

INSOLVENCY AND BANKRUPTCY JOURNAL

Insolvency: The Path Ahead



ICSI Institute of Insolvency Professionals (ICSI IIP)

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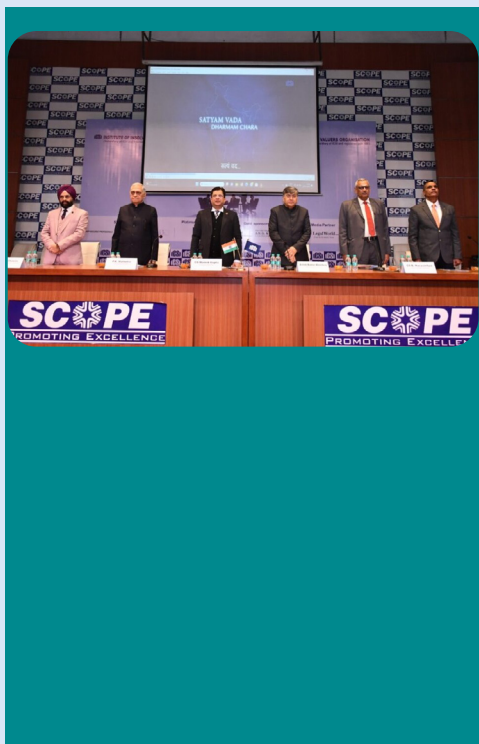
Dr. Ashok Kumar Mishra

SHAREHOLDER DIRECTORS

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From Chairman's Desk

A resolution to avoid an evil is seldom framed till the evil is so far advanced as to make avoidance impossible.

– Thomas Hardy, *Far From the Madding Crowd*

Information available from the regulator with the Insolvency and Bankruptcy Board of India (IBBI), showed that there is a 33% fall in the admission of bankruptcy petitions filed by operational creditors in the December quarter compared with the previous three months, while there is a matching increase in the admission of cases filed by financial creditors like banks. Data shows there has been a sharp decline in the number of bankruptcy petitions initiated by operational creditors and admitted by National Company Law Tribunal (NCLT) – from 123 in the September quarter to 84 in the December quarter.

Traditionally, the concept of insolvency has been associated with the idea of recovering debts from insolvent entities. However, contemporary perspectives emphasize its role as a tool for restructuring rather than mere recovery. This shift in perception underscores the transformative potential of insolvency mechanisms in fostering financial rehabilitation and preserving economic value.

At its core, insolvency entails a state where an entity is unable to meet its financial obligations. While recovery remains a crucial aspect, modern insolvency frameworks recognize the importance of facilitating restructuring processes that aim to revive the viability of distressed businesses. Traditional recovery-focused approaches often result in liquidation, leading to the dissolution of businesses and loss of value for stakeholders. In contrast, restructuring under insolvency frameworks aims to salvage viable components of distressed entities, thereby preserving economic value and safeguarding interests of creditors, employees, and shareholders.

Insolvency mechanisms offer a structured framework for distressed businesses to reorganize their operations, renegotiate contracts, and address financial challenges. By providing breathing space through mechanisms such as moratoriums and interim financing, restructuring efforts can focus on operational improvements and strategic realignment, enabling businesses to emerge stronger and more resilient.

By offering a pathway for distressed businesses to overcome financial challenges and continue operations, insolvency mechanisms contribute to the preservation of entrepreneurship and innovation. Restructuring allows viable businesses to adapt to changing market dynamics, explore new opportunities, and contribute to economic growth, thereby promoting a culture of resilience and adaptability in the business ecosystem.

Effective insolvency frameworks play a vital role in maintaining systemic stability by containing the ripple effects of financial distress within the economy. By facilitating orderly resolutions and minimizing disruptions to supply chains and financial markets, restructuring-oriented insolvency mechanisms help mitigate systemic risks and promote confidence in the stability of the financial system.

Insolvency mechanisms serve as more than just tools for debt recovery; they represent a fundamental instrument for restructuring distressed businesses and preserving economic value. By embracing a holistic approach that prioritizes rehabilitation over liquidation, modern insolvency frameworks foster resilience, innovation, and sustainable growth in the face of financial challenges.

Let us join hands to ensure that the law achieves its Objectives.

(P.K. Malhotra)
Chairman, ICSI IIP

MD's Message

In recent years, India has witnessed a paradigm shift in its approach to corporate insolvency, recognizing it not merely as a tool for debt recovery but as a comprehensive mechanism for restructuring distressed businesses. The Insolvency and Bankruptcy Code (IBC) of 2016 stands as a testament to this evolution, offering a robust legal framework that promotes holistic restructuring solutions tailored to the unique dynamics of the Indian economy. NCLAT Chennai bench had ruled in a case that the spirit of IBC – the maximization of asset and resolution of the company, and not recovery – has to be kept in mind before admission of a bankruptcy petition. The proposed regime of mediation to achieve bankruptcy resolution will also help to address the practice of using IBC by operational creditors as a recovery tool.

Unlike traditional recovery-centric approaches, the IBC prioritizes the revival and rehabilitation of distressed businesses. By providing opportunities for corporate debtors to reorganize their operations, renegotiate debts, and implement turnaround strategies, the law fosters a culture of resilience and entrepreneurship in the Indian business landscape.

The IBC empowers creditors with significant decision-making authority throughout the insolvency resolution process. By actively involving creditors in the formulation and approval of restructuring plans, the law ensures transparency, accountability, and equitable distribution of assets, thereby enhancing investor confidence and promoting a creditor-friendly environment.

The IBC encourages innovation and adaptability in restructuring efforts by providing flexibility in the formulation of resolution plans. With a focus on viable resolution strategies tailored to the specific needs of each case, the law promotes creative problem-solving and strategic thinking, driving sustainable growth and value creation in the Indian economy.

The government had in March 2020 raised the payment default threshold for initiating bankruptcy proceedings from ₹1 lakh to ₹1 crore in order to protect small businesses from being dragged to tribunals for payment defaults. This has helped in preventing operational creditors to initiate IBC action for small defaults.

Creditors recovered 32.9% of their admitted claims from 138 large stressed firms until December 2023 since the IBC came into being in late 2016, as per the Insolvency and Bankruptcy Board of India data. However, the recovery from all the 891 bankrupt companies that saw resolution until December 2023 stood at 31.9%, indicating that lenders to smaller firms had to take larger haircuts.

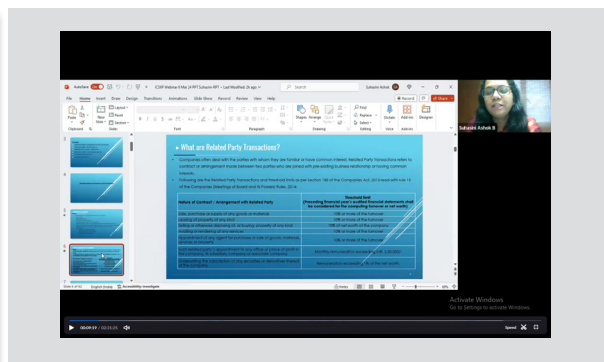
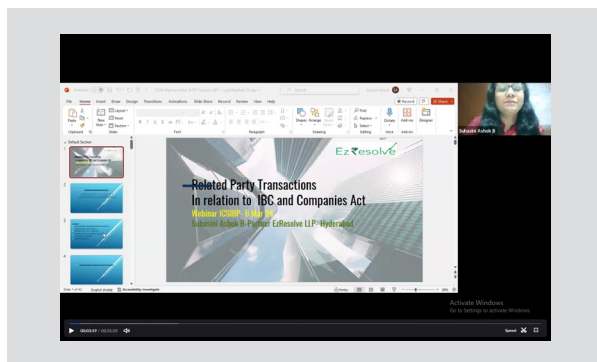
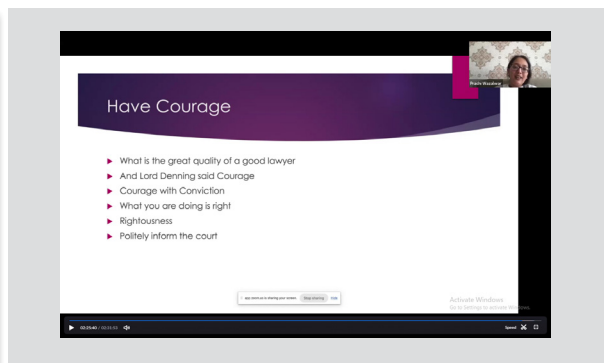
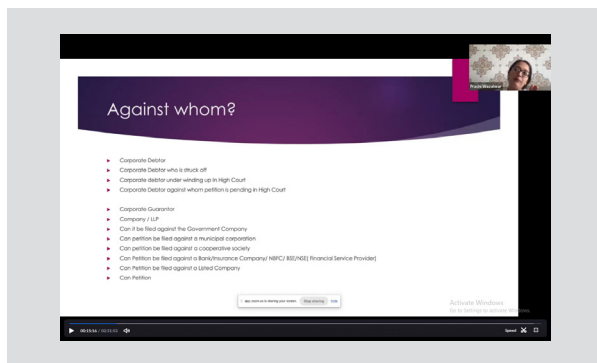
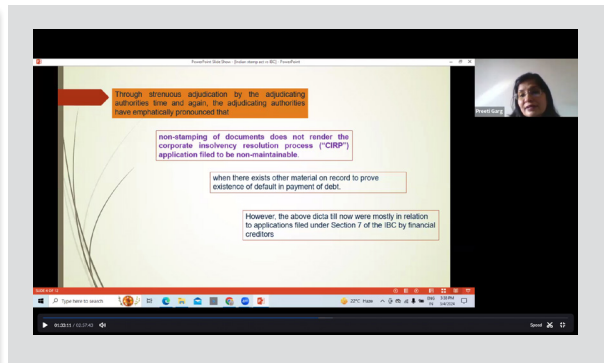
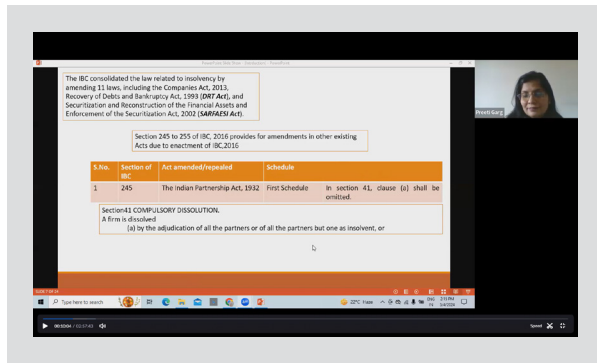
In essence, the Insolvency and Bankruptcy Code represents a watershed moment in India's quest for effective restructuring solutions. By embracing a holistic approach that emphasizes revival, rehabilitation, and stakeholder collaboration, the law has emerged as a catalyst for economic rejuvenation, promoting resilience, innovation, and sustainable growth in the Indian corporate landscape.

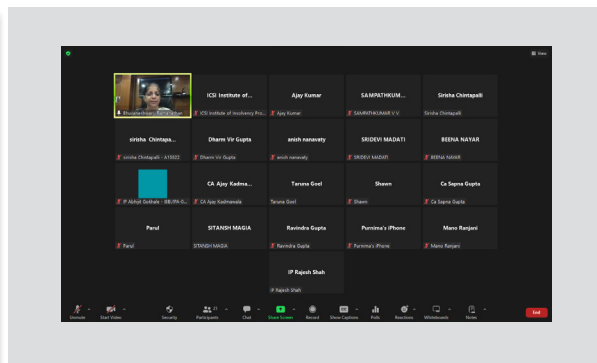
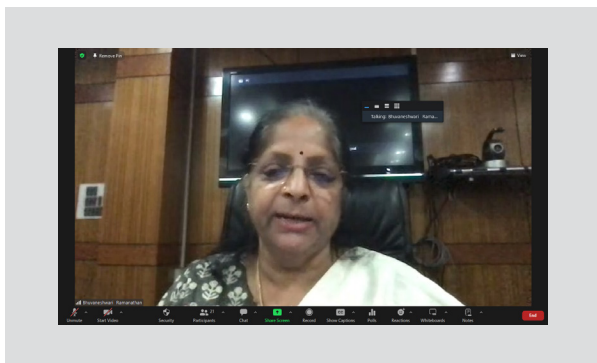
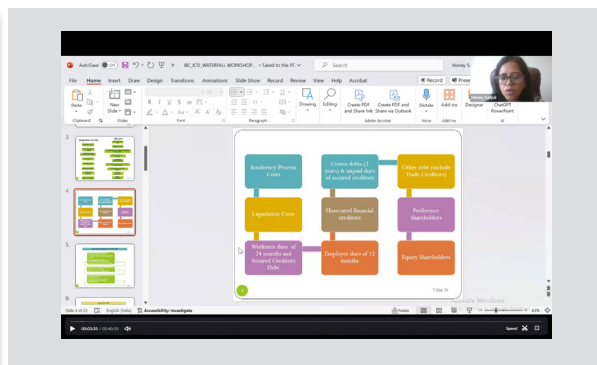
Dr. Prasant Sarangi
Managing Director, ICSI IIP

Events @ICSI IIP

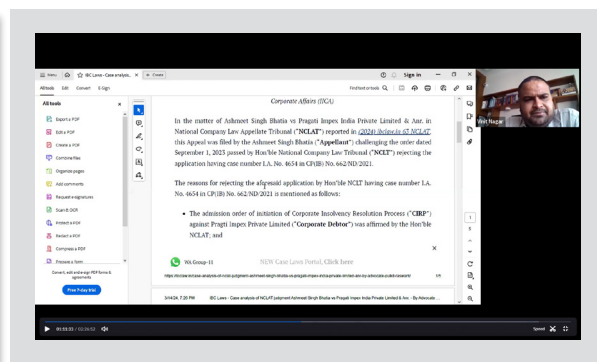
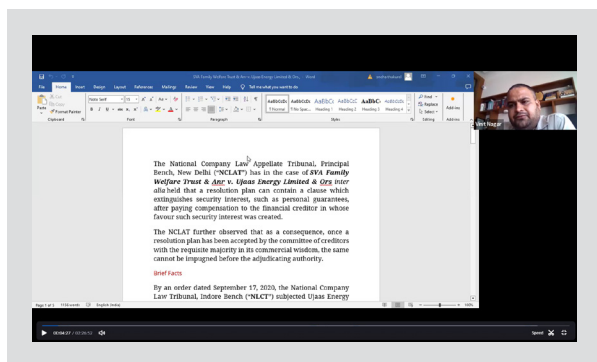
(Workshops, Webinars, Round-table Discussions, Interactive Meets etc.)

