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INSOLVENCY AND BANKRUPTCY JOURNAL

Evolving Jurisprudence:
Role of Judiciary

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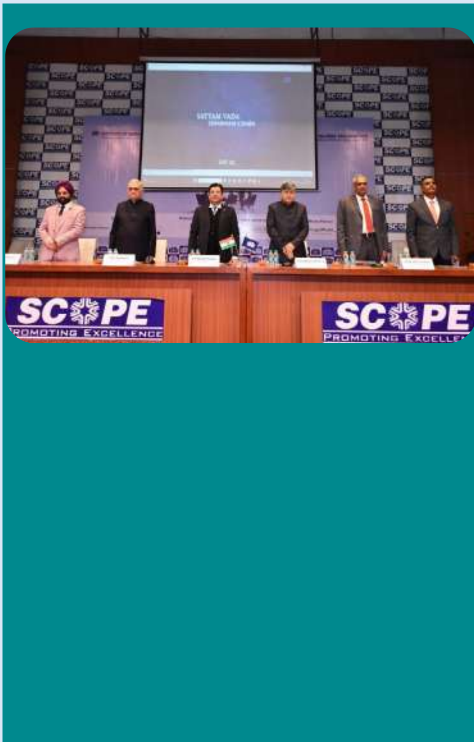

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From Chairman's Desk

"Judgment is the most important of all the laws. Without justice, there is no law, and without law, there is no civilization."

- Aristotle

The Role of Growing Jurisprudence in Shaping India's Insolvency Laws

India's economic evolution has brought with it a complex landscape of financial transactions, commercial ventures, and cross-border investments. With this transformation, the necessity for a robust insolvency framework has never been more critical. Central to the success of India's insolvency regime is the continual development of jurisprudence—the body of judicial decisions that clarify, interpret, and give life to the insolvency laws set out by Parliament.

Since the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, India has made significant strides in reforming its approach to insolvency and bankruptcy resolution. The IBC marked a pivotal shift from a fragmented and protracted process to a more streamlined and efficient system. However, as with any legislative framework, the IBC's effectiveness depends on the interpretation and application of its provisions by the judiciary. This is where the growth of jurisprudence becomes indispensable.

The judiciary plays a key role in resolving ambiguities, filling legislative gaps, and addressing the inevitable challenges that arise from applying insolvency law to complex financial realities. Over the past few years, courts and tribunals—particularly the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and the Supreme Court—have delivered several landmark judgments that have shaped the contours of insolvency practice in India. These decisions have brought clarity on critical issues such as the role of operational creditors, the prioritization of claims, the treatment of guarantors, and the balance between liquidation and resolution.

A well-developed body of case law provides certainty to businesses, investors, and creditors, enabling them to navigate the insolvency process with greater confidence. Predictable outcomes are essential to fostering a business environment where risk can be managed more effectively. The development of jurisprudence also enhances the effectiveness of the insolvency framework by ensuring that the law is not rigid but adaptive, evolving in response to changing economic conditions and emerging challenges.

For instance, recently, the Supreme Court in **V.S. Palanivel v. P. Sriram CS Liquidator**, Civil Appeal Nos. 9059-9061 of 2022-Decided on 28.08.2024 (2024 INSC 659) clarified that the advice offered by the Stakeholders Consultation Committee (SCC) constituted in liquidation proceedings is not binding on the Liquidator. In another important judgment, the High Court of Delhi in **Asian Colour Coated Ispat Limited Vs. Assistant Commissioner of Income Tax & Anr. (W.P. (c) 3498/2022)** held that an Income Tax reassessment cannot be sustained if resolution plan is approved.

For a dynamic economy like India, where businesses operate in an increasingly globalized marketplace, the development of insolvency jurisprudence is critical for sustaining economic growth. Judicial decisions in insolvency cases have far-reaching implications on sectors such as banking, real estate, and corporate governance. A well-functioning insolvency system supports the resolution of distressed assets, strengthens the financial sector, and enhances the ease of doing business in the country—key goals for India's continued economic ascent.

The growing jurisprudence around insolvency laws in India is not merely a matter of legal refinement—it is a cornerstone of the country's economic development. As courts continue to interpret and apply insolvency laws, they shape the principles that will govern the resolution of financial distress in India for decades to come. A strong, clear, and evolving jurisprudence is essential for ensuring the IBC's success and, ultimately, for fostering a more resilient and prosperous economy.

I urge all our readers to work towards fostering a collaborative environment and keep themselves abreast with the legal developments.

I wish all our readers happy festival season.

