ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
(A wholly owned subsidiary of ICSI and registered with IBBI)
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# INSOLVENCY AND BANKRUPTCY JOURNAL

## Insolvency: Looking Ahead

# ICSI Institute of Insolvency Professionals (ICSI IIP)

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# From Chairman's Desk

*The only way to make sense out of change is to plunge into it, move with it, and join the dance."*

*– Alan Watts*



Dear Readers,

I would like to draw your attention to the noteworthy impact of the Budget 2024 on the landscape of insolvency in India.

The budget has introduced several key measures aimed at further strengthening the insolvency framework, aligning it with the evolving economic needs. Additionally, the Budget has demonstrated a commitment to fostering a more conducive environment for distressed businesses to recover and contribute to the overall economic revival. The proposed amendments in the Insolvency ecosystem are anticipated to play a pivotal role in supporting businesses facing insolvency challenges.

As we navigate these changes, it becomes crucial for stakeholders in the insolvency ecosystem to stay informed and adapt their strategies accordingly. These developments present both challenges and opportunities, and a nuanced understanding of the revised regulations will be essential for businesses, creditors, and insolvency professionals alike. Amendments to the IBC are often introduced to streamline and enhance the insolvency resolution process. Adapting to these changes can contribute to increased efficiency in resolving insolvency cases, reducing the time taken for resolution and ensuring a faster recovery of assets.

In an increasingly interconnected global economy, aligning with international best practices is crucial. Adapting to amendments in the IBC ensures that our insolvency framework remains aligned with global standards, which can contribute to greater ease of doing business and increased foreign investment. Economic conditions are dynamic and subject to change. Amendments in the IBC are introduced in response to economic challenges, ensuring that the insolvency framework remains resilient and responsive to unforeseen circumstances. Adapting to these changes is essential for businesses to navigate economic downturns effectively.

A dynamic and responsive legal framework, through timely amendments, creates an environment that fosters entrepreneurship and attracts investments. Businesses are more likely to thrive when they have confidence in the regulatory system, knowing that it is adaptable to the changing economic and business landscape.

I encourage you to delve into the specifics of the Finance Act 2024 and its implications on insolvency in India. It is an exciting time for our industry, and I believe that a proactive approach in understanding and leveraging these changes will contribute significantly to the success and resilience of businesses in the coming years.

Let's stay engaged and informed as we navigate these transformative changes together.

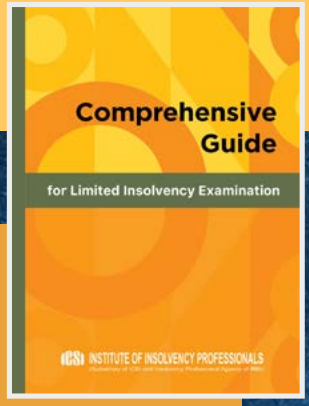
**(P.K. Malhotra)**

**Chairman, ICSI IIP**

INSTITUTE OF INSOLVENCY PROFESSIONALS
(Subsidiary of ICSI and Insolvency Professional Agency of IBBI)

# 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/-*
*Postage Extra*

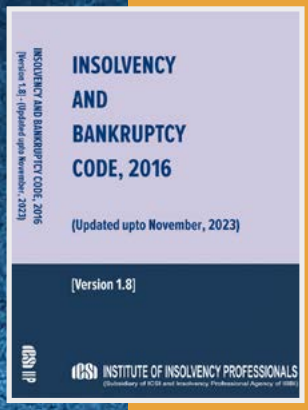

## A Compendium on Insolvency Professionals

*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.*

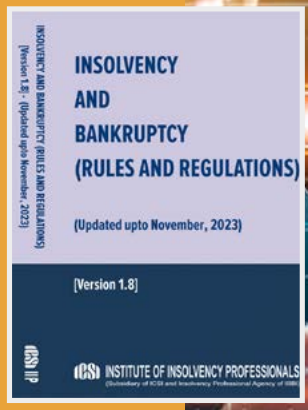
*INR 1000/-*
*Postage Extra*

## 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

*"Every wall is a door."*

*– Ralph Waldo Emerson*



Dear Professional Members,

I hope this message finds you in good health and high spirits. As we dive into a new month, I am delighted to share with you some of the notable initiatives undertaken by the ICSI Institute of Insolvency Professionals (ICSI IIP) in the previous month.

The highlight of the month was the successful organization of the 1st National Convention of Insolvency Professionals & Registered Valuers in New Delhi. Themed "Insolvency, Bankruptcy and Valuation: Achievements, Challenges and Expectations," the convention brought together industry experts, professionals, and stakeholders to discuss and navigate the complexities of the Indian insolvency landscape. It was indeed a great opportunity for insightful discussions and knowledge sharing, enabling us to chart a path towards a more robust and efficient ecosystem.

In addition to the convention, ICSI IIP released its esteemed publications including the 8th edition of Insolvency and Bankruptcy Code and Insolvency and Bankruptcy (Rules and Regulations), as well as the IBC Digest, Comprehensive Guide for Limited Insolvency Examination. These publications serve as essential resources for professionals in the field, providing up-to-date information and guidance on various aspects of insolvency and bankruptcy.

Furthermore, ICSI IIP facilitated the members with a "Certificate of Appreciation" during the 1st National Convention of IPs and RVs. These individuals were recognized for their outstanding contributions and dedication to the profession, and we are grateful for their continued support.

Additionally, ICSI IIP organized several workshops throughout the month, focusing on enhancing multifaceted skills required under the Insolvency and Bankruptcy Code. These workshops covered topics such as PUFE transactions, the role of IPs as financial experts and lawyers, and an in-depth analysis of IBC case laws. These knowledge sessions aimed to equip our members with the necessary tools and expertise to excel in their professional endeavors.

As we continue to strive for excellence, I would like to express my gratitude to all our members for their unwavering commitment and support. It is through your dedication and contributions that we are able to advance the field of insolvency and bankruptcy and create a more robust ecosystem in India.

I encourage all members to make full use of the resources and opportunities provided by ICSI IIP, including our publications, workshops, and conventions. We are committed to continuously enhancing our offerings and supporting our members in their professional growth.

Thank you once again for your continued support, and I look forward to further achievements and collaborations in the coming months.

**Dr. Prasant Sarangi**

**Managing Director, ICSI IIP**

# Events @ICSI IIP

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

**1st National Convention of Insolvency Professionals and Registered Valuers**
***Theme: Insolvency, Bankruptcy and Valuation: Achievements, Challenges and Expectations***
**13th January 2024 (Saturday); 09:30AM-04:30PM**


**"The efficiency and commitment of professionals like Company Secretaries, Registered Valuers, Insolvency Professionals and the like, are guarding our economy and are responsible for drawing the foreign investment into India Inc.**

**-Hon'ble Mr. Ashok Kumar Bhardwaj, Member (Judicial), NCLT."**

**Delhi, India (13th Jan, 2024) –**Over 300 insolvency professionals, registered valuers and key stakeholders converged in Delhi today for the Ist National Convention of Insolvency Professionals and Registered Valuers organized by the Institute of Company Secretaries of India (ICSI) jointly with ICSI Institute of Insolvency Professionals (ICSI IIP), and ICSI Registered Valuers Organization (ICSI RVO), to delve into the transformative Insolvency Landscape. The convention, themed "Insolvency, Bankruptcy and Valuation: Achievements, Challenges and Expectations," provided a platform for insightful discussions on navigating the complexities of the Indian insolvency landscape and charting a path for a more robust and efficient ecosystem.

The convention received the esteemed presence of **Mr. Ashok Kumar Bhardwaj, Hon'ble Member (Judicial),** as the Special Guest, who lent their invaluable expertise to the inaugural session. **Mr. NPS Chawla, Central Council Member of the Institute of Company Secretaries of India (ICSI),** delivered a captivating welcome address, offering valuable insights into the evolving landscape of the profession, and introduced the distinguished guests.

- **Hon'ble NCLT Judicial Member Mr. Ashok Kumar Bhardwaj, Mr. Bhardwaj shed light on the practical challenges faced in implementing the IBC and urged the stakeholders to collaborate for effective resolution mechanisms and robust legal frameworks.**

- **Mr. Manish Gupta, President, ICSI: Mr. Gupta underscored the commitment of ICSI to equip IPs and RVs with the necessary expertise and skillsets to navigate the complexities of insolvency and valuation.**
- **CS B Narsimhan, Vice President, ICSI: CS Narsimhan emphasized the importance of pre-packaged insolvency for faster resolutions and urged participants to actively contribute to shaping the future of the IBC.**

**Dr. Navrang Saini, Chairman of the ICSI Registered Valuers Organisation**, and **Mr. P. K. Mittal, Chairman of the ICSI Institute of Insolvency Professionals,** underscored the crucial role of insolvency professionals and registered valuers in driving effective resolutions and maximizing value recovery. The inaugural session also provided the platform for ICSI IIP Chairman and ICSI RVO Chairman to present comprehensive project report, showcasing the significant initiatives undertaken by their respective organisations in furthering the development of insolvency and valuation professionals.

The convention featured interactive panel discussions on critical topics, including:

- **Quandaries Present in the IBC:** Renowned experts delved into the complexities of the IBC, exploring challenges in valuation, asset realization, and cross-border insolvency.
- **Fate of Pre-Packaged Insolvency:** The viability and potential pitfalls of pre-packaged insolvency frameworks were analyzed in detail, sparking lively debate among participants.
- **Insolvency against Personal Guarantors:** Legal and financial experts shed light on the legal nuances and practical considerations regarding personal guarantors in insolvency proceedings.
- **The Art of Valuation in Insolvency Cases:** The session emphasized the critical role of accurate and ethical valuation in maximizing value recovery and ensuring fair outcomes for all stakeholders.

The convention also witnessed the release of the three books i.e. **A Comprehensive Guide to Limited Insolvency Exam, IBC Digest – A Compendium of Research Articles, and Voluntary Liquidation- A Handbook,** serving as valuable resources for insolvency professionals and aspiring entrants to the field.

The convention also served as a platform to recognize and appreciate the outstanding contributions of exceptional Insolvency Professionals and Registered Valuers. These dedicated individuals received **Certificates of Appreciation**, acknowledging their commitment to excellence in their respective fields.

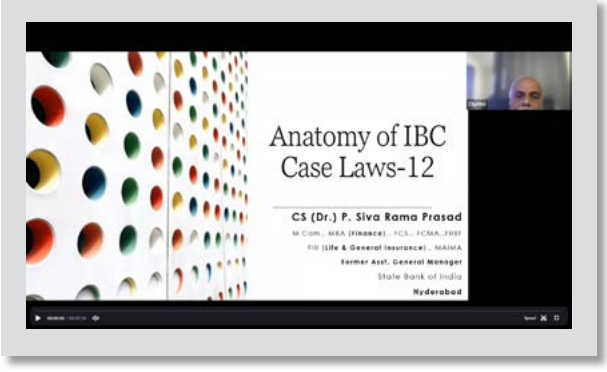
Recognizing the importance of inclusivity, the convention was accessible to a wider audience through **virtual participation**. Many participants from across the country joined the discussions and gained valuable insights from the event.

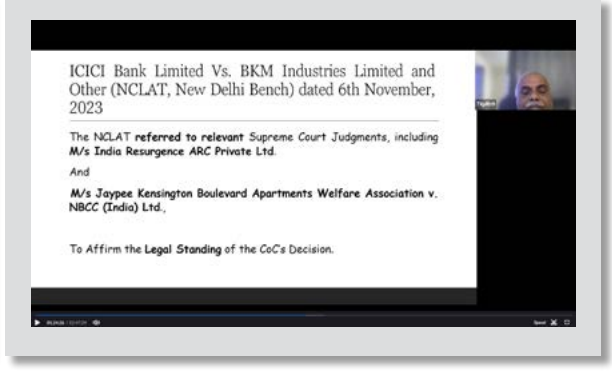
The convention concluded with a vote of thanks delivered **by Mr. Prasant Sarangi, Managing Director(Designate), ICSI IIP,** expressing gratitude to all speakers, participants, and organizers for contributing to the success of the event.

**Overall, the 1st National Convention of Insolvency Professionals and Registered Valuers proved to be a resounding success.** The event provided a platform for knowledge sharing, networking, and celebrating the achievements of individuals and organizations playing a crucial role in the insolvency and valuation ecosystem.



