SEPTEMBER 2025

INSOLVENCY PROFESSIONAL AGENCY OF
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 newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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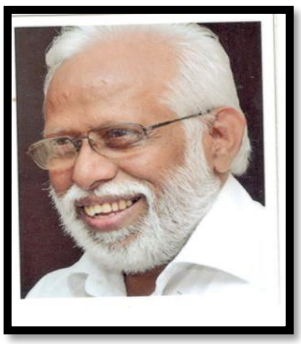

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CASEBOOK

TABLE OF CONTENTS

MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR

Dear Reader,

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

E-Journal, one of the publications regularly brought out by the Publications Desk of IPA-ICMAI, carries interesting articles and opinions that not just inform but provide an enlightened insight into issues of vital interest in the domain of insolvency and bankruptcy, corporate restructuring & rejuvenation, and related subjects. The profession of IPs, now getting out of infancy into adolescence, is continuously evolving with numerous rulings from the adjudicating authorities as well as constitutional courts apart from regulatory changes and hence demands a high level of attention of IPs in the midst of assignments and related preoccupations.

Professional development happens through continuous professional education including updates on changes in the code, relevant laws, and regulations as also new case laws. As the saying goes, articulation of one's own understanding is the highest level of learning. Hence, an important of professional development is expression of a professional's knowledge and experience and sharing with fellow professionals. The professional strength we gain and the satisfaction from the intellectual exercise in working for and preparing an opinion/ article shall drive us to be active participants in professional development activities. We at IPA-ICMAI are indeed privileged to be a vehicle of such expressions.

This is a bumper issue of e-Journal brings five interesting articles on relevant topics

- An Exhaustive Analysis of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 by Gp. Capt. Rajendra Kumar Joshi (Retd)
- Consequence of amalgamation of the Corporate Debtor on liability of the guarantor of the CD by Shri M. Govindarajan, our regular contributor,
- Review of Mansi Brar Judgement by Dr. Biswadev Dash,
- Role of IBC Revised by Shri Manohar Suman, IP,
- Supreme Court's Vision for a National Revival Fund to Rescue India's Stuck Housing Projects by Shri Ravi Garg,
- Resolution or recovery? Navigating section 9 and commercial litigation by Shri Udit Agarwal

Apart from our regular features – recent judicial rulings, review of programs organised by IPA-ICMAI, etc.

I hope you will find these articles useful and interesting as much to generate your responses and feedback.

I welcome your comments, observations, and critique on the published articles in this journal. Your response will contribute to better understanding of the issues in the articles as also better appreciation of different perspectives. I welcome you to contribute with your updates that would help our fellow IPs and opinions from your experiences that all of us can benefit from. Such responses will also be published in the journal in future to generate a healthy discussion and as also an expression of the appreciation of the author.

Your rejoinder/ response/ feedback may be sent to publication@ipaicmai.in.

Wish you all happy reading.

Mr. G.S. Narasimha Prasad
Managing Director

PROFESSIONAL DEVELOPMENT INTIATIVES

SEPTEMBER 2025

DATE	EVENTS CONDUCTED
September 6, 2025	**A** Workshop on "AI Applications in IBC Processes" **was conducted on September 6, 2025, exploring how artificial intelligence can be applied in insolvency proceedings to improve efficiency, accuracy, and decision-making.**
September 13, 2025	**A** Workshop on "Pathways to Revival – The Evolving Landscape of IBC" **was held on** September 13, 2025, in Hyderabad**, in association with the** Hyderabad Insolvency Professional Association**. The workshop focused on the changing contours of the insolvency framework and strategies for revival under IBC.**
September 13, 2025	**Workshop on "Non-Adversarial Concepts of ADR"** was organized September 13, 2025in association with Missing Bridge, highlighting the role of Alternative Dispute Resolution mechanisms in resolving disputes effectively and complementing the insolvency framework.
September 15–19, 2025	IPA-ICMAI, in association with NIBSCOM, successfully organized a **Special Programme on Insolvency and Bankruptcy Code 2016** from September 15–19, 2025. The five-day programme included in-depth sessions, expert lectures, and practical case studies, culminating in interactive assessments to strengthen professional competence.
September 19, 2025	**An Executive Development Programme on "Case Management & Practices in IBC"** was held on September 19, 2025, providing advanced training to professionals on case handling, process efficiency, and best practices in insolvency management.
September27-28, 2025	**A Learning Session on "Critical Aspects in CIRP & Liquidation Lifecycles" was conducted on September 27–28, 2025,** offering comprehensive insights into key issues faced during CIRP and liquidation, and equipping professionals with practical knowledge for effective resolution and closure processes.

IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy Code

ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

Mr. Manohar Suman
Insolvency Professional

SYNOPSIS

The Insolvency and Bankruptcy Code (IBC) has transformed India's economic framework by streamlining insolvency resolution, reducing NPAs, and strengthening banking stability. It promotes credit discipline, enhances investor confidence, and improves ease of doing business. By preserving viable enterprises and fostering entrepreneurship, IBC plays a pivotal role in India's sustainable economic growth.

Role of IBC in the Indian Economy
Introduction
India's economic landscape underwent a fundamental transformation with the introduction of the Insolvency and Bankruptcy Code (IBC) in 2016. Before its enactment, India's insolvency regime was plagued with inefficiencies, long-drawn litigation, and a low recovery rate of non-performing assets (NPAs). With rising NPAs choking the banking sector and causing a drag on economic growth, the IBC came as a much-needed reform to address insolvency and promote credit discipline. It provided a consolidated framework to resolve insolvency and bankruptcy issues in a time-bound manner, thereby increasing investor confidence, strengthening the financial sector, and contributing significantly to India's economic development.

Background: The Pre-IBC Scenario

Prior to the IBC, India had multiple laws dealing with insolvency and bankruptcy such as the Sick Industrial Companies Act (SICA), the Recovery of Debt Due to Banks and Financial Institutions Act (RDDBFI), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), and the Companies Act, 1956/2013. These laws worked in silos, leading to inconsistent interpretations, prolonged litigation, and lack of accountability.

The average time taken to resolve insolvency cases was more than 4 years, with recovery rates among the lowest globally. Lenders had little control over the resolution process, and debtors continued to run distressed companies even after default. This inefficiency not only eroded creditors' confidence but also significantly hampered the overall economic productivity.

Genesis of the IBC
The Insolvency and Bankruptcy Code was enacted in May 2016 and came into effect in December 2016. It aimed to create a single unified framework for insolvency and bankruptcy for corporates, partnerships, and individuals. Key features included:

- **Time-bound process**: Resolution to be completed within 180 days (extendable to 330 days).
- **Creditor in control**: Shift from 'debtor-in-possession' to 'creditor-in-control'.
- **Institutional mechanisms**: Establishment of Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs), and information utilities.
- **Adjudicatory authorities**: National Company Law Tribunal (NCLT) for companies and Debt Recovery Tribunal (DRT) for individuals.

Economic Impact of IBC

1. **Resolution of NPAs and Strengthening of Banking Sector**

One of the primary objectives of the IBC was to address the mounting non-performing assets in the banking sector. By providing a structured mechanism to resolve bad debts, it allowed banks to clean up their balance sheets and redirect credit to more productive sectors.

According to the RBI, IBC has emerged as the most effective recovery mechanism among all available tools, including SARFAESI and DRT.Notably, several high-profile insolvency cases, such as **Essar Steel, Bhushan Steel, Jet Airways, and Dewan Housing Finance**, showcased the success of the IBC in facilitating debt resolution and value maximization. This has strengthened the financial health of banks and improved credit discipline in the system.

2. Improvement in Ease of Doing Business
India's ranking in the World Bank's **Ease of Doing Business** improved dramatically from 130 in 2016 to 63 in 2020. One of the most significant improvements came in the **"Resolving Insolvency"** parameter, where India jumped 56 places in two years. The IBC played a pivotal role in making India a more attractive destination for foreign and domestic investment by creating a predictable and transparent insolvency regime.

3. Boost to Entrepreneurship and Business Confidence
The IBC provides a structured exit route for failing enterprises, allowing honest entrepreneurs to walk away without being stigmatized. This encourages risk-taking and innovation by reducing the fear of business failure. Moreover, the possibility of liquidation and loss of control acts as a deterrent against willful default and misuse of company resources.

4. Promotion of Credit Culture
IBC has transformed the borrower-lender dynamics in India. With a credible threat of insolvency proceedings, borrowers are more cautious and willing to settle dues proactively. This shift toward a more disciplined credit culture has led to an increase in the quality of credit and helped financial institutions lend with greater confidence.

5. Recovery and Value Maximization
One of the distinguishing features of IBC is its focus on **resolution over liquidation**. The idea is to keep viable businesses running under new management, thereby preserving jobs, supplier relationships, and market share. According to IBBI data, as of 2024, nearly **47% of admitted cases have seen resolutions**, and recovery rates under IBC are significantly higher than other recovery mechanisms.

Sectoral Impacts
1. Infrastructure and Real Estate
The IBC has played a crucial role in resolving insolvencies in the infrastructure and real estate sectors. The landmark **Jaypee Infratech** case set a precedent for homebuyers being treated as financial creditors, giving them a voice in the Committee of Creditors (CoC). This has led to a better balancing of interests between financial institutions and consumers.

2. Steel and Manufacturing
Large-scale resolutions like **Essar Steel (₹42,000 crore recovery)** and **Bhushan Steel (₹35,000 crore)** demonstrated the potential of IBC to unlock value in distressed assets. These cases attracted global players like ArcelorMittal and Tata Steel, showing that IBC can also be a vehicle for attracting FDI into stressed sectors.

3. MSMEs
The IBC has been particularly impactful for Micro, Small, and Medium Enterprises (MSMEs), which often lacked access to effective insolvency frameworks. In 2021, the government introduced a **pre-packaged insolvency resolution process (PPIRP)** for MSMEs to allow faster and cost-effective resolutions, thus preserving jobs and livelihoods.

Challenges and Criticisms
Despite its transformative impact, the IBC has faced several challenges:

1. Delays and Judicial Bottlenecks
While the IBC mandates resolution within 330 days, many cases have dragged on for years due to judicial delays, litigation, and lack of capacity at NCLTs. As of 2024, thousands of cases are still pending, leading to value erosion.

2. Haircuts and Recovery Rates
While some high-profile recoveries have occurred, average recoveries remain modest, and creditors often have to take steep haircuts (sometimes over 90%). Critics argue that such outcomes undermine the confidence of financial creditors.

3. Misuse and Strategic Defaults
Some promoters have tried to use backdoor entries to regain control of companies at

discounted prices, raising concerns about regulatory arbitrage. Despite Section 29A banning defaulting promoters from bidding, enforcement has been uneven.

4. Capacity Constraints

The infrastructure of insolvency professionals, information utilities, and tribunal members is still under development. This has slowed down the resolution process and diluted the effectiveness of the law.

Recent Developments and Reforms

To strengthen the IBC framework, the government and IBBI have undertaken various reforms:

- **Cross-border insolvency framework** (draft proposal) to handle cases involving foreign creditors.
- **Pre-packaged insolvency** introduced for MSMEs and may be extended to other companies.
- Enhanced roles for **CoC and resolution professionals** to avoid undue litigations.
- **Technology integration** and digital case management to reduce procedural delays.

Future Outlook

The IBC has fundamentally reshaped India's insolvency ecosystem, but it is still evolving. For the IBC to fully realize its potential, the following reforms are essential:

1. **Strengthening NCLT infrastructure** and increasing the number of benches and members.
2. **Training and accreditation** of insolvency professionals to ensure high standards.
3. **Adoption of cross-border insolvency laws** in line with the UNCITRAL model.
4. **Greater stakeholder participation**, including operational creditors, homebuyers, and employees.
5. **Regular amendments and reviews** based on market feedback to ensure relevance and efficacy.

Conclusion

The Insolvency and Bankruptcy Code has been one of the most significant economic reforms in post-liberalization India. By providing a time-bound, market-driven, and transparent mechanism for resolving insolvency, it has addressed systemic issues that plagued the Indian financial system for decades. While challenges remain, the IBC has made substantial progress in improving credit discipline, unlocking capital stuck in distressed assets, and fostering a more vibrant entrepreneurial ecosystem.

As India moves toward becoming a $5 trillion economy, a robust insolvency framework like the IBC will be pivotal in ensuring financial stability, investor confidence, and sustainable economic growth. The continued evolution and strengthening of the IBC will determine its long-term contribution to India's economic development.

DECONSTRUCTING THE SUPREME COURT'S VISION FOR A NATIONAL REVIVAL FUND TO RESCUE INDIA'S STUCK HOUSING PROJECTS

Mr. Ravi Garg
Insolvency Professional

In what may well be remembered as a watershed moment for India's real estate sector, the Supreme Court of India has issued a clarion call for the establishment of a dedicated 'Revival Fund' or 'Stress Fund' aimed at breaking the deadlock that has left lakhs of housing projects incomplete and millions of homebuyers in financial and emotional limbo. This landmark observation, emerging from a hearing centered on the rights of beleaguered homebuyers, represents more than just judicial concern; it is a structured proposal for a collective, national effort to resolve one of the country's most persistent economic and social challenges. The Court's intervention underscores a stark reality: the plight of stuck housing is not merely a market failure—it is a humanitarian crisis demanding urgent, multi-stakeholder action.