1. Workshop Series “Perspectives on IBC Series VIII-An Array” from 4th March, 2024 to 8th March, 2024. The topics covered in the series such as interplay of IBC with allied laws, drafting, pleadings and arguments before NCLT and NCLAT, related party transaction in relation to IBC and companies act, waterfall mechanism under IBC and CIRP and reverse CIRP under IBC

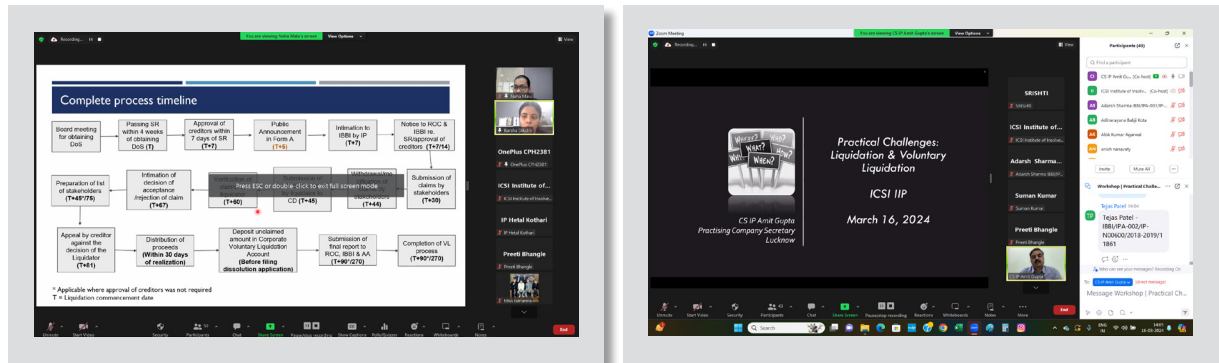




2. Webinar on Anatomy of IBC Case Laws-15 by CS and IP Vinit Nagar on Friday, 15th March, 2024



3. Workshop on Practical Challenges: Liquidation and Voluntary Liquidation Processes by CS Barsha Dikshit and CS and IP Amit Gupta on Saturday, 16th March, 2024



4. Annual Residential Refresher Course organized by RIPA in association with ICSI Institute of Insolvency Professionals from Friday to Sunday, 15th March, 2024 to 17th March, 2024



5. Webinar on Demystifying the Process for Homebuyers in Real Estate Distress by CS and IP Ashish Singh on Tuesday, 19th March, 2024

DEMYSTIFYING THE PROCESS FOR HOMEBUYERS IN REAL ESTATE DISTRESS

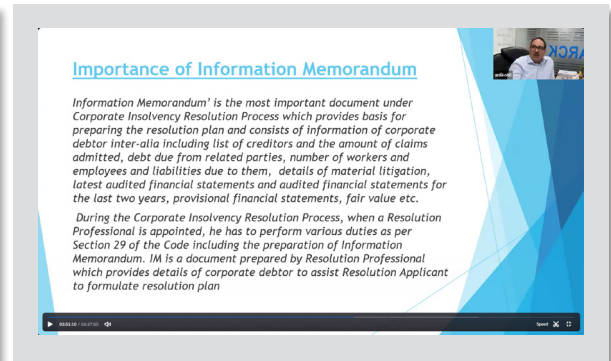
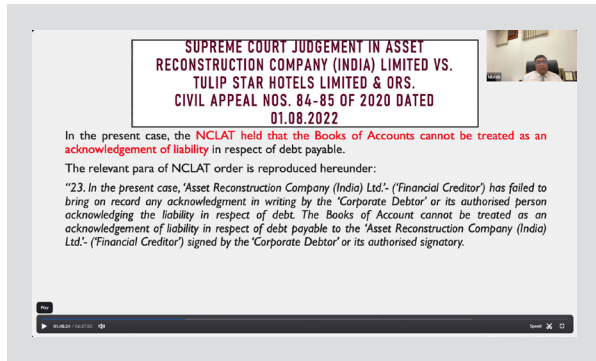
ASHISH SINGH
Advocate, FCS, Insolvency Professional

Rights of Home buyer's in CIRP process of the Real Estate I

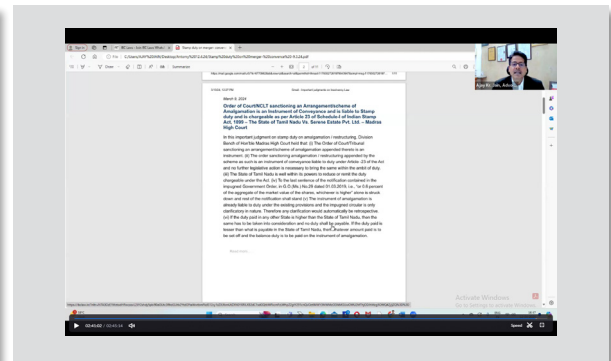
An 'Interim Resolution Professional (IRP)' is required to be appointed at the time of admitting the application for insolvency resolution of the corporate debtor in accordance with section 16 of the Code. However, the name of an IRP is to be proposed by the Financial Creditor in the application itself to be filed under Section 7 of the Code.

- Registration of units including plots and flats in case possession of the units handed over to the home buyer
- Pool and build of the Project of the Corporate Debtor
- Duplicate claim for the same units: What to do??
- If home buyers are residing in the Project;
- Maintenance of the society in case of such project where home buyers are residing
- Home buyers can ask for change of the RP in case they are not satisfied;
- Home buyers right to ask for the Valuation Report, IM and Resolution Plan .. quote relevant provide of the Code
- Home buyers right to ask for meeting with the PRA's for better understanding of the Resolution Plan;

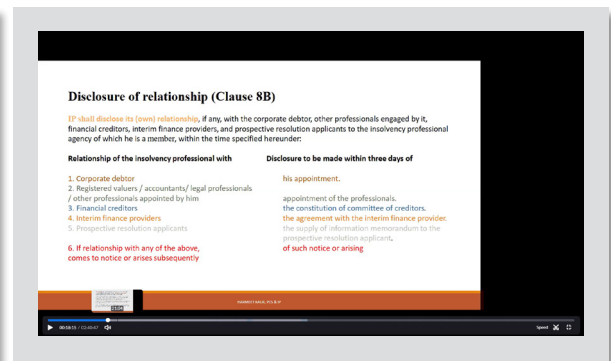
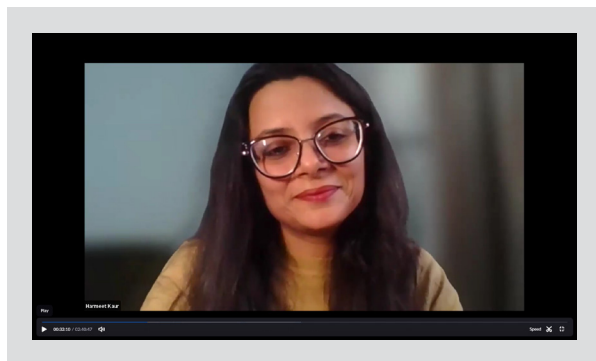
6. Webinar on Navigating the IBC: Claims Handling, Information Memorandum and Resolution Plan by CA, Advocate and IP Nilesh Sharma and CA and IP Anil Kohli on Saturday, 6th April, 2024



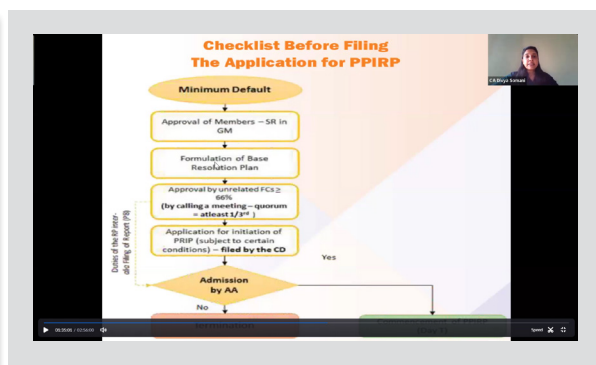
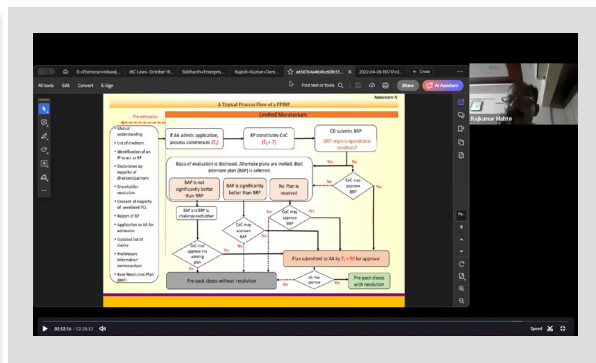
7. Webinar on Anatomy of IBC Case Laws-16 by Advocate and IP Ajay Kumar Jain on Friday, 12th April, 2024



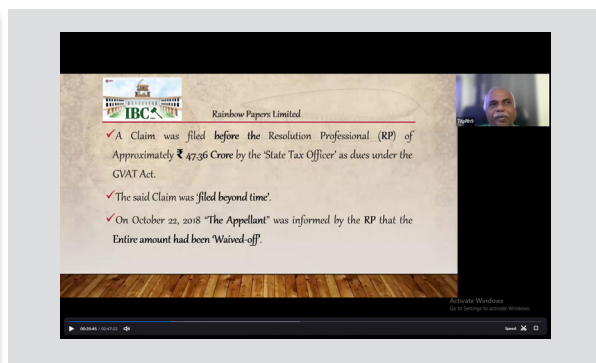
8. Webinar on Code of Conduct for IPs by CS and IP Harmeet Kaur on Saturday, 13th April, 2024



EVENTS@ICS.IIP



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A Look at the Landmark Supreme Court Judgements

FACTS OF THE CASE

The Appellant Engaged the Respondent Company (Kirusa) for providing various Services relating to the TV Programs, and the Both Parties Also Executed a Non-disclosure Agreement.

A Look at the Landmark Supreme Court Judgements

The Supreme Court further held that the Amendment to Section 30 (4) of the Code in June 2018, which introduced the requirement for the CoC to consider the Feasibility and Viability of a Resolution Plan before approval, is a mere restatement of the factors that the CoC is expected to take into consideration in any event while considering a resolution plan.

11. Workshop on Practical Intricacies under Insolvency Resolution and Bankruptcy Process for Personal Guarantors to Corporate Debtors by CS and IP Vinit Nagar and Advocate and IP Devvart Rana on Saturday, 27th April, 202

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

60. Adjudicating Authority for corporate persons:

(1) 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.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Public Insolvency Tribunal as contemplated under Part III of this Code for the purpose of sub-

102. Public notice and claims from creditors:

(1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.

(2) The notice under sub-section (1) shall include-

(a) details of the order submitting the application;

(b) particulars of the resolution professional with whom the claims are to be registered; and

(c) the last date for submission of claims.

(3) The notice shall be -

(a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;

(b) affixed on the premises of the Adjudicating Authority; and

(c) placed on the website of the Adjudicating Authority.

103. Registering of claims by creditors:-

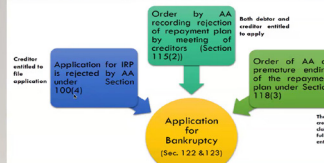
BANKRUPTCY

Bankruptcy is when a Person or Company is legally declared incapable of paying their "Due and Payable" Bills.

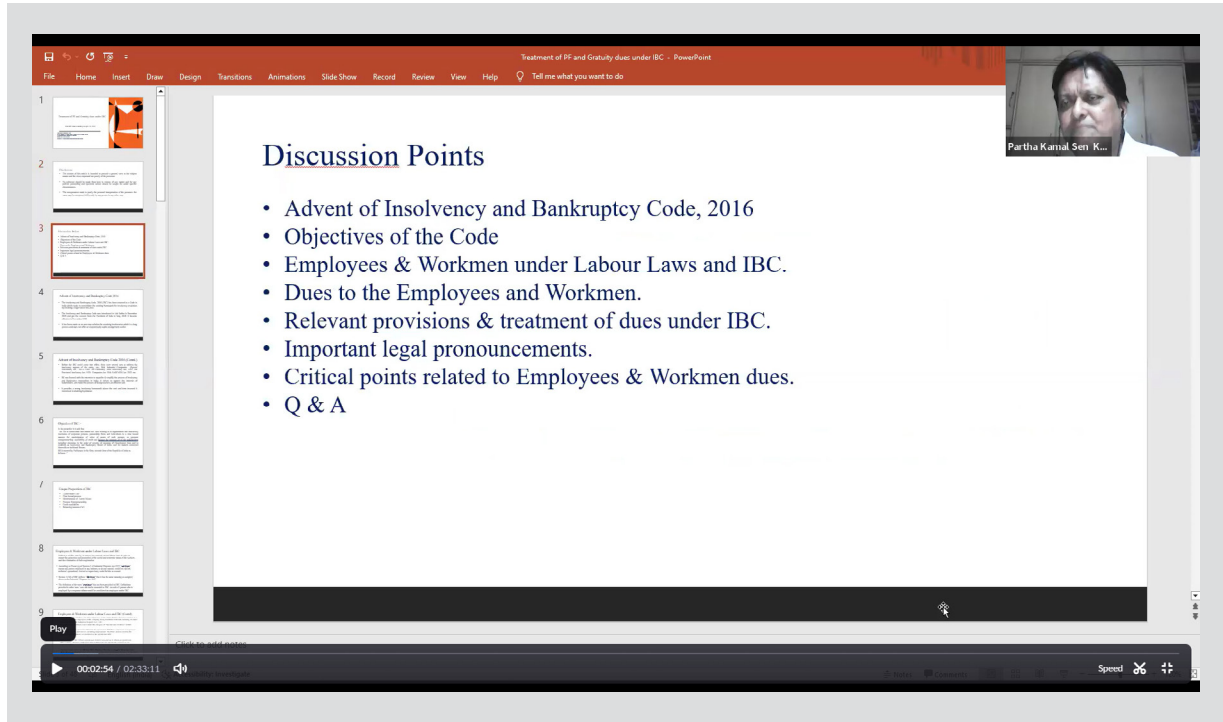
The Individual ask for help from the govt. to pay off his debts to his creditors

Discussed in first Half
-DOUBLE DIPPING of PG
-Multiple and Concurrent proceedings of CIRP and PG (Same Issue- same party)
-Complexity of location when diff guarantee of different CD in diff states, how will jurisdiction will work (like in CPC) courts have jurisdictional issue.

