AUGUST 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

OVERVIEW

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

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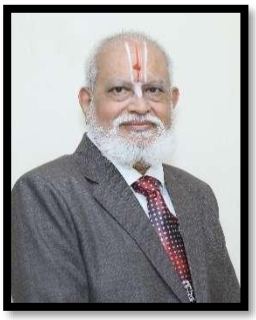

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FROM THE MANAGING DIRECTOR'S DESK

Dear Readers,

Welcome to the August 2026 edition of "The Insolvency Professional – Your Insight Journal".

The rollout of the Insolvency and Bankruptcy Code (Amendment) Act, 2026 remains a work in progress. While key provisions took effect on 26 May 2026, the Insolvency and Bankruptcy Board of India (**IBBI**) and the Ministry of Corporate Affairs (**MCA**) are working on frameworks still awaiting notification, viz., Creditor-Initiated Insolvency Resolution Process (**CIIRP**), Cross-Border Insolvency, and Group Insolvency.

In a related development, MCA has undertaken the development of the Integrated Platform for Insolvency Ecosystem (iPIE), envisaged as a unified digital platform integrating the various stakeholders, processes, and technology systems operating under the IBC into a common framework, to enable seamless, secure, and transparent workflows across the Insolvency lifecycle. Recognizing that the success of such a platform depends on active stakeholder participation, MCA had earlier invited suggestions from professionals, institutions, industry, and academia to help shape its design and functionality . During the month of August, IBBI issued a Discussion Paper on ***"Guidance to Insolvency Professionals for Due Diligence to Identify Fraudulent or Malicious Initiation of Corporate Insolvency Resolution Process, and Recourse under Sections 60(5) and 65 of the Insolvency and Bankruptcy Code, 2016"***.

As these regulatory and structural changes take shape, Insolvency Professionals (IPs) must stay proactively engaged with the regulatory updates including Discussion Papers, Circulars etc. issued by IBBI from time to time as these have practical implications and are necessary for continued regulatory compliance.

On the activity front, apart from the ongoing monthly online programmes, two programmes were organized by IPA-ICMAI which were supported by the IBBI. These included One Day Conclave on the theme "IBC at Crossroads: Decade of Evolution – Road Ahead" which was jointly organized with Views Exchange at Kolkata and Two-Day Certificate Training Programme for Professionals under the Insolvency and Bankruptcy Code 2016, which was jointly organized with IP Foundation at Nagpur. In its endeavor to keep the professionals updated about the legal developments under the IBC Ecosystem, , IPA-ICMAI continues to bring out its regular publications – the daily IBC Au Courant, Weekly IBC Dossier, Monthly E-Journal, Quarterly Digest, Casebook, and Annual Publication – all of which are hosted on the IPA-ICMAI website.

IPA-ICMAI remains committed to keeping the profession abreast of the changes, developments in the IBC Ecosystem through its ongoing workshops, webinars, and training programmes across the country.

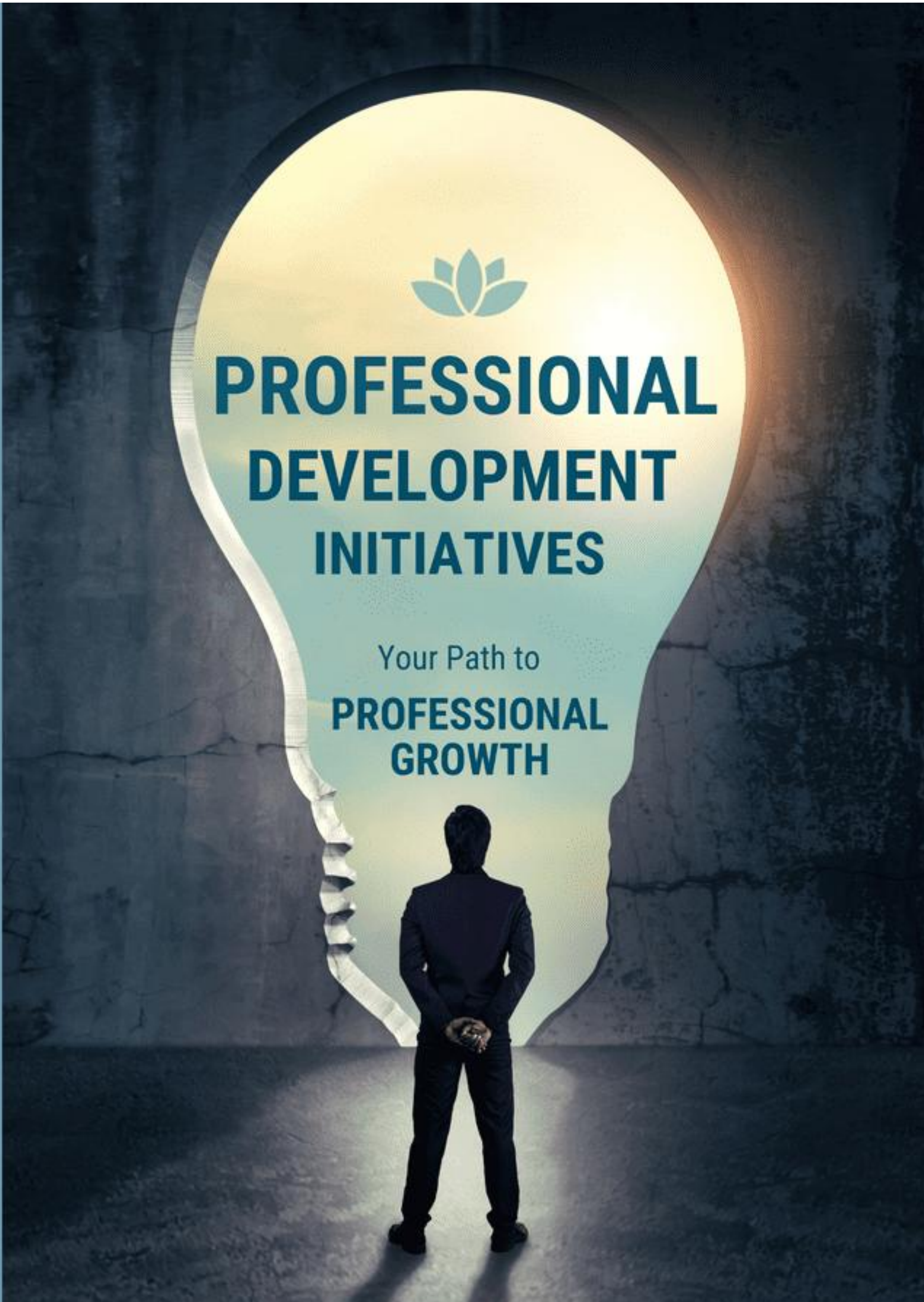
I encourage members to make full use of these professional development activities and to contribute their own experience and expertise to strengthen the ecosystem.

I trust you will find this edition insightful..

(Vinay Kumar Sanduja)
Managing Director, IPA-ICMAI

PROFESSIONAL DEVELOPMENT INITIATIVES

Your Path to PROFESSIONAL GROWTH



AUGUST 2026	
DATE	**EVENT's CONDUCTED**
August 8th, 2026	IPA-ICMAI jointly with Views Exchange, organised a Conclave on the theme **"IBC at Crossroads: Decade of Evolution – Road Ahead,"** on August 8th, 2026 at Kolkata. The Conclave was supported by the Insolvency and Bankruptcy Board of India (IBBI).
August 09th, 2026	**An Advanced Workshop on Committee of Creditors (CoC) under the IBC: Law, Practice & Evolving Jurisprudence** was held on August 09th, 2026, in online mode. The workshop covered key aspects including **the** Anatomy of an Effective CoC, Commercial Wisdom and its Limits, Judicial Review, Role of the RP in Managing Conflicts within the CoC, Resolution Plan Evaluation and Decision-Making by the CoC, Emerging Challenges, and important case laws pertaining to the CoC.
August 14th, 2026	**An Advanced Workshop on "Insolvency & Bankruptcy Resolution Process of Personal Guarantors to Corporate Debtors"** was held on August 14th, 2026 in online mode. The workshop focused on the key legal and practical aspects of insolvency proceedings involving Personal Guarantors, providing participants with valuable insights into the resolution process and emerging developments under the IBC.
August 22nd & 23rd, 2026	**A Two-day Certificate Training Program for Professionals under the IBC Ecosystem** on August 22nd & 23rd, 2026 with IP Foundation in Nagpur. The program brought together professionals and stakeholders from the insolvency ecosystem and served as a platform for discussions and knowledge sharing on various aspects of the Insolvency and Bankruptcy Code.
August 23rd, 2026	**An Advanced Workshop on "Section 29A of IBC, 2016"** was held on August 23rd, 2026 in online mode. The workshop covered the legislative intent and genesis of Section 29A, clause-wise analysis, connected persons and related parties, due diligence of resolution applicants, the role of the Resolution Professional and Committee of Creditors, and the evolving judicial approach to Section 29A.

GLIMPSE
OF EVENTS

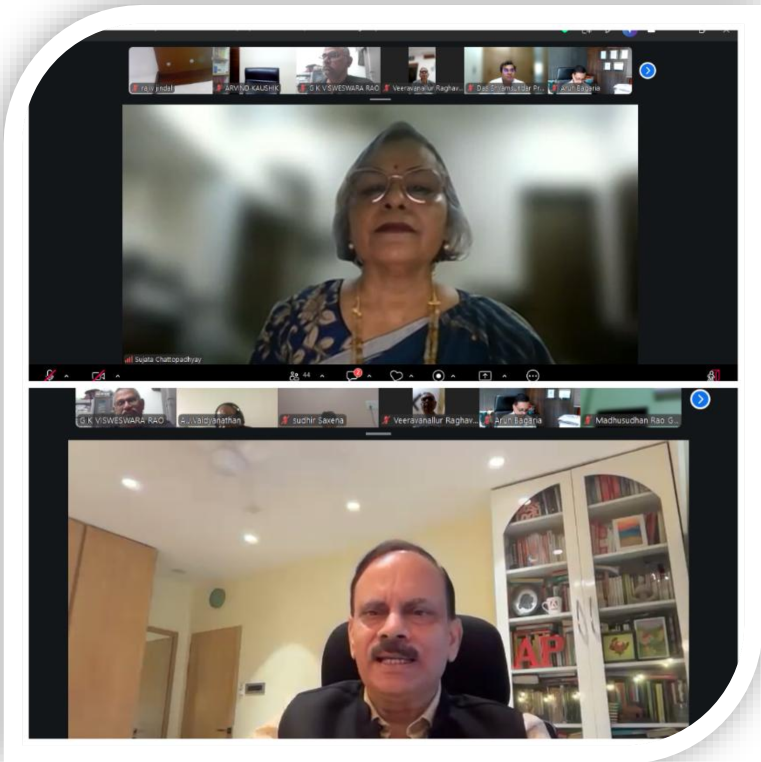
IN PERSON EVENTS

A CONCLAVE ON THE THEME "IBC AT CROSSROADS: DECADE OF EVOLUTION – ROAD AHEAD ON AUGUST 8TH, 2026 AT KOLKATA.