The Anatomy of a Crisis: How India's Housing Dream Stalled

To appreciate the significance of the Supreme Court's proposal, one must first understand the depth and origins of the crisis. The Indian real estate sector, once a roaring engine of economic growth and employment, began facing severe headwinds post-2016. A combination of transformative policy reforms and external shocks created a perfect storm:

- **Policy Shocks:** The sudden demonetization move, followed by the arduous but necessary implementation of the Goods and Services Tax (GST), disrupted the sector's cash-dependent ecosystem. Shortly thereafter, the Real Estate (Regulation and Development) Act (RERA) fundamentally altered developer-buyer dynamics, increasing accountability but also tightening compliance costs and timelines.
- **The NBFC Liquidity Crunch:** The collapse of Infrastructure Leasing & Financial Services (IL&FS) in 2018 sent shockwaves through the non-banking financial company (NBFC) sector. NBFCs had been the primary source of funding for many developers after traditional banks turned cautious. This liquidity vacuum left numerous projects stranded without access to crucial capital.

The Pandemic: COVID-19 was the final blow. Nationwide lockdowns halted construction, disrupted supply chains, and led to massive migrant labor exodus. While demand eventually recovered, the financial damage to developers was irreparable.

The result is a landscape littered with unfinished towers. According to various industry estimates, over **4.12 lakh crore rupees** worth of projects are stalled or significantly delayed across top Indian cities. This isn't just a statistic; it represents the life savings of hundreds of thousands of ordinary Indians—doctors, engineers, teachers, and retirees—who invested in the promise of a home.

Beyond SWAMIH: The Supreme Court's Nuanced Proposal

The government's **Special Window for Affordable and Mid-Income Housing (SWAMIH)** Investment Fund has been a success story in its own right, completing numerous projects. However, the Supreme Court's observation suggests a need for a broader, more institutionalized solution. The bench's proposal is nuanced and built on the principle of shared responsibility:

1. **A Consortium-Based Funding Model:** The Court's vision is not for a purely government-funded bailout. Instead, it explicitly called for contributions from all stakeholders who profited from the real estate boom. This includes:
    - **The Government:** Acting as a catalyst and anchor investor to instill confidence.
    - **Banks and Financial Institutions (Lenders):** These entities have significant non-performing asset (NPA) exposure to these stalled projects. Their participation is crucial, as completing a project allows them to recover

their stuck loans, converting NPAs into performing assets.

- **Developers:** The Court specifically mentioned contributions from the developer community, particularly those who are solvent and have successfully delivered projects. This creates a peer-driven accountability mechanism.

2. **Strategic Last-Mile Financing:** The fund's objective would be highly specific: to provide last-mile funding. It would not be used to bail out terminally insolvent companies or wipe out debt. Instead, it would target projects that are **physically near completion (e.g., 70-90%)** but have stalled purely due to a lack of working capital. This ensures maximum impact—a relatively small infusion of capital can deliver a disproportionately large number of homes, providing immediate relief to a maximum number of buyers.
3. **Robust Oversight and Transparency Mechanism:** Acknowledging the historical misuse of funds in the sector, the Court suggested the fund be managed under the vigilant oversight of the **Real Estate Regulatory Authority (RERA)**. This would ensure that every rupee disbursed from the fund is strictly monitored and used solely for construction-related expenses—cement, steel, labor, and other completion costs—preventing any further diversion.

Why This Intervention is a Game-Changer

The Supreme Court's role transcends that of a passive adjudicator; it has actively proposed policy. This carries immense weight for several reasons:

- **Moral Suasion and Top-Down Pressure:** The Court's stature forces a collective reckoning. It places immense moral and administrative pressure on banks and developers to participate in a solution. It reframes the narrative from a financial problem for banks to a social obligation for all profitable entities in the ecosystem.
- **Addressing the Collective Action Problem:** One of the biggest hurdles in resolving stalled projects is the fragmented nature of creditors and the lack of a unified approach. The Court's proposal for a collective fund directly addresses this "collective action problem," providing a single platform for coordinated action.
- **Complementing the IBC Process:** For projects where the developer is insolvent, but the asset is viable, the fund could work in tandem with the Insolvency and Bankruptcy Code (IBC) process. It could provide the necessary financing to a new resolution applicant to complete the project, making the assets more attractive and ensuring a higher recovery value for all creditors.

Navigating the Implementation Minefield: Challenges Ahead

While the vision is compelling, its execution is fraught with challenges:

- **Stakeholder Buy-in:** Securing voluntary, significant financial commitments from private banks and developers will be difficult. It may require a mandated contribution formula or regulatory incentives, which would need careful design to avoid legal challenges.
- **Viability Assessment:** Creating a technically sound and impartial committee to assess which projects are viable for funding is critical. The fund must avoid becoming a sinkhole for doomed projects. Parameters for selection—percentage of completion, number of homebuyers affected, financial health of the developer, and legal clearances—must be transparent and objective.
- **Legal Complexities:** Many stalled projects are entangled in complex litigation across various courts and the National Company Law Tribunal (NCLT). Deploying funds from a new entity into these projects will require navigating a web of judicial approvals and creditor hierarchies.
- **Coordination with SWAMIH:** The proposal must clearly define how this new fund would coexist or integrate with the existing SWAMIH fund to avoid duplication of effort and bureaucracy.

A Ray of Hope for a Decade-Long Nightmare

For countless homebuyers, the Supreme Court's words are a potent symbol of hope. After years of paying EMIs for a non-existent home while

simultaneously paying rent, their desperate petitions have been met with a response that is both empathetic and action oriented. The Court has effectively stated that the resolution cannot be left to market forces alone and requires a structured, collective, and morally conscious effort.

The upcoming hearings, where stakeholders are expected to present concrete blueprints, will be closely watched. The journey from a judicial observation to a functional, well-capitalized fund is long and complex. Yet, the Supreme Court has ignited a crucial conversation, challenging the government, the financial sector, and the real estate industry to collaborate as never before. If this vision is realized, it could finally provide the keys to not just new homes, but also to restoring faith in the system itself. The nation awaits the next chapter, hoping for a decisive turn towards resolution.

Mr. Udit Agarwal
Advocate & Insolvency Professional

SYNOPSIS

This article explores the strategic choice between filing an insolvency application under Section 9 of the IBC and initiating a commercial suit under the Commercial Courts Act. It explains that Section 9 is not a recovery mechanism and focus on each route, how they work, and the key procedural differences. The article also compares likely outcomes and how courts approach these cases. Its aim is to help businesses and legal professionals choose the most effective path for recovering dues or resolving commercial disputes.

Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 ("IBC") marked a fundamental change in India's insolvency landscape. Section 9 of the Code empowered operational creditors to trigger the Corporate Insolvency Resolution Process (CIRP) against defaulting companies, subject to the threshold requirements and procedural safeguards laid down in the Code. However, over the years, judicial interpretation and legislative amendments have significantly reshaped the scope of this provision, particularly in terms of its purpose, limitations and specifically misuse by the creditors.

A natural point of comparison is the traditional remedy of filing commercial suits for recovery of debt. While commercial suits under the Commercial Courts Act 2015 provide a litigation-based mechanism for enforcing contractual obligations and securing monetary decrees of the commercial disputes, Section 9 of the IBC operates in a distinct framework aimed not at recovery, but at resolution of insolvency.
This article traces the evolution of Section 9 and contrasts it with commercial suits as a recovery mechanism.

Evolution of Section 9

At its inception in 2016, Section 9 of IBC offered operational creditors a swift and structured remedy to initiate the CIRP upon default. The procedure was simple, and issued a demand under Section 8, await a response, and, if no payment or dispute was raised within ten days, approach the National Company Law Tribunal (NCLT) under Section 9.

However, the framework evolved significantly over time. In March 2020, the threshold for initiating insolvency was enhanced from Rs. 1 lakh to Rs. 1 crore, resulting in a steep decline in filing of Section 9. Simultaneously, Section 10A was introduced, suspending fresh insolvency proceedings for COVID-related defaults. These changes reinforced the jurisprudential shift that the IBC is not intended to serve as a debt recovery forum but as a mechanism for resolution of insolvency in a time-bound manner.

When the Central Government, by its notification dated 24.03.2020, raised the threshold for initiating insolvency proceedings under Section 9 of the IBC from Rs. 1 lakh to Rs. 1 crore, it effectively curtailed the ability of operational creditors to trigger the CIRP in respect of defaults below Rs. 1 crore.
However, this enhancement of threshold does not render such claims remediless. Creditors holding debts below the prescribed limit are required to pursue recovery through alternative forums such as commercial courts under the Commercial Courts Act, 2015, arbitration proceedings under the Arbitration and Conciliation Act, 1996 (where a contractual arbitration clause exists), or before the Micro and Small Enterprises Facilitation Council under the MSMED Act, 2006 in the case of registered MSMEs.

Procedure for Section 9 IBC Application (Operational Creditor)

Step 1 – Demand Notice under Section 8

- Issue demand notice in Form 3 or Form 4.
- Serve at the registered office of the corporate debtor and/or its directors.
- Wait for 10 days.

Step 2 – Response by Corporate Debtor

- If the debtor makes payment → process ends.
- If the debtor raises a pre-existing dispute → creditor cannot proceed under Section 9.
- If no payment or reply or dispute → creditor may file Section 9 petition.

Step 3 – Filing of Section 9 Application before NCLT

- File in Form 5 with supporting documents:
  - Copy of demand notice & proof of service.
  - Copy of invoices/agreements.
  - Affidavit under Section 9(3)(b) confirming no dispute.
  - Record of default (bank statement, financial institution certificate if available).
  - Proposed name of Interim Resolution Professional (optional).

Step 4 – Admission Process before NCLT

- NCLT examines whether:
  - Operational debt is due and payable.
  - Default exceeds threshold of Rs. 1 crore.
  - Limitation
  - No pre-existing dispute exists.
- Timeline: NCLT to admit/reject within 14 days (in practice, longer).

Step 5 – Order of NCLT

- **If admitted:**
  - CIRP begins.
  - Interim Resolution Professional (IRP) is appointed.
  - Moratorium under Section 14 declared (no suits, execution, etc.).
- **If rejected:**
  - Appeal before NCLAT / Creditor free to pursue recovery through civil suit/arbitration.

Section 9 of IBC: Recovery Mechanism or Insolvency Tool?

Section 9 of IBC provides operational creditors with the right to initiate the CIRP if an operational debt remains unpaid even after service of a statutory demand notice. However, once CIRP is triggered, the creditor who filed the application becomes merely one of the stakeholders in the collective insolvency process. Recovery at this stage is uncertain, and operational creditors are often paid a fraction of their admitted claims.

This is why the Supreme Court in *Swiss Ribbons v. Union of India* (2019) clarified that the IBC is not a debt recovery statute, but a resolution framework. Similarly, in *Mobilox Innovations v. Kirusa Software* (2017), the Court stressed that Section 9 cannot be used where even a plausible dispute exists.

Since the enactment of the IBC, operational creditors have frequently invoked Section 9 to initiate the CIRP against defaulting companies. However, an important debate persists: **is Section 9 truly a recovery mechanism, or should creditors pursue commercial suits for that purpose?**

Misuse and Limitations of Section 9

- Increasing trend of creditors using Section 9 as a *debt recovery tool*, contrary to its intended purpose.
- Courts have cautioned against this misuse, emphasizing that insolvency is not a substitute for recovery proceedings.
- The Supreme Court has repeatedly underscored that CIRP is meant for resolution and not enforcement of dues.

Commercial Suits under the Commercial Courts Act

Commercial suits, on the other hand, continue to be the traditional remedy for debt recovery. The Commercial Courts Act, 2015 (Act) streamlined commercial litigation, reducing pecuniary thresholds to Rs. 3 lakh and mandating pre-institution mediation for certain disputes under Section 12A of the Act. Unlike IBC, commercial suits are designed for

adjudication of contractual disputes, counterclaims, damages, and set-offs.

While the process may be lengthier, commercial suits result in a money decree that is enforceable directly against the debtor's assets. The creditor retains control over enforcement and does not risk be subsumed into a collective insolvency process.

Doctrine of Twin requirement
In the Commercial Courts Act, the suit needs to fulfil the twin requirement of the Act to qualify for the test of a commercial suit under the Commercial Courts Act. A case must satisfy two conditions simultaneously:

1. Commercial Nature of the Dispute – The subject matter must fall within the ambit of a *"commercial dispute"* as defined in Section 2(1)(c) of the Act.
2. Specified Value – The dispute must be of the *"specified value"* as per Section 12 of the Act, read with the notifications issued thereunder (currently Rs. 3,00,000 after the 2018 Amendment).

If either requirement is absent, the suit cannot be entertained as a commercial suit before a Commercial Court/Commercial Division which has been given judicial recognition in catena of judgements passed by the different courts.

Commercial Suits: The Recovery Route
Commercial suits, governed by the Commercial Courts Act 2015 and the CPC, are fundamentally different from IBC. Their objective is individual enforcement of contractual rights. If a decree is granted, the plaintiff/decree holder can enforce it directly against the debtor's assets through execution proceedings.

Unlike Section 9, commercial suits:

- Allow adjudication of contested disputes,
- Enable recovery of damages, interest, and costs,
- Keep the company as a going concern, without triggering insolvency.

While the process is lengthier than IBC admission, it leads to a decree that is binding and enforceable.

