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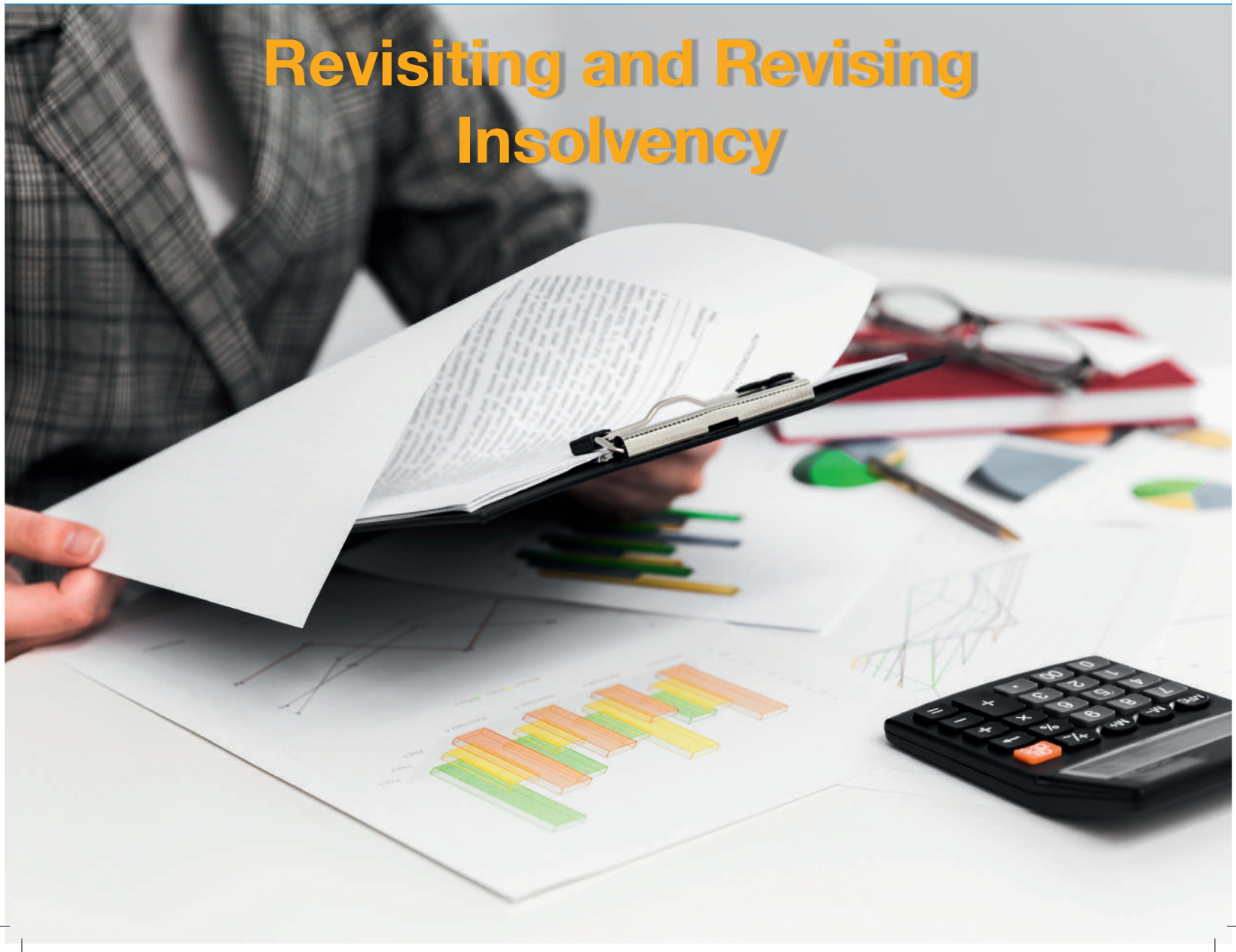
INSOLVENCY AND BANKRUPTCY JOURNAL



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From Chairman's Desk

Never stop fighting until you arrive at your destined place - that is, the unique you. Have an aim in life, continuously acquire knowledge, work hard, and have perseverance to realise the great life.

– APJ Abdul Kalam Azad

The landscape of economic regulations and financial restructuring in India has undergone a significant transformation, with the enactment of the Insolvency and Bankruptcy Code (IBC). The insolvency framework in India was introduced with the primary objective of expediting the resolution process, ensuring the maximization of value from distressed assets, and fostering a conducive environment for economic growth. However, the journey from legislation to implementation has been marked by challenges, prompting a reflection on the importance of adhering to the core objectives of insolvency laws.

The primary aim of any insolvency regime is to strike a delicate balance between the interests of creditors, debtors, and other stakeholders while promoting a swift and efficient resolution process. In the Indian context, this involves steering away from delays and ensuring a transparent, predictable, and robust mechanism. Timely resolution not only minimizes the economic fallout from distressed entities but also enhances investor confidence, encouraging capital flow into the market.

One crucial aspect of the insolvency process is the maximization of the value of distressed assets. The objective is not merely the liquidation of assets but, more importantly, the revival and continuation of viable businesses. This requires a holistic approach that takes into account the nuances of each case, emphasizing resolution over liquidation whenever possible. Adherence to this objective aligns with the broader goal of promoting entrepreneurship, fostering economic growth, and preserving employment opportunities.

Furthermore, the insolvency laws aim to create a level playing field by treating all creditors fairly and impartially. The concept of the Committee of Creditors (CoC) underscores the democratic decision-making process in the resolution of distressed entities. A concerted effort to uphold the principles of fairness and equality among creditors is instrumental in fostering trust in the insolvency process.

In recent times, there have been instances where deviations from the core objectives of insolvency laws have led to prolonged litigation, creating uncertainty and hampering the resolution process. It is imperative for all stakeholders, including regulatory authorities, resolution professionals, creditors, and debtors, to collectively work towards preserving the sanctity of the insolvency framework.

As we navigate the evolving economic landscape, it is crucial to underscore the importance of aligning our actions with the fundamental objectives of insolvency laws. This requires a commitment to transparency, accountability, and a relentless pursuit of efficient resolution. By doing so, we not only fulfil the legislative intent but also contribute to the development of a robust and resilient financial ecosystem.

The true success of India's insolvency laws lies in their ability to fulfill their stated objectives. As we move forward, let us collectively strive to create an environment that not only resolves financial distress but also fosters a culture of responsible entrepreneurship and economic rejuvenation.

(P.K. Malhotra)

Chairman, ICSI IIP

INSTITUTE OF INSOLVENCY PROFESSIONALS
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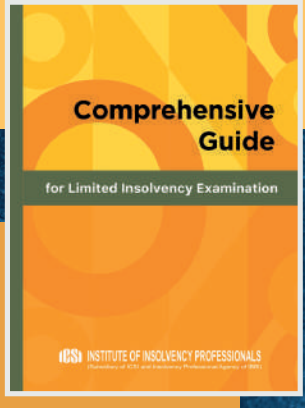
Book Release

"we pride ourselves with building knowledge by having enhancement to education skill vision, and helping it reach its fullest potential."



Comprehensive Guide for Limited Insolvency Examination 1st Edition

This book serves as a guide for how to ace the exam that makes a professional an Insolvency Professional and open up a sea of opportunities for themselves. This is based on the latest syllabus as made applicable by IBBI.

INR 990/-
Postage Extra

IBC Digest: A Compendium of Research Outcomes

This publication is a collection of Research Articles submitted by our members for this editorial. This publication will bring to its readers both retrospective and prospective viewpoints relating to Insolvency and Bankruptcy realm. With over 10 Research Articles, this collection is a first of its kind publication for ICSI IIP.

INR 390/-
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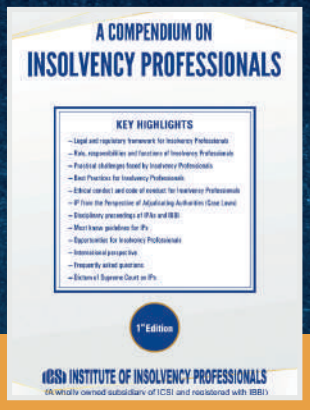

A Compendium on Insolvency Professionals

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

INR 1000/-
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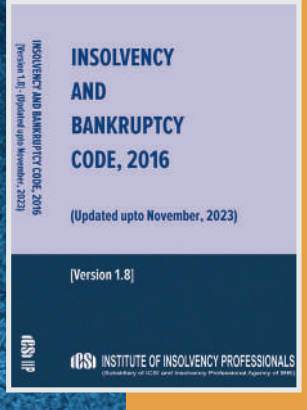
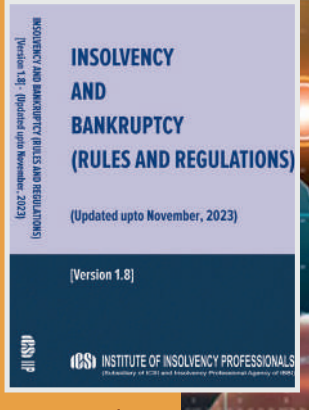


Insolvency and Bankruptcy Code; Insolvency and Bankruptcy (Rules and Regulations) 8th Edition

The Bare Act and its Regulations in a pocket book format, updated till November 2023.

INR 500/-
Postage Extra



INR 600/-
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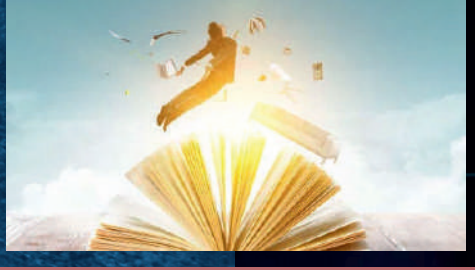


MD's Message

The secret of success is to do the common thing uncommonly well.

– John D. Rockefeller Jr.

Dear Professional Member(s),

The insolvency profession involves dealing with financially distressed companies and individuals, their creditors, and various stakeholders. This profession requires a unique skillset, encompassing legal knowledge, financial acumen, and strategic thinking. Insolvency professionals have the responsibility of managing complex insolvency processes, safeguarding the interests of stakeholders, and promoting the revival of viable businesses. In order to maintain the integrity of this profession it is our duty to ensure that we act in the best interest of all parties involved and maintain utmost transparency and fairness throughout the resolution process. To ensure a high level of ethical behavior, insolvency professionals must continually update their skills and improve their knowledge. The professionals should consistently follow the ethical practices and get themselves updated with the ever-evolving legal and regulatory framework governing insolvency. Additionally, the professionals should also understand and follow the ethical guidelines issued by the Insolvency and Bankruptcy Board of India (IBBI) and Insolvency Professional Agencies (IPAs) to ensure compliance and adherence to ethical standards. This also includes keeping abreast of changes in legislation, exploring innovative methodologies, and enhancing our knowledge through continuous professional development.

Continuous professional development is key to stay well informed of the latest laws, regulations, and best practices in the insolvency field. As an Insolvency Professional Agency, we offer comprehensive training programs, workshops, and seminars on various topics that focuses on enhancing the knowledge and skills of the professional. Our comprehensive training programs aim to foster a holistic understanding of insolvency processes, encompassing both theoretical frameworks and practical applications. Furthermore, insolvency professionals should actively engage in discussions and knowledge-sharing platforms to exchange insights and experiences with their peers. This collaborative approach not only fosters a culture of learning but also helps in understanding different perspectives and ethical challenges faced by professionals in the field. Through our workshops, we offer participants a unique platform to engage in interactive sessions and dynamic discussions. These workshops are designed to bridge the gap between theoretical concepts and their practical implementation, allowing participants to develop a deep understanding of the complexities involved in insolvency proceedings.

Moreover, our pedagogical approach emphasizes experiential learning, enabling participants to apply their newfound knowledge in real-life scenarios. Through case studies, simulations, and practical exercises, participants gain the practical skills necessary to excel in their roles as insolvency professionals. IIP takes immense pride in its esteemed faculty, whose expertise spans across various disciplines, including law, finance, accounting, and business management. Our faculty members combine their extensive industry experience with academic rigor, ensuring that participants receive a top-notch educational experience. Our aim is to create a community of insolvency professionals who are not only technically competent but also stand as beacons of ethics in their profession. By upholding integrity, demonstrating transparency, and fostering trust, we can ensure the long-term sustainability and growth of the insolvency profession.

Together, let us challenge conventions, embrace innovation, and determine new frontiers in the world of insolvency. ICSI IIP stands as your steadfast partner, committed to empowering you with the skills, knowledge, and networks required to thrive in this challenging industry.

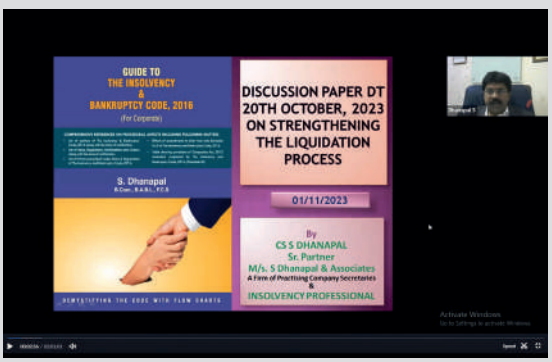
Dr. Prasant Sarangi

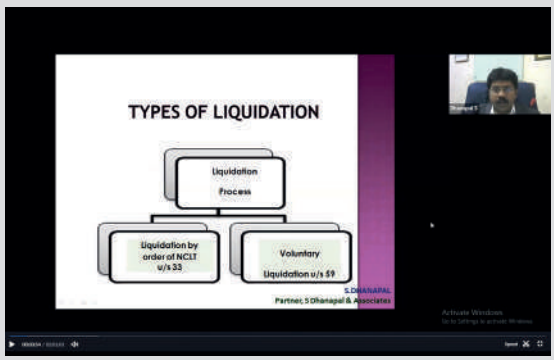
Managing Director (Designate), ICSI IIP

Events @ICSI IIP

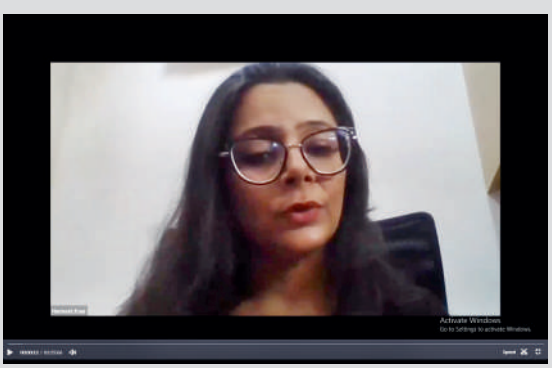
(Workshops, Webinars, Round-table Discussions, Interactive Meets etc.)

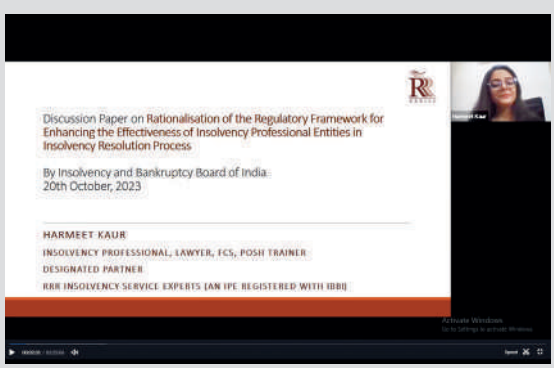
1. Round-table (Virtual) Discussion on IBBI Discussion Paper on Strengthening the Liquidation Process by CS and IP S. Dhanapal on Wednesday, 1st November, 2023





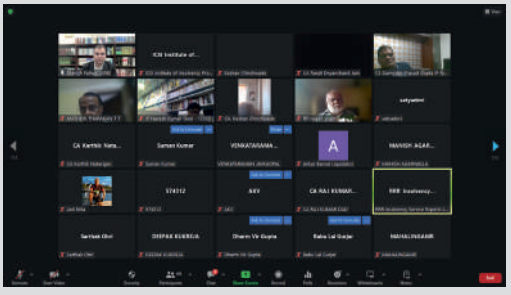
2. Round-table (Virtual) Discussion on IBBI Discussion Paper on Rationalisation of the Regulatory Framework for Enhancing the Effectiveness of IPEs in IRP by CS and IPS. Harmeet Kaur on Tuesday, 7th November, 2023



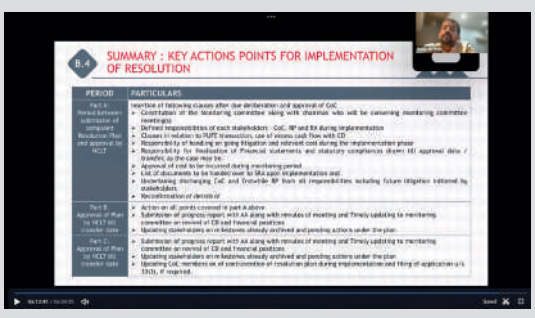


3. Round-table (Virtual) Discussion on Proposed CIRP Amendments & Real Estate Related Proposals by Advocate and IP Ashish Makhija on Thursday, 16th November, 2023

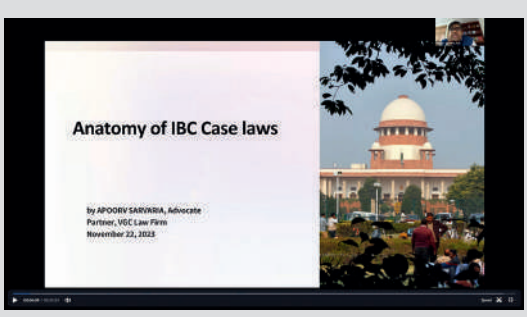
4. Webinar on Code of Conduct for IPs and Disciplinary Proceedings and Impact of IBC on Ease of Doing Business by Advocate and IP Manish Paliwal on Friday, 17th November, 2023

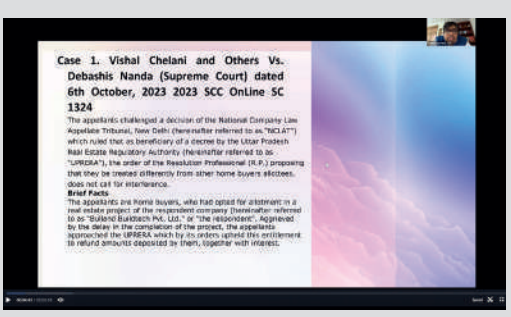


5. Workshop on Managing Corporate Debtor as a Going Concern by CA and IP Anil Kohli and CA and IP Bhrugesh Amin on Saturday, 18th November, 2023