WHEN CAN BANKRUPTCY APPLICATION BE FILED

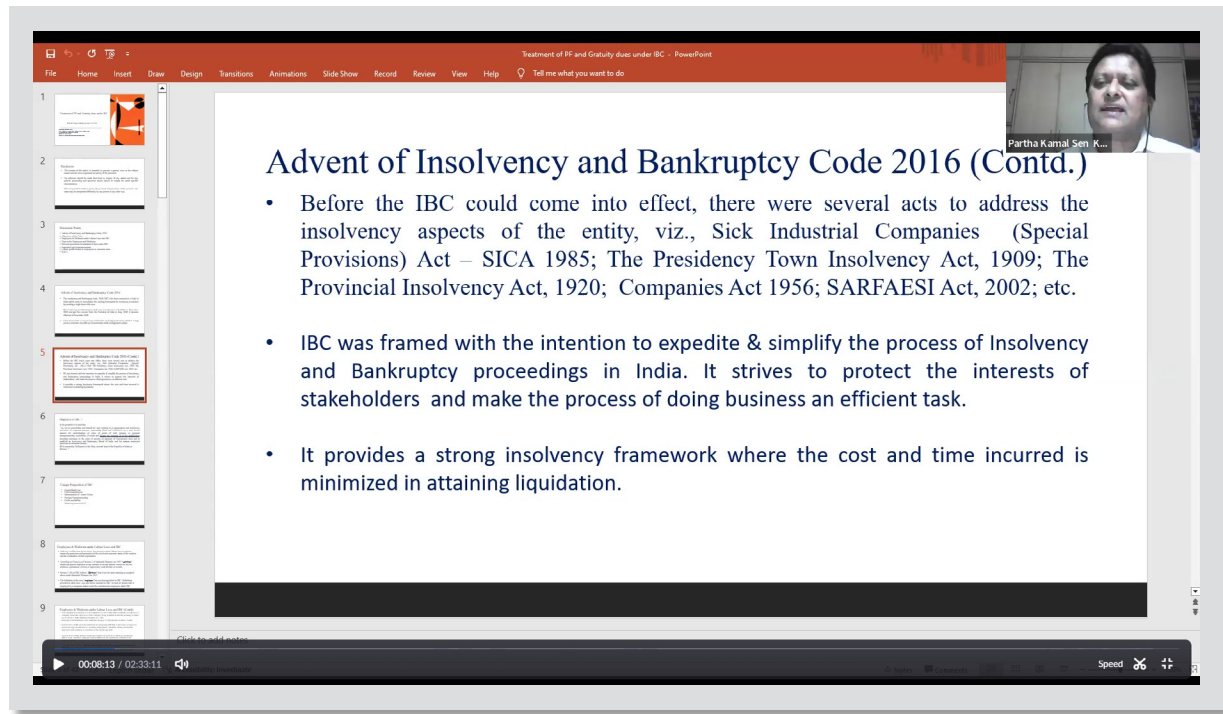


12. Webinar on Treatment of PF and Gratuity Dues under IBC by CS and IP Partha Kamal Sen on Tuesday, 30th April 2024



Discussion Points

- Advent of Insolvency and Bankruptcy Code, 2016
- Objectives of the Code
- Employees & Workmen under Labour Laws and IBC.
- Dues to the Employees and Workmen.
- Relevant provisions & treatment of dues under IBC.
- Important legal pronouncements.
- Critical points related to Employees & Workmen dues.
- Q & A



Advent of Insolvency and Bankruptcy Code 2016 (Contd.)

- Before the IBC could come into effect, there were several acts to address the insolvency aspects of the entity, viz., Sick Industrial Companies (Special Provisions) Act – SICA 1985; The Presidency Town Insolvency Act, 1909; The Provincial Insolvency Act, 1920; Companies Act 1956; SARFAESI Act, 2002; etc.
- IBC was framed with the intention to expedite & simplify the process of Insolvency and Bankruptcy proceedings in India. It strives to protect the interests of stakeholders and make the process of doing business an efficient task.
- It provides a strong insolvency framework where the cost and time incurred is minimized in attaining liquidation.

Learner's Corner

FAQS ON CROSS-BORDER INSOLVENCY

Q1. Who is the Appellate Authority under IBC?

Ans: As per Section 61 (1), notwithstanding anything to the contrary contained under the Companies Act 2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the **National Company Law Appellate Tribunal**.

Q2. What is the time limit for filing an appeal under IBC?

Ans: The appeal against the order of Adjudicating Authority shall be filed within **thirty days** before the National Company Law Appellate Tribunal.

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed **fifteen days**.

Q3. What are the grounds for filing an appeal under IBC, 2016?

Ans: The grounds for filing an appeal are as follows:

- 1) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely: –
 - a) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
 - b) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
 - c) the debts owed to operational creditors of the corporate debtor have not been provided for in

the resolution plan in the manner specified by the Board;

- d) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
- 2) the resolution plan does not comply with any other criteria specified by the Board.
- 3) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.
- 4) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O, may be filed on grounds of material irregularity or fraud committed in relation to such an order.

Q4. Can appeal lie against the order of Appellate Tribunal?

Ans: As per Section 62(1) any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under the Code.

Q5. What is the time limit for filing an appeal before the Supreme Court?

Ans: Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under the Code within **forty-five days** from the date of receipt of such order.

The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding **fifteen days**.



Legal Maxims

Omnia praesumuntur rite et dowee probetur in contrarium solenniter esse acta.

Meaning: All the acts are presumed to have been done rightly and regularly.

Example: "Section 114 of the Act 1872 gives rise to the presumption that every official act done by the police was regularly performed and such presumption requires rebuttal. The legal maxim ***omnia praesumuntur rite et dowee probetur in contrarium solenniter esse acta i.e., all the acts are presumed to have been done rightly and regularly,*** applies. When acts are of official nature and went through the process of scrutiny by official persons, a presumption arises that the said acts have regularly been performed."- Gian Chand and Ors. vs. State of Haryana (23.07.2013 - SC)

Nullus Commodum Capere Protect De Injuria Sua Propria.

Meaning: No man can take advantage of his own wrong.

Example: "Maxim ***Nullus commodum capere potest de injuria sua propria*** has a clear mandate of law that, ***a person who by manipulation of a process frustrates the legal rights of others, should not***

be permitted to take advantage of his wrong or manipulations. In the present case Respondent Nos. 2 & 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon respondent Nos. 2 & 3 and in any case on the appellant." - Eureka Forbes Limited vs. Allahabad Bank and Ors. (03.05.2010 - SC)



Stare decisis et non quieta movere.

Meaning: The standing of the decided and do not disturb the calm.

Example: “There is one more reason, though not a major one, for not disturbing the law settled in Antulay’s case (cited supra). That **decision has stood the test of time for last over 25 years and it is trite that going as per the maxim stare decisis et non quieta movere, it would be better to stand by that decision and not to disturb what is settled.** This rule of interpretation was approved of by Lord Coke who suggested - “those things which have been so often adjudged ought to rest in peace” - Abhay Singh Chautala vs. C.B.I. (04.07.2011 - SC)

Prior tempore potior iure / lex posterior

Meaning: Earlier in time, stronger in law

Example: “The entitlement to keep the right of pre-emption in existence beyond 30 days had accordingly, in my view, not vested at the time when the Sale of Shares Agreement was concluded on 22 April 2010 and accordingly, on the application of the rule **qui prior est tempore potior est iure the rights acquired by the [purchaser] are of greater force than those subsequently acquired by the [franchisor] in respect of the extended period.**” - Pick ‘n Pay Retailers (Pty) Ltd and Others v. Eayrs NO and Others (26.09.2011 - SASC)



ICSI IIP – AT A GLANCE

1. DURING THE FY 2023-2024

S. No.	Particulars	Details
1.	Members enrolled	18
2.	Members registered	34
3.	Inspections conducted	7
4.	IPs monitored	45
5.	AFA applications received	662
6.	AFA applications approved	610
7.	Complaints/Grievances received	54
8.	Complaints/Grievances disposed off	49
9.	SCN issued	3
10.	Disciplinary action taken	6

2. DURING THE FY 2023-2024, FOLLOWING PROGRAMS WERE ORGANISED BY ICSI IIP,

NATIONAL CONVENTION

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

WORKSHOPS

S. No	Date of Workshop	Topic
1.	01.04.2023	Workshop Interplay of Companies Act and SEBI Act with IBC April 01, 2023 09:30 - 04:30 PM
2.	15.04.2023	Workshop Labour Laws & GST Law vis-a-vis IBC April 15, 2023 9:30 AM - 4:30 PM
3.	25.04.2023	Workshop IBC vis-a-vis Limitation Act and PMLA 25 & 26 April, 2023 3 PM to 6 PM
4.	06.05.2023	Workshop Interplay of SARFAESI Act, 2002 and Arbitration Act, 1996 with IBC May 06, 2023 10 AM to 5 PM
5.	13.05.2023	Workshop Role of Related Parties Under IBC - A Critical Analysis May 13, 2023 10 am - 5 pm
6.	20.05.2023	Workshop New Avenues in IBC May 20, 2023 10.00 AM - 05.00 PM
7.	27.05.2023	Workshop Claim Verification and Committee of Creditors Under IBC May 27, 2023 10 AM to 5 PM
8.	05.06.2023	Workshop Perspectives on IBC - An Array (Series V) June 05 - June 09, 2023 2pm - 5pm
9.	13.06.2023	Workshop Rising Haircuts under IBC June 13th and 14th, 2023 2.00 PM - 5.00 PM
10.	07.07.2023	Workshop Refresher on IBC 7th and 8th July, 2023 9.30 AM to 4.30 PM
11.	29.07.2023	Workshop Roles and Responsibilities of IP and IRPs July 29, 2023 10:30 am to 01:30 pm
12.	05.08.2023	Workshop Penal Provisions under IBC Laws & Best Practices by IPs August 05, 2023 09:30 AM to 04:30 PM

S. No	Date of Workshop	Topic
13.	19.08.2023	Workshop Learner's Session on Committee of Creditors August 19, 2023 09:30 AM to 04:30 PM
14.	26.08.2023	Workshop Practical Intricacies Related to Personal Guarantor August 26, 2023 9:30 AM to 4:30 PM
15.	23.09.2023	Workshop Learner's Session on Moratorium and Interim Finance under IBC September 23, 2023 09:30 AM to 04:30 PM
16.	07.10.2023	Workshop Learning Aspects of Valuation under IBC October 07, 2023 10am - 5pm
17.	09.10.2023	Workshop Perspectives on IBC - An Array (Series VI) 9th Oct. 2023 - 13th Oct. 2023 2pm - 5pm
18.	28.10.2023	Workshop Real Estate Ecosystem and Treatment of Homebuyers October 28, 2023 09.30 AM - 04.30 PM
19.	18.11.2023	Workshop Managing Corporate Debtor as a Going Concern November 18, 2023 09:30 AM to 04:30 PM
20.	02.12.2023	Workshop Protection of Insolvency Professionals under IBC and Labour Laws 2nd December 2023 9.30am-4.30pm
21.	18.12.2023	Workshop Perspectives on IBC - An Array (Series VII) 18th Dec. 2023 Onwards 2pm - 5pm
22.	23.12.2023	Workshop Enhancing Multifaceted Skills required under IBC - IP as an Interim CEO 23rd December 2023 10:30 AM to 01:30 PM
23.	06.01.2024	Workshop Knowledge Session on PUF Transactions under IBC January 06, 2024 9.30am - 4.30pm
24.	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
25.	24.01.2024	Workshop Enhancing Multifaceted Skills required under IBC - IP as a Lawyer 24th January 2024 02:30 PM to 05:30 PM
26.	07.02.2024	Workshop Interplay of IBC with Other Laws February 7th to 8th, 2024
27.	13.02.2024	Workshop Perspectives on IBC - An Array (Series VIII) 13th Feb. 2024 (Onwards) 2pm - 5pm
28.	24.02.2024	Workshop Resolution and Way Out of Stressed Assets Under IBC 24th Feb. 2024 9.30am - 4.30pm
29.	04.03.2024	Workshop Perspectives on IBC - An Array (Series IX) 04th March 2024 (Onwards) 2pm - 5pm
30.	16.03.2024	Workshop Practical Challenges: Liquidation and Voluntary Liquidation Processes March 16, 2024 10am to 5pm

WEBINARS

S. No	Date of Webinar	Topic
1.	17.04.2023	Webinar Income Tax Quandaries with IBC April 17, 2023 4.00 pm - 6.00 pm
2.	21.04.2023	Webinar Anatomy of IBC Case - 4 April 21, 2023 3:00PM - 6:00PM
3.	28.04.2023	Webinar Recent Important Orders by NCLAT April 28, 2023 2.30pm - 4.30pm
4.	19.05.2023	Webinar Anatomy of IBC Cases - 5 May 19, 2023 3 PM - 6 PM
5.	09.06.2023	Webinar Information Utility services for the IPs June 09, 2023 11 AM to 1 PM
6.	21.06.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
7.	28.06.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM

S. No	Date of Webinar	Topic
8.	05.07.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
9.	12.07.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
10.	19.07.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
11.	26.07.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
12.	02.08.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
13.	09.08.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
14.	11.08.2023	Webinar Drafting & Negotiation of Resolution Plans August 11, 2023 2 PM - 5 PM
15.	16.08.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
16.	18.08.2023	Webinar Anatomy of IBC Case Laws - 6 August 18, 2023 2:00 PM to 5:00 PM
17.	08.09.2023	Webinar Anatomy of IBC Case Laws - 7 September 08, 2023 2:00 PM to 5:00 PM
18.	09.09.2023	Webinar Knowledge Session on Challenges Related to Real Estate Claims September 09, 2023 10:00 AM to 1:00 PM
19.	13.09.2023	Webinar Series: Reviewing Regulations notified under Insolvency and Bankruptcy Code, 2016 (Every Wednesday) 04.00 PM - 05:30 PM
20.	15.09.2023	Webinar Knowledge Session on Avoidance Transactions under IBC September 15, 2023 2 PM to 5 PM
21.	16.09.2023	Webinar Artificial Intelligence in Turnaround & Insolvency September 16, 2023 12 PM - 2 PM
22.	22.09.2023	Webinar Anatomy of IBC Case Laws - 8 September 22, 2023 02:00 PM to 05:00 PM
23.	06.10.2023	Webinar Anatomy of IBC Case Laws - 9 October 06, 2023 2pm - 5pm
24.	20.10.2023	Webinar Anatomy of IBC Case Laws - 10 October 20, 2023 2pm - 5pm
25.	17.11.2023	Webinar Code of Conduct for IPs and Disciplinary Proceedings and Impact of IBC on Ease of Doing Business 17th Nov, 2023 02:00 - 05:00 PM
26.	22.11.2023	Webinar Anatomy of IBC Case Laws - 11 November 22, 2023 2.30pm - 5.30pm
27.	08.12.2023	Webinar Important Hon'ble NCLAT Judgments on Insolvency and Bankruptcy Code, 2016 08 December 2023 2:30PM - 4:30PM
28.	15.12.2023	Webinar Important Hon'ble NCLAT Judgments on Insolvency and Bankruptcy Code, 2016 15 December 2023 2:30PM - 4:30PM
29.	29.12.2023	Webinar Important Hon'ble NCLAT Judgments on Insolvency and Bankruptcy Code, 2016 29 December 2023 2:30PM - 4:30PM
30.	05.01.2024	Webinar Anatomy of IBC Case Laws - 12 January 05, 2024 2pm - 5pm
31.	05.02.2024	Webinar Anatomy of IBC Case Laws - 13 February 05, 2024 3pm - 6pm
32.	22.04.2024	Webinar Decoding Recent changes in IBC Regulations 22 February 2024 05:30 PM
33.	29.02.2024	Webinar Anatomy of IBC Case Laws - 14 February 29, 2024 2pm - 5pm
34.	15.03.2024	Webinar Anatomy of IBC Case Laws - 15 15 Mar, 2024 03.00 PM - 06.00 PM
35.	19.03.2024	Webinar Demystifying the Process for Homebuyers in Real Estate Distress 19 March, 2024 2.30 PM - 5.30 PM

SEMINARS

S. No	Date of Seminar	Topic
1.	29.04.2023	Seminar jointly with IIP on the theme: "Voluntary Liquidation under IBC and Practical Aspects of Resolution Plan in IBC with latest Judgements" on Saturday 29th April, 2023 at 04:00 PM onwards
2.	16.09.2023	ICSI Ahmedabad Chapter In Association With ICSI Institute Of Insolvency Professionals Organizes Seminar On "NCLT: Practices And Procedures" On 16.09.2023
3.	16.09.2023	ICSI Bengaluru Chapter In Association With ICSI Institute Of Insolvency Professionals Organizes Seminar On "NCLT: Practices And Procedures" On 16.09.2023
4.	23.09.2023	EIRC of ICSI In Association With ICSI Institute Of Insolvency Professionals Organizes Seminar On "NCLT: Practices And Procedures" On 23.09.2023
5.	25.09.2023	Bhubaneswar Chapter of EIRC of the ICSI In Association With ICSI Institute Of Insolvency Professionals Organizes Seminar On "NCLT: Practices And Procedures" On 25.09.2023
6.	10.02.2024	Seminar cum Celebration of 47th Foundation Day of Chandigarh Chapter jointly with IIPs on 10/02/2024 at Hotel Mountview, Chandigarh at 4.00 PM onwards

