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

APRIL-JUNE 2026

QUARTERLY DIGEST

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA
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 the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI/Board). 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 endeavour to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely "IBC Au Courant" which keeps the Insolvency Professionals updated with the news relating to Insolvency and Bankruptcy domain.

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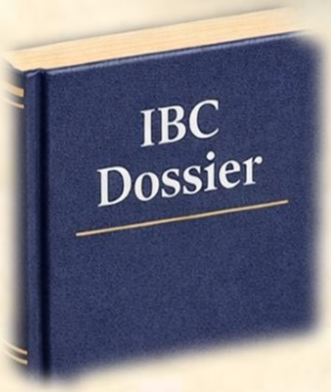

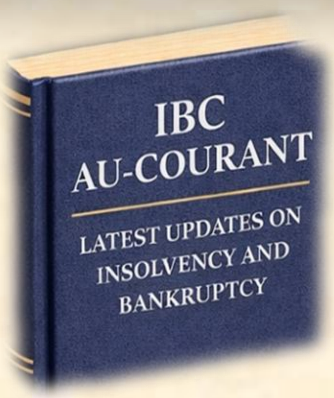

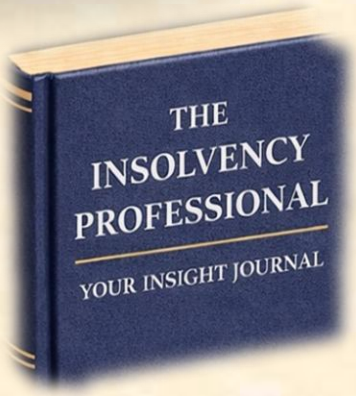

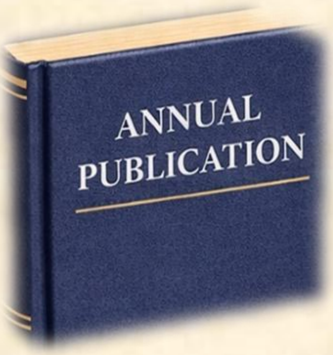

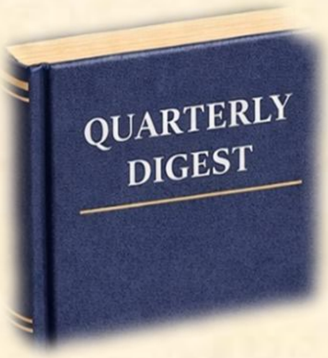

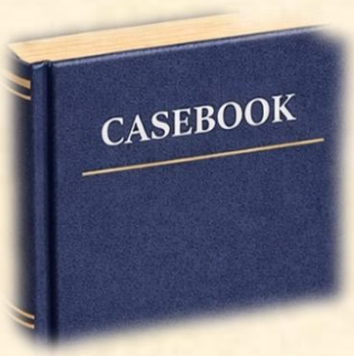

BOARD OF DIRECTORS

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FROM THE CHAIRPERSON'S DESK

Dear Readers,

It gives me great pleasure to present this edition of the Quarterly Digest of the Insolvency Professional Agency of the Institute of Cost Accountants of India. As we progress through another significant quarter, it is encouraging to witness the continued evolution of India's Insolvency framework and the growing contribution of Insolvency Professionals towards fostering financial discipline, business revival, and economic resilience.

The Insolvency ecosystem today stands at an important juncture. Emerging jurisprudence, regulatory developments, and evolving market practices continue to shape the way resolution processes are conducted. These developments underscore the importance of maintaining high standards of professionalism, independence, and accountability while navigating increasingly complex assignments.

The Insolvency and Bankruptcy Code, 2016 has undoubtedly transformed the credit culture of the country by promoting timely resolution and value maximization. However, the effectiveness of the framework ultimately depends upon the commitment and competence of the professionals entrusted with its implementation. Continuous learning, ethical conduct, and adherence to best practices therefore remain central to the growth and credibility of the profession.

At IPA-ICMAI, we remain committed to supporting our members through capacity-building initiatives, knowledge-sharing platforms, research activities, and professional development programmes. During the quarter, the Agency has continued its efforts to facilitate meaningful dialogue on contemporary issues, encourage exchange of practical experiences, and promote thought leadership within the insolvency fraternity.

This Quarterly Digest reflects those efforts by bringing together insightful articles, legal analyses, case studies, and professional perspectives on issues relevant to the insolvency and bankruptcy landscape. I extend my sincere appreciation to all contributors, members, and the editorial team for their valuable contributions in making this publication a rich source of knowledge and professional reference.

I encourage our readers to engage actively with the ideas presented in this edition and continue contributing towards strengthening a transparent, efficient, and stakeholder-centric Insolvency regime.

(Dr. Bhaskar Chatterjee)
Chairperson, IPA-ICMAI

FROM THE EDITOR AND MANAGING DIRECTOR'S DESK

Dear Readers,

Welcome to the 2nd edition of the "Quarterly Digest" for the year 2026, brought out by the Editorial Team of the Insolvency Professional Agency of the Institute of Cost Accountants of India **("IPA-ICMAI")**. It is both an honor and a privilege to address you for the first time as the Editor of **"Quarterly Digest"** and as the Managing Director of IPA-ICMAI.

The last quarter has been eventful and significant for the insolvency profession in India, witnessing continued momentum in the resolution of stressed assets, greater engagement among stakeholders, and further consolidation of the regulatory framework through the Insolvency and Bankruptcy Code (Amendment) Act, 2026 **("Amendment Act")**, which strengthens the Insolvency and Bankruptcy Code, 2016 **("Code")**.

In furtherance of the Amendment Act, the Insolvency and Bankruptcy Board of India **("IBBI")** has moved swiftly to align its corporate insolvency resolution process (CIRP) and liquidation regulations, among others, by introducing new procedural requirements, governance mechanisms, and timelines where necessary. These amendments to the IBBI Regulations operationalise the legislative reforms introduced under the Amendment Act and are intended to further strengthen the regulatory framework.

Recently, IBBI has also solicited comments on the proposals and draft regulations proposed in discussion papers on strengthening resolution outcomes in real estate insolvency and on strengthening the regulatory framework through amendments to the CIRP Regulations, the Liquidation Regulations, and the Personal Guarantors to Corporate Debtors Regulations. I would encourage members to share their comments on the IBBI website, as stakeholder feedback continues to play a vital role in shaping the final regulatory architecture.

During this quarter, IPA-ICMAI undertook a series of pan-India initiatives, including workshops, webinars, certificate programmes, and interactive executive development sessions, to keep our members abreast of evolving regulatory and judicial developments.

This edition of Quarterly Digest brings together select articles from our monthly journal, judicial pronouncements issued during the quarter, regulatory updates, news updates in the field of insolvency law and practice, and updates on the activities of IPA-ICMAI. I commend the editorial team comprising Karishma Rastogi, Ayush Goel, and Neha Sen for their dedicated efforts in bringing out the Quarterly Digest. I am confident that they will continue to work with the same commitment and enthusiasm to further enhance the quality and value of the publication.

I encourage each of you to actively participate in IPA-ICMAI's initiatives, contribute your valuable insights and expertise, and continue to uphold the highest standards of professionalism, integrity, and ethical conduct.

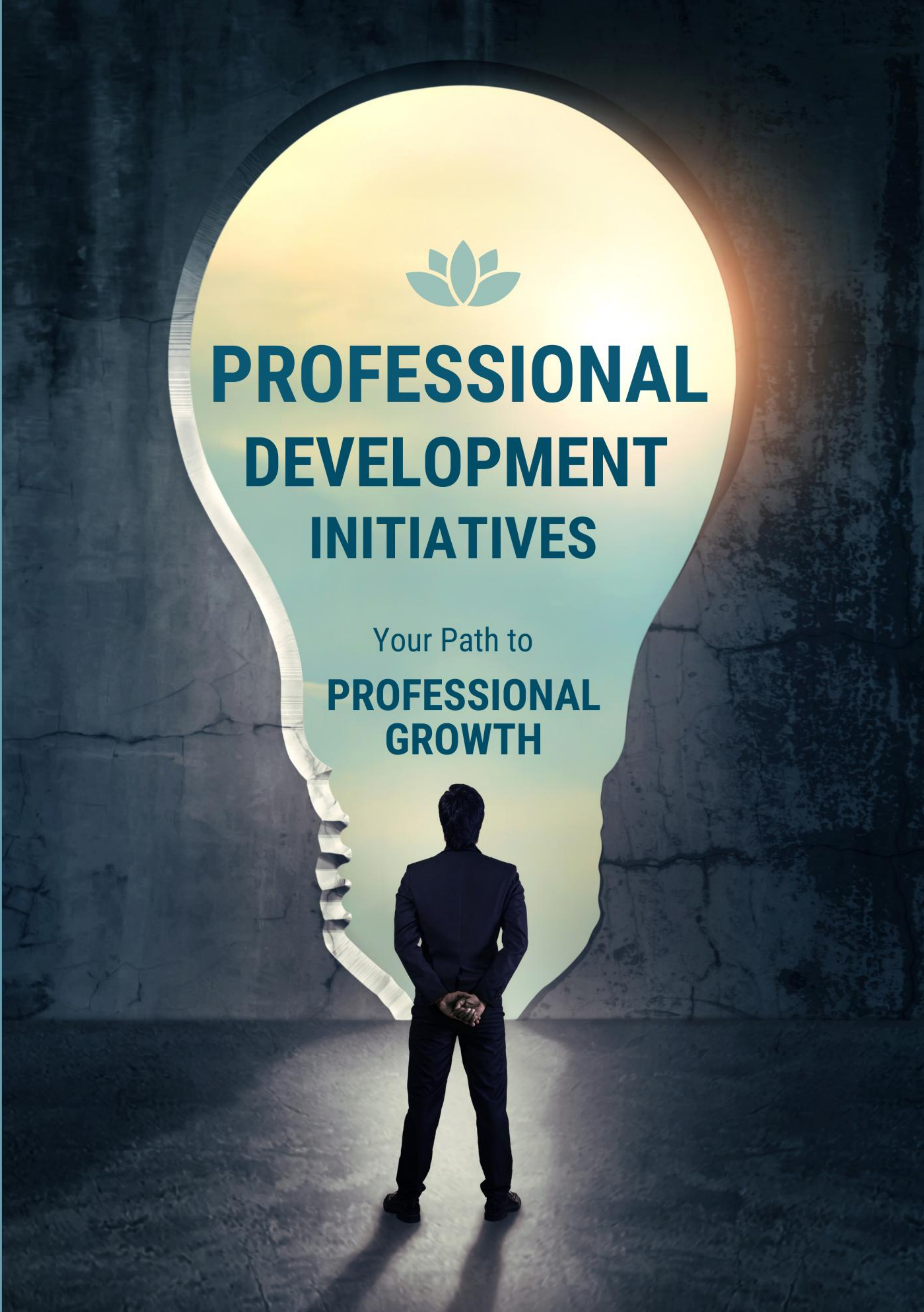
I hope you find this edition of the Quarterly Digest highly insightful.

(Vinay Kumar Sanduja)
Editor & Managing Director, IPA-ICMAI

PROFESSIONAL DEVELOPMENT INITIATIVES

Your Path to

PROFESSIONAL GROWTH

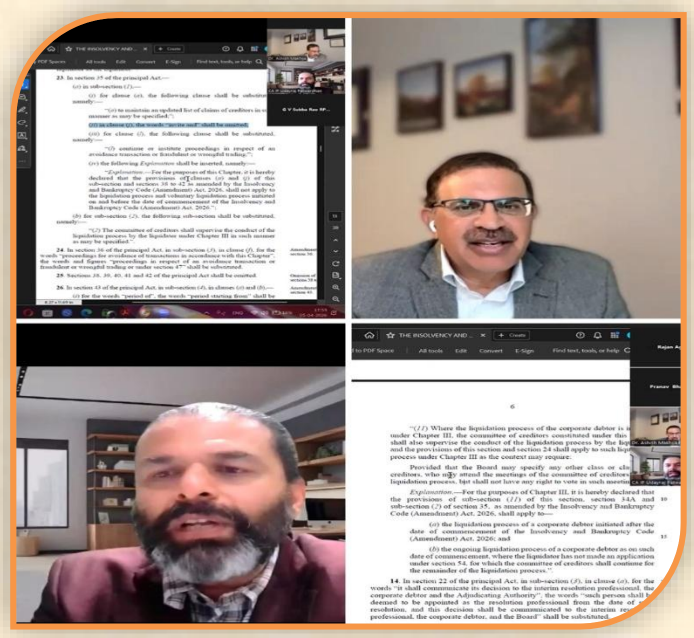


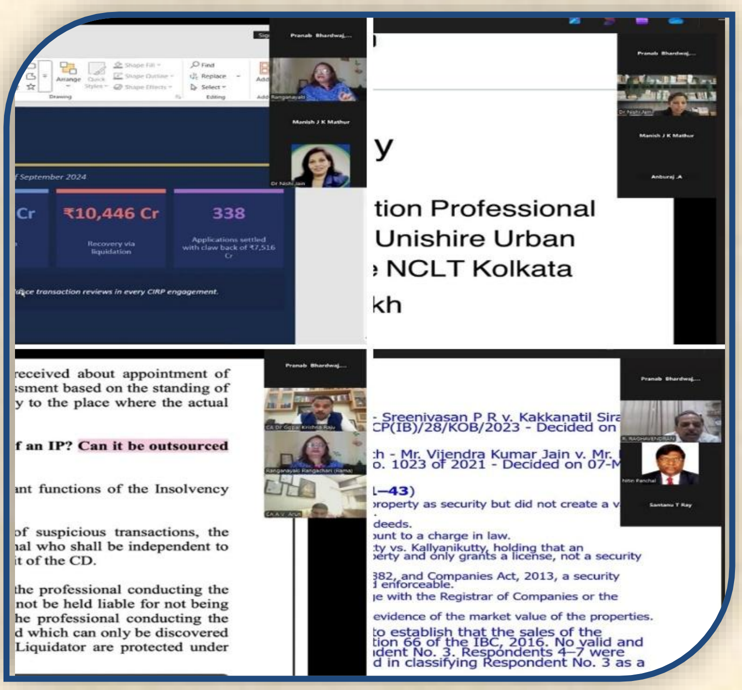
ACTIVITIES BY IPA-ICMAI

S. NO	Program/ Event	No. of Programs
1	Workshop	7
2	Seminar	1
3	Certificate Training Program	6
4	Executive Development Programme	1
5	Webinar/ Learning Session	4
6	Others (Conclave/PREC/Mediation)	3
	Total	22

ONLINE PROGRAMS

IPA-ICMAI organised a Webinar Series on "IBC 2026 Unpacked: A Clause-by-Clause Masterclass" on April 4, 2026, in association with IP Net.

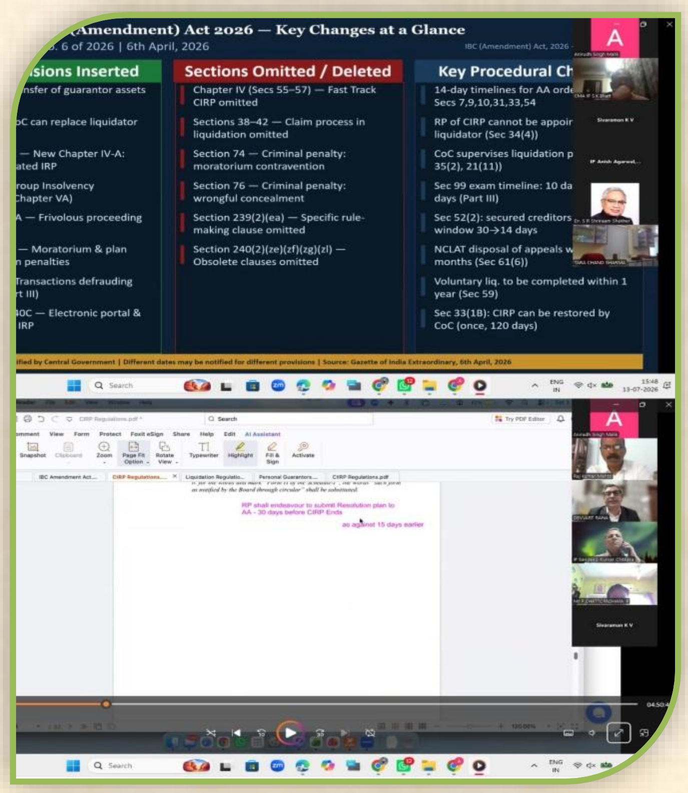




IPA-ICMAI organised a virtual Workshop on "Avoidance Transactions, including Case Studies, Forensic and Transaction Review Engagements (with reference to the latest amendments under the IBC)" on April 19, 2026.

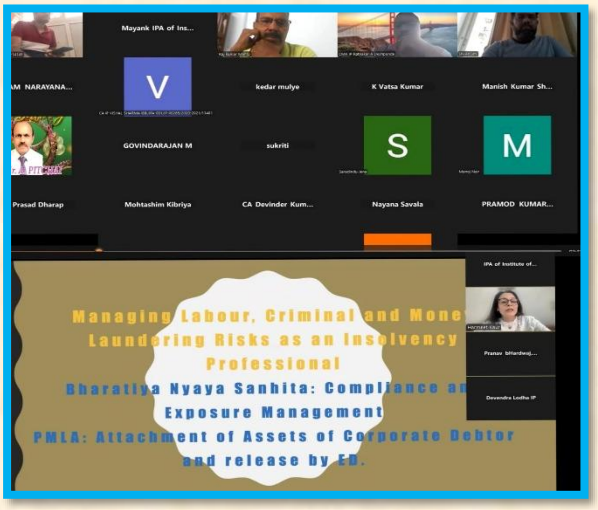
IPA-ICMAI, in association with the Association of Insolvency Professional Entities (AIPE), organised a virtual Webinar on "Decoding the Amendments: Navigating IBC's Transformative Shifts – Strategy, Compliance and Stakeholder Impact" on April 24, 2026.

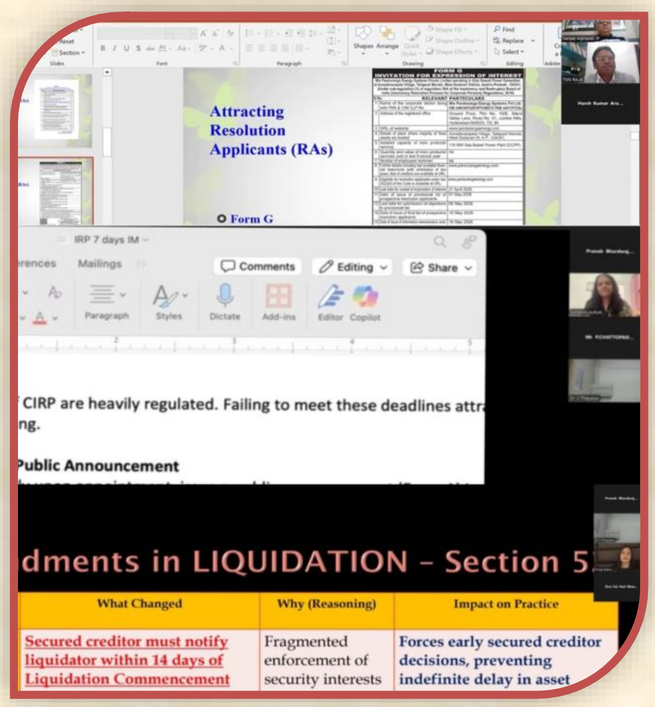
IPA-ICMAI organised a Two-Day Learning Session on "CIRP Strategy & CoC Management" on April 25–26, 2026.



IPA-ICMAI organised a Workshop on "Amendments to IBBI Regulations (IBBI Discussion Paper dated April 15, 2026)" on May 2, 2026.

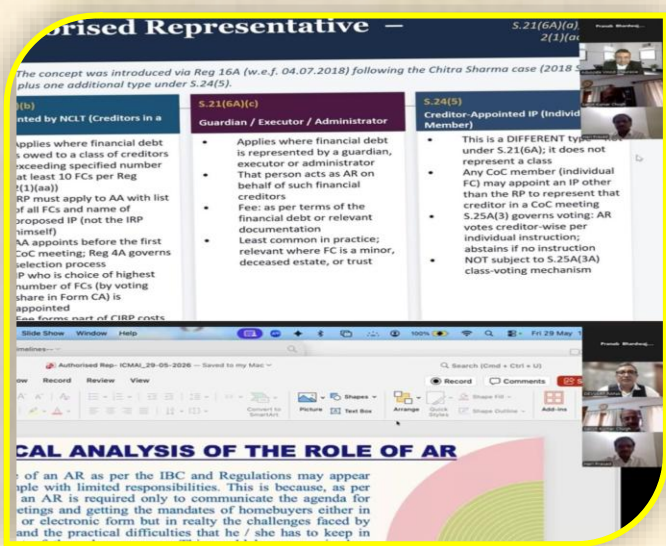
IPA-ICMAI organised a virtual Workshop on "Managing Labour, Criminal and Money Laundering Risks as an Insolvency Professional" on May 10, 2026.



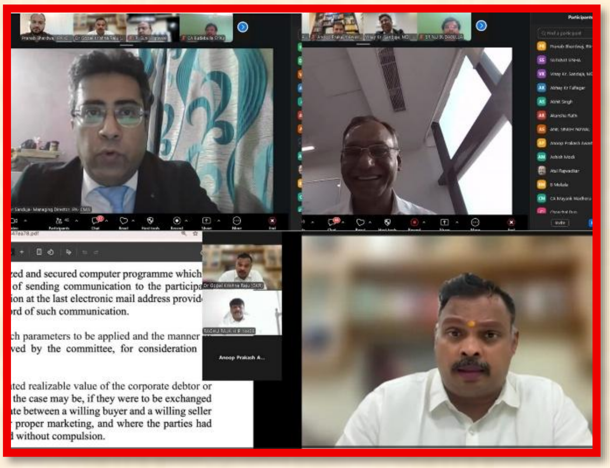


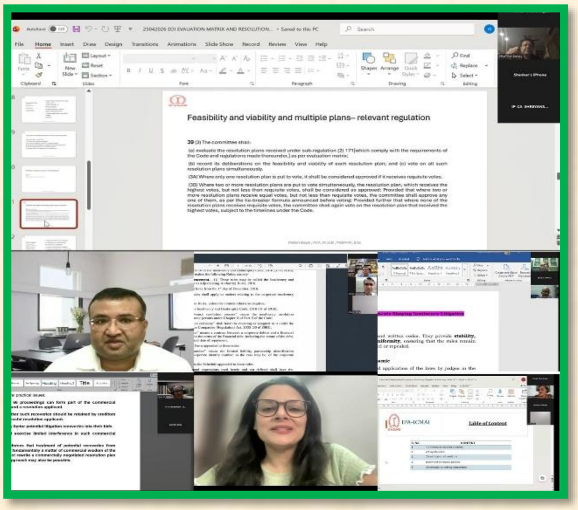
IPA-ICMAI organised a Two-Day Learning Session on "Resolution Process under the IBC: The Real Execution Strategy" on May 23–24, 2026.

IPA-ICMAI organised an Advanced Workshop on "Role of Authorised Representatives under the IBC, 2016" on May 29, 2026.



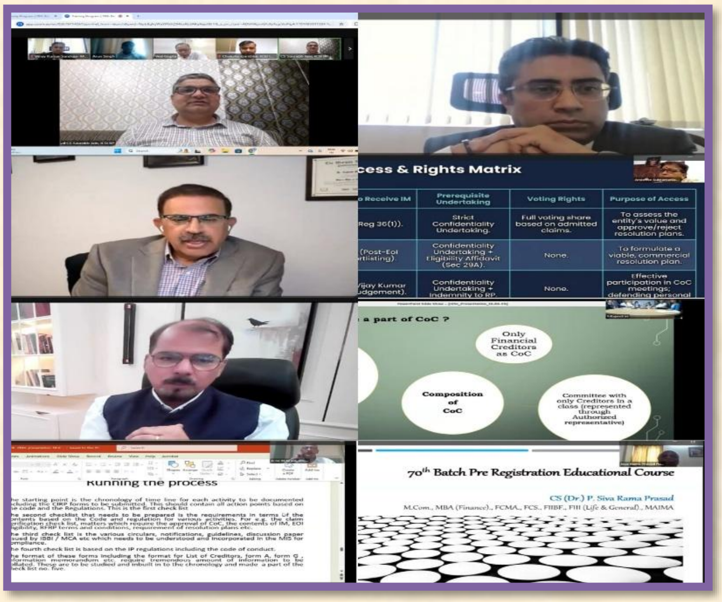
IPA-ICMAI organised an Advanced Workshop on "CIRP & Liquidation: Amendments, Challenges and Timelines" on June 5, 2026.

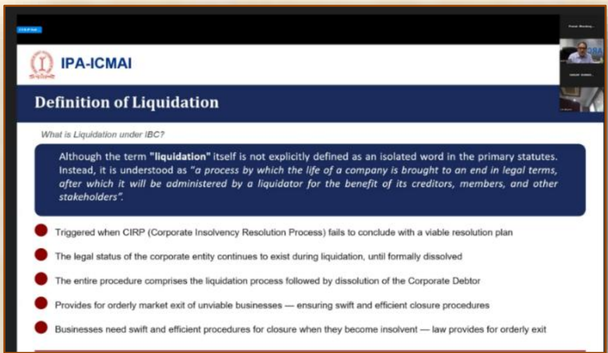




IPA-ICMAI organised the Executive Development Program on Insolvency Litigation & Advocacy under the IBC from June 12–14, 2026.

IPA-ICMAI, jointly with IIIPI and ICSI IIP, organised the 70th Batch of the Pre-Registration Educational Course (PREC) from June 15–21, 2026.





IPA-ICMAI organised an Advanced Workshop on Liquidation under the IBC, 2016 on June 26, 2026.

IN PERSON PROGRAMS

IPA-ICMAI organised a Two-Day Certificate Training Program for Professionals under the IBC Ecosystem on April 17–18, 2026, in Ahmedabad, in association with DBS Bank India and IP Foundation.

IPA-ICMAI, jointly with the Association of Corporate Advisors & Executives (ACAE) and IP Net, organised a Conclave on IBC in Kolkata on April 18, 2026.

IPA-ICMAI, in association with the Kerala Insolvency Professionals Forum (KIPF), organised a seminar on "IBC (Amendment) Act, 2026 – A Walkthrough" on April 23, 2026.

IPA-ICMAI, jointly with Missing Bridge, organised the 4th Batch of the Hybrid Mediation Training Program from May 4–10, 2026. The programme comprised virtual sessions from May 4–7, 2026, followed by in-person sessions on May 9–10, 2026.

IPA-ICMAI organised a Two-Day Certificate Training Program for Professionals under the IBC Ecosystem on May 15–16, 2026, in Bengaluru, jointly with IP Foundation and In.Corp.

IPA-ICMAI organised a Two-Day Certificate Training Program for Professionals under the IBC Ecosystem on May 16–17, 2026, in Delhi-NCR.

IPA-ICMAI organised a Two-Day Certificate Training Program for Professionals under the IBC Ecosystem on June 6–7, 2026, in Chandigarh, jointly with IP Foundation, BIG FM and Jujhar Group.

IPA-ICMAI organised a Two-Day Certificate Training Program for Professionals under the IBC Ecosystem on June 19–20, 2026, in Chennai, jointly with 3i Advisory and 3V Appraisers.

IPA-ICMAI organised a Two-Day Certificate Training Program for Professionals under the IBC Ecosystem on June 20–21, 2026, in Hyderabad, jointly with IP Foundation and HIPA.

IPA-ICMAI facilitated the Workshop for Insolvency Professionals organised by IBBI on June 25, 2026, in Mumbai.


ARTICLES

FROM ASPIRATION TO REGISTRATION: UNDERSTANDING THE JOURNEY TO BECOME AN INSOLVENCY PROFESSIONAL AND THE COMMON CHALLENGES FACED BY ASPIRING PROFESSIONALS

MR. PRANAB BHARDWAJ
MEMBERSHIP DEALING OFFICER
IPA OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 ("Code") marked a transformative shift in India's insolvency framework by introducing a time-bound, transparent, and creditor-driven insolvency resolution mechanism. At the heart of this framework stands the Insolvency Professional (IP), who performs multifaceted responsibilities requiring legal acumen, commercial prudence, financial expertise, ethical integrity, and sound professional judgment.

Recognising the significance of this role, the legislature and the Insolvency and Bankruptcy Board of India (IBBI) have prescribed a structured pathway before an individual is permitted to practise as an Insolvency Professional. The journey is intentionally rigorous, ensuring that only competent, ethical, and professionally qualified individuals enter the insolvency ecosystem.

During the course of dealing with enrolment applications and interacting with aspiring professionals, it becomes evident that while candidates are academically competent and enthusiastic, many encounter avoidable challenges due to lack of awareness of the statutory requirements and procedural expectations. Understanding these requirements not only facilitates a smoother enrolment process but also lays the foundation for a successful professional career.

The Statutory Framework

The journey towards becoming an Insolvency Professional is primarily governed by the Insolvency and Bankruptcy Code, 2016, the IBBI (Insolvency Professionals) Regulations, 2016, the IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, and the Bye-Laws of the Insolvency Professional Agency.

Section 206 of the Insolvency and Bankruptcy Code, 2016 – Mandatory Enrolment and Registration

Section 206 of the Code provides that no person shall render services as an Insolvency Professional unless he or she is enrolled as a member of an Insolvency Professional Agency and registered with the Insolvency and Bankruptcy Board of India. Thus, enrolment with an IPA and registration with the Board are statutory prerequisites for practicing as an Insolvency Professional and not mere procedural formalities.

Eligibility to Become an Insolvency Professional

Regulation 4 of the IBBI (Insolvency Professionals) Regulations, 2016 prescribes the eligibility conditions for registration.

The Regulation provides that an individual shall not be eligible for registration if he or she:

- is a minor;
- is not a resident in India;
- does not possess the qualifications and experience specified under Regulation 5;
- is an undischarged insolvent;
- has applied to be adjudicated as an insolvent;
- has been declared to be of unsound mind;
- has been convicted of specified offences; or
- is not considered a "fit and proper person."

The "fit and proper" requirement extends beyond technical qualifications and includes assessment of integrity, reputation, character, competence, financial solvency, and absence of adverse regulatory findings. The objective is to ensure that individuals entrusted with insolvency proceedings inspire confidence among all stakeholders.

Regulation 5 – Qualification and Experience

While Regulation 4 determines who is eligible, Regulation 5 prescribes who is professionally qualified to become an Insolvency Professional.

The Regulation recognizes multiple pathways, including:

- Chartered Accountants, Company Secretaries, Cost Accountants and Advocates possessing the prescribed professional experience;
- Professionals having specified experience in law or management;
- Candidates completing the Graduate Insolvency Programme approved by IBBI; and
- Such other qualifications as may be notified by IBBI from time to time.

The Regulation ensures that every prospective Insolvency Professional possesses adequate academic qualifications coupled with substantial practical experience before entering the profession.

The Journey from Eligibility to Registration

The pathway to becoming an Insolvency Professional involves several carefully designed stages.

Stage I – Qualifying the Limited Insolvency Examination

An applicant is required to successfully clear the Limited Insolvency Examination conducted by IBBI. The examination evaluates the applicant's understanding of the Insolvency and Bankruptcy Code, allied laws, finance, valuation, ethics, and regulatory framework.

However, qualifying for the examination merely establishes technical competence; it does not confer the right to practice.

Stage II – Enrolment with the Insolvency Professional Agency

An applicant is required to apply for enrolment with the Insolvency Professional Agency within the prescribed period after passing the examination.

The enrolment application is examined in accordance with the Code, applicable Regulations, Bye-Laws and Guidelines. During scrutiny, the Agency verifies eligibility, disciplinary history, professional conduct, declarations, and supporting documents. Where deficiencies are noticed, applicants are provided an opportunity to furnish clarifications or additional documents before a final decision is taken. Upon satisfaction, the Agency grants Professional Membership and issues the Certificate of Membership.

Stage III – Completion of the Pre-Registration Educational Course (PREC)

After enrolment, the applicant is required to successfully complete the Pre-Registration Educational Course (PREC). The programme is intended to bridge the gap between theoretical understanding and practical insolvency practice by familiarising prospective professionals with real-life insolvency assignments, stakeholder management, documentation, ethical obligations, and procedural compliances.

Stage IV – Registration with IBBI

Upon successful completion of all prescribed requirements, the applicant becomes eligible to apply to IBBI for registration as an Insolvency Professional.

Registration signifies the commencement of professional responsibility rather than the culmination of the process.

Common Challenges Observed During the Enrolment Process

While processing enrolment applications, several recurring issues are frequently observed.

Incomplete Applications

Applications are often received with missing declarations, incomplete disclosures, unsigned forms, or inadequate supporting documents. Such deficiencies inevitably delay processing and require additional correspondence.

Applicants should ensure that every document is carefully reviewed before submission.

Inadequate Understanding of Eligibility Requirements.

Many applicants focus exclusively on educational qualifications while overlooking other statutory requirements such as the “fit and proper” criteria, disciplinary disclosures, and professional conduct.

Understanding the complete regulatory framework before applying significantly reduces avoidable deficiencies.

Delay in Seeking Enrolment

Some candidates postpone applying for enrolment after successfully clearing the Limited Insolvency Examination. Timely submission of applications ensures smoother processing and avoids unnecessary procedural complications.

Casual Approach towards Documentation

Every declaration submitted during enrolment carries legal significance. Incorrect disclosures, inconsistent information, or omission of material facts may adversely affect the application and undermine professional credibility.

Accuracy, transparency, and completeness should therefore remain paramount.

Viewing Membership as a Formal Requirement

Professional membership is often perceived merely as an administrative step preceding registration.

In reality, membership signifies admission into a regulated profession governed by statutory obligations, ethical standards, continuing professional education, and disciplinary oversight. It is the beginning of a lifelong commitment to professional excellence.

Limited Practical Exposure

Although candidates often possess sound theoretical knowledge, practical exposure to Corporate Insolvency Resolution Processes, Liquidation, claim verification, Committee of Creditors’ meetings, valuation, preparation of statutory reports, and stakeholder management remains limited.

Working under experienced Insolvency Professionals and actively participating in professional development programmes substantially enhances practical competence.

Conclusion

The insolvency profession occupies a position of immense trust within India’s economic and legal framework. Every Insolvency Professional is expected to balance competing stakeholder interests while maintaining complete independence, impartiality, transparency, and integrity.

The statutory pathway prescribed under the Code is not intended to create procedural hurdles. Rather, it serves as a robust quality assurance mechanism designed to ensure that individuals entering the profession possess not only the requisite qualifications but also the professional character necessary to discharge their responsibilities effectively.

Aspiring Insolvency Professionals should therefore approach every stage—from eligibility and examination to enrolment, educational training, and registration—not merely as compliance requirements but as opportunities to strengthen their professional foundation.

A successful Insolvency Professional is ultimately distinguished not by the certificate of registration alone, but by continuous learning, ethical conduct, technical competence, and the confidence reposed in him or her by stakeholders and the insolvency ecosystem as a whole.

AVOIDANCE PROCEEDINGS IN CIRP: LEGAL PRINCIPLES AND PRACTICAL ISSUES

MR. CHANDAN CHOUBEY
RESEARCH SCHOLAR

Abstract

The Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016, focuses on maximizing the value of the assets of the corporate debtor, and creditors are treated fairly. The other key mechanism that supports this goal is the framework that regulates avoidance transactions, which enables insolvency professionals to recognize and attack any transaction that could have been made to unfairly benefit creditors before the insolvency process is initiated.

The avoidance proceedings under the Code mainly pertain to preferential transactions, undervalued transactions, extortionate credit transactions, and fraudulent trading, regulated by Sections 43 to 51 and Section 66 of the IBC. These sections permit the resolution professional or liquidator to apply to the National Company Law Tribunal to have suitable relief granted, such as an overturn of such transactions and the reversion of assets to the insolvency estate.

Judicial interpretations of the National Company Law Appellate Tribunal and the Supreme Court over the years have made it clear what the avoidance proceedings should cover, the requirements, and the consequences of the proceedings. The landmark decisions have highlighted the responsibility of the Resolution Professional to carry out detailed investigations of the suspect transactions and have touched upon important matters like continuation of the application of avoidance after the resolution plan is approved and distribution of recoveries after such proceedings.

Although there is a statutory framework, and the jurisprudence has evolved in certain aspects, avoidance proceedings still pose a number of practical challenges when undergoing CIRP. These involve challenges in getting financial documents, the time lag in forensic investigations, lack of funds to conduct litigation, complicated related party structures, and long adjudication processes by tribunals. These difficulties tend to impede the successful implementation of avoidance measures and affect recovery prospects of creditors.

The paper discusses the law of avoiding proceedings under the IBC, evaluates the important trends in judicial decision-making, and also provides practical considerations among insolvency practitioners in CIRP. It also talks about possible reforms that can enhance the effectiveness of avoidance mechanisms and increase the value recovery in the insolvency regime in India.

1. Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a transformative shift in India's bankruptcy system by establishing a time-limited and creditor-based system in settling financial strains of corporate organizations. The main aim of the Code is to maximize the value of assets of the corporate debtor and treat all the parties fairly. To this end, the IBC has introduced clauses that allow the reversal of some of the transactions that the corporate debtor had made before the insolvency procedure begins to unfold, and this might have unfairly favored the interests of the creditors.

In most instances, troubled businesses conduct business transactions right before the commencement of insolvency that divert resources, benefit a few creditors, or sell property to other parties at underpriced rates. These transactions can greatly decrease the value of the insolvency estate that can be distributed to creditors. In acknowledging this risk, the Code gives a systematic process of identifying and reversing such transactions by avoidance proceedings.

The major types of avoidance transactions under the IBC are preferential transactions, undervalued transactions, extortionate credit transactions, and fraudulent or wrongful trading, which are governed by Section 43 to 51 and Section 66 of the Code. These rules will enable the Resolution Professional (RP) or liquidator to inquire into previous dealings of the corporate debtor and, as deemed necessary, put applications before the National Company Law Tribunal (NCLT) to seek suitable remedies, such as rescission of the transaction or restitution of assets to the insolvency estate.

The meaning and application of the provisions under avoidance have changed over the years with a number of decisions by the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India. Cases that have been judged have shed light on important issues like scope of preferential transactions, responsibilities of the resolution professional in probing suspected transactions, continuance of avoidance proceedings once a resolution plan has been approved, and treatment of recoveries realized by such proceedings.

Although there is a clear statutory framework, the practical application of the avoidance provisions is often a challenging task in the Corporate Insolvency Resolution Process (CIRP). Some common problems that insolvency professionals face include poor access to financial records, non-cooperation with promoters, delays in forensic investigations, complex related-party structures, and an extended period of litigation by adjudicating authorities. These issues can threaten the success of avoidance actions and decrease the possible recovery of creditors.

Avoidance proceedings in this context are very important in ensuring that the value of the corporate debtor is not destroyed and justice is upheld in the insolvency process. The availability of a robust mechanism of detection and reversal of suspect transactions, besides enhancing creditor confidence, facilitates transparency and accountability in corporate governance.

This paper discusses the legal principles of avoidance proceedings in CIRP, the major judicial developments in interpreting the avoidance provisions, and the practical issues of seeking such applications in front of the adjudicating authorities. Possible reforms to improve the effectiveness of avoidance mechanisms in an emerging insolvency regime in India are also discussed.

2. Statutory Framework for Avoidance Transactions

The avoidance transactions framework in the Insolvency and Bankruptcy Code, 2016, is aimed at protecting the insolvency estate of the corporate debtor and preventing any stakeholder from having an unfair advantage due to the transactions made before the insolvency proceedings have been initiated. The code gives the resolution professional (RP) or liquidator the ability to examine the previous dealings of the corporate debtor and reverse the dealings that are harmful to the creditor interests.

The statutory regulations that are concerned with avoidance transactions are mainly found in Sections 43 to 51 and Section 66 of the Code. All these provisions give the legal reasons to identify, investigate, and reverse transactions that might have impacted negatively on the value to be distributed among creditors during the Corporate Insolvency Resolution Process (CIRP).

2.1 Preferential Transactions (Sections 43–44)

Section 43 of the IBC refers to the transactions in which the corporate debtor transfers property or an interest in property to the benefit of a creditor, surety, or guarantor to a position where such person is in a more favorable position to receive priority of payment than other creditors in the event of a liquidation.

A look-back period, within which such transactions could be reviewed, is also prescribed in it:

- Two years before the date of commencement of insolvency in case of a transaction with related parties.
- One year before the date of insolvency of transactions with other parties.

In case the National Company Law Tribunal finds that a preferential transaction has been made, the tribunal may issue orders to rewind the status of the position before the transaction was made, which may involve reversal of the transaction or restoration of possession of the transferred property.

2.2 Undervalued Transactions (Sections 45–48)

The following sections (45 to 48) address undervalued transactions, which are transactions where the corporate debtor transfers assets or property at a consideration that is much less than the value of the asset.

These kinds of transactions can occur when assets are sold to related parties or promoters at prices significantly lower than the market value and thus decrease the asset base of the corporate debtor. In case such transactions are found, the resolution professional can make an application before the judging body to obtain suitable relief, which may involve restoration of the property or damages.

Where the transaction is established to have been made with the aim of defrauding creditors, the tribunal can give harsher penalties under Section 49.

2.3 Extortionate Credit Transactions (Sections 50–51)

Sections 50 and 51 deal with the topic of extortionate credit transactions, which is associated with the granting of credit to the corporate debtor at unconscionable or grossly unfair terms. These are usually transactions with very high interest rates or repressive terms of repayment from a company that is financially crippled.

The code enables the adjudicating authority to disregard such transactions in case they were made within the two years before the insolvency commencement date. The tribunal can rearrange the terms of the transaction or rescind the debt altogether in case it concludes that the credit arrangement was extortionate.

2.4 Fraudulent or Wrongful Trading (Section 66)

Section 66 of the IBC covers fraudulent or wrongful trading by a director or partner of the corporate debtor. This is to enable the tribunal to put persons personally in the dock in case it is proved that the business of the corporate debtor was operated with the aim of defrauding the creditors or any other fraudulent reason.

The National Company Law Tribunal can direct the individuals in question to make contributions towards the assets of the corporate debtor in case it concludes that such a behavior took place.

2.5 Role of the Resolution Professional

The responsibility of identifying and pursuing avoidance transactions primarily lies with the **Resolution Professional** during the CIRP. The RP is required to conduct a thorough review of the corporate debtor’s financial affairs, including examination of:

- financial statements
- related party transactions
- bank records and loan agreements
- asset transfers and security interests

The **IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** further prescribe timelines within which the RP must form an opinion regarding avoidance transactions and file appropriate applications before the adjudicating authority.

2.6 Objective of Avoidance Provisions

The avoidance transaction framework serves multiple objectives:

1. **Protection of creditor interests** by preventing preferential treatment.

2. **Preservation of the insolvency estate** by reversing value-eroding transactions.
3. **Promotion of fairness and transparency** in insolvency proceedings.
4. **Deterrence against fraudulent conduct by promoters and management**.

Through these provisions, the Insolvency and Bankruptcy Code, 2016 seeks to ensure that the insolvency process remains equitable and that all creditors receive fair treatment based on the statutory priority framework.

3. Practical Challenges in Avoidance Applications

Although the avoidance transaction regime under the Insolvency and Bankruptcy Code, 2016, offers a detailed legal framework to unwind transactions that erode value, the application of the regime in the real world through the Corporate Insolvency Resolution Process (CIRP) tends to face a number of operational and procedural difficulties. Resolution professionals and insolvency professionals are often faced with challenges when determining, investigating, and enforcing avoidance applications in the National Company Law Tribunal. These obstacles can greatly affect the efficacy of avoidance proceedings and, ultimately, creditor recoveries.

The key practical challenges are discussed below.

3.1 Lack of Access to Books of Accounts and Financial Records

One of the most common challenges faced by Resolution Professionals is the **non-availability of complete financial records** of the corporate debtor. Promoters and former management often fail to cooperate with the Resolution Professional and may not provide access to:

- books of accounts
- statutory registers
- bank statements
- agreements and contracts
- related party transaction details

In the absence of reliable financial records, it becomes extremely difficult for the Resolution Professional to identify suspicious or preferential transactions within the prescribed look-back period.

3.2 Non-Cooperation from Promoters and Management

The other major obstacle is the uncooperative promoters, directors, and key managerial staff. In a number of CIRP cases, the suspended board of directors either postpones the procedure of submitting information or makes partial disclosures.
The code allows the resolution professional to request tribunal directions in the event of non-cooperation, which might in turn lead to further delays in solving the insolvency process.

3.3 Delay in Conducting Forensic Audits

Avoidance transactions often involve complex financial arrangements and layered corporate structures, which should be thoroughly examined with the help of forensic audits. Nevertheless, there are a number of issues in carrying out a forensic audit in CIRP:

- Engagement of forensic auditors can be time-consuming.
- Historical financial documents can be missing.
- A trail of transactions can have more than one party.
- investigation schedules can be longer than CIRP deadlines.

As the CIRP is supposed to be filled in a time-constrained system, any delays in the forensic investigations may impact prompt filing of the avoidance applications.

3.4 Funding Constraints for Avoidance Litigation

Avoidance proceedings can be very expensive, and include:

- forensic audit expenses

- legal fees
- expert advisory services
- litigation costs

The corporate debtor, in most cases of insolvency, might not have the funds to undertake such litigation. Despite the Committee of Creditors (CoC) approving funding these expenses, in some cases creditors are reluctant to fund them as they are uncertain about recovering any of their money in case of avoidance actions.

3.5 Complex Related-Party Structures

Related-party arrangements are common in avoidance transactions, such as asset transfers to promoter-controlled parties or group companies. These transactions can be organized so as to have various tiers of corporate bodies that it becomes hard to know the actual path of money.

These complicated structures may need a lot of research to determine:

- beneficial ownership
- control relationships
- final users of the transaction.

This intricacy can greatly postpone the investigation.

3.6 Burden of Proof and Evidentiary Requirements

In avoidance proceedings, the Resolution Professional bears the **burden of establishing that a transaction is preferential, undervalued, or fraudulent as per the applicable provisions of the Code.**

This involves the demonstration of a great deal of documentary evidence, including:

- **financial statements**
- **valuation reports**
- **transaction agreements**
- **bank records**

This evidence is often difficult to get because of lost records or non-cooperation of old management in most instances.

3.7 Delay in Adjudication of Avoidance Applications

Another major challenge is the **delay in adjudication of avoidance applications** before the National Company Law Tribunal. Such applications can take long durations to be processed due to heavy case loads and complexities involved in the procedure.

In some of the cases, even after
• consent to a resolution plan.
• finalization of liquidation process.

These delays bring in uncertainty on the recovery and distribution of assets that come about as a result of avoidance proceedings.

3.8 Uncertainty Regarding Treatment of Recoveries

It has been greatly debated that recoveries as a result of avoidance transactions should be treated in a particular manner. There are often questions about whether such recoveries should

- form a part of the insolvency estate to be distributed among creditors, or
- be vested in the successful resolution applicant upon the resolution plan being approved.

Despite the efforts by judicial pronouncements to deal with this problem, there still remains practical uncertainty in some cases.

3.9 Strict CIRP Timelines

CIRP is a time-bound process with timelines prescribed by the Code for various activities. But the identification and recovery of avoidance transactions may involve complex financial analysis and investigation, which may not fit within these timelines.

As a result, resolution professionals may struggle to meet these deadlines for investigations and applications.

3.10 Coordination with Other Regulatory Authorities

In some cases, avoidance transactions may overlap with investigations conducted by other regulatory authorities such as enforcement agencies or tax authorities. Coordination between insolvency proceedings and such parallel investigations can create additional procedural complexities.

4. Recommendations for Strengthening the Avoidance Framework

While the avoidance transaction provisions under the Insolvency and Bankruptcy Code, 2016 provide a strong statutory mechanism to address fraudulent and value-eroding transactions, practical experience from several CIRP cases indicates that certain structural and procedural improvements are necessary to enhance their effectiveness. Strengthening the avoidance framework will not only improve recoveries for creditors but also reinforce transparency and accountability within the insolvency ecosystem.

The following measures may be considered to improve the functioning of avoidance proceedings in India.

4.1 Strengthening Investigative Mechanisms

Avoidance applications often require detailed financial investigation to establish the nature and intent of transactions. The **Resolution Professional (RP)** should be supported through stronger investigative mechanisms, including:

- early appointment of forensic auditors
- standardized investigation procedures
- enhanced access to financial data from banks and statutory authorities

The Insolvency and Bankruptcy Board of India may consider issuing detailed guidelines on **investigation methodologies for avoidance transactions**, which would assist Resolution Professionals in identifying suspicious transactions more efficiently.

4.2 Ensuring Timely Availability of Financial Records

One of the key obstacles in avoidance proceedings is the **non-availability of financial records**. Promoters and former management should be required to provide complete records immediately upon commencement of CIRP.
Stricter enforcement of compliance requirements may be introduced, including:

- penalties for non-cooperation by promoters
- mandatory digital preservation of financial records
- stronger enforcement of record submission obligations

Such measures would significantly improve the ability of Resolution Professionals to conduct timely investigations.

4.3 Dedicated Adjudication for Avoidance Applications

Avoidance applications often remain pending before the National Company Law Tribunal due to the heavy workload of insolvency cases. Establishing **dedicated benches or special procedures for avoidance matters** could expedite the adjudication process.

A faster adjudication mechanism would ensure that recoveries from avoidance transactions are realized within a reasonable timeframe.

4.4 Clarification on Treatment of Recoveries

The treatment of recoveries as a result of avoidance transactions is another area that needs to be regulated, especially where the resolution plan is already approved.

Well-defined rules can be implemented stating:

- the presence or absence of recoveries as a part of the insolvency estate.
- whether they ought to be shared with creditors.
- whether the resolution applicant is entitled to such recoveries or not.

It would be desirable to shed some light on this matter so as to reduce lawsuits and enhance some level of certainty for all the stakeholders.

4.5 Strengthening the Role of the Committee of Creditors

The Committee of Creditors (CoC) is a very important body in the management of the insolvency process. The CoC could contribute to the investigation of the avoidance transactions to a greater extent, which could enhance the accountability and resource distribution.

The CoC may:

- authorize the allocation of funds for forensic investigations.
- Check on avoidance application progress.
- monitor recovery efforts

This supervision would ensure that the avoidance proceedings are effectively pursued on behalf of the creditors.

4.6 Use of Technology and Data Analytics

The capacity to identify suspicious transactions can be greatly increased with the help of technological tools. Innovations in data analytics, artificial intelligence, and digital forensic tools can assist insolvency professionals to detect the trends of asset diversion and transactions involving related parties more effectively.

Data on corporate databases, banking information, and regulatory filings could be integrated to help identify potentially avoidable transactions faster.

4.7 Clearer Regulatory Guidelines

The release of regulatory guidelines on avoidance proceedings would help the Resolution Professional and the relevant authority to interpret these provisions.

These guidelines may include:

- investigation standards
- evidentiary requirements
- procedural timelines
- cooperation with other regulators

This will bring consistency in dealing with avoidance applications in insolvency proceedings.

4.8 Post-Resolution Continuation of Avoidance Proceedings

Even when the resolution plan has been approved, avoidance applications are often not decided in many CIRP cases. Providing a legal framework that would enable continuation of avoidance proceedings after the determination would help in ensuring that no recoveries are lost just because of procedural timelines.

This would reinforce the aim of maximizing the value of the insolvency estate.

5. Conclusion

The avoidance transaction regime of the Insolvency and Bankruptcy Code, 2016 is an important protection mechanism aimed at safeguarding the value of the corporate debtor and promoting fairness among creditors in the process of Corporate Insolvency Resolution Process (CIRP). The Code aims to eliminate the diversion or dissipation of assets before the insolvency proceedings begin by enabling the Resolution Professional to question the transactions involving preferential, undervalued, extortionate credit and fraudulent transactions.

The judicial interpretations by the National Company Law Tribunal, the National Company Law Appellate Tribunal and the Supreme Court of India over the years have contributed significantly to the scope and applicability of avoidance provisions. The high-profile cases have highlighted the importance of Resolution Professionals undertaking due diligence to ensure they understand the transactions between the suspects and have strengthened the overriding purpose of making the most of the insolvency estate to the creditors.

Nevertheless, there are still a number of challenges that the practical implementation of avoidance proceedings has to overcome. Limitations in access to financial records, uncooperative promoters, slow pace of forensic inquiry, inadequate funding to carry on litigation, and lengthy process of adjudication by tribunals are some of the factors that tend to undermine the success of avoidance applications. Such operational challenges can minimize the possible recovery of creditors and erode the overall performance of the insolvency system.

To deal with such challenges, a concerted effort by regulators, insolvency professionals, adjudicating authorities, and creditors will have to be in place. Enhancing investigative procedures, timely availability of financial data, the use of technological solutions to analyse transactions, and offering more straightforward regulatory frameworks can greatly improve the success of the avoidance procedures. Moreover, quicker processing of the avoidance applications and increased understanding of how recoveries would be treated would also enhance the insolvency ecosystem.

To sum up, avoidance proceedings is a necessary tool to safeguard creditor interests and ensure the integrity of the insolvency process. An effective and well established avoidance regime will deter fraudulent behavior by the corporate management as well as play a role in the larger task of creating an open, foreseeable and creditor accommodating insolvency regime in India.

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ROLE OF FREE TRADE AGREEMENTS IN RESOLUTION OF STRESSED ASSETS

MR. SUTANU SINHA
INSOLVENCY PROFESSIONAL

Abstract

The Insolvency and Bankruptcy Code, 2016 ("IBC") transformed India's insolvency framework by replacing fragmented and delayed recovery mechanisms with a consolidated, time-bound and creditor-driven process.

Within this structure, operational creditors occupy a complex and often controversial position. Although operational creditors such as suppliers, vendors, employees, statutory authorities and service providers are essential to the functioning of a corporate debtor, they possess limited participation rights in insolvency resolution. The Committee of Creditors ("CoC") remains dominated by financial creditors, while operational creditors generally receive only minimum statutory protection.

This article examines the legal and practical treatment of operational creditors under the IBC. It analyses the recommendations of the Bankruptcy Law Reforms Committee ("BLRC"), statutory provisions, judicial developments and practical experiences emerging from major insolvency cases, particularly the RBI's "Dirty Dozen" accounts. It further examines the position of MSMEs, the impact of judicial decisions such as Swiss Ribbons, Mobilox and Essar Steel, and the continuing tension between value maximisation and equitable stakeholder treatment.

Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 marked one of the most significant commercial law reforms in India. Prior to the IBC, insolvency proceedings were governed through multiple statutes including the Sick Industrial Companies Act, the Companies Act, the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act. The multiplicity of forums resulted in delay, value destruction and low recoveries.

The IBC sought to create a unified insolvency framework focused upon time-bound resolution, preservation of enterprise value and maximisation of creditor recovery. The Code introduced the Corporate Insolvency Resolution Process ("CIRP"), under which the management of a defaulting company shifts to an insolvency professional and commercial decisions are taken by the Committee of Creditors.

However, IBC deliberately distinguishes between financial creditors and operational creditors. While operational creditors can initiate CIRP under Sections 8 and 9, they ordinarily do not possess voting rights in the CoC constituted under Section 21. This distinction has generated continuing debate regarding fairness, commercial practicality and constitutional validity.

Operational creditors frequently include suppliers, transporters, service providers, employees and government authorities whose contributions are indispensable to the survival of a business. Yet in many insolvency cases they receive only a small fraction of their admitted claims. The position of operational creditors therefore reflects one of the most debated aspects of the Indian insolvency framework.

Concept and Statutory Position of Operational Creditors

Section 5(20) of the IBC defines an operational creditor as a person to whom an operational debt is owed. Section 5(21) defines operational debt as a claim arising from the provision of goods or services, employment dues, or statutory dues payable to government authorities.

Operational creditors include:

- suppliers of goods and raw materials;
- service providers;
- employees and workmen;
- statutory authorities and government departments; and
- trade creditors.

The IBC permits operational creditors to initiate CIRP under Sections 8 and 9. Before filing an application, the creditor must issue a demand notice and establish that there is no pre-existing dispute. The process is intended to ensure that insolvency proceedings are not misused as ordinary debt recovery proceedings.

Despite this right to initiate CIRP, operational creditors generally remain excluded from commercial control of the insolvency process. Under Section 21, the CoC consists primarily of financial creditors. Operational creditors may attend meetings only in limited circumstances and ordinarily do not possess voting rights.

The legislative rationale is that financial creditors such as banks and financial institutions are better equipped to evaluate restructuring proposals, assess viability and take long-term commercial decisions. Operational creditors, by contrast, are viewed as entities primarily concerned with payment for goods and services.

BLRC Approach and Legislative Philosophy

The Bankruptcy Law Reforms Committee laid the intellectual foundation of the IBC. The Committee recognised that operational creditors are essential to the commercial ecosystem, particularly in industries dependent upon supply chains and trade credit. However, it consciously differentiated operational creditors from financial creditors.

According to the BLRC, financial creditors possess expertise in credit evaluation, restructuring and viability assessment. Operational creditors usually extend short-term trade credit in the ordinary course of business and may lack the institutional ability to coordinate restructuring decisions.

The Committee therefore recommended:

a) both financial and operational creditors should be able to initiate insolvency proceedings;

b) financial creditors should control the CoC;

c) operational creditors should receive minimum statutory safeguards; and

d) operational creditors should receive at least liquidation value under a resolution plan.

This philosophy shaped the structure of the IBC. The Code prioritised speed, certainty and commercial decision-making by financial institutions while attempting to provide limited protection to operational stakeholders.

The BLRC also acknowledged the vulnerability of MSMEs, employees and trade creditors whose survival often depends upon timely payments. However, it stopped short of granting operational creditors substantive governance rights within the insolvency process.

Judicial Developments

Swiss Ribbons Pvt. Ltd. v. Union of India (2019)

Swiss Ribbons is the leading constitutional judgment concerning operational creditors. The principal challenge before the Supreme Court was whether differential treatment between financial and operational creditors violated Article 14 of the Constitution.

The Apex Court upheld the constitutional validity of the distinction. It held that financial creditors and operational creditors are not similarly situated. Financial creditors are involved in assessing the viability and financial structure of the corporate debtor from the beginning of the lending relationship, whereas operational creditors are primarily concerned with payment for goods and services.

The judgment validated:

• dominance of financial creditors in the CoC;
• limited participation rights of operational creditors;and
• differential treatment in resolution plans.

At the same time, the Court recognised that operational creditors must receive fair statutory protection under Section 30(2)(b).

Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.

The Supreme Court in Mobilox clarified the meaning of "pre-existing dispute" under Section 9. The Court held that insolvency proceedings are not substitutes for ordinary debt recovery litigation. Even a plausible dispute regarding the debt can defeat an operational creditor's insolvency application.

This judgment significantly influenced operational creditor litigation. While it prevented misuse of the IBC as a recovery mechanism, it also increased the burden upon operational creditors seeking to initiate CIRP.

Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta

Essar Steel became the most influential case concerning distribution under resolution plans. The Supreme Court held that equality of payment between financial and operational creditors is not mandatory. It reaffirmed the doctrine of CoC commercial wisdom and limited judicial interference with approved resolution plans.

The Court accepted that differential treatment may be commercially justified provided operational creditors receive the minimum amount required under Section 30(2)(b).

The decision strengthened the primacy of financial creditors while reinforcing only limited safeguards for operational creditors.

Other Important Decisions

In Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, the Supreme Court recognised the importance of preserving essential contracts and utility supplies during CIRP. The judgment indirectly strengthened the position of operational creditors supplying critical services.

Similarly, decisions concerning electricity distribution companies and essential suppliers recognised that current dues during CIRP should generally be treated as insolvency resolution process costs, thereby encouraging continuity of supply.

Operational Creditors in RBI's "Dirty Dozen" Cases

In 2017, the Reserve Bank of India identified twelve major stressed accounts for immediate insolvency proceedings under the IBC. These accounts collectively represented a substantial portion of India's non-performing assets and included companies such as Essar Steel, Bhushan Steel, Alok Industries and Monnet Ispat etc.

The "Dirty Dozen" cases became the first major practical test of the IBC framework. They also revealed the structural disadvantages faced by operational creditors.

Across most major cases:

- financial creditors controlled the CoC and resolution process;
- operational creditors received minimal recoveries;
- many suppliers suffered haircuts exceeding ninety percent; and
- MSME vendors faced severe financial stress.

In several cases, operational creditors effectively received only liquidation value despite successful continuation of the corporate debtor as a going concern.

Essar Steel highlighted the debate most sharply. Operational creditors argued that they were treated unfairly despite substantial value maximisation achieved through the resolution process. However, the Supreme Court ultimately upheld the commercial discretion of the CoC.

Similarly, in Alok Industries and Monnet Ispat, operational creditors reportedly suffered near-complete erosion of claims. These experiences demonstrated that although the IBC improved overall recovery rates compared with the pre-IBC regime, the gains accrued disproportionately to financial institutions.

MSMEs and Operational Creditors

MSMEs constitute a substantial proportion of operational creditors in Indian insolvency proceedings. Many small businesses supply raw materials, logistics, manufacturing inputs and specialised services to large corporate entities. Their financial survival often depends upon regular payment cycles.

Despite their economic importance, MSME operational creditors remain ordinary operational creditors under the IBC. The Code does not provide them:

- voting rights in the CoC;
- enhanced priority under Section 53; or
- guaranteed parity with financial creditors.

In practice, some protection is provided because resolution professionals and CoCs may continue dealing with critical suppliers during CIRP. Current dues incurred during the insolvency period are generally treated as CIRP costs and therefore receive priority payment.

The IBC has, however, introduced certain protections for MSME corporate debtors themselves. Section 240A relaxes eligibility restrictions under Section 29A, thereby permitting promoters of MSMEs to submit resolution plans. The introduction of the Pre-Packaged Insolvency Resolution Process ("PPIRP") for MSMEs also reflects legislative recognition of the vulnerability of smaller enterprises.

Nevertheless, MSME operational creditors continue to face severe bargaining disadvantages in large insolvency proceedings.

Challenges Faced by Operational Creditors

1. Lack of Decision-Making Power

Operational creditors remain largely excluded from negotiation and voting within the insolvency process. Their inability to influence resolution plans significantly weakens their bargaining position.

2. Heavy Haircuts

In many CIRPs, operational creditors receive only a small percentage of admitted claims. Since secured financial creditors dominate the debt structure and distribution waterfall, operational creditors frequently receive only liquidation value.

3. Delay and Litigation

Operational creditors often face prolonged litigation regarding claim verification, pre-existing disputes and distribution mechanisms. Smaller suppliers may lack the financial ability to sustain lengthy proceedings.

4. Structural Subordination

The distribution waterfall under Section 53 places operational creditors below insolvency resolution costs, secured creditors and unsecured financial creditors. This statutory structure substantially limits recoveries.

5. Vulnerability of MSMEs

MSME suppliers are particularly vulnerable because they often depend heavily upon a limited number of large corporate customers. Significant haircuts or delayed payments may threaten their commercial survival and become bankrupt themselves.

Recovery Trends and Emerging Developments

IBBI data indicates that the IBC has substantially improved recovery rates and strengthened credit discipline within the Indian economy. Resolution under the IBC has generally produced better outcomes for financial creditors than earlier insolvency mechanisms.

However, the same data reveals a clear asymmetry:

- financial creditors recover substantially higher amounts than operational creditors;
- operational creditors frequently receive only nominal payments; and
- unsecured trade creditors remain highly vulnerable.

Over time, certain improvements have emerged. Amendments to CIRP Regulations and judicial scrutiny have increased focus upon "fair and equitable treatment" of operational creditors. Courts have also recognised the commercial necessity of protecting essential suppliers and preserving supply chains during CIRP.

Nevertheless, the core architecture of the IBC continues to prioritise enterprise value maximisation and commercial wisdom of financial creditors over distributive equality.

Future Outlook and Possible Reforms

The future development of the IBC may require a more balanced approach between insolvency efficiency and stakeholder fairness. Excessive dilution of financial creditor control could undermine credit markets and restructuring efficiency. However, a system that consistently imposes devastating losses upon operational creditors may damage supply chains and discourage trade credit.

Possible reforms may include:

- consultative participation rights for large operational creditors;
- enhanced transparency in distribution decisions;
- special protection mechanisms for MSME suppliers;
- Payment of past dues to critical vendors, who continue during CIRP to keep the corporate debtors as a going concern;
- statutory recognition of critical vendors; and
- Stronger fairness review standards for discriminatory treatment.

Any reform must balance commercial efficiency with broader economic fairness. Operational creditors, especially suppliers and MSMEs, are integral to enterprise value creation and business continuity. Their continued marginalisation may weaken confidence in the insolvency framework.

Conclusion

The Insolvency and Bankruptcy Code, 2016 fundamentally transformed India's insolvency regime by introducing a consolidated, creditor-driven and time-bound framework. The Code strengthened recovery culture, improved credit discipline and significantly enhanced the effectiveness of insolvency resolution.

At the same time, the position of operational creditors remains one of the most debated aspects of the IBC. The legislative framework, based upon BLRC recommendations, consciously prioritised financial creditor control and commercial decision-making. Judicial decisions such as Swiss Ribbons and Essar Steel upheld this distinction as constitutionally valid and commercially rational.

However, practical experience—particularly in the RBI's "Dirty Dozen" cases and thereafter —demonstrated that operational creditors often bear disproportionate losses despite being indispensable to business continuity.

Suppliers, MSMEs and trade creditors remain structurally disadvantaged because they generally lack CoC control, possess limited bargaining power and occupy a lower position within the statutory distribution waterfall.

Although regulatory amendments and evolving jurisprudence have gradually improved safeguards for operational creditors, the IBC continues to prioritise enterprise value maximisation and financial creditor confidence over distributive equality.

The long-term legitimacy of the insolvency framework may ultimately depend upon achieving a more balanced approach that preserves efficiency while ensuring meaningful protection for operational stakeholders who sustain the productive economy.

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FROM SCC TO COC: THE COMMITTEE OF CREDITORS NOW CONTINUES THROUGH LIQUIDATION

MS. SHRISHTI GARG
INSOLVENCY PROFESSIONAL

Abstract

The Insolvency and Bankruptcy Code (Amendment) Act, 2026 marks a structural turning point in India's liquidation regime. By inserting **Section 21(11)** into the Code, the Committee of Creditors constituted during the corporate insolvency resolution process shall continue and shall supervise the conduct of the liquidation process by the liquidator, after the corporate debtor enters liquidation. **The IBBI (Liquidation Process) (Fourth Amendment) Regulations, 2026** operationalise this mandate, principally through a **Regulation 8**, and abolish the erstwhile Stakeholders' Consultation Committee that had performed a purely advisory role. This article traces the journey from the advisory Stakeholders' Consultation Committee to the supervisory Committee of Creditors, examining the new approval architecture under Regulation 8, including the matters that now require the committee's prior approval and voting. It analyses the Explanation to Section 21(11), which extends the new framework to liquidations already in progress where no application for dissolution under Section 54 has been filed, and considers the re-anchoring of claims and interest to the insolvency commencement date under amended **Regulation 16(2).** Drawing on a live real-estate liquidation involving more than two hundred homebuyers, the article sets out the practical steps a liquidator must take to transition mid-process reconstituting the committee, re-validating the authorised representative, and revising admitted claims and flags the open questions practitioners will confront as the new regime takes root.

1. Introduction

For as long as the Insolvency and Bankruptcy Code, 2016 ("the Code") has been in force, the creditors' collective decision-making body, the Committee of Creditors ("CoC"), operated during the corporate insolvency resolution process alone. Once resolution failed and the corporate debtor passed into liquidation, the CoC was understood to dissolve, and the liquidator stepped into a largely autonomous role, answerable to the Adjudicating Authority. That assumption no longer holds.

The Insolvency and Bankruptcy Code (Amendment) Act, 2026 has inserted a new sub-section (11) into Section 21 of the Code,[1] mandating that the CoC shall continue into, and supervise, the liquidation process. To give the amendment operational content, the Insolvency and Bankruptcy Board of India ("the Board") has notified the IBBI (Liquidation Process) (Fourth Amendment) Regulations, 2026,[2] which substantially recast the Liquidation Process Regulations. This article examines the shift from the advisory Stakeholders' Consultation Committee ("SCC") to the supervisory CoC, with particular focus on amended Regulation 8 and amended Regulation 16(2), and the practical consequences of transitioning a liquidation that is already well advanced.

2. The Earlier Framework: The Stakeholders' Consultation Committee

Under the position obtaining before the present amendment, the entry of a corporate debtor into liquidation extinguished the CoC.

[1]The Insolvency and Bankruptcy Code (Amendment) Act, 2026, notified on 6 April 2026 and brought into force w.e.f. 26 May 2026, inserting sub-section (11) in Section 21 of the Code.

[2]IBBI (Liquidation Process) (Fourth Amendment) Regulations, 2026, Notification No. IBBI/2026-27/GN/REG151 dated 1 June 2026,

In its place, the Liquidation Process Regulations provided for a Stakeholders' Consultation Committee (under the earlier Regulation 31A, now omitted) comprising all creditors of the corporate debtor, constituted by the liquidator from amongst the stakeholders, to advise him on the conduct of the liquidation. The defining feature of the SCC was that it was consultative, not decisional.

The liquidator was required to consult the SCC on enumerated matters, and the SCC tendered its advice by a vote of not less than sixty-six per cent. Critically, however, that advice did not bind the liquidator: he was entitled to take a different view, provided that he recorded the reasons in writing, submitted the records relating to the said decision to the Adjudicating Authority and to the Board within five days of the said decision, and included it in the next progress report. The SCC was thus a sounding board, valuable for transparency, but ultimately a body whose recommendations the liquidator could decline. This architecture is now history. The IBBI (Liquidation Process) (Fourth Amendment) Regulations, 2026 omitted Regulation 31A.

3. The Key Change: Section 21(11) of the Code

The newly inserted Section 21(11) provides that, where the liquidation of a corporate debtor is initiated under Chapter III, the CoC constituted under Section 21 "shall also supervise the conduct of the liquidation process by the liquidator," and that the provisions of Section 21 (constitution and functioning of the CoC) and Section 24 (meetings of the CoC) shall apply to the liquidation, as the context may require. In section 21 of the principal Act, after sub-section (*10*), the following sub-section shall be inserted, namely:-

"(11) Where the liquidation process of the corporate debtor is initiated under Chapter III, the committee of creditors constituted under this section shall also supervise the conduct of the liquidation process by the liquidator, and the provisions of this section and section 24 shall apply to such liquidation process under Chapter III as the context may require: Provided that the Board may specify any other class or classes of creditors, who may attend the meetings of the committee of creditors during liquidation process, but shall not have any right to vote in such meetings."

Two features deserve emphasis.

Section 21 of the code: Committee of creditors. First, by importing Section 21 the Liquidator must carry the process of CoC constitution as followed during the Corporate Insolvency Resolution process. The committee of creditors shall comprise all financial creditors that are not related parties of the corporate debtor (or Unrelated operational creditors, where there is no unrelated financial creditor). With the Introduction of Section 21 (11), the operative verb is "supervise" the creditors' body is no longer a consultee but an overseer of the liquidation process

Section 24 of the code: Meeting of committee of creditors.

Second, by importing 24 the legislature carries the process followed in Corporate Insolvency Resolution process including notice, quorum, meetings and voting into liquidation.

4. The New Regulatory: Amended Regulation 8

The Substituted Regulation 8 of the Liquidation Process Regulations supplies the operational detail. Its scheme may be summarised as follows.

Continuity and composition. The CoC constituted under Section 21 of the code continues to function during liquidation. A secured creditor who has not relinquished its security interest does not form part of the committee. Conversely, a creditor whose debt remains partly unsatisfied and is treated as unsecured by reference to the Explanation to Section 53(1)(b) is a member for the remaining portion of its debt and votes to the value of that remaining debt.

In the principal regulations, for regulation 8, the following regulations shall be substituted, namely:-

"(1) The committee of creditors constituted under section 21 shall continue to function during the liquidation process: Provided that a secured creditor who has not relinquished his security interest under section 52 shall not be part of the committee. Provided further that with reference to Explanation in clause (b) in

sub-section (1) of section 53, the creditor whose value of debt remains and is considered as unsecured creditor shall be a part of the committee for the remaining portion of debt and shall have the voting rights to the value of the remaining debt.

Meetings. Regulations 18 to 26 of Chapter VI and Chapter VII of the CIRP Regulations apply *mutatis mutandis* to meetings of the committee, and the first meeting must be convened within seven days of the liquidation commencement date. In the principal regulations, for regulation 8, the following regulations shall be substituted, namely:-

"(2) The provisions of regulations 18 to 26 of Chapter VI and Chapter VII of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall apply mutatis mutandis to meetings of the committee under liquidation proceedings:

Provided that the first meeting of the committee shall be convened within seven days of liquidation commencement date.

At every meeting the liquidator must place before the committee the actual liquidation cost (with reasons for any excess over the estimate), the consolidated status of all legal proceedings, and the progress of the process.

Matters requiring prior approval (vote of not less than fifty-one percent). The liquidator may not, without the committee's prior approval, deal with the appointment and remuneration of professionals, his own fee, liquidation costs, valuation, the continuation or institution of suits, the extension of payment of balance sale consideration beyond ninety days, arrangements for distribution, or any other matter relating to the liquidation save those reserved to the higher threshold.

Matters require sixty-six per cent approval. A higher bar approval by a voting share of not less than sixty-six per cent applies to the sale under Regulation 32 of IBBI (Liquidation Process) Regulations, 2016 (including the manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process), the manner of pursuing avoidance and wrongful-trading proceedings after dissolution and the distribution of their proceeds, and the assignment of not-readily-realisable assets.

Access and representation. The committee is entitled to all relevant records and information it requires. Significantly, the authorised representative appointed during the CIRP continues to act for the creditors in a class during liquidation, with sub-regulations (3A) to (12) of Regulation 16A of the CIRP Regulations[3] applying *mutatis mutandis*. The authorised representative thus carries over from the CIRP, but the resolution professional does not. Under Section 34(4) of the Code, as substituted by the Amendment Act, 2026, an insolvency professional who acted as the resolution professional in the CIRP under Chapter II cannot be appointed as the liquidator for the same corporate debtor; the liquidator is instead chosen from names recommended by the Board

5. From Advice to Supervision

Under the SCC, the liquidator made the decisions, and the committee only gave advice; under the new Regulation 8, for a wide range of actions the committee carries the decision and the liquidator executes it. Several formerly discretionary steps most importantly the design and conduct of the sale, the fixing of the reserve price, the reduction of the reserve price on a failed auction, the rejection of the highest bid, and the assignment of distressed claims are now conditioned on the committee's prior approval.

In consequence, the liquidator's file must now be built around committee approvals rather than around recorded consultations. Agendas, notices, quorum, voting records and minutes assume the same evidentiary weight in liquidation that they carry in the resolution process. The premium on procedural discipline rises accordingly, and so does the risk that a sale or distribution effected without the requisite approval may be open to challenge.

6. Effect on Ongoing Liquidations

The most consequential aspect of the amendment for the existing caseload is its

[3]Regulation 16A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — representation of creditors in a class through an authorised representative.

temporal reach. The Explanation to Section 21(11) provides that the new framework applies both to liquidations initiated after the commencement of the Amendment Act and to ongoing liquidations as on that date, provided the liquidator has not yet made an application for dissolution under Section 54. For such ongoing matters, the CoC continues for the remainder of the process.

"Explanation. — … the provisions of sub-section (11) … shall apply to —(b) the ongoing liquidation process of a corporate debtor as on such date of commencement, where the liquidator has not made an application under section 54, for which the committee of creditors shall continue for the remainder of the liquidation process."

The operative trigger, therefore, is the dissolution application. Where it has not been filed, the liquidator must wind down the SCC and constitute and operate a CoC for the balance of the process, irrespective of how far the liquidation has otherwise progressed. This creates a meaningful transition burden for matters that may have run for a year or more, with several SCC meetings already held and major steps already taken.

7. A New Cut-off Date for Interest: Amended Regulation 16(2)

A financially significant change lies in amended Regulation 16(2). The earlier text required a person to prove its claim, including interest, "as on the liquidation commencement date." The amendment substitutes that phrase with "for the newly submitted claims, if any, as on the insolvency commencement date,"

"(ii) in sub-regulation (2), for the words "including interest, if any, as on the liquidation commencement date", the words "for the newly submitted claims, if any, as on the insolvency commencement date" shall be substituted."

and inserts a new sub-regulation requiring a stakeholder to update its claim as and when it is satisfied, in whole or in part, from any source after the insolvency commencement date.

The reference point for a claim and, on one view, for the computation of its interest component thus moves from the liquidation commencement date back to the insolvency commencement date ("ICD"). For creditors with long-running interest entitlements, particularly financial creditors and homebuyers, the difference between the two dates can be substantial. The reading that the interest cut-off shifts to the ICD is a natural one, given its direct effect on admitted amounts and on the eventual distribution under Section 53. Fixing claims and interest to a single date i.e. The insolvency commencement date brings consistency and certainty to the amounts admitted , whether in resolution process or in liquidation..

8. A Real Case: A Real-Estate Liquidation

I am presently handling a liquidation which is more than a year old; eleven SCC meetings have been held, and most major steps are complete. Yet, because no application for dissolution under Section 54 has been filed, the Explanation applies squarely the SCC must give way, and a CoC must be reconstituted and operated for the remainder. The corporate debtor is a real-estate project with more than two hundred homebuyers, which makes it a useful example of how the transition works. The steps taken are set out below.

1. **Convening a CoC meeting in place of an SCC meeting.** A meeting of the Committee of Creditors not the SCC has been called, with the committee constituted in accordance with Section 21(2) of the Code. Earlier, the SCC comprised all creditors of the corporate debtor; Now the COC comprises only the financial creditors that are not related parties of the corporate debtor. Accordingly, all the creditors other than the financial creditors who have appeared in the earlier SCC list have been excluded from the committee.
2. **Notice and intimation.** Notice of the CoC meeting was issued after the amendment, intimating the newly inserted provisions, and served on (a) the members of the CoC, including the authorised representative; (b) the members of the suspended board of directors or the partners of the corporate person; and (c) operational creditors or their representatives whose aggregate dues are not less than ten per cent of the debt. As provided in Section 24(3) and (4), the directors, partners and the operational-creditor representative may attend but have no right to vote, and their absence does not invalidate the proceedings. Earlier the SCC

Notice use to be sent to all creditors; now the COC Meeting notice during liquidation is issued in terms of section 24, as set out above.

3. **Representation of homebuyers through an authorised representative.**

The committee here comprises homebuyers', who are financial creditors in a class represented by their authorised representative. Under New Liquidation Regulation 8(7), the authorised representative appointed during the CIRP continues to act in liquidation, with Regulation 16A(3A) to (12) of the CIRP Regulations applying *mutatis mutandis*.

On verification with the Board's portal, the authorised representative who had acted during the CIRP was found not to hold a valid Authorisation for Assignment as on date, and so could not continue under the existing appointment; a fresh appointment therefore became necessary in terms of sub regulations (3A) to (3C) of regulation 16A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.The Liquidator shall offer choice of at least three insolvency professionals to the financial creditors in the class including any insolvency professional proposed by financial creditors in the class, representing not less than ten per cent. voting share. The Liquidator shall apply to the Adjudicating Authority for appointment of the authorised representative who receives the highest percentage of voting share of financial creditors in that class.

4. **Revision of claims and interest to the ICD.**

The IBC (Amendment) Act, 2026 has inserted an Explanation in Section 35(1) providing that the amended clauses (a) and (j) of Section 35(1) and Sections 38 to 42 as amended shall not apply to liquidation processes initiated on or before its commencement.

"Explanation.—For the purposes of this Chapter, it is hereby declared that the provisions of clauses (a) and (j) of this sub-section and sections 38 to 42 as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2026, shall not apply to the liquidation process and voluntary liquidation process initiated on and before the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2026."

The present liquidation, having commenced in December 2021, therefore continues to be governed by the pre-amendment Sections 38 to 42. The IBBI (Liquidation Process) (Fourth Amendment) Regulations, 2026, however, have substituted Regulation 16 without any corresponding transitional provision, and the amended Regulation 16 shifts the reference date for admission of claims, including the interest component, from the liquidation commencement date to the insolvency commencement date.

Applying the amended Regulation 16 in the present matter, the reference date moves from December 2021 (LCD) to January 2019 (ICD, being the date on which the National Company Law Tribunal admitted the CIRP). Interest had hitherto been computed up to December 2021; it will now be re-computed and restricted to the position as of January 2019. A revised list of creditors reflecting the recomputed interest will be circulated to all creditors and will form the basis for distribution under Section 53. As no amount has yet been distributed, the revision can be implemented cleanly. It may, however, be noted that the co-existence of the statutory carve-out under the Explanation to Section 35(1) with the silent, substituted Regulation 16 leaves open an interpretive question on the applicability of the amended Regulation 16 to pending liquidations, and a clarification from IBBI on this transitional aspect would be welcome.

9. Practical Challenges

The transition is not without friction. First, the mechanics of winding down a functioning SCC and reconstituting a CoC sorting out who the members are, re-calculating voting shares, and validating the authorised representative demand careful documentation, particularly where, as here, the class of creditors is large and the representative's authorisation has lapsed.

Second, the interest re-calculation under Regulation 16(2) will require re-opening admitted claims; where distributions have already been made, the re-calculation becomes considerably harder, and liquidators in such matters will need to consider the consequences for amounts already paid.

Under CIRP Regulation 16A (8), the fee payable to an authorised representative of a class of creditors is Rs. 30000-50000 per meeting of the Committee, depending on the number of creditors in class, together with a further fee of Rs. 10000-15000 for every meeting of the class of creditors convened by the representative. The cost per meeting is approximately Rs. 40000-65000.

10. Conclusion

Taken together, these changes mark a clear shift: creditors are once again at the centre of the liquidation, and the liquidator now carries out the committee's decisions rather than acting largely on his own. For new cases, the position is clear from day one. For cases already running, the safest approach is to check where the process stands against the new Regulation 8 framework, confirm that every class of creditors is properly represented, revisit admitted claims against the insolvency commencement date, and complete the transition before taking the next major step. Done carefully, the new regime gives creditors greater oversight and transparency. In short, it carries the collective, creditor-led spirit of the resolution process into liquidation and handled well, it should make liquidations fairer, clearer, and more focused on getting the best value for those who are owed.

References

- Insolvency and Bankruptcy Code, 2016, Sections 21, 24, 52, 53 and 54.
- IBBI (Liquidation Process) Regulations, 2016, Regulations 32.
- Insolvency and Bankruptcy Code (Amendment) Act, 2026 (inserting Section 21(11)).
- IBBI (Liquidation Process) (Fourth Amendment) Regulations, 2026, Notification No. IBBI/2026-27/GN/REG151 dated 1 June 2026.
- IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 16A, 18 to 26.

CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

State Bank of India vs. Union of India [2026] 183 taxmann.com 418 (SC)

Spectrum allocated to Telecom Service Providers (TSPs) cannot be subjected to insolvency proceedings under IBC as licensee unequivocally undertook to comply with all contractual obligations, acknowledging that grant conferred only a regulated right to use spectrum and not any proprietary interest therein.

The corporate debtors were granted telecom licences by the DoT under Unified Access Service Licences (UASL) pursuant to Licence Agreements. In spectrum auctions conducted by DoT, the corporate debtor acquired rights to use spectrum upon payment of certain amount. The corporate debtors failed to pay licence fee. When DoT attempted to recover these amounts, they invoked IBC by filing an application under section 10 for voluntary corporate insolvency resolution process. The application was admitted by the NCLT. Upon constitution of the Committees of Creditors (CoC) for corporate debtors, claims were invited from all stakeholders. The DoT filed its claim asserting a claim of certain amount as a licensor, arising from Annual Licence Fee and Spectrum Usage Charges payable under the Licence Agreements. A resolution plan submitted by UV Asset Reconstruction Company was approved by the CoC and thereafter sanctioned by the NCLT. On appeal, the NCLAT held that spectrum was a natural resource and the Government was holding the same as cestui que trust. Spectrum, being intangible asset of the Licensee/TSPs/TelCos/Corporate Debtor, could be subjected to insolvency/liquidation proceedings.

Dues of Central Government/ DOT under the Licence fell within the ambit of Operational Dues under IBC Code.

Held that spectrum allocated to telecom service providers (TSPs) and shown in their books of account as an 'asset' cannot be subjected to proceedings under IBC. Operation of laws concerning telecommunications governing spectrum trading cannot be overridden or bypassed on basis of an interpretation adopted to expression 'asset' and its treatment as also section 238. Spectrum trading is not a private commercial arrangement, but a part of privilege vested in Central Government under section 4 of Indian Telegraph Act, 1885. Licensee unequivocally undertook to comply with all contractual obligations, acknowledging that grant conferred only a regulated right to use spectrum and not any proprietary interest therein. Use, transfer or trading of spectrum is permissible only in strict conformity with Spectrum Trading Guidelines, 2015, and any deviation would amount to a breach of licence conditions, statute and its policy. Statutory regime under IBC cannot be permitted to make inroads into telecom sector and re-write and restructure rights and liabilities arising out of administration, usage, and transfers of spectrum which operate under exclusive legal regime concerning telecommunications.

Therefore, under IBC framework, spectrum licensing rights is not a part of pool of assets for insolvency or liquidation and spectrum allocated to TSPs and shown in their books of account as an ‘asset’ cannot be subjected to proceedings under IBC.

Case Review: Union of India vs. Vijaykumar V. Iyer [2021] 126 taxmann.com 147 (NCL-AT)/ [2021] 168 SCL 168 (NCL-AT), modified.

SECTION 10A - CORPORATE INSOLVENCY RESOLUTION PROCESS – SUSPENSION OF INITIATION OF

Power Trust vs. Bhuvan Madan [2026] 183 taxmann.com 568 (SC)

Where restructuring proposals had not fructified into valid agreements novating original contract, and pre-implementation conditions were not complied with, plea of bar under section 10A was a non-starter and default date would relate to 31-3-2018 as per section 7 application.

A financial creditor filed an application under section 7 for initiation of CIRP against the corporate debtor on ground that the corporate debtor had defaulted under a common loan agreement dated 19-6-2013. The corporate debtor contended that the common loan agreement had been subsequently restructured vide the first restructuring proposal dated 21-2-2020, whereby the first instalment became payable on 31-12-2020, attracting the prohibition under section 10A. It was further submitted that the restructuring proposals dated 21-2-2020 and 29-9-2020 were final and binding between the parties and had novated the earlier common loan agreement Dated 19-6-2013. The Adjudicating Authority dismissed the application of the corporate debtor and admitted the section 7 application initiating CIRP. The NCLAT upheld order passed by the Adjudicating Authority. An ameliorative measure, section 10A was incorporated in IBC which barred initiation of CIRP against a corporate debtor in event default arose on or after 25-3-2020, for a period of 6 months or such period not exceeding one year as may be notified. Instant appeal was filed.

Held that plea of bar under section 10A was a non-starter as restructuring proposals had not fructified into valid agreements novating original contract and pre-implementation conditions were not complied with. Therefore, default date would relate to 31-3-2018 as per section 7 application, and proceeding could not be held to be barred in light of Explanation to section 10A.

Case Review: Order of National Company Law Appellate Tribunal, New Delhi in CAAT(I)-81-2024 order dated 25.01.2024, affirmed.

SECTION 61 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES – APPEALS AND APPELLATE AUTHORITY

Torrent Power Ltd. vs. Ashish Arjunkumar Rathi [2026] 183 taxmann.com 741 (SC)

Where resolution professional acted strictly on instructions of committee of creditors during CIRP and resolution plan approved by CoC, NCLT and NCLAT had already been implemented, such conduct did not amount to material irregularity under section 61 and there was no scope for intervention, as commercial wisdom of CoC enjoys primacy and cannot be supplanted by judicial review.

CIRP was initiated against the corporate debtor and SEML was declared as successful resolution applicant (SRA). Resolution plan submitted by SEML was approved by CoC. Appellants, unsuccessful resolution applicants, filed application before NCLT alleging that resolution professional (RP) committed material irregularity by seeking/accepting SEML's clarifications on bank guarantees and upfront/deferred payment option, which amounted to post-bid modification of SEML's plan. NCLT by impugned order rejected said application. NCLAT by impugned order affirmed order of NCLT.

Held that since RP had acted strictly on instructions of CoC, such conduct could not, by any stretch of imagination, be characterised as a 'material irregularity' within meaning of Section 61(3)(ii). Since resolution plan stood approved by both NCLT and NCLAT and had since been implemented, there was absolutely no scope for intervention by Supreme Court. Commercial wisdom of CoC enjoys primacy and cannot be supplanted by judicial review. Neither NCLT, nor NCLAT nor even Supreme Court is empowered to substitute its assessment in place of commercial decision arrived at by a requisite majority of CoC, therefore, impugned order passed by NCLAT was to be affirmed.

Case Review: Order of NCLAT, New Delhi in Company Appeal (AT) (Ins) Nos.1621-1622 of 2024, Dated 01.10.2024, affirmed.

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

Catalyst Trusteeship Ltd. vs. Ecstasy Realty (P.) Ltd. [2026] 183 taxmann.com 687 (SC)

Where procedure prescribed under Debenture Trust Deed (DTD) for modification and variation of terms thereunder was not adhered to and, thus, terms of DTD could not have been modified, application filed by financial creditor under section 7 for initiation of insolvency process against respondent company was to be admitted.

The respondent real estate company issued non-convertible debentures to meet its requirement of funds for a residential-cum-retail project in Mumbai. The financial creditor (debenture trustee) was appointed on behalf of debenture holders. Respondent company proposed restructuring of loan repayment under debentures and requested for principal and interest moratorium of 18 months. The financial creditor informed the respondent company that it was agreeable to provide extension but would need to run entire process internally based on overall resolution plan and final restructuring approval would be provided. The respondent company filed commercial suit before High Court seeking a declaration that Debenture Trust Deed (DTD) stood amended by virtue of e-mails exchanged between the respondent company and one of debenture holders and for consequential reliefs. High Court refused to grant an interim injunction restraining defendants from initiating any action under DTD and from demanding any payments thereunder. The financial creditor demanded overdue amount and issued a loan recall notice and later, filed an application under section 7 seeking initiation of insolvency process against the respondent company. Said application was dismissed by NCLT and same stood confirmed by NCLAT. It was an admitted fact that procedure prescribed under DTD for modification and variation of terms thereunder was not adhered to. Further, debenture trustee and other debenture holders were not even privy to discussion as to modification of DTD at relevant time, let alone being consenting parties thereto.

Held that NCLT and NCLAT erred in ignoring binding terms of DTD and in reframing terms thereof on strength of surmises, conjectures and assumptions, which were not borne out on facts and were completely unsustainable in law. Therefore, application filed by the financial creditor was to be admitted.

Case Review: Order of National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No. 467 of 2023, Dated 16.04.2025 (Para 24) reversed.

Deepak Sakharam Kulkarni vs. Manoj Kumar Agarwal [2026] 185 taxmann.com 15 (SC)

Where CoC approved resolution plan within CIRP period as duly extended and no objection was raised regarding shared valuation reports, and all attached assets' title documents were provided to valuers with attachments already recorded, provisions of section 32A entitled corporate debtor's assets to be dealt with in resolution plan despite enforcement attachment, leaving no ground for interference with approval order; appeal was to be dismissed.

NCLAT held that where CoC approved Resolution Plan on 13.08.2021 and RP filed application before Adjudicating Authority on 18.02.2022 along with Form H, which mentioned that 13.06.2021 was date of expiry for extended period of CIRP, but also noted that an exclusion application for further time till 23.05.2021 was pending, and Adjudicating Authority granted exclusion of 60 days from 24.03.2021 to 22.05.2021, and later, on RP's rectification application, allowed two more days, extending CIRP period till 13.08.2021, date of CoC approval, whether thus, CoC's approval fell within extended/excluded CIRP period and submission that plan was approved after expiry of CIRP period could not be accepted. Further, where valuation reports were shared by RP with CoC and no member of CoC raised any question with regard to valuation report and CoC proceeded to examine Resolution Plan accordingly, valuation exercise could not be reopened. Moreover, where assets of the Corporate Debtor were attached by Directorate of Enforcement under PMLA, assets had already been attached, which was an admitted fact, RP had obtained all relevant details of assets from investigating agencies as well as Directorate of Enforcement, which, in all documents pertaining to title obtained from agencies were given to valuers, which was basis of valuers to proceed to value land and building of the corporate debtor, submission of the appellant that assets were not available to be considered in Resolution Plan in view of attachment by Directorate of Enforcement had already been settled by Judgments of this Tribunal as well as High Courts. Additionally, Section 32-A of IBC which was inserted in IBC giving overriding effect to all offences committed by the Corporate Debtor prior to initiation of CIRP, fully entitled assets of the Corporate Debtor to be dealt in Resolution Plan. Therefore, there was no ground to interfere with order, approving Resolution Plan on ground advanced by the appellant.

Held that since no case for interference was made with impugned order of NCLAT, appeal was to be dismissed.

SECTION 62 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - SUPREME COURT, APPEAL TO

Electrosteel Castings Ltd. vs. UV Asset Reconstruction Company Ltd. [2026] 185 taxmann.com 167 (SC)/[2026] 264 COMP CASE 1 (SC)

Where CIRP was initiated against corporate debtor and Resolution Plan was approved with financial creditor receiving consideration for its claim and later assigning alleged residual debt to respondent, approval of Resolution Plan did not ipso facto discharge security providers from their liabilities under contract of security, so NCLAT rightly held that claims against financial creditor as a security provider could persist post-approval.

ESL (borrower) had availed financial assistance amounting to INR 500 crores from SREI and ECL, being a promoter of ESL, executed a 'Deed of Undertaking' in favour of the lender. SREI subsequently assigned all its rights and interest in favour of the Respondent-Reconstruction Company. Meanwhile, Insolvency proceedings (CIRP) were initiated against ESL. Eventually, a Resolution Plan submitted by successful resolution applicant (SRA) was approved by NCLT. Under this plan, a portion of debt was settled through an upfront cash payment to the respondent and a significant portion of "Unsustainable Debt" was converted into equity shares of ESL. Respondent filed a Section 7 application against ECL, asserting that a residual debt subsisted despite Resolution Plan's approval and that ECL had furnished a corporate guarantee. NCLT dismissed application holding that entire admitted debt of ESL stood repaid and discharged in full pursuant to approved Resolution Plan. NCLAT vide impugned order held that it could not be said that, after approval of Resolution Plan, entire debt stood extinguished and no recourse could be taken by the respondent against ECL. It is well settled that approval of Resolution Plan does not ipso facto discharge a security provider of her or his liabilities under contract of security. It was also noted that clause 3.2 (x) of Resolution Plan explicitly reserves rights of financial creditors against such third parties, including security providers/existing promoters, in relation to unsustainable debt. Further, from perusal of Clause 3.2 (ix) of Resolution Plan, it was evident that Resolution Plan unequivocally provides that rights against any third party, including a security provider/existing promotor in relation to any portion of unsustainable debt, secured or guaranteed by such third parties, would not be extinguished. It further provides that, if any third-party security provider (including Existing Promoter) who had guaranteed or secured any portion of debt availed by ESL prior to insolvency commencement date, including the Existing Promoter who have created pledge of shares of ECL or ESL, makes any claims against ESL or SRA on account of any invocation/enforcement of such guarantee or security provided, such claim should be settled at NIL value.

Held that in view of aforesaid, there was no infirmity in impugned judgment of NCLAT, and accordingly, instant appeal against impugned order was to be dismissed.

Case Review: UV Asset Reconstruction Company ltd. vs. Electrosteel Castings Ltd. [2026] 182 taxmann.com 227 (NCLAT-New Delhi), affirmed.

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

State Bank of India vs. Doha Bank Q.P.S.C. [2026] 185 taxmann.com 918 (SC)

Where corporate debtor executed corporate guarantees in favour of consortium lenders securing loans of group entities, such guarantees constituted financial debt under section 5(8) and appellants were entitled to recognition as financial creditors; objections as to timing of execution, non-disclosure in financial statements and insufficient stamping being untenable, orders of NCLT and NCLAT rejecting claims were unsustainable.

Consortium of banks extended rupee loan facilities to group entities of the corporate debtor (CD) and CD executed deed of hypothecation in favour of the security trustee. Thereafter, the CD executed corporate guarantees in favour of consortium lenders securing loans granted to said group entities. CIRP was initiated against CD and IRP was appointed. Appellants submitted claim as financial creditors. NCLT held that there was no material to show submission of proof of claim along with corporate guarantees and, therefore, consortium lenders were not financial creditors. NCLAT affirmed said order holding, inter alia, that guarantees were executed when CD was already in default and under financial stress.

Held that corporate guarantees executed by CD constituted financial debt within meaning of section 5(8) and appellants were entitled to be recognised as financial creditors. Timing and manner of execution of corporate guarantees could not be questioned on ground that the CD and holding company were already in default. Mere non-disclosure of corporate guarantees in financial statements of the CD could not deprive appellants of making claim on basis thereof. Since RP had inspected and verified guarantees by visiting office of security trustee at New Delhi, finding of NCLAT that there was no pleading on record to establish such verification was perverse. Defect of insufficient stamping was curable in nature and did not go to root of validity of instrument. Therefore, impugned orders of NCLT and NCLAT were liable to be set aside and appellants were to be recognised as financial creditors of CD.

Case Review: State Bank of India v. Doha Bank Q.P.S.C [2026] 184 taxmann.com 731 (NCLAT - New Delhi), Set aside.

SECTION 238A - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

Shankar Khandelwal vs. Omkara Asset Reconstruction (P.) ltd [2026] 185 taxmann.com 1005 (SC)/[2026] 266 COMP CASE 862 (SC)

Where limitation for filing an application under Section 7 of IBC is three years from date of default or NPA classification, and acknowledgment under Section 18 of Limitation Act cannot revive limitation after expiry, Section 7 application filed beyond permissible period was held time-barred, leading to setting aside of NCLAT order affirming its timeliness.

The appellant was the erstwhile Director of two corporate debtors. DHFL sanctioned loans in September 2014. The corporate debtors defaulted, and their accounts were classified as NPA on 06.12.2016. CIRP against DHFL commenced on 03.12.2019 and a resolution plan of PCHFL was approved on 07.06.2021. CIRP against the corporate debtor (first CIRP) was admitted on 23.12.2021 with moratorium, and PCHFL assigned the debt to the secured financial creditor (Omkara Asset Reconstruction Pvt. Ltd.) on 10.01.2023. The first CIRP was terminated on 29.07.2024 on the ground of fraudulent initiation. A Section 7 petition was thereafter filed by the secured financial creditor on 23.09.2024. The Covid-19 extension of limitation commenced on 15.03.2020 and concluded on 30.05.2022. By order dated 22.01.2025, the NCLT held that the Section 7 application was within limitation and admitted it. On appeal, the NCLAT on 15.10.2025 affirmed the NCLT's order. It recorded that the RP's admission of the creditor's claim in the first CIRP on 22.05.2022 and its updating on 21.01.2024 constituted acknowledgments, and on that basis concluded that the petition was within limitation. On the appellant's appeal to the Supreme Court.

Held that limitation for filing an application under Section 7 of IBC is three years and is governed by Article 137 of the Limitation Act, 1963. Accrual of such right has been consistently interpreted by this Court to arise on date of default, that is, when the corporate debtor first fails to discharge its repayment obligations. Limitation begins to run from date of classification of account as NPA, being date of default, and not from any subsequent proceeding initiated for recovery. An acknowledgment under Section 18 of 1963 Act can only extend/renew a limitation period which has not already expired. Where loan was sanctioned to the corporate debtor on 26.09.2014 and loan account was declared NPA on 06.12.2016, right to file a petition under Section 7 of Code accrued on 06.12.2016. Where Section 7 application was filed on 23.09.2024, after reckoning three years from 06.12.2016 and excluding period of CIRP of the lender, Covid-19 extension of limitation and CIRP of the corporate debtor, only three days remained from 29.07.2024 which would expire on 01.08.2024 and, thus, Section 7 application was well beyond period of limitation. Therefore, impugned order passed by NCLAT affirming NCLT's order that Section 7 application was within limitation was to be set aside.

Case Review: Shankar Khandelwal v. Omkara Asset Reconstruction (P.) ltd [2026] 184 taxmann.com 732 (NCLAT - New Delhi), set aside.

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

GLS Films Industries (P.) Ltd. vs. Chemical Suppliers India (P.) Ltd. [2026] 185 taxmann.com 377 (SC)/[2026] 266 COMP CASE 368 (SC)

Where pre-existing disputes regarding defective supplies and reconciliation of accounts were evidenced prior to demand notice and creditor's claim lacked clarity, section 9 application was not maintainable, and NCLT's dismissal was justified.

The operational creditor supplied chemicals to the corporate debtor and issued demand notice under section 8. The corporate debtor disputed claim asserting pre-existing dispute regarding defective supplies and sought reconciliation of accounts. NCLT dismissed section 9 application holding that a plausible dispute existed prior to demand notice. NCLAT set aside said order and directed admission.

Held that existence of written correspondence dated 10-12-2020, prior to issuance of demand notice, was sufficient in itself to show that there were pre-existing disputes between parties. When the corporate debtor sought reconciliation of accounts and the operational creditor failed to oblige, its demand would not be sufficient to meet threshold for maintaining application under section 9. There was clearly no consensus between parties as to who was liable to pay to other and amount that was payable. Therefore NCLT was correct in concluding that the application under section 9 did not merit consideration owing to pre-existing disputes and NCLAT was not justified in reversing same.

Case Review: Chemical Suppliers India P.Ltd. v. GLS Films Industries Private Limited [2026] 184 taxmann.com 728 (NCLAT- New Delhi), set aside.

SECTION 30 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

Nirmal Ujjwal Credit co-operative Society Ltd. vs. Ravi Sethia [2026] 185 taxmann.com 355 (SC)

Where resolution applicant, being a multi-State co-operative society (MSCS), proposed to invest in corporate debtor but such investment was not permitted under its bye-laws, as corporate debtor was neither its subsidiary nor in 'same line of business', resolution plan was hit by section 30(2)(e), as compliance with statutory restrictions is to be tested with reference to bye-laws.

The appellant, a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002, operated a textile unit 'Nirmal Textile' with separate GST registration and factory licence. Pursuant to the 2023 amendment to section 64(d), the appellant amended clause 52 of its bye-laws through an AGM, and such amendment was approved by the Central Registrar on 24-1-2024. CIRP of the corporate debtor commenced, and the appellant submitted an EOI and was included in the list of prospective resolution applicants. It submitted a resolution plan initially of ₹120 crores, later enhanced to ₹169 crores. The RP sought clarification regarding whether the appellant's constitutional documents permitted such acquisition and thereafter declared the appellant ineligible under section 30(2)(e) of the IBC on the ground that the proposed investment was contrary to its bye-laws and section 64(d) of the 2002 Act. The NCLT upheld the ineligibility, holding that the corporate debtor was neither a subsidiary nor engaged in the same line of business. The NCLAT affirmed, inter alia, holding that the appellant's activities were predominantly agro-based processing and financial services, whereas the corporate debtor was engaged in man-made fibre manufacturing, and that the requirement of 'same line of business' was not satisfied. On appeal before the Supreme Court, although the appellant relied upon the amended bye-laws and its textile operations, the appeal was ultimately withdrawn; however, the Court examined the issue for the purpose of explaining the position of law governing the issue.

Held that where the resolution applicant, being a multi-state co-operative society (MSCS), proposed to invest in the corporate debtor but its bye-laws did not permit such investment as the corporate debtor was neither its subsidiary nor engaged in 'same line of business', requirement under section 64(d) stood violated and, consequently, resolution plan contravened section 30(2)(e). Expression 'same line of business' is to be determined strictly with reference to objects and functions in bye-laws of MSCS and requires substantial or predominant sameness in core business activities, and not mere similarity in sector or incidental activity. In absence of any amendment to object clause so as to bring the appellant's permissible activities in alignment with those of the corporate debtor, requirement of being in same line of business could not be said to be satisfied merely by adopting statutory language of section 64(d).

Case Review: Nirmal Ujjwal Credit Co-operative Society Ltd v. Ravi Sethia [2026] 184 taxmann.com 727 (NCLAT- New Delhi), Affirmed.

RECENT DEVELOPMENTS IN INSOLVENCY AND BANKRUPTCY

1. **NCLT to Admit Insolvency Cases Only When Debt and Default Are Established**

   The Insolvency and Bankruptcy Code (Amendment) Act, 2026 clarifies that the NCLT will admit an insolvency application only when both the existence of a financial debt and the occurrence of default are conclusively established. The amendment aims to prevent frivolous filings and ensure that only genuine insolvency cases proceed.

   Link: NCLT to admit case only if debt, default established: Insolvency & Bankruptcy (Amendment) Act - The Economic Times

2. **IBBI Proposes Stricter Rules for Personal Guarantors and Valuation Process**

   The Insolvency and Bankruptcy Board of India (IBBI) has proposed amendments to strengthen the insolvency framework by withdrawing interim moratorium protection for personal guarantors and introducing tighter valuation norms. The proposal seeks to prevent misuse of legal provisions and improve transparency in insolvency proceedings.

   Link: IBBI seeks tighter regulations around personal guarantors, valuation of insolvent firms - The Economic Times

3. **Supreme Court Flags Delays Due to NCLT Infrastructure Deficiencies**

   In a development with far-reaching implications for the insolvency ecosystem, the Supreme Court took Suo motu cognizance of delays caused by vacancies, staffing shortages, and inadequate infrastructure across NCLT benches. The Court noted that these deficiencies have significantly hampered the timely disposal of insolvency matters, including approval of resolution plans. The observations have reignited discussions on strengthening adjudicatory capacity and ensuring compliance with the timelines envisaged under the IBC. The matter is expected to influence future policy measures aimed at improving institutional efficiency within the insolvency framework.to an increasingly interconnected global financial environment.

   Link:https://timesofindia.indiatimes.com/india/staff-crunch-infrastructure-hit-nclt-operations-must-be-addressed-supreme court/articleshow/130708129.cms?utm

4. **Government Relaxes Insolvency Rules for MSMEs**

   The Central Government amended IBC rules to simplify insolvency resolution for MSMEs while tightening safeguards in the Pre-Packaged Insolvency Resolution Process (PPIRP) to reduce conflicts of interest and improve transparency.

   Link:https://m.economictimes.com/news/economy/policy/insolvency-rules-relaxed-for msmes/articleshow/131250977.cms

5. **IBBI Extends Deadline for Filing Personal Guarantor Forms to September 30**

   IBBI has extended the deadline for Insolvency Professionals to electronically submit statutory forms relating to insolvency proceedings of personal guarantors from June 30 to September 30, 2026. The extension provides additional time to ensure compliance and improve monitoring of such cases.

   Link:https://m.economictimes.com/news/company/corporate-trends/deadline-for-filing-forms-relating-to-personal-guarantors-to-insolvent-firms-extended-up-to-sept 30/articleshow/132293634.cms?utm_source=chatgpt.com

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GUIDELINE FOR AUTHORS

The articles sent for publication in the E-journal "The Insolvency Professional - Your Insight Journal" should confirm to the following parameters, which are crucial in selection of the article for publication:

1. The article should be original, i.e., not published/broadcasted/hosted elsewhere, including any website. A declaration in this regard must be submitted to IPA-ICMAI in writing at the time of submission.
2. The article may be topical and address matters of current interest to professionals and stakeholders.
3. It may preferably introduce stakeholders to new knowledge areas or present innovative ideas relevant to the profession.
4. The length of the article may be 2500–3000 words.
5. The article should include an Abstract of approximately 200–250 words.
6. The article should contain clear, concise, and engaging headings.
7. Authors may provide a list of references, if any, at the end of the article.
8. A brief author profile, along with e-mail ID, postal address, contact number, and the required declaration of originality, must be submitted with the article.
9. The article must adhere to ethical standards, with plagiarism not exceeding 10% and AI-generated content limited to a maximum of 20% similarity, ensuring originality of the author's work.
10. A limited number of articles (maximum 2–3) from an individual author may be considered for publication in a year.
11. In case an article is found unsuitable, it may not be considered for publication.
12. Articles may be evaluated based on originality, relevance, clarity, and innovation, as part of the review criteria.
13. Articles should be sent via email to: publication@ipaicmai.in
14. Submission Guidelines

a) Format: Submissions must be in Microsoft Word (.docx) format.
b) Length: Articles should be between 2500-3000 words.
c) Font: Use Cambria, 12-point font.
d) Line Spacing: 1.5 Line-spaced.
e) Margins: 1-inch margins on all sides.
f) Footnotes: Cambria 10 -Point size
g) Abstract: Use Cambria, 12-point font. (If Applicable)
h) Columns: Two columns

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