Procedure for Filing a Commercial Suit before High Court (under **Commercial Courts Act, 2015** & CPC as amended)

Step 1 – Pre-Institution Mediation
- If no urgent interim relief is sought, the plaintiff must first attempt mediation before the court-annexed mediation centre.
- If mediation fails, non-starter report issued → plaintiff may proceed with the suit.

Step 2 – Institution of Suit
- File a plaint before the Commercial Court.
- Pay prescribed court fees.
- Plaint must be verified with Statement of Truth affidavit

Step 3 – Scrutiny & Registration
- Court registry scrutinises plaint for defects.
- On removal of defects, plaint is registered as a suit and listed for admission and presentation of plaint.

Step 4 – Issue of Summons & Filing of Written Statement

- Court issues summons to defendant.
- Defendant must file written statement within 30 days (extendable up to 120 days with costs).
- Defendants may also raise counterclaims/set-offs.

Step 5 – Case Management Hearing & Discovery

- Court conducts Case Management Hearing to frame issues, set timelines.
- Discovery, inspection, and production of documents.
- Interlocutory applications (interim injunctions, deposit orders, etc.) can be filed.

Step 6 – Trial

- Evidence by affidavit; cross-examination of witnesses.
- Arguments and submissions by both parties.

Step 7 – Judgment & Decree

- Court pronounces judgment.
- If in plaintiff's favour → decree for recovery passed.

Step 8 – Execution of Decree

- If debtor does not comply, decree-holder may initiate execution proceedings:
  - Attachment and sale of property.
  - Garnishee orders.
  - Arrest/detention (in rare cases).

Key Points of Contrast between Section 9 and Commercial Suits

Characteristic	Section 9 IBC	Commercial Suits
Objective	Trigger insolvency resolution of corporate debtor	Recovery of money for an individual creditor
Threshold	Minimum default: Rs. 1 crore	Minimum specified value: Rs. 3 lakh
Nature of Debt	Only undisputed operational debts	Any commercial dispute (even contested)
Forum	NCLT	Civil courts/Commercial Courts
Disputes	Even a "plausible dispute" bars admission	Court adjudicates disputes fully on merits
Outcome	CIRP, moratorium, creditor becomes part of collective process	Money decree enforceable by plaintiff
Timeline	Summary process; intended disposal in weeks (though often longer)	Lengthier trial, but Commercial Courts Act seeks faster disposal

Procedural Differences between Section 9 and Commercial Suits

Stage	Section 9 IBC (NCLT)	Commercial Suit (High Court)
Pre-filing	Mandatory demand notice – Sec 8 (10 days)	Pre-institution mediation- Sec 12A (unless urgent relief sought)
Filing	Form-based application (Form 5)	Plaint with Statement of Truth affidavit
Forum	NCLT	High Court (Commercial Division)/ Commercial Court
Admission Test	Default more than Rs. 1 crore, no dispute, limitation	Cause of action, maintainability, limitation

Stage	Section 9 IBC (NCLT)	Commercial Suit (High Court)
Timeline	Summary (intended quick admission/rejection)	Longer – pleadings, trial, evidence
Outcome	CIRP (collective process), moratorium	Money decree (individual recovery)
Post-order	IRP appointed, Creditor joins CIRP process	Decree execution proceedings

Conclusion

Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) is fundamentally designed to facilitate collective insolvency resolution, not individual debt recovery. Its purpose is to protect the interests of all stakeholders by enabling a time-bound process for resolving operational debts. Once an application under Section 9 is admitted, control shifts from the operational creditor to the resolution professional, and the creditor may ultimately receive only a fraction of the dues, depending on the resolution plan approved by the Committee of Creditors. This loss of control and uncertain recovery underscores that Section 9 is not a substitute for traditional recovery mechanisms.

In contrast, commercial suits offer a direct and creditor-controlled path to recovery. They are particularly appropriate where disputes exist or where the creditor's objective is to obtain a decree and enforce it individually. Suits allow for adjudication of contested claims and provide a more predictable route to enforcement. Therefore, Section 9 should be reserved for clear, undisputed operational debts exceeding Rs. 1 crore, where the creditor is prepared for a collective resolution outcome and not merely seeking repayment. Jurisprudence has consistently reinforced this distinction. In *Swiss Ribbons v. Union of India* (2019), the Supreme Court affirmed that the IBC is a resolution framework, not a recovery tool. Parliament's intent and judicial interpretation both caution against using Section 9 as a shortcut to recover dues.

Operational creditors must carefully assess whether their claims are undisputed and statutorily maintainable before invoking the IBC. Ultimately, the choice between Section 9 and a commercial suit pivot on the creditor's strategic objective i.e., whether to initiate a collective insolvency process or pursue individual recovery through the courts. Misuse of Section 9 for recovery not only risks dismissal but also undermines the integrity of the insolvency framework. Strategic clarity is therefore essential.

THE MANSI BRAR JUDGMENT: REPLACING HOLISTIC RESOLUTION WITH A CREDITOR-CENTRIC APPROACH UNDER IBC

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I. Synopsis/Abstract

The Supreme Court of India, in the landmark judgment of Mansi Brar Fernandes vs Shubha Sharma [(2023) 6 SCC 1], has fundamentally redefined the approach to insolvency resolution in the real estate sector. Departing from the traditional holistic approach mandated by the Insolvency and Bankruptcy Code, 2016 (IBC), the Court held that real estate projects undergoing insolvency proceedings must be resolved on a project-specific basis, rather than treating the entire corporate debtor as a single unit. This decision addresses the unique complexities of real estate insolvency, including incomplete constructions, disparate asset values across projects, and the critical interest of homebuyers. The judgment underscores the need for tailored solutions that prioritize project viability and stakeholder welfare, potentially altering the landscape of real estate insolvency resolutions in India. This article analyzes the judgment's implications, legal rationale, and future directions for the insolvency regime.

II. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC), introduced a transformative framework for resolving corporate distress in India. Central to this framework is the principle that upon initiation of insolvency proceedings, the corporate debtor's assets are "pooled" together, and a resolution plan is approved to transfer these consolidated assets to a new buyer. However, the real estate sector—characterized by large-scale, multi-project operations, significant unfinished inventory, and vulnerable homebuyers—posed unique challenges to this one-size-fits-all model.

In Mansi Brar Fernandes, the Supreme Court addressed a critical question: Whether real estate projects within a corporate debtor can be treated as distinct units for resolution purposes, rather than being subsumed into a single, monolithic resolution plan. The Court's affirmative answer marks a paradigm shift, emphasizing that real estate insolvency requires a nuanced, project-centric approach to ensure fairness, efficiency, and sustainability. This article examines the judgment's background, legal analysis, implications for stakeholders, and recommendations for refining the insolvency regime.

III. Statement of Problem

The fundamental problem addressed by the Supreme Court is the conflict between two core principles of the IBC:

1. **The Principle of Unity:** The IBC envisions the resolution of the corporate debtor as a whole. Regulation 37(f) of the CIRP Regulations mandates that a resolution plan must provide for the manner of implementation and *supervision* of the plan, treating the entity in its entirety.

2. **The Principle of Practicality & Stakeholder Protection:** Applying this unitary principle to a real estate SPV with one stalled project and other defunct or liability-ridden projects creates an intractable problem. Resolution applicants are deterred from bidding if they are required to infuse funds not only to complete the project for which homebuyers are waiting but also to deal with the corporate debtor's other unrelated debts, litigation, and liabilities. This often leads to liquidation, a sub-optimal outcome for all, especially the allottees who are left with neither home nor money.

The specific problems were:

- **Lack of Bidders:** For a corporate debtor with a single viable asset (Project A) and massive liabilities from other failed ventures (Project B,

C), a resolution plan for the entire entity was commercially unviable.

- **Prejudice to Homebuyers:** The allottees of the viable project were held hostage to the failures of other projects of the same promoter, defeating the very objective of protecting their interests.
- **Interpretational Vacuum:** While the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) had occasionally approved project-specific plans, there was no settled precedent from the Supreme Court, creating uncertainty for resolution professionals and adjudicating authorities.

IV. Review of Literature / Background

The tension between entity-wide and project-specific resolution is not new. The IBC itself does not explicitly provide for project-wise resolution. The judiciary has grappled with this issue, evolving its stance over time.

Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors. (2021): In this case, the Supreme Court approved a resolution plan that involved the completion of specific projects by the resolution applicant. This was seen as an early endorsement of a project-centric approach, though the legal rationale was not extensively detailed.

The Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. (2019): The Supreme Court established the primacy of the commercial wisdom of the Committee of Creditors (CoC). This principle empowered the CoC to approve a plan that it deems feasible, even if it is not the highest bid, opening the door for pragmatic solutions like project-specific plans.

NCLT/NCLAT Precedents: Several benches of the NCLT and NCLAT had, based on the facts of specific cases, allowed resolution plans that focused on completing specific projects, ring-fencing the funds, and separating the project's assets from the corporate debtor's other liabilities.

The Mansi Brar case emerged from a similar context. The corporate debtor, Vipul Ltd., had multiple projects. The resolution plan approved by the CoC and NCLT proposed the completion of one specific project, "Vipul Greens", in a time-bound manner. Certain allottees of other projects challenged this, arguing it was against the holistic spirit of the IBC. The NCLAT upheld the plan, leading to the appeal before the Supreme Court.

V. Global Context

Globally, jurisdictions like the UK (under the Insolvency Act 1986) and Singapore allow project-specific resolutions for real estate. The US Bankruptcy Code permits "section 363 sales" of individual assets, providing flexibility absent in India's earlier regime. The Mansi Brar judgment aligns India with international best practices, recognizing that real estate insolvency cannot be treated identically to manufacturing or services.

VI. Analysis / Discussion

The Supreme Court's judgment is a masterclass in balancing statutory interpretation with pragmatic economic outcomes. Its analysis can be broken down into several key pillars:

1. Primacy of Commercial Wisdom of CoC: The Court heavily relied on the precedent set in *Essar Steel*, reaffirming that the commercial decision of the CoC, taken by a majority vote, is sacrosanct and not to be interfered with by adjudicating authorities unless it is patently illegal, arbitrary, or against the provisions of the IBC. The CoC, comprising financial creditors and allottees (represented by their authorized representative), is best placed to evaluate what is feasible and maximizes value.

2. Interpretation of CIRP Regulations: The Court performed a purposive interpretation of the CIRP Regulations, particularly Regulation 37 and Regulation 38, which list the mandatory contents of a resolution plan. It held that these regulations are **facilitative and not exhaustive or rigid**. The requirement to provide for the "implementation and supervision of the plan" does not necessarily mean the plan must be for the entire corporate debtor. A plan that provides for the completion of a specific project

under supervision fully satisfies this regulatory requirement.

3. Protection of Homebuyers as Paramount: The judgment places the interests of homebuyers at the forefront. It is reasoned that forcing a resolution applicant to take on all liabilities of the corporate debtor would make the resolution unviable, leading to liquidation. In liquidation, homebuyers, being unsecured creditors, would recover very little. A project-specific plan, which ensures they get their homes, is a far superior outcome and aligns with the IBC's objective of value maximization.

4. Recognition of Real Estate Realities: The Court acknowledged the ground reality of the Indian real estate sector—the prevalent use of SPVs and the common malady of fund diversion. Treating each project as a distinct unit for resolution purposes is a pragmatic recognition of this business model. It effectively allows for the "salvaging of a viable project from a non-viable corporate shell."

5. Ring-Fencing and Value Maximization: The judgment sanctifies the concept of "ring-fencing" the assets and cash flows of a specific project. This ensures that the funds infused by the new resolution applicant are used solely for completing that project and are not dissipated in settling other debts. This clarity and security are crucial for attracting serious bidders.

Implications for Insolvency Professionals (IPs):

For IPs, this judgment is both empowering and challenging.

- **Enhanced Flexibility:** IPs now have a clear legal mandate to explore and present project-specific resolution plans to the CoC, especially in real estate cases.
- **Complex Valuation & Planning:** The IP's task becomes more complex. They must now conduct separate valuations for each project of the corporate debtor and model various resolution scenarios—whole-entity vs. project-specific.
- **Stakeholder Management:** IPs must meticulously manage the expectations of allottees from different projects, clearly communicating why a project-specific plan is beneficial for one group but may not immediately help another.
- **Plan Structuring:** Designing the legal and financial structure of a project-specific plan requires ingenuity to ensure it is compliant, feasible, and capable of effective supervision.

VII. Rationale Behind the Judgment

The Court grounded its decision in three principles:

- Economic Reality: Real estate projects have distinct cash flows, risks, and market values. Treating them as a single pool distorts economic reality.
- Stakeholder Welfare: Homebuyers in stalled projects face existential threats; segregating projects ensures targeted relief.
- Efficiency: Project-specific resolutions reduce transaction costs, accelerate timelines, and maximize asset recovery.

VIII. Criticisms and Counterarguments

The project-specific resolutions may fragment the corporate debtor, complicating creditor coordination and increasing litigation risk. However, the Court countered that the IBC's "business rescue" objective is better served by tailored solutions. It clarified that segregation does not absolve the corporate debtor of liabilities but merely reallocates them equitably among stakeholders.

IX. Practical Implications

1. Valuation Methodology: Insolvency professionals must adopt project-specific valuation techniques, moving beyond aggregate appraisals.

3. Buyer Interest: Developers with strong track records in specific segments (e.g., luxury housing) can now target viable projects without being burdened by distressed ones.