(P.K. Malhotra)
Chairman, ICSI IIP

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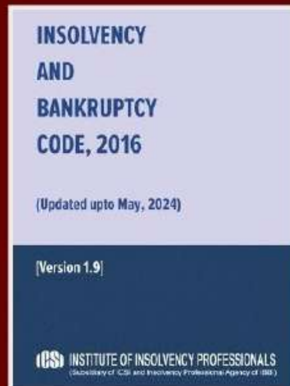
ICSI IIP's Publications



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Insolvency and Bankruptcy Code; Insolvency and Bankruptcy (Rules and Regulations) (9th Edition)

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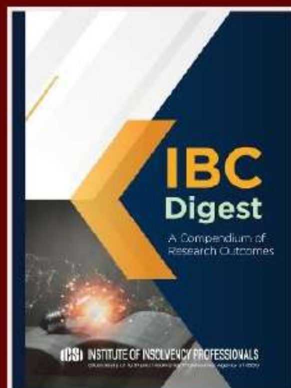

IBC Digest: A Compendium of Research Outcomes

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

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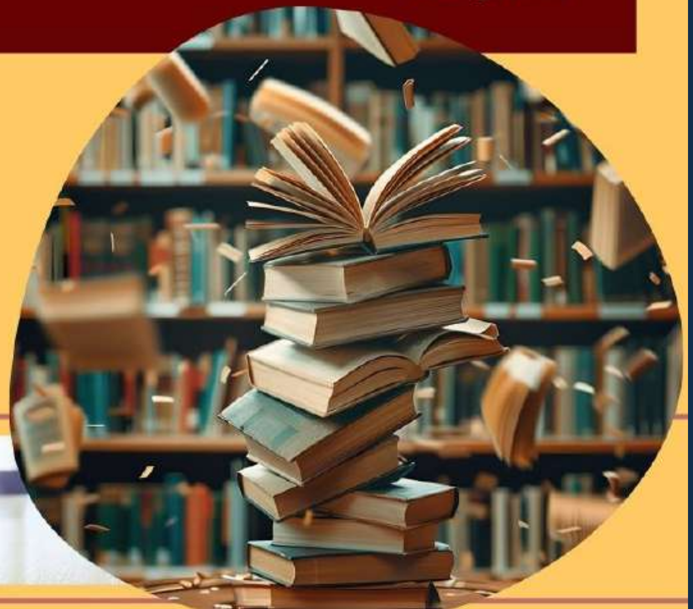
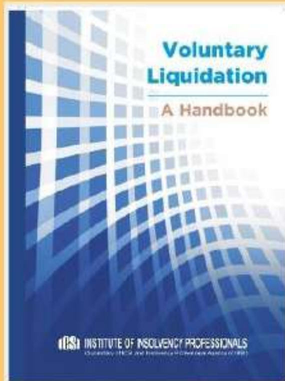
"A book is a gift you can open again and again."
-Garrison Kellor





Voluntary Liquidation: A Handbook (1st Edition)

This handbook serves as a comprehensive guide to the process of voluntary liquidation in India. This book covers the relevant provisions of Insolvency and Bankruptcy Code and Regulations, procedural aspects, specimen formats of all necessary resolutions, engagement letters, formats of intimation to authorities, various reports etc.

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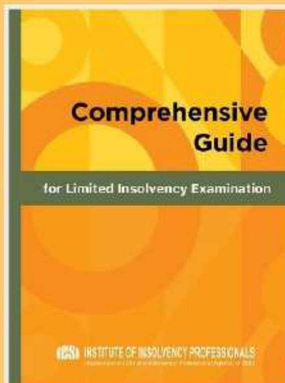

Comprehensive Guide for Limited Insolvency Examination (1st Edition)

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

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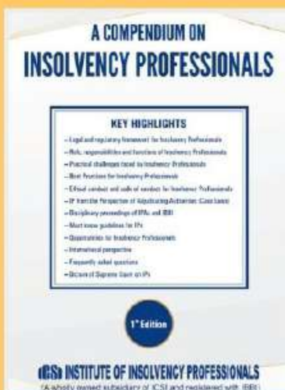

A Compendium on Insolvency Professionals (1st Edition)

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

INR 1000/-
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MD's Message

"In the end, we are judged not by the laws we make, but by how we enforce them, and how we comply with them."

- Barack Obama

As India strives to build a resilient and efficient system for managing distressed assets, one of the critical aspects that demands attention is the adherence to both legal and social compliances. These elements not only ensure the efficacy of insolvency laws but also play a vital role in preserving social equity, economic justice, and long-term economic stability.

Legal compliance is, of course, the backbone of any well-functioning insolvency regime. The statutory framework laid down by the IBC provides clear guidelines for resolving insolvencies in a time-bound and efficient manner. However, the law itself is a living entity, one that constantly evolves through interpretation by courts and tribunals. Ensuring that insolvency laws are implemented in full accordance with existing legal standards, including constitutional mandates, principles of natural justice, and statutory regulations, is essential to upholding the credibility of the system.

Insolvency processes involve the interests of a wide range of stakeholders—debtors, creditors, employees, and shareholders—each of whom have legal rights that must be respected. Legal compliance ensures that these rights are protected, fostering an environment of fairness and transparency. It also prevents the misuse of insolvency laws for unethical practices such as asset stripping or fraudulent claims, which could otherwise destabilize the financial system and erode public trust.

