

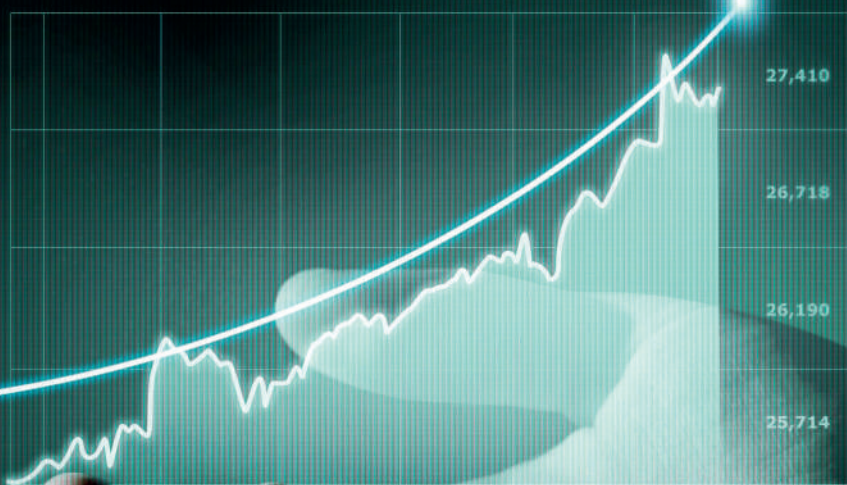
IISSI INSTITUTE OF INSOLVENCY PROFESSIONALS

(A wholly owned subsidiary of ICSI and registered with IBBI)

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INSOLVENCY AND BANKRUPTCY JOURNAL

Enhancing Valuation Ecosystem



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From Chairman's Desk

"Knowledge is the eye of desire and can become the pilot of the soul"

– Will Durant

The study of insolvency brings with it the need to study the disciplines attached to it. The need and requirement of valuation under Insolvency and Bankruptcy Code 2016 ("IBC"); is an important area for Registered Valuers under all three asset classes- Plant & Machinery, Land & Building and Securities or Financial Assets. Obtaining professional Valuation of the assets of an entity is quintessential for taking an "informed decision making" for any acquisitions under IBC. As per the Companies (Registered Valuers and Valuation) Rules, 2017, every valuation under the IBC is to be conducted by a Valuer registered with the IBBI. The key objective is to be independent and transparent and have fair determination of value of the assets to facilitate comparison and informed decision making by the committee of creditors.

To streamline one of the major functions within the insolvency process, various amendments were brought in. The Companies (registered valuers and valuation) Amendment Rules 2022 were issued to bring clarity on the valuation standards that professionals should be using. The amendments said that no partnership entity or company shall be eligible to be a registered valuer if it is not a member of a registered valuer organisation. Also, a new rule stipulated that these entities should not be registered with more than one registered valuer organisations at one point in time.

The amendments also remove ambiguity in the professional standards by specifying that valuers could follow either internationally accepted valuation standards or valuation standards adopted by any registered valuer's organisation. For IBC to thrive, it is necessary for its interlinked disciplines to perform and evolve too.

The basis for correct evaluation and analysis by the Resolution Professional and the Committee of Creditors is based on correct valuation. It makes for the basis for the decision making in the insolvency resolution process. The ripples of the success of IBC are felt throughout industries and it is only fair that the various disciplines and functions that are associated with it are developed with the same fervour as IBC is.

The rule maker, IBBI along with the Insolvency Professional Agencies and the Registered Valuers Organisations, undertake the function of organising and educating various professionals in the importance of disciplines such as valuation, its importance and its analysis. I urge the professionals to take advantage of the same.

Mr. P.K. Malhotra
Chairman
ICSI IIP



INSTITUTE OF INSOLVENCY PROFESSIONALS
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ICSI IIP'S PUBLICATIONS

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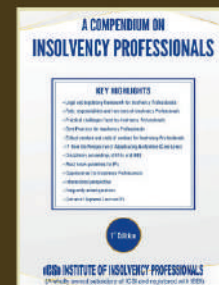
BOOKS ARE
UNIQUELY
PORTABLE
MAGIC

WE OFFER

A Compendium on Insolvency Professionals

ICSI IIP has brought-out a comprehensive publication on Insolvency Professionals titled 'Compendium on Insolvency Profession', which the IBBI Chairperson Mr. Ravi Mital has himself released on 27th Oct 2022 at IBBI office.

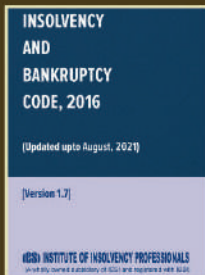
The publication is a comprehensive document covering varied aspects like legal and regulatory framework for IPs, disciplinary proceedings against IPs (and their outcomes), ethical and code of conduct for IPs, opportunities for IPs and case laws related to IPs.



INR 1000/- Postage Extra

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LET'S GROW WITH US



Insolvency and Bankruptcy Code, 2016 (Version 1.7)

This Publication (updated upto November, 2022) covers the provisions of Insolvency and Bankruptcy (Amendment) Act, 2021 which provides the specialised forum to oversee Insolvency and Liquidation proceedings.

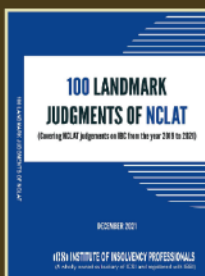
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Insolvency and Bankruptcy (Rules and Regulations) (Version 1.7)

This Publication (updated upto November, 2022) covers all the Rules, Regulations and Notifications along with all the Circulars and Guidelines issued by Insolvency and Bankruptcy Board of India (IBBI).



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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.

INR 400/- Postage Extra

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MD's Message

"Faith is the bird that feels the light and sings when the dawn is still dark"

– Nirmala Sitharaman

The basic objective behind the introduction of Insolvency and Bankruptcy Code, 2016 is to reorganize and resolve the corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets and to promote entrepreneurship, availability of credit and balancing the interests of all the stakeholders. To achieve these objectives, valuation is one of the most important and critical factors. The Code read with regulations made thereunder assign this responsibility to 'Registered Valuers'. The Registered valuers' rules notified under the Companies Act, 2013 introduced a comprehensive framework for the development of profession of valuers and the valuers must be registered and recognized by IBBI. Accordingly, IBBI performs the functions of the Authority as per the rules. It conducts exams, recognizes the registered valuers' organizations and registered valuers also. It also monitors the registered valuer organizations and registered valuers and take necessary action, wherever required.

Valuation simply means analyzing the value of the company, asset or the business. Valuation determines the worth of the company and consequently affects the decision making. Simply, valuation decides the future of the business, company or an asset. The fair value and Liquidation value help to identify the minimum

value of a particular asset at the time of resolution or liquidation, as *the case may be* which is very necessary for benchmarking the value in the market.

As per latest IBBI's statistics as on 30th June, 2023, there are currently 16 RVOs recognized by IBBI and total 5258 individuals have active registrations. Further, registered valuers are permitted to form registered valuer entities and there are 89 such RV entities.

The valuation plays very critical role in the revival of the company, therefore the professionals who will be valuing the assets/business of the company should be well versed and should follow standardized practices, methodologies, processes to bring transparent estimation.

I was at the helm of ICSI registered valuers organisation since its inception and no stone was left unturned to provide required knowledge and skills to the registered valuers to excel in their role. I must say there is a lot of scope and demand for valuers in the market and with the correct knowledge and capabilities, valuers can really shine under the insolvency ecosystem.

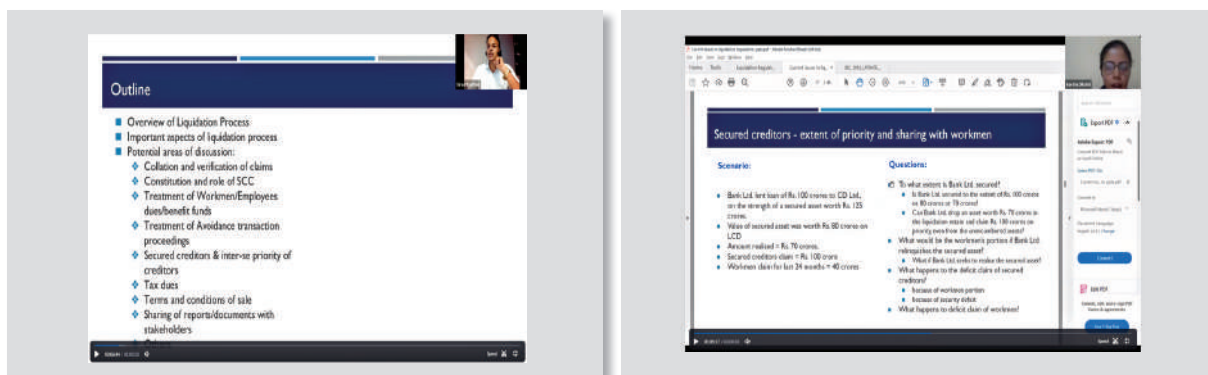
(Dr. Prasant Sarangi)

Managing Director (Designate), ICSI IIP

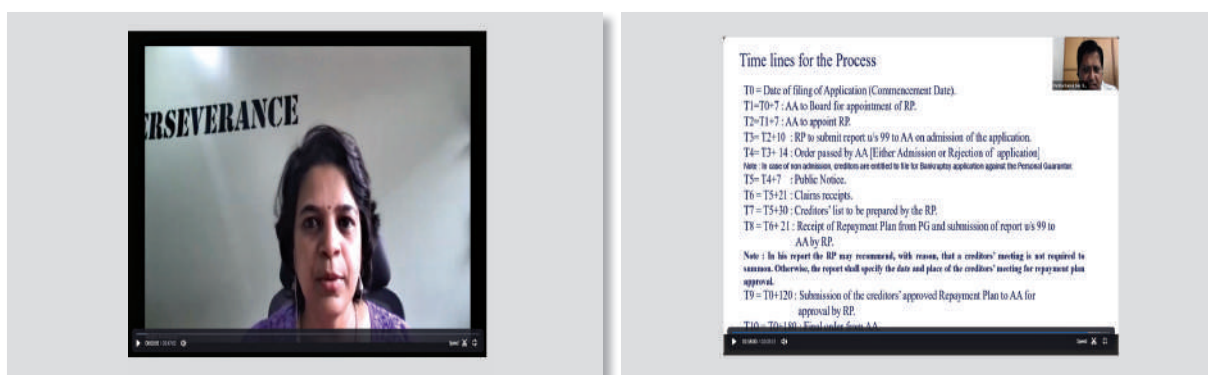
Events @ICSI IIP

(Workshops, Webinars, Round-table Discussions, Interactive Meets etc.)

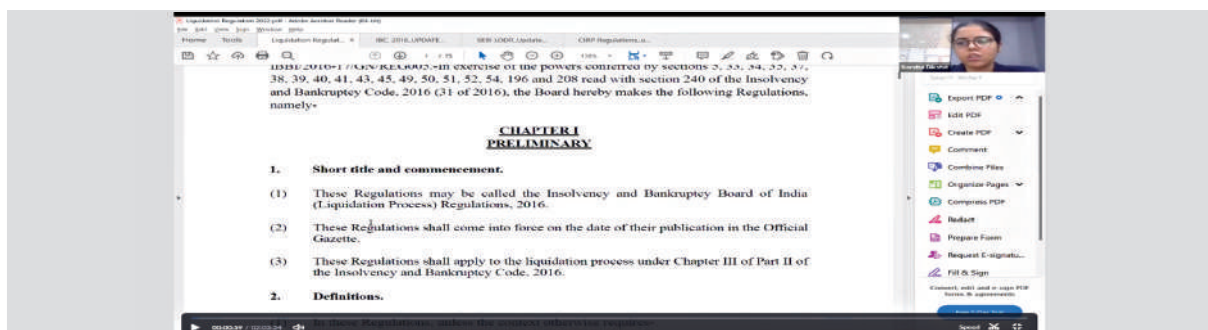
Webinar Series on Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 by CS and IP Vinod Kumar Kothari on Wednesday, 5th July, 2023



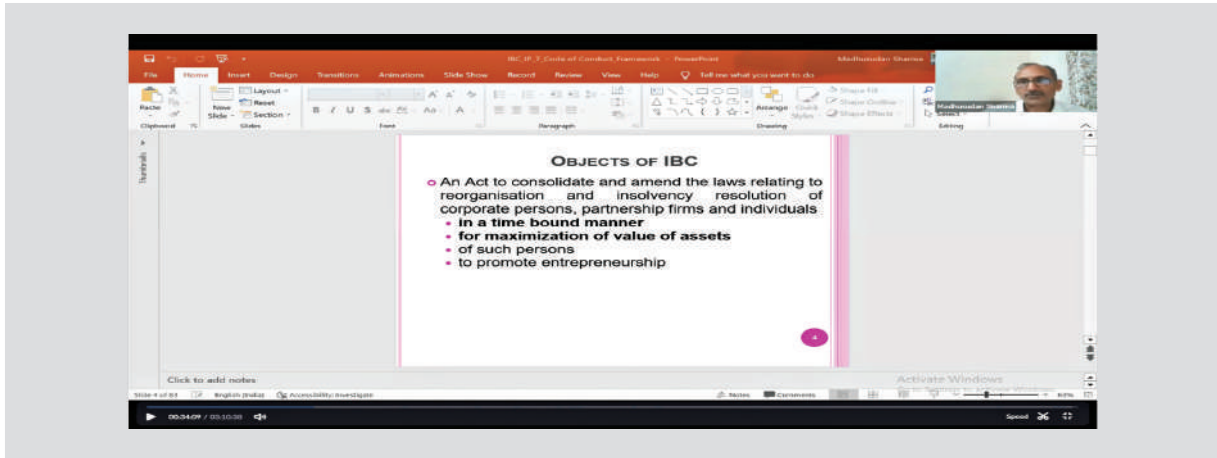
Workshop on Refresher on IBC by CS and IP Anagha Anasingaraju and Advocate and IP Apoorv Sarvaria and CS and IP Partha Kamal Sen on Friday and Saturday, 7th July, 2023 and 8th July, 2023 respectively



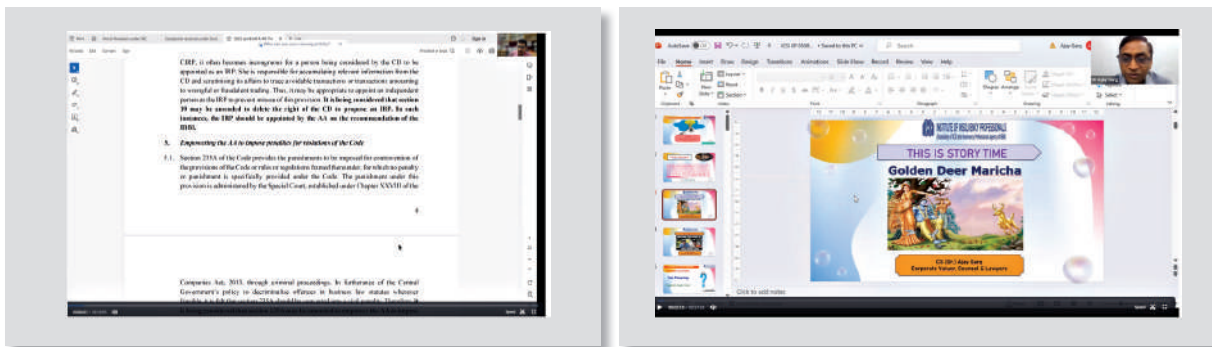
Webinar Series on Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 by CS Barsha Dikshit on Wednesday, 12th July, 2023