3. Regulatory Oversight: The RBI and IBBI may need to issue guidelines on project segmentation, valuation standards, and homebuyer protection protocols.

X. Findings

1. Paradigm Shift: The Mansi Brar judgment replaces the holistic IBC model with a project-centric approach for real estate, acknowledging sectoral nuances.

2. Enhanced Stakeholder Protection: Homebuyers gain priority in project resolutions, reducing their vulnerability to delays.

3. Improved Asset Recovery: Segregated valuations and targeted bids are likely to increase recoveries for creditors.

4. Implementation Challenges: Insolvency professionals face new complexities in valuation, stakeholder coordination, and legal compliance.

XI. Conclusion & Suggestions

The Mansi Brar Fernandes judgment is a watershed moment for India's insolvency regime, particularly in real estate. By mandating project-specific resolutions, the Supreme Court has balanced the IBC's objectives of creditor maximization and business continuity with the realities of the real estate sector. However, successful implementation requires proactive measures:

1. Amend IBC Rules: The Insolvency and Bankruptcy Board of India (IBBI) should amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to formalize project-segregation procedures.

2. Valuation Standards: Develop standardized methodologies for project-specific valuations, incorporating factors like stage of completion, location, and pre-sales.

3. Homebuyer Safeguards: Mandate escrow accounts for project-specific resolutions to ring-fence funds for construction completion.

4. Training and Capacity Building: Equip insolvency professionals with skills to manage segmented resolutions through workshops and certification programs.

5. Judicial Guidance: Issue practice directions for NCLTs to streamline project-specific resolution processes.

In conclusion, Mansi Brar represents a progressive step toward a more adaptive and equitable insolvency framework. While challenges remain, the judgment provides a roadmap for revitalizing stalled real estate projects and restoring confidence in the sector.

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WHETHER THE AMALGAMATION OF CORPORATE DEBTOR COMPANY EXTINGUISHES THE GUARANOR'S LIABILITY UNDER THE GUARANTEE?

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SYNOPSIS

This article explores the strategic choice between filing an insolvency application under Section 9 of the IBC and initiating a commercial suit under the Commercial Courts Act. It explains that Section 9 is not a recovery mechanism and focus on each route, how they work, and the key procedural differences. The article also compares likely outcomes and how courts approach these cases. Its aim is to help businesses and legal professionals choose the most effective path for recovering dues or resolving commercial disputes.

Corporate Guarantee

A corporate guarantee is a formal contract involving three parties - the guarantor, the debtor, and the lender (or creditor). The guarantor pledges to step in and fulfil the debtor's obligations if the debtor defaults on their obligations. Lenders view corporate guarantees as an assurance of repayment, reducing their risk and potentially leading to more favourable terms or larger loans for the borrower.

Issue

The issue to be discussed in this article is as to whether the amalgamation of a corporate debtor company extinguishes the guarantor's liability under the guarantee with reference to decided case law.

Binding nature of resolution plan

The Insolvency and Bankruptcy Code, 2016 ('Code' for short) provides for the resolution of a corporate debtor who is in distress by means of corporate insolvency resolution process. Section 31 of the Code states that an approved resolution plan binds the corporate debtor and all its stakeholders. Whether the approved resolution plan discharges the corporate guarantee. The landmark judgment in ***Lalit Kumar Jain v. Union of India*** the Supreme Court clarified that approving a resolution plan for the corporate debtor does not automatically discharge the guarantor from their obligations. The Supreme Court confirmed that confirm that a guarantor's liability is independent and co-extensive with the principal debtors and therefore remains binding even after the corporate debtor's liability is discharged by a resolution plan or other corporate restructuring processes like amalgamation.

Amalgamation

Amalgamation is the process where two or more independent entities, such as companies, join to form a single, new organization. Unlike a merger where one entity absorbs another, an amalgamation results in the dissolution of all original companies, with a new legal entity created from their combined assets, liabilities, and operations. It is often done to increase efficiency, enhance market reach, or achieve economies of scale.

It was established under the Companies Act, 2013. The National Company Law Tribunal ('NCLT' for short) has exclusive jurisdiction over mergers, amalgamations, and other corporate restructuring schemes. Its approval is a mandatory step for any such transaction.

An amalgamation can take place under the Code as a resolution measure for a corporate debtor, often as part of a resolution plan submitted to the NCLT. The Code allows for the restructuring of a distressed company, including through merger or amalgamation, to ensure the preservation of the corporate debtor as a going concern and to maximize its value for the creditors. The proposed resolution plan, which may include an amalgamation scheme, is presented to the NCLT for approval. The goal is to maintain the corporate debtor as a "going concern" through the restructuring process, thereby increasing its overall value.

Liability of guarantors

The answer for the question as to whether the amalgamation of corporate debtor extinguishes the guarantor's liability is NO. The amalgamation of a corporate debtor company does not automatically extinguish the

guarantor's liability under a guarantee, especially in the context of the Code. The fundamental purpose of the Code is to allow creditors to pursue claims against guarantors, as their liability is separate from the corporate debtor's. The creditor retains the right to proceed against the guarantor for any remaining debt or to fulfil the terms of the guarantee.

In **'Pooja Ramesh Singh v. Jammu and Kashmir Bank Limited and another'** – 2025 (9) TMI 760 – NCLAT, New Delhi, decided on 11.09.2025, the financial creditor, Jammu and Kashmir Bank sanctioned a long-term working facility of Rs. 200 Crore to Pan India Utilities Distribution Company Limited ('PIUDCL' for short) on 17.12.2013. The said loan was secured by a corporate guarantee given by the corporate debtor, Essel Infraprojects Limited ('EIL' for short) with mortgage over land measuring 196.16 acres, located in Gorai Village, Borivali (West), Mumbai, owned by the Corporate Debtor. The loan agreement was executed on 27.12.2013 after formalizing the security arrangements. The Corporate Debtor executed deed of mortgage in favour of the Financial Creditor. The loan was renewed on 18.11.2017 through a renewal cum reduction letter.

The borrower, PIUDCL, failed to repay the loan amount in instalments as agreed to by the borrower. The Financial Creditor claimed the default by the Corporate Debtor of debt of Rs. 69,97,71,800.00/- as on 01.03.2019 with interest Rs. 17,36,47,021.00/- calculated @ 2.55% per annum with monthly rest plus 2% penal interest (effective 12.20% p.a.) as on 30.06.2020 with legal expenses and other charges of Rs. 9,99,104,005/-. The Financial Creditor also sent a notice to PIUCDL on 31.01.2019 that the credit facility granted to the corporate debtor has been matured on 28.12.2018 and principal amount of Rs. 70 Crore is outstanding which is required to be repaid. PIUDCL admitted the debt and default and requested the financial creditor to give for further time to repay the same raising the issue of liquidity.

The Financial Creditor issued a letter on 29.10.2019 to the corporate guarantor *qua* repayment of outstanding loan as per his obligation but no reply was received.

The Financial Creditor initiated corporate resolution process against the corporate guarantor, i.e., the corporate debtor, under Section 7 of the Code for the resolution of a debt of Rs. 87,43,17,925.37/- inclusive of contractual interest, penal interest, costs and expenses. The Adjudicating Authority and admitted the application and appointed interim resolution professional on 28.08.2024.

The Corporate Debtor did not dispute the existence of debt and default. The Corporate debtor submitted the following before the NCLT-

- The Corporate Debtor entered into a scheme of demerger where a specific asset (Gorai Land) and its related project were transferred to Essel Urban Infraprjects Limited ('EUIL' for short).
- The remaining assets and business of the Corporate Debtor remained with it.
- The demerger was approved by the Bombay High Court on 04.04.2014.
- The corporate debtor was merged with Pan India Infraprojects Private Limited (for Short 'PIIPL') by scheme of amalgamation because of which all assets and labilities of the corporate debtor including Gorai land were transferred to PIIPL. This merger was approved by the Bombay High Court on 20.06.2014.
- Since all its liabilities including the liability under a corporate guarantee were transferred to EUIL and then to PIIPL, therefore, it has no longer having any liability for the debt.
- The renewed sanctioned letter dated 18.11.2017 has not mentioned the guarantee, therefore, it should be considered as relinquished or extinguished.

The NCLT did not accept the contentions of the corporate debtor and held that the guarantee given by the CD shall still exist and would not be affected where the two orders passed by the Bombay High Court and admitted the petition because debt and default were not denied.

Aggrieved by the said order one of the suspended directors filed the present appeal before NCLAT. The appellant has not disputed the facts narrated herein before about the loan advanced by the Financial Creditor to the

principal borrower and the guarantee given by the Corporate Debtor besides executing a mortgage deed of the immovable property.

The appellant submitted the following before NCLAT-

- An order of scheme of demerger entered into by the CD by which it transferred mortgaged land and its related project to EUIL, and the said scheme was approved by the Hon'ble Bombay High Court on 04.04.2014 and that EUIL was merged with PIIPL through scheme of amalgamation approved by the Bombay High court on 20.06.2014.
- The scheme before the said orders passed by the Hon'ble Bombay High court are binding on all creditors including the financial creditor/Respondent No. 1.
- Once the liability of the CD was transferred, it cannot be pushed into CIRP on account of debt and default.
- The schemes approved by the Bombay High Court on 04.04.2014 and 20.06.2014 were not challenged and had attained finality.
- The 2013 sanction letter was replaced by the 2017 sanction letter which is different from the earlier one. 2013 sanction letter was for 200 crores whereas 2017 sanction letter was reduced to Rs. 130 crores. In the 2013 sanction letter, the mortgagor and guarantor was corporate debtor/EIL whereas in 2017 sanction letter the mortgagor and guarantor was PIIPL.
- On the date of filing of Section 7 petition, the operative sanction letter was the 2017 whereas debt has been claimed on the basis of the sanction letter 2013.

The respondent Financial Creditor submitted the following before NCLAT-

- The loan was sanctioned in 2013 of an amounts of Rs. 200 Cr. was secured by mortgage of land measuring 196.16 acres and a corporate guarantee issued by the Corporate Debtor in its favour.
- The scheme of demerger clearly states that all assets and liabilities pertaining to the demerged undertaking stands transferred as per the scheme means the development, operation and maintenance of a facility centre to be established in the Gorai Region being the development and maintenance of the land mortgaged by the Corporate Debtor to the Financial Creditor.
- It was only an asset which was demerged from the Corporate Debtor whereas clause 8 clearly provided that it shall not be affected by any amalgamation or absorption of the guarantor company.
- The revised sanction pertaining to Rs. 130 crores it was clearly stipulated that all other existing terms and conditions shall remain applicable which include clause 8 of the earlier guarantee deed.
- PIUDCL vide its letter dated 12.12.2017 addressed to Financial Creditor unequivocally acknowledged the continued subsistence of the corporate guarantee issued by Corporate Debtor despite intervening scheme of demerger/merger and requested for the release of guarantee given by the Corporate Debtor.
- The corporate guarantee executed by the Corporate Debtor never stood transferred/discharged under the scheme of demerger and merger because in its letter dated 12.12.2017, three years after the merger, request was made to the Respondent No. 1 to release the guarantee given by the Corporate Debtor.
- The Corporate Debtor has failed to bring on record a single letter from the Bank by which it had discharged the guarantee given by the Corporate Debtor which cannot be accepted on inference and the corporate guarantee cannot be unilaterally revoked or assigned to another entity without the express consent of the Financial Creditor.
- The corporate guarantee is an independent contract and remains valid despite the restructuring and it cannot be linked to the Gorai project.

The NCLAT heard the submissions of both the parties. The NCLAT observed that there was internal adjustment by the corporate debtor by way of demerger/merger/amalgamation, but it has no effect in so far as the liability of the Corporate Debtor as the corporate guarantor is concerned because it has been categorically mentioned in clause 8 of the guaranteed deed which has already been noticed in the early part of this order. The NCLAT did not accept the contentions of the appellant that the discharge of its liability after execution of the revised sanction on 18.11.2017 because it has specifically been mentioned that all other

existing terms and conditions remain applicable which include clause 8 of the guaranteed deed. The NCLAT further observed that there is no evidence brought on record by the Corporate Debtor that at any point of time the liability of the Corporate Debtor as a corporate guarantor was discharged by the Financial Creditor rather by letter dated 12.12.2017 which was written by the principal borrower to the Financial Creditor, requests has been made to release the guarantee of the Corporate Debtor which means that post renewal of sanction letter dated 18.11.2017 the guarantee was continuing and there is no evidence brought on record by the Corporate Debtor that the guarantee given by the Corporate Debtor was ever discharged by the Financial Creditor.

The NCLAT dismissed the appeal. The NCLAT did not find error in the impugned order which calls for any interference in this appeal.

Conclusion

A guarantor continues to be liable for the debts and obligations of a debtor company after it has been amalgamated. In many cases, a guarantee will contain a clause expressly providing that the guarantee extends to the liabilities of any entity into which the borrower may amalgamate. If this clause is missing then then amalgamation of a company will not discharge the guarantor and it will continue till its discharge.