ROUNDTABLES

S. No	Date of Roundtable	Topic
1.	16.06.2023	Round-table (Virtual) Discussion IIBBI Dis. Ppr on "Measures for increasing the possibility of resolution, value of resolution plan and enabling timely resolution" June 16, 2023 4pm to 5.30pm
2.	21.10.2023	Round-table (Virtual) Discussion IIBBI Dis. Ppr on "Streamlining the Voluntary Liquidation Process" October 21, 2023 12:00 PM - 02:00 PM
3.	01.11.2023	Round-table (Virtual) Discussion IIBBI Dis. Ppr on "Strengthening the Liquidation Process" November 01, 2023 02:30 PM - 04:30 PM
4.	07.11.2023	Round-table (Virtual) Discussion Rationalisation of the Regulatory Framework for Enhancing the Effectiveness of IPEs in IRP November 07, 2023 09:30 AM - 11:30 AM
5.	16.09.2023	Round-table (Virtual) Discussion Proposed CIRP Amenments & Real Estate Related Proposals November 16, 2023 04:30 PM (Onwards)
6.	24.11.2023	Round-table (Virtual) Discussion Proposed CIRP Amenments & Real Estate Related Proposals (Part II) November 24, 2023 04:30 PM (Onwards)

INTERACTIVE MEET

S. No	Date of Interactive Meet	Topic
1.	03.04.2023	Interactive Meet (Virtual Mode) Let's Connect: A Platform for the IPEs April 03, 2023 04:00 PM

NCLT CONCLAVES

S. No	Date of NCLT Conclave	Topic
1.	23.09.2023	ICSI CCGRT-Hyderabad and ICSI Hyderabad Chapter In Association With ICSI Institute Of Insolvency Professionals Organizes NCLT Conclave on "Practices and Procedures" On 23.09.2023
2.	06.10.2023	Chandigarh Chapter of NIRC of the ICSI In Association With ICSI Institute Of Insolvency Professionals Organizes NCLT Conclave on "Pre Pack for MSMEs & Insolvency against Guarantors" On 06.10.2023
3.	21.10.2023	ICSI CCGRT-Navi Mumbai and ICSI WIRC In Association With ICSI Institute Of Insolvency Professionals Organizes NCLT Conclave on "Practices and Procedures" On 21.10.2023

IBC CONCLAVE

S. No	Date of IBC Conclave	Topic
1.	03.02.2024	ASSOCHAM Tamil Nadu State Development Council IBC Conclave Saturday, 03rd February 2024 The Southern India Chamber of Commerce and Industry, Chennai

TRAINING PROGRAM

S. No	Date of Training Program	Topic
1.	13.10.2023	Training Program on “Challenges under IBC 2016: Practical Implications” (Hybrid Mode) on 13th October 2023

CERTIFICATE COURSE

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

RESIDENTIAL REFRESHER COURSE

S. No	Date of Residential Refresher Course	Topic
1.	15.03.2024 to 17.03.2024	Annual Residential Refresher Course

PRE-REGISTRATION EDUCATIONAL COURSES

S. No	Date of Pre-Registration Educational Course	Topic
1.	07.06.2023	61 st Batch Pre-Registration Education Course (Online Course) (June 07 - June 13, 2023)
2.	19.09.2023	62 nd Batch Pre-Registration Education Course (Online Course) (September 19 - September 25, 2023)
3.	19.02.2024	63 rd Batch Pre-Registration Education Course (Online Course) (February 19, 2024 - February 25, 2024)

INSIGHTS



INSIGHTS



Shailendra Singh
Advocate & Mediator, Supreme
Court of India
Insolvency Professional

A COMPARATIVE ANALYSIS OF INSOLVENCY LAWS: INDIA VERSUS DEVELOPED COUNTRIES CROSSROADS

Introduction: In the global arena, insolvency laws play a crucial role in facilitating the orderly resolution of financial distress, protecting creditors' rights, and promoting economic stability. As India continues to refine its insolvency framework, it is essential to assess how its laws compare with those of other developed countries. This article offers a comprehensive comparative analysis, examining the key features of Indian insolvency laws vis-à-vis those of selected developed nations.

United States: Chapter 11 Bankruptcy: The United States runs under Chapter 11 bankruptcy laws, allowing financially distressed companies to reorganize and continue their operations. Unlike India's Insolvency and Bankruptcy Code (IBC), Chapter 11 provides debtors with a significant degree of control over the restructuring process,

enabling them to propose a plan of reorganization and seeking approval from creditors and the court. While both systems aim to rehabilitate businesses and maximize value for stakeholders, Chapter 11 offers greater flexibility and discretion to debtors, often resulting in protracted and expensive proceedings.

United Kingdom: Administration: The UK's administration regime allows for the appointment of administrators to manage a company's affairs and explore options for rescue or sale. Similarly, India's Corporate Insolvency Resolution Process (CIRP) under the IBC focuses on the resolution and revival of distressed companies through the appointment of insolvency professionals and formation of a creditors' committee known as Committee of Creditors (CoC). Both regimes prioritize the rescue and preservation of businesses as a preferred outcome, emphasizing the importance of creditor involvement and judicial oversight in the restructuring process.

Germany: Insolvency Plan Procedure: Germany's insolvency laws include the Insolvency Plan Procedure, allowing financially troubled companies to negotiate and implement a restructuring plan duly approved by the creditors and the court. In comparison, India's Insolvency Resolution Process (IRP) under the IBC follows a similar trajectory, with creditors and the resolution professional negotiating and approving a resolution plan for the distressed company. Both frameworks underscore the significance of creditor participation and judicial supervision in the restructuring process, ensuring transparency and fairness in decision-making.

Australia: Voluntary Administration: Australia's voluntary administration regime enables financially distressed companies to appoint external administrators to assess viability and explore restructuring options. India's recent introduction of the Pre-packaged Insolvency Resolution Process (PIRP) mirrors Australia's approach, allowing debtors and creditors to negotiate and agree on a restructuring plan before initiating formal insolvency proceedings. Both mechanisms emphasize early intervention and collaborative resolution, aiming to minimize disruptions to business operations and preserve enterprise value.

Canada: Companies' Creditors Arrangement Act (CCAA): Canada's Companies' Creditors Arrangement Act (CCAA) provides a framework for restructuring insolvent companies outside of bankruptcy court, allowing for the negotiation and implementation of a plan of arrangement. Similarly, India's IBC offers a platform for out-of-court settlements through mechanisms such as the Scheme of Compromise or Arrangement, providing flexibility and autonomy to debtors and creditors in resolving financial distress. Both jurisdictions prioritize the preservation of business value and the protection of stakeholders' interests, encouraging consensual agreements and alternative dispute resolution mechanisms.

Conclusion: In conclusion, while India's insolvency laws share common principles with those of other developed countries, they also exhibit distinct features shaped by the country's economic, legal, and cultural context. The Insolvency and Bankruptcy Code (IBC) has been instrumental in streamlining insolvency procedures, enhancing creditor rights, and fostering a culture of corporate accountability. As India continues its journey towards economic growth and stability, ongoing alignment with global best practices and lessons learned from international experiences will be crucial in further strengthening the effectiveness and resilience of its insolvency framework. Through continued dialogue and collaboration with international counterparts, India can leverage insights and innovations to create a more robust and adaptable insolvency regime, capable of meeting the challenges of an increasingly interconnected and dynamic global economy.





Atul Kumar
Insolvency Resolution
Professional
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SUPREME COURT ON THE CONUNDRUM OF OPERATIONAL DEBT VIS- A-VIS FINANCIAL DEBT UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The Supreme Court of India in a recent landmark judgment in the case of Global Credit Capital Ltd. and Anr. Vs. Sach Marketing Pvt. Ltd. and Anr (Civil Appeal No. 1143 of 2022) dealt with a vexatious issue of operational debt vis a vis financial debt under the Insolvency and Bankruptcy Code, 2016 (IBC). The Supreme Court in this case while explaining the concept of financial debt held that in a case where one party owes a debt to another and the creditor is making claim under a written agreement of service, the debt can be categorised as an operational debt only if the claim has some connection or nexus with

the 'service', the subject matter of the transaction. The Supreme court further explained that the written document or agreement should not be taken on its face value and the real nature of the transaction must be ascertained after examining the agreements.

In the Instant case, the issues revolved around Sales promotion agreements signed by the corporate debtor (CD) with the sales promotion agency/sales promoter (Agency) for promotion of sale of beer in the state of Jharkhand. The CD received security deposit from the Agency under the said agreements. The Supreme Court pointed out after examining the two agreements signed by the CD that although the clause in the agreement provided for the payment of the security deposit by the Agency, there was no clause for the forfeiture of the security deposit. The amount specified as security deposit had no correlation or nexus whatsoever with the performance of the other conditions of the contract by the Agency. The Supreme Court held that as there is no clause regarding forfeiture of the security deposit or part thereof, the CD was liable to refund the security deposit after the period specified therein was over with interest @21% per annum. Since the security deposit payment had no nexus or correlation with any other clause under the agreements, the Court held that the security deposit amounts represent debts covered by subsection (11) of Section 3 of the IBC and the right of the Agency to seek a refund of the security deposit with interest is a claim within the meaning of subsection (6) of Section 3 of the IBC.

The Supreme Court further dwelling upon the concept of financial debt explained that (a) under sub-section (8) of Section 5 of the IBC, in the facts of the case, there is no doubt that there is a debt with interest @21% per annum. The provision made for interest payment shows that it represents consideration for the time value of money. The condition for the applicability of clause (f) of section 5 (8) of IBC is that the transaction must have the commercial effect of borrowing.

The Supreme court also took note of the financial statements of the CD and held that it is evident that the amount raised under the said two agreements has the commercial effect of borrowing as the CD treated the said amount as borrowed from the Agency. In the financial statement of the corporate debtor, the amounts paid by the Agency were shown as "other

long-term liabilities". The Supreme court also took into account the letter written by the CD whereby the CD informed the Agency that for the financial year 2016-2017, the CD had provided the interest amounting to Rs.18,06,000/- in the books of the CD. Therefore, the Supreme court came to the conclusion that the amount raised under the said two agreements has the commercial effect of borrowing as the CD treated the said amount as borrowed from the Agency.

The Supreme Court summarised the underlying legal principles/conclusions as under :

- (i) There cannot be a debt within the meaning of subsection (11) of section 5 of the IB Code unless there is a claim within the meaning of sub-section (6) of section 5 of thereof;
- (ii) The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of section 5 is the existence of a debt along with interest, if any, which is disbursed against the consideration for the time value of money. The cases covered by categories (a) to (i) of sub-section (8) must satisfy the said test laid down by the earlier part of sub-section (8) of section 5;
- (iii) *While deciding the issue of whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and*
- (iv) *Where one party owes a debt to another and when the creditor is claiming under a written agreement/ arrangement providing for rendering 'service', the debt is an operational debt only if the claim subject matter of the debt has some connection or correlation with the 'service' subject matter of the transaction.*

In the Instant case, the Supreme Court dissected the underlying transaction reflected in the agreements executed between the CD and Agency to arrive at the conclusion that security deposit paid by the sales promotion agency shall qualify as financial debt as defined under section 5 (8) (f) of the IBC and has laid down legal principles to determine the issue of operational debt and financial debt under the IBC.



Shailendra Singh
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Supreme Court of India
Insolvency Professional

DRIVING ECONOMIC RESILIENCE: RECENT ADVANCEMENTS IN INDIA'S INSOLVENCY LAWS

In the dynamic landscape of global commerce, a robust insolvency framework is essential for fostering economic growth, promoting investor confidence, and helping efficient resolution of financial distress. India has undertaken significant strides in reforming its insolvency laws, ushering in a new era of transparency, accountability, and resilience. These developments not only bolster the domestic economy but also elevate India's credit rating on the world stage, positioning the country as an attractive destination for investment and business expansion.

The Insolvency and Bankruptcy Code (IBC): A Paradigm Shift

One of the pivotal reforms that has garnered widespread acclaim is the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016.

The IBC introduced a comprehensive and time-bound resolution process for distressed companies, replacing the erstwhile fragmented and protracted insolvency regime. By streamlining procedures, enhancing creditor rights, and promoting a culture of corporate accountability, the IBC has catalyzed a change in thinking in India's insolvency landscape.

Amendments and Innovations

A key milestone in the evolution of India's insolvency framework was the amendment to the IBC in 2020, which introduced several critical reforms aimed at expediting the resolution process and mitigating systemic risks. Notably, the insertion of Section 32A provided immunity to successful resolution applicants from criminal prosecution for offenses committed by the previous management. This reform instilled confidence among prospective investors and resolution applicants, fostering a conducive environment for distressed asset acquisition and business turnaround.

Furthermore, the introduction of the pre-packaged insolvency resolution process (PIRP) in 2021 marked a significant leap forward in insolvency resolution mechanisms. PIRP offers a collaborative and expedited route for resolving corporate insolvency, wherein debtors and creditors negotiate and agree on a restructuring plan before initiating formal insolvency proceedings. This innovative approach not only minimizes disruptions to business operations but also preserves enterprise value, thereby enhancing the overall efficiency and effectiveness of the resolution process.

Alignment with International Best Practices

In addition to domestic reforms, India has taken proactive steps to align its insolvency framework with international best practices, fostering greater convergence with global standards. The enactment of the Cross-Border Insolvency Regulations in 2018 enabled cooperation and coordination between Indian insolvency proceedings and foreign jurisdictions, easing the resolution of complex cross-border insolvency cases. This harmonization of insolvency laws enhances predictability and certainty for foreign creditors, thereby bolstering investor confidence and strengthening India's position in the global marketplace. The judgement of Hon'ble Supreme

Court in *GNIDA vs. Prabhajit Singh Soni* has also cleared the uncertainty looming around the status of landowner authorities as secured creditors and it will have a positive impact in domestic real estate sector.

Impact on Credit Rating and Economic Resilience

The recent advancements in India's insolvency laws have not gone unnoticed by international credit rating agencies, which play a crucial role in assessing a country's creditworthiness and investment climate. The reforms aimed at speeding up the resolution process, enhancing creditor rights, and promoting a culture of corporate transparency have garnered favorable attention from credit rating agencies, contributing to India's improved credit rating outlook on the world stage.

The positive impact of these reforms on India's credit rating is evident in the increased investor confidence, heightened interest from foreign investors, and enhanced access to capital markets. Moreover, a robust insolvency framework instills trust and certainty in the business environment, fostering long-term economic stability and resilience.

Conclusion

In conclusion, the recent developments in India's insolvency laws have paved the way for economic revitalization, bolstering investor confidence, and elevating India's credit rating in the global arena. By embracing transparency, accountability, and efficiency in insolvency resolution mechanisms, India has positioned itself as an attractive destination for investment and business expansion, driving sustainable growth and prosperity in the years to come.