Workshop on Roles and Responsibilities of IP and IRPs by CMA and IP Madhusudan Sharma on Saturday, 29th July, 2023



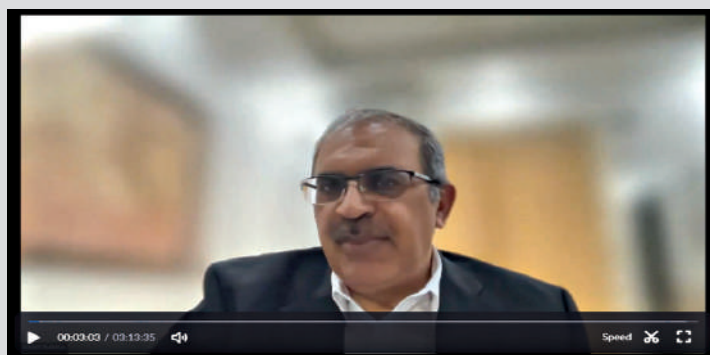
Workshop on Penal Provisions under IBC Laws & Best Practices by IPs by Dr. Risham Garg and CS Ajay Garg on Saturday, 5th August, 2023



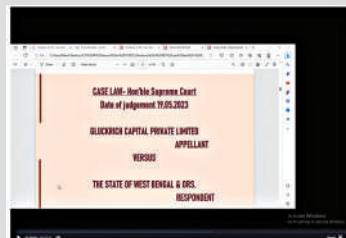
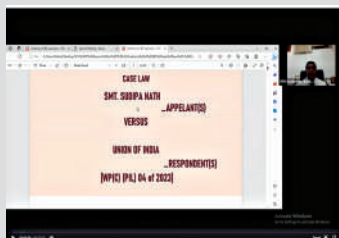
Webinar Series on Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 by Mr. Debajyoti Ray Chaudhuri on Wednesday, 9th August, 2023



Webinar on Drafting and Negotiation of Resolution Plans by IP Ashish Makhija on Wednesday, 11th August, 2023



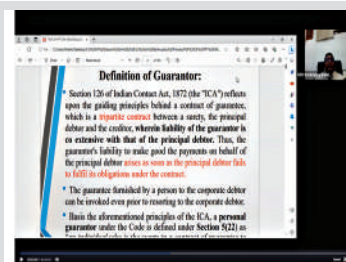
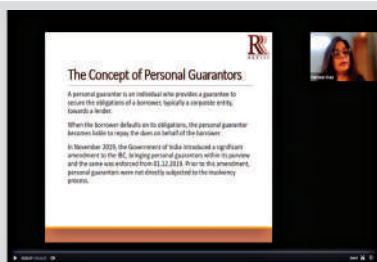
Webinar on Anatomy of IBC Case Laws 6 by CA and IP Nilesh Sharma on Friday, 18th August, 2023



Workshop on Learner's Session on Committee of Creditors by IP Ashish Makhija on Saturday, 19th August, 2023



Workshop on Practical Intricacies Related to Personal Guarantor by IP Harmeet Kaur and IP Nilesh Sharma on Saturday, 26th August, 2023





TURNAROUND AND RESTRUCTURING SERIES



Rocky Ravinder Gupta

President of Turnaround Management Association India.

He is a Lawyer and Managing Partner of UnitedJuris, INSOL Fellow, an Insolvency Professional and an Accredited Mediator.

EARLY WARNING SIGNALS

Anticipate Tomorrow: Navigating Business with Early Signals

INTRODUCTION

In the dynamic and ever-evolving landscape of business, it is crucial for companies to remain vigilant and proactive in identifying signs of distress that could potentially lead to insolvency and bankruptcy. Early detection of these warning signals provides companies and businesses an opportunity to take corrective measures and mitigate the risk of financial ruin. The collapse of well-established businesses, once considered pillars of stability, has served as a stark reminder of the importance of monitoring and analyzing early warning signals. Be it a small startup or a multinational corporation, no business is immune to the probable risks and challenges that can arise unexpectedly.

The significance of identifying early warning signals for distress cannot be overstated. Business distress not only affects the survival of the business itself but also has far-reaching consequences for its employees, stakeholders, and the broader economy. Financial indicators often serve as the primary red flags signaling potential trouble within a company. Cash flow issues, declining revenue, and profit margins, increasing debt burden, and liquidity problems are some of the key financial warning signals. inability to meet financial obligations, such as missed payments

to suppliers or lenders, can be a strong indication of an organization's deteriorating financial health.

Operational indicators provide insights into the efficiency and effectiveness of a company's core operations. Decreasing customer base, quality control and production issues, inefficient inventory management, and challenges in cost management are all signs that the business may be facing operational distress. Market share erosion can also be indicative of underlying problems that need to be addressed.

External factors beyond a company's control can also contribute to its distress. Changes in industry dynamics, such as the emergence of disruptive technologies or shifts in consumer preferences, can render traditional business models obsolete. Regulatory changes and competitive pressures can further strain the viability of a business. Additionally, economic downturns can have a cascading effect on companies, impacting their ability to generate revenue and manage their financial obligations.

Management and leadership factors play a critical role in determining a company's success or failure. Poor decision-making, lack of strategic direction, ineffective communication, inadequate talent management, and weak culture can impact the organisation's ability to survive.

NEED FOR EARLY DETECTION OF BUSINESS DISTRESS

The early detection of business distress is important for several compelling reasons and benefits. By identifying the warning signals at an early stage, businesses and companies can promptly undertake actions and initiatives to tackle root causes, thereby mitigating the potential risks of insolvency. Early detection of signals helps in:

1. **Preservation of Business Value:** Early detection allows businesses to preserve their value and safeguard their assets. When distress signals are ignored or overlooked, the financial and operational problems can escalate, leading to a rapid decline in the company's value.
2. **Enhanced Financial Stability:** Early detection provides businesses with an opportunity to stabilize their financial position. Financial indicators, such as cash flow issues, declining revenue, and increasing debt burden, can be warning signs of an impending fiscal crisis.
3. **Facilitating Turnaround and Restructuring:** Early detection of distress signals increases the likelihood of successful turnaround efforts. When issues are recognized early, there is more time to implement strategic initiatives, such as cost-cutting measures, operational improvements, or diversification strategies. Additionally, businesses can explore restructuring options, such as renegotiating contracts, refinancing debt, or pursuing mergers and acquisitions.
4. **Preservation of Jobs and Stakeholder Interests:** Business distress and insolvency can have far-reaching consequences for employees, suppliers, investors, and other stakeholders. Early detection of stress allows businesses to take proactive steps to preserve jobs, can avoid drastic measures such as layoffs, supplier disruptions, or the erosion of investor confidence and protect the interests of their stakeholders.
5. **Minimization of Legal and Reputational Risks:** Ignoring early warning signals can expose businesses to legal and reputational risks. Breaches of contracts, non-compliance with regulatory requirements, and fraudulent activities can lead to legal disputes, litigation, fines, and damage to the company's reputation. Early detection enables businesses to rectify these issues before they escalate, potentially avoiding costly legal battles and preserving their reputation in the marketplace.
6. **Improved Access to Financing:** Early detection and pre-emptive actions demonstrate to lenders and investors that the company is actively managing its financial health. This can enhance the company's credibility and increase its chances of securing additional financing or support during challenging times.
7. **Competitive Advantage and Adaptability:** Businesses operating in a rapidly changing environment need to be agile and adaptable. Early detection allows companies to respond swiftly to market trends, technological advancements, or shifts in consumer preferences.

EARLY WARNING SYSTEMS AND TOOLS

Research into early warning predictive indicators of business default has garnered attention in past decades. These indicators are recognized as crucial for both financial and non-financial sectors within any economy. Particularly, non-financial businesses and companies benefit from understanding the likelihood of default. In the financial sector, especially the banking industry, awareness of default probabilities aids in prudent capital allocation and reducing non-performing loans.

Investors also stand to gain from studying predictive signals of business default, as recognizing these signals assists in avoiding poor investment choices and unwise commitments to questionable assets. Signals of default hold value for relevant authorities too, aiding them in monitoring industries to prevent potential systematic risks.

While Altman's pioneering work in 1968 initially utilized only five financial ratios, the model's accuracy in classifying bankruptcy ranged from 95% in the year leading to bankruptcy to below 50% for three annual reporting periods before default. Over time, the model has been expanded to encompass factors like industrial characteristics, the business cycle, and corporate governance, aiming to enhance its predictive power in modern conditions.

In the Financial sector, early warning signals for default probability have become a significant research focus. Various financial institutions and credit providers are developing their own matrix for predicting credit defaults. While conventional financial theories emphasize the value of private or internal information in predicting abnormal returns, challenges to the efficient market hypothesis have shown that public news also holds valuable information. In this context, the use of artificial intelligence AI is gaining ground with the concept of text mining of news and press releases on policy, sectors, businesses, and companies, as an effective approach for organizing unstructured textual information and deriving meaningful numerical indices. Manning and Schütze (2002) introduced this concept, highlighting its potential in rendering textual information accessible for analysis.

Early warning systems and tools provide businesses with the means to monitor key indicators and detect warning signals that may indicate financial or

operational difficulties. These early warning systems and tools can help businesses identify potential risks:

1. **Financial Ratio Analysis:** Financial ratios such as liquidity ratios, profitability ratios, and solvency ratios provide insights into a company's financial health. Monitoring changes in these ratios over time and comparing them to industry benchmarks can help identify financial distress. Sudden declines in profitability, deteriorating liquidity positions, or increasing debt burdens can be early warning signals.
2. **Cash Flow Forecasting:** Cash flow forecasting allows businesses to anticipate future cash inflows and outflows. Regularly analysing cash flow projections and comparing them to actual cash flow statements helps identify cash flow problems. A significant gap between projected and actual cash flows, consistent negative cash flows, or an inability to meet financial obligations may indicate financial difficulties.
3. **Key Performance Indicators (KPIs):** Establishing and monitoring relevant KPIs specific to the business can provide early warning signals of performance deviations. KPIs may include sales growth rates, customer acquisition costs, inventory turnover, or customer satisfaction scores. Significant declines in key performance metrics compared to historical trends or industry benchmarks can indicate underlying issues.
4. **Early Warning Models:** Various statistical models and algorithms can be used to develop early warning systems tailored to specific industries or business types. These models analyse historical data and identify patterns that precede financial distress or insolvency. By applying these models to current data, businesses can identify warning signals based on predetermined thresholds.
5. **Market Surveillance Tools:** Monitoring the market and industry trends using specialized tools and software can help identify risks and changes in the business environment. These tools provide real-time data on market demand, competitor activities, regulatory changes, and industry developments. Any sudden shifts or disruptive events can serve as early warning signals for businesses to take appropriate actions.

6. **Qualitative Assessments:** Alongside quantitative indicators, qualitative assessments play a crucial role in early warning systems. Regularly reviewing business plans, conducting internal and external audits, and engaging in open communication with stakeholders can provide insights into risks and challenges. Changes in market perceptions, supplier relationships, or customer feedback can be early warning signals of underlying issues.

CONCLUSION

Recognizing a range of early warning signals is a significant step towards protecting companies and businesses from potential financial and operational turmoil. It is imperative for business promoters and directors to grasp the adage “Prevention is better than Cure.” The sooner an issue or problem is detected and its impact on the business is assessed, the earlier steps can be taken to mitigate the situation, thus averting an uncontrollable state. By actively monitoring warning signals, companies can proactively address emerging challenges and take preventive measures to safeguard their financial stability. Identifying such signals in their initial stages allows management to investigate the underlying causes and take corrective actions promptly.

Moreover, timely recognition of warning signals fosters transparency and accountability within the

organization. It encourages open communication between management, stakeholders, and shareholders, allowing for informed decision-making and collaborative problem-solving. By addressing potential insolvency risks early on, companies can not only protect their financial health but also maintain their reputation, credibility, and relationships with suppliers, customers, and investors. By doing so, they can enhance their resilience, sustain their growth, and secure long-term success.

Disclaimer: The information provided in this article does not, and is not intended to constitute legal advice, instead, all information, content, and material available in this article are for general informational purposes only.

About the Author: Rocky Ravinder Gupta is the President of Turnaround Management Association India. He is a Lawyer and Managing Partner of UnitedJuris, INSOL Fellow, an Insolvency Professional and an Accredited Mediator. Turnaround Management Association India (TMA India) is the Indian chapter of the Turnaround Management Association (TMA) Global. TMA India is a community of professionals in the corporate restructuring and reorganization field to promote the interdisciplinary field of turnaround management, bringing together professionals and experts from law, accounting, business, and investing community.



ICSI IIP – AT A GLANCE

1. DURING THE MONTH OF AUGUST 2023:

S. No.	Particulars	Details
1.	Members enrolled	1
2.	Members registered	2
3.	Inspections conducted	2
4.	IPs monitored	3
5.	AFA applications received	29
6.	AFA applications approved	32
7.	Complaints/Grievances received	13
8.	Complaints/Grievances disposed off	8
9.	SCN issued	3
10.	Disciplinary action taken	-

2. DURING THE MONTH OF AUGUST 2023, FOLLOWING PROGRAMS WERE ORGANISED BY ICSI IIP:

WORKSHOPS

S. No	Date of Workshop	Topic
1.	05.08.2023	Workshop Penal Provisions under IBC Laws & Best Practices by IPs August 05, 2023 09:30 AM to 04:30 PM
2.	19.08.2023	Workshop Learner's Session on Committee of Creditors August 19, 2023 09:30 AM to 04:30 PM
3.	26.08.2023	Workshop Practical Intricacies Related to Personal Guarantor August 26, 2023 9:30 AM to 4:30 PM

WEBINARS

S. No	Date of Webinar	Topic
1.	02.08.2023, 09.08.2023 and 16.08.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
2.	11.08.2023	Webinar Drafting & Negotiation of Resolution Plans August 11, 2023 2 PM - 5 PM
3.	18.08.2023	Webinar Anatomy of IBC Case Laws - 6 August 18, 2023 2:00 PM to 5:00 PM

CERTIFICATE COURSE

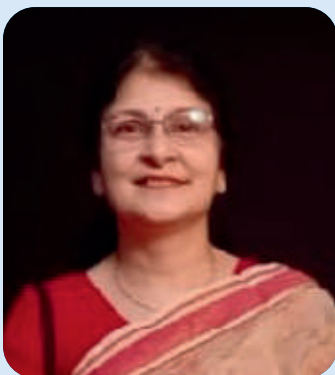
S. No	Date of Roundtable	Topic
1.	23.08.2023	Certificate Course on Insolvency & Bankruptcy Code, 2016 August 23, 2023 (Joint Program with ICSI) 23.08.2023-15.11.2023

Learner's Corner

Case Study



Dr. Rajinder Aurora,
Senior Lead,
Research and Content
Development,
Shriram Learning Systems



Dr. Roopali Srivastava,
Professor,
Project Management & SCM,
IBS Mumbai

The Reliance ADAG Group

1.0 ABSTRACT:

Mr. Sethu was the employee of Shri Mukesh Ambani but subsequently changes side, saw the dispute between the Ambani brothers from close quarters and he witnessed the outcome over a period of time. As a witness he observed the matter very closely and was also involved in the all the meetings that took place between the Ambani brothers on the dispute. He are trying to see this dispute through his eyes and try to move on to see the irretraceable decline of The ADAG (Anil Dhirubhai Ambani Group) that eventually became bankrupt as it had borrowed excessively so much so the it could not repay the loans EMI's and eventually saw a disastrous end in the form of gradual bankruptcy of its group companies one by one. One thing to notice here is that the elder's brothers companies kept moving northwards and the younger brother's entities moved southwards and ultimately ceased to exist. The case study looks at the various aspect of the dispute leading to the ADAG group being declared bankrupt.

