OCTOBER 2026

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

THE INSOLVENCY PROFESSIONAL

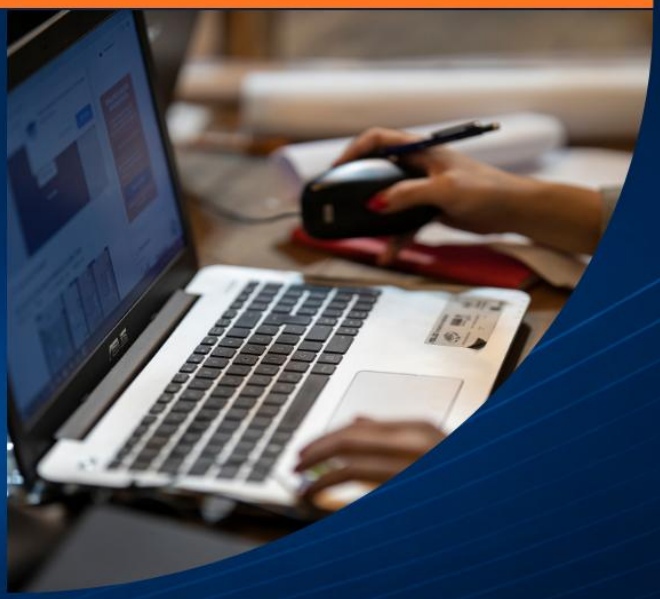
YOUR INSIGHT JOURNAL





IPA-ICMAI





OVERVIEW

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

BOARD OF DIRECTORS



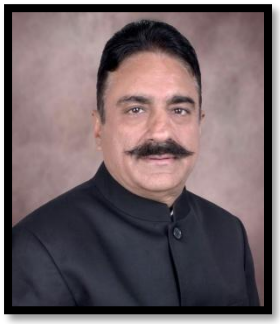
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MANAGING DIRECTOR

OUR PUBLICATIONS



IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

IBC DOSSIER

BULLETIN ON LANDMARK JUDGMENTS

QUARTERLY DIGEST

CASEBOOK

ANNUAL PUBLICATION

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FROM THE MANAGING DIRECTOR'S DESK



Dear Readers,

Welcome to the October 2026 Edition of "The Insolvency Professional - Your Insight Journal".

I extend my warm wishes to you and your loved ones for the Diwali festival. May the festive season bring happiness, prosperity, and renewed enthusiasm to all of us.

The Insolvency and Bankruptcy Board of India **("IBBI")** celebrated its 10th Annual Day on 1st October 2026, marking 10 years of IBBI and the Insolvency and Bankruptcy Code, 2016 **("IBC/Code")**. On the occasion, IBBI also released a publication titled *"Shaping the Next Decade of IBC: The Road Ahead."* I congratulate IBBI on this milestone and acknowledge its continued contribution as a dynamic regulator in strengthening the insolvency framework in India.

Recently, IBBI issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2026, along with related circulars covering: (i) compliance with the Real Estate (Regulation and Development) Act, 2016, for Corporate Debtors **("CDs")** having real estate projects and the disclosure of CIRP at the project and office sites of the CD; and (ii) the introduction of a revised Form CA for the filing of claims by real estate allottees. Insolvency Professionals **("IPs")** are required to comply with the amended CIRP Regulations and circulars during the CIRP of a CD having one or more real estate projects.

On the judicial front, the Hon'ble Supreme Court of India, in *Deepak Raheja v. Omkara Assets Reconstruction Private Limited*, considered the evidentiary requirements for establishing default under Section 7. In *Bank of India v. S.M. Kamal Pasha*, the Hon'ble Supreme Court reaffirmed the binding effect of a CoC-approved resolution plan and the limits on its withdrawal. These judicial decisions offer important guidance to IPs on the implementation and interpretation of the Code.

It gives me immense pleasure to share that during the month, IPA-ICMAI organized various online advanced workshops, a certificate course, and a seminar. A two-day certificate course titled *"IBC RE: UP – Refresh Your Knowledge, Upgrade Your Practice"* was held in Mumbai on 10th and 11th October 2026. The program also included new, value-added topics such as negotiation skills for IPs, Artificial Intelligence (AI) in insolvency practice, and an integrated case study. Over 65 participants attended the program in person.

On 31st October 2026, a seminar on the theme *"IBC SAMVAAD – Law, Practice & Road Ahead"* was organized by IPA-ICMAI at the SCOPE Auditorium, Scope Complex, New Delhi, with over 200 participants, including IPs, Cost and Management Accountants, Chartered Accountants, Company Secretaries, Advocates, Bankers, and other stakeholders in the IBC ecosystem. The seminar was graced by Hon'ble Justice Tejas Karia, Judge, High Court of Delhi, as the Chief Guest, and Mr. Sandip Garg, Whole Time Member, IBBI, and Ms. Tanvi Sundriyal (IAS), Joint Secretary, Ministry of Corporate Affairs, as Guests of Honour. As part of the program, two panel discussions were organized on the topics "IBC in Practice – Perspectives from

Stakeholders" and "Reskilling & Upskilling of Professionals." The event provided a valuable platform for knowledge-sharing and deliberations on various aspects of the IBC in practice—including technology, AI, negotiations, and mediation, among others.

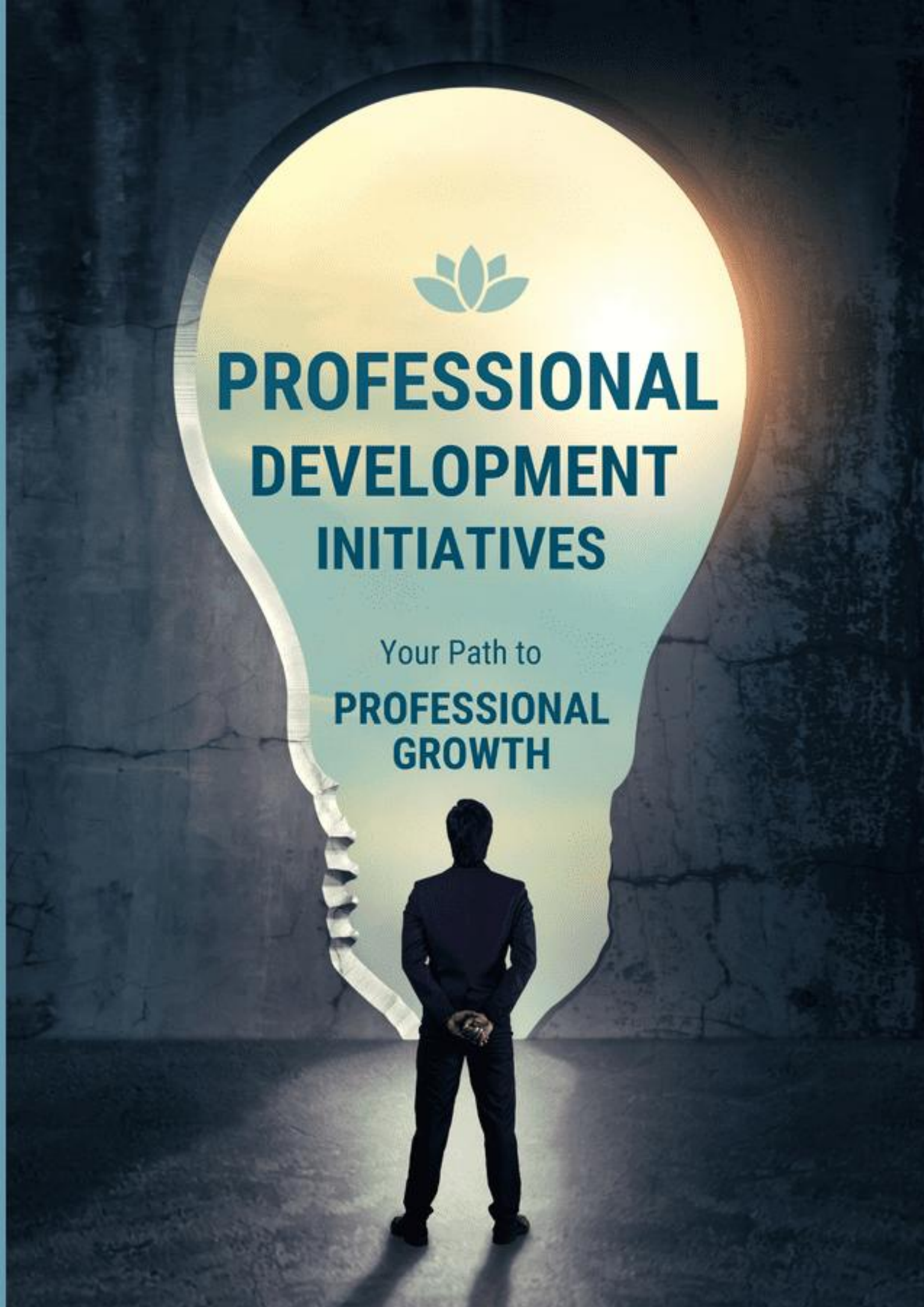
IPA-ICMAI also organized several online advanced workshops covering various aspects of the CIRP and liquidation under the Code. Additionally, IPA-ICMAI jointly with the ICSI Institute of Insolvency Professionals and the Indian Institute of Insolvency Professionals of ICAI successfully conducted the 71st Batch of the Pre-Registration Educational Course (PREC), a mandatory 50-hour program for aspiring Insolvency Professionals (IPs). Held online, the course provided participants with a structured understanding of the Code, its regulations, and the processes relating to insolvency resolution, liquidation, and bankruptcy. It also familiarized them with the ethical standards and professional responsibilities expected of an IP, preparing them for the practical demands of the profession.

These initiatives reflect IPA-ICMAI's continued commitment to capacity building, the professional development of IPs, and stakeholder engagement. I encourage all members to actively participate in our programs and contribute to the continued growth of the insolvency ecosystem.

I also extend my best wishes to Ms. Tanvi Sundriyal, Joint Secretary, Ministry of Corporate Affairs, on her appointment as Ex-Officio Member of IBBI with effect from 28th October 2026.

I trust that you will find this edition informative and insightful.

(Vinay Kumar Sanduja)
Managing Director, IPA-ICMAI


PROFESSIONAL
DEVELOPMENT
INITIATIVES
Your Path to
PROFESSIONAL
GROWTH

EVENTS CONDUCTED

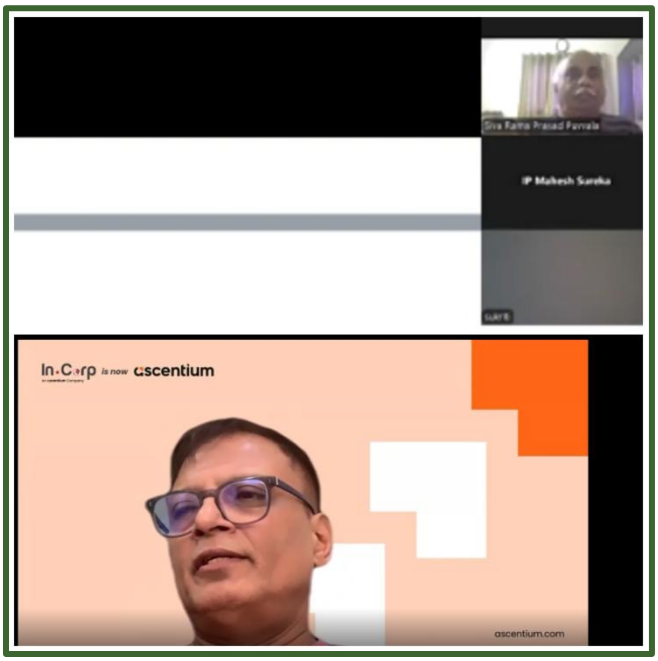
OCTOBER 2026

DATE	EVENTS CONDUCTED
October 9, 2026	IPA-ICMAI in association with the ICMAI Registered Valuers Organisation (ICMAI RVO), conducted a Knowledge Enhancement Program for Professionals at Delhi on October 9, 2026.
October 9–11, 2026	IPA-ICMAI conducted an Executive Development Program on "Liquidation under IBC: Regulatory Framework & Practical Dimensions" from October 9–11, 2026 in virtual mode.
October 10, 2026	IPA-ICMAI in association with ICMAI Jaipur Chapter and ICMAI Registered Valuers Organisation (ICMAI RVO), conducted a Knowledge Enhancement Program for Professionals at Jaipur on October 10, 2026.
October 10–11, 2026	IPA-ICMAI in association with IP Foundation, Aikyam Capital, and ICMAI RVO, conducted the certificate programme "IBC RE: UP – Refresh Your Knowledge. Upgrade Your Practice" at Mumbai from October 10–11, 2026.
October 12-18, 2026	IPA-ICMAI jointly with IIIPI and ICSI IIP organized the 71st Batch of the Pre-Registration Educational Course (PREC) in virtual mode from October 12th to 18th, 2026.
October 17, 2026	IPA-ICMAI in association with the ICMAI SIRC Chapter and ICMAI RVO, conducted a Knowledge Enhancement Program for Professionals at Chennai on October 17, 2026.
October 18, 2026	IPA-ICMAI conducted an Advanced Workshop on "Sector-Specific CIRP Challenges" in virtual mode on October 18, 2026.
October 24, 2026	IPA-ICMAI in association with the ICMAI Pune Chapter and ICMAI RVO, conducted a Knowledge Enhancement Program for Professionals at Pune on October 24, 2026.
October 25, 2026	IPA-ICMAI conducted a Workshop on "Compliances to be Made by Insolvency Professionals under IBC, 2016" in virtual mode on October 25, 2026.
October 31, 2026	IPA-ICMAI organised IBC SAMVAAD – Law, Practice & Road Ahead on October 31, 2026 at the Scope Complex, New Delhi, bringing together eminent judicial dignitaries, regulatory authorities, Legal experts and Insolvency Professionals, the programme witnessed participation from over 200 delegates.
October 31, 2026	IPA-ICMAI in association with the ICMAI Lucknow Chapter and ICMAI RVO, organised a Valuation Knowledge Camp on October 31, 2026 at Lucknow.