## 2. Webinar on Anatomy of IBC Case Laws-12 by CS, CMA and IP Siva Rama Prasad Puvvala on Friday, 5th January, 2024

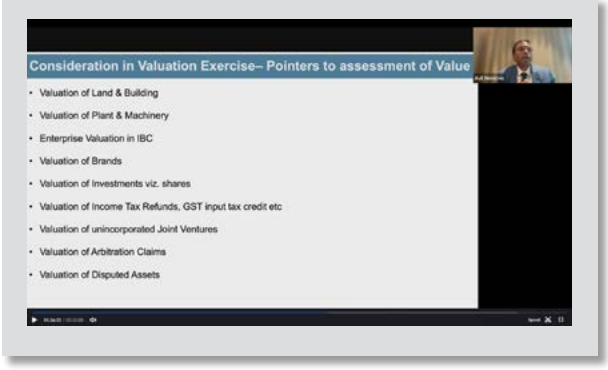


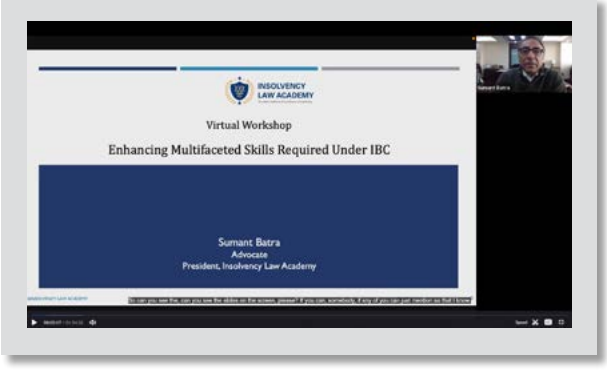

## 3. Workshop on Knowledge Session on PUFE Transactions under IBC by CFA, CAIIB and IP Raghuram Manchi and CS and IP Prakul Thadi on Saturday, 6th January, 2024

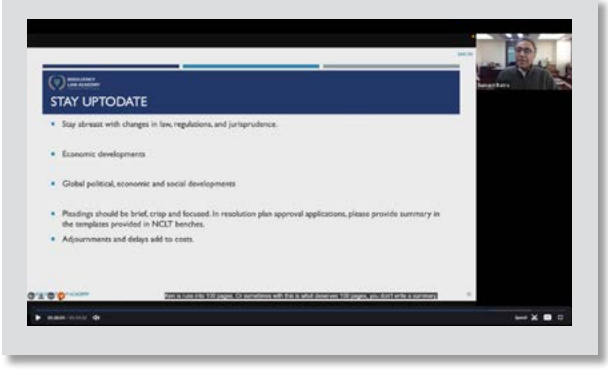



## 4. Workshop on Enhancing Multifaceted Skills required under IBC - IP as a Financial Expert by CA and IP Avil Menezes on Friday, 19th January, 2024


## 5. Workshop on Enhancing Multifaceted Skills required under IBC - IP as a Lawyer by Advocate Sumant Batra on Wednesday, 24th January, 2024



# Learner's Corner

# Frequently Asked Questions on Personal Guarantor under IBC, 2016

**1. Who is a Personal Guarantor?**

As per Section 5 (22), 'Personal Guarantor' means an individual who is the surety in a contract of guarantee to a Corporate Debtor.

As per Rule 3 (f) of IBBI (Application to AA) Rules, 'Guarantor' means a debtor who is personal guarantor to a CD and in respect of whom guarantee has been invoked by the creditor and remain unpaid in full or part.

A personal guarantor being an individual, provides guarantee in their personal capacity against the loans availed by the corporate debtor and as such, their liability is co-extensive with that of the corporate debtor.

**2. Who is the Adjudicating Authority to which application for bankruptcy process of personal guarantors to corporate debtors has to be preferred?**

As per Section 60(1) of the IBC, the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

**3. What is the minimum amount of default for initiating insolvency proceedings?**

An application for insolvency can be filed for a default of at least Rs.1000/- by the debtor.

**4. Who can file an Application for Insolvency of Individual Guarantor?**

The debtor himself (i.e. Individual) who has committed default of debt either personally or through a Resolution Professional under section 94 of IBC or the creditor either individually or jointly with other creditors directly or through a Resolution Professional under section 95 of IBC can make the application for insolvency.

**5. How does the application by the creditor have to be submitted?**

A demand notice under section 95(4)(b) of IBC shall be served on the guarantor demanding payment of the amount of default in Form B. The application under section 95(1) of IBC shall be submitted in Form C, along with a fee of two thousand rupee. The creditor shall serve forthwith a copy of the application to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor. In case of joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

**6. How the application by a guarantor has to be submitted?**

The application under section 94(1) of IBC by the guarantor has to be submitted in Form A, along with an application fee of two thousand rupees.The guarantor shall serve forthwith a copy of the application to every financial creditor and the corporate debtor for whom the guarantor is a personal guarantor.

**7. Are there any pre-conditions for initiating Insolvency of Individual Guarantor?**

The application can be filed with Adjudicating Authority only if guarantee is invoked and the debtor fails to pay within 14 days of service of demand notice by the creditor.

**8. Can guarantee be invoked before claiming the same debt from the corporate person?**

The Hon'ble NCLAT in the matter of Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd. Company Appeal (AT)(Insolvency) No. 346 of 2018, held that guarantee can be invoked before claiming the same from the principal debtor.

**9. Who can be a Resolution Professional (RP)?**

As per the Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 following is the eligibility of resolution professional:

i. Insolvency Professional or Insolvency Professional entity of which he is partner or director & all partners and directors of that Insolvency Professional entity are Independent of the guaranteed. The term independent here refers to:
   a. Not an associate of the guarantor;
   b. Not a related party of the corporate debtor;
   c. Has not acted as the IRP; RP or liquidator of the Corporate debtor for whom guarantee is given.

ii. Insolvency Professional or Insolvency Professional entity of which he is partner or director & all partners & directors do not represent any party in resolution process of corporate debtor.

iii. Insolvency Professional is not subject to any proceedings by the Insolvency and Bankruptcy Board of India ("IBBI").

**10. What is the Framework defined for Personal Guarantors under IBC?**

The Framework is defined under:

i. clause (e) of section 2

ii. section 78 (except with regard to fresh start process) and section 79;

iii. sections 94 to 187 [both inclusive];

iv. clause (g) to clause (i) of sub-section (2) of section 239;

v. clause (m) to clause (zc) of sub-section (2) of section 239;

vi. clause (zn) to clause (zs) of sub-section (2) of section 240; and

vii. section 249.

For Insolvency Resolution Process

- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
- Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

For Bankruptcy Process

- Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
- Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Processfor Personal Guarantors to Corporate Debtors) Rules, 2019.

# ICSI IIP – AT A GLANCE

## 1. DURING THE MONTH OF JANUARY, 2024

| S. No. | Particulars | Details |
|---|---|---|
| 1. | Members enrolled | 2 |
| 2. | Members registered | 0 |
| 3. | Inspections conducted | 1 |
| 4. | IPs monitored | 4 |
| 5. | AFA applications received | 63 |
| 6. | AFA applications approved | 68 |
| 7. | Complaints/Grievances received | 1 |
| 8. | Complaints/Grievances disposed off | 0 |
| 9. | SCN issued | 0 |
| 10. | Disciplinary action taken | 0 |

## 2. DURING THE MONTH OF JANUARY, 2024, FOLLOWING PROGRAMS WERE ORGANISED BY ICSI IIP

### NATIONAL CONVENTION

| S. No | Date of Workshop | Topic |
|---|---|---|
| 1. | 13.01.2024 | 1st National Convention of Insolvency Professionals & Registered Valuers \| 13th January 2024 \| 9:30 AM Onwards \| SCOPE Auditorium, New Delhi |

### WORKSHOPS

| S. No | Date of Webinar | Topic |
|---|---|---|
| 1. | 06.01.2024 | Workshop \| Knowledge Session on PUFE Transactions under IBC \| January 06, 2024 \| 9.30am - 4.30pm |
| 2. | 19.01.2024 | Workshop \| Enhancing Multifaceted Skills required under IBC - IP as a Financial Expert \| 19th January 2024 \| 02:30 PM to 05:30 PM |
| 3. | 24.01.2024 | Workshop \| Enhancing Multifaceted Skills required under IBC - IP as a Lawyer \| 24th January 2024 \| 02:30 PM to 05:30 PM |

### WEBINARS

| S. No | Date of Webinar | Topic |
|---|---|---|
| 1. | 05.01.2024 | Webinar \| Anatomy of IBC Case Laws - 12 \| January 05, 2024 \| 2pm - 5pm |


# Learning the Law

## THE COMMON LAW SYSTEM

The Common Law system, a legal framework derived from judicial decisions and precedents, has a significant presence in India. While the country primarily follows a mixed legal system that incorporates elements of both common law and civil law traditions, the Common Law system plays a crucial role, especially in matters of interpretation and adjudication.

In India, the Common Law system has evolved over the years through a combination of judicial decisions and statutes. The roots of the Common Law in the Indian legal system can be traced back to the British colonial era, during which the British legal principles and practices were introduced and adapted. The decisions of the British courts, particularly the Privy Council, held sway over the Indian legal landscape during this period.

Post-independence, the Indian judiciary has continued to rely on the Common Law tradition in shaping legal principles and resolving disputes. The Supreme Court of India and various High Courts, through their judgments and interpretations, have contributed significantly to the development of Common Law in the country. The doctrine of precedent, where decisions in prior cases serve as a basis for deciding current cases, is a fundamental aspect of the Common Law system in India.

In the Common Law system, the principle of stare decisis, meaning "to stand by things decided," is crucial. It implies that lower courts are bound to follow the decisions of higher courts, ensuring consistency and predictability in legal outcomes. This reliance on precedent fosters a sense of continuity and stability within the legal framework.

One notable feature of the Indian Common Law system is the flexibility it offers in adapting to changing societal norms and values. Courts often play a proactive role in interpreting laws to align them with contemporary perspectives, contributing to the dynamism of the legal landscape.

While the Common Law system coexists with statutory laws and codes inherited from the colonial era and developed domestically, its influence is pervasive, especially in areas not explicitly covered by legislation. It provides a framework for resolving ambiguities and gaps in statutory law, offering a nuanced and evolving approach to justice.

In conclusion, the Common Law system in India has deep historical roots and continues to be a cornerstone

of the country's legal framework. It reflects the adaptability of legal principles to the evolving needs of society, ensuring a balance between tradition and progress in the quest for justice.

## RULE OF LAW

The Rule of Law stands as a fundamental pillar in the constitutional framework of India, ensuring that the legal system operates based on established principles and is not subject to arbitrary power. Enshrined in the Constitution, the Rule of Law reflects a commitment to fairness, justice, and the protection of individual rights.

In India, the Rule of Law is embedded in the preamble of the Constitution, which declares India as a sovereign, socialist, secular, and democratic republic. The preamble emphasizes justice, liberty, equality, and fraternity as guiding principles, encapsulating the essence of the Rule of Law.

One of the key aspects of the Rule of Law in India is the supremacy of the Constitution. The Constitution is the supreme law of the land, and all actions of the government and individuals are subject to its provisions. The judiciary, as the guardian of the Constitution, plays a crucial role in upholding the Rule of Law by ensuring that laws and executive actions conform to constitutional principles.

Equality before the law is another cornerstone of the Rule of Law in India. It implies that all individuals, regardless of their status or position, are equal in the eyes of the law. The legal system is designed to treat every citizen fairly and impartially, preventing discrimination and arbitrary exercise of power.

The independence of the judiciary is paramount for the effective implementation of the Rule of Law. The judiciary acts as a check on the executive and legislative branches, ensuring that their actions adhere to constitutional norms. The Supreme Court of India, with its power of judicial review, has played a pivotal role in interpreting and upholding the Rule of Law.

Additionally, the Rule of Law in India emphasizes legal certainty and predictability. Laws are meant to be clear, accessible, and consistently applied. This principle ensures that individuals can anticipate the consequences of their actions and have confidence in the legal system.

While India has made significant strides in upholding the Rule of Law, challenges persist. Issues such as delays in the judicial process, access to justice, and the effective implementation of laws remain areas of concern. However, ongoing efforts are directed towards addressing these challenges and reinforcing the Rule of Law.

In essence, the Rule of Law in India serves as a guiding principle that underlines the nation's commitment to justice, fairness, and the protection of individual rights. It is a dynamic concept that evolves with the changing needs of society, reflecting a collective aspiration for a just and equitable legal system.