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NON-APPOINTMENT OF A COMPANY SECRETARY DURING CIRP

Brief details about this case

1. The ultimate responsibility of ensuring the compliances that are applicable to a company is with the board of directors and the company secretary of the company for ensuring the required compliances under the Companies Act and in the corporate insolvency process, the responsibility stand shifted to Resolution Professional / Liquidator and they being the officer-in-default since during the corporate insolvency process under IBC the power of the board stands suspended.

This case pertained to the non-appointment of a whole-time company secretary in a company as per the provisions of section 203 of the Companies Act 2013, where the Registrar of Companies slapped a penalty on the Resolution Professional and Liquidator for non-compliance of appointing the company secretary. During the process

of the corporate insolvency process, the Resolution Professional and Liquidator failed to appoint the company secretary after the position had fallen vacant, therefore the Registrar of Companies initiated the adjudication proceedings against the Resolution Professional and Liquidator and they accepted and admitted the non-compliance in spite of trying to strive for the compliances with a result, they were penalised.

Compliance during the Corporate Insolvency Process

2. The Insolvency and Bankruptcy Board of India (IBBI) requires Resolution Professionals to comply with all rules and regulations, which a company under normal circumstances also has to comply with. This provision is there because, during the corporate insolvency process, the powers of the board of directors stand suspended and hence the responsibility of compliance is shifted to the Resolution Professionals / Liquidator who are termed as officers responsible for the affairs of the company.

There have been views and suggestions coming from the legal experts handling insolvency cases that compliance is difficult in companies undergoing the resolution process, and complete relaxation of filing and disclosure rules should be given in such cases. However today such relaxation / exemption is not available and as per the provisions of the Companies Act, compliance is required to be ensured till the existence of the company. The provisions of the Companies Act use the wordings in its penalty clauses that "officer who is in default" is liable for penal actions. Obviously, in the case of the corporate resolution process, the officer who is in default is the Resolution Professional / Liquidator.

Relevant provisions under the Companies Act 2013 relating to this case

In pursuant to sub-section (1) of section 203 of the Companies Act, 2013, every company belonging to such class or classes of Companies as may be prescribed under Rule 8A of the companies (Appointment & Remuneration of Managerial personnel) Amendment Rules, 2014 shall appoint a whole-time company secretary.

Rule, 8A companies (Appointment of Remuneration of Managerial personnel) Rules 2014

A company other than a company covered under rule 8 which has a paid-up capital of five crore rupees or more shall have a whole-time company secretary. (Applicable in respect of financial years commencing before 1st April 2020 prior to substituted rule by the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 where the paid-up capital limit was increased to 10 crores for the appointment of a whole-time company secretary.

Penal provisions for default / non-compliance of section 203

3. Sub-section (5) of section 203 of the Companies Act 2013 provides that if any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

Consequences of any default

4. To understand the consequences of any default while complying with the provisions relating to filing of annual returns and annual financial statements, let us go through the decided case law by the Registrar of Companies, Gujarat, Dara & Nagar Haveli on this matter on 4th April 2022.

The relevant case law on this matter

5. We shall go through the adjudication order dated 4th April 2022 passed by the Registrar of Companies Gujarat, Dara & Nagar Haveli bearing No. ROC-GJ/ADJ- order/Section 454 /STA (V) 2021-22/ 117-119 in the matter of adjudication of penalty under section 454(3) of the Companies Act 2013 read with Rule 3 of the companies (Adjudication of Penalties) Rules 2014 for violation of section 203 of the Companies Act 2013 read with Rule 8A of the Companies (Appointment and Remuneration of

Managerial personnel) Rules, 2014 regarding the appointment of whole-time company secretary in the matter of M/s. Steel Konnect (India) Private Limited.

Details of the company

6. M/s Steel Konnect (India) Private Limited is a company incorporated on 19th January 2012 under the provisions of the Companies Act 1956 having its registered office at B-83, Pariseema Complex, C. G. Road, Ellis bridge Ahmedabad in the state of Gujarat and the company falls under the jurisdiction of the Registrar of Companies of Gujarat, Dadra & Nagar Haveli and the Registrar of Company is situated at Ahmedabad. The company had three directors on its board. The company is in the manufacturing business of metals and chemicals and associated products thereof.

Facts about the Case

7. The background details relating to this case are as follows:-

The company had gone to the Honourable National Company Law Tribunal under section 230-232 of the Companies Act 2013 at the beginning of the year 2017 and the Honourable National Company Law Tribunal upon hearing the case passed an order dated 19th April 2017 against Steel Konnect (India) Private Limited and appointed an Interim Resolution Professional under section 73 read with section 15 of the Insolvency and Bankruptcy 2016 Code with effect from 19th April 2017 and upon commencement of CIRP the powers of the board of directors of Steel Konnect (India) Private Limited stands suspended and such powers by virtue of the order, vested with the Interim Resolution Professional / liquidator appointed for the purpose of corporate insolvency process (CIP) followed by liquidation. On this matter the Honourable National Company Law Tribunal has passed its order under section 230-232 on 3rd May 2021, bringing the matter to rest.

7.1 Directions given by NCLT to Registrar of Companies

During the process CIP process, the National Company Law Tribunal directed the Registrar

of Companies for providing the required no objection certificate and for this purpose, the Registrar of Companies undertook the procedural verification of records of the company and also made enquires with the company's concerned officials.

7.2 The relevant events which took place in this case

During the procedural verification of records of the company, the Registrar of Companies had observed that the company and its board of directors/Resolution Professional /Liquidator, at the relevant time, have failed to comply with the provisions of section 203 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014 regarding the appointment of a whole-time company secretary.

-	The company failed to appoint the whole time company secretary during the period between 26 th February 2015 and 30 th November 2015 and
-	Also further period with effect from 1 st April 2021 onwards till the final order issued by the Honourable National Company Law Tribunal i.e. 3 rd May 2021 (excluding six months cooling period as provided under section 203(4) of the Companies Act, 2013)

Thus, the company and its board of directors/ Resolution professional /Liquidator at the relevant time have violated the provisions of section 203 of the Companies Act, 2013 and the Rules made thereunder by not appointing the whole time company secretary and the Registrar of Companies had reasonable cause to believe that aforesaid provisions of the Companies Act, 2013 have not been complied with.

7.3 Relevant facts upon further enquiry by the Registrar of Companies

On making a further enquiry by the Registrar of Companies,

(i)	The Liquidator made a submission that the Hon'ble National Company Law Tribunal has passed an order on 19 th April 2017 in respect of company petition (1.B.) No.5 of 2017 against M/s Steel Konnect (India) Private Limited and appointed an Interim Resolution Professional under section 13 read with section 16 of the Insolvency and Bankruptcy Code with effect from 19 th April 2017 and upon commencement of corporate insolvency restructuring (CIR) process the powers of the board of directors of Steel Konnect (India) Private Limited stands suspended and such powers were vested with the Interim Resolution Professional appointed by the National Company Law Tribunal.
(ii)	The Liquidator also further submitted that the Hon'ble National Company Law Tribunal vide its order dated 2 nd November 2017 confirmed the appointment of another person as Resolution Professional towards the corporate debtor in place of the Interim Resolution Professional in pursuant to section 27 of the Insolvency and Bankruptcy Code upon an application filed by the committee of creditors through the Bank of Baroda.
(iii)	He also further submitted that as per the order dated 28 th January 2020, the Hon'ble National Company Law Tribunal passed an order for liquidation of the company and appointed the Liquidator (the same Liquidator who was making the submissions) as the Liquidator of the company.

Show Cause Notice issued by the Registrar of Companies

Since the Registrar had a reason to believe that the company had violated the provisions of section 203 of the Companies Act 2013, by not appointing the whole time company secretary, issued an adjudication notice on 1st October 2021 to all the directors, Liquidator and to the Resolution Professional of the company.

No response from the company

8. No response was received either from the company or from its directors/ Liquidator / Resolution Professional for the show cause notice issued by the regulator on this matter.

Personal hearing notice issued by the Registrar of Companies

9. Thereafter, a personal hearing notice was issued by the Registrar of Companies to the company and its directors & Liquidator / Resolution Professional pursuant to section 454(4) of the Companies Act, 2013 and a hearing was fixed for 11th January 2022 in the interest of natural justice, before the matter was decided by the Adjudicating Officer

Response from the company

10. In the meantime, the Registrar of Companies received an e-mail communication dated 28th December 2021 from one of the chartered accountants on behalf of the Liquidator intimating the appointment of Liquidator by the Hon'ble National Company Law Tribunal, Ahmedabad vide its order dated 28th February 2020 under the provisions of the Insolvency and Bankruptcy Code, 2016.

In view of the above appointment made by the Honourable National Company Law Tribunal, the chartered accountant request the office of the Registrar to send all the letters and correspondence to the Liquidator with regards to the company.

On the day of the personal hearing

11. On the Scheduled date of the personal hearing i.e. on 11th January 2022, none of the ex-directors, or Resolution Professionals for the personal hearing. However, the Liquidator of the company appeared and attended the hearing proceedings and submitted oral submissions in the matter. With the presence of the Liquidator, pursuant to Rule 3 of the companies (Adjudication of penalties) Rules 2014, the Registrar of Companies proceeded with the absence of the Resolution Professional and the company directors on this matter. The Liquidator had submitted that

-	Pursuant to an application filed by the GSEC Green Energy Private Limited for approval of scheme of compromise and arrangement under section 230-232 of the Companies Act, 2013 vide order issued by the Honourable National Company Law Tribunal, Ahmedabad dated 3 rd May 2021 it was declared that as per section 32A, the liquidation estate of company is free from the liability of offences or misconducts done by the previous management of the company and accordingly no authorities shall ever attach, impair, diminish or take any actions against the assets of the corporate debtor either in the name of re-assessment, revisions, review of the previous acts or returns filed by the company.
-	The Liquidator further submitted that during the corporate insolvency resolution process and during the liquidation period, the powers of the board of directors were suspended, and the suspended directors were not cooperating during the corporate insolvency resolution process and liquidation process.
-	The suspended directors did not attend any Stakeholders Consultation Committee meeting during the liquidation period and all the notices and letters sent to the suspended directors were unanswered and that there were various litigations were going on with the National Company Law Tribunal, Ahmedabad against the suspended directors for making preferential and fraudulent transactions
-	The National Company Law Tribunal, Ahmedabad also advised issuing a public notice to directors for attending the hearing but the suspended directors have not attended the hearing.
-	The Liquidator had submitted that Covid-19 had also impacted the business operation and importantly the health of the human assets of the applicant company. Hence, the non-compliance / delay in compliance occurred in spite of trying to strive for the compliance.

-	The Liquidator further informed that as per the information received one of the suspended directors had also passed away and no proof of the same had been received to the office of the Liquidator and the information was only based on intimation received without any proof for the same.
-	Finally, the Liquidator admitted that the non-compliance had occurred in respect of section 203 by not appointing the whole time company secretary in spite of trying to strive for the compliances.

Submission made by the Presenting Officer on the above

12. The presenting officer submitted that from the above submission made by the Liquidator and records available with the office of the Registrar of Companies, it revealed that the powers of the board of directors were suspended with effect from 19th April 2017 to 2nd May 2021. The Presenting Officer summarized the people who were liable for default after taking into consideration of the order passed by the Honourable National Company Law Tribunal under section 230-232 of the Companies Act, 2013 on 3rd May 2021.

(a)	The directors of the company were liable for the period from 1 st May 2016 to 18 th May 2017 for any defaults / violations committed by the company.
(b)	The interim Resolution Professional was liable for default with effect from 1 st October 2017 to 1 st November 2017.
(c)	The Resolution Professional Resolution professional was liable for default with effect from 2 nd January 2018 to 27 th January 2020 and
(d)	The Liquidator was liable for default with effect from 28 th January 2020 too 2 nd May 2021.

The Presenting Officer concluded by stating that the company and its board of directors, Resolution Professional and Liquidator at the relevant time had violated the provisions of section 203 of the Companies Act 2013 read with relevant Rules made thereunder by not appointing the whole time company secretary.

Based on the above submissions, the matter did proceed for adjudication action from the period from 2nd November 2018 to the date 2nd May 2021 till the date of the order passed by the Honourable National Company Law Tribunal under section 230-232 of the Companies Act, 2013 which was on 3rd May 2021.

The conclusion reached by the Registrar of Companies / Adjudicating officer

- 13.** From the forgoing facts and circumstances, the Registrar of Companies / Adjudicating Officer had reasonable cause to believe that the company and its officers – i.e. Resolution Professional and Liquidator had violated the provisions of section 203 of the Companies Act 2013 as noticed from the Ministry of Corporate Affairs portal record. In view of the facts narrated above, the officers-in-charge of the company in default were liable for penalty as per the provisions under section 203(5) of the Companies Act 2013.

Factors considered by the Adjudicating Officer while passing the order

- 14.** While adjudging the quantum of penalty under section 117(2) of the Companies Act, 2013, the Adjudicating Officer has considered the following factors, namely:-

(a)	The amount of disproportionate gain or unfair advantage, whenever quantifiable, made as a result of default.
(b)	The amount of loss caused to an investor or group of investors as a result of the default.
(c)	The repetitive nature of default.

The Presenting Officer further submitted that with regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the company and its directors or loss caused to the investor as a result of the delay on the part of the notice to redress the investor grievance are not available on the record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the company and its directors or the loss caused to the investors in a default of this nature.

As regards to imposing lesser penalty

- 15.** The Presenting Officer submitted that it is observed from the annual return for the financial year ended as on 31st March 2016 of the company, that the paid-up capital of the company was Rs. 56,00,00,000/- and turnover is Rs. 195, 79,37,083 and hence the company, as per the Ministry's Notification No. GSR 92(E) dated 1st February 2021, with respect to the provisions of section 2(85) of the Companies Act, 2013, the company does not fall under the ambit of "small company". Therefore, the provisions of imposing lesser penalty as per the provisions of section 446B of the Companies Act, 2013 do not apply to the company.

The order passed by the Registrar of Companies / Adjudicating Officer

- 16.** The Registrar of Companies / Adjudicating Officer, having considered the facts and circumstances of the case and submissions made by the presenting officer and oral submissions made by the Liquidator during the hearing and after taking into accounts the factors discussed above, the Registrar of Companies / Adjudicating Officer imposed penalty on the Resolution Professional and Liquidator of the company being officers in default as per table given below for violation of section 203 (5) of the Companies Act 2013. The order spelled out that Resolution professional was liable for default with effect from 2nd January 2018 to 27th January 2020 and the Liquidator was liable for default with effect from 28th January 2020 to 2nd May 2021.