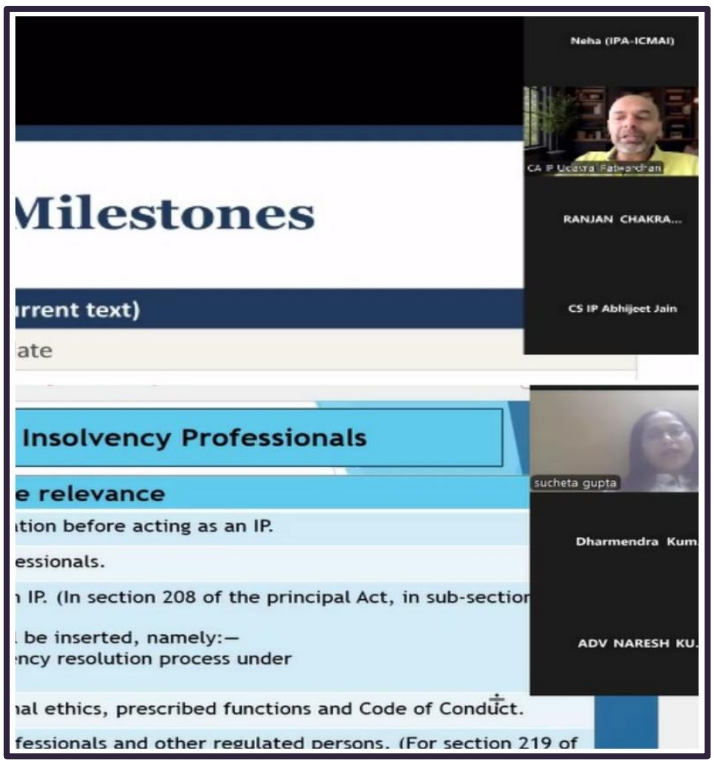
ONLINE EVENTS



EXECUTIVE DEVELOPMENT PROGRAM ON "LIQUIDATION UNDER IBC: REGULATORY FRAMEWORK & PRACTICAL DIMENSIONS" FROM OCTOBER 9–11, 2026

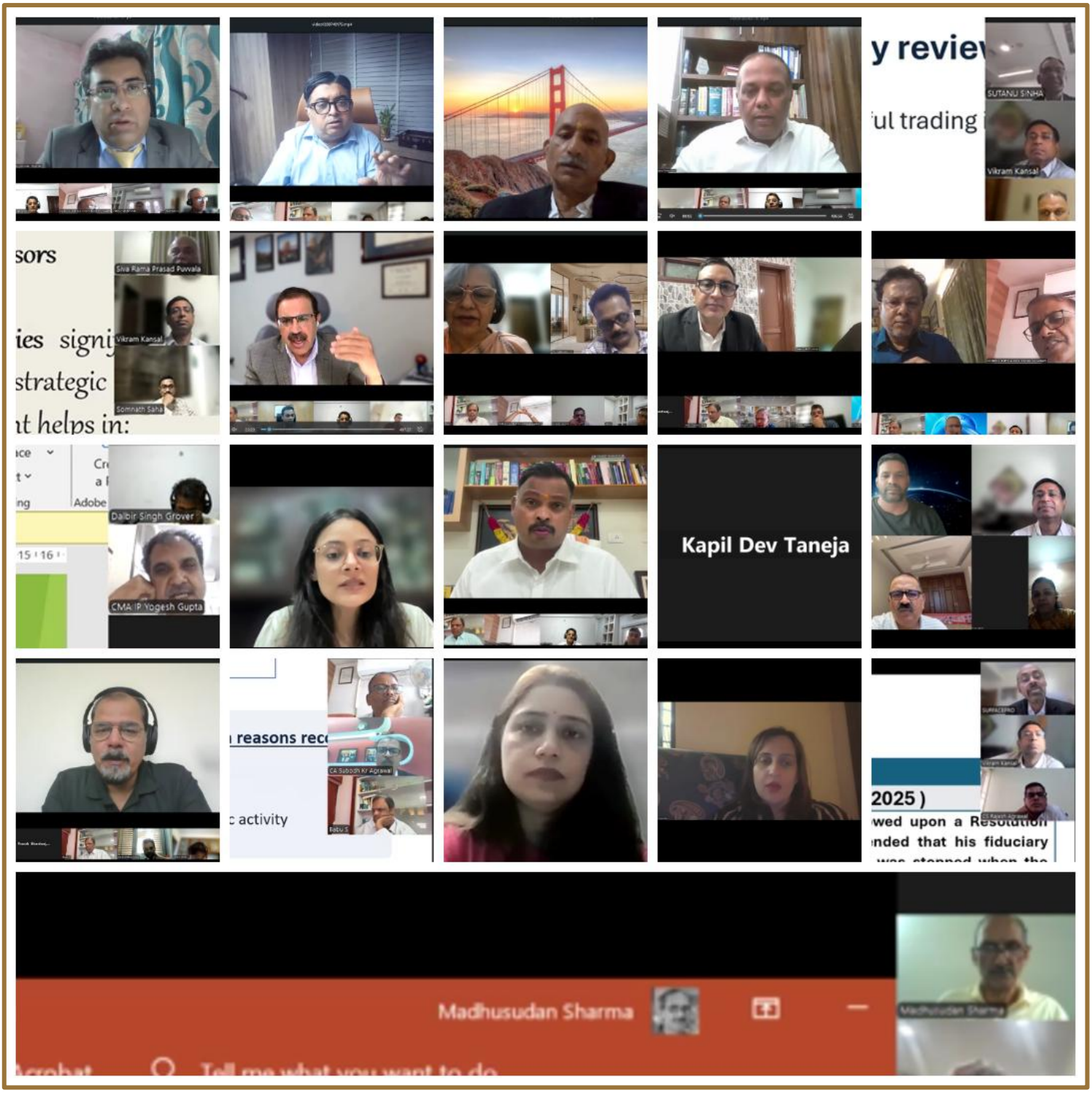


IPA-ICMAI CONDUCTED AN ADVANCED WORKSHOP ON "SECTOR-SPECIFIC CIRP CHALLENGES" WAS HELD ON OCTOBER 18, 2026.



IPA-ICMAI CONDUCTED A WORKSHOP ON "COMPLIANCES TO BE MADE BY INSOLVENCY PROFESSIONALS UNDER IBC, 2016" WAS HELD ON OCTOBER 25, 2026.

IPA-ICMAI JOINTLY WITH IIIPI AND ICSI IIP ORGANIZED THE 71ST BATCH OF THE PRE-REGISTRATION EDUCATIONAL COURSE (PREC) IN VIRTUAL MODE FROM OCTOBER 12TH TO 18TH, 2026.



IN-PERSON EVENTS

IPA-ICMAI IN ASSOCIATION WITH THE ICMAI REGISTERED VALUERS ORGANISATION (ICMAI RVO), CONDUCTED A KNOWLEDGE ENHANCEMENT PROGRAM FOR PROFESSIONALS AT DELHI ON OCTOBER 9, 2026.



IPA-ICMAI IN ASSOCIATION WITH ICMAI JAIPUR CHAPTER AND ICMAI REGISTERED VALUERS ORGANISATION (ICMAI RVO), CONDUCTED A KNOWLEDGE ENHANCEMENT PROGRAM FOR PROFESSIONALS AT JAIPUR ON OCTOBER 10, 2026.



IPA-ICMAI IN ASSOCIATION WITH IP FOUNDATION, AIKYAM CAPITAL, AND ICMAI RVO, CONDUCTED THE CERTIFICATE PROGRAMME "IBC RE: UP – REFRESH YOUR KNOWLEDGE. UPGRADE YOUR PRACTICE" AT MUMBAI FROM OCTOBER 10–11, 2026.



IPA-ICMAI IN ASSOCIATION WITH THE ICMAI SIRC CHAPTER AND ICMAI RVO, CONDUCTED A KNOWLEDGE ENHANCEMENT PROGRAM FOR PROFESSIONALS AT CHENNAI ON OCTOBER 17, 2026.



IPA-ICMAI IN ASSOCIATION WITH THE ICMAI PUNE CHAPTER AND ICMAI RVO, CONDUCTED A KNOWLEDGE ENHANCEMENT PROGRAM FOR PROFESSIONALS AT PUNE ON OCTOBER 24, 2026.



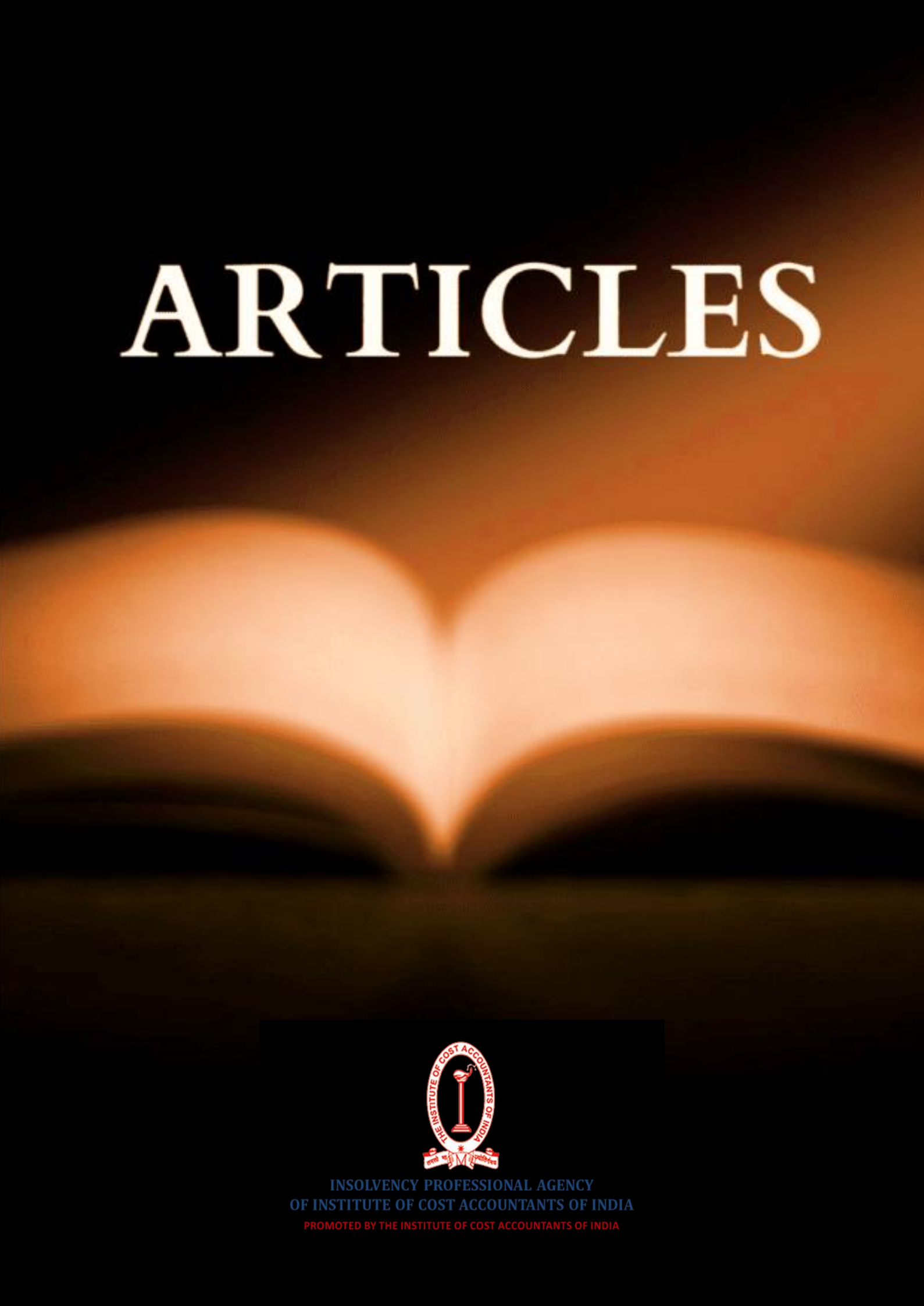
IPA-ICMAI IN ASSOCIATION WITH THE ICMAI LUCKNOW CHAPTER AND ICMAI RVO, ORGANISED A VALUATION KNOWLEDGE CAMP ON OCTOBER 31 2026 AT LUCKNOW.



IPA-ICMAI ORGANISED A SEMINAR ON IBC SAMVAAD – LAW, PRACTICE & ROAD AHEAD ON OCTOBER 31, 2026 AT SCOPE COMPLEX, DELHI.



ARTICLES



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA
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IBC AT A DECADE
FROM LEGISLATIVE REFORM TO A LIVING INSOLVENCY FRAMEWORK

CA TEENA SARASWAT PANDEY
(Insolvency Professional & Mediator)

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted with an ambitious objective: to consolidate and amend the law relating to insolvency and bankruptcy and establish a time-bound framework for resolution of insolvency. Nearly a decade into the IBC journey, it is useful to look beyond the bare text of the statute and examine how the framework has evolved through legislation, regulations, judicial interpretation and practical experience.

The IBC has fundamentally changed the manner in which financial distress is approached in India. The central question is no longer merely how a creditor can recover its dues. The larger question is whether a distressed enterprise can be resolved, its value preserved and the interests of stakeholders addressed through a structured statutory process.

The evolution of the IBC demonstrates that insolvency is not merely a recovery exercise. It is an economic, legal and institutional process in which time, value, information, commercial viability and stakeholder interests interact continuously.

2. From Recovery to Resolution

Before the IBC, insolvency and debt recovery were dealt with through multiple laws, forums and mechanisms. The Code sought to bring greater coherence to this landscape and establish a common framework for insolvency resolution and liquidation.

The emphasis on resolution before liquidation represents an important conceptual shift. A company facing financial distress is not necessarily a failed business. Financial distress and economic viability are different questions.

A distressed enterprise may possess valuable assets, an established workforce, customers, technology, licences, goodwill and business relationships while simultaneously facing severe liquidity problems. If the business can be revived, preserving it as a going concern may generate greater economic value than selling its assets individually.

The resolution architecture of the IBC should therefore be understood not merely as a mechanism for recovery but as a framework for dealing with economic distress and, wherever feasible, preserving productive capacity.

3. Preserving The Going Concern

The expression 'going concern' has considerable practical significance in insolvency proceedings. A running business possesses value that may not be captured by the value of its individual assets.

For a manufacturing enterprise, value may lie not only in plant and machinery but also in its workforce, customers, suppliers, licences, technology, operating history and market presence. Once operations stop, several of these elements may disappear or become significantly impaired.

The practical challenge for an Insolvency Professional is therefore not limited to protecting physical assets. Wherever circumstances permit, the professional must work towards preserving the economic value of the enterprise while remaining within the statutory framework.

This requires attention to operations, working capital, employee matters, statutory compliances, insurance, security, records and stakeholder coordination. Value preservation is consequently both a legal responsibility and a management challenge.