# INSIGHTS

**IP Akhil Chadha**
**B. Com, FCS, LLB**

# Set off of claims during the CIRP of a Corporate Debtor under IBC 2016

## 1. INTRODUCTION:

The term "Set Off" in common parlance means reciprocal adjustment of amounts payable to each other by the Parties to a contract. Set off is often used interchangeably with the term "Counter Claim". However, there is a distinction between the two terms as set off necessarily evolves out of the same transaction whereas counter claim does not need to be out of the same transaction. Set off has been given legal recognition under Order VIII, Rule 6 of the Code of Civil Procedure 1908. The principle of set off enables the other party to a suit, apart from claimant, to submit his/her side of claim in the same suit instituted by the claimant. The equity principles played an important role in evolution of the concept of set off as the other party of the suit was also allowed to submit their claims in the suit brought by the plaintiff. In common parlance also, where in a suit, each party to the dispute owes some amount to each other, the defendants should have a right to claim the amounts due to them by the plaintiffs.

## 2. SETOFF IN CIRP:

When Corporate Insolvency Resolution Process (CIRP) is initiated in respect of a Corporate Debtor, the Interim Resolution Professional (IRP) publishes a public announcement and invites claims from the creditors of the Corporate Debtor in Form B/C/CA/D as the case may be. Creditors of the Corporate Debtors, whether operational or financial, submit their claims with the IRP who collates the claims and prepares a final list of creditors of the Corporate Debtor. Forms prescribed under Regulation 7 of IBBI (Corporate Insolvency Resolution Process) Regulations 2016, for submission of claims by the creditors of the Corporate Debtor, have a provision for providing details of mutual credits, mutual debts etc. between the Corporate Debtor and the creditor which may be set off against the claim of the creditor.

## 3. LEGAL PROVISIONS UNDER IBC 2016 GOVERNING SET-OFF

### a) Moratorium under Section 14 of IBC 2016

**Section 14**

*"Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."*

### b) Forms B/Form C/Form CA/Form D under Regulation 7 of CIRP Regulations 2016

The Forms prescribed for filing of claims by the creditors of the Corporate debtor provide for filing details of transactions between the Corporate debtor and Creditor which can be mutually set off against the claim filed by the creditor.

*"DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM."*

### c) IBBI (Liquidation Process) Regulations 2016

*"Regulation 29. Mutual credits and set-off.*

*Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party."*

## 4. ANALYSIS OF LEGAL PROVISIONS

Section 14 of the IBC 2016 prohibits initiation of suits or other proceedings against the Corporate Debtor during the period when moratorium is in place. Section 14 also bars transferring, or alienating any assets of the Corporate Debtor during the moratorium period. It is commonly understood and has been a practice adopted by the Resolution Professionals that since moratorium continues till the date CIRP is over, allowing set off to a creditor would amount to providing a preference to that creditor over the remaining creditors and thus will be contrary to law.

Further Forms B/C/CA/D as required to be filed under Regulation 7 of the CIRP Regulations specifically provides for mutuality and set off, thereby recognizing the principle of set-off under the I&B Code.

Furthermore, the liquidation process regulations, in Regulation 29, specifically provide for set off of mutual dealings between the Corporate Debtor and the creditor.

The principle of set off is not permissible under the CIRP despite the fact that setting off of mutual dues is both legitimate and equitable. Further set off of claims is not recognised/acknowledged by the Resolution Professionals even though there is a specific provision in the liquidation guidelines for set off. Since CIRP Regulation do not provide specifically for set off except that the forms prescribed in Regulation 7 do

recognise the right to set off, set off is rejected by the Resolution Professionals while accepting/rejecting the claims.

Hon'ble NCLT, NCLAT and Supreme Court have adjudicated upon the principle of set off in a few cases.

The Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. vs. Union of India & Ors.***, (2019) 4 SCC 17 specifically holds that:

*"61. Insofar as set-off and counter claim is concerned, a set-off of amounts due from financial creditors is a rarity. Usually, financial debts point only one way – amounts lent have to be repaid. However, it is not as if a legitimate set-off is not to be considered at all.* ***Such set-off may be considered at the stage of filing of proof of claims during the resolution process by the resolution professional, his decision being subject to challenge before the Adjudicating Authority under Section 60*** *...".*

It is therefore clear that it has always been the intent of the legislature to set-off the dues towards the Corporate Debtor with the claim towards the same. The Hon'ble Supreme Court has observed that the set offs which are legitimate can be considered by the Resolution Professional at the stage of filing of proof of claims.

The Hon'ble Supreme Court in ***Bharti Airtel limited and others vs Vijaykumar V Iyer and others*** have held that the provisions of the IBC relating to Corporate Insolvency Resolution Process do not recognise the principle of insolvency set-off. The Hon'ble apex court also held that the principle of set off cannot be extended by implication whereas the code itself has not accepted applicability of mutual set off at the CIRP stage.

## 5. CONCLUSION

The cases of mutual dealings between the Corporate Debtor and the Financial Creditor are very rare. However, in the case of Operational Creditors, the mutual dealings between the Operational Creditors and the Corporate Debtors are very common. There are circumstances when both of them owe money to each other and set off is claimed by the operational creditor in respect of a transaction emanating from a single contract. Not allowing the set off to the Operational Creditor while admitting the claims put the Operational Creditors in financial jeopardy where the Operational Creditors have to pay the entire payable amount to the Corporate Debtor on the one hand and on the other the Operational Creditor does not receive a single rupee out of the amount due to him by the Corporate Debtor because the approved Resolution Plan does not provide for any payment to the Operational Creditors. This could not be the intention of the legislature to put Operational Creditors in financial hardship when the Operational Creditors are not even part of the Committee of Creditors and have no say in the approval of the Resolution Plan.

The provisions of the IBC 2016 should be amended to provide protection to the Operational Creditors who have legitimate and equitable mutual dealings with the Corporate Debtor.



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# Enhancing Transparency and Stakeholder Engagement in Liquidation Process

IBBI boosts liquidation process with stakeholder engagement.

The first and foremost objective of the Insolvency and Bankruptcy Code, 2016 ('Code') is resolution of the corporate debtor (CD), and only upon its failure, liquidation commences. During the liquidation process, the liquidator invites claim from stakeholders, forms a liquidation estate, endeavours to sell assets, in consultation with the Stakeholders' Consultation Committee (SCC) and distributes the realized proceeds to stakeholders as per the waterfall mechanism provided under section 53 of the Code. To respond to emerging needs, the regulatory framework of the liquidation process has been amended on several occasions. With the emergence of new issues, a need is felt to further strengthen the regulatory framework of the liquidation process in terms of certain matters related to sale, accountability of liquidator towards stakeholders, etc.

The liquidator shall constitute an SCC within 60 days from the liquidation commencement date to advise him on matters relating

to sale. SCC having representation from secured financial creditors, unsecured financial creditors, workmen and employees, government, other operational creditors, and shareholder/partners, to advice the liquidator on matters relating to sale. Though constitution of SCC is mandatory during liquidation process, its recommendations were not binding on the liquidator. Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator. In all cases where the liquidator proposes to continue or initiate any legal proceeding, he shall, after presenting the economic rationale for the proposal, seek the advice of the consultation committee. Regulation 31A (11) empowers the SCC to propose to replace the liquidator with a 66% majority and file an application for the same with the adjudicating authority with written reasons for the request.

Insolvency and Bankruptcy Board of India (IBBI) recently issued a circular No. IBBI/LIQ/70/2024 dated 22nd February 2024 which mandates the involvement of Stakeholders' Consultation Committee (SCC) during the preparation of preliminary report in liquidation.

In some liquidation cases, it has been observed that there is a lack of regular communication between the Liquidator and the SCC, which left the stakeholders unaware about the progress and direction of the liquidation, leading to uncertainty and disputes. The amendment in the Regulations, therefore, seeks to address these issues by institutionalizing regular, transparent, and inclusive.

As SCC represents the interests of various stakeholders involved in the liquidation process, by not consulting them while preparing the report, there is a risk of overlooking their concerns, insights, and suggestions, which could be invaluable in preparing a comprehensive and balanced report. Further, stakeholders, through the SCC, might possess critical information or perspectives about the corporate debtor that the Liquidator might not be privy to. Their input can help in ensuring the accuracy and completeness of the report, especially in cases where the books of the corporate debtor are either not available or unreliable.

In accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, Regulation 15 provides that the liquidator shall submit Progress Reports, to the Adjudicating Authority (AA) and the Insolvency and Bankruptcy Board of India (IBBI / Board) within fifteen days after the end of every quarter. Prior to the Circular no. IBBI/LIQ/70/2024 dated 22nd February 2024, IBBI did not involve Stakeholders' Consultation Committee for sharing the progress reports in the liquidation process.

In accordance with the Regulation 15 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator shall submit First Progress Report, in the format stipulated by the Board, to the Adjudicating Authority(AA) and the IBBI within Fifteen days after the end of the quarter in which he is appointed and subsequent Progress Report(s) within fifteen days after the end of every quarter during which he acts as liquidator. If an insolvency professional ceases to act as a liquidator during the liquidation process, he shall file a Progress Report for the quarter up to the date of his so ceasing to act, within fifteen days of such cessation. Though the regulation provides the submission of progress reports to the AA and the Board, it does not get shared with the key stakeholders of the ecosystem, i.e., creditors, thus leaving them unaware of the progress in the process thereby creating information asymmetry.

A Progress Report shall provide all information relevant to liquidation for the quarter, including:

i. **appointment, tenure of appointment and cessation of appointment of professionals;**

ii. **a statement indicating progress in liquidation, including settlement of list of stakeholders, details of any property that remain to be sold and realized, distribution made to the stakeholders and distribution of unsold property made to the stakeholders;**

iii. **details of fee or remuneration, including the fee due to and received by the liquidator together with a description of the activities carried out by him, the remuneration or fee paid to professionals appointed by the liquidator together with a description of activities carried out by them and other expenses incurred by the liquidator, whether paid or not;**

**iv. developments in any material litigation, by or against the corporate debtor;**

**v. filing of, and developments in applications for avoidance of transactions of the Code and**

**vi. changes, if any, in estimated liquidation costs**

Further, Regulation states that the Progress Report shall enclose an account maintained by the liquidator showing his receipts and payments during the quarter and the cumulative amount of his receipts and payments since the liquidation commencement date. Report shall also enclose a statement indicating any material change in expected realization of any property proposed to be sold, along with the basis for such change. The Progress Report for the fourth quarter of the financial year shall enclose audited accounts of the liquidator's receipts and payments for the financial year.

Now, IBBI directed that the liquidator shall also share the progress reports with the members of the SCC after receiving a confidential undertaking. This moves for additional sharing to stakeholders would facilitate substantive engagement with stakeholders prior to significant decisions, thereby ensuring their interests remain paramount.

Circular No. IBBI/LIQ/70/2024 dated 22nd February 2024 also amended Regulation 13 of the Liquidation Regulations which mandates the liquidator to submit a Preliminary Report to the AA detailing various aspects of the corporate debtor and the intended plan of action for carrying out the liquidation process. IBBI has now mandated the involvement of SCC during the preparation of preliminary report in liquidation as the present regulation lacks SCC consultation in preparation of the preliminary report thereby risking oversight of crucial stakeholder insights.

As per Regulation 13 of the Liquidation Regulations, the liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date, detailing the capital structure of the corporate debtor and the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate debtor and whether, he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business thereof and the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

The Preliminary Report, as currently structured, provides an initial estimate of the liquidation costs, and any subsequent changes in the estimated cost are reported in the quarterly progress report. However, there is no mandate to inform the SCC if the actual liquidation costs exceed the estimated costs. The SCC represents the interests of various stakeholders, including creditors, who have a direct financial stake in the liquidation process. As any increase in the liquidation costs would potentially reduce the recoverable amount for these stakeholders, it is crucial for them to be informed promptly about any deviations to ensure complete financial transparency. Early information about cost overruns may enable the SCC to engage in discussions with the Liquidator about alteration in strategy or corrective actions to mitigate further financial deviations.

To bring a solution to above issue, The IBBI stated in the Circular that Liquidators should seek suggestions/ observations of the members of the SCC while preparing the preliminary report. They should finalise the preliminary report only after considering such suggestions/observations of the members of the SCC and thereafter submit it to the AA, Board and members of SCC, it added.