In a country as socioeconomically diverse as India, where livelihoods often depend on single enterprises or industries, the social implications of insolvency cannot be overlooked. For instance, efforts must be made to safeguard workers' rights, minimize job losses, and explore possibilities for restructuring that enable businesses to emerge from insolvency in a way that contributes to the local economy and community welfare.

A robust framework for insolvency must balance legal rigor with social responsibility. Policymakers, regulators, and the judiciary must work together to ensure that the law not only resolves financial distress but does so in a manner that is consistent with India's socio-economic values and goals. This includes fostering a culture of compliance among corporate actors, where ethical practices and social considerations are integrated into business operations from the outset.

In conclusion, adhering to legal and social compliances in the development of insolvency laws is not just a procedural necessity—it is a moral and economic imperative. India's insolvency framework, still in its relatively early stages of development, has the opportunity to set global standards for a system that is both efficient and equitable. By ensuring that legal and social obligations are fully integrated into the insolvency process, India can foster a more just, resilient, and sustainable economy, one that supports not only financial recovery but also social progress and harmony.

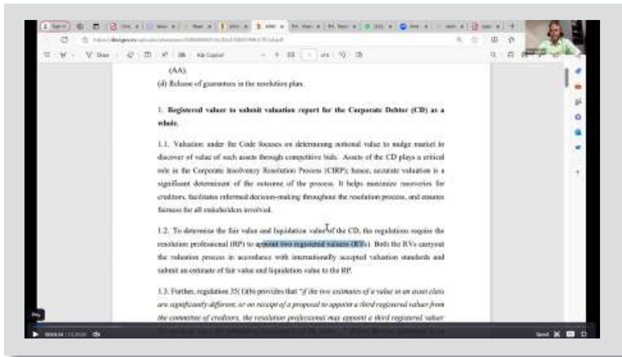
Dr. Prasant Sarangi

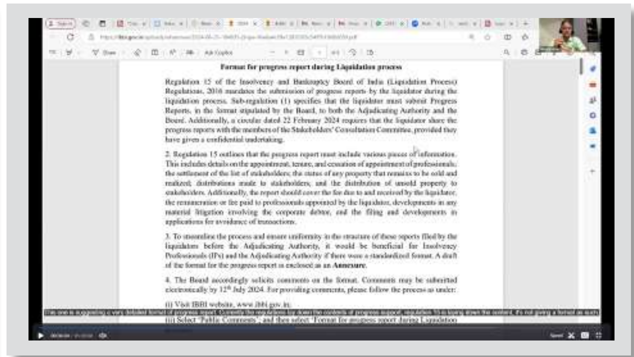
Managing Director, ICSI IIP

Events @ICSI IIP

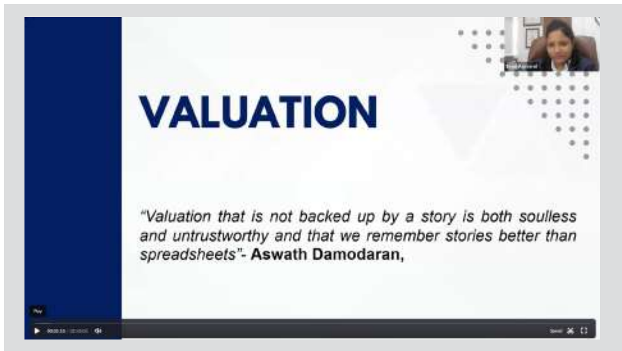
(Workshops, Webinars, Round-table Discussions, Interactive Meets etc.)

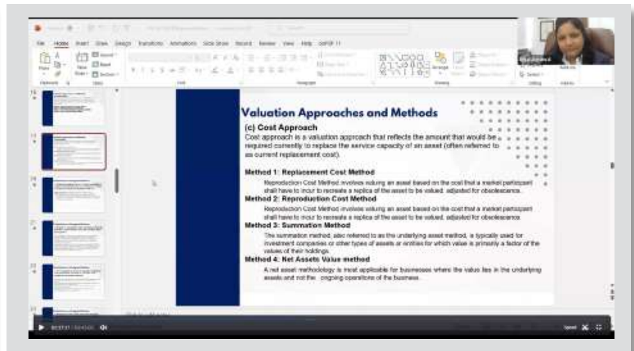
1. Round-table (Virtual) Discussion on IBBI Discussion Paper on Amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 by CA, CS and IP Vinod Kumar Kothari on Tuesday, 2nd July, 2024