4. The Committee of Creditors and Commercial Wisdom

The Committee of Creditors occupies a central position in the corporate insolvency resolution process. The IBC recognises the commercial role of financial creditors in evaluating the viability and feasibility of resolution proposals.

Judicial jurisprudence has repeatedly emphasised the importance of the commercial wisdom of the CoC, while also recognising that commercial decisions operate within the boundaries of the Code and Regulations.

Commercial wisdom should therefore not be confused with unrestricted discretion. The

statutory framework, eligibility requirements, procedural safeguards and judicial scrutiny continue to form the legal boundaries within which the process operates.

The Resolution Professional has an important facilitative role: to conduct the process fairly, place relevant information before the CoC, maintain procedural discipline and ensure compliance with the Code and Regulations, without substituting the professional's own commercial judgment for that of the CoC.

5. The Insolvency Professional: Custodian of Process

The role of the Insolvency Professional is sometimes misunderstood. The IP is not the representative of the promoters and is not merely an agent of an individual creditor. The professional is entrusted with conducting and facilitating the insolvency process in accordance with the statutory framework.

This requires independence, objectivity and professional judgment. An IP may face competing expectations from creditors, promoters, employees, statutory authorities, prospective resolution applicants and other stakeholders. The professional must remain anchored to the Code, Regulations, judicial directions and documented facts.

Independence is therefore not merely a regulatory requirement. It is a professional discipline. It is particularly important when the decision that is legally correct is not necessarily the decision that is most convenient for a stakeholder.

6. Claims: The Foundation of the Process

The claims process may appear procedural, but it forms one of the foundations of a CIRP. The constitution of the CoC, voting rights, distribution and several subsequent stages depend upon accurate identification and verification of claims.

The professional may have to examine the existence and nature of debt, supporting documents, security interests, interest calculations, statutory dues, contingent claims, related-party issues and subsequent developments affecting the claim.

This demonstrates why insolvency is inherently multidisciplinary. Claims verification may require accounting analysis, reconciliation of records, examination of contracts and an understanding of the commercial transaction from which the claim arises.

7. Avoidance Transactions and Protection of Value

The provisions concerning preferential, undervalued, fraudulent and extortionate transactions form an important part of the IBC architecture. Their practical significance lies in examining transactions that may have diminished or diverted value otherwise available to stakeholders, subject to the statutory tests applicable to each category.

Effective examination requires chronology, financial analysis, documentary evidence and legal interpretation. The professional must distinguish an ordinary commercial transaction from a transaction that attracts statutory consequences.

This area also illustrates the importance of multidisciplinary investigation. Financial records may reveal a pattern, but legal analysis is required to determine whether that pattern satisfies the statutory ingredients of an avoidance transaction.

8. Resolution Plans: From Document to Implementation

A resolution plan should not be examined merely as a document containing financial figures. A meaningful assessment involves its feasibility, viability, funding arrangements, implementation mechanism, treatment of stakeholders, statutory compliance and the long-term sustainability of the proposed business model.

A plan may offer an attractive immediate recovery while presenting implementation difficulties. Conversely, a plan that appears modest on the face of the initial financial offer may preserve a viable enterprise and generate wider economic value.

The resolution process therefore should focus not only on approval but also on the credibility of implementation. Resolution does not truly end with approval of a plan; its effectiveness is ultimately reflected in implementation.

9. Personal Guarantor Insolvency

The extension of the insolvency framework to Personal Guarantors has added an important dimension to Indian insolvency jurisprudence. Corporate insolvency and personal-guarantor insolvency involve different factual and human

considerations.

A Personal Guarantor is an individual whose assets, liabilities, repayment capacity and future financial circumstances may directly be involved. The statutory framework therefore requires careful financial examination together with procedural fairness and sensitivity to the circumstances of the individual.

The repayment-plan mechanism, where applicable, also demonstrates that insolvency law can provide a structured route for addressing creditor claims while examining whether a sustainable repayment arrangement is possible within the statutory framework.

10. Liquidation: An Orderly Statutory Outcome

Liquidation should not automatically be described as a failure of the insolvency process. Where resolution is not possible, liquidation provides a statutory mechanism for realisation and distribution of assets.

The objective during liquidation remains value preservation and maximisation of realisation within the legal framework. Where circumstances permit and the statutory requirements are satisfied, a going-concern approach may preserve greater value than piecemeal disposal of assets.

The Liquidator therefore has a distinct but equally important responsibility: preserving the estate, identifying recoveries, examining transactions, realising assets and distributing proceeds in accordance with the statutory waterfall.

11. Time-Bound Resolution and The Cost of Delay

Time is not a neutral factor in insolvency. Delay can result in deterioration of assets, loss of customers, employee attrition, erosion of goodwill, accumulation of costs and reduction in enterprise value.

At the same time, meaningful resolution cannot be reduced to a mechanical race against the clock. The practical objective should be speed with fairness and efficiency without sacrificing due process.

The continuing challenge for the insolvency ecosystem is therefore to reduce avoidable delay while ensuring that stakeholders have a genuine opportunity to participate in a legally compliant and commercially meaningful process.

12. Technology and the Future of Insolvency

Technology has already changed the manner in which insolvency processes are conducted. Electronic voting, virtual hearings, digital claims management, document management and financial analytics have become important components of modern insolvency practice.

The next stage may see wider use of data analytics and responsible artificial-intelligence tools for document review, transaction analysis and identification of financial patterns. However, technology cannot replace professional judgment.

A system may identify a pattern; an Insolvency Professional must determine its legal, financial and commercial significance. Technology should therefore be viewed as an aid to professional decision-making rather than a substitute for accountability.

13. Institutional Professionalism

As the insolvency ecosystem matures, professional practice must become increasingly institutional. Complex assignments require coordinated teams comprising Insolvency Professionals, lawyers, valuers, accountants, company secretaries, transaction advisers and other specialists.

An IP may delegate tasks, but responsibility remains with the professional. Robust systems for review, documentation, conflict management, data security and compliance are therefore essential to maintaining quality.

The future of insolvency practice will depend not only on individual expertise but also on the ability of institutions and professional teams to deliver consistent, transparent and accountable processes.

14. Ethics, Independence and Professional Responsibility

The credibility of the insolvency framework ultimately depends upon the credibility of its professionals. Technical knowledge alone is insufficient if independence and integrity are compromised.

Every significant professional action should be capable of being explained through the facts, the applicable law, the statutory framework and the reasoning supporting the decision.

Independence, transparency and accountability are therefore not abstract ideals. They are practical requirements for a functioning insolvency ecosystem.

15. The Road Ahead

As the IBC enters its next phase, continued attention is required towards reducing avoidable procedural delays, strengthening implementation of approved resolution plans, improving institutional capacity, developing specialised insolvency expertise, strengthening the personal-guarantor framework, improving asset tracing and transaction analysis, and using technology responsibly.

The objective should not simply be faster insolvency. It should be better insolvency outcomes—outcomes that preserve viable businesses where possible, maximise value, protect stakeholder interests and provide greater predictability to the credit market.

16. Conclusion

The IBC has changed India's insolvency landscape. Its contribution is not confined to any single provision. It has changed the way financial distress is conceptualised and addressed.

A distressed enterprise is not necessarily synonymous with a failed enterprise. A creditor's claim can be addressed through a structured process. A Personal Guarantor can be dealt with within a statutory insolvency framework. Where resolution is not possible, liquidation can provide an orderly mechanism for realisation and distribution.

The next phase of the IBC should focus on predictability, professionalism, speed, value preservation and integrity. The success of the framework should be assessed not only by the number of cases resolved, but also by whether the ecosystem preserves productive value, facilitates implementation and strengthens confidence in India's credit market.

The Code created the framework. Its continuing effectiveness depends upon the courts, regulators, creditors, professionals and other stakeholders who give that framework practical meaning.

The journey from insolvency to resolution is not merely a legal process. It is an exercise in preserving economic value, maintaining stakeholder confidence and, wherever the law and circumstances permit, creating a pathway for sustainable resolution.

LAND AND DEVELOPMENT AUTHORITY DUES UNDER THE IBC, 2016: A DOCTRINAL ANALYSIS OF SECURITY INTEREST, CREDITOR STATUS AND DISTRIBUTION PRIORITY IN LIGHT OF THE SUPREME COURT, THE 2026 AMENDMENTS AND RECENT NCLAT JURISPRUDENCE

CA MANOJ KUMAR ANAND
(Insolvency Professional)

Abstract

1) The treatment of dues payable to statutory and development authorities has been one of the most contentious issues under the Insolvency and Bankruptcy Code, 2016 (IBC). Authorities such as the New Okhla Industrial Development Authority (NOIDA), Greater NOIDA Industrial Development Authority, Haryana's Department of Town and Country Planning (DTCP), and Maharashtra's housing and area development authorities frequently claim substantial amounts from companies undergoing Insolvency resolution or liquidation. It can apply to other authorities as follows;

i. Northern Region

a) DDA (Delhi Development Authority) – Delhi

b) PUDA (Punjab Urban Planning and Development Authority) – Punjab

c) GLADA (Greater Ludhiana Area Development Authority) – Punjab

d) UDA (Urban Development Authorities like JDA for Jaipur) – Rajasthan

e) RIICO (Rajasthan Industrial Development and Investment Corporation) – Rajasthan

ii. Western Region

a) MMRDA (Mumbai Metropolitan Region Development Authority) – Maharashtra

b) CIDCO (City and Industrial Development Corporation) – Maharashtra

c) MIDC (Maharashtra Industrial Development Corporation) – Maharashtra

d) GIDB (Gujarat Infrastructure Development Board) – Gujarat

e) GIDC (Gujarat Industrial Development Corporation) – Gujarat

f) AUDA (Ahmedabad Urban Development Authority) – Gujarat

iii. Southern Region

a) BDA (Bengaluru Development Authority) – Karnataka

b) KIADB (Karnataka Industrial Areas Development Board) – Karnataka

c) CMDA (Chennai Metropolitan Development Authority) – Tamil Nadu

d) TIDCO (Tamil Nadu Industrial Development Corporation) – Tamil Nadu

e) HMDA (Hyderabad Metropolitan Development Authority) – Telangana

f) TGIIC (Telangana Industrial Infrastructure Corporation) – Telangana

g) APCRDA (Andhra Pradesh Capital Region Development Authority) – Andhra Pradesh

iv. Eastern & Central Region

a) KMDA (Kolkata Metropolitan Development Authority) – West Bengal

b) WBIDC (West Bengal Industrial Development Corporation) – West Bengal

c) BDA (Bhubaneswar Development Authority) – Odisha

d) IDCO (Industrial Infrastructure Development Corporation of Odisha) – Odisha

e) MPIDC (Madhya Pradesh Industrial Development Corporation) – Madhya Pradesh

2) The magnitude of these **outstanding liabilities** is so substantial that it doesn't allow plan implementation as **Successful Resolution Applicants (SRAs)**, **homebuyers and landowners** find themselves embroiled in **protracted litigation** over the bearing of such a huge cost for years. **Greater Noida**

Industrial Development Authority (GNIDA) is faced with staggering dues of **Rs 4,081 crore** from 21 major real estate projects. **Supertech Ltd** leading the defaulters' list. The company's outstanding dues of Rs 903 crore span across three projects — Rs 312 crore for a project in Sector 1, and Rs 590 crore for two projects in Sector 16B. **Unitech Ltd**, with pending dues of Rs 828 crore across four projects in Pi 1 and 2

3) The legal controversy principally concerns the **nature of these dues**: whether they constitute **secured or unsecured financial debt**, **secured or unsecured operational debt** or **statutory dues, or merely contractual claims arising from lease deeds**. The **Supreme Court's decisions** in *State Tax Officer v. Rainbow Papers Ltd.*, *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni* have significantly shaped the jurisprudence.

4) **While the Insolvency and Bankruptcy Code (IBC) Amendment Act, 2025** (effective **May 26, 2026**) made a laudable attempt to nullify the adverse effects of these judgments by amending **Section 3(31)**, significant **statutory lacunae** still persists. The amendment restricts the recognition of a **"security interest"** strictly to **consensual, voluntary encumbrances**, thereby excluding rights that arise **by operation of law**. Consequently, the classification of a claim now hinges entirely on the interpretation of specific clauses within the **lease agreement** to determine the **voluntariness** of the security provision. If the security is deemed to have been granted **voluntarily**, the authority's claim qualifies for priority under **Section 53(1)(b)**. Conversely, if the security lacks this voluntary character, the **right of recovery** is relegated to the lower-tier distributions under **sub-clauses (e) or (f) of Section 53(1)**—tranches that are routinely **exhausted** before any residual funds can be disbursed.

This article examines the **evolution of the law**, the relevance of lease deed provisions, the distinction between secured and unsecured claims, and the **practical implications for insolvency professionals** dealing with government and development authority dues.

1. Introduction & Statutory Provisions Framework

The interaction between statutory/development authority rights and the Insolvency and Bankruptcy Code, 2016 (IBC) revolves around core statutory definitions and distribution priorities.

Provision	Scope & Key Definition	Impact on Authority Dues
Section 3(30)	Defines a Secured Creditor as a creditor in whose favour a security interest is created.	Status depends entirely on establishing a valid "security interest."
Section 3(31)	Defines Security Interest (mortgages, charges, hypothecation, encumbrances).	2026 Amendment Explanation: Clarifies that security interest exists *only* if created by an agreement/arrangement (act of two or more parties) and excludes security interests created *merely by operation of law*.
Section 5(7) & 5(8)	Defines Financial Creditor and Financial Debt (disbursement against consideration for time value of money).	Development authorities granting leases are generally not financial creditors.
Section 5(20) & 5(21)	Defines Operational Creditor and Operational Debt (claims arising from goods, services, lease rentals, statutory dues).	Authority dues typically qualify as *operational debt* unless backed by a valid contractual charge.

Section 53(1)	Prescribes the Liquidation Waterfall:	Determines priority of payment in liquidation. Statutory charges without contractual backing fall under (e) or (f) rather than (b).

2. Judicial Evolution: Landmark Precedents

The jurisprudence on statutory authority claims under the IBC has transitioned from broad statutory charge recognition to strict contractual and functional definitions.