Some of the Experts in the Association of Asset Reconstruction Companies (ARCs) said that The involvement of SCC at the time of preparation of preliminary report in liquidation, will help the liquidator have a more reasoned commercial perspective to finalise best fit strategy in the situation. Further Law experts added that such a protocol will also cultivate ongoing dialogue and updates with creditors, who are key stakeholders in the ecosystem, further augmenting inclusivity and transparency. This Circular marks a positive and welcome step forward with liquidators now be actively disclosing information to the SCC in a timely manner. With this change, the insolvency regime in India is set to be further strengthened, emphasising the importance of inclusive and transparent interaction. Engaging with stakeholders is the ultimate test of an independent and impartial process.

The delicate balance between creditor involvement and the imperative to maintain the liquidator's independence, crucial for the equitable distribution of assets, requires meticulous consideration. As the IBC strives to resuscitate corporate debtors and not merely serve as a creditor recovery mechanism, preserving the integrity of the liquidation process remains paramount.

As part of Final Report, prior to dissolution, Regulation 45 states that the liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern or for the dissolution of the corporate debtor, in cases not covered in above.

Form H discloses details of liquidation process such as Name of Corporate Debtor, Case No and NCLT Bench, details with respect to all dates in relation to opening of liquidation account with Bank A/c details, constitution of Consultation Committee, Date of submission of Quarterly Progress Reports, Date of Final Report to AA (prior to dissolution application).It further discloses the details of the assets as per Asset Memorandum and Final Sale Report, Liquidation value of the liquidation estate, Amount realized during the liquidation process, The amounts distributed to stakeholders as per section 52 or 53 of Code, Details of realisation of security interest by secured creditor under section 52, Details of assignment of not readily realisable assets and details with respect to the Liquidation Process has been conducted as per the timeline indicated in regulation 47.Form H also mentions the deviations non compliances with the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made, or circulars issued there under. Form also confirms about whether the dissolution application has been filed (before expiry of the period of one year/ after expiry of one year). The details of application(s) filed pending in respect of avoidance of transactions and all undischarged or matters pending before any Court or Tribunal relating to corporate debtor, if any, have been reported to AA. The above details are then certified by Liquidator stating that the contents of this certificate are true and correct to the best of his/her knowledge and belief, and nothing material has been concealed there from.

Previously, Form H was amended to capture certain other details regarding the realisation and distribution made during the process. On perusal of Form H filed by the liquidators in various cases, it had been observed that there was a discrepancy in the total amount realised and distributed by the liquidator. For instance, in some cases, the amount distributed has been shown to be more than the amount realised during the process.

**What's changing?**

Previously, the liquidator, appointed to oversee the company's dissolution, held primary decision-making power. Now, an SCC, comprising creditors, employees, operational stakeholders, and government representatives, will be actively involved in crucial decisions.

This includes:

- Approving litigation and other liquidation costs: This ensures funds are used judiciously and stakeholders have a say in their expenditure. There will be no discrepancy in the amounts.
- Cost-benefit analysis of key steps: Stakeholders can evaluate proposed actions and offer valuable insights. Based on progress reports, SCC can plan and provide feedback on certain matters in reports.
- Decisions on running the company as a going concern: Liquidator is not having ultimate power in deciding on going concern basis. In some cases, continuing operations might maximize value, and the SCC will have a voice in this decision.
- Approvals for private sales, fresh valuations, and sale confirmation: This increases transparency in asset sales and distribution of proceeds.

**Benefits of Increased Transparency:**

- Enhanced Trust: Latest amendments to the liquidation process regulations embody a pivotal step towards enhanced accountability, transparency, and stakeholder-centricity by increasing the participation of the SCC and thus, fortifying inclusivity and answerability within the process. Stakeholder involvement fosters trust in the process, minimizing disputes and delays.

- Informed Decisions: The amended regulations mandate associating consultation committee in all critical areas of functioning of liquidator. This reinforces the commercial wisdom and committee-based approach in decision making. Collective wisdom from diverse stakeholders can lead to better-informed decisions.
- Improved Recovery Rates: The new amended regulations calling for approvals from SCCs for litigations or other liquidation costs, cost-benefit analysis of various steps taken under the process would bring efficiency in terms of timelines and value addition. Transparent processes potentially lead to higher asset valuations and recoveries for all stakeholders.
- Accountability: The liquidator is now accountable to the SCC, promoting responsible conduct and emphasises the importance of inclusive and transparent interactions.

**Challenges and the Road Ahead:**

While the reforms are promising, challenges remain. Effective implementation requires:

- Clear guidelines: The roles and responsibilities of the SCC need to be clearly defined to avoid confusion and conflict.
- Capacity building: Stakeholders need training and resources to participate effectively.
- Timely communication: Open communication between the liquidator and SCC is crucial.

The stakeholders–interim resolution professional (IRP), resolution professional (RP), liquidator, committee of creditors (CoC), stakeholders' consultation committee (SCC), have been granted considerable freedom to take commercial decisions to maximise the value of the corporate debtor. For instance, the Code does not spell out the shape of the resolution plan and leaves its delineation to the ingenuity of the stakeholders, while merely stipulating the basic requirements which a resolution plan must fulfil, under section 30. Similarly, regulation 32 read with regulation 33 of the Liquidation Regulations provide the freedom of manner and mode of sale to the liquidator, i.e., he may sell an asset on a standalone basis, assets in a slump sale, assets in parcels, set of assets collectively, the corporate debtor as a going concern or the business(s) of the corporate debtor as a going concern, through auction or private sale (while laying down some basic conditions to be adhered in such situations).

The amendment, therefore, seeks to address these issues by institutionalizing regular, transparent, and inclusive communication mechanisms, ensuring that all stakeholders are adequately informed, engaged, and aligned throughout the liquidation journey.

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# SC on Regaining Control of Corporate Debtor

In one of the recent pronouncements, Apex Court has held that where corporate debtor was a Micro, Small and Medium Enterprise (MSME), it was not necessary for the promoters of corporate debtor themselves to compete with other resolution applicants in the CIRP process so as to regain its control. The NCLAT did not mentioned about any exceptional circumstances in the instant case.

**Relevant Statutory Provisions of IBC, 2016**

***Withdrawal of application admitted under section 7, 9 or 10 (Section 12A)***

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.

***Persons not eligible to be resolution applicant (Section 29A)***

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

The person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

However, this clause shall not apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Only for this purposes, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Also, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under IBC:

(d) has been convicted for any offence punishable with imprisonment-

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

This clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Further this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013);

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

This clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

The expression "connected person" has been defined to mean as follows:

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

However, clause (iii) shall not apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Further, "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, or completion of such transactions as may be prescribed prior to the insolvency commencement date.

Here, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify.

***Application of this Code to micro, small and medium enterprises (Section 240A)***

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.

(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall-

(a) not apply to micro, small and medium enterprises; or

(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.

(3) A draft of every notification proposed to be issued under sub-section (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

(5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

In the view of the aforementioned statutory provisions, factual matrix must be understood first.

**Facts in Brief**

In the instant case, resolution professional filed the appeal against the promoter of corporate debtor (Springfield Shelters Pvt. Ltd.), a MSME entity, being aggrieved against NCLAT, Chennai order in *C. Raja John v. R. Raghavendran, Resolution Professional of Springfield Shelters Pvt. Ltd. (2022) 138 taxmann.com 315 (NCLAT, Chennai).*

NCLAT found the resolution plan of respondent to be ineligible for consideration on account of the status of the respondent as a promoter as the entity was not an MSME and thus incurred the disqualification under Section 29(A)(e) of the IBC and an exception for MSME would not be carved out in the facts of the present case. NCLAT observed that the entity was an MSME and had that status prior to the proceedings, the plan submitted by respondent was liable to be considered. NCLAT held that keeping in view of the object to the Code, 'the maximization of the value of the assets of corporate debtor', the Promoters

of the Corporate Debtor being an MSME, were not necessary to compete with other Resolution Applicants to regain control of the corporate debtor.

However, resolution professional went ahead to invite other plans and thereafter e-voting tool place. On the anvil of the results of e-voting to be declared, contempt proceedings were filed by respondent alleging that the resolution professional was not acting in terms of the NCLAT order. Resolution professional therefore, appealed before the Supreme Court by way of the instant appeal.

**Apex Court's Observation**

The NCLAT judgment envisages maximization of value of assets of the corporate debtor. Thereafter, it discussed the scenario of a corporate debtor, which is an MSME, qua the ineligibility in terms of the inapplicability of Section 29A (c) & (h) of the IBC Code to a promoter.

Further, in "exceptional circumstances" if a corporate debtor is an MSME, it is not necessary for promoters to compete with other resolution applicants to retain control of the corporate debtor. The judgment was predicated on a broad reasoning as if *ipso facto* there is no need to call other proposals if it is an MSME.

However, Apex Court observed that this may not be the correct position of law. Apex Court was clearly of the view that the appellant cannot be faulted for calling for other proposals in which the proposal given by respondent was also to be examined, put them to voting before the CoCs and declare the results. The impugned order was thus, set aside.



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# Sustainable Turnaround: Redefining Debt Resolution through India's IBC Evolution

## 1. INTRODUCTION

The pivotal shift towards integrating sustainability into the debt resolution framework under India's Insolvency and Bankruptcy Code (IBC) reflects a growing consensus among industry experts. Numerous professionals, investors, and stakeholders contend that sustainability should be a guiding principle, irrespective of whether the bankruptcy code explicitly specifies it or not. The evolving dialogue recognizes that codifying sustainability within the IBC would not only underscore its significance but also accelerate its widespread adoption.

This transformative proposal aligns with the broader Environmental, Social, and Governance (ESG) framework, emphasizing the forward-looking nature of sustainability. ESG considerations extend beyond immediate financial aspects, incorporating the anticipation of future risks, whether they be market-related dynamics, technological shifts, or other potential challenges. Recognizing these risks is fundamental to formulating successful, viable, and sustainable

resolution plans, and any approach falling short of this comprehensive evaluation would inherently be incomplete.

## 2. CURRENT SCENARIO:

In the current landscape, the utilization of the Insolvency and Bankruptcy Code (IBC) is primarily steered by financial creditors, including banks and institutions, as well as operational creditors, such as suppliers tethered to distressed companies. As major stakeholders shaping the destiny of businesses undergoing insolvency proceedings, these entities wield substantial influence in determining the trajectory of debt resolution plans.

The traditional approach under the IBC has been inherently focused on a narrow spectrum of financial and legal considerations. Financial creditors, driven by the imperative to recover their dues, have primarily concentrated on ensuring that resolution plans adhere to stipulated legalities and address immediate financial obligations. Operational creditors, too, have predominantly sought assurances of timely payments, often neglecting broader environmental and sustainability concerns in their pursuit of debt recovery. However, as the discourse surrounding the integration of sustainability gains momentum, financial and operational creditors find themselves at a pivotal juncture.

## 3. PROPOSED CHANGES: NAVIGATING A SUSTAINABLE PATH IN DEBT RESOLUTION:

The proposed paradigm shift goes beyond mere acknowledgment; it envisions sustainability as a decisive factor in debt resolution, marking a departure from conventional approaches. This transformative move necessitates a comprehensive evaluation of distressed companies, prompting a potential evolution in the technical parameters for selecting winning bidders to incorporate considerations for sustainable business rescue options.

**3.1** Recent developments have seen senior functionaries of the insolvency regulator IBBI advocating for a legal amendment mandating the explicit consideration of ESG factors during the evaluation of resolution plans for stressed firms. This proposition aligns with the global emphasis on sustainability. Furthermore, it recommends expanding the role of insolvency professionals to include the nuanced assessment of ESG risks and opportunities during the restructuring process.

**3.2** The impact of these proposed changes is substantial, notably on the evaluation matrix within the IBC. This shift could effectively encourage investors to infuse an ESG focus into their resolution plans for stressed assets. A targeted starting point could be the amendment of Section 30(2) of the IBC, governing the submission of resolution plans, to align with the broader goal of preserving economic value, promoting sustainable practices, and considering the interests of a broader stakeholder group.

**3.3** To operationalize this approach, the IBBI could introduce regulations stipulating specific ESG criteria and delineating the process for their seamless integration into resolution plans. This flexible framework would allow for the tailored consideration of ESG factors based on the unique circumstances of each case and sector. As experience accumulates, there could be a progression towards making ESG factors mandatory.

**3.4** Encouraging voluntary commitment by corporate debtors to integrate ESG considerations into the insolvency process becomes another key recommendation. Judicial interpretation of existing legal provisions to incorporate ESG principles could also play a pivotal role in embedding sustainability into insolvency and restructuring processes.