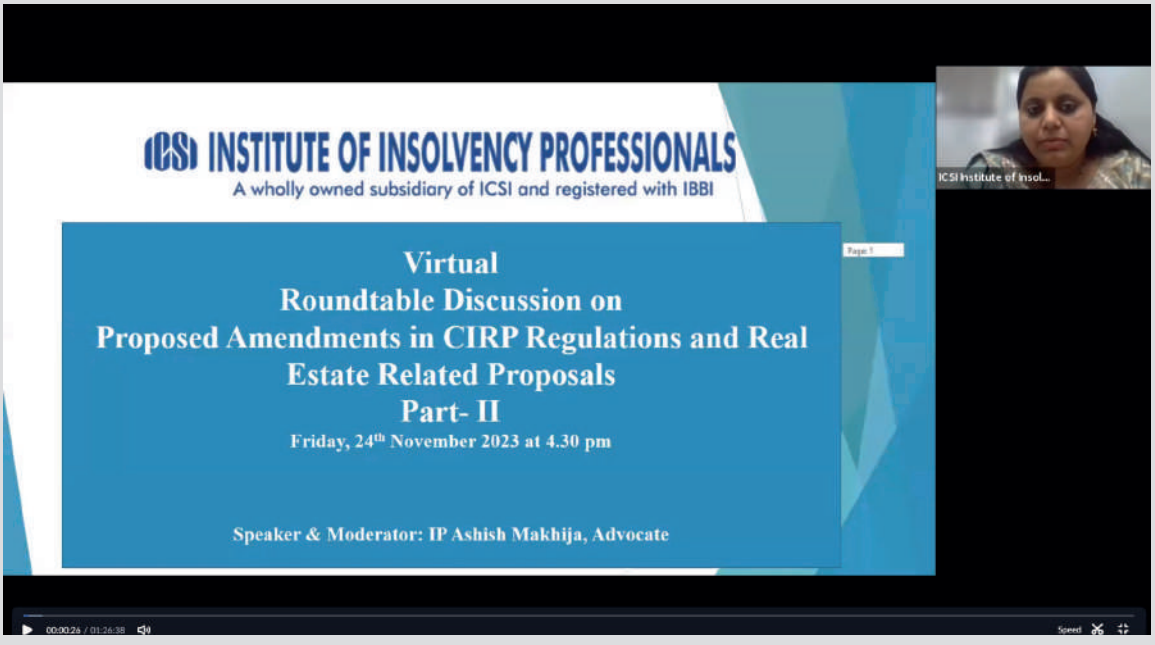


6. Webinar on Anatomy of IBC Case Laws-11 by Advocate and IP Apoorv Sarvaria on Wednesday, 22nd November, 2023

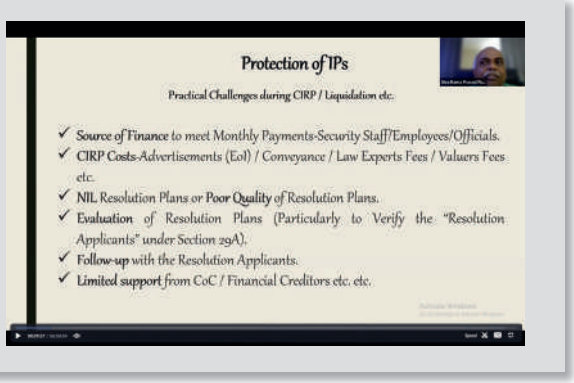


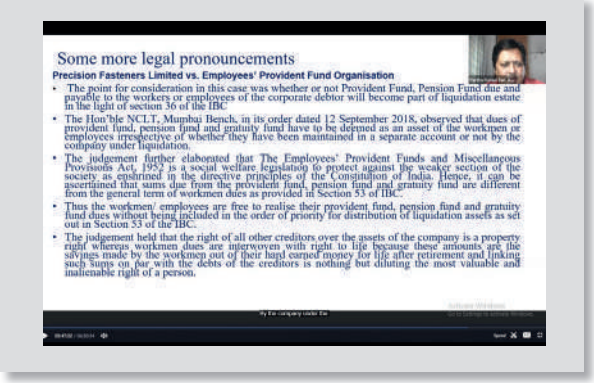


7. Round-table (Virtual) Discussion on Proposed CIRP Amendments & Real Estate Related Proposals (Part II) by Advocate and IP Ashish Makhija on Friday, 24th November, 2023

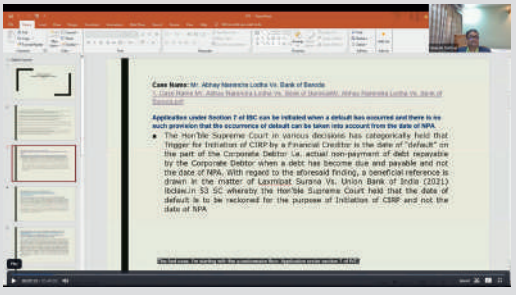


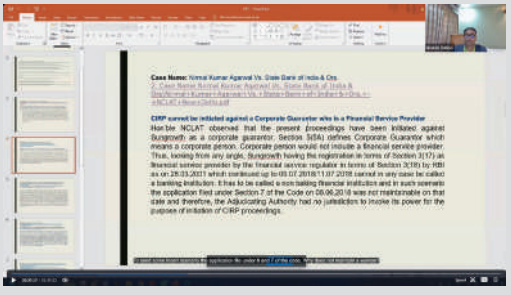
8. Workshop on Protection of Insolvency Professionals under IBC and Labour Laws by CS, CMA and IP Siva Rama Prasad Puvvala and CS and IP Partha Kamal Sen on Saturday, 2nd December, 2023



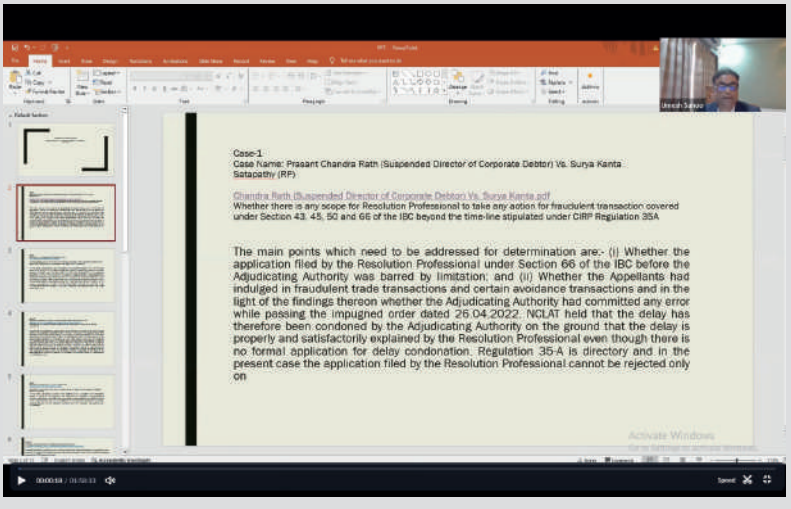


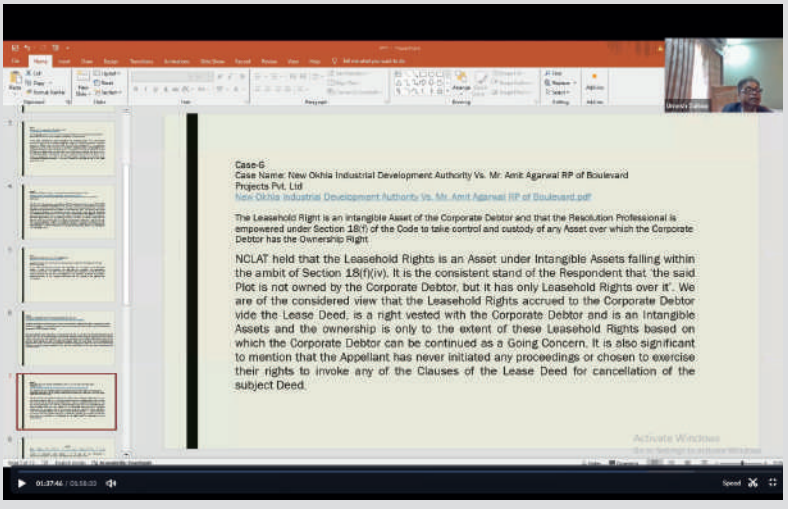
9. Webinar on Important Hon'ble NCLAT Judgments on Insolvency and Bankruptcy Code, 2016 by Advocate and IP Umesh Chandra Sahoo on Friday, 8th December, 2023



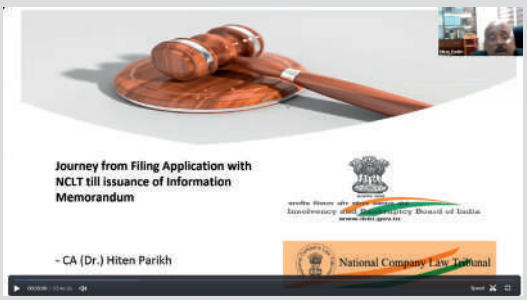


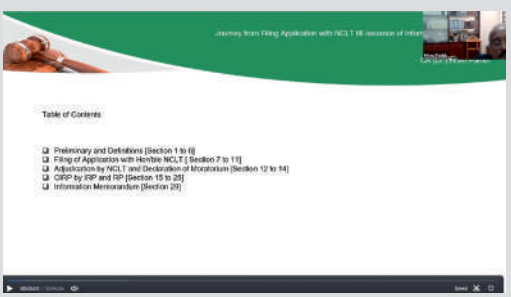
10. Webinar on Important Hon'ble NCLAT Judgments on Insolvency and Bankruptcy Code, 2016 by Advocate and IP Umesh Chandra Sahoo on Friday, 15th December, 2023

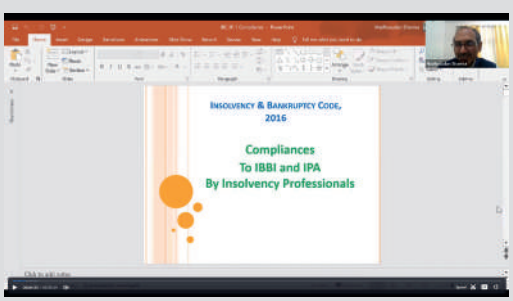


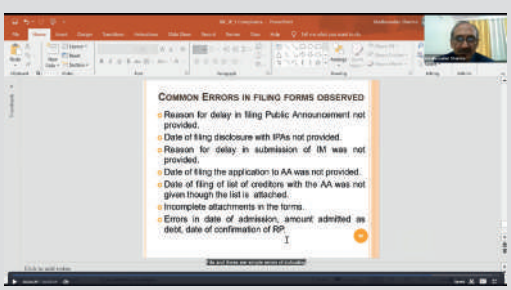


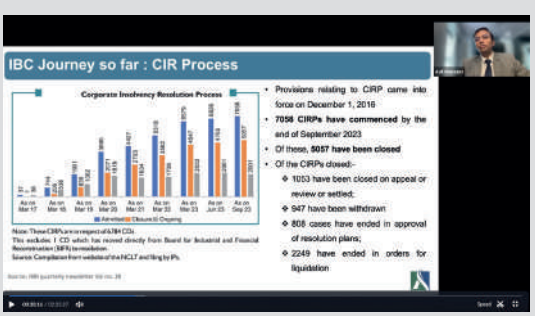
11. Workshop Series "PERSPECTIVES ON IBC Series VII-AN ARRAY" from 18th December, 2023 Onwards. The topics covered in the series such as Journey from filing application with NCLT till issuance of Information Memorandum, Compliances under IBC to IBBI and IPA, Behavioural changes under IBC, Due diligence in preparation of Information Memorandum and Due diligence before finalising the resolution plan.



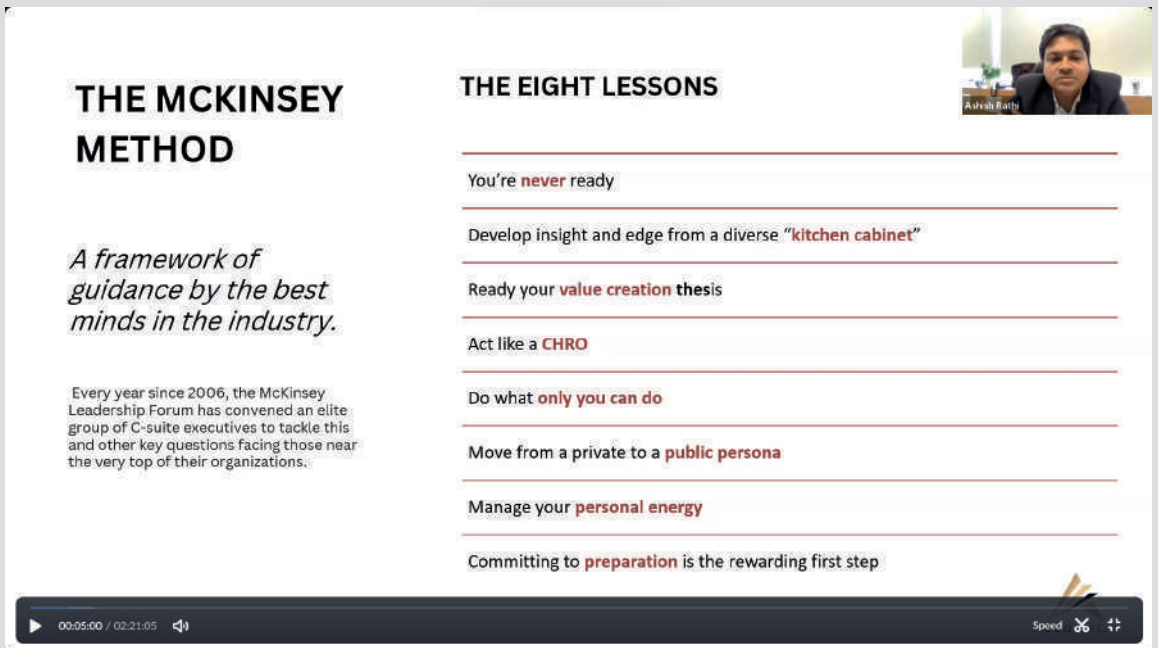


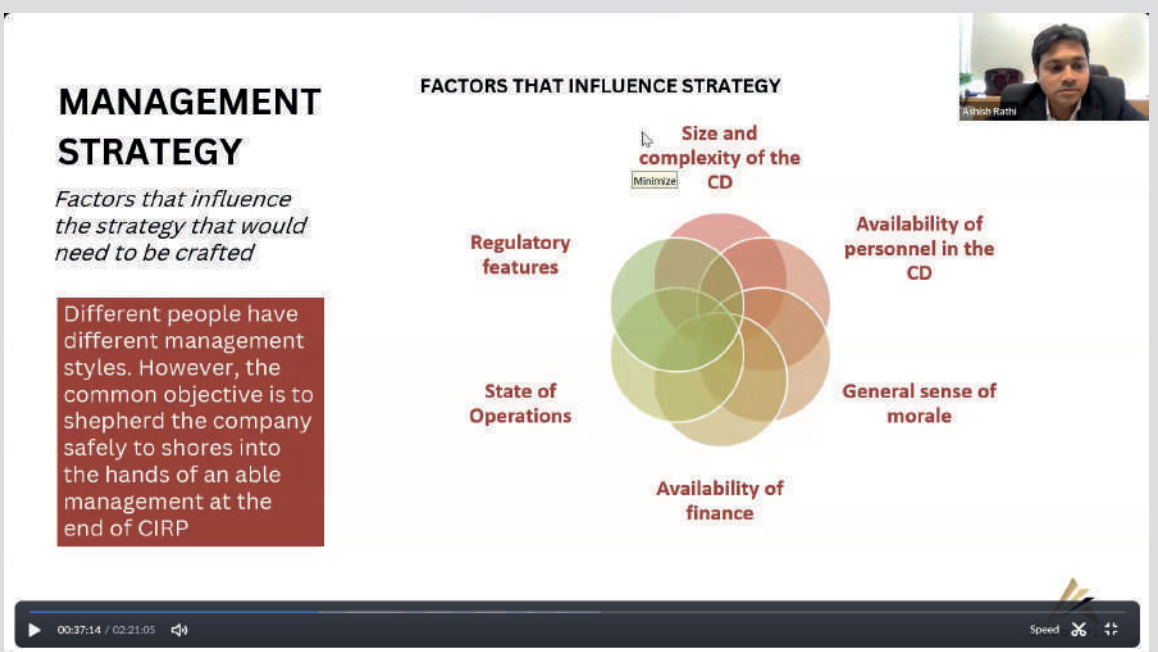






12. Workshop on Enhancing Multifaceted Skills required under IBC - IP as an Interim CEO by CA and IP Ashish Rathi on Saturday, 23rd December, 2023





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.

STAGES OF BUSINESS TURAROUND

Conquering Crisis, Embracing Opportunity

ESG AND BUSINESS TURNAROUND

Harmonizing Progress: Navigating Business Turnaround Through ESG Integration

1. INTRODUCTION

Environmental, **Social**, and **Governance** (ESG) issues are driving significant changes in how businesses operate worldwide. New regulations addressing climate change, biodiversity, environmental conservation, modern slavery, worker's rights, and corporate governance are emerging. Additionally, social attitudes are shifting, and there is a growing expectation from stakeholders such as financiers, insurers, investors, and customers that businesses must act responsibly and ethically.

These dynamic changes in regulation, social expectations, and the broader economic landscape are expected to influence future turnaround and restructuring activities. Companies are likely to restructure their operations and business models to align with improved governance, labour protection, social justice objectives, and the imperatives of a net-zero emissions economy and environmentally responsible practices.

However, this evolving social and economic landscape, with a strong focus on ESG considerations, raises questions about whether existing Business revival laws, restructuring and insolvency laws are equipped to adequately protect and uphold environmental responsibilities, employee entitlements, workplace health and safety obligations, and hold corporate directors and officers accountable for their responsibilities to the company and its stakeholders.

A delicate balance must be struck between safeguarding these interests and the fundamental principles that Business turnaround, restructuring and insolvency processes should maximize value for the collective body of creditors. In some cases, conflicts may arise between the policy concerns of ESG issues and the objectives of restructuring and insolvency law and practice.

Overall, the evolving landscape of ESG considerations is reshaping the business world and will likely have a profound impact on turnaround, restructuring and insolvency practices. Balancing the interests of all stakeholders, including environmental and social concerns, will be a complex but necessary endeavour in this changing business environment.

2. Brief Overview of ESG (Environmental, Social, and Governance) factors

Environmental, Social, and Governance (ESG) factors are a set of criteria that are used to assess and evaluate a company's impact and performance in non-financial areas. These factors have gained increasing importance in the business world and among investors, regulators, and stakeholders. Here is a brief overview of each component of ESG:

Environmental (E):

a. **Environmental Sustainability: This factor assesses a company's commitment to reducing its environmental footprint. It includes efforts to minimize resource consumption, reduce greenhouse gas emissions, and adopt sustainable practices.**

b. **Climate Change: Companies are evaluated on their response to climate change, including the disclosure of carbon emissions, climate-related risks, and strategies for mitigating environmental impact.**

c. **Resource Efficiency: Companies are assessed on their efficient use of resources such as water, energy, and raw materials, which can impact operational costs and environmental conservation.**

Social (S):

a. **Social Responsibility: This dimension focuses on a company's commitment to social causes, including community engagement, philanthropy, and support for social initiatives.**

b. **Workforce Management: Evaluation includes aspects like employee benefits and well-being, diversity and inclusion, labour law and practices, efforts to ensure a safe and healthy workplace, fair pay and living wages, and equal opportunities for all.**

c. **Human Rights: Companies are assessed on their adherence to human rights standards and their efforts to prevent violations within their operations and supply chains.**

Governance (G):

a. **Corporate Governance: This factor evaluates a company's internal governance structure, including the composition and independence of the board of directors, executive compensation, and the presence of mechanisms to prevent conflicts of interest.**

b. **Ethical Conduct: Companies are assessed on their commitment to ethical conduct, transparency, and accountability in their business operations.**

c. **Compliance and Risk Management: Evaluation includes a company's ability to detect and manage risks effectively, including legal and regulatory compliance.**

ESG IN A TABULATED FORM

ENVIRONMENTAL	SOCIAL	GOVERNANCE
Energy usage and efficiency	Fair pay and living wages	Corporate governance
Climate change strategy	Equal employment opportunity	Risk management
Waste reduction	Employee benefits	Compliance
Biodiversity loss	Workplace health and safety	Ethical business practices
Greenhouse gas emissions	Responsible supply chain	Avoiding conflicts of interest
Carbon footprint reduction	Adhering to labour laws	Accounting integrity and transparency

The integration of ESG factors into business practices and decision-making processes is driven by the recognition that these non-financial factors can have a significant impact on a company's long-term success and sustainability. Investors, consumers, and regulators increasingly consider a company's ESG performance as a crucial aspect of its overall value and reputation. Additionally, ESG factors are often used to assess a company's alignment with broader societal and environmental goals, contributing to a more responsible and sustainable business environment.