Penalty levied on Resolution Professional of the company who was In-charge of company between 2nd November 2018& 27th January 2020

Period of default	Company / defaulting officers	Fixed Penalty	Penalty continuing failure	Total Penalty imposed
		Rs	Rs	Rs
2.11.2018 to 27.01.2020	Resolution Professional	50,000	451 x 1000 = 4,51,000	5,01,000
Penalty levied on Liquidator of the company who was In-charge of company between 28th January 2020 and 2nd May 2021				
28.01.2020 to 02.05.2021	Liquidator	50,000	460 x 1000 = 4,60,000	5,10,000
Total Penalty				10,11,000

The Registrar of Companies / Adjudicating Officer is also of the opinion that the penalty imposed is commensurate with the aforesaid failure committed by the Resolution Professional and Liquidator who were the officers in default

(a)	The order directed that the company and its officers shall have to make the payment of penalty by way of e-payment (available on Ministry website www.mca.gov.in) under "pay miscellaneous fees" category in MCA fee and payment services within 90 (ninety) days of this order and the challan / SRN generated after payment of penalty through online mode be filed in INC-28 to the office of Registrar of Companies.
(b)	The order stated that an appeal against this order may be filed in writing with the Regional Director, North Western Region, Ministry of Corporate Affairs, Roc Bhavan, opp. Rupal Park, Near Ankur Bus Stand, Naranapura,, Ahmedabad - Gujarat within a period of sixty days from the date of receipt of this order, in form ADJ setting forth the grounds of appeal and shall be accompanied by the certified copy of this order. (Section 454 of the Companies Act, 2013 read with the companies(Adjudicating of Penalties) Rules, 2014 as amended by companies (Adjudication of Penalties) Amendment Rules, 2019.

(c)	The order also spelt out that as per the provisions of section 454(8) (i) of the Companies Act 2013, where a company does not pay the penalty imposed by the Adjudicating Officer or the Regional Director within a period of ninety days (90 days) from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs rupees. Further as per Section 454(8) (ii) of the companies Act 2013, where an officer of a company who in default does not pay the penalty within a period of ninety days from the date of receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
(d)	The order drew the attention to section 458(8) of the Companies Act, 2013, regarding the consequences of non-payment of a penalty within the prescribed time limit, in the event of non-compliance of this order which provides that in case of default in payment of a penalty, the prosecution will be filed under section 454 (8) (ii) of the companies Act, 2013 at the cost your own costs of the company, without any further notice.

(e)	Finally the order concluded by saying that the adjudication notice stands disposed of with this order.
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Despatch of the order

- 17.** The order was sent by the Registrar of Companies in terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendments Rules 2019 to the company and its defaulting officers and also to the Regional Director, North Western Region, Ministry of Corporate Affairs at Ahmedabad.

The complete order for reading

- 18.** The readers may like to read the complete adjudication order bearing No. ROC-GJ/ADJ-order/Section 454/STA (V) 2021-22 /117 -119 passed by the Registrar of Companies, Gujarat, Dara & Nagar Haveli order signed on 1st April 2022 and dated 4th April 2022, in the matter of adjudication of penalty under section 454 (3) of the Companies Act 2013 read with Rule 3 of the companies (Adjudication of Penalties) Rules 2014 for violation of section 203 of the companies Act 2013 read with rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 in the matter of M/s. Steel Konnect (India) Private Limited and the relevant website is <https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/roc-adjudication-orders.html>

Conclusion

- 19.** From the above case law, it is abundantly clear that the company has to ensure compliance in all stages i.e. right from the incorporation till the company is finally liquidated through the corporate insolvency resolutions process during which time the powers of the board of directors of the company stands suspended and such power is vested with the resolution professional / liquidator. In the given case, the company had gone to the mode of liquidation through the order of the Honorable National Company Law Tribunal and as per the order, the earlier management i.e. the directors of the company was relieved from all their responsibilities and

the same has been taken over by the Liquidator and Insolvency Resolution Professional. By taking over, they became the officer in default and assumed the responsibility of ensuring compliance. Even though the company has gone into liquidation mode, the earlier management had been relieved from their responsibilities, still, for the non-compliance, the Liquidator and the Resolution Professional both were identified as defaulters for the required compliance of filing annual returns and annual financial statements and accordingly the Registrar of Companies penalized them.

In conclusion, we can say that the company is required to ensure all the required compliance at all stages till it is finally closed down and the person whosoever is responsible including Liquidator and Resolution professional have to ensure absolute compliance at all stages and at all time in order to avoid the penal actions from the regulators.

Reference:-

1.	Companies Act 2013
2.	Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014
3.	Insolvency and Bankruptcy Code 2016
4.	Companies (Adjudication of Penalties) Rules 2014
5.	Companies (Adjudication of Penalties) Amendment Rules 2019
6.	Adjudication order bearing No. ROC-GJ/ADJ-order/Section 454 /STA (V) 2021-22 /117 -119 passed by the Registrar of Companies, Gujarat, Dara & Nagar Haveli order signed on 1 st April 2022 and dated 4 th April 2022, in the matter of adjudication of penalty under section 454 (3) of the companies Act 2013 read with Rule 3 of the companies (Adjudication of Penalties) Rules 2014 for violation of section 203 of the companies Act 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014 regarding appointment of whole-time company secretary in the matter of M/s. Steel Konnect (India) Private Limited.



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INSOLVENCY & BANKRUPTCY CODE 2016- AN IMPETUS TO THE LENDERS EFFORTS FOR RECOVERY OF CORPORATE DUES FROM PERSONAL GUARANTORS

Background/Outline:

In a historic ruling in November/December 2023, the Supreme Court (SC) order allowing bankruptcy proceedings against personal guarantors of loans to defaulter corporates has opened up a new window of recovery, certainly increasing banks' realisations. The Supreme Court dismissed a set of petitions filed by past promoters of bankrupt companies, viz Anil Ambani, Venugopal Dhoot and Sanjay Singhal, challenging personal insolvency proceedings initiated against them. These promoters challenged the changes to the bankruptcy

law, allowing personal insolvency cases against guarantors in 2019. The SC judgement has cleared the barriers for insolvencies giving relief to lenders whose petitions were getting stuck in various judicial courts due to excessive litigations.

As personal guarantors are mostly promoters of companies, Supreme Court judgement will also prevent promoters of high-debt companies from giving unproven personal guarantees. For example, Anil Ambani, stand as personal guarantor of approximately ₹1,384 crore to lenders of his distressed companies. Sanjay Singal and his wife Arti Singal jointly had given guarantee of ₹12,276 crore of loans to Bhushan Power and Steel.

Synopsis:

In this article, we will cover the journey of legally pursuing the guarantor as per the relevant sections of “Indian contract act 1872” and the latest legislation “Insolvency & Bankruptcy code 2016 with amendments and the progress made in the personal insolvency cases filed with NCLTs since inception to December 2023.

The outline of discussions will be under following paras.

1. The Indian contract act & IBC 2016 provisions
2. Framework-Insolvency Resolution Process & Bankruptcy process
3. Summary of petitions and Supreme Court order
4. Progress of resolution cases of personal guarantors.
5. Progress under Bankruptcy Process
6. Cases of personal Insolvency like latest case of Subhash Chandra, Founder & Chairman Emeritus of Zee Entertainment and Indiabulls Housing Finance has opened floodgates for creditors
7. Way Forward

1. The Indian contract act:

Section 126 to 129 deals with the contract of guarantee of **Indian contract act ,1872.**

Section 128 defines the liability of guarantor/ surety as under:

Surety's liability—The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

This means that liability of guarantor is equal to the principal debtor and creditor can sue the surety directly. So, insolvency proceedings against CDs and PGs can go hand-in-hand.

IBC provisions-Proceedings against Personal Guarantors to Corporate Debtor:

The provisions for resolution of corporate persons notified in 2016 and amended in the year 2018 thereby bringing individuals under provisions for resolution in a phased manner. The individuals were defined into 3 categories as:-

- (i) **Personal guarantors (PGs) to corporate debtors (CDs)**
- (ii) **Partnership firms, Proprietorship firms and**
- (iii) **Other individuals**

2. Framework

Following is the frame work under IBC 2016 for proceedings against personal guarantors of loans.

Under part III of the Code, the Government has notified the commencement of provisions relating to insolvency and bankruptcy processes for PGs of CDs, with effect from 1st December, 2019. i.e

Insolvency Resolution Process

- **Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (IIRP Rules).**

Bankruptcy Process

- **Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (Bankruptcy Rules)**

The IBBI has notified:

- **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.(IIRP regulations)**

- **Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. (Bankruptcy regulations)**

The Code read with the above-mentioned rules and regulation provide for the procedure for insolvency resolution and bankruptcy process for PGs to the CDs.

3. Summary of petitions and Supreme Court order:

After the personal insolvency notification by the Ministry of Corporate Affairs dated 15-11-2019, regarding the insolvency of the corporate debtor's personal guarantors, the various writ petitions filed in high courts as also in supreme court (SC) in 2021, challenging the rights & responsibilities of PGs under IBC. Honourable SC by ruling dated 21.05.2021 in **Lalit Kumar Jain vs Union of India & others** upheld the legal position of above notification clarifying that mere approval of resolution plan against CD does not absolve the liabilities of PGs to CDs. Supreme Court addressed the constitutionality of the provisions of the IBC that permitted the initiation of insolvency process against personal guarantors, including the promoters, of a corporate debtor that is facing insolvency.

The Supreme Court maintained the terms of the notification and gave ruling that the guarantor remains liable even if the corporate debtor or principal borrower is released from their obligation to the creditor through insolvency process. In a nutshell, the Supreme Court opened the door for creditors to file for bankruptcy against the personal guarantors of a company debtor going through liquidation or insolvency.

Again, concerning the procedural aspect, many writ petitions filed by guarantors before various high courts and before the SC challenging the constitutional validity of provisions of PG to CD on the ground that those were against the due process of law and are in violation of articles 14 and 21 of the constitution. Clubbing the 384 tagged petitions, the honourable supreme court in the matter of **Dilip B. Jiwrajika vs Union of India & others** uphold the validity of provisions of sections 95 to 100 of IBC 2016 related to personal guarantors.

4. Progress of resolution cases of personal guarantors:

Now, we would take up the progress so far have been made in resolution cases filed against personal guarantors. Below in table -1 the cases filed since 2019-20 to December 2023 are shown.

Table 1. Insolvency resolution of Personal Guarantors (Amount in ₹ crore)

Period	Applications filled by				Total		Adjudicating Authority	
	Debtors(u/s 94)		Creditors(u/s 95)				NCLT	DRT
	No.	Debt Amount	No.	Debt Amount	No.	Debt Amount*		
2019- 20	3	49.66	22	3289.85	25	3339.51	24	1
2020-21	23	2485.94	239	37632.83	262	40118.77	256	6
2021-22	86	3397.57	884	64363.23	970	67760.80	955	15
2022-23	70	10396.90	717	37428.60	787	47825.50	786	1
Apr -Jun, 2023	37	1364.43	85	3238.40	122	4602.83	122	0
Jul - Sep, 2023	65	279.74	125	3061.29	190	3341.03	163	27
Oct - Dec, 2023	50	1274.46	61	2980.78	111	4255.24	111	0
Total	334	19248.70	2133	151994.98	2467	171243.68	2417	50

Note: The data are provisional. These are revised on a continuous basis as further information is received.
*Debt data not available in 490 cases,

Source: Insolvency & Bankruptcy IBBI quarterly news letter-Oct-Dec 2023.

It is observed from Table-1 that a total number 2467 cases have been filed till 31.12.2023, after provisions related to insolvency resolution & Bankruptcy relating to personal guarantor to corporate debtors came into effect on 1st December 2019. The information taken from IBBI Insolvency & Bankruptcy quarterly news letter- Oct-Dec 2023.

Out of 2467 applications 334 applications filed by debtors u/s 94 of IBC 2016 and 2133 applications

filed by creditors u/s 95 of IBC 2016. So, creditors have taken a bigger advantage as more than 86% applications against guarantors were filed by them.

Now, we will see status of filed applications for initiation of Insolvency Resolution Process of personal guarantors to corporate debtors, given in table-2.

Table-2 status of filed applications for initiation of Insolvency Resolution Process of personal guarantors to corporate debtors

Period	No. of applications	Before appointment of RP		No. of cases RPs have been appointed	After appointment of RP		No. of cases admitted
		No. of applications withdrawn	No. of applications dismissed/rejected		No. of applications withdrawn	No. of applications dismissed/rejected	
2019-20	25	0	0	2	0	0	0
2020-21	262	6	1	35	2	1	13
2021-22	970	15	16	401	0	7	35
2022-23	787	17	29	490	14	20	201
Apr-June 2023	122	0	2	55	10	10	30
Jul-Sept 2023	190	0	1	24	3	0	14
Oct-Dec 2023	111	0	0	58	0	1	3
Total	2467	38	49	1065	29	39	296

Source: Insolvency & Bankruptcy IBBI quarterly news letter-Oct-Dec 2023.

It is observed that out of 2467 applications with debt over Rs 1.71 lakh crore, 87 applications withdrawn/dismissed/rejected before the appointment of RPs and 68 applications after appointment of RP totaling 155 applications. That means 6.28 % applications withdrawn before & after appointment of RP.

In 1065 cases RPs have been appointed which is less than 45% of applications filed excluding withdrawal. Out of 296 cases admitted only in 21 cases (merely 7%) repayment plan is approved and creditors have

realized Rs 91.27 crore which is only 5.22% of the admitted claim. Out of 296 cases admitted only 101 cases closed. In addition to 21 cases wherein repayment plan is approved, 12 withdrawn, 68 closed on non-submission or rejection of repayment plan. Therefore 101 cases closed represents 34.12 % of admitted cases.

5. Progress under Bankruptcy Process:

If the repayment plan is not executed and resolution process is failed, the creditor or debtor can file

an application before NCLT/DRT for initiation of Bankruptcy process.

If a person is not able to settle dues according to the demands of creditors, they are declared bankrupt. Bankrupt person's assets are sold and the proceeds distributed amongst the creditors. Such person cannot hold a directorship in any company, not eligible for any bank loan or access to the bond market and also cannot stand for any public office. These restrictions remain in place for a year after sale proceeds are distributed. After one year a report in this regard is submitted to the NCLT, thereafter only the person is discharged.

So far 23 applications for bankruptcy have been filed by creditors as of December 2023 u/s 123 of code before various branches of NCLT and 1 with DRT, making a total of 24.

6. Cases of personal Insolvency like latest case of Subhash Chandra, Founder & Chairman Emeritus of Zee Entertainment and Indiabulls Housing Finance has opened floodgates for creditors

Lately Subhash Chandra , Founder & Chairman Emeritus of Zee Entertainment faces Personal Insolvency proceedings. He has given personal guarantee of approx.. 170 crore to group entity M/s Vivek Infracon.

There was a settlement between Zee entertainment and Indiabulls Housing Finance, so case was

withdrawn from NCLAT which was filed in 2022 in NCLT. However, terms of agreement were not met, so Indiabulls Housing Finance once again moved to NCLT for action under section 95 of IBC. This move was following November 2023 ruling of Supreme Court upholding the validity of IBC provisions regarding personal guarantee to corporate debtor. Though, progress on personal insolvency cases so far is slow but it has definitely opened flood gates for creditors for debt realisations as nobody would like to lose his/her personal assets.

Thus it is seen that the SC order has cleared the obstructions for insolvencies involving personal guarantors. It has given respite to lenders as proceedings pending against PGs would see the fast disposal.

Hopefully, cases pending with NCLTs for resolution of the CDs and its PGs will be accelerated and will see the way towards value maximization.

7. Way Forward:

Progress is not very significant in quantitative terms, but supreme court orders have triggered a sense of fear amongst personal guarantors that they cannot escape from their personal liability and the recovery can be made from their personal assets.