Keywords: ADAG Bankrupt Dispute matriarch family feud

1.1 THE BACKGROUND:

When the patriarch Shri Dhirubhai Ambani died, he did not leave behind a will, leaving his sons to fight for control of the empire he built i.e. Reliance Group. As a result of this, a bitter and an open public dispute ensued between the two brothers Mukesh and Anil Ambani for a claim on Shri Dhirubhai's empire and deciding his rightful legal heir. In order to settle the dispute between the two brothers their matriarch Kokilaben eventually had to step in and make an attempt to call in truce between the two disputing brothers. Those who know the Ambani

family story know that the epic feud between Mukesh and his brother Anil sits high on the list of issues that nearly tore the family apart forever, though Mukesh at different times did lend a helping hand to his young sibling to help him tide over the crisis. But the help was too little as the borrowings were very high. In the dispute the group companies was divided amongst the two brothers, with each getting a portion to control in the companies. The ugly fighting did not stop there: Anil continued to call foul on Mukesh, even accusing him of upending his own business opportunities and not helping the cause.

1.2 THE PLAN EVOLVED BY SMT. KOKILABEN:

The disputes between the brothers who lived and worked in Mumbai saw all their battles being fought in the power corridor of Lutyen's Delhi. In this process on a certain day of May 2010 an Airbus ACJ 320 with the call sign 'VT-IAH' touched down at New Delhi's Indira Gandhi International Airport from Mumbai. It was carrying Shri Mukesh Ambani, the chairman of the Reliance Group. Likewise another flight, a Falcon 2000 that answered to the call sign 'VT-AAT', carrying Shri Anil Ambani, the Vice Chairman of the Reliance Group also landed two minutes later. The pilots of both the jets informed their billionaire owners that they had landed safely. Outside, the day was just beginning, but the temperature outside had already climbed to 38 degrees and the discomfort being experienced by the billionaires was been felt in the atmosphere, though they were showing a very cool temperament as if it was a normal day of many business meetings lined up for them.

Mukesh Ambani, the owner-passenger from the first plane, walked out of the airport in his characteristic brisk style, his mind preoccupied with the packed schedule for the day. On top of his priority list was a meeting of the Prime Minister's Council on Trade and Industry. He suddenly, came face to face with his old employee Shri Sethuraman, who was now with his brother Mr. Anil. Mr. Mukesh very professionally shook hands and asked him warmly, "How are you, Sethu?" This small gesture shown by Mr. Mukesh travelled like wildfire quickly through the political and business circles of the Capital, carrying the news that the Ambani brothers have decided to end their six-year-long bitter battle and to have decided to "collaborate" again with

each other. However, this news was received with a strange surprise that borders skepticism.

Kicking off the process of a possible settlement of the ownership and distribution of assets within the Reliance Group between her sons Mukesh and Anil, Smt. Kokilaben Ambani, the widow of Shri Dhirubhai Ambani started consultations separately with her warring sons Mukesh and Anil based on the valuation report prepared and submitted by a renowned and close family friend Shri K V Kamath, the then ICICI Bank chief. Smt. Kokilaben met both her sons on two occasions to find a solution to the dispute on the basis of the recommendations made by Kamath regarding the valuation of the family assets in Reliance Group. Kamath it is believed assessed the value of family asset at Rs.80,000 crore and made a few recommendations for both division of equity shares held in the different entities of the group companies including the flagship Reliance Industries. Although the two brothers could not reach a solution instantly, before the dispute reached a nearly inconclusive end or one may call it a beginning, in the board meeting of RIL, Anil Ambani proposed the name of Shri Mukesh Ambani to become the chairman and managing director of Reliance Industries Ltd that was duly accepted with overwhelming majority. In the same meeting Shri Anil Ambani was made vice-chairman. But this did not put an end to the dispute in spite of each brother showing consideration for each other.

1.3 THE SEPARATION FINALLY OKAY-ED:

The company was eventually separated, with the brothers each getting a portion to control in it. A new group Anil Dhirubhai Ambani group (ADAG) was formed in 2006 after the two brothers split Reliance Industries in December 2005.

Under this group Anil get control over telecom, power, entertainment and financial services. The Anil Dhirubhai Ambani Group included the following entities:

- **Reliance Communications Ltd**
- **Reliance Infrastructure Ltd**
- **Reliance Capital Ltd**
- **Reliance Natural Resources Ltd and**

■ Reliance Capital Ventures Limited

■ Reliance Power Ltd.

Anil Ambani's downfall can be attributed to a combination of factors, including aggressive and uncontrolled expansion initiated rather rapidly, forcing Mr. Anil to borrow high increasing the debt levels of the companies, and unfavorable market conditions. Infact if one takes a look at his personality he is found to be extremely outgoing and expressive, media friendly as well as a impulsive and rash personality. Reliance Communications faced intense competition in the telecommunications industry, leading to pricing wars and diminishing profitability that affected its future prospects.

On the other had the elder sibling Mukesh got control of flagship Reliance Industries, with interests in petrochemicals, oil and gas exploration, refining and textiles Mukesh was known to possessing greater his resilience and his excellence in execution strategies accompanied with an effective project management bore results and the company continued growing like during Dhirubhai's era. He went on to launch a retail venture which is not doing very good but he is able to sustain it as a subsidiary of Reliance Industries. The hope was it will do well in the course of time. This was the only entity he ventured into. Under this one company which has not added value to RIL is Reliance Jewels which continues to make losses.

1.4 NO COMPETITION CLAUSE:

One very big decision taken in this split was introduction of **"No Competition Clause"**. This clause restrained the brothers from entering into trade or business of any kind, in which the other brother was active and had presence. If such an act was committed by any brother the decisions would be void and would be in clear violation of the split agreement signed. The original non-compete agreement signed between RIL and ADA group in January 2006 was for a period of ten years starting from 2006. In other words, after 2016, both Mukesh and Anil Ambani were free to enter into each other's business territories without any restriction. This is when Mukesh hit gold when he launched Jio, that changed the telecom and internet segment in India by not only making data cheap and affordable it also made its availability and

connectivity easy. The price of mobile telephony came down drastically signaling bad times for the existing players in the market like Vodafone, Idea, Reliance Communication, Videocon, etc.

The name Reliance Capital came into effect on 5 January 1995. In 2002, Reliance Capital Ltd shifted its registered office to Jamnagar in Gujarat before it finally moved to Mumbai in Maharashtra, in 2006. In 2006, Reliance Capital Ventures Limited merged with Reliance Capital. Reliance Capital was active in life, general and health insurance; commercial & home finance; equities and commodities broking; wealth management services; distribution of financial products; asset reconstruction; proprietary investments and other activities in financial services. Reliance Anil Dhirubhai Ambani Group (ADAG) company Reliance Capital has posted a net profit of Rs 181 crore and revenue of Rs 1,869 crore for second quarter of the financial year, helped by robust growth in insurance, commercial finance and mutual fund businesses. Barely a few years into their banking dreams, the cracks in the so called "great empires" of Anil Ambani's - ADAG became visible. As a result of this the ADAG companies were on the path of being declared bankrupt as it had borrowed excessively but was not able to repay his obligations. While Anil Ambani is fighting cases with lenders abroad, claiming to live off his mother and wife's wealth.

He is even fighting his battle with his own brother Mukesh Ambani over the price of Gas that has landed him more in trouble. Anil Ambani's had a bad habit of seeking legal recourse at the drop of a hat has made him enemies even outside his family. He has several lawsuits for defamations and allegations against journalists, adding to the problem he is already into with bankruptcy proceedings against most of his companies. The star of ADAG reliance Capital is now facing the threat of bankruptcy.

Innoventures, a company owned by Anil Ambani, has been admitted for insolvency proceedings by the national company law tribunal (NCLT) after JC Flowers Asset Reconstruction Company, which took over Yes Bank's bad loan portfolio worth ₹ 48,000 crore in December, claimed that Reliance Innoventures had defaulted on its debts. JC Flowers claimed that Reliance Innoventures defaulted on interest payments worth ₹ 100 crore. That is when Anil borrowed from

Yes Bank, that ultimately became the last nail in the coffin of Reliance Capital.

Reliance Capital, currently undergoing corporate insolvency proceedings, has divested a 45% stake in its listed subsidiary, Reliance Home Finance, for Rs 54 million in the open market. This strategic move is expected to enhance the recovery prospects for creditors. Consequently, Reliance Capital's owner in Reliance Home Finance now stands at less than 2.5%. His other companies were a shock for the investors who lost big time investing in his companies.

1.3 RELIANCE CAPITAL'S COMMITTEE OF CREDITORS:

Reliance Capital's Committee of Creditors (CoC) gave its approval to the resolution plan proposed by Indusind International Holdings Ltd (IIHL) for the troubled financial services company, bringing finality to the long-drawn insolvency resolution process of the company, multiple people aware of the development as reported in the press.

According to sources familiar with the matter, IIHL, which is the investment arm of the Hinduja Group, received an overwhelming majority of votes from the lenders, with 99.6 percent in favor of its resolution plan for Reliance Capital (RCap). The voting process to approve the sole resolution plan ended with an overwhelming majority.

Under the resolution plan, IIHL proposed to acquire Reliance Capital for a sum of Rs 9,661 crore in upfront cash, as part of the Insolvency and Bankruptcy Code (IBC) proceedings it is learnt. Additionally, Reliance Capital has a cash balance of approximately Rs 350-400 crores, which will also be distributed among the lenders. This comprehensive recovery plan was expected to result in a total recovery of around Rs 10,000 crore for the lenders, inclusive of the cash on the books of the company.

The Administrator of RCap then filed IIHL's resolution plan with the National Company Law Tribunal (NCLT) in Mumbai for the final approval, which is anticipated soon. This crucial step will be felt will determine whether the proposed acquisition and recovery plan can proceed as intended. Hinduja's IIHL was the sole bidder for Reliance Capital in the last round of auction held for the company on April 2023. The other suitors,

Torrent Investments and Oak tree Capital didn't submit bids, nor did Piramal - Cosmea consortium.

Lenders had set Rs 9,500 crore as the threshold for participation in the auction, including a minimum Rs 8,000 crore as upfront cash. The Hinduja Group offered Rs 9,510 crore in the first round and raised this to Rs 9,650 crore in the second and final round. The amount has since been increased marginally to Rs 9661 crores

It is important to note that Reliance Capital is currently facing claims totaling Rs 25,334 crore from secured and unsecured financial creditors under the IBC. The approval of IIHL's resolution plan by the CoC marks a significant step forward in the ongoing efforts to find a resolution for Reliance Capital. The administrator of RCap refrained from providing any comments regarding the recent developments.

The Reserve Bank of India had superseded the board of Reliance Capital on November 30 2021, citing governance concerns and sent the company to bankruptcy courts for resolution. Reliance Capital was a core investment company with 20 units in its fold, including insurance, broking and asset reconstruction.

1.4 ADAG STOCKS FALLING:

Reliance ADA Group is going through a rough patch. Shares of the Anil Ambani group companies wilted under heavy selling pressure after Reliance Communications announced its decision to move the insolvency tribunal for bankruptcy protection. The market capitalization of these companies has also deteriorated drastically causing huge losses to the investors.

Private sector lender YES Bank has taken possession of Reliance Centre, the headquarters of Anil Dhirubhai Ambani Group (ADAG) in Mumbai, for non-payment of dues. The office building is spread over a 21,432.28 square metre plot in Santacruz.

The bank has also taken over another property of the group situated at Veer Nariman Road in Mumbai. The possession of the properties was to recover its unpaid loans by the group. The possession of the building took place as under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFESI). The move to take

over the buildings of ADAG comes after the Anil Ambani group failed to repay dues worth ₹2,892 crore that it owes to the bank. The group had a total exposure of nearly ₹12,000 crore to the private sector lender. This step made the investors run for cover as it created a situation of panic in the market. In fact Mr Ambani had told Enforcement Directorate (ED) officials that ADAG's entire exposure to Yes Bank is fully secured and is in compliance with law and financial regulations. He also said that the group neither has any direct or indirect exposure to Mr. Kapoor, his wife, and his daughters nor is it exposed to any entities controlled by them.

A forensic audit of Reliance Home Finance Ltd by Grant Thornton India, revealed that the company gave a loan of ₹60 crore to Bliss House Pvt. Ltd in April 2018, which was used to repay an existing loan worth ₹60 crore, which RAB Enterprise had borrowed in March 2017. Bliss House was a 100% subsidiary of RAB Enterprise India Pvt. Ltd, which is owned by Bindu Kapoor, wife of Rana Kapoor. A separate forensic audit of Reliance Commercial Finance Ltd, also by Grant Thornton India, showed that it had lent ₹125 crore to Imagine Estate Pvt. Ltd on 18 April 2018, which was used to repay an existing loan of RAB Enterprise, which was taken on November 2017. Imagine Estate is a subsidiary of RAB.

The trouble got aggravated when Three State-run lenders, State Bank of India (SBI), Union Bank of India (UBI) and Indian Overseas Bank (IOB), have classified accounts of the Anil Ambani owned Reliance Communication Ltd (RCom) and its two units Reliance Telecom Ltd (RTel) and Reliance Infratel Ltd (RInfra) as fraudulent.

The Anil Ambani-owned Reliance group, however, denied that the claims in media reports and from social media. In a statement, a spokesperson of Reliance group says, "It is being falsely and mischievously stated in a section of social media that RCOM Group of companies owe Rs86,188 crore to Indian banks and financial institutions. As per figures certified by the Resolution Professional appointed by the lenders, the RCom group owed Rs26,000 crore to Indian banks and financial institutions as on the date of filing before the NCLT." While the embattled chairman of Anil Dhirubhai Ambani Group (ADAG) continues to maintain that he has negative net worth, the Chinese banks have argued otherwise, quoting his luxurious lifestyle and the support that he has received from his elder brother Mukesh Ambani.

1.5 ADAG GROUP:

Reliance Anil Dhirubhai Ambani Group is an Indian conglomerate. It is headquartered in Navi Mumbai, India. The company was formed after Dhirubhai Ambani's business was divided up. Reliance ADA Group is headed by Anil Ambani. Reliance Group has the following companies under it:

Reliance Power
Reliance Communications
Reliance Infrastructure
Reliance Capital
Reliance Naval
Reliance Entertainment

The group provides telecom, financial services, construction, entertainment, power, health care, manufacturing, defense, aviation, and transportation services.

Reliance Anil Dhirubhai Ambani Group Companies		
Company	CMP (₹)	% Fall Since February 4, 2019
Reliance Power	10.90	-58.63%
Reliance Infrastructure	118.05	-55.78%
Reliance Communications	5.37	-53.71%
Reliance Capital	129.25	-31.67%
Reliance Naval	8.24	-30.29%
Reliance Home Finance	26.00	-24.75%
Reliance Nippon Life AMC	163.30	20.25%

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Shares of the Anil Ambani group companies wilted under heavy selling pressure this week after Reliance Communications had announced its decision to move the insolvency tribunal for bankruptcy protection. Since February 4, Reliance Communications has plunged 54%, Reliance Power has declined 59%, and Reliance Capital has lost 32% while Reliance Infra has dropped 56%.

The fall prompted lenders to sell pledged shares, with L&T Finance selling 20 million shares of Reliance Communications, 7.8 million shares of Reliance Capital, 4.9 million shares of Reliance Infrastructure and 62.5 million shares of Reliance Power.