3. EXAMPLE – Johnson & Johnson

Let's understand in simple and plain terms as to what is ESG and why it is such a big issue in businesses to be ESG compliant by way of an example:

Johnson & Johnson (J&J) talc-based baby powder was alleged to have caused ovarian and lung cancer due to the presence of asbestos in its talc-based baby powder. J&J faced over 38,000 lawsuits relating to these claims. With mounting payouts and litigation costs, J&J attempted to restructure under Chapter 11 of the United States Bankruptcy Code, invoking a controversial technique called the "Texas Two-Step" process. This involved J&J spinning off its talc liabilities into a new entity through a divisional merger (where a company splits itself into two companies and allocates the assets and liabilities among the two new companies any way it sees fit.) There is nothing especially new about using Chapter 11 to deal with mass tort litigation. In the past three decades, thousands of companies, dozens of religious organizations, and even the Boy Scouts of America have filed Chapter 11 because of mass tort claims.

Some legal commentators have called J&J's strategy the "Texas Two-Step." J&J candidly admits the strategy was intended "to globally resolve talc-related claims through a chapter 11 reorganization without subjecting the entire [J&J enterprise] to the bankruptcy proceeding."

The new entity LTL Management LLC. (Debtor LLC) which held the responsibility of settling the tort claim of 38000 lawsuits was created and two days later, the Debtor LLC filed for Chapter 11 protection in North Carolina. Debtor LLC was responsible for all talc-related liabilities, and New J&J now called Johnson & Johnson Consumer Inc. (JJCI) owned all non-talc assets and was responsible for non-talc liabilities. To be sure, the divisive merger did not leave the Debtor LLC saddled with all the talc liabilities without any assets whatsoever. The Debtor LLC estimated in its bankruptcy filing that it holds $373.1 million in assets due to the allocation made in the divisive merger. New JJCI has agreed to fund the Debtor LLC's Chapter 11 case and contribute $2 billion into a settlement trust for the benefit of the talc claimants as part of a Chapter 11 reorganization plan.

The Chapter 11 proceedings were eventually dismissed in January 2023 by an appellate court. Somewhat ironically, the basis for the dismissal was that the restructuring entity, LTL Management LLC (LTL), was not considered to be in financial distress.

These above facts raise many questions for an entity facing restructuring and insolvency:

1) Whether the claim for damages will form part of contingent liability of the company, till they are confirmed as liquidated damages.

2) What will be the scenario if claims are more than the assets.

3) Even if assets are there to take care of the liabilities, why would creditors accept that.

4) Why should the creditors pay for debtors wrong actions or inactions?

5) Whether the waterfall mechanism holds good in this scenario? If not the social impact of such law.

In case of a turnaround of a similar company, not facing insolvency will face similar dichotomies:

1) How to ward off such litigations

2) Reputational Risk

3) Even if there is enough cash to pay off the litigants, how will the company survive due to limited working capital and brand erosion.

4) Directors Liabilities

5) How will the investors sentiments be taken care off.

6) Movement of Share prices.

7) Employee motivations, many will start leaving the company.

8) Vendors will not want to be associated with a tainted company.

9) Senior Management may resign in face of such adversity.

10) Shareholders may want to windup the company.

4. The relevance of ESG considerations in today's business landscape

ESG (Environmental, Social, and Governance) considerations have become highly relevant in today's business landscape due to several key factors:

a. Risk Mitigation: ESG factors help businesses recognise and mitigate various risks. Environmental risks, such as climate change-related disruptions or resource scarcity, can impact supply chains and operations. Social risks, including employee discontent or community backlash, can harm reputation and profitability. Governance risks, like ethical violations or weak board oversight, can lead to legal and financial consequences.

b. Regulatory Compliance: Governments and regulatory bodies are increasingly implementing ESG-related requirements and standards. Companies that do not comply with these regulations may face legal repercussions, fines, or restrictions on their operations. Staying ahead of regulatory changes is crucial for business sustainability.

c. Investor Expectations: Institutional investors, such as pension funds and asset managers, are integrating ESG considerations into their investment strategies. They recognize that ESG factors can impact a company's long-term financial performance and are demanding greater transparency and disclosure. Businesses that meet ESG criteria may attract more investment, while non-compliance may result in reduced access to capital.

d. Consumer Preferences: Many consumers are now making purchasing decisions based on a company's ESG practices. They seek products and services from businesses that align with their values, such as sustainability, ethical sourcing, and social responsibility. Companies that demonstrate a commitment to ESG can build brand loyalty and increase market share.

e. Talent Acquisition and Retention: ESG-focused companies often find it easier to attract and retain top talent. Younger generations are drawn to employers with strong ESG records. A company's commitment to employee well-being, diversity and inclusion, and ethical practices can enhance its employer brand.

f. Supply Chain Resilience: ESG considerations are essential in ensuring the resilience of supply chains. Businesses are recognizing the importance of sustainable sourcing practices to minimize disruptions caused by environmental, social, or governance issues in the supply chain.

g. Competitive Advantage: Companies that proactively integrate ESG factors into their strategies can gain a competitive advantage. They may differentiate themselves in the marketplace, attract more customers, secure partnerships, and position themselves as

leaders in sustainability and responsible business practices.

h. **Long-Term Value Creation:** ESG considerations encourage a focus on long-term value creation rather than short-term gains. Sustainable and responsible practices can contribute to a company's resilience, longevity, and overall success in an increasingly complex and interconnected global economy.

ESG considerations are no longer optional for businesses in today's landscape. They are integral to risk management, compliance, stakeholder relations, and long-term viability. Companies that embrace ESG principles not only contribute to a more sustainable world but also position themselves for continued success and competitiveness in the evolving business environment.

5. How ESG factors can influence and shape turnaround strategies

Environmental, Social, and Governance (ESG) factors can significantly influence and shape turnaround strategies for distressed or struggling companies. Integrating ESG considerations into the turnaround process goes beyond financial recovery; it emphasizes sustainability, stakeholder engagement, and responsible business practices. Here's how ESG factors can impact and guide turnaround strategies:

a. **Discovering Opportunities for Efficiency and Cost Reduction:**

Environmental Factors: ESG-driven turnaround strategies can begin by assessing the company's environmental footprint. This can lead to find opportunities for resource efficiency, waste reduction, and energy savings. Implementing environmentally sustainable practices can reduce operating costs and improve profitability.

b. **Enhancing Operational Resilience:**

Environmental Factors: Turnaround strategies may involve improving the company's resilience to environmental risks, such as climate change-related disruptions or resource scarcity. This could include diversifying suppliers, redesigning facilities for sustainability, or adopting circular economy principles.

c. **Improving Reputation and Stakeholder Relations:**

Social Factors: A tarnished reputation can exacerbate financial distress. ESG-driven turnarounds focus on rebuilding trust with stakeholders, such as customers, employees, and the community. Strategies may include corporate social responsibility initiatives, philanthropic efforts, and transparent communication about social responsibility goals and achievements.

d. **Employee Engagement and Retention:**

Social Factors: A motivated and engaged workforce is crucial during a turnaround. ESG principles encourage a focus on employee well-being, diversity and inclusion, and ethical labour practices. Improving these aspects can boost morale, reduce turnover, and enhance productivity.

e. **Ethical Leadership and Accountability:**

Governance Factors: Sound governance practices are essential in a turnaround, as they instil confidence in stakeholders and ensure ethical conduct. Governance strategies may include strengthening board oversight, revising executive compensation plans, and implementing ethical conduct guidelines.

f. **Risk Identification and Management:**

Environmental Factors: Assessing environmental risks, such as regulatory non-compliance or environmental liabilities, is integral to ESG-driven turnarounds. Mitigating these risks can prevent setbacks and costly legal issues.

Governance Factors: Effective governance mechanisms can help find and address potential governance-related risks, such as conflicts of interest or inadequate internal controls.

g. Engaging with ESG-Focused Stakeholders:

Social Factors: ESG-conscious stakeholders, including investors and customers, may expect companies to align with their values. Engaging with these stakeholders, addressing their concerns, and showing commitment to ESG principles can garner their support and investment.

h. Aligning with Sustainable Business Practices:

Environmental Factors: Sustainable business practices can create long-term value and align with ESG goals. Turnaround strategies may involve adopting sustainable supply chain practices, reducing carbon emissions, or investing in renewable energy sources.

i. Long-Term Value Creation:

Governance Factors: Robust governance practices ensure that turnaround strategies are not only focused on short-term recovery but also on long-term value creation and sustainability.

j. Compliance with ESG Reporting Requirements:

Ensuring that the company follows ESG-related reporting requirements and communicates its progress toward ESG goals transparently can boost credibility and stakeholder trust.

Incorporating ESG factors into turnaround strategies not only helps address immediate financial challenges but also positions the company for long-term success in an environment where ESG considerations are increasingly significant for investors, customers, and regulators. It aligns the company with responsible and sustainable business practices, fostering resilience and competitiveness.

6. Legal and Regulatory Framework

Legal and Regulatory Framework related to Environmental, Social, and Governance (ESG) considerations is becoming increasingly important for businesses to navigate. Understanding this framework is essential for ensuring compliance, mitigating risks, and making informed decisions. Here are the key points to consider:

Overview of ESG-Related Regulations and Reporting Requirements:

a. Global Landscape: ESG regulations and reporting requirements vary by jurisdiction and can encompass a wide range of topics, including environmental disclosures, social responsibility, and corporate governance standards.

b. Mandatory Reporting: Many countries have introduced mandatory ESG reporting requirements for publicly listed companies. These reports typically cover ESG performance metrics, policies, and goals, allowing stakeholders to assess a company's sustainability efforts.

c. Voluntary Standards: In addition to mandatory regulations, there are various voluntary ESG reporting frameworks and standards, such as the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-related Financial Disclosures (TCFD). Companies often use these frameworks to enhance transparency and demonstrate commitment to ESG principles.

Compliance Considerations During a Business Turnaround:

a. Due Diligence: When planning a business turnaround, it is crucial to conduct due diligence to assess the company's compliance with existing ESG regulations and reporting requirements. Identifying compliance gaps early allows for corrective actions to be incorporated into the turnaround plan.

b. Alignment with ESG Goals: A successful turnaround strategy should consider aligning the company's actions with ESG goals and commitments. This alignment can be used to rebuild trust with stakeholders and enhance the company's reputation.

c. **Legal Implications:** Non-compliance with ESG-related regulations can lead to legal consequences, fines, and reputational damage. Therefore, compliance with these regulations should be a top priority during a turnaround.

Legal Risks Associated with ESG Non-Compliance:

a. **Financial Penalties:** ESG non-compliance may result in financial penalties imposed by regulatory authorities. The severity of these penalties can vary depending on the jurisdiction and the nature of the violation.

b. **Litigation Risks:** Non-compliance with ESG regulations can expose a company to lawsuits from stakeholders who believe that their interests have been harmed due to the company's actions or lack thereof. Shareholder lawsuits related to ESG issues are becoming increasingly common.

c. **Reputation Damage:** ESG-related legal disputes can harm a company's reputation, which may lead to a loss of customers, investors, and partners. Reputation damage can be long-lasting and challenging to repair.

d. **Regulatory Scrutiny:** Non-compliance may trigger regulatory investigations and increased scrutiny, leading to additional legal and administrative burdens for the company.

The legal and regulatory framework surrounding ESG considerations is evolving and increasingly stringent. Compliance with ESG-related regulations and reporting requirements is not only a legal obligation but also a critical aspect of risk management and reputation protection. During a business turnaround, it is essential to conduct thorough due diligence, assess compliance, and align the turnaround plan with ESG goals to mitigate legal risks and promote long-term sustainability.

7. Challenges and Pitfalls

Challenges and Pitfalls are inherent in the integration of Environmental, Social, and Governance (ESG) principles into turnaround strategies. Recognizing and addressing these challenges is essential to ensure the effectiveness and authenticity of ESG initiatives. Here are the key considerations:

Common Challenges in Integrating ESG into Turnaround Strategies:

a. **Resource Constraints:** Companies facing financial distress may lack the resources, both financial and human, to implement ESG initiatives effectively. Prioritizing ESG within limited budgets can be challenging.

b. **Short-Term Focus:** Turnaround efforts often prioritize short-term financial recovery. Balancing immediate financial needs with longer-term ESG goals can be complex.

c. **Resistance to Change:** Organizational resistance to change, particularly cultural and operational changes required for ESG integration, can impede progress.

d. **Data and Measurement Challenges:** Collecting, analyzing, and reporting ESG data accurately can be difficult, particularly for companies with limited historical ESG reporting.

e. **Stakeholder Skepticism:** Stakeholders may be skeptical about a company's commitment to ESG, especially if the turnaround plan appears to prioritize financial recovery over sustainability.

Avoiding "Greenwashing" and Ensuring Genuine ESG Commitment:

a. **Transparency:** To avoid the perception of "greenwashing" (making false or exaggerated claims about ESG efforts), be transparent about the company's ESG goals, progress, and challenges. Use credible ESG reporting frameworks and standards.

b. **Accountability:** Set realistic ESG targets and timelines and hold the organization accountable for achieving them. Avoid making promises that cannot be fulfilled.

c. **Third-Party Verification:** Consider third-party verification or audits of ESG performance and reporting to demonstrate authenticity and credibility.

d. Integrated ESG Strategy: Ensure that ESG considerations are fully integrated into the company's overall business strategy, rather than treated as a superficial add-on.

Integrating ESG into turnaround strategies is not without challenges, but it is essential for building a sustainable and resilient business. To overcome these challenges, companies must prioritize transparency, accountability, and authenticity in their ESG efforts. By addressing conflicting priorities and demonstrating genuine commitment to ESG principles, businesses can navigate the complexities of turnaround while building a stronger foundation for long-term success.

8. Conclusion:

Environmental, Social, and Governance (ESG) factors are integral to business turnaround and rescue efforts. They influence strategy, risk management, stakeholder engagement, and long-term sustainability. ESG considerations help detect opportunities for cost reduction, efficiency gains, and stakeholder engagement, while also mitigating risks related to compliance, reputation, and stakeholder trust.

The business landscape is evolving, with ESG principles becoming increasingly significant for investors, customers, regulators, and the public. ESG is not just a trend, it is a fundamental shift in how businesses operate and are perceived. Ignoring ESG considerations can pose significant risks to financial recovery and long-term sustainability. Businesses in distress should recognize that integrating ESG is not a burden but an opportunity for innovation, cost savings, and long-term resilience.

ESG is no longer an optional consideration in business turnaround and rescue efforts. It is a strategic imperative that can enhance financial recovery, rebuild stakeholder trust, and position companies for long-term success in an ESG-focused world. Businesses that heed this call to action and embrace ESG principles are better equipped to thrive in the evolving business landscape.

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.*

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Learner's Corner

Frequently Asked Questions on Avoidance Transactions

Avoidance Transactions are transaction entered into by the Corporate Debtor prior to the commencement of the insolvency proceedings, with the intention to defraud or prefer certain creditors over others or putting the creditors at a disadvantage or give preference to some creditors over others. These transactions are considered detrimental to the interests of the creditors and the successful resolution of the insolvency process. Such transactions could have been avoided by filing an Avoidance Application before the Adjudicating Authority.

I. What are the types of avoidance transactions under the IBC?

The Insolvency and Bankruptcy Code, 2016 identifies four types of avoidance transactions:

(a) Preferential Transactions;

(b) Undervalued Transactions;

(c) Transactions defrauding Creditors;

(d) Extortionate credit Transactions.

II. What are Preferential Transactions? What is the relevant time period to identify such preferential transactions?

As defined under Section 43(2) of the code, a transaction will be said to be preferential if:

(a) there is a transfer of property or an interest thereof of the corporate debtor;

(b) for the benefit of a creditor or a surety or a guarantor;

(c) on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor and

(d) the transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a

distribution of assets being made in accordance with section 53.

However, as per Section 43(3) a preference shall not include the following transfers:

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –

i. such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and

ii. such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Section 43 (4) also provides for a look back period for identifying such preferential transactions:

1) If preference is given to a related party: two years preceding the commencement of CIRP; or

2) If preference is given to other than a related party: one year preceding the commencement of CIRP.

III. What are Undervalued Transactions? What is the relevant time period to identify such Undervalued Transactions?

Section 45(2) of the Insolvency and Bankruptcy Code, 2016 states the following circumstances under which the transactions by the corporate shall be considered undervalued:

(a) where the Corporate Debtor makes a gift to a person; or

(b) where the Corporate Debtor enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and

(c) where such transaction has not taken place in the ordinary course of business of the corporate debtor.

Section 45(1) of the Insolvency and Bankruptcy Code, 2016 states that if the liquidator or the resolution professional, after examination of the transactions of the corporate debtor determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction.

The Relevant period is defined under Section 46 as:

(i) transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) transaction was made with a related party within the period of two years preceding the insolvency commencement date.

IV. What are Transactions defrauding Creditors?

Section 49 of the Code deals with undervalued transactions entered into by the Corporate Debtor with the purpose of defrauding and affecting the interests of creditors. The transaction was entered:

(i) to keep the assets of the Corporate Debtor beyond the reach of any person who is entitled to make a claim against the Corporate Debtor; or

(ii) in order to adversely affect the interests of such a person in relation to the claim.

Section 49 of IBC will, however, not apply to the following transactions:

(i) any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(ii) a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

V. What are Extortionate credit transactions?

An extortionate transaction is defined as the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date at terms requiring the corporate debtor to make exorbitant payments.

VI. How are avoidance transactions identified and dealt with under the IBC?

The resolution professional or the insolvency professional appointed for the insolvency proceedings is responsible for identifying and investigating avoidance transactions. They have the authority to examine the books and records of the corporate debtor and interview relevant parties to gather evidence of avoidance transactions.