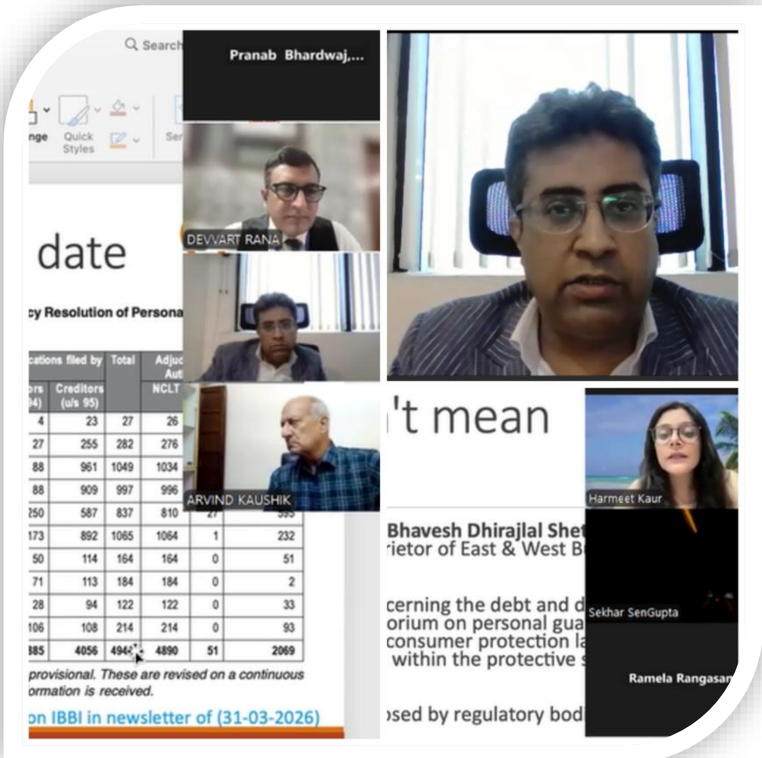
TWO-DAY CERTIFICATE TRAINING PROGRAM FOR PROFESSIONALS UNDER THE IBC ECOSYSTEM ON AUGUST 22ND & 23RD, 2026 WITH IP FOUNDATION IN NAGPUR.

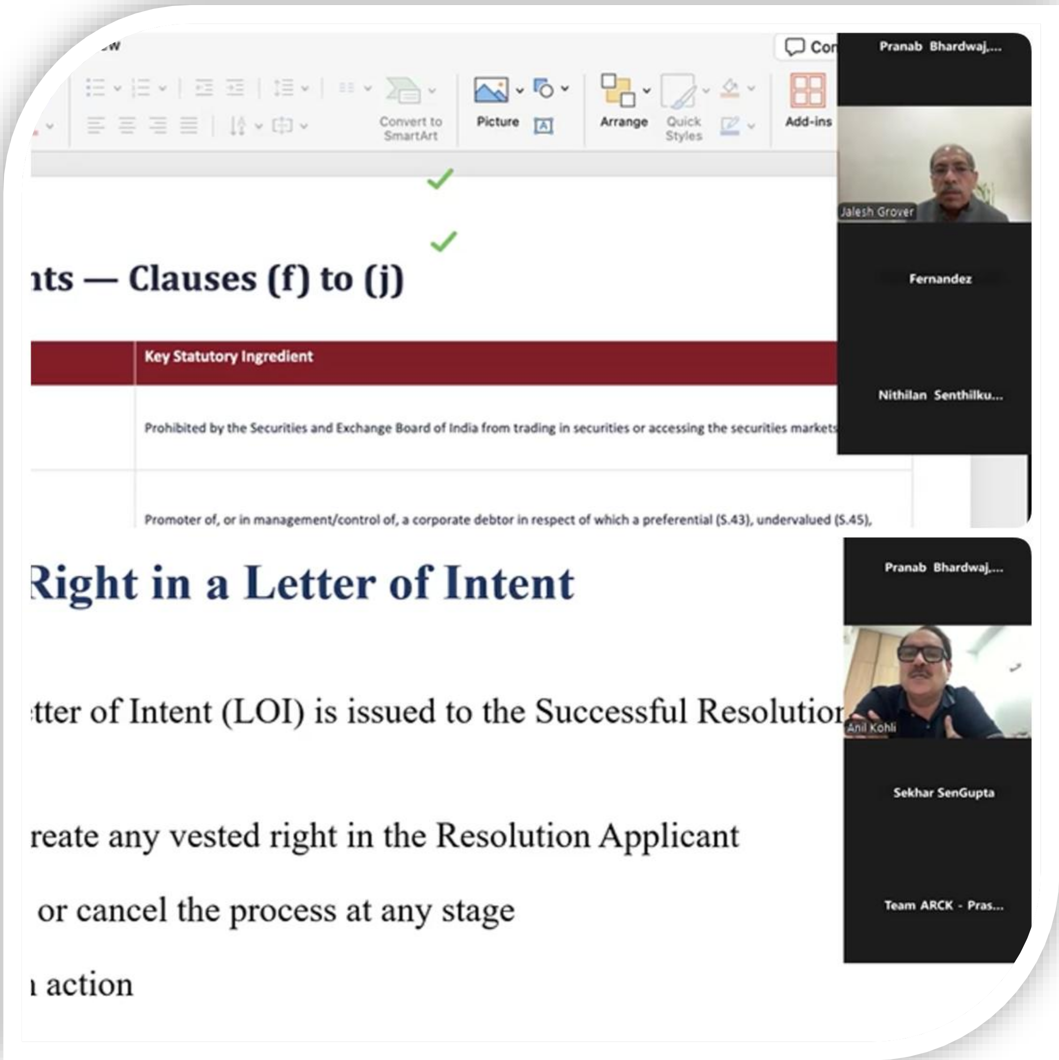
ONLINE EVENTS

ADVANCED WORKSHOP ON COMMITTEE OF CREDITORS (COC) UNDER THE IBC: LAW, PRACTICE & EVOLVING JURISPRUDENCE HELD ON AUGUST 09TH, 2026.



ADVANCED WORKSHOP ON "INSOLVENCY & BANKRUPTCY RESOLUTION PROCESS OF PERSONAL GUARANTORS TO CORPORATE DEBTORS" HELD ON AUGUST 14TH, 2026

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Key Statutory Ingredient
Prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets
Promoter of, or in management/control of, a corporate debtor in respect of which a preferential (S.43), undervalued (S.45),
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ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
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HANDLING OF GST IN INSOLVENCY & BANKRUPTCY CODE (IBC, 2016) / CIRP CASES, BY THE INTERIM RESOLUTION PROFESSIONAL/ RESOLUTION PROFESSIONAL

Mr. Gopinath
(Advocate & Insolvency Professional)

Purpose of this Article:

This Standard Operating Procedure outlines the procedures to be followed by an Interim Resolution Professional (IRP) or Resolution Professional (RP) for managing and complying with the Goods and Services Tax (GST) requirements of a Corporate Debtor after its admission into the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC).

The primary objectives of this Standard Operating Procedure are:

- **i.** To ensure timely and accurate GST compliance from the date of commencement of CIRP by the IRP / RP.
- **ii.** To ensure proper GST registration, return filing, tax payment, record maintenance, and communication with GST authorities during the CIRP period.
- **iii.** To clearly distinguish GST liabilities arising before the commencement of CIRP from those arising during the CIRP period.
- **iv.** To treat pre-CIRP GST dues as operational debt and deal with them through the CIRP process in accordance with the provisions of the IBC.
- **v.** To ensure that GST liabilities arising during CIRP are treated as current statutory liabilities and paid in accordance with applicable law.
- **vi.** To ensure proper closure, transfer, or modification of GST obligations and records for smooth implementation of the approved resolution plan or liquidation process.
- **vii.** To provide a clear compliance framework that protects stakeholders' interests and ensures compliance with both the IBC and GST laws.

Scope and Applicability:

This SOP applies to every GST-registered Corporate Debtor undergoing CIRP and managed by an IRP / RP, in accordance with the special procedure notified under section 148 of the CGST Act, 2017.

This SOP applies to all GST registrations of the corporate debtor and remains in force from the date of appointment of the IRP / RP until completion of CIRP through approval of a resolution plan or an order of liquidation.

This SOP covers GST compliance during CIRP, including registration, return filing, payment of taxes, treatment of GST liabilities, and communication with GST authorities.

This SOP is limited to GST-related matters during CIRP and does not cover general CIRP procedures, claims of non-GST creditors, or issues relating to other indirect tax laws except where necessary for GST compliance.

For SGST matters, the corresponding notifications, circulars, and provisions issued by the respective State Governments shall apply, unless otherwise provided.

Definitions and Meaning:

Definitions	Meaning
CIRP	Corporate Insolvency Resolution Process under the IBC, 2016.
IRP/RP	Interim Resolution Professional / Resolution Professional appointed under the IBC who manages the affairs of the corporate debtor.
Corporate Debtor	The company / LLP undergoing CIRP whose GST obligations are the subject of this SOP.
Erstwhile registered person	The GST registration (old GSTIN) held by the Corporate Debtor before the IRP/RP's appointment.
Distinct person	The status the Corporate Debtor acquires for GST purposes from the

	date of IRP/RP appointment, requiring (where applicable) a fresh registration.
Pre-CIRP Dues	GST liabilities relating to tax periods up to the day before the CIRP commencement / IRP appointment.
Morotarium	The prohibition under section 14 of the IBC on instituting or continuing recovery against the Corporate Debtor during CIRP.
Operational Debt	A debt in respect of goods, services or statutory dues; pre-CIRP GST dues fall in this class for IBC priority.
Resolution Plan	The plan approved by the Committee of Creditors and the NCLT under section 31 of the IBC; binding on all stakeholders, including tax authorities.

