign judicial cooperation for resolution.

While the subject engages traditional principles of **private international law**, **comity of nations**, and **sovereignty**, it also invokes questions of **creditor protection**, **value maximization**, and **legal predictability**.

3. Legal Doctrines: Between Territorial Absolutism and Global Cooperation

3.1 Territorialism: Legal Isolationism

Territorialism postulates that each state exercises exclusive jurisdiction over insolvency proceedings within its territory, applying its laws to local assets and creditors. While it protects domestic priorities, it often results in:

- Duplication of proceedings,
- Forum shopping,
- Inconsistent creditor treatment, and
- Sub-optimal value realization.

3.2 Universalism: Legal Cosmopolitanism

This approach envisions a single, centralized proceeding in the debtor's "home" jurisdiction (determined by COMI—Centre of Main Interests), with global recognition. However, it is practically constrained by:

- Differing national priorities,
- Lack of uniform enforcement mechanisms,
- Public policy divergences.

3.3 Modified Universalism: Pragmatic Harmonization

Modified universalism underpins the **UNCITRAL Model Law on Cross-Border Insolvency, 1997**, balancing centralization of proceedings with local safeguards. It seeks inter-jurisdictional cooperation without abdicating national legal discretion.

4. The UNCITRAL Model Law: Blueprint for Global Best Practices

4.1 Adoption and Scope

The Model Law is designed to be adopted into domestic law and:

- Recognizes foreign insolvency proceedings (main and non-main),
- Permits access to foreign representatives,
- Provides for automatic or discretionary relief,
- Mandates cooperation and coordination among courts and insolvency administrators.

As of 2025, over **55 jurisdictions** including the **US, UK, Singapore, Japan, Canada, and Australia** have adopted the Model Law.

4.2 Key Provisions

- **Articles 15–17:** Procedure for recognition of foreign proceedings.
- **Article 20:** Automatic stay on recognition of a foreign main proceeding.
- **Articles 25–27:** Judicial cooperation and coordination mandates.
- **Article 6:** Public policy exception to preserve national sovereignty.

The Model Law provides a skeletal framework, enabling national customization, which has been crucial to its global acceptability.

5. India's Cross-Border Insolvency Regime: Present and Deficient

5.1 Sections 234 and 235 of the IBC

- **Section 234:** Permits bilateral agreements with foreign states for reciprocal enforcement of insolvency proceedings.
- **Section 235:** Allows the NCLT to issue letters of request to foreign courts for evidence or action.

However, these provisions are:

- **Unnotified** as of 2025,
- **Dependent on bilateral treaties**, none of which exist currently,
- **Procedurally ambiguous**, lacking implementation protocols.

Thus, India currently operates in a state of **judicial and legislative vacuum** in respect to cross-border insolvency.

6. The Jet Airways Case: Judicial Innovation in a Legislative Void

In 2019, **Jet Airways (India) Ltd.**, undergoing CIRP in India, was simultaneously declared bankrupt in the **Netherlands**. The Dutch court appointed a bankruptcy trustee and initiated proceedings, leading to:

- Competing claims over the airline's assets in Europe,
- A request by the Dutch trustee for recognition in India.

6.1 NCLT vs NCLAT Approach

- **NCLT**: Denied recognition due to lack of enabling legislation.
- **NCLAT**: Allowed a **cross-border protocol** under which Indian and Dutch resolution professionals coordinated under judicial supervision.

6.2 Legal Implications

- Showed the judiciary's **adaptive capacity**,
- Highlighted the **limitations of ad hoc arrangements**,
- Reinforced the need for a **formal legislative framework**.

7. The Draft Cross-Border Framework: India's Unfinished Legal Business

- Following recommendations from the **Insolvency Law Committee (2018)**, the MCA released a **draft Part Z** to the IBC in 2019, largely adopting the UNCITRAL Model Law with tailored modifications.

7.1 Key Features

- Recognition of **foreign main and non-main proceedings** based on COMI.
- **Automatic moratorium** for recognized main proceedings.
- Direct access for **foreign representatives**.
- **Public policy clauses** for safeguarding sovereignty and legal integrity.
- Power to **exclude financial service providers** via notification.

7.2 Comparative Strengths

- **Unilateral recognition** even in the absence of treaties,
- **Court-to-court cooperation** provisions,
- **Discretionary relief** consistent with Indian jurisprudence.

7.3 Present Status

- The framework remains **pending parliamentary enactment**, leaving India out of step with similarly placed jurisdictions like Singapore, South Africa, and the UAE.

8. Comparative Jurisdictions: Lessons in Legal Convergence

Country	Adoption Year	• Key Highlights
• USA	• 2005	• Chapter 15; robust jurisprudence on COMI and reliefs
• UK	• 2006 (EU Recast Insolvency Regulation)	• Strong cross-border protocols, though Brexit limited EU scope
• Singapore	• 2018	• Enhanced Model Law; court-supervised COMI determination
• Australia	• 2008	• Emphasis on mutual cooperation and judicial flexibility
• South Africa	• 2000	• Partial adoption; SADC coordination remains limited

India's non-adoption places it at a competitive disadvantage in cross-border claim enforcement and coordination.

9. Implementation Challenges: From Law to Practice

9.1 Institutional Capacity

- NCLTs and NCLAT need capacity building to handle international legal principles.
- SOPs for cooperation with foreign courts and professionals are absent.

9.2 Regulatory Coordination

- Need for harmonization between IBC and **FEMA, SEBI, RBI, and ED** rules.
- Cross-border flows, especially in financial distress, are heavily regulated.

9.3 Creditor Concerns

- Domestic creditors may perceive cross-border protocols as favoring foreign entities. Mechanisms for **class voting**,

creditor ranking, and **asset tracing** must be clarified.

9.4 Enforcement Gaps

- India's enforcement of foreign judgments relies on **Section 13 CPC**, which may be insufficient for insolvency-specific orders.

10. Strategic Justifications for Reform

10.1 Investment Climate

A credible cross-border regime enhances confidence for:

- Foreign bondholders and lenders,
- Multinational suppliers and service providers.

10.2 Value Preservation

Coordinated proceedings reduce duplicative litigation, asset dissipation, and inconsistent rulings.

10.3 Legal Sovereignty

By adopting the Model Law with appropriate exceptions, India retains

sovereignty while engaging with global norms.

10.4 Institutional Credibility

Demonstrates India's maturity in legal infrastructure, crucial for WTO, FTA, and G20 engagements.