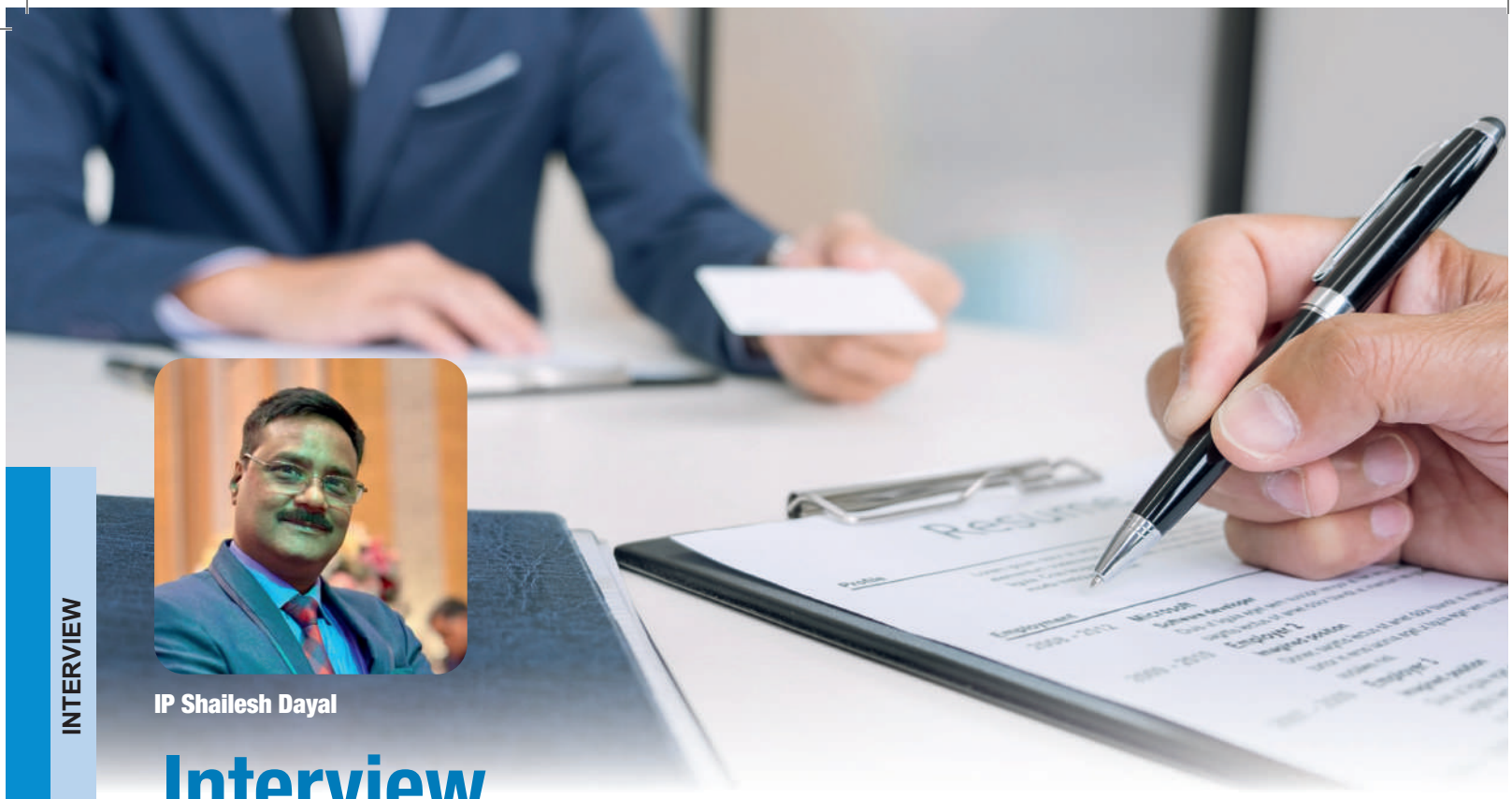
Once identified, avoidance transactions can be challenged before the Adjudicating Authority. The Adjudicating Authority can declare such transactions as void, and the assets or money transferred can be brought back to the debtor's estate for the benefit of all the creditors.

VII. What is the objective of addressing avoidance transactions under the IBC?

The objective of addressing avoidance transactions is to ensure fairness and equality among the creditors. By identifying and setting aside transactions that were done with the intention to defraud or prefer certain creditors, the assets of the debtor can be distributed in a fair and equitable manner among all the creditors. This promotes the effectiveness of the insolvency proceedings and provides a level playing field for all stakeholders involved.

VIII. Whether a composite application can be filed for various avoidance transactions?

The NCLAT in the matter of GVR Consulting Services Pvt. Ltd. & Anr. Vs. Pooja Bahry & Ors. noted the ruling of the Supreme Court in the matter of Anuj Jain (RP) v. Axis Bank Limited & Ors. that the ingredients of Section 43, 45 and 66 are different and Resolution Professional is expected to keep such requirement in view while making motion to the Adjudicating Authority. Hence, a composite application where the allegations and averments are separately made, under different heads, does not suffer from any infirmity.



IP Shailesh Dayal

INTERVIEW

Interview

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

Answer: The enactment of Insolvency and Bankruptcy law has provided a mechanism to revive or resolve the sickness of all companies, irrespective of their business activities. Earlier, under SICA, companies having certain scheduled industrial activities could only be registered with BIFR. The inception of Insolvency Law itself was a landmark achievement for the Indian Economy. While landmark judgements clarified the ambiguities in early stages, and continue to do so, the introduction of Section 29A, which prevented the defaulting promoters to be resolution applicants and Section 32A, which insulated the successful resolution applicants from liability of the CD for prior offences, are two milestones which have instilled confidence in all stakeholders.

2. Could you please share some tips and tricks of the trade that you abide by? What are some strategies adopted by you to tackle assignments under the Code, keeping in mind the underlying reasons for which the Code was enacted?

Answer: I have found preparing a chronological compliance schedule at the very beginning and pasting it at a conspicuous place very helpful. My first and foremost concern is to ensure that if the company has a running unit with workmen and employees, then its operations should not suffer due to insolvency proceedings.

3. IBC is perceived as a recovery tool for many stakeholders. Is it perceived as a recovery tool in the debt and restructuring asset market?

Answer: I don't blame the applicants for filing insolvency applications against defaulter companies. If a Company defaults in repayment of loans or making timely payments to its vendors without there being any pre-existing dispute, then it is a reasonable assumption that the Company is in financial stress and has started defaulting on its liabilities. It is not possible for a lender or a vendor to ascertain true financial position of the defaulter company. The Adjudicating Authority may, however, determine if the Company is solvent or not based on the averments and documents of that Company submitted before it.

4. How does practicing as a Company Secretary help in handling the assignments as an Insolvency Professional? Is the experience of being a practicing Company Secretary an added advantage in this profession?

Answer: A large part of our work as an insolvency professional comprises of handling legal work. As a practicing Company Secretary, we have experience in handling corporate legal work. This experience aids me in understanding Agreements, drafting and vetting applications, replies and other documents as well as in briefing legal counsels on various matters.

5. While handling the assignments, what challenges are being posed by various stakeholders? How has your experience been with the Promoters of the Corporate Debtors?

Answer: In a typical case of insolvency of a CD having a running unit, once you assume charge as insolvency professional for a CD, on one hand promoters and key employees avoid sharing critical information and documents, while on the other hand, the operations in-charge would press for raw material, salaries and wages. The vendors will also approach you and exert pressure for their past dues. The IP has to do a fine balancing act, wherein he has to obtain all critical information from the management, manage operations and arrange immediate cash flows to make sure that the operations are not hampered. There is no simple way of gathering all critical inputs from the promoters, if they are not cooperating. In my view, if proper cooperation is not received from the promoters/key managerial personnel/bankers/ auditors, a section 19(2) application should be filed by the insolvency professional at the IRP stage only. Generally, I have seen that if such application is filed at an early stage, the promoters are advised by their lawyers to start cooperating with the IP, so that no adverse order is passed against them by the AA.

6. How significantly do you think the regulators i.e., IBBI and IPAs serve the profession of Insolvency Professionals? What are some changes in the regulatory framework that could benefit the professionals?

Answer: There is no denying the fact that the profession of insolvency professionals requires through monitoring due to high stakes involved and need to protect and balance the interest of all stakeholders. However, on the regulatory front, the IBBI and IPA have somewhat overlapping roles in regulating the profession of insolvency professionals. A common platform for insolvency related reporting and filings shall go a long way in simplification of back-end compliances for the insolvency professionals, as most of their time and energy is spent in managing the assignments on the field as well as in the courts.

7. What are some lessons learnt in your journey as an Insolvency Professional that you have emulated in your life outside the profession too?

Answer: Commitment to meet deadlines and negotiating with stakeholders and bankers to keep the CD as a going concern have helped me in my professional life other than insolvency resolution assignments too. Communication with Police Authorities is a delicate skill that requires careful wording and educating police officials and lower judiciary about insolvency laws remains tricky, to say the least.

8. If there was any piece of advice that you could share with the prospective aspirants of the profession and new entrants, what would it be?

Answer: Please learn every aspect of the assignment, before delegating the responsibilities to other professionals.

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

Answer: The effectiveness of IBC is getting hampered due to prolonged court proceedings. And we all are responsible for the same. We need to keep our applications simple, so that the matters may be decided by the Ld. Benches in shortest possible time.

10. Through various amendments, processes such as pre-pack, group insolvency, mediation are being introduced to Insolvency and Bankruptcy ecosystem in the country. Is this a recipe for success or disaster?

Answer: All developed countries have their own Insolvency Law. We have precedents and studies on implementation of such laws in those countries. However, I think we have been experimenting with adaptation of such provisions in our country and rightly so. Unless some of the provisions are put to test in practice, the lacunae cannot be discovered. Pre-pack may be cited as an example. I'm confident that over time, there measure would be successful in making the implementation of Insolvency Law more efficient.

11. What future do you envision for the Insolvency law ecosystem and the profession of Insolvency Professionals in the country?

Answer: Easy and early resolution of insolvency is essential for businesses to survive through reconstruction, fresh capital and ideas when the tide is against and at the same time it helps in eliminating deadwood without wasting precious resources and time in trying to revive it. Thus, there would be an everlasting need for the insolvency law ecosystem to evolve and thrive so as to help and support the Indian industries in times of crisis. The profession of Insolvency Professionals will remain challenging, exciting and rewarding in times to come.

TIME MANAGEMENT AT WORKPLACE

CS Shalu Sharma
M. No. - A58711

"Productivity is never an accident. It is always the result of a commitment to excellence, intelligent planning and focused effort."

— Paul J. Meyer

Time is an invaluable resource in the workplace, and effective time management is the cornerstone of a successful and productive professional life. Beyond the traditional techniques of scheduling and prioritizing, a holistic approach to time management involves a keen understanding of one's own energy levels and cognitive rhythms. Each task undertaken should contribute meaningfully to broader objectives, and every hour invested should be a step towards professional and personal growth. It's not merely about doing more but doing the right things with intention and mindfulness, creating a sense of alignment between daily actions and overarching aspirations. Collaboration and communication

also play pivotal roles in the time management narrative. In a team-oriented workplace, understanding collective priorities and timelines is essential.

For the best time management in the workplace, an employee should have a clear job description and therefore defined tasks. Without a clear and detailed job description, employees cannot be held responsible for tasks that they have not committed. Time management is really self- management in terms of time; as a result, there is a way to self-management for everyone because it depends on the nature of the employee.

The nature of employees in an organization:

- Ego;
- Desire to have good relationship with colleagues;
- Fear that the others might get offended;
- Fear of new challenges;
- Curiosity;
- Uncertainty;
- Overestimation of personal skills;
- Envy of others;
- Ambition;
- Perfection

As **Shakespeare** said, **"The fault, dear Brutus, is not in our stars, But in ourselves, that we are underlings".** It's on us, in our disheveled schedules where most of our time goes down the drain. If we sort our tasks by what really matters, time management becomes a breeze, not just a wish.

TECHNIQUES OF TIME MANAGEMENT:

a) Keep lists or set the table-

To manage your time effectively, begin by making a list of your goals and what you want to achieve. After you have got your goals down on paper, give yourself a deadline for when you want to achieve them. Then, break these big goals into smaller, achievable tasks. Each day, focus on completion of one of these tasks.

When you finish a task, it gives a sense of accomplishment and motivates you to keep working on the next one. This way, you make progress towards your goals step by step.

b) Plan every day in advance-

Planning effectively starts with a simple process: sit down, make lists, and note any upcoming tasks. You need different lists for different purposes-

1. **Master List**: This is where you pen down everything you want to do sometime in the future.
2. **Monthly List**: At the end of each month, create a list for the upcoming month.
3. **Weekly List**: Plan your entire week on this list.
4. **Daily List**: Transfer items from your monthly and weekly lists onto your daily list. This is what you have to deal with each day.

c) Apply The 80/20 Rule

Tracy addresses the 80/20 rule, often referred to as the **Pareto Principle**. This principle suggests that out of 10 tasks, only 2 of them will be worth a lot more than the remaining 8 combined. The most important rule is to resist the urge to tackle minor issues first. Keep in mind that starting is the most challenging part. Both important and unimportant tasks require the same amount of time, but the outcomes they produce are vastly different. Your success depends on your ability to make a choice between important and less important tasks.

d) Use the ABCDE Method Continually:

Organize tasks based on their significance and value. Tracy suggests the ABCDE technique:

A - Important and compulsory.

B - The tasks that you should complete; they are of lower priority than "A" tasks.

C - The tasks that are excellent to have. You might want to do them, but there are no consequences if you don't.

D - Delegate tasks to others so you can devote more time to your "A" tasks.

E - Identify tasks that can be avoided. You neither need nor want to do them, and assigning them to someone else is pointless.

e) Set SMART goals:

The productivity of a person is often measured by his ability to achieve goals. If you achieve those goals

quickly, with a smaller investment of resources, it is a clear indication that you are managing your time effectively. When you set daily, weekly, and monthly goals for yourself, it's important to make sure they are SMART. The acronym SMART stands for –

1. **Specific –** Are the goals well-defined and understandable? Goals should be clear and specific.
2. **Measurable –** Can the achievement of the goals be measured? Goals should have quantifiable criteria to track progress and determine when you've achieved them.
3. **Achievable –** Are the goals achievable? Setting unattainable goals and inability to achieve them, demotivates to work further.
4. **Relevant –** Does the goal align with your overall objectives? The set goals should be practical, relevant and well aligned with objectives.
5. **Timed –** Are deadlines being set for the goals? Such deadlines motivate the employees to finish the tasks in a certain and defined time.

f) Upgrade Key Skills-

It is widely recognized that the ones that bring you the greatest pleasure are also the ones in which you excel. Once you have figured out these areas, they should become the exclusive center of your attention and concentration. The more informed and proficient you become at your main duties, the faster you can begin and complete them.

g) Monitor how your time is spent:

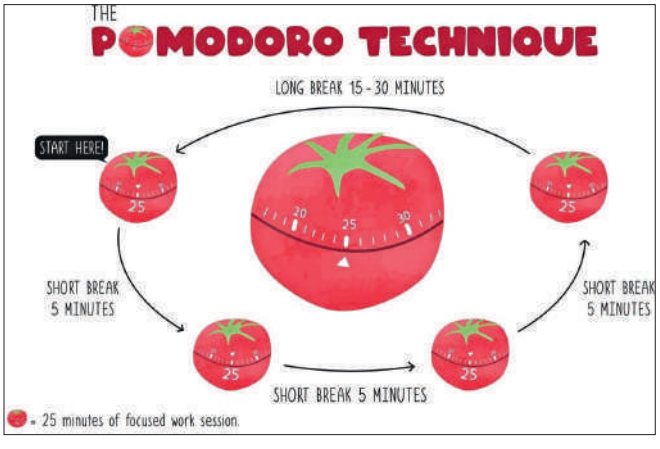
Knowing how you're managing your time is a crucial part of being good at managing it. Try spending a day or two documenting each task or activity you do. Another option is to use a productivity app that can keep track of what you're doing on your phone or computer. This way, you can see where your time goes and make improvements.

h) Group similar tasks:

To enhance your time management skills, it is important to group similar tasks together to complete in succession. Since various tasks require different types of focus and energy, organizing them into related groups will create a smoother flow from one task to the next.

i) Pomodoro Technique:

To remain focused, motivated and committed, it's crucial to take breaks between tasks. This involves setting a timer for 25 minutes and focusing on a single task during that time. Once the 25 minutes ends, you enjoy a five-minute break, and then repeat the process. Once you complete 100 minutes of wok, extend the break to 15 or 20 minutes. These short breaks allow you to recharge and can help you stay on track and energized throughout the day. The goal of the Pomodoro Technique is to create a sense of urgency, force you to relax throughout the day and help you feel refreshed and motivated throughout the day.



j) Focus Your Attention:

Dopamine levels can be artificially boosted during the day by engaging in a variety of distractions, including continuously checking and responding to emails, chats, and direct messages. A study conducted by neuroscientists at Stanford University suggests that humans have a limited capacity for true multitasking. This study found that the brain can effectively focus

on only one task at a time. In reality, "multitasking" is just "task shifting," where we jump between tasks rapidly. This not only requires more effort but also results in reduced productivity and a higher likelihood of making mistakes. So, it's better to focus on one task at a time.

k) Time Management and Productivity:

Effective time management has many advantages, including:

- Enhanced productivity and efficiency.
- Reduction in stress levels.
- A better professional reputation.
- Increased prospects for career progression and growth.
- More opportunities to achieve life and career goals and aspirations.

l) Eisenhower Matrix:

The Eisenhower matrix to help you prioritize your tasks. This may help you schedule your day. Begin by creating a list of tasks, then categorize each task into one of the following categories:

- Urgent and important
- Not urgent and important
- Urgent and not important
- Not urgent and not important

Effective time management is crucial for optimizing productivity and achieving one's goals. By prioritizing tasks, setting deadlines and avoiding distractions, one can efficiently utilize their time, reduce stress and enhance work-life balance. Effective time management enables better decision-making, improved efficiency and a sense of satisfaction in personal and professional pursuits.

Common Barriers to Effective Time Management at Workplace

- New or developing work has more barriers than established jobs with routine and predictable work.
- Jobs involving contact with others are more prone to interruptions than those with no near contacts. People with offices of their own can operate an 'open door' policy for staff communications but it may be a barrier to effective time management.
- The location of colleagues, customers and suppliers can contribute to time wasted in travelling.
- Some organizational culturesfavour strict adherence to protocol and procedures, discouraging informal contacts.
- Some organizations encourage an open-access communications policy that can be stimulating but time-wasting.
- Organizational policies that involve stringent paperwork are time-consuming.

In the intricate dance of professional life, time management serves as the choreography that ensures a harmonious performance. By embracing a holistic approach that encompasses purpose-driven prioritization, strategic planning, delegation, tech integration, mindful breaks, and the art of saying no, individuals can navigate the complexities of the workplace with grace and efficiency. Remember, effective time management is not just about doing more; it's about doing what matters most.

LEGAL IDIOMS

Law of unintended consequences

Meaning: Events and/or actions that result from the implementation of a law or rule that the makers of the law did not expect.

Exception that proves the rule

Meaning: This expression is used by many to indicate that an exception in some way confirms a rule. Others say that the exception tests the rule. In its original legal sense, it meant that a rule could sometimes be inferred from an exemption or exception. In general use, the first meaning predominates nowadays, much to the annoyance of some pedants.

Against your better judgment

Meaning: If you do something against your better judgment, you do it even though you do not think you should. You can also do something against someone else's better judgment.

Letter of the law

Meaning: If people interpret laws and regulations strictly, ignoring the ideas behind them, they follow the letter of the law.

Spirit of the law

Meaning: The spirit of the law is the idea or ideas that the people who made the law wanted to have effect.

Judge, jury and executioner

Meaning: If someone is said to be the judge, jury, and executioner, it means they are in charge of every decision made, and they have the power to be rid of whomever they choose.

Signed, sealed and delivered

Meaning: If something›s signed, sealed and delivered, it has been done correctly, following all the necessary procedures.

Case by case

Meaning: If things are done case by case, each situation or issue is handled separately on its own merits and demerits.

Code of Conduct

IBBI Order No. IBBI/DC/195/2023 dated 20th November, 2022

Contravention	Submission by IP	Violation of Provision	Findings by Disciplinary Committee
Non-cooperation with IA The Board noted that a notice of investigation asking for reply, along with supporting documents in the matter of CD-1, was served on IP by IA-1 on 14.09.2022, and on his failure to respond to the said notice, a reminder was sent vide email dated 06.10.2022 requesting him to submit his response. It is noted that he failed again to reply to the notice of investigation by IA-1, and on his failure to respond, however he again failed to respond to the said reminder. failed to submit the reply/records/ documents within the time prescribed by the IA and that he has not extended sufficient and appropriate co-operation to the IA, as may be required to carry out the inspection, which is his duty as an IP under regulation 8(4) of the Investigation regulations.	IP did not provide any plausible reason on above non-reply or delay reply to the notices of investigation, the DC proceeds to make findings on the basis of material available on records.	Regulation 8(2), 8(4) and 8(8) of Investigation Regulations and regulation 7(2)(h) of the IBBI (Insolvency Professional) Regulations, 2016 (IP Regulations) clause 18 and 19 of the Code of Conduct as specified in the First Schedule of IBBI (Insolvency Professional) Regulations, 2016. (Code of Conduct).	The DC notes that IP did not provide any reply to IA1, IA-2 and IA-3 at all while it submitted its reply to IA-4 after a delay. Even if the DC proceeds to condone the delay in providing reply to IA-4, the non-cooperation to other notices of investigation would be hard to ignore. The Investigation Regulations fixes a duty upon an IP to produce before the Investigating Authority records in his custody or control, furnish such statements and information relating to its activities and provide all assistance which the Investigating Authority may reasonably require in connection with the investigation. The DC finds that IP has erred in his duties towards respective IAs despite repeated reminders being sent to him.