The stocks of all the companies under the group have fallen by 56-60% in the last 12 months. And in the last couple of weeks, some

stocks have further fallen by almost 50%. The group has pledged their shares in almost all the companies. That is also why the stocks of the companies are falling so much. The market capitalization of the companies have since then also deteriorated drastically.

Total Debt on the Company:

The group has a total debt of more than Rs. 1 lakh crore on them and they are not able to service these borrowings (debt). So, if we consider a usual 10% interest rate, then the group is not even able to pay the annual interest of Rs. 10,000 crores on their debt. The Company wise classification and its debt liability are as given below:

Reliance Infrastructure:

The total outstanding debt on this company is of Rs. 17,000 crores. The power business in Mumbai that is the electricity supply in Mumbai was previously held by Reliance Infrastructure. But this business has now been sold to Adani Transmission Ltd for a deal of Rs. 19,000 crores. Of this Rs. 19,000 crores, Rs. 5,000 crores were transferred to the account of the company and the rest Rs. 14,000 was the debts carry forwarded to Adani Transmission Ltd as the whole business was only sold to them. Thus, the initial debt of Rs. 30,000 crores has now reduced down to Rs. 17,000 crores.

Reliance Power:

The total outstanding debt on this company is of Rs. 30,000 crores. They recently sold some plants of Reliance Power amounting to Rs. 700-800 crores. But this amount is negligible compared to the debt on the company.

Reliance Communications:

The total outstanding debt on this company is of Rs. 47,000 crores. The company has not yet paid the money for the deal made with Ericsson 7-8 year back, even with the personal guarantee taken by Mr. Anil Ambani. There is an on-going legal battle on this matter too. To reduce the debt, the company is planning to sell their telecom towers, spectrum, some real estate owned by the company, their DTH business. The company is planning to sell a land in Navi Mumbai for the price around Rs. 11,000 crores. The company had also finalized a deal to sell the telecom towers and spectrum to Jio for Rs. 25,000 crores. This deal has yet not been approved by the Regulatory Authority.

Anil Ambani has now approached National Company Law Tribunal (NCLT) has the lenders, almost 45-47, has not agreed to the debt repayment plan presented by Reliance group. Here, the NCLT will now have meeting with the entire lenders and decide how the debt will be paid-off. So, now Mukesh Ambani may try to take advantage of the situation and may even bargain some more for the deal. Because today there is no company other than Reliance Jio in the telecom sector which will be able to buy these things. So, now Reliance Jio may even quote a lower amount in the tender to buy this deal and Reliance Communications may not get the expected amount of Rs. 25,000 crores.

Reliance Naval:

The total outstanding debt on this company is of Rs. 5,300 crores.

These are the major companies on which the group has debt. 30%-40% of the debt might get written-off as the business did not prosper. The companies have failed in business terms and although no fraudulent activities were conducted.

Reliance Communication was the biggest reason behind this huge debt. And Reliance Jio is the biggest reason for the failure of Reliance Communications.

Reliance Capital is the only profitable company. The future of this group doesn't look quite good. As its joint venture with Nippon is on the verge of collapsing. There is an old joke in the Dalal Street, that the evolution in the Indian economy is symbolized by the transition from self-reliance to **Reliance**. Anil Ambani has expressed his wish to get out of the businesses of Reliance Power, Infrastructure, Communications and Naval as these are not doing well either. So many new entities entered the defense manufacturing segment are doing good except Reliance Naval and Defence clearly showing it is not about the companies but the leadership which is under question.

When asked about the 12 million equity shares he owns in Reliance Innoventures, Anil Ambani had claimed that the shares were worthless. He added that he had borrowed Rs500 crore from his mother and Rs310 crore from his son Anmol. In October 2018, Anil Ambani took a loan of Rs500 crore from his mother, but when the lawyer asked him to reveal the

terms of the loan, he had said he was not privy to the actual terms of the loan.

In 2012, Anil Ambani took a loan of over US\$700 million for his company Reliance Com from three Chinese banks for which he provided personal guarantee. The company is currently caught in insolvency proceedings.

The banks managed to get a judgement debt to the tune of US\$717 million against Mr Ambani. Mr Ambani was asked to provide a list of assets to the UK court along with bank statements and credit card statements for the last 24 months since he failed to pay the banks as per the Court's direction.

The total debt of Anil Ambani at that time was US\$716.92 million.

Reliance Capital Debt break-up:

Type	Amount (Rs Crore)	% of Borrowings
NCDs	28,900	55
Term loans from banks, financial institutions	18,490	35
Commercial paper	3,130	6
Cash credit	1,980	4
Total	52,490	100

Source: Bloomberg Quint

With such a debt heavy balance Sheet, one cannot expect the financial condition to be good. Added to this are the big plans of revival in the pipeline but theses look a distant dream. At present it is struggling and it's sinking looks the only possible alternative.

Conclusion:

The present state of affairs of the group is bad and it is not able to pay even the interest leave alone the principal. Although he had very big plans in the pipeline for his group. He had plans to get in the real estate business in the future. There were plans to build a university in the name of Dhirubhai Ambani. But given the sorry state of affairs of ADA group it looks a distant dream. One can only pray for him to be able to revive his existing entities which are in a soup as of now though it seems like a fairy tale.

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Learner's Corner

Legal Maxims

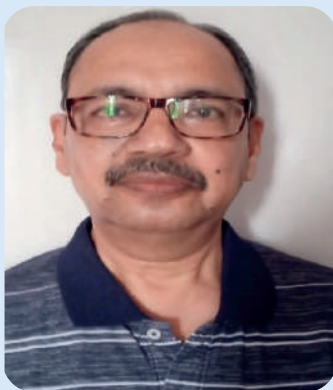
LEGAL

LAW

RULES

LEARNER'S CORNER

Maxim	Meaning
<i>Actus dei nemini facit injuriam.</i>	The act of God causes injury to no one
<i>Volenti non fit injuria.</i>	No injury can be done to a willing person
<i>Omnia praesumuntur rite et doctee probetur in contrarium solenniter esse acta.</i>	All the acts are presumed to have been done rightly and regularly.
<i>Nullus Commodum Capere Potest De Injuria Sua Propria.</i>	No man can take advantage of his own wrong.
<i>Ex injuria jus non oritur.</i>	Law (or right) does not arise from injustice.
<i>Subla Fundamento cadit opus.</i>	A foundation being removed, the superstructure falls.
<i>Stare decisis et non quieta movere.</i>	The standing of the decided and do not disturb the calm.
<i>Noscitur a sociis.</i>	The meaning of a word can be determined by the context of the sentence.
<i>Pacta sunt servanda.</i>	Agreements must be followed.
<i>Animus nocendi.</i>	Intention to harm
<i>Vigilantibus non dormientibus iura subveniunt.</i>	Law aids the vigilant and not the indolent.
<i>Actio personalis moritur cum persona.</i>	Action dies with the person.



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Preferential Transactions under IBC, 2016

IBC, 2016 was enacted by the Government of India with the objectives to promote entrepreneurship, availability of credit and balance the interest of all stakeholders by consolidating and amending law relating to insolvency resolution of corporates, partnership firms and individuals in a time bound manner. The objective of the Code is also to maximize value of assets of such persons.

Avoidance Transactions :

In general parlance, avoidance transactions mean those transactions which should not be entered into by the parties concerned. In order to achieve the objectives of the Code, it recognizes the pre-insolvency rights of the stakeholders and also transactions done by the CD prior to ICD. The Code deals with four type of such transactions viz; Preferential, Undervalued, Fraudulent and Extortionate transactions. In this article, we shall deal with 'Preference' transactions.

The Resolution Professional (RP) has been vested with a Central role under the Code to protect and preserve the assets of the CD and manage the whole commercial affairs of the CD as a going concern. It may be possible that the erstwhile management of the CD might have entered into certain transactions with a view to protect its own interest. The RP and / or the Liquidator is under obligation to investigate such transactions with a view to ensure that there is no unjust enrichment by the CD.

The provisions of 'avoidance transactions' have been incorporated under the Code with a view to maximize the value of assets of the CD and deter the CD and certain creditors of their malicious designs to prevent the success of the process. The target is also for preservation of the assets of

the CD for the collective benefit of all the stakeholders. Another reason for enactment of the provision of 'avoidance transactions' is to find out the reasons leading to insolvency of the corporate. The aim of the provisions is also to prevent unfair advantage granted to certain creditors at the cost of others and also to maximize the availability of general pool of assets to the creditors both in resolution of insolvency as well as liquidation process. In simple words, the idea to prevent avoidance transactions is that if prior to the CIRP, the CD indulges into any transactions by which the assets are diluted, those transactions should be held to be illegal hence must be avoided.

The provisions of 'avoidance transactions' have been incorporated under the Code with a view to maximize the value of assets of the CD and deter the CD and certain creditors of their malicious designs to prevent the success of the process. The target is also for preservation of the assets of the CD for the collective benefit of all the stakeholders. Another reason for enactment of the provision of 'avoidance transactions' is to find out the reasons leading to insolvency of the corporate. The aim of the provisions is also to prevent unfair advantage granted to certain creditors at the cost of others and also to maximize the availability of general pool of assets to the creditors both in resolution of insolvency as well as liquidation process. In simple words, the idea to prevent avoidance transactions is that if prior to the CIRP, the CD indulges into any transactions by which the assets are diluted, those transactions should be held to be illegal hence must be avoided.

Preference Transactions : The term 'preference transactions' has not been defined in the Code. It may be described as a transaction by which any asset or property is transferred to a person in preference to others. Section 43 of the Code provides that where the RP or Liquidator is of the opinion that the corporate debtor (CD) has given any preference in any transaction to any person, he shall apply to the Adjudicating Authority (AA) for an appropriate order. It is important to note that the RP or Liquidator forms only an opinion about the preference transactions and it is only the AA who has to adjudicate whether the transaction is a preference transaction or not. The Code provides a timeline of 75 days from the insolvency commencement date for forming opinion by the RP whether the CD has been subjected to

any transactions under Sections 43, 45, 50 or 66. If the RP is of such opinion, in the next 40 days he has to determine such transactions after collecting necessary evidence. After making such determination, the RP shall file application before the Adjudicating Authority in the next 20 days i.e. on or before 115th day of the insolvency commencement date.

"Preference" : Section 43(2) provides that a Corporate Debtor shall be deemed to have given preference if (i) there is transfer of property or an interest in such property of the CD for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owned by the CD and (ii) such transfer has the effect of putting such creditor, surety or guarantor in a more beneficial position than they would have been in the event of distribution of assets being made in accordance with Section 53 of the Code. It implies that any transaction for the benefit of a creditor or guarantor done for any antecedent liability owed by the CD, which is likely to improve the financial position of such creditor or guarantor in liquidation under the waterfall mechanism provided under Section 53 of the Code would be treated as a 'preference' transaction. In the matter of *SBI Global Factors Ltd. Vs. Sanaa Syntex Private Ltd., MA 436/2018 in CP No. 172/IBC/NCLT/MB/MAH/2017*, it was ruled that the purpose of such provision is to ensure that a creditor is not placed in a beneficial position than what such creditor would otherwise receive through distribution of bankruptcy estate. It was further held that the defaulters should not go scot free if the funds have been syphoned away.

In the matter of *S.V. Ramkumar Vs. Orchid Healthcare P. Ltd & Others, MA/86/2018 in CP/540/IB/CB/2017*, it was held by Hon'ble NCLT, Chennai that to invoke the provisions of Section 43 of the Code, two elements are essential namely, there should be transfer of property or interest from CD to a creditor and secondly such transfer must be for the benefit of such creditors in preference to other creditors of the CD in the event of distribution of assets being made in accordance with Section 53 of the Code. In another matter of *K.L. Jute Products P. Ltd Vs Tirupiti Jute Industries Ltd and others, [CA (AT) (Ins) No 277 of 2019]*, it was held by NCLAT that Section 43 of the Code is applicable during the pendency of resolution process or liquidation proceedings, if there are reasonable grievances

relating to preferential transactions at a relevant time. Further, a liquidator can seek one or other order from AA under Section 44 by filing an application.

In the matter of S. V. Ramkumar, RP Vs. M/S Orchid Health Care Pvt. Ltd., MA/86/2018 in CP/540/IB/CB/2017, NCTL Special Bench, while dealing with such transaction where a transfer is made to a creditor by the CD in pursuance of mutual dealings and obligations between the parties. Ld. NCLT held that as the adjustments are made in respect of payments to be made against each other, it cannot be held as a preferential transaction as these adjustments do not have the effect of putting such a creditor in a beneficial position as to other creditors in the event of waterfall.

Relevant Time : It is of utmost importance to note that for a preference transaction to be avoided, it should have been given at a relevant time. Hence, a 'preference transaction' shall be deemed to be 'preference transaction' only if it has been made within the time stipulated under the Code. Section 43(4) provides that a preference transaction shall be deemed to be given at a relevant time, if :

- (i) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or
- (ii) A preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

The question arises as to what is the rationale behind such provision. It would be seen that the purpose is to prevent a creditor, surety or guarantor from taking unfair advantage over the other creditors during the period just before the commencement of insolvency proceedings.

Related Party : The related parties may be described as the insiders who have better awareness about the CD's financial status as well as the instances of having given such preference by CD during the period in question. Section 5(24) defines the term 'related party' in an exhaustive manner. Further by an amendment, sub-section 24-A has been inserted in Section 5 by which the term has been made more exhaustive.

The 'Relevant Time' or 'Look Back Period' for 'preference' transactions shall be longer if one of the parties involved in the transaction is a 'related party'

as it is presumed that the related parties have an idea that the CD might undergo insolvency proceedings. Therefore it is imperative that due care ought to be taken as to who shall qualify to be a related party.

Transactions not deemed as "Preference Transactions" : Sub-section (3) of Section 43 provides exceptions according to which certain transactions shall not be treated as 'preference' transactions. Following transactions fall within the exceptions provided under Section 43(3) :

- (i) a transaction is made in the ordinary course of business, it shall not be treated as a preference transaction. 'Ordinary Course of Business' means any normal business task, which does not arise out of a special or particular situation within the meaning of the Code.
- (ii) any transfer creating a security interest in property acquired by the CD to the extent that such security interest secured new value and was given at the time or after signing of a security agreement that contains a description of such property as security interest, and was used by the CD to acquire such property and transfer was registered with an Information Utility on or before 30 days after the CD receives possession of such property.

It has been provided that an order under Section 44 shall not affect (i) the interest in property acquired from a person other than the CD acquired in good faith and for value (ii) require a person who received a benefit from preferential transaction in good faith and for value to pay a sum to liquidator or the RP.

Conclusion :

As discussed above, one of the objectives of the Code is the preservation and maximization of value of assets of the CD for the collective benefit of the stakeholders. The RP or the Liquidator, as the case may be, has been assigned a very vital and central role to adopt a logical approach in order to meet the objectives laid down under the Code. Hence the expertise of the RP / Liquidator in identification of such transactions and timely action by him ensures the achievement of these objectives.