**3.5** Simultaneously, there's a pressing need for a concerted effort to enhance the understanding and capacity of insolvency professionals and relevant stakeholders in dealing with ESG issues. Dedicated training programs and resources are essential components of this collective endeavor, ensuring that the integration of ESG principles becomes a seamless and effective aspect of the insolvency and restructuring landscape. In embracing these changes, the journey toward sustainable

debt resolution becomes not just a legal and procedural shift but a cultural transformation fostering resilience, responsibility, and a future-ready business ethos.

**4. EXPERT CONSENSUS:**

The consensus among experts is resounding – sustainability should be a guiding principle in the realm of debt resolution. While the existing bankruptcy code may not explicitly outline sustainability considerations, experts unanimously agree on its pivotal role in shaping the future of business rescues.

The absence of explicit directives within the code does not diminish the urgency and importance of incorporating sustainability principles. Experts argue that codifying sustainability would not only underscore its significance but also expedite its widespread adoption by professionals, investors, and other stakeholders involved in the intricate process of debt resolution. This expert consensus reflects a broader understanding that the success of debt resolution plans isn't solely contingent on immediate financial and legal parameters.

Sustainability is seen as a linchpin, ensuring that businesses not only recover but do so in a manner that is resilient, responsible, and aligned with evolving global expectations.

**5. KEY PERSONS WHOSE ROLE IS MOST CRUCIAL IN INTRODUCING ESG IN IBC:**

**5.1 Valuation professionals**: In this evolving landscape, valuation professionals emerge as key players in the integration of sustainability into the debt resolution process. Their role extends beyond traditional financial assessments to include a nuanced understanding of the environmental footprint of distressed businesses. By factoring in sustainability considerations, valuation professionals contribute not only to a more comprehensive evaluation of distressed assets but also align with the broader ethos of responsible and forward-thinking business practices.

**5.2 Insolvency Professionals:** As custodians of the restructuring process, insolvency professionals play a crucial role in aligning businesses with sustainable practices. This involves expanding their purview to encompass a thorough analysis of ESG factors that may impact the distressed company's resilience and long-term viability. This expanded role requires a nuanced understanding of the interplay between financial imperatives and ESG considerations. Insolvency professionals are now tasked with conducting comprehensive Environmental Impact Assessments to identify and mitigate environmental risks associated with distressed companies. They must also factor in social considerations, ensuring fair and ethical treatment of employees.

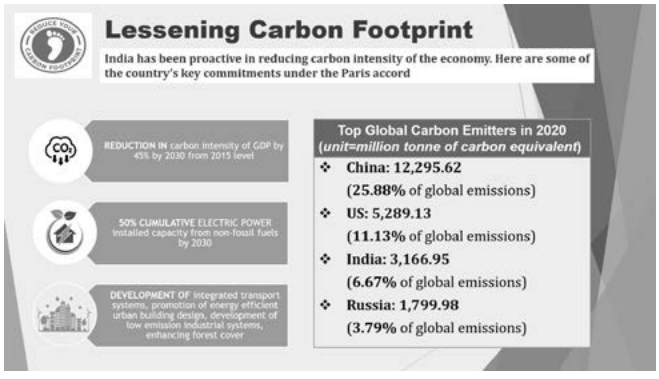
**6. KEY ADVANTAGES OF ESG INTEGRATION IN IBC:**

This integration requires a forward-looking approach, acknowledging that the sustainability of projects hinges on considering and mitigating potential risks today. Factors such as emissions reduction costs and investments in new machinery and technology throughout the project's lifecycle become integral components of a robust ESG-integrated resolution plan. The ESG framework, therefore, serves as a compass, guiding businesses towards not only financial recovery but also long-term sustainability and resilience.

**6.1 Global Recognition:** The integration of sustainability into debt resolution strategies holds the potential to elevate India's standing on the world stage. With the World Bank advocating a transition from the current "Doing Business" ranking to the forward-looking "Business Ready" Report, India is positioned to garner international acclaim for its commitment to sustainable business practices. This transformative shift transcends local adjustments; it represents a strategic maneuver in harmony with the evolving global ethos that underscores the importance of responsible and sustainable business conduct. A positive evaluation in the proposed global report could not only enhance India's international standing but also signal to the global business community that sustainability is a crucial determinant of competitiveness. This aligns with the growing expectation that businesses should not only prioritize profits but also operate with a conscientious

commitment to environmental and social responsibilities.

### 6.2 Major contribution towards India's climate commitments:




*Source: ClimateWatch, an official online tool*

**The Top-Line Targets from India's climate commitments**

| Latest Nationally Determined Contribution (NDC) | Long Term Strategy | Net-Zero Target |
|---|---|---|
| **GHG Target**<br>India commits to reducing its emissions intensity by 45% by 2030 compared to 2005 levels. | ➢ Quantified Long-Term Emissions Goal<br>➢ Net-zero emissions by 2070 | **Net-Zero Target Status :**<br>➢ In Policy Document (8/26/2022, 11/14/2022)<br>➢ In Political Pledge (11/1/2021) |
| **Mitigation Contribution Type**<br>GHG target and non-GHG target | **Submission Date :11/14/2022** | **Net-Zero Target Year : 2070** |
| **Adaptation Included - Yes**<br>Also India has updated its First NDC | **Long-Term Strategy Document**<br>India's Long-Term Low-Carbon Development Strategy | **Net-Zero Target Source**<br>➢ India's Long-Term Low-Carbon Development Strategy (11/14/22),<br>➢ India's Updated First NDC under Paris Agreement (8/26/2022)<br>➢ Speech during COP26 World Leaders Summit (11/1/2021) |

Source: https://www.climatewatchdata.org/countries/IND?end_year=2020&start_year=1990#ndc-adaptation

## 7. CHALLENGES AHEAD:

While the prospect of integrating sustainability into debt resolution strategies holds promise, it is not without its set of challenges. The transition from conceptualization to implementation is a multifaceted journey, requiring a nuanced understanding of the complexities involved.

At the first stage, stakeholders must grapple with the inherent tensions between financial imperatives and sustainability goals. Striking a balance that ensures both economic recovery and environmental responsibility is a delicate task, requiring innovative solutions and collaborative efforts. The challenges ahead underline the transformative nature of this endeavor and emphasize the need for a concerted, multi-stakeholder approach to navigate the complexities and usher in a new era of sustainable debt resolution.

And then at the next stage, Challenges may encompass: (i) Regulatory Hurdles, (ii) the need for industry-wide consensus, and (iii) the development of standardized frameworks for assessing sustainability in debt resolution.

## 8. CONCLUSION:

As we witness a profound shift in the business landscape towards sustainability, insolvency professionals emerge as trailblazers at the forefront of this transformative journey. Their expanded role, encompassing the consideration of ESG risks and opportunities during the restructuring process, transcends mere compliance, it becomes a strategic imperative. This evolution is not merely procedural; it marks a cultural transformation that insolvency professionals are leading. By deftly navigating the intricate interplay between financial recovery and sustainability, they cease to be mere architects of corporate restructuring; they become architects of resilience, responsibility, and future-ready businesses. The significance of this expanded role extends far beyond the immediate realm of distressed companies. It positions these professionals as catalysts for change, steering businesses towards a more sustainable and equitable future. In embracing a holistic approach to restructuring, they not only breathe new life into struggling enterprises but also imbue them with a sense of purpose contributing to a world where business success is inseparable from social and environmental responsibility. As insolvency professionals redefine their role, they are not just shaping the fate of companies; they are shaping the landscape of a more sustainable and just tomorrow.

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   *https://www.climatewatchdata.org/*

**Piyana Bandyopadhyay**
**Organization Development Lead- Blackberrys**

# Cross-border Insolvency source landscape of Indian Apparel Industry.

The apparel industry is characterized by global supply chains, international distribution networks, and outsourcing practices, which often involve contracts, assets, and creditors across multiple jurisdictions. As a result, cross-border insolvency issues in the apparel industry can be particularly complex and challenging to resolve.

India sources fabric from a variety of countries around the world to meet its diverse textile and garment manufacturing needs. So, it is important to understand the cross-border insolvency and bankruptcy laws of these countries. Some of them are signatories of UNCITRAL Model Law on Cross-Border Insolvency while others are not. It is crucial to know it for resolving complex cases involving international creditors, assets, and operations. Here's a brief piece of information about countries from which India sources its fabric.

**Italy:** Italy is renowned for its premium textiles and luxury fabrics, including silk, wool, and fine cottons. The main legislation governing bankruptcy in Italy is the Italian Bankruptcy Law, which is primarily contained in the Italian Civil Code and the Italian Bankruptcy Law. It provides procedures for the liquidation of insolvent companies (fallimento) and the restructuring of financially distressed companies

(concordato preventivo." In addition to bankruptcy proceedings, Italian law provides for a procedure known as "concordato preventivo" for the composition with creditors. Concordato preventivo allows financially distressed companies to propose a restructuring plan to their creditors, which, if approved, can lead to the continuation of the business and the settlement of debts so that the debtor can prevent bankruptcy. Italy has incorporated the UNCITRAL Model Law on Cross-Border Insolvency into its legal system. It provides a framework for the recognition and enforcement of foreign insolvency proceedings in Italy and facilitates cooperation between Italian courts and foreign courts in cross-border insolvency cases. Italian law allows for the recognition and enforcement of foreign bankruptcy orders in Italy in accordance with the UNCITRAL Model Law on Cross-Border Insolvency. Foreign creditors seeking to enforce their rights in Italian insolvency proceedings must apply to the Italian court for recognition of the foreign bankruptcy order. Italy is a party to various international agreements and conventions related to cross-border insolvency, including the European Insolvency Regulation (Recast) and the European Convention on Certain International Aspects of Bankruptcy. These agreements provide mechanisms for cooperation between Italy and other countries in cross-border insolvency cases, including the recognition and enforcement of foreign insolvency proceedings and the coordination of asset recovery efforts. Overall, Italy has comprehensive legislation and mechanisms in place for dealing with cross-border insolvency cases, including recognition and enforcement of foreign insolvency proceedings and international cooperation agreements. Foreign creditors seeking to enforce their rights in Italian insolvency proceedings should consult with legal experts familiar with the Italian legal system and procedures.

**China:** China is one of the largest suppliers of fabric to India. It produces a wide range of fabrics, including cotton, polyester, silk, and blends, at competitive prices. China's main bankruptcy law is the Enterprise Bankruptcy Law (EBL), which governs insolvency proceedings for enterprises, including both state-owned and private companies. Cross-border insolvency cases in China are primarily governed by bilateral agreements and treaties. China is not a signatory to the UNCITRAL Model Law on Cross-Border Insolvency.

**South Korea:** South Korea is known for its high-quality technical textiles and advanced manufacturing capabilities. Indian textile companies import fabrics from South Korea for various applications, including sportswear, outerwear, and industrial textiles. South Korea's main insolvency law is the Debtor Rehabilitation and Bankruptcy Act (DRBA), which governs corporate insolvency proceedings. South Korea has adopted the UNCITRAL Model Law on Cross-Border Insolvency, providing a framework for the recognition and enforcement of foreign insolvency proceedings.

**Bangladesh:** Bangladesh is another significant source of fabric for India, particularly for woven textiles. Indian garment manufacturers often import fabrics from Bangladesh for further processing and export. Bangladesh's insolvency laws are primarily governed by the Companies Act, 1994, which provides for the winding up of insolvent companies. Cross-border insolvency cases in Bangladesh are relatively uncommon, and there is limited guidance on how such cases would be handled under Bangladeshi law..

**Indonesia:** Indonesia is a major producer of natural fibres such as cotton and rayon, as well as synthetic fibres like polyester. Indian textile manufacturers import fabrics from Indonesia for use in apparel, home textiles, and industrial applications. Indonesia's insolvency laws are primarily governed by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU Law).Indonesia is not a signatory to the UNCITRAL Model Law on Cross-Border Insolvency, and there is limited guidance on how cross-border insolvency cases would be handled under Indonesian law.

**Vietnam:** Vietnam has emerged as a significant supplier of fabrics to India in recent years. Vietnamese textile mills produce a wide range of fabrics, including denim, knits, and synthetic textiles, which are imported by Indian garment manufacturers for domestic consumption and export. Vietnam's main insolvency law is the Law on Bankruptcy, which governs bankruptcy proceedings for enterprises. Vietnam is not a signatory to the UNCITRAL Model Law on Cross-Border Insolvency.