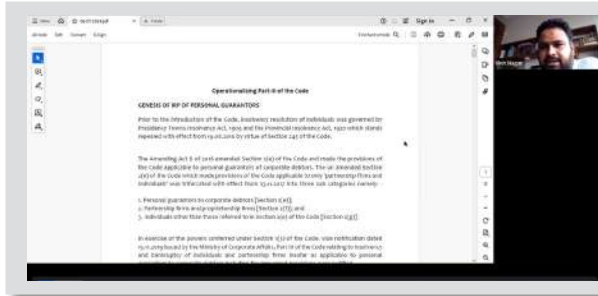


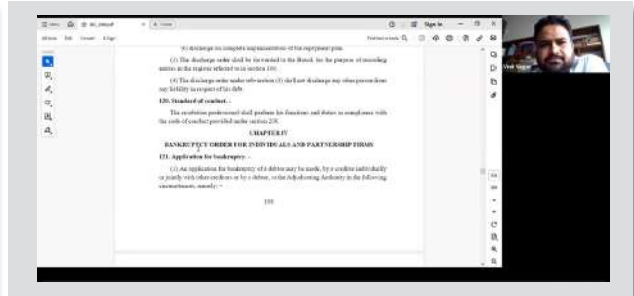
2. Webinar on Valuation under IBC and its relevant case laws by CA and IP Sejal Agrawal on Friday, 5th July, 2024

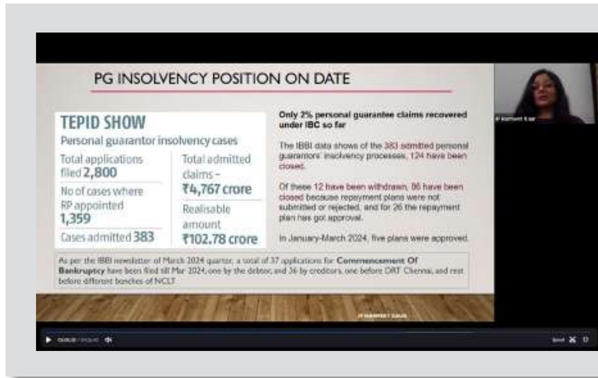


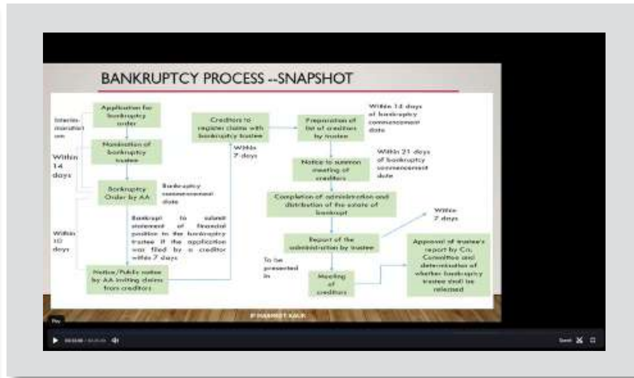


3. Workshop on Practical Implications in Insolvency Resolution and Bankruptcy Process for Personal Guarantors by CS and IP Vinit Nagar and CS and IP Harmeet Kaur on Saturday, 6th July, 2024

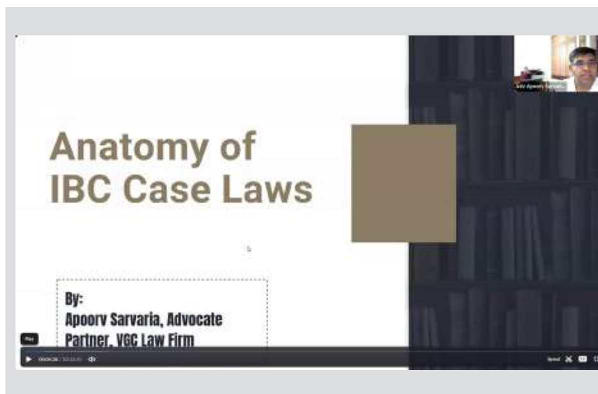








4. Webinar on Anatomy of IBC Case Laws-18 by Advocate and IP Apoorv Sarvaria on Friday, 12th July, 2024



5. Webinar on Drafting and Negotiation of Resolution Plan by CS and IP Ashish Singh on Friday, 19th July, 2024

PROVISIONS OF THE CODE TO BE KEPT IN MIND WHILE DRAFTING OF THE RES
PLAN:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan
Regulation 38 (3) (b)	Resolution Plan should demonstrate that it is feasible and viable.
Regulation 38 (3) (d)	Resolution Plan should have provisions for approvals required and the timeline for the same
Regulation 38 (3) (e)	Resolution Plan should demonstrate that the Resolution Applicant has the capability to implemen the Resolution Plan
Regulation 38 (IB)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any oth resolution plan approved by the Adjudicating Authority at any time in the past
Regulation 38(4) and (5)	Supervising and implementation of Resolution Plan by proposing to constitute a Monitoring Committee.