Delay in conducting first meeting of Committee of Creditors CIRP of CD-1 commenced on 12.04.2019 and the first meeting of committee of creditors (CoC) was conducted on 21.10.2019, i.e., after more than 180 days from the commencement of CIRP. It is further noted that CIRP of the CD-1 was extended by 90 days beyond 180 days vide order of the AA dated 03.01.2020 which means that the meeting of 1 st CoC was conducted in an irregular manner as by then there was no order of AA extending the CIRP of the CD beyond 180 days.	IP has not provided any comments on the above issue, the DC proceeds to make findings on the basis of material available on records.	section 22 of the Code read with Clause 1, 2, 13 and 14 of the Code of Conduct.	The DC notes that as per CIRP Form-3 filed by IP, application for constitution of CoC was filed by him on 20.05.2019 which included prayer to appoint Authorised Representative (AR) and order for appointment of AR was passed on 09.10.2019. Thereafter, IP conducted first meeting of CoC on 21.10.2019 whose minutes noted that the period of 180 days for completion of CIRP has expired on 10.10.2019 and application for extension has been filed under section 12(2) of the Code. The above facts highlight that the IP did not conduct the first CoC meeting within seven days of the constitution of CoC, i.e., 09.10.2019 as provided under section 22 of the Code. Hence the DC upholds the above contravention.
Non-appearance before the Adjudicating Authority It is observed that despite the directions of the AA vide its orders dated 19.01.2023 and 16.02.2023 seeking personal appearance of IP as the matter was pending for a long time, he failed to comply them. The AA made adverse observation against him for not appearing before the AA despite the specific direction given and vide order dated 24.03.2023 referred the matter to Board for taking appropriate action.	IP submitted that due to personal difficulties he could not appear on 13.01.2023, however the advocate appeared online and came to know about the fact that application has been filed for his removal. He submitted that all applications filed by the homebuyers pertains for declaration that their plots should not form part of the assets of CD1 under CIRP.	Section 25(2)(b), 208(2)(a) and (e) of the Code, regulations 7(2)(a) and (h) of the IP Regulations read with clause 14 of the Code of Conduct.	DC notes that he did not appear before the AA not just on 13.01.2023 but also on 19.01.2023, 03.03.2023 and 24.03.2023. Thus, it is evident that IP failed to comply with direction of the AA for appearance which is also contravention of section 25(2)(b) of the Code. Hence, the DC while upholding the above contravention also takes exception to contemptuous language used against the AA.
Non-conduct of the CIRP proceedings It is observed that subsequent to the 6th CoC meeting held on 25.02.2021, no steps were taken by him for a period of more than two years for conducting the CIRP of the CD-1 or to manage the affairs of the CD-1 or even to file for liquidation.	He submitted that there was no intentional delay on his part for a single day, however, he has no control over legal proceedings and litigations, which were the only reason for causing delay in the process.	Sections 23(1), 208(2)(a) and (e) of the Code, regulations 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and regulation 7(2)(h) of IP Regulations read with Clause 2, 13 and 14 of the Code of Conduct.	The DC notes that the 7th CoC meeting conducted only on 26.05.2023 after direction of the AA vide order dated 19.05.2023 where resolution for replacement of RP was passed. The facts highlight inactivity on part of Mr. Vineet Aggarwal in taking forward the CIRP of CD-1. Hence the DC upholds the above contraventions.

Non-cooperation in handing over assets to new RP IP failed to handover the relevant documents/ information relating to CIRP of the CD-1. New RP vide email dated 26.07.2023 has informed to the Board that the data of CD along with the official CIRP e-mail ID access has not been shared with her. In view of the aforesaid, it is observed that IP have adopted a negligent approach in discharging his duties under the Code and failed to provide coordination in smooth transition in handing over the custody and possession of records to the new RP in detriment to the interest of the CD-1 and its stakeholders.	He submitted that new RP for the first time informed about her appointment on 12.07.2023 and asked for handing over. He provided documents through email to new RP on 24.07.2023 and has fully handed over the entire details with the password and email id created for CIRP on 27.07.2023.	Sections 23(3) and section 208(2)(a) of the Code, regulation 7(2)(a) & (h) of IP Regulations read with clauses 1, 12, and 14 of the Code of Conduct.	The DC notes that prima facie there appears to be non-cooperation on behalf of the IP. He provided documents and information in piecemeal to the new RP which further hampered the already delay in process.
Embezzlement of Ernest Money Deposit In the 6th CoC Meeting the CoC had directed to forfeit the security deposit amount of M/s Alkon Projects and to utilise it in a specified order for various items enumerated. However, afterwards no further CoC meetings were conducted nor was the CoC informed regarding the manner the forfeited security deposit was utilised. Further, Mr. Vineet Aggarwal failed to reply to the IA as to the manner in which the forfeited EMD amount was utilized. Moreover, Mr. Vineet Aggarwal has also not handed over documents and records to new RP. Hence, it is observed that he failed to manage the assets of the CD and misappropriated the security amount.	Mr. Vineet Aggarwal submitted that when the application Interlocutory Application 22 of 2022 for release of security deposit was filed by Alkon Projects, he filed a reply on 09.03.2022 and has specifically mentioned that the amount was forfeited for contravention of the RFRP by the resolution applicant as per the decision of CoC on 25.02.2021 and the same has been utilized as per their directions to meet CIRP expenses. Further one Niraj Gupta fraudulently misled the AA by mentioning that he is appearing as advocate of Authorized Representative (AR) and made false allegations against him for embezzlement of funds. However, upon coming to know about the misrepresentation he wrote to the AR demanding explanation for the same.	Sections 23(1), 208(2)(a) and (e) of the Code and regulations 4(1)(g) and 7(2)(b) & (h) of IP Regulations read with clauses 1, 2, 4 and 14 of the Code of Conduct.	The DC notes that CoC in its 6th CoC meeting dated 25.02.2021, directed IP to forfeit the full security money including the bank guarantee. IP submitted that the forfeited amount has been utilized to meet CIRP expenses as per direction of the CoC and therefore inclined to take lenient view on this count.

Order of Disciplinary Committee: DC finds that the IP failed in discharge of his duties on multiple counts, and in view of the observations and analysis, the DC notes that the conduct of the IP contravening provisions of the Code. The DC cancelled the registration of the IP with immediate effect.

Er CMA IP Rajendra D Aphale.

Role of Authorised Representative in CIRP

Under the Insolvency and Bankruptcy Code 2016 (IBC), Authorised Representatives (AR) are appointed for a "Class of Creditors". Like the other aspects of IBC, role of AR is also evolving. This article attempts to capture the role of AR in the Corporate Insolvency Resolution (CIRP) process, particularly in the light of the amendments in CIRP Regulations in September 2023. Most common class in practice appears to be home buyers, hence the discussion here will largely focus on AR representing home buyers, the same principles apply to role of AR while representing other classes of creditors.

A. Appointment of AR

Section 21 (6A) provides that (*code in italics,* plain text added**,** underlined content from the Regulations) - *Where a financial debt—*

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee (for instance debenture trustee) or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, (Regulation 2 (1) (aa) defines class of creditors as a class with at least ten financial creditors

under clause b of sub-section 6A of section 21, and the expression "creditors in a class" shall be construed accordingly) *other than the creditors covered under clause (a) or sub-section (6) (this subsection refers to consortium), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors* (CoC); (often this appointment before the first CoC meeting is not practical. The first CoC meeting has to be held within T+30. i.e. within 30 days from the date of commencement of CIRP)

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors, and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

The AR therefore shall attend CoC meetings, represent the class of creditors he represents and vote on behalf of the class of creditors. One AR can therefore represent multiple classes of creditors, but will vote for each class separately.

B. Procedure for appointment

1. As per above subsection 21 (6A) (b), the Interim Resolution Professional (IRP) shall apply to the Adjudicating Authority (AA).
2. Regulation 4A states that the IRP shall ascertain such classes of creditors, and for representation such creditors in a class, shall identify three insolvency professionals (IP).
3. Under Regulation 6 (2) (bb), choice of these 3 eligible IPs to the creditors in each class. Under Regulation 8A (3), a creditor in class may indicate his choice of AR, out of these 3 names.
4. The IP who is the choice of the highest number of creditors shall be selected as the AR by the IRP. The IRP shall apply to AA for appointment of the AR. This application must be made within 2 days of verification of claims. This may have some practical difficulties in terms of timelines. But there is a saving grace that any delay shall not affect the validity of the decisions taken by CoC (Reg 16A(3)).
5. The IP should give consent to act as the AR in form AB Schedule I of the CIRP Regulations.

C. Eligibility of AR

The AR should not be a relative or a related party of the IRP. The AR should be a registered IP.

Further, the AR should be having his address, as registered with the Board (IBBI), in the State or Union Territory, as the case may be, which has the highest number of creditors in the class as per their addresses in the records of the corporate debtor:

Provided that where such State or Union Territory does not have adequate number of insolvency professionals, the insolvency professionals having addresses in a nearby State or Union Territory, as the case may be, shall be considered.

(b) eligible to be [resolution professional] under regulation 3; and (c) willing to act as authorised representative of creditors in the class.

D. Replacement of the AR

Prior to September 2023, there was no provision to replace the AR. The provisions (CIRP Reg 16A) now state –

i. the financial creditors in the class, representing not less than 10% voting share may seek replacement of AR and should include name of an IP of their choice. The wording implies that the creditors can pool together and need not have 10% of vote share individually. Also voting share implies voting share in CoC, and not among the class of creditors.

ii. Such creditors should make a request to the IRP / RP to that effect. The IRP / RP should send this request to the creditors in that class and announce a voting window of at least

24 hours. Similar to the existing provisions, the RP shall offer a choice of at least 3 IPs, including one proposed above, along with the existing AR.

iii. The IP who receives highest percentage of voting share of financial creditors in that class shall be the next AR. Only the creditors belonging to that class are entitled to vote and their share will be as per their admitted claims.

iv. The RP then must make an application to the AA to appoint the new AR.

E. Rights, Duties and Responsibilites of AR

The duties of AR have been expanded in the amendments in September 2023. Section 25A defines the rights and duties.

1. AR has the right to participate and vote in CoC meetings on behalf of the financial creditors he represents.
2. The voting must be in accordance with the instructions given by the financial creditor. If an AR represents multiple financial creditors, voting shall be done in accordance with each of the financial creditors separately. In no such instructions are given, the AR shall abstain in respect of that creditor (S25A (3)).
3. The AR shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the financial creditors he represents, who have cast their vote. (S25A (3A)). This has an exception in respect of voting in respect of an application under S 12A. This exception states that in case of 12A application, the vote shall be cast in accordance with the provisions of sub-section (3), i.e. point 2 above.
4. The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be. Explanation.- For the purposes of this section, the "electronic means" shall be such as may be specified.
5. Under Reg 16A (5) the IRP / RP shall provide updated list of creditors in each class to the respective AR, as and when the list is updated.
6. An important clarification to the above Regulation is that the AR shall have no role in receipt or verification of claims of creditors of the class he represents.
7. The amendments now provide for meeting of creditors in class and get paid for it (for 2 meetings no consent of CoC will be required). These payments will be part of CIRP cost. The usual rules for meeting and minutes will apply in this case also.
8. AR is expected to support the CIRP process, and to help creditors understand the process better. The creditors in class can propose additional responsibilities for the AR. The new responsibilities are welcome step, to help creditors understand the process well so that they can make more informed decisions. Particularly the provision regarding modifications in RPlan, is welcome as AR's knowledge in this area can be put to good use. The AR shall also represent the class of creditors in front of AA, NCLAT and other Regulatory Authorities. Specifically –
    a. assist the creditors in a class he represents in understanding the discussions and considerations of the committee meetings and facilitate informed decision-making;
    b. Review the contents of minutes prepared by the resolution professional and provide his comments to the resolution professional, if any;
    c. help the creditors in a class he represents during the consultations made by the resolution professional to prepare a strategy for marketing of the assets of the corporate debtor in terms of sub-regulation (1) of regulation 36C;
    d. work in collaboration with the creditors in a class he represents to enhance the

marketability of the assets of the corporate debtor in terms of sub-regulation (3) of regulation 36C;

e. Assist the creditors in a class he represents in evaluating the resolution plans submitted by resolution applicants;

f. Ensure that the creditors in a class he represents have access to any information or documents required to form an opinion on issues discussed in the committee meetings;

g. Update regularly the creditors in a class he represents on the progress of the corporate insolvency resolution process;

h. Make suggestions for modifications of the resolution plan as may be required by the creditors in class he represents;

i. Record proceedings and prepare the minutes of the meeting with the creditors in a class he represents;

j. Act as a representative for the creditors in a class he represents in representations before the Adjudicating Authority, National Company Law Appellate Tribunal, and other regulatory authorities.

A few cases may be interesting to note-

1. Piya Puri and ors vs Debashish Nanda and ors – : (2022) ibclaw.in 625 NCLAT - in this case, it is established that the AR has to vote by majority of the class of creditors he represents. In this case, involving home buyers, 89% of the home buyers voted in favour of a resolution (in this case the resolution plan), and a few opposed it. The AR cast his vote in favour of the resolution considering that more than 50% of the home buyers favoured the resolution. NCLAT upheld this manner of voting.

2. Jaypee Kensington Buoulevard Apartments Welfare association ors v NBCC (India) Ltd and ors (2022) 1 SCC 401, 24-03-2021, the Supreme Court held that –

   "170. To sum up this part of discussion, in our view, after approval of the resolution plan of NBCC by CoC, where homebuyers as a class assented to the plan, any individual homebuyer or association cannot maintain any challenge to the resolution plan nor could be treated as carrying any legal grievance."

3. In *Amit Goel vs. Piyush Shelters India Private Ltd. and Ors.* **[Company Appeal (AT) (Ins) No. 700 of 2021],** on *18.01.22;* NCLAT held that the AR should elicit the views of financial creditors prior to CoC meetings in letter and spirit of S 25A.

F. Fees for the AR

Fees receivable by the AR have been revised.

Overall, the role of AR is expanding and that is a welcome step. Though currently most of the scope is recommendatory and executing instructions, hopefully the role in the future may be more active.

Labyrinth of Resolution for Personal Guarantors

Dinesh Seth
Insolvency Professional

Personal guarantors have always been found at the crossroads for the matters related to guarantee provided by them. Be it in terms of Section 128 of the Indian Contracts Act, whereby, the liability of the surety is said to be co extensive with that of the principal borrower or more recently in the Supreme Court verdict for Lalit Kumar Jain case (2021), 9 SCC 321, where, the PGs are brought in the same operational net and regime of IBC as that of CD and approval of resolution plan did not provide an automatic release to the guarantors from their liabilities. Further, the Apex Court has in 2023 for Dilip Jawarjka case (Civil WP 1281/2021) struck down the objections raised by the Personal Guarantors on the premise of natural justice, whereby, the resolution process get started with the filing of the report by the Resolution Professional under section 95 of the IBC and the interim moratorium is levied on the matters of debts belonging to the PG without giving the PG any opportunity of being heard.

The creditors have been feeling jubilant over the stated decisions, as the process will now start taking shape for the resolution and recovery of amount from the realisation of the personal assets of the guarantors. However, in my opinion, there is still a long road to get any meaningful recovery through this route.

The brief understanding of the process for securing PG will help in analysis of the whole issue.

The lenders while granting credit to a corporate debtor seek to secure their interest by mortgage and hypothecation of its fixed and current assets respectively. These assets are put under a charge through

legal agreements and the same are also recorded with the MCA. In order to cover the additional risk while granting credit, the personal guarantees of the key personnel are sought from the CD. The guarantor is asked to declare its personal assets in detail along with the valuation of the same. This statement is generally certified by a Chartered Accountant on the assumption that the valuation recorded therein has a sanctity. The stated value is thus reduced by the personal liabilities of the PG and the resultant amount is considered as the net worth of the guarantor at a point of time.

The lenders consider their loans to be extra secured for the net worth amount of the PG as the guarantee document executed by the guarantor invariably includes that the stated assets are always maintained till the duration of the loan.

The noteworthy point in the above stated process is that while the charge on the assets of the CD is always recorded with MCA and therefore considered available in the public domain (as the charge details can be known from the public documents available with MCA), there is no such provision to record the implicit charge on the assets of the PG.

Further, the valuation of the assets of the CD is undertaken by the lender, while the valuation of the personal assets of the PG is taken as certified by the Chartered Accountant that is hired for service by the PG itself.

We have experienced in the last 5 years of the IBC that the monitoring of the accounts by the lenders has been lax and not up to the mark. This creates a space for the divergence of funds by the CD that is one of the major reasons for their slippage to the NPA category and subsequently below par recovery. Despite having an annual review system within the policy framework of the lenders, the renewals of the credit limits are undertaken without required due diligence that prevents in bringing to the notice the early warning signals from the potential bad assets. In this scenario, it is herculean task to expect from the lenders to screen the assets of the PG every year so that the security cover is adequately maintained. It therefore becomes a customary practice for the lenders to accept the revised net worth statement of the PG certified by a CA.

In this background, when the resolution of the PG is to be undertaken, the following difficulties emerge for the RP:

1. The details of the PG assets available in the records of the lender are from a bygone era, as the process of declaring an account NPA and ultimately reaching at the stage of resolution takes years and in between this period there is little check and monitoring on the assets declared by the PG.

2. The RP has to rely on the declaration of the PG only for the availability of the existing assets and any investigation into the assets earlier declared and not made available now will only elongate the process of resolution.

3. The RP has to rely on the future income estimated by the PG only to prepare the schedule of repayment as RP does not exercise any control on the business and other sources of income declared by the PG.

4. The resolution plan is to be prepared by the debtor in consultation with the RP and the creditors are not engaged in this process like that of CIRP, therefore, the modifications proposed to the plan might be on unexpected lines and can change the colour of the whole resolution plan that may derail all the efforts made by the RP. Further, each modification to the resolution plan proposed by the creditors need to get a consent from the debtor that will be a herculean task for the RP when there are number of creditors and each one can suggest different modifications.

5. The low recoverable amount from the declared assets of the PG will make it difficult to get the resolution plan approved from the lenders. In case of rejection of the resolution plan, the bankruptcy proceedings will be the only tool of recovery that is still not tested in recent years.

In order to be effective in implementing the resolution plan related to PG, the following steps are required to be undertaken:

1. The detailed report needs to be made on the assets of the PG with effect from the date of guarantee provided for the first time.