**Thailand:** Thailand is known for its specialty fabrics, including silk, satin, and technical textiles. Indian textile companies import fabrics from Thailand for use in high-end apparel, home furnishings, and other luxury products. The main legislation governing bankruptcy in Thailand is the Bankruptcy Act B.E. 2483 (1940).The Bankruptcy Act provides procedures for the liquidation of insolvent debtors and the distribution of their assets to creditors. In addition to bankruptcy proceedings, Thailand has the Rehabilitation of Business Act B.E. 2559 (2016), which provides for the rehabilitation of financially distressed businesses. The Rehabilitation of Business Act aims to facilitate the restructuring and rehabilitation of viable businesses to avoid liquidation. Thailand is not a signatory to the UNCITRAL Model Law on Cross-Border Insolvency. However, Thailand has provisions in its bankruptcy laws for dealing with cross-border insolvency cases, including provisions for the recognition and enforcement of foreign insolvency proceedings. Foreign creditors seeking to enforce their rights in Thai insolvency proceedings must apply to the Thai court for recognition of the foreign bankruptcy order. Thailand has entered into bilateral agreements and treaties with certain countries to facilitate cooperation in cross-border insolvency cases. These agreements may provide mechanisms for the recognition and enforcement of foreign insolvency proceedings and the coordination of cross-border asset recovery efforts.

**Turkey:** Turkey is a leading producer of textiles and clothing, known for its high-quality cotton fabrics, denim, and knitwear. Indian garment manufacturers import fabrics from Turkey for various applications, including fashion apparel and home textiles. The Turkish Commercial Code (TCC) governs corporate insolvency and bankruptcy proceedings in Turkey. The TCC provides for the liquidation of insolvent companies and the distribution of their assets to creditors. Turkey is not a signatory to the UNCITRAL Model Law on Cross-Border Insolvency.

However, TCC allows for the recognition and enforcement of foreign bankruptcy orders in Turkey. It's commercial laws provide mechanisms for dealing with cross-border insolvency cases. Foreign creditors seeking to enforce their rights in Turkish insolvency proceedings should consult with legal experts familiar with the Turkish legal system and procedures.

With time, there will be more awareness and efforts with an urge to reach global agreements in strengthening laws to provide faster resolutions in cross border cases. India with its ever growing apparel market will also definitely benefit a lot from it.

# Global Arena



# Restructuring & Insolvency in Japan

The insolvency in Japan are primarily governed by the Civil Rehabilitation Law, Corporate Reorganization Law and the Bankruptcy Law. These laws aim to provide a framework for companies and individuals in financial distress to reorganize their affairs and restructure their debts, or in the case of bankruptcy, to liquidate the company's assets and distribute them among the creditors.

## THE CIVIL REHABILITATION LAW, 1999

Under the Civil Rehabilitation Law, a debtor can file for civil rehabilitation proceedings (*Minji Saisei*) if it is unable to pay its debts as they become due. The goal of civil rehabilitation is to rehabilitate the debtor's business and enable it to continue its operations. The debtor prepares a rehabilitation plan, which is subject to approval by the court and creditors. If approved, the court will supervise the implementation of the plan, which may include debt restructuring, asset sales, or other measures to improve the debtor's financial situation.

Civil rehabilitation proceedings are used for the rehabilitation of companies of almost any size and type, and for the rehabilitation of individuals. Either a debtor or a creditor can file a petition to court for the commencement of civil rehabilitation proceedings.

The CRL provides for a "summary rehabilitation proceeding" or a "consensual rehabilitation proceeding" to avoid the time-consuming process of the full proceeding. A summary rehabilitation proceeding is a "quasi-prepackaged plan", which requires the consent of creditors holding at least 60% of the total amount of unsecured claims at the time of filing. This proceeding eliminates the examination of the proof of claims, the result of which is confirmation and allowance of the filed claims. However, the proceeding requires the acceptance of the plan at the creditors' meeting. A consensual rehabilitation proceeding is even quicker and simpler than a summary rehabilitation proceeding because it requires neither the creditors' meeting nor the examination of the claims. This proceeding, however, requires the unanimous consent of all creditors.

## THE CORPORATE REORGANIZATION LAW, 1952

The Corporate Reorganization Law applies to corporations and allows for the reorganization and

restructuring of financially distressed companies. A company can file for corporate reorganization proceedings (*Kaisha Kosei*) if it is insolvent or in danger of becoming insolvent. Such proceedings are more rigid than civil rehabilitation proceedings. The company must prepare a reorganization plan, which is subject to approval by the court and creditors. If approved, the court will supervise the implementation of the plan, which may involve debt restructuring, asset sales, or other measures to restore the company to a viable financial condition.

Corporate Reorganization Proceedings can be initiated only against a stock company by a debtor or by a creditor (or creditors) holding aggregate claims equal to 10% or more of the paid-in capital of the debtor or by a shareholder (or shareholders) holding 10% or more of the voting rights in the debtor.

Both the Civil Rehabilitation Law and the Corporate Reorganization Law provide for a stay on enforcement actions, such as debt collection or foreclosure, during the insolvency proceedings. This allows the debtor or company to focus on negotiating and implementing a restructuring plan without the risk of immediate creditor action.

## THE BANKRUPTCY ACT, 2004

In addition to these laws, Japan also has a bankruptcy law called the **Bankruptcy Act**. The Bankruptcy Act applies to individuals and businesses that are unable to pay their debts and provides for the liquidation of assets to repay creditors. Unlike civil rehabilitation and corporate reorganization, bankruptcy typically involves the complete winding up of the debtor's affairs and the distribution of its assets to creditors.

Bankruptcy proceedings (*Hasan*) are proceedings for the winding up of a debtor in financial difficulty. In principle, all of the assets of the debtor will be sold, converted into cash, and then distributed to creditors, depending on the amount of their claims. Bankruptcy proceedings are applicable not only to legal persons but also to natural persons. In principle, either a debtor or a creditor can file a petition. In addition, a representative of a legal person such as a director of a stock company can file a petition. The court will issue a commencement order and appoint a trustee to manage the bankruptcy estate, which consists of all assets that belong to the debtor at the time of the commencement order. Eventually, the bankruptcy estate is liquidated into cash, which will be distributed to claim-holders in order of priority.

Overall, Japan's insolvency regime provides options for both rehabilitation and liquidation of financially distressed individuals and businesses. The Civil Rehabilitation Law and the Corporate Reorganization Law aim to help debtors and companies get back on track financially, while the Bankruptcy Act provides a mechanism for the orderly liquidation of insolvent entities.

## SPECIAL LIQUIDATION PROCEEDINGS

Special liquidation proceedings, governed by the Companies Act, is a form of liquidation that is available only to stock corporations that have been placed into a voluntary liquidation process by the corporation's shareholders. Special liquidation is a simpler, less onerous and more expeditious form of liquidation than bankruptcy. It is frequently used by a parent company to liquidate loss-making subsidiaries.

In special liquidation, the liquidator who has been appointed by the debtor continues to hold control and possession of the debtor's property. The liquidator's activities are subject to the court's supervision. The liquidator must obtain the court's permission if it plans to, inter alia, dispose of an asset, borrow money, file an action, enter into a settlement or an arbitration agreement, or waive the rights of the corporation.

**Out-of-court corporate workouts**

**1. Turnarounds of SMEs**

In March 2022, the Ministry of Economy, Trade and Industry, in collaboration with the Financial Services Agency and the Ministry of Finance, has formulated the SME Vitalisation Package to support small and medium-sized enterprises (SMEs) facing increasing debt and challenging business conditions. This package includes measures such as emergency loans, tax and social insurance premium deferral, support for profitability improvement, and guidelines for out-of-court debt workouts.

SMEs can undergo out-of-court workouts based on guidelines for business turnaround, which involve negotiating with major creditors and appointing third-party support experts. They must formulate a business

revitalisation plan addressing debt resolution, income surplus, cash flow ratio, and shareholder responsibilities. If all major creditors agree to the plan, it is confirmed, and regular monitoring is conducted for three fiscal years.

Additionally, there are procedures for business discontinuation, allowing SMEs to draft measures for liquidating assets if the business is unlikely to continue, under the guidance of third-party support experts and major creditors.

The SME Vitalisation Council previously supported these procedures but now SMEs can proceed independently with the consent of target creditors, aiming to accelerate their business revitalisation efforts in the post-covid-19 era.

**2. Turnaround ADR**

Turnaround ADR is another popular rule-based out-of-court workout procedure in which third-party experts coordinate communications between creditors, such as financial institutions, and debtors to support debtor companies' early-stage business revitalisation. The Japanese Association of Turnaround Professionals, as a specific certified dispute resolution business operator, is responsible for conducting ADR procedures.

The process requires unanimous consent from relevant creditors and provides support measures for a smooth transition to in-court insolvency procedures if needed. A recent case happens, where a company had to abandon the ADR process due to failure in obtaining consent from a minority of financial institutions. To address such issues, there are discussions about potential amendments to the ADR process to allow for a cramdown through majority creditor votes, as well as the establishment of legislation for out-of-court workouts for business restructuring. These amendments could further facilitate the use of rule-based workout initiatives in Japan.

**3. Special Conciliation**

The process for special conciliation is governed by the Act on Special Conciliation Proceedings for Expediting Arrangement of Specified Debts. Special conciliation pertains to an adjustment or arrangement of debts to contribute to the economic rehabilitation of debtors who are likely to become unable to pay debts. It thereby aims to expedite the arrangement of interests pertaining to the debts of the debtors.

According to article 17 of the Civil Conciliation Act, if an agreement among the parties is unlikely to be reached, the court may issue an order to resolve the case. The order has the same effect as a successful conciliation if no parties object within a certain period, and the court announces positive use of the order as necessary.

**Japan to introduce long-awaited majority voting rule for out-of-court workout**

In Japan, any out-of-court workout requires the unanimous consent of all creditors to a restructuring plan. On October 4, 2022, the Japanese government announced the "Direction of Legislation for New Business Restructuring (Draft)" to consider the introduction of a majority rule in informal restructuring proceedings. Under the proposed new rules, a restructuring plan will be binding if a majority vote of creditors and confirmation of the court is obtained. The Japanese Government aims to submit a bill to introduce such majority rule with in-depth discussions. The Direction is expected to undergo further refinement and consultation before being presented to the Diet for approval.

**Revitalizing Japan's Secured Transactions Law after 120 Years: A Paradigm Shift**

On 20 January 2023, the Interim Proposal on the Reform of Secured Transaction Law ("**Interim Proposal**") was published by the Japanese government. The Interim Proposal is, among other things, intended to govern security interests created by secured transactions, such as security assignments and sales with retention of title, that have been recognized by court precedents. The Interim Proposal expressly allows for the creation of multiple security interests over a single asset through multiple security assignments. The Interim Proposal also clarifies that the subordinated secured party can enforce its security interest only when it obtains consent from all senior secured parties.

The traditional reliance on real estate collateral and personal guarantees in Japanese bank lending, making it challenging for SMEs and startups without extensive real estate assets to access financing. As a result, there is a demand for more diverse financing

options, leading banks to consider movable property and receivables as collateral. However, the absence of specific statutory rules has led to the formation of rules through court precedents, which may lack clarity and leave legal questions unanswered. Consequently, the government is considering the review of current law on secured transactions to enhance commercial certainty, and has compiled an Interim Proposal for this purpose.

It is proposed that the existing rules on the treatment of security interests during insolvency proceedings be extended to security assignments. Secured creditors would be able to exercise and enforce their rights under the security assignment separately from the bankruptcy proceedings or civil rehabilitation proceedings for the assignor. However, in the case that the assignor is subject to corporate reorganization proceedings, security interests created by way of security assignment will not be separately enforceable. The claims secured by security assignment will only be repaid in accordance with the reorganization plan, under which holders of such claims (i.e., secured creditors) will enjoy first priority to the extent of the value of their collateral. Any contractual provision that causes the release of ownership by the assignor of any assets subject to security assignment upon the filing of civil rehabilitation proceedings or corporate reorganization proceedings will be void.

If these reforms successfully passed by the Diet as proposed in the Interim Proposal, the forthcoming legislation will be a revolutionary reform of Japanese law on secured transactions and may make financing transactions more diverse, secure and predictable. The new reform is expected to have a significant impact on Japanese financial transactions and corporate restructurings.




***Mandamus***

A writ or order that is issued from a court of superior juris diction that commands an inferior tribunal/ court to perform, or refrain from performing, a particular act, the performance of which is required by law as an obligation.

***Sub Silentio***

When a rule or principle on a particular point of law in a decision is passed and applied by the court in silence without any consideration to the applicable law or any argument.