NEGOTIATION – Q&A

1. Whether the Resolution Plan can provide for extinguishment of unascertained, uncrystallized, future liabilities?

Key Judicial Decisions

i. Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (SC;2019)

ii. Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited (SC;2021)

iii. ArcelorMittal India Private Limited v. Satish Kumar Gupta & Ors. (SC;2018)

Principles from Judicial Decisions

1. **Commercial Wisdom of the CoC**: The CoC has the discretion to decide the treatment of all liabilities, including contingent ones, within the resolution plan. Courts have consistently upheld the primacy of the CoC's commercial wisdom.
2. **Clean Slate for Resolution Applicants**: To encourage potential investors and resolution applicants, the IBC framework allows for the extinguishment of past liabilities, including contingent and uncrystallized claims, ensuring the corporate debtor can start afresh post-resolution.
3. **Binding Nature of Approved Resolution Plans**: Once a resolution plan is approved by the CoC and the NCLT, it is binding on all stakeholders, including those with contingent claims. This binding nature is crucial for the finality and certainty of the insolvency

6. Workshop on Managing Corporate Debtor as Going Concern during CIRP and Liquidation by CS and IP Prakul Thadi and CS Barsha Dikshit on Saturday, 20th July, 2024

Role of AA

- Immediate reliefs u/s. 60(5) for providing support to IRP/RP
- Issuing directions for ensuring going concern status of the CD.
- Using its inherent powers

First Thirty Days

Taking Control & Custody → Salaries → Existing Contracts

What leads to liquidation?

Liquidation under IBC
No resolution plan received (Sec. 31(1)(a))
Resolution plan not approved by the CoC
Resolution Plan not approved by AA (Sec. 33(1)(b))
Decision of CoC to move to liquidation prior to expiry of CIRP (Sec. 33 (2))
Resolution plan approved by AA is contravened (Sec 33(3))

- Liquidation is the terminal process for a business
  - In case of voluntary liquidation, it is based on decision to liquidate
  - In case of insolvent liquidation, it is based on failure of rescue effort
- Therefore, the key principle is:
  - We first try to rescue and revive a business; if that fails, liquidation follows
- Insolvency – resolution – acquisition
- Bankruptcy – liquidation - dissolution

Going-concern sale under liquidation

Meaning of Going-concern

- Meaning provided in AS-1, as analysed by Insolvency Law Committee
- Meaning given by IBBI

Aims at value preservation of the undertaking including tangible assets

The acquirer who acquires the undertaking will have smooth transition

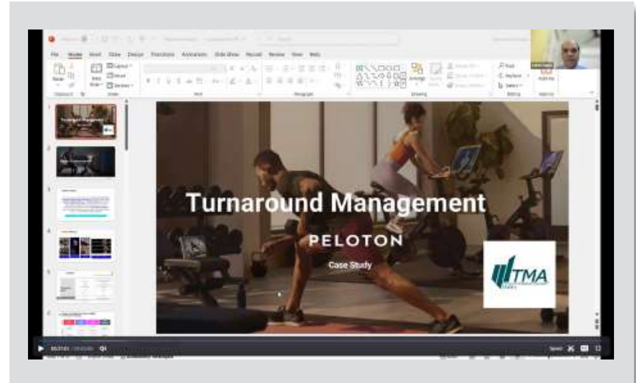
As the legal entity survives as going concern, the value of intangibles will be preserved

Helps achieving synergy as collective value of the assets would be higher than salvage value if disposed separately

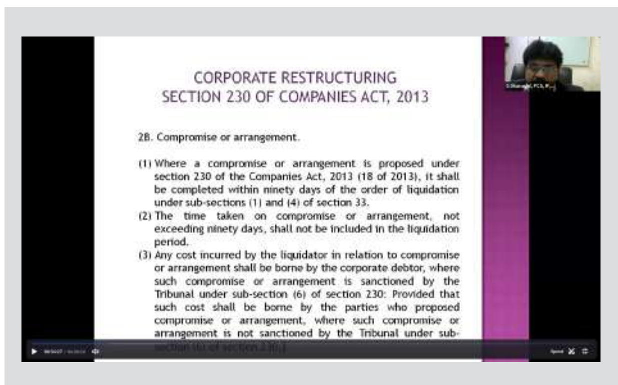
See discussion in- Enabling Going Concern sale in Liquidation

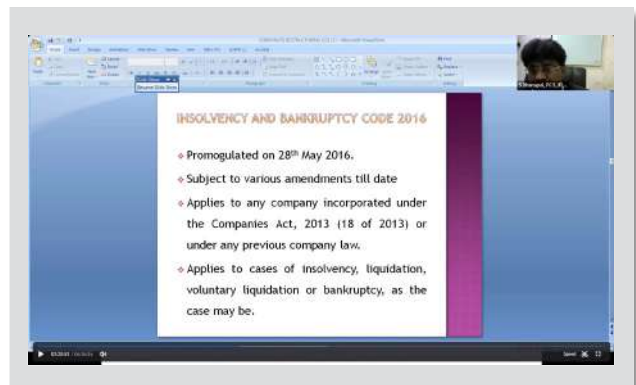
7. Webinar on Differentiating Financial and Operational Creditors by CS and IP Sucheta Gupta on Friday, 26th July, 2024