2. The assets disposed of during the period of guarantee need to be consolidated with their details of transfer and price.
3. The income sources of the PG need to be verified in detail along with the expenditure incurred for the past 3 years.
4. The lenders should be provided with the above mentioned details in order to reach at a consensus for the expected repayment and its schedule.
5. Henceforth, the valuation of the assets of the PG be carried out by the lenders before considering the same for collateral security purposes and an obligation be imposed upon the PG to create Negative Lien on the specific assets.
6. The alienation of assets by the PG in violation of the terms of the guarantee agreement be considered as avoidable transaction
7. As cooperation under section 19(2) of IBC from the asset holders have been evasive at best, the third parties (mostly in the government sector) holding the information about these assets be made to share the same with the RP for collating the necessary facts and figures. Specifically, a circular be issued to all Deputy Commissioners as Registrar of Properties under their jurisdiction for providing easy access to the RP so as to locate the properties in the name of the PG or other relevant persons.
8. The creditors with the voting power to approve the plan should be asked to consolidate their proposed modifications to the resolution plan with prior approval from their respective competent authorities so as to finalize the said resolution plan efficiently.

Er CMA IP Rajendra D Aphale

Claims of Home Buyers Under IBC

Increasingly many cases relating to real estate industry have been coming under insolvency profess and liquidation. Insolvency and Bankruptcy Code (IBC) was amended in 2018 and home buyers got the status of financial creditors.

This article details the relevant definitions, process of filing claims, its evaluation and admission; and other relevant matters.

A. Who is a home buyer

The words home buyer are not used in IBC or RERA. Both the Acts use the word allottee.

S2 (d) of the Real Estate (Regulation and Development) Act 2016 (RERA) defines allottee as - "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

This definition is broad and appears to include commercial as well as residential allottees, though the commonly used term it "home buyers" in common language.

An allottee can be construed as a home buyer.

B. What is financial debt in the context of Home Buyer?

S 5(8) of IBC defines financial debt and the explanation to clause (f) states that "(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"

Real Estate Project is defined in RERA as (zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto. This definition is also wide, to include new projects, redevelopment projects or partial development projects.

The financial debt is the amount raised – that's an important part of the definition, guiding the claims of home buyers.

C. Can Home Buyers initiate insolvency?

The proviso under s 7(1) of IBC states that financial creditors who are allottees under real estate project can initiate inwolvency by making an application jointly – by 100 or more allottees, or 10% or more of such allottees, whichever is less; under the same real estate project.

Home buyers, therefore can initiate insolvency under Section 7, under the above conditions.

D. Procedure for Submission of Claims of Home Buyers

Home buyers have to submit claims in form CA.

Existence of debt can be proved on the basis of (CIRP Regulations 8A) -

a. any information available with an Information Utility

b. other relevant documents including-

   a. agreement to sale

   b. letter of allotment

   c. receipts of payments made

   d. such other document, evidencing existence of debt

As in claims from other categories of creditors, the Resolution Professional (RP) may ask for further information for substantiation of claims (Reg 10); and cost of proving the debt is to be born by the creditor (Reg 11).

Calculation of claims should be as of the date of commencement of insolvency process. This is not specified in the law, but it brings in uniformity in claims and helps simplify the process at the time of settling the claims.

It may be noted that the Public Announcement (PA) may specify under S 15(1)(e) penalty for submitting false and misleading claims.

E. Time limit for submission of claims

Reg 12(1) defines the time limit as "the time stipulated in the Public Announcement, or up to the date of issue of request for Resolution Plans (under Reg 36B), or 90 days from the insolvency commencement date, whichever is later.

F. Verification of Claims

The IRP / RP should verify the claims within 7 days from the last date of receipt (it is submitted that this last date refers to the last date mentioned in the Public Announcement. For claims submitted later, such claims should be verified within 7 days of submission of the claims. In absence of this, claim admission will remain pending right up to the date of issue of request for RPlans. This will have impact on Committee of Creditors (CoC), Information Memorandum (IM), among other matters.)

The claims have to be updated continuously, based on new claims received later, more information submitted by claimant or becoming available otherwise.

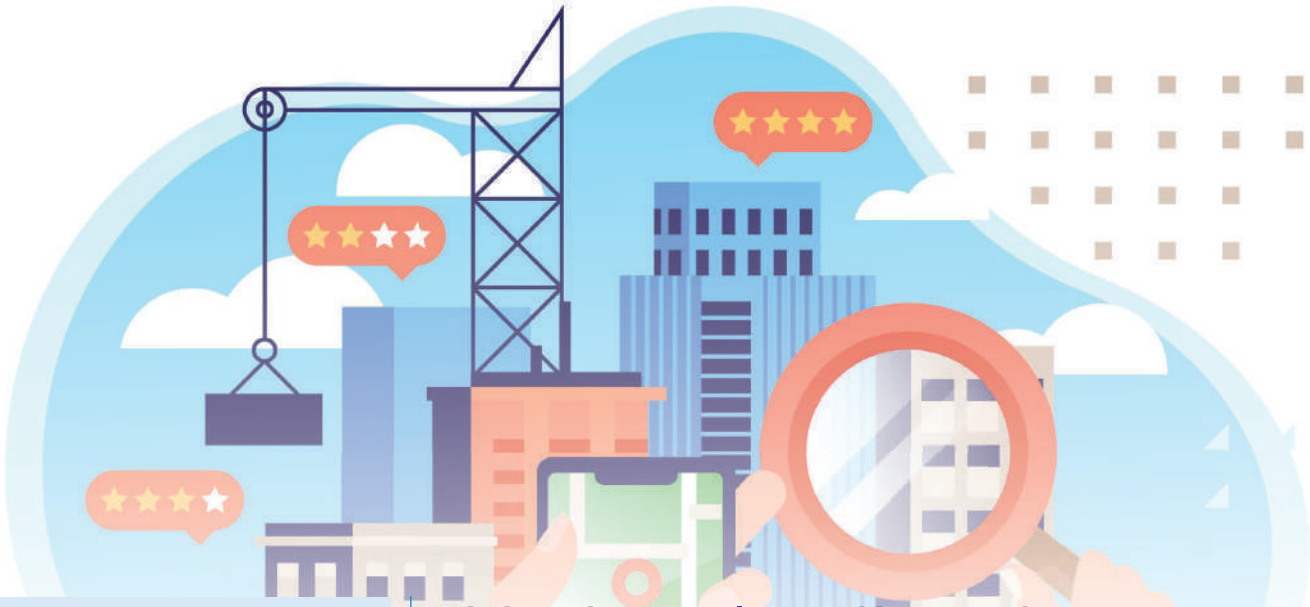
Claims received after the expiry of the period stipulated in the PA, but 7 days before the meeting of CoC for voting on RPlan, the RP must verify these claims and classify them as acceptable or not-acceptable (Reg 13(1B)), intimate this decision to the creditor, and put the acceptable claims before the CoC meeting for its recommendation for inclusion

in the list of creditors and its treatment in RPlan, and apply to AA for condonation of delay in respect of the acceptable claims.

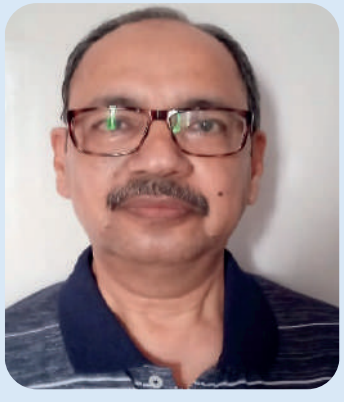
G. Important aspects, some observations in respect of verification of claims

1. Often one comes across a situation that the agreement for sale is not registered. We are aware that transfer of immovable property must be by way of a registered agreement. In this respect, the Maharashtra Ownership Flats Act 1963 states in S 4A that the agreement may be received as evidence of contract in suits relating to Specific Relief Act, or Transfer of Property Act. It is submitted that the same principle would apply in case of IBC for admission of claims. While this Act may be applicable only in Maharashtra, provisions or other laws in other states may have to be seen.
2. Reg 8A (2)(iii) includes the wording "receipts for payment made" for proving a claim. The wording therefore includes receipts for cash payment as well.
3. Reg 16A (7) states that voting share of a creditor will be in proportion to the financial debt, which includes an interest at the rate of 8% pa, unless a different rate is agreed between parties. It is submitted that this interest is simple and not compound.
4. Evidences for payment are- receipts, agreement (agreements normally specify payments received as of date of the agreement, any confirmation letters from the builder, entries in the accounting books of the Corporate Debtor (CD).
5. The definition provided in 5(8) (i) in defining financial debt is "amount raised from an allottee…". This implies that any notional values such as market value, damages will not form part of the financial debt.
6. There is an issue of stamp duty and registration fee paid by the home buyer to the builder in respect of the agreement for sale. The common practice is the builder collects this money from the home buyer and organizes the documentation. Should this form a part of the claim? There is no clarity in the law. This author opines that if the builder has collected the money and the agreement has not been registered, it should be included as a part of the debt. This amount may or may not reflect in CD's accounts.
7. The responsibility of receiving verifying claims lies with the RP, and the Authorised Representative (AR) has no role in it (Reg 16A(5)).
8. Presence of a liability in the books of the CD are enough to admit claim. In Jt Commissioner of Commercial Taxes & GST v Anish Nanavaty RP, in the matter of Ericsson India v Reliance Telecom; NCLT Mumbai – the claim was filed on 16.10.2020, much later than the date of approval of RPlan (04.03.2020). The claim was allowed as it was in the records of the CD. The same principle may apply to claims of home buyers as well.
9. In addition to the claims submitted, it will be a good idea to look at the accounts of the CD and identify all liabilities and check if any claims have remained to be submitted, particularly of home buyers.
10. There is a question of whether the law of limitation applies to the claims of home buyers. As such the law applies, and action needs to be taken within the limitation period, from the cause of action. However, it has been held by SC in Meerut Development Authority v M K Gupta IV (2012) held that in such a case the buyer has a recurrent cause for filing a complaint about non-delivery of possession of the plot. In a similar case, National Consumer Redressal Commission has held in Satish Kumar Pandey v M/s Unitech (2015) that failure to deliver possession being a continuous wrong it constitutes a recurrent cause of action and, therefore, so long as the possession is not delivered to him the buyers can always approach a Consumer Forum. In short, until possession is handed over, the cause of action continues.

Overall, it is necessary to verify claims of home buyers carefully. The AR, though not responsible for verification of claims, can help, including conducting meetings of home buyers, now recognized after the amendments in CIRP Regulations in September 2023.



'Undervalued' and 'Extortionate' Transactions under the IBC, 2016



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Government of India constituted The Bankruptcy Law Reforms Committee (BLRC) to examine and address the issues relating to Insolvency and Bankruptcy. The Committee in its report observed *inter alia* that the existing legal structure of Insolvency and Bankruptcy process is elaborate and that the adjudication takes place in multiple and contradictory forums. It recommended for overhauling of the laws relating to insolvency and bankruptcy which should be simple, coherent and effective. Based on the recommendations of the Committee, IBC 2016 was enacted 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 my article published in August, 2023 issue, I dealt with only 'Preference Transaction'. In this article, I shall be discussing provisions relating to 'Undervalued Transactions' and 'Extortionate Transactions' which ought to be avoided. In the matter of *Swiss Ribbons and Another Vs. Union of India and Others,* it was observed by Hon'ble Supreme Court that the Code is a beneficial legislation aimed at putting back the derailed corporate back on its feet. On turning an entity as insolvent, certain types of transactions ought to be avoided failing which it will tell upon financial health of the entity. It is these transactions which are referred to as 'avoidance transactions'. U.N. Commission on International Trade Law

(UNCITRAL) Legislative Guide on Insolvency Law defines the avoidance transactions as "provisions of insolvency law that permit transactions for transfer of assets or the undertaking of obligations prior to insolvency proceedings to be cancelled or otherwise rendered ineffective and any assets transferred, or their value, to be recovered in the collective interest of creditors". Sections 43 to 50 of the Code deal with avoidance transactions. The Code provides four types of transactions namely, Preferential Transactions, Undervalued Transactions, Transactions defrauding creditors and Extortionate Credit Transactions which are referred to as ' Avoidance Transactions'.

The purpose to prevent avoidance transactions is that if prior to the initiation of CIRP, the CD has indulged into any transactions by which the assets might have been diluted, those transactions should be held to be illegal hence must be avoided. Hence, the aim of avoidance certain transactions mentioned under the Code is also to prevent unfair advantage granted to certain creditors at the cost of others. Another purpose is to maximize the availability of general pool of assets to the creditors both in resolution of insolvency as well as liquidation process.

It has been provided under the Code that in first meeting of CoC, the RP has to scrutinize all the information and records so as to find out any such transactions which might have taken place in the past two years from commencement of the CIRP. The RP has also to find out such irregular transactions which may have been responsible for financial deterioration of the CD. Section 25(2)(j) of the Code obligates the Resolution Professional to file an application before the Adjudicating Authority seeking appropriate relief as contained under the Code.

Undervalued transactions: As per Section 45(2) of the Code, a transaction shall be considered undervalued if the CD makes a gift to a person or enters into transaction with a person which involves transfer of one or more assets by the CD for a consideration the value of which is significantly less than the value of consideration provided by the CD. Also the transaction shall be considered as undervalued if the transaction is for transfer of property from CD to any person, the consideration of which is much lower than what is provided in the books of accounts. However, if such transaction has taken place in the ordinary course of business of the CD, such transaction shall not be deemed to be an undervalued transaction.

Section 45(1) provides that if the Liquidator or RP as the case may be, determines that certain transactions were made during the relevant period under Section 46, which were undervalued, he shall make an application to the Adjudicating Authority (AA) to declare such transaction as void and reverse the effect of such transaction. For an application to AA, the transaction in question should have taken place at the relevant time. As per Section 46(1), the relevant time is two years from the insolvency commencement date in case of transaction with a related party and one year in other cases.

If after examining the application the AA is satisfied that an undervalued transaction took place, the AA may declare such transaction as void and reverse the effect of such transaction. Further Section 48 provides for following actions :

(i) Vesting of property transferred as part of the transaction in the CD;

(ii) Release or discharge, in whole or part, of any security interest granted by the CD;

(iii) Payment of such sums by a person, in respect of benefits received by such person, to the RP or Liquidator, as the case may be, as the AA may direct;

(iv) Payment of such consideration for the transaction as may be determined by an independent expert.

In a relevant case of *IDBI Bank Vs. Jaypee Infratech Ltd., CA No 26 of 2018,* the CD had transferred property by way of mortgage without any consideration. On challenge, the Hon'ble Court held that the transaction as undervalued. Section 46(2) provides that the AA may require an independent expert to assess the evidence relating to the value of the transactions. In the matter of *Anuj Jain Vs. Axis bank Ltd. & Others, [Civil Appeal Nos 8512-8527 of 2019],* it was held by Hon'ble Supreme Court that as the transactions are held as preferential, it is not

necessary to examine whether these transactions are undervalued and/or fraudulent. In preferential transaction, the question of intent is not involved and by virtue of legal fiction, upon existence of given ingredients, a transaction is deemed to be of giving preference at a relevant time, while undervalued transaction requires different enquiry under Sections 45 and 46 where AA is required to examine the intent. It was further held that the AA is required to examine the aspect of preferential, undervalued and fraudulent transactions separately and distinctly. In *Bank of India Vs. Balaji Forest Products Pvt. Ltd, (2022) 141 taxmann.com 337 (NCLT-Kol),* the applicant-RP filed application before the AA alleging that suspended Board of Directors of CD entered into a grossly undervalued transaction wherein under the garb of lease deed, all plant and machinery of CD along with land was leased to respondent No 3 for a meagre amount. The RP prayed for declaration that the execution of lease deed was in the nature of transaction as described under Section 45 and that said lease deed be declared null and void. It was held by NCLT Kolkata that the lease deed was grossly undervalued to the detriment of creditors of the CD and that the said lease deed itself was void *ab initio,* fraudulent and illegal, therefore it was set aside.

The Code casts an obligation upon the RP to move the AA in case of any of the avoidance transactions and obtain an appropriate order. Section 47 provides that where an undervalued transaction has taken place and the Liquidator or the RP fails to report it to the Adjudicating Authority, a creditor, member or partner may make an application to the AA to declare such transaction void and reverse their effect. If the AA is satisfied that any undervalued transaction has occurred and the Liquidator or RP has not reported such transaction after having sufficient information or opportunity to avail information of such transaction, in addition to order for avoidance transaction, it can pass an order requiring the Board to initiate disciplinary proceedings against the liquidator or RP as the case may be.

Extortionate credit transactions: Sections 50 and 51 of the Code deal with the extortionate transactions. The term has not been defined under the Code. In general parlance the term 'extortionate' means exorbitant, excessive or severe. If the transaction carries exorbitant rate of interest or unconscionable credit terms, it would be treated as 'exorbitant' transaction. According to Regulation 11 of the IBBI(Liquidation Process) Regulations, 2016, a transaction shall be considered as an extortionate transaction under Section 50(2) where the terms:

(1) Require the CD to make exorbitant payments in respect of the credit provided; or

(2) Are unconscionable under the principles of law relating to contracts.

Section 50(1) provides that where a CD has been a party to an extortionate credit transaction involving receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the Liquidator or the RP, as the case may be, may make an application to the AA for avoidance of such transaction. Section 51 of the Code provides that if the Adjudicating Authority is satisfied that the terms of a credit transaction required exorbitant payments, it may pass the following orders:

(i) restore the position as it existed prior to such transaction;

(ii) set aside the whole or part of the debt created on account of extortionate credit transaction;

(iii) modify the terms of the transaction;

(iv) require any person who is or was a party to the transaction to repay any amount received by such person;

(v) require any security interest created as part of the extortionate credit transaction to be relinquished in favour of the Liquidator or the RP as the case may be.

In the matter of *Shinhan Bank Vs. Sungil India Pvt. Ltd., (2019) 109 taxmann.com 170,* it was held by NCLT Delhi that interest rate of 65% p.a. is extortionate and held that since the interest rate was above the business standards as prevailing in the market, it amounted to extortionate transaction.

It is important to note that extortionate transactions are not just limited to charging of exorbitant interest rates but also include exorbitant payments

and unconscionable terms regarding financial or operational debt. However, any debt extended providing financial services under any law in force at the time shall not be considered to be an extortionate transaction. In the matter of *Anamika Singh and others Vs. Shinhan Bank and others [Company Appeal (AT) (Insolvency) No 912-913 of 2019]* the appellant advanced loan to CD at exorbitant rate of interest rate around 50% per annum. There was no evidence that the loan was required by the CD and that Board of Directors of CD approved such proposal. On challenge, Adjudicating Authority held the transaction as extortionate. On appeal NCLAT held that in normal course, a company takes loan from banks at certain rate of interest but in present case, the appellant CD accepted loan from individual at exorbitant rate of interest which appears to be a collusive. Despite the fact that transactions with some of the appellants occurred prior to two years preceding the insolvency commencement date, but taking into consideration the exorbitant rates of interest charged by appellants, said transactions were held to be unconscionable.

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 objective is also to prevent have unfair advantage to certain category of creditors at the cost of others. The RP or the Liquidator, as the case may be, is required to examine the transactions entered into by the CD meticulously so as to protect the interests of all the stakeholders. He has to make diligent efforts and adopt a logical approach utilizing his prowess so as 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 in obtaining orders from Adjudicating Authority.

IBBI's proposals for Real Estate Insolvency: An Impact Analysis

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BACKGROUND:

On 06.11.2023, the Insolvency and Bankruptcy Board of India (hereinafter referred as "IBBI or Board") released a discussion paper for dealing with the issues being faced in insolvency processes of real estate projects. In relation to the stalled real estate projects, this discussion paper seeks to implement the recommendations made by Amitabh Kant's Committee (Hereinafter referred as "the Committee") and also by a Colloquium on Functioning and Strengthening of the IBC Ecosystem (hereinafter referred as "the Colloquium"). It has been recommended by the committee and the Colloquium that the *"IBC needs to be reformed to better accommodate the complexities of real estate sector"*. According to the Colloquium, *"There exists a pressing need to have a separate resolution mechanism for real estate sector. Thus, a resolution mechanism tailor made to address the needs of real estate sector may be specified with necessary variation from CIRP"*.