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CA Chandrasekaran Ramadurai,
Chartered Accountant, Insolvency
professional Registered Valuer

Ask the AI: “Code of conduct for Committee of Creditors under Insolvency & Bankruptcy Code 2016”

Prompt: Code of conduct for Committee of Creditors under Insolvency & Bankruptcy Code 2016

ChatGPT

The Committee of Creditors (CoC) plays a crucial role in the insolvency resolution process under the Insolvency and Bankruptcy Code (IBC) in India. While the IBC does not provide a specific code of conduct for the CoC, there are certain principles and practices that are generally followed by the CoC members. These include:

1. **Duty of Good Faith:** CoC members are expected to act in the best interest of all creditors as a whole and exercise their powers and rights in good faith.
2. **Confidentiality:** CoC members should maintain the confidentiality of all sensitive information received during the resolution process and should not disclose it to unauthorized parties.
3. **Impartiality and Independence:** CoC members should act impartially and independently, without favoring any particular creditor or stakeholder.
4. **Timely Participation:** CoC members should attend and actively participate in CoC meetings, providing their inputs and making informed decisions within the specified timelines.

5. Due Diligence: CoC members should conduct necessary due diligence and review relevant information provided by the resolution professional or other sources to make informed decisions.
6. Compliance with Legal Obligations: CoC members should comply with all applicable laws, regulations, and guidelines related to the insolvency resolution process.
7. Avoiding Conflict of Interest: CoC members should avoid situations that may create a conflict of interest or compromise their ability to make impartial decisions. They should disclose any potential conflicts of interest and recuse themselves from discussions or decisions where such conflicts arise.
8. Transparency and Communication: CoC members should maintain open and transparent communication with other stakeholders, including the resolution professional, other creditors, and the debtor, to ensure effective resolution of the insolvency process.

It is important to note that these are general principles, and in specific cases, the CoC may need to adhere to additional guidelines or directions issued by the Insolvency and Bankruptcy Board of India (IBBI) or other regulatory authorities.

Prompt: Please elaborate each point

ChatGPT

Certainly! Here's an elaboration on each point of the code of conduct for the Committee of Creditors (CoC) under the Insolvency and Bankruptcy Code (IBC):

1. Duty of Good Faith: CoC members should act in the best interest of all creditors as a whole and exercise their powers and rights in good faith. This means making decisions and taking actions that are fair, reasonable, and consider the collective interests of all creditors rather than advancing individual agendas.
2. Confidentiality: CoC members should maintain the confidentiality of all sensitive information received during the resolution process and should not disclose it to unauthorized parties. This includes financial, operational, and other confidential information provided by the debtor or other stakeholders. Maintaining confidentiality is crucial to preserve the integrity of the process and protect the interests of all involved parties.
3. Impartiality and Independence: CoC members should act impartially and independently, without favoring any particular creditor or stakeholder. They should base their decisions on objective assessments of the available information and avoid any undue influence or bias.
4. Timely Participation: CoC members should attend and actively participate in CoC meetings, providing their inputs and making informed decisions within the specified timelines. Timely participation ensures effective communication, allows for collective decision-making, and helps maintain the momentum of the resolution process.
5. Due Diligence: CoC members should conduct necessary due diligence and review relevant information provided by the resolution professional or other sources to make informed decisions. This involves carefully analyzing financial statements, valuation reports, resolution plans, and any other pertinent documents to assess the feasibility and viability of the proposed resolution.
6. Compliance with Legal Obligations: CoC members should comply with all applicable laws, regulations, and guidelines related to the insolvency resolution process. This includes adhering to the provisions of the IBC, as well as any additional regulations or directions issued by the Insolvency and Bankruptcy Board of India (IBBI) or other regulatory authorities.
7. Avoiding Conflict of Interest: CoC members should avoid situations that may create a conflict of interest or compromise their ability to make impartial decisions. They should disclose any potential conflicts of interest, such as having a personal or financial interest in the outcome of the resolution process, and recuse themselves from discussions or decisions where such conflicts arise.
8. Transparency and Communication: CoC members should maintain open and transparent communication with other stakeholders, including the resolution professional, other creditors, and the debtor. This involves sharing relevant information,

discussing concerns or issues, and actively participating in negotiations and discussions to ensure effective resolution of the insolvency process. Transparent communication helps build trust and collaboration among stakeholders.

It's important for CoC members to follow these principles to ensure fairness, efficiency, and integrity in the insolvency resolution process and to safeguard the interests of all creditors involved.

Prompt: Specific examples

ChatGPT

Certainly! Here are specific examples to further illustrate each point of the code of conduct for the Committee of Creditors (CoC) under the Insolvency and Bankruptcy Code (IBC):

1. **Duty of Good Faith:** CoC members should act in the best interest of all creditors. For example, when evaluating a resolution plan, CoC members should consider the potential recovery for all creditors and assess the feasibility of the plan in maximizing the overall value of the assets.
2. **Confidentiality:** CoC members should maintain the confidentiality of sensitive information. For instance, if the CoC receives confidential financial statements or trade secrets of the debtor, they should ensure that this information is kept secure and not disclosed to unauthorized parties, protecting the debtor's business interests.
3. **Impartiality and Independence:** CoC members should act impartially without favoring any particular creditor. For example, if a CoC member has a personal relationship with one of the creditors, they should declare the conflict of interest and recuse themselves from discussions or decisions related to that particular creditor.
4. **Timely Participation:** CoC members should actively participate in CoC meetings. They should review the agenda beforehand, provide their inputs on the matters under discussion, and vote on resolutions within the specified timelines, ensuring the smooth progress of the resolution process.
5. **Due Diligence:** CoC members should conduct due diligence and review relevant information provided by the resolution professional. For instance, they should carefully analyze financial statements, consider the accuracy and reliability of valuation reports, and seek expert advice if needed before making decisions on the acceptance or rejection of resolution plans.
6. **Compliance with Legal Obligations:** CoC members should comply with applicable laws and regulations. This includes adhering to the timelines and procedures set forth in the IBC and other related regulations, such as submitting required reports or disclosures to the Insolvency and Bankruptcy Board of India (IBBI) or other regulatory authorities.
7. **Avoiding Conflict of Interest:** CoC members should avoid situations that may create a conflict of interest. For example, if a CoC member is a creditor with a substantial debt owed by the debtor, they should disclose this information and refrain from using their position to influence decisions that may unduly benefit themselves.
8. **Transparency and Communication:** CoC members should maintain transparent communication with stakeholders. They should share relevant information, provide updates on the progress of the resolution process, and actively engage in discussions and negotiations with the resolution professional and other creditors to reach consensus on crucial matters, such as the approval of a resolution plan.

By adhering to these specific examples, CoC members can uphold the principles of the code of conduct and contribute to a fair and effective insolvency resolution process.





**Advocate & Solicitor and
Insolvency Professional**

Submission and Verification of Claims during Corporate Insolvency Resolution Process (“CIRP”)

In *Swiss Ribbons Pvt. Ltd. & Anr. Vs. UoI & Ors.*, the SC held [on 25.01.19] that “Claim” gives rise to “debt” only when it is “due”; and “default” occurs only when “debt” becomes “due and payable” and is not paid by the debtor. This is why a Financial Creditor (“FC”) proves ‘default’ and an Operational Creditor (“OC”) claims a ‘right to payment’ of liability. When this is kept in mind, the differentiation in triggering CIRP by FCs and OCs becomes clear.

Public Announcement and Submission of Claims: [S 13, 15(1)(c), 18(1)(b) of IBC r/w R 6, 6A and 12 (2) of CIRP Regulations]¹

- As per S 13 and 15 (1)(c) (read with R 6), the Adjudicating Authority (“AA”) shall, after admission of application u/s 7 or 9 or 10, by order, cause a public announcement and call for the submission of claims. The public announcement shall specify the last day of Claim submission (i.e. within 14 days of the appointment of IRP)² along with all supporting documents.
- **R 6A. Communication to creditors:** IRP shall send a communication along with a copy of the public announcement made u/R 6, to all

¹ For clarity, it is specified that wherever I refer Section(S), it relates to section of Insolvency & Bankruptcy Code (“IBC”) and wherever I refer Regulation (R), it relates to the regulations of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”).

² R 12(2) provides that if a creditor fails to submit the claim within 14 days, it can submit the claim on or before 90th day of the insolvency commencement date (“ICD”). The Public Announcement shall also specify the penalties for false or misleading claims.

the creditors as per the last available books of accounts of Corporate Debtor ("CD") through post or electronic means wherever the information for communication is available. Provided that where it is not possible to send a communication to creditors, the public announcement made u/R 6 shall be deemed to be communicated to such creditors.

Note: One may also find information on the creditors from the sources such as MCA, Contracts executed with creditors, compliance filings, etc.

■ S 18(1)(b) imposes a duty on the IRP as under:

IRP shall "receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;"

Category of Claimant	Form to be submitted for Claims	Mode of Submission	Supporting Documents are to be submitted to prove the debt to IRP along with the Claim Form.
Operational Creditor (other than workman or employee) (R 7)	Form B	In-person or by post or by electronic means	(a) <i>records with Information Utility ("IU")</i> , if any; or (b) other relevant documents, including – (i) a <i>contract</i> for the supply of goods/ services with CD; (ii) an <i>invoice</i> demanding payment for goods/ services supplied to CD; (iii) an <i>order of a court/tribunal</i> that has adjudicated upon non-payment of a debt, if any; or (iv) <i>financial accounts</i> ; (v) copies of relevant extracts of <i>Form GSTR-1 and Form GSTR-3B</i> filed under GST Laws and the copy of the e-way bill wherever applicable. [Not apply– (a) to creditors who do not require registration; and (b) to those goods and services which are not covered under GST Law]. ³
Financial Creditors (other than a Class of Creditors) (R 8)	Form C	By electronic means	(a) <i>records with IU</i> , if any; or (b) other relevant documents, including – (i) a <i>financial contract</i> supported by <i>financial statements</i> evidencing debt; (ii) a <i>record</i> evidencing that amounts committed by FC to CD under a facility have been <i>drawn by CD</i> ; (iii) <i>financial statements</i> showing that the debt has not been paid; or (iv) an <i>order of a court/tribunal</i> that has adjudicated upon the non-payment of a debt, if any.
Financial Creditors (of a Class of Creditors) (R 8A)	Form CA	By electronic means	(a) <i>records with IU</i> , if any; or (b) other relevant documents, including (i) <i>agreement for sale</i> ; (ii) <i>letter of allotment</i> ; (iii) <i>receipt</i> of payment made; or (iv) such other document, evidencing existence of debt. A creditor in a class may <i>indicate its choice of IP</i> , from amongst three choices provided by IRP in a public announcement, to act as its AR.
Workman and Employees (R 9) ⁴ (if through authorized Representative of them)	Form D Form E	In-person or by post or by electronic means	Existence of dues to workmen/ employees may be proved by them, individually or collectively on the basis of – (a) <i>records with IU</i> , if any; or (b) other relevant documents, including – (i) a <i>proof of employment</i> such as <i>contract</i> of employment for the period for which such workman or employee is claiming dues; (ii) evidence of <i>notice demanding payment of unpaid dues</i> and any documentary or other proof that payment has not been made; or (iii) an <i>order of a court/ tribunal</i> that has adjudicated upon the non-payment of dues, if any.
Other Creditors (R 9A)	Form F	In-person or by post or by electronic means	(a) <i>records in IU</i> , if any, or; (b) other relevant documents sufficient to establish the claim, including any or all of the following: - (i) <i>documentary evidence demanding satisfaction of claim</i> ; (ii) <i>bank statements of creditor</i> showing non-satisfaction of claim; (iii) an <i>order of court/tribunal</i> that has adjudicated upon non-satisfaction of claim, if any.

³ Further, the IRP may also look at other documents like ledger, bank statements, acknowledgment of debt, books of account of CD, proof of delivery of goods etc.

⁴ While examining the Claims of workman or employees, the IRP must also keep in mind provisions of S 53(1)(b) and S 53(1)(c) and S 53 (1)(f).

- **R 10: Substantiation of claims:** IRP/RP may call for *such other evidence or clarification as he deems fit* from a creditor for substantiating the whole or part of its claim.
- **R 11: Cost of proof:** A creditor shall bear the cost of proving the debt.
- **R 12: Submission of proof of claims:** A creditor shall submit a claim with proof *on or before the last date mentioned in a public announcement*. A creditor, who fails to submit a claim with proof within the time stipulated in the public announcement, may submit the claim with proof to IRP /RP, *on or before the 90th day of ICD*⁵. Where a creditor is a *FC u/R 8*, it shall be *included in the CoC from the date of admission of such claim*. Such inclusion shall not affect the *validity of any decision taken by the CoC prior to such inclusion*.
- **R 12A. Updation of claim**⁶- A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the ICD.
- **R 13: Verification of claims:** IRP/RP shall verify every claim, as *on the ICD, within 7 days from the last date of the receipt of claims*, and thereupon maintain a **list of creditors** containing *names of creditors* with the *amount claimed by them*, the *amount of their claims admitted*⁷ and the *security interest*, if any, in for such claims, and update it. The list of creditors shall be: (a) *available for inspection by persons who submitted proofs of claim*; (b) *available for inspection by members, partners, directors, and guarantors of CD or their authorized representatives*; (c) *displayed on the website of CD*; (ca) *filed on the electronic platform of the IBBI for dissemination on its website*; (d) *filed with NCLT*; and (e) *presented at the first meeting of CoC*.

In **SBI Vs. ARGL Limited.**, the Application was filed by the CBDT to get their claim admitted which was rejected by RP for late filing of the claim. AA held: *"It is a strange situation which is adopted by the RP because in the books of accounts the*

governmental dues are always reflected. First of all, as a matter of fact, as the first step IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless..."

- **R 14: Determination of amount of claim:** Where the amount claimed by a creditor is not precise due to any contingency or other reason, IRP/RP shall make a *'best estimate'* of the amount of claim based on information available to him. IRP/RP shall *revise the amounts of claims admitted*, including estimates of claims made, as soon as may be practicable, when he comes across additional information warranting such revision.
- In *Swiss Ribbons Pvt. Ltd. & Anr. Vs. UOI & Ors.* [WP (Civil) No. 99/2018 with connected matters], the SC held that **RP has no adjudicatory powers. He has administrative powers as opposed to quasi-judicial powers. He is a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA.**

Position of Home Buyers ("HBs"):

S 5(8)(f) of the IBC (which defines 'financial debt') provides as under:

- (f) *any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; For this clause - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) "allottee" and "real estate project" shall have the meanings respectively assigned to them in of S 2 (d) & (zn) of RERA, 2016"*.
- In **Pioneer Urban Land Infrastructure Limited & Anr. v. Union of India & Ors.** [(2019) 8 SCC 416], the Hon'ble SC has interpreted the amendment dated 06.06.18 by which "Explanation was inserted in S 5(8)(f) ("Amendment"), the clarity achieved thereby and it observed:

⁵ In *Edelweiss ARC v. Adel Landmarks Ltd.*, it was held that "rejection of claims on the grounds of delays are unsustainable because the provision has been held to be a directory". In *SBI v. Surya Pharmaceuticals Ltd.*, NCLT held that the provision with regard to filing of claims within the stipulated period is not mandatory.

⁶ 'Updating' of claim is different from 'review' of claim. IRP is entitled to update the claims but not 'review' the claim or reclassify the claim as held in *Mr. Rajnish Jain v. BVN Traders and Other*.

⁷ *Navneet Kumar Gupta vs BHEL*, NCLAT has ruled that under CIRP, RP has no authority to 'reject' a claim, part or whole. He is only required to admit a claim or call for more proof in support of the claim. In contrast, A Liquidator u/s 40 has to determine the claim, accepting or rejecting and the decision is appeal able before AA. In short RP is the facilitator in CIRP while under liquidation, Liquidator exercises quasi judicial power. This is the ratio in *Swiss Ribbons* case.