In 1,065 cases of personal insolvency where resolution professionals have already been appointed as shown under para 5 table-2, these cases are expected to



move speedily and over next few months likely to yield manifold increase of Rs 91.27 crore paltry realizations under personal insolvency cases.

To improve the efficacy of insolvency resolution process for personal guarantors, the IBBI has undertaken frequent steps. To summarise it has taken 3 key actions as under:

- i. **Same RP can handle insolvency resolution process of PG and CIRP (of CD). It will enhance the process harmonization.**
- ii. **RP can share his/her recommendations with both debtors and creditors for better decision making amongst stake holders.**
- iii. **RP can organize creditors meeting for all PG cases. It will ensure integration of collective voice of creditors into the resolution process thereby facilitating overall repayment plan.**

Finally, decline by Supreme Court to grant relief to personal guarantors from a company's default under the Insolvency and Bankruptcy Code, 2016 (IBC) and

maintaining the validity of several important IBC provisions, including the ability to file for bankruptcy against guarantors, has paved the way for manifold increase in bank recoveries.

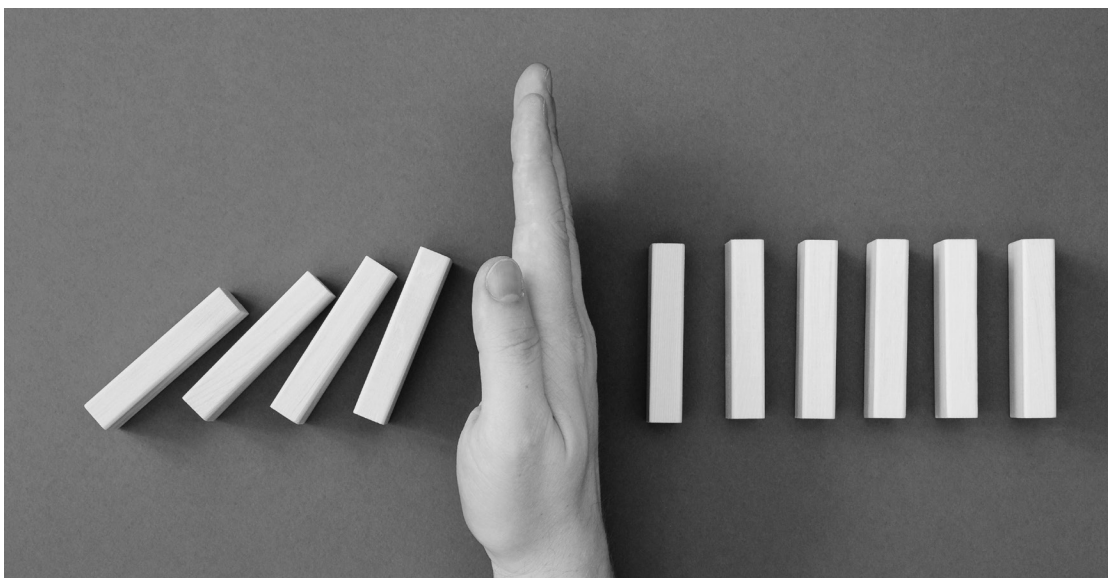
Over 200 petitions have been filed against various provisions of the IBC since it was amended in 2019 to allow for recovery from guarantors. These include applications by creditors to start the insolvency

resolution process against personal guarantors, interim moratoriums, and the appointment of resolution professionals. The personal guarantor is responsible for repaying the debt on the borrower's behalf in the event that the borrower defaults on its responsibilities, as the liability of the surety is co- extensive with that of the principal debtor as per section 128 of Indian contract act. SC ruling will improve lenders' recourse with defaulters and discourage unrealistic personal guarantees by promoters in coming times.

The journey began with the 2019 Amendment to the IBC, expanding its scope to contain personal guarantors. The move was aimed at streamlining the insolvency resolution process and ensuring that guarantors are not exempt from liability when the corporate debtor defaults. Even any foreign assets held by a corporate debtor's personal guarantor can also be attached for the purposes of the debtor's insolvency or bankruptcy. The NCLT has the authority to attach the foreign assets of the corporate debtor under insolvency.

References:

1. **Insolvency & Bankruptcy IBBI quarterly news letter-Oct-Dec 2023**
2. **News paper editions of Economic Times & Times of India, Hindu Business Line**
3. **Elements of Mercantile Law by N. D. Kapoor-Indian contract act1872**





A LOOK AT THE ENVIRONMENTAL CONCERNS IN IBC FRAMEWORK: THE GREENING GAP IN CORPORATE INSOLVENCY

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The Insolvency and Bankruptcy Code (IBC) of India has streamlined corporate insolvency resolution, offering a much-needed fillip to economic efficiency. However, a crucial question lingers: does the IBC adequately address environmental concerns during corporate distress? Is the IBC environment-friendly?

This issue resonates globally. A global conversation is undergoing on integrating environmental considerations into insolvency processes. This initiative, led by a 12-member working group formed by the World Bank, INSOL International, and the International Insolvency Institute, aims to address the critical gap in holding companies accountable for environmental damage during financial distress. They aim to bridge the gap in holding companies accountable for environmental damage during insolvency.

Recognizing this pressing need, the Government is reportedly considering changes to the IBC.

The Current Landscape:

The current IBC framework classifies environmental claims, such as clean-up costs and fines, as unsecured operational debts. This puts them at a disadvantage compared to secured creditors in the “waterfall” mechanism for claim settlement. Often, unsecured creditors receive little to nothing during liquidation, leaving environmental liabilities potentially unaddressed.

This prioritizes financial interests over environmental well-being. This prioritization of financial over environmental concerns creates a conflict. Companies facing insolvency may be incentivized to neglect environmental compliance, knowing these liabilities may be extinguished in a resolution plan.

As per Section 238 of the Code, the Insolvency law supersedes all other laws including environmental laws creating a visible human rights implication. The intersection between environmental liability claims and insolvency of the entity concerned have grown increasingly. The need for regulations to deal with polluting companies and prioritize environmental claims during insolvency is becoming increasingly evident, especially considering the growing risks posed by climate change to businesses and vice versa.

Challenges and Considerations:

- **Quantifying Environmental Claims:** Environmental liabilities, like clean-up costs, are often contingent or undetermined, making them difficult to quantify for inclusion in resolution plans.
- **Environmental Liabilities vs. Fresh Start:** The IBC's objective of providing a "fresh start" for distressed companies can come at the cost of environmental protection. Extinguishing environmental liabilities can leave communities burdened with pollution and long-term health risks.
- **Balancing Interests:** Striking a balance between economic revival and environmental protection is essential.
- **Prioritizing Environmental Claims:** Should environmental claims be categorized as high-priority claims, ensuring they are addressed before financial creditors are fully compensated during insolvency proceedings?
- **Current System's Shortcomings:** The IBC currently places environmental liabilities in the same category as ordinary trade liabilities, neglecting their unique importance.
- **Adjudication and Valuation:** Who should be responsible for adjudicating environmental claims and assigning appropriate cost to the damage caused?
- **Polluting Companies and Insolvency:** Should polluting companies be allowed to restructure under the insolvency regime, or should they be liquidated to prevent further environmental harm?
- **Classification and Priority:** What classification should be given to environmental claims, and what priority would they receive within the waterfall structure of debt repayment?
- **Environmental Expertise in Decision-Making:** While the Committee of Creditors possesses commercial wisdom, they may lack expertise in climate change issues. Should an environmental body be involved in the plan approval stage to ensure environmental considerations are adequately addressed?
- **Promoting Sustainable Practices:** Building on SEBI's initiative of mandatory sustainability reporting for top listed companies, can similar responsibilities be developed under the insolvency regime to encourage environmentally responsible business practices?

A Balancing Act

The changes under consideration represent a delicate balancing act. While facilitating economic revival remains crucial, environmental protection cannot be sidelined. A robust IBC framework should support both economic growth and environmental sustainability.

The Road Ahead:

The government is likely exploring ways to strengthen the IBC's environmental focus. The government's exploration of strengthening the IBC's environmental focus is a positive step. By prioritizing environmental protection alongside financial considerations, we can create a more responsible insolvency framework that promotes a sustainable business environment. The stakeholders need adherence to environmental norms for a better future.

The potential changes to the IBC signal a positive shift towards a more environmentally conscious approach to corporate insolvency resolution. The specific measures implemented will be keenly watched by businesses, environmental groups, and the public alike. A well-crafted set of reforms could pave the way for a more sustainable and responsible IBC, ensuring economic revival goes hand-in-hand with environmental well-being.



Global Arena

FG21/4

Guidance for insolvency practitioners on how to approach regulated firms

UK's Financial Conduct Authority (FCA) in 2021 published its Guidance for Insolvency Practitioners on how to approach regulated firms. This guidance is aimed at IPs appointed over firms solely authorised or registered by the FCA. It may also be relevant from the perspective of conduct regulation for IPs appointed over firms that are dual regulated by the FCA and PRA (Prudential Regulation Authority). The FCA is the competent authority for solo-regulated firms. The PRA is the competent authority for dual-regulated firms.

What does this Guidance cover?

The guidance is set out at Annex 1 (for firms authorised under Financial Services and Markets Act) and Annex 2 (for firms authorised or registered under the Payment Services Regulations or Electronic Money Regulations). The guidance is structured as follows:

- Chapter 1 (Introduction) explains the scope of the guidance and our role in regulated firm failures.
- Chapter 2 (Pre-insolvency) outlines considerations for IPs before a regulated firm's entry into an insolvency procedure, such as obtaining consent for out of court administration appointments and sharing court documentation with us.
- Chapter 3 (Entering insolvency) explains our expectations on IPs at the point of a regulated firm's entry into an insolvency procedure and shortly thereafter, such as communications with clients and creditors.
- Chapter 4 (During insolvency) explains our expectations on IPs during an insolvency

procedure, such as treatment of client assets and treating customers fairly.

- Chapter 5 (Restructuring procedures) explains our expectations when a regulated firm enters into a company voluntary arrangement, scheme of arrangement or restructuring plan.
- Chapter 6 (Checklist) summarises the key steps from the guidance that an IP will need to consider when appointed over a regulated firm.

Who does this guidance apply to?

The guidance is primarily aimed at Insolvency Practitioners appointed (or looking to be appointed) over regulated firms. It may also be of interest to the Official Receiver, professional advisers, trade associations, firms and consumers.

GC24/1

Proposed amendments to FG21/4 - Guidance for insolvency practitioners (IPs) on how to approach regulated firms

FCA is proposing to amend the Guidance to update and improve it. The Guidance, among other things, highlights and raises awareness of regulated firms' regulatory obligations and our expectations of IPs when taking appointments. FCA received feedback from stakeholders that the Guidance has been helpful to IPs in ensuring regulated firms meet the ongoing obligations following appointment.

Given developments that have occurred since the Guidance was published in 2021, FCA decided to undertake an exercise to assess whether it remains relevant for when regulated firms fail. These developments included: changes in the legal framework affecting firm failure (for example, the coming into force of the Payment and Electronic Money Institution Insolvency Regulations 2021), changes in the regulatory framework (for example, the introduction of the Consumer Duty); and changes in the UK economic climate including significant changes in interest rates.

FCA concluded that the Guidance remained appropriate but would benefit from updating to reflect some changes referred to above. Having also received feedback from several stakeholders, including an insolvency trade body, one of the

recognized professional bodies that authorises IPs and the Insolvency Service, FCA identified aspects of the Guidance where FCA could improve clarity or provide further information. The proposed Guidance is aimed at IPs appointed over firms solely authorized or registered by the FCA. It may also be relevant for IPs appointed over firms that are dual regulated by the FCA and PRA. The more substantive amendments and reasons for proposing them are summarised below:

1. Introduction of the Consumer Duty

The Consumer Duty introduces higher and clearer standards of consumer protection across financial services and requires firms to act to deliver good outcomes for retail customers. Our rules require firms to consider the needs, characteristics and objectives of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the customer journey. As well as acting to deliver good customer outcomes, firms will need to understand and evidence whether those outcomes are being met. The Consumer Duty came into effect on 31 July 2023 for new and existing products and services that are open to sale (or renewal). From 31 July 2024, the Consumer Duty will apply to the products and services of firms held in closed books.

The rules, including those relevant to the Consumer Duty, continue to apply to firms in insolvency, up until their permissions are cancelled. Therefore, changes are made to the Guidance setting out expectations that IPs conduct the affairs of the firm in a way that is compatible with the Consumer Duty.

2. Compromises Guidance

In July 2022, FCA published guidance clarifying how to approach compromises in line with the statutory objectives to protect consumers and the integrity of markets. The aim of this guidance is to help firms understand what information is required to and the factors will be considered when deciding if and what actions to take.

IPs may be involved in certain types of compromises (for example, acting as the statutory office-holder (the supervisor) in a company voluntary arrangement) or may consider them as an option for a firm in an insolvency proceeding. FCA therefore made changes

to the Guidance to ensure both sets of guidance are duly aligned.

3. Availability of Financial Services Compensation Scheme (FSCS) protection for customers of payment and electronic money firms where a credit institution holding safeguarding deposits fails

In March 2023, the PRA amended its rules to make FSCS depositor protection available to eligible customers of an electronic money institution (EMI)/ payments institution (PI) in respect of their relevant proportion of safeguarded funds should a credit institution holding the safeguarded deposits fail.

FCA made changes to the Guidance to reflect that whilst eligible customers of an EMI or PI may receive FSCS protection in certain circumstances where the credit institution that holds their safeguarded funds fails, IPs should avoid giving customers misleading impressions on the protection they can receive from the FSCS. This is because the availability of FSCS depositor protection depends on the particular facts of the case.

In addition, FCA updated the Guidance to reflect that, where FSCS protection is available following the failure of a PRA authorised credit institution holding safeguarded deposits, an IP should liaise with the FSCS, including to consider whether clients/creditors need to be involved.

4. The Court of Appeal decision in In The Matter of Ipagoo LLP

The Court of Appeal in the Ipagoo decision held that the Electronic Money Regulations 2011 do not create a statutory trust over relevant funds held by an EMI but that the 'asset pool' includes relevant funds that have been properly safeguarded and an amount equivalent to relevant funds that should have been safeguarded but were not.

FCA made changes to the Guidance to reflect understanding of the Ipagoo decision so that IPs are aware of and understand the need to top-up the asset pool where there is a shortfall in safeguarded relevant funds. FCA however note that, as part of the Smarter Regulatory Framework Payments work, working in conjunction with the Treasury, FCA are currently considering changes to strengthen safeguarding requirements for payment firms and are aiming to consult in summer 2024.

5. Dormant Asset Scheme expansion

The Dormant Assets Act 2022 enables an authorised reclaim fund, which administers the scheme, to accept a wider range of dormant assets, including certain assets in the insurance and pensions, investment and wealth management sectors.

In anticipation of making final rules this year to facilitate the expansion of the Dormant Asset Scheme, FCA proposed new guidance to advise IPs that they should liaise with the authorised reclaim fund if the failed firm was a participant in the scheme and is holding customer records in relation to dormant funds transferred to the authorised reclaim fund.

In addition to the above, FCA also made a number of other amendments in response to feedback received from stakeholders, including IPs, and its own experience of regulated firm failures since the Guidance was published in 2021. This includes the first uses of the Payment and Electronic Money Institution Insolvency Regulations 2021.