Legal & Regulatory Framework

Sections/Notifications/Circulars/ Under IBC/GST	**What it Governs**
IBC, 2016 —Section 14, 17–20, 31, 53, 238	Moratorium; vesting of management in the IRP/RP and its duties; binding effect of an approved resolution plan; liquidation waterfall; overriding effect of the IBC over other laws.
CGST Act, 2017 — s. 148	Empowers the Government to notify a special procedure for a class of registered persons — the legal basis for the CIRP-specific GST regime.
CGST Act, 2017 — ss. 40, 84	First return after becoming liable to register (s.40); reduction of government dues following appeals / other proceedings (s.84).
Notification 11/2020 – Central Tax (21.03.2020)	The core special procedure: distinct-person status, fresh registration in each State/UT within 30 days of appointment, first return and ITC mechanics
Notification 39/2020 – Central Tax (05.05.2020)	Amends 11/2020 — narrows the fresh-registration requirement so it does not apply where the Corporate Debtor had filed all returns before the IRP/RP's appointment.
Circular 134/04/2020-GST (23.03.2020)	Operational clarifications: no obligation to file pre-CIRP returns; pre-CIRP dues are operational debt; no coercive recovery during moratorium; ITC and refund mechanics for the transition period.
Circular 187/19/2022-GST (27.12.2022)	How a confirmed GST demand is reduced once IBC proceedings are finalised — issue of FORM GST DRC-25 by the Commissioner under s.84 / Rule 161.
CBIC Advisory No. 06/2025 dated 01.07.2025	**New Statutory Time-Bar on Return Filing — Applies to RPs Too** Introduces a statutory time limit of three years for filing GSTR-1, GSTR-3B, and GSTR-9 from their respective due dates, to bring finality to open filings and minimise future audit exposures. **Impact on IRPs/RPs:** Where old GSTR-1/3B/9 returns of the CD are pending (a common issue in stressed companies), the RP now has a hard three-year window from the original due date to file or regularise them. Beyond this, the portal will not permit filing. This makes early triage of pre-CIRP compliance gaps essential.

GST dues, VAT dues, and other statutory tax dues are generally treated as **Operational Debt** under section 5(21) of the Insolvency and Bankruptcy Code, 2016, and the Government is ordinarily an **Operational Creditor** and not a Financial Creditor. Since tax liabilities arise from statutory obligations rather than from lending or financing transactions, they do not constitute financial debt and do not entitle the Government to membership in the Committee of Creditors (CoC).

The position was examined by the Supreme Court in **State Tax Officer v. Rainbow Papers Limited,** where it was held that if a tax law creates a valid statutory first charge over the taxpayer's property, the Government may be treated as a secured creditor to that extent. However, this judgment does not convert all government dues into secured debts or financial debts. In the absence of a specific statutory charge creating a security interest in favour of the Government, GST and other tax dues continue to be treated as operational debt under the IBC framework.

For practical purposes during CIRP, the IRP/RP may follow these principles:

GST dues are generally treated as Operational Debt under the IBC, and GST authorities are Operational Creditors rather than Financial Creditors. Accordingly, GST authorities do not ordinarily form part of the Committee of Creditors (CoC). Where the GST Department claims secured status based on a statutory charge created under a specific law, the Resolution Professional should examine the legal basis of such claim and obtain legal advice where necessary. The existence, validity, and priority of any statutory charge should be assessed on a case-by-case basis, taking into account the principles laid down in the judgment of State Tax Officer v. Rainbow Papers Limited and subsequent judicial decisions. Therefore, GST dues should ordinarily be treated as Operational Debt unless a valid statutory charge conferring secured status is established under the applicable law

<u>The Pre-CIRP/CIRP Bifurcation:</u>

	Pre-CIRP Period	**CIRP Period (From appointment)**
Nature	Operational debt of the Corporate Debtor.	Current statutory liability of the IRP/RP-managed entity.
Returns	IRP/RP need not file the Corporate Debtor's pre-CIRP returns.	IRP/RP must file all returns and pay tax for these periods.
Recovery	No coercive recovery; the tax authority files a claim before the NCLT.	Paid in the ordinary course as a CIRP cost.
End state	Settled per the resolution plan; balance extinguished on plan approval.	Must be fully discharged; not extinguished by the plan.

Procedure: Phase 1 — Immediate Actions on Appointment (Day 0–7)

i. Take charge of the corporate debtor's GST affairs and record the exact date of appointment and the CIRP commencement date — every GST timeline runs from these dates.
ii. Compile the full inventory of GST registrations: list every GSTIN across all States/UTs, plus any ISD, TDS or TCS registrations.
iii. Secure GST portal access: obtain login credentials, registered email and mobile, and DSC/EVC control for each GSTIN from the outgoing management. If credentials are withheld, approach the jurisdictional officer to be made primary authorised signatory.
iv. Pull the compliance status for each GSTIN: identify the last GSTR-1 and GSTR-3B filed and list all pending returns and outstanding demands (DRC-07 / DRC-07A).
v. Notify the jurisdictional GST authorities in writing of the CIRP admission and the IRP/RP's appointment, enclosing the NCLT order, so they can lodge any pre-CIRP claim before the NCLT.
vi. Freeze pre-CIRP dues: instruct the team that no demand or notice relating to pre-CIRP periods is to be paid; such dues are to be routed only through the claims process.

Phase 2 — GST Registration Decision & Execution (within 30 days)

The first substantive decision is whether a fresh registration is required. This turns on the Corporate Debtor's pre-appointment return-filing record:

Situation at the date of appointment	Action
The Corporate Debtor had NOT filed all GSTR-1 and GSTR-3B for the periods before the appointment (default exists).	Take a NEW registration in each State/UT where it was registered, within 30 days of appointment, effective from the date of appointment. The entity is a 'distinct person' on the new GSTIN.
Corporate debtor HAD filed all GSTR-1 and GSTR-3B for all periods before appointment (no default).	No fresh registration. Continue on the existing GSTIN. The IRP/RP is added as authorised signatory via a non-core amendment.

One registration per entity per State: only one new registration is needed per GSTIN, even if the IRP is later replaced by a different RP — the incoming RP simply amends the authorised signatory details.

Where credentials are not handed over: the new RP may approach the jurisdictional authority to be recognised as primary signatory rather than being blocked.

Document the decision: record, per GSTIN, the filing status relied on and whether a fresh registration was obtained or the existing GSTIN was retained.

Phase 3 — First Return, ITC & Refund Transition

Where a new registration is taken, manage the gap between the appointment date and the date registration is granted:

I. File the first return under section 40 covering the period from the date the IRP/RP became liable to register (appointment) to the date registration is granted, capturing supplies made and received in that window.

II. Claim transition ITC in the first return on inward supplies received during that window. The usual provisional-credit restriction in Rule 36(4) does not apply to this first return, and credit may be claimed on invoices even where the supplier's details predate the new GSTIN.

III. Protect recipients' ITC: customers who received supplies from the Corporate Debtor during the appointment-to-registration window may claim ITC on invoices bearing the OLD GSTIN, subject to the normal Chapter V conditions (again, without the Rule 36(4) cap).

IV. Recover interim cash deposits: any amount deposited in the cash ledger of the OLD GSTIN between the date of appointment and the date of the new registration is refundable to the erstwhile registered person and may be claimed even though returns for that period are not filed on the old GSTIN — preventing double payment of tax.

Phase 4 — Ongoing Compliance During CIRP

i. File GSTR-1, GSTR-3B and the annual return for every CIRP-period tax period on the new GSTIN (or retained GSTIN) and pay current GST in full and on time.

ii. Run the business as a going concern: ensure outward invoices, e-invoicing/e-way bills and ITC reconciliation continue without interruption.

iii. Do NOT file the Corporate Debtor's pre-CIRP returns and do NOT discharge pre-CIRP tax out of CIRP funds.

iv. Reconcile monthly: maintain a clear ledger separating CIRP-period liabilities (to be paid) from pre-CIRP dues (to be claimed).

v. Treat CIRP-period GST as a cost of the insolvency resolution process, payable in priority in the ordinary course.

Phase 5 — Handling Pre-CIRP Dues & Departmental Claims

Invite and collate claims: ensure the jurisdictional GST authorities are aware of the public announcement and file their pre-CIRP claims in the prescribed form within the claim window.

Verify each claim against the Corporate Debtor's records, returns and any DRC-07/DRC-07A demands; admit, partly admit or reject with reasons, and record this in the claims register.

Classify admitted GST dues as operational debt for the resolution plan/waterfall, noting any asserted security and the need for legal advice on its validity.

Resist coercive recovery: if the department attempts attachment or recovery for pre-CIRP dues during the moratorium, point to section 14 of the IBC and Circular 134/04/2020 and escalate to the NCLT if needed.

Keep an audit trail of all correspondence with the department and all claim decisions.

Phase 6 — On Approval of the Resolution Plan

On NCLT approval under section 31, the plan binds the Corporate Debtor, creditors and tax authorities; pre-CIRP GST claims are dealt with strictly per the plan.

Clean slate: GST claims that were not lodged or not admitted into the plan stand extinguished and cannot be revived against the resolved entity (Ghanashyam Mishra principle).

Demand reduction: where a confirmed demand (DRC-07/DRC-07A) is reduced as a consequence of the IBC proceedings, the jurisdictional Commissioner is to issue FORM GST DRC-25 reducing the demand — follow up to ensure this is done.

GSTIN continuity/handover: hand over the GST position, credentials and a closing reconciliation to the successful resolution applicant / new management, flagging any open compliance items.

Phase 7 — On Liquidation (if CIRP Fails)

If no plan is approved and the NCLT orders liquidation, the liquidation regime takes over and the distribution of proceeds follows the section 53 waterfall. Continue GST compliance for the liquidation period as required and coordinate the eventual cancellation/closure of the GST registration in line with the liquidator's process.

Key Timelines

Event	Deadline	Action
Appointment of IRP/RP	Day 0	Take charge; record date; inventory GSTINs; secure portal access.
Fresh registration (if required)	Within 30 days of appointment	Register in each State/UT, effective from appointment date.
First return (s.40)	After registration granted	Cover appointment-to-registration window; claim transition ITC.
Monthly compliance	Statutory GSTR due dates	File GSTR-1 / GSTR-3B; pay current tax for CIRP period.
Departmental claim window	Per Public announcement	Collate, verify and record pre-CIRP GST claims.
Resolution plan approved (s.31)	On NCLT order	Apply clean slate; pursue DRC-25; hand over.

Key GST Forms

Form	Use in the CIRP context
GST REG-01	Application for the new (distinct person) registration where required.
First return (s.40)	Return for the appointment-to-registration window, with transition ITC.
GSTR-1 / GSTR-3B	Ongoing outward-supply and summary returns for the CIRP period.
DRC-07 / DRC-07A	Summary of a confirmed demand — relevant to pre-CIRP dues being claimed
DRC-25	Intimation by the Commissioner reducing a demand after IBC finalisation.
Refund application	To recover interim deposits made in the old GSTIN cash ledger.