- (a) the allottees, who give advances to the real estate developer and thereby finance the real estate project at hand, are really financial creditors (and “not other creditors”) (para 43);
 - (b) While interpreting Section 5(8)(f), this is clear from the words “any amount” and “any other transaction” which means that amounts that are “raised” under “transactions” not covered by any of the other clauses, would amount to a ‘financial debt’ if they had ‘the commercial effect of a borrowing’ (para 65);
 - (c) the amounts raised from allottees under real estate projects would, in fact, be subsumed within Section 5(8)(f) even without adverting to the Explanation introduced by the Amendment (para 68); the ‘Explanation’ added through the Amendment is clarificatory in nature; (para 69);
- As per R 2(aa) “class of creditors” means a class with at least ten FCs u/s 21(6A)(b). Hence, when CD has 10 or more HBs, they would fall within the “class of creditors”.
 - In case of liquidation, the HBs would usually be ‘Unsecured Financial Creditors’ under 53(1)(d).
 - Can an allottee of a flat (who may not have a registered ‘Agreement For Sale’ but still can show the proof of payments and allotment of the flat through an ‘allotment letter’ and other supporting documents etc) be FC? Logically, Yes! “Agreement for Sale” is an important collaborative document. But the debt can be established even without the existence of an “Agreement for Sale” with other supporting documents.
 - **HBs can file the claim even after the resolution plan is approved by CoC but before adjudicated by NCLT.** NCLT allowed submission of claims by HBs even though the period for submission has elapsed and the resolution plan for CD has been approved by CoC. In the CIRP of Appu Ghar Retail, the NCLT directed the RP to accept the claims. “It is a respite to allottees of real estate projects who miss timelines because of being unaware of the initiation of CIRP. Their claims can be accepted even at a belated stage *i.e. even after a resolution plan has been approved by CoC and pending adjudication before NCLT.*”
 - In Edelweiss Asset Reconstruction Co. Pvt. Ltd. v. Adel Landmarks Ltd, the NCLT principal bench held that the rejection of a claim on the ground of delay is not sustainable because the provision has been held to be a directory. It was further clarified that RP shall make note of these repeated orders passed by NCLT clarifying that the claims of the HBs cannot be rejected on the ground of delay as the provision has been held to be a directory.
 - In Punit Kaur v. K V Developers Pvt. Ltd., the NCLAT (on 01.06.22) held that where the HB has filed their *claim before the RP after the Resolution plan was duly approved by CoC (but before approval of the Resolution Plan by AA), the claims could not have been included in the list of creditors. However, HB’s claims were not ‘extinguished’, as the extinguishment of the claim of HB would happen only after approval of the plan by AA. Further, when the HB had booked the flat with CD and made payments and their claims were reflected in the records of CD, the same ought to have been included in Information Memorandum (“IM”) and the RA ought to have taken note of the said liabilities and should have appropriately dealt with them in Resolution Plan and hence the RA was directed to prepare an addendum to the Resolution Plan by including claims of such HBs.*
- Other Judicial Pronouncements:
- In Dr. Ramakant Suryanath Pande v. CS Prakash K. Pandya, NCLT Mumbai (on 05.02.19) held -
“The scope of RP is limited to verifying the claims received in light of regulations 13 and 14 of the IBBI(CIRP) Regulations. The RP is not an adjudicating authority and is not required to inquire into factual scenarios between the parties and determine their rights and liabilities. The task of RP is to limit itself to confirm that the claims received by him are true and correct. The task of the RP is to limit itself to confirm that the claims received by him are true and correct. Verification is a process of establishing the truth, accuracy, and validity of the claim. It is not meant to be passing of a judgment or making a decision on the quantum of the claim.”
 - In a unique judgment Sumat Kumar Gupta (RP of Vallabh Textiles Company Ltd) v. Vardhaman

Industries Ltd., the facts were RP rejected the claim on certain grounds like old authorization, insufficient account statement, belated claim filing etc. NCLAT (by order dated 27/7/22) held that the RP should not have rejected the claim without even discussing or presenting the facts about the claims to the CoC.

While usually, CoC has no role or authority in the acceptance or admissibility of the claim, the above judgment shows that RP should probably discuss with the CoC about disputed claims (and especially, if its claims belated filed or filed after 90 days of ICD).

- Whether claim filed after 90 days of ICD ("**Belated Claims**") is also required to be verified and accepted by the RP? There are contradictory views by various AA. In *R. Natrajan v. Mr. Radhakrishnan Dharmarajan* NCLT, Chennai held that belated claims cannot be accepted especially when the Resolution Plan is approved by the CoC and is pending for approval before the NCLT. However, the contrary views were taken by AA as aforesaid for the claims submitted by HBs.
- In *Ruchi Soya Industries Ltd. v. Union of India* [2022] 139 taxmann.com 266 (SC) held that once the Resolution Plan was approved by AA, all claims as provided in the Resolution Plan would freeze, and all such claims, which were not part of the Resolution Plan, would not survive.
- '**Time-Barred Claims**': (E.g. there is no transaction with the CD in the last 3 years and debt is before 3 years)- Firstly, examine that if CD's books of accounts admit that as liability, the question of barred by limitation does not arise. Secondly, if the debt is already acknowledged during these 3 years (or litigation is going on before some court of competent jurisdiction about the said debt), the claim may not be time-barred. Also, the question of exclusion of period while calculating the time is important. Logically, the RP is not allowed to adjudicate the claim, if there is a dispute about the limitation. In that case, RP would apply the limitation law and claims can remain as 'disputed claims' (i.e. not admitted by RP).
- In *Orator Marketing Private Limited v. M/s. Samtex Desinz Private Limited*, [Civil Appeal No. 2231 of

2021], the SC (In its decision on July 26, 2021) held that a lender who has advanced interest-free loans to a CD will be a financial creditor under the IBC. The emphasis is applied to the word interest, 'if any' in the definition of Financial Debt.

- In *Mr. Rajnish Jain v. BVN Traders and Other*, NCLAT by its order dated 18th December 2020 held that neither the CoC has the power to determine, nor the RP has the power to reclassify the status of a creditor from FC to an OC under the IBC. In this same judgment, the NCLAT also observed –
- The 'expression time value of money' has not been defined under the Code and hence one has to revert to the dictionary meaning of the phrase as generally understood. The time value of money concept states that "cash received today is more valuable than cash received at some point in the future". NASDAQ Glossary of Financial Terms defines the phrase 'TIME VALUE OF MONEY' as The idea that a dollar today is worth more than a dollar in the future because the dollar received today can earn interest until the time the future dollar is received.
- In the matter of *SK Wheels Private Limited* [MA No. 2319/2019 in CP(IB) 4301/ 2018]- AA noted that RP did not take any decision, even after 4 months of submission of the claim by the applicant of his claim. It held that the action or rather inaction by the RP in not deciding on the claim is his abuse of the power under the Code, and contrary to justice and public policy.
- In addition to the information about the claims admitted by the IRP/RP, the IM should also contain the information about the "Disputed claims" requiring adjudication (i.e. claims received without sufficient documents in support of the claim and hence RP could not admit; or the claim not admitted by RP being disputed position/claims; or time-barred claims disputed by the claimant; or claims which were already under court litigations, contingent claims, etc), liabilities appearing in the books of accounts (but no claim forms have been filed by the claimant), invocation of guarantee not been made or any notice received for contingent claims.

Given the above, one may observe the following procedural caution while carrying out Claim Verification during the CIRP:

- (a) IRP/RP may prepare the “list of creditors (as per the books of accounts)” and then invite the claims and communicate with creditors as required in R 6A;
- (b) Based on the Claims of Creditors received in the respective form under Schedule I, segregate all creditors based on their claims and categories [such as financial creditors, class of creditors, operational creditors (other than employees and workman), Employees and workman (u/s 53(1) (b), 53(1)(c) and 53(1)(f)), Government dues (of CG/SG of preceding 2 years and other dues of CG&SG), other creditors, etc] and prepare the “List of Creditors (as per IBC)”.
- (c) Thereafter, segregate the claims which can be admitted (being found to be ‘true and correct’) and those which are ‘Disputed Claims’ which may need adjudication by AA (i.e. claims which could not be admitted due to its requirement of adjudication such as- (i) claims received without sufficient documents in support of the claim and hence RP could not admit, or (ii) the claim not admitted by RP being disputed position/claims; or (iii) time-barred claims and such legal position is disputed by the claimant; or (iv) the debt/ claims which were already under court litigations; (v) contingent claims or unsubstantiated/ unascertained claims; (vi) category, nature or amount of claim admitted is disputed by the Claimant; (vii) Claim admitted but needs review or reclassification, or (viii) any other dispute about the claim which needs adjudication by AA, etc.⁸
- (d) Discuss the disputed claims with CoC and record their views in the Minutes. Same way, if the 90 days of ICD is expired, the claim received thereafter would fall within the category of “Belated claims”. The receipt of the belated claims should also be discussed with the CoC, from time to time, and take resolution from CoC on the same.
- (e) From the List of Creditors (as per books of accounts), remove the creditors whose claims are received and post-collation is included in the “List of Creditors (as per IBC)”. Accordingly, you will now have two List of Creditors- (a) List of Creditors (as per IBC, whose claims are received and collated, whether disputed or not); (b) List of Creditors (as per books of accounts from whom claims are not received under IBC). Include both these Lists of Creditors in the IM. If required, highlight the Disputed claims (along with the nature of the dispute) in the IM, so that due consideration and attention can be given by the RA while submitting the Resolution Plan.
- (f) For the claims which are received after 90 days, prepare a separate list (after collating and examining) and put it before the CoC for approval for admission (or disputed claims, if any). If it’s a claim of HBs, accept the claim and do the verification process even if the claim is received after 90 days of ICD.
- (g) To avoid complications, submit the complete details [of all the claims received from the claimants (whether admitted or not) and the claims not received from the claimant but appearing in the books of accounts] to the CoC, RAs (through IM) and NCLT.

⁸ In my personal view, it should also be the duty of RP to bring ‘disputed claims’ to the knowledge of the CoC (through discussions in CoC meetings), RA (through IM) as well as the AA before the ‘resolution plan’ is approved (and the AA should, if required, pass the necessary orders for such disputed claims, as appropriate).





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The requirement of Valuation with respect to issuance of Compulsorily Convertible Debentures on a Private Placement basis by a Private Company

1. A private company wants to issue Compulsorily Convertible Debentures
2. Debentures come within the definition of "Securities" as defined under Section 2(81) of the Companies Act, 2013 read with Section 2(h) of the Securities Contracts (Regulation) Act, 1956 (SCRA).
3. According to the above, the term 'securities' include the following:
 - Shares, scrips, stocks, bonds, debentures, debenture stocks etc. in or of any incorporated company or another body corporate.

4. Section 71 of the Companies Act, 2013 (Act) along with Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 deals with debentures. Section 71(1) permits companies to issue debentures with an option to convert such debenture into shares, either wholly or partly at the time of redemption, provided that it shall be approved by a special resolution passed at a general meeting. Companies can issue CCDs through a private placement offer u/s 42 of the Companies Act, 2013.
5. While issuing Debentures one must also follow the provisions of "Deposits" under Section 73 of the Act and the Companies (Acceptance of Deposits) Rules, 2014. As per the provisions of Section 73 and Deposit Rules, no private company is allowed to accept deposits from public. Section 2(31) of the Act defines the term 'deposit' and states that "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. Thus, the definition of the term 'deposit' under the Companies Act is an inclusive definition and covers all receipts except such categories of amounts as may be prescribed in consultation with the Reserve Bank of India
6. Accordingly, issuance of Debentures will be categories as acceptance of Deposit under the provision of Companies Act, 2013. However, there are certain categories of transactions which does not fall under the definition of Deposit and therefore will not be required to comply with provisions of Deposit Regulations. As per clause (ix) of Rule 2(1) (c) of the Companies (Acceptance of Deposits) Rules, 2014, any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari-passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the Company or bonds or debentures compulsorily convertible into shares of the company within ten years – will not be treated as Deposits.
7. *Therefore, the CCDs, which are to be converted into shares, within a maximum period of ten years, are allowed to be accepted as such and not prohibited as Deposit under the Companies Act, 2013.*
8. The private placement shall be to a select group.
 - a. "Private Placement" means any offer of securities (Not Only Shares) or invitation to subscribe securities to a select group of persons by a company through issue of a private placement offer letter and which satisfies the conditions specified in section 42 of the Act.
 - b. *The offer of securities or invitation to subscribe securities, shall be made to not more than 200 persons in the aggregate in a financial year (excluding qualified institutional buyers and employees of the company being offered securities under ESOP). This restriction would be reckoned individually for each kind of security that is equity share, preference share or debenture.*
9. The intended investors shall be less than 200 in number.
10. The requirements as indicated below shall need to be complied with at the time of the private placement:
 - a. Private Placement - In Nutshell
 - b. It shall be made only to the selected group of persons who are identified by board first and such number of persons must not 200 in a financial year.
 - c. Issuer Company must issue Private Placement Offer Letter (PPOL) to identified persons. Such PPOL shall not contain any right to renunciation.
 - d. PPOL must be issued only after filing of Special Resolution or Board Resolution as the case may be.
 - e. Application money shall require to be paid through banking channel only.
 - f. Issuer Company must open separate bank account in a scheduled bank for receiving money against allotment of securities.
 - g. Issuer Company shall allot its securities within 60 days from the date of receipt of the application money and if the company is not able to allot within 60 days, it shall repay the application money within 15 days from the expiry of 60 days.
 - h. Issuer Company must file form PAS-3 for the return of allotment within 15 days.
 - i. Issuer Company can't utilize the money till the return of allotment is filled with ROC.

- j. Issuer Company must maintain a complete record of private placement in PAS-5.
- k. No fresh offer or invitation shall be made unless the allotments with respect to any previous offer or invitation have been completed.

Question:

1. Whether the requirement of Valuation is at the time of issuance of the CCDs or at the time of Conversion?

Opinion:

1. The requirement of Valuation has to be seen with reference to Rule 12 (5) of COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014 and Rule 13(2) (h) of COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014
2. The requirements of Rule 12 (1) & (5) of the COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014 are as follows:
 - a. (1) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form PAS-3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.
 - b. (5) A report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).
3. Thus the Return of allotment of Debentures (covered as Securities) shall be filed within 30 days of allotment along with the Valuation of the Consideration.
4. Rule 13(2) (h) of COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014 state as follows:
 - a. [(h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined—
 - i. (i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or

- ii. (ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:

Provided that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of this rule.]

5. Thus under the above rule either Valuation has to be done at the time of offer of Convertible securities or at the time the holder becomes entitled to apply for shares.
6. In that context, the Company can make a disclosure in its Private Placement Offer Letter (PPOL) the option that it has chosen under sub rule 2(d) (v) of the above rule.
7. Now the issue appears grey as to whether Companies (Issue of Prospectus and allotment) Rules shall take precedence over Companies (Share Capital & Debentures) Rules 2014.
8. The Return of allotment of Debentures shall be filed within 30 days of the allotment accompanied by a Valuation Report of the Consideration.
9. This would mean that Valuation is required at the time of issue of CCDs.
10. Even under Rule 13(2) (h) of COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014 sub clause (i), the price of the resultant shares pursuant to conversion shall be determined—
 - (i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer.

Return of allotment of Convertible securities precede conversion of those securities into equity shares later. Considering the above, my opinion is that the Valuation Report to decide the price at which the equity shares shall be issued by converting the CCDs shall be taken upfront at the time of issuance of the convertible securities.