FCA welcomes views from respondents by April 30, 2024 and will review all responses to this consultation and, subject to responses received, intend to publish the finalised amended guidance later this year.

FCA make all responses to formal consultation available for public inspection unless the respondent requests otherwise. FCA will not regard a standard confidentiality statement in an email message as a request for non-disclosure. Despite this, FCA may be asked to disclose a confidential response under the Freedom of Information Act 2000. FCA may consult if it receive such a request. Any decision made by FCA not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.





Judgments

Case Title: Mr. Shiv Charan & Ors. Vs. Adjudicating Authority & Anr.

Case no.: Writ Petition (L) No. 9943 & 29111 of 2023

Decision Date: March 01, 2024

Court/Tribunal: High Court of Bombay

FACTS:

- The Corporate Debtor had been subjected to a Corporate Insolvency Resolution Process ("CIRP") since at the instance of a financial creditor. A resolution plan propounded by the Resolution Applicants approved by the Adjudicating Authority by an order dated 17th February, 2023.
- The properties of the Corporate Debtor were attached provisionally under section 5 of the PMLA, 2002 and subsequently continued by a confirmatory order passed by the Adjudicating Authority under section 8 of the PMLA, 2002. The attachment continued even after approval of resolution plan.
- The AA disposed of an interim application filed by the RP, seeking a direction to the ED to release the attached properties on the premise that the attachment must come to an end once a moratorium under section 14 of the IBC, 2016 and ruled that once the moratorium commenced, the attachment must abate.
- ED filed a Writ Petition challenging the authority and legal capacity of the Adjudicating Authority to pass orders invoking Section 32A of the IBC, 2016. The ED has sought quashing of an order whereby the Adjudicating Authority directed the ED to release the attached properties.
- The core issue that falls for consideration is whether the Adjudicating Authority had the jurisdiction to direct the ED to release the Attached Properties, invoking Section 32A of the IBC, 2016, since Section 32A provides that all attachments over properties of a corporate debtor would cease once a resolution plan in respect of the said corporate debtor is approved.

DECISION:

- The Hon'ble High Court affirmed the ruling made by the NCLT. Hon'ble High Court noted that protections to the Corporate Debtor under Section 32A apply upon approval of a qualifying Resolution Plan, ensuring a clean break with a change in ownership.
- The NCLT was well within its jurisdiction in declaring that the corporate debtor would stand discharged from the offences alleged to have been committed prior to the CIRP and that the Attached Properties as identified in the Approval Order became free of attachment from the time of approval of the resolution plan eligible for benefit of Section 32A.
- The Court also noted that the jurisdiction of Section 32A of the IBC, 2016 would be attracted from the point at which a qualifying resolution plan is approved under Section 31 of the IBC, 2016. The protections afforded by Section 32A would become available only when the resolution plan is so approved.
- The Court noted that as a consequence of Section 32A of the IBC, the ED must now necessarily release the attachment, without being logged down by the question of how to interpret the continuation of attachment after the commencement of CIRP and before the approval order and the implications for the same under Section 14 of the IBC, 2016.
- The NCLT in its capacity as the Adjudicating Authority under the IBC, 2016 has only interpreted the provisions of Section 32A and applied them to the facts at hand, to declare that the attachment of the Attached Properties by the ED must come to an end.
- The Court therefore, hold that the interpretation by the NCLT in both, the Approval Order, and the April 2023 Order, did not at all render nugatory, the provisions of the PMLA, 2002 or its legislative objectives.
- The NCLT has merely given effect to the provisions of Section 32A of the IBC, 2016 in its terms and that is an accurate decision. The Court ruled

that the attachment by the ED over the attached properties of the CD came to an end. The Writ Petitions are disposed of accordingly.

CASE REFERRED:

Manish Kumar Vs Union of India – (2021) 5 SCC; Kiran Shah, Resolution Professional of KSL and Industries Ltd. Vs. Enforcement Directorate – (Company Appeal (AT) (Insolvency) No. 817/2021; Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors – (2019 SCC OnLine SC 1542) Deputy Director, Office of the Joint Director, Directorate of Enforcement Vs. Asset Reconstruction Company India Ltd. & Ors. – (2020 SCC OnLine Mad 28090); Phoenix Tech Tower Ltd. Vs. AP Gems and Jewellery Park Pt. Ltd. – (2020 SCC OnLine NCLT 12503); Manohar Lal Vij Vs. The Directorate of Enforcement – ([IB]- 1205/[ND]/2019); Deputy Director of Enforcement, Delhi vs. Asix Bank & Ors – (2019 SCC OnLine Del 7854); P. Mohanraj Vs. Shah Brothers Ispat Pvt Ltd. – (2021 SCC OnLine SC 152) (P Mohanraj); Rai Foundation through its Trustee Vs. The Director, Directorate of Enforcement (WP (Crl.) No. 100/2015).

Case Title: Godavari Projects (JV) vs. Union of India

Case no.: ARB.P. 1342/2022

Decision Date: March 04, 2024

Court/Tribunal: High Court of Delhi

FACTS:

- The disputes between the parties have arisen in context of a tender process initiated by the respondent for "construction of dwelling units including allied services for officers & ORS at Mumbai (Army)".
- The bid submitted by the petitioner was accepted by the respondent on 15.06.2016, and accordingly a Work Order dated 27.06.2016 was issued.
- The petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the A&C Act) has been filed seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
- The respondent has submitted that the work was cancelled/terminated by the respondent vide

letter dated 21.01.2022 since the petitioner was in violation of its contractual obligations.

- It is further submitted that the present petition is not maintainable due to insolvency proceedings being undertaken against one of the member constituents of the petitioner JV.

DECISION:

- The Hon'ble High Court observed that in terms of the settled legal position, the scope of inquiry in a petition under Section 11 of the A&C is limited to examination of the existence of an arbitration agreement.
- The Court also noted that even assuming the petitioner JV is under insolvency, it will not prevent the (corporate debtor) from filing an application under Section 11 of the A&C Act against another party, since the said proceedings are for the benefit of the corporate debtor.
- Accordingly, Mr. Justice (Retd.) Krishna Murari, Former Judge Supreme Court of India, (Mob No.- 9415308516) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.
- All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
- Accordingly, the petition stands disposed of.

CASE REFERRED:

Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund; Gammon India Limited v. Commissioner of Customs, Mumbai; New Horizons Limited v. Union of India; Power Grid Corporation of India Ltd vs. Jyoti Structures Ltd; New Delhi Municipal Council v. Minosha (India) Ltd; MFAR Constructions Pvt. Ltd. v. Married Accommodation Project; Ivrc Limited v. Union of India; Mohindra Bros v. Union of India; Perkins Eastman Architects DPC v. HSCC (India) Ltd and Sai Enterprises vs Union of India.

Case Title: Vishal Sethi Vs. M/s Collage Group Infrastructure Pvt. Ltd.

Case no.: Company Appeal (AT) (Insolvency) No. 903 of 2023

Decision Date: March 20, 2024

Court/Tribunal: NCLAT, New Delhi

FACTS:

- The Appellant/Operational Creditor was appointed as General Manager in the Corporate Debtor Company - M/s Collage Group Infrastructure Private Limited. In due course of time, the Corporate Debtor failed to release timely payments of salary and eventually salary payments came to a halt from 2015 onwards.
- The Appellant submitted his resignation and requested the CD to pay the balance of his arrear salary. The Corporate Debtor provided a full and final settlement statement admitting an outstanding amount of Rs. 9,28,972/- as debt due and payable.
- The Corporate Debtor also made limited part payments of the outstanding dues, but when some cheques issued by the Corporate Debtor were dishonored and further payments were not forthcoming, the Appellant sent a Section 8 notice and thereafter filed a Section 9 application.
- It was pointed out that subsequently a settlement was arrived at between the Appellant and Corporate Debtor which was brought on record before the Adjudicating Authority and Section 9 application was withdrawn with the liberty to revive the same in the event of failure of settlement between the parties.
- Owing to breach caused in the terms of settlement by the Corporate Debtor, the matter was reopened before the Adjudicating Authority, by the Appellant. However the application was rejected by the AA holding that the Appellant was working with a separate company and not with the Corporate Debtor.
- Assailing the impugned order, it has been contended that Clause 2 of the letter of appointment clearly shows that the Appellant was under the

employment of the Corporate Debtor and not of any separate entity namely, MNT Infrastructure Private Limited (MNT).

- The settlement agreement was signed by one of the representatives of MNT, it was clarified that the latter was governed and operated by the same staff/management of the Corporate Debtor and that there existed 100% shareholding between the two entities.

DECISION:

- The Hon'ble Court observed that the Indian Companies Act, 1956 has statutorily recognised subsidiary companies as a separate legal entity. A subsidiary is a separate legal entity for tax and liability purposes.
- Further, to hold the parent company liable, there is need of specific and detailed information, but no such credible information has been provided by the Appellant. There are no sustainable grounds placed on record for holding the Corporate Debtor company liable for the acts of its subsidiary.
- The Hon'ble Court affirm the findings recorded by the Adjudicating Authority in the impugned order and held that when any Operational Creditor seeks to initiate insolvency process against a Corporate Debtor, it can only be done in clear cases where no real dispute exists between the two which is not so borne out from the present factual matrix.
- The provisions of IBC cannot be manipulated and the process of law allowed to be misused such as to turn IBC into a debt recovery proceeding as it would frustrate the basic intent and objective of this special code to bring the Corporate Debtor back on its feet.
- The Court therefore, satisfied that the Adjudicating Authority did not commit any error in rejecting the Section 9 application. Hence, dismissed the appeal.

CASE REFERRED:

Vodafone International Holdings BV vs Union of India and Anr. (2012) 6 SCC 613; Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) in C.A. No.9405 of 2017

Case Title: Ashdan Properties Pvt. Ltd. Vs Mamta Binani & Ors.

Case no.: Company Appeal (AT) (Insolvency) No.464 & 459 of 2024

Decision Date: March 18, 2024

Court/Tribunal: NCLAT, New Delhi

FACTS:

- Two appeals have been filed by the same Appellant challenging the orders dated 12.02.2024 and 21.02.2024 passed by the Adjudicating Authority.
- The Adjudicating Authority directed the Resolution Professional to place the Plan for the Corporate Debtor filed/to be filed by B-Right Real Estate Ltd and Intervenor MGN Agro Properties Private Limited, for the consideration of the Committee of Creditors.
- The Appellant underwent 33 rounds of bidding and was declared H1 and it was thereafter IA was filed by Patanjali Ayurveda Ltd. and other two applicants namely B-Right Real Estate Ltd. and MGN Agro Properties Private Limited, on whose application direction has been issued to place their Resolution Plan before CoC for consideration.



- It is submitted that neither Patanjali nor the other two applicants who subsequently filed applications were included in the list of Prospective Resolution Applicants (PRAs), hence, there was no occasion to issue direction to the CoC to consider their application or Resolution Plan.
- It is submitted that as per Regulation 39(1)(b) of the CIRP Regulation, the Applicant whose name is not included in the list of PRAs cannot be considered.

DECISION:

- The Court observed that the Regulation thus clearly provides that the committee shall not consider a resolution plan received from an application whose name does not appear in the list of PRAs. Admittedly, neither Patanjali nor other two applications have submitted any EOI nor their name was reflected in the List of PRAs.
- Further, Regulation 36A provides for Invitation for Expression of Interest which empowers the CoC to modify the invitation for Expression of Interest. It is always open for the CoC to take a decision to not proceed on the Applications, EOI received and take a decision for issuance of fresh Form G and permit other applicants to participate.
- When no fresh Form G has been issued, it is not open for any new applicant to submit application before the Adjudicating Authority for being permitted to participate in the CIRP and submit Resolution Plan.
- The Court is of the view that impugned order dated 12.02.2024 and 21.02.2024 cannot be sustained, Committee of Creditors having taken resolution not to consider any additional new entrants. Hence, allowed the appeals and set aside the impugned orders.

Case Title: Mr. Tushar Harshadrai Mehta Vs. Samarth Softech Solutions Private Limited

Case no.: CP (IB)/311/MB/2023

Decision Date: March 22, 2024

Court/Tribunal: NCLT, Mumbai Bench, Court-II

FACTS:

- A Company petition is filed by Mr. Tushar Harshadrai Mehta (Operational Creditor), former Director of the Corporate Debtor, praying for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Samarth Softech Solutions Private Limited (Corporate Debtor) under Section 9 of the IBC.
- The Company Petition was filed on 03.04.2023 claiming an outstanding amount of INR 1,06,03,252/-, out of which the principal amount is INR 77,76,159/- and interest thereon computed by the Applicant @ 18% p.a. is INR 28,27,093/- only.
- The principal claim of the Applicant is comprised of remuneration and commission payable by the Corporate Debtor to the Applicant for the services rendered by the Applicant as a technical director of the Corporate Debtor.
- Despite several reminders and follow-ups for the release of payment, the Operational Creditor did not receive his rightful dues and being aggrieved by such non-payment, the Operational Creditor had sent a Demand Notice under Section 8 of the IBC. Hence, filed an application under Section 9.
- The Corporate Debtor submits that the interest claimed by the Applicant/Operational Creditor in the instant Petition @ 18% p.a. is not supported by any agreement/clause whatsoever. Interest at the above-rate has been claimed and computed only for the purpose of inflating the claim so as to reach the minimum threshold of rupees one crore for filing an application u/s 9 of the Code.
- If the interest component is excluded for the reasons stated hereinabove, then the present petition is not maintainable u/s 4 of the Code.

DECISION:

- The Hon'ble NCLT find that the amount claimed to be in default is INR 1,06,03,252/-. The principal value of claim is Rs. 77,76,158/- and interest thereon computed by the Applicant at the rate of 18% p.a. comes to Rs. 28,27,094/-.

- The Court noted that it is well settled position in law that where the contract provides for payment of interest, both principal and interest can be considered to determine whether the threshold set out u/s 4 of the Code is met.
- The Court however observed that where there is no such contractual clause stipulating payment of interest or where the liability in respect of the interest is disputed, then in such cases, the interest portion cannot be considered for determining whether the threshold set out u/s 4 of the Code is met.
- In this case, there is no agreement between the parties hereto with respect to interest. Further, nothing has been placed on record to show that the Corporate Debtor is liable to pay interest to the Applicant/Operational Creditor on account of delay in payment of remuneration.
- Further, the Corporate Debtor too has denied and disputed its liability to pay interest for want of any agreement between the parties in respect thereto. Hence, the interest amount of INR 28,27,093/- cannot be taken into account while ascertaining the quantum of default to see if the minimum threshold prescribed u/s 4 of the Code is met or not.
- Even otherwise, the Petition filed u/s 9 of the Code does not meet the minimum threshold of Rs. 1 crore which is required u/s 4 of the Code to trigger CIRP against the Corporate Debtor.
- Hence, the interest of Rs. 28,27,093/- claimed by the Applicant from the Corporate Debtor cannot be treated as an 'operational debt' as defined u/s 5(21) of the Code and thus, it cannot be taken into account while reckoning the quantum of default to see if minimum threshold prescribed u/s 4 of the Code is met.
- The Court dismissed the petition with above mentioned observations

CASE REFERRED:

Krishna Enterprises v/s. Gammon India Ltd. - Company Appeal (AT)(Insolvency) No.144 of 2018.



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