Case Name & Forum	Key Ruling / Principle Established	Relevancy to Classification
State Tax Officer v. Rainbow Papers Ltd. *(Supreme Court, 2022)*	Held that statutory first charges (e.g., under Gujarat VAT Act) conferred secured creditor status, and resolution plans ignoring statutory demands were non-compliant.	Recognized statutory security interests (overturned/narrowed by the 2026 Statutory Amendment to Sec 3(31)).
NOIDA v. Anand Sonbhadra *(Supreme Court, 2022)*	Held that long-term lease arrangements, payment of premium in instalments, and interest components do **not** constitute "financial debt" under Sec 5(8).	Established that development authorities are **not Financial Creditors** merely by granting leasehold rights.
GNIDA v. Prabhjit Singh Soni*(Supreme Court, 2024)*	Reaffirmed that statutory status under local Acts (e.g., UP Industrial Area Development Act, 1976) does not automatically make an authority a Financial Creditor.	Treated them under ***Secured Operational*** category & **plan** treating them as Operational Creditor was **set aside**.
GNIDA v. Anand Sonbhadra *(Supreme Court, Nov 2024)*	Reaffirmed rejection of financial creditor status while expressly preserving the authority's right to claim as an operational or secured operational creditor.	Clarified that lack of Financial Creditor status does not preclude a separate claim of being a Secured Operational Creditor.
Alpha Corp Development Private Limited v. Greater Noida Industrial Development Authority (2026 INSC 449)	Only the core **principle dues** remain payable by the resolution applicants in structured instalments, and the NCLT-approved resolution plans were restored.	The Supreme Court held that GNIDA's failure or delay in filing timely claims and monitoring the process meant they were **not entitled to penal interest, penal charges, or time-extension penalties**.

Avenue Realty v. Asst. Commr. *(Madras High Court, 2026)*	Held the Explanation to Sec 3(31) to be **clarificatory and retrospective**, excluding statutory charges created merely by operation of law.	Validated the shift away from statutory charges toward consensual contractual security arrangements.

3. Post-2026 Amendment NCLAT Jurisprudence: Contractual vs. Statutory Charges

Following the amendment to Section 3(31) (effective 26 May 2026), NCLAT addressed whether lease deed clauses establish a contractual security interest.

Aspect	**NOIDA v. Ayyagari Viswanadha Sarma (NCLAT, June 2026 - Arena Superstructures)**	**GNIDA & NOIDA v. Anand Sonbhadra (NCLAT, September 2026)**
Nature of Clause	**Express Contractual Charge:** The registered sub-lease explicitly stipulated that the lessor had a "first charge on the plot towards payment of all dues."	**Conditional / Statutory Right:** Standard-form lease clauses provided for recovery as land revenue or a limited charge over unearned increase upon mortgage foreclosure.
Source of Right	Mutual, consensual agreement /arrangement between parties.	Operation of law / statutory recovery mechanisms / conditional priority.
Scope of Security	Secured all outstanding lease premium, rent, and dues.	Did not establish a general present security interest over the whole asset.
Legal Outcome	Recognized as **Secured Operational Creditor** under Section 3(31).	Reclassified as **Unsecured Operational Creditor** / Government Dues.

4. Comprehensive Classification Matrix under the IBC

The table below summarizes the legal basis and distribution priority for development authority and statutory dues based on transaction structure:

Creditor Classification	Statutory Basis	Criteria & Features	Priority Treatment (Resolution / Liquidation)
Secured Financial Creditor	Sec 3(30), 3(31), 5(7), 5(8)	Must satisfy financial debt criteria (disbursement against time value of money) + hold valid contractual security.	Section 53(1)(b) priority upon relinquishment of security.
Unsecured Financial Creditor	Sec 5(7), 5(8)	Financial debt without a valid security interest (e.g., unsecured loan/facility).	Section 53(1)(d) priority.
Secured Operational Creditor	Sec 3(30), 3(31), 5(20), 5(21)	Underlying debt is operational (lease premium/rent) **AND** an express contractual charge is created by an agreement/lease.	Section 53(1)(b) priority upon relinquishment of security interest.
Unsecured Operational Creditor	Sec 5(20), 5(21)	Operational dues (lease rent, premium, penalty) without an express contractual charge.	Section 53(1)(f) residual priority in liquidation.
Government Dues	Sec 53(1)(e)	Statutory taxes, rates, or dues owed to Central/State Government (preceding 2 years).	Section 53(1)(e) priority; does not confer secured creditor status automatically.

5. Classification of Claims of Land and Development Authorities under the IBC: Authority Perspective

S.No.	Nature of claim or underlying arrangement	Position of the Authority	Likely classification under the IBC
1	Lease premium, land cost, development charges and other contractual dues	The Authority may assert its right to recover outstanding amounts under the lease deed or applicable agreement. However, the mere existence of a contractual or statutory right to recover dues does not, by itself, create a security interest.	Unsecured operational creditor, subject to the nature of the underlying claim.

2	Statutory dues, penalties or other amounts payable to the Government or a statutory Authority	The Authority may claim priority based on the statutory nature of the dues. However, statutory recoverability alone does not automatically confer secured creditor status.	Government dues, potentially falling under Section 53(1)(e) or Section 53(1)(f), depending on the nature and statutory character of the claim.
3	Claims supported by a lease deed containing a security clause	Where the lease deed contains a genuine, independently negotiated and legally enforceable security clause, the Authority may assert that the clause creates a security interest in its favour. The validity and enforceability of the clause must be examined on the facts and applicable law.	Potentially secured creditor, if a valid security interest is established.
4	Claims arising from a genuine financial lease	Where the underlying arrangement is, in substance, a financial lease and satisfies the requirements of Section 5(8)(d), the Authority may assert that the amount constitutes financial debt. The mere description of an arrangement as a lease would not, on its own, be conclusive.	Potentially financial creditor, subject to the requirements of Section 5(8)(d).
5	Claims where no independent security interest or qualifying financial lease is established	The Authority may retain its right to lodge and pursue its claim in the CIRP. However, in the absence of a legally recognised security interest or a qualifying financial lease, the claim would not acquire secured or financial creditor status merely because it relates to land or development rights.	Generally unsecured operational creditor or government dues creditor, as applicable.

Overall Position: For the **majority** of pending and future claims, land and development authorities are likely to be classified as **unsecured operational creditors**, with their claims falling under the category prescribed under **Section 53(1)(e)** of the IBC. However, where the claims constitute **recovery as land revenue**, they shall fall under the category prescribed under **Section 53(1)(f)**, as applicable.

6. Practical Guidelines & Checklist for Insolvency Professionals (RPs / Liquidators)

To ensure accurate claim verification and compliance with Section 30(2) and Section 53, Resolution Professionals (RPs) and Liquidators must execute the following process:

6.1 Document Verification Checklist

1. **Title & Agreement Review:** Inspect original lease deeds, sub-leases, supplementary agreements, and mortgage permissions for explicit charge language.
2. **Identify Charge Creation Basis:** Distinguish whether a charge is created by express agreement (*inter partes*) or asserted merely by operation of a statutory provision.
3. **Analyze Conditional Provisions:** Check if the charge is absolute or contingent upon

events (e.g., mortgage sale, unearned increase).

4. **Registration Status:** Verify whether the security document is registered where legally mandated.
5. **Component Segregation:** Break down claims into distinct components:

   i) Principal Lease Premium
   ii) Ground Rent
   iii) Contractual Interest / Penal Interest
   iv) Post-Insolvency Commencement Dues
   v) Statutory Taxes / Penalties

6.2 Resolution & Liquidation Strategy

- **Resolution Plans (Sec 30 & 31):** Ensure operational creditors receive minimum distribution equivalents under Section 30(2)(b). Differentiate between secured and unsecured operational creditors in plan allocations.
- **Liquidation Waterfall (Sec 52 & 53):** Verify if a secured operational creditor chooses to enforce (Sec 52) or relinquish (Sec 53) its security interest. Disallow unverified statutory assertions of secured status.

7. Conclusion

The framework governing statutory and development authority dues under the IBC has achieved clarity following the 2026 Amendment to Section 3(31) and subsequent rulings. Key principles include:

1. **Exclusion of Automatic Statutory Charges:** Charges created merely by operation of law no longer confer secured creditor status under Section 3(31).
2. **Contractual Primacy:** An express, registered, contractual first-charge clause created by an agreement (such as a lease or sub-lease deed) can establish secured operational creditor status.
3. **Separation of Debt and Security:** Financial creditor status requires satisfying Section 5(8); being a secured creditor does not automatically transform an operational debt into a financial debt.

   Insolvency Professionals must base claim classifications on rigorous clause-by-clause analysis of underlying lease contracts rather than statutory designations alone.

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UNLOCKING VALUE FROM NOT READILY REALISABLE ASSETS (NRRA) IN LIQUIDATION UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016: PRACTICAL IMPEDIMENTS FOR LIQUIDATORS AND THE WAY FORWARD

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to resolve corporate distress within strict time limits so that productive assets do not remain locked in litigation. That design works reasonably well when a liquidator is selling factory land, machinery, or physical stock. Difficulties arise when a large part of the liquidation estate consists of claims that cannot be turned into cash right away. Pending applications for avoidance of preferential or fraudulent transactions before the National Company Law Tribunal (NCLT), trade receivables disputed by buyers, arbitration awards challenged in court, and tax refunds held up at the department level all fall into this category of Not Readily Realisable Assets (NRRA). Through Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016, the regulator permitted liquidators to assign or transfer such claims after consulting the Stakeholders' Consultation Committee (SCC). On the ground, however, actual transfers under Regulation 37A remain uncommon. This paper looks into the practical reasons behind that slow uptake: the lack of an accepted method for valuing contingent legal claims, a very narrow buyer base in India's distressed debt market, long delays at the NCLT, and the hesitation of liquidators who worry that selling a large claim at a heavy discount may invite scrutiny from regulators or investigative agencies later on. The paper also outlines practical steps that can make Regulation 37A work better, including clearer rules on assigning avoidance actions, dedicated tribunal benches, a transparent online platform for trading distressed claims, safe-harbour protection for bona fide decisions, and wider participation by Asset Reconstruction Companies (ARCs).

1. Background: From Corporate Revival to Liquidation Realities

Before the Insolvency and Bankruptcy Code, 2016 came into force, corporate debt recovery in India was spread across multiple overlapping laws and forums, which routinely delayed outcomes for years. The Code brought in a single time-bound process where keeping the company running through the Corporate Insolvency Resolution Process (CIRP) is the first priority. Only when revival fails does the company move into liquidation under Chapter III of Part II of the Code. At that stage, the liquidator takes control of the debtor's estate, realises the available assets, and distributes the proceeds among claimants according to the priority order laid down in Section 53.

For physical property like plant, buildings, vehicles, or inventory, public e-auctions offer a clear disposal route. The situation changes completely when the estate holds intangible or contested rights that practitioners and the regulations describe as Not Readily Realisable Assets. A claim seeking recovery from former directors for wrongful trading, an arbitral award tied up in a Section 34 challenge, an unpaid government subsidy, or a disputed insurance payout cannot be priced and sold like a piece of equipment. Whether any money comes in at all depends on how a tribunal, court, or government department decides the matter in the future, and nobody can predict how long that decision will take.

Recognising that liquidation estates were staying open for years just to chase such uncertain recoveries, the Insolvency and Bankruptcy Board of India (IBBI) inserted Regulation 37A into the Liquidation Process Regulations in November 2020. The provision allows a liquidator, after consulting the Stakeholders' Consultation Committee, to assign or transfer NRRA to an eligible buyer instead of waiting for every legal dispute to conclude. While the regulatory intent was practical, actual monetisation on the ground has been slow and difficult. In many cases, accounting records from the pre-insolvency period are incomplete, suspended directors refuse to cooperate, valuers struggle to put a defensible number on pending lawsuits, and very few buyers show up at auctions.

This article examines why the gap between the text of Regulation 37A and everyday liquidation practice remains so wide. It reviews the legal provisions governing NRRA, identifies the main operational hurdles faced by liquidators, assesses the current state of the Indian market for distressed claims, and suggests specific reforms to help unlock value from these assets.

2. Statutory Architecture Governing NRRA under the IBC

Neither the Code nor the Liquidation Process Regulations contain a standalone statutory definition of NRRA in their definitions clauses. Instead, the explanation to Regulation 37A describes them in functional terms as assets forming part of the liquidation estate that the liquidator cannot sell through normal auction channels because of their peculiar nature or special circumstances. The explanation specifically covers contingent or disputed assets as well as claims underlying proceedings for preferential, undervalued, extortionate, or fraudulent transactions.

The liquidator's basic authority to deal with such assets comes from Section 35 of the IBC. Among other duties, Section 35 empowers the liquidator to hold custody of all property and actionable claims of the corporate debtor, institute or defend suits and legal proceedings, and sell movable or immovable property and actionable claims through public auction or private contract. Since most NRRA are essentially legal rights to recover money through adjudication rather than physical items in a warehouse, they operate in law as actionable claims.

Regulation 37A builds on this power by allowing the liquidator to assign or transfer any NRRA in consultation with the SCC constituted under Regulation 31A (or the Committee of Creditors before the SCC is formed). Any person who is eligible to submit a resolution plan under Section 29A of the Code can acquire these assets. The liquidator is expected to identify the asset, have it valued, place the proposal before the SCC, run a transparent sale or assignment process, and distribute the proceeds under Section 53. Although the SCC's view is advisory in nature, a liquidator who overrides stakeholder objections must record clear reasons and be prepared to justify that decision before the NCLT.

In practice, the largest share of NRRA comes from avoidance applications filed under Sections 43 to 51 and Section 66 of the Code, covering preferential, undervalued, extortionate, and fraudulent (PUFE) transactions. Indian courts and appellate tribunals have clarified that avoidance applications do not automatically lapse when a resolution plan is approved or when liquidation begins, because their whole purpose is to bring diverted funds back to the creditors. Even with that principle settled, a liquidator handling a high-value avoidance application faces a tough practical choice. Applications before the NCLT routinely take several years to reach final orders. Keeping the liquidation open for that entire period drains the estate through ongoing legal and administrative fees, whereas selling the claim right away means accepting a steep discount. The statute also leaves several procedural questions open. While Section 130 of the Transfer of Property Act, 1882 permits the assignment of actionable claims in general commercial law, there is still debate over how smoothly a private third-party buyer can step into the shoes of a liquidator to prosecute a pending Section 66 application before the NCLT, and how the transaction will be taxed.

All of this sits uncomfortably alongside Regulation 44, which expects a liquidation to be completed within one year. When an estate has unresolved litigation claims and no ready buyer, meeting that one-year mark becomes nearly impossible, forcing the liquidator to approach the tribunal repeatedly for extensions while creditor payouts get pushed further back.