Knowledge Centre

JOURNEY OF A COMPANY: From Insolvency to Resolution

KNOWLEDGE CENTRE

NET4 INDIA LIMITED

In accordance with the applicable provisions of the Insolvency and Bankruptcy Code 2016 ("IBC/ Code"), the Corporate Insolvency Resolution Process ("CIRP Process") of Net 4 India Limited ("Company") was initiated by one of the Financial Creditors of the Company i.e. Edelweiss Asset Reconstruction Company Limited.

The company was incorporated in the year 1985. Net4 India is a leading Data Centre dealing with Cloud Hosting and Network Services Provider; focuses on providing services to businesses (small, medium and large) and its offerings include Data Centre & Cloud Hosting Solutions, Enterprise Internet Services, VoIP Solutions, Enterprise Messaging & Hosting Solutions and Domain name registration. It was amongst the largest provider of hosting email, web hosting and domain name registration (www.net4.in) in Asia-Pacific region. It has the distinction of being the first Internet services company ISO 27001 certified, for Information Security standards adopted at its

Data Centers. It is also ISO 9001:2000 certified, a Microsoft Gold Partner and an ICANN & .IN accredited Domain Name Registrar. It is an accredited Registrar of Internet Corporation for assigning domain names and numbers from (ICANN) and National Internet Exchange of India and such other Registries.

The company is a listed company having registered office at Delhi with authorised capital of 25,00,00,000/- and paid-up share capital of 20,05,82,500/-

The company's insolvency process was initiated on 8th March, 2019 by NCLT New Delhi Bench through Edelweiss Asset Reconstruction Company Limited under Section 7 of the Code.

Mr. Vikram Bajaj (IBBI/IPA-002/IP-N00003/2016-2017/10003) was appointed as the Interim Resolution Professional and later on he was confirmed as Resolution Professional.

The constitution of Committee of Creditors of the Corporate Debtor (along with their voting share) is as follows:

Edelweiss Asset Reconstruction Company Limited	58.447%
State Bank of India	20.801%
Phoenix ARC P. Ltd.	13.760%
Paisalo Digital India Limited	5.658%
Aditya Vikram Lakhota	0.002%
Anju Lakhota	0.002%
Pushpa Lakhota	0.003%
Caparo Financial Solutions Limited	1.323%
Kety Ranikhetwalla	0.002%
Kapil Mahesh and Purvi Kapil	0.001%
Mahesh Kambholja	0.001%

Following were the series of events which took place during process:

S. No.	Particulars	Details
1.	Initiation of CIRP	08.03.2019
2.	First CoC meeting	06.04.2019
3.	Issuance of expression of interest (Form G)	22.05.2019
4.	No of CoC meetings conducted	9
5.	Issuance of Final list of resolution applicant	01.07.2019
6.	No. of prospective resolution applicants	3
7.	Date of approval of resolution plan by CoC	17.09.2019
8.	Name of final resolution applicants	M/s Open Platforms Private Limited along with co-applicants Mr. Sudhankshu Rawat and Mr. Dalip Kumar Kewalramani
9.	Date of approval of resolution plan by AA	18.08.2023
10.	No. of days taken to complete the resolution	4 years and 4 months

Successful Resolution applicant was M/s Open Platforms Private Limited along with co-applicants Mr. Sudhanshu Rawat and Mr. Dilip Kumar Kewalramani.

The successful resolution plan was approved with a majority voting share of 77.867%. However, the plan was rejected by State Bank of India which holds 20.80% voting share in the CoC. The Tribunal vide its order dated 29.05.2023, directed the State Bank of India to file an affidavit stating the reasons for rejecting the Plan. In compliance with the order dated 29.05.2023, the SBI has filed an affidavit dated 05.06.2023 wherein the following is stated: *"The Hon'ble Adjudicating Authority may take its independent view on the merit of the Resolution Plan, as the Bank, having voted against*

the Resolution Plan, would be entitled to be paid as per the provisions of Section 30 (2) (b) of the IBC, 2016."

The resolution plan was submitted to the Adjudicating Authority in September, 2019 for approval, however the Adjudicating Authority was dealing with PUFEE transactions application first and later on due to application of withdrawal filed by successful resolution applicant (which was later withdrawn), the approval of resolution plan got delayed.

As per the resolution plan, the resolution applicant altered the terms of interest of existing shareholders and the plan provides for payment of Rs. 50 Lacs as CIRP costs in priority to other payments.

Details of payment by the resolution applicant is as follows:

Category of stakeholder	Amount admitted (Cr)	Amount provided under the plan (Cr)	Amount Provide d to the Amount Claimed (%)
Secured Financial Creditors			
EARCL	235.45	Proceeds from Sale of Assets of NOIDA and Chennai Property of the CD exclusively mortgaged to EARCL (Estimated Value: Rs.14.51 Crore) 15% Equity Shareholding in the restructured equity of the CD (Estimated Value—Rs. 150 Crore)	69.87%
State Bank of India	30.65	2% Equity Shareholding in the restructured equity of the CD (Estimated Value — Rs. 20 Crore)	65.25%
Unsecured Financial Creditors			
Fixed Deposit	0.04	0.04	100%
Caparo Financial Solutions Ltd.	5.32	0.05	1%
SBI (claim in respect of Corporate Guarantee for debt of Pipetel Communications Private Ltd.)	18.83	1% Equity Shareholding in the restructured equity of the CD (Estimated Value — Rs. 10 crore)	53.10%
SBI (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd)	34.30	0.34	1%
Phoenix ARC Ltd. (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd.)	55.43	0.55	1%
Paisalo Digital India Ltd. (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd.)	22.79	0.23	1%
IFCI Factors Ltd. (claim in respect of Corporate Guarantee for debt of Net 4 Communications Ltd.)	36.29	0.36	1%
Operational Creditors			
Government	21.53	0.05	0.23%
Workmen	-	-	-
Employees	1.80	0.15	0.83%
Total	462.48	196.28	42.44%

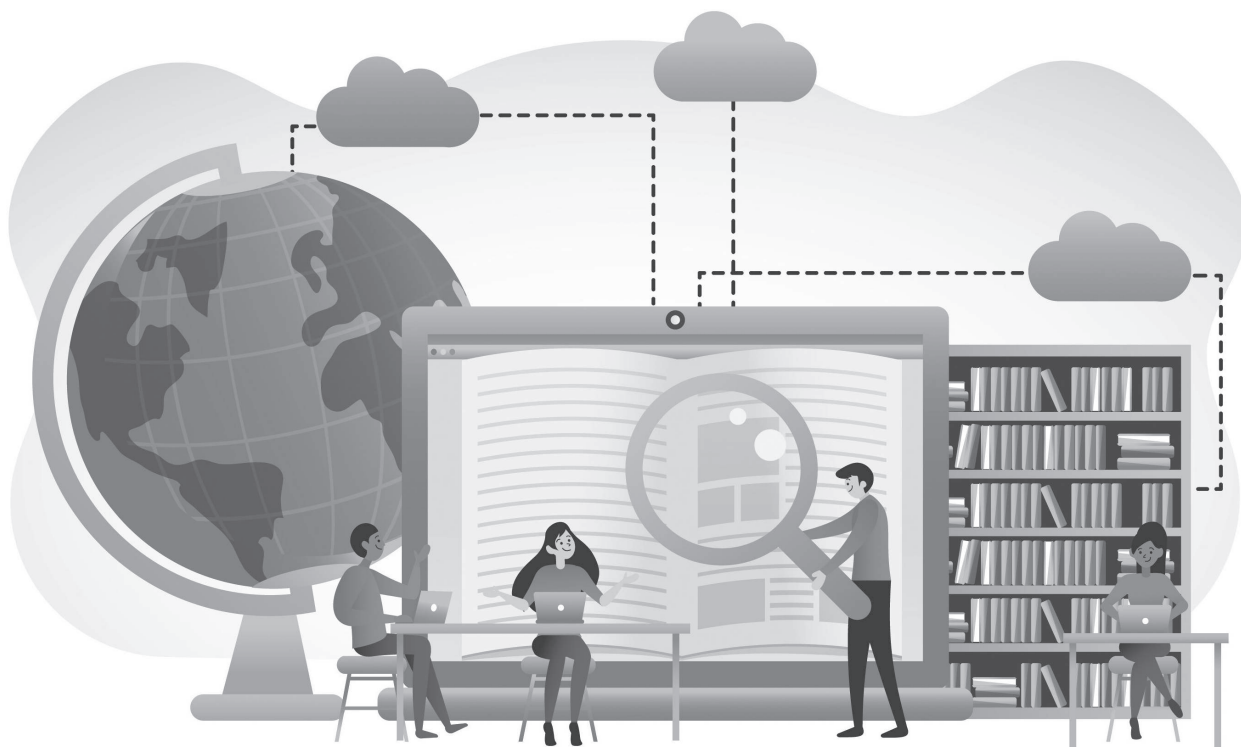
The average fair value and Liquidation value of the corporate debtor was Rs. 17,81,44,001/- & Rs. 11,01,21,167.50/- and the amount proposed under the Plan is well above the Liquidation Value as well as the fair value.

The implementation of the plan until the final payment of Resolution plan is being supervised by the Monitoring agency. The RA shall pay the RP same monthly remuneration/ fees as paid during the CIRP. Further, an Asset Sale Committee shall be set up with the appointment of 2 members, one member shall be nominated by Edelweiss ARC and other member by Corporate Debtor to supervise and manage the sale of the two properties as per the Resolution Plan. EARCL shall have the right to modify/authorize any other member to be a part of the Asset Sale Committee. In addition, EARCL shall have the veto power to

take the decision w.r.t. the sale of asset. Both these committees will be deemed to have completed their respective tasks once their objectives have met and consequently dissolved.

Way forward

The resolution plan is under implementation stage. The corporate debtor has been resolved after almost 4 years and during that period due to non-cooperation of promoters there have been termination of accreditation by ICANN, discontinuation of services by data centres and complete distrust of the customers in the corporate debtor. Let's hope that the new breeze will bring the Company into life and it will grow in the near future with new aspirations and will satisfy the expectations of the customers.



Judgments

JUDGMENTS

Case Title: Vinay Jain Vs. AVJ Developers (India) Pvt. Ltd

Case no.: Company Appeal (AT) Insolvency No.846 of 2023

Decision Date: August 23, 2023

Court/Tribunal: NCLAT, New Delhi

FACTS:

- The adjudicating Authority initiated 'Corporate Insolvency Resolution Process' (CIRP) against the Corporate Debtor-M/s. AVJ Developers (India) Pvt. Ltd. on an Application filed by the Financial Creditor-Mr.Vishal Fabrics & Ors.
- Erstwhile Resolution Professional of the Corporate Debtor filed an application alleging preferential, undervalued and fraudulent transactions by the Appellant.
- Thereafter, Resolution Plan of the Appellant was approved by the CoC with 72.666% Vote share and Erstwhile Resolution Professional filed an application praying for approval of Resolution Plan of the Appellant.

- New Resolution Professional was appointed by the IBBI. Resolution Professional was given time to get instruction from the CoC on the Application of the avoidance PUFE in relation to plan approval application.
- CoC after the said order, considered the PUFE Transaction Application as well as Resolution Plan approval application and further in its 17th meeting resolved that Application for approval of Resolution Plan be first considered by the Adjudicating Authority.
- The Adjudicating Authority passed the Impugned Order directing PUFE Transaction Application shall be heard first and Plan Approval Application shall be heard thereafter. The Appellant aggrieved by the Impugned Order has preferred an Appeal.

DECISION:

- The Resolution of the Corporate Debtor is the objective of IBC and the Resolution Plan has been approved by the CoC and Application for approval is pending before the Adjudicating Authority since 09.11.2021, there is no reason for adjourning consideration of the said application to await the decision of PUFE Application.

- The Adjudicating Authority is well within jurisdiction to consider both the Resolution Plan Approval Application as well as PUFE Application but the Adjudicating Authority erred in observing that the consideration of Plan Approval Application has to be deferred and can be taken only after PUFE Applications are decided.
- The Adjudicating Authority is directed to proceed to consider the Resolution Plan Application and not to await the decision in PUFE Applications.
- Further, the Adjudicating Authority may hear and decide Resolution Plan Approval Application and PUFE Application simultaneously.

CASE REFERRED:

- Chitra Sharma & Ors. Vs. Union of India & Ors. (2018) 18 SCC 575;
- Arun Kumar Jagatramak Vs. Jindal Steel and Power Ltd. & Anr., (2021) 7 SCC 474

Case Title: SVA Family Welfare Trust & Anr. Vs. Ujaas Energy Ltd. & Ors.

Case no.: Company Appeal (AT) Insolvency No.266 of 2023

Decision Date: August 21, 2023

Court/Tribunal: NCLAT, New Delhi

FACTS:

- Corporate Insolvency Resolution Process (CIRP) was initiated against Corporate Debtor- 'M/s. Ujaas Energy Limited'. In pursuance of publication of Form-G, Appellant submitted its Resolution Plan which was approved by the CoC by 78.04% vote shares and thereafter placed before the Adjudicating Authority for approval.
- The Appellant has proposed INR 45,00,00,000/- towards the value of Corporate Debtor and INR 23,81,75,744/- towards release of personal guarantees. The personal guarantee is to be extinguished after paying due compensation to the Financial Creditors.
- Bank of Baroda, one of the members of the CoC holding 5.83% voting share, had filed an Affidavit objecting to the Resolution Plan on the basis that it provided for extinguishment of rights under personal guarantees.
- The Adjudicating Authority vide impugned order rejected the Resolution Plan. Adjudicating

Authority took the view that CoC cannot extinguish right of the particular secured creditor to proceed against the personal guarantor of the Corporate Debtor, hence, the plan contravenes the provision of Section 30(2)(e) of the Code.

- Aggrieved with the impugned order appellant preferred an appeal.

DECISION:

- This is not a case where issue pertaining to the release of the personal guarantee was not before the CoC and was not deliberated. There was a specific clause in the Resolution Plan pertaining to release of the personal guarantee which clause was deliberated.
- Plan allocates a plan value for extinguishment of personal guarantee which has been accepted by the Financial Creditors by a vote share of 78.04%. The order of Adjudicating Authority is unsustainable.
- The decision of the CoC to accept the value for relinquishment of personal guarantee was a commercial decision of the CoC which cannot be allowed to be impugned at the instance of dissenting Financial Creditor. There is no error in the consideration of the CoC of the Resolution Plan and the commercial wisdom of the CoC by approving the Resolution Plan has to be given due weightage.
- The NCLAT held that the Adjudicating Authority committed error in rejecting the Application for approval of the Resolution Plan on the ground that plan could not have contained a provision for extinguishment of personal guarantee of the personal guarantors. The Resolution Plan submitted by the Appellant did not contravene any of the provisions of Section 30(2)(e) of the Code.

CASE REFERRED:

Edelweiss Asset Reconstruction Company Ltd. vs. Mr. Anuj Jain, Resolution Professional of Ballarpur Industries Ltd. & Ors.

Case Title: State Bank of India Vs. Mr. JOSE M.M.

Case no.: CP(IBC)/10 (KOB)/2023

Decision Date: August 10, 2023

Court/Tribunal: NCLT, Kochi Bench

FACTS:

- The State Bank of India, Financial creditor has filed an application against the personal Guarantor of corporate debtor under Section 123 of IBC, 2016 to initiate resolution process against the respondent Mr. Jose M.M. for default amount of Rs.1,97,54,49,848.81/.
- After perusing the report of Resolution Professional and hearing the respondent, Adjudicating Authority passed an order on 24.02.2021 admitting the said application. The respondent preferred an appeal against the said admission order which was dismissed by the NCLAT.
- Thereafter, the Adjudicating Authority rejected the repayment plan and passed an order under section 115(2) permitting the debtor and creditor to file petition for Bankruptcy. Pursuant to which the creditor/applicant filed a petition with the Adjudicating Authority to pass the Bankruptcy order against the respondent.
- The respondent submitted that the Corporate Debtor was admitted into CIRP and the appeal was preferred against the approval of resolution plan is pending before the NCLAT, Chennai, hence prayed to keep the application in abeyance.