8. Workshop on Alternate Career Opportunities for Insolvency Professionals in India and Abroad by IP and Advocate Rocky Ravinder Gupta, IP Satish Kumar Gupta, IP and CA Devang D. Sampat, Mr. Alain Le Berre, Mr. Sumit Arora, Mr. Vikram Shankar, IP Shekhar Shriraam, Mr. Christopher Davis, Linda Spedding, CS and Advocate M.K. Ramakrishna, CA Aruloli and Advocate Ambili Menonon Saturday, 27th July, 2024

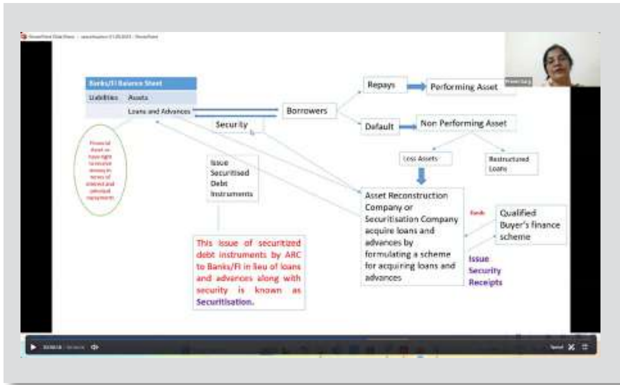


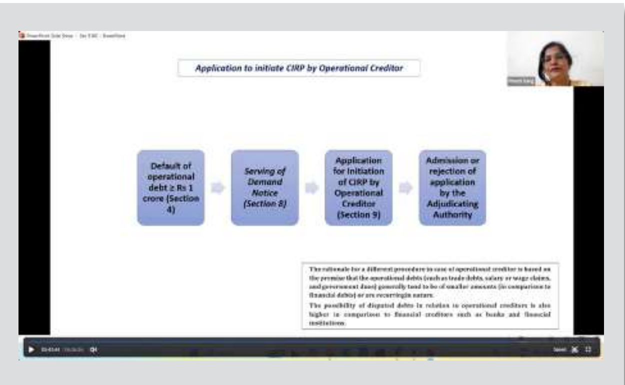
9. Workshop on Interplay of IBC with Other Laws by CS and IP S. Dhanapal and CS and IP Preeti Garg on Saturday, 3rd August, 2024





EVENTS @ICSI IIP





10. Workshop Series "Perspectives on IBC Series X-An Array" from 5th August, 2024 to 9th August, 2024. The topics covered in the series such Role of Resolution Professional under IBC, Timelines and Milestones under CIRP, Resolution of Disputes arising out of CIRP, Strategies for making exit from CIRP and Post CIRP Plan Implementation

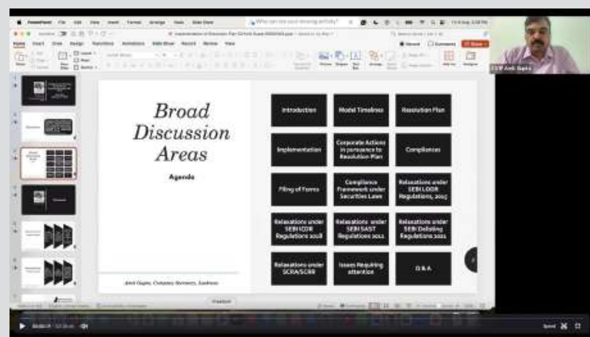
Rajesh Ramnani- IBBI/IP...

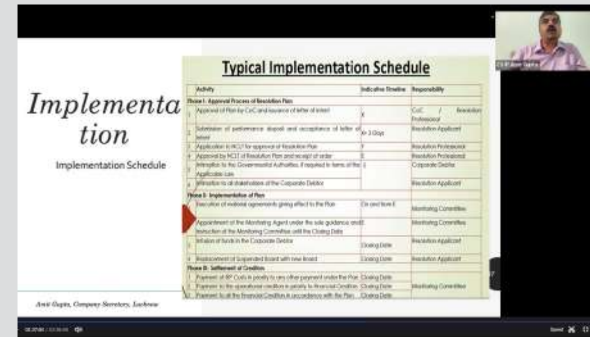
Reg 39BA of CIRP Reg

39BA. Assessment of Compromise or Arrangement.

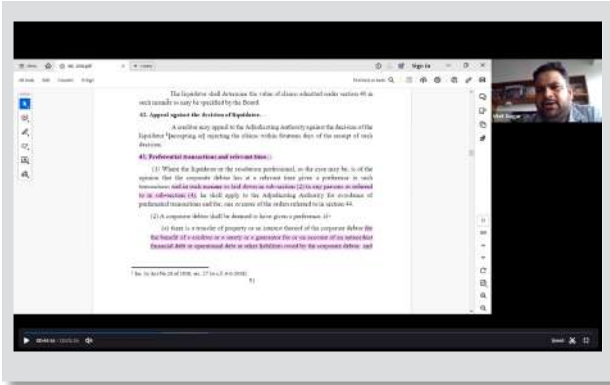
(1) While deciding to liquidate the corporate debtor under section 33, the committee shall examine whether to explore compromise or arrangement as referred to under sub -regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee's recommendation to the Adjudicating Authority while filing application under section 33.