3. Disputed Claims and Contingent Rights: How NRRA Arise in Practice

Across liquidation cases in India, NRRA usually fall into a few recognisable groups. The most prominent group consists of claims under avoidance applications against former promoters, directors, or related entities for diverting funds or transferring property below fair value before insolvency began. Next come disputed trade receivables, where former customers refuse to clear outstanding invoices and raise counterclaims over delayed supply, quality defects, or breach of contract.

Arbitration claims and awards under challenge form another major category; even when an arbitral tribunal has ruled in the company's favour, a challenge filed by the opposite party under Section 34 of the Arbitration and Conciliation Act, 1996 keeps the recovery locked up until the court disposes of the petition. Liquidators also frequently encounter unpaid government dues such as Goods and Services Tax (GST) refunds, income tax refunds, or state capital subsidies stuck in departmental verification, along with security deposits held by utility providers or landlords, bank guarantees under dispute, and niche intangible assets like unquoted subsidiary shares or restricted licences.

Despite their different legal origins, all of these assets share one commercial trait: their realisation depends on an uncertain future outcome. A valuer can visit a factory, check the condition of a boiler or a crane, compare recent auction prices, and arrive at a fair value within days. Nobody can physically inspect a fraudulent-trading claim against a former promoter. Its worth depends on how strong the forensic audit report is, how long the tribunal will take to hear the matter, and whether the promoter still holds attachable assets in India. Yet in many large corporate insolvencies, the face value of these disputed and avoidance claims runs into hundreds of crores of rupees, far exceeding what is left of the physical plant. How a liquidator handles them can decide whether creditors recover a meaningful sum or almost nothing.

4. Ground-Level Bottlenecks Confronting Liquidators

Valuation is usually the first major roadblock. Unlike real estate or plant and machinery, contingent legal claims have no standard valuation formula under Indian insolvency practice. To put a price on a pending lawsuit or disputed debt, a valuer has to guess the chances of winning in court, the solvency of the opposite party, the number of years the litigation will drag on across appeals, and the legal fees required to fight it. Because each of those factors is uncertain, valuers naturally play it safe and assign very low or near-zero realisable figures. When that conservative number is placed before the SCC, creditors who are used to seeing the full book value on the balance sheet often suspect the asset is being given away too cheaply.

Finding a buyer is just as hard. In jurisdictions like the United States and the United Kingdom, specialist distressed-claim funds and litigation financiers regularly price and buy contested legal claims. India's secondary market for such claims is still very small. Most domestic Asset Reconstruction Companies and distressed funds prefer loans backed by land, buildings, or running factories. When liquidators put standalone litigation claims or disputed receivables up for e-auction, it is common for multiple auction rounds to pass without a single bid.

Court delays make the commercial math even worse. Proceedings before the NCLT, NCLAT, High Courts, arbitral tribunals, and tax appellate forums routinely take years to conclude. Every additional year reduces the present value of whatever recovery might eventually come through. In avoidance matters under Sections 43 to 66, long delays carry an extra danger: by the time the tribunal passes a recovery order against former management, the assets may already have been shifted out of reach.

There is also a real fear of personal and professional exposure among liquidators. When a claim with a face value of fifty crore rupees is assigned for two or three crore rupees because of litigation risk, there is always a chance that an aggrieved party, a regulator, or an investigative agency will question the deal years later, especially if the buyer eventually wins the case in court. Without clear protection for commercial decisions made in good faith, many liquidators feel it is safer to let the litigation sit pending or hand the claim directly to creditors rather than risk an accusation of undervaluation.

Differences among creditors inside the SCC/COC add to the delay. Banks and secured financial creditors generally prefer to accept a reasonable discount, recover what they can, and close the liquidation account on their books. Operational creditors, workmen, or homebuyers, who sit lower in the Section 53 waterfall and receive nothing from a heavily discounted sale, often want the liquidator to keep fighting the case for the full amount. Getting consensus in SCC meetings takes

months, and disagreements frequently end up as fresh applications before the NCLT.

On top of these structural issues lie everyday operational problems. In many insolvent companies, books of account are incomplete, original invoices or contracts are missing, and former directors refuse to hand over records despite directions under Section 19 of the Code. Any serious investor looking to buy a disputed receivable wants to see the underlying paperwork during due diligence; when the liquidator cannot produce those documents, buyers walk away. Pursuing the cases directly is no easier when the liquidation estate has run out of cash to pay advocates, forensic auditors, and court fees. Unclear rules on how GST, stamp duty, and income tax apply to assigned litigation claims further discourage institutional buyers from stepping forward.

5. Assessing Buyer Appetite in India's Distressed Claims Market

Looking at the broader market, buyer interest in NRRA remains limited to a small group of ARCs, special-situation funds, and niche investors who have the legal bandwidth to handle long court battles. Mainstream financial institutions stay away because their investment mandates and regulatory norms require clear title and predictable cash flows. In the few assignments that do close under Regulation 37A, buyers apply steep discounts. Arbitration claims with large face values regularly sell for a single-digit percentage of the claimed amount, while un-adjudicated avoidance claims attract even lower offers unless they are bundled with physical assets.

Standard e-auction processes designed for selling physical scrap or factory sheds do not work well for legal claims. Prospective buyers need access to detailed litigation files and flexible deal structures, such as paying a small upfront sum paired with a share of future recoveries, which rigid auction templates rarely accommodate. Where former promoters have withheld crucial documents, even interested distressed-debt funds find the legal risk too high to price.

Because India does not yet have a central online exchange or listing platform dedicated to distressed claims, most assignments rely on scattered newspaper notices or the liquidator's personal professional network. That keeps smaller or specialised investors out of the loop and limits competitive bidding. Where diverted funds have crossed national borders, the lack of a comprehensive statutory cross-border insolvency regime makes tracing and recovery overseas even harder, keeping domestic buyers focused firmly on local physical collateral.

6. Policy, Judicial, and Market Reforms: The Way Forward

Making NRRA monetisation work in practice requires practical changes across the law, regulatory guidelines, and market infrastructure. A useful first step would be to insert a clear statutory definition of NRRA in the Code or the regulations, listing its main categories so that liquidators, valuers, and tribunals follow a uniform standard. Alongside this, the IBBI can issue a standard operating framework for Regulation 37A assignments covering buyer eligibility, due diligence data-room norms, probability-based valuation methods for legal claims, and model assignment clauses that allow the liquidation estate to share in any future upside recovered by the buyer.

Building a proper secondary marketplace is equally important. Setting up a dedicated digital listing window for NRRA on existing public insolvency platforms like Baanknet (formerly e-Bkray) or through Information Utilities would let ARCs, Alternative Investment Funds (AIFs), and distressed-asset buyers view available claims across the country and bid transparently. At the same time, India needs a clear regulatory framework for third-party litigation funding in insolvency. Allowing specialised litigation funders to finance the legal costs of avoidance applications and arbitration proceedings in return for an agreed share of the eventual recovery would help cash-strapped liquidation estates pursue strong claims without having to sell them off at throwaway prices.

Faster disposal by tribunals would immediately lift the market value of these claims. Setting up dedicated benches at the NCLT to hear avoidance applications under Sections 43 to 66, or fixing dedicated weekly

hearing days for such matters, would cut down the multi-year wait that currently scares buyers away. An explicit clarification in the Code confirming that avoidance claims can be assigned to third parties, and laying down the procedure for substituting the assignee in pending NCLT proceedings, would also remove a major source of legal doubt.

Finally, two targeted measures would give liquidators and buyers the confidence to close deals. First, liquidators who obtain independent valuations, share full records with the SCC/COC, and run an open bidding process should be given clear safe-harbour protection so that a bona fide commercial sale is not treated with suspicion years later merely because the discount was steep. Second, the government should clarify the GST, stamp duty, and income tax treatment of NRRA transfers so that tax uncertainty no longer blocks genuine recovery transactions.

7. Expanding the Mandate of Asset Reconstruction Companies (ARCs)

Asset Reconstruction Companies are well placed to play a larger role in buying and resolving NRRA. Having worked under the SARFAESI Act, 2002 for more than two decades, established ARCs already have in-house legal teams, recovery officers, and experience dealing with defaulting promoters. While their main business has traditionally been buying secured non-performing loans from banks, those same legal and recovery skills can be applied to pursuing disputed corporate receivables, arbitration awards, and avoidance claims acquired from liquidation estates. Unlike a liquidator working against a one-year regulatory clock, an ARC has the institutional staying power and funding to pursue contested claims through appellate courts until money is actually recovered.

For ARCs to step in at scale, however, a few regulatory hurdles need to be cleared. The SARFAESI framework and Reserve Bank of India (RBI) guidelines were drafted around secured financial debt acquired from banks and financial institutions, leaving grey areas around whether ARCs can directly purchase standalone disputed trade receivables or statutory avoidance claims from a liquidator under the IBC. Aligning RBI norms with Regulation 37A to explicitly permit ARCs and Special Situation Funds to acquire all categories of NRRA, paired with sensible provisioning rules and tax clarity, would bring reliable institutional capital into this segment.

8. Concluding Observations

Monetising Not Readily Realisable Assets is difficult because it sits at the intersection of uncertain litigation, a thin buyer market, and personal regulatory risk for the liquidator. Introducing Regulation 37A was a necessary reform that gave liquidators a legal route to transfer contingent claims instead of keeping liquidations open indefinitely. What is needed now is the supporting structure around that provision: clearer statutory definitions, standardised valuation and assignment guidelines, an open digital marketplace for distressed claims, faster hearings for avoidance applications, tax clarity, and safe-harbour protection for liquidators acting in good faith.
Once these practical gaps are addressed, contingent and disputed claims will no longer be treated as dead weight that merely delays the closure of liquidation proceedings. Instead, they can be priced and transferred systematically, ensuring that money owed to the corporate debtor or diverted through wrongful transactions is actually recovered and distributed to stakeholders as intended under the Code.

DELAYED CLAIMS UNDER THE IBC: REGULATORY CONTRADICTIONS, THE "ACCEPTABLE FOR COLLATION" TEST AND THE UNWARRANTED COMPLEXITY OF COC INVOLVEMENT

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The central issue is that the existing framework combines claim verification, admission, condonation of delay and CoC consideration into a multi-stage process without clearly defining the powers and responsibilities at each stage. The following article examines the contradictions in Regulation 12 and Regulation 13, including the "acceptable/non-acceptable for collation" classification and the proposed amendment in the IBBI Discussion Paper dated 16 February 2026.

1. Introduction

The Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) is founded on the principles of time-bound resolution, maximisation of value, and certainty for creditors and prospective resolution applicants. An effective insolvency framework must, therefore, strike a balance between two competing objectives: protecting the legitimate interests of creditors who submit genuine claims and preserving the certainty and finality essential to the resolution process.

The submission and verification of claims constitute the foundation of CIRP. The constitution of the Committee of Creditors (CoC), determination of voting shares, preparation of the Information Memorandum, assessment of liabilities, and distribution of resolution proceeds all depend, directly or indirectly, on the identification and verification of creditors.

While procedural discipline in submitting claims is undoubtedly necessary, genuine creditors may sometimes be unable to file their claims within the stipulated period. This may occur because of delayed knowledge of the CIRP, incomplete records of the corporate debtor, ongoing litigation, uncertainty regarding the amount due, or administrative difficulties in compiling supporting documents.

The regulatory framework must provide a clear and predictable method for dealing with such claims. Unfortunately, the present framework under Regulations 12 and 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has evolved into a complex mechanism involving different timelines, classification of claims as "acceptable" or "non-acceptable for collation", recommendations by the CoC, and applications before the Adjudicating Authority for condonation of delay and adjudication.

The Insolvency and Bankruptcy Board of India (IBBI), recognising at least one aspect of this difficulty, issued its Discussion Paper on Strengthening CoC's Oversight and Procedural Clarity under the CIRP Regulations, 2016, dated 16 February 2026. Proposal 3 seeks to clarify the role of the CoC in dealing with delayed claims. The said proposal 3 is titled as "Clarification of the Role of the CoC in Respect of Delayed Claims"

Although this proposal is a welcome step, it addresses only a part of the problem. The larger questions concerning (a) what is finally considered as the date of filling of the claim (b) the meaning of "acceptable for collation", (c)the consequences of the 90-day requirement and (d) the division of responsibility between the Resolution Professional (RP), the CoC and the Adjudicating Authority remain substantially unresolved.

2. The statutory and regulatory framework

Regulation 12(1) requires a creditor to submit its claim with supporting proof on or before the last date specified in the public announcement. The proviso provides an extended period for a creditor who has missed that deadline: the claim may be submitted to the Interim Resolution Professional (IRP) or RP up to the date of issue of the Request for Resolution Plans (RFRP) under Regulation 36B, or 90 days

from the insolvency commencement date (ICD), whichever is later.

The second proviso to Regulation 12(1) further requires the creditor to provide reasons for the delay where the claim is submitted beyond 90 days from the ICD.

Regulation 13 deals with the verification and handling of claims. Its provisions, read together, create different procedural stages:

- Under Regulation 13(1), the IRP/RP verifies claims and maintains an updated list of creditors.
- Regulation 13(1A) provides for admission or rejection of claims, in whole or in part, and communication of the decision to the creditor, along with reasons, within the prescribed period of seven days of such admission or rejection of claims.
- Regulation 13(1B) deals with claims received after the period specified under Regulation 12(1), provided they are received up to seven days before the meeting of creditors for voting on the resolution plan or the initiation of liquidation, as applicable. (emphasis added) Such claims must be verified and categorised as acceptable or non-acceptable for collation. (emphasis added)
- Regulation 13(1C) prescribes the subsequent steps for communicating that categorisation and processing claims categorised as acceptable. (emphasis added)

Under the existing Regulation 13(1C)(b), claims categorised as acceptable and collated by the RP are placed before the CoC in its next meeting for a recommendation regarding their inclusion in the list of creditors and their treatment under the resolution plan, if any. Such claims are also required to be submitted before the Adjudicating Authority for condonation of delay and adjudication, wherever applicable.

- The regulatory scheme, therefore, contains two distinct extensions: one under Regulation 12(1), and another under Regulation 13(1B). The latter is not merely a continuation of the former. It involves an additional classification and procedural process, with the CoC and the Adjudicating Authority both becoming involved (emphasis added).

It is this additional complexity that requires reconsideration.

3. The 90-day deadline vis-à-vis the date of issue of the RFRP

One of the principal questions arising from Regulation 12(1) is the utility of prescribing two alternative dates: the date of issue of the RFRP and 90 days from the ICD, whichever is later.