With this discussion paper, IBBI is considering to implement the recommendations made by Amitabh Kant's Committee and the Colloquium, to address the issues in insolvency process of the real estate projects.

This article aims to analyze the critical aspects of the changes proposed by the IBBI in IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 (hereinafter referred as "CIRP Regulations") and IBBI(Liquidation Process) Regulations, 2017 (hereinafter referred as "Liquidation Process Regulations").

KEY HIGHLIGHTS OF THE DISCUSSION PAPER:

Following are the key highlights of the discussion paper suggesting, broadly, five proposals dealt through amendments in CIRP Regulations and Liquidation Process regulations:

1. **Mandatory registration and extension of projects under RERA;**
2. **Operating a separate bank account for each real estate projects;**
3. **Execution of registration/sublease deeds with the approval of CoC during CIRP;**
4. **CoC to examine separate plans for each real estate projects; and**
5. **Exclusion of property in possession of homebuyers from the liquidation estate.**

IMPACT ANALYSIS OF PROPOSED CHANGES:

These proposed changes by IBBI aim to address issues faced in the insolvency process of real estate projects. The IBBI's proposed changes are analyzed below:

1. Mandatory Registration and extension of projects under RERA:

Legal Background: Section 17(2)(e) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC or the Code") which deals with the management of affairs of the corporate debtor, provides that Insolvency professional (hereinafter referred as "IP") is responsible for ensuring compliance with the requirements under any law for the time being in force. As per section 3 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "RERA"), all real estate projects are required to be registered with respective state's RERA, where the area of land proposed to be constructed exceeds 500 square meter or the number of apartments proposed to be constructed exceeds 8.

IBBI's Proposal: It is proposed to expressly mandate the IRP/RP to register all real estate projects under RERA or to extend registration under RERA, where registration is expired or about to expire.

Impact: Mandatory registration under RERA will enhance transparency and accountability, which in turn enhance the prospects of a successful resolution.

Analysis: Registration of real estate projects under RERA is a pivotal step in fostering transparency and accountability, essential for a more efficient and successful resolution process. However, there are certain practical challenges in implementing this proposal in CIRP Regulations.

Generally, registrations under RERA are done by the companies themselves as they can not start any project without registration under RERA. Its only seeking extension of registration under RERA which would be required to be done by IRP/RP. For registration under RERA, there are lots of documentation required, which would be very very difficult for IRP/RP to collect and compile. Also, there are registration charges which are required to pay for registration. Moreover, the period of registration is usually for one year. Therefore, seeking extension of registration will be a recurring cost. Further, post registration under RERA, there will be lots of compliances annually and quarterly under RERA required.

In view of these challenges, it may be suggested that there should be a deemed registration under RERA during the CIRP period. Further, if at all registration or renewal of registration is being mandated, the registration cost should be part of CIRP cost.

2. Operating a separate bank account for each real estate projects

Legal Background: Under RERA, each project is registered separately and given a unique identification number. The approvals, filings etc. all done on a project basis. RERA registration facilitates systematic record keeping and mandates project wise separate accounts.

IBBI's Proposal: In line with RERA provisions and to ensure transparency in the resolution process, it is proposed that IRP/RP should operate separate bank account for each project undergoing CIRP.

Impact: For real estate projects during CIRP, operating a separate bank account for each real estate project would record all receipt and payments of the individual projects. This will facilitate information about a particular project which may be useful for project wise

insolvency or for inviting separate resolution plans for particular real estate project.

Analysis: As per the discussion paper, following amendment is proposed to be made in CIRP Regulations:

"4E: Opening project wise account:

The interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project."

The above proposed provision may result in ambiguity considering that a separate account needs to be maintained under the provisions of RERA. To avoid any conflict between the RERA and CIRP regulations, the construct of Regulation 4E should clarify that the separate account as mandated by RERA shall be operated by the IRP/RP. Further, there will be an issue of bifurcation of costs amongst each accounts of different projects. Therefore, for common costs, a common account may also be maintained.

3. Handover of unit's possession to homebuyers

Present Scenario: Managing continuity in a business undergoing Corporate Insolvency Resolution Process (CIRP) often involves acquiring and selling inventory. However, the real estate sector poses a distinctive challenge. In certain instances, creditors have fulfilled their contractual obligations, and the corporate debtor (CD) has completed construction, yet formal ownership transfer remains pending. Currently, some courts have utilized their inherent powers to authorize ownership and registration transfers for select projects during CIRP.

IBBI's Proposal: To facilitate the smooth handover of occupied units or where possession has been transferred to home buyers, IBBI has proposed to allow IRP/RP to handover the ownership of a plot, apartment, or building to the allottees through transfer during the resolution process. Before doing so, the approval of the Committee of Creditors (CoC) has to be obtained, by not less than 66% of the total votes. Further, to avoid delays due to unnecessary holds-ups, it is also proposed that with the approval of the CoC, RP may also be permitted to hand over the possession of units to the allottees on 'as is where is' basis or on payment of balance amount, if any, after taking in to account the funds due and funds required for completing the unit.

This provision, which is aimed at safeguarding the homebuyers' interests, is sought to be introduced vide insertion of Regulation 4F in the CIRP regulations.

Impact: This proposal will potentially reduce the disputes. Further, the transactions will be formalized through the transfer of such units during the resolution process with the approval of the CoC.

Analysis: It seems that the proposal to handover possession and register in the name of allottees during the IBC process, where the allottees have fulfilled their obligations, on 'as is where is' basis, will bring relief to the home buyers, who need not wait till the resolution is over. However, units which are in possession of buyers, but pending registration of the sale deed, cannot be made part of the insolvency/ liquidation estate – duly acknowledging their ownership rights. The ability of the buyers to even accept partly finished units on as-is-where-is basis can ameliorate the financial woes and uncertainty of a large section. Giving statutory recognition to project-wise resolution certainly will expedite the whole process and foster over-all improvement. Handing over 'as is where is basis' will create lots of issues. This will allow handover of even incomplete projects which is violation of the provisions of RERA and Consumer Protection Act. Therefore, this amendment should go away altogether.

4. CoC to examine and invite separate plans for each projects:

Present Scenario: Generally, the CD which is associated with real estate has multiple projects that are at different stages of construction. Some projects have been completed and some are partially completed, or some are at the initial phase of construction. However, investing in all projects by one resolution applicant requires huge capital, and thus limits the number of resolution applicants.

IBBI's Proposal: The IBBI has proposed to clarify that CoC on examination, may direct the RP to invite separate plan for each project. The same will be in the form of a clarification added to Regulation 36A(4) of the CIRP regulations.

Impact: Inviting separate plans for each real estate project is expected to widen the pool of prospective resolution applicants considering that it would not be feasible for them to invest in all projects.

Analysis: Such a clarification would definitely enhance the participation of resolution applicants. This is a need of the hour. It may however, be suggested that there may be separate COCs also for each project. Moreover, there should be little safeguards in it.

5. Exclusion of property in possession of homebuyers from the liquidation estate:

Legal Background: Section 36 of the Code defines 'Liquidation Estate' which states that for the purpose of liquidation, the liquidator shall form an estate of the assets which will be called the liquidation estate in relation to the corporate debtor. Section 36(4) states a list of assets which shall not be included in the liquidation estate and not be used for recovery in liquidation. Section 36(4)(e) further provides power to the Board to specify any other assets which shall not form a part of the liquidation estates of corporate debtor.

Present Scenario: There is some confusion in the market as to whether properties where, the allottees have taken possession but a registration with any authority of the transfer is pending, are to be included in the liquidation estate or not. Jurisprudence also laid down different pronouncements. Inclusion of properties of homebuyers when they have fulfilled their part of the obligation would create several difficulties.

IBBI's Proposal: It is proposed to modify the Liquidation process regulations to make following changes:

"Regulation 46A.

Exclusion of Certain Assets from the Liquidation Estate

For the purposes of Section 36(4)(e), wherever an "allottee" as defined under clause (d) of section 2 of the Real Estate (Regulation and Development) Act, 2016 is in possession of the unit, it shall not form a part of the liquidation estate of the corporate debtor."

Analysis: By insertion of Regulation 46A in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, it is proposed to exclude units under the possession of allottees as defined under RERA from the liquidation estate of the corporate debtor.

Under Section 36(4) of the IBC, certain assets are excluded from the liquidation estate. Consequently, such assets will not be used for recovery in liquidation. Sub-section (e) to the said Section empowers the Board to specify any other assets for such exclusion and in the exercise of this power, the proposed regulation is sought to be introduced.

The IBBI adjudged it to be necessary to exclude units under the possession of allottees from liquidation estate in light of the conflicting judicial pronouncements in this regard and to ensure that bona fide homebuyers do not end up suffering on account of the insolvency proceedings.

This is a very controversial proposed amendment, which need more deliberation before implementing in IBBI(Liquidation Process) Regulations.

Conclusion:

Sector wise amendments in CIRP is needed especially in case of real estate insolvency. The changes proposed in the Discussion Paper try to provide clarity on several aspects and attempt to mitigate certain practical complications faced in CIRP which can result in making the process more robust, and effective. To have a customized and tailor-made approach to resolve each project is a welcome move and will facilitate relatively faster targeted resolution. If one project is defaulted, it makes no sense to drag the entire company into CIRP. However, the amendments proposed by IBBI may impose administrative challenges even as it attempts to deal with important issues in the real estate insolvency resolution process, especially if a real estate company has multiple objects at various stages of development. It may complicate the overall insolvency process, as coordinating multiple resolution plans, and involving various stakeholders for each projects can be challenging. This could potentially lead to inconsistent results, with some projects being resolved more efficiently than others. Although these would facilitate faster resolution under IBC, it may also require amendments in other laws for smooth execution. Therefore, before implementing these changes, more deliberations with the stakeholders are required for addressing their concerns and practical challenges.

CONFLICT OF INTEREST AMID THE APPROVAL OF RESOLUTION PLAN

CS Vinit Nagar

PREFACE

The Committee of Creditors (CoC) possesses the most dominant and privileged position so far as the decision making powers during the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor including the decision pertaining to the approval of the Resolution Plan for such stressed Debtor is concerned pursuant to Section 30 of the Insolvency and Bankruptcy Code (the Code) which is subject to its final endorsement by the Hon'ble Adjudicating Authority (AA) but the AA while sanctioning the Resolution Plan, limits its intervention only up to its judicial review and oversee the compliance of Section 30(2) of the Code by the Resolution Applicant but it does not interfere at all into the commercial acumen of the CoC.

Time & again, the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India (SC) have also upheld the supremacy of the CoC as far as the evaluation of the commercial viability and feasibility of any Resolution Plan is concerned including the determination of the criteria for the invitation of EOI for the purpose of calling the Resolution Plan for the Corporate Debtor as provided under Section 25(2) (h) of the Code.

It is a well-accepted fact that, the Financial Creditors plays a significant role in running and nurturing the business operations of the Company and their contribution in form of debt capital is comparatively higher than that of the capital contribution of the shareholders and during the course when the business of the Company is financially stable and running, such creditors does not even intervene at all in the business affairs of the Company but immediately on the triggering of the Corporate Insolvency Resolution Process (CIRP) and constitution of the CoC, by the virtue of the provisions of the Code, such Financial Creditors get all the powers and control in their hands including and not limited to the powers as conferred upon them under the provision of Section 28 of the Code, which otherwise are the powers generally exercisable by the Board and the Equity Shareholders of the Company during the course when a Company is a going concern.

The emphasis of this Article is to highlight upon the need of the AA to extend its scrutiny beyond the judicial review over the commercial wisdom of the Committee of Creditors in the process of insolvency resolution of the corporate person specially in those circumstances in which the member of the CoC itself is proposing the Resolution Plan, sitting for an evaluation upon and according its consent to own proposed plan and therefore such circumstances specifically requires the intervention of AA so that the wisdom of such interested Resolution Applicant over its own proposed Resolution Plan can be tested and verified upon.

Critical aspects of Sec. 30(5) of the Insolvency & Bankruptcy Code, 2016

Injudiciously, the provision of sub-section (5) of Section 30 of the Code permits a Resolution Applicant to vote at the Meeting of the CoC, if such Applicant is also a financial creditor but resulting to this unexplained proviso of the Code, it gives rise to several round of litigations on the grounds of the conflict of interest of such Resolution Applicant and its privileged provision in the CoC during the course of the approval of the Resolution Plan and therefore, there is an intense need to have some clarification and explanation to the said proviso of the Code but until same is introduced and clarified by the Ministry there is a serious need to have some intervention of the Adjudicating Authority beyond mere judicial scrutiny and the AA should also take into consideration all the decisions taken by such interested Member of the CoC right from its induction.

The Provision of Section 30 (5) of the Code in general permits the resolution applicant to vote at the Meeting of CoC, if such Resolution Applicant is also a financial creditor but due to the absence of any explanation to this sub- proviso, the Resolution Applicants are taking the best advantage of its voting shares in the CoC either by hindering the approval of the Resolution Plan for the Corporate Debtor as set forth by some other Resolution Applicant(s) or by exercising the commercial wisdom over its own promoted plan in the midst of its conflict of interest.

This proviso is being liberally interpreted by the Resolution Professionals and also by the AA therefore is defeating the very principle of the natural justice, *nemo judex in causa sua,* that, no person can judge a case in which he himself hold an interest and no man shall be a judge in his own cause. On application of this rule against bias in a situation where the financial creditor, also being the Resolution Applicant is casting its vote for the approval of its own proposed resolution plan and therefore, the personal bias is bound to set in, but it shall defeat the very fundamental objective of the Code which actually aims for striking a balance between various stakeholders of the Corporate Debtor.

It should be the fundamental requirement that the members of the CoC who are sitting over the evaluation of the Resolution Plan for evaluating its commercial viability must be the impartial ones and must act fairly, without prejudice and bias.

Notwithstanding the actual feasibility and the viability of the other Resolution Plans, the presence of any interested Member in the Meetings of the CoC as a Resolution Applicant always give such applicant an extra edge and advantage over the other resolution applicants due to its locus and voting shares in the meeting of COC and therefore, the AA are required to interfere in such circumstances. This open-ended proviso to sub-section (5) of Section 30 of the Code has led to the rampant practice of endorsing its own resolution plan by some Financial Creditor in the meeting of the CoC and therefore this creates a huge basis of distinction in the possible success among the resolution applicants who is the member of the CoC and those who are not in the CoC and the situation gets more biased and prejudiced when the voting share of such Resolution Applicant is enough to disapprove and reject all the other resolution plans and is sufficient to approve its own plan even without the seeking the assistance and interference from any other CoC Members.

The self-evaluation of the Resolution Plan by the Resolution Applicant qua the Financial Creditor & Member of CoC is mainly caused due to the liberal interpretation Section 30(5) of the Code but due to this, the interested Resolution Applicant is not only causing a serious prejudice to the interest of other Resolution Applicants but is also giving rise to a chain of litigations amongst the resolution applicants due to the vested interest of one or some of the applicant in the process but in such circumstances, the Commercial Wisdom of the CoC often get criticised and come under scanner of doubts and it also hampers the time bound resolution process as well as the fortunes of the Corporate Debtor.

Therefore, it is important that each of the Member of the CoC who are dealing into consideration of the Resolution Plan at the Meeting of the CoC should be acting independently and do not hold any direct or indirect personal interest while approving or disapproving the resolution plan and in the cases where the Member of the CoC itself/ himself is proposing the Resolution Plan, than the fairness and fate of such Resolution Plan should only be allowed to be decided upon by and between the other independent Members of the CoC. Thus only the disinterested members of the CoC should only be allowed and permitted to weight the commercial viabilities and feasibilities of the Resolution Plan and the concerned Resolution Applicant during such discussions and consideration should not be allowed to participate and influence the decisions of the CoC.

Ever changing Constitution of CoC

The Constitution of the CoC is the foremost task which every IRP's and RP's are required to handle and take care of in most prudent and judicious manner as many of the disputes in the process of CIRP are pertaining to the composition of the committee and many a times such litigations even last up to the stage of approval of the Resolution Plan and this ultimately damage the overall objective of the Code and does also impact given timeliness of the insolvency resolution process. Therefore there is need for the adjudicating

authority to first adjudicate upon and dispose of all such interlocutory applications which are made under Section 21 of the Code and also even in

those cases where there is/ are no subsisting litigation pertaining to the composition of CoC, the RP and the AA must ensure that all the members of the committee those are sitting over the consideration of the resolution plan are acting independently and possess zero conflict of interest.

Final thought

Though it is a settled principle that the NCLT and NCLAT cannot sit in appeal over the commercial wisdom of the CoC, but this practice of judging, evaluating and voting over its own resolution plan requires high discipline and strictness in the Code so that the paramount status given to the CoC under the Code should not be misused. Also, there is a need beyond the judicial intervention and the interference of the AA in certain circumstances to keep the process more transparent and fair. If in the light of the present Code, the powers of the AA are fettered, then the legislature is required to step-in by the virtue of its powers to amend the Code for extending such power of AA and to restrain such financial creditors to evaluate and vote over its own resolution plans wearing the hat of the Resolution Applicant in the process of CIRP.

The referred provision of the Code is required to be amended in lines with the provisions of Sec. 184, 188 of the Companies Act, 2013 and Reg. 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as their foundational principle is to avoid the conflict of interest. Under the provisions of the Companies Act, 2013, the Directors and the Members of companies are not permitted to participate and vote in certain situations where there is conflict of interest i.e., the contracts or arrangements in that they are directly and indirectly interested. Not only this, their presence is also not counted for the purpose of determination of the quorum during the course of discussion on such contracts and arrangements. The similar provisions are required to be inserted in the Insolvency and Bankruptcy Code, 2016 in order to debar the interested resolution applicant to evaluate and vote over its own Resolution Plan even if such applicant is the financial creditor and the member of CoC, as this will enhance the faith among the stakeholders in the commercial wisdom and decisions' of the CoC and this will further encourage

the equity and fair play among the all the resolution applicants which will ultimately benefit the Corporate Debtor.

If the resolution applicant, in spite of being a financial creditor and a member of CoC is stopped from participating in agenda's pertaining to the approval of the Resolution Plan, than there will be fair evaluation about the viability and feasibility of any plan and no room will be left for anyone to raise finger on the aspects of the conflict of interest of any member thereat during the approval of the resolution plan and no questions shall further arise pertaining to the abuse by any member due to its position in the Meeting of the CoC and voting shares. Exclusion of such members from participation in the meeting of CoC shall preserve the paramount status of the Committee of Creditors and their supremacy in the evaluation of the Resolution Plan. The adoption of such practice in the meeting of CoC may further prevent several Corporate Debtors from being liquidated as conflict of interest of even a single member of the CoC is sufficient to decide the fate of any resolution plan. It is seen in many CIRP's that if the plan of such member qua resolution applicant is not being consented and approved by the CoC, then its own voting percentage are enough to block the approval of other resolution plans and therefore for such circumstances, if such member is/are excluded from even participating in the meeting of CoC during the discussion of the agenda of the approval of the resolution plan then possibilities may get increase and rise high for such plan to get approved by the unbiased composition of the CoC.