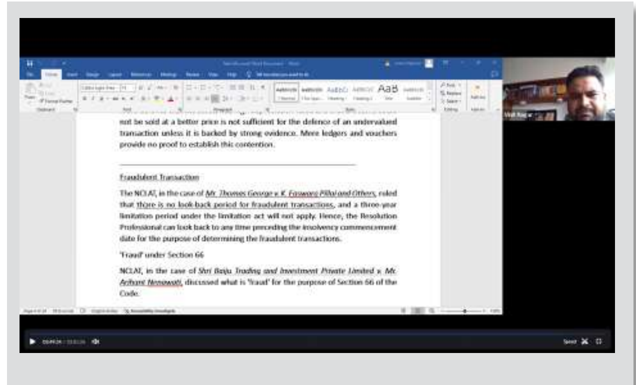
(2) Where a recommendation has been made under sub-regulation (1), the resolution professional and the committee shall keep exploring the possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority.]



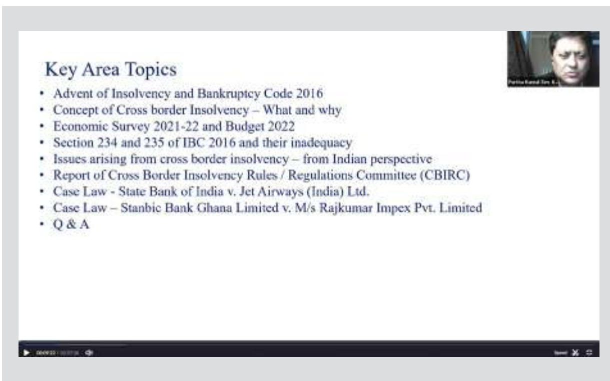


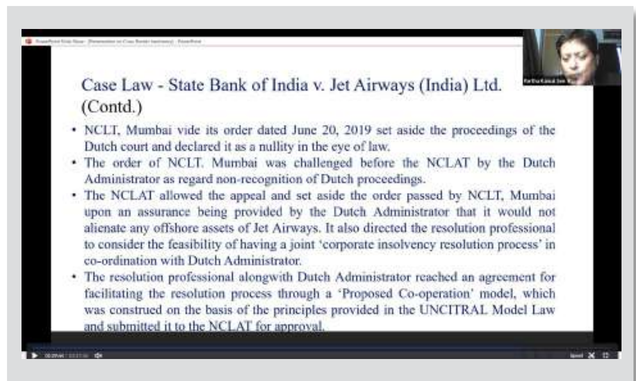
11. Webinar on Navigating PUFE Transactions under IBC by CS and IP Vinit Nagar on Saturday, 10th August, 2024



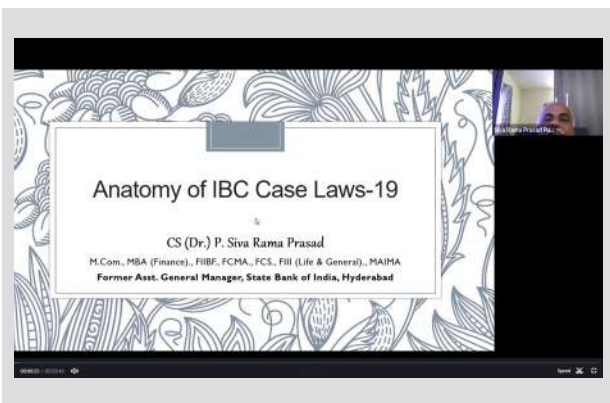


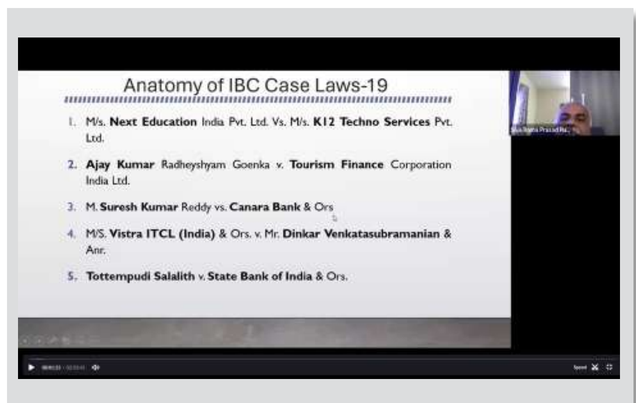
12. Workshop on Future of Insolvency: Cross Border and Group Insolvency by CS and IP Partha Kamal Sen and CS and IP Anagha Anasingaraju on Tuesday and Wednesday, 13th and 14th August, 2024





13. Webinar on Anatomy of IBC Case Laws-19 by CS, CMA and IP Siva Rama Prasad Puvvala on Friday, 16th August, 2024





LEARNING

Learner's Corner

FAQS ON INFORMATION UTILITY

Q1. Who is an insolvency professional (IP)?