Key Judicial Pronouncements

Key Judicial Pronouncements

Case	Forum	Content
Ghanashyam Mishra & Sons v. Edelweiss ARC	(2021) SC	Once the NCLT approves a Resolution Plan, every claim not included in it — including tax dues of the Central Government, State Government, and local authorities — stands wiped out forever, and no department can wake up later to demand payment.
State Tax Officer v. Rainbow Papers Ltd.	(2022) SC	The Supreme Court held that if a tax law creates a "first charge" on the company's property, the tax department automatically becomes a secured creditor in CIRP — but later rulings have confined this decision strictly to the Gujarat VAT Act and refused to extend it to CGST or other GST law

Sundaresh Bhat v. Central Board of Indirect Taxes & Customs	(2022) SC	Moratorium is a "hands off" order — Customs, GST, and every other tax authority must stand in line as claimants, not as recovery officers
State Tax Officer V Besto Trade Link	(2026) 44 Centax 158 NCLAT	Section 82 of the CGST Act itself says it bows down to the IBC — so when a company goes into CIRP, GST dues stand in the queue as unsecured operational debt, not as secured debt.
Central Transmission Utility v. Sumit Binani	Supreme court	A security deposit is the Corporate Debtor's property — once moratorium starts, no one can quietly grab it to settle old dues.
Tejas J. Shah v. Mantri Technology Constellations	Supreme court	The CIRP moratorium is a shield only for the Corporate Debtor — directors, promoters, guarantors, landowners, and co-respondents get no free hiding place behind it.
Prawincharan Dwary v. Bank of India	NCLT Indore	If a bank helps itself to the Corporate Debtor's money during moratorium to settle old pre-CIRP dues, the RP's silence or "OK" cannot make that illegal grab legal. recovery during moratorium
HPGST Dept. v. RP (2025)	NCLAT	Whether it's Central GST or Himachal Pradesh GST, the tax department cannot claim secured-creditor status in CIRP — it stands in line as an unsecured operational creditor like everyone else.

Article References from:

- **IBC Act 2016**
- **CGST Act 2017**
- Notification 11/2020 – Central Tax (21.03.2020)
- Notification 39/2020 – Central Tax (05.05.2020)
- Circular 134/04/2020-GST (23.03.2020)
- Circular 187/19/2022-GST (27.12.2022)
- CBIC Advisory No. 06/2025 dated 01.07.2025

THE REGULATORY ASSET ILLUSION: CAN AN IBC RESOLUTION PROFESSIONAL RELY ON TARIFF-DEFERRED RECEIVABLES TO VALUE A STRESSED POWER ASSET

Mr. Ramesh Bingi
(Cost and Management Accountant)

Abstract

Tariff-deferred receivables, more precisely termed "Regulatory Assets," have become a structurally embedded feature of Indian power distribution accounting, and increasingly of the balance sheets that resolution professionals (RPs) encounter in power-sector Corporate Insolvency Resolution Processes (CIRP). These assets arise when a state electricity regulatory commission defers full tariff-based cost recovery to avoid an abrupt consumer tariff shock, carrying the resulting Average Cost of Supply–Average Revenue Realised (ACS-ARR) gap forward for recovery in future tariff cycles. This article examines whether such Regulatory Assets can properly be treated by an RP as a "receivable" for the purposes of asset valuation, fair value and liquidation value determination, and Information Memorandum disclosure under the IBC or whether they are, at best, a contingent regulatory expectation lacking the certainty of quantum, debtor identity, and enforceable timeline that a bona fide receivable requires. It surveys the scale of accumulated Regulatory Assets across major states, the Supreme Court's August 2025 intervention mandating time-bound liquidation of these balances, and the near-total absence of NCLT/NCLAT jurisprudence squarely addressing Regulatory Assets as CIRP or liquidation-estate assets in contrast to adjacent, already-litigated claims-classification disputes. It further distinguishes regulatory-asset-driven distress from contract-failure-driven distress of the kind seen in recent thermal generation insolvencies. The article closes with a proposed valuation and disclosure framework, built around discounting against an ERC's historical true-up realization rate, and flags a coordination gap between IBBI's valuation regime and state regulatory commissions that RPs currently have no formal mechanism to bridge.

1. Introduction

On 28 November 2025, the National Company Law Tribunal, Delhi Bench, approved a ₹3,800-crore resolution plan for Sinnar Thermal Power Limited, with Maharashtra State Power Generation Company (MAHAGENCO) and NTPC Limited as the successful resolution applicants[7]. The order is a useful reminder, if one were needed, that power-sector CIRP is not a theoretical curiosity for Insolvency Professionals to contemplate at leisure, it is a live, ongoing docket item, with generation assets, distribution-linked claims, and fuel-supply disputes all working their way through the Code in parallel.

Resolution professionals handling such matters, and the valuers they engage under the CIRP Regulations, routinely confront balance sheets in which "Regulatory Assets" amounts a Distribution Company (Discom) has been permitted, in principle, to recover from consumers in future tariff cycles, but has not yet recovered so sit as a material asset-side entry, whether directly on the debtor's own books or embedded in the receivables owed to it by Discom counterparties. The question this article asks is narrow but consequential: can an RP rely on a stated regulatory asset figure i.e. a tariff-deferred receivable as a dependable component of enterprise or liquidation value, in the same manner as an ordinary trade receivable? Or is the regulatory asset better understood as a regulatory expectation: real in an accounting sense, but contingent, staggered, and dependent on future regulatory discretion in a way that makes it fundamentally different in kind from a receivable an RP can bank on?

This is not an abstract line-drawing exercise. Getting the answer wrong in either direction has consequences. Treating Regulatory Assets as fully realizable receivables risks inflating resolution plan valuations and misleading the Committee of Creditors (CoC) about recoverable value. Treating them as worthless, on the other hand, risks understating the value of a going concern that genuinely stands to benefit from a multi-year, regulator-sanctioned recovery mechanism, one that the Supreme Court has now placed under an explicit, time-bound clearance mandate [1]. The remainder of this article works through the mechanics of the regulatory asset, the scale of the underlying problem, the specific insolvency-law question it raises, the surprising absence of tribunal precedent on point, and a proposed framework for how RPs might responsibly treat these figures pending the development of such precedent.

2. Anatomy of a Regulatory Asset

A regulatory asset is not a contractual receivable in the ordinary commercial sense; it is a creature of tariff regulation. Under the Multi-Year Tariff (MYT) framework followed by most State Electricity Regulatory Commissions (SERCs), a Discom's tariff is set for a control period based on projected costs (the Annual Revenue Requirement, ARR) and projected revenue from approved consumer tariffs. At the end of each tariff year, or at the end of the control period, the regulator conducts a "true-up" exercise, comparing actual costs and revenues against what was approved [10].

Where a Discom's actual cost of supplying power i.e. its Average Cost of Supply (ACS) exceeds what it is permitted to recover from consumers i.e. its Average Revenue Realised (ARR), colloquially the ACS-ARR gap, the regulator faces a choice. It can pass the full gap through to consumers immediately via a tariff hike, or it can defer recovery, spreading the increase over future years to avoid an abrupt tariff shock. When it chooses deferral, the unrecovered amount is booked as a "Regulatory Asset": an entry on the Discom's balance sheet representing a future right to recover the shortfall, subject to the regulator's continuing willingness to authorise that recovery in subsequent tariff orders [10].

This mechanism gives Regulatory Assets three structural features that distinguish them from a conventional receivable. First, there is no single identified debtor in the way a trade receivable has a specific counterparty; the "debtor," functionally, is the consumer base recovering the amount through future tariffs or surcharges, mediated entirely through regulatory orders. Second, the quantum is not fixed at the point of recognition as it is subject to further true-up, revision, and sometimes partial disallowance in subsequent regulatory proceedings. Third, and most importantly for an RP's purposes, the timeline and even the ultimate realisability of the amount depend on a sequence of future discretionary regulatory decisions, not on an enforceable contractual obligation with a fixed maturity. A regulatory asset is, in short, an expectation sanctioned by regulatory process, not a debt owed by an ascertainable party on ascertainable terms.

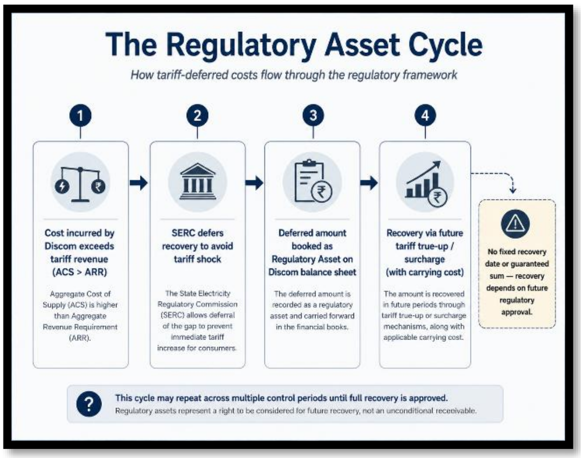
3. The Scale of the Problem

Whatever the conceptual nuance, the scale of accumulated Regulatory Assets in the Indian power sector is large enough that no RP working in this space can treat the issue as marginal.

In August 2025, the Supreme Court directed all states and Union Territories to clear their existing Regulatory Assets within four years and to liquidate any newly accrued Regulatory Assets within three years of their creation[1]. The direction responds to years of Regulatory-Asset accumulation across major Discoms. Analysis by the Council on Energy, Environment and Water (CEEW), published in September 2025, put the combined Regulatory Assets of Discoms in Tamil Nadu, Rajasthan, Delhi, Maharashtra and Kerala at approximately ₹1.6 lakh crore as of March 2023 [2].

State-level responses vary in both mechanism and pace. Rajasthan introduced a dedicated Regulatory Surcharge which is initially set at ₹0.42 to ₹0.72 per unit and later revised to a flat ₹0.56 per unit effective from October 2025, as one route toward liquidating its accumulated balance[3]; Tamil Nadu, separately, has set a target of reducing its outstanding Regulatory Assets in line with the Supreme Court directions. Delhi presents a different complication: the Delhi government has moved to order a Comptroller and Auditor General (CAG) audit of the city's Discoms over their claimed Regulatory Assets of approximately ₹38,500 crore, as reported in May 2026, placing the very quantum of the claimed asset under independent scrutiny even as the recovery clock set by the Supreme Court runs[4]. Tamil Nadu's own numbers illustrate how large a single state's exposure can be: the state reported ₹89,375 crore in Regulatory Assets for FY 2021-22 alone [5].