(Views are Personal Only) This insight is authored by CS Vinit Nagar Practicing Company Secretary from Ahmedabad (Gujarat) who is majorly dealing into the litigation management

practice under the Corporate Law and the Insolvency & Bankruptcy Code in India and can be reached on vncolegal@gmail.com for any questions in connection with this editorial. This insight is intended only as a general discussions on the issues and is not intended for any solicitation of work. Further, it should not be regarded as a Legal advice and no legal or business decisions should be taken based on this content.

Judgments

JUDGMENTS

Case Title: Ramkrishna Forgings Ltd Vs. Ravindra Loonkar, RP of Acil Ltd & Anr.
Case no.: Civil Appeal No.1527 of 2022
Decision Date: November 21, 2023
Court/Tribunal: Supreme Court of India

FACTS:

- An application was filed by IDBI Bank Ltd. for initiating corporate insolvency resolution process (CIRP) against the Corporate Debtor ACIL Ltd., a manufacturer of precision engineering and automobile components and a resolution professional (RP) was appointed to manage its affairs and invite resolution plans from prospective resolution applicants.
- The appellant-Resolution Applicant submitted its first Resolution Plan on 11.04.2019 providing to pay Rupees seventy-four crores to all the stakeholders including Rupees sixty-three and a 5 half crores to Financial Creditors.
- This final Resolution Plan submitted by the Appellant-Resolution Applicant on 05.08.2019 was finally approved by the CoC on 14.08.2019 by a majority of 88.56% votes.
- In terms of such approval of the Resolution Plan by the CoC, the RP moved Approval Application under Sections 30(6)4 and 315 of the Code seeking approval of the Resolution plan before the Adjudicating Authority-NCLT on 16.08.2019.
- The Adjudicating Authority kept in abeyance the approval of resolution plan and directed the official liquidator to revalue the assets of the CD and provide exact figures/value of assets.
- The matter was carried in appeal before the NCLAT which passed the impugned judgment dismissing the appeal and upholding the order passed by the Adjudicating Authority. Aggrieved with the same the appellant challenged the order of NCLAT before the Supreme Court.

DECISION:

- The Supreme Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT.

- The NCLT and NCLAT erred to fully recognise that under the Resolution Plan, the Corporate Debtor was set to be revived and not liquidated. Thus, the minimum mandatory component in the Resolution Plan was only a reflection of the actual money, including upfront payment, which would go towards the FC(s).
- The Supreme Court held that if after repeated negotiations the CoC with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, such commercial wisdom was not required to be called into question or casually interfered with.
- The Supreme Court note that the Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives power not to approve only when the Resolution Plan does not meet the requirement laid down under Section 31(1) of the Code.
- The order of the Adjudicating Authority dated 01.09.2021 suffers from a jurisdictional error, as in the facts that prevailed, it was not entitled to pass the direction that it did.
- Accordingly, the Court allowed the appeal and set aside the orders passed by the Adjudicating Authority and the NCLAT.

CASE REFERRED:

K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd.; Maharashtra Seamless Limited; Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401; Pratap Technocrats Private Limited; Innoventive Industries Ltd. v ICICI Bank, (2018) 1 SCC 407; Swiss Ribbons Private Limited v Union of India, (2019) 4 SCC 17; Kranti Associates Private Limited v Masood Ahmed Khan, (2010) 9 SCC 496; Manoj Kumar Khokhar v State of Rajasthan, (2022) 3 SCC 501; Embassy Property Developments Private Limited v State of Karnataka, (2020) 13 SCC 308; Gujarat Urja Vikas Nigam Limited v Amit Gupta, (2021) 7 SCC 209.

Case Title: ABBA Consultants Private Limited Vs. IBBI & Ors.

Case no.: W.P.(C) 8856/2020 & CM APPL. 28479/2020

Decision Date: November 03, 2023

Court/Tribunal: High Court of Delhi

FACTS:

- The NCLT Ahmadabad, initiated CIRP against the Corporate Debtor. The Resolution Professional was appointed. However, it is stated that the RP was failed to publish the public announcement in two widely circulated newspapers within three days of his appointment.
- The petitioner, who was the Operational Creditor of the CD, filed a complaint against the RP with the respondent highlighting the irregularities committed by the RP during the CIRP process of the Corporate Debtor.
- The NCLT passed an order for liquidation. Thereafter, the Petitioner filed an application under the Right to Information Act, 2005 enquiring about the status of his complaint pending before the Board. The petitioner was informed that the complaint has been disposed of.
- The petitioner approached the High Court seeking a writ of mandamus directing the Respondent to take action against RP for misconduct in his performance as an Insolvency Resolution Professional in the matter of M/s Sandhya Prakash Limited (Corporate Debtor).

DECISION:

- The Court observed that no material has been furnished by the Petitioner to substantiate that the Board has acted in a manner to favour Respondent No.2 or to shield the mis-deeds of Respondent No.2, who is Insolvency Resolution Professional.
- Under Article 226 of the Constitution of India, this Court cannot substitute its own conclusion to the one arrived at by experts until and unless there is gross miscarriage of justice which strikes at the root of the case.

- A team of experts have considered the case and have arrived at a conclusion and this Court cannot hazard a venture into this domain. It is well settled that the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable.
- The Court noted that Respondent No.1/Board is the authority to regulate the functioning of the Insolvency Professionals and the Board comprises of experts in the field who have been appointed by the Central Government to carry out the functions specified under Part IV of the IBC. It is well settled that Courts do not sit as an Appellate Authority over the decisions taken by the experts.
- The Court does not find that the decision making process adopted by the Board or the decision based on the final report is perverse or is contrary to law or against public interest, which would warrant interference from this Court under Article 226 of the Constitution of India.
- The Court, accordingly dismissed the petition.

CASE REFERRED:

Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622; State of NCT of Delhi v. Sanjeev, (2005) 5 SCC 181;

Case Title: Fervent Synergies Limited Vs. Manish Jaju & Ors.

Case no.: Company Appeal (AT) (Insolvency) No.1338 of 2023

Decision Date: November 02, 2023

Court/Tribunal: NCLAT, New Delhi

FACTS:

- The Corporate Debtor - Sivana Reality Private Limited launched a Project known as 'Samriddhi Garden' at Mumbai which was mortgaged to the LICHFL. In terms of the Mortgaged Deed any sale or third party right could have been created by the CD only after the prior written consent from LICHFL.
- The Appellant - Fervent Synergies Limited and the Corporate Debtor entered into 10 separate Agreements for sale of 10 flats in the Project. CIRP was initiated against the Corporate Debtor. The appellant filed its claim before the RP.
- The claim of appellant was admitted by the RP. Respondent No.2 submitted a Resolution Plan. The Resolution Plan dealt with Financial Creditors class in two categories, i.e., affected homebuyers (who have not obtained NOC from the LICHFL) and unaffected homebuyers (who have obtained NOC). However, Resolution Plan does not recognize 10 flats sold to the Appellant on the ground that LICHFL has not given NOC in respect of the said flats.
- The appellant raised objection to the resolution plan and filed an IA before the Adjudicating Authority. The IA was rejected by the Adjudicating Authority. The Appellant challenged the impugned order and filed an appeal with the NCLAT
- It is submitted by the Appellant that the claim having been admitted by the RP so there was no question to treat the admitted claim of the Appellant differently from other Homebuyers and the Respondents are bound by principle of promissory estoppel and cannot deny the claim, which was admitted by the RP.

DECISION:

- The NCLAT held that Resolution Plan does not violate any provisions of the Code and classification of the homebuyers into two group is justified. The Adjudicating Authority did not commit any error in rejecting the objections filed by the Appellant to the Resolution Plan.
- The NCLAT noted that Acceptance or admission of the claim of a Financial Creditor is one aspect of the scheme under the IBC. Subsequent steps in the IBC including the preparation of Resolution Plan are based on the list of creditors, admitted claims of the creditors etc. as per the scheme of the IBC.
- The principle of promissory estoppel cannot be pressed against the Resolution Applicant, who submits Resolution Plan on the basis of relying on the Information Memorandum, the list of creditors and other aspect of the matter.

- The Resolution Applicant has not extended any promise to the Financial Creditors of the Corporate Debtor that the claim submitted by Financial Creditor or any other creditor shall be accepted in toto.
- If a Resolution Plan is compliant with the provision of Section 30 (2) of the IBC and the provisions of the Regulations, 2016, the Plan cannot be faulted on the ground of the promissory estoppel, which the Appellant is pressing against the Resolution Professional, who has admitted the claim.
- The NCLAT is of the view that doctrine of promissory estoppel cannot be pressed into service in reference to the Resolution Plan approved by the CoC in its commercial wisdom and dismissed the appeal.

CASE REFERRED:

Jaypee Kensington Boulevard Apartments; Company Appeal (AT) (Insolvency) No.1162 of 2023 – Sabari Reality Pvt. Ltd. vs. Sivana Realty Pvt. Ltd. & Ors.; Motilal Padampat Sugar Mills Co. Ltd; Manuelsons Hotels (P) Ltd. v. State of Kerala – (2016) 6 SCC 766

Case Title: ICICI Bank Limited Vs. BKM Industries Limited & Anr.

Case no.: Company Appeal (AT) (Insolvency) No.405 of 2023

Decision Date: November 06, 2023

Court/Tribunal: NCLAT, New Delhi

FACTS:

- CIRP was initiated against the Corporate Debtor by order in application under Section 7 of the IBC filed by M/s Trimurti Associates Private Limited.
- The Appellant submitted its claim in Form-C for an amount of Rs.15,52,73,428/-. The amount claimed by the Appellant in Form-C was admitted by the RP.
- Members of the CoC discussed on distribution of proceeds under the received Resolution Plan, wherein the Appellant mentioned that any distribution to be made to secured creditors must be done keeping in mind the security interest.
- The RP provides a calculation methodology and the lender-wise proportional share in the liquidation value of the Corporate Debtor for the purposes of distribution as well as proportionate share as per security interest.
- The Appellant raised objection to the distribution methodology circulated by RP and claimed distribution as per security interest.
- In the 16th CoC Meeting, the Resolution Plan of Uniglobal Papers Private Limited was approved by the CoC with vote share of 78.79%. The Resolution Professional filed an Application for approval of the Resolution Plan.
- The appellant also filed an IA before the Adjudicating Authority seeking a direction to distribute as per security interest. The Adjudicating Authority after hearing the parties, by the impugned order has rejected the Application. Aggrieved by the said order, appellant filed an Appeal.

DECISION:

- The NCLAT held that it is clear that specific Agenda Item was placed before the CoC for consideration as to whether distribution has to be made as per the admitted claim of the secured lenders or on the basis of security interest over assets of the Corporate Debtor.
- When the CoC approved the voting at Agenda Item No.1, i.e., distribution based on the proportion of admitted claim of the respective secured lenders, which was also in accordance with the Resolution Plan submitted by the Resolution Applicant, no challenge by the Appellant can be entertained.
- The NCLAT observed that the scheme of Section 53, sub-section (1), clearly indicates distribution as per the debt and in the legislative scheme there is no scope of distribution of assets among the Financial Creditors as per security interest.
- NCLAT dismissed the appeal and held that the Adjudicating Authority committed no error in rejecting the IA filed by the appellant.

CASE REFERRED:

Small Industries Development Bank of India vs. Vivek Raheja and Ors; India Resurgence Arc Private Limited Vs. M/s. Amit Metaliks Limited & Anr.; Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.; Vistra ITCL (India) Ltd. and Ors. vs. Dinkar Venkatasubramanian and Anr. – (2023) 7 SCC 324.

Case Title: Mr. Brajesh Mishra and Others Vs. M/s Dolphin Offshore Shipping Ltd.

Case no.: CP(IB) 206 MB 2021

Decision Date: November 02, 2023

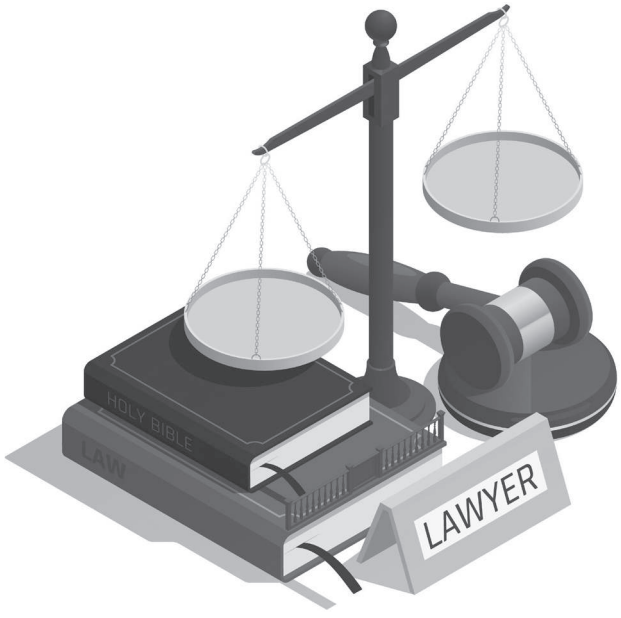
Court/Tribunal: NCLT, Mumbai, Court-V

FACTS:

- An application has been filed under Section 9 of the IBC jointly by Operational Creditors before the Adjudicating Authority seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s Dolphin Offshore Shipping Ltd (Corporate Debtor).
- The Operational Creditors are the employees of M/s Dolphin Offshore Shipping Ltd. The Corporate Debtors have not paid the legal dues of the Operational Creditor and therefore, the petition was filed.
- Total outstanding dues of all Operational Creditors are of Rs. 2,86,11,281/- in the form of liquidated debt payable by the Corporate Debtor to all the Operational Creditor jointly.
- The respondent Corporate Debtor denies, and all the allegations, contentions and statements made in the present Company Petition.
- The Corporate Debtor pleaded that a joint Application under Section 9 of the Code by one or more Operational Creditor is not maintainable, the individual claim of each of the Operational Creditor is less than the minimum threshold limit of Rs. 1 crore and therefore, the Petition is liable to be dismissed.

DECISION:

- The Adjudicating Authority observed that the records reveals that the none of the Petitioners individually has a claim of more than Rs. 1 crore and none of the Applicants meets/fulfills the threshold requirement of Rs. 1 crore as per Section 4 of the Code, 2016.
- The Adjudicating Authority made a reference to the law laid down in Sadashiv Nomaya Nayak and Others. Vs. Gammon India and Contractors Private Limited whereby it has been held that if an individual claim of each of the Operational Creditor, the amount of debt is less than rupees one lakh (as the threshold limit was at that time), it can be rejected being not maintainable.
- The Adjudicating Authority held that the present Petition is not maintainable as the individual claim of each of the joint Petitioners do not meet the threshold limit of Rs. 1 crore. The Adjudicating Authority then dismissed the petition.



Insolvency and related news around the world

❖ CHINA WEALTH MANAGER ZHONGZHI FLAGS INSOLVENCY, $64 BLN IN LIABILITIES

China wealth manager Zhongzhi flags insolvency, $64 bln in liabilities

China's Zhongzhi Enterprise Group, a leading wealth manager, told investors it is heavily insolvent with up to $64 billion in liabilities, threatening to reignite concerns that the country's property debt crisis is spilling over into the broader financial sector.

The firm, which has sizable exposure to China's real estate sector, apologised to its investors in a letter that said it had total liabilities of about 420 billion yuan ($58 billion) to 460 billion yuan ($64 billion).

Read More at: https://www.businesstoday.in/latest/world/story/china-wealth-manager-zhongzhi-flags-insolvency-64-bln-in-liabilities-406942-2023-11-24

❖ US-BASED VICE MEDIA FILES FOR BANKRUPTCY

Vice Media, once a rising star in the digital media industry, has encountered significant setbacks and filed for Chapter 11 bankruptcy in the United States. The company, known for popular websites like Vice and Motherboard, is in the process of finalizing its sale to a group of lenders.

The consortium of lenders submitted a credit bid of approximately $225 million (€206 million) for most of Vice Media's assets and agreed to assume substantial liabilities upon the transaction's completion. It is worth noting that in 2017, Vice Media had a valuation of $5.7 billion.

Read More at: https://insolvencytracker.in/2023/05/16/us-based-vice-media-files-for-bankruptcy/

❖ SUPREME COURT UPHOLDS VALIDITY OF KEY PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE

The Supreme Court on Thursday upheld key provisions of the *Insolvency and Bankruptcy Code, 2016* (IBC), which had been challenged on various grounds including alleged absence of due process and a violation of natural justice principles. The judgment came in a batch of over 200 petitions challenging Sections 95(1), 96(1), 97(5), 99(1), 99(2), 99(4), 99(5), 99(6), and 100 of the IBC.

Read More at: https://www.barandbench.com/news/supreme-court-upholds-validity-key-provisions-insolvency-and-bankruptcy-code

❖ INDIA AMENDS INSOLVENCY RULES IN WAKE OF JET LEASING DISPUTE

India has amended its insolvency law to exclude leased aircraft from assets that can be frozen, a long-awaited move expected to shore up the financing of its fast-growing airline industry by addressing discrepancies between global and local rules.

The rule change, disclosed in a government notice on Wednesday, aims to bring India's bankruptcy laws into line with a treaty protecting the rights of foreign lessors, following a dispute over the bankruptcy of budget airline Go First.

Read More at: https://www.reuters.com/business/aerospace-defense/india-changes-insolvency-rules-exclude-leased-aircraft-2023-10-04/

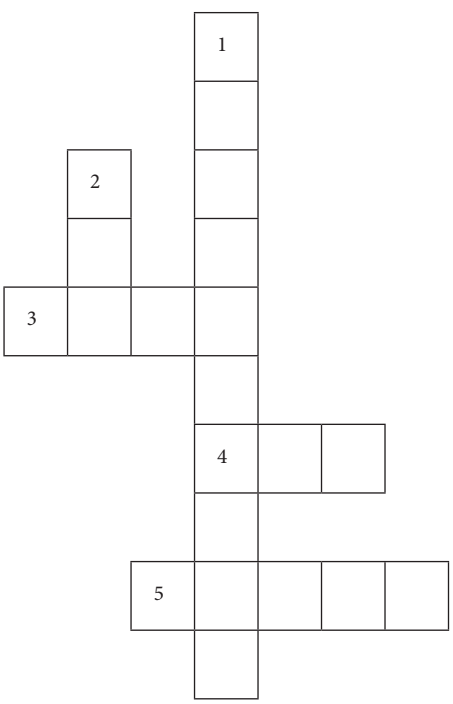
❖ MCA TWEAKS RULES; NEW PROMOTERS OF BANKRUPT FIRMS CAN EASILY SHIFT REGISTERED OFFICES

The Indian government has amended rules to allow insolvent firms to easily shift their registered offices to another state or union territory if there are no pending investigations or appeals against the resolution plan. The move is expected to provide relief to new promoters who want to achieve better operational synergy with their other businesses.

Insolvent firms that change hands after resolution can now shift their registered offices easily from one state to another according to the choice of the new promoters if there is no pending investigation, as the government has tweaked the relevant rules.

Read more at: https://economictimes.indiatimes.com/news/economy/policy/mca-tweaks-rules-new-promoters-of-bankrupt-firms-can-easily-shift-registered-offices/articleshow/104674793.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

GAMES CORNER



ACROSS

3. This forum has replaced the Board of Inustrial & Financial Reconstruction.

4. No Recovery of _____ Can Be Made Towards Deductee Even If Deuctor Is Undergoing CIRP

5. Airways company facing CIRP where moratorium was exempted for specific situations.

DOWN

1. This Act specifies statutory time frame within which a person initiates legal action.

2. These norms ensure compliance with the Prevention of Money Laundering Act.

Answer key:

1. Limitation
2. KYC
3. NCLT
4. TAS
5. GoAir

NOTES

NOTES

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