***Vigilantibus et non dormientibus jura sub veniunt***

Law aids the vigilant and not the dormant or laws aid/ assist those who are vigilant, not those who sleep upon/ over their rights.

***Nemo Debet Esse Judex in Propria Sua Causa***

No man can be judge in his own case. No one ought to be a judge in his own cause.

***Malum prohibitum***

In a way, opposite of Malum in se. It means 'crimes are criminal not because they are inherently bad, but because the act is prohibited by the law of the state.' For example, jurisdiction in India requires drivers to drive on the left side of the road. This is not because driving on the right side of a road is considered immoral, but because the law says to drive on the left side and not on the right side.

***Judicium non debet esse illusorium, suum effectum habere debet***

A judgement ought not to be illusory; it ought to have its proper effect.

***Nova Constitutio Futuris Formam Imponere Debet, Non Praeteritis***

A new law ought to be prospective and not retrospective, in operation.

***Nemo Potest esse tenens et dominus***

Nobody can be both a landlord and a tenant of the same property.

***Novation***

Transaction in which a new contract is agreed by all parties to replace an existing contract.

# Judgments

## JUDGMENTS

**Case Title:** Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr.
**Case no.:** Civil Appeal Nos. 7590-7591 OF 2023
**Decision Date:** February 12, 2024
**Court/Tribunal:** Supreme Court of India, New Delhi

### FACTS:

- The Appellant acquired a land for setting up an urban and industrial township. One of the plots of land acquired was allotted, by way of lease for 90 years, to M/s. JNC Construction (P) Ltd (the Corporate Debtor) for a residential project, by charging premium, payable in instalments.
- A Company Petition No. (IB) 272 (PB)/ 2019 was filed against the CD for initiating CIRP, which was admitted by the Adjudicating Authority (AA) on 30.05.2019. Consequent thereto, claims were invited through a public announcement.
- Pursuant to the public notice, appellant submitted a claim of Rs. 43,40,31,951, being unpaid instalments payable towards premium for the lease. The claim was set up by the appellant as a financial creditor of the CD.
- However, the RP treated the appellant as an operational creditor and, vide e-mail dated 04.02.2020, requested the appellant to submit its claim in Form B, as an operational creditor of the CD.
- The appellant did not submit its claim afresh as an operational creditor. In the meantime, the COC approved a plan which was presented to the AA for approval. The AA vide order dated 04.08.2020 approved the same.
- On getting information of the same, the appellant filed an application questioning the resolution plan, the decision of the RP to treat the appellant as an operational creditor, and all actions in pursuance thereof. Another application was filed seeking recall of the said order.
- The AA rejected the aforesaid applications. Aggrieved with the order of the AA the appellant filed an appeal before the NCLAT. The NCLAT also dismissed the appeal observing that the lease executed by the appellant was not a financial lease or capital lease, the appellant does not qualify as a financial creditor;

- Therefore, the appellant preferred this appeal before Supreme Court of India under Section 62 of the IBC, 2016. The question arises before this Court is whether the AA can recall an order of approval passed under sub-section (1) of Section 31 of the IBC.

**DECISION:**

- The Court noted that a Tribunal or a Court is invested with such ancillary or incidental powers as may be necessary to discharge its functions effectively for the purpose of doing justice between the parties and, in absence of a statutory prohibition, in an appropriate case, it can recall its order in exercise of such ancillary or incidental powers.
- The Court also noted that in a recent decision (i.e., Union Bank of India vs. Dinkar T. Vekatasubramanian & Ors.) of NCLAT held that though the power to review is not conferred upon the Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT Rules, 2016.
- The Court observed that in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/ or to prevent abuse of the process of the Court.
- Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to re-hear the matter.
- Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court /Tribunal resulting in gross failure of justice.
- In this case the application was filed by claiming that the appellant was not informed, the proceedings were ex-parte, the RP misinterpreted the claim amount and there was gross mistake on part of the AA in approving the resolution plan.
- The Court held that the aforesaid grounds are valid to recall an order of approval. Hence, the recall application was maintainable notwithstanding that an appeal lay before the NCLAT against the order of approval passed by the AA.
- The Court is of the considered view that the appeals of the appellant are entitled to be allowed and are accordingly allowed. The impugned orders are set-aside.

**CASE REFERRED:**

Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal; Grindlays Bank Ltd. vs. Central Govt. Industrial Tribunal; State of Punjab vs. Davinder Pal Singh Bhullar; New India Assurance Co. Ltd. vs. Krishna Kumar Pandey; Budhia Swain vs. Gopinath Deb; Union Bank of India vs. Dinakar T. Vekatasubramanian & Ors.; Union Bank of India vs. Financial Creditors of M/s Amtek Auto Ltd. & Ors.

**Case Title:** Ansal Crown Heights Flat Buyers Association Vs. M/S. Ansal Crown Infrabuild Pvt. Ltd. & Ors.
**Case no.:** Civil Appeal No(S). 4480-4481 Of 2023 with Civil Appeal No(S). 4247 Of 2023
**Decision Date:** January 17, 2024
**Court/Tribunal:** Supreme Court of India, New Delhi

**FACTS:**

- The Homebuyers filed a Complaint before the National Consumer Disputes Redressal Commission (the National Commission).
- The National Commission made an order directing the developer/CD to complete the project in all respects and handover the possession of the allotted flats/apartments to the members of the Association of the homebuyers within the time specified.

- The Adjudicating Authority (AA) has admitted the petition filed under Section 9 of the IBC, 2016 against the CD.
- The Appellant filed execution application to execute such direction against the CD and several other individuals.
- The National Commission by impugned order held that the decree cannot be executed against the Company/ CD due to operation of Moratorium under section 14 of the IBC.
- The National Commission also observed that in view of moratorium against the company/CD, it would not be appropriate to proceed in the same execution against the opposite party Nos. 2 to 9/ other individuals.
- The Appellant filed the appeal against the impugned order and submitted that under the provisions of the IBC, there is no prohibition on proceedings against the directors/officers of the company, which is the subject-matter of moratorium under Section 14 of the IBC.

**DECISION:**

- The Court noted that the National Commission has not made any adjudication on the question whether the opposite party Nos. 2 to 9 (the respondent Nos. 2 to 9) in the execution application were under an obligation to abide by the directions issued against the Company.
- There is no finding recorded by the National Commission that in view of any particular provision of the IBC, moratorium will apply to the directors/ officers of the company.
- The Court also noted that notwithstanding moratorium, the liability, if any, of the directors/ officers will continue. This Court, therefore, permitted the appellants to expressly proceed against the promoters of the company though there was a moratorium under Section 14 of the IBC affecting the company.
- The Court also observed that only because there is a moratorium under Section 14 of the IBC against the company, it cannot be said that no proceedings can be initiated against the opposite party for execution, provided that they are otherwise liable to abide by and comply with the order, which is passed against the company.
- The protection of the moratorium will not be available to the directors/officers of the company. Therefore, the Court set aside the impugned judgments and orders and remit the execution application to the National Commission.

**CASE REFERRED:**

P. Mohanraj vs. Shah Bros. Ispat (P) Ltd.; Anjali Rathi and others vs. Today Homes and Infrastructure Pvt. Ltd. And Others

**Case Title:** Deputy Commissioner (Works Contract) Vs. National Company Law Tribunal & Ors.

**Case no.:** WP(C) NO. 39185 OF 2022

**Decision Date:** January 30, 2024

**Court/Tribunal:** High Court, Kerala

**FACTS:**

- The 2nd respondent, M/s Albanna Engineering (India) Private Limited, a Corporate Debtor, was admitted into Corporate Insolvency Resolution Process (CIRP) on 25.10.2019 under Section 9 of the IBC, 2016.
- The Adjudicating Authority (AA) declared Moratorium under Section 14 of the IBC. The Moratorium existed till the day on which the liquidation order was passed.
- On verification of the assessment records of the CD pertaining to the period 2015-16 certain irregularities were noticed. Hence, notice under Section 25(1) of the KVAT Act was issued to the CD.
- The assessment for the year 2015-16 was completed vide Order dated 25.02.2021, and the total liability of KVAT was determined to be Rs.11,76,35,628.70, which would include interest of Rs.4,31,82,699.14.
- The Department had claimed Rs.11,76,35,626.70 in Form-C dated 04.01.2022 before the resolution professional.

- Against the petitioner's Form-C application, the respondent CD had filed an application before the AA under Section 33(5) of the IBC seeking permission to prefer an appeal against the order of assessment dated passed by the petitioner.
- The AA had passed the impugned order stating that the Assessment Order was passed in violation of the prohibition provided under Section 14(1)(a) of IBC and therefore declared the Order void ab initio.
- The AA dismissed the application of the respondent CD and directed the respondent to consider the claim submitted by the KVAT Works Contract Authorities independently, ignoring the assessment order dated 25.02.2021.
- Therefore the Petitioner filed the Writ Petition. The question which falls for consideration in this writ petition before this Court is whether the NCLT is empowered to declare the assessment order as void ab initio under Section 33(5) of IBC.

**DECISION:**

- The Court observed that Moratorium is to ensure the curtailing of parallel proceedings and reduce the possibility of conflicting outcomes in the process. Section 14(1)(a), (b) and (c) of the IBC shields and protects against pecuniary attacks against the Corporate Debtor.
- The purpose of Moratorium is to provide the Corporate Debtor with breathing space to allow it to continue as a going concern and rehabilitate itself.
- The Court noted that after declaring the moratorium, there is an embargo on enforcing the demand, but there is no embargo under Section 14, read with Section 33(5) of the IBC, for determining the quantum of tax and other levies, if any, against the Corporate Debtor.
- This Court finds the impugned order passed by the National Company Law Tribunal, Kochi Bench, as preposterous and untenable. The Company Law Tribunal has no power and authority under the IBC to declare an assessment order as void ab initio and non est in law.
- The Order shows the lack of basic understanding of the law. Instead of considering the application by the 2nd respondent for permission to file an appeal against the assessment order, the National Company Law Tribunal, Kochi Bench, has assumed the jurisdiction of the Constitutional Court to declare the assessment order as void ab initio.
- This Court held that the impugned order is unsustainable and the same is set aside. The writ petition is allowed. The matter is remitted back to the National Company Law Tribunal, Kochi Bench, to consider and pass an appropriate order.

**CASE REFERRED:**

Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes & Customs; S V Kandoakar v. V M Deshpande;

**Case Title:** Gloster Cables Ltd. Vs. Fort Gloster Industries Ltd. & Ors.
**Case no.:** Comp. App (AT) (Ins) No. 1343 of 2019 with Civil Appeal No(S). 4247 Of 2023
**Decision Date:** January 25, 2024
**Court/Tribunal:** NCLAT, New Delhi

**FACTS:**

- The Appellant, Crest Cables Private Limited, was incorporated to take over the assets of Sputnik Cables Private Limited, which was a sick company. Later with the induction of Bangur Group as an investor with equity participation Crest Cables Pvt. Ltd. was changed to Gloster Cables Limited in the year 2004.
- The respondent Fort Gloster Industries Limited (Corporate Debtor) is a public company indulged in the business of manufacturing of power cables and the owner of the trademark viz "GLOSTER" bearing Trademark Registration No' 690772 in class 9.
- The CD executed a deed of hypothecation and hypothecated the trademark in favour of the Appellant by way of first and exclusive charge. The CD entered into a supplemental trademark agreement with the Appellant whereby it assigned

the trade mark in favour of the Appellant against the consideration.

- CIRP was initiated against the CD by the Adjudicating Authority (AA). The RP filed an application seeking approval of resolution plan duly approved by the CoC. The resolution applicant claimed the trademark in the plan and recorded that the trademark Gloster has been assigned and/or transferred to GCL is bad in law and is the lawful property of the CD.
- Meanwhile the appellant filed an application seeking clarification that the trademark should not be included as an asset of the CD and the AA has dismissed the application holding that the trademark is an asset of the CD.
- Therefore, the appellant has challenged the impugned order and filed an appeal on the ground that the AA has no jurisdiction to adjudicate upon the title of the property/asset in view of Section 134(1) of the Trademark Act, 1999.
- The Appellant submitted that the AA has committed an error in holding that the transaction relied upon by the Appellant is undervalued and preferential transaction.