As per the model timelines for corporate insolvency resolution process under Regulation 40A-the Issue of RFRP shall happen only on T+105 days. Therefore, the RFRP will invariably be issued after 90 days, making the 90-day reference redundant. However, that proposition requires some qualification.

Regulation 36A requires publication of Form G for inviting expressions of interest at the earliest and ordinarily no later than the 60th day from the ICD. The prospective resolution applicants must receive the prescribed minimum period to submit expressions of interest, following which the process of preparing the provisional list and issuing the RFRP under Regulation 36B takes place. Depending on the actual dates on which these steps are undertaken, the RFRP may theoretically be issued before the 90th day from ICD. However, it would be extremely rare to have a CIRP assignment which is running ahead of the model timelines as the said timelines are very stringent. Hence ideally the timelines under the first and second proviso to Regulation 12(1) should have been 105 days and not 90 days which would have been in sync with the model timelines for corporate insolvency resolution process under Regulation 40A. The reference to 90 days in first and second proviso to Regulation 12(1) adds unnecessary complexity with no additional benefits.

Nevertheless, the drafting gives rise to a separate and more substantial difficulty.

3.1 The unexplained distinction between the filing deadline and the requirement to provide reasons

The second proviso to Regulation 12(1) requires reasons for delay whenever the claim is submitted after the 90th day, even if the claim is submitted before the date of issue of the RFRP and is therefore within the extended period expressly permitted by the first proviso to Regulation 12(1).

This creates two distinct standards within the same provision:

1. The creditor is legally permitted to submit its claim up to the later of the RFRP date and the 90th day.
2. If the claim is submitted after the 90th day, the creditor must nevertheless explain the delay.

The regulation does not clearly explain the consequences if the creditor furnishes reasons that the RP considers inadequate (emphasis added).

The second proviso to Regulation 12(1) is silent of the following pertinent issues:

- Is the RP entitled to reject a claim that has been submitted within the outer filing period merely because the reasons for filing after the 90th day are considered unsatisfactory?
- Whether the creditor must provide these reasons simultaneously with the claim or may furnish them upon a request from the RP
- Consequences if no reasons are provided by the claimants.

In the views of this author- seeking reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement under second proviso to Regulation 12(1) is not serving any beneficial purpose and only adding an additional layer of complexity and should be deleted.

4. The distinction between claims under Regulation 12 and delayed claims under Regulation 13

The major difficulty with claims delayed claims under Regulation 12 and delayed claims under Regulation 13 is that the regulations create two different categories of claims that may both be described as delayed, although they attract different procedural requirements.

A claim submitted after the last date in the public announcement but on or before the later of the RFRP date and the 90th day falls within Regulation 12(1). The creditor must provide reasons if the claim is submitted after the 90th day, but the claim is not thereby automatically transferred into the Regulation 13(1B) process. What is finally considered as the date of receipt of claim adds additional layer of complexity to the issue.

A claim submitted after the extended period specified in Regulation 12(1), but by the cut-off under Regulation 13(1B), enters a different regime. The RP must verify it and categorise it as acceptable or non-acceptable for collation. If the claim is categorised as acceptable, the existing Regulation 13(1C) process involves the CoC and the Adjudicating Authority.

Consequently, the legal consequences of delay are not determined merely by the number of days elapsed from the ICD. They depend on the relationship between the following:

a. the date of filing of the claim with complete proof of claim

b. the date of issue of the RFRF – if the RFRP is issued two times, can the date of issue of 2nd RFRP be considered or only the date of issue of the 1st RFRP is to be considered.

c. the meeting at which the resolution plan is to be voted upon- there may be considerable gap between the date of presentation of the Plan before the CoC and its actual voting and linking 7 days to the date of voting of the resolution plan can have serious consequences to the commercial decision of the CoC on approval or rejection of the resolution plan if there is a material deviation in the payment outcome to the financial creditors.

The Regulation should provide an unambiguous answer to the following questions:

- What is considered as the date of filing of a

claim? - the RPs usually consider the date of the receipt of first claim with or without supporting documents as the date of receipt of claim, however the DC order No. IBBI/DC/310/2026 dated 30 March 2026, concerning the CIRP of Grandstar Realty Private Limited has added a further layer of complexity to the said issue. As per the said DC order " the date of submission of the complete claim form, along with all necessary supporting documents, shall be considered the effective date for the purpose of computing the timeline of the submission of claim" (emphasis added)

- When is a claim late under Regulation 12?
- When does it become a delayed claim requiring classification under Regulation 13(1B)?
- At what stage does the creditor need to approach the Adjudicating Authority for condonation of delay?

Without clear answers, creditors may be uncertain about the procedure applicable to their claims, while RPs face the risk of regulatory action for incorrectly processing them.

5. The concept of "acceptable" and "non-acceptable for collation": A new source of confusion

Perhaps the most problematic feature of Regulation 13(1B) is the requirement that the RP categorise claims as "acceptable" or "non-acceptable for collation".

The regulation does not define either expression. Nor does it specify the objective parameters on which the classification must be made (emphasis added)

What exactly is an acceptable claim?

Does "acceptable" mean that the claim is supported by adequate documents and that the debt is prima facie established? Does it mean that the RP considers the reasons for delay sufficient? Does it refer to whether the claim can be incorporated into the list of creditors without disrupting the resolution process? Or does it mean that the RP considers the claim suitable for being placed before the CoC and the Adjudicating Authority?

These questions cannot be dismissed as semantic concerns. They go to the heart of the RP's statutory responsibilities.

5.1 Verification, admission and collation are different functions

It is important to distinguish three activities.

Verification concerns examination of the claim and the supporting evidence to determine the creditor's entitlement and the amount claimed.

Admission or rejection concerns the RP's decision on the claim, in whole or in part, based on the verification undertaken in accordance with the regulatory framework.

Collation ordinarily refers to the administrative process of compiling and organising the claims and claim-related information for the purposes of maintaining the list of creditors and conducting the CIRP.

These functions are related, but they are not interchangeable.

A claim may be supported by adequate documentary evidence and appear genuine on its merits yet have been submitted outside the filing period defined under Regulation 13(IB).

Conversely, a claim submitted within the relevant filing period under Regulation 13(IB) may lack sufficient evidence to substantiate the amount claimed.

The first case raises a question of delay and procedural eligibility. The second raises a question of verification and proof. The regulations should not permit these distinct issues to become blurred through an undefined classification.

5.2 Does "non-acceptable for collation" mean that a claim is not admissible?

The implications of a finding that a claim is non-acceptable are particularly serious.

Under Regulation 13(1C), the specific obligation to place claims before the CoC and the Adjudicating Authority attaches to claims categorised as acceptable and collated by the RP. Claims categorised as non-acceptable are not expressly afforded the same route under that sub-regulation (emphasis added).

The natural question is whether the RP's categorisation consequently determines whether a creditor can obtain consideration of its application for condonation of delay.

If the answer is yes, the RP's classification assumes a quasi-gatekeeping role over access to the adjudicatory process. Yet the regulations do not prescribe the legal test or threshold to be applied while exercising that function.

If the answer is no, the regulations should expressly clarify the route available to a creditor whose claim is classified as non-acceptable.

The problem is compounded by Regulation 13(1A), which provides for admission or rejection after verification, while Regulation 13(1B) separately requires categorisation as acceptable or non-acceptable for collation. The regulations do not set out an entirely clear sequence explaining how these decisions interact.

For instance, if a claim is prima facie supported by evidence but is considered non-acceptable because of the delay, does the RP reject the claim under Regulation 13(1A), classify it as non-acceptable under Regulation 13(1B), or both? If the claim is rejected, can the creditor still approach the Adjudicating Authority for condonation and adjudication? If it is acceptable for collation, does that mean that the claim has already been admitted on its merits? (emphasis added)

These are not hypothetical drafting concerns. They affect the rights of creditors and the discharge of an RP's professional obligations.

5.3 The need for objective and transparent criteria

The regulations should prescribe clear criteria for claims to be classified as acceptable or non-acceptable for collation to avoid complexity and give complete clarity for the path to be adopted by the IRP/RP. The RP should be required to record the basis of the classification in writing. A creditor should also have a clear procedural route to challenge a finding of non-acceptability.

6. Excessive involvement of the CoC in the admission of delayed claims

The third major issue is the role assigned to the CoC under the existing Regulation 13(1C)(b).

The current provision requires acceptable delayed claims to be placed before the CoC in its next meeting for a recommendation regarding their inclusion in the list of creditors and their treatment in the resolution plan. The claims must also be submitted before the Adjudicating Authority for condonation of delay and adjudication, wherever applicable.

Ideally the role of the CoC should have been restricted to the treatment of the delayed claims in the resolution plan. The use of the language in Regulation 13(1C)(b)(i) "recommendation for inclusion in the list of creditors" acts as a potential conflict between commercial interests and procedural fairness. (emphasis added)

There is no sound reason for the CoC to become the gatekeeper for deciding whether a delayed claim should be placed before the Adjudicating Authority for condonation of delay.

6.1 The CoC cannot substitute for the Adjudicating Authority

Whether a delay ought to be condoned is a matter requiring application of the relevant legal principles to the facts of the case. It is not a commercial decision merely because the claim may affect the liabilities of the corporate debtor.

Similarly, whether a claim is supported by documentary evidence and the amount to which the creditor may be entitled are matters that must be addressed through the applicable verification and adjudication process.

The CoC may legitimately have an interest in the consequences of a claim for the resolution plan. For instance, the claim may change the projected distribution to a creditor class or affect the voting share of financial creditors.

That interest, however, should not transform the CoC into an authority that determines whether a creditor should be permitted to seek condonation of delay.

A CoC member may have a commercial interest in whether a particular claim is recognised or in how the resulting liabilities affect recoveries. Allowing a recommendation from the CoC to function as a prerequisite to the consideration of the claim by the Adjudicating Authority creates a potential conflict between commercial interests and procedural fairness.

6.2 The ambiguity of the existing sequence

The existing provision uses the words "and" between the two steps of placing a claim before the CoC and submitting it before the Adjudicating Authority. It does not expressly state that the RP may approach the Adjudicating Authority only after receiving the CoC's recommendation.

Nevertheless, the sequence in which the steps are described, together with the reference to the CoC's recommendation for inclusion in the list of creditors, has encouraged an interpretation under which the CoC's recommendation is treated as a condition precedent to moving the Adjudicating Authority.

The IBBI Discussion Paper itself identifies this implementation problem. It notes that acceptable delayed claims have, in certain cases, not been placed before the Adjudicating Authority solely because the CoC did not recommend them, resulting in procedural inconsistencies and avoidable disputes.

The regulatory response should therefore be more than a clarification of meeting procedure. It should establish unequivocally that the CoC cannot prevent a properly verified delayed claim from being presented to the Adjudicating Authority merely by withholding its recommendation.

6.3 The consequences for insolvency professionals

The problem is not academic. In its Disciplinary Committee Order No. IBBI/DC/310/2026 dated 30 March 2026, concerning the CIRP of Grandstar Realty Private Limited, the IBBI suspended the registration of the RP for one year. Among the findings was the failure to process a delayed claim through the prescribed procedure, including placement before the CoC and submission before the Adjudicating Authority for condonation of delay and adjudication, where applicable.

The order illustrates the seriousness with which compliance with Regulation 13(1B) and (1C) is enforced.

However, where the regulation itself leaves uncertainty over the relationship between the RP's classification, the CoC's recommendation, and the Adjudicating Authority's jurisdiction, a professional should not be placed in the position of navigating those issues without clear procedural direction.

7. The IBBI Discussion Paper dated 16 February 2026: A welcome but incomplete correction

Proposal 3 in the IBBI Discussion Paper seeks to substitute Regulation 13(1C) (b).

Under the proposed provision, claims categorised as acceptable under Regulation 13(1B) and collated by the RP would be placed:

- before the Adjudicating Authority, within one week of receipt of such claims, for condonation of delay and adjudication, wherever applicable; and
- before the CoC in its next meeting for a recommendation regarding their treatment in the resolution plan, if any.

The proposed amendment makes two important changes.

First, it requires claims to be placed before the Adjudicating Authority within a specified period, rather than leaving the process open to uncertainty over sequencing.

Second, it removes the CoC's recommendation regarding inclusion in the list of creditors and limits the recommendation to treatment of the claim in the resolution plan.

This is the correct direction. Inclusion in the list of creditors and the legal determination of whether a delayed claim should be considered should not depend upon a commercial

recommendation by the CoC. The CoC's input should principally concern how an admissible claim is to be treated under the resolution plan, subject to the IBC and applicable law.

However, the latest consolidated CIRP Regulations as amended up to 9th June 2026 and available on the website of IBBI, the proposed substitution of Regulation 13(1C)(b) as per the discussion paper dated 16th Feb 2026 does not appear in CIRP Regulations as amended up to 9th June 2026. The recommendations of the discussion paper dated 16th Feb 2026 has still not been implemented and needs to be implemented at the earliest.

However, the proposed amendment does not address several related issues.

First, it continues to rely upon the classification of claims as acceptable under Regulation 13(1B). The criteria for this classification remain undefined.

Second, it does not specify a procedural route for claims categorised as non-acceptable. If such claims are not to be placed before the Adjudicating Authority by the RP, should the RP be required to provide the creditor with a reasoned decision and inform it of the right to approach the Adjudicating Authority independently?

Third, it does not clarify the precise relationship between the admission or rejection of a claim under Regulation 13(1A), its classification under Regulation 13(1B), and the Adjudicating Authority's role in condonation and adjudication.

Fourth, although the proposal requires an application to be submitted within one week of receipt, it does not require the Adjudicating Authority to decide the application within that period. A claim received at the seven-day cut-off before plan voting could therefore remain undecided when the CoC proceeds to vote.

The proposal resolves an important sequencing problem. It does not yet provide a complete framework for delayed claims.

8. The seven-day cut-off: A further limitation requiring clarification

Regulation 13(1B) permits the special treatment of delayed claims only where they are received up to seven days before the meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be.

This cut-off is intended to prevent claims from being introduced at a stage when the resolution process is about to conclude. The objective of preserving finality is legitimate. Yet the drafting leaves several questions unanswered.

8.1 Which meeting is relevant?

A CIRP may involve multiple meetings at which resolution plans are discussed, revised, challenged or put to vote. There may also be changes in the voting schedule.

Does the seven-day period run from the first meeting at which a resolution plan is put to vote or discussion or from the meeting at which the final plan is considered? What happens if a plan is rejected and a revised plan is subsequently placed before the CoC?