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Executive Summary

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025, attempts to represent a significant evolution of India's insolvency framework, moving beyond the foundational principles of the 2016 Code to address operational challenges, judicial bottlenecks, and emerging complexities. The legislation aims to achieve a more efficient, predictable, and value-maximizing resolution process. Its core objectives, as outlined in the Statement of Objects and Reasons, include reducing delays, enhancing governance, and incorporating novel frameworks from global best practices.The most significant proposed changes include a marked reduction in the discretion of the Adjudicating Authority (AA) at the admission stage, the introduction of a game-changing out-of- court "creditor-initiated" resolution process, and the formal empowerment of the Committee of Creditors (CoC) with a new supervisory role in liquidation. The Bill also provides statutory clarity on several key judicial pronouncements, such as the "clean-slate" principle and the priority of government dues in the distribution waterfall, thereby providing much-needed legal certainty for all stakeholders. The strategic outlook for the Indian insolvency landscape is one of greater efficiency and a shift towards an out-of-court, creditor-driven culture. The introduction of frameworks for group and cross-border insolvency, coupled with enhanced penalties for frivolous proceedings, suggests a mature and comprehensive legislative approach. By institutionalizing previously litigated principles and offering alternative resolution pathways, the Bill endeavors to foster a more robust, predictable, and investor- friendly environment.

1. Introduction: Context and Thematic Framework of the amendments

1.1 Stated Objectives of the Bill

The Bill's stated objectives are clear and ambitious, seeking to address several critical shortcomings in the current framework. **The primary objectives** are to: a. **Reduce delays** and maximize value for all stakeholders, thus aligning with the Code's core mandate. b. **Improve the governance and predictability** of all processes conducted under the Code. c. **Provide statutory clarification for judicial principles** and the original legislative intent, thereby reducing litigation. d. **Introduce innovative frameworks** that follow global best practices, such as the "creditor-initiated insolvency resolution process," "group insolvency," and "cross-border insolvency".

1.2 Thematic Categorization: has been done and presented under suitable headings to provide a comprehensive analysis, the proposed amendments are categorized into five key themes. a. Procedural Streamlining and Timeliness b. The Evolving Frameworks of Insolvency. c. Redefining Stakeholder Rights and Protections: Codifying judicial principles and clarifying the rights and liabilities of creditors and guarantors. d. Strengthening the Regulatory and Professional Ecosystem. e. enhancing Asset Recovery and Avoidance.

2. Procedural Streamlining and Timeliness Enhancements

2.1 Admission and Procedural Discipline (Sections 7, 9, 10, 215)

a) **The Bill introduces significant changes designed to expedite the initiation of the Corporate Insolvency Resolution Process (CIRP) and reduce judicial discretion**. The new Section 7(5) mandates the AA to admit an application if it is satisfied that a default has occurred, the application is complete, and no disciplinary proceedings are pending against the proposed Resolution Professional (RP). This provision includes an

explicit "Explanation I" clarifying that where these requirements have been met, no other grounds shall be considered to reject the application. This is a fundamental change that transforms AA's role from a substantive judge of facts, often bogged down by collateral litigation, to a procedural gatekeeper focused on objective, verifiable criteria.

b) **The role of Information Utilities (IUs) is also significantly amplified**. An "Explanation II" is inserted into Section 7, which states that a record of default in respect of a financial debt furnished by a financial institution to the IU is now considered "sufficient" for the AA to ascertain the existence of default. This is a critical step towards digitizing and standardizing the proof of default, which is a major point of friction and delay. Furthermore, Section 215 is amended to make it mandatory for an operational creditor to submit financial information to an IU before filing an application under Section 9. This new requirement, along with a provision for deemed authentication if the corporate debtor does not respond to the information submitted to the IU, creates a causal chain of efficiency. The IU will now serve as a central, reliable repository of authenticated financial data, which will, in turn, accelerate AA's review process, particularly for applications filed by financial institutions.

c) **In a move to enhance process integrity, the Bill amends Section 10 to abrogate the corporate debtor's right to propose an Interim Resolution Professional (IRP)**. The AA will now make a reference to the IBBI for the recommendation of a suitable insolvency professional to act as an IRP. This change aims to eliminate any potential conflict of interest that could arise from a debtor-appointed professional, thereby building greater confidence among creditors in the impartiality of the process.

2.2 Expediting the Process & Withdrawal (Sections 12A, 31, 33, 54)

a) **The Bill introduces specific, time-bound measures to push for faster resolution and liquidation**. New provisos are inserted across key sections (7, 9, 10, 31, 33), mandating the AA to record reasons in writing for any delay in passing an order beyond the prescribed timelines. While not a direct penalty, this requirement creates a formal record and a culture of accountability for timely disposal of cases. *A new proviso to Section 31(2) also provides a practical solution by allowing the AA to give the CoC a notice to rectify "procedural, non-material" defects in a resolution plan before outright rejection*. This is a value-enhancing measure that prevents the failure of a viable plan due to minor errors.

b) **The new Section 12A is a complete substitution of the previous provision and aims to provide greater certainty to resolution applicants**. It clarifies that an application, once admitted, can only be withdrawn on an application made by the RP with the approval of 90% of the CoC's voting share. Critically, it introduces a statutory bar on withdrawal before the CoC is constituted or after the first invitation for resolution plans has been issued by the RP. *This prevents frivolous withdrawals by the applicant after other bidders have invested time and resources in the process, thereby protecting the sanctity of the bidding process*.

c) **Furthermore, the Bill introduces strict timelines for the liquidation process**. The new Section 54(1) sets a mandatory timeline of 180 days for a liquidator to complete the liquidation and apply for dissolution, with a possible 90-day extension by the AA for sufficient reasons. The AA is also required to pass a dissolution order within 30 days of receiving the application.

Table 1: Key Procedural Timeline Changes

Event	Old Timeline	New Timeline (as per Amendment Bill, 2025)	Notes
CIRP Application Admission (Sec 7, 9, 10)	14 days, with a proviso to record reasons for delay.	14 days, with mandatory recording of reasons for delay. Explicitly limits AA discretion.	The AA's role is now procedural, not adjudicatory.
Withdrawal of Application (Sec 12A)	Allowed with 90% CoC approval (judicial precedent).	30 days for AA to pass an order on withdrawal. Cannot be withdrawn before CoC formation or after first invitation for plans.	Provides certainty to the bidding process and deters frivolous withdrawals.
Resolution Plan Approval (Sec 31)	No statutory timeline.	30 days for AA to pass an order. Mandatory to record reasons for delay.	Pushes for faster judicial approval of resolution plans.
Liquidation Process Completion (Sec 54)	No statutory timeline.	180 days to liquidate and apply for dissolution. Possible 90-day extension.	Aims to combat value erosion from prolonged liquidation.
Dissolution Order (Sec 54)	No statutory timeline.	30 days for AA to pass an order. Mandatory to record reasons for delay.	A final step to ensure the closure of the corporate debtor is time-bound.

2.3 The 'Second Chance' Mechanism (Section 33)

The Bill introduces a critical, value-maximizing provision by inserting new sub-sections (1A) and (1B) into Section 33. *The AA can now, upon an application by the CoC with a vote of not less than 66%, restore a CIRP that failed to receive a resolution plan within the stipulated period or had its plan rejected under Section 31*. The restored process must be completed within a period not exceeding 120 days. This mechanism formally acknowledges that a failed first attempt at resolution does not necessarily mean the corporate debtor is non-viable. The provision creates a legally sanctioned pathway to pursue a resolution, potentially saving a business from the value destruction inherent in liquidation. It balances the need for flexibility with the need for a time-bound process by limiting the restoration option to only a single instance, regardless of the reason for the failure. For the corporate debtor and its workforce, this provides a lifeline, while for financial creditors, it offers a crucial opportunity to recover more value than they would in liquidation.

3. The Evolving Frameworks of Insolvency

3.1 The Creditor-Initiated Insolvency Resolution Process (New Chapter IV-A)

a) **Perhaps the most significant structural change introduced by the Bill is the new Chapter IV-A, which establishes an out-of-court, creditor-initiated insolvency resolution process**. This new framework is designed for a specific class of corporate debtors, *to be notified by the Central Government*, and aims to provide a faster, more cost-effective resolution with minimal judicial disruption. The process can be initiated by a financial creditor from a notified class of financial institutions, subject to a 51% vote of that class of creditors. After a 30-day notice

period to the debtor, a fresh 51% vote is required, and the process is initiated by a public announcement made by the RP, not a judicial order.

b) **The AA's role is primarily one of post-initiation oversight. The corporate debtor can file an objection within 30 days from the public announcement, challenging the process on grounds of non-default or procedural contravention**. The AA may declare the process void ab-initio or convert it to a regular CIRP if it finds a contravention of the Code or a failure of the corporate debtor to cooperate. The entire process has a strict time limit of 150 days, extendable by 45 days, after which it will be mandatorily converted to a CIRP. *This is a pragmatic, hybrid model that balances the speed and efficiency of a private process with the legal certainty and oversight of the judicial system. It is expected to divert a significant volume of cases from the AA, easing the judicial burden and promoting ease of doing business*.

3.2 Group and Cross-Border Insolvency (New Chapter VA & Section 240)

a) **The Bill introduces a forward-looking and much-needed framework for dealing with the complexities of multi-entity insolvencies**. A new Chapter VA is inserted, empowering the Central Government to prescribe rules for coordinating the insolvency proceedings of corporate debtors that form part of a "group". A group is defined by "control or significant ownership," including holding, subsidiary, and associate companies. The rules may provide for the appointment of a common insolvency professional and a common AA bench to facilitate coordination and information sharing among various entities within the group, thereby maximizing the aggregate value of the group's assets.

b) In parallel, a new Section 240C is inserted, which empowers the Central Government to prescribe rules for administering cross border insolvency proceedings for notified classes of debtors and corporate debtors. *This is a clear move to align the IBC with international standards, such as the UNCITRAL Model Law on Cross-Border Insolvency, which will enhance India's credibility in the global financial community and provide a clear legal foundation for protecting stakeholder interests across different jurisdictions*.

3.3 Omission of Fast Track CIRP (Chapter IV)

The Bill proposes the omission of Chapter IV, which dealt with the Fast Track CIRP. This is a strategic and logical move. The Fast Track CIRP was a partial solution for simpler cases, but it was still a court-driven process. The new Creditor-Initiated Insolvency Resolution Process (Chapter IV-A) provides a much more comprehensive, flexible, and efficient out-of-court mechanism that renders the Fast Track process redundant. *The new framework's reliance on creditor action and its built-in judicial check-and-balance provides a superior solution to the very problem that the Fast Track CIRP sought to address*.

4. Redefining Stakeholder Rights, Liabilities, and Protections

4.1 The "Clean-Slate" Principle (Section 31)

a) The Bill provides statutory clarity on a cornerstone of the IBC that was previously a matter of judicial interpretation: the "clean-slate" principle. New sub-sections (5) and (6) are inserted into Section 31 to explicitly codify this principle. The new sub-section (6) clarifies that upon the AA's approval of a resolution plan, any claims against the corporate debtor and its assets under any other law, which were not covered by the plan, shall be extinguished. Furthermore, no proceedings can be continued or instituted against the corporate debtor based on such claims. **This provides immense legal certainty for resolution applicants by guaranteeing that they will not be burdened by legacy liabilities and contingent dues after acquiring the corporate debtor as a going concern**.

b) In a related provision, the new sub-section (5) states that a license, permit, or similar grant from a government authority or sectoral regulator cannot be suspended or terminated if the new owner (the resolution

applicant) complies with the obligations associated with the remaining period of the grant. **This is a crucial amendment that provides a new owner with the assurance of operational continuity and prevents government entities from using pre-acquisition defaults as a pretext for termination**.

c) In a vital clarification, "Explanation I" to the new sub-section (6) explicitly states that the clean-slate principle does not affect claims or proceedings against a promoter, management, or a guarantor of the corporate debtor. This codifies the principle established in the Supreme Court's ruling in Lalit Kumar Jain v. Union of India, which confirmed that the liability of a personal guarantor is co-extensive with that of the corporate debtor and survives the resolution process. **This provides a crucial check-and-balance, ensuring that promoters and guarantors remain accountable even after the corporate debtor's resolution**.

4.2 Dissenting Creditors & the Distribution Waterfall (Sections 30, 53)

a) The Bill introduces a new "lower of" formula for the payment of dissenting financial creditors, which addresses the interpretation of Section 30(2) in the landmark Supreme Court judgment in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta &Ors. The new clause (ba) in Section 30(2) states that the minimum payment to financial creditors who do not vote in favor of the resolution plan must be the lower of two amounts: (i) the amount they would receive in a liquidation of the corporate debtor under section 53, or (ii) the amount they would have been paid if the amount to be distributed under the resolution plan had been distributed in accordance with the Section 53 priority order. This change aims to strike a balance between providing a minimum safety net for dissenting creditors and ensuring the commercial viability of the resolution plan, thereby prioritizing the successful resolution of the corporate debtor as a going concern.

b) A long-standing point of legal contention regarding the priority of government dues is also settled. An "Explanation" inserted into Section 53(1)(e) clarifies that dues owed to the Central and State Governments for a period of two years preceding the liquidation commencement date will be distributed under sub-clause (e) and not as a secured creditor under sub-clause (b), even if a security interest is created to secure such dues. Any remaining government dues will be distributed under the even lower priority of clause (f). **This decisive amendment firmly places the collective mechanism of the IBC above individual state-level recovery laws, providing crucial clarity for all creditors and enhancing the predictability of the distribution process**.

