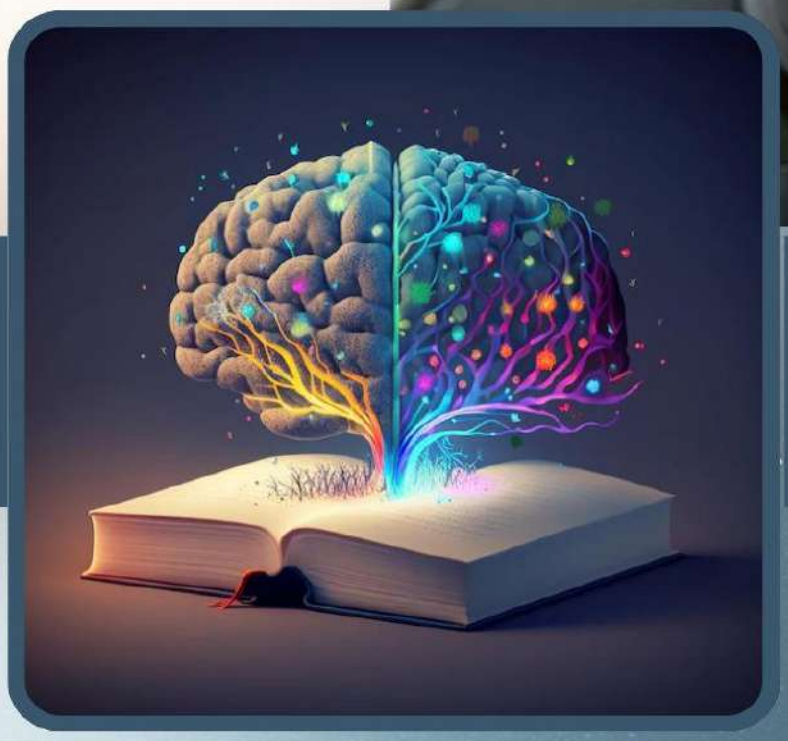
OCTOBER-DECEMBER 2025

IPA-ICMAI

QUARTERLY DIGEST



INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

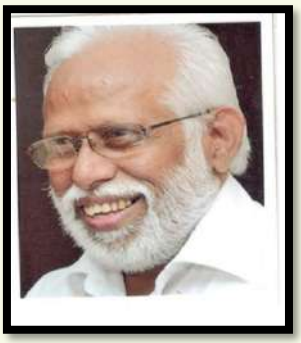
(SECTION 8 COMPANY REGISTERED UNDER COMPANIES ACT 2013)

PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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 thefrontline 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.

BOARD OF DIRECTORS



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THE INSOLVENCYPROFESSIONAL
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QUARTERLY DIGEST

IBC DOSSIER

CASEBOOK

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Mr. Ayush Goel
Ms. Neha Sen

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MESSAGE FROM THE DESK OF THE CHAIRMAN

Dear Readers,

It is my privilege to present this edition of the IPA-ICMAI Quarterly Digest, which captures a defining phase in the evolution of India's insolvency framework. This quarter stands out for its depth of regulatory discourse, judicial developments, and professional engagement—each reinforcing the growing maturity of the Insolvency and Bankruptcy Code, 2016.

The period under review has been marked by heightened policy momentum and intellectual rigor. The proposed amendments to the IBC, expanding jurisprudence on resolution plans, creditor participation, personal guarantors, and ethical accountability of insolvency professionals collectively signal a decisive shift towards a more robust, outcome-oriented insolvency regime. These developments underscore the increasing expectation that insolvency resolution must not only be time-bound but also transparent, equitable, and economically meaningful.

This issue of the Digest reflects these realities through well-researched articles, empirical analyses, and practitioner perspectives that examine both doctrinal clarity and on-ground challenges. The discussions on resolution plan dynamics, ethical standards, judicial restraint, valuation discipline, and stakeholder balance are particularly relevant at a time when insolvency professionals are required to exercise heightened diligence, independence, and commercial prudence.

At IPA-ICMAI, we remain deeply committed to strengthening professional capacity and institutional credibility. The extensive training programs, workshops, conclaves, and collaborative initiatives undertaken during this quarter reaffirm our focus on continuous learning, regulatory alignment, and practical readiness. These initiatives are not merely academic exercises—they are essential to preparing professionals to operate effectively in increasingly complex and scrutinized insolvency environments.

As the insolvency ecosystem continues to evolve, the role of Insolvency Professionals is expanding beyond process management to stewardship of trust, value preservation, and systemic confidence. This places a greater responsibility on all stakeholders to uphold ethical conduct, respect judicial discipline, and embrace knowledge-driven practice.

I commend the editorial team, contributors, and members whose sustained efforts have enriched this publication. I trust that readers will find this issue both insightful and instructive, and that it will contribute meaningfully to informed decision-making and professional excellence.

Together, let us continue to strengthen the insolvency framework—not merely as a legal mechanism, but as a cornerstone of India's financial and corporate governance architecture.

Warm regards,

Dr. Jai Deo Sharma
Chairman
IPA of Institute of Cost Accountants of India

MESSAGE FROM THE DESK OF THE EDITOR AND MANAGING DIRECTOR

Hello Reader,

Greetings to you from Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) and best wishes for a happy fulfilling year ahead in 2026!

Our editorial team is happy to present the third issue of THE QUARTERLY DIGEST to our members, professionals and all readers. This is the latest addition to the periodical publications of IPA-ICMAI that already include Au Currant, a daily Newsletter, e-journal, the monthly e-journal, IBC Dossier, a monthly publication on interesting relevant rulings apart from the annual publication that is normally released in January.

In the last quarter, IPA-ICMAI celebrated its 9th Foundation. Shri Sandip Garg, Whole Time Member, IBBI, graced the occasion as the Chief Guest and gave an insightful speech on the issues and challenges that were taken up to be solved and the diligent background work that went into making and also the rationale for the of the IBC Amendment Bill, 2025 that has become the Parliament's property now after review by the Select Committee. The distinguished panel discussion that followed saw some brilliant articulation of both the improvements set out in the bill as well as concern about the implications of the measures spelt out.

We are also gearing up to ensure that IPA-ICMAI's third residential program, this time in Shillong in February, 2026 will see quality discussions, networking among professionals in the IBC ecosystem and all in all, a quality time spent for all participants with spouses, the very objective behind this program.

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

- Five articles from the monthly journals,
- An article by contributed by Anirudh Singh Malik, my colleague, on behavioural and financial transformation of India's credit ecosystem under the Insolvency and Bankruptcy Code,
- Important rulings of the Supreme Court, NCLAT and NCLT during the quarter
- News updates and news about activities of IPA-ICMAI.

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

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

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

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

HAPPY New Year 2026

"As we step into the New Year, IPA - ICMAI extends warm wishes for continued learning, integrity, and professional growth."

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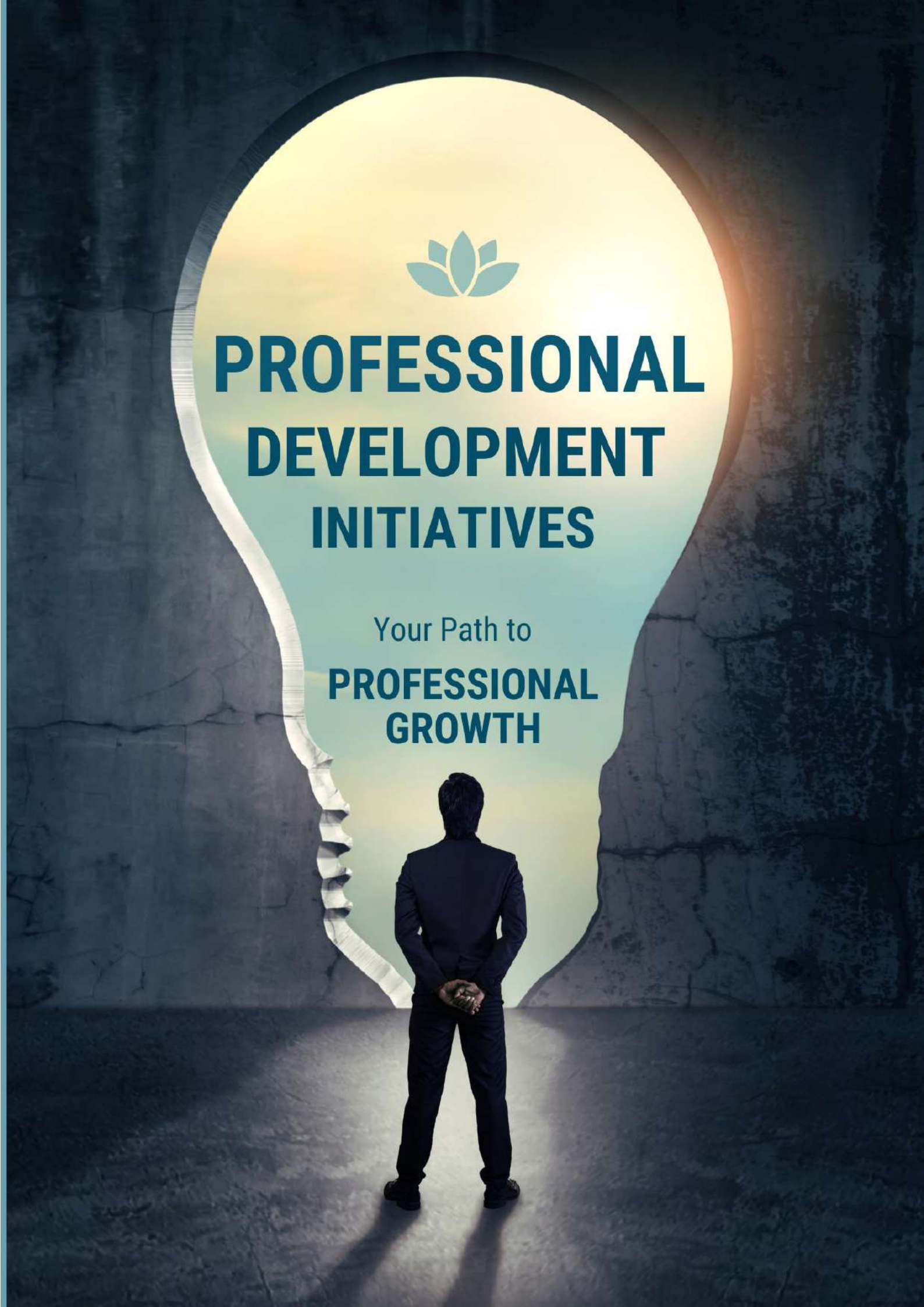
PROFESSIONAL
DEVELOPMENT
INITIATIVES
Your Path to
PROFESSIONAL
GROWTH

ACTIVITIES BY IPA-ICMAI

S. NO	Program/ Event	No. of Programs
1	Workshop	5
2	Learning Session	2
3	Seminar	3
4	Training Program	2
5	Webinar Series	2
6	Executive Development Programme	1
7	Conclave	1
	Total	16

ONLINE PROGRAMS

A Workshop on **"Foundation & Framework for Going Concern Management"** was organized on **October 4th,2025**, focusing on the fundamental principles and practical approaches to managing companies as a going concern during insolvency proceedings.

A Workshop on **"Management of Creditors under IBC: Framework, Dynamics & Practice"** was organized on **October 10th, 2025**, highlighting the important role of creditors in the insolvency process and ways to improve coordination among stakeholders. The workshop covered the following key topics, **Dynamics of the Committee of Creditors (CoC), Statutory and Other Creditors – Where Do They Stand? Operational Creditors – Rights, Remedies & Realities, etc.**

A Workshop on **"Avoidance Transactions under IBC, 2016"** was organized on **October 17th, 2025**, offering an in-depth understanding of the legal provisions, judicial interpretations, and practical challenges in identifying and handling avoidance transactions.

A Workshop on **"Navigating Cross-Border & Group Insolvency under IBC, and Global Practices"** was held on **October 25th, 2025**, exploring the emerging framework for cross-border insolvency, group insolvency mechanisms, and comparative insights from global best practices.

IPA-ICMAI organized a three-day **Webinar series on "Interplay of IBC with Other Laws – Overlaps & Practical Navigation"** from **November 7th -9th, 2025**. The sessions featured experienced insolvency professionals as resource persons, offering deep insights into critical aspects of the Insolvency and Bankruptcy Code, 2016, and practical guidance on navigating overlaps with other laws. The series significantly contributed to enhancing professional knowledge and readiness across the insolvency ecosystem.

A focused **Learning Session on Real Estate Stress & Attachment of Assets under IBC** was organized on **November 14th, 2025**, shedding light on sector-specific stress factors and judicial perspectives relevant to real estate insolvency cases.

IPA-ICMAI organized **Webinar Series – II on "Practice & Strategic Challenges in CIRP" from December 6th -7th,2025** focusing on practical difficulties, strategic decision-making, and evolving issues faced by Insolvency Professionals during the Corporate Insolvency Resolution Process.

A **Workshop on the Role of Related Parties under IBC, 2016** was conducted on **December 14th 2025**, providing in-depth clarity on identification, treatment, and implications of related party transactions, supported by judicial interpretations and case-based discussions.

An **Executive Development Program (EDP)** titled **"Mastering the Resolution Plan Lifecycle: Legal, Strategic & Practical Perspectives" was organized on December 19th 2025**. The programme offered comprehensive insights into the resolution plan process, covering legal frameworks, commercial considerations, stakeholder management, and implementation challenges.

A Two-day **Learning Session on "Advanced Perspectives on Individual, Group & Cross-Border Insolvency"** was organized from **27th to 28th December 2025**, highlighting global best practices, evolving jurisprudence, and practical considerations in handling complex insolvency cases.

OCTOBER 2025

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NOVEMBER 2025

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30						

DECEMBER 2025

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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

IN PERSON PROGRAMS

*A **Seminar on "Insolvency and Bankruptcy Code, 2016**" was held on **October 8th, 2025**, in association with WIRC, Mumbai, providing a comprehensive overview of the Code's implementation, emerging issues, and professional best practices.*

*The Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA - ICMAI), jointly with IP Net, successfully organized the **"IBC Conclave 2025"** on **November 1st, 2025** at the India Habitat Centre, New Delhi. The conclave brought together eminent members of the judiciary, regulators, and industry experts.*

*IPA-ICMAI, jointly with Insolvency and Bankruptcy Board of India (IBBI), conducted a comprehensive **Three-day training programme for Insolvency Professionals on November 21st –23rd, 2025.***

IPA-ICMAI celebrated ***its Foundation Day on November 28th, 2025****, with a* ***Seminar on "Insolvency Evolution: Preparing Professionals for the Future."*** *The programme featured a distinguished panel of speakers who deliberated on the theme "Creditor-Initiated Corporate Resolution Process." Eminent experts and senior insolvency professionals shared valuable insights on emerging trends, regulatory expectations, and future skill requirements for the profession.*

IPA-ICMAI organized in collaboration with Missing Bridge a unique, specialized hybrid Mediation training programme *designed for insolvency professionals, legal practitioners, and corporate executives. The 50-hour course was conducted virtually on* ***November 3rd -6th, 2025*** *followed by in-person sessions on* ***November 28th – 29th,2025*** *in Delhi-NCR. The training included intensive real-world case studies, interactive sessions, and expert panel discussions, enhancing negotiation, mediation, and conflict-resolution skills — especially for disputes related to IBC, Startups, and MSMEs.*

A ***Seminar on "The Insolvency & Bankruptcy Code (Amendment) Bill, 2025*** *and the Role of Insolvency Professionals as Officers of Court" was conducted on* ***December 23rd 2025*** *in Mumbai, focusing on proposed amendments, their implications for insolvency practice, and the role of Insolvency Professionals as Officers of Court.*

UPCOMING RESIDENTIAL PROGRAM

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



RESIDENTIAL PROGRAM

"UNLOCKING THE SECRETS OF INSOLVENCY"
IN THE SCOTLAND OF EAST INDIA -SHILLONG

5TH FEBRUARY- 8TH FEBRUARY 2026
PARTICIPATION FEES: 65,000/- (PLUS 18% GST)
REGISTERATION LINK: CLICK HERE

HIGHLIGHTS OF THE RETREAT

- ENHANCING KNOWLEDGE
- NETWORKING WITH STAKEHOLDERS & REGULATORS
- OPEN AND FREE DISCUSSIONS
- EXPANDING HORIZONS
- REJUVENATION AND STRESS REDUCTION
- PHYSICAL FITNESS
- FAMILY TIME

INCLUSIONS

- ACCOMODATION (DOUBLE OCCUPANCY) & ALL MEALS FOR ACCOMPANYING SPOUSE
- YOGA SESSIONS
- FIRE SIDE INTERACTION
- GALA DINNER WITH MUSICAL NIGHT

CPE DETAILS
15 CPE HOURS - INSOLVENCY PROFESSIONALS | 10 CMA MEMBERS | 15 REGISTERED VALUERS

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FOR MORE DETAILS PLEASE CONTACT
MS. KARISHMA RASTOGI, 8826750072 OR MANAGER@IPAICMAI.IN
MR. PRANAB BHARDWAJ, 7678494704 OR ASSISTANTMANAGER@IPAICMAI.IN

ARTICLES

BEHAVIORAL AND FINANCIAL TRANSFORMATION OF INDIA'S CREDIT ECOSYSTEM UNDER THE INSOLVENCY AND BANKRUPTCY CODE

MR. ANIRUDH SINGH MALIK
EXECUTIVE
IPA OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

Abstract

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a watershed moment in India's insolvency and credit resolution framework. By consolidating fragmented insolvency laws into a creditor-in-control, time-bound mechanism, the IBC aimed to restore credit discipline, improve recovery outcomes, and strengthen corporate governance. This article synthesizes findings from a comprehensive empirical study conducted using large-scale firm-level, loan-level, and insolvency process datasets to examine the behavioral and financial impact of the IBC on borrowers, lenders, and firms. The analysis reveals significant improvements in repayment behavior, faster resolution of financial distress, structural changes in leverage and credit composition, enhanced governance standards, and nuanced effects on innovation and asset allocation.

1. Introduction

Prior to 2016, India's insolvency regime was characterized by prolonged litigation, weak creditor rights, and limited recovery prospects. The introduction of the Insolvency and Bankruptcy Code fundamentally altered this landscape by shifting control from debtors to creditors and imposing strict timelines for resolution. Nearly a decade after its enactment, it is essential to evaluate not only legal outcomes but also the behavioral responses it has induced across the financial system.

This article draws upon an extensive empirical study undertaken by researchers associated with the Indian Institute of Management Bangalore, utilizing data from corporate financials, loan account filings, and insolvency proceedings to assess how the IBC has reshaped India's credit ecosystem.

2. Data Sources and Methodology

The study integrates three major datasets to ensure analytical robustness:

- CMIE Prowess (2010–2024): Firm-level financial and governance data, enabling longitudinal analysis of leverage, profitability, innovation, and asset structure.
- NESL Loan Account Filings (2018–2024): Over 58 lakh loan contracts with periodic creditor updates, offering granular insights into loan status transitions and repayment behavior.
- IBBI CIRP Data (2017–2023): Detailed information on initiation, withdrawal, resolution, and liquidation of Corporate Insolvency Resolution Processes.

The combined use of these datasets allows for a comprehensive examination of both macro-level credit trends and micro-level firm behavior following the implementation of the IBC by the Insolvency and Bankruptcy Board of India.

3. Trends in NPAs and Credit Discipline

One of the most visible impacts of the IBC has been the improvement in overall asset quality within the banking system. India's gross Non-Performing Assets (NPAs), which peaked at approximately 11.2% in 2018, declined sharply to around 2.8% by March 2024. This reduction reflects both active resolution of stressed assets and improved borrower discipline arising from the credible threat of insolvency proceedings.

Loan accounts classified as overdue declined from nearly 22% to 15% of total accounts, indicating better repayment behavior and earlier corrective action by lenders. While the number of default accounts remained broadly stable, their share in outstanding loan value increased, suggesting that defaults

increasingly pertain to larger exposures—an outcome of more decisive creditor recognition and enforcement.

4. **Loan Account Transitions and Resolution Speed**

A defining behavioral change post-IBC is the acceleration of loan account transitions. The time taken for accounts to move from "overdue" back to "normal" status fell dramatically—from an average of 248–344 days in 2019–20 to as low as 30–87 days by 2023–24. Similarly, transitions into default or legal action also occurred more swiftly.
This compression of timelines reflects enhanced creditor confidence, improved monitoring, and heightened borrower responsiveness, reducing prolonged uncertainty that once characterized India's credit markets.

5. **Firm-Level Drivers of Default and Recovery**

The study identifies clear financial characteristics influencing default and recovery outcomes. Firms entering default typically exhibited higher leverage, greater dependence on short-term debt, and weaker profitability. Exposure to public sector banks was also associated with a higher likelihood of default.

Conversely, firms that successfully exited default demonstrated lower leverage, stronger profitability, larger operational scale, and reduced reliance on unsecured or short-term borrowing. Importantly, recovery prospects for such firms improved steadily in the post-pandemic period, indicating adaptive lender and borrower behavior under the IBC framework.

6. **CIRP Withdrawals and the Deterrence Effect**

Between 2016 and 2023, over 7,300 CIRPs were initiated, of which approximately 22% were withdrawn under Section 12A following mutual settlement. These withdrawals underscore the deterrent power of the IBC: the initiation of insolvency proceedings often catalyzes out-of-court resolution.

Firms withdrawing from CIRP exhibited significantly lower leverage and recorded marked post-withdrawal improvements in profitability, suggesting that early intervention and negotiated settlements can restore financial viability without full-scale insolvency.

7. **Defaults with and without CIRP**

A comparison of defaults resolved with and without formal CIRP reveals stark contrasts. Defaults resolved outside CIRP were associated with lower leverage, better profitability, and meaningful post-default performance improvements. In contrast, defaults escalating to CIRP typically involved severe financial distress, high leverage, and limited recovery in operating performance, indicating deeper structural weaknesses.

8. **Impact on Leverage, Credit Structure, and Cost of Debt**

Post-IBC, firms exhibited a modest overall decline in leverage, accompanied by a shift towards short-term and unsecured borrowing. Firms with high tangible assets deleveraged more significantly, suggesting effective collateral-based restructuring.

Notably, distressed firms experienced a substantial reduction in their cost of debt—by over three percentage points—reflecting improved creditor confidence in the resolution framework and enhanced predictability of recovery outcomes.

9. **Governance, Innovation, and Asset Allocation**

The IBC has also contributed to improvements in corporate governance, particularly through an increase in the proportion of independent directors on company boards. This effect was more pronounced among distressed firms, reinforcing accountability and oversight during periods of financial stress.

The impact on innovation, however, has been mixed. While overall R&D intensity increased marginally, distressed firms curtailed

innovation spending, prioritizing solvency and stabilization. Asset tangibility increased post-IBC, indicating a preference for more secure, collateralizable investments.

10. Conclusion and Policy Implications

The Insolvency and Bankruptcy Code has fundamentally reshaped India's credit ecosystem by strengthening creditor rights, accelerating resolution timelines, and instilling greater financial discipline among borrowers. Its influence extends beyond insolvency outcomes to corporate governance, credit pricing, and strategic financial behavior.

Going forward, sustained data-driven oversight, capacity building of insolvency institutions, and sector-specific analysis—particularly for MSMEs—will be critical to deepening the Code's effectiveness. Balancing financial discipline with incentives for innovation remains a key policy challenge as India's insolvency framework continues to evolve.

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

MS. PAYAL AGARWAL
INSOLVENCY PROFESSIONAL

Synopsis/Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) heralded a paradigm shift in India's corporate insolvency landscape, pivoting from a debtor-in-possession to a creditor-in-control model. Central to this process is the resolution plan, a blueprint for a corporate debtor's revival. While the IBC delineates a clear framework for the formulation and approval of such plans, the practical interplay between the key stakeholders—the Resolution Professional (RP), the Committee of Creditors (CoC), and the Adjudicating Authority (AA)/Appellate Tribunal—has engendered a complex, and often contentious, jurisprudential terrain. This article conducts a critical doctrinal and analytical study of this triadic relationship. It posits that the ostensibly clear statutory demarcation of roles is frequently blurred, leading to judicial overreach or, conversely, undue deference to commercial wisdom. The study scrutinizes the RP's multifaceted role as a facilitator, supervisor, and compliance checker, the CoC's primacy in commercial decision-making, and the evolving scope of judicial review by the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). Through an analysis of landmark judicial pronouncements, the article identifies key areas of friction, including the interpretation of 'maximization of value' versus 'other stakeholders' interests,' the applicability of the 'business judgment rule,' and the permissible grounds for judicial interference with a CoC-approved plan.

The findings reveal a judicial trajectory that is still crystallizing, with courts increasingly delineating the boundaries of their authority to ensure the plan's legal conformity without supplanting the CoC's commercial judgment. The article concludes by offering suggestions for a more predictable and efficient approval regime, emphasizing the need for standardized checklists for RPs, clearer legislative guidance on the treatment of dissenting creditors and statutory dues, and a reaffirmation of the principle of limited judicial review to preserve the IBC's core objective: value maximization and timely resolution.

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

1. Introduction

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

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

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

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

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

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

2. Statement of Problem

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

The specific problems investigated are:

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

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

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

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

3. Review of Literature / Background

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

Subsequent literature, including reports by the Insolvency and Bankruptcy Board of India (IBBI) and commentaries by legal scholars like Chaturvedi and Chaturvedi (2020), began to identify teething problems. They noted the NCLT's initial tendency to delve into the commercial merits of plans, leading to the Supreme Court's seminal judgment in Essar Steel India Limited vs. Satish Kumar Gupta &

Ors. (2019). This judgment was a corrective measure, strongly reiterating the primacy of the CoC's commercial wisdom and cautioning the NCLT against acting as a "super-appellate authority."

The discourse then evolved to critique the absolute nature of the CoC's power. Scholars like Chawla and Datta (2021) argued that an unfettered CoC, driven solely by value maximization for financial creditors, could lead to inequitable outcomes for operational creditors and employees, potentially violating the IBC's objective of balancing all interests. The Supreme Court's judgment in Vijay Kumar Jain vs. Standard Chartered Bank & Ors. (2019), which emphasized the rights of all creditors to access the plan, and the subsequent amendments introducing the mandatory distribution waterfall, were responses to this critique.

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

4. How the Study is Undertaken

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

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

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

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

The analysis is structured to:

1. Deconstruct the statutory provisions governing each stakeholder's role (Sections 25, 30, 31 of the IBC).
2. Trace the judicial evolution of the interpretation of these provisions, identifying key turning points and conflicting viewpoints.
3. Categorize the specific grounds on which judicial interference has been sanctioned or rejected.
4. Synthesize the findings to identify persistent challenges and emerging principles.
5. Findings from the Study

5. The research yields several critical findings:

1. The RP's Role is Increasingly Quasi-Judicial: Courts have clarified that the RP's duty under Section 30(2) is not a mere formality. The RP must apply their mind to ensure the plan conforms to the law. Failure to do so can lead to the plan being rejected by the AA, and the RP may face disciplinary action from the IBBI. However, the RP is not required to evaluate the commercial fairness of the plan, a domain reserved for the CoC.
2. The "Commercial Wisdom" of the CoC is Not Absolute but Highly Deferential: The study finds a strong judicial consensus, led by the Supreme Court, that the commercial wisdom of the CoC is sacrosanct and not open to judicial review on its merits. However, this wisdom must be exercised within the four corners of the IBC. Findings indicate that courts will intervene if:

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

   The plan is patently illegal or contravenes the

provisions of Section 30(2).

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

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

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

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

   The plan is not feasible or viable in its implementation.

   The plan unfairly prejudices the interests of stakeholders.

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

6. Analysis & Interpretation

The findings reveal a legal ecosystem in a state of dynamic equilibrium. The initial years of the IBC saw the NCLT benches exercising wide-ranging scrutiny, often second-guessing the CoC. The Supreme Court's intervention in Essar Steel was a necessary corrective, establishing a clear hierarchy where commercial decisions rest with the CoC. This has undoubtedly reduced frivolous challenges and reinforced the creditor-in-control model. However, this interpretation has created its own set of challenges. The principle of deference has sometimes been interpreted by lower tribunals as a mandate for non-interference, leading to the approval of plans that, while commercially astute for the financial creditors, may push the boundaries of legality and fairness. The Ebix Singapore case is a prime example, where the NCLAT initially set aside a CoC-approved plan due to perceived legal flaws in the process, a decision that sparked a debate on the limits of appellate intervention.

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

- Procedural Propriety: Ensuring a fair, transparent, and non-discriminatory process.
- Substantive Legality: Enforcing the mandatory requirements of the IBC, especially those pertaining to the distribution waterfall and ineligibility criteria.
- Manifest Arbitrariness: Intervening only in those rare cases where the CoC's decision is so irrational that no reasonable body of creditors could have arrived at it.

This middle path is prudent but inherently subjective. The interpretation of "feasibility" or "unfair prejudice" can vary significantly between NCLT benches, leading to inconsistency and forum shopping. The lack of a standardized, quantitative measure for these qualitative assessments remains a systemic weakness. Furthermore, the RP is caught in a crossfire. An overly cautious RP may delay the process by seeking repeated clarifications, while a lax RP may face judicial censure for approving a non-compliant plan. This highlights the need for more precise guidelines from the IBBI on the RP's fiduciary and statutory duties during plan evaluation.

7. Conclusion & Suggestions

The journey of a resolution plan from conception to judicial sanction under the IBC is a complex interplay of commercial acumen, statutory compliance, and judicial oversight. This research concludes that while the jurisprudential foundation has stabilized around the primacy of the CoC's commercial

wisdom, the practical application continues to be refined through judicial interpretation. The triadic relationship between the RP, CoC, and AA is not one of rigid separation but of collaborative checks and balances, albeit with inherent tensions.

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

1. Legislative Clarity: A clarifying explanation could be added to Section 31(1) of the IBC explicitly delineating the scope of the Adjudicating Authority's inquiry. This would minimize subjective interpretations and reinforce the principle of limited review.
2. IBBI Guidelines on "Feasibility and Viability": The IBBI should issue non-binding guidance notes outlining the parameters for assessing a plan's feasibility. This would provide a framework for both the CoC and the RP, reducing ambiguity and potential grounds for challenge.
3. Standardized RP Checklists: Developing a comprehensive, dynamic checklist for RPs to use when examining plans under Section 30(2) would bring uniformity to the compliance verification process and protect RPs from allegations of negligence.
4. Strengthened Dissent Management: The law should provide more explicit guidance on the treatment of dissenting financial creditors, ensuring their rights are protected without allowing a small minority to hold the resolution process hostage. The current waterfall under Section 30(2)(b) is a step in the right direction, but its application needs consistent judicial enforcement.
5. Specialized NCLT Benches: Establishing dedicated insolvency benches within the NCLT, with judges and technical members possessing specialized expertise in finance and corporate law, would lead to more consistent and informed decisions on the approval of resolution plans.

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

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CASE FOR REVISITING THE DYNEPRO PRINCIPLE

CA. KARTHIK NATARAJAN
INSOLVENCY PROFESSIONAL

The Dynepro Principle

In what has been termed as 'the Dynepro Principle', the Hon'ble National Company Law Appellate Tribunal, New Delhi ('the Hon'ble NCLAT')[1] had held that complex inter-party claims/counterclaims over third-party asset ownership which do not emanate as a direct consequence of the Company's insolvency fell outside the Adjudicating Authority viz., the Hon'ble National Company Law Tribunal ('the Hon'ble NCLT') under the Insolvency and Bankruptcy Code, 2016 ('the Code'). In other words, the Hon'ble NCLAT held that the Hon'ble NCLT could not decide disputes about ownership of such goods if there were competing claims. Instead, the parties had to go to other courts after waiting out the insolvency moratorium. We shall see the facts, the key arguments, the ratio of the judgement and the extant law and regulations under the Code, in the ensuing paragraphs.

To be sure, this judgement has held fort till date, *albeit* subsequent judgements emanating from none less that the Hon'ble Supreme Court have indeed refined and, in some cases, widened the scope of the Hon'ble NCLT's jurisdiction under Section 60(5)(c) of the Code, in the process creating a clearer distinction between what the Hon'ble NCLT can and cannot adjudicate, confirming that not all contractual disputes are outside its purview.

But in this article, we would like to take a look at this issue from a different perspective. Admittedly, the Dynepro judgement of the Hon'ble NCLAT was upheld by the Hon'ble Supreme Court[2]. On paper this looks fine, but in practice, it causes serious hardship—especially for small businesses. Imagine raw materials worth lakhs or crores lying locked up in a corporate debtor's factory for years, deteriorating in quality or losing commercial value, whilst the actual owners (bailors) cannot access them. This is the "Dynepro principle," and this article argues why it may need a fresh look in today's commercial environment.

Issues emanating from the Dynepro Principle

It has been often seen that both practitioners and the Hon'ble Judiciary have made wide use of the Dynepro judgement to support their stance/decision. In the practice of insolvency, this has come to pose practical difficulties for operational creditors, especially the MSME category ones. For instance, in the widely prevalent job work industry, it is customary for the operational creditors to supply a company with materials and expect value addition on the same materials, to receive the intended finished goods. This activity generally takes the form of 'job work' or 'works contract'. In fact, section 2(68) of the CGST Act, 2017 defines 'Job work' as "any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly."

This happens all the time in manufacturing industries. And God forbid, in a situation, where a company with possession of sizeable goods and materials belonging to various principals for the purpose of job work happens to go under the Corporate Insolvency Resolution Process ('CIRP'), then the Dynepro judgement becomes an impediment as chances are that it could become a tool for the stakeholders viz., the

[1] In Company Appeal (AT) (Insolvency) No. 229 of 2018 rendered on January 30, 2019 reported in [2019] ibclaw.in 24 NCLAT[1] [2]CA No. 2391 of 2019

Resolution Professional, the Suspended Directors, the Financial Creditors and even the Hon'ble Judiciary to cite its ratio to the detriment of the aforesaid principals. And to make matters worse, what if principals happen to be hapless MSMEs who are already burdened with terrible business headwinds. So, what seems the be way out presently and what could be done to avoid hardship to such bailors in such circumstances. That is the aim of this article, viz., to educate the principals/bailors as to the actions they could take under the extant regulations to protect their goods/materials and also to examine what changes could be tweaked to the extant regulations, if need be, to make them effective and to prevent genuine and unintended hardship.

Facts, Arguments and the Ratio of the Dynepro judgement

Dynepro Pvt. Ltd. acted got a job work order for manufacture of boiler steel drums from M/s G B Engineering, who as the principal also supplied materials to Dynepro. In turn, Dynepro sent these materials to M/s Cethar Ltd. with a back-to-back job work order to manufacture the said drums. Unfortunately for Dynepro, M/s Cethar Ltd. entered into CIRP, and its materials got stuck with the insolvent company. As a natural corollary, Dynepro knocked the doors of the Hon'ble NCLT with a prayer for return of its goods (which had significant value) as the principal, with facts and evidences in support of their claim.

It was argued by the Resolution Professional ('RP') of M/s Cethar Ltd. that Dynepro was merely trying to defraud M/s Cethar Ltd., b) Dynepro and M/s Cethar Ltd. were run by the same Promoters and Managing Director, who were related parties and c) they were now seeking to take advantage of their knowledge about the operations of the insolvent company. The RP also alleged that Dynepro had forged certain documentation in the process.

It was on the strength of these arguments by the RP that Dynepro seems to have lost their case all through viz., right up to the Hon'ble Supreme Court. Now, we do not seek to analyse this case on merits as the facts appear to be contrived in this matter, at least from the perusal of the connected orders[3].

Our gaze is solely restricted only to the ratio of the Hon'ble NCLAT in this matter. It seems that certain other parties have also made counter-claims to the same materials as claimed by Dynepro. Latching on to this important fact finding, the Hon'ble NCLAT held that *"therefore, we are of the view that the Adjudicating Authority cannot decide the disputed question of fact including claim and counter claim made by one or other party qua, any material in current case."*

In this article, our focus is solely on a moot and very fundamental point i.e., what if the facts, in another situation, were not contrived as it turned out in the subject case; in other words, what if the principals had a genuine claim over the materials lying with a company under CIRP as bailors? Would it not cause tremendous hardship to the bailors especially small units or MSMEs who will have to wait out the mandatory moratorium period and haplessly watch the fate and value of their goods lie in uncertainty? That is the intended reach of this article.

What remedies do such Principals have under the extant regulations?

In light of the Dynepro judgement, chances are that any RP might not entertain pleas to return the goods under bailment which are lying with the corporate debtor, moreso when there are counter-claims. Perhaps the Hon'ble Adjudicating Authority might also take the same view. So, what actions could a genuine claimant take under the extant regulations, in order to protect his claims over such bailment goods?

In the same Dynepro judgement, the Hon'ble NCLAT had held that it was open to the claimants to file a suit before appropriate forum claiming right and title over the

[3] The orders appearing in public domain and also digested/analysed in public fora

material in question only after completion of the moratorium period of the CIRP and that for filing such suit claiming right over the material, the moratorium period had to be excluded for the purpose of counting the period of limitation. Thus, view 1 would be to wait out the CIRP moratorium period and then approach a suitable appellate forum to adjudicate on the title of the bailment goods, as suggested in the Dynepro judgement *supra*.

View 2 would be to file a claim as an operational creditor before the RP for the bailment goods. However, that would be leaving it to the RP's goodwill since technically, he/she may reject the claim on the basis that such goods were never part of the corporate debtor under CIRP. Which will bring the issue back to square one, in which case View 1 appears to be the sole remedy. Trying to knock the doors of appellate fora may not work here since there is a binding precedent in the Dynepro judgement. Further, a forum such the MSME Facilitation Council may have limited impact given the over-arching bind of the Code over practically all other statutes.

In conclusion, it may seem that at present, under such circumstances, a genuine principal/bailor may be left in the lurch.

Why the Dynepro Principle may need to be relooked at?

In our considered and humble view, with utmost regard for the Hon'ble Judiciary, the Dynepro judgement was a correct one based on a strict and literal interpretation of the then extant Code. For sure, it is trite that the Code may not be used to settle contractual disputes. And it is equally fair to say that the then extant law has fairly remained static to this day, meaning thereby there is no change in the regulations connected to this vexed issue viz., Sections 60(5)[4] and 18(f) read with Explanation to section 18[5] of the Code.

Now, we know from reports[6] that the average duration for closing a CIRP yielding a resolution plan was 843 days in FY2024. That's almost 2.5 years. Why should the poor bailor suffer this delay? What if the goods became tampered/pilfered during the CIRP? Whether the RP/corporate debtor will recompense the said principal/bailor for such loss? What if the bailment goods were specialized in nature and needed specific protection protocols such as temperature, space and storage hygiene? And finally, what if those goods were to suffer expiry during the interregnum period?

What could be the possible options to remedy the situation, in such cases?
Possibility 1 – Hon'ble NCLT ought to make an exception and adjudicate on such claims and counter-claims

Section 18(f) of the Code exhorts the Interim RP to take custody and control of assets belonging to the corporate debtor under CIRP. And for this purpose, Explanation to section 18 clearly states that such assets **do not include** assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment. Thus, it is clear that the IRP cannot and should not take custody and control of assets under bailment as they do not belong to the corporate debtor.

Section 60(5)(c) reads as follows:

"Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have iurisdiction to entertain or dispose of –
******
(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

[4] **Enumerating the areas where the Hon'ble NCLT shall have jurisdiction to decide i.e., what Hon'ble NCLT can and cannot adjudicate**
[5] **Dealing with the duties of the Interim Resolution Professional**
[6] **https://www.icra.in/CommonService/OpenMediaS3?Key=6962fa25-2d04-4a06-b6f7-dd98f9a6e8fe**

Can it be then said that the issue of claims/counter-claims over the third-party bailment goods 'arose out of' or 'were in relation' to the impugned CIRP?

In M/s Renuka Power Co. Ltd. vs. General Electric Co. [1994 AIR 860], the Hon'ble Supreme Court had the occasion to interpret the words 'arising out of' or 'in relation to'. The Hon'ble Apex Court had held that expressions such as 'arising out of' or 'in relation to' the contract were of the widest amplitude and content. In this connection, reference may be made to 76 Corpus Juris Secundum at pages 620 and 621, where it is stated that the term 'relate' is also defined as meaning 'to bring into association or connection with'. It has been clearly mentioned that 'relating to' has been held to be equivalent to or synonymous with as to 'concerning with' and 'pertaining to'. The expression 'pertaining to' is an expression of expansion and not of contraction. If that be the case, could one argue that the dispute between two third parties over goods lying with the corporate debtor indeed was in relation to the impugned CIRP especially if the corporate debtor happened to be at fault in any manner vis-à-vis the said bailment goods, given a wide interpretation of the term. In our view, that is far-fetched and may not be the correct view.

For section 60(5)(c) of the Code provides that the Hon'ble NCLT can entertain or dispose of any event or action arising out of, in relation to, effecting or hampering the insolvency resolution process. For sure, Hon'ble NCLT has the jurisdiction to intervene to the extent of removing any obstacle in the CIRP process for it to reach its logical end, which is approval of the resolution plan or liquidation. But Section 60(5) must be interpreted in the context of Section 25(2)(b) of the Code, which provides that the RP has to exercise the rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings. Certainly, the said goods did not belong to the corporate debtor; they happened to be lying in possession of the corporate debtor when the CIRP commenced, thereby triggering a moratorium.

Thus, one could argue and perhaps with force, that in the present situation at hand, the dispute is between two third parties over some goods which just happen to be in the custody of the corporate debtor under CIRP, as the bailee. The Hon'ble NCLT adjudicating the CIRP has got nothing to bother themselves about third-party disputes, as was indeed decided in the Dynepro judgement.

So, then it is well neigh unfeasible for the Hon'ble NCLT to adjudicate the dispute of the aforesaid impugned claims and counter-claims.

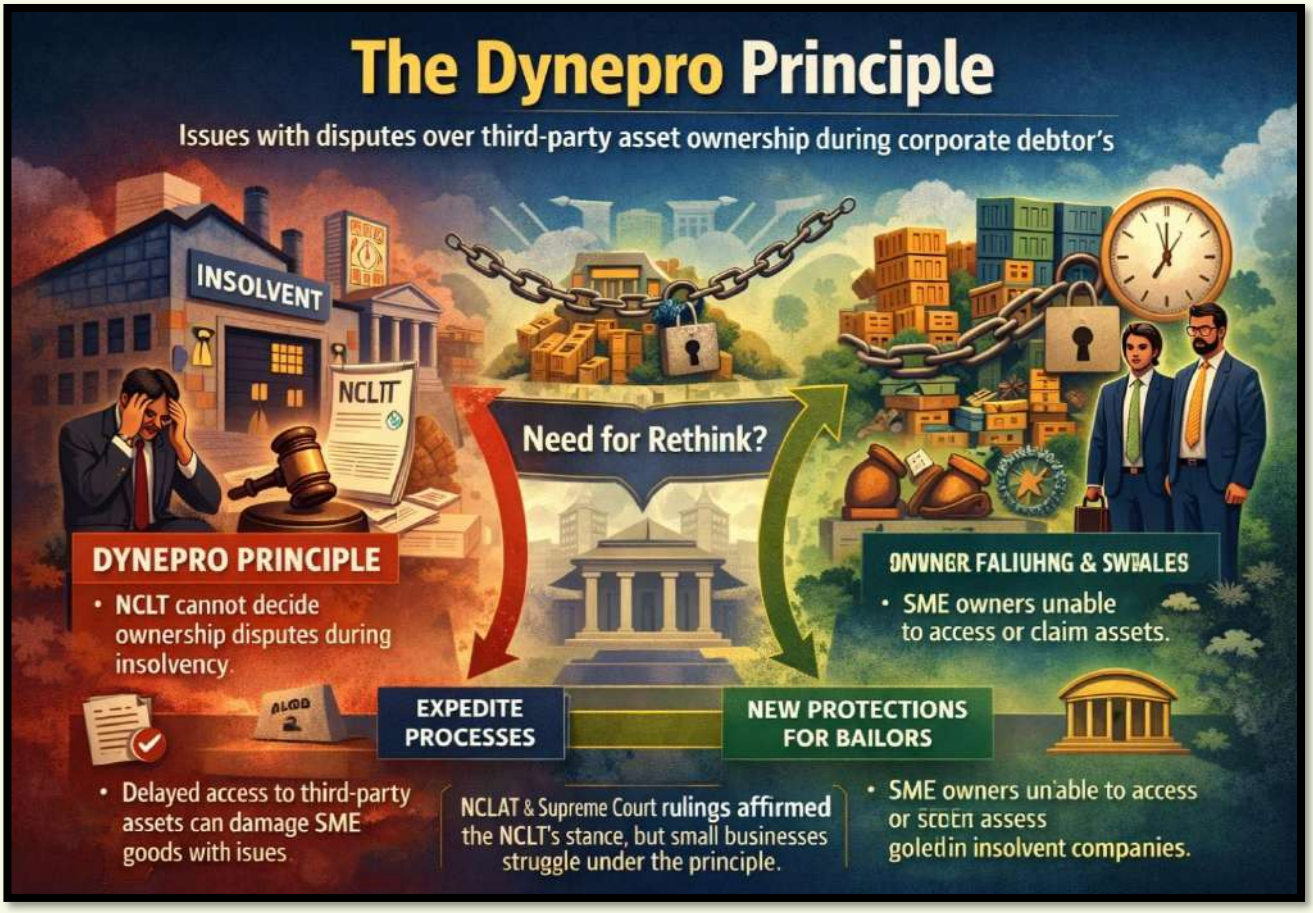
Suggestion 2 – Hon'ble NCLT must simply cede space to an appropriate forum to make such adjudication/determination of this vexed issue

The Statement of Objects and Reasons leading up to the enactment of the Code conveys a strong sense of the intent of the legislature. According to it, one of the key underlying purpose of enacting the Code was to balance the interests of all stakeholders. Viewed in the context of the third-party bailors/principals and their predicament as narrated hereinabove, surely the Code has both an obligation and the authority to come their rescue under the circumstances.

Yes, it is trite that Section 238 of the Code states that the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But therein lies the catch. 'Notwithstanding anything inconsistent therein contained in any other law'. So, in the present situation, if it is certain that the Hon'ble NCLT will take its due time to adjudicate on the CIRP of the impugned corporate debtor, then it follows suit that the subject dispute between 2 third parties over the bailment goods need not be held ransom to the unconnected CIRP at hand. For it may lead to unintended economic hardship for the claimants involved and in suitably extreme cases, may even lead to creating insolvency situations of those claimant/s. That certainly may not what our Law framers would envisage or even desire. Therefore, it is suggested that in such a situation, where

there is likely economic value erosion of bailment goods and if there are claims/counter-claims, then, there ought to be a mechanism for the Hon'ble NCLT to allow the title of the said goods be adjudicated by the appropriate forum and the verdict in such a matter may be honoured by way of handing over of goods to the successful claimant under the direction of the Hon'ble NCLT. Situation may get complicated if the RP were to argue that the impugned goods have been partly utilized in the actual manufacture process by the corporate debtor and that those goods were essential to the continuation of the corporate debtor as a going concern. In such a situation, we would argue that the said matter would clearly become in relation to the present CIRP and therefore, the Hon'ble NCLT gained locus to adjudicate on the claim/counter-claim.

In parting, we may state that as a regulator governing the subject of insolvency in India, the ld. IBBI has been utmost nimble-footed when it comes to being alive to the ever-changing dynamics of trade and trade practices when it comes to ensuing success of the fledgling insolvency regime in India. And therefore, it may be apposite for the ld. IBBI to do consider the situation envisaged above and how it may be remedied.



CODE OF ETHICS FOR INSOLVENCY PROFESSIONALS

CMA M KAMESWARA RAO
INSOLVENCY PROFESSIONAL

SYNOPSIS

Code of ethics for the Insolvency Professionals is an important pillar in the eco system of Corporate Insolvency Resolution Process / Liquidation under Insolvency and Bankruptcy Code 2016 is very crucial.

The principles indicated in the code of conduct involves, ethical, regulatory, legal, confidentiality etc. To follow these ethical standards, it is mandatory for the Insolvency Professional to understand them deeply and avoid any conflicting situations.

This article identifies the conflicts, and instances of earlier violations and in some cases penalties

This article deals with ethics to be followed by Insolvency Professionals, outlining the regulatory ethical framework prescribed by IBBI.

Evaluation of Insolvency profession in India.
With introduction of Insolvency and Bankruptcy Code, 2016 the insolvency profession has developed significantly. At present there are 4587 IPs registered with the insolvency and Bankruptcy Board of India ("IBBI" / "Board") as on date.

The role of IPs is a link between Adjudicating Authority, Committee of Creditors, Corporate Debtor, Creditors and other stakeholders.

When an Insolvency Professional is appointed by the Adjudicating Authority, he takes over the powers of the Board of Directors of the Corporate Debtor during the Corporate Insolvency Resolution process ("CIRP"). High ethical standards are essential for the effectiveness of the bankruptcy regime.

The ecosystem of IBC consists of Four Pillars:

1. Insolvency and Bankruptcy Board of India
2. Insolvency Professioals
3. Insolvency Professionl Agencies
4. Adjudicating Authority

Role of Insolvency Professional Agencies

Insolvency Professional Agencies (IPAs) are responsible for the regulation and development of the insolvency profession.

- IPAs promote professional standards and codes of ethics for IPs under the Insolvency & Bankruptcy Code, 2016.
- They conduct audits, discipline members, and ensure compliance with the Code of Conduct.
- Currently, there are three IPAs associated with major professional bodies in India.
- IPAs are tasked with continuous improvement of internal regulations to uphold high ethical standards.

Regulatory Framework of IBBI

The Insolvency and Bankruptcy Board of India (IBBI) serves as the regulatory authority overseeing the insolvency ecosystem.

- IBBI is responsible for the registration and regulation of IPs and IPAs, ensuring compliance with the Code.
- It performs executive, quasi-judicial, and legislative functions to facilitate the insolvency process.
- The Board conducts investigations and inspections of IPs for any violations of the law.
- IBBI plays a crucial role in maintaining the integrity and effectiveness of the insolvency framework.

Ethical Standards for Insolvency Professionals

The ethical framework for IPs is critical for maintaining professionalism and integrity in the insolvency process.

- IPs must adhere to a strict Code of Conduct that emphasizes integrity, objectivity, and confidentiality.
- They are required to disclose any conflicts of interest and maintain transparency in their dealings.
- The ethical standards are derived from international best practices, including those from the UK.
- IPs are expected to act in good faith and prioritize the interests of all stakeholders involved.

Disciplinary Mechanisms for Non-Compliance

The IBBI has established disciplinary mechanisms to address non-compliance by IPs.

- Complaints against IPs can lead to inspections or investigations by the IBBI.
- The Disciplinary Committee is empowered to impose penalties or suspend/cancel registrations based on findings.
- IPs are required to provide timely responses and documentation during investigations.
- The disciplinary process aims to uphold the integrity of the insolvency profession.

Case Illustrations of Ethical Violations

Real-world examples highlight the importance of adherence to ethical standards by IPs.

- Case I involved an IP resigning without proper authorization and failing to conduct the CIRP as required, leading to violations of multiple sections of the Code.
- Case II illustrated the appointment of a third valuer at the request of the CoC, raising questions about objectivity and independence.
- These cases emphasize the need for IPs to maintain integrity and objectivity in their professional conduct.

Violations by Resolution Professionals

The text outlines various violations committed by Insolvency Professionals (IPs) during the Corporate Insolvency Resolution Process (CIRP).

- RP appointed a third valuer without justification, violating regulations and incurring unnecessary costs.
- IP continued to draw the same remuneration during liquidation as during the CIRP, contravening fee structure regulations.
- RP failed to represent the Corporate Debtor (CD) in arbitration, leading to financial losses and negligence in duties.
- IP made a third-party entity a beneficiary of an insurance policy, violating the Code and creating unnecessary financial burdens.

Threats to Independence and Impartiality

- IPs must avoid conflicts of interest and disclose any relationships that may impair objectivity.
- Safeguards should be implemented to address threats to integrity, including independent valuations and considering other purchasers.
- IPs should document all communications and decisions to maintain transparency and accountability.

Professional Competence and Due Care

- IPs must self-assess their ability to handle assignments based on infrastructure, manpower, and sectorial knowledge.
- Continuous professional development is essential to keep up with legal and regulatory changes.
- IPs should not accept assignments beyond their capacity to ensure quality service delivery.

Timeliness in Insolvency Processes

- The CIRP must conclude within maximum period of 330 days, including a normal period of 180 days and a one-time extension of 90 days.
- Delays can lead to value destruction and reduced recovery rates for creditors.

- IPs must plan actions carefully and communicate promptly with stakeholders to avoid delays.

Case Illustrations of Non-Compliance

Various cases demonstrate failures in adhering to regulations, such as delays in public announcements and misleading statements to authorities.

- IPs faced penalties for actions that compromised the integrity of the insolvency process, including charging excessive fees and failing to consider claims.
- Each case illustrates the consequences of negligence and the importance of maintaining professional standards.

Non-Compliance in Insolvency Processes

Various instances of non-compliance by Insolvency Professionals (IPs) during the Corporate Insolvency Resolution Process (CIRP).

- The RP failed to publish Form G as required by regulation 36 A(5) of the CIRP Regulations.
- The RP's claim that Form G was not applicable was found inconsistent with his actions.
- The RP contravened multiple provisions of the Code and regulations, including section 25(2)(h) and regulation 36A.
- The RP also failed to adhere to the code of conduct principles regarding professional competence and due care.

Inaccurate Presentation of Creditors' List

The IP presented the list of creditors in a non-compliant format, leading to significant discrepancies.

- The list did not adhere to regulation 13 of the CIRP regulations, with inconsistencies in claimed and admitted amounts.
- The RP failed to specify interest in claims, violating regulation 16 A(7).
- The IP's actions were deemed negligent and in violation of multiple sections of the Code and regulations.

Appointment of Unregistered Valuation Firms

The RP appointed unregistered valuers, breaching regulatory requirements.

- The RP initially appointed two unregistered entities and allowed one to continue for six months post-discovery of the error.
- This action violated section 208(2)(a) and (e) of the Code and various IP regulations.
- The RP acknowledged the breach but cited a lack of funds and health issues as excuses.

Misrepresentation of Professional Identity

The IP used letterheads indicating his profession as a lawyer instead of insolvency professional.

- This misrepresentation violated IBBI Circular dated January 3, 2018, and several sections of the Code.
- The IP corrected the issue after being advised by the inspecting authority.

Non-Compliance in Resolution Plan Invitations

The IP failed to invite resolution plans properly, violating multiple provisions of the Code.

- The IP did not submit a complete progress report or make public announcements as required.
- He invited plans only from a single CoC member without adequate information, undermining the CIRP process.

Oversight in CoC Meeting Minutes

The RP failed to accurately record decisions in the CoC meeting minutes.

- The omission of a decision to recuse his wife as proposed IRP was deemed a significant oversight.
- The IP's defense of oversight was not accepted, highlighting a pattern of negligence.

Outsourcing Claim Verification Responsibilities

The RP outsourced the verification of claims, which is a core duty of the IP.

- The RP claimed to have only sought assistance, but evidence showed he delegated essential responsibilities.
- This action led to a penalty of INR 1,00,000 for non-compliance with regulatory requirements.

Conducting CoC Meetings Post-Liquidation Application

The RP held CoC meetings after filing for liquidation, incurring unnecessary expenses.

- The RP's justification for these meetings was deemed inappropriate as the CIRP period had ended.
- This action violated sections of the Code regarding the management of corporate debtors.

Professional Competence and Due Care

- IPs must only accept appointments they are competent to perform and maintain overall control of engagements.
- Continuous professional development and adherence to time limits are essential for effective service delivery.

Asset Management Responsibilities of IPs

The role of IPs in asset management during insolvency is crucial for preserving value.

- IPs must take control of assets and ensure their protection and preservation.
- The Code mandates that IPs manage operations as a going concern and safeguard assets from unauthorized actions.

Confidentiality Obligations for IPs

Maintaining confidentiality is a fundamental principle for IPs during insolvency processes.

- IPs must ensure that sensitive information is kept confidential and only disclosed as required by law.
- The principle of confidentiality extends to resolution plans and negotiations, emphasizing the need for careful information management.

Employment Restrictions for Insolvency Professionals

IP faces restrictions on simultaneous employment and must avoid conflicts of interest.

- IPs cannot accept multiple assignments if they cannot devote adequate time to each.
- They must not engage in employment with stakeholders involved in their assignments for a specified period after cessation.

Information Management Duties of IPs

IP is responsible for organizing and managing information related to insolvency processes.

- They must maintain clear communication with stakeholders and keep written records of decisions.
- Regulatory requirements mandate the preservation of records and timely submission of information to the Board and IPA.

No Constraints on Resolution Professional Fees

The Committee advocates for a competitive market to determine Resolution Professional (RP) fees without regulatory constraints.

- The fees for managing insolvency resolution processes should reflect fair market value based on the entity's size.
- Transparency in the performance of insolvency professionals is essential to incentivize optimal behavior among professionals, creditors, and debtors.
- The market should develop organically, allowing competition to dictate RP charges rather than fixed regulations.

Regulatory Framework for RP Fees

The regulatory framework lacks specific guidelines for fixing RP remuneration, contrasting with the UK's structured approach.

- The Insolvency and Bankruptcy Code (IBC) does not stipulate a basis for fixing RP fees, unlike the UK's Insolvency (England and Wales) Rules, 2016.
- Section 5(13) of the IBC defines "Insolvency Resolution Process Costs," including RP fees,

but does not impose limits or principles for fee determination.
- Regulation 34 mandates that the Committee of Creditors (CoC) fix RP fees without specifying limitations or principles.

Code of Conduct for Insolvency Professionals

The Code of Conduct outlines expectations for transparency and reasonableness in RP remuneration.

- Remuneration must be transparent, reasonable, and consistent with applicable regulations.
- Adequate disclosures regarding fees must be made to the Insolvency Professional Agency (IPA) and other stakeholders.
- RPs must ensure that fees are commensurate with the work undertaken and disclose all costs related to the insolvency process.

Determinants of RP Fees

Several factors influence the determination of fees charged by insolvency professionals.

- The value and nature of the assets involved are critical in fee determination.
- Time spent by the insolvency professional and staff on the case is a significant factor.
- The complexity of the case and the exceptional responsibilities assumed by the professional also affect fee levels.

Threats to Compliance with Code of Conduct

Various circumstances may lead to non-compliance with the Code of Conduct for insolvency professionals.

- Potential bias may arise if an IP has prior associations with creditors or the corporate debtor.
- Quoting zero remuneration can lead to exploitation and is not reasonable.
- Outsourcing duties to related parties without disclosure can result in indirect remuneration to the IP, violating the Code.

Illustrations of Non-Compliance

Several cases highlight breaches of the Code of Conduct by insolvency professionals.

- In one case, an RP charged Rs.50 lakh for services while the applicant's claim was only Rs.13.76 lakh, leading to a two-year suspension.
- Another case involved an IRP authorizing an LLP, where he was a partner, to raise invoices, violating the Code.
- A liquidator continued to draw the same remuneration as an RP without CoC approval, breaching regulations.

UK Practices on Remuneration of Insolvency Practitioners

The UK has established principles for determining the remuneration of insolvency practitioners.

- Factors include case complexity, exceptional responsibilities, and the effectiveness of the office-holder's duties.
- Remuneration can be based on a percentage of asset value, time spent, or a set amount.
- The court can intervene to fix remuneration if not determined by the CoC.

Gifts and Hospitality Guidelines for Insolvency Professionals

Insolvency professionals must maintain integrity regarding gifts and hospitality to avoid conflicts of interest.

- Acceptance of gifts or hospitality that affects independence is prohibited.
- Offering gifts to public servants or stakeholders to gain work is also forbidden.
- The Code emphasizes the importance of maintaining professional integrity and objectivity.

Global Best Practices in Insolvency Ethics

The UK Code of Ethics outlines fundamental principles for insolvency practitioners to uphold.

- Key principles include integrity, objectivity, professional competence, confidentiality, and professional behavior.
- Practitioners must comply with laws and regulations to avoid discrediting the profession.

- The ethical framework requires practitioners to identify and address threats to compliance with these principles.

CONCLUSION:

The most important pillar of the Corporate Insolvency Eco system make the IP as the most important link leaving other Stakeholders such as CoC, Adjudicating Authority. In many cases the delay in the CIRP period is due to Adjudicating Authority. CoC Does not take any responsibility in timely decision making.

Though the life spans have increased and many advocates practice their profession without any age limit, IBBI restricts practice of IPs to 70 years. This age group IPs come with lot of experience in corporates and can lead a Corporate Insolvency Resolution Process successfully without any violations in the Code.

Ref: Handbook of Ethics for IPs published by IBBI

MR. RAJESH KAMATH
INSOLVENCY PROFESSIONAL

Synopsis: - One of the main pillars of the IBC besides Judiciary, IPA, and Information utilities is the IP. Thus, the RP/Liquidator is expected to run the CIRP/Liquidation smoothly in a time bound manner towards the speedy resolution/recovery in order to achieve the objectives of the IBC. While disciplinary action on bad fish and strictures passed on negligent IPs are in order, all IPs may not fit the basket. A vast majority strive towards the successful resolution owing to which the success of IBC is what it is as of today. However, this is not without some practical issues faced by the IP in getting co-operation from the CD and accordingly some measures are suggested to alleviate the fears of the IP from the wrath of the judiciary or the regulator.

Practical issues faced by IP and few suggestions while running the CIRP/Liquidation process in relation to the co-operation from the management, auditors, consultants or other related parties.

Application u/s 19-2 for non-co-operation of suspended directors/auditor of CD.

In many cases the RP initiates the non-co-operation application quite late after exhausting all his efforts as also due to negligence at times. This highlights laxity on part of RP unless he can justify same with valid reason. However, in few circumstances in absence of any defined time limit there should be a discretion available to IP acting in good faith as explained below.: -

a) Practically in NCLT if such application is put up at an early stage even with all requirements, details of follow up and non-cooperation, it's experience of IPs that such application is summarily dismissed with instructions for more effort from IP, to visit auditor and get the documents (most of the documents like accounts may be in custody of management and not auditor),etc. To alleviate some of the pain, the RP needs to cross reference such documents duly numbered, each mail follow up copy printed, all necessary evidence of visits to the CD office with dates, virtual meetings, speed posts, etc. This may take some time especially with paucity of necessary information, for example the RP visits the registered office which turns out to be a closed place/rented to another company/residence of the director and cannot get access to the books of accounts and records.

b) As alternative to the proper books of accounts found wanting and subject matter of application, in NCLT it is often suggested to recreate the books with help of bank statements, gst data, it data etc. While Income tax password can be reclaimed in short period without password, reclaim of GST takes longer time due to physical visits, follow up etc. While this is possible as well as only option in case no books are maintained at all with auditor suitably qualifying with "Information as available with the RP" basis. However, where audited accounts already exists this leads to duplication of effort. Many times, the IP has to continue to carry on his role as RP/Liquidator even as suspended management may challenge admission order in NCLAT/ Supreme Court all the while with management retaining the password and also replying to the income tax/gst queries independently, So till a order passed or stay is granted by NCLAT or SC it is not possible to get such info or a clear path and IBBI should specify what is to be done in such a case and whether Sec 19-2 application under the circumstances can be delayed or not.

When application under section 19-2 comes on board as such there is no provision anywhere under IBC or Companies Act, except in extreme circumstances that books can be redrawn as also normally books cannot be reaudited for same financial year or so refiled in RoC. So, in case this route is to be adopted there have to be some standards for

how to do it basis single entry bookkeeping system etc. Further RPs are also from non-accounting backgrounds like legal/banking/management, etc who may

not comprehend and process these information accurately as this is not job of IP alone and calls for trained accounting personnel and may have to do the same for many past years also frequently , there must be some guidelines to CoC to fund this activity immediately and not delay it as it will be another additional burden on the IP who has to finish the whole process within 180 days. Immunity of acting in good faith must also accompany such order as his conduct in case of some major unnoticed error by new accounts staff appointed by RP were same to be discovered at a later stage.

Even where such exercise is sought to be undertaken, it must be provided that in case management later on in say some PUFE application does not agree with the books, so challenges it, it must be precluded from producing such books or information which were not given initially. This reconstruction of books by IP may also give the management some leeway to contest the same due to some errors which cannot be known by the accounting professional due to missing gaps and absence of relevant information. The management may also prove these books wrong in the court due to some additional information presented at such stage. Also, by this exercise the onus is getting shifted from the suspended directors to the RP who is comparatively new and may not have the wherewithal to accurately compile the accounts. This may imply that mischievous directors may be exonerated from their own disastrous consequences, unless NCLT can see through their game by RP demonstrating the clear linkage.

c) In liquidation cases where assets are to be sold piecemeal, non-compliance of accounts maintenance being done for last many years, there may not be much need for drawing books of account, but assets can be sold piecemeal and the company dissolved. However, in case later on some buyer is interested in a going concern buy, it becomes a trigger and challenge for the liquidator to get the documents and hence he may file sec 19-2 application at later stage which may even be till a period of 2 years depending upon the no of auctions and extensions applied and granted from NCLT. This should not be a ground to penalize the IP being liquidator unless it is demonstrated that with 19-2 application processed by NCLT, the IP would get some information like additional assets which were earlier undisclosed by the management. Especially in case of liquidator where the RP has earlier on not applied for 19-2 application. However, the decision should not be based on time period alone but on relevant considerations as above. With the abolition of liquidation as going concern wef 14/10/2025, the above may not apply.

d) It is suggested for RP to have a suitable checklist ready so as to get the requirements addressed in a speedy manner or to get the deficiencies complained upon by filing the sec 19-2 application in NCLT. Actual checklist would vary from sector to sector however, an illustrative checklist is attached as under: -

SR NO	ACTIVITY DETAILS	INFORMATION PROVIDER	DEPT OF COMPANY
1	Place of business including Registered Office, Sales Offices, Branch Offices, Depots etc.	Management	Admin
2	List of important company Contacts	Management	HR/IR
3	Details of all employees (full time or temporary or Contract staff or Retainers)	Management	HR/IR
4	Copies of audited financial statements for last 3 years	Auditor	Finance
5	Details of full-time employees serving Notice period	Management	HR/IR
6	Details of vacant positions and list of	Management	HR/IR

	key employees who parted in Last 6 months - only full time		
7	Contact details of top creditors - domestic and overseas (email, mobile and address)	Management	Finance/Banking
8	Contact details of top vendors and service providers (email, mobile and address) including details of all contract labour and contracts, agreements or arrangements with independent contractors including copies of any relevant documents.	Management	Finance
9	Contact details of utility companies (gas, electricity, water, telephone)	Management	Admin
10	Details of local government officials	Management	Admin
11	List of shareholders	Management	Secretarial
12	Details of subsidiaries, associates and holding companies	Management	Secretarial
13	Director and company secretary in subsidiaries and associate companies	Management	Secretarial
14	Details of all Demat account and shares held by company (physical and Demat)	Management	Secretarial
15	Taking over custody of DP slips	Management	Finance/Banking
16	Details of the all the bank accounts (name, address and balance) and other financing (including LC)	Management	Finance/Banking
17	Cash on hand as on date of filing of application	Management	Finance
18	Details of LCs, promissory notes and bank guarantees arrangement in last 2 years	Management	Finance/Banking
19	List of FDs held by Corporate Debtor	Management	Finance/Banking
20	Details of Derivative Instruments & unhedged foreign currency exposure	Management	Finance/Banking
21	Details of Security deposits/EMD/ performance BGs / LC with customers, government agencies, courts etc	Management	Finance/Banking
22	A schedule summarizing short-term (including working capital) and long-term debt (including inter-company debt) as well as capital lease obligations of the Company setting forth the obligor, the lender, principal amounts outstanding, interest rates and maturity dates, security created, if any, or, in the case of capital lease obligations, payment schedules, for each such item and documents and agreements evidencing borrowings, whether secured or unsecured, by the Company, including sanction letters, loan and credit agreements and other evidences of indebtedness along with compliance reports submitted by the	Management	Finance/Banking

	Company or its independent public accountants to lenders		
23	Details of outstanding in books as on date with name of vendor and ageing, Duress payments - Quantify any duress payments and asses whether appropriate/ critical to pay.	Management	Multiple Dept
24	Details of all unpaid statutory dues:	Management	Finance/Banking
25	Details of Employees, Labour and workmen dues, HR Policies for employees	Management	HR/IR/Finance
26	Insurance certificates and policies and premiums statement	Management	Finance/Banking
27	List of pending Insurance claims	Management	Finance/Banking
28	Licences, certificates, clearance or regulations that need to be considered or complied with	Management	Multiple Dept
29	Copies of relevant forms (Forms 8, 10 and 17 under the Companies Act, 1956 and Forms CHG-1 and CHG-9 under the Companies Act, 2013) filed with the Registrar of Companies in respect of any security created.	Management	Secretarial
30	List of Consultants/legal practitioners appointed by management to facilitate w.r.t Direct/Indirect taxation and its assessment (if any)	Management	Secretarial
31	Details of litigation/dispute/arbitration	Management	Legal
32	List of Contingent Liabilities	Management	Legal
33	List of Related Parties transactions (Related party as per related party defines under Companies Act/ Listing Regulations)	Management	Secretarial /Finance
34	All material agreements with any government or government agency, other than ordinary course contracts.	Management	Finance
35	IT System - Details of Softwares, Licenses, Mail Server, ERP Server, Network configuration etc.	Management	IT
36	List of assets from Fixed Asset Register - taking extract from SAP or equivalent tool	Management	Assurance
37	Details of Plant	Management	Assurance
38	Details of real estate/property of the Company (whether owned, leased or licensed) Also, take custody of title documents and agreements.	Management	Finance/Banking
39	Copy and details of last 3 months utility bills (gas, electricity, water, telephone)	Management	Admin
40	Various reports released by internal team and external agencies for last 2 years including forensic/ valuation	Management	Multiple Dept

	reports or physical verification reports if any		
41	Details of people in-charge of company keys. List of keys, key codes and controls	Management	Admin
42	Details of corporate guarantees provided by the company	Management	Secretarial/Finance

Besides the above summary, there should be cross linking of formats for the same preferably in an excel sheet which can help collate the information in a structured manner avoiding gaps which may occur in verbose format.

Conclusion: - A well maintained systematic schedule of activities as well as thoroughly documented paperwork may only justify the efforts of the RP while discharging his duties effectively and exonerate him at time of any scrutiny in future.

MS. SHALINI SHRIVASTAV
INSOLVENCY PROFESSIONAL

The situation in the banking sector is quite different at present, as compared to the time when the IBC was introduced in 2017. The Code has played a crucial role in reducing the gross NPAs of scheduled commercial banks (SCBs) from 11.2% in March 2018 to 2.1% in September 2025. The financial sector has achieved a more robust position, and the stressed asset burden has come down. For NBFCs as well, the gross GNPA ratio was approximately 5.3% in March 2018 and stood at around 2.9% in March 2025.

There are various other directional changes that suggest that the next phase of insolvency resolution in India could pose notable differences from the past:

Emerging stress in retail loans: The RBI has noted the risks of increasing NPAs in the unsecured loan portfolios of banks and NBFCs, including new-age NBFCs that operate as 'Fintechs'. While corporate stress has come under control, the retail portfolios are now under closer watch, specially the unsecured segment. Rapid expansion in recent years in this segment by tech-driven lenders and online lending platforms may have put pressure on borrower quality and credit standards. It is expected that NBFCs would be more exposed to this risk than banks, based on the different borrower profiles that they target. Under the RBI's baseline stress scenario, the system-level GNPA ratio for NBFCs is projected to rise to 3.3% by March 2026 from 2.9% in March 2025.

Evolving borrower profile: The pattern of companies getting admitted for CIRP has undergone a perceptible change. Companies from the following sectors have increased their share in recent years:

- Real estate companies
- Financial services companies – NBFCs
- Technology companies – including companies in sectors such as Ed-tech, ATM management, payment services
- Erstwhile PE (Private Equity)-backed companies

  These companies are quite different from the industrial manufacturing and infrastructure companies, that dominated the population of CIRP companies in the initial years. Accordingly, the type of interventions required for the successful resolution of such companies would also be unique and customized. It is important to consider and distinguish the value drivers for unlocking the right outcomes for these distressed companies.

Moreover, the size profile of companies undergoing CIRP proceedings has also undergone a change. Till June 2025, on a cumulative basis, large CIRP cases (admitted claims > INR 1000 crores) accounted for 85%[7] of the total CIRP cases that received resolution plans, in terms of size of admitted claims (INR 10 lakh crores out of INR 12 lakh cores). In terms of number - their share was 14% (175 cases out of 1258 cases that yielded resolution plans.) By contrast, the large cases for which resolution plans were approved during the June 2025 quarter accounted for 60% share in terms of claim size and 5% share in terms of number of cases. Clearly, the mega-sized cases have become fewer in number, and the mid and small size cases are expected to have relatively greater proliferation going forward.

Changing profile of lenders: Globally, and also in India, private credit has emerged as a new source of debt capital for corporate

borrowers. Private credit transactions are reported to have crossed USD 10 bn in the Calendar Year 2024. In 2025, during the first half itself, the total deal volume touched USD 9.0 billion, a 53% increase

from H1 2024. This growth was driven by a 53% year-on-year increase. In India, private credit is funding special situations and also helping stressed companies to refinance/ exit their non-performing loans. Private credit capital in India is currently playing a role as solution-provider for stress alleviation. In certain cases, Successful Resolution Applicants (SRAs) are also availing private credit to finance their resolution plans. The private credit industry is at a nascent sate in India, and no confirmed numbers on portfolio metrics are available at present. The performance will unfold in the coming years. Globally, high-profile insolvencies such as the First Brands group have raised concerns on private credit stress in recent times. In India, this is not the case, but the situation may change in future. Apart from the growth of private credit, there are other trends that are influencing and changing the CoC composition for companies undergoing CIRP. NARCL has aggregated the debt of several large borrowers and replaced the multi-lender lending consortiums. PSU Banks have overcome their peak NPL situation and no longer drive the major CoCs. Increasingly, we see CoCs comprising of bondholders represented by their trustee agents or facility agents, as well as global lenders including specialized institutions such as impact investors. Such non-bank lenders could have very different expectations from the process in terms of speed and documentation.

Increasing impact of technology and increasing demands from sustainability frameworks - Technological advancements are impacting each stage of the credit cycle from EWS (Early Warning Systems) to NPL detection to NPL management. Service providers such as RPs and Liquidators are expected to use the latest technological tools for more efficient process execution. Further, resolution plans will soon be expected to get sustainability ratings and comply with ESG requirements.

Activation of new frameworks under the Code – The recent amendments to the IBC under IBC 2.0 have ushered in a slew of changes including –

- Update to the existing frameworks such as pre-packaged insolvency resolution, for greater consistency and procedural ease
- Introduction of new frameworks for creditor-initiated resolution, group-insolvency and cross-border frameworks. All of these are expected to have a sizeable impact on the way insolvency resolutions are conducted. For example, in the past, group entities with inter-linked assets had to undergo separate processes, which led to bottlenecks and sub-par value discovery. This is expected to significantly alter in future, with the group insolvency regime. For groups or companies operating across geographies, the cross-border framework will bring greater clarity and coordinated action.

Key Considerations in the New Paradigm

The value drivers for the successful resolution of the new types of borrowers coming under CIRP should be determined by taking into account their specific operating domain. Some of the key considerations are outlined below:

Nature of Assets and Unconventional Value Pockets

Companies from sectors such as financial services, real estate development, and technology-based service platforms, etc. do not own much of hard assets. They do not offer production capacities like steel factories or power plants.– rather, they offer market entry to potential acquirers. Their business model is usually B-to-C (Business-to-Consumer). For some of the companies, it is a B-to-B (Business-to-Business) model based

on service contracts. They need to deliver to a large customer base, and they have voluminous consumer touch-points. This makes managing their operations under an insolvency scenario extremely challenging.

The value streams for such companies are often linked to intangible factors and soft strengths such as brand, intellectual properties (IP), human resources and organizational skill-sets. These complex assets need to get correctly valued, and there also has to be proper planning to retain them with the corporate debtor (CD) through the resolution process. Traditional valuation methodologies would need to be suitably updated to accurately capture the value of new-age assets.

Many of the upcoming companies would have a combination of physical and virtual assets and hybrid business models. They will need to be dealt with by specialized turnaround experts.

Value preservation and the need for speed

The risk of accelerated value depreciation is very high for such companies. Speed of referral or speed of initiation of the resolution process, as well as the pace of the resolution exercise, are both very crucial.

If they lose their customer base, and market presence, the value can quickly dissipate. Therefore, the first task for the resolution professional in such cases is to ensure that the services restart and continue to reach the customers during the insolvency resolution process.

For other companies such as EPC companies or ATM management companies or fleet management companies, the ability to deliver as per the contracted terms and customer needs is critical. Otherwise, there could be mass contract cancellations and severe value decline. It is important to develop sound communication strategies to maintain ongoing customer interaction and retain customer confidence during the process.

It has been observed in FSP cases, that the resolutions have achieved relatively better realization . vis a vis claims. However, the realizations benchmarked to liquidation value have been on the lower side for FSPs as compared to the overall CIRP average. This is brought out in the table below:

Average Realization	As %of admitted claims	As % of LV
Large CIRP cases*	34%	178%
FSP Cases^	41%	135%

*Admitted claims > 1000 crores
^ FSP cases include Dewan Housing Finance Corporation Ltd, Srei Equipment Finance Limited, Srei Infrastructure Finance Limited and Reliance Capital Ltd – the FSP cases reported in the latest IBBI newsletter.

This points to the risk of significant value-loss post CIRP initiation, which needs to be addressed. In the case of FSPs – it is vital to have continued collections and servicing of the existing book during CIRP, in order to prevent value erosion.

There are various case studies of successful operational management through onboarding of Development Managers or Interim Operators

- -In the case of an offshore fund-backed real state company undertaking a residential project in NCR (FC claims > 2000 cr.), there was no company team or former management available when the company went under insolvency. The RP and his support team engaged a Development Manager through an open bidding process, to kickstart the construction. There were clear terms laid down for dwelling units to be completed, sales to be achieved, and payments to the Development Manager through the sale proceeds. The traction on construction achieved during the CIRP period enabled the corporate debtor to receive a satisfactory resolution plan.

- -The concept of reverse CIRP also originated from the need for continued delivery during CIRP period. Under reverse CIRP, the original

promoter infuses liquidity and undertakes the construction and delivery under the supervision of the RP, and under a controlled set-up with escrow mechanism and other checkpoints.

Alternative value unlocking, including from Claw-back transactions

As per the latest IBBI statistics, applications have been filed for around 1500 avoidance transactions involving almost INR 4 lakh crores. This has the potential to add 2 – 3% to the realizations from CIR processes.

In the case of manufacturing and infrastructure companies, most of them faced distress on account of the industry situation (among other factors). In the case of companies such as financial sector companies, it has been alleged that fund misappropriations and wrong lending practices were the major causes of financial decline. This also indicates the scope for improvement in realizations through alternative options such as claw-back transactions. Therefore, a strong follow-up of avoidance transaction applications could result in significant recovery improvement.

The need for Regulatory innovation

On account of the granular nature pf the customer base, certain corporate debtors are faced with a large number of claims arising from service defaults, refund demands, delivery failures, etc. A number of them result in litigations that can prolong the insolvency proceedings. The courts and the regulator can enable faster resolution by prescribing certain common guidelines for the treatment of similar claims.

There have been certain cases, where the NCLT took a conscious call not to hold the resolution plan implementation, on account of pending claim litigation. The plan was allowed to proceed while the claim-related litigations were heard in parallel. The recent IBC amendments that separate out the implementation from the distribution, are also a positive step towards achieving faster corporate rescue.

Leveraging new mechanisms/ frameworks

The new mechanisms introduced under IBC 2.0, that were briefly referred to earlier, can be utilized to increase the efficacy of the net phase of resolution. For example,

The Creditor-initiated insolvency resolution process - Allows creditors to initiate insolvency for genuine business failures, including an out-of-court mechanism. Sets procedural discipline, with initiation needing the support of creditors representing a specified threshold (i.e. 51%) of outstanding debt. The process is to be concluded within 150 days, with a possible extension for a period of 45 days. This provides one more mechanism to lenders, with the potential for speedier resolution. This can be specially useful in the case of companies where the tangible assets are fewer, threat of accelerated decline is higher, and there is a requirement for a strategic buyer or operator to step in on an urgent basis.

Pre-packs need to be used more widely for small borrowers, who are expected to form a large part of future insolvencies.

The Need for Greater Harmonization

It is useful to keep a view on the emerging trends in terms of borrower profiles, sectoral themes and lender composition, and design resolution strategies accordingly. At the same time, it is also important for the different resolution frameworks to converge under a combined regulatory interface, for greater effectiveness. For the implementation of certain laws, the Financial Sector regulator may designate nodal persons for stressed assets within itself, who can closely collaborate with IBBI.

Some of the diverse laws that need to act in tandem in order to create an overall vibrant stressed assets market:

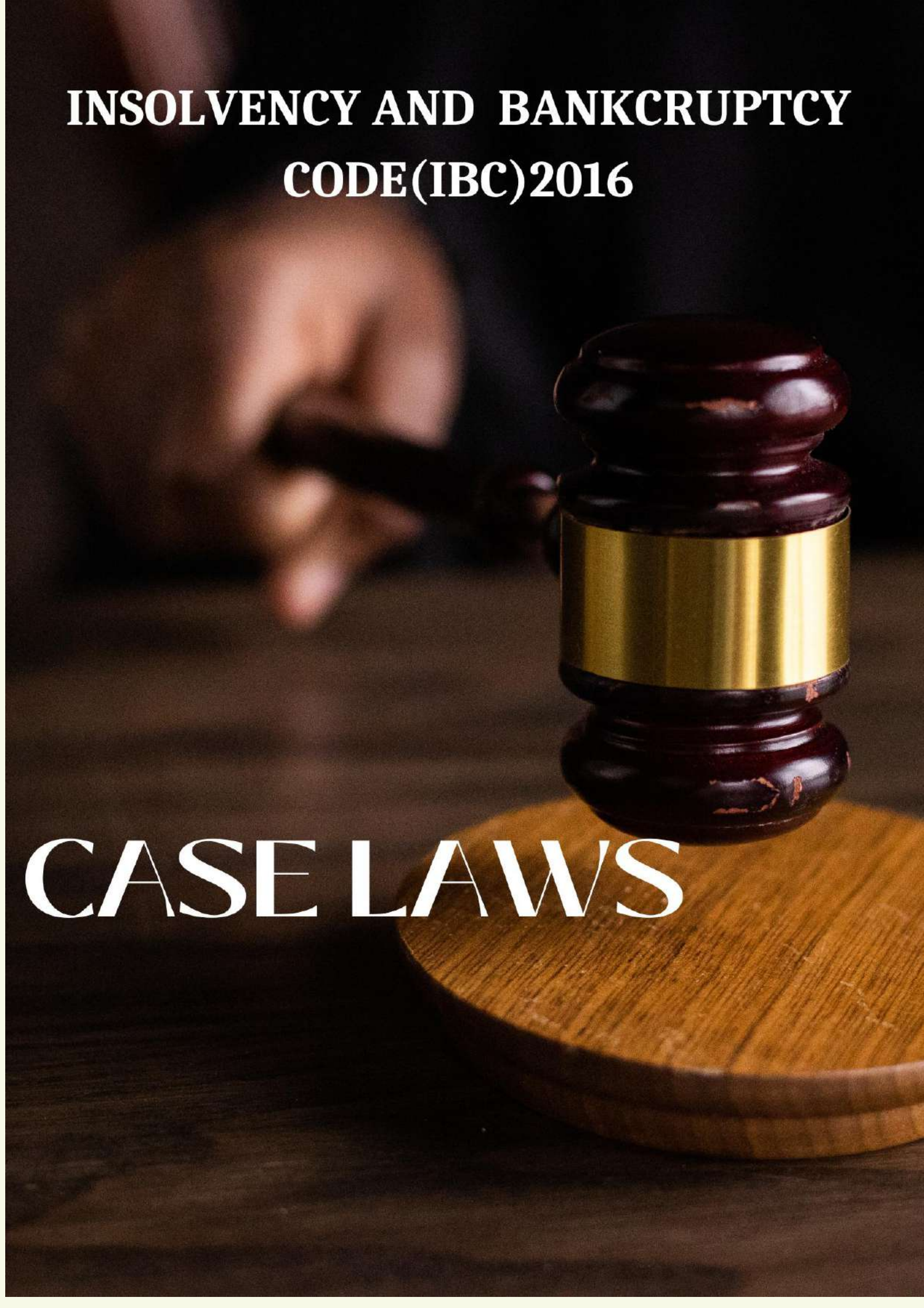
- Securitisation of Stressed Assets Framework (SSAF) - RBI's Draft Directions on Securitisation of Stressed Assets, 2025, were released in April, 2025. SASF offers greater strategic flexibility by permitting pooled transfers of MSME and retail NPAs (as well as larger loans), subject to homogeneity. SASF can operate as an alternative recovery channel alongside IBC and DRT. Under this framework, a Resolution Manager (ReM) concept has been introduced: A dedicated Resolution Manager (ReM) is required to be appointed to manage and resolve the pool. Eligible entities include Scheduled Commercial Banks, NBFCs, ARCs, IPs, and IPEs, subject to certain fit-and-proper norms and independence requirements. Since some of these entities are regulated by IBBI, and some by RBI - there need to be suitable "linking" provisions under the different regulations.

- Sale to ARCs – ARCs remain a significant channel for banks and lenders, to reduce their stressed loans. ARCs in turn rely on various recovery strategies including triggering of CIRP. ARCs are also allowed to participate as Resolution Applicants (RAs) in CIR processes, subject to net worth criteria. ARCs being specialized special situation investors, can be the ideal source of interim finance for corporate debtors undergoing CIRP. More clarity in interim financing can be brought about, under both IBBI regulations as well as ARC guidelines. This remains a key unaddressed area under the Code.

- Debt Restructuring guidelines under RBI's Stressed Asset Resolution Framework and under the Companies Act – apart from these historical mechanisms, a new framework for creditor-initiated resolution has been introduced under IBC 2.0. This envisages a shorter time-frame of 150 days. It may be useful to assess the intersection between resolutions under this scenario, and the traditional loan restructuring guidelines followed by banks and NBFCs.

- Personal Guarantor insolvencies and enablement of cross-border asset tracing through collaboration between centralized investigative agencies, local RP/ Liquidator and RPs/ Liquidators in other jurisdictions – personal guarantor (PG) insolvencies linked to companies undergoing CIRP have started taking off under the IBC. The recent updates to the Code also incorporate provisions for surrender of PG estates – which can be a significant source of recoveries. Guidelines can be issued for coordinated working between different professional agencies in order to maximize and expedite the realizations from the resolution process.

INSOLVENCY AND BANKCRUPTCY CODE(IBC)2016



CASE LAWS

Amit Nehra vs. Pawan Kumar Garg [2025] 178 taxmann.com 254 (SC)/[2025] 190 SCL 209 (SC)

Where appellants/homebuyers had paid nearly entire sale consideration for apartment in a project of corporate debtor and submitted their claim, which was duly verified and admitted by Resolution Professional, they could not be treated as belated claimants entitled only to refund of 50 per cent of their principal deposit under resolution plan, but were entitled to possession of their allotted apartment.

Appellants booked an apartment in a project of the corporate debtor and paid almost entire sale consideration. However, the corporate debtor failed to deliver possession within agreed period. Meanwhile, CIRP was initiated against the corporate debtor and appellants submitted their claim before Resolution Professional. Resolution Professional published list of financial creditors, wherein appellants' name was reflected, with their claim duly admitted. Resolution plan submitted by successful resolution applicant was approved by NCLT. As per resolution plan, treatment of homebuyer claims was governed by clause 18.4, with distinct provisions for timely claims and belated claims. Despite admitted inclusion of appellants' claim in list of financial creditors, possession of allotted apartment was not delivered. Appellants approached Adjudicating Authority seeking directions to Resolution Professional and Successful Resolution Applicant for execution of conveyance deed and handover of possession. NCLT held that appellants claim was to be dealt with strictly in accordance with clause 18.4(xi) of resolution plan, entitling them only to refund of 50 per cent of principal sum. NCLAT affirmed decision of NCLT.

Held that since appellants had paid nearly entire sale consideration, submitted their claim, and had it duly verified and admitted by Resolution Professional, they could not be treated as belated claimants entitled only to refund of 50 per cent of their principal deposit under clause 18.4(xi) of resolution plan but were entitled to possession. Therefore, judgment of NCLAT as well as order of NCLT were to be set aside and respondents were to execute conveyance deed and hand over possession of apartment to appellants.

Case review: Order of NCLAT, New Delhi in Amit Nehra v. Pawan Kumar Garg [CAAT(I)-1365-2023, dated 10-01-2025] (para 39) set aside.

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

Mansi Brar Fernandes vs. Shubha Sharma [2025] 178 taxmann.com 359 (SC)/[2025] 190 SCL 230 (SC)

Where appellant entered into a Memorandum of Understanding (MoU) with corporate debtor for purchase/buy-back of four apartments in its project and paid a sum as part consideration, since MoU was in substance a buy-back contract, not an agreement to sell flats, appellant was a speculative investor, disentitling her from invoking section 7.

The appellant entered into a Memorandum of Understanding (MoU) with the corporate debtor for purchase/buy-back of four apartments in its project and paid a sum of Rs. 35 lakhs through cheque as part consideration. MoU contained a buy-back clause that was entirely at option of the corporate debtor. If buy-back option was not exercised, the appellant was entitled to receive possession of flats without payment of any additional amount. Despite MoU having been extended twice, neither flats were delivered, nor payment was made. The appellant thereafter initiated section 7 proceedings in capacity as an allottee/financial creditor. NCLT admitted application. On appeal, NCLAT reversed admission of application by holding that the appellant was a speculative investor and not a genuine homebuyer/financial creditor.

Held that If agreement substitutes possession with a buyback or refund option, or any other special arrangement, allottee is likely a speculative investor. Since

agreement stipulated a buyback whereby amount invested by the appellant would be returned with an additional amount as premium within 12 months, the appellant's true interest lay in assured returns, not possession and, therefore, the appellant was a speculative investor, disentitling her from invoking section 7. Since MoU was in substance a buy-back contract, not an agreement to sell flats thus, finding of NCLAT treating the appellant as a speculative investor warranted no interference.

Case Review: Ankit Goyat v. Sunita Agarwal [2021] 131 taxmann.com 219/168 SCL 829 (NCL-AT) and Shubha Sharma v. Mansi Brar Fernandes [Company Appeal (AT) (Insolvency) No. 83 of 2020, dated 17-11-2020] (Para 18.8) affirmed.

SECTION 21 - CORPORATE INSOLVENCY RESOLUTION PROCESS – COMMITTEE OF CREDITORS

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

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

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

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

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

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

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

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

I. The corporate debtor had obtained financial facilities from Allahabad Bank to purchase a property at Coimbatore, Tamil Nadu. Bank declared account of the corporate debtor NPA and assigned its debt to the respondent, financial creditor by a registered assignment deed. The financial creditor filed an application under section 7

against the corporate debtor. Adjudicating Authority by impugned order admitted section 7 application. The appellant suspended director of the corporate debtor filed appeal contending that assignment agreement was claimed to be executed in Mumbai, Maharashtra and had been registered in Kolkata, which was in contravention of provisions of section 28 of Registration Act, 1908 as applicable in State of Tamil Nadu, hence, was void and, therefore, application under section 7 filed by the financial creditor on basis of such assignment agreement was not maintainable. However, as per provisions of section 28 of Registration Act, 1908 as applicable in State of Tamil Nadu, every document affecting immovable property shall be presented for registration in office of Sub-Registrar within whose sub-district whole or some portion of property to which such document relates is situated in State of Tamil Nadu and any document registered outside State of Tamil Nadu in contravention of provisions of clause (a) shall be deemed to be null and void. It was noted that assignment agreement qua immovable property, i.e., land situated in Coimbatore was void and no right could be claimed by the financial creditor with respect to said land. However, there were large number of other accounts and other financial assets which were dealt in assignment agreement and, thus, entire assignment could not be declared as null and void. NCLAT held that assignment deed could be held to be void insofar as creating any mortgage in land situated in Coimbatore and no rights in said land by virtue of assignment could be claimed by the financial creditor, but that itself was not sufficient to hold entire assignment void so as to make CIRP application as not maintainable and appeal against order of Adjudicating Authority was to be dismissed. Appeal was filed against said order.

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

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

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

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

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

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

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

CIRP was initiated against the corporate debtor. Respondent financial creditor submitted claim based on corporate guarantee extended by the corporate debtor in favour of the financial creditor in respect of credit facilities availed from the financial creditor by three companies. Resolution Professional (RP) sent an email to the financial creditor informing that claim could not be accepted as financial debt. Aggrieved by rejection of claim of financial creditor, the financial creditor filed an application before

NCLT. NCLT by impugned order held that RP had no adjudicatory function and directed RP to reconsider claim of financial creditor.

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

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

Rajjath Goel vs. Maxworth Infrastructure (P.) Ltd. [2025] 178 taxmann.com 600 (NCLAT- New Delhi)

Where a Civil Suit had already been filed by operational creditor where same amount was treated to be due on corporate debtor, there was a pre-existing dispute between parties and, therefore, application under section 9 could not have been admitted.

The operational creditor launched a residential project "Aashray". A Term Sheet was executed between the operational creditor and the corporate debtor, where entire project along with land and license was agreed to be purchased by the corporate debtor. Amount of Rs.12.76 crores was claimed as debt outstanding amount on the corporate debtor. The operational creditor thus, filed an application under Section 9, which was admitted by NCLT by impugned order. NCLT noticed contention of the corporate debtor regarding pendency of Civil Court, however, it had brushed aside said argument observing that Suit could not be come in way of prosecuting Section 9 petition. It was noted that instant was a case where pre-existing dispute between parties was writ large, more so Civil Suit had already been filed by the operational creditor where same amount was treated to be due on the corporate debtor for which demand notice had been subsequently issued. Suit was filed more than one and a half year before issuance of demand notice under section 8 of IBC in which Suit written statement was also filed, disputing claim set up in plaint.

Held that instant was a clear case of pre-existing dispute between parties, accordingly, impugned order passed by NCLT was unsustainable and thus, same was to be set aside.

Case Review: NCLT's order dated 21.08.2024 in CP No.224/(PB)/2024 (Para 44) reversed

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

Union Roadways Ltd. vs. ICE Steel 1 (P.) Ltd. [2025] 179 taxmann.com 506 (NCLAT-New Delhi)

Where there was a manifest dispute between parties over invoices against which payments made by corporate debtor were appropriated, NCLT had not committed any error in dismissing section 9 application filed by operational creditor.

The operational creditor was engaged in business of providing transportation and trucking services to the corporate debtor. The operational creditor raised 247 invoices for period 24-6-2019 to 24-2-2020 for a total amount of Rs. 3.57 crore against which only Rs. 10.08 lakh had been paid by the corporate debtor. The operational creditor sent a section 8 demand notice to the corporate

debtor claiming Rs. 3.47 crore as principal component of operational debt along with Rs. 1.24 crore towards interest component amounting to a total operational debt of Rs. 4.72 crore including interest. The corporate debtor failed to respond to section 8 demand notice following which the operational creditor filed section 9 petition. The corporate Debtor filed a detailed reply denying liability and disputing claimed outstanding and interest claim for want of agreement/debit notes. Adjudicating Authority dismissed Section 9 application, noting disputes over validity and accuracy of invoices, appropriation of payments, and interest component, and observing that claim amount was not crystallised and proceeding could not be used as a recovery mechanism.

Held that there was a manifest dispute between parties over invoices against which payments made by the corporate debtor were appropriated. Mere mention of interest claim in invoice without any mutually acceptable agreement between parties did not constitute sufficient basis for including interest component in computation of outstanding operational debt and that created a shadow of dispute in respect of operational debt. Since there were clear differences between parties on crystallised amount of operational debt, Adjudicating Authority had rightly adverted attention to issue of validity and accuracy of invoices which had led to a situation of non-crystallization of claim amount leading to spectre of disputed debt. Since defence raised by the corporate debtor in their reply filed in section 9 application was not illusory or moonshine, Adjudicating Authority had not committed any error in dismissing section 9 application filed by operational creditor.

Case Review: Order of National Company Law Tribunal, Mumbai Bench-V in Company Petition (IB) No. 603/MB/2021 dated 04.09.2024, affirmed.

SECTION 5(20) - CORPORATE INSOLVENCY RESOLUTION PROCESS – OPERATIONAL CREDITOR

Korea Trade Insurance Corporation (Ksure) vs. Amrit Polychem (P.) Ltd. [2025] 179 taxmann.com 510 (NCLAT-New Delhi)/[2025] 190 SCL 785 (NCLAT-New Delhi)

Where prior to assignment of debt by supplier of goods to appellant/insurance company, appellant had already been informed by corporate debtor about existing dispute between parties with regard to third proforma invoice, since appellant was well aware of fact before stepping into shoes of supplier, impugned order passed by Adjudicating Authority dismissing section 9 application on grounds of pre-existing dispute was justified.

The respondent/corporate debtor had placed three purchase orders on JTC/supplier for supply of certain goods. The appellant was an insurance company for supplier of goods-JTC. Due to non-receipt of payment by JTC, the appellant being insurer company reimbursed JTC as insured entity. Following this reimbursement, debt due from the respondent was assigned by JTC to the appellant. A demand notice was issued by the appellant to the corporate debtor. The corporate debtor replied to demand notice in which they denied claims raised by the appellant following which the appellant filed section 9 petition before Adjudicating Authority. Adjudicating Authority however dismissed section 9 application on grounds of pre-existing dispute. It was noted that prior to signing of Letter of Assignment (LoA) between JTC and the appellant, the respondent-corporate debtor had already notified the appellant about existing dispute between them and JTC with regard to third proforma invoice (PI).

Held that since notice of dispute was served upon the appellant though

beyond stipulated ten days' period, nevertheless it was well before filing of Section 9 application. Since the appellant was well aware of fact before stepping into shoes of JTC that there was a pre-existing dispute between the corporate debtor and JTC, impugned order passed by Adjudicating Authority dismissing section 9 application on grounds of pre-existing dispute was justified.

Case Review: Order of National Company Law Tribunal, Mumbai Bench-IV in Company Petition (IB) No. 903/MB-IV/2022 dated 02.08.2023, affirmed.

SECTION 5(7) - CORPORATE INSOLVENCY RESOLUTION PROCESS – FINANCIAL CREDITOR

EPC Constructions India Ltd. vs. Matix Fertilizers and Chemicals Ltd. [2025] 179 taxmann.com 650 (SC)

Where appellant's claim for redemption of cumulative redeemable preference shares arose from a contractual conversion of dues into share capital, appellant as a preference shareholder was not a creditor and thus not entitled to maintain an application under section 7, and classification in accounts or expiry of redemption period did not alter this legal position.

The appellant/EPCC had entered into engineering and construction contracts with the respondent for setting up a fertilizer complex. About Rs. 572.7 crores became due to the appellant under these contracts. Parties discussed converting a portion of receivables into a subordinate debt. The Respondent proposed converting up to Rs. 400 crores of outstanding dues into preference shares, the appellant's board approved conversion into 8% Cumulative Redeemable Preference Shares (CRPS), and the respondent thereafter allotted 25 crore CRPS of Rs. 10 each aggregating to Rs. 250 crores, on terms including cumulative 8% dividend and redemption at par at end of three years (with issuer's discretion to redeem earlier). The appellant accepted and CRPS were issued accordingly. The appellant filed a petition under section 7 against the respondent for failure to pay redemption amount of about Rs. 310 crores claimed as payable on maturity of CRPS. NCLT dismissed section 7 application. NCLAT by impugned order dismissed appeal.

Held that CRPS were at a stage when redemption period had expired would not lend greater weight to case of the appellant. The appellant being a preference shareholder, was not a creditor and an application by it under section 7 was not maintainable. Treatment in accounts due to prescription of accounting standards will not be determinative of nature of relationship between parties as reflected in documents executed by them. Paid up money on shares being 'share capital' they do not constitute debt. Since shares could be redeemed only out of profits or with any amount kept apart for dividends which was not situation in instant case, further argument that redemption was due, was also not meritorious. Thus, appeal against impugned order was to be dismissed.

Case Review: Order of National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 1424 of 2023 dated 09.04.2025 (para 50) affirmed

Meck Pharmaceuticals and Chemicals (P.) Ltd. vs. Accurate Infrabuild (P.) Ltd. [2025] 179 taxmann.com 684 (NCLAT- New Delhi)

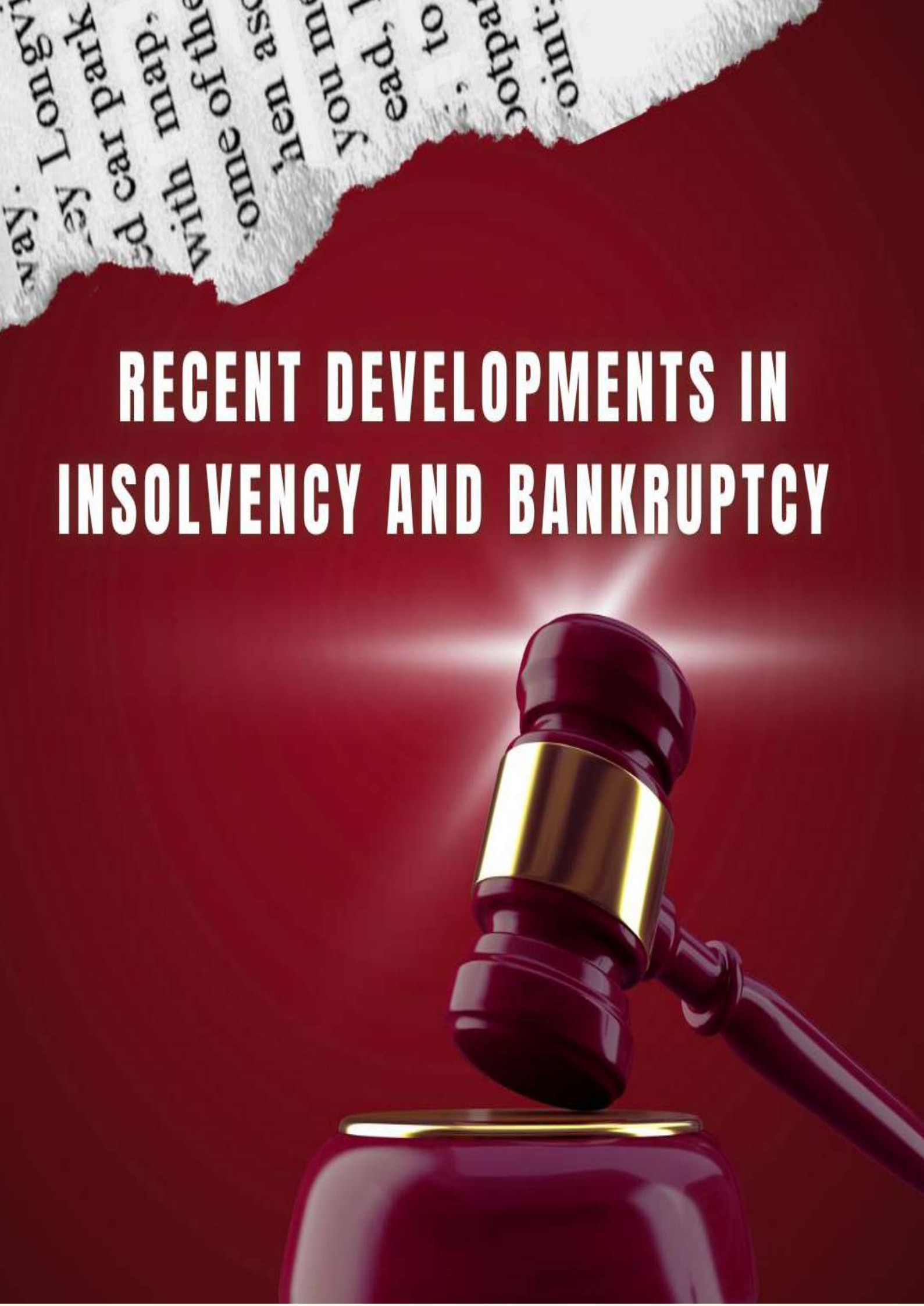
Where financial creditor had failed to muster clinching proof and evidence in terms of financial records to show that sum advanced by them to corporate debtor was indisputably interest-bearing and that interest had continued to accrue and was being realized as consideration for time value of money, sum advanced by financial creditor to corporate debtor did not satisfy ingredients of financial debt of disbursal, time value of money and commercial effect of borrowing, and thus, instant section 7 petition by financial creditor was to be dismissed,

The appellant-financial creditor advanced loan of Rs. 1 crore to the respondent, a real estate company for construction of a project 'Madina Heights'. The respondent assured to repay loan with interest @ 18 per cent per annum besides offering 15 per cent share in profit of project. However, the respondent failed to repay loan. The appellant issued demand notice. Since payments were still not forthcoming from the respondent, the appellant filed a section 7 petition seeking admission of the respondent into corporate insolvency resolution process which was rejected by the Adjudicating Authority as non-maintainable. It was an admitted fact that there was no written contract or agreement between the appellant and the respondent governing terms and conditions by which sum was advanced by appellant and disbursed to account of the respondent.

Held that since the appellant had failed to muster clinching proof and evidence in terms of financial records to show that sum advanced by them was indisputably interest-bearing and that interest had continued to accrue and was being realized as consideration for time value of money, sum advanced by the appellant to the respondent did not satisfy ingredients of financial debt of disbursal, time value of money and commercial effect of borrowing. Further, said project was still in progress and compliances, both procedural and regulatory were still pending and hence no occasion for default could be said to have occurred as debt was not due or payable. Thus, debt and default not having been clearly established, there was no infirmity in impugned order rejecting Section 7 application.

Case Review: Order dated 17.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-II) in Company Petition (IB) No. 122 of 2022, affirmed.

RECENT DEVELOPMENTS IN INSOLVENCY AND BANKRUPTCY



1. **Ambuja Neotia Group gets NCLT nod to take over Usshar project**

   The National Company Law Tribunal (NCLT) has approved the resolution plan for part of the Riverbank Developers project, allowing Ambuja Housing & Urban Infrastructure Company Ltd. to take over the stalled Usshar housing project under the IBC framework. This brings clarity to a long-pending real estate insolvency case and provides optimism for homebuyers and stakeholders.

   Link:https://timesofindia.indiatimes.com/city/kolkata/ambuja-neotia-group-gets-nclt-nod-to-take-over-ussharproject/articleshow/126219738.cms

2. **NCLAT rules CoC cannot alter an approved resolution plan**

   The National Company Law Appellate Tribunal (NCLAT) held that once a resolution plan is approved, the Committee of Creditors (CoC) cannot reassign funds of dissenting creditors or modify the plan post-approval. This judgment strengthens the finality and integrity of approved resolution plans under the IBC.

   Link:https://timesofindia.indiatimes.com/business/india-business/insolvency-ruling-coc-cannot-alter-approved-resolution-plan-or-reallocate-dissenting-creditors-funds-says-nclat/articleshow/126192413.cms

3. **Syska LED insolvency draws four bidders including Mutares Group**

   In the insolvency proceedings involving Syska LED Lights, four bidders—including the promoter, Germany's Mutares Group, and other investment funds—have participated in the Corporate Insolvency Resolution Process (CIRP). This reflects continued interest from institutional players in stressed assets under resolution.

   Link:
   https://m.economictimes.com/industry/cons-products/durables/syska-led-insolvency-draws-four-bidders-including-promoter-and-mutares-group/articleshow/126238939.cms

4. **IBCI Amendment Bill 2025 under scrutiny with mixed expert reaction**

   Recent discussions around the IBC Amendment Bill, 2025 show differing views, with some experts asserting the Bill misses opportunities to strengthen governance and independence of insolvency professionals—even as it aims to streamline CIRP procedures and clarify critical definitions.

   Link:https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/missed-opportunity-ibc-amendment-bill-fails-to-reform-the-insolvency-profession/126030748

5. **IBBI issues updated guidelines for Insolvency Professionals**

   The Insolvency and Bankruptcy Board of India (IBBI) released new guidelines for Insolvency Professionals to act as IRP, RP, Liquidator, and Bankruptcy Trustee, extending deadlines for submission and adding operational clarity on roles within CIRPs and liquidation processes.
   Link: https://ibbi.gov.in/whats-new

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FEBURUARY 5TH TO 8TH, 2026

COURTYARD BY MARRIOTT SHILLONG

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 8 COMPANY REGISTERED UNDER COMPANIES ACT 2013

PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

ABOUT US

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a frontline regulator registered with the Insolvency and Bankruptcy Board of India.

IPA-ICMAI has professional members enrolled with it from versatile disciplines, which include CMA, CS, CA, Bankers, Lawyers, Management Experts, etc. IPA-ICMAI ensures continuous growth of the professional members as a part of the continuous learning process.

Activities of IPA-ICMAI to facilitate continuous professional development of the entire professional community across India, to develop the profession and advocacy of the young profession of Insolvency and Bankruptcy, include -

PUBLICATIONS

- IBC Au-Courant (Daily Newsletter)
- Annual Publication
- Quarterly Digest
- IBC Dossier (Bulletin on landmark judgments)
- Monthly E-Journal
- IBC Case Books

PROGRAMS

- Webinars, Roundtables, Conferences, and Workshops.
- Preparatory Education Course for the Limited Insolvency Examination.
- Training programs, and certificate courses related to insolvency and bankruptcy for professionals and stakeholders of the IBC domain.
- Annual Residential Event for professionals and stakeholders.

RECENT INITIATIVES

- Podcast engaging experienced professionals sharing their insights and experiences.
- Research Projects by professionals and research scholars in relevant topics in the domain of Insolvency and Liquidation.

Pursuant to provisions of the Insolvency & Bankruptcy Code, IPA-ICMAI performs the following functions, namely:

1.Grant membership to persons who fulfil all requirements.
2.Lay down standards of professional conduct for its members.
3.Monitor the performance of its members.
4.Safeguard the rights, privileges, and interests of its members.
5.Suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its byelaws.
6.Redress the grievances of consumers against insolvency professionals who are its members.
7. Publish information about its functions, list of its members, performance of its members, and such other information as may be specified by regulations.
8.Professional Development of its members
9.Development of the Profession of Insolvency & Bankruptcy

IPA-ICMAI has demonstrated a strong record of conducting maximum inspections of its professional members nationwide, aiming to enhance their performance in line with best practices.

"IBC in the Hills"
A Journey of Insight and Renewal

Amidst the serene landscapes of Shillong, this residential program under the Insolvency and Bankruptcy Code (IBC) offers stakeholders a rare blend of learning and reflection. Far from the bustle of board rooms and Court halls, participants will engage with the evolving IBC framework through curated sessions, interactive case studies, and collaborative dialogue.

Set against nature's quiet wisdom, the program fosters clarity, resilience, and strategic thinking—qualities essential for insolvency professionals, company secretaries, legal officers, financial stakeholders and corporate leaders. Shillong's tranquil environment complements the program's goal: to inspire ethical practice, strengthen regulatory understanding, and build synergy among stakeholders.

Beyond technical learning, the program emphasizes community and connection. Shared experiences—whether in workshops, cultural exchanges, or informal discussions—will deepen professional bonds and encourage collective responsibility in shaping India's insolvency ecosystem.

Here, nature becomes a silent mentor, reminding us that reform is not just procedural—it is personal, purposeful, and deeply human.

ABOUT THE PROGRAM

The Residential Program in Shillong is designed to provide participants with an immersive environment to advance professional skills, expand strategic thinking, and build meaningful peer networks.

Set against the serene hills of Meghalaya, the program combines experiential sessions, expert-led workshops, and interactive learning, allowing participants to reflect, learn, and collaborate away from routine pressures.

This program brings together thought leaders, industry practitioners, and emerging professionals seeking structured growth and a deeper understanding of contemporary issues and future-ready leadership.

Program Highlights

- ✓ Three-day curated learning experience
- ✓ Limited cohort for impactful interaction
- ✓ Case-based sessions and simulations
- ✓ Fireside conversations with industry experts
- ✓ Guided reflective exercises
- ✓ Peer group learning circles
- ✓ Evening networking & cultural experiences

Who Should Attend

This program is ideal for:

- Insolvency Professionals
- Senior executives looking to refresh leadership perspective
- Mid-career professionals seeking strategic capability enhancement
- Founders, entrepreneurs & decision-makers
- Practitioners in finance, consulting, policy, and governance
- Professionals preparing for leadership transition

INCLUSIONS

- ✓ Accommodation with all meals (Double Occupancy) (3 days and 3 nights)
- ✓ Technical sessions and Panel Discussions
- ✓ Program materials & stationery
- ✓ Local experience/activity
- ✓ Certificate of Participation

Not Included:

- ✗ Travel to/from the venue
- ✗ Cost of additional stay/ travel arranged on exclusive individual basis.
- ✗ Personal expenses
- ✗ Flight Tickets

PARTICIPATION FEES : ₹ 65,000/- PLUS GST AS APPLICABLE

ADDITIONAL OFFERS

Fee Structure	Discount/Incentives (₹)	Net Fees (₹) (GST As Applicable)
Individual alone (Room Sharing Basis)	20,000	45,000
Early Bird Incentive (Up to 31st December 2025)	5,000	60,000
Student Offer	2500	62,500
Group Incentive (Minimum 4 in a group)	3000	62,000
Referral Incentive	3000	62,000

TERMS AND CONDITIONS

1. Entry is strictly by registration.
2. Extra fee of Rs. 15000 will be charged for the accompanying children above 5 years.
3. Group registrations are allowed for four or more delegates.
4. "Individual alone" Registration will be on twin sharing basis.
5. Cancellation or refund of the registration fees is not permissible. However, it may be transferable on request of the delegate in exceptional circumstances, with the approval of IPA-ICMAI.
6. Flight charges not included in the participant fees.
7. The pick and drop facility from/to the airport can be arranged on demand with charges payable directly to the driver.
8. Rs.3000/- will be offered as referral discount to participant who refers another professional (Not an Insolvency Professional). Discount will be provided after referral registration.
9. Additional offer cannot be combined and only one can be availed.
10. The last date for early bird discount is 31st December 2025.

REGISTRATION PROCESS & ACCOUNT DETAILS

1. Make the Payment
2. Click on the link to Register.
3. Send a Confirmation mail to assistantmanager@ipaicmai.in

The details of the Bank Account where remittances can be made are as follows:

Beneficiary Name - Insolvency Professional Agency of Institute of Cost Accountants of India
Name of the Bank- Indian Bank
Address of Bank- Defence Colony, New Delhi - 110024
Bank Account No. – 6486054958
IFSC Code- IDIB000D008

GSTIN of IPA of ICMAI is 07AAECI3186J1ZC.

CLICK HERE TO REGISTER

CPE/CEP HOURS :
10 HOURS FOR CMA MEMBERS
15 HOURS FOR INSOLVENCY PROFESSIONALS
15 HOURS FOR REGISTERED VALUERS

SCHEDULE OF THE PROGRAM

THURSDAY, 5TH FEBRUARY 2026

1400 - 1600 Hours	Inaugural Session
1600 - 1700 Hours	IBC 2.0 – Expectation of stakeholders - Met and Awaited
1700 - 1800 Hours	Pole position of financial creditors in IBC process - A SWOT Analysis
1900 - 2000 Hours	Fireside Chat

FRIDAY, 6TH FEBRUARY 2026

0700 - 0800 Hours	Yoga & Spiritual Session
0800 - 0930 Hours	Breakfast
0930 - 1100 Hours	Role of Insolvency Professional in Pre- CIRP Settlements- 30,000+ cases Pre- IBC
1100 - 1200 Hours	Market Place for IBC Assets/Securities
1200 - 1300 Hours	Research Project Presentations
1300 - 1400 Hours	Lunch
1400 -1530 Hours	Stalemates in IBC - Creative Solutions
1530 - 1630 Hours	Interim Finance in Insolvency-Fresh Look

SATURDAY, 7TH FEBRUARY 2026

0700 - 0800 Hours	Yoga Session
0800 - 1000 Hours	Breakfast
1000 - 1130 Hours	Resolving Complex Corporate Structures – Handling Inter-Group Loans and Guarantees
1130 - 1300 Hours	Domain Specific Challenges in IBC - Real Estate and Services Sector
1300-1400 Hours	Lunch
1400-1530 Hours	Valuation Conundrum of Assets in Insolvency and Liquidation
1530-1700 Hours	Valedictory Session
1900 Hours onwards	Gala Dinner and Musical Night

"UNLOCKING THE SECRETS OF INSOLVENCY"

SCOTLAND OF EAST "SHILLONG"

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

(A SECTION 8 COMPANY REGISTERED UNDER COMPANIES ACT 2013)

(PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA)

FOR MORE DETAILS PLEASE CONTACT :

MS. KARISHMA RASTOGI, MANAGER ON 8826750072 OR MANAGER@IPAICMAI.IN OR

MR. PRANAB BHARDWAJ ON 7678494704 OR ASSISTANTMANAGER@IPAICMAI.IN

GUIDELINES FOR ARTICLE

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

✓The article should be original, i.e., not published/broadcasted/hosted elsewhere including any website. A declaration in this regard should be submitted to IPA- ICMAI in writing at the time of submission of article.

✓ The article should be topical and should discuss a matter of current interest to the professionals/readers.

✓It should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of.

✓The length of the article should be 2500-3000 words.

✓The article should also have an executive summary of around 100 words.

✓The article should contain headings, which should be clear, short, catchy, and interesting.

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

✓A brief profile of the author, e-mail ID, postal address and contact numbers and declaration regarding the originality of the article as mentioned above should be enclosed along with the article.

✓In case the article is found not suitable for publication, the same shall not be published.

✓The articles should be mailed to "publication@ipaicmai.in."