The regulation should identify the relevant event with precision. Otherwise, the same claim may be classified differently depending on the interpretation of the RP.

8.2 How is the cut-off calculated where electronic voting is involved?

In practice, CoC decisions may involve meetings followed by voting through electronic means. The relevant date may not always be as straightforward as the date of a physical meeting.

The regulation should clarify whether the cut-off is tied to the date of the CoC meeting, the opening or closing of the voting window, or another specified event.

8.3 What happens to a claim received within the final seven days?

A claim received within the final seven days before the relevant meeting falls outside the express period provided under Regulation 13(1B). This may result in a genuine creditor being excluded even where the delay was

beyond its control.

The IBBI's proposed amendment does not address this issue.

9. The relationship between claim completeness and the date of submission

Another practical problem concerns the date on which a claim should be regarded as having been submitted.

In the IBBI Disciplinary Committee's order dated 30th March 2026 concerning Grandstar Realty Private Limited, the RP had received a claim earlier, but the supporting documents necessary for verification were received later. The Disciplinary Committee held that mere receipt of a claim without complete supporting proof did not qualify as a valid submission for Regulation 12 purposes. It treated the date of receipt of the complete claim with supporting proof as the relevant date for determining whether the claim was delayed.

This approach underscores the need for documentary completeness. However, it also exposes a procedural gap. A creditor may submit a claim form within the prescribed period and later provide a document or clarification requested by the RP. If the later document is treated as the date of submission of the claim, a claim initially filed on time may be shifted into the delayed-claim process.

10. The impact on the CoC and the resolution plan

Delayed claims may have significant consequences for the CIRP, particularly where the creditor is a financial creditor.

Under Regulation 12(3), a financial creditor whose claim is admitted is included in the CoC from the date of admission of the claim, subject to the proviso that inclusion does not affect the validity of decisions taken by the CoC before that inclusion.

Thus, admission of a delayed financial claim can alter the composition or voting shares of the CoC for subsequent decisions, even though it does not invalidate prior decisions.

A claim received after the RFRP has been issued may also affect the assessment of liabilities disclosed to prospective resolution applicants. Depending on the stage of the process, it may require updated creditor information and consideration of the claim's treatment under the resolution plan. These consequences explain why late claims cannot be accepted without discipline. But they do not justify placing the entire process under the control of the CoC.

11. Judicial emphasis on finality does not justify procedural ambiguity

The Supreme Court's decision in RPS Infrastructure Ltd. v. Mukul Kumar, decided on 11 September 2023, remains an important authority on the need for finality in insolvency resolution. The Court declined to permit a belated claim after the CoC had approved the resolution plan. It emphasised that permitting claims to be introduced at that stage could reopen the resolution process and undermine the certainty expected by a successful resolution applicant.

The principle of finality is central to the IBC. A resolution applicant must be able to assess the liabilities of the corporate debtor on the basis of the information and claims processed through the CIRP, rather than face an open-ended possibility of additional liabilities after committing to a plan. However, RPS Infrastructure should not be read as making every delayed claim inadmissible in every circumstance. The subsequent regulatory framework expressly provides for the processing of certain delayed claims received before the Regulation 13(1B) cut-off.

The task of regulation is to define that permitted window, prescribe objective procedures for exercising it, and protect the finality of the process after the relevant stage has passed. An uncertain procedural regime does not advance finality. It generates disputes about whether a claim was properly submitted, whether its delay should be condoned, whether the RP correctly classified it, whether the CoC should have recommended it, and whether the Adjudicating Authority ought to have been approached.

The object should be to minimise these

disputes through clear rules rather than multiply procedural steps.

12. Suggested regulatory reforms

A meaningful amendment should address the whole process of delayed claims rather than only the sequence in which the RP approaches the CoC and the Adjudicating Authority.

12.1 Clarify the permissible filing period for claims under Regulation 12:

- Under Regulation 12 – the last date for filing the claims may be defined as the date of issue of first RFRP without any reference to the period of 90 days from ICD.
- The need for providing reasons for delayed claim under second proviso to Regulation 12 may be omitted as it is not serving any purpose.

12.2 Define "acceptable for collation"

Ideally the categorisation of claims as acceptable or non-acceptable for collation should be omitted. The claims which are received by the RP within a certain defined period which should ideally be linked to the receipt of the Resolution Plan by the RP. The criteria for accepting delayed claim under Regulation 13(IB) should be linked to a certain number of days from the receipt of resolution plan by the RP. The delayed claims should not be linked to the date of the meeting of creditors for voting on the resolution plan.

To protect the claimants who have not filed their claims, the Regulation should make it mandatory for every resolution plan to provide the treatment for delayed claims/ claims not received/ claims not accounted for in the resolution plan.

If the terms "acceptable" and "non-acceptable for collation" are retained in Regulation 13(IB). the expressions "acceptable" and "non-acceptable for collation" should be supported by objective criteria and defined in the Regulation.

12.3 Remove the CoC's role in determining inclusion in the list of creditors

The CoC should not be required to recommend whether a legally supportable delayed claim should be included in the list of creditors as a condition for its consideration by the Adjudicating Authority.

The RP should process the claim in accordance with the regulations and submit an acceptable delayed claim to the Adjudicating Authority within the prescribed period. The CoC should be informed of the claim and should make its recommendation on the treatment of the claim under the resolution plan, if any.

This is the essential correction proposed in the February 2026 Discussion Paper and should be retained and implemented at the earliest.

12.4 Prescribe a route for non-acceptable claims

Where the RP classifies a delayed claim as non-acceptable, the regulation should require a reasoned communication setting out the grounds for the decision.

It should also clarify whether and how the creditor may independently approach the Adjudicating Authority, and whether the RP must inform the creditor of that procedural option.

The RP should not have an unstructured power to prevent the adjudicatory forum from considering a matter merely by describing the claim as non-acceptable.

12.5 Reconsider the seven-day cut-off

The regulation should specify the event from which the seven-day period is calculated, including where electronic voting, revised plans or multiple voting exercises are involved.

It should also identify whether a narrow exception is appropriate where a creditor demonstrates circumstances beyond its control and the claim can still be processed without undermining the integrity of the resolution process.

Any exception must be carefully limited to prevent endless reopening of the CIRP.

12.6 Provide for timely disclosure and protection of resolution-process certainty

When a delayed claim is accepted for further consideration, the RP should ensure appropriate disclosure to the CoC and, where relevant, prospective resolution applicants.

If a claim has a material impact on liabilities or voting shares, the regulations should explain the procedural consequences and how the integrity of the resolution process is to be preserved.

The framework should also clarify the point after which a claim cannot ordinarily be introduced into the resolution process, consistently with the statutory objective of finality.

13. Conclusion

The treatment of delayed claims under Regulations 12 and 13 has become unnecessarily cumbersome. The framework requires creditors and insolvency professionals to navigate multiple timelines, undefined categories, procedural classifications and overlapping institutional roles.

The expression “acceptable for collation” is particularly problematic because its legal meaning and criteria are not expressly defined.

Similarly, CoC involvement should not become a condition precedent to an application for condonation of delay. The CoC's role in assessing the commercial consequences and treatment of a claim must remain distinct from the RP's responsibility for verification and the Adjudicating Authority's adjudicatory role.

The ultimate objective should be a system that protects genuine creditors without compromising finality. The IBC must not permit an endless reopening of the resolution process, but neither should a creditor's legitimate claim become subject to an undefined procedural discretion.

Regulatory clarity, rather than additional layers of approval, is the key to achieving both creditor protection and time-bound resolution.



CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

Central Transmission Utility of India Ltd. vs. Sumit Binani [2026] 189 taxmann.com 146 (SC)/ [2026] 268 COMP CASE 66 (SC)

Where appellant appropriated Payment Security Mechanism deposit against both pre-CIRP and post-CIRP dues after commencement of CIRP, such set-off towards pre-CIRP dues was impermissible since deposit remained property of corporate debtor until legally adjusted and no security interest or mutual set-off existed, thus, NCLT and NCLAT rightly directed adjustment only towards post-CIRP dues in adherence to moratorium under section 14.

The appellant operated inter-state transmission system under a BPTA/TSA with the corporate debtor (KMPCL). Pursuant to CERC directions and at KMPCL's request, KMPCL deposited about Rs. 108.44 crores in cash with the appellant as a Payment Security Mechanism (PSM) in place of furnishing a Letter of Credit (LoC). KMPCL defaulted on multiple monthly transmission bills raised prior to the insolvency commencement date. NCLT admitted CIRP. On 28.03.2020, the appellant appropriated the entire PSM deposit against outstanding bills, applying about Rs. 23.31 crores to post-CIRP bills and about Rs. 85.13 crores to pre-CIRP bills. NCLT held that the appellant's invocation/appropriation of PSM after commencement of CIRP towards pre-CIRP dues was impermissible under Section 14 and directed that appropriated security be adjusted only towards post-CIRP dues. NCLAT affirmed NCLT's directions.

Held that since there were no debts due to the corporate debtor from which a set-off could have been made by the appellant of dues arising on default of payment of monthly bills, mutual dues, arising from a distinct contract, justifying a set-off did not arise in the instant case. Since a deposit was made as security for due payment of bills raised, if due amounts were apportioned prior to the commencement date, then there could be no dispute raised. Since the appellant had the status of an operational creditor and apportionment of defaulted bills remained defaulted for a long till 18.03.2020, long after commencement of CIRP, the appellant ought not to have apportioned the claim once CIRP proceedings commenced. Since the appellant was neither a financial creditor nor could be deemed to be a secured creditor, there was no security interest created through pledge or otherwise by the corporate debtor to the appellant. Since the deposit made, even if treated as a guarantee for default in dues remained property of the corporate debtor till it was adjusted towards defaulted dues and if so, adjusted after moratorium kicked in towards pre-CIRP dues, adjustment would be rendered illegal. Since the corporate debtor was continuing its operations during the CIRP period, book adjustments would reverse the apportionment made to pre-CIRP dues so as to satisfy post-CIRP dues, pre-CIRP dues being satisfied through claim allowed by RP with respect to that. Thus, NCLT and NCLAT had rightly found the apportionment made by the appellant to be violative of the provisions of IBC and in derogation of the moratorium under Section 14, and the impugned orders were to be affirmed, and appeals were to be rejected.

Case Review: Central Transmission Utility of India Ltd. Vs. Mr. Summit Binani RP of KSK Mahanadi Power Company Ltd. and Anr. [2026] 188 taxmann.com 1047(NCLAT. Chennai), affirmed.

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

Hussain Somjee vs. Assets Care and Reconstruction Enterprise Ltd. [2026] 189 taxmann.com 149 (NCLAT - Chennai)/[2026] 268 COMP CASE 306 (NCLAT - Chennai)

Where appellant filed appeals under Section 61 against NCLT orders but failed to apply for certified copies within 30 days of pronouncement and provided no proof of timely application, exclusion of time under Section 12 of Limitation Act could not be claimed, rendering appeals as barred by limitation and thus liable to be dismissed.

The appellant filed appeals under Section 61 against NCLT orders dated 01.08.2025, which dismissed applications seeking to restrain dealing with secured assets and to preserve status quo. The company appeal was accompanied by an application seeking condonation of a 12-day delay in filing the appeal on the ground that the impugned order was pronounced on 01.08.2025, but it was uploaded by NCLT on its website only on 26.09.2025. Accordingly, the statutory period of 30 days for filing an appeal would have to be computed from 26.09.2025, and it would only expire on 26.10.2025. But since 26.10.2025 happens to be a Sunday, limitation would be deemed to have been extended under Section 4 of the Limitation Act, and therefore the limitation period would expire on 27.10.2025; therefore, the appeal e-filed on 06.11.2025 was within the condonable period. It was noted that the limitation period will commence from the date of pronouncement in case it is pronounced in open court in the presence of the party and from date of uploading in case it is not pronounced in open court and party to proceedings, has to be diligent enough to apply for certified copy within prescribed period of limitation of appeal to avail benefit of exclusion of time spent in procuring certified copy to file appeal. In the instant case, the appellant applied for certified copy of order on 29.09.2025, i.e. after expiry of 59 days from date of pronouncement of order, which was beyond expiry of prescribed period of limitation as well as condonable period, which shows his lack of diligence in pursuing appeal and therefore delay was not to be condoned. Thus, the instant company appeal was barred beyond limitation as prescribed under proviso to Section 61(2), and hence, the company appeals were to be dismissed.

Case Review: Order of NCLT Bengaluru Bench in IA No. 323 & 324/2025 in CP (IB) No. 15/BB/2023, dated 01.08.202, affirmed.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM - GENERAL

Rakhiben w/o Sanjaykumar Agrawal vs. State of Gujarat [2026] 189 taxmann.com 156 (SC)/[2026] 193 SCL 763 (SC)

Where Rs. 5.05 crores from corporate debtor's account was deposited as bail condition in a criminal case during CIRP and moratorium, only that amount with accrued interest constituted corporate debtor's asset and was to be disbursed to IRP while complainant could withdraw remaining sums with interest upon furnishing bank guarantee.

The corporate debtor was admitted to CIRP, and moratorium was declared. In parallel criminal proceedings arising from a complaint alleging cheating of about Rs. 36 crores linked to an export to a UAE entity and involving transactions routed through the corporate debtor, this Court

directed a deposit of Rs. 7.50 crores as a condition for anticipatory bail to a director. The deposit was made, and bail was granted. On the complainant's application, this Court allowed withdrawal of the deposited amounts subject to furnishing a bank guarantee of an equivalent amount including accrued interest; funds remained with the Registry pending bank guarantee. IRP filed the present application asserting that about Rs. 5.05 crores of the deposited amount had been transferred from the corporate debtor's bank account to comply with bail condition and sought disbursal of Rs. 5.05 crores with accrued interest to preserve the corporate debtor's assets and facilitate CIRP.

Since moratorium had been imposed, the complainant could not claim disbursal of the entire amount, since Rs. 5.05 crores along with interest accrued thereon would be the corporate debtor's assets, which had to be disbursed to IRP. Complainant would be entitled to get disbursal of the balance amounts remaining, with interest, on furnishing bank guarantee for such amounts.

SECTION 238 - OVERRIDING EFFECT OF CODE

Chhattisgarh State Power Distribution Company Ltd. vs. State of Chhattisgarh [2026] 189 taxmann.com 180 (Chhattisgarh)/[2026] 193 SCL 781 (Chhattisgarh)

Where a dispute over Parallel Operation Charges between a distribution licensee and a steel/energy company was pending before APTEL and a resolution plan was approved under IBC during CIRP, section 238 of IBC was held to have overriding effect over Electricity Act provisions despite their non-obstante clauses, thereby extinguishing the outstandings forming the subject matter of the appeal and upholding the correctness of APTEL's order.