Table 2: Changes to the Distribution Waterfall

Stakeholder Group	Old Position (Pre-Amendment)	New Position (as per Amendment Bill, 2025)	Strategic Implications
Dissenting Financial Creditors	As per the Supreme Court's Essar Steel judgment, entitled to at least the liquidation value.	Entitled to the lower of: (i) Liquidation value, or (ii) The amount they would get if the plan's proceeds were distributed as per the Section 53 waterfall.	Prioritizes the commercial feasibility of the resolution plan. Provides a fair floor for dissenters without scuttling the resolution process.

Central & State Government Dues	Rank equally with unsecured creditors (Section 53). However, judicial disputes arose when charges were created under state-level laws.	Dues for two years preceding liquidation rank at a specific priority (Section 53(e)), and explicitly do not rank as a secured creditor, even if a security interest exists. Remaining dues fall to a lower priority (Section 53(f)).	Provides legal certainty on the government's priority, firmly placing it below secured creditors. This is a major win for financial creditors

4.3 The New Role of the Committee of Creditors (Sections 21, 35)

a)**The Bill profoundly redefines the role of the Committee of Creditors (CoC) by extending its authority beyond the resolution phase**. A new sub-section (11) is inserted into Section 21, which empowers the CoC to supervise the liquidator's conduct during the liquidation process. This means the provisions of Section 21 and Section 24, which outline the CoC's powers, will now apply to liquidation as well, ensuring continuity and creditor oversight throughout the entire insolvency lifecycle. This is a profound shift from a model where the CoC's powers ceased upon liquidation, often leading to a slow and opaque process.

b) **The Bill also inserts a new Section 34A, which allows the CoC to replace the liquidator at any time during the process with a 66% vote, subject to the AA's approval**. This power creates a direct line of accountability between the liquidator and the creditors, incentivizing a faster, more transparent, and value- enhancing liquidation. This extended supervisory role is a major merit for financial creditors, providing them with a greater degree of control and protection of their interests.

4.4 Guarantor Liability and Asset Realization (Section 28A)

a) **In a pragmatic move, the Bill inserts a new Section 28A to establish a legally defined mechanism for realizing guarantor assets**. A creditor can now, with prior approval from the CoC of the corporate debtor, permit the transfer of an asset of a personal or corporate guarantor as part of the corporate debtor's CIRP. If the guarantor is also undergoing an insolvency process, approval from the guarantor's own committee of creditors or creditors is also required.

b) **This amendment addresses the commercial reality that a resolution plan for the principal debtor may require the inclusion of guarantor assets for a holistic resolution**. It provides a structured, legally sanctioned channel for this to occur, which previously existed in a legal grey area. While potentially introducing a new layer of negotiation and complexity, this provision provides financial creditors with a more comprehensive and legally certain pathway to recover their dues.

5. Strengthening the Regulatory and Professional Ecosystem

5.1 Expanded Regulation of 'Service Providers' (Sections 3, 196,217-220)

a) The Bill formalizes the IBBI's broader regulatory mandate by introducing a new clause (31A) in Section 3, which defines "service provider" to include insolvency professionals, agencies, information utilities, and any other person notified by the Central Government who provides services under the Code. *This signals that the IBBI will serve as the central regulator for the entire insolvency ecosystem, ensuring all aspects of the process are governed by a single body with a unified purpose*.

b) The IBBI's powers are further expanded in Section 196 to include the authority to specify "standards of conduct of the committee of creditors and its members".

This is a significant, yet subtle, change that recognizes the immense power vested in the CoC and the need for a code of conduct to ensure transparency and prevent misuse.

c) The Bill also overhauls the disciplinary mechanism in Sections 217, 218, and 220. The IBBI's Disciplinary Committee can now include officers below the rank of Executive Director, which allows for greater capacity to address misconduct.

d) The upper limit for penalties is increased from one crore rupees to two crore rupees, and the committee is given the power to direct disgorgement of unlawful gains.

e) An appeal mechanism to the National Company Law Appellate Tribunal (NCLAT) is also introduced, providing a formal avenue for recourse against disciplinary orders.

These reforms provide the IBBI with more potent tools to deter misconduct and punish wrongdoers, thereby improving the overall integrity of the process.

5.2 Deterrents and Penalties for Misconduct (Sections 64A, 183A, 235A, 65, 67A)

a) The Bill introduces significant financial deterrents to address the widespread use of litigation as a delay tactic. New sections 64A and 183A are inserted, which impose a penalty of not less than 1 lakh rupees, but which may extend to 2 crore rupees, for initiating "frivolous or vexatious" proceedings before the AA under Part II (corporate) and Part III (personal) respectively. This direct financial deterrent is a clear legislative response to a major pain point, aiming to reduce the flood of baseless applications and appeals that clog the system.

b) Furthermore, Section 235A is substituted with a new provision that allows the AA to impose a daily penalty of not less than 1 lakh rupees (up to a maximum of 5 crore rupees) for general contraventions of the Code or any rules or regulations. The penalty can also be up to three times the amount of loss caused or the unlawful gain made, whichever is higher. This new penalty structure is more sophisticated, linking the punishment to the actual harm caused and providing a more proportional and just framework.

6. Enhancing Asset Recovery and Avoidance Transactions

6.1 Recalibration of "Look-Back" Periods (Sections 43, 46, 50)

a)**The Bill introduces a crucial anti-fraud measure by changing the look-back periods for preferential (Section 43), undervalued (Section 46), and extortionate credit (Section 50) transactions**. *The periods are now calculated from the "initiation date" (the date of filing the application) rather than the "insolvency commencement date" (the date of admission).*

b) This is a vital change because it closes a significant loophole that allowed a corporate debtor to conduct fraudulent transactions in the time between the filing of a petition and its admission by the AA, a period that could extend beyond the previous look-back periods. By starting the clock from the initiation date, the law more effectively captures last-minute fraudulent activities, thereby enhancing the pool of assets available to creditors.

6.2 New Avenues for Pursuing Avoidance Transactions (Sections 26, 47, 54)

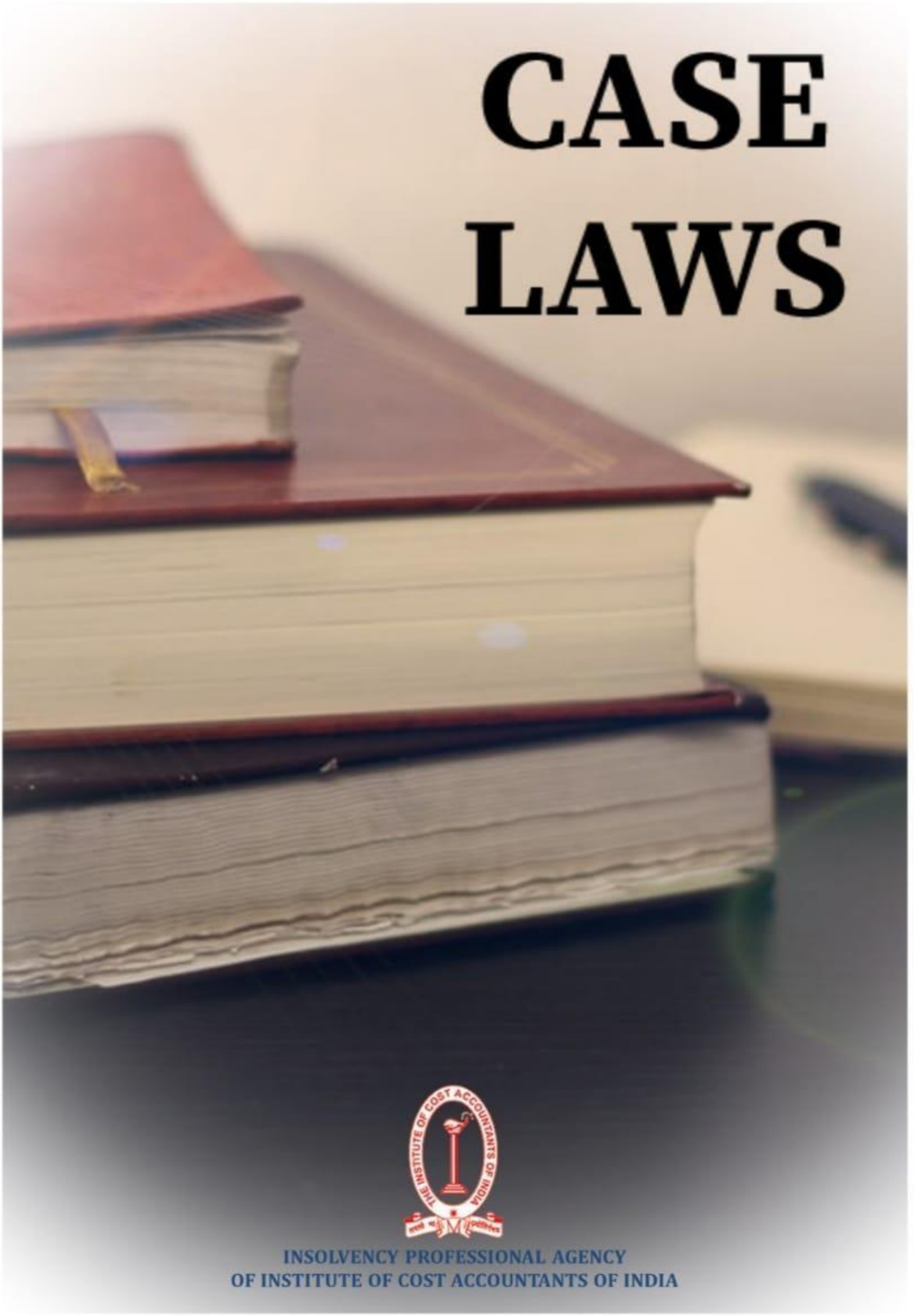
a) The Bill introduces a powerful new tool for stakeholders to ensure professional accountability. **Section 47 is substituted to empower a creditor, member, or partner of the corporate debtor to apply to the AA for the avoidance of a preferential, undervalued, or extortionate credit transaction if the RP or liquidator has failed to do so**. If the AA is satisfied that such a transaction occurred, it can order its avoidance and, importantly, direct the IBBI to initiate disciplinary proceedings against the professional for their failure to act.

b) Furthermore, the Bill addresses the risk that avoidance proceedings might be terminated upon the completion of the CIRP or liquidation. Section 26 is substituted to clarify that the filing of an application for an avoidance transaction or fraudulent or wrongful trading shall not affect the proceedings of the CIRP or liquidation

process. More profoundly, a new sub-section (2B) is inserted into Section 54, which states that the passing of a dissolution order for the corporate debtor shall not affect the continuation of avoidance proceedings. The CoC will determine the manner of pursuing these proceedings and the distribution of proceeds after the corporate debtor has been dissolved. **This is a major innovation that ensures the recovery of fraudulently siphoned-off assets is not prematurely halted, maximizing the value recovered for the creditors even after the company has ceased to exist**.

7. Challenges

While the Bill is highly meritorious, its successful implementation will depend on several factors. The AA benches will need to adapt to their new, more administrative role, which will require procedural discipline and strict adherence to timelines. The operationalization of the new out-of-court process will require clear rules and a cultural shift among creditors and debtors. The new provisions on guarantor asset realization and the continuation of avoidance proceedings post-dissolution may also lead to a new wave of litigation as parties test the boundaries of the new law.



CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

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

Nazru S. Basheer v. Pancard Clubs Ltd. [2025] 176 taxmann.com 59 (SC)

Where no objection was raised by successful resolution applicant, one week's time was granted to appellant to comply with order of Adjudicating Authority, as affirmed by NCLAT to handover property to successful resolution applicant.

Adjudicating Authority approved resolution plan submitted by the successful resolution applicant. NCLAT affirmed order of Adjudicating Authority. The appellant sought extension of time to handover property to the successful resolution applicant.

Held that in view of fact that the successful resolution applicant had no objection if one week's time was granted to the appellant to hand over property to the successful resolution applicant, appeal was to be disposed of granting one week's time to the appellant to comply with order of Adjudicating Authority, as affirmed by NCLAT.

Case Review : Order of NCLAT-DELHI in Nazru S Basheer vs. Pancard clubs ltd. [CAAT(I)-798-2025, dated 30-05-2025], affirmed.

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

Vijay Kumar Singhania v. Bank of Baroda [2025] 176 taxmann.com 175 (NCLAT-New Delhi)

Application filed under section 7 cannot be rejected on grounds that financial creditor has not filed record of default from an information utility; concept of pre-existing dispute is not relevant with regard to financial debt when debt is due on corporate debtor and he commits default.

The Corporate Debtor obtained Term Loan and Cash Credit Facility from Bank of Baroda. The facility extended to the Corporate Debtor was classified as Non-Performing Asset (NPA). The Appellant, suspended director of corporate debtor, gave settlement proposal, which was rejected by the Bank. Several OTS proposals were submitted by the Appellant. Bank of Baroda filed Section 7 Application. The Adjudicating Authority by the impugned order admitted Section 7 Application. The Adjudicating Authority held that Application filed by Financial Creditor was not barred by time. The Corporate Debtor having made several OTS proposals and lastly on 3-11-2020, was an acknowledgement of the default amount, hence the Application filed within three years from the date of acknowledgement, was well within time. The Adjudicating Authority held that Financial Creditor had furnished certified copy of entries in the relevant account in Banker's Book and had also enclosed statement of account in respect of two accounts along with interest calculation sheet, which was valid evidence in terms of provisions of Regulation 2A(a) of IBBI (CIRP) Regulations, 2016. Application under Section 7 was admitted. Moratorium was imposed. Appellant filed instant appeal.