11. Recommendations: Toward a Coherent Cross-Border Insolvency Ecosystem

- **Legislative Enactment:** Introduce and pass the Draft Part Z in Parliament with stakeholder consultation.
- **Protocol Development:** Create model court-to-court cooperation protocols and inter-jurisdictional SOPs.
- **Capacity Building:** Launch certification programs for judges, insolvency professionals, and regulators.
- **Treaty Framework:** Use Section 234 to develop treaties with strategic jurisdictions—UK, Singapore, UAE.
- **Data Infrastructure:** Link insolvency data with global platforms like **INSOL** and **UNCITRAL Judicial Networks**.
- **Public Policy Clarification:** Define 'public policy' in the context of cross-border recognition to avoid discretionary misuse.

12. Conclusion: India at the Crossroads of Global Insolvency Reform

India's insolvency ecosystem has matured impressively in the last decade, but its inability to handle cross-border insolvency in a codified, rule-based manner poses a threat to that progress. The legal and commercial realities of transnational insolvencies demand that India adopt an advanced cross-border insolvency framework in line with global standards.

The UNCITRAL Model Law, adapted to Indian needs, offers a pragmatic and tested model. Enacting this reform is not only a legal necessity—it is a strategic imperative.

As India seeks to become a hub for international finance, arbitration, and restructuring, its legal infrastructure must reflect its ambitions. Cross-border insolvency is no longer a peripheral issue—it is a central feature of global commerce. The time for legislative and institutional action is now.

References

1. UNCITRAL Model Law on Cross-Border Insolvency, 1997
2. Insolvency and Bankruptcy Code, 2016 (India)
3. Report of the Insolvency Law Committee, Ministry of Corporate Affairs (2018)
4. Draft Part Z, Cross-Border Insolvency Framework (2019), MCA
5. Jet Airways (India) Ltd. v. State Bank of India, NCLAT, 2019
6. World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes (2016)
7. IMF Working Paper (2020): "Cross-Border Resolution Regimes: Comparative Analysis"
8. UNCITRAL Legislative Guide on Insolvency Law, 2021
9. INSOL International: Judicial Guidelines for Cross-Border Insolvency Cooperation
10. Singh, A. (2022). "Territorialism vs. Universalism in Cross-Border Insolvency." NLIU Law Review

PAYMENTS MADE BY CORPORATE DEBTOR AFTER COMMENCEMENT OF CIRP – BREACH OF MORATORIUM?

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INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS

The Insolvency and Bankruptcy Code, 2016 ('Code' for short) provides the procedure for initiation of corporate insolvency resolution process ('CIRP' for short) by the Financial Creditor/Operational Creditor/corporate applicant under Section 7, 9 or 10 of the Insolvency and Bankruptcy Code, 2016 ('Code' for short). On receipt of the application for initiation of CIRP, if the Adjudicating Authority is satisfied that the application is complete in all aspects, the Adjudicating Authority admits the application for CIRP and appoints the interim resolution professional ('IRP' for short). The date of order is the commencement of the CIRP. The Adjudicating Authority also declares the moratorium under Section 14 of the Code. From this date all transactions against the corporate debtor will be stayed and no further action can be taken against the corporate debtor, till the date of revocation of moratorium.

Payment after declaration of moratorium

The issue to be discussed in this article is as to whether any transaction can be made after declaration of the moratorium by the corporate debtor to its creditors and whether it is in violation of the provisions of the moratorium with reference to the

decided case by NCLAT as discussed below- In '**Sunil Gutte, Promoter and suspended director v. Avil Menezes, Liquidator of Sunil Hitech Engineers Limited and 4 others**' – Company Appeal (AT) (Insolvency) No. 515 of 2025 – NCLAT, Principal Bench, New Delhi, decided on 30.05.2025, the appellant was the corporate debtor. The CIRP was initiated against the corporate debtor under Section 7 of the Code and the same was admitted by the Adjudicating Authority on 07.09.2018. The said order was uploaded on the website of the Insolvency and Bankruptcy Board of India website on 10.09.2018. The Adjudicating Authority also appointed an Interim Resolution Professional ('IRP' for short).

The IRP, immediately, on his appointment, took action to take over the management of the corporate debtor and sent a notice in this regard to the suspended Directors of the corporate debtor. The IRP was replaced by the Resolution Professional ('RP' for short) on 27.11.2018.

The RP noticed that certain unauthorised payments were made by the Ex-promoter of the company and Chief Financial Officer, (respondent No. 6) to the respondents 2 to 5 in this case to the tune of Rs.11.01 crores from 10.09.2018. Major payments were made through RTGS and by cheques. The RP sent a letter to the appellant asking the details of payments made from 10.09.2018 to 14.09.2018. The appellant and

respondent No. 6 informed the RP vide their letter dated 09.04.2019 that the payments were made to maintain the corporate debtor as a going concern. They further added that the payments were made routine as per the standard operating procedures entered into by the corporate debtor and the respondents 2 to 5.

The RP filed a misc. application before the Adjudicating Authority with the prayer for issuing directions to the corporate debtor and the respondents 2 to 6 to return the entire amount of Rs.11.01 crores to the RP. The Adjudicating Authority allowed the application of RP. Being aggrieved against the order of the Adjudicating Authority the appellant filed the present appeal before the National Company Law Appellate Tribunal ('NCLAT' for short).

The appellant submitted the following before NCLAT-

- The RP had divided the entire lot of these unauthorised payments amounting Rs.11.01 crore into two phases of which the first phase included transactions during period of 10.09.2018 to 14.09.2018 while the second phase was for transactions during 27.09.2018 to 10.11.2018.
- These transactions were routinely done in the course of ordinary business and not done for purposes of unjust enrichment or personal gain of the appellant or with any other *mala fide* intention.
- The Respondent Nos. 2 to 5 were long term service providers/vendors of the Corporate Debtor who were having an ongoing and continuing contract with the Corporate Debtor and therefore entitled to receive their dues for the goods and services provided by them.
- If these payments were not made the corporate debtor would have run the risk of facing an abrupt halt.

- Since the objective of the Code of keeping the Corporate Debtor running as a going concern, the Adjudicating Authority could not have treated the transactions as not being in the ordinary course of business.
- These payments were further in respect of invoices issued upon the Corporate Debtor by Respondent Nos. 2 to 5 before the commencement of CIRP.
- The cheques were issued to the respondents 2 to 5 before the commencement of CIRP. It is not for the appellant to explain why these cheques were encashed by respondent Nos. 2 to 5 after commencement of the CIRP.
- If the IRP did not take any pre-emptive action to ensure stop payments in respect of the cheques routinely issued before the commencement of CIRP, the appellant cannot be held responsible for encashment of these cheques post commencement of CIRP.
- The RP has not made any allegation that respondent Nos. 2 to 5 were related parties of the Corporate Debtor.
- The IRP had not raised objections shows that IRP was convinced that these transactions were necessary and critical for maintaining the Corporate Debtor as a going concern.
- There were several other vendors/suppliers to whom payments had also been released but from whom refunds had not been sought.

The RP, the first respondent in the present appeal submitted the following before the NCLAT-

- The appellant and respondent No.6 had made these payments from the account of the Corporate Debtor after commencement of CIRP in contravention of Section 14(1)(b) of the Code which prohibits any payment to be made by the suspended management after commencement of CIRP.

- Once the CIRP order is pronounced, the legal consequences flow from the date of pronouncement of such order.
- The Adjudicating Authority had rightly held that the appellant and respondent No. 6 were jointly and severally liable along with Respondent Nos. 2 to 5 to return the money which had been unauthorisedly transferred from the account of the Corporate Debtor in breach of moratorium.

The NCLAT considered the submissions of the appellant and of RP. The NCLAT considered the question, in the present appeal, as to whether the payments made by the Appellant after commencement of CIRP constituted a breach of the provisions of moratorium and whether there was any infirmity in the impugned order directing the reversal of the impugned transactions by the Appellant and Respondent No. 2 to 5 to the assets of the Corporate Debtor.

The NCLAT analysed the provisions of Section 5, 13 and 14 of the Code. The NCLAT observed that the moratorium becomes enforceable from the date the CIRP application is admitted or as indicated in the order of admission passed by the Adjudicating Authority. The provisions of moratorium *inter-alia* provide for a stand-still period during which Financial or Operational creditors cannot resort to individual debt enforcement action in respect of debts which had accrued during the period prior to commencement of CIRP proceedings. The suspended management of the Corporate Debtor is also strictly prohibited from directly or indirectly deploying the funds of the Corporate Debtor unilaterally, without the authorisation of IRP, to clear any dues of any Financial Creditor or Operational Creditor.

The NCLAT observed that after commencement of CIRP on 07.09.2018, certain payment transactions were made from the account of the Corporate Debtor in two phases. The first phase was between 10.09.2018 to 14.09.2018 amounting to Rs 9.54 Cr. The second set of transactions occurred between 27.09.2018 to 10.10.2018 amounted to Rs 6.80 Cr. The RP had sought to set aside 12 payments only and these impugned transactions were made by the appellant to respondent Nos. 2 to 5 amounting to Rs 11.01 Cr. The rest of the payments have been allowed since the same related to the payment of the workers dues.

The NCLAT considered the question as to whether the IRP has approved these payments made during moratorium. In this regard the NCLAT found that the RP has sent a mail to IRP, seeking clarification as to whether the payments made during the impugned period were approved by IRP. The IRP replied that all the payments made are with the approval of Committee of Creditors and the payments were made only through UCO bank. But these payments were made through the HDFC Account of the corporate debtor. Further the NCLAT observed that the appellant informed the IRP about the payment on 14.09.2018 which shows that the payments were made prior to the taking over the charges of the corporate debtor by IRP.

The RP wrote a letter to the appellant on 29.03.2019 that the impugned transactions were made after CIRP commencement and without the authority of IRP. The appellant and respondent Nos. 2 to 5 had offered their explanation to the RP on 09.04.2019 on this count. In the said explanation the appellant informed the RP that the payments made before Take - Over Notice were not made in violation of the Code and the admission

Order. The appellant has neither committed any act of fraud or concealment of property nor he has contravened the moratorium.

The NCLAT observed that in terms of Section 14(1)(b) of the Code, once moratorium has been declared upon admission of Section 7 application, it is not open for any person to recover any amount from the account of the Corporate Debtor. Once moratorium is declared, the suspended management of the Corporate Debtor has to willy-nilly and mandatorily abide by this clear and express provision contained in the Code and cannot raise grounds of exception to the applicability of Section 14(1)(b) of the Code. Any action contrary to the provisions of moratorium would vitiate the resolution process of the Corporate Debtor and thereby render itself illegal and perverse. The NCLAT found that in the present case, there is no dispute that all the RTGS payments were made after commencement of CIRP as well as after the declaration of moratorium. The considered view of the NCLAT is that all the nine RTGS payments were perverse and it was the statutorily incumbent upon the RP to seek reversal of these payments and bring it back to the corpus of the Corporate Debtor. The RP in seeking reappropriation of the said amount has acted in conformity with the Code. The NCLAT did not find that the Adjudicating Authority committed any error in holding these RTGS payments to have been made in violation of the statutory provisions and consequentially directing the appellant and respondent Nos. 2 to 5 to reverse these payments to the kitty of the Corporate Debtor after holding them to be jointly and severally viable. In respect of the cheque payments the Adjudicating Authority had concluded that the cheques were deliberately ante-dated only to conjure the impression that they were

handed over before commencement of CIRP. There was no explanation from the appellant as to why these cheques though issued prior to CIRP commencement date were kept on hold by respondent Nos. 2 to 5 and encashed after the commencement of CIRP. The Adjudicating Authority, has therefore, rightly set aside all the impugned transactions.

The NCLAT did not find any error in the impugned order of the Adjudicating Authority holding the appellant and respondent Nos. 2 to 5 to be jointly and severally liable to refund the said amount to the account of the Corporate Debtor. The NCLAT dismissed the appeal of the appellant. However, the NCLAT held that liberty is given to the respondent Nos. 2 to 5 to file their claims, if they so wish, in respect of these transactions which may then be considered by the RP/Liquidator in accordance with law.

Conclusion

After initiation of CIRP once moratorium starts no person can recover any amount from the account of the Corporate Debtor. No action violating moratorium can be countenanced.

INSOLVENCY AND BANKRUPTCY CODE(IBC)2016

A wooden gavel with a brass band is positioned on a wooden block. In the background, a hand is pointing towards the gavel.

CASE LAWS

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

Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. [2025] 173 taxmann.com 123 (SC)

Where approved resolution plan was challenged by respondent on ground that recoveries under section 66 should not benefit Successful Resolution Applicant (SRA), however, NCLT approved resolution plan, citing CoC's commercial wisdom, NCLAT had clearly transgressed its jurisdiction under section 61 in striking down clause that allowed SRA to benefit from section 66 recoveries.

The corporate debtor was a NBFC engaged in housing finance, project loans, etc. RBI superseded the corporate debtor's Board, citing operations detrimental to depositors and creditors. An Administrator was appointed, and CIRP proceedings were initiated. Creditors submitted claims totalling Rs. 82,247 crores. Committee of Creditors (CoC) was constituted, and an invitation for Expression of Interest (EOI) & Resolution Plans (RP) was issued. However audit report revealed preferential, undervalued, fraudulent, and extortionate transactions worth Rs. 45,050 crores. Multiple applications were filed before NCLT to set aside these transactions, pending adjudication. Request for Resolution Plan Proposal (RFRP) was issued and later revised to address complexities regarding section 66 recoveries. The appellant submitted a

resolution plan. CoC approved said plan with 93.65 per cent votes, and Administrator sought NCLT approval. Resolution plan was challenged by respondent, contesting that section 66 recoveries should not benefit successful resolution applicant (SRA). NCLT approved resolution plan observing that CoC had exercised commercial wisdom. NCLAT by impugned order set aside term in resolution plan that permitted SRA to appropriate recoveries, if any, from avoidance applications filed under section 66. It was noted that SRA had raised its offer to extent of Rs.37,250 crores, which had factored potential recoveries from section 66 Applications and thus, resolution plan approved by CoC was an outcome of commercial bargain struck between SRA and CoC after several rounds of negotiations.

Held that NCLAT had clearly transgressed its jurisdiction under section 61 by interfering with clause pertaining to treatment to recoveries from Fraudulent and Wrongful trading under section 66, therefore, impugned order passed by NCLAT was to be set aside and order passed by NCLT in plan approval order was to be upheld.

Case Review: 63 Moons Technologies Ltd. v. Administrator of Dewan Housing Finance Corporation Ltd. [2022] 134 taxmann.com 334 (NCL-AT - New Delhi) (para 87) Set aside.

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

Rakesh Bhanot v. Gurdas Agro (P.) Ltd. [2025] 173 taxmann.com 249 (SC)

Legislative intent behind IBC is to provide a protective shield for debtors during insolvency

process; however, allowing debtors to evade prosecution under section 138 of Negotiable Instruments Act, 1881 would undermine very purpose of NI Act, 1881, which is to preserve integrity and credibility of commercial transactions.

The respondent filed a complaint under section 138 against appellants for dishonour of cheques due to insufficiency of funds. During pendency of proceedings, appellants filed an application under section 94 before NCLT for personal insolvency. Said application was pending adjudication. Appellants moved an application before Trial Court for adjourning section 138 of NI Act proceedings sine die, in view of pendency of section 94 petition as well as injunctive provision as envisaged under section 96. Trial Court rejected aforesaid application.

Held that legislative intent behind IBC is to provide a protective shield for debtors during insolvency process. Scope and nature of proceedings under IBC may result in extinguishment of actual debt by

restructuring or through process of liquidation but such extinguishment will not absolve its directors from criminal liability. However, allowing debtors to evade prosecution under section 138 would undermine very purpose of NI Act, 1881, which is to preserve integrity and credibility of commercial transactions and personal responsibility persists, regardless of insolvency proceedings and its outcome. Prayer of appellants/petitioners to stay prosecution under section 138, relying on interim moratorium under section 96, could not be entertained.

Case Review: Rakesh Bhanot v. Gurdas Agro (P.) Ltd. [Criminal Petition Bearing No. CRM-M37169-2022 (O&M), dated 23-3-2023, affirmed.]

SECTION 220 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES- DISCIPLINARY COMMITTEE - APPOINTMENT OF

Sandeep Kumar Bhatt v. Insolvency & Bankruptcy Board of India [2025] 173 taxmann.com 464 (Delhi)

Where penalty of two years suspension from taking any assignment as IRP had been imposed on appellant by IBBI and almost 1 year and 4 months of penalty imposed had already lapsed, suspension period was to be reduced to period already undergone.

The appellant was registered with the respondent-Board as Insolvency Professional. He was appointed as an Interim Resolution Professional (IRP) in CIRP of the corporate debtor. Disciplinary Committee of Board passed an order suspending registration of the appellant for a period of two years on ground that the appellant had contravened sections 25(1), 25-(2)(a), 25(2)(b) and 208(2)(e) of the Code and Regulation 40B of CIRP.

Regulations, Regulations 7(2)(a) and (h) of the IP Regulations and clauses 1, 2, 14 and 19 of the code of conduct specified thereunder. The appellant filed writ petition challenging order of suspension on ground that punishment was grossly disproportionate. Single Judge dismissed writ petition holding that Board had duly adhered to procedure before passing order of suspension.

Held that analysis regarding charges levelled against the appellant appeared to be aspects which might have inadvertently been overlooked by Disciplinary Committee, and it was possible that a penalty, not so severe in nature might perhaps, have been imposed upon the appellant. Since almost 1 year and 4 months of penalty imposed had already lapsed, penalty imposed of two years suspension from taking any assignment as IRP was to be reduced to period already undergone.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

Pratibha Industries Ltd. v. Yes Bank Ltd.
[2025] 173 taxmann.com 763 (NCLAT-
New Delhi)

Where respondent bank conducted e-auctions and sold mortgaged property under SARFAESI Act, borrower had no right to property for purpose of raising a dispute regarding sale.

The corporate Debtor (CD) availed a credit facility from secured creditor (SC) by way of a term loan and created exclusive mortgage on two properties. CD was admitted to CIRP and, a moratorium under section 14 was imposed. SC issued first e-auction sale notice under section 13(8) of SARFAESI Act, but e-auction was declared unsuccessful because no bid was received. Second e-auction sale notice was issued, and sale was conducted of first property, in which one buyer gave highest bid. Bid was accepted by SC and, a letter of confirmation was issued in favour of the buyer. Remaining payment of sale consideration was made and sale certificate was issued. Sale was confirmed and it was registered. In respect of second

property, since no bid was received by SC, it issued a letter of confirmation to itself for said property and issued sale certificate - Appellant, liquidator of CD filed an application for reversing sale transactions of properties on ground that sale had been affected after imposition of moratorium, which was dismissed by NCLT.

Held that once the borrower failed to tender entire amount of dues with all costs and charges to secured creditor before publication of auction notice, his right of redemption of mortgage shall stand extinguished / waived on date of publication of auction notice in newspaper in accordance with Rule 8 of 2002 Rules. Relationship between mortgagor and mortgagee, for purpose of redemption exists till date of issuance of notice of sale, if property is being sold under section 13(8) of the SARFAESI Act then in that situation also the borrower had no right to property for purpose of raising dispute and thus, appeal filed by the appellant was to be dismissed.

Case Review: Order of NCLT (Mumbai) in M. A No. 1662 of 2019, dated 08.04.2024, **affirmed.**

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

Electrosteel Steel Ltd. v. Ispat Carrier (P.) Ltd. [2025] 173 taxmann.com 873 (SC)

Once a resolution plan is duly approved by Adjudicating Authority, all claims which are not part of resolution plan stand extinguished, and no person will be entitled to initiate or continue any proceeding in respect of a claim which is not part of resolution plan.

The respondent-operational creditor filed claim against the appellant-corporate debtor before Micro and Small Facilitation

Council (MSMEC) for outstanding amount. Meanwhile, financial creditors of the appellant had filed application under section 7. NCLT had imposed a moratorium and appointed a Resolution Professional (RP). Resolution plan had been approved by CoC, wherein all claims of operational creditors, including the respondents, had been settled at nil value. After moratorium had ended, Facilitation Council had resumed arbitration and had awarded Rs. 1.59 crores plus interest to respondent under MSME Act. The respondent had instituted execution proceeding of Arbitral Award passed by MSMEC. At stage of execution of Award, the appellant filed a

petition contending that Arbitral Award was nullity and hence not executable, as claim of the respondent had already been settled at nil as per resolution plan. Executing Court by order had directed the appellant to comply with award. On appeal, High Court upheld order of Executing Court.

Held that once a resolution plan is duly approved by adjudicating authority, all claims which are not part of resolution plan stand extinguished and no person will be entitled to initiate or continue any proceeding in respect of a claim which is

not part of resolution plan. In instant case, upon approval of resolution plan by NCLT, claim of the respondent being outside purview of resolution plan stood extinguished and, therefore, award passed by MSMEC was incapable of being executed, therefore, order passed by Executing Court directing the appellant to comply with award was to be set aside.

Case Review: Order of High Court of Jharkhand at Ranchi in C. M. P. No. 376 of 2023, dated 17.07.2023, set aside

SECTION 62 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – SUPREME COURT, APPEAL TO

State Bank of India, Assistant Manager v. India Power Corporation Ltd. [2025] 171 taxmann.com 600 (SC)

Where in insolvency proceedings initiated by SBI against respondent NCLT condoned delay in filing rejoinder affidavit but ruled that factual assertions in rejoinder affidavit would not be considered while deciding section 7 application and said order was upheld by

NCLAT, order of NCLAT was to be set aside and matter was to be remitted to NCLT for fresh adjudication of section 7 application. SBI initiated insolvency proceedings against the respondent (IPCL) under Section 7 before NCLT. SBI filed its rejoinder affidavit, but with a delay, citing a pending money suit filed by IPCL. An application was filed for condonation of delay. NCLT condoned delay

but ruled that factual assertions in rejoinder affidavit would not be considered while deciding section 7 application. SBI challenged said order, but NCLAT dismissed appeal.

Held that NCLT permitted Bank to file their rejoinder after condoning delay, it was too much for NCLT to say that Bank shall not be permitted to rely on any assertions made in rejoinder. NCLT and NCLAT erred in disallowing rejoinder affidavit despite condoning delay. Order of NCLAT was to be set aside and matter was to be remitted to NCLT for fresh adjudication of section 7 application.

Case Review : Order of NCLAT, Chennai in CAAT (CH)(I) No. 87/2023, dated 4-10-2023 (para 12) set aside

SECTION 62 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – SUPREME COURT, APPEAL TO

Employees' Provident Fund v. Jaykumar Pesumal Arlani, Resolution Professional of Decent Laminates (P.) Ltd. [2025] 171 taxmann.com 522 (NCLAT- New Delhi)

Where appellant/EPFO filed claim with respect to PF dues payable on basis of assessment under section 7A of EPF & MP Act, 1952, which was made subsequent to initiation of moratorium, said claim was hit by section 14(1).

IRP was initiated against the corporate debtor. Appellant-EPFO had initiated proceedings under section 7A of the EPF & MP Act, 1952 with respect to PF dues payable. Subsequently, assessment orders under section 7A, 14B and 7Q were passed against the corporate debtor. The appellant had filed application before NCLT seeking directions to RP to admit total claim of PF dues. NCLT by impugned order had rejected said application on ground that IBC was a time bound process and claim, which had been submitted by the appellant at a belated stage, after approval of resolution plan was rightly rejected by RP.

Held that after initiation of moratorium under section 14, no assessment proceedings can be continued by EPFO and

if after an order of liquidation was passed, section 33(5), does not prohibit initiation or continuation of assessment proceedings. Claims were filed on basis of assessment, which had been made subsequent to initiation of moratorium, said claim was hit by section 14, sub-section (1) and no such claim could be admitted in CIRP, therefore, impugned order passed by NCLT was to be upheld.

Case Review : Assistant Provident Fund Commissioner v. Sanjay Kumar Lalit [2025] 171 taxmann.com 118 (NCLT - Mum.) and Assistant Provident Fund Commissioner (EPFO) v. Jaykumar Pesumal Arlani RP of Decent Laminates (P.) Ltd. [2025] 171 taxmann.com 366 (NCLT - AHD) affirmed.

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

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

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

The appellant was engaged in real estate development and had several pending consumer complaints before the NCDRC (National Consumer Disputes Redressal Commission) filed by homebuyers alleging delay in possession, deficiency in service, and breach of contractual obligations. The NCDRC allowed the complaints and directed the appellant to complete construction, obtain the requisite occupancy certificate, and hand over possession and imposed 27 penalties on the appellant for deficiency in service by failing to deliver possession

within a reasonable time. The respondent, as decree holders, subsequently filed execution applications seeking execution of the order of the NCDRC as the appellant

failed to comply with the directions of the NCDRC. Subsequently, the appellant, facing insolvency proceedings before the National Company Law Tribunal under the IBC, moved an application before the NCDRC seeking a stay of execution proceedings. The appellant in the application before the NCDRC sought to contest the execution on various grounds, including financial distress, adverse market conditions in the real estate sector, and its ongoing insolvency proceedings. The appellant contended that it had entered into settlement agreements with several decree holders and had already made significant payments, satisfying a substantial portion of the execution claims. However, some instalment payments were delayed due to reasons beyond its control, particularly adverse economic conditions in the real

estate sector. The appellant also contended that it was one of the personal guarantors to credit facilities extended to A by the State Bank of India (SBI). Due to an alleged default in repayment, insolvency proceedings under section 7 of the IBC were initiated against A before the NCLT, Mumbai Bench. Additionally, SBI initiated proceedings under section 95 of the IBC against the appellant, the proprietor of the Judgment Debtor. Consequently, an interim moratorium was triggered against the appellant as per section 96, which the appellant claimed barred further legal proceedings, including the ongoing execution proceedings before the NCDRC. The NCDRC vide the impugned order rejected this application, holding that consumer claims and the penalty imposed did not fall within the moratorium under the IBC.

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

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

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM – GENERAL

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

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

quashing of proceedings initiated under section 138 of NI Act against the appellant. High Court by impugned order dismissed the appellant's petition. It was noted that cause

be quashed.

The appellant was director of the corporate debtor. A contract was executed between the corporate debtor and respondent-trading company where respondent was to function as a super stockist of the corporate debtor. In consequence of business relationship between two companies, the appellant, in his capacity as director of the corporate debtor, had drawn eleven cheques in favour of the respondent. However, said cheques were dishonoured. A complaint was filed against the appellant for offence under section 138 of NI Act. Meanwhile, insolvency of action for offence under Section 138 of NI Act arose after imposition of moratorium. Further, when notice was issued to the appellant, he was not in charge of the corporate debtor as he was suspended from

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

Held that High Court ought to have quashed case against the appellant by exercising its power under section 482 of CrPC. Therefore, impugned order passed by High Court was to

be set aside and complaint pending before CJM filed by respondent against the appellant was to be quashed.

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

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

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

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

Disbursement of funds by banks was made to builders-cum-developers through subvention schemes for various housing development projects. There were three parties to subvention schemes, aggrieved homebuyers, builders-cum-developers, and banks/financial institutions. Aggrieved homebuyers purchased units in some, or other development projects launched by builders-cum-developers. Through subvention scheme, builders-cum-developers advertised that they would pay EMI/pre-EMI of loans taken by homebuyers to purchase said units in their development projects, till specified cut-off taken or till date of

possession, depending on terms of each tripartite agreement. Homebuyers obtained loans from respondent-banks. In furtherance of these tripartite agreements, banks disbursed majority of loan amounts to builders-cum-developers upfront. In 2018 and 2019, when builders-cum-developers defaulted on required EMI/pre-EMI payments, banks began to demand payments from homebuyers. At time of demanding payment from them, homebuyers had not still received possession of their purchased units. In fact, development projects were still under construction, incomplete, or had not even begun construction till then. Owing to this, CIRP proceedings commenced under IBC against builders-cum-developers, before various National Company Law Tribunals across those regions. Aggrieved by banks claiming monthly instalments from them, homebuyers approached High Court of Delhi for a writ of mandamus, inter alia, directing, banks to charge EMI/pre-EMI payments from builders-cum-developers, not homebuyers and to refund already recovered amount to homebuyers and recover it from builders-cum-developers. High Court, vide a common judgment dismissed writ petitions owing to alternate remedy available before Real Estate Regulatory Authority. Challenging same, homebuyers approached Supreme Court.

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

A torn piece of paper with text is visible in the top left corner. The text is upside down and includes words like "Longway", "Key", "car park", "with map", "ome of the", "en as", "you m", "ead", "to", "compa", and "omit".

RECENT DEVELOPMENTS IN INSOLVENCY AND BANKRUPTCY



1. **NCLT Orders Insolvency Proceedings Against Gstaad Hotels**

On July 10, 2025, the Mumbai bench of the National Company Law Tribunal (NCLT) initiated Corporate Insolvency Resolution Process (CIRP) against Gstaad Hotels Pvt Ltd following a petition filed by Omkara Asset Reconstruction Company. The case pertains to a significant default amounting to ₹665.74 crore. The tribunal found sufficient grounds to admit the insolvency application under Section 7 of the Insolvency and Bankruptcy Code (IBC), which allows financial creditors to initiate proceedings upon default. This case underscores the increasingly proactive approach of the NCLT in handling large-scale defaults and enforcing financial discipline. With the admission of this case, an Interim Resolution Professional (IRP) will now take over the management of the company, and creditors will form a Committee of Creditors (CoC) to decide on the future course of action. This development is significant in the context of insolvency enforcement, as it reflects the robust implementation of IBC norms against high-value corporate defaulters.

Link- <https://economictimes.indiatimes.com/industry/services/property/-construction/nclt-orders-insolvency-process-against-gstaad-hotels-over-rs-666-crore-default/articleshow/122357242.cms>

2. **Parliamentary Panel Recommends Dedicated NCLT/NCLAT Benches**

A major development came through a Parliamentary Standing Committee on Finance, which recommended the formation of dedicated benches within the NCLT and NCLAT to exclusively handle cases under the Insolvency and Bankruptcy Code. The recommendation is part of a larger strategy to enhance efficiency and reduce case backlog within the insolvency ecosystem. The Committee observed that the delays in resolution timelines are undermining the IBC's core objective of time-bound insolvency proceedings. Additionally, the panel suggested legal frameworks to support group insolvency and cross-border insolvency cases, aligning India's insolvency infrastructure with international standards. If implemented, these

proposals will mark a significant shift in the handling of IBC matters, ensuring quicker resolutions and improved investor confidence. The upcoming monsoon session of Parliament may see these reforms being formally introduced, potentially transforming the judicial architecture surrounding corporate insolvency in India.

Link- https://www.business-standard.com/finance/news/panel-recommends-dedicated-nclt-nclat-courts-expedite-ibc-cases-125071001311_1.html?

3. **IBBI Allows Flexible Asset-Level Sales in CIRP**

In a significant regulatory change, the Insolvency and Bankruptcy Board of India (IBBI) amended the CIRP regulations, to permit Resolution Professionals (RPs) to invite bids for either the entire corporate debtor or its individual assets. This amendment provides greater flexibility in resolution strategies and is expected to improve recovery rates, especially in cases involving asset-rich but operationally distressed companies. The move is aimed at maximizing value for stakeholders by allowing targeted asset-level resolutions rather than forcing a bundled sale of the entire company. However, such proposals will still require approval from the Committee of Creditors (CoC), ensuring that creditor interests remain central. This development is seen as a response to evolving market needs and provides resolution professionals with more tools to adapt to complex insolvency scenarios. It represents a shift toward a more dynamic and market-responsive insolvency resolution framework.

Link- <https://taxguru.in/corporate-law/ibbi-issues-fourth-amendment-cirp-rules-2025>.

4. **NCLAT Upholds COVID-19 Moratorium in Zee Entertainment Case**

The National Company Law Appellate Tribunal (NCLAT) dismissed IDBI Bank's appeal to initiate insolvency proceedings against Zee Entertainment Enterprises Ltd. The bank's claim pertained to a default of ₹150 crore. However, the NCLAT upheld the NCLT's earlier decision, ruling that the default occurred during

the moratorium period under Section 10A of the IBC, which suspended insolvency proceedings for defaults occurring during the COVID-19 pandemic. The appellate tribunal held that the intent of Section 10A was to provide relief to businesses hit by the pandemic and that initiating CIRP for such defaults would go against the legislative intent. While the bank retains the right to initiate insolvency for defaults occurring after the moratorium period, this decision reinforces the protective ambit of Section 10A and sets a precedent on the scope of relief available under pandemic-related provisions.

Link-

<https://www.moneycontrol.com/news/business/major-relief-for-zee-entertainment-as-nclat-dismisses-idbi-bank-s-plea-seeking-insolvency-proceedings-12986979.html>

Link-<https://cbcl.nliu.ac.in/insolvency-law/transferability-of-winding-up-proceedings-to-nclt-after-passing-of-winding-up-order-upholding-the-objectives-of-ibc>

5. NCLT Directs IBBI to Amend CIRP Rules for Winding-Up Cases

Although stemming from an order, the NCLT Principal Bench's directive to the IBBI regarding CIRP rules for winding-up cases remains highly relevant in Q2 2025. The tribunal instructed the IBBI to incorporate specific provisions into the CIRP regulations to handle legacy winding-up cases transferred from High Courts under the Companies Act. The absence of procedural clarity in such cases has often led to delays and confusion. This direction, if acted upon by the IBBI, could lead to streamlined procedures and uniformity in handling such transitional matters. The NCLT's proactive approach in this regard is seen as a necessary step toward ensuring procedural certainty and efficient resolution. The legal community and insolvency professionals have welcomed this move, and subsequent regulatory changes are expected to align CIRP norms with the realities of legacy case management.

CHECKLIST ON REPORTING REQUIREMENTS OF INSOLVENCY PROFESSIONAL UNDER IBC, 2016

Every professional member of the Insolvency Professional Agency of Institute of Cost Accountants of India shall ensure their completion of reporting compliances on a monthly/event basis in accordance with the following checklist.

Corporate Insolvency Resolution Process (CIRP) Forms

FORM NO.	PERIOD COVERED & SCOPE	TO BE FILLED BY	TIMELINE
CP-1	From commencement of CIRP till constitution of CoC: Includes details of IRP, CD, Applicant; admission of application by AA; public announcement; details of ARs; taking over management of CD; receipt and verification of claims; constitution of CoC, etc.	IRP	On or before the 10 th day of the subsequent month after filing the report on constitution of CoC to AA.
CP-2	From constitution of CoC till issue of RFRP: Includes details of RP; registered valuers; Information Memorandum; Expression of Interest; RFRP and modifications thereof.	RP	On or before the 10 th day of the subsequent month after issuance of RFRP.
CP-3A	Approval of resolution plan/liquidation/closure by AA: Includes details of resolution plan approved by AA or liquidation order or closure order.	RP	Within 7 days of disposal of application by AA.
CP3B	Approval of resolution plan / liquidation / closure by AA: This includes details of the resolution plan approved by the AA or liquidation order or closure order; etc.	RP	Within 7 days of disposal of application by AA.
CP-4	Avoidance transactions reported to AA: Includes details of avoidance transactions (preferential, undervalued, extortionate credit, fraudulent); underlying amounts; date of reporting to AA; order of AA on the application.	RP	On or before the 10 th day of the subsequent month after filing or disposal of application(s) with AA.

CP-5	Monthly Progress: Includes updates on status of CIRP; CoC meetings; litigations; expenses incurred; reasons for delay (if any); applicable to all ongoing CIRPs.	IRP/RP	On or before the 10 th day of every month for the preceding month.
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Liquidation Forms

FORM NO.	PERIOD COVERED & SCOPE	TIMELINE
LIQ 1	From liquidation commencement date till public announcement: This includes details of the liquidator, corporate debtor, the liquidator's fee, etc.	On or before the 10 th day of the subsequent month, after a public announcement has been made.
LIQ 2	From public announcement till Progress Report: This includes details of valuation, sale, litigations, avoidance of transactions, meetings of consultation committee, receipts and payments, etc.	On or before the 10 th day of the subsequent month, after submission of each Progress Report to the Adjudicating Authority.
LIQ 3	From final report to application for dissolution: This includes details of unclaimed proceeds, sale, litigations, avoidance transactions, realisation, distribution of proceeds, receipts and payments, etc.	On or before the 10 th day of the subsequent month, after submission of the dissolution /closure application to the Adjudicating Authority.
LIQ 4	From application for dissolution to order of dissolution: This includes details of the distribution of proceeds, receipts and payments, etc.	On or before the 14 days of passing of the order for dissolution of corporate debtor or closure of the liquidation process by the AA.

Voluntary Liquidation Forms

FORM NO.	PERIOD COVERED & SCOPE	TIMELINE
VL-1	Details of the Corporate Debtor and initiation of Voluntary Liquidation process.	On or before the 10 th day of the second month after the public announcement.
VL-2	Details of meetings of contributors; reasons for delay; details of replacement of liquidator, if any.	On or before the 10 th day of the subsequent month after such meeting or replacement.

VL-3	Details of dissolution application; details of unclaimed proceeds; realization and distribution made to stakeholders; pending litigations; detection of fraud or insolvency, if any.	On or before the 10 th day of the subsequent month after submission of dissolution application or withdrawal/suspension to AA.
VL-4	Order for dissolution: Includes distribution of proceeds, receipts and payments, etc.	Within 14 th days of passing the dissolution order or withdrawal/suspension of voluntary liquidation process.

Additional Obligations

- Relationship Disclosures: As per IBBI Circular No. IP/05/2018 dated 16th January 2018, within 3 days of trigger event.
- Cost and Expenses Disclosure: As per IBBI Circular No. IBBI/IP/013/2018 dated 12th June 2018, within 7 days of demitting office as IRP/RP.
- Monthly Status Report: Submit to IPA ICAI at monitoring@ipaicmai.in by the 7th of every month for all ongoing assignments.

Penalty for Delay

- Delays in submission of reports/disclosures will attract penalties as per the Monitoring Policy:
 - Delay up to 15 days: Condoned without penalty.
 - Delay 15–45 days: May be condoned by Monitoring Committee without penalty.
 - Delay beyond 45 days: Penalty of Rs.100 per day from the 45th day.
 - Delay beyond 90 days: Referred to Disciplinary Committee
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COMPLIANCES TO BE MADE BY IPS UNDER IBC 2016 TO IBBI AND IPA OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

As per the IBBI (Insolvency Professionals) Regulations, 2016 and the Code of Conduct for Insolvency Professionals, every Insolvency Professional (IP) is required to comply with the following reporting and disclosure requirements. These are in accordance with provisions of the Insolvency and Bankruptcy Code, 2016, and Monitoring Policy of Insolvency Professional Agency of Institute of Cost Accountants of India (IPA of ICAI).

• *FIRST SCHEDULE [Under Regulation 7(2)(h)]* **CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS**

8. An insolvency professional shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under sections 53 or 178 of the Code, and the concerned corporate person/ debtor as soon as he becomes aware of it, by making a declaration of the same to the applicant, committee of creditors, and the person proposing appointment, as applicable.

8A. An insolvency professional shall disclose as to whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor, to the committee of creditors and to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

8B. An insolvency professional shall disclose [its] relationship, if any, with the corporate debtor, other professionals engaged by [it], financial creditors, interim finance providers, and prospective resolution applicants to the insolvency professional agency of which he is a member, within the time specified hereunder

Relationship of the insolvency professional with	Disclosure to be made within three days of
Corporate Debtor	his appointment
Registered valuers / accountants/ legal professionals/ other professionals appointed by him	appointment of the professionals.
Financial Creditors	the constitution of committee of creditors.
Interim Finance Providers	the agreement with the interim finance provider.
Prospective Resolution Applicants	the supply of information memorandum to the prospective resolution applicant.
If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising.

8C. An insolvency professional shall ensure disclosure of the relationship, if any, of the other professionals engaged by [it] with [itself], the corporate debtor, the financial creditor, the interim finance provider, if any, and the prospective resolution applicant, to the insolvency professional agency of which he is a member, within the time specified as under:

Relationship of the other professional with	Disclosure to be made within three days of
Insolvency professional	the appointment of the other professional.
Corporate debtor	the appointment of the other professional
Financial creditors	constitution of committee of creditors

Kind of Relationship

Kind of relationship	Nature of relationship
A	Where the insolvency professional or the other professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party
B	Where the insolvency professional or the other professional, as the case may be, is a shareholder, director, key managerial personnel or partner of the related party.
C	Where a relative (spouse, parents, parents of spouse, sibling of self and spouse, and children) of the insolvency professional or the other professional, as the case may be, has a relationship of kind A or B with the related party
D	Where the insolvency professional or the other professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an insolvency professional entity or registered valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party
Interim finance providers	the agreement with the interim finance provider or three days of the appointment of the other professional, whichever is later
Prospective resolution applicants	the supply of information memorandum to the prospective resolution applicant or three days of the appointment of the other professional, whichever is later.

If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising.
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For the purposes of clause 8B and 8C above, 'relationship' shall mean any one or more of the following four kinds of relationships at any time or during the three years preceding the appointment of other professionals:

8D. An insolvency professional shall ensure timely and correct disclosures by [it], and other professionals appointed by [it] and shall provide a confirmation to the insolvency professional agency of which he is a professional member to the effect that the appointment, if any, of every other professional has been made at arms' length relationship.

25A. An insolvency professional shall disclose the fee payable to [it], the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by [it] to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

• **Compliance Requirements as per the Monitoring Policy of IPA ICAI**

Compliance Requirement	Timeline
Submission of records to IBBI and IPA (Section 208(2)(d) of IBC 2016)	As and when proceedings occur
Monthly Status Report	By 7 th day of every month for ongoing assignments
Event-based Reporting	Within 24 hours of the event (penalty/legal action, etc.)
Half-Yearly Report	15 th October and 15 th April for respective half-year periods
Conclusion Report	Within 7 days of the conclusion of assignment

Under Section 208(2)(d) Insolvency and Bankruptcy Code 2016:

Every insolvency professional shall abide by the following code of conduct: to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board, as well as to the insolvency professional agency of which he is a member.

Monthly Status Report: To be submitted by 7th day of each month for all ongoing assignments to the Monitoring Department of IPA of ICAI, as per the format prescribed under the Monitoring Policy.

Requirement	Timeline
Submit Monthly Status Report for all ongoing assignments in prescribed format	By the 7th day of every month
Continue submission until vacation of office as IRP/RP/Liquidator	Throughout assignment period

Event-Based Reporting: The Professional Member must report to IPA within 24 hours in the event of any warnings, penalties, or initiation of legal action against the Professional Member.

Event Trigger	Reporting Timeline
Any warnings, penalties, or strictures imposed by a competent authority	Within 24 hours of occurrence
Initiation of legal action against the Insolvency Professional	Within 24 hours of occurrence

Half-Yearly Report: As per Regulation 16 of the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, every Professional Member shall submit a report on ongoing and concluded assignments twice annually in the format specified by IPA, even if no assignment is being handled (in which case 'NIL' report should be filed).

Reporting Period	Last Date of Submission
1st April to 30th September	15th October
1st October to 31st March	15th April

Report on Conclusion of Assignments: Every member shall submit a conclusion report within 7 days of completing each assignment to IPA, including a copy of the approved resolution plan or the liquidation order, as applicable.

Penalties for Delay

Delays in submission of HYR attract penalties as per the Monitoring Policy:

- Delay up to 15 days: Condoned without penalty.
- Delay between 15–45 days: May be condoned by Monitoring Committee without penalty.
- Delay beyond 45 days: Penalty of Rs. 100 per day from the 45th day.
- Delay beyond 90 days: The Case will be referred to the Disciplinary Committee.

GUIDELINES FOR ARTICLE

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

- ✓ The article should be original, i.e., not published/broadcasted/hosted elsewhere including any website. A declaration in this regard should be submitted to IPA ICAI in writing at the time of submission of article.*
- ✓ The article should be topical and should discuss a matter of current interest to the professionals/readers.*
- ✓ It should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of.*
- ✓ The length of the article should be 2500-3000 words.*
- ✓ The article should also have an executive summary of around 100 words.*
- ✓ The article should contain headings, which should be clear, short, catchy, and interesting.*
- ✓ The authors must provide the list of references if any at the end of article.*
- ✓ A brief profile of the author, e-mail ID, postal address and contact numbers and declaration regarding the originality of the article as mentioned above should be enclosed along with the article.*
- ✓ In case the article is found not suitable for publication, the same shall not be published.*
- ✓ The articles should be mailed to “publication@ipaicmai.in.”*

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**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**