DECISION:

- Adjudicating Authority noted that the submission made by the respondent that appeal pending before the NCLAT, Chennai against the resolution plan in respect of proceeding against the corporate debtor is not a ground to keep the proceeding under cold storage.
- The applicant filed the application in time and complied all pre-requisite requirements as provided under the regulation and hence there is no valid reason attributed on the respondent, the plea of the applicant was accepted and the application was admitted by the Adjudicating Authority.
- Therefore, Mr. Jose M. M., Personal Guarantor of the Corporate Debtor, was ordered to be Bankrupt. The estate of the bankrupt vest with the bankrupt trustee and the trustee was directed to take into his custody all the assets, Properties, and actionable claims of the Bankrupt and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 128 and 154 of IBC, 2016.
- The Bankruptcy trustee was thereafter directed by the Adjudicating Authority to take all necessary actions in this regard.





NEWS- INSOLVENCY & MORE

Insolvency and related news around the world

❖ FORENSIC AUDITS GAIN PIVOTAL ROLE IN INSOLVENCY LANDSCAPE

Rising instances of bankruptcy actions by creditors under India's Insolvency and Bankruptcy Code (IBC) against distressed companies are fuelling the growth of forensic audits, and signifies the increasing importance of such audits in providing evidence for court proceedings.

Read More at: <https://www.livemint.com/companies/news/cci-clears-air-india-vistara-merger-11693718372986.html>

❖ AVERAGE TIME TAKEN FOR IBC RESOLUTION AT THREE-YEAR HIGH

The average time taken for resolution or liquidation of bad loans facing corporate insolvency resolution process (CIRP) has increased to a three-year high for all stakeholders in the first quarter of the current fiscal, says a India Ratings and Research report. The timelines for the resolution of cases under CIRP or Insolvency and Bankruptcy Code (IBC) continue to

increase for operational creditors (OCs) and financial creditors (FCs) during the June quarter.

Read More at: <https://indianexpress.com/article/business/banking-and-finance/average-time-taken-for-ibc-resolution-at-three-year-high-8916823/>

❖ CREDITORS SEE BETTER RATE OF RECOVERY FROM LARGE FIRMS VIA IBC

The rate of recovery for creditors from the resolution of large stressed firms has exceeded realisation from smaller ones under the Insolvency and Bankruptcy Code (IBC), according to latest data compiled by the regulator.

Read more at: <https://economictimes.indiatimes.com/industry/banking/finance/creditors-see-better-rate-of-recovery-from-large-firms/articleshow/102955804.cms?from=mdr>

❖ NCLT ADMITS RASNA TO INSOLVENCY ON A RS 71 LAKH CLAIM BY LOGISTICS FIRM

The National Company Law Tribunal (NCLT) on Friday admitted the insolvency application against instant drink mix Rasna for unpaid dues to the

tune of Rs 71 lakh. The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

Read More at: <https://www.zeebiz.com/companies/news-rasna-to-challenge-nclts-insolvency-order-court-appoints-official-to-take-full-charge-of-firms-assets-251635>

❖ **FINFLUENCERS WILL REQUIRE REGISTRATION OR LICENCE FROM SEBI, IRDAI: ASCI**

In a bid to safeguard consumer interests, the Advertising Standards Council of India (ASCI) has tightened its guidelines for financial social media influencers also known as “finfluencers.” It has also put more onus on social media influencers that endorse health or nutrition-related claims. In its revised guidelines, ASCI said that ‘finfluencers’ can now offer investment-related advice only after being registered with the Securities and Exchange Board of India (SEBI). They should prominently display their registration number alongside name and qualifications.

Read More at: <https://www.thehindubusinessline.com/news/finfluencers-will-require-registration-or-licence-from-sebi-irdai-asci/article67206218.ece>

❖ **GOVT OF INDIA AND META LAUNCH ‘EDUCATION TO ENTREPRENEURSHIP’ INITIATIVE**

The Ministry of Education, the Ministry of Skill Development & Entrepreneurship, and Meta (formerly ‘Facebook’) jointly unveiled an initiative titled “Education to Entrepreneurship: Empowering Students, Educators, and Entrepreneurs”. The initiative’s primary goal is to nurture this expedition and motivate young individuals to turn their educational groundwork into flourishing enterprises.

Read more at: http://timesofindia.indiatimes.com/articleshow/103349469.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

❖ **SPICEJET INSOLVENCY CASE: NCLT ISSUES NOTICE TO SPICEJET ON AIRCRAFT LESSOR’S PETITION**

The National Company Law Tribunal issued a notice to SpiceJet on a petition filed by an aircraft lessor seeking initiation of insolvency resolution proceedings against the budget carrier. The petition was filed by Aircastle (Ireland) Ltd.

Read more at: <https://www.zeebiz.com/economy-infra/aviation/news-spicejet-insolvency-case-nclt-issues-notice-to-spicejet-on-aircraft-lessor-petition-next-hearing-on-may-17-233864>

❖ **WEWORK’S BANKRUPTCY WARNING TO NOT IMPACT INDIA UNIT**

WeWork’s warning of a bankruptcy risk would not have an impact on its India unit, regional CEO Karan Virwani said on Wednesday, Reuters reported. New York-based WeWork, which was valued at \$47 billion in 2019, on Tuesday raised “substantial” doubt around the continuance of its operations and warned of a possible bankruptcy. WeWork India, which is backed and owned in majority by Indian real estate firm Embassy Group, said it was focused on growth with sustained profitability and the fundamentals of its business remain strong.

Read more at: <https://globalinsolvency.com/headlines/weworks-bankruptcy-warning-not-impact-india-unit>

❖ **NCLAT ADMITS IDBI’S INSOLVENCY PLEA AGAINST ZEE**

The National Company Law Appellate Tribunal (NCLAT) on Thursday issued notice to Zee Entertainment Enterprises Ltd (ZEEL) in a plea by IDBI Bank to initiate insolvency proceedings against the company. IDBI Bank, in its plea, said it was unable to recover unpaid dues of around ₹150 crore from Zee. The tribunal instructed both parties to submit replies and rejoinders. Many banks, including IndusInd, Standard Chartered, Axis Bank and IDBI, have initiated insolvency proceedings against Zee ahead of its merger with Sony. So far, Zee has reached a settlement with IndusInd and Standard Chartered.

Read more at: <https://www.thehindubusinessline.com/companies/nclat-admits-idbis-insolvency-plea-against-zee/article67256473.ece>

TIME TO THINK!

NUMBER'S GAME

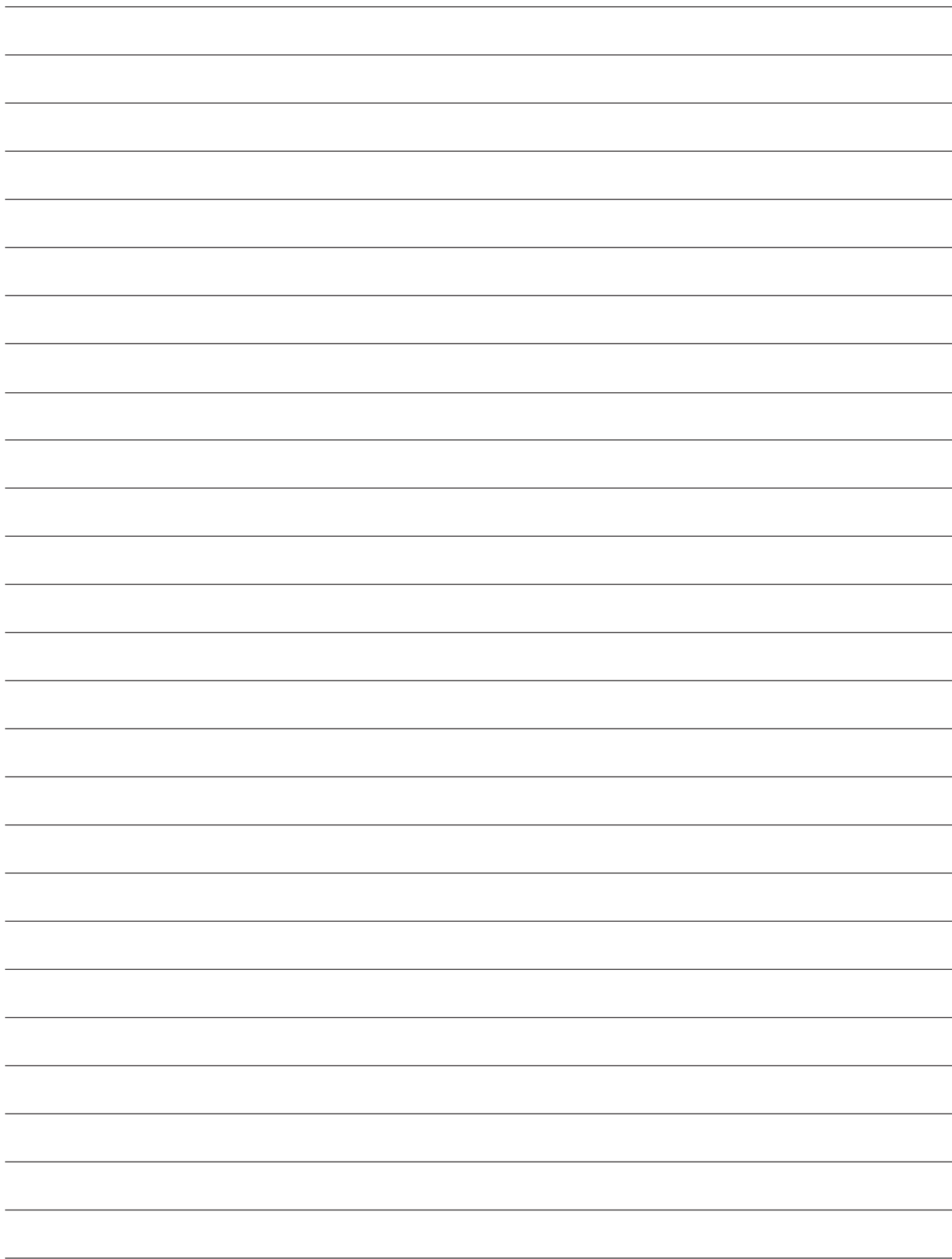
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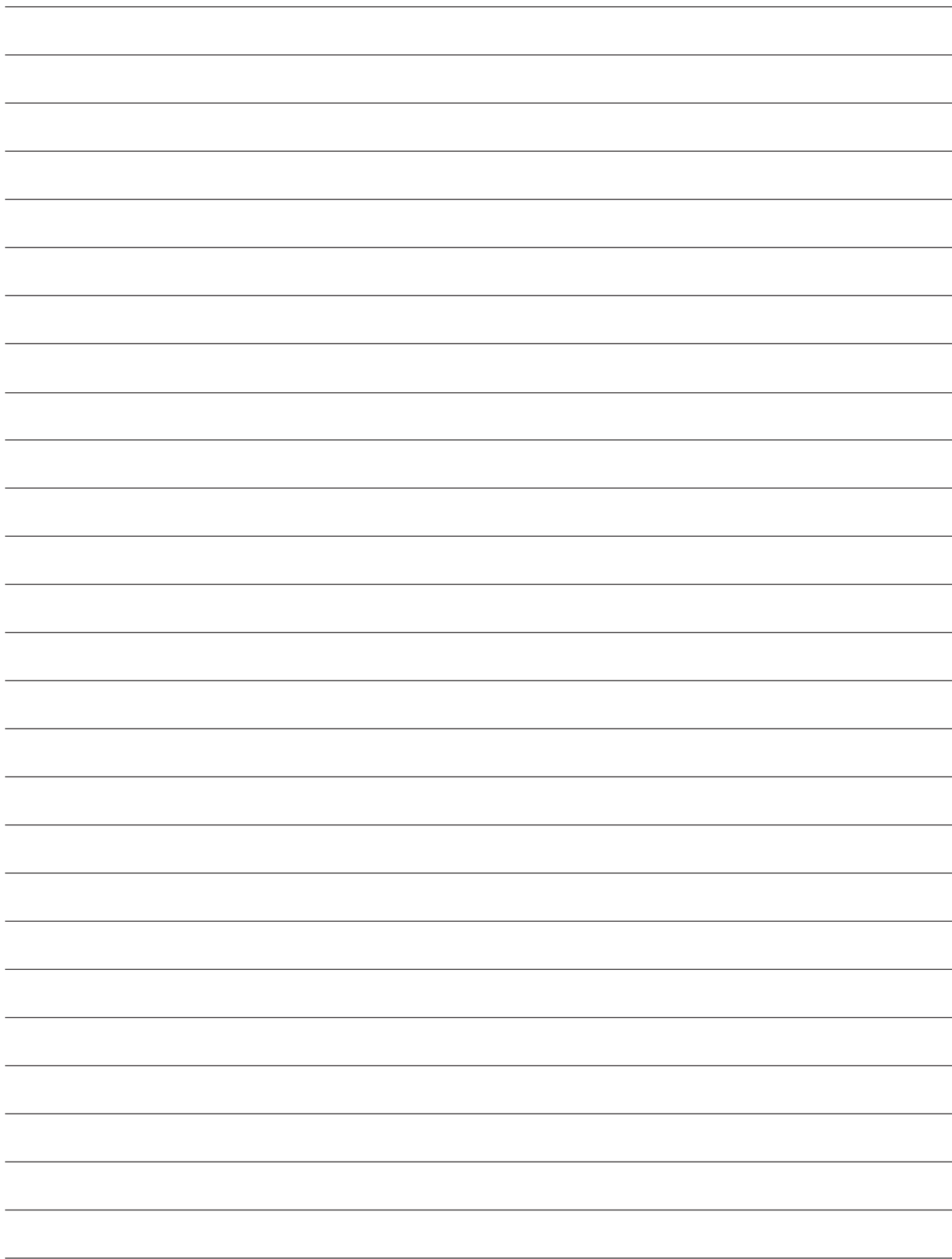
1. A 'corporate guarantor' is defined in the section ____A of IBC.
2. The "*insolvency resolution process period*" means the period of ____ days beginning from the insolvency commencement date.
3. For financial creditors who are allottees under a real estate project, an application for initiating CIRP against the corporate debtor shall be filed jointly by not less than ____ of such allottees under the same real estate project or not less than ____ per cent of the total number of such allottees under the same real estate project, whichever is less.
4. The Adjudicating Authority shall, within ____ days of the receipt of the application under 7(2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.
5. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ____ per cent. voting share of the committee of creditors.
6. The first meeting of the committee of creditors shall be held within ____ days of the constitution of the committee of creditors.
7. The committee of creditors may, at a meeting, by a vote of ____ per cent of voting shares, resolve to replace the resolution professional.
8. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within ____ days of the receipt of such decision.
9. In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that such transaction was made with any person within the period of ____ year preceding the insolvency commencement date.
10. The pre-packaged insolvency resolution process shall be completed within a period of ____ days from the pre-packaged insolvency commencement date.

Answer key:

- | | | |
|-----------|-------|---------|
| 1. 5 | 5. 90 | 9. 1 |
| 2. 180 | 6. 7 | 10. 120 |
| 3. 100,10 | 7. 66 | |
| 4. 14 | 8. 14 | |

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