Ans: As per the Insolvency and Bankruptcy Code, 2016 (the Code), an insolvency professional (IP) means an eligible person:

a) enrolled with an insolvency professional agency (IPA) as its member and,

b) registered with Insolvency and Bankruptcy Board of India (IBBI/the Board) as an insolvency professional (IP).

Q2. What is the Eligibility Criteria for becoming an insolvency professional (IP)?

Ans: An **individual** is eligible to become an insolvency professional (IP) provided he/she:

a) is a person resident in India,

b) is not a minor,

c) is solvent (i.e., he / she is not an undischarged insolvent or he / she has not applied to be adjudicated as an insolvent)

d) is of sound mind,

e) has the qualification and experience as specified by the Board,

f) has not been convicted by any competent court, for an offence punishable with imprisonment for a term exceeding six months, or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence.

g) is a fit and proper person.

Q3. What is the process to become an IP?

Ans. Following are the (mandatory) stages to be followed to become an IP:

A. For Professionals (Chartered Accountant, Company Secretary, Cost Accountant or an Advocate) having 10 years of experience, or graduates having 10 years of experience in the field of law or Masters' Degree holders/Post-Graduate Diploma holders, in management, having 10 years of managerial experience or graduates having 15 years of managerial experience:

Stage-1: Pass the limited insolvency examination (LIE)

Stage-2: Enrol as a professional member with an insolvency professional agency (IPA), within a

period of 12 months of clearing the LIE

Stage-3: Complete a pre-registration educational course (PREC) conducted by the IPA.

Stage-4: Apply to the Board for registration as an 'insolvency professional' (IP)

B. For Young Professionals, having less than 10 years of experience or no experience:

Stage-1: Complete the Graduate Insolvency Programme (GIP)

Stage-2: Pass the limited insolvency examination

Stage-3: Enroll as a professional member with an insolvency professional agency (IPA), within a period of 12 months of clearing the Limited Insolvency Examination

Stage-4: Complete a pre-registration educational course by the IPA.

Stage-5: Apply to the Board for registration as an 'insolvency professional' (IP)

C. The National Insolvency Programme will be notified by the Board in due time.

Note: Only professional and managerial experience of an individual shall be considered for becoming an IP.

Q4. What parameters are considered for an individual to be fit and proper for registration as an IP?

Ans. For determining whether an individual is fit and proper for registration as an IP, the Board may take into account any consideration as it deems fit, including but not limited to the following criteria;

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence, including financial solvency and net worth.

Q5. Who is an Insolvency Professional Entity (IPE)?

Ans. The Board has institutionalized the concept of an Insolvency Professional Entity (IPE) whereby several

IPs can come together and pool their resources and capabilities to form an IPE so as to handle insolvency proceedings involving very high stakes or where complex issues of law or practical difficulties are involved. In terms of applicable regulations, the sole objective of IPE would be to provide support services to IPs. An IPE can take the form of a company, a limited liability partnership or a registered partnership firm having minimum net worth of ₹1 crore. However, IPEs are neither enrolled as member of an IPA nor registered as IP with the Board. They cannot act as IPs under the Code but can provide support services to IPs.

Q6. What is Pre-Registration Educational Course (PREC)?

Ans. The Pre-Registration Educational Course is a 50-hour Course conducted by expert faculty who share their domain knowledge and varied experience. The Course is aimed at enhancing the knowledge base, sharpen the management skills with efficiency in advocacy, code of conduct and handling insolvency effectively. Completion of PREC by an applicant, however, does not guarantee the registration as IP with the Board and the registration shall be subject to fulfilment of other terms and conditions as applicable.

Q7. What is Graduate Insolvency Programme (GIP)?

Ans. The Graduate Insolvency Programme (GIP) is the first of its kind programme for those aspiring to take up the discipline of insolvency profession as a career or seeking to take up other roles in the value chain, in India and in foreign jurisdictions. A student who completes the GIP will be eligible for registration as an IP under the Code, without having to wait to acquire the 10-year experience as required by the Code at present.

Q8. How can one commence practice as an IP, after obtaining registration?

Ans. In order to practice as an IP (i.e., for accepting assignments under the Code), after obtaining registration, one must hold 'Authorisation for Assignment' (AFA) issued by IPA.

Q9. What is 'Authorisation for Assignment'?

Ans. As per regulations, IP can accept or undertake any assignment as interim resolution professional, resolution professional, liquidator, bankruptcy trustee, authorised representative or in any other role under the Code, only if he holds an AFA. Thus, an AFA means an authorisation to undertake an assignment, (