The petitioner, a distribution licensee, and respondent no. 4, a company engaged in steel/energy, had an agreement for start-up power for its unit. A dispute arose regarding computation of Parallel Operation Charges (POC). The petitioner raised a POC bill, which was challenged by respondent no. 4 before the State Commission under Section 86(1)(f), but was dismissed. The respondent No. 4 appealed before APTEL. During pendency of appeal, CIRP was admitted against the respondent no. 4 and a resolution plan was approved by NCLT. APTEL, taking note of the approved resolution plan and the overriding effect of Section 238, allowed the appeal in part and observed that all outstanding amounts forming the subject matter of the appeal against the petitioner stood extinguished. The petitioner filed a writ petition contending that the Electricity Act, 2003 would have precedence over IBC.

Held that section 238 of IBC has overriding effect over provisions of the Electricity Act, 2003 despite provisions under Section 173 and 174 of the Act of 2003 opening with non-obstinate clauses. Therefore, APTEL had passed the impugned order upon proper appreciation of facts and law and, as such, it did not call for any interference.

I. SECTION 9 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR
II. SECTION 5(21) - CORPORATE INSOLVENCY RESOLUTION PROCESS - OPERATIONAL DEBT

Srinivasa Reddy Velagala vs. Sravanthi Infratech (P.) Ltd. [2026] 189 taxmann.com 409 (SC)/[2026] 194 SCL 83 (SC)

I. Where EPC contract was neither completed nor terminated and suspension of works due to non-payment did not constitute supervening impossibility, contract continued to subsist and was not frustrated by efflux of time.

The appellant-corporate debtor awarded the respondent-operational creditor an EPC contract for a 225 MW gas-based power plant for about Rs. 827 crores, to be completed in 14 months with milestone-linked payments. Despite achievement of the first, second and third milestones, the appellant made only partial payment. The respondent suspended EPC works for non-payment and, receiving no response to its section 8 demand notice, filed a section 9 application. NCLT admitted the application, holding that the EPC contract continued to subsist as neither party had terminated it; NCLAT affirmed.

Held that since the parties had not completed their respective obligations, the EPC contract could not be said to have naturally come to an end. Since the contract provided no strict timeline for completion, efflux of time was inapplicable. Suspension arising from non-performance of contractual obligations could not constitute supervening impossibility and, therefore, the contract was not frustrated. As neither party had expressed or acted upon an intention to terminate, the EPC contract continued to subsist.

II. Where milestone dues under EPC contract qualified as operational debt, suspension/demobilization charges were unadjudicated damages, and no pre-existing dispute existed, section 9 application filed beyond three years was time-barred and NCLAT erred in upholding its admission.

The appellant awarded respondent an EPC contract with milestone-linked payments. The respondent achieved the first to third milestones, but the appellant made only partial payment; the respondent thereafter suspended works and issued legal notices and a section 8 demand notice, but received no response. The respondent filed a Section 9 application claiming milestone dues and suspension/demobilization charges. NCLT admitted the application, and NCLAT affirmed.

Contractual milestone payments qualified as operational debt, whereas suspension, idling and demobilization charges were damages incapable of being treated as operational debt unless adjudicated and crystallized. Absence of material showing any litigation or arbitration and appellant's consistent silence established no pre-existing dispute barring section 9 application. Application filed more than three years after default was time-barred and NCLAT erred in upholding its admission. Held, yes. NCLAT order was therefore liable to be set aside.

Case Review: Srinivasa Reddy Velagala v. Sravanthi Infratech (P.) Ltd. [2021] 127 taxmann.com 224 (NCL-AT), set aside.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM – GENERAL

Ammeet Kumar Agarwal vs. Ssarvi Resolution Services LLP [2026] 189 taxmann.com 140 (NCLAT- New Delhi)/ [2026] 194 SCL 125 (NCLAT-New Delhi)

Where erstwhile management of Corporate Debtor wrongfully withdrew about Rs. 8.05 crores from its bank account during CIRP

moratorium and Adjudicating Authority directed restoration of funds to preserve insolvency estate, without returning any finding on fraudulent or wrongful trading under Section 66, direction under omitted Section 74 became infructuous and appeal against restoration of funds was liable to be dismissed.

The corporate Debtor had availed credit facilities from a financial creditor and defaulted. A petition under Section 7 was admitted, commencing CIRP and imposing moratorium, and a Resolution Professional was appointed. During the moratorium, erstwhile management continued to operate and deal with bank funds and proceeded to sell assets, including the Panvel property. Resolution Professional filed an application under Sections 66, 74 and 60(5) read with Rule 11 of NCLT Rules, alleging that an aggregate of about Rs. 8.05 crores was wrongfully withdrawn from the Corporate Debtor's bank account during moratorium and seeking investigation, reversal and contribution of said amount. The Adjudicating Authority directed the appellant and other respondents to jointly and severally contribute about Rs. 8.05 crores to the Corporate Debtor and forwarded a copy of the order to IBBI and MCA for appropriate action under Section 74. It was noted that the Adjudicating Authority consciously refrained from adjudicating allegations of fraudulent or wrongful trading under Section 66 and proceeded to examine whether funds of the Corporate Debtor had been dealt with during subsistence of moratorium and whether amount withdrawn was liable to be restored to account of the Corporate Debtor.

Held that direction requiring restoration of funds to account of the Corporate Debtor was intended to protect and preserve insolvency estate so that resolution process was conducted on basis of assets legally available to the Corporate Debtor. Since the Adjudicating Authority had consciously refrained from returning any finding under Section 66 and had not imposed liability upon the appellant on the basis of fraudulent or wrongful trading, the impugned direction was founded upon consequences of alleged violation of moratorium and restoration of assets of the Corporate Debtor during CIRP. Since the appellant had not pointed out any specific error in quantification of amount directed to be restored, the challenge was principally founded on jurisdiction of the Adjudicating Authority to pass such a direction and not on computation itself. Since Section 74 had been omitted vide Insolvency and Bankruptcy Code (Amendment) Act, 2026, directions contained in impugned order relating to said section had become infructuous. Therefore, there was no merit in the appeal, and the same was to be dismissed.

Case Review: Order of National Company Law Tribunal, Mumbai Bench, Court-II in I.A. No. 3653 of 2024 in CP (IB) No. 368/MB/C-II/2023, dated 19.12.2024 (para 66) affirmed.

SECTION 34 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - APPOINTMENT, ETC.

Rajesh Mehru vs. Punjab National Bank [2026] 189 taxmann.com 37 (NCLAT-New Delhi)

Where Adjudicating Authority vide impugned order appointed respondent no. 2 as a Liquidator without considering CoC's unanimous recommendation of Appellant for that very office, Authority erred in appointing Respondent No. 2 and impugned order was to be set aside to limited extent that it appoints Respondent No. 2 as Liquidator of Corporate Debtor and order of liquidation, and remainder of Impugned Order were not to be disturbed.

During CIRP of the corporate debtor, the Adjudicating Authority vide impugned

order directed liquidation of the corporate debtor. It also appointed Respondent No. 2 as Liquidator, choosing him independently from the IBBI panel. This was done even though the sole member of the Committee of Creditors, holding 100% voting share, had already recommended the appellant for that very office. Aggrieved, the appellant filed the instant appeal. It was noted that the impugned order did not merely override CoC's recommendation of the appellant. Rather, it did not mention that recommendation at all. Only reference to the CoC meeting in the impugned order concerns the fee structure fixed for the Liquidator, not the identity of the person recommended. The Adjudicating Authority instead selected Respondent No. 2 independently from the IBBI panel, citing intent behind IBBI guidelines dated 18.07.2023. This was a more serious infirmity than a reasoned departure from CoC's commercial wisdom would have been. CoC's commercial wisdom, exercised unanimously and reaffirmed twice, was entitled to primacy. Section 34(1) makes the resolution professional's continuation as Liquidator the default position, displaceable only on grounds set out in Section 34(4).

Held that whether or not those grounds applied to Appellant, CoC's own recommendation of a named Liquidator, arrived at unanimously and reaffirmed twice, was material that the Adjudicating Authority was required to consider before appointing someone else. An order that appoints a Liquidator without any reference to CoC's recommendation could not be said to have applied its mind to that recommendation at all. Independently of this, there was a further difficulty with reliance on IBBI communication. The appellant was never IRP or RP of the Corporate Debtor. Those offices were held successively by one KV and AS. An IBBI communication dated 18.07.2023 aimed at preventing an outgoing resolution professional from becoming Liquidator, whatever its general validity, could have no application to a professional who held no such prior office. Thus, the sole basis on which Respondent No. 2 was appointed did not survive scrutiny, and accordingly, the impugned order was to be set aside to the limited extent that it appoints Respondent No. 2 as Liquidator of the Corporate Debtor. The order of liquidation, and the remainder of the impugned order were not to be disturbed.

Case Review: Order of National Company Law Tribunal, Chandigarh Bench-II in I.A.(IBC)(Liq.)/5/CH/2024 in C.P.(IB) No. 63/CHD/PB/2019 dated 30.01.2026, partly set aside.

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

South Indian Bank Ltd. vs. Brijesh Singh Bhadauriya [2026] 189 taxmann.com 40 (NCLAT- New Delhi)

Where appellant bank discounted invoices for suppliers on TReDS platform and obtained assignment of receivables, such exposure did not constitute financial debt under section 5(8) but instead made appellant an operational creditor under sections 5(20) and 5(21, and with resolution plan fully implemented and Monitoring Committee dissolved, no relief could be granted to unsettle completed process, warranting dismissal of appeal.

The appellant bank executed a Master Financier Agreement with TReDS platform operator and the corporate debtor registered as buyer under a Master Buyer's Agreement. Under reverse factoring, suppliers uploaded invoices, the corporate debtor confirmed them, and the appellant discounted them by paying suppliers at a discount; suppliers simultaneously executed Deeds of Assignment of trade receivables in favour of the appellant. The appellant sought recovery of full invoice value from the corporate debtor on due dates. Subsequent NACH auto-debit bounces occurred due to non-payment by the corporate debtor, and the account was

classified as NPA. A Section 9 application against the corporate debtor was admitted, and CIRP commenced. The appellant filed a Form C claim of about Rs. 38.54 crores comprising approximately Rs. 20.62 crores (CCOL) and Rs. 17.92 crores (TReDS). RP accepted the CCOL portion as financial debt but treated TReDS portion as operational debt and directed refiling in Form B, which the appellant objected to. The appellant filed an application under section 60(5) seeking to set aside RP's communication and for a direction to treat TReDS exposure as financial debt. In the meantime, CoC approved SRA's resolution plan and an approval application was filed before the Adjudicating Authority. The Adjudicating Authority thereafter dismissed the appellant's application, holding matter was covered by its earlier order in the same corporate debtor's case that had been affirmed by this Appellate Tribunal. Following dismissal, appellant filed a fresh claim in Form B as an operational creditor; this occurred after CoC approval of the plan. Appellant then filed the present appeal, which was admitted, and while it was pending, the Adjudicating Authority approved the resolution plan. It was undisputed that plan was fully implemented, payments were made to creditors, and Monitoring Committee was dissolved.

Held that the transaction between the appellant and the corporate debtor under the TReDS mechanism did not constitute 'financial debt' within the meaning of Section 5(8), that the appellant, upon assignment of its suppliers' receivables, correctly fell to be treated as an Operational Creditor under Sections 5(20) and 5(21), and that Resolution Professional's communication and Impugned Order upholding that classification were correct in law. Since the resolution plan had since been approved and fully implemented, with the Monitoring Committee dissolved, no relief that would unsettle that completed process could now be granted. Thus, the impugned order did not warrant any interference, and appeal, being devoid of merit, was liable to be dismissed.

Case Review: Order of NCLT, New Delhi Bench III in IA No. 3206/2023 in IB No. 2688/ND/2019 dated 13.02.2025, affirmed.

SECTION 21 - CORPORATE LIQUIDATION PROCESS - COMMITTEE OF CREDITORS

Haritham Buyer's Association vs. National Company Law Tribunal [2026] 189 taxmann.com 7 (Kerala)

Where petitioner, a home buyers' association, challenged NCLT's order permitting sale of corporate debtor's property and, under law as it then stood, such association was not entitled to intervene, by virtue of Insolvency and Bankruptcy Code (Amendment) Act, 2026 inserting section 21(11), members of association, being stakeholders, became entitled to seek intervention to supervise liquidation proceedings, and writ petition was to be dismissed with liberty to file a fresh application before NCLT under amended law.

The petitioner was a homebuyers' association of a project floated by the corporate debtor. It claimed that its members had entered into tripartite agreements with the builder and the landowner before 2011, though the liquidator disputed this by asserting that some of the agreements had been executed after 2015. The landowner sold about 87 cents of land in the builder's name, which the builder mortgaged to the respondent-bank for obtaining credit facilities. Upon default, the court initiated insolvency proceedings against the builder and appointed the second respondent as liquidator. During the liquidation process, the liquidator proposed the sale of the 87 cents of land along with the incomplete building. Although the Stakeholders' Consultation Committee, which included members of the petitioner association, did not approve the proposal, the liquidator

decided to proceed with the sale and placed the decision before the NCLT. The petitioner pointed out that eleven other homebuyers, who were not members of the association, had unsuccessfully sought exclusion of their individual apartments from the proposed sale before the NCLT and had filed appeals before the NCLAT. The petitioner also challenged the NCLT's order before the NCLAT and sought to keep further proceedings in abeyance pending the appeal. On a writ petition before the High Court.

Held that the petitioner, being an association of home buyers, was not entitled to seek intervention before the NCLT or before the Appellate Authority in view of the Supreme Court's decision in Elegna Co-Op. Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Ltd. [2026] 182 taxmann.com 384 (SC). However, by virtue of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, section 21(11) specifically provided that, with respect to the conduct of the liquidation process by the Official Liquidator, the Committee of creditors constituted under the section was also entitled to supervise the conduct of the liquidation process. Explanation to section 21(11) further made it clear that said amendment applied to ongoing liquidation process of the corporate debtor. In that view of the matter, members of the petitioner association, being stakeholders, were entitled to seek intervention for supervising proceedings initiated by the Official Liquidator. Therefore, the writ petition had to fail; however, leaving open the right of members of the petitioner association to file a fresh application before NCLT under the provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2026.

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