Held that even after amendment of Regulation 20 by insertion of sub-regulation (1A) with effect from 14-6-2022, Financial Creditor was entitled to file evidence of record of default as contemplated by Regulation 2A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Thus,

application filed under section 7 could not be rejected on grounds that financial creditor had not filed record of default from an information utility. Concept of pre-existing dispute is relevant with regard to operational debt and financial debt even if disputed does not preclude Adjudicating Authority to decide debt and default. Mere fact that corporate debtor filed a counter claim and also filed money suit could not negate existence of debt and default which was due on corporate debtor. OTS proposal to settle outstanding debt by making an offer by Corporate Debtor was nothing but acknowledgment of liability which acknowledgment is to extend limitation under section 18 of Limitation Act.

Case Review: Order passed by NCLT-Mumbai in CP No.(IB)-39(ND)/2023, dated 26-7-2023, affirmed

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

Yatendra Singh v. Ganga Iron and Steel Trading Company Ltd. [2025] 176 taxmann.com 242 (Bombay)

Where moratorium was declared and liquidation process was initiated much prior to issuance of cheque by corporate debtor, directors of corporate debtor company could not be held liable for offence punishable under section 138 of Negotiable Instruments Act.

The corporate debtor company entered into business with non-applicant company for purchasing goods. The corporate debtor issued cheques to non-applicant company for payment of goods, but same were dishonoured. Non-applicant company filed complaint under section 138 of Negotiable Instruments Act against the corporate debtor and its directors. Meanwhile, the corporate debtor was liquidated and liquidator was appointed. Applicants/Directors of the corporate debtor filed application for quashing of complaint filed by non-applicant company.

Held that moratorium was declared and liquidation process was initiated much prior to issuance of cheques, therefore, directors of the corporate debtor could not be held liable for dishonour of cheques. Once moratorium was declared and liquidation proceeding had been completed, directors of the corporate debtor company ceased to be in-charge of the company and powers of Board of Directors were to be exercised by the liquidator/Resolution Professional in accordance with provisions of IBC. Therefore, application filed by directors of the corporate debtor for quashing of complaint filed by non-applicant company was to be allowed.

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

Vijay Kumar Singhania v. Bank of Baroda [2025] 176 taxmann.com 552 (SC)

Application filed under section 7 cannot be rejected on ground that financial creditor has not filed record of default from an information utility; concept of pre-existing dispute is not relevant with regard to financial debt when debt is due on corporate debtor and he commits default.

High Court held that even after amendment of Regulation 20 by insertion of sub-regulation (1A) with effect from 14-6-2022,

Financial Creditor is entitled to file evidence of record of default as contemplated by Regulation 2A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Further, application filed under section 7 cannot be rejected on ground that financial creditor has not filed record of default from an information utility further, therefore concept of pre-existing dispute is relevant with regard to operational debt and financial debt even if disputed does not preclude Adjudicating Authority to decide debt and default. Moreover mere fact that the corporate debtor has filed a counter claim and has also filed money suit cannot negate existence of debt and default which is due on the corporate debtor and OTS proposal to settle outstanding debt by making an offer by the Corporate Debtor is nothing but acknowledgment of liability which acknowledgment is to extend limitation under section 18 of Limitation Act.

Held that since there was no reason to interfere with impugned order passed by National Company Law Appellate Tribunal, appeal was to be dismissed.

Case Review: Vijay Kumar Singhania v. Bank of Baroda [2025] 176 taxmann.com 175 (NCLAT- New Delhi), affirmed

SECTION 61 - CORPORATE INSOLVENCY RESOLUTION PROCESS - CORPORATE APPELLATE TRIBUNAL - APPEALS AND APPELLATE AUTHORITY

Imbulle Realtors (P.) Ltd. v. Sanjeev Kumar, Director (Power Suspended) of Realanchor Developers (P.) Ltd. [2025] 176 taxmann.com 668 (NCLAT- New Delhi)

Where appellant/stakeholder alleged that in transfer application only IRP was made a party and appellant, being a stakeholder, was neither heard nor made a party, since appellant was not a party to proceedings before Adjudicating Authority, it was not necessary for President of NCLT to hear appellant while passing order in transfer application.

CIRP was initiated against the corporate debtor and the appellant filed its claim in CIRP of the corporate debtor. Meanwhile a settlement was entered into between suspended director and original creditors and IRP later filed a section 12A application, but delays followed due to bench reconstitution. The respondent, suspended director of the corporate debtor filed an application seeking transfer of company petition to a bench which had heard matter earlier. Transfer Application was heard by the President of NCLT and by impugned order, same was allowed. Appellant filed appeal challenging order passed by the President of NCLT on ground that in Transfer Application, the appellant being also a stakeholder, was required to be heard and order passed by President was in violation of principle of natural justice since appellant was not given an opportunity.

Held that appeal against order passed by President of NCLT in exercise of jurisdiction under Rule 16(d) of NCLT Rules, 2016 was not maintainable under section 61 but in view of provisions of section 421 of Companies Act, 2013, appeal against an order passed by President under Rule 16(d) was fully maintainable. Since, the appellant was not party to proceedings before Adjudicating Authority, it was not necessary party in Transfer Application and was not required to be heard by the President. Since no grounds had been made out in appeal to interfere with order passed by the President of NCLT, appeal deserved to be dismissed. *Case Review:* Order of NCLT-Delhi in TA (IBC) – 16(PB)/2025, dated 09.05.2025, affirmed.

Mohota Industries Ltd. v. Smt. Vibha w/o Mayank Agrawal [2025] 176 taxmann.com 707 (Bombay)

Where NCLT had placed applicant company under moratorium and prohibited initiation of any sort of proceedings against company during subsistence of CIRP, suit for recovery of possession, eviction and injunction filed against applicant company during subsistence of moratorium period was to be rejected.

The respondent leased a property to the applicant company. The respondent filed a suit for declaration, recovery of possession, eviction, and injunction along with arrears of rent with regards to property. The applicant filed an application seeking rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure on ground that National Company Law Tribunal (NCLT) had initiated corporate insolvency resolution process (CIRP) against the applicant company and had placed company under a moratorium under section 14 prohibiting initiation of any sort of proceedings against company during subsistence of CIRP. During this period, CIRP of the applicant Company was resolved and NCLT gave its approval to a resolution plan and moratorium came to be lifted. Civil Judge rejected application on ground that period of 180 days of CIRP under section 12 had come to an end before filing of suit by the respondent making suit not barred by law.

Held that suit was filed during subsistence of moratorium period as per order of NCLT, therefore, plaint was to be rejected under Order 7 Rule 11 and section 151 of Code of Civil Procedure. Impugned erroneous order was liable to be set aside as passed without considering law position and, thus, Civil Revision Application was to be allowed.

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

Sushil Jejani v. Pasad Dharap [2025] 176 taxmann.com 759 (NCLAT- New Delhi)

Ordinarily payment is to be made by by successful bidder in 90 days but in extraordinary circumstances, NCLT can allow further time to successful bidder; where there were compelling circumstances which constrained Liquidator from securing sale consideration of auction land within 90 days, these special circumstances arising out of conversion imbroglio, restraint orders of Bombay High Court and IAs pending before NCLT did form justifiable ground for Liquidator not to cancel auction sale even though balance sale consideration had not been received.

Liquidation proceedings of the Corporate Debtor was initiated by Adjudicating Authority. However, Successful Auction Purchaser (SAP) failed to remit balance consideration of bid amount within stipulated period of 90 days. Adjudicating Authority by impugned order directed SAP to pay balance sale consideration along with interest within 30 days. The appellant - promoter sought for setting aside of the auction sale conducted by the Liquidator and holding of fresh auction.

Ordinarily time-line of 90 days specified in regulation 33 of Liquidation Process Regulations needs to be adhered to for making payment by successful bidder but if it comes to notice of Adjudicating Authority that extraordinary circumstances have arisen which has impeded conduct of auction process, it can allow further time to successful bidder as a special measure in exercise of its inherent powers. Since there were compelling circumstances which

constrained Liquidator from securing sale consideration of auction land within 90 days, these special circumstances arising out of conversion imbroglio, restraint orders of Bombay High Court and IAs pending before Adjudicating Authority did form justifiable ground for Liquidator not to cancel auction sale even though balance sale consideration had not been received. Ordinarily liquidator is not required to approach regulatory authorities for conversion of land but in instant case, this requirement was impelled by rule 3 of the Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold Lands into Occupancy Class-I Lands) Rules 2019 according to which subject land could not be transferred without conversion and such conversion application could be moved only by holder of the land and, hence, it was an inescapable requirement for the Liquidator to file the application for conversion. Since SAP was still ready and willing to pay balance consideration, in event of any further delay happening in concluding of auction sale, value of assets of the corporate debtor would suffer further depletion which would cause violence to one of overarching principles of maximization of value of assets which permeates IBC and, therefore, Adjudicating Authority did not commit any error in coming to conclusion that auction having been held in a valid manner, auction sale ought not to be cancelled as it would disrupt liquidation process.

Case Review: Order of NCLT- Mumbai Bench in CP (IB) No. 1833 of 2017, dated 21-1-2025, affirmed

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

Morex Corporation Ltd. v. Jindal Poly Films Ltd. [2025] 176 taxmann.com 826 (NCLAT- New Delhi)

Where operational creditor had entered into a business understanding with respondent-corporate debtor for supply of non-woven fabric but respondent failed to deliver goods on time, purportedly due to Government ban on exports of such goods due to Covid-19, since contractual dispute had figured prominently in notice of dispute issued by respondent, Adjudicating Authority had rightly rejected section 9 application filed by operational creditor.

The appellant-operational creditor entered into a business understanding with respondent for supply of non-woven fabric for export to a China based company. The appellant issued a purchase order for supply of contracted material and made an advance payment to respondent for performing their part of contract. The respondent was required to hand over cargo to forwarder as designated by the appellant within a specified time.

However, the respondent failed to deliver goods within agreed timeline and purportedly could not do so due to Government ban on exports of such goods vide its notification due to COVID-19 pandemic. The appellant thereafter issued a demand notice under section 8. The respondent sent a notice of dispute on ground that there existed a dispute qua illegal and unilateral contract termination. The appellant thereafter filed a section 9 application seeking admission of respondent into rigours of CIRP. The Adjudicating Authority by impugned order rejected section 9 application on grounds of pre-existing dispute i.e. termination of contract.

Held that since a supervening impossibility had been triggered by a ban on exports by virtue of a valid notification issued by Government of India and in wake of ban, even placement of goods on board carrier for shipment would have entailed possibility of risk of violating ban. Since contractual dispute figured prominently in notice of dispute issued by the respondent,

Adjudicating Authority did not commit any error in taking cognizance of termination of contract as ground of pre-existing dispute. Therefore, impugned order passed by Adjudicating Authority was to be upheld.

Case Review: Morex Corporation Ltd. v. Jindal Poly Films Ltd. [C.P. (IB) No. 12/ALD/2021, dated 14.12.2023], affirmed

SECTION 30 - CORPORATE INSOLVENCY RESOLUTION PROCESS – RESOLUTION PLAN - SUBMISSION OF

Orissa Metaliks (P.) Ltd. v. Avil Jerome Menezes, RP of Future Enterprises Ltd. [2025] 176 taxmann.com 874 (NCLAT-New Delhi)

Where in CIRP of corporate debtor, CoC decided to abate voting and to provide an opportunity to resolution applicant to submit its revised plan subject to approval of Adjudicating Authority, decision of CoC was in accordance with law.

In CIRP process, resolution plan was invited in respect of the corporate debtor's assets. Both appellant and R-3 submitted their respective resolution plan, CoC requested both the appellant and R-3 to revise their plan. The appellant submitted a revised resolution plan, however, R-3 did not submit any revised plan. In CoC meeting, R-3 failed to submit a resolution plan, voting commenced on resolution plan of the appellant. R-3 sent an email to RP expressing its intention to withdraw from process and sought refund of Earnest Money Deposit (EMD). Later, R-3 sent another email asking RP to ignore earlier email and communicated that it would submit a revised plan and submitted a revised plan. R-3 also filed an application before Adjudicating Authority seeking direction that RP and CoC to consider their revised plan of R-3. CoC decided to abate voting and to provide an opportunity to R-3 to submit its revised plan subject to Adjudicating Authority's approval. The appellant filed an application to intervene in application filed by R-3. NCLT approved decision of CoC to permit R-3 to submit revised plan as well as to the appellant.

Held that it is sole discretion of CoC to approve or not to approve resolution plan and CoC's decision to permit R-3 to submit a revised plan was in accordance with law. Therefore, impugned order passed by Adjudicating Authority was to be upheld.

Case Review: Order of NCLT- Mumbai Bench in Foresight Innovations (P.) Ltd. v. Future Enterprises Ltd. [I.A. No.2956/2024 & I.A. No. 3550/2024 in C.P. (IB) No. 513(MB)/2022], dated 16-6-2025, affirmed

SECTION 238A - CORPORATE INSOLVENCY RESOLUTION PROCESS – LIMITATION PERIOD

IL & FS Financial Services Ltd. v. Adhunik Meghalaya Steels (P.) Ltd. [2025] 176 taxmann.com 948 (SC)

Entries in balance sheets can constitute a valid acknowledgment of debt under section 18 of Limitation Act.

The appellant/financial creditor extended a loan to the respondent. On 1-3-2018, account of the respondent was declared as a Non-Performing Asset (NPA) as the respondent was unable to meet its debt obligations. Consequently, the appellant filed an application under section 7 on 15-1-2024. However same was rejected by NCLT and NCLAT on grounds of limitation. It was noted that balance sheet of financial year 2019-20, viewed in background of other admitted documents, including financial statements of previous years, clearly constituted a valid acknowledgment of a subsisting liability and indicated existence of a jural relationship and an admission as

to existence of such relationship.

Held that in view of section 238A, Limitation Act, 1963 shall, as far as may be, apply to proceedings under IBC. Since balance sheet was admittedly signed by board of directors on 12-8-2020, this date was within subsisting period of limitation for reason that taking 1-3-2018 as commencement of limitation, limitation ordinarily would have continued till 28-2-2021. Further, an acknowledgment came into effect on 12-8-2020, thus, limitation would have stood extended till 11-8-2023. Covid-19 intervened resulting in Court passing a series of orders extending period of limitation and, therefore, entire period from 15-3-2020 to 28-2-2022 would stand excluded, which would mean that limitation would, reckoning acknowledgment of 12-8-2020, commence on 1-3-2022 and continue till 28-2-2025. Since application had been filed on 15-1-2024, same was within time and, therefore, application under section 7 was to be treated as one filed within limitation.

Case Review : Order of NCLAT-DELHI in IL&FS Financial Services Limited Vs. Adhunik Meghalaya Steels Private Limited, CAAT(I)-1379-2024, dated 25-3-2025, set aside.

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

Pravin Electricals (P.) Ltd. v. Akshaya Engineering Works (P.) Ltd. [2025] 176 taxmann.com 989 (NCLAT- New Delhi)

Where pre-existing disputes existed between parties not only on whether debt had crystallized and was payable but also on deficiencies and shortcomings of work executed by operational creditor, impugned order passed by Adjudicating Authority initiating CIRP against corporate debtor was to be set aside.

Corporate debtor had awarded two Letters of Award (LoA) in favour of operational creditor which culminated into two contracts. Pursuant to sub-contract, the operational creditor claimed to have provided services/supplies in terms of contract agreements and thereafter raised 17 invoices against which the corporate debtor made only partial payment. Operational creditor filed section 9 application against the corporate debtor. Adjudicating Authority by impugned order admitted section 9 application holding that the operational creditor had successfully demonstrated existence of debt and default with no pre-existing dispute between parties.

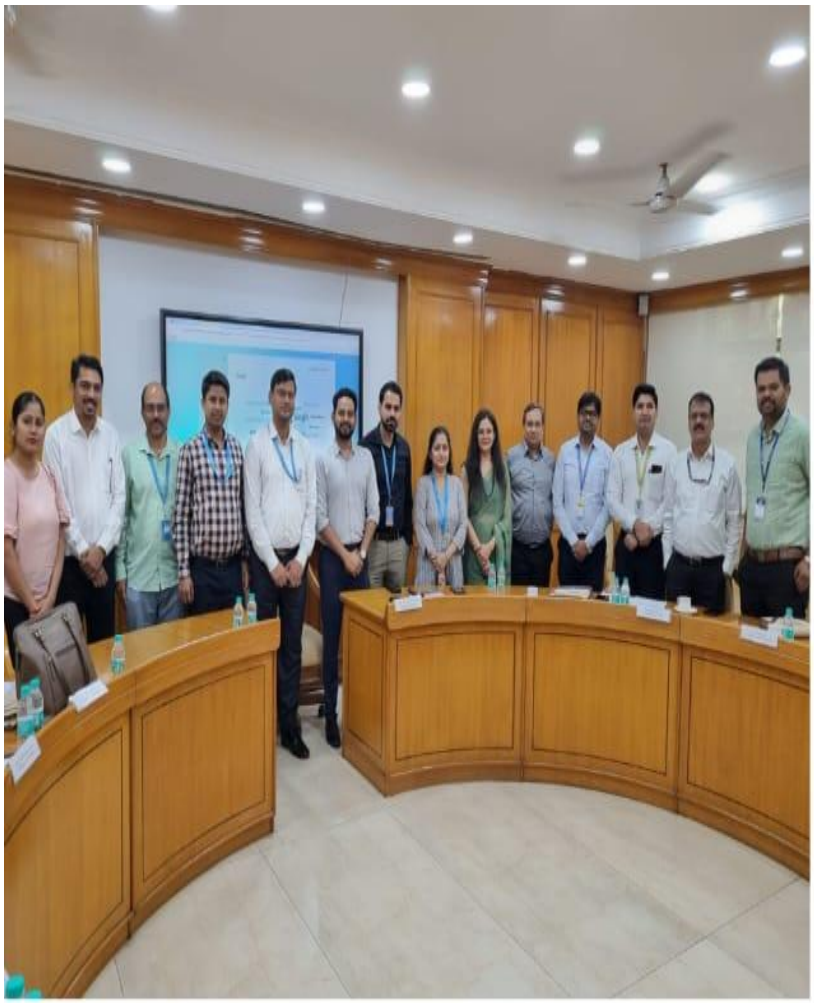
It was noted that the corporate debtor had exchanged e-mails with the operational creditor highlighting their shoddy performance. These communications, which pre-dated issue of demand notice, clearly evidenced pre-existing disputes between them and the operational creditor on quality and timeliness of work including imposition of penalties, risk and cost.

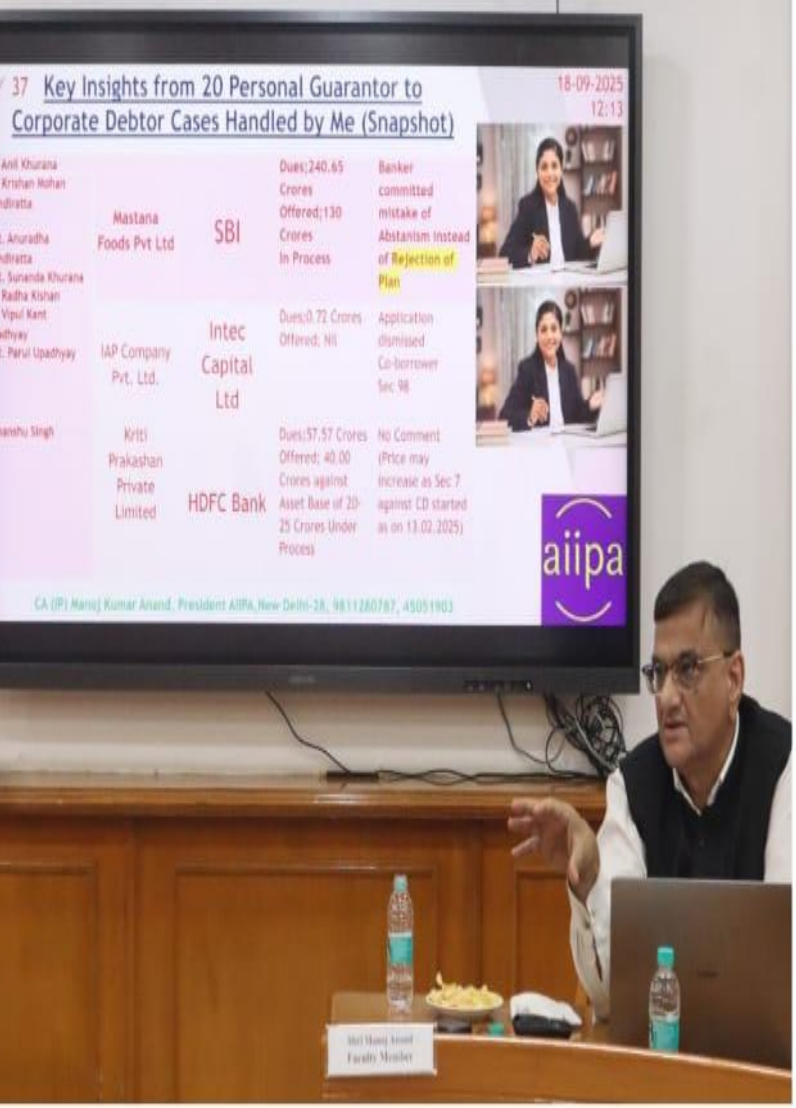
Held that Adjudicating Authority grossly erred in accepting unilateral submission made by the operational creditor that work executed by them was perfect in nature which met satisfaction of both end user as well as the corporate debtor. Since there was sufficient foundation that genuine pre-existing disputes existed between two parties not only on whether debt had crystallized and was payable, but also on deficiencies and shortcomings of work executed, therefore, impugned order passed by Adjudicating Authority initiating CIRP against the corporate debtor was to be set aside.

Case Review: Order of NCLT- Mumbai Bench in C.P. (IB) No. 533/MB/2022, dated 17.10.2023, reversed

WORKSHOP ON PATHWAYS TO REVIVAL THE EVOLVING LANDSCAPE OF IBC IN ASSOCIATION WITH HYDERABAD INSOLVENCY PROFESSIONAL ASSOCIATION 13TH SEPTEMBER 2025 IN HYDERABAD.

SPECIAL PROGRAMME ON INSOLVENCY AND BANKRUPTCY CODE 2016 IN ASSOCIATION WITH NIBSCOM FROM 15.09.2025 TO 19.09.2025




37 Key Insights from 20 Personal Guarantor to Corporate Debtor Cases Handled by Me (Snapshot)
18-09-2025
12:13
Mastana Foods Pvt Ltd
SBI
Dues;240.65 Crores Offered;130 Crores In Process
Banker committed mistake of Abstanism instead of Rejection of Plan
IAP Company Pvt. Ltd.
Intec Capital Ltd
Dues;0.72 Crores Offered; Nil
Application dismissed Co-borrower Sec 98
Kriti Prakashan Private Limited
HDFC Bank
Dues;57.57 Crores Offered; 40.00 Crores against Asset Base of 20-25 Crores Under Process
No Comment (Price may Increase as Sec 7 against CD started as on 13.02.2025)
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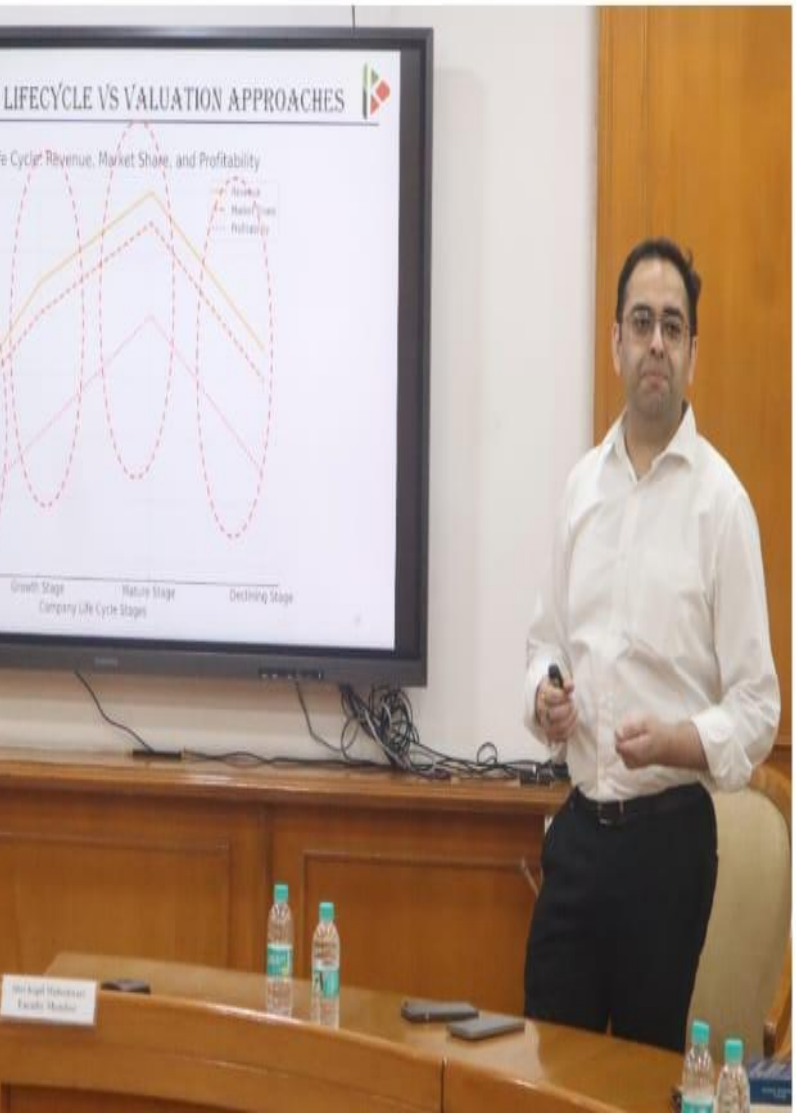
CA (IP) Manoj Kumar Anand, President AIIPA, New Delhi-28, 9811280787, 45051903


LIFECYCLE VS VALUATION APPROACHES
Growth Stage
Nature Stage
Declining Stage
Company Life Cycle Stages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✓The article should contain headings, which should be clear, short, catchy, and interesting.

✓The authors must provide the list of references if any at the end of article.

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