**DECISION:**

- NCLAT is of the view that the AA had the jurisdiction which was though not challenged before it by the Appellant when it itself had filed the application for seeking a declaration/ clarification as to whether the trademark is the property of the Corporate Debtor or the Appellant.
- Further, if a question of law or fact arising out or in relation to the insolvency resolution then the Adjudicating Authority shall have the jurisdiction. Thus, rejected the contention of the Appellant.
- The NCLAT held that it is needless to mention that the assignment was contingent upon the vacation of the order of BIFR and with the repeal of SICA, 2016, the condition was lifted and the Appellant became assignee of the trademark w.e.f. the date when the supplemental trademark agreement was executed.
- Therefore, the finding recorded by the AA in this regard that because there was a stay by the BIFR and agreement was executed during that period is null and void is not in accordance with law.
- The NCLAT noted that the liquidator/RP shall after examine the transactions as undervalued or preferential file an application before the AA to declare such transaction as void. However, no such application has been filed by the RP, also the CoC was apprised that the forensic audit report found no such preferential or undervalued transactions.
- Therefore, the NCLAT held that only on the basis that the trademark was hypothecated for a bigger amount and has been assigned for lesser amount would not be a criteria for the purpose of declaring it to be undervalued transaction without there being sufficient material before the AA to decide.
- The NCLAT allowed the appeal and set aside the impugned order.

**CASE REFERRED:**

Jehal Tanti & Ors Vs. Nageshwar Singh; Thomson Press (India) Limited Vs. Nanak Builders & Investors Pvt. Ltd. &Ors.,(2013) 5 SCC 397; Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & Ors., 2021 SCC Online SC 194; Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka &Ors, 2019 SCC Online SC 1542; Tata Consultancy Service Limited Vs. Vishal Ghisulal Jain, RP, SK Wheels Pvt. Ltd., 2021 SCC Online SC 1113 and Sicom Ltd. & Anr. Vs. Kitply Industries Ltd. & Ors. CA (AT) (Ins) No. 849 of 2021.

**Case Title:** Suresh Gupta Vs. B.E. Billimoria & Company Limited
**Case no.:** CP (IB) No. 838/MB-VI/2019
**Decision Date:** January 19, 2024
**Court/Tribunal:** NCLT, Mumbai, Bench-VI

**FACTS:**

- The CD had appointed the OC to represent and act on its behalf and for various other services. The CD has defaulted in payment to the OC for his services. Therefore, the CD and the OC entered into a settlement agreement wherein the CD undertook to pay the total lump-sum settlement amount of Rs. 2,05,43,208/-.

- The Settlement Agreement was a full and final settlement regarding the OC' s claims as per mutual consent of the parties. The CD failed to pay the outstanding dues to the OC as agreed under the Settlement Agreement despite the OC sending reminders to the CD regarding the same.
- The OC issued a Demand Notice under Section 8 of the IBC to the CD. The CD replied vide its letters and rejected OC's claims on ground of non-finalization of their accounts and certain complaints from the DDA over defective work as well as non-disbursal of amount from the DDA in favor of the OC till that date.
- An application was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Suresh Gupta, the Operational Creditor (OC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of B.E. Billimoria & Company Limited, the Corporate Debtor (CD).

**DECISION:**

- The Court observed that the moment parties entered into the Settlement Agreement, the nature of the debt changed. The amount outstanding pursuant to the Settlement Agreement is a settlement amount which can only be construed as a mere debt and does not qualify to be an operational debt as defined under Section 3(11) of the IBC.
- The claim of the OC as regards existence of operational debt due and payable by the CD fails as it lost its character of operational debt.
- Moreover, there is a shadow of doubt as regards the engagement and agreement between the OC and the CD. Both parties have suppressed number of things from the Adjudicating Authority.
- In view of the aforesaid, the Adjudicating Authority rejected the application and held that an application under Section 9 of the IBC cannot be admitted when there exists a cloud of suspicion, especially when the nexus between the OC and CD in their engagement or agreement is not clearly made out.
- The Settlement Agreement does not offer any credence in establishing the relationship between the parties. Even if it is believable, CIRP cannot be initiated on the failure of the Settlement Agreement.
- The Court, accordingly dismissed the petition.

**CASE REFERRED:**

M/s. S.S. Engineers Vs. Hindustan Petroleum Corporation Ltd, (Civil (A) No. 4583 of 2022; Bank of India v B.E. Billimoria & Co Ltd, [CP(IB) 1329(MB)2019]; Outdoor Advertising Professionals (India) Private Limited v/s Graphene Media Private Limited (C.P. No. 427/IBC/MB/2019, decided on 25.01.2022); Maulik Kirtibhai Shah v United Telecom Limited, Company Appeal (AT)(CH)(Ins) 268/2023


# Policy and Regulatory Updates

## IBC REGULATORY UPDATES:

### AMENDMENTS:

#### ❖ INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2024

The Insolvency and Bankruptcy Board of India (IBBI) amended the Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. Through the amendment, IBBI amended the Regulation regarding the validity of Authorisation for Assignment.

Read More at: https://ibbi.gov.in/uploads/legalframwork/2024-02-01-212642-qznth-b07b176dfa0a43a56f7bafeab096455d.pdf

#### ❖ INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) (AMENDMENT) REGULATIONS, 2024

The Insolvency and Bankruptcy Board of India (IBBI) amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Through the amendments, the following points were highlighted:

1. An IP may resign as an IRP/RP/liquidator as the case may be subject to the recommendation of:
   - CoC in case of CIRP
   - Consultation committee in liquidation process
   - debtor or creditor in the insolvency resolution process of personal guarantor to the CD
   - And approval of NCLT
2. Relaxation in case of IPEs w.r.t. from appointment of partners or directors of IPE, as the case may be, for any work relating to any of its assignments handled
   - Excluding work related to valuation and audit of the CD

## ❖ INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (BANKRUPTCY PROCESS FOR PERSONAL GUARANTORS TO CD) REGULATIONS, 2024

Through the amendments, the following points were highlighted:

1. The IPE of which IP is a partner or a director, or any other partner or director of such IPE which represents any party in the bankruptcy process is now allowed to act as a bankruptcy trustee.
2. An IP who has acted or is acting as an IRP, a RP or a liquidator in respect of the corporate debtor can now be appointed by the bankruptcy trustee as professional.

## ❖ INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CD) REGULATIONS, 2024

Through the amendments, the following points were highlighted:

1. IRP/RP/liquidator of the CD is now permitted to be appointed as RP in the insolvency resolution process for personal guarantors to CDs.
2. The RP shall place the repayment plan (as u/s 105) in a meeting of the creditors for its consideration. Where no repayment plan has been received within period stipulated u/s 106, the RP shall notify the same in a meeting of creditors.

## ❖ INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2024

Through the amendments, the following points were highlighted:

1. Disclosure about pending proceedings before statutory authorities, and pending litigations, in respect of CD to be given with Director's affidavit along with an affirmation in the affidavit that the CD has made sufficient provision to meet the obligations arising on account of pending matters.
2. From the list of documents which the liquidator has to prepare, in the "annual status report", the word "annual" has been omitted. If applies, status report to also contain reasons for not completing the VL process within timeline prescribed.
3. If the VL process is not concluded within the time limit of 90/270 days, as the case may be, meeting of contributories to be called within 15 days from the conclusion of every 90/270 days. Status report to be filed with the Board within 7 days from the date of meeting of contributories.
4. Process relating to claim from "Corporate Voluntary Liquidation Account" by the stakeholders prior to dissolution of the CD and after dissolution of the CD has been prescribed.

## ❖ THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

The amendments made the following changes:

1. Where the corporate debtor is associated with real estate project, the Interim Resolution Professional or the Resolution Professional whichever the case may be shall form a separate bank account for each real estate project. This insertion aligns with the Real Estate Regulatory Authority (RERA) provision for maintaining separate bank accounts for each project to ensure transparency in the project.
2. Amendment to regulation 25(5)(b) regarding the opening of the electronic voting window introduces a more flexible and controlled approach. The CoC is now empowered to determine the period for opening the voting window, ranging from a minimum of 24h to a maximum of 7 days.
3. The RP shall facilitate a meeting between the registered valuers and the CoC wherein the valuers will explain the methodology adopted to arrive at the valuation to the CoC before computation of the estimates.

4. RP to seek approval of all the insolvency resolution process cost which shall now include the cost/expenditure incurred in running the business of corporate debtor as a going concern.
5. Clarification inserted in regulation 36A allows the CoC to direct the Resolution Professional (RP) to invite separate resolution plan for each real estate project or group of projects of the corporate debtor. The amendment is made to enhance flexibility and competition in the resolution process.

## CIRCULARS:

***Measures for rationalization of the regulatory framework of Insolvency Professional Entities***

Circular No. No. IBBI/IPE/64/2024 clarified the following points w.r.t. IPEs:

- **In relation to disciplinary proceedings in case of an IP which is an IPE**
- **On applicability of limit on number of Assignments to an IP which is an IPE**
- **On applicability of fee structure to an IP which is an IPE**
- **Regulation 34B of CIRP Regulations does not apply to an IP, which is an IPE.**

***Measures for facilitating efficient conduct of the processes by the Insolvency Professionals***

Circular No. IBBI/IP/65/2024 clarified the following points:

- **To facilitate smooth implementation of the resolution plan, it is hereby clarified that an IP may render professional service in relation to implementation of resolution plan approved by the AA, provided details of such service are mentioned in the resolution plan approved by the AA.**
- **For the purposes of clause 25C of Code of Conduct specified in First Schedule to IP Regulations, the bill or invoice may be raised in the name of the IPE or the professional or the firm in which such professional is a partner.**

***Sharing of the Report prepared by the Resolution Professional under section 99 of the Insolvency and Bankruptcy Code, 2016 to both debtor and creditor.***

Circular No. IBBI/II/66/2024 advised that the RP shall provide a copy of the report to both debtor and creditor in all cases. This will ensure that the debtor and the creditor are well-informed about the evaluation and recommendations made by the RP, thereby promoting transparency and informed decision-making.

***Reporting / Sharing of information in the Voluntary Liquidation process***

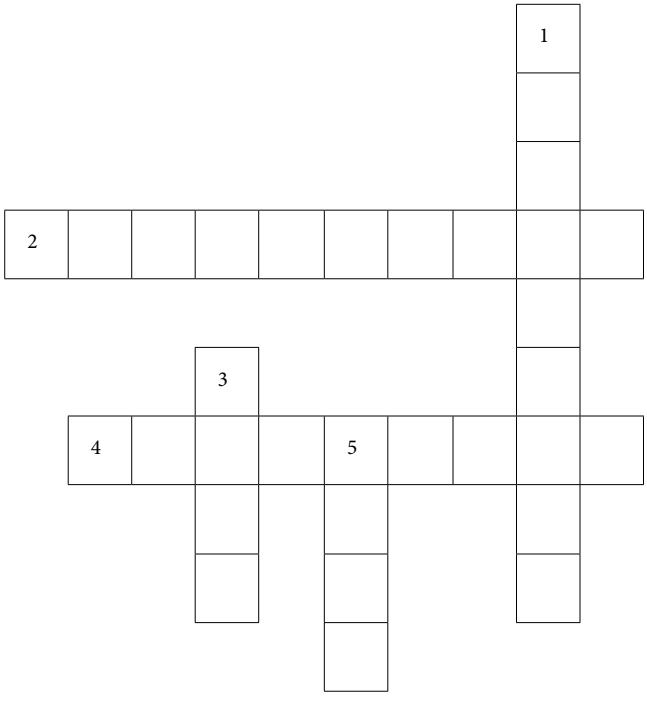
Circular No. IBBI/LIQ/67/2024 y directed that the liquidator shall ensure that, if the corporate person falls under the category of financial service provider, it shall declare that: (i) the category of Financial Service Providers has been notified by the Central Government under section 227 of the Code, and (ii) the corporate person has obtained prior permission from the appropriate regulator. the liquidator shall submit a copy of Form H and the final report filed before the Adjudicating Authority as per Regulation 38, and the order for dissolution to the Board to assigned email ID.

***Deposit and withdrawal of unclaimed dividends and / or undistributed proceeds in accordance with regulation 39 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.***

To facilitate the request received from a stakeholder, under regulation 39(7), who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account for withdrawal before the dissolution of the corporate person, the liquidator shall apply to the Board in the form as per Annexure in the Circular, for the release of the amount for onward distribution to the stakeholders.




## GAMES CORNER




**ACROSS**

2. What kind of valuers are appointed under IBC?

4. The registered valuer for land is also the valuer for _____

**DOWN**

1. The two kinds of financial creditors are secured and _____

3. A company may be wound up by _____

5. Who is the Regulator for both IPs and RVs?

**Answer key:**

1. Unsecured
2. Registered
3. NCLT
4. Machinery
5. IBBI

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