(BS) INSTITUTE OF INSOLVENCY PROFESSIONALS

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(A wholly owned subsidiary of ICSI and registered with IBBI) VOL VII | NO. : 1 & 2 | PG. 1-64 | Jan-Feb 2023

INSOLVENCY AND BANKRUPTCY JOURNAL

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Reinforcing our Commitment to Timelines



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ICSI Institute of Insolvency Professionals (ICSI IIP)

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CS Manish Gupta CS B Narasimhan CS NPS Chawla

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ICSI IIP greets and welcomes the new President and Vice-President of ICSI to its Governing Board



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From Chairman's Desk

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"We had a tendency in the past, while we were searching for solutions, we create a problem. And, one of the reasons is that we were never willing to confront the problem; ask the right question so that we can get the right answers. And, that is how when we found the principles of bankruptcy or insolvency coming into existence, particularly in the post 1992 liberalisation, we delayed solutions... the moment you place an iron curtain around a firm, which is sinking, in a hope that it will revive and payback, then the NPAs continue to exist and the mode of recovery was also being blocked."

(Lt. Shri Arun Jaitley)

Dear Professional Member(s),

IBC got enacted almost as a necessity when all the earlier solutions had effectively failed to make the economy overcome the problem of rising NPAs figures in the Indian banking sector, to provide an easy exit route companies intending to do so and thus give further impetus to the agenda of promoting ease of doing business.

The set of changes to IBC which are presently being considered by the Government are intended to inter alia quicken the resolution process as also broaden the scope of PPIRP under IBC. Further, the liquidation process under IBC is being relooked so as to make it effective and the role of service providers in the resolution process is also likely to get defined in elaborate details. In order to reduce human intervention/interaction and to enhance the role of technology, a cutting edge electronic platform which can manage several processes under the Code is likely to get introduced in the IBC ecosystem. This e-platform may provide for a case management system, automated processes to file applications with the Adjudicating Authority (AA), delivery of notices, enabling interaction of IPs (Insolvency Professionals) with stakeholders, storage of records of CDs (Corporate Debtors) undergoing the process, and incentivising participation of other market players in the IBC ecosystem. The platform may also allow the regulators and the AAs to exercise better

oversight over their respective domains of functioning through the consolidated information available on the e-platform.

There is also a proposal to make changes in the waterfall mechanism such that the creditors shall be able to receive proceeds up to stressed firm's liquidation value in the order of priority already stipulated, thus giving secured financial creditors precedence over usually unsecured operational creditors.

While it is widely acknowledged and understood that the prime objective of IBC is to achieve resolution of CD's insolvency, it is beyond doubt that the legislation is seen as a tool to help the creditors recover their dues.

The significance of these changes lies in the fact that they are intended to streamline the processes and procedures under IBC through introduction of technology and also bringing clarity in relevant clauses to ensure their smooth implementation, all of which point towards a brighter future.

With warm regards,

(P.K. Malhotra) ILS (Retd.) & Ex-Law Secretary, Ministry of Law & Justice, Gol Chairman, ICSI IIP

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President's Message

"If we keep calling our learnings as failures, then the likelihood of succeeding can only be by chance and not by design."

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Dear Professional Members,

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The beauty and strength of any law lies in its compliance. Governance encompasses not only compliance and to the best of abilities and capabilities but it also holds in its ambit the expectations of understanding of the true intent of the law by those who are the active stakeholders, i.e., those on whom the provisions of the law are applicable but also by those who assist in the compliance - for it is the latter who shall be ensuring the success of these laws. The IBC or the Insolvency and Bankruptcy Code, 2016 is no different, and it is with this thought of apt understanding prevailing that the law itself opened doors of opportunity for professionals to serve as Insolvency Professionals or IPs but most definitely after gaining ample knowledge and undergoing requisite examinations.

The ICSI-IIP has been playing a role of catalyst in the entire process, engaging professionals, according appropriate knowledge, imparting befitting training and guiding the way with capacity building initiatives. Along with this, this section 8 company of the ICSI has been supporting the law making and enforcement authorities in adding further strength to the law thus making it all the more effective. The year gone by witnessed us not only undertaking the regular webinars, seminars and trainings but we also launched a Pan-India initiative under the ambit of AKAM only to create a better understanding and acceptability of the law amongst the varied stakeholders.

IBC is likely to see some major amendments in the coming days. The amendments are of course intended to make the processes under the Code. In the past 6-odd years of its functioning, we have witnessed rapid progress being made. The Code has been accompanied by an ecosystem and a commitment by the Government to keep in touch with the current reality. No other law has engaged the attention of the Government, resources of the Government and the Courts the way IBC has since apart from the intended objectives, the law is expected to also reform the credit market in the nation given the fact that risk taking is now being widely acknowledged as an essential facet of entrepreneurship.

For a law holding so much ability and anticipation, all at the same time, it is more than necessary to have capable handholding, a dedicated armed force to take forward the mission. The IPs and the ICSI-IIP ace in just that.

The future holds immense potential but it is upto us to tap into it with our best of efforts. On that note, wishing all of you a very happy new year and a sparkling bright future.

With warm regards,

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(CS Manish Gupta) President, The ICSI

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COO's Message

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'The measure of intelligence is the ability to change'.

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~Albert Einstein

Dear Professional Member(s),

MESSAGES

The next set of reforms in IBC law space are there in the offing and it is expected that the Code would undergo a revamping/transformational exercise for fixing different practical issues encountered in past period, and take a leap forward in terms of its objective of faster resolutions of distressed firms. The Government has consulted all the major stakeholders, including the judiciary, the Banks (lenders), the Professionals (IPs) as well as other stakeholders to have a holistic view of the present state of affairs and to find the way forward. One of the areas wherein there is a definite need to work (to achieve successful resolutions) concerns the capacity building of the Professionals (IPs) which can help them to become a turn-around specialist as also become industry experts. The IBC legal regime definitely requires the Professional to focus towards improving operational performance of the firm's business, and therefore, the Government is now considering to revamp the Code such that it addresses these issues as well. The Government and the IBBI, as a part of their respective mandate and responsibility, have been extremely swift and quick to respond thereby ensuring smooth functioning of the Code. The Commitment to remain focussed and overcome all challenges witnessed on its way is now the settled hall-mark of the Code and the same is visible in every action taken by the Government (as also the IBBI).

Delving deeper into the practicalities, the Resolution Process vis-à-vis Real Estate companies is another area of IBC law which the Government is now targeting to reform. The proposals being considered thereof are that, in cases where default by a Real Estate Company pertains to one or more of its projects only, the order for initiation of CIRP by the AA shall be wrt such real estate projects only and not the entire entity. The intent clearly is not to disturb the smooth running of other real estate projects by that company. Therefore, such projects shall be recognised as distinct from the larger entity for the limited purpose of resolution.

The Government is also envisaging to allow and introduce consolidated resolution for companies with their subsidiaries, fast-track out of court settlements, extension of pre-packaged insolvency processes to large sized companies, tighten recovery process and make failure to comply with IBC a civil violation rather than a criminal offense. Lastly, there is also a proposal for appointment of an administrator in cases involving public interest. At ICSI IIP we are committed to strengthen the IBC legal regime, and towards that objective shall be conducting sessions/discussions on the suggested changes.

Ever since IBC provisions (wrt Corporate Insolvency Resolution) came effective (December 2016), the stakeholders have worked together to strengthen this new legal regime which truly has helped the nation to overcome all challenges.

Looking forward to your support and guidance to the ICSI-IIP.

(Dr. Prasant Sarangi) COO (Designate), ICSI IIP



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An Interactive Meet with the Insolvency Professionals was conducted by ICSI IIP on 2nd February, 2023, wherein, a cloud based case management platform was presented by "TURNKEY" – a UK software Management Company to the IPs. CS (& IP) **Manish Gupta** (*President, The ICSI*), CS (& IP) **NPS Chawla** (*Central Council Member, The ICSI*), CS (& IP) **Manoj Kumar Purbey** (*Central Council Member, The ICSI*) & **Dr. Prasant Sarangi** (*COO* (*Designate*), *ICSI IIP*), Officers of ICSI IIP and other IPs participated in the deliberations and gave their valuable inputs to the presenters to cater to the needs of IBC regime and the IPs.

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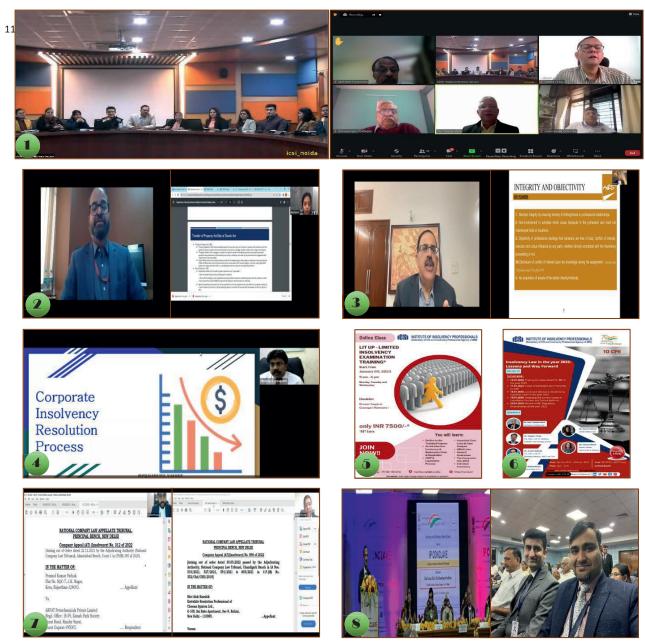
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EVENTS @ICSI IIP

Events @ICSI IIP

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- 1. Interactive Meet on Let's Connect: A Platform for the IPs moderated by IP Ravi Prakash Ganti on 5th January 2023
- Introductory remarks shared by Shri Santosh Shukla, ED IBBI on "Registration of Security Interest and Rights under IBC on Saturday, 6th January, 2023
- Moratorium & Ethical Practice for Insolvency Professionals by Adv. Ashish Makhija and Adv. Shweta Bharti on Saturday, 7th January, 2023
- 4. Webinar on "Treatment of Claims under Liquidation" by CS & IP S. Dhanapal on Monday, 9th January, 2023
- 5. 3-Day LIT UP Limited Insolvency Examination Training[®] (Preparatory Virtual Classroom) conducted for aspirants for becoming Insolvency Professional
- 6. Insolvency Law in the year 2022: Lessons and Way Forward (IBC Series III) conducted for esteemed Insolvency Professionals

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- 7. Webinar on "Anatomy of IBC Cases 3" by Adv. Ashok Juneja and Mr. S. Badri Narayanan on Friday, 13th January, 2023
- 8. ICSI IIP Officials attended IP Conclave duly organized by IBBI, in association with Insolvency Professional Agencies (IPA) on Friday, 20th January 2023 in Chennai

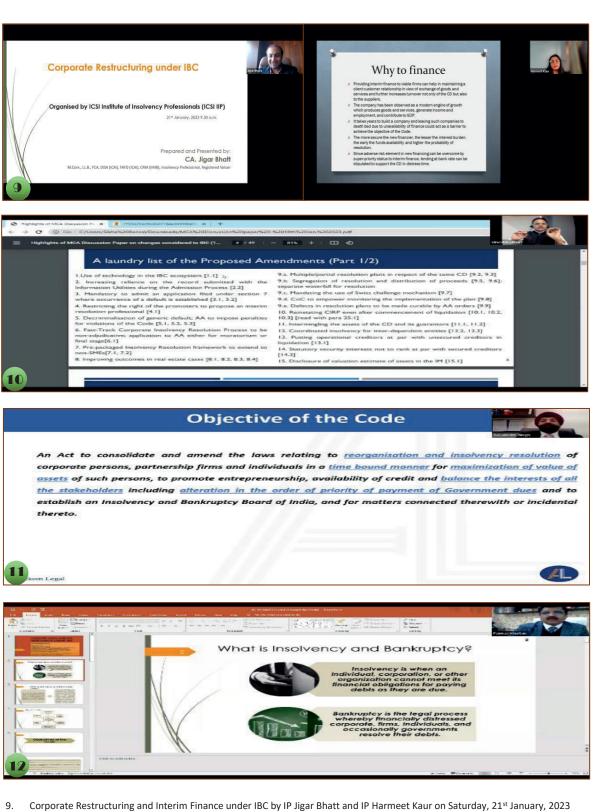
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EVENTS @ICSI IIP

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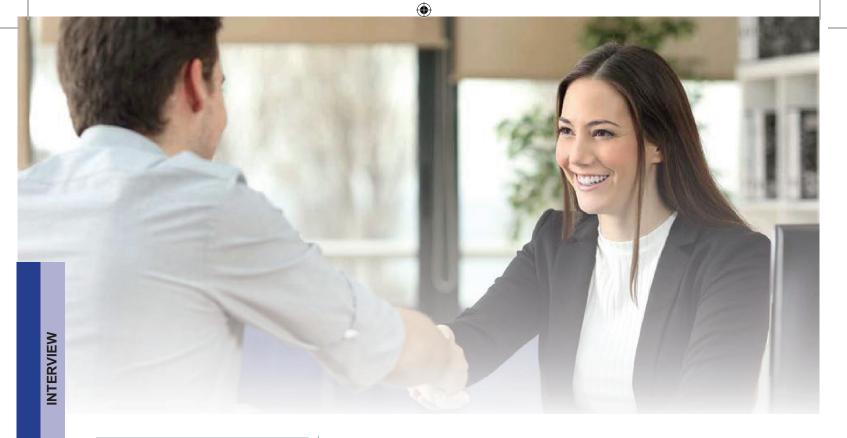
- Round-table Discussion on MCA notice dated 18th Jan 2023 on "Proposed changes to IBC" moderated by IP Vinod Kothari and CS Sikha Bansal on Wednesday 25th January, 2023
- 11. Webinar on "EOI to Resolution Plan A Journey" by IP Satwinder Singh on Friday, 27th January, 2023
- 12. Labour Laws and its relevance under IBC by IP Pankaj Khetan and IP Harmeet Kaur on 30th and 31st January, 2023 respectively

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EVENTS @ICSI IIP

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Interviewee: IP Anshul Gupta

Founder-Director, Truvisory Insolvency Professionals (P) Ltd. Managing Partner, Finkonnect Capital Advisors LLP Email: contactanshulgupta@gmail.com

INTERVIEW

1. What do you think have been the key achievements of Insolvency and Bankruptcy law since its commencement?

The Insolvency and Bankruptcy Code 2016 (IBC) was enacted to provide a single law for insolvency resolution and bankruptcy proceedings in India. IBC has emerged powerfully from the previous law framework and has helped in establishing strong and professionalised process of stress resolution. The IBC has been instrumental in providing quicker and transparent insolvency resolution process, which helps in timely payment of dues to creditors and maximizes the value of assets of corporate debtors.

Stronger institutional framework such as Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have overall helped in tackling the problem of Non-Performing Assets (NPAs) in a far efficient way and in a time bound manner. IBC has increased the creditor rights by providing them a greater say in the insolvency resolution process.

In 2016, India ranked 136 out of 189 countries in the World Bank's index on the ease of resolving insolvencies and by 2019, India's ranking in the World Bank's index on resolving insolvency had jumped to 63rd rank.

Till September 30, 2022, the creditors realised Rs. 2.43 lakh crore under the resolution plans. The fair value of the assets available with these CDs, when they entered the CIRP, was estimated at Rs. 2.14 lakh crore and liquidation value of Rs. 1.37 lakh crore against the total claims of the creditors worth Rs. 7.91 lakh crore. The creditors have realised 177.55% of the liquidation value and 84.00% of the fair value (based on 456 cases where fair value have been estimated).

IBC has improved the credit culture in India by encouraging timely payment of dues and thereby reducing the number of defaults making it difficult for debtors to default on their loans. The timebound insolvency resolution process encourages debtors to pay their dues on time and reduces the number of defaults.

IBC has improved investors' confidence in India as it provides a more secure environment for investments. The introduction of IBC has increased the level of investment in India, which in turn has helped the economy to grow.

2. What made you pursue the field of IBC and become an Insolvency Professional considering it is relatively new and niche field?

Being a Management graduate with almost over 2 decades of experience in Growth and Distress Advisory, I have always been dealing with the requirements of Corporates may be Fund Raising, Mergers and Acquisitions, Special Situation Advisory, Corporate Debt Restructuring, BIFR packages etc. I derived quite an experience from dealing with various legal aspects related to Corporate Debt Restructuring and Recovery. After going through the draft of the Code, I was confident that IBC will be the next biggest turnaround in the mechanism of Debt resolution of Corporates and led me to pursue this Profession as it seemed like a great opportunity to help people and companies who were in financial distress.