These figures also have a pre-existing history as a driver of sector-wide financial stress. As early as August 2018, the Union Power Ministry had identified 66 stressed power assets, with Regulatory Assets and other non-payables which were then estimated at around ₹20,000 crore owed to thermal generators, cited among the drivers of that stress [6]. The point is not that any single figure above is directly comparable to another as the sources differ in date, methodology and state coverage but that, taken together, they establish a consistent pattern: Regulatory Assets are a lakh-crore-scale, multi-state phenomenon, now under active Supreme Court supervision, and any RP conducting a valuation exercise on a power-sector debtor, or on a debtor whose principal receivables are owed by a Discom, should expect to encounter them.



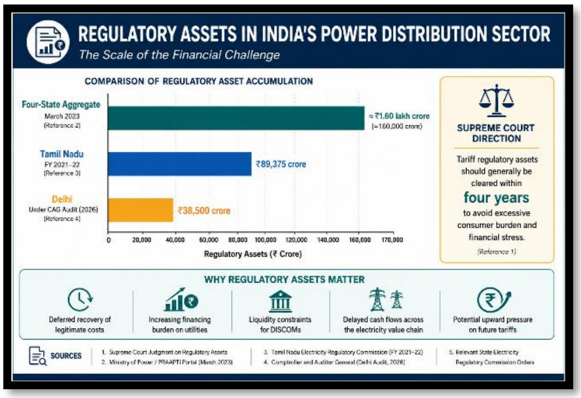
4. The Insolvency Question

The structural features described above bear directly on the central question this article poses: is a regulatory asset a receivable an RP can rely upon for valuation purposes, or is it, properly understood, a mere regulatory expectation with no enforceable right to a fixed and ascertainable sum?

An RP's obligations under the Code and the CIRP Regulations require the preservation, verification and valuation of the Corporate Debtor's assets, ordinarily on the basis of the fair value and liquidation value determined by registered valuers from the books of account and underlying documentation. A trade receivable, for this purpose, typically has three characteristics: an identified debtor, a quantum fixed (or readily ascertainable) at a point in time, and an enforceable right to payment on a defined or reasonably foreseeable timeline, defensible before a civil court or arbitral tribunal if disputed. A Regulatory Asset, as described above, satisfies none of these three characteristics in the same way. Its "debtor" is diffuse and mediated through tariff orders; its quantum is subject to further regulatory true-up and can be revised; and its timeline for recovery is set entirely by the discretion of the regulator, informed by political economy considerations principally, the willingness of a state government and its regulator to accept the consumer-facing consequences of tariff increases or surcharges. The Supreme Court's four-year clearance mandate changes the incentive structure facing regulators, and may plausibly compress the realistic recovery horizon but it does not convert the regulatory asset into an enforceable debt with the characteristics of a receivable; it remains a direction to regulators and state governments, not a decree in favour of a specific creditor for a specific sum.

It is important, at this point, to draw a sharp line between this question and a superficially similar but analytically distinct category of power-sector insolvency trigger. The Sinnar Thermal Power matter referenced in the introduction is illustrative. Sinnar's slide into insolvency did not arise from an unresolved regulatory-asset dispute. As reported contemporaneously, South Eastern Coalfields Limited (SECL) cancelled Sinnar's coal-linkage in December 2022 for want of a Power Purchase Agreement (PPA), and Sinnar's PPA with Maharashtra State Electricity Distribution Company Limited (MSEDCL) had itself been terminated years earlier [8]. These are contract-failure triggers like the collapse of a fuel-supply linkage and the termination of an offtake agreement but not a dispute over the recoverability of a tariff-deferred cost.

The distinction matters because commentary on power-sector insolvency risks conflating two analytically separate stress channels: distress caused by the breakdown of contracted revenue and input arrangements (PPA termination, fuel-linkage cancellation, construction-stage payment default) on one hand, and distress connected to, or complicated by, unresolved Regulatory-Asset recovery on the other. Both can appear on the same balance sheet, and both can motivate a CIRP filing, but an RP analysing a Regulatory Asset entry is answering a different question i.e. one of contingent regulatory recoverability than an RP analysing a terminated PPA or a cancelled coal linkage, which are questions of contractual breach and quantifiable loss. Treating the two as interchangeable species of "power-sector receivable risk" would be an analytical error with direct valuation consequences.



5. Why This Is Untested

Given the scale of the numbers involved and the frequency with which power-sector matters now reach the NCLT, it might be expected that Indian insolvency jurisprudence would already have developed a settled position on how Regulatory Assets should be treated within a CIRP or liquidation estate. It has not. A survey of reported NCLT and NCLAT orders reveals no decision squarely addressing whether a Regulatory Asset entry whether on a corporate debtor's own books, or embedded in amounts owed to it by a Discom counterparty should be recognised at face value, discounted, or excluded altogether from a resolution plan's valuation basis or a liquidation estate's realisable assets. The absence is conspicuous precisely because the underlying accounting entries are large, frequently recurring, and directly relevant to the fair value exercise every RP is required to conduct.

This is not to say that power-sector claims are litigation-free territory within CIRP. Adjacent claims-classification disputes do reach the tribunals, and are adjudicated. In the Goyal Energy resolution before the NCLT, Cuttack Bench, decided in 2026, a power-sector creditor's claim that of Chhattisgarh State Power Distribution Company Limited (CSPDCL) was disputed and adjudicated within the CIRP, illustrating that the classification and quantum of Discom-related creditor claims is very much litigated ground [9]. What is missing is the mirror-image question: not a Discom's claim against a corporate debtor, but a corporate debtor's own Regulatory Asset — its claim, in effect, against future tariff recovery is being tested as an item of value in the debtor's own resolution or liquidation. Until such a case is decided, RPs and valuers are, in practice, exercising unguided discretion whenever they encounter a regulatory asset figure on a power-sector debtor's books, with no tribunal ruling to anchor either an inclusion, an exclusion, or a discounting methodology.

6. A Proposed Valuation and Disclosure Framework

In the absence of tribunal guidance, this article proposes a conservative, disclosure-first approach that RPs and valuers can adopt pending the development of settled jurisprudence.

First, a regulatory asset should be treated as a disclosed contingent asset in the Information Memorandum and in any valuation report, not as an on-balance-sheet receivable includible at face value in the fair value or liquidation value computation. This preserves transparency toward the CoC and prospective resolution applicants without either inflating or erasing the figure.

Second, where an RP or valuer considers it appropriate to attribute some recoverable value to a disclosed Regulatory Asset, for instance, where it forms a material part of a Discom counterparty's ability to pay amounts owed to the Corporate Debtor that value should be discounted against the concerned SERC's historical true-up realization rate: that is, the regulator's demonstrated track record of actually approving and giving effect to deferred cost recovery within the timeframes it has previously scheduled, rather than assumed at full face value or on an arbitrary discount rate. Where such a track record is not readily available or verifiable, the safer course is to assign no recoverable value at all for valuation purposes and rely solely on disclosure.

Third, the disclosure accompanying any Regulatory Asset figure should, at minimum, record: the vintage of the asset (how many tariff cycles it has been carried forward without recovery); whether a dedicated surcharge mechanism has already been approved and is operational, as in Rajasthan's case; the extent to which the Supreme Court's four-year clearance mandate applies to the specific state and asset in question, noted as a regulatory tailwind that may compress the recovery timeline without guaranteeing it; and a sensitivity analysis presenting valuation outcomes under both a full-recovery and a haircut scenario, so that the CoC can weigh the range of outcomes rather than a single, potentially misleading point estimate.

Fourth, and more structurally, this article flags a coordination gap between the IBBI's valuation and CIRP regulatory framework and the SERC regime. There is currently no formal mechanism by which an RP is required, or even encouraged, to seek a status confirmation from the jurisdictional SERC regarding the recoverability, vintage, or scheduled recovery path of a regulatory asset appearing on a corporate debtor's books, or on the books of a Discom counterparty material to the debtor's valuation. Given that ongoing state-level scrutiny such as Delhi's CAG audit of its Discoms' claimed ₹38,500-crore regulatory asset figure can materially affect even the quantum of the underlying claim, an RP relying solely on the corporate debtor's own books without such external verification risks working from a figure that is itself unsettled. A protocol requiring RPs to solicit a written status confirmation from the relevant SERC, to be appended to the valuation report, would close this gap at negligible procedural cost and would align IBBI practice with the heightened SC- and CAG-level scrutiny Regulatory Assets are now attracting.

7. Conclusion

Regulatory Assets are real entries on real balance sheets, and the sums involved are large enough that no RP conducting a power-sector valuation exercise can responsibly ignore them. But size is not the same as certainty. A tariff-deferred receivable remains, until crystallised by a specific, binding tariff order, a regulatory expectation rather than an enforceable debt lacking the identified debtor, fixed quantum, and defined timeline that valuation on a receivable basis presupposes. The temptation to read a large regulatory asset figure as bankable value is precisely the illusion this article's title names, and it is one that current IBC practice has no settled jurisprudence to correct.

Until the NCLT or NCLAT squarely addresses the treatment of Regulatory Assets within a CIRP or liquidation estate, the disclosure-first, true-up-discounted framework proposed here offers RPs a defensible, conservative middle path, one that neither discards a genuine, regulator-sanctioned recovery mechanism nor mistakes a regulatory expectation for a receivable an RP, or a Committee of Creditors relying on the RP's valuation, can safely bank on.

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Mr. Manoj Kumar Anand
(Insolvency Professional)

Introduction

When a real estate developer slides into insolvency, homebuyers who have paid for under-construction flats find themselves in an unusual position compared to other creditors. Since the 2018 amendment to the Insolvency and Bankruptcy Code, 2016 ("IBC"), allottees in a real estate project are treated as "financial creditors" under Section 5(8)(f), giving them a seat at the table in the Corporate Insolvency Resolution Process (CIRP) alongside banks, NBFCs, and other lenders. This status carries real power — the right to vote in the Committee of Creditors (CoC), and even to trigger insolvency proceedings against a defaulting developer under Section 7.

Real estate insolvencies are not a marginal category. Data compiled from the Insolvency and Bankruptcy Board of India (IBBI) indicates that roughly 21% of all insolvency resolution processes admitted so far relate to the real estate sector, with high-profile matters such as Jaypee Infratech, Amrapali, Supertech and, very recently, Parsvnath shaping much of the jurisprudence governing homebuyer participation today. Because thousands of individual allottees are typically involved in a single stalled project, how their claims are verified, aggregated, and tested for genuineness has an outsized effect on how real estate insolvencies actually play out. This article examines two issues that dominate homebuyer claims in practice: how the Resolution Professional verifies the claim itself, and whether the claimant is a genuine homebuyer or a speculative investor using insolvency as a recovery tool.

Background: How Homebuyers Entered the IBC Framework

Before 2018, homebuyers had no independent standing in a developer's insolvency — treated, at best, as unsecured operational creditors, ranked below secured lenders and with no voice in the CoC. This became untenable as stalled projects like Jaypee Wishtown and Amrapali left tens of thousands of families having paid substantial sums with no possession, no refund, and no say in resolution.

The government responded in June 2018 by inserting an Explanation to Section 5(8)(f), deeming amounts raised from allottees to constitute a "financial debt." The Supreme Court upheld this in *Pioneer Urban Land*, resting its reasoning on a "time-value-of-money" test — homebuyers advance substantial capital months or years before delivery, satisfying the elements of a financial debt even without conventional interest.

This inclusion, however, had an unintended consequence: it catalysed misuse in two ways — a single dissatisfied investor could stall an entire company, as happened in the Emaar matter, and speculative investors began leveraging the IBC not for genuine project revival but as a coercive debt-recovery mechanism, triggering CIRP to extract premium buyback payments and exiting once returns materialised. Developers complained that a handful of investors unhappy with a private commercial bargain could threaten an entire company and derail a project for hundreds of genuine buyers.

The Minimum Threshold Requirement

The legislative response came through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, later enacted as the 2020 Amendment Act. This introduced a threshold into Section 7: a CIRP application can now be filed only by allottees numbering at least 100, or 10% of the total allottees in the same project, whichever is less. A single homebuyer can no longer approach the NCLT individually and must join a group meeting this threshold. Challenged as discriminatory since no comparable threshold applies to a bank or operational creditor filing alone, the Supreme Court in *Manish Kumar v. Union of India* upheld it as constitutionally valid, reasoning that homebuyers of a project function collectively somewhat like shareholders of a company, and that a minimum threshold guards against solitary or speculative filings while preserving the collective remedy for genuinely aggrieved allottees.

Tribunals apply this strictly: in one recent matter, a petition filed by only 20 homebuyers was dismissed because the project's 2,099 allotted units required at least 210 allottees to jointly initiate CIRP — a requirement that applied even to buyers who had already obtained refund orders from RERA or NCDRC. This threshold is the first filter homebuyers must clear before their claims are even examined — setting the stage for why claim verification and the genuine-buyer inquiry matter so much once a CIRP is underway.

a. Claim Verification

Once CIRP is initiated against a real estate developer — whether triggered by a financial institution, an operational creditor, or a qualifying group of homebuyers — a public announcement invites all creditors, including individual homebuyers, to submit their claims in **Form CA**, prescribed under the CIRP Regulations for allottees of real estate projects. Verification is the process by which the Interim Resolution Professional (IRP) or Resolution Professional (RP) tests each submitted claim before entering into the official record governing the resolution process. Form CA is soon to be replaced by **Form CS-R**, proposed in the IBBI's Discussion Paper on Strengthening Resolution Outcomes in Real Estate Insolvency dated 30.07.2026, which formalises most of the checks an IRP/RP presently applies as a matter of practice.

The Documents an RP Examines

- **Documentary proof of allotment:** Buyers must produce the builder-buyer agreement, allotment letter, or flat/unit booking receipt establishing that a specific unit was actually allotted to them, along with the unit or flat number, tower, and project name.
- **Proof of payment:** Bank statements, payment receipts, cancelled cheques, or ledger extracts showing the amounts actually paid to the developer over time, since the claim amount must correspond to real consideration paid rather than a notional or inflated figure.
- **Reconciliation with the developer's own records:** The RP cross-checks each claim against the corporate debtor's books of account, statutory registers, GST filings, and project-wise unit allotment registers to confirm that the claim is not duplicated, fabricated, or inconsistent with what the company itself recorded.
- **RERA registration cross-check:** Since most organised real estate projects are also registered under the Real Estate (Regulation and Development) Act, 2016 ("RERA"), RPs frequently cross-reference a claimant's unit against the project's RERA filings, which independently record allotments, payment schedules, and construction milestones.
- **Collation into the list of creditors:** Verified claims are entered into the list of financial creditors, which in turn determines each claimant's voting share in the CoC. Given the sheer number of homebuyers typically involved, they vote collectively through an "authorised representative" appointed for the class of allottees, as mandated under Section 21(6A) of the IBC — an arrangement designed to make CoC deliberations administrable despite hundreds or thousands of individual claimants.
- **Rejection, modification, or admission at reduced value:** Claims that are unsubstantiated, duplicated, time-barred, or inconsistent with the developer's records can be rejected outright or admitted at a reduced value. In either case, the claimant retains a right to challenge that determination before the NCLT.
- **Registry vs POSS (Fit Out) Possession:** Many a times allottees are given only possession “As on where basis” without Registry. Here it is pertinent to note that main reason for not getting the registry done is not having of OC, non-payment of authority charges (EDC/IDC/Licence Fee etc) which in case of Haryana is DTCP and UP is Greater NOIDA authority or NOIDA authority and in Maharashtra is MMRDA, CIDCO etc. In such cases IRP/RP should accept their claim or not as legally Corporate Debtor ***(‘CD’)*** is the owner of Unit but practically allottee is treated as owner of the unit.
- **Interest Payment @ 8% under Regulation 16A(7):** This regulation permits consideration of interest at 8% p.a., or such other rate as may be agreed between the allottee and the Corporate Debtor, solely for determining the voting share of creditors in a class**.** A practical issue arises where an allottee has already taken possession of the allotted unit, but the

conveyance deed/registry remains pending. In such cases, uncertainty persists regarding whether the claim should be admitted and, if so, whether and to what extent interest should be considered. In the absence of settled jurisprudence on this specific factual scenario, varying practices are being followed by IRPs/RPs, including treating the claim as **Nil**, admitting the amount **actually claimed**, or considering interest for voting purposes irrespective of whether it was specifically claimed. The proposed **Form CA-R**, particularly Parts D, E and F, may facilitate more structured assessment by capturing details relating to possession, conveyance, outstanding amounts and interest.

b. Genuine Homebuyer vs. Speculative Investor

Document verification is only half the story. Tribunals increasingly confront a harder question: is the claimant genuinely seeking a home, or using the "homebuyer" label to disguise a speculative investment gone wrong?

The Pioneer Urban Foundation

The Supreme Court first addressed this in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019), distinguishing speculative investors from genuine homebuyers. The Court held that the IBC should not become a recovery tool for speculative investors at the expense of a company's genuine stakeholders and the broader public interest in housing.

The Mansi Brar Fernandes Judgment (2025)

This distinction was substantially reinforced in *Mansi Brar Fernandes v. Shubha Sharma & Ors.* (2025 INSC 1110), which addressed the line between genuine homebuyers seeking possession as an exercise of their constitutional right to shelter, and speculative investors seeking assured financial returns. The appeals arose from agreements with buy-back clauses and assured-return arrangements, where the appellants invoked Section 7 after developers defaulted on possession or on the promised returns. The NCLT had admitted these petitions, but the NCLAT reversed them, classifying the appellants as speculative investors rather than financial creditors. IRP/RP has to analyse each claim and conclude whether the classify allottee as Homebuyer or Other Creditor secured or unsecured based on the following indicative criteria:

1. **Buy-back or exit clauses** guaranteeing that the developer will repurchase the unit at a fixed price, or on a fixed date, functioning much like a debt instrument rather than a sale.
2. **Assured or abnormally high returns** promised on the invested amount, unrelated to any genuine intention to occupy the property once construction is complete.
3. **Multiple unit purchases** by a single allottee — sometimes across several towers or even several projects of the same developer — especially when several units are later offered for resale to third parties rather than retained for personal use.
4. **Refusal or reluctance to take possession**, including declining an offer of possession once construction is complete, or failing to pay outstanding instalments needed to complete the transaction and take the keys.
5. **Parallel recovery proceedings**, such as cheque-dishonour complaints under Section 138 of the Negotiable Instruments Act, civil recovery suits, or arbitration claims for a fixed return, run in parallel with the insolvency claim — a strong signal that the underlying grievance is financial rather than about the loss of a home.
6. **Short holding period and rapid resale intent**, where the pattern of the transaction (timing of purchase relative to project launch, absence of any personalisation or customisation requests typical of a genuine buyer, and so on) points toward an investment rather than housing motive.
7. **Investments in commercial real estate projects are often made with a purely investment-oriented objective rather than for self-use.** In certain cases, investors may acquire units or interests in projects where the underlying land is subject to disputes, requisite plans or approvals have not yet been obtained, or even where the investment relates to a "virtual space" or other non-traditional form of commercial property. The primary intention in such cases is generally not to occupy or use the premises for business purposes, but to hold the investment for a period and subsequently sell or transfer it at an appreciation, thereby earning a return on the investment. This investment objective and the surrounding circumstances may be relevant while determining the true nature and character of the transaction and the

status of the investor's claim in an insolvency proceeding.

8. **The overall commercial substance of the transaction**, assessed holistically by the adjudicating authority rather than mechanically applying any single factor — the Supreme Court has been consistent in stressing that this is a fact-intensive, case-by-case inquiry rather than a bright-line legal test.

Why the Distinction Matters

Classifying an allottee as speculative strips them of standing to trigger CIRP under Section 7 and can exclude their claim once a CIRP is underway, directly affecting CoC voting weight and recoveries available to genuine buyers. Conversely, careless rejection of legitimate claims risks denying ordinary buyers — who seek possession as an exercise of their constitutional right to shelter under Article 21 — the very protection the 2018 amendment was designed to give them.

Conclusion

Two Sequential Filters in Homebuyer Participation

1. **Overview: Not Isolated Checkpoints**

- ❖ Claim verification and the genuine-buyer inquiry are sequential filters, not standalone checks.
- ❖ Together, they determine whose voice counts in a developer's insolvency proceedings.

2. **Filter One: Claim Verification (The Mechanical Filter)**

- ❖ Tests whether paperwork — allotment, payment, and reconciliation with the developer's own records — actually supports the claimed amount.
- ❖ Unresolved practical questions remain, including:

  - ○ Treatment of possession-without-registry claims.
  - ○ Interest calculation under Regulation 16A(7).

- ❖ In the absence of settled guidance, RPs continue to exercise discretion on these issues.

3. **Filter Two: The Genuine-Buyer Inquiry (The Substantive Filter)**

- ❖ Even a fully documented claim can be excluded from CoC voting if the underlying transaction reveals an investment motive rather than a housing motive.

- ❖ Red flags include:

  - ○ A buy-back clause.
  - ○ An assured return arrangement.
  - ○ Refusal to take possession.
  - ○ A parallel recovery suit.

4. **The Guiding Jurisprudence**

- ❖ Case law from *Pioneer Urban Land* to *Mansi Brar Fernandes* provides a workable, fact-intensive framework for RPs, NCLT, and NCLAT.
- ❖ This framework also cautions against misuse by developers seeking to disqualify genuine buyers on mere suspicion.

5. **The Shared Purpose of Both Filters**

- ❖ Admit: the ordinary family that paid for a home and is still waiting for it.
- ❖ Exclude: the investor using a builder-buyer agreement as a disguised debt instrument.

6. **The Unfinished Task**

- ❖ The central challenge is calibrating both filters to be:

  - ○ Precise enough to catch speculation.
  - ○ Generous enough to avoid punishing genuine buyers for a developer's record-keeping failures.

- ❖ This task remains ongoing, with the forthcoming **Form CS-R** and continued judicial guidance only beginning to address it.

CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 35 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR – POWERS AND DUTIES OF

JFC Finance (India) Ltd. vs. Arvind Garg [2026] 187 taxmann.com 20 (NCLAT- New Delhi)

Where appellant was denied access to participate in e-auction for sale of Corporate Debtor as a going concern due to non-availability of pre-qualification link despite several attempts and prior communication with auction platform, e-auction conducted by liquidator was set aside, and liquidator was directed to conduct fresh e-auction proceedings at a reserve price of Rs. 54 crores open to all eligible bidders, including appellant.

The corporate debtor was placed under liquidation. The liquidator issued an auction notice for the sale of the corporate debtor as a going concern. The appellant was one of the bidders. E-auction was conducted on 08.04.2025 on the BAANKNET platform, and the respondent emerged as the successful auction purchaser (SRA). The appellant filed an application before the Adjudicating Authority seeking to quash the e-auction and for a fresh auction or inter-se bidding on the ground that it was excluded from the auction process due to non-availability of pre-qualification link/technical glitch. The Adjudicating Authority, by impugned order, refused to interfere with the auction process. It was noted that the appellant had made multiple logins attempts on 07.04.2025 and 08.04.2025 and, on not being able to participate in the auction, they had taken up with the BAANKNET executive to be provided with the pre-qualification link even before the bid process was to commence. It was also noted that the appellant had informed the BAANKNET support team that the pre-qualification submission link had been unavailable to them and, as they were unable to participate, they had also requested postponement of the auction. This email clearly showed seriousness on the part of the appellant to participate in the bid process, access to which was being denied due to non-availability of the pre-qualification link. Further, the appellant had already deposited Rs. 54 crores with the liquidator as bid value on directions of the High Court of Delhi.

Held that the impugned order was to be set aside and the e-auction of the Corporate Debtor conducted by the liquidator on 08.04.2025 was to be set aside and the liquidator was to be directed to conduct fresh e-auction proceedings with reserve price kept at Rs. 54 crores, which auction would be open for all eligible prospective bidders including the appellant.

Case Review: Order of National Company Law Tribunal, Principal Bench in I.A. No. 1746 of 2025 in C.P. (IB) No. 272/pB/2017, dated 19.11.2025, reversed.

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

Sainik Industries (P.) Ltd. vs. Indian Sugar Manufacturing Company Ltd. [2026] 187 taxmann.com 102 (Delhi)

Where plaintiff, having settled its claim against defendant during CIRP and received full and final settlement under resolution plan, sought withdrawal of recovery suit based on same cause of action, suit was to be treated as withdrawn under Order XXIII Rule 1(4) CPC and full court fee paid was to be refunded in terms of Section 16 of Court Fees Act, 1870.

The plaintiff filed a suit for recovery of Rs. 19.55 crores with interest, arising from an agreement for supply of 5200 MT of sugar. The defendant supplied only 1942.9 MT valued at Rs. 6.25 crores and failed to supply the balance despite receiving substantial advance payments. During pendency of suit, CIRP was initiated against the defendant.

The plaintiff submitted its claim before the Resolution Professional and accepted the amount provided under the resolution plan. Plaintiff filed an application under Order XXIII Rule 1 of CPC for withdrawal of suit and for refund of court fees.

Held that since the plaintiff had accepted the amount under the CIRP towards full and final settlement of claims under suit and had agreed not to initiate any other proceedings based on the cause of action on which suit was premised, ingredients of settlement were attracted to the facts of the case. Thus, suit was to be disposed of as withdrawn under Order XXIII Rule 1(4) of CPC and entire court fee was to be refunded to the plaintiff in terms of Section 16 of Court Fees Act, 1870.

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

Kapole Advertising Agency vs. Standard Chartered Bank [2026] 187 taxmann.com 112 (Bombay)

Where petitioners defaulted on loan repayment and a Section 95 IBC petition was filed against them, interim moratorium commenced by operation of law only when the petition was registered and not from the date of filing of petition; commencement and effect of interim moratorium could not be contingent upon same being brought to notice of respondent bank, and DRT erred in rejecting relief merely because respondent had not been notified.

The petitioners had defaulted on loan repayment to respondent No.1 bank (secured creditor). The bank issued notice under Section 13(2) of the Securitisation Act and took symbolic possession under Section 13(4) of two mortgaged flats. On 09.07.2025, a third party claiming to be a creditor of petitioner No.2 filed a petition under Section 95 before NCLT. On 15.07.2025, petitioners filed a Securitisation Application before DRT challenging the bank's measures, including on the ground that filing under Section 95 triggered an interim moratorium under Section 96. On 10.11.2025, petitioners filed interim applications in SA seeking restoration of possession, stay of further steps, and setting aside of auction. DRT, by impugned order, rejected said applications on the ground that intimation regarding filing of petition before NCLT was not sent to the proper email ID of respondent No.1.

Held that interim moratorium commences as a matter of law and that it is a fallout of relevant statutory provision, i.e., Section 96. Interim moratorium stood triggered only when the petition was registered, i.e., on 04.11.2025 and not from the date of filing of petition, i.e, 09.07.2025. DRT could not have rejected applications only on the ground that commencement of interim moratorium was not brought to notice of respondent No.1 bank. Commencement and effect of interim moratorium cannot be contingent upon the same being brought to notice of respondent No.1 bank. Thus, impugned orders passed by DRT were to be set aside, and further steps could be taken by respondents only after interim moratorium ceased to operate or NCLT held that interim moratorium did not operate as against respondents, in the event respondents chose to approach NCLT.

Case Review: Order of Debt Recovery Tribunal-II, Mumbai dated 09.01.2026 in Interim Application Nos.2524 of 2025 and 2526 of 2025 in Securitisation Application No.411 of 2025, set aside.

CA Ramchandra Dallaram Choudhary vs. Adani Infrastructure and Developers (P.) Ltd. [2026] 187 taxmann.com 327 (SC)

Once the window of 60 days prescribed by the IBC, followed by a window of 28 days in re-filing an appeal upon curing of defects permitted by Supreme Court Rules (SCR), is shut, the right to appeal stands extinguished.

The appellant, the liquidator of a corporate debtor under liquidation, filed an appeal under Section 62 of the Insolvency and Bankruptcy Code challenging an order of the National Company Law Appellate Tribunal. The appeal was presented beyond the 45-day period, but within the additional 15-day period contemplated by Section 62(2). The Registry reported a filing delay of 7 days, and an application for condonation of filing delay was made. The appeal was marked defective by the Registry; after curing the defects, it was re-filed with a further delay of 82 days, and a separate application seeking condonation of the delay in re-filing was filed. On appeal to the Supreme Court, the appellant contended that, being a neutral officer acting for stakeholders and the corporate debtor, the minor delays ought to be viewed liberally; that under the Supreme Court Rules, re-filing delay can be condoned beyond 28 days upon sufficient cause; and relied on a coordinate Bench decision between the same parties in in CA Ramchandra Dallaram Choudhary v. Adani Infrastructure & Developers (P.) Ltd. 2025 SCC OnLine SC 1406, where re-filing delay in an appeal under Section 61 before the NCLAT had been condoned, urging a similar approach here.

Held that an appeal under Section 62 of the IBC to be regarded as having been instituted within the prescribed period of 45 days must be a defect-free appeal, which is capable of being acted upon by the Registry for being immediately placed before approaching the Bench for consideration. Any appeal which is not filed within the stipulated period in a form shorn of defects, for all practical and legal purposes, remains a defective appeal. No litigant can be permitted to subvert the statutory scheme by seeking condonation of re-filing delay beyond the period of 28 days after having initially lodged a defective appeal. Once the window of 60 days prescribed by IBC, followed by a window of 28 days in re-filing an appeal upon curing of defects permitted by SCR is shut, right to appeal stands extinguished. Fact of the appellant being a neutral officer acting under the aegis of the Supreme Court for the benefit of all stakeholders and the corporate debtor under liquidation is not sufficient for the Court to invoke its extraordinary jurisdiction under Article 142 of the Constitution to dilute or override express statutory timeframes engrafted under the IBC. Where the appellant had once secured indulgence in relation to delay, it could not legitimately proceed on the assumption that further defaults engendered at the next appellate stage would automatically attract a similar exercise of discretion. Thus, delay in filing and in re-filing the appeal was not liable to be condoned.

SECTION 32A - CORPORATE DEBTOR - LIABILITY FOR PRIOR OFFENCES, ETC.

Dwarka Iron Industries (P.) Ltd. vs. Competent Authority (under MPID Act, 1999) [2026] 187 taxmann.com 471 (Bombay)

Where corporate debtor's property was attached under the MPID Act without it being a financial establishment or an accused, and the designated Court had not made attachment absolute as required by Section 7 of the MPID Act, such attachment could not continue upon approval of resolution plan due to operation of Section 32A of IBC, the notification attaching property was quashed.

The corporate debtor was a steel manufacturer. In 2013, the Economic Offences Wing (EOW) registered an FIR against Birla Power Solutions Ltd. The corporate debtor was not named as an accused. In 2016, a notification under the MPID Act attached several properties, including the subject property. The corporate debtor, not being a financial establishment or an accused, filed objections before the Competent Authority challenging the attachment. In 2021, an operational creditor's Section 9 application was admitted by NCLT, commencing CIRP and the appointment of an RP. In 2024, NCLT approved the resolution plan submitted by the successful resolution applicant (SRA). Meanwhile, the resolution professional had filed a writ petition challenging the attachment. In 2025, it was permitted to be withdrawn with liberty to file fresh proceedings post-approval of the resolution plan. The present writ was then filed invoking Section 32A of the IBC seeking to quash the 2016 MPID notification insofar as it attached the subject property.

Held that 'vesting' of properties occurs only after the designated Court passes an order under Section 7 of the MPID Act, making absolute the order of attachment passed under Section 4(1) thereof. Since the designated Court had not passed any order under Section 7 of the MPID Act, making absolute the order of attachment of the subject property, attachment could not continue in light of the operation of Section 32A of the IBC. Since NCLT thought it fit to call upon the successful resolution applicant to approach the competent authority, i.e., the designated Court under the MPID Act, for lifting of attachment, there was no question of the subject property not being part of the resolution plan or the full effect of Section 32A of the IBC not coming into play. Therefore, the impugned notification was to be quashed and set aside.

SECTION 94 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS – APPLICATION BY DEBTOR

Maria Kuresh Rajkotwala vs. Rozina Firoz Hajiani [2026] 187 taxmann.com 751 (SC)/[2026] 267 COMP CASE 80 (SC)

Where secured asset of personal guarantor had been e-auctioned, and auction was confirmed by secured creditor before filing of application under section 94, subsequent issuance of signed sale certificate after commencement of interim moratorium under section 96 did not affect completion of auction or revive rights of personal guarantor, and therefore exclusion of auctioned asset from section 94 proceedings was justified.

The appellant-personal guarantor filed an application under Section 94 on 24.12.2024. Prior thereto, the secured asset was e-auctioned on 13.12.2024 in favour of the respondent-auction purchaser, and the auction was confirmed by the respondent bank on 18.12.2024. The Adjudicating Authority admitted the Section 94 application and excluded assets auctioned on 13.12.2024 from the Section 94 proceeding. The appellant contended that although the bank claimed issuance of a sale certificate on 24.12.2024, it was unsigned, and a signed sale certificate was issued on 26.12.2024, therefore, in view of the interim moratorium under Section 96, assets ought not to have been excluded. NCLAT held that even if the submission of the appellant was accepted that the sale certificate was signed on 26.12.2024 and 24.12.2024 was only an unsigned sale certificate, that would have no effect on completion of auction which took place on 13.12.2024 and was confirmed on 18.12.2024 by bank.

Held that the rights of the personal guarantor came to an end after the auction held on 13.12.2024 was confirmed. Thus, the Adjudicating Authority had not committed any error in excluding assets from Section 94 proceedings. Since the court did not find any error in the impugned order passed by NCLAT, the appeal was to be dismissed.

Case Review: Maria Kuresh Rajkotwala vs. Rozina Firoz Hajiani [2026] 186 taxmann.com 1282 (NCLAT- New Delhi), affirmed.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM - GENERAL

Darshan Mandir Co-operative Housing Society Ltd. vs. District Deputy Registrar, Co-operative Society [2026] 187 taxmann.com 894 (Bombay)

Where a petition for unilateral deemed conveyance of land and building was filed before Competent Authority under MOFA and CIRP was subsequently initiated against respondent, pendency of CIRP and moratorium under section 14 of IBC does not bar Competent Authority from deciding application under section 11 of MOFA, as such action does not constitute an alienation or transfer of assets nor institution of prohibited proceedings, thus application should be restored and decided on merits.

The petitioner-society of flat purchasers filed an application before the Competent Authority seeking unilateral deemed conveyance of land and building under Section 11 of MOFA. During pendency of said application, CIRP was admitted against the respondent no. 4, who claimed to have obtained conveyance of property from the original promoter and landowner. Competent Authority rejected the petitioner's application, holding that it could not be adjudicated in light of CIRP and moratorium against the respondent no. 4.

Held that provisions of Section 14 of IBC do not come in the way of the Competent Authority exercising powers under Section 11 of MOFA. Grant of deemed conveyance by the Competent Authority under Section 11 of MOFA would not be a transfer or alienation of the asset of the respondent no. 4 within the meaning of Section 14 of IBC. Mere initiation of CIRP against the respondent no. 4 could not be a reason for the Competent Authority not to exercise powers under Section 11(3) of MOFA. Since an application for unilateral deemed conveyance under Section 11 of MOFA could be decided by the Competent Authority despite pendency of CIRP, there was no necessity of filing an application to NCLT by the petitioner under Section 60(5) of IBC. Performance of statutory duty by the Competent Authority under Section 11(3) could not be treated as institution of suit or proceedings within the meaning of Section 14(1)(a) of IBC.

Therefore, the impugned order passed by the Competent Authority rejecting the petitioner's application was to be set aside, and the application was to be restored on file of the Competent Authority, which would proceed to decide the same on its own merits.

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

Pinax Paper Mills (P.) Ltd. vs. State of West Bengal [2026] 187 taxmann.com 928 (Calcutta)

Where electricity connection to premises of corporate debtor was disconnected due to non-payment of dues and after approval of resolution plan Electricity Distribution Company demanded payment of pre-CIRP outstanding electricity charges and Late Payment Surcharge (LPSC) as a precondition for new connection, such demands were prohibited since approval of resolution plan extinguished all claims not included therein, including electricity dues and related LPSC.

The petitioner, a successful resolution applicant for the corporate debtor (a paper manufacturing company), was admitted to CIRP by NCLT on 22 July 2022 (amended on 27 July 2022). A bill dated 2 August 2022 raised on the corporate debtor reflected total dues of about Rs. 3.39 crores, including an LPSC component of about Rs. 2.16 lakhs, and the electricity connection was disconnected pursuant to a notice dated 16 August 2022. The Resolution Plan was approved by NCLT on 28 December 2024. Under the approved Resolution Plan, the total plan amount was about Rs. 30.93 crores, of which only about Rs. 10 lakhs were allocated towards full and final satisfaction of operational creditors and statutory dues. The Plan recorded that WBSEDCL had submitted its claim before the Resolution Professional and a NIL component had been sanctioned in its favour. Post-approval, by letters dated 29 January 2025 and 12 February 2025, the petitioner sought construction power. By communication dated 6 May 2025, WBSEDCL demanded payment of outstanding electricity charges of about Rs. 1.30 crores and LPSC of about Rs. 1.27 crores (as on 18 December 2024) as a precondition to affecting a new connection. During the hearing and in written submissions, WBSEDCL opted not to press the claim of outstanding electricity charges. On writ petition before the High Court.

Held that upon approval of a Resolution Plan, debts of the corporate debtor arising before commencement of CIRP stood obliterated. Where electricity connection to premises of the corporate debtor was disconnected due to non-payment of dues, and after approval of resolution plan, WBSEDCL demanded payment of outstanding electricity charges and LPSC as a precondition to effecting a new connection, WBSEDCL was prohibited from raising any demand either on account of outstanding electricity charges before CIRP or connected LPSC which had been triggered before CIRP proceedings against the petitioner. LPSC by its very nature is statutorily payable on failure of a consumer to pay an outstanding amount on account of electricity charges on due date, and if the amount on account of outstanding electricity dues is extinguished, it would be illogical to suggest that any amount could be recoverable on account of LPSC arising in respect of the same period.

SECTION 95 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS – APPLICATION BY CREDITOR

Dr. Badri Prasad vs. Tata Capital Financial Services Ltd. [2026] 187 taxmann.com 1113 (NCLAT - Chennai)

Where the appellant executed and signed both a sanction letter and a letter of guarantee explicitly undertaking guarantee obligations for a loan taken by the corporate debtor, enforceability of the guarantee and appellant's liability stood established even without a formal deed of guarantee, therefore, admission of the section 95 application and rejection of appellant's challenge was justified and warranted no interference.

The corporate debtor availed a loan from the financial creditor, which was secured by personal guarantee of the appellant. On default, the financial creditor filed an application under section 95 against the appellant. NCLT admitted said application. The appellant challenged said order on the ground that there was no deed of guarantee on record to establish his liability as a personal guarantor. It was noted that the appellant had signed the sanction letter and letter of guarantee, which demonstrated an explicit consent to guarantee to loan by the appellant, obligating him to the terms and conditions of the loan and terms and conditions of guarantors, which had been expressed in the letter of guarantee.

Held that issuance of letter of guarantee, which was admittedly signed by the appellant and which secured loan facility extended to the corporate debtor, would be enforceable even in absence of a deed of guarantee, as long as parties intended to create a binding obligation, and therefore, it would not adversely prejudice proceedings under section 95. Since default was established and the status of the appellant being guarantor was established too, invocation of section 95 did not suffer from any apparent error, which could call for any interference by the Appellate Tribunal. Thus, the appeal against the order of NCLT admitting the application under section 95 was to be dismissed.

Case Review: Order of NCLT in CP(IBC)/32/KOB/2023 dated 14.08.2024 (para 25) affirmed.

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

Pooja Ramesh Singh vs. Jammu and Kashmir Bank Ltd. [2026] 187 taxmann.com 1135 (NCLAT- New Delhi)

Where corporate guarantee expressly continued notwithstanding demerger, amalgamation or renewal of credit facility and lender never discharged corporate debtor from guarantee, admission of section 7 application against corporate debtor was rightly upheld.

The financial Creditor sanctioned a long-term working capital facility to the principal borrower (PIUDCL) on 17-12-2013, secured by a corporate guarantee executed by the Corporate Debtor (EIL) and a mortgage over Gorai land owned by the Corporate Debtor. Upon default by the principal borrower, the Financial Creditor invoked the corporate guarantee and claimed default by the Corporate Debtor of about Rs. 69.98 crores towards principal and about Rs. 17.36 crores towards interest. The Adjudicating Authority admitted the Financial Creditor's application under section 7 against the Corporate Debtor.

Held that demerger, merger or amalgamation within Essel group had no effect on the liability of the Corporate Debtor as corporate guarantor because clause 8 of the guarantee deed expressly provided that the guarantee would continue notwithstanding such restructuring. There was no merit in the appellant's contention that execution of renewal-cum-reduction letter dated 18-11-2017 discharged the Corporate Debtor from its obligations under the guarantee, since renewal expressly preserved all existing terms and conditions, including clause 8 of the guaranteed deed. In the absence of any evidence that the Financial Creditor had discharged the Corporate Debtor from its liability as a corporate guarantor, the Adjudicating Authority rightly admitted the section 7 application and the impugned order called for no interference in appeal.

Case Review: Order of National Company Law Tribunal, Mumbai Bench-V RCP No. 06/IB/MB-V/2023 connected with CP No. 361/IB/2022, dated 28-8-2024) affirmed.

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