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

YOUR INSIGHT JOURNAL

IPA-ICMAI

OVERVIEW

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

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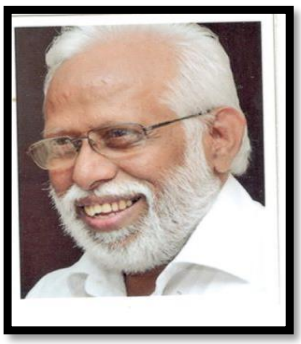

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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Reader,

Greetings to you from all of us in TEAM IPA-ICMAI. At IPA-ICMAI, our young team strives to be up to mark on both streams of our mandate – regulation and professional development.

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

IPA-ICMAI celebrates its 9th Foundation Day on Friday, 28th November 2025

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

- Enhancing effectiveness of CoC through a comprehensive Code of Conduct by Anil Kumar
- Impact of Insolvency Proceedings on Real Estate Markets by Mohita Garg
- Triadic Tension between the Resolution Professional, the CoC and judiciary by Payal Agarwal
- Transition from 'Sale as a Going Concern' to Asset based Realisation in liquidation by Sameer Rastogi
- Claims Submission under CIRP by Manish Sukhani.

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

Mr. G.S. Narasimha Prasad
Managing Director

PROFESSIONAL DEVELOPMENT INTIATIVES

OCTOBER 2025	
DATE	**EVENTS CONDUCTED**
October 4, 2025	**A Workshop on "Foundation & Framework for Going Concern Management"** was organized on **October 4, 2025**, focusing on the fundamental principles and practical approaches to managing companies as a going concern during insolvency proceedings**.**
October 8, 2025,	A **Seminar on "Insolvency and Bankruptcy Code, 2016**" was held on **October 8, 2025**, in association with **WIRC, Mumbai**, providing a comprehensive overview of the Code's implementation, emerging issues, and professional best practices.
October 10, 2025,	**A Workshop on "Management of Creditors under IBC: Framework, Dynamics & Practice"** was organized on October 10, 2025, highlighting the key role of creditors in the insolvency process and ways to improve coordination among stakeholders. The workshop covered the following key topics, Dynamics of the Committee of Creditors (CoC), Statutory and Other Creditors – Where Do They Stand? Operational Creditors – Rights, Remedies & Realities, etc.
October 17, 2025	**A Workshop on "Avoidance Transactions under IBC, 2016" was organized on October 17, 2025,** offering an in-depth understanding of the legal provisions, judicial interpretations, and practical challenges in identifying and handling avoidance transactions. The session witnessed an encouraging participation of more than 72 professionals, reflecting the growing interest and relevance of this critical area of practice.
October 25, 2025	**A Workshop on "Navigating Cross-Border & Group Insolvency under IBC, and Global Practices**" was held on October 25, 2025, exploring the emerging framework for cross-border insolvency, group insolvency mechanisms, and comparative insights from global best practices**.**

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ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
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Ms. Mohita Garg
Insolvency Professional

Abstract

Real estate is one of the most asset-intensive sectors of any economy and often forms the backbone of corporate balance sheets. When companies enter insolvency proceedings, these immovable assets become central to creditor recovery and restructuring strategies. Insolvency, however, affects more than individual firms; it reshapes market dynamics, impacts liquidity, alters investor confidence, and drives long-term reforms in valuation and policy frameworks. This paper examines the multifaceted impact of insolvency on real estate markets, analyzing both disruptions and opportunities, with a particular focus on the role of valuers, regulators, and investors in ensuring sustainable market resilience.

Introduction

Real estate markets represent a crucial intersection of finance, infrastructure, and social development. Land and property assets often account for a substantial share of corporate borrowing, functioning as collateral for loans and as income-generating resources. Yet, in times of financial distress, the very immobility and regulatory rigidity of real estate become liabilities. Insolvency proceedings subject such assets to forced sales, prolonged litigation, or repurposing, all of which reverberate across broader property markets.

The Insolvency and Bankruptcy Code (IBC) in India and similar frameworks worldwide were designed to accelerate resolution and maximize value recovery. Nonetheless, the translation of legal mechanisms into market practice remains complex. Real estate is uniquely sensitive because its valuation depends not only on market cycles but also on regulatory clearances, construction progress, and investor sentiment. This article explores how insolvency shapes real estate outcomes in both the short and long term and considers strategies for stakeholders to mitigate risks while unlocking opportunities.

The Nexus Between Insolvency and Real Estate

Insolvency arises when firms cannot service financial obligations. For real estate–heavy businesses—such as developers, hospitality groups, or logistics firms—the consequences are pronounced because land and property underpin both operations and borrowing. Several structural linkages define this nexus:

- **Collateralized Financing:** Corporate loans are often backed by immovable assets, and defaults trigger enforcement proceedings that place real estate in the spotlight of creditor recovery (Sharma & Thomas, 2020).
- **Capital Intensity:** Real estate projects demand large upfront investments, exposing firms to high leverage and vulnerability to market downturns (Royal Institution of Chartered Surveyors (RICS, 2019).
- **Regulatory Dependencies:** Permissions, environmental approvals, and zoning restrictions complicate asset transfers during insolvency (WorldBank, 2020).
- **Spillover Effects:** Distressed sales in one segment can depress valuations and investor sentiment across the market, amplifying systemic risk.

Thus, real estate is not merely an asset in insolvency—it is the stage on which creditor recoveries, investor strategies, and policy interventions unfold.

Market Impacts Across Time Horizons

The influence of insolvency proceedings on real estate can be mapped across temporal phases. Instead of compartmentalizing, these impacts are best understood as an evolving continuum.

Immediate Disruptions: At the onset of insolvency, liquidity pressures force quick asset disposals. Distressed sales

typically fetch prices significantly below fair market value. Studies have shown that commercial properties under insolvency in India may trade at 20–40% markdowns compared to pre-distress valuations (Insolvency and Bankruptcy Board of India [IBBI], 2022) ((2022)., Annual report 2022-23). Investor sentiment weakens, financing institutions tighten credit, and rumors of contagion can trigger market-wide volatility. Procedural delays—whether due to court approvals or title disputes—further freeze development pipelines.

Medium-Term Adjustments: As cases progress, markets recalibrate. Lenders impose stricter credit norms, limiting speculative projects while favoring established zones. Developers struggle to refinance, but new investors—especially private equity and distressed-asset funds—emerge to acquire undervalued assets. This reallocation shifts capital toward logistics hubs, affordable housing, or co-working spaces, reflecting demand trends. While stabilizing, such portfolio rebalancing can exacerbate regional imbalances or stall innovative projects.

Long-Term Transformation: Over time, insolvency can catalyze structural reforms. Assets stranded in stalled developments may be reallocated to capable players, reviving projects or repurposing them for more viable uses. Improved valuation practices, bolstered by technology such as GIS and predictive analytics, strengthen market transparency. Regulatory refinements, including amendments to the IBC and global equivalents, reduce litigation timelines and enhance investor protection (Organisation for Economic Co-operation and Development [OECD], ((2021).). Thus, insolvency evolves from a source of disruption into a driver of systemic resilience.

Challenges and the Role of Valuers

Despite potential benefits, real estate during insolvency presents formidable challenges:

- **Distressed Valuation vs. Fair Value:** Determining whether assets should be sold at liquidation value or longer-term fair potential creates tensions between creditors and buyers.
- **Stakeholder Coordination:** Multiple actors—banks, resolution professionals, regulators, and investors—must align, but divergent interests often slow proceedings.
- **Data Deficiencies:** Insolvent firms frequently lack reliable records of ownership, approvals, or construction progress, complicating due diligence.
- **ESG Considerations:** Contemporary investors demand compliance with environmental, social, and governance norms, adding new filters for distressed asset acquisition.

In this context, the role of registered valuers is pivotal. By conducting **enhanced due diligence**, leveraging **advanced valuation tools**, and integrating **ESG risk assessments**, valuers provide the transparency needed for investor confidence. Scenario-based modeling—offering distressed sale, fair market, and income-based valuations—enables stakeholders to make informed choices. Ultimately, valuers bridge the gap between distressed realities and long-term potential.

Global and Indian Illustrations

The Indian real estate market has witnessed high-profile insolvency cases under the IBC, from large developers whose stalled projects left homebuyers stranded to infrastructure firms whose land banks became central to creditor recovery. Resolution outcomes have been mixed: while some assets attracted institutional investors at discounted valuations, others languished due to legal disputes.

Internationally, similar patterns are evident. In the aftermath of the 2008 global financial crisis, distressed real estate sales in the United States created opportunities for private equity funds, which acquired undervalued portfolios and later exited profitably (PIMCO, 2010). In Europe, insolvency frameworks were refined to accelerate real estate workouts, fostering investor trust. These global experiences highlight that while insolvency depresses valuations in the short run, it can stimulate market renewal if supported by effective legal and valuation ecosystems.

Policy Pathways for Resilient Real Estate

Building resilience in real estate markets amid insolvency requires multi-pronged strategies:

Strengthening Legal Timelines: Expedited court approvals and streamlined dispute resolution can reduce value erosion from delays.

Enhancing Valuation Standards: Broader adoption of international best practices and technology-driven methodologies ensures credibility.

Facilitating Secondary Markets: Creating transparent platforms for trading distressed real estate can improve liquidity and price discovery.

Incorporating ESG into Resolution: Policies encouraging sustainable redevelopment of distressed assets align with global capital preferences.

Stakeholder Education: Training for lenders, valuers, and investors enhances awareness of insolvency complexities and potential opportunities.

Conclusion

Insolvency proceedings have a profound impact on real estate markets, oscillating between immediate distress and long-term transformation. Short-term effects include liquidity crunches, suppressed valuations, and shaken investor confidence. Yet, insolvency also triggers structural reforms, revitalizes stalled projects, and encourages more rigorous valuation practices. The role of valuers is central, offering not just technical expertise but also trust-building in uncertain times.

As economic volatility and corporate defaults continue to test resilience, real estate markets must evolve through robust legal frameworks, transparent valuation, and adaptive investor strategies. Insolvency is not merely a challenge—it is a catalyst for reimagining the allocation, valuation, and governance of real estate assets.

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THE UNCHARTED TERRAIN OF RESOLUTION PLAN NAVIGATING THE TRIADIC TENSION BETWEEN THE RESOLUTION PROFESSIONAL, THE COC, AND JUDICIAL INTERVENTION

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Synopsis/Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) heralded a paradigm shift in India's corporate insolvency landscape, pivoting from a debtor-in-possession to a creditor-in-control model. Central to this process is the resolution plan, a blueprint for a corporate debtor's revival. While the IBC delineates a clear framework for the formulation and approval of such plans, the practical interplay between the key stakeholders—the Resolution Professional (RP), the Committee of Creditors (CoC), and the Adjudicating Authority (AA)/Appellate Tribunal—has engendered a complex, and often contentious, jurisprudential terrain. This article conducts a critical doctrinal and analytical study of this triadic relationship. It posits that the ostensibly clear statutory demarcation of roles is frequently blurred, leading to judicial overreach or, conversely, undue deference to commercial wisdom. The study scrutinizes the RP's multifaceted role as a facilitator, supervisor, and compliance checker, the CoC's primacy in commercial decision-making, and the evolving scope of judicial review by the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). Through an analysis of landmark judicial pronouncements, the article identifies key areas of friction, including the interpretation of 'maximization of value' versus 'other stakeholders' interests,' the applicability of the 'business judgment rule,' and the permissible grounds for judicial interference with a CoC-approved plan. The findings reveal a judicial trajectory that is still crystallizing, with courts increasingly delineating the boundaries of their authority to ensure the plan's legal conformity without supplanting the CoC's commercial judgment. The article concludes by offering suggestions for a more predictable and efficient approval regime, emphasizing the need for standardized checklists for RPs, clearer legislative guidance on the treatment of dissenting creditors and statutory dues, and a reaffirmation of the principle of limited judicial review to preserve the IBC's core objective: value maximization and timely resolution.

Keywords: Insolvency and Bankruptcy Code 2016, Resolution Plan, Resolution Professional, **Committee** of Creditors, Judicial Review, NCLT, NCLAT, Commercial Wisdom, Value Maximization.

1. Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a watershed moment in Indian economic jurisprudence. It was conceived as a comprehensive legislation to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. The primary objective was to promote investment, protect the interests of various stakeholders, and balance the interests of all the parties involved. At the heart of the corporate insolvency resolution process (CIRP) lies the resolution plan—a prospective contract that seeks to resuscitate a corporate debtor as a going concern, as opposed to its liquidation.

The statutory journey of a resolution plan, from its inception to final approval, is a meticulously choreographed process involving three principal actors:

1. The Resolution Professional (RP): Appointed to manage the affairs of the corporate debtor during the CIRP, the RP invites plans, constitutes the CoC, and presents the plan(s) to the CoC and subsequently to the Adjudicating Authority.

2. The Committee of Creditors (CoC): Comprising the financial creditors of the corporate debtor, the CoC is endowed with the "commercial wisdom" to evaluate and approve a resolution plan by a super-majority vote.

3. The Adjudicating Authority (AA - typically the NCLT): Charged with the judicial function of ensuring that the CoC-approved plan conforms to the requirements laid down under Section 30(2) of the IBC and does not contravene any law.

The IBC, in its original design, envisaged a clean separation of powers: the RP acts as a facilitator and compliance officer, the CoC exercises its business decision-making process, and the AA provides a judicial check on legality. However, the practical application of this framework has proven to be far from seamless. This article argues that the approval mechanism for resolution plans is a site of continuous negotiation and tension among these three pillars. The judiciary, through the NCLT and NCLAT, has been compelled to interpret the limits of its authority, often venturing into areas that test the boundaries of the CoC's commercial wisdom. This article seeks to dissect this triadic interplay, analyse the emerging judicial trends, and evaluate the implications for the efficacy and predictability of the IBC regime.

2. Statement of Problem

The problem underpinning this research is the inherent tension and jurisdictional ambiguity in the approval process of a resolution plan under the IBC. Despite a seemingly clear statutory mandate, the process is fraught with challenges that threaten the Code's core principles of timeliness and value maximization.

The specific problems investigated are:

1. The Evolving and Expansive Role of the Resolution Professional: The RP's duty under Section 30(2) to examine the plan for compliance is a passive check or an active investigative mandate. The ambiguity leads to delays and potential litigation if the RP's interpretation of compliance is contested.

2. The Contours of the CoC's 'Commercial Wisdom': While the Supreme Court in Ebix Singapore and other cases has vehemently upheld the primacy of the CoC's commercial wisdom, the boundaries of this wisdom are nebulous. Can it be completely unfettered, ignoring the interests of operational creditors, dissenting financial creditors, and other stakeholders beyond the statutory minimum?

3. The Scope and Limits of Judicial Intervention: The most significant problem is defining the NCLT's jurisdiction under Section 31. Is its role limited to a mere "rubber-stamp" verification of the checklist under Section 30(2), or does it possess a broader "judicial review" power to scrutinize the fairness, feasibility, and the very "commercial wisdom" of the CoC's decision? Inconsistencies in judicial approach create uncertainty, leading to appeals and delays, thereby defeating the time-bound nature of the CIRP.

4. The Balancing Act: The fundamental problem is achieving a delicate balance between respecting the commercial decision of the CoC and ensuring that the resolution process is just, equitable, and legally sound. This research aims to explore how this balance is being struck and at what cost to the efficiency of the resolution process.

3. Review of Literature / Background

A substantial body of literature has emerged since the IBC's inception, analysing its various facets. Early scholarship, such as that by Chakrabarti and De (2018), focused on the architectural shift brought by the IBC, celebrating the move from a secured creditor-dominated recovery mechanism to a collective creditor-driven resolution process. They highlighted the role of the RP as a linchpin but primarily as an administrator.

Subsequent literature, including reports by the Insolvency and Bankruptcy Board of India (IBBI) and commentaries by legal scholars like Chaturvedi and Chaturvedi (2020), began to identify teething problems. They noted the NCLT's initial tendency to delve into the commercial merits of plans, leading to the Supreme Court's seminal judgment in Essar Steel India Limited vs. Satish Kumar Gupta & Ors. (2019). This judgment was a corrective measure, strongly reiterating the primacy of the CoC's commercial wisdom and cautioning the NCLT against acting as a "super-appellate authority."

The discourse then evolved to critique the absolute nature of the CoC's power. Scholars like Chawla and Datta (2021) argued that an unfettered CoC, driven solely by value maximization for financial creditors, could lead to inequitable outcomes for operational

creditors and employees, potentially violating the IBC's objective of balancing all interests. The Supreme Court's judgment in Vijay Kumar Jain vs. Standard Chartered Bank & Ors. (2019), which emphasized the rights of all creditors to access the plan, and the subsequent amendments introducing the mandatory distribution waterfall, were responses to this critique.

Recent academic work has focused on the post-Essar Steel landscape. Researchers are now analysing whether the judiciary has swung too far in the other direction, adopting a posture of excessive deference that allows potentially non-compliant or patently unfair plans to be approved. The literature, however, lacks a focused analysis of the ongoing, dynamic tension in the triadic relationship between the RP, CoC, and the AA. This article seeks to fill that gap by providing a contemporary analysis of this interplay and its impact on the resolution ecosystem.

4. How the Study is Undertaken

This research employs a doctrinal and analytical methodology. The primary sources of data are:

The Insolvency and Bankruptcy Code, 2016, along with subsequent amendments and regulations framed by the IBBI.

Landmark judgments and a curated selection of orders from the Supreme Court of India, the National Company Law Appellate Tribunal (NCLAT), and various benches of the National Company Law Tribunal (NCLT). Key cases analysed include Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors., Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr., Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. & Anr., and Vijay Kumar Jain vs. Standard Chartered Bank & Ors.

Secondary sources, including scholarly articles, commentaries, and reports from the IBBI and other financial and legal research institutions.

The analysis is structured to:

1. Deconstruct the statutory provisions governing each stakeholder's role (Sections 25, 30, 31 of the IBC).

2. Trace the judicial evolution of the interpretation of these provisions, identifying key turning points and conflicting viewpoints.

3. Categorize the specific grounds on which judicial interference has been sanctioned or rejected.

4. Synthesize the findings to identify persistent challenges and emerging principles.

5. Findings from the Study

The research yields several critical findings:

1. The RP's Role is Increasingly Quasi-Judicial: Courts have clarified that the RP's duty under Section 30(2) is not a mere formality. The RP must apply their mind to ensure the plan conforms to the law. Failure to do so can lead to the plan being rejected by the AA, and the RP may face disciplinary action from the IBBI. However, the RP is not required to evaluate the commercial fairness of the plan, a domain reserved for the CoC.

2. The "Commercial Wisdom" of the CoC is Not Absolute but Highly Deferential: The study finds a strong judicial consensus, led by the Supreme Court, that the commercial wisdom of the CoC is sacrosanct and not open to judicial review on its merits. However, this wisdom must be exercised within the four corners of the IBC. Findings indicate that courts will intervene if:

The decision-making process of the CoC is vitiated by mala fides, fraud, or collusion.

The plan is patently illegal or contravenes the provisions of Section 30(2).

The plan unfairly discriminates against a class of creditors beyond the asymmetric treatment inherent in the IBC's structure.

3. Judicial Intervention is Primarily Procedural and Legality-Centric: The NCLT's role has been crystallized as a guardian of due process and legality. Its inquiry is not, "Is this a good commercial deal?" but rather, "Was the process followed, and does the plan meet the statutory requirements?" Key grounds for judicial interference identified include:

Non-compliance with the mandatory distribution mechanism outlined in Section 30(2)(b).

Violation of the provisions of Section 29A (ineligibility of certain persons to submit a plan).

The plan is not feasible or viable in its implementation.

The plan unfairly prejudices the interests of stakeholders.

4. The "Feasibility and Viability" Criterion is a Major Point of Contention: The requirement under Section 30(2)(d) that the plan must demonstrate its feasibility and viability for implementation has become a significant ground for judicial scrutiny. While the CoC is best placed to assess this, the AA has, in several instances, rejected plans where the source of funds was unclear or the business model for revival was deemed fanciful, demonstrating that "commercial wisdom" is not a shield against a fundamental lack of feasibility.

6. Analysis & Interpretation

The findings reveal a legal ecosystem in a state of dynamic equilibrium. The initial years of the IBC saw the NCLT benches exercising wide-ranging scrutiny, often second-guessing the CoC. The Supreme Court's intervention in Essar Steel was a necessary corrective, establishing a clear hierarchy where commercial decisions rest with the CoC. This has undoubtedly reduced frivolous challenges and reinforced the creditor-in-control model.

However, this interpretation has created its own set of challenges. The principle of deference has sometimes been interpreted by lower tribunals as a mandate for non-interference, leading to the approval of plans that, while commercially astute for the financial creditors, may push the boundaries of legality and fairness. The Ebix Singapore case is a prime example, where the NCLAT initially set aside a CoC-approved plan due to perceived legal flaws in the process, a decision that sparked a debate on the limits of appellate intervention.

The analysis suggests that the judiciary is now carving out a "middle path." This path acknowledges the CoC's primacy but reserves for the AA a robust power of review limited to:

Procedural Propriety: Ensuring a fair, transparent, and non-discriminatory process.

Substantive Legality: Enforcing the mandatory requirements of the IBC, especially those pertaining to the distribution waterfall and ineligibility criteria.

Manifest Arbitrariness: Intervening only in those rare cases where the CoC's decision is so irrational that no reasonable body of creditors could have arrived at it.

This middle path is prudent but inherently subjective. The interpretation of "feasibility" or "unfair prejudice" can vary significantly between NCLT benches, leading to inconsistency and forum shopping. The lack of a standardized, quantitative measure for these qualitative assessments remains a systemic weakness.

Furthermore, the RP is caught in a crossfire. An overly cautious RP may delay the process by seeking repeated clarifications, while a lax RP may face judicial censure for approving a non-compliant plan. This highlights the need for more precise guidelines from the IBBI on the RP's fiduciary and statutory duties during plan evaluation.

7. Conclusion & Suggestions

The journey of a resolution plan from conception to judicial sanction under the IBC is a complex interplay of commercial acumen, statutory compliance, and judicial oversight. This research concludes that while the jurisprudential foundation has stabilized around the primacy of the CoC's commercial wisdom, the practical application continues to be refined through judicial interpretation. The triadic relationship between the RP, CoC, and AA is not one of rigid separation but of collaborative checks and balances, albeit with inherent tensions.

To strengthen this framework and enhance the predictability and efficiency of the CIRP, the following suggestions are proposed:

1. Legislative Clarity: A clarifying explanation could be added to Section 31(1) of the IBC explicitly delineating the scope of the Adjudicating Authority's inquiry. This would minimize subjective interpretations and reinforce the principle of limited review.

2. IBBI Guidelines on "Feasibility and Viability": The IBBI should issue non-binding guidance

notes outlining the parameters for assessing a plan's feasibility. This would provide a framework for both the CoC and the RP, reducing ambiguity and potential grounds for challenge.

3. Standardized RP Checklists: Developing a comprehensive, dynamic checklist for RPs to use when examining plans under Section 30(2) would bring uniformity to the compliance verification process and protect RPs from allegations of negligence.

4. Strengthened Dissent Management: The law should provide more explicit guidance on the treatment of dissenting financial creditors, ensuring their rights are protected without allowing a small minority to hold the resolution process hostage. The current waterfall under Section 30(2)(b) is a step in the right direction, but its application needs consistent judicial enforcement.

5. Specialized NCLT Benches: Establishing dedicated insolvency benches within the NCLT, with judges and technical members possessing specialized expertise in finance and corporate law, would lead to more consistent and informed decisions on the approval of resolution plans.

In conclusion, the resolution plan approval mechanism under the IBC is a remarkable legal innovation that is still maturing. By refining the roles of the RP, CoC, and the judiciary through precise guidelines and consistent jurisprudence, India can realize the full potential of its insolvency framework, ensuring that the corporate resurrection it seeks is both swift and just.

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SYNOPSIS

I. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) restructured India's insolvency framework by transferring control of resolution from promoters to creditors. Central to this regime is the Committee of Creditors (CoC) constituted under Section 21, which exercises decisive authority in approving resolution plans, replacing the Resolution Professional (RP), and determining whether a corporate debtor should continue as a going concern or proceed to liquidation. In liquidation, an analogous consultative body—the Stakeholders' Consultation Committee (SCC)—functions under Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016.

While the Code and regulations elaborate on the powers and procedures of these bodies, they remain silent on ethical or behavioral standards guiding their decision-making. Judicial and regulatory experience increasingly shows that arbitrary or conflicted CoC conduct undermines both fairness and efficiency. Following the decision in *Kunwer Sachdev v. IDBI Bank & Ors.*, 2024 SCC OnLine Del 908, the IBBI issued a Model Code of Conduct for the CoC. However, as it is only recommendatory and lacks penalties or oversight, creditor behavior remains effectively unregulated.

This paper identifies the legal vacuum governing CoC and SCC conduct, examines its consequences for stakeholder confidence, draws lessons from comparative jurisdictions, and proposes a codified and enforceable Code of Conduct—anchoring commercial discretion within principles of transparency and ethical accountability.

II. Regulatory Context: Power without Norms

The CoC's powers under Sections 21, 27, and 30(4) of the IBC are sweeping: it alone decides the viability of resolution plans, liquidation, and the appointment or replacement of the RP.

Regulations 18 and 25A specify voting thresholds and representation procedures but impose no substantive standards on how those powers are exercised.

The SCC, though formally advisory, often exerts quasi-supervisory influence over the liquidator, occasionally conflicting with the latter's independent powers under Section 35. The IBBI's Model Code of Conduct acknowledges this issue but lacks legal enforceability or sanctions.

In contrast, insolvency professionals (IPs) are bound by a statutory Code of Conduct under the IBBI (Insolvency Professionals) Regulations, 2016, with disciplinary consequences for violations. No parallel exists for CoC or SCC members, despite their decisions directly affecting stakeholder rights and recoveries.

Given that most CoC members are regulated financial institutions, the Reserve Bank of India (RBI) could also issue binding internal guidelines governing their representatives' conduct in insolvency proceedings. In the absence of such harmonized regulation, creditor behavior remains inconsistent and unaccountable.

III. Commercial Wisdom and the Need for Fiduciary Standards

Judicial precedent affirms the primacy of CoC's commercial wisdom. In *K. Sashidhar v. Indian Overseas Bank* (2019) and *Essar Steel v. Satish Kumar Gupta* (2020), the Supreme Court held that adjudicating authorities cannot review the merits of CoC decisions except on limited statutory grounds. While such deference preserves creditor's autonomy, it simultaneously leaves their conduct beyond meaningful scrutiny.

If courts cannot review the substance of CoC decisions and no binding conduct norms exist,

the process risks arbitrariness. Although CoC members are not formal trustees, their decisions determine the fate of employees, operational creditors, resolution of applicants, and government entities. Recognizing limited fiduciary-like obligations—good faith, fairness, avoidance of conflicts, and proportional consideration of stakeholder interests—would ensure that power is exercised responsibly without curbing autonomy.

Judicial dicta already hint at this equilibrium. In *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.* (2019), the Supreme Court stressed equitable treatment of operational creditors, and in *Binani Industries Ltd. v. Bank of Baroda* (2018), the NCLAT warned against discriminatory resolution plans. These judgments indicate that commercial wisdom, though paramount, must operate within implicit fairness boundaries. Codifying these principles through an enforceable framework would institutionalize ethical responsibility.

IV. Practical Challenges and Stakeholder Consequences

1. **Arbitrary or Under-Informed Decision-Making:**
   CoC representatives are often junior officers with limited mandate or technical capacity to assess complex restructuring issues. Decisions are sometimes deferred for external approvals or taken mechanically, delaying processes and fostering disputes. The absence of structured meeting norms or capacity-building obligations worsens this gap.

2. **Marginalization of Operational and Minority Creditors:**
   Operational creditors—often the most affected in liquidation—remain outside the CoC, receiving only liquidation value under Section 30(2)(b). Litigation is their only remedy, which is both costly and time-consuming. In liquidation, SCC participation by such stakeholders is nominal, as its advice is non-binding. This dominance of secured financial creditors undermines the IBC's promise of equitable treatment.

3. **Lack of Oversight and Accountability:**
   No regulatory body currently supervises CoC conduct. Unless challenged judicially, questionable decisions remain unchecked, encouraging opacity and procedural laxity.

4. **Erosion of Confidence and Efficiency:**
   Opaque decision-making deters serious resolution applicants and leads to litigation and liquidation, eroding value and contradicting the IBC's objective of timely and efficient resolution.

V. Comparative Lessons from Other Jurisdictions

Comparative regimes reveal that creditor-led processes can coexist with ethical regulation.

1. **UNCITRAL Legislative Guide on Insolvency Law (2005)** – Recommends that creditor committees act in good faith, ensure transparency, and consult inclusively where diverse interests are affected.
2. **United States (Chapter 11)** – The Official Committee of Unsecured Creditors (UCC) acts under fiduciary duties to the entire creditor class, disclosing conflicts and maintaining records under U.S. Trustee oversight.
3. **United Kingdom** – Under the Insolvency (England and Wales) Rules 2016, creditor committees must meet regularly, act collectively, and avoid conflicts, guided by the Insolvency Practitioners Association (IPA) Code of Ethics (2019).
4. **Singapore** – The Committee of Inspection (COI) under the Insolvency, Restructuring and Dissolution Act 2018 operates with formal voting, documentation, and removal procedures for misconduct, ensuring procedural integrity.

These examples demonstrate that transparency and fiduciary discipline enhance, rather than impede, creditor autonomy. India's insolvency framework, however, imposes no equivalent obligations—neither conflict declarations nor rationale-based voting disclosures—on CoC or SCC members. Adopting such measures would align Indian practice with global standards and improve confidence among investors and stakeholders.

VI. Reform Proposals: Toward a Codified Framework

To embed ethical discipline without

undermining commercial autonomy, four interlinked reforms are proposed:

1. **Statutory Code of Conduct:**
   A dedicated Schedule to the IBC or regulations should enshrine binding principles for CoC and SCC members, akin to the IPs' Code of Conduct. Core elements should include:

   - Good faith and diligence in participation and voting;
   - Mandatory disclosure and avoidance of conflicts of interest;
   - Consideration of collective stakeholder interests beyond individual recovery; and
   - Transparency in decision rationale for plan approval, liquidation, or asset sales.

2. **Standardised Record-Keeping and Meeting Protocols:**
   IBBI should prescribe uniform templates for agendas, minutes, and voting rationales, mandating that dissenting opinions be annexed to minutes to enhance auditability and procedural transparency.

3. **Capacity Building and Training:**
   Just as IPs must fulfill Continuing Professional Education (CPE) requirements, creditor representatives should undergo mandatory training in insolvency principles, valuation, and governance, coordinated by the IBBI, RBI, and industry associations.

4. **Oversight and Redress Mechanism:**
   Limited oversight can be introduced without eroding CoC independence by:

   - Empowering the IBBI to review complaints of procedural misconduct; or
   - Appointing a neutral "Resolution Auditor" in complex cases to ensure procedural integrity without encroaching on commercial discretion.

Collectively, these reforms would harmonize creditor conduct with the IBC's aims of value maximization, fairness, and efficiency.

Conclusion

The CoC and SCC occupy central positions in India's insolvency regime, determining not only creditor recoveries but also the survival of distressed enterprises. Yet their functioning remains unregulated by enforceable ethical standards. Courts have repeatedly upheld CoC autonomy, but such deference presumes responsible and transparent conduct—an assumption not always validated in practice.

A codified Code of Conduct, grounded in good faith, transparency, and inclusivity, would not constrain commercial wisdom but legitimize it through accountability. Comparative models demonstrate that autonomy and ethics are compatible and mutually reinforcing. As the IBC matures, institutional integrity must evolve alongside statutory efficiency. Establishing a binding behavioral framework—supported by training, standardized documentation, and limited oversight—would strengthen creditor credibility, restore stakeholder trust, and ensure that commercial wisdom operates with conscience as well as competence.

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13. Singapore Insolvency, Restructuring and Dissolution Act 2018, §§148–156.
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REFRAMING LIQUIDATION UNDER IBC: TRANSITIONING FROM SALE AS A GOING CONCERN TO ASSET BASED REALISATION

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) aimed to balance value maximisation with timely resolution of distressed assets. A key feature facilitating business revival was the option of liquidation 'sale as a going concern'. The recent omission of this provision under the IBBI (Liquidation Process) Regulations, 2016, however, signals a shift from business continuity to asset realisation. This article analyses the legal and policy rationale behind this change and its implications for stakeholders. It traces the evolution of 'going concern' sales, evaluates their impact on creditor recoveries and employment, and examines the alignment of the amendment with the IBC's objectives and judicial interpretations. The article argues that while the reform enhances liquidation efficiency, it may also dilute the Code's rehabilitative ethos. It concludes by suggesting a calibrated approach to reconcile value preservation with procedural finality in liquidation.

Keywords: Insolvency and Bankruptcy Code (IBC); Sale as a Going Concern; IBBI (Liquidation Process) Regulations; Asset Realisation; Business Continuity; Value Maximisation; Insolvency Framework.

INTRODUCTION

The IBC was enacted to consolidate and amend India's insolvency laws, establishing a unified mechanism for time bound resolution of corporate debtor while ensuring maximisation for stakeholders.[1] A key innovation under the IBC framework was allowing for Liquidation as a going concern, a mechanism that enabled sale of the corporate debtor's business as an operating entity even in Liquidation, thereby preserving business value, employment and stakeholder confidence. However, through a notification dated 14th October, 2025, the Insolvency and Bankruptcy Board of India (IBBI), through its recent amendment to the IBBI (Liquidation Process) Regulations, 2016, omitted 'sale of corporate debtor as a going concern as a permissible mode of liquidation. This development marks a significant shift in the liquidation regime under the IBC, from prioritising continuity of business operations to focusing purely on asset realisation.

RATIONALE BEHIND 'SALE AS A GOING CONCERN'

The concept of 'sale as a going concern' was introduced by the IBBI through the Liquidation Process (Amendment) Regulations, 2018[2], allowing the Liquidator to sell the corporate debtor's business or assets in such a way that its operations continue seamlessly. This provision emerged as a pragmatic middle ground, enabling recovery of higher value for creditors while protecting jobs and preserving economic activity.

Under ***Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016[3],*** provided a set of modes of sale of assets in liquidation which included sale of an asset on a standalone basis, sale by slump sale, sale of a set of assets collectively, sale of assets in parcels, sale of the corporate debtor as a going concern and sale of the business of the corporate debtor as a going concern. Liquidators were permitted to sell the

[1]Insolvency and Bankruptcy Code, No. 31 of 2016, Statement of Objects and Reasons, § 5, Acts of Parliament, 2016 (India).

[2]Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2018, Gazette Notification No. IBBI/2018-19/GN/REG040 (Mar. 27, 2018).

[3]Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32.

corporate debtor or its business as a 'going concern,' in order to align with the broader objectives of the IBC, emphasizing value maximisation over mere liquidation. It also offered a chance for revival when resolution under CIRP had failed. ***Regulation 32A[4] of the IBBI (Liquidation Process) Regulations, 2016,*** introduced a specific mechanism: if the Committee of Creditors recommended or the liquidator opined that such a sale would maximise value, the liquidator must first endeavour to sell the corporate debtor or its business as a going concern. This preserved employment and business relationships, reinforcing the economic and social objectives of the IBC.

In ***Swiss Ribbons Pvt. Ltd. v. Union of India,[5]*** the Supreme Court acknowledged the IBC's fundamental emphasis on resolution over Liquidation. Similarly, in ***S.C. Sekaran v. Amit Gupta[6] and Y. Shivram Prasad v. S. Dhanpal,[7]*** the NCLAT endorsed the sale of the corporate debtor as a going concern during Liquidation as consistent with the objectives of the IBC.

RECENT IBBI CIRCULAR: A PARADIGM SHIFT

On 14 October 2025, the IBBI notified a Circular/ amendment which is the ***IBBI (Liquidation Process) (Second Amendment) Regulations, 2025[8],*** omitting the 'sale as a going concern' under ***Regulation 32A[9] of the Liquidation Process Regulations*** and omitted corresponding ***clauses (e) and (f) of Regulation 32[10].*** For liquidation cases where the sale-as-going-concern has not yet begun, the new regime applies. Going forward, under the liquidation process, the only sales envisaged would appear to be asset-based (standalone assets, parcels, slump sale) but not the corporate debtor as an entire going concern.

The permissible modes of sale are now limited to:

- Sale of Assets on a standalone basis
- Sale of assets in a slump sale
- Sale of assets in parcels, and
- Sale of the business of the corporate debtor as a going concern

According to the IBBI, the move was intended to streamline liquidation, reduce ambiguity about post- sale liabilities, and ensure that liquidation served its intended purposed which is asset realisation rather than corporate revival. The IBBI has cited several reasons prompting the amendment:

a. Complexity and delay: The going-concern sale framework in liquidation was leading to elongated processes, protracted litigation, and increased cost of liquidation.
b. Value erosion risk: Concerns about poor outcomes, increased costs and delays when opting for going concern sales in liquidation.
c. Streamlining of liquidation framework: By removing a route that was under-utilised and often contested, the regulator aims to simplify the liquidation process and make asset realisation more predictable.
d. Policy emphasis shift: Though the concept of going concern sale is well-recognised in global insolvency law, in the IBC world there were practical hurdles, especially around transfer of liabilities, employee rights, security interests, and the regulatory approvals required. The policy is now more oriented towards timely liquidation and asset-realisation rather than business-continuation in the liquidation stage.

The Amendment is prospective in nature; it shall apply to the cases where liquidation by

[4]Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32A.
[5]*Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).
[6]*S.C. Sekaran v. Amit Gupta*, Company Appeal (AT) (Insolvency) Nos. 495–496 of 2018 (NCLAT Aug. 27, 2018).
[7]*Y. Shivram Prasad v. S. Dhanapal*, Company Appeal (AT) (Insolvency) No. 224 of 2018 (NCLAT Jan. 8, 2019).
[8] Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, Gazette Notification No. IBBI/2025-26/GN/REG106 (Oct. 14, 2025).
[9]Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32A.
[10]Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025, at reg. 32.

sale as going concern has not commenced. The notification is effective from the date of publication which is 14th October, 2025. In effect, this regulatory change removes the mandatory-first-attempt route of sale as a going concern in the liquidation process under IBC, defaulting instead to the other asset-sale modes (standalone assets, slump sale, assets in parcels). This deletion marks a decisive policy departure. The liquidation process will now focus on asset-by- asset realisation rather than continuity of the debtor's business. The change may prompt stakeholders to prefer earlier resolution rather than wait for liquidation; perhaps emphasising the importance of earlier invocation of resolution (CIRP) rather than liquidation.

POLICY RATIONALE AND CONCERNS

1. ADMINISTRATIVE AND LEGAL AMBIGUITIES- While conceptually sound, going-concern sales posed practical challenges. Liquidators encountered uncertainty regarding transfer of licenses, statutory dues, and treatment of employees.[9] Ambiguities also persisted over whether the buyer inherited contingent liabilities and pending litigations associated with the corporate debtor.

2. REASSERTION OF LIQUIDATION'S PURPOSE- The amendment underscores a policy distinction between resolution and liquidation. The earlier overlap allowed quasi-revival during liquidation. The omission redefines liquidation strictly as a process of asset monetisation and distribution under Section 53 of the IBC.[11]

3. STAKEHOLDER IMPACT- Critics argue that this approach undermines value maximisation, particularly where a business retains going-concern value despite insolvency.[12] It may also reduce employment preservation and discourage investors seeking acquisition of operational entities.

[11]Insolvency and Bankruptcy Code, No. 31 of 2016, § 53 (India).
[12]See *Rajesh Singh v. Official Liquidator of M/s. Emporis Projects Ltd.*, Company Appeal (AT) (Insolvency) No. 334 of 2020 (NCLAT Aug. 24, 2020).

IMPACT ON STAKEHOLDERS

CREDITORS
The new framework may expedite liquidation and improve predictability in recoveries. Yet, empirical data suggests that sales as going concerns historically yielded higher recoveries than asset-wise disposals[13]. The amendment could therefore reduce overall creditor value.

1. EMPLOYEES
A major collateral impact will be on the workforce. Sale as a going concern allowed retention of employment through continuity of business. The omission of this could lead to immediate cessation of operations, adversely affecting employment and supply chains.[14]

2. BUYERS AND INVESTORS
Potential buyers who look for acquiring a distressed business as a going concern may now face reduced regulatory clarity or possibility in liquidation settings under IBC. Investors may prefer resolution-stage acquisitions, reducing participation in liquidation auctions. This narrows the market and could depress asset prices.

3. LIQUIDATORS
Liquidators will have clearer but less operational discretion. The omission will most likely mean more focus on sale of assets. The simplification of sale methods may expedite liquidation timelines but at the cost of reduced flexibility to maximise value.

CRITIQUE AND CONSIDERATIONS

One of the key benefits of going concern sales under distress is value-preservation: transferring intangible assets, contracts, branding, operating workforce, etc. By eliminating that route, there is a risk of value being destroyed through piecemeal asset sales. On the other hand, the practical difficulties of going concern sales, complex liability transfers,

[13]Insolvency and Bankruptcy Board of India, Annual Report 2022–23, at 112 (showing higher average recoveries in going-concern sales).
[14] Id.

employee issues, regulatory approvals, and timing delays were real and may have prevented it from being used efficiently.

The amendment says "where sale as going concern has not commenced" but the boundary of "commenced" may raise disputes. It remains to be seen whether the IBBI will provide further guidance (or carve-out) for complex businesses which may still be viable and would realise higher value if transferred intact, rather than broken up. There may be a future need for legislative amendment (rather than regulatory) if the policy aim is to continue going concern transfers but with safeguards because many of the foundational issues (liabilities, employee rights, security interests) point to statutory rather than purely regulatory solutions.

JUDICIAL PERSPECTIVES

Indian courts have repeatedly underscored that liquidation should be the last resort. In ***Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.***,[15] the Supreme Court reiterated that the IBC's design is resolution-oriented. Earlier, in ***S.C. Sekaran v. Amit Gupta[16],*** the NCLAT directed liquidators to explore sale of the corporate debtor as a going concern before resorting to asset breakup. Nevertheless, judicial discourse also recognises the need for finality in liquidation. Prolonged processes frustrate the Code's time-bound mandate under Section 33[17]. The IBBI's amendment, therefore, aligns with the judiciary's growing emphasis on procedural efficiency.

CONCLUSION

The IBBI's amendment to omit "sale as a going concern" provisions under the liquidation framework reflects a shift in emphasis from trying to rescue or carry forward distressed businesses under liquidation, to more direct asset realisation. While this may streamline the process and reduce legal and procedural complexity, it leaves open risks relating to value destruction, job losses, and piecemeal disposal outcomes. Stakeholders will need to adapt their strategies accordingly, and for cases where business continuity is desirable, emphasis on early resolution (CIRP) remains critical. It will also be interesting to see if further refinements or policy tweaks follow, especially to deal with the tension between liquidation efficiency and business value preservation.

To balance efficiency with value preservation, regulatory reforms could consider:

a. Reintroducing limited going-concern sales with clear liability demarcation;
b. Establishing safe-harbour provisions for buyers to avoid inherited liabilities; and
c. Facilitating hybrid sales models combining asset transfer with continued business operation.

Such measures would harmonise liquidation finality with the IBC's founding ethos of maximising value of assets of the corporate debtor.

[15] *Arun Kumar Jagatramka v. Jindal Steel & Power Ltd*., (2021) 7 SCC 474 (India).
[16] *S.C. Sekaran v. Amit Gupta*, Company Appeal (AT) (Insolvency) Nos. 495–496 of 2018 (NCLAT Aug. 27, 2018).
[17] Insolvency and Bankruptcy Code, No. 31 of 2016, § 33 (India).

CLAIMS SUBMISSION TIMELINES UNDER CIRP

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[This article examines whether a Resolution Professional should entertain claims received after the stipulated period under Regulation 12(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). Under the amended regulation, creditors must submit their claims on or before the last date mentioned in the public announcement. However, those who fail to do so may still submit claims up to the later of (i) ninety days from the insolvency commencement date, or (ii) the date of issuance of the Request for Resolution Plan (RFRP) and also touches upon some other provisions related to claims which haven't caught so much of attention]

Section 13 of the Code requires the Adjudicating Authority to pass an order directing the publication of a public announcement of the initiation of corporate insolvency resolution process and calling for the submission of claims under Section 15. **Section 15** of the Code requires this public announcement to contain the last date for submission of claims, as may be specified. Notably, 'as may be specified' in Section 15 was added by Act No. 26 of 2018, w.e.f. 6-6-2018, thus settling the authority of the Board to define the last date for submission of claims. The Board has accordingly specified two relevant dates in the CIRP Regulations.

The first date is provided in **Regulation 6**. It provides fourteen days from the date of appointment of the interim resolution professional to be the last date for submission of proofs of claim in the public announcement. This is reaffirmed in **Regulation 12(1)**, which states that a creditor shall submit its claim with proof on or before the last date mentioned in the public announcement. **Regulation 40A**, which contains the model timeline for the CIRP, aligns with this by suggesting the same timeline of T + 14 for submission of claims, assuming that the appointment of the IRP takes place on the day of the order of admission. The claims-related exercise during CIRP is critical for constitution of the Committee of Creditors. It should be done at the earliest so that the corporate debtor gets its steering team for most part of the process. Hence, a short date in the public announcement for submission of claims.

Regulation 12(1), as amended, provides that where a creditor fails to submit its claim within the time stipulated in the public announcement, it may nevertheless submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the later of: (a) the date of issue of the RFRP under Regulation 36B; or (b) ninety days from the insolvency commencement date, subject to providing reasons for the delay beyond the period of ninety days. **This amendment replaced the earlier fixed ninety-day period and aligned the submission window with key CIRP milestones to promote flexibility while maintaining procedural discipline.**

'TWO LAST DATES' makes an impression of being oxymoron. It is not. The last date is the one in the public notice. The extended time clause in regulation 12 (1) provides the buffer/ grace period to creditors to submit claims. While, the public announcement continues to set the primary deadline for claim submission, the extended period under the amended Regulation 12(1) provides a window linked to the issuance of the RFRP, thereby synchronising the claim process with the preparation of the Information Memorandum and invitation of the resolution plans. This change serves primarily the interest of the Process itself, and thus, all stakeholders.

TWO LAST DATES makes an impression of being oxymoron

The claims-related exercise under CIRP gains true relevance only if the process culminates in the approval of a resolution plan. If the CIRP ends in withdrawal under Section 12A of the Code or results in liquidation, the entire claims process effectively resets. In such cases, creditors are invited afresh to submit their claims in the liquidation stage, giving those who may have missed the

deadline during CIRP another opportunity to participate.

However, it is important to note that under **Regulation 12(2)(c) of the IBBI (Liquidation Process) Regulations, 2016**, where a creditor fails to submit a claim during the liquidation process, the liquidator **may consider the claim submitted during CIRP** for the purpose of verification. This provision serves as a fallback mechanism to ensure that genuine creditors who participated in CIRP are not excluded from liquidation proceedings due to procedural lapses or missed timelines.

The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan {**Section 29(1)**}. A resolution applicant may submit a resolution plan prepared on the basis of the information memorandum {**Section 30(1)**}. Under **Regulation 36**, the information memorandum shall contain a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims. **Section 30(2)** requires resolution plan to provide for payments of operational and certain financial debts in a specified manner.

Change in the List of Creditors is a modification of the Information

Regulation 36B provides that a prospective resolution applicant must be given a minimum of 30 days from the date of receipt of the Information Memorandum (IM), the RFRP, and the Evaluation Matrix (EM) to formulate and submit its resolution plan. Furthermore, if there is any modification to either the RFRP or the EM, the 30-day period resets from the date of such modification. Notably, while the regulation expressly addresses changes to the RFRP and EM, it does not contemplate any modification to the IM once it is shared with prospective resolution applicants. This omission reflects the fundamental nature of the IM — it forms the very basis for the preparation of resolution plans. If one assumes that a modification to the IM after its issuance is permissible, principles of fairness would require that the resolution applicant be given at least 30 days from the date of such modification to submit or revise its resolution plan. Any change to the list of creditors, their claims, or classification within the IM effectively constitutes a change to the IM itself and should therefore be avoided once the IM has been circulated.

This underscores the critical importance of finalising the claims-related exercise within a defined timeframe. A combined reading of Regulation 36B and amended Regulation 12(1) highlights the regulatory intent: to ensure that resolution applicants receive a stable, finalised IM — particularly in terms of creditor claims — before preparing their resolution plans. Recognising this, the recent amendment to Regulation 12(1) introduces a clear cut-off: creditors must file their claims along with proof within the time stipulated in the public announcement. Those who miss this initial window may still submit claims on or before the 90th day from the insolvency commencement date or the date of issuance of the RFRP, whichever is later. This is a departure from the earlier position, where claims could be submitted up until the approval of the resolution plan. The amendment brings much-needed certainty and discipline to the claim admission process, ensuring that resolution applicants are not handicapped by evolving claim data and can formulate informed, commercially viable resolution plans based on a stable creditor structure. The introduction of Regulation 6A on communication to creditors is effectively a nudging of creditors to submit their claims, to meet the objectives stated above.

The judicial landscape has been evolving in tandem with these regulatory changes. Earlier decisions of the National Company Law Tribunals (NCLTs), such as **in Twenty First Century Wire Rods Ltd. – CP (IB) No. 737 (PB)/2018 and Edelweiss Asset Reconstruction Co. Pvt. Ltd. Vs. Adel Landmarks Ltd. – CP (IB) No. 1083 (PB)/2018,** had adopted a more flexible and purposive approach. These tribunals held that the rejection of delayed claims was not sustainable, treating the timelines under Earlier Regulation 12(2) as directory rather than mandatory, especially when the CIRP was

ongoing and no resolution plan had yet been approved. The rationale was to maximise creditor inclusion and avoid harsh exclusionary consequences for procedural delays.

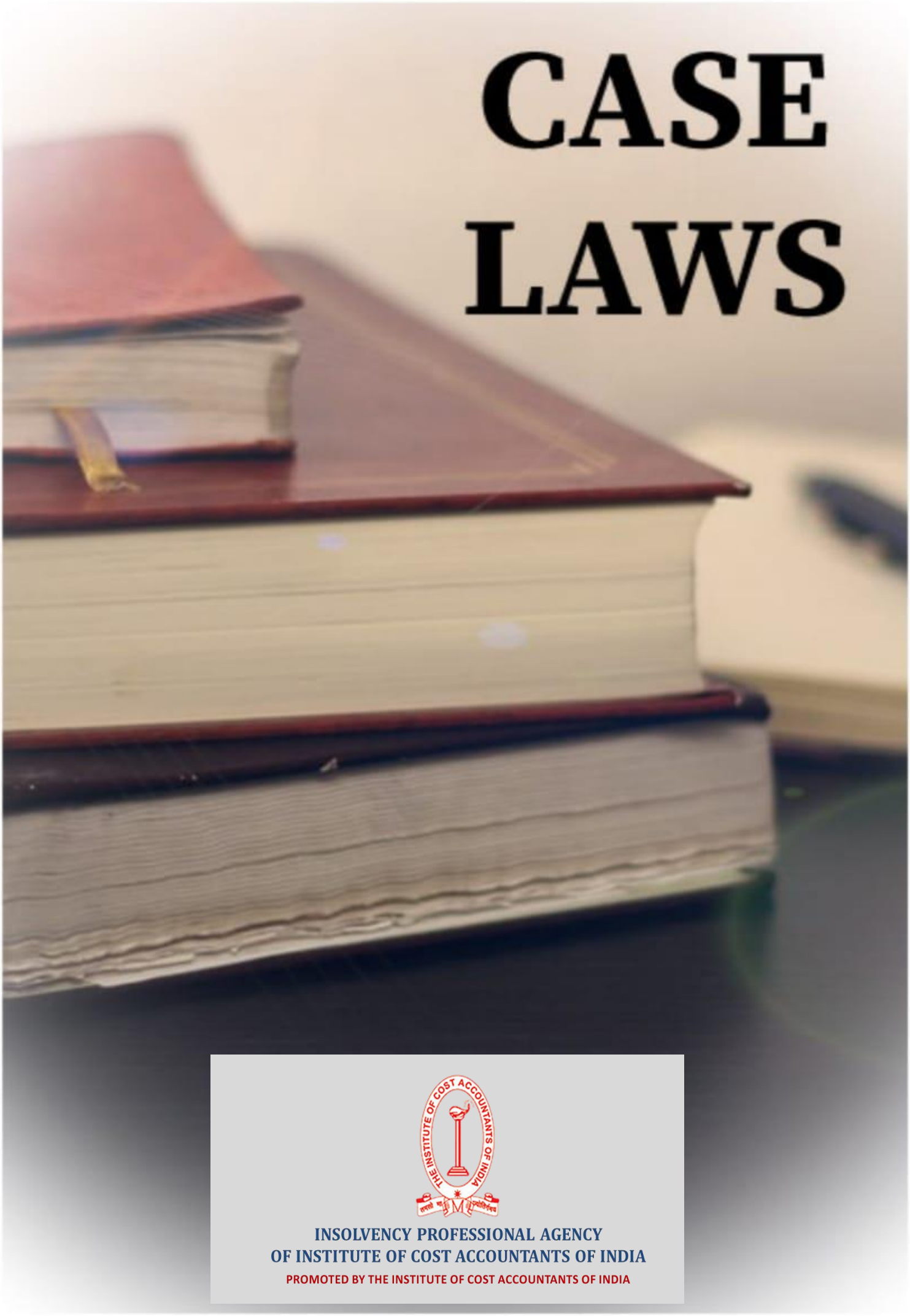
The above-stated legal position was further cemented by the directions issued by the Hon'ble National Company Law Tribunal in the matter titled "**Edelweiss Asset Reconstruction Co. Pvt. Ltd. Vs. Adel Landmarks Ltd. – CP (IB) No. 1083 (PB)/2018**" vide Order dated 06.06.2019 while deciding a similar application for condonation of delay, wherein it held that *"We have repeatedly held that rejection of claim on the ground of delay is not sustainable because the provision has been held to be directory. In that regard reference may be made to the orders dated 01.05.2019 passed in CA-727 (PB)/2019 in CP. No. (IB)-737 (PB)/2018, Twenty First Century Wire Rods Ltd. & in the case of the corporate debtor itself on 30.04.2019 in CA-729 (PB)/2019 where the same counsel for Resolution Professional has appeared. We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory."*

Unfortunately, the effect of holding a provision as 'directory' has been to treat as if the provision does not exist in the statute. This is the case even with the Directive Principles shrined in our constitution. If only the amendment to the Regulation was accompanied by a Note from the Board, on the rationale behind the change, the Tribunal may not have directed in the way they did. The other option to give effect to amended Regulation 12 was to appeal against such Orders right upto the Apex Court, but Committee of Creditors approving a budget for this purpose is highly unlikely. Consequently, this important question of law has not reached the Apex Court for a direct reference. However, the Supreme Court's landmark judgment in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors., Civil Appeal No. 3395 of 2020**, marked a decisive shift towards strict compliance with the prescribed timelines. The Court emphasized that adherence to the timelines under Sections 13, 15, and 18 of the IBC, and corresponding Regulations 12 and 13, is fundamental to the CIRP process. It was held that claims not made within the stipulated time and the extended period allowed under Regulation 12(1) cannot be considered for inclusion in the Information Memorandum, and consequently, cannot be factored into the resolution plan or the Committee of Creditors' decision-making.

The Supreme Court invalidated the NCLT's direction to keep open the possibility of paying fixed deposit holders who had not submitted claims within time, underscoring the finality and certainty that the IBC process must maintain. This ruling reinforces that post-amendment, Insolvency Professionals (IPs) must exercise strict discipline and not entertain claims beyond the cut-off date specified in regulations.

The introduction of the RFRP issuance date as a benchmark recognizes the practical commercial realities of the resolution process. Since resolution applicants rely heavily on the IM and related documents to price and structure their bids, any late admission or modification of claims can prejudice the entire process, resulting in delays and potential challenges. Therefore, the amended Regulation 12(1) strikes a balance between creditor inclusivity and procedural finality, thereby promoting efficiency and predictability in insolvency resolutions.

In summary, the amended Regulation 12(1), supported by judicial pronouncements — especially from the Supreme Court — mandates strict compliance with claim submission timelines, limits the window for claims to the later of 90 days from insolvency commencement or issuance of the RFRP (whichever is later), and curtails the scope for entertaining belated claims. This legal position preserves the integrity of the claims process, stabilizes the Information Memorandum, and facilitates fair and effective resolution plan formulation. Insolvency professionals are thereby obligated to adhere to these timelines and avoid acceptance of delayed claims, which the jurisprudence and regulatory intent clearly do not support.



CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Apresh Garg vs. Indian Bank [2025] 177 taxmann.com 195 (SC)/[2025] 258 COMP CASE 34 (SC)

Where respondent-Creditor had not accepted settlement proposal submitted by Suspended Director of Corporate Debtor, resolution of corporate debtor had to take place in accordance with IBC.

The corporate debtor obtained various financial facilities through a joint consortium of lenders. Respondent bank was one of member of consortium. On failure to abide by terms of sanction, respondent bank issued legal notice to the corporate debtor and filed an application under section 7 claiming amount due. The corporate debtor contended that 90 per cent of lenders had agreed for restructuring of loan and once consortium was considering transfer of loan account to NARCL, application under section 7 need not be entertained. However, Adjudicating Authority held that account had not been transferred and default in payment was not disputed, and, thus, it was left with no option but to admit section 7 application. NCLAT held that respondent had 2.47 per cent proportion in lending, in no manner precluded the respondent to take its measures as per facility document. Further, NARCL, who was now assignee of entire debt of all consortium members, including respondent had not accepted settlement proposal submitted by the appellant, resolution of the corporate debtor had to take place in accordance with IBC. Moreover, the corporate debtor had failed to discharge its debt liability and there were sufficient materials to indicate debt and default, there was no error in order of Adjudicating Authority admitting section 7 application. Appeal was filed against said order.

Held that impugned judgment/order passed by NCLAT did not suffer from any patent illegality and, thus, appeal was to be dismissed.

Case Review: Apresh Garg v. Indian Bank (erstwhile Allahabad Bank) & Ors. [2025] 176 taxmann.com 736 (NCLAT- New Delhi), affirmed

I. SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT
II. SECTION 238A - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

Saurabh Jhunjhunwala vs. Pegasus Assets Reconstruction Company (P.) Ltd.[2025] 177 taxmann.com 202 (SC)/[2025] 258 COMP CASE 88 (SC)

I. Where assignment agreement qua immovable property, i.e., land in Tamil Nadu was void as it was hit by section 28(b) of Registration Act, 1908, however, there were large number of other accounts and other financial assets which were dealt in assignment agreement and, thus, entire assignment could not be declared as null and void.

II. Where corporate debtor had acknowledged its default in its financial statements for several years, since debt was continuously acknowledged in balance sheets of corporate debtor, it was relevant for extension of limitation and mere fact that balance sheet did not mention name of financial creditor, it would not deny benefit of section 18 of Limitation Act.

1. The corporate debtor had obtained financial facilities from Allahabad Bank to purchase a property at Coimbatore, Tamil Nadu. Bank declared account of the corporate debtor NPA and assigned its debt to the respondent, financial creditor by a registered assignment deed. The financial creditor filed an application under section 7 against the corporate debtor. Adjudicating Authority by impugned order admitted section 7 application. The appellant suspended director of the corporate debtor filed appeal contending that assignment agreement was claimed to be executed in Mumbai, Maharashtra and had been registered in Kolkata, which was in contravention of provisions of section 28 of Registration Act, 1908 as applicable in State of Tamil Nadu, hence, was void and, therefore, application under section 7 filed by the financial creditor on basis of such assignment agreement was not maintainable. However, as per provisions of

section 28 of Registration Act, 1908 as applicable in State of Tamil Nadu, every document affecting immovable property shall be presented for registration in office of Sub-Registrar within whose sub-district whole or some portion of property to which such document relates is situated in State of Tamil Nadu and any document registered outside State of Tamil Nadu in contravention of provisions of clause (a) shall be deemed to be null and void. It was noted that assignment agreement qua immovable property, i.e., land situated in Coimbatore was void and no right could be claimed by the financial creditor with respect to said land. However, there were large number of other accounts and other financial assets which were dealt in assignment agreement and, thus, entire assignment could not be declared as null and void. NCLAT held that assignment deed could be held to be void insofar as creating any mortgage in land situated in Coimbatore and no rights in said land by virtue of assignment could be claimed by the financial creditor, but that itself was not sufficient to hold entire assignment void so as to make CIRP application as not maintainable and appeal against order of Adjudicating Authority was to be dismissed. Appeal was filed against said order.Held that there was no good reason to interfere with impugned order passed by NCLAT and thus, appeal was to be dismissed.

II. The respondent filed section 7 application to initiate CIRP against the corporate debtor. The corporate debtor pleaded that application was barred by limitation as account had been declared as Non-Performing Asset (NPA) on 30-9-2011 and application was filed on 18-8-2022. It was noted that the corporate debtor had continuously admitted and acknowledged its default in its financial statements for financial years 2013-14 to 2019-20. NCLAT held that since debt was continuously acknowledged in balance sheets of the corporate debtor, it was relevant for extension of limitation and mere fact that balance sheet did not mention name of the financial creditor, it would not deny benefit of section 18 of Limitation Act and therefore, application filed by the financial creditor was not barred by time. Appeal was filed against said order.

Held that there was no good reason to interfere with impugned order passed by NCLAT and thus, appeal was to be dismissed.

Case Review: Saurabh Jhunjhunwala v. Pegasus Assets Reconstruction Company (P.) Ltd. [2025] 176 taxmann.com 739 (NCLAT- New Delhi) (Para 2) - Affirmed

SECTION 97 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - RESOLUTION PROFESSIONAL, APPOINTMENT OF

Ashwani Kumar Bhatia vs. Union of India [2025] 177 taxmann.com 207 (Madras)/[2025] 257 COMP CASE 547 (Madras)

Where IBBI issued circular to clarify submission of particulars and declarations by Insolvency Professional in application filed by creditor in Part-IV in Form-C of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, since said circular emerged as a practice direction and pragmatic tool for fulfilling purposes of IBC, thereby saving time and increasing efficiency, such circular was neither ultra vires nor violative of provisions of IBC.

IBBI issued a Circular No.IBBI/II/62/2023, dated 21.12.2023 in exercise of its powers under Section 196 to all registered Insolvency Professionals, recognized Insolvency Professional entities, and registered Insolvency Professional Agencies. Impugned circular aimed to clarify submission of particulars and declarations by Insolvency Professional in application filed by creditors in Part-IV in Form-C of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (Personal Guarantors Rules). As per said circular, creditor could recommend name of Insolvency Professional to be appointed as Resolution Professional. Petitioners, personal guarantors for the corporate debtor filed instant writ petition seeking a declaration to annul impugned circular on ground that it contradicted provisions of Code and well-established position of law. According to

petitioners, creditor did not possess right to make a recommendation and only IBBI was authorized to nominate Resolution Professional.

Held that if creditor was allowed to recommend at outset, entire episode of Resolution Professional becoming aware of any conflict of interest, etc., at a later stage, and once again having process start all over was effectively mitigated as Resolution Professional provides their consent and details of professional were also recorded in Part IV of Form. Creditor was given an option only to nominate from panel, it could effectively be seen that nomination was ultimately only by IBBI. Therefore, circular emerged as a practice direction and pragmatic tool for fulfilling purposes of IBC, thereby saving time and increasing efficiency. Adjudicating Authority holds final power under Section 97(5) and order issued by Adjudicating Authority was also subject to appeal, thus, impugned circular was neither ultra vires nor violative of provisions of IBC, and accordingly, instant writ was to be dismissed.

SECTION 24 - CORPORATE INSOLVENCY RESOLUTION PROCESS – COMMITTEE OF CREDITORS - MEETING OF

Punjab National Bank vs. Farooq Ali Khan [2025] 177 taxmann.com 229 (Karnataka)/[2025] 257 COMP CASE 291 (Karnataka)

Where resolution professional and consortium of banks had filed review petitions contending that order passed by High Court in favour of writ petitoners was passed in violation of principles of natural justice as grounds of writ petition were given up by counsel for writ petitioner but review petitioners were not given an opportunity to respond to same, review petitions were to be allowed and order passed by High Court was to be recalled.

The corporate debtor, engaged in wood product manufacturing, defaulted on loans and was declared an NPA, prompting Punjab National Bank to initiate insolvency proceedings under Section 7. NCLT appointed an RP and formed CoC. Resolution plan submitted by SRA was approved in a meeting called on short notice, which was challenged by the respondent/suspended director as a regulatory violation. The High Court quashed plan and meeting minutes, allowing the respondent to approach IBBI and directing CoC to reconsider a restructuring proposal under section 12A.

Held that in instant case, review petitioners i.e. resolution professional and consortium of banks, had filed review petitions contending that there was error apparent on face of record in order passed by High Court in favour of writ petitioners and same was passed in violation of principles of natural justice as grounds of writ petition challenging decision of NCLT and resolution professional were given up by counsel for writ petitioner but review petitioners were not given an opportunity to respond to same. Therefore, instant review petitions were to be allowed, order passed by the High court was to be recalled and main writ petition was to be restored to file for full fledged hearing.

Case Review : order passed by High Court of karnataka At Bengaluru in Writ Petition No.483 of 2023, 21-11-2023, recalled

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

Farooq Ali Khan vs. Punjab National Bank [2025] 177 taxmann.com 230 (Karnataka)/[2025] 257 COMP CASE 309 (Karnataka)

Where resolution plan approved in adjourn meeting of CoC was in violation of principles of natural justice as suspended director of corporate debtor who had right to participate in

CoC meetings had not received prior notice, it had fallen foul of Regulations and Code, and accordingly, instant writ seeking to quash resolution plan approved in adjourned meeting of CoC was to be allowed.

The corporate debtor had availed loan from consortium of banks. On account of default in repayment, CIRP was initiated against the corporate debtor. During CIRP, resolution plans were submitted by two resolution applicants i.e. 'A' and 'M'. On 10-2-2020, proposals submitted by both applicants were taken up for deliberations by CoC. The petitioner being a suspended director of the corporate debtor had represented. However, deliberations did not get concluded and were adjourned to 11-2-2020. Thereafter, pursuant to discussions held with members of CoC at meeting, 'M' submitted Amended and Restated Resolution Plan. Next day i.e., 11-02-2020 at 12.20 p.m an e-mail was sent to participants including members of erstwhile Board of Directors of the corporate debtor, communicating that meeting of CoC which was sought to be adjourned on 10-02-2020 was scheduled on same day i.e., 11-02-2020 at 3.00 p.m. Thereafter, CoC meeting was held wherein resolution plan of 'M' was approved by CoC. It was a candid admission on part of 'M' that it was an amended and re-stated Resolution Plan. Therefore, it becomes a new agenda on next day, and thus, warrant for issuance of notice to suspended directors. Resolution Professional also had thought that it was a new agenda and issues a notice. However, notice fell completely foul of Regulations and Code, and his own mandate of 48 hours prior notice.

Held that Resolution Professional had acted contrary to what was a mandate under statute and resolution. Accordingly, instant writ seeking to quash resolution plan approved in adjourned meeting of CoC was to be allowed.

SECTION 52 - CORPORATE LIQUIDATION PROCESS - SECURED CREDITOR IN

Suraksha Asset Reconstruction Ltd. vs. Varsha Bagri [2025] 177 taxmann.com 355 (SC)/[2025] 257 COMP CASE 466 (SC)

Where in liquidation process, appellant secured creditor failed to pay liquidation costs as per regulation 21A of IBBI (Liquidation Process) Regulations, 2016 within stipulated time, security interest of appellant stood relinquished in terms of regulation 21A(2) and (3).

In CIRP process of the corporate debtor, there being no resolution, order of liquidation was passed by Adjudicating Authority. The appellant, secured creditor of the corporate debtor informed liquidator of its intention to realize its security interest under SARFAESI Act, 2002. The respondent-liquidator sent an e-mail informing that security interest of appellant stood relinquished in terms of regulation 21A(2)(a) and 21(3) of IBBI (Liquidation Process) Regulations, 2016 on ground of appellant having failed to pay liquidation costs. The appellant thereafter filed application praying for quashing said e-mail. Adjudicating Authority by impugned order held that the appellant having failed to discharge its obligations under regulation 21A within 90 days, security interest of the appellant would become part of liquidation estate. It was noted that the appellant after informing liquidator proceeded to realize its security interest. Liquidator had communicated to the appellant twice for payment of proportionate share of liquidation costs, however, no payment was made by the appellant towards liquidation costs. NCLAT held that when the appellant proceeded to realize its security interest, it was required to pay amount as referred to in regulation 21A(2)(a). Further, liquidator did not commit any error in communicating decision to the appellant that on account of non-payment of liquidation costs, security interest of the appellant stood relinquished in terms of regulation 21A(2) and (3) of Liquidation Regulations. Moreover, in view of facts and circumstances, it was not a fit case to exercise Appellate jurisdiction in interfering with impugned order passed by Adjudicating Authority.

Held that instant court saw no reason to interfere with impugned order passed by Appellate Tribunal and accordingly appeal filed was to be dismissed.

Case Review: Suraksha Asset Reconstruction Ltd. v. Varsha Bagri, Liquidator of Bharat NRE Coke Ltd. [2025] 177 taxmann.com 51 (NCLAT- New Delhi), affirmed.

SECTION 21 - CORPORATE INSOLVENCY RESOLUTION PROCESS – COMMITTEE OF CREDITORS

Byju Raveendran vs. Aditya Birla Finance Ltd. [2025] 177 taxmann.com 592 (NCL-AT)

Where interim resolution professional (IRP) had reconstituted committee of creditors (CoC) by excluding two major financial creditors, since IRP had no authority to reconstitute CoC, NCLT was correct in restoring status of financial creditor and in directing to initiate disciplinary proceedings against IRP.

Interim Resolution Professional (IRP) had constituted CoC with four financial creditors, namely, G (respondent No.3), A (respondent No, 1), I and ICICI Bank. Subsequently, IRP reconstituted CoC by excluding two major financial creditors, namely, respondent no. 1 and 3. NCLT by impugned order held that IRP had no authority to reconstitute CoC and, thus, restored status of the financial creditor and directed to initiate disciplinary proceedings against IRP. An appeal against said order was filed by the appellant, suspended director and promoter of the corporate debtor. It was noted that the appellant had failed to cite any provision in Code nor any precedent to effect that status of a creditor, who had been made part of CoC, could be reviewed by IRP on his own.

Held that NCLT was correct in restoring status of the financial creditor and in directing to initiate disciplinary proceedings against IRP.

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

Hemant Sharma, Resolution Professional Today Homes and Infrastructure (P.) Ltd. vs. Indian Renewable Energy Development Agency Ltd. [2025] 177 taxmann.com 674 (NCLAT- New Delhi)

Decision of RP to verify or not verify claim of creditor may be erroneous, but that cannot be said to be adjudication of claim by RP.

CIRP was initiated against the corporate debtor. Respondent financial creditor submitted claim based on corporate guarantee extended by the corporate debtor in favour of the financial creditor in respect of credit facilities availed from the financial creditor by three companies. Resolution Professional (RP) sent an email to the financial creditor informing that claim could not be accepted as financial debt. Aggrieved by rejection of claim of financial creditor, the financial creditor filed an application before NCLT. NCLT by impugned order held that RP had no adjudicatory function and directed RP to reconsider claim of financial creditor.

Held that RP under regulation 13 of CIRP Regulations has a duty to verify every claim as on insolvency commencement date and thus, for verification of claim, RP has to look into nature of claim, basis of claim, fact that whether RP has verified claim or not, it cannot be said to be adjudication of claim. Decision of RP to verify or not verify a claim, may be erroneous, but that cannot be said to be adjudication of claim by RP. Therefore, act of not verifying claim by RP and communicating email giving reason for non-verification, could not be said to be in excess and abuse of duties of RP. Therefore, adverse observations made against RP in impugned order were to be deleted and further directions issued forwarding copy of order to IBBI was to be deleted. However, directions issued by NCLT to reconsider claim could not be faulted in facts of present case and law as noticed above and RP had to carry out reconsideration of claim of the financial creditor and take a decision.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM

Indian Overseas Bank vs. Consortium of GSEC Ltd. and Rakesh Shah [2025] 177 taxmann.com 675 (NCLAT- New Delhi)

Where appellant bank had made payment against invoked bank guarantee (BG) on behalf of corporate debtor and had utilised margin money term deposit of corporate debtor, since margin money no longer formed part of assets of corporate debtor, appropriation of same by bank was not hit by moratorium under section 14.

The corporate debtor had availed credit facilities, including Bank Guarantees (BGs), from the appellant bank, which required margin money in form of term deposits. Upon invocation of BGs by third parties, bank used margin money to make payments, as per agreement. Later, the corporate debtor entered into Corporate Insolvency Resolution Process (CIRP) and, bank filed a revised claim reflecting adjustment of margin money, which was accepted by Resolution Professional (RP). After Resolution Plan was approved, SRA raised objections to margin money adjustment, alleging it was done after CIRP began and sought its reversal. With no satisfactory response from bank or RP, SRA filed an application. Adjudicating Authority admitted said application and directed payment by the appellant bank to SRA towards reversal of margin money.

Held that appropriation of margin money by the appellant bank was a contractual adjustment arising out of BG agreement and did not amount to enforcement of security interest and therefore did not attract moratorium under section 14. Since BG had been invoked before commencement of CIRP, margin money was no longer property or asset of the corporate debtor and appropriation of same by the appellant bank was clearly not hit by moratorium. Since revised claim of the appellant had already been admitted and formed part of Information Memorandum, SRA was conscious of this revised claim of the appellant while submitting resolution plan and once resolution plan had been approved by CoC and Adjudicating Authority, SRA could not be permitted to modify terms of resolution plan after approval by Adjudicating Authority. Therefore NCLT acted beyond its jurisdiction in ordering reversal of margin money to account of the corporate debtor as it would amount to modification of terms of resolution plan which was not permissible.

SECTION 65 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – FRAUDULENT OR MALICIOUS PROCEEDINGS

Anil Singh vs. SREI Equipment Finance Ltd. [2025] 177 taxmann.com 758 (NCLAT- New Delhi)

IBC clearly prohibits any malicious or fraudulent initiation of CIRP and when in an application, it had been brought into notice by stakeholders, said application deserved consideration on merits; rejection of application only on ground that applicant had no locus, was unsustainable.

A section 7 application was filed by respondent No.1, the financial creditor against the corporate debtor on which company petition was registered. The appellant, stakeholder of the corporate debtor filed an application under section 65 alleging fraudulent and malicious initiation of CIRP. Said application was rejected by Adjudicating Authority on ground that the appellant had no locus, it being neither proper nor necessary party in section 7 application.

Held that in a case where prayer of applicant under section 65 regarding pleading to initiation of CIRP with fraudulent and malicious intent, Adjudicating Authority ought to have looked into allegations carefully. Since IBC clearly prohibits any malicious or fraudulent initiation of CIRP and when in an application, it had been brought into notice by stakeholders, said application deserved consideration on merits. Therefore, rejection of application only on ground that the applicant had no locus, was unsustainable. Impugned order rejecting intervention petition was to be set aside and intervention petition was to be revived, which may be heard by Adjudicating Authority and decided in accordance with law.

A SEMINAR ON "INSOLVENCY AND BANKRUPTCY CODE, 2016" WAS HELD ON OCTOBER 8, 2025, IN ASSOCIATION WITH ICMAI (WIRC MUMBAI)

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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.

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