This field was relatively new in India and still even today holds it niche, for the early entrants like me as all the developments and changes in the new laws which happened since inception made me more aware of the ever evolving industry and is helping me put up revival structures which are viable.

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3. So far how was your experience as an Insolvency Professional?

As an Insolvency Professional in India and also as being the founder-Director of Truvisory Insolvency Professionals Private Limited (an IPE), I have been fortunate to gain valuable experience working with a variety of clients in different industries, including Textiles, Metals, Services, Engineering, Pharma and Chemicals, Hospitality, Real Estate etc.

Working on these varied assignments, I have been able to develop my professional skills in the areas of finance, accounting, legal, and business. I have had the opportunity to work on complex cases insolvency cases involving multiple stakeholders and complicated legal structures.

Dealing with the Insolvency and Bankruptcy Code (IBC), and the various procedures relating to it has enabled me to provide effective solutions to CD, COC and other stakeholders in a timely manner.

Overall, my experience as an Insolvency Professional in India has been a very rewarding and enriching experience. I look forward to continuing to build my expertise and providing valuable services in the future.

4. In reference to the assignments handled by you what practical challenges you faced as an Insolvency Professional so far?

Dealing with the former management and promoters and sometimes even with the employees creates friction and difficulty in entering the premises and taking over the charge of assets of the CD. IPs also face challenges while dealing with the labour and the security personnel of the CD which poses a potential threat to their safety. Contacting the local police and with the help of the order passed by the AA to the police authorities for assistance heads to this issue but the time delay caused in the process harms the smooth running of the CIRP Process.

In cases where the CD is a going concern without adequate support from the former management, promoters and the employees, continuing the operations of CD becomes quite challenging.

Another challenge IPs face is when the CD will lack sufficient funds to meet the CIRP or liquidation

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costs. The funds may not even be enough to pay the IP's fee, or to take control and custody of the assets of the CD. IP will find it very challenging as many a times the COC members cause delay in payment of CIRP costs on one hand and on the other hand cause concerns for IPs for raising finance from outside sources because lenders do not wish to take on further exposure to the CD.

IPs face numerous challenges as they are responsible for ensuring compliance with all applicable laws. Such challenges may arise where the CD has not been operational for some time, where there is lack of sufficient documentation, or where the management is not cooperating in providing sufficient information to the CD to assess and ensure compliance. Further, the non-compliance may have been continuing for a long period, making it difficult for the IP to ensure future compliance. In some cases, the legal and statutory authorities may insist on the IP completing or rectifying past compliances, or paying past dues of the authorities before they permit filing of documents by the IP. In many cases cash flows of the CD are not enough to engage professional or legal advisers or to pay the requisite fees to the legal and statutory authorities.

Other challenges:

- i. Time Pressure: Insolvency professionals often face the challenge of working within tight deadlines, which can be difficult to manage.
- ii. Industry Expertise: Insolvency professionals must possess a wide range of skills, including Industry, accounting, legal, financial, and business administration knowledge. This will be difficult for an individual to obtain all expertise thus a proper experienced team is important.
- iii. Complex Business Structures: Insolvency professionals must understand the complex business structures of the companies they are working with. This can be difficult due to the variety of different companies and the ever-changing nature of the industry.
- iv. Legal Challenges: Insolvency professionals must be aware of all applicable laws and regulations when performing their duties. This can be difficult due to the complexity of the legal system.

v. Managing Stakeholders: Insolvency professionals must manage a variety of stakeholders and ensure that all parties get a fair result from the outcome of the insolvency process. This can be difficult due to the variety of parties involved and the emotions that often accompany insolvency proceedings.

5. Since, you have handled number of assignments, how has your experience been with the Promoters of the Corporate Debtors?

Experience with promoters has been satisfactory in some cases and not so pleasant in some of our cases. Many a times making the promoters understand the law and its implications helps us in carrying out the CIRP / Liquidation process smoothly.

Seeking information from the promoters and other key employees of the CD is tedious and cumbersome due to non-availability of information with them or in the system of the CD.

6. How significantly do you think the regulators i.e., IBBI and IPAs serve the profession of Insolvency Professionals?

IBBI is a key pillar of the ecosystem whereat it regulates the profession of IPs as well as the processes and is responsible for effective implementation of the Code.

IBBI has provided immense support to the IPs by penning down the rules and regulations pertaining the corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code. It has laid down a structured framework to monitor and regulate the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, and all that leads to achieving the ultimate purposes of the Code.

Insolvency Professional Agencies (IPAs) are front-line regulators to Insolvency Professionals. IPAs take numerous steps for the development of IPs viz helps in developing capacity building through conducting webinars, workshops, interactive sessions, round tables, publishing weekly newsletters; promotes professional and ethical conduct; monitors the transactions and

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performance of their IPs through its defined mechanism; it also initiate appropriate action against IPs who do not comply with the provisions of Code/Regulations. All these steps taken by the IPAs help in maintaining the efficiency and work conduct of the IPs.

Regulators also play an important role in ensuring that insolvency professionals adhere to ethical and legal standards. They also help to protect the interests of creditors and other stakeholders by setting best standards of practice and ensuring that insolvency professionals are qualified and experienced to handle insolvency cases. In addition, they can provide guidance to insolvency practitioners on current industry trends and best practices. By doing so, regulators can help to ensure the profession of insolvency practitioners is respected and that insolvency practitioners provide quality services to their clients.

7. How being an Insolvency Professional shaped your professional career from the time you got yourself registered?

Being an Insolvency Professional has allowed me to gain valuable experience and knowledge, about the legal, regulatory and financial aspects of insolvency and restructuring, which has enabled me to develop an in-depth understanding of the complexities of the insolvency process. I have also been able to use my experience to advise individuals and businesses on the options available to them to manage their financial liabilities. This career has helped me gain hands on experience to effectively negotiate asset sales, debt rescheduling and other creative solutions to debt problems.

Over all entering this arena has given me invaluable insights on various facets including efficient time management and has helped me immensely in my professional pursuit.

8. Any piece of advice you would like to share with the prospective aspirants or Fresh Insolvency Professionals who are seeing their career in Insolvency Law?

Apart from the basic eligibility criteria & qualifications as prescribed for registration, Insolvency professionals are required to have

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experience in more than one discipline, and in professional fields such as management, law, chartered accountancy, company secretaryship and cost accounting. This shall definitely help them in syncing in the efforts of all the stakeholders involved and thus, carrying out the CIRP / Liquidation process with quite an ease.

To the aspirants I shall suggest:

- i. Make sure you become well-versed in the laws and regulations related to insolvency.
- ii. Develop your research and problem-solving skills.
- iii. Understand the different types of insolvency and how they affect businesses.
- iv. Target effectively managing the various stakeholders involved in an insolvency process.
- v. Develop strong communication and negotiation skills.
- vi Develop a network of professionals in the insolvency industry.
- vii. Always stay updated with industry trends and news.
- viii. Keep up to date with new technology and tools needed to execute insolvency processes.
- ix. Remain organized and detail-oriented.
- x. Treat promoters, management, workers and employees with respect and empathy.

9. What are the key elements in your opinion that can be addressed to make IBC more effective?

An insolvency proceeding has many constituents that have specific roles to play. In particular, the CoC needs to be in the shoes of businessmen and its conduct needs to be above board; Government needs to submit claims in time and avoid litigation relating to claims post resolution, and it must ensure a clean slate for successful resolution applicant;

The Adjudicating Authority needs to have adequate bench capacity to admit applications for commencement of insolvency proceedings, approval of resolution plans and dispose of applications in respect of avoidance transactions, in a time-bound manner;

Promoters and board of directors need to avoid resistance to commencement of insolvency proceedings on frivolous grounds and extend all

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co-operation to the IP in running a business as a going concern.

Some process improvements are required to ensure certainty of outcomes. Markets for distressed assets should become deeper so that for every distressed asset, there are many resolution plans for value maximization.

The new dimensions of the Pre-packaged Insolvency Resolution Process (PPIRP/pre-packs) which combines the best of the out-of-court resolution efforts and the judicial finality of a resolution plan approved by an Adjudicating has been presently allowed only for borrowers that are classified as micro, small and medium enterprises, we could further envision pre-packs in respect of all borrowers in that difficult resolution involving non-cooperative lenders can be resolved using such pre-packaged plans. It would be worthwhile to consider extending PPIRP to all borrowers.

IBC can become more effective by increasing its capacity to respond to requests for assistance in a timely manner, improving its ability to share information with other international bodies, strengthening its ability to enforce decisions, and increasing its capacity to influence decisionmaking at the national level.

10. Lastly, according to you what are your views on the future of this law?

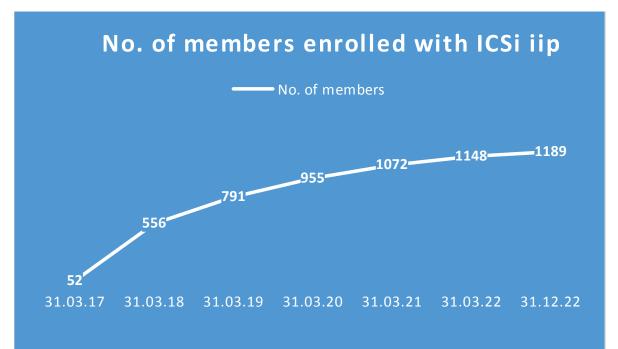
IBC in India is an important part of the country's economic development. The reforms brought in by the Insolvency and Bankruptcy Code (IBC) have been crucial in improving the recovery process of bad loans and bringing in transparency and accountability in the system. With the introduction of the IBC, lenders can now recover their dues in a much simpler and faster manner. This has led to greater confidence among banks and other financial institutions to lend, thereby leading to an increase in credit flow in the economy. The future of IBC in India looks promising, as the government and the regulators continue to strengthen the legal framework and streamline the process of debt resolution.

IBC being one of the best reforms of financial law, and like any other law, IBC also has areas which can still witness remarkable improvement, thus its future amendments as per the need of the hour will play a significant role in protecting the interest of the companies (debtors) and for banks (creditors) as there is a long way ahead for Indian insolvency regime to meet standards of other mature global jurisdictions

ICSI IIP – AT A GLANCE

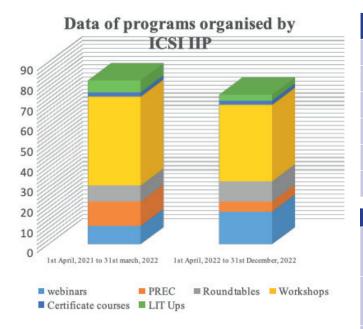
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1. Details of Members enrolled with ICSI IIP



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2. Data of programs organised by ICSI IIP



Programs	01.04.2021-31.12.2022
Webinars	25
PREC	17
Roundtables	18
workshops	82
Certificate courses	4
LIT Ups	9

ICSI IIP – AT A GLANCE

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During the current financial year some new initiatives were started: 1) **Anatomy of Cases- weekly webinar series** sherein case laws of Supreme Court & NCLAT are deliberated. (12 series conducted till now)

2) **Lets connect series- Monthly interactive mee**t wherein a platform is provided for IPs to discuess and deliberate issues related to IBC (2 series conducted till now)

3) **Perspectives on IBC - An Array- workshop series of 4 days** wherein hot topics od IBC are tought by eminent faculties (3 series conducted till now)

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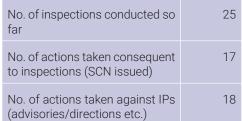
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3. Details of Inspections conducted



■ 2019-20 ■ 2020-21 ■ 2021-22 ■ 2022-23 (till date)

Details of Inspections conducted



Out of 41 inspections, 9 SCNs have been issued on the basis of inspections.

4. Details of Monitoring

14

No. of IPs having valid AFA	653
No. of IPs having/have handled CIRP assignments	735
Total No. of CIRP assignments handled by ICSI IIP IPs	1097
No. of IPs having/have handled Liquidation assignments	287
Total No. of Liquidation assignments handled by ICSI IIP IPs	538
No. of IPs having/have handled Vol. Liquidation assignments	294
Total No. of Voluntary Liquidation Assignments handled by ICSI IIP IPs	720
No. of IPs who have been monitored so far	175
No. of assignments monitored	955
No. of CIRP forms verified so far	4775

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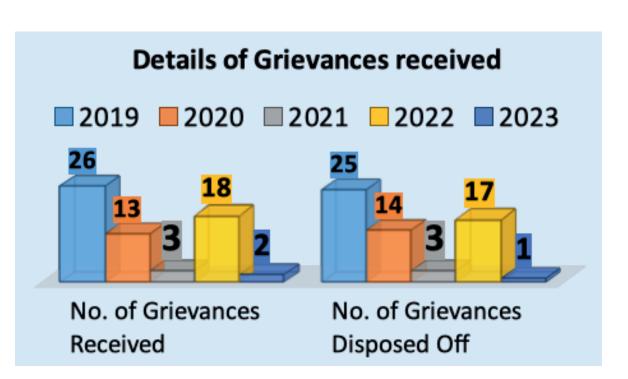
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Inspections



5. Details of Grievances

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Total Grievances Received	Total Grievances Disposed Off
62	60

6. Details of DC proceedings

Total SCN issued	Total SCN disposed off
36	33

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7. ICSI IIP has brought out several publications in-house

- A Compendium on Insolvency Professionals
- IBC Learning Curves
- Final word on IBC
- 100 Landmarks Judgements of NCLAT 2 Editions
- Pronouncements Under The Insolvency And Bankruptcy Code, 2016 Issue Analysis
- IBC Judicial- Regulatory Rulings for stakeholders 2 Editions
- Practical Aspect Of Insolvency Law 4 Editions
- Voluntary Liquidation: A handbook
- Interim Resolution Professional- A Handbook 4 Editions
- Insolvency And Bankruptcy Code, 2016
- Insolvency and Bankruptcy (Rules & Regulations)

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ICSI IIP – AT A GLANCE

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8. E-Facilities to Professionals

- Online registration
- Online facility for purchase of books
- Query platform wherein expert panel of IPs replies to practical queries of Insolvency Professionals within specified time
- Online facility to submit relationship, cost, time based/event based disclosures, half yearly returns

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- Subscription of e-journals
- Dedicated helplines and email ids for assistance
- Online Learning Management System which delivers assistance in learning by way of e-books, online lectures delivered by experts covering the Limited Insolvency Exam syllabus and e-mock exam for aspirants preparing for Limited Insolvency Examination
- Impact assessment of services of ICSI IIP taken from IPs to get the feedback and to improvise the working

9. Education and Training (apart from programs)

- Daily learning curves (no. of issues till date = 898);
- Compliance calendars conclusive and easy understandable compliance calendars for IPs
- Statement of best practices;
- FAQs- Part of monthly journal;
- Monthly journal
- IBC Knowledge Capsules: 26 editions issued till date;
- Research articles in national and international journal on various topics;
- Research initiative original research articles invited from IPs on IBC;
- Snippets on IBC super informative short videos by IPs;

List of programs organized by ICSI IIP in the month of January and February, 2023

1. Webinars

S. No	Date of Webinar	Торіс
1.	09.01.2023	Treatment of Claims under Liquidation
2.	13.01.2023	Anatomy of IBC Cases - 3
3.	27.01.2023	EOI to Resolution Plan - A Journey
4.	30.01.2023	Recent Amendments relating to Regulatory Fee

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2. Workshops

S. No	Date of Workshop	Торіс
1.	06.01.2023	Registration of Security Interest and Rights under IBC
2.	07.01.2023	Moratorium & Ethical Practice for Insolvency Professionals
3.	21.01.2023	Corporate Restructuring and Interim Finance under IBC
4.	30.01.2023 & 31.01.2023	Labour Laws and its relevance under IBC

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3. Workshop Series

S. No	Date of Workshop	Торіс
Series III	16.01.2023 to	Insolvency Law in the year 2022: Lessons and Way Forward
	20.01.2023	16.01.2023: Tracing the steps ahead for IBC in the year 2023
		17.01.2023: Scope of Mediation as a Precursor to CIRP
		18.01.2023: Landmark Decisions rendered by Supreme Court in the year 2022
		19.01.2023: Analysing the current issues in Liquidation Process and Future Reforms
		20.01.2023: Review of IBC Regulatory Amendments of the year 2022

4. Roundtables

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S. No	Date of event	Торіс
1.	25.01.2023	Proposed changes to IBC - MCA notice dated 18th Jan 2023

5. Interactive meet

S. No	Date of event	Торіс
1.	05.01.2023	Let's connect: A platform for the IPs- "Know your IPA"
2.	06.02.2023	Let's connect: A platform for the IPs- "Managing the CD as going concern"

6. Joint initiative with IBBI and other IPAs

IBBI conducted Insolvency Professional's Conclave jointly with the three IPAs on 23.01.2023 at Chennai.

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7. LIT UP: 3 days Training Programmes for Preparation of Limited Insolvency Examination

ICSI IIP conducted 1 training programme from 9th January, 2023 to 11th January, 2023.

Insights

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IP & Adv. Shailendra Singh Email: shailendralaw@gmail.com" Vidharbha Industries Judgement and its implications on CIRP -Important developments leading to appeal before the SC

Appellant Vidharbha Industries Power Limited is an electricity generation company which had filed an application before Maharashtra Electricity Regulatory Commission (MERC) due to increase in fuel cost however, the MERC in 2015 disposed of the matter refusing a substantial portion of fuel cost as claimed by the Appellant, subsequently Appellant filed an appeal before the Appellate Tribunal for electricity (APTEL) challenging the same. In November 2016, the APTEL allowed the appeal and the Appellant claimed that a sum of Rs. 1,730 crore is due to the Appellant in accordance with the terms of the order of APTEL. However, MERC filed an appeal in the Hon'ble Supreme court against the order of the APTEL.

In February 2020 the Respondent as a financial creditor filed for initiation of CIRP u/s 7(2) of IBC before NCLT Mumbai and therefore the Appellant filed a miscellaneous Application seeking stay of same proceeding since the matter was pending before the Hon'ble SC. The NCLT dismissed the miscellaneous application of the appellant

citing that timely disposal of the petition is foremost objective of the IBC law. it further quoted preamble of the code highlighting that the "it is the code for reorganization and insolvency resolution of corporate debtors, unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete." and "Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit market".

It further observed that no other extraneous matter should come in the way of expeditiously deciding a petition either under section 7 or section 9 of the code and the adjudicating authority is only required to see whether there has been debt and the corporate debtor defaulted in making payments, subsequently the appellant filed an appeal before the NCLAT against the order of NCLT which was also dismissed on the ground that it finds no legal infirmity in the said order, hence the appeal under section 62 of the insolvency and bankruptcy code, 2016 was filed before the Supreme Court.

The Supreme court while elaborating section 7(5) (a) held that since the word which is being used by the legislatures in subclause (a) & (b) is 'may' and not 'Shall' therefore, by applying literal interpretation, the court deciphered that the concerned provision is discretionary/ directory rather than being mandatory and is different from other analogous provisions i.e., Section 8 and 9 wherein the creditor is not a financial institution but an operational creditor, thereby concluding that the adjudicating authority has discretion while considering the application for initiation of CIRP, taking into account all relevant facts and circumstances, which include overall financial health and viability of the corporate debtor.

FLAWED RATIO DECIDENDI:

The Court ignored the fact that IBC is the law specifically designed for expeditious disposal of the cases in a time bound manner and for maximization of value of assets of corporate debtor and has even overlooked its own judgements namely, **E.S. Krishnamurthy & ors. Vs. Bharath Hi-Tech Builders Pvt. Ltd., 2021** wherein the Apex court categorically laid down that "On a bare reading of the provision, it is clear that both, Clauses (a) and (b) of sub-Section (5) of Section 7, use the

expression "it may, by order" while referring to the power of the Adjudicating Authority. In Clause (a) of sub-Section (5), the Adjudicating Authority may, by order, admit the application or in Clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the Adjudicating Authority in a petition under Section 7. The Adjudicating Authority must either admit the application under Clause (a) of sub-Section (5) or it must reject the application under Clause (b) of sub-Section (5). The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available" and the Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 wherein while elucidating section 7 of the IBC it held that the adjudicating authority only has to determine whether a default has occurred, i.e., whether the debt was due and has remained unpaid, therefore once the adjudicating authority is of the opinion that default has occurred, it has to admit the application unless it is incomplete.

Further, in **Swiss Ribbons Private Limited and Anr. Vs. Union of India, 2018** it observed that The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code.

The judgement while delving upon the provisions Corporate Insolvency concerning Resolution Process, overlooked broader aims and objectives of the insolvency law, moreover it also appears to be indifferent to its widespread ramification on the corporate insolvency process, one of which could be multiplicity of the cases and passing of contradictory/ varying judgement by different benches/ tribunals. The court instead of applying literal interpretation, should have harmoniously interpreted the provisions involved which would have ensured equal platform to all stakeholders i.e., corporate debtor as well as financial creditor. further, acceptance or rejection of the application by the adjudicating authority, after the default by the corporate debtor gives extensive discretion to the adjudicating authority, since no clear rule regarding a red flag condition of the corporate debtor is laid down.

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CONCLUDING REMARKS:

judgement back-pedals earlier achievements in the field of corporate insolvency resolution and disturbs the fine balance envisaged under corporate insolvency law. The court has erroneously applied peculiar facts and circumstances of the matter at hand to interpret concerned provisions of the law. E.S. Krishnamurthy (supra) judgement had very aptly laid down that the adjudicating authority should either accept the Application for initiation of CIRP or reject it, therefore, there isn't any third course available to it, the Hon'ble SC has misconstrued the same and preferred to rely on literal rule of interpretation by overlooking the purpose/ object of the insolvency and bankruptcy code. Meanwhile it can only be anticipated that the judgement doesn't become the new normalcy, therefore causes hindrance for a healthy competitive market which allows regular entry of new businesses and easy exit for sick ones.

In my humble opinion, since the matter was sui generis in nature involving electricity generating company or power sector which was in financial distress, therefore considering peculiarity of facts and circumstances the court could have abstained to interpret relevant provisions in the same light. Further, the judgements declared by the SC has binding authority Under Art. 141 of the constitution, therefore the Hon'ble court may have considered the same and has rather upheld the object and spirit of the insolvency and bankruptcy law in its essence.

UPCOMING EVENTS IN THE MONTH OF MARCH, 2023

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PERSPECTIVES ON IBC - AN ARRAY	LIT UP - LIMITED INSOLVENCY
(SERIES – IV)	EXAMINATION TRAINING
 Brief Outline : Managing Valuation under CIRP & Liquidation Handling the Compliances under IBC Drafting, pleadings and Arguments before NCLT and NCLAT Discussion on Landmark Judgments SC, NCLAT & others Mock CoC Meeting 	 Brief Outline : Insolvency & Bankruptcy Code & CIRP Regulation Liquidation Process Business Laws General Laws General awareness Important Case Laws & Case study
 Mode of program – Virtual Fees – Rs. 3,000/- plus GST Duration – 5 days CPE – 10 (For IPs) Who should attend : Members of IPAs Members of ICSI/ICAI/CMAI Advocates, Bankers & Other Professionals Graduation in any stream from a recognised University/ Institute 	 Mode of program – Virtual Fees – Rs. 7,500/- plus GST Duration – 3days Who should attend : Has 10 years of experience as CS/CA/CMA Students of ICSI LLB/LLM, MBA etc. Graduation in any stream from a recognized University/ Institute
Payment link :	Payment link :
https://portal.icsiiip.in/Login.aspx?Payment=true	https://portal.icsiiip.in/Login.aspx?Payment=true

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INSIGHTS



IP & Adv. Anang Kumar Shandilya Email: cs.anang@gmail.com

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Voluntary Liquidation Process Under IBC

INTRODUCTION

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In accordance with Section 59 of Insolvency and Bankruptcy Code, 2016, a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under this code'.

Before, the inception of the Code, the liquidation proceedings could be instituted before the NCLT as well as before the High Court but after the enactment of this Code w.e.f. 1st April 2017 the corporate person can only be put into voluntary liquidation by its shareholders. Also, the corporate person must be solvent i.e there are enough assets to pay off all the debts. The Board has introduced the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 for giving effect to the procedure involved in the Liquidation process.

This is a relatively newly introduced path for voluntary liquidation, and, in theory, it should be an important process.

PRE-CONDITIONS FOR COMMENCEMENT OF VOLUNTARY LIQUIDATION

For initiating voluntary liquidation under section 59, there are few preconditions required to be satisfied which are as follows-

- a. Intention of corporate person to liquidate itself voluntarily; and
- b. the corporate person has not committed any default;

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- c. adequate assets to pay off its debts
- d. Members' approval is necessary to initiate the process

EFFECT OF COMMENCEMENT OF VOLUNTARY LIQUIDATION

The Voluntary Liquidation shall commence from the date of passing the shareholders' resolution subject to the creditors' approval. The shareholders shall appoint an Insolvency Professional to act as Liquidator for the purpose of conducting the voluntary liquidation proceedings.

The provisions of sections 35 to 53 (relating to liquidation under the Code in respect of insolvent entities) shall apply to voluntary liquidation proceedings for corporate persons who among other things enumerate the power and duties of Liquidator.

The Liquidator takes control of the company's affairs and almost all powers of the directors.

The Liquidator shall dispose off all the company's assets and, after paying the costs and expenses of the liquidation, distributes remaining amount to the creditors and balance amount to contributories for moving further with dissolution process of company.

ROLE AND RESPONSIBILITIES OF DIRECTORS OF COMPANY UNDER LIQUIDATION

In voluntary liquidation proceedings, the company's directors must:

- a. provide information about the company's affairs to the Liquidator and attend interviews with the Liquidator as and when reasonably required;
- b. look after and hand over the company's assets to the Liquidator, together with all its books, records, bank statements, insurance policies and other papers relating to its assets and liabilities

STEPS AS PER PRESCRIBED CODE AND RELATED REGULATIONS

The major steps involved in voluntary liquidation process under section 59 of IBC read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 are as follows:

Step 1: Convene Board Meeting for approving the voluntary liquidation.

- In the Board Meeting, the majority of the directors of the company shall give declaration of solvency duly verified by an affidavit stating that
 - a) the company is not being liquidated to defraud any person and
 - b) the company will be able to pay all its debts in full from the proceeds of assets to be sold in the liquidation
 - c) the company has made provision for preservation of its records after its dissolution
- Such declaration is to be accompanied with audited financial statements and record of business operations of the company for the previous two years or since its incorporation, whichever is later and a valuation report of assets of the company, if any, prepared by a Registered Valuer.
- Sending Notice of General Meeting to all the members for passing resolution for voluntary liquidation and appointment of Liquidator

Step 2: Passing of shareholder's resolution and appointing a Liquidator.

- A special resolution passed by the members of the company in general meeting, within 4 weeks of giving declaration of solvency by the majority Directors, requiring the company to be liquidated voluntarily and appointing an Insolvency Professional to act as the Liquidator.
- Further, creditors representing two-thirds in value of the debt of the company shall approve the said resolution within seven days of such resolution.
- The Insolvency Professional shall intimate the Board about his appointment within seven days of such appointment.

Step 3: Public Announcement by the Liquidator

- As per Regulation 14 of Voluntary Liquidation Regulations, the Liquidator shall make public announcement (in English and regional newspapers) within five days of appointment as Liquidator in General Meeting calling stakeholders to submit claims within 30 days from liquidation commencement date.
- Publish on the website of the Company, if any.

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Step 4: Filing of resolutions and declaration of solvency to ROC and Insolvency and Bankruptcy Board of India (IBBI)

 The Liquidator shall file the resolution passed in the general meeting to ROC and IBBI within seven days of passing resolution (or within seven days of creditors' approval) and shall file Declaration of Solvency to ROC in e-form GNL.2

Step 5: Intimation to Income Tax Authority regarding initiation of Voluntary Liquidation process

• As per Section 178 of Income Tax Act, 1961, the Liquidator of the Company shall within 30 days of becoming such Liquidator shall give notice of his appointment and commencement of Voluntary Liquidation Process to the assessing officer of the company

Step 6: To open a bank account in name of corporate person

 Liquidator shall open a bank account in the name of the corporate person followed by the word "in voluntary liquidation" in a scheduled bank for transfer of funds to the said account and closure of existing bank account(s) of the corporate person.

Step 7: Registers and Book of Accounts of the Company

• The Liquidator shall ensure to keep the registers and book of accounts of the Company completed as on Liquidation commencement date and brought up to date. He shall maintain all books and registers as provided in the Reg. 10(2) of Voluntary Liquidation Process.

Step 8: Submission of Preliminary report to the Company by the Liquidator

- The liquidator shall submit a Preliminary Report to the Company within 45 days from the liquidation commencement date, detailing:
 - a. the capital structure of the Company
 - b. the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the Company
 - c. Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the Company or the conduct of the business thereof; and

d. the proposed plan of action for carrying out the liquidation including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Step 9: Verification of claims submitted and preparation of List of stakeholders

- The Liquidator shall verify all the claims received within thirty days from the last date of receiving claims; and
- Communicate his decision of accepting or rejecting the claims with reason, within seven days of such acceptance or rejection;
- The Liquidator shall prepare list of stakeholders within Forty-five days from the last date of receiving claims (*within fifteen days, if no claims* has been received)

Step 10: Realisation of the assets and payment of all the debts

- The Liquidator shall realize proceeds from all the assets and distribute the proceeds within thirty days from realization after deducting Liquidation cost.
- Liquidator shall give final remittance to shareholders/contributories
- Lastly, Liquidator shall close the bank account opened for Liquidation purpose.

Step 11: Submission of Final Report to ROC, IBBI and NCLT

- On completion of Liquidation Process, the Liquidator shall prepare the final report enclosing audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date;
- Statements and declaration as enumerated in Reg. 38 of Voluntary Liquidation Process;
- The Liquidator shall submit the final report to ROC in GNL.2 and to the Board.

Step 12: Completion of Liquidation Process

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• The Liquidator shall endeavor to complete the process and submission of final report with 270 days from the Liquidation Commencement date (90 days, in case of no creditors).

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- In case the Liquidation process continue for more than 12 months, then the Liquidator shall:
 - a) Hold a meeting of contributories within 15 days from end of 12 months;
 - b) Present an annual status report indicating progress in liquidation enclosing the audited accounts of Liquidation showing receipts and payments relating to Liquidation

Step 13: Application to adjudicating authority for dissolution

 After the completion of Liquidation Process, the Liquidator shall make an application and submit Final report and compliance certificate in Form H to National Company Law Tribunal (NCLT) for passing dissolution order under section 59(8) of Code.

Step 14: File copy of order for dissolution of Company and change of status of company in master data on MCA website

- Copy of order for dissolution of Company shall be filed with ROC in Form INC 28 within fourteen days from the date of such order.
- A letter shall be made to IBBI to change the status of the Company from "Under Liquidation" to "Dissolved" in the master data appearing on the MCA website.

PRACTICAL ISSUES INVOLVED

There is a lack of standard guidelines on requirements by NCLT benches. During my appearance in the capacity of counsel / Liquidator it has come to my knowledge:

 That in certain benches of the NCLT specifically require, the application for dissolution to be services to IBBI and concerned RoC and a newspaper publication to be published inviting objection(s) on the proposed order of dissolution.

 That in so many instances, the Bench requires an NOC from the relevant RoC to be submitted before taking the application for dissolution on record, even though this requirement does not emanate from either IBC or related regulations.

These requirements imposed by the Bench is superfluous in nature and leads to unnecessary delay in the processes as the Liquidator has to make duplicate efforts and exercises already done by him before closure of liquidation.

3) There is hesitancy in the banks for closure of existing bank accounts and also for opening of the new liquidation bank account by the Liquidator which is a mandatory step in the liquidation proceedings. The bank employees are not fully aware of the requirements leading to hesitancy among them.

CONCLUSION

In a developing economy like India, where micro small and medium enterprises are aspiring to contribute to the national GDP of the Country, the seamless exit is equally important as smooth start and ease of doing business. In line with the same, a legally recognized sound framework for dissolution of business in a hassle free manner is essential for all businesses irrespective of whether or not they are in financial crisis. Although the same has been introduced by Legislators in the form of IBC, yet, uniformity in the approach undertaken by Liquidators is required, at the same time the Hon'ble Bench has to prescribe standard practice for submission and disposal of Application for dissolution. There is also need to issue guidelines to Banks participating in the process for making them aware about the liquidation process, powers of Liquidator for opening of liquidation accounts and closure of existing accounts.

INSIGHTS





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IP, FCS & ACMA Sanjay Lalit Email: sanjay@jupiterlegal.in, Expeditious Resolution of Commercial Disputes Under IBC is Necessity for the Additional Economic Growth of the Nation

Generally speaking, a commercial dispute is a disagreement that arises as a result of commercial activity. This disagreement could be amongst the stakeholders with someone else within the business – such as a shareholder or director, banks, lenders, supplier, customer, long-term client etc. Indian industry and the government must together approach the judiciary to press for faster resolution of commercial disputes that presently take number of months & sometime years to unravel. NCLT or judicial system must accept ideas like limiting the number of adjournments allowed in the hearings of such commercial disputes. Additionally, NCLT Benches or IBBI make explore "for working on making mediation a preferred mechanism to resolve delays in settling commercial disputes" & thereafter the Mediator can submit its report to NCLT Benches and NCLT would adjudicate in the related matter.

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INTRODUCTION

The preamble of the Insolvency and Bankruptcy Code, 2016 ('the Code') makes it clear that it is a comprehensive law which consolidates and amends the law relating to the subject of 'reorganization and insolvency resolution of various entities, including corporate entities', and that the process laid down is to be conducted and completed in a time bound manner. Thus, it is clear that the objective is not only to enable the creditors to recover from the CD by selling-off its assets but to find the best possible resolution for the state of insolvency faced by the CD. Thus, from a standpoint of a comprehensive interpretation of the Code, it is evident that its objective is not only to achieve certainty in recovery of creditors' dues, but the primary aim is to resolve the insolvency of a corporate entity and make it viable for continuation of its business. To this effect, the Code envisages appointment of an expert called the Insolvency Professional, as registered with the Insolvency and Bankruptcy Board of India, who takes over possession and management of the CD, invites claims and assesses the value of assets available to satisfy those claims. By this way, he attempts to resolve the state of insolvency of such corporate entity with in a given time frame for maximization of the value of assets of such entity to interalia endure the economic activity in the economic system of the nation.

Further, in accordance with the Recommendations of the Bankruptcy Law Reforms Committee (BLRC), one of rationale of promulgation of IBC was to provide greater clarity in the insolvency law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt and will address the challenges being faced at present for swift and effective bankruptcy resolution. The said report of BLRC seeks to improve the handling of conflicts between creditors and debtors, avoid destruction of value, distinguish malfeasance vis-a-vis business failure and clearly allocate losses in macroeconomic downturns. BLRC proposed to revamp the revival/re-organization regime applicable to financially distressed companies and limited liability entities and IBC lays down a clear, coherent and speedy process for early identification of financial distress and revival of the companies and limited liability entities if the underlying business is found to **be viable**. Further, IBC would prescribes a swift process and timeline of 180 days for dealing with applications for insolvency resolution. This can be extended for 90 days by the Adjudicating Authority only in exceptional cases. During insolvency resolution period (of 180/270 days), the management of the debtor is placed in the hands of an interim resolution professional/resolution professional. An insolvency resolution plan prepared by the resolution professional has to be approved by a majority of 66% of voting share of the financial creditors. Once the plan is approved, it would require sanction of the Adjudicating Authority. If an insolvency resolution plan is rejected, the Adjudicating Authority will make an order for the liquidation.

It is necessary to reiterate that before IBC, the recovery (of debt) rate was around 26% and the time taken for closure of the case was over four years. IBC has changed this scenario completely and now the average recovery rate is 43% in case of financial creditors and 49% in case of operational creditors. India's ranking in the World Bank Ease of Doing Business Index improved by another 14 places to 63 in 2019 thanks to a sharp improvement in its ranking in resolving insolvency, one of the seven indicators used to build the index. In resolving insolvency, India's ranking jumped 56 places to 52 in 2019 from 108 last year. The credit for this goes to the Insolvency and Bankruptcy Code (IBC), which came into force in 2016. In addition to this if the pending commercial litigations are resolved expeditiously by the stakeholders, both the recovery (of debt) rate & India's ranking in the World Bank Ease of Doing Business Index will further improve.

No business or corporate entity ideally wishes to be involved in a commercial dispute, but in the ordinary course of business, Commercial disputes do arise out of a variety of situations like :-

- from breach of contract;
- infringement of intellectual property rights;
- Non-performing asset (NPA) for loans or advances that are in default or in arrears to the Banks, Financial Institutions, Lenders, wherein the borrower has not made any previously agreed payment of interest and principal repayments to the designated lender for an extended period of time.
- Abovesaid kind of NPAs, financial defaults or number of other situations that result in the potential for legal action for the parties involved.

The wide range of events can give rise to a commercial dispute making it a common place for the businesses

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to get into a difficult situation wherein they have to defend themselves in litigation with other parties before tribunals like the NCLT, Civil Courts, High Courts, Arbitrations, DRTs, SARFAESI Act etc.

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The reality is that although commercial disputes are common and can arise for a variety of reasons, such disputes ought to be resolved either through a Court decision or settlement between parties in an expeditious and time-bound manner, as conceived by the IB Code. The financial or reputational harm that can accompany a poorly navigated commercial dispute is often difficult to calculate, but can be extensive. Avoiding this type of negative outcome is the top priority for businesses and the stakeholders who represent them.

The insolvency law has brought in the much-desired change in the system and is really commendable for having worked towards laying down a stable legal mechanism for resolving commercial disputes falling under its purview of code in an expeditious manner. The commercial disputes include those covered under Sections 7, 9 and 10 of the Code, wherein Sections 7 and 9 provide for financial creditors and operational creditors respectively to seek insolvency resolution of corporate debtor, while Section 10 of the Code allows filing for initiation of insolvency resolution process by the Corporate Debtor itself. Despite best efforts of the existing system mandated under IBC like CIRP activities like CoC meetings, approval of Resolution plan, the manpower shortage including duration of NCLT hearings at the NCLT benches, average time taken for resolution of an insolvency is much higher than the stipulated 330 days and this poses a realtime challenge in realizing the objective of IBC. While the IBC timeframe for resolution is maximum 330 days, inclusive of time taken for litigation, in a lot of cases before NCLT Benches in the country that yielded resolution plans, it took more than 330 days and in a lot of cases the time taken is huge while in many resolution is not achieved as yet, as they are still pending adjudication before NCLT Benches for more than 330 days & in some case this period is of more than 425 days.

In addition to abovesaid delays, after filing the application by the financial and operation creditors under the Section 7 or 9 of the Code and related substantial delay of around 180 days to 400 days or

even more is happening & thereafter delay is being taken in admission of a case as well as approval of the resolution plan at the end of Adjudicating Authority which also results in erosion in value of the CD's assets. It has been observed that even after the marathon completion of CIRP spanning from 9 months to 15 months or more and subsequently approval of Resolution Plans by the CoC (after its negotiation by the CoC with the shortlisted Resolution Applicants & Successful Resolution Applicant), these Resolutions Plans are not being implemented by the Successful Resolution Applicant in time because of delay in the approval of the related Resolutions Plans by the Adjudicating Authority. For the purpose of ease of doing business and accelerating economic activities, Adjudicating Authority should not take over 30 to 60 days after receiving a detailed application accompanied with the Detailed Resolution Plan along with approval of CoC, for the required approval or rejection of a resolution plan. It has been noted by the stakeholders that there are continued delays in approval of the resolution plan which is slowing down the process of complete resolution of Commercial Disputes.

Every human being and best available system have their own inherent limitations. Despite the best efforts of the NCLTs, it has been continuously observed by the stakeholders that unwarranted litigations (by filing of writ petitions before High Courts & Supreme Court), and shortage of manpower at the National Company Law Tribunal (NCLT) Benches at different centers, infrastructure woes and the pandemic-induced disruptions have adversely impacted the envisaged time-bound resolution process, which has resulted in delays.

Now it's high time that these kind of bottlenecks in realizing of the objective of IB Code are done away with and they should not go unnoticed. The Corporate Insolvency Resolution Process (CIRP), which has been marked by delays needs an immediate overhaul at the end of Government of India and related Regulatory Agencies namely IBBI & MCA.

It should be reviewed at the end of legislature or policy-makers that NCLT Bench should pass an order approving or rejecting a resolution plan within 30 to 60 days, and in case of justified reasons of delay in approving or rejecting within 30 to 60 days,

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NCLT Benches should consider to give the reason of said delays. Further in order to curb unsolicited and continuous revision of resolution plans, which is another major reason for delay in the approval of resolution process, the legislations or IBBI clearly lay down a mechanism for reviewing the process of revisions to resolution plans. Though IBBI regulations do not give a right to the Resolution Applicants to unilaterally revise or change resolution plans but Adjudicating Authorities, in order to ensure value maximization, have allowed revisions to prospective resolutions applicants submitting their resolution plans to NCLT, which sometime delays the process of approval of Resolution Plans. To overcome this delay in the process of approval of Resolution Plans and also to facilitate the value maximization to CD's assets, CoC and RP should proactively negotiate with the Resolution Applicants which has critical commercial decision-making powers under the insolvency laws, which would indeed ensure value maximization along with expeditious approval of the Resolution Plans.

The current state of affairs is not only affecting the functioning of the tribunal but the increased demand of the revival of economy and also the expectations of faster resolution by various stakeholders, including banks, lenders, creditors, investors, employees of stressed companies and thousands of aggrieved homebuyers requires that the government should look to provide the much-needed strength and infrastructure as far as NCLT is concerned wherein the NCLT should consider to adjudicate matters related to IBC and Companies Act in line with the need of expeditious revival of Indian Economy.

There is no denying fact that in regard to faster resolution of commercial disputes, judicial system should actively implement the process of Capping adjournments and the stakeholders namely government, corporate debtor, financial & operational creditors including CoC all go together and engage with the judiciary, wherein the judiciary has really outstanding & learned judges/members with a very high degree of understanding and empathy to cap the adjournments & adjudicate the resolution in a time bound manner for the additional economic growth of the nation.

India may become a USD five trillion economy by 2028-29 only if the GDP grows at nine per cent per annum consistently for the next five years along with resolution of the commercial disputes speedily. It should be appreciated by the stakeholders that the expedited settlement of commercial disputes which are pending for adjudication before NCLT could generate added value to the Indian economy and businesses. This includes direct economic impacts in the revival of said Corporate Debtor's business entity and additionally indirect and induced benefits for the larger economy in the form of employment opportunities & taxes to the national exchequer. Quicker resolution of disputes increases the competitiveness of the businesses wherein these Commercial Disputes also may have strong potential for growth, provided further measures are taken in time for the resolution/ settlement of commercial disputes. One of the measures that the Regulatory Agencies can adopt is the enhancement of procedural rules for the expedited settlement of commercial disputes, which would be even more attractive for the lenders & other stakeholders. It has been observed that the area of settlement of commercial disputes, is not performing to its full potential due to lengthy judicial procedures in tribunals/ courts.

The Code is a nascent statute and there are clearly divergent views on many aspects of its provisions emerging from the different NCLTs. Mostly the Tribunals have delivered orders/judgments providing remarkable clarity on the interpretation of many provisions of the Code relating to corporate insolvency. However, as expected, as in the case of new legislations, there are varied interpretations of certain provisions, as also the scopes of extent thereof. However, one may sincerely hope that with passage of time, insolvency jurisprudence would crystallize into a more concrete form in the right direction, completely in tandem with the content and spirit of the Code.

BRAINSTORMING IDEAS FOR FASTER RESOLUTION OF COMMERCIAL DISPUTES & JUDICIAL SYSTEM

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It's well evident & known to everyone that during the period till 1990 to 1995, in maximum branches of Commercial Banks in India business hours of banks are of four hours only from 10 AM to 2 PM, wherein the customers could do banking activities including withdrawal of money in those four hours only. But after the computerization of the banks and installations of ATM-machines, these business hours have been also doubled and people can withdraw the money from ATMs 24 * 7 , all the 365 days of the year.

Even earlier during the period till 1990 to 1995, Railway Reservations were happening 9.00 A.M. to 8.00 P.M. at specified Railway Reservation Centers with a long queues all the days but after the computerizations of railways, these railway reservations can happen 24 * 7, all the 365 days of the year while sitting at the comfort of our homes.

In addition to above, it's a well evident true history of the country, that Registration of Sale Agreements of Immovable Property were happening in the offices of Sub-Registrar of Assurances for four to five hours from 10 AM to 3 PM, but now a days in the metro cities, Registration of Sale Agreements of Immovable Property are happening in the offices of Sub-Registrar of Assurances in two or three shifts for around fourteen hours from 7:30 AM to 9.00 PM.

In few selective matters pending for disposal before NCLT Benches, the NCLT Benches or government or IBBI may consider to explore **"for working on making mediation a preferred mechanism to resolve delays in settling commercial disputes"** rather than everyone rushing to NCLT by filing Interlocutory Application (IAs) under Rule 11 of NCLT Rules or Section 60 (5) of IBBI Code. Thereafter this Mediator can submit its report to NCLT Benches and NCLT would adjudicate in the related matter in due course.

Similarly, as the nation have massive resources of Learned Judges/Retired Judges/Retired Civil Servants/Experts/Legal or Technical Professionals /Advocates/Company Secretaries /Chartered Accountants/ Management or Cost Accountants who can be prospective judges/members of NCLT Benches, the Central Government, Ministry of Finance or Corporate Affairs, IBBI etc. should consider to increase the number of shifts/members or duration of NCLT Benches which should be partially or fully compensated by collecting the additional increased court fees or filing fees from the litigants or related stakeholders by not compromising the quality of justice and final adjudication of resolution process.

CONCLUSION

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Notwithstanding, any views, things, obligations, expectations mentioned hereinabove the judicial system of the nation should be complimentary to economic growth of the nation by resolving the commercial disputes in the time bound manner with the required support of all the stakeholders. At this critical juncture of economic slow -down, expeditious resolution of commercial disputes is the need of the hour. This guicker resolution process of commercial disputes will ensure more revenue to government treasury in the form taxes and also opportunities of more employability to the deserved masses of the country. Quicker Resolution of Commercial Disputes can unlock the economical potential of the concerned businesses and can be a major enabler of additional economical development in the country.

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Judicial Pronouncements

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Supreme Court of India

Case title: Sabarmati Gas Limited vs. Shah Alloys Limited

Case no.: Civil Appeal No. 1669 of 2020

Decision Date: 4th January, 2023



Facts:

- The respondent, for its manufacturing needs, required commercial supply of natural gas. To facilitate the same the appellant and the respondent entered into a Gas Sales Agreement (GSA) whereby and where under the appellant was obligated to supply natural gas.
- On later stage the Respondent defaulted in the payment and made only partial irregular payments.
- Meanwhile, the respondent approached BIFR to get it declared as a 'sick unit' and for recommendation of a plan for its rehabilitation, in terms of the provisions under SICA.
- After the enactment of IBC, the Appellant issued a demand notice, under Section 8 of the IBC, 2016 demanding payment of operational debt. Respondent gave a reply to the aforesaid demand notice stating that there was shortfall in supply of natural gas and it caused huge loss due to the disconnection of gas supply. Therefore, Respondent declined the liability to pay the amount demanded.
- Thereafter, an application was filed by under section 9 of Insolvency and Bankruptcy Code, 2016 (IBC) by Operational Creditor (Sabarmati Gas Limited) seeking initiation of Corporate Insolvency Resolution Process (CIRP) of Shah Alloys Limited.
- The said application was dismissed by the NCLT on the grounds of being barred by limitation and existence of a 'pre-existing dispute' between the appellant and the respondent.

Held:

- In the preset case, while the proceedings under SICA were pending, Insolvency & Bankruptcy Code came into effect, which repealed SICA. The Appellant could not have resorted to any legal proceedings to enforce its rights.
- The Hon'ble Supreme Court interpreted the provision related to limitation of time that section 238A of IBC renders the provision of Limitation Act applicable to the computation of the period of limitation in regard to proceedings before the NCLT.
- Decision in B.K. Educational Services Private Limited was referred, that the period of limitation is three years from the right to apply accrues but the delay is condonable on sufficient grounds as provided under Section 5 of the Limitation Act.
- Sufficient cause is the cause for which a party could not be blamed. As such, in the absence of provisions for exclusion of the period of suspension of legal proceedings, the same can be excluded and is sufficient cause for condoning the delay under Section 5 of the Limitation Act.
- If the question of condonation of delay is not considered it will result in injustice as the party was statutorily prevented from initiating action against the industrial company concerned.
- Moreover, for an application filed under section 7 or 9 of IBC, the date of coming into force of IBC i.e. 01.12.2016 would not form the trigger point of limitation and the period of limitation for an application for initiating of CIRP under Section 9, IBC would be three years from the date when the right to apply accrues as provided by Article 137 of the Limitation Act.
- Furthermore, the Hon'ble Supreme Court concluded that there was a pre-existing dispute between the parties and the matter was not remanded to NCLT for reconsideration of the Section 9 Application.

Cases Referred:

Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407

- Mobilox Innovations (P) Ltd. v. Kirusa Software (P)
 Ltd. (2018) 1 SCC 353
- Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited and Anr. (2020) 15 SCC 1
- B.K. Educational Services Private Limited v. Parag Gupta and Associates (2019) 11 SCC 633

Allahabad High Court

Case title: Narendra Singh Panwar v Pashchimanchal Vidyut Vitran Nigam Limited

Case no.: WRIT - C No. - 26355 of 2022

Decision Date: January 12, 2023



Facts:

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- An application/petition was filed by the M/s Ram Alloys Casting Pvt Itd under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the rules framed thereunder, wherein the defaulter company(M/s Trimurti Concast Pvt Itd.) went into insolvency.
- By an order dated 22.3.2022, the National Company Law Tribunal had approved the resolution plan and on the application filed by the respondent no.1 namely Paschimanchal Vidyut Vitran Itd for

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its claim of electricity dues, it was directed by the Tribunal that since the approval of resolution plan was under consideration, the claim as prayed be considered before the approval of the resolution plan by the adjudicating authority.

- The claim of the applicant Corporation, thus, was to be considered along with other Operational Creditors for whom the resolution applicant had made specific provisions in the resolution plan.
- It is contended in the writ petition that after the order dated 22.3.2022 passed by NCLT Allahabad, the electricity connection of the defaulter company namely M/s Trimurti Concast Pvt Itd had been disconnected permanently on 30.08.2022, in continuation with the temporary disconnection made on 9.7.2019. The recovery is sought to be made by the demand notice dated 30.06.2022 issued in the name of both the Directors of the defaulter company, which is subject matter of challenge herein.
- The recovery of electricity dues was initiated against the Directors of the company during the period when the defaulter company was in insolvency. The resolution plan submitted by the resolution applicant was approved under the order of the National Company Law Tribunal.
- The issue was whether the director of the company who is claimed to be the personal guarantor in the matter of payment of electricity dues of the company would be able to sustain the challenge to the demand of dues of electricity from the personal assets of the directors, in view of the insolvency proceedings concluded in relation to the defaulter company, namely the corporate debtor.

Held:

It is well settled that IBC is a complete Code and in view of the provision of Section 238 of the IBC, the provisions of the Code will prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The Code is beneficiary legislation intended to put the corporate debtor back on its feet and is not merely money recovery legislation. The CIRP is not intended to be adversial to the corporate debtor but is intended at protecting the interest of the corporate debtor.

- ➤ A reading of the order of the NCLT clearly shows that the reliefs, waiver and claims made by the resolution applicant were granted to the extent that after the payment of dues of the creditor as per the resolution plan, a creditor cannot initiate proceedings for recovery of claims against the corporate debtor which are not part of the resolution plan. All encumbrance on the assets of the corporate debtor prior to the plan stood permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013.
- The object of the Code is not to allow personal guarantors such as Directors who are in management of the companies to escape from an independent and co-existent liability to pay off the entire outstanding debt.
- While dealing with the action under Section 7 of IBC,2016 against the corporate debtor, it was noted that Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor.
- The sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.
- Approval of a resolution plan does not ipso facto absolve the surety/guarantor of his or her liability, which arises out of an independent contract of guarantee. To what extent, the liability of a guarantor can be pressed into service would depend on the terms of the guarantee/contract, itself.
- The Court rejected the main contention of the petitioner to challenge the recovery, on the ground that approval of the resolution plan in the insolvency proceeding in relation to the defaulter company would ipso facto discharge both the Directors of the defaulter Company.

CASES REFERRED TO: Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481; SBI v. V. Ramakrishnan, (2018) 17 SCC 394; Sanjeev

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JUDICIAL PRONOUNCEMENTS

Shriya v. SBI, 2017 SCC OnLine All 4067; Vijay Kumar Jain v. Standard Chartered Bank, (2019) 20 SCC 455; Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531

Delhi High Court

Case title: Tata Steel BSL Limited V. Venus Recruiter Private Limited & Ors.

Case no.: LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021

Decision Date: 13th January, 2023



Facts:

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- Upon default in repayment of its credit facilities, State Bank of India ("SBI") filed a petition under Section 7 of the IBC before the NCLT seeking initiation of CIRP of M/s Bhushan Steel Limited.
- On 26.07.2017, the National Company Law Tribunal, New Delhi (NCLT) passed an order admitting Bhushan Steel Limited to CIRP. Mr. Vijay Kumar Iyer was appointed as the Interim Resolution Professional. Thereafter, pursuant to the procedure laid down in the IBC, a public announcement was made inviting submission of claims by prospective resolution applicants and the Committee of Creditors was constituted.
- On 24.08.2017, the CoC convened for the first time wherein it inter alia confirmed the appointment of

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Mr. Vijay Kumar Iyer as the Resolution Professional of Bhushan Steel Limited.

- On 20.03.2018, the CoC approved the resolution plan proposed by Tata Steel Ltd.
- On 28.03.2018, the RP filed the resolution plan proposed by Tata Steel before the NCLT for its approval in terms of Section 31 of the IBC.
- On 03.04.2018, after filing of the resolution plan \geq but before its approval, the Forensic Auditor of Bhushan Steel Ltd., Deloitte, submitted a Forensic Audit Report of the Corporate Debtor to the RP. Material on record discloses that several suspect transactions were entered into by the Corporate Debtor, namely, (i) Potential excess payment of lease rent to Vistrat Real Estate Pvt. Ltd.; (ii) Preferential credit to various international customer sand long outstanding receivables to entities such as Shree Steel Djibouti FZCO and Shree Global Steel FZE; (iii) Excess payments Manpower companies/contractors; to (iv) Uncontracted payment of interest on advance to Peak Minerals and Mining Private Ltd. for cancelled sale-and-lease back transactions.
- The allegation is that 10% service charge was paid in lieu of manpower supply could have been preferential in nature.
- On 09.04.2018, the RP filed an application before the NCLT, under Section 25(2)(j), Sections 43 to 51 and Section 66 of the IBC wherein various transactions were enumerated as 'suspect transactions' with related parties.
- On 15.05.2018, NCLT approved the Resolution Plan of Tata Steel filed by the RP before the NCLT on 28.03.2018. On 18.05.2018, the Resolution Plan was implemented in finality and the new management being Tata Steel BSL Ltd., the Appellant herein assumed control of Bhushan Steel Limited.
- NCLT observed that CA-284(PB)/2018, i.e., the avoidance application, has been filed by RP on 09.04.2018 prior to the approval of the Resolution Plan and proceeded to issue notice to the respondent companies made party to the application.

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- Parallelly, on 10.08.2018, the NCLAT upheld the Order dated 15.05.2018, passed by the NCLT approving the Resolution Plan of Tata Steel.
- Aggrieved by the Order of the NCLT issuing notice in the avoidance application, the Respondent filed a Writ Petition seeking issuance of a writ declaring the proceedings borne out of the avoidance application, pending before the NCLT, as void and non-est since CIRP had concluded and the successful Resolution Applicant, Tata Steel Limited had assumed control of Bhushan Steel Limited in terms of the IBC.
- The quintessential question to be answered in the writ was whether an application for avoidance of a preferential transaction, though filed prior to the Resolution Plan being approved, can be heard and adjudicated by the NCLT, at the instance of the RP, after the approval of the Resolution Plan.

Held:

- There is "no doubt" that in terms of Section 60 of the IBC, the NCLT/Adjudicating Authority has the jurisdiction to deal with all applications and petitions "in relation to insolvency resolution and liquidation for corporate persons", however, the issue is whether the proceedings in question were in relation to insolvency resolution or not.
- > The purpose and object of the IBC is: -
 - to consolidate all laws relating to reorganization and insolvency resolution of corporate persons and bring them under a single unified umbrella.
 - (ii) to undertake the process of resolution in time bound manner with a view to maximize the value of assets of such a corporate person.
 - (iii) to ensure that the corporate debtor is a going concern, by separating it from its promoters and allowing for its reconstruction by substituting its management with an efficient and entrepreneurial one
 - (iv) to enhance and improve the availability of credit with lending institutions to promote further economic growth while balancing the interests of all stakeholders in the process.

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- \geq Provisions pertaining to various types of avoidable transactions i.e., Sections 43-51 and 66 and 67 were especially made a part of the IBC so that they could be avoided by the RP (during the CIRP) or the liquidator thereafter to protect the interests of the creditors. On account of avoidable transactions undertaken by the erstwhile promoters/management of a corporate debtor, the pool of assets of the corporate debtor stands diminished, becoming detrimental to the successful resolution of the corporate debtor as it does not serve as a lucrative prospect to a Resolution Applicant. Even if the corporate debtor would proceed to liquidation, the diminished pool of assets harms the recovery prospect of creditors directly. Therefore, these provisions, largely endeavour to enhance the pool of assets of the corporate debtor available for either making it a lucrative prospect for a Resolution Applicant or in the event of liquidation, for distribution among creditors. The avoidance of these transactions essentially prevents unjust enrichment of one party at the expense of a creditor.
- The nature of avoidance applications clearly indicate that they can survive after CIRP. Section 26 only buttresses this position by clearly demarcating between the scope of proceedings pertaining to resolution on one hand and adjudication of avoidance applications on the other.
- The IBC being a special statute endeavouring \geq to ensure that the resolution process is time bound and efficient, Regulation 35A is in line with this object in attempting to make sure that an avoidance application is determined and filed at the earliest to facilitate resolution of the Corporate Debtor. The insertion of clause 3A to Regulation 35A requires that copies of such an application is provided to the prospective applicants to ensure that such transactions are factored in their plans at the time of submission. The amended Regulation makes it amply clear that an avoidance application can be pending even beyond the submission of the Resolution Plan. This is consistent with our findings in respect of the nature of such proceedings, which require proper scrutiny of facts and law and are likely to meet resistance,

JUDICIAL PRONOUNCEMENTS

thereby being likely to last beyond the conclusion of CIRP.

- Avoidance of certain transactions such as preferential transactions or undervalued transactions are special remedies envisaged only under the IBC to benefit a special creature of the Code itself, i.e., the Committee of Creditors. In view of the purpose and policy behind enactment of the IBC, it is only befitting that any petition or application arising out of the insolvency resolution or liquidation of a corporate person includes proceedings under Part III of the IBC.
- Regulation 38(2)(d) necessitates a resolution plan to provide for the manner in which the resolution applicant seeks to deal with a pending avoidance application and the proviso sets a cut-off date for the applicability of the new regulation.
- The timelines under Regulation 35A are directory and not mandatory in nature. This is because Regulation 35A pertains merely to the RP discharging his statutory burden of filing an avoidance application within an outer limit of 135 days from the commencement of the CIRP.
- While Regulation 35A endeavours to ensure that an avoidance application is determined and filed at the earliest to facilitate resolution of the Corporate Debtor, it does not envisage a situation where the RP is not able to form an opinion, make a determination or file an application as per the prescribed timeline. The duty cast by the IBC under Section 25(2) (j) is with respect to the RP filing the application before conclusion of the CIRP. The said obligation has been discharged. The premise of 35A timelines not being mandatory itself, adherence to Regulation 35A timelines cannot be required so strictly as to render the provisions of avoidable transactions redundant.
- While the Corporate Debtor ceases to exist in its erstwhile avatar, in cases where the Resolution Plan is silent on the treatment of any pending

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applications because such information could not be made available to the applicant, the creditors of the corporate debtor can still be the beneficiaries of the sum or properties that may be recovered from adjudication of an avoidance application. The same is consistent with the scheme of the Code and in line with object sought to be achieved by it which inter-alia includes, increasing the availability of credit within the economy.

- Money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements. Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.
- It is apposite that any kind of benefit acquired from the adjudication of avoidance applications, in cases where treatment of such applications could not be accounted in the plan, must be given to the creditors of the erstwhile corporate debtor, considering especially, that in the present case, the creditors took a massive haircut towards resolution of the corporate debtor. Giving such benefit to the creditors is in consonance with the scheme of the IBC.

CASES REFERRED TO: Anuj Jain, Interim Resolution Profession vs. Axis Bank Ltd., (2020) 8 SCC 401; Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta, (2021) 7 SCC 209; Titaghur Paper Mills Co. Ltd vs State of Orissa, 1983 SCC (2) 433; Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and Others, (1985) 1 SCC 260; Commissioner of Income Tax vs. Chhabil Dass Agarwal, (2014) 1 SCC 603; Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531.

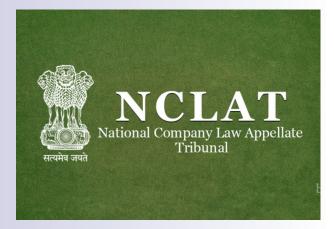
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National Company Law Appellate Tribunal, Delhi

Case title: Jindal Stainless Ltd. v. Mr. Shailendra Ajmera, Resolution Professional of Mittal Corp Ltd. & Ors.

Case no.: Comp. App. (AT) (Ins.) No. 1058 of 2022

Decision Date: January 18, 2023



Facts:

- Mittal Corp Limited (Corporate Debtor) was admitted into Corporate Insolvency Resolution Process on 10.11.2021 by the Adjudicating Authority. Mr. Shailendra Ajmera was appointed as the Resolution Professional. The Resolution Professional received six resolution plans for the Corporate Debtor including plans from Jindal Stainless Ltd. and Shyam Sel and Power Ltd. The Resolution Applicants were communicated the rules of Challenge Process and gave their unconditional acceptance to the same.
- On 15.07.2022, the Challenge Process was conducted and continued for seven rounds, until only one competing Resolution Applicant

remained in the Challenge Process. All the Resolution Applicants were notified that the signed and compliance Resolution Plan must be submitted by 18.07.2022. Jindal Stainless Ltd., Shyam Sel and Power Ltd. along with two other resolution applicants submitted their amended Resolution Plans by 18.07.2022.

- On 19.07.2022, Shyam Sel and Power Ltd. addressed an e-mail to the Resolution Professional, stating its willingness to submit the entire NPV offered as upfront payment within 30 days. Further, Shyam Sel and Power Ltd. also filed an application before the Adjudicating Authority, seeking direction to the Resolution Professional to consider the offer dated 19.07.2022 and place the same before the Committee of Creditors.
- The Adjudicating Authority vide an order dated 11.08.2022, directed the CoC to consider the revised resolution plan of Shyam Sel and Power Ltd. and take an informed decision. In pursuance of the said Order, the Resolution Professional stopped the voting process which was underway.
- Jindal Stainless Ltd. filed an appeal before NCLAT against the Order.
- The issue for consideration was whether after closure of Challenge Process on 15.07.2022 and consequent receipt of Resolution Plan by 18.07.2022, the Adjudicating Authority could have directed for consideration of the revised plan submitted by Shyam Sel and Power Ltd. thereafter.

Held:

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- Taking note of Regulation 39 (1A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the regulation has been brought in place to enable the CoC to negotiate with all the Resolution Applicants by one alternative mechanism to find out the best resolution plan.
- Clause 7 of the Challenge Process clearly contemplates that after conclusion of the Challenge Process, the eligible Resolution Applicants shall not revise their bid/commercial offer. It is relevant to note that Challenge Process

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also reserves the unconditional right of the CoC to cancel/ modify/ withdraw/ abandon/ amend the process of the Challenge Process at any stage. The approval of the plan submitted in CIRP is in the domain of the CoC. Under Regulation 39 of the CIRP Regulations, the committee is entitled to record its deliberation and vote on such resolution plan simultaneously.

- There can be no fetter on the power of the CoC to cancel or modify any negotiation with the Resolution Applicant including a Challenge Process but it is the wisdom of the CoC to take a decision in that regard. CoC, in the facts of the present case, did not take any decision to disregard the Challenge Process, rather it decided to vote on the plan.
- It is well settled that the timeline in the IBC has its salutary value, and it was the wisdom of the CoC which decided to vote on the Resolution Plan after completion of Challenge Process and not to proceed to take any further negotiation or further modification of the plan, that decision ought not to have been interfered with.
- The decision of CoC to vote on the Resolution Plan after completion of Challenge Process and not to further accept any modification of the plan, should not be interfered with. The Application was filed by Shyam Sel and Power Ltd. on 07.08.2022, when CoC had already resolved the vote on all the plans and voting had also commenced w.e.f. 07.08.2022.

CASES REFERRED TO: Ngaitlang Dhar vs. Panna Pragati Infrastructure Private Limited & Ors., Civil Appeal Nos. 3665-3666 of 2020;

Case title: Dharmindra Constructions Pvt. Ltd. & Anr. Vs Rajendra Kumar Jain Resolution Professional of Kudos Chemie Ltd. & Ors.

Case no.: Company Appeal (AT) (Insolvency) No.1477 of 2022 & I.A. No.4658, 4610 of 2022

Decision Date: 18th January, 2023

Facts:

- In the present case, Appellant (Dharmindra Constructions Pvt. Ltd.) is Operational Creditor whose claim was admitted by the Resolution Professional. However, Resolution Plan does not allocate any amount to the Appellant.
- The Resolution Plan submitted by the Successful Resolution Applicant was approved by Adjudicating Authority.
- As per the Information Memorandum issued by the RP to the resolution applicant, the Operational Creditors have been segregated into three categories. The first category being operational creditors being workmen and employees an amount of Rs. 20 lakhs was given against their verified claim of Rs. 18.88 crores.
- Second being Government dues, towards which NIL payment was made as against as verified claim of Rs.295.18 Crores. Third being operational creditors to which NIL payment was made as against a verified claim of Rs.295.18 crores.
- The Appellant filed an application before the NCLAT, challenging the order and argued that that since the approved resolution plan did not allocate any amount for the operational creditor, the same was violative of the provisions of Insolvency & Bankruptcy Code.

Held:

- The Form-H submitted by the Resolution Professional, clearly indicated that the Liquidation value of the Appellant is Nil. The present is a case where all stakeholders have been dealt with in the Plan. There is no requirement in statute that all stakeholders have to be necessarily made payment in the Resolution Plan.
- The decision of Committee of Creditors must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors.
- Judicial review by the Adjudicating Authority as well as Appellate Tribunal has to confine as to whether the requirement referred to in Section

30(2) has been met and Adjudicating Authority may not interfere with the merits of the commercial decision of the CoC.

- The limited judicial review available is to see that CoC has taken into account the fact that Corporate Debtor needs to be kept as a going concern, it needs to maximise the value, and interest of all the stakeholders including Operational Creditor have been taken care of.
- As per the existing law, the Operational Creditors are only entitled for minimum of the liquidation value and there being no breach of any of the provisions of the Code the appeal was dismissed by Hon'ble NCLAT New Delhi.

Cases Referred:

- Hammond Power Solutions Pvt. Ltd. vs. Mr. Sanjit Kumar Nayak, Resolution Professinal & Ors., decided on 14.02.2020
- S. Chandriah vs. Sunil Kumar Agarwal, decided on 22.07.2022
- Essar Steel India Ltd. Committee of Creditors vs.. Satish Kumar Gupta, (2020) 8 SCC 531

Case title: Ashoka Hi-Tech Builders Pvt. Ltd. v. Sanjay Kundra & Anr.

Case no.: Company Appeal (AT) (Insolvency) No. 46 of 2023

Decision Date: 18th January, 2023

Facts:

- In the pertinent case Appellant was a land owner on which the development project was to be constructed and he had filed the claim before the Resolution Professional which was admitted.
- He was inducted in the Committee of Creditors however, subsequently on an Application filed by the Home-Buyers, an order was passed removing

the Appellant from the Committee of Creditors holding that he is not the financial creditor.

Challenging the order, Learned Counsel referred to the Development Agreement between the parties which clearly indicates that Appellant is an owner of 11.40 acres agriculture land on which development agreement, construction to be executed.

Held:

- The provision of Section 5(8)(f) explanation (i) and (ii), it is clear that pre-condition for a debt being a Financial Debt is disbursement against the time value of money and when any amount is raised from an allotment under real estate such transaction is also covered under Section 5(8)(f).
- In the matter of Jaypee Infratech Limited vs. Axis Bank Ltd. & Ors., (2020) the Hon'ble Supreme Court while examining the definition under Section 5(8) of the I&B Code noticed the essentials for Financial Debt and emphasised that essential element is disbursement against time value of the money.
- In instant case, the terms and conditions of development agreement entered between the appellant and the corporate debtor clarified that the appellant was a collaborator in the development agreement and not a financial creditor.
- There was no disbursement for time value of money by the appellant within meaning of Section 5(8) of the IBC. Therefore, Hon'ble NCLAT New Delhi dismissed this appeal.

Cases Referred:

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- Namdeo Ramchandra Patil and Ors. Vs. Vishal Ghisulal Jain Company Appeal (AT) Ins. No. 821 and 930 of 2021 decided on 19.09.2022
- Anuj Jain, Interim Resolution Professional for Company Appeal (AT) Ins. No. 46 of 2023 Jaypee Infratech Limited vs. Axis Bank Ltd. & Ors., (2020) 8 SCC 401

JUDICIAL PRONOUNCEMENTS

National Company Law Tribunal, Delhi

Case title: JHS Svendgaard Laboratories Limited VS HT Media Limited.

Case no.: C.P. (IB) - 400/2022

Decision Date: 3rd January, 2023



Facts:

- The Applicant and the Respondent entered into an Advertising Agreement dated 25.01.2017 wherein the Applicant paid security deposit of INR 8 crores.
- The applicant utilised the Advertisement services of the Respondent to the tune of INR 2.6 crores. The rest of the services could not be availed by the Applicant owing to commercial reasons

pertaining to COVID 19 from January 2017 to January 2019.

- The Respondent also declined to extend the term of the agreement beyond 2022, as per the previously agreed date.
- The Operational Creditor issued a demand notice under Section 8 of the IBC to the CD, demanding the security amount of 5,39,39,475/-.
- The Corporate Debtor did not respond to the notice. The Corporate Debtor while opposing the petition argued that no operational debt was due and payable and there is a pre-existing dispute between the Parties.
- The security deposit amount stood forfeited and was non-refundable as per the Agreement.

Held:

- Disputes may exist, without necessarily being escalated to the court/arbitration, so long as a dispute exists in fact and is not spurious, hypothetical or illusory, insolvency petition is liable to be rejected. The Adjudicating Authority has only to see whether there is a plausible contention which requires further investigation, without going into the merits of the dispute.
- It is further averred that the proceeding under IBC, 2016 are not designed as a tool for recovery of money but to bring out of insolvency and maximization of value of assets of the Respondent.
- The Application was pursued for a disputed debt. the Adjudicating Authority is not a dispute redressal forum.

CASES REFERRED TO: Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.(2018) 1 SCC 353;

Penalty imposed on IP.

Code & Conduct

CASE NO		
DATE OF ORDER		

31st January, 2023

IBBI/DC/148/2023

Contravention-1

Failure to give specific reply to IA

The Draft Inspection report prepared by the IA was sent to the IP and his reply thereof was sought to be furnished within 15 days from its receipt. The IP, however, replied back providing generic replies and also stated that the matter is sub-judice before NCLAT, with no details concerning the issue(s) before the Appellate Authority.

Provisions Referred

Regulation 4(4) and 4(7) of the IBBI (Inspection) Regulations provide as follows:

"(4) It shall be the duty of the service provider and an associated person to produce before the Inspecting Authority such records in his custody or control and furnish to the Inspecting Authority such statements and information relating to its activities within such time as the Inspecting Authority may require"

"(7) It shall be the duty of the service provider and an associated person to give to the Inspecting Authority all assistance which the Inspecting Authority may reasonably require in connection with the inspection" Clause(s) 18 and 19 of the Code of Conduct provides as follows:

"18. An insolvency professional must appear, co-operate and be available for inspections and investigations carried out by the Board, any person authorised by the Board or the insolvency professional agency with which he is enrolled"

"19. An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled."

Contravention-2

Failure to circulate agenda/minutes of 5^{th} , 6^{th} , and 7^{th} CoC meeting and delayed circulation of the minutes of 8^{th} CoC meeting.

The Disciplinary Committee of IBBI observed that neither the agenda nor the minutes of the 5th, 6th, and 7th meeting of the Committee of Creditors (CoC) were circulated to the homebuyers, and the IP pleaded that agenda and minutes were not circulated by him to avoid duplication since the Resolution Professional had already sent the minutes to the homebuyers directly.

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Provisions Referred

Section 25A(2) and (3) of IBC and regulation 25(6) of the IBBI (CIRP) Regulations which provide respectively as follows:

"25A. Rights and duties of authorised representative of financial creditors. –

... (2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share: Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor."

The IP pleaded: (a) that Section 25A (2) under which he is being held liable, was a new provision and associated modalities were still being understood by the market and professionals alike; and (b) that the said omission on his part, did not cause any prejudice to anyone as the RP had already sent the minutes/ agenda of the 5th, 6th and 7th CoC meetings to the homebuyers and recirculation may have caused the confusion.

Contravention-3

Failure to seek instructions on the manner of voting for 5th, 6th, 7th , 8 th, and 9th CoC Meeting.

There was failure on the part of the IP to provide any proof of having received any prior voting instructions from homebuyers indicating that he voted on behalf of homebuyers without taking instructions from them. The IP contended that he had to act in a prudent manner, and for faster resolution and safeguarding interest of the Homebuyers, and that he acted on the decisions which were necessary for speedy completion of CIRP of CD.

Provisions Referred

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Section 25A(3), IBC read with Regulation 16A (9) of CIRP Regulations and Clause 1, 2 and 14 of the Code of Conduct. The language thereof is as follows respectively:

"s. 25A(3): The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions: Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share: Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor."

Regulation 16A provides for the Authorised representative. Its language is as follows:

"(3) Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee."

Contravention-4

Failure to provide documents which were sought by certain homebuyers.

The Disciplinary Committee of IBBI observed that Certain Homebuyers had requested the IP (acting as their AR) as well as the RP to provide certain documents/information *viz.* copy of IM, up to date financials of CD, proceedings before NCLTs, *etc.*

Provisions Referred

Section 25A(3) (supra):

(b) for the dissolution of the corporate debtor, in cases not covered under clause (a)."

DECISION

In view of the aforesaid contraventions, IBBI imposed penalty of Rs. 1,00,000/- (Rupees Five Lakhs only) on the Insolvency Professional and cautioned the IP to be more careful in future and directs him to strictly comply with the applicable provisions of the Code and its underlying Regulations while performing his duties

Knowledge Centre

FAQs on offences and penal provisions under IBC

1. Can a corporate debtor be prosecuted for an offence committed prior to the commencement of the CIRP?

As per Section 32A, the liability of the corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease and the corporate debtor shall not be prosecuted for such offence from the date the resolution plan has been approved by the Adjudicating Authority under Section 31 of the Code.

Further, no action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of CIRP where such property is covered under a resolution plan approved by the Adjudicating Authority under Section 31 of the Code.

2. What are the penal provisions w.r.t fraudulent or malicious initiation of proceedings?

As per Section 65 of the Code, if any person initiates

CIRP/Liquidation/Vol. Liquidation/pre-packaged insolvency resolution process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

3. What are the penal provisions w.r.t concealment of property by any officer of the corporate debtor?

As per Section 68 of the Code, where any officer of the corporate debtor has wilfully or fraudulently concealed any property or part there of or any debt within 12 months immediately preceding the insolvency commencement date, he shall be punishable with imprisonment for a term not less than 3 years which may extend to 5 years and with fine, which shall not be less than 1 lakh rupees, but extend to 1 crore rupees, or both.

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4. What are the penal provisions w.r.t transactions defrauding creditors?

As per Section 69 of the Code, where any officer of the corporate debtor made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of CD within a period of 5 years from the insolvency commencement date or concealed or removed any part of the property of the CD Within two months before the date of any unsatisfied judgment, decree or payment order, he shall be punishable with imprisonment for a term not less than 1 year which may extend to 5 years or with fine, which shall not be less than 1 lakh rupees, but extend to 1 crore rupees, or both.

5. What are the penal provisions w.r.t misconduct by the officers of the corporate debtor during CIRP?

As per Section 70(1) of the Code, when an officer of the corporate debtor intentionally,

- does not disclose to the RP all the details of property of CD and the transactions
- does not deliver to the RP control or custody of property of CD
- does not deliver to RP all books and papers belonging to CD
- fails to inform RP that a debt has been falsely proved by any person during CIRP
- prevents production of any book or paper wrt property or affairs of CD
- accounts fictitious losses or expenses, or any attempt at a CoC meeting within 12 months before ICD

He shall be punishable with imprisonment for a term not less than 3 years which may extend to 5 years or with fine, which shall not be less than 1 lakh rupees, but extend to 1 crore rupees, or both.

6. What are the penal provisions w.r.t misconduct by the Resolution professional of the corporate debtor during CIRP?

As per Section 70(2) of the Code, when the resolution professional of the corporate debtor deliberately contravenes the provisions, he shall be punishable with imprisonment which may

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extend to six months or with fine, which shall not be less than 1 lakh rupees, but extend to 5 lakhs rupees, or with both.

7. What are the penal provisions w.r.t falsification of books of corporate debtor?

As per Section 71 of the Code, on and after the commencement of CIRP, when any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to CD, he shall be punishable with imprisonment for a term which shall not be less than 3 years, but which may extend to 5 years, or with fine which shall not be less than1 lakh rupees, but may extend to 1 crore rupees, or with both.

8. What are the penal provisions w.r.t wilful and material omissions from statements relating to affairs of corporate debtor?

As per Section 72 of the Code, where an officer of the corporate debtor makes Wilful and material omissions from statements w.r.t affairs of CD, he shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to five years, or with fine which shall not be less than 1 lakh rupees, but may extend to 1 crore rupees, or with both.

9. What are the penal provisions w.r.t false representations to creditors during or prior to CIRP or Liquidation?

As per Section 73 of the Code, where any officer of the corporate debtor, on or after CIRP or liquidation or prior to CIRP commencement, makes a false representation or commits any fraud for the purpose of obtaining the consent of creditors, he shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to five years, or with fine which shall not be less than 1 lakh rupees, but may extend to 1 crore rupees, or with both.

10. What are the penal provisions w.r.t contravention of moratorium provisions?

As per Section 74(1) of the Code, where corporate debtor or any officer, knowingly or wilfully committed or authorised or permitted

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violation the provisions of Section 14, he shall be punishable with imprisonment for a term which shall not be less than 3 years, but may extend to 5 years or with fine which shall not be less than 1 lakh rupees, but may extend to 3 lakh rupees, or with both.

As per Section 74(2) of the Code, **where any creditor**, knowingly or wilfully committed or authorised or permitted violation the provisions of Section 14, he shall be punishable with imprisonment for a term which shall not be less than 1 years, but may extend to 5 years or with fine which shall not be less than 1 lakh rupees, but may extend to 1 crore rupees, or with both.

11. What are the penal provisions w.r.t violation of approved resolution plan?

As per Section 74(3) of the Code, Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan, he shall be punishable with imprisonment of not less than 1 year, but may extend to 5 years, or with fine which shall not be less than 1 lakh rupees, but may extend to 1 crore rupees, or with both.

12. What are the penal provisions w.r.t false information furnished in application?

As per Section 75 of the Code, where any false information furnished or material information omitted in application u/s 7 knowingly, such person shall be punishable with fine which shall not be less than 1 lakh rupees, but may extend to 1 crore rupees.

13. What are the penal provisions w.r.t nondisclosure of dispute or payment of debt by operational creditor?

As per Section 76 of the Code, where an operational creditor has wilfully or knowingly concealed under Section 9 application, that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final payment of the unpaid operational debt or knowingly and wilfully authorised or permitted such concealment to any person, he shall be punishable with imprisonment for a term which shall not be less than 1 year but may extend to 5 years or with fine which shall not be less than 1 lakh rupees but may extend to 1 crore rupees, or with both.

14. What are the penal provisions w.r.t wrong information in Section 10 application?

As per Section 77 of the Code, where a corporate debtor provides false information under Section 10 application, or omits any material fact, knowing it to be material or authorised or permitted the furnishing of such information to any person, he shall be punishable with imprisonment for a term which shall not be less than 3 years, but which may extend to 5 years or with fine which shall not be less than 1 lakh rupees, but which may extend to 1 crore rupees, or with both.

15. What are the penal provisions w.r.t offences related to pre-packaged insolvency resolution process?

As per Section 77 of the Code, where corporate debtor or any knowingly or wilfully authorised person,

- provides any information in the application under section 54C which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material;
- provides any information in the list of claims or the preliminary information memorandum under sub-section (1) of section 54G, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material;

shall be punishable with imprisonment for a term which shall not be less than 3 years, but which may extend to 5 years or with fine which shall not be less than 1 lakh rupees, but which may extend to 1 crore rupees, or with both.

Further, If a director or partner of the corporate debtor deliberately contravenes the provisions of Chapter III-A, such person shall be punishable with imprisonment for not less than 3 years, but which may extend to 5 years, or with fine which shall not be less than 1 lakh rupees, but which may extend to 1 crore rupees, or with both.

KNOWLEDGE CENTRE

Policy/Regulatory Updates

REGULATIONS

 The President, NCLT Principal Bench, New Delhi, in exercise of its powers u/Rule 16(f) (r/w rule 51 and 124 of NCLT Rules 2016 and s. 432 CA, 2013) has vide its order dt. 27th January 2023, has prescribed the dress code for the following:

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- o President and Members;
- o Legal Practitioners

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- o Authorised Representatives;
- o IRP/RP/Liquidator;
- o Parties in person.

(The detailed notification can be accessed @ https://ibbi.gov.in//uploads/legalframwork/884e17357 05b71117781a0fcc279efe9.pdf)

 The MCA, vide its notice dt. 18th January 2023, has invited public comments on its recommendations concerning changes in IBC.

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(The detailed notice can be accessed @ https://ibbi.gov.in/uploads/whatsnew/7f55e29ae9c0023184a 3895f849cd2ef.pdf)

Brief on proposals under MCA Notice dt. 18th Jan 2023

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Sr. No.	Proposal Brief
1	Use of Technology in IBC An e-platform to be developed providing a case management system, automated processes to file applications with the AAs, delivery of notices, enabling interaction of IPs with stakeholders, storage of records of CDs undergoing the process, and incentivising participation of other market players in the IBC ecosystem.
2	Admission of CIRP Application based on IU records Admission of application u/s 7 and 9 shall be based on the data of IU only. Such IU record shall be deemed to be conclusive proof about the occurrence of default. In limited cases where the record is not available with IU, AA, on genuine reasons to be shown, consider other evidence. Additionally, CD/debtors shall be provided a reasonable opportunity to respond to the information submitted. To prevent recalcitrant debtors from causing delays, information shall be deemed to be authenticated if no response is received within a stipulated time period.
3	Mandatory to admit an application filed under section 7 where occurrence of a default is established While considering an application under sec. 7, the scope of the AA's power in this regard is limited to determination of default, and the provision does not require the AA to consider other factors or circumstances regarding the inability of the CD to repay its debts. However, in case of <i>Vidarbha Industries Power Limited v. Axis Bank Limited</i> , (Civil Appeal No. 4633 of 2021), a contrary stand was taken by the SC wherein it was held that AA has the discretion to admit or reject an application u/s 7 of IBC despite existence of a default. Consequently, it is observed that the AAs delve into detailed factors relating to the solvency and financial health of the corporate debtor, which is not required as per the original intent of the law. Hence, it has been proposed to clarify (by way of amendment in sec. 7) that the AA is only required to be satisfied about the occurrence of a default and fulfillment of procedural requirements for this specific purpose (and nothing more). Where a default is established, it is mandatory for the AA to admit the application and initiate the CIRP.
	The timeline of 14 days provided in sec 7 has been interpreted to apply only for ascertainment of default. However, it is also intended to apply to the AA's decision to admit or reject the application under section 7(5). Accordingly, suitable amendments are proposed to clarify the applicability of the timeline to that provision as well.
4	Restricting the right of the promoters to propose an interim resolution professional. - No right to the promoters to propose the name of IRP in case of sec. 10 application. AA to appoint on recommendation of IBBI.
5	Empowering the AA to impose penalties for violations of the Code (2 fold proposal) First proposal suggests to provide for civil penalty u/s. 235A with right to AA to penalise for non-compliance of the provisions of the Code. The proceedings may be initiated on an application made by the IBBI or any other person authorised by it in this regard.
	Second proposal seeks to empower the AA to impose a penalty where the AA believes that such a person has filed frivolous or vexatious applications. Minimum penalty 1 lakh per day which may extend to three times the loss caused or unlawful gain, whichever is higher. Further, it is proposed to amend sec. 29A to empower the AA to bar such a promoter from being a resolution applicant and submitting a resolution plan in the CIRP of any CD. The AA, while exercising this power, shall be required to consider the conduct of the promoter in the relevant CIRP and the gravity of the contraventions committed

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Sr. No.	Proposal Brief
6	Fast Track CIRP Unrelated FCs of a CD to select and approve a resolution plan through an informal out-of-court process and involve the AA only for its final approval or for moratorium if the same is needed. Detailed process is proposed to be specified by the IBBI for ensuring that out-of-court process retains the core element.
7	Expanding the applicability of the Pre-packaged Insolvency Resolution Process Prepacks are currently applicable only in case of MSMEs, and come laden with multiple approvals. It is being considered that section 54A be amended to provide that the framework for pre-pack shall apply to prescribed categories of CDs in addition to the MSMEs.
8	Improving Outcome in real estate cases The jurisprudence has evolved to classify 'house allottees' as Financial Creditors. Being classified as FC, makes them part of the Committee of Creditors. However, due to their inherent nature, there arises a dissimilar interest with other FCs which does not align with the scheme of the CIRP. Thus, it is being proposed that when an application is filed to initiate the CIRP against the Corporate Debtor, being promoter of a real estate project, then the Adjudicating Authority , at its discretion, may admit the case but apply the CIRP provisions only to such projects, which have defaulted. The same shall lead to a segregation of such projects from the larger entity for the limited purpose of resolution.
9	Approval of multiple resolution plans (for separate assets) At present, the CoC cannot approve two or more resolution plans, either providing for the sale of the assets of the CD or its insolvency resolution as a going concern; that is, the plan must provide for insolvency resolution as a going concern. It is now proposed that CoC may approve that individual or collective assets of the CD may be resolved in one or more resolution plans. However, at least one of the plans ought to provide for insolvency resolution of the CD as a going concern. Upon approval of a resolution plan by the AA, it shall be implemented pending approval of other plans in the CIRP, if any. CIRP will terminate the CoC and the AA have approved and finalized resolution plans for all the assets of the CD and insolvency resolution of the CD as a going concern.
10	Separation of resolution plan and distribution of proceeds Presently, a resolution plan provides for distribution of proceeds to the OCs under sec. 30(2). The AA, at the time of approving the resolution plan has to verify that the plan conforms by the prescribed manner of distribution, and provides the minimum entitlement for the OCs and dissenting FCs. It has been observed that the CIRP is severely delayed due to numerous objections which are filed with the RP regarding the distribution of proceeds when the resolution plan is pending approval before the AA. Therefore, it is being considered that the Code may be amended to segregate the concept of the resolution plan from the manner of distribution of proceeds received.
11	AA to provide an opportunity to cure the defects in the resolution plan Section 31 may be amended to clarify that the AA can send the resolution plan back to the CoC for curing certain curable defects.
12	Mandating use of a challenge mechanism and constitution of a monitoring committee for monitoring and supervising the implementation of the resolution plan(s).
13	Reinstating CIRP The Code may enable reinstatement of the CIRP during the liquidation process, where the liquidator continues to carry on the CD's business, and it is possible to revive the CD as determined by the CoC. Further, where an approved resolution plan is not implemented or a plan gets rejected under section 33 (1) (b), and the CoC believes that the CIRP may be reinstated, it may be empowered to apply to the AA for such reinstatement. However, it will be at the discretion of the AA to either reinstate the CIRP or pass a liquidation order for the CD, or continue with the liquidation process, as the case may be.

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Sr. No.	Proposal Brief
14	Intermingling the assets of the CD and its guarantors In case the assets of the CD and its guarantor (corporate or personal) are so closely or inseparably linked, a mechanism should be provided under the Code to include such assets of the guarantor in the general pool of assets available for the CIRP for efficient resolution of the CD. In a case where the secured creditor has taken possession of a secured asset of the guarantors of the CD (security interest over which was created to secure the repayment of the CD's debt) under the SARFAESI Act, 2002, that is linked to the CD's assets, she may have the option to sell such assets through a special window created under the CIRP process.
15	Resolving inter-dependent entities The proposals provide for a common AA and common RP in these cases where there exist related parties in the nature of holding, subsidiary or associate companies of the CD, or, a subsidiary of a holding company to which the CD is a subsidiary. It has been further envisaged that CoCs of two separate CDs may file an application seeking cooperation and coordination of the CIRPs concerning the CDs.
16	Improving recoveries for operational creditors in liquidation All unsecured creditors (FCs, OCs and any government or authority) other than the workmen and employees shall be treated equally for distribution under section 53.
17	Clarity in the treatment of security interests created by statutes Recently, in the case of Rainbow Papers v State Tax Officer (1), the Supreme Court held that a 'security interest' under IBC can also be created by operation of law and a statute, can accord the status of a 'secured creditor' to the government authorities. It is felt that the definitions of 'security interest' and 'transaction' provided under Section 3(31) & 3(33) of the IBC respectively, when read together make it amply clear that a security interest can only be created by a transaction which is contractually agreed upon by two or more parties, based on their commercial considerations. Thus, it is being considered that all debts owed to Central Government and the State Government, irrespective of whether they are secured creditors pursuant to a security interest created by a mere operation of statute, shall be treated equally with other unsecured creditors.
18	Disclosure of valuation estimate of assets in the IM Presently, the information memorandum shared with the resolution applicants for preparing the resolution plan does not contain a valuation estimate of the assets. Thus, it is being considered to amend section 29 to provide that the information memorandum shall contain an estimation of the valuation of the corporate debtor's assets.
19	Certain categories of OCs to honour the agreement with the CD for the remaining useful life of the agreement. After approval of Resolution plan, CG, SG, local authority, or any statutory authority with whom such an arrangement subsists, shall continue to honour the arrangement during its term. Currently, the successful resolution applicant faces difficulties when certain OCs seek termination of their subsisting agreements and extinguishment of their liability on account of insolvency of the CD, after the plan is approved. To remedy such problems, it is being proposed that anti-deprivation principles should be extended and applied to certain agreements, in the implementation period, that is after the resolution plan is approved. Such principles shall only extend to contracts executed between government entities.
20	Protection of a resolution applicant post implementation of the resolution plan concerning civil liabilities post-approval of the resolution plan, No proceedings commenced or be continued by any government or authority regarding the claims arising before the commencement of the CIRP, unless otherwise provided for in the resolution plan, and such claims shall stand extinguished.

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Sr. No.	Proposal Brief
21	Clarity on the computation of voting share and treatment of abstentionT he Voting share defined u/s 5(28) implies the share of the voting rights of a single FC in the CoC. This is in proportion of the financial debt owed to such FC to the entire financial debt owed by the CD. This definition, in turn, leads to the inclusion of debt held by related FCs as well in the denominator. However, as these related FCs are barred in the CoC, there is an inherent contradiction in the definition.
	Thus, to cure the contradiction, it is being proposed that the voting share be now computed as a proportion of financial debt owed to only those concerned FC who are the members of the CoC and are eligible to vote. Further, an effort has also been made to address the problem of abstention in voting in the meeting of CoC. The voting threshold for major decisions is being proposed to be revised to 2/3rd of the CoC members present and voting in a meeting. However, members approving such a decision should constitute at least \geq 51% of the total voting share of the CoC.
22	Incentivising interim finance providers Interim Finance providers can attend CoC meeting as non-voting members to keep themselves informed about the proceedings under the Code.
23	Appointment of Administrator by the Central Government it is being considered to insert an enabling provision in the Code for the Central Government or any other authority as may be prescribed or authorised in this behalf, to propose the appointment of an 'Administrator' in specific CIRP cases involving public interest for performing all the duties of an IP, IRP, RP, or liquidator, as the case may be. Under this proposal, the processes will be conducted as per the Code's provisions for regular cases, except that the CoC will not have the power to remove or replace such an Administrator (and such power shall only vest with the Central Government or any other authority as may be prescribed or authorised in this behalf).
24	Power to exempt a class or classes of corporate persons from provisions of this Code - Section 462 of Companies Act, 2013 provides power to CG to exempt class or classes of companies from provisions of Companies Act, 2013.
	Similar provisions are being proposed to be included in IBC framework. These will include exempting a class of CD from the applicability of the provisions of the Act, or applying its provisions with certain exceptions, modifications and adaptations subject to procedural safeguards
25	Recasting the Liquidation Process: Direct dissolution of CD where the CoC requests that the CD should be dissolved without undergoing a liquidation process, the AA should allow the dissolution of the CD in such cases where it thinks it is just and reasonable to do so.
26	Eliminating duplication of activities between the CIRP and the Liquidation Process- omit sections 38 to 42 and the requirement to invite fresh claims under section 35 (1) (j). Liquidator to continue avoidance transaction if initiated during CIRP
27	Role of the creditors during the liquidation process - the CoC in liquidation may take all decisions by a simple majority of fifty-one per cent or more of the voting share. CoC should supervise and support the liquidator's functioning. Currently, the role of the creditors at the stage of liquidation is limited to advising and assisting the Liquidator. The law mandates that the Liquidator shall run and take all commercial decisions related to the assets of the Corporate Debtor. However, noting the importance of commercial wisdom required at the stage of liquidation, it is being proposed that the CoC should supervise and support the liquidator's functioning and shall also take commercial decisions and oversee the conduct of the proceedings.

Sr. No.	Proposal Brief
28	Replacement of the liquidator - As per section 34 of the Code, the RP appointed during the CIRP automatically continues as a liquidator during the liquidation process except where a change is recommended by IBBI or if the RP fails to perform its duties related to the examination of the resolution plan. However, pursuant to an amendment notification dated 16th September, 2022, the Stakeholders' Committee was empowered to replace the Liquidator with \geq 66% votes.
	It is being considered that the Code may be amended to enable the CoC to seek replacement of the RP conducting the CIRP from becoming the liquidator by a vote of at least sixty-six per cent of voting shares. Further, the Code should be amended to empower it to replace the liquidator at any time during the process by a vote of not less than sixty-six per cent of voting shares.
29	Stay on the continuation of proceedings during the liquidation process. Section 33 (5) of the Code bars the institution of suits or legal proceedings by or against the CD without the leave of the AA during the liquidation process. However, it does not bar the continuation of any pending suit or legal proceeding once the moratorium imposed during the CIRP is terminated.
	It is being considered that section 33 (5) be amended to prohibit the continuation of the suit or other legal proceedings during the liquidation process, apart from proceedings under section 52. The leave of the AA should also be required for continuing any suit or other legal proceeding by or against a CD undergoing liquidation.
	The Proposal further adds that the CD would be allowed to go for dissolution without satisfying different civil claims raised against it in different forums.
30	Realisation of security interest by the Secured Creditor - In practice, it is observed that despite a timeline being specified in the regulations, the secured creditors do not inform the liquidator about their decision to relinquish or realize their security interests. The same caused long delays in the liquidation procedure.
	Thus, it is being considered that the Code may restrict the secured creditor's right to either realize the security interest or relinquish it within a stipulated period. Further, in cases where the secured creditors do not convey their decision to the liquidator within this period, they shall be deemed to have relinquished the security.
31	Right of the Secured Creditors to Relinquish/ Realise secured asset in cases of Pari-Passu Charge - In instances where multiple secured creditors have a pari-passu charge over an asset of the CD, some creditors may decide not to relinquish the security interest, while the remaining secured creditors may favor such relinquishment. The indecisiveness between different classes of creditors causes delays in the liquidation procedure as the Liquidator is unable to sell the encumbered asset.
	Thus, it is being considered that the Code may be amended to provide a presumption that all assets owned by the CD shall form part of the liquidation estate unless all secured creditors holding pari passu charge over the secured assets of the CD declare to realize their security interest outside the liquidation process.

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Global Arena Spain Restructuring and Insolvency: Reforms

The Insolvency Act (22/2003) is to be replaced by its consolidated text on 1 September 2020 is the primary legislation governing insolvency proceedings in Spain. In addition, although temporary, Royal Decree Law 16/2020 published on 28 April 2020 affects regulations of an insolvency and restructuring nature and will do so for the next few years.

Pre-insolvency restructuring proceedings are also regulated to a degree by the Insolvency Act. However, restructuring proceedings are generally governed by ordinary legislation.

Insolvency proceedings are initiated by petition to the Court. Such petitions can be filed either by the insolvent debtor – voluntary – or by a creditor or other legitimate party –compulsory – and must be based on the existence of a reason for the instigation of the insolvency proceeding. The case for a third party to file for a compulsory insolvency proceeding must be based on one of the facts set out in the Insolvency Act. Pre-insolvency restructuring proceedings are usually initiated by the debtor contacting its creditors, as they aim at improving its financial situation. Once negotiations have started, the debtor must inform the Court.

Regulated in Article 5 of the Spanish Insolvency Act:

- refinancing agreements with the effects provided for in the Act
- out-of-court payment agreements these agreements are intended mainly for natural persons, and
- Proposal for an early creditors' agreement.

The above are intended to reach an agreement that will prevent the company from having to file for insolvency.

The process is used as an alternative to filing for insolvency in order to gain up to an extra four months to negotiate:

- (1) A debt restructuring agreement;
- (2) An out-of-court agreement, which is only available for certain companies; or
- (3) The agreement by certain majorities of creditors to an anticipated proposal for a composition agreement.

The process consists of a formal notice to the competent court acknowledging the insolvency and making a reference to the existence of the negotiations for achieving any of the agreements or adhesions.

The court process leads to: (1) an order of the court for the liquidation and ultimate dissolution of the debtor or (2) a composition agreement with the creditors.

Current insolvency occurs if a debtor is unable to meet its due payment obligations. It is understood that this will be the case if the debtor has stopped making regular payments. The Spanish Insolvency Act also sets out the following cases under which the debtor is presumed to be aware of its insolvency:

- general suspension of the debtor's current payment obligations
- the existence of seizures or pending foreclosures with an overall effect on the debtor's aggregate assets
- unlawful removal or hasty or ruinous liquidation of the assets by the debtor, and
- generalised breach of obligations of any of the following types:
 - o Payment of tax obligations during the 3 months prior to applying for insolvency
 - Payment of Social Security contributions and other joint collection items during the same period, and
 - Payment of salaries, compensation and other remuneration arising from the relevant employment relationships, relating to the last 3 monthly payments.

Furthermore, insolvency is also presumed when a creditor requires the debtor to satisfy a debt and the debtor fails to comply.

INSOLVENCY ADMINISTRATOR

An insolvency administrator is appointed in the court order that opens the insolvency proceedings.

In this order, the judge can decide whether to intervene or suspend the representative bodies of the company. From that moment on, the debtor's right to administer and dispose of assets belonging to the insolvency estate is transferred to the insolvency administrator, except in the case of intervention when the representative bodies of the company still retain some of their powers to administer the company and continue to operate under the supervision/approval of the insolvency administrator.

However, in both scenarios the representative bodies have duties of disclosure and cooperation in order to assist the insolvency administrator with the fulfilment of its duties.

In pre-insolvency restructuring proceedings, it is usually the debtor who conducts the negotiations and it is the representative bodies of a company that notify the court of the outcome. In addition, in out-ofcourt payment agreements, an insolvency mediator is appointed to conduct the negotiations.

REFORMS

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Act No 16/2022 of 5 September 2022 ("Act 16/2022") reformed the Recast Insolvency Act, transposing Directive (EU) 2019/1023 of the European parliament and of the council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, bringing major changes to the existing Spanish insolvency legislation.

Since the approval of the old Act 22/2003 of 9 July 2003, Spanish insolvency regulation has been amended successively, creating means and systems to overcome insolvency prior to its judicial declaration. Royal Decree 3/2009 of 27 March on urgent measures relating to tax, financial and insolvency matters regarding the evolution of the economic situation and Act 38/2011 of 10 October, which reforms Act 22/2003 of 9 July, introduced the concept of restructuring agreements, although they are limited to financial creditors and almost exclusively aimed towards large companies with considerable financial risk.

GLOBAL ARENA

The amendments also gave insolvency administrators powers that were initially assumed by the courts. Such powers include:

- communicating the declaration of insolvency to creditors through telematics means;
- receiving credit communications;
- notifying the inventory project and creditors list;
- Notifying the insolvency administrator report and the quarterly liquidation reports, etc.

The insolvency administrator has been the professional figure most affected by the reforms, having been reduced to a secondary role triggered by the existing division between professional schools and associations. This division arises out of an inability to meet in the middle or to row in the same direction, and from the fact that there was never a punitive system for those insolvency administrators whose conduct and actions were undesirable.

This Act introduces the new concept of the likelihood/ probability of insolvency (ie, within the next two years), sets the term for imminent insolvency (ie, foreseeable in the next three months) and maintains the concept of current insolvency, establishing an early warning system to assist in the early detection thereof.

The core of the reform and the main relevant amendments are as follows:

- the regulation of restructuring plans or pre insolvency instruments;
- a Spanish discharge system;

• a micro-business special proceeding; and

• Pre-pack administration and sale of business units.

Act 16/2022 introduces a major change to the regulation of the debt discharge system so that it becomes a right rather than a benefit. This right is suitable for any natural person that is considered to be acting in good faith through a payment plan or through liquidation to those who had good faith. The concept of good faith is strengthened in this Act.

The reform has removed the concept of "professional" or "entrepreneur", mainly because the debt discharge, in this case, should be requested within the microbusiness special proceeding, even when the insolvency proceeding has no assets. The Act does not remove the requirement for the debtor to request discharge within 15 days if it was not done within the established term (i.e., any time before the opening of the liquidation). These facts solidify the exemption of liability for a natural person in the proceeding or plan of continuance, and, in the case of failure, in the liquidation of all of the assets.

This reform introduces into Spanish legislation the pre-pack or sale before the declaration of insolvency in order to preserve a company's value so it does not suffer deterioration because of the insolvency declaration. This aspect was strongly regulated in the proposed act, but was somewhat weakened in the Act as passed.

The Act does not include the regulation or legislative development of new figures such as restructuring experts, the expert to locate offers in order to sell business units, or the expert to value the companies or the business units.



Let's Connect -An Interactive Meet of IPs

ICSI IIP through its new initiative, endeavours to connect the insolvency professionals every month virtually to discuss the latest updates, orders, issues, changes required, ways to improve the efficiency of ICSI IIP etc. The required suggestions will be shared through representation letters to the required authorities.

Every month in the first week, the interactive meet is planned on different topics. Two of such meets have already been conducted on 5th January, 2023 & 6th February, 2023 on the following topics:

(1) Know your IPA

In the first meet, all the officials of ICSI IIP were introduced with key duties and responsibilities and

the issues of IPs were addressed by specific officials. Mr. Ravi Prakash Ganti, IP moderated the session and the deliberations on CPE, payment mechanism, less awareness amongst stakeholders about IBC, recovery of RP fees, development of mechanism to support IPs etc. were discussed.

(2) Managing the CD as going concern

In the second meet, the deliberations revolved around issues and challenges in managing the CD as going concern. Mr. Ravi Prakash Ganti, IP moderated the session and some of the key issues which were discussed in detail were establishing contact with key persons, understanding nuances of businesses, striking a Balance between Procedural mandates and Substantive necessities, management of litigations etc.

IMPORTANT LEARNINGS FROM LEARNING CURVES BY ICSI IIP*

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Ratio of Judgment	Cause Title
An unregistered lease deed cannot be looked into by the NCLT to determine the amount due from CD (lessee).	N. Nallusamy Vs. S. Rajendran and Other (NCLAT, Chennai Bench) dated 22nd December, 2022
Delay in filing a CIRP petition can be condoned under section 5, Limitation Act, 1963 on proof of 'sufficient cause'.	Sabarmati Gas Limited Vs. Shah Alloys Limited (Supreme Court) dated 22nd December, 2022
When the Committee of Creditors (CoC) approves a Resolution Plan in its commercial wisdom, it is presumed that the Resolution Plan is viable and feasible.	Rajesh Kumar Vs. Others Vs. Rabindra Kumar Mintri and Other (NCLAT, New Delhi Bench) dated 11th November, 2021
AA empowered to direct tenant to vacate premises of Corporate Debtor so that Resolution Plan which has been approved can be implemented.	Jhanvi Rajpal Automotive Private Limited Vs. Resolution Professional, Rajpal Abhikaran Private Limited
The proceeding under Insolvency and Bankruptcy Code, 2016 are not designed as a tool for recovery of money but to bring out of insolvency and maximization of value of assets.	JHS Svendgaard Laboratories Limited Vs. HT Media Limited (NCLT, New Delhi Bench) dated 3rd January, 2023
The only benefit Successful Resolution Applicant can claim is extinguishment of the dues which are not part of the Resolution Plan.	Maharashtra Industrial Development Corporation Vs. Bhadrashree Steel and Power Limited and Other (NCLAT, New Delhi Bench) dated 4th January, 2023
The Tribunal can very well look into as to whether the decision of the COC is in accordance with the Code or not.	Hero Fincorp Limited Vs. Hema Automotive Private Limited (NCLAT, New Delhi Bench) dated 6th January, 2023
A judgment creditor cannot withdraw decretal amount/ money deposited by Corporate Debtor (judgment debtor) in a Trial Court, during moratorium under Section 14 of Insolvency and Bankruptcy Code.	Reliance Communication Limited Vs. Rajendra P. Bansal (Bombay High Court) dated 4th January, 2023

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Approval of a resolution plan does not ipso facto absolve the surety/guarantor of his or her liability, which arises out of an independent contract of guarantee.	Narendra Singh Panwar Vs. Pashchimanchal Vidyut Vitran Nigam Limited and Others (Allahabad High Court) dated 12th January, 2023
Avoidance applications filed under Insolvency and Bankruptcy Code survive even after approval of the resolution plan, in cases where Resolution Plans are unable to account for such applications and such applications may be heard even after CIRP is concluded.	Tata Steel BSL Limited Vs. Venus Recruiter Private Limited and Others (Delhi High Court) dated 13th January, 2023
Application for recovery of balance amount of interest is not allowed under Section 9 as such application is not filed for resolution of any insolvency of the Corporate Debtor.	Permali Wallace Private Limited Vs. Narbada Forest Industries Private Limited (NCLAT, New Delhi Bench) dated 17th January, 2023
After adoption of Challenge Method to find out the best plan, one Resolution Applicant cannot be allowed to submit a Revised Resolution Plan.	Jindal Stainless Limited Vs. Shailendra Ajmera (NCLAT, New Delhi Bench) dated 18th January, 2023
NCLT, Hyderabad granted the Successful Bidder the liberty to approach the concerned authority for seeking offset of any loses as per Income Tax Act against future profits.	State Bank of India v. K.R.R Infraprojects Private Limited (NCLT, Hyderabad Delhi Bench) dated 9th January, 2023
The Operational Creditors are only entitled for minimum of the liquidation value.	Dharmindra Constructions Private Limited and Other Vs. Rajendra Kumar Jain (NCLAT, New Delhi Bench) dated 18th January, 2023
A landowner in a development agreement is not a financial creditor within the meaning of Section 5(8) of Insolvency and Bankruptcy Code and cannot be included in the CoC.	Ashoka Hi-Tech Builders Private Limited Vs. Sanjay Kundra and Other (NCLAT, New Delhi Bench) dated 18th January, 2023
The relief of not proceeding with its IPO sought by the Operational Creditor, have been regarded as premature, since CIRP has not yet been initiated against Oyo.	Jagadish Vs. Oyo Hotels and Homes Private Limited (NCLAT, New Delhi Bench) dated 13th January, 2023
Once the CoC approves a resolution plan, no withdrawal application under Section 12A of Insolvency and Bankruptcy Code can be entertained.	Hem Singh Bharana Vs. Pawan Doot Estate Private Limited and Others (NCLAT, New Delhi Bench) dated 5th January, 2023

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When the CoC is given powers to permit modifications more than once, restricting the RP from doing so seems to be illogical, since no modifications would usually be permitted by the RP without the proposal of modification being placed before the CoC.	State Bank of India Vs. Meenakshi Energy Limited (NCLT, Hyderabad Bench) dated 23rd January, 2023
Benefit u/s 10A of Insolvency and Bankruptcy Code can only be claimed when default occurs during prohibited period.	Vishal Agarwal Vs. ICICI Prudential Real Estate AIF-I and Other (NCLAT, New Delhi Bench) dated 23rd January, 2023
The financial debt which was claimed by the financial creditor would not be wiped out nor shall the nature and character of financial debt be changed on account of breach of the consent terms between the parties.	Priyal Kantilal Patel Vs. IREP Credit Capital Private Limited and Other (NCLAT, New Delhi Bench) dated 1st February, 2023
Assets of Subsidiary Company cannot be dealt with in CIRP of Holding Company.	Greater Noida Industrial Development Authority (GNIDA) Vs. Roma Unicon Designex Consortium (NCLAT, New Delhi Bench) dated 30th January, 2023
There cannot be simultaneous CIRP proceedings against the same Corporate Debtor.	Vrundavan Residency Private Limited Vs. Mars Remedies Private Limited (NCLT, Ahmedabad Bench) dated 12th January, 2023

* Detailed Learning Curves are available at our website (https://icsiiip.in/learning-curves.php)

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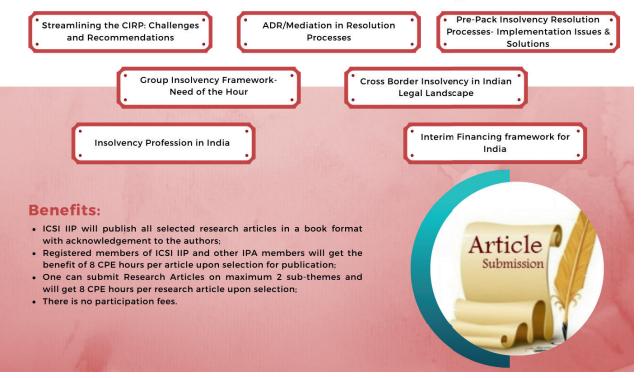


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The Trajectory: The Insolvency and Bankruptcy Code, 2016 (IBC/Code) is the landmark legislation which was enacted on 28th May, 2016. It is now a well-established fact that from the era of archaic resolution and liquidation process during pre-IBC to the faster resolution of distressed companies post-IBC, the Code has transformed the Indian distressed market and improved ease of doing business in India. Since its implementation, IBC has undergone six amendments and, the Indian insolvency law still continues to be evolving in accordance with the emerging needs of India. With the increasing diversification of insolvency ecosystem in India, there is great need for carefully study of IBC, its achievements and gaps, international standards, and best practices. Research will play a great part in this.

Considering the importance of research in insolvency law, ICSI IIP is launching this research initiative 'IBC-Looking Back to Look Forward' to invite original research articles aimed to promote research in the areas of evolving insolvency and bankruptcy regime.





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Who can contribute:

- Members of ICSI IIP
- Other IPA Members
- Other Professionals
- Research Scholars
- Advocates
- Students etc

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Guidelines for contributors:

- The research article must be an original contribution of the author(s) written in english language only.
- The research article must not be published elsewhere, and must not be submitted for publication elsewhere in the same or substantially the same form.

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- The research article should ordinarily have 2000 to 3000 words. A longer article may be considered if the subject so warrants.
- The research article should carry the name(s) of the author(s) on the title page only and nowhere else. Insolvency Professionals have to mention their membership number in order to credit their CPE hours, if eligible.
- The research article shall be accompanied by a summary of 150 words and mailed to research.icsiiip@icsi.edu
- The manuscript shall be accompanied by a 'Declaration-cum-Undertaking' from the authors that:
 - the work is original and previously unpublished and also not has been sent elsewhere for publication.
 - the research article avoids plagiarism in all and any form.
 - the research article discloses the source of all data with appropriate attribution.

Publication:

- ICSI IIP will publish all selected research articles in a book format (E-book or printed) with acknowledgement to the authors. The Board may publish the research articles on its website.
- The author(s) of the selected research article(s) will have to pay INR 500/- towards processing fee.
- The ICSI IIP shall be free to publish the research articles or use it in any other manner, while acknowledging that the article is the work of the author under the ICSI IIP Research Initiative.
- The copyright of the research articles, if published in the book, shall vest with ICSI IIP.
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Dr. Prasant Sarangi Chief Operating Officer (Designate)



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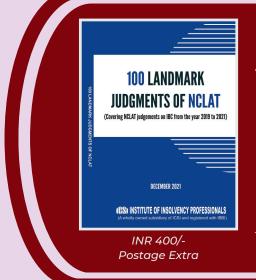
ICSI IIP's Publications

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A Compendium on Insolvency Professionals

ICSI IIP has brought-out a comprehensive publication on Insolvency Professionals titled 'Compendium on Insolvency Profession', covering varied aspects like legal and regulatory framework for IPs, disciplinary proceedings against IPs (and their outcomes), ethical and code of conduct for IPs, opportunities for IPs and case laws related to IPs.





100 Landmark Judgements of NCLAT (covering NCLAT judgements on IBC from the year 2019 to 2021)

This publication is about making the legal provisions in the Insolvency & Bankruptcy Code, 2016 and the interpretations thereof easily discernible for the readers. This is approached through the analysis of 100 crucial landmark judgments delivered by Hon'ble National Company Law Appellate Tribunal (NCLAT). The landmark judgments, as delivered by Hon'ble NCLAT, have been identified and their ratios culled out in this book.

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Insolvency and Bankruptcy Code, 2016 (Version 1.7)

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This Publication (updated upto August, 2021) covers the provisions of Insolvency and Bankruptcy (Amendment) Act, 2021 which provides the specialised forum to oversee Insolvency and Liquidation proceedings.

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(Updated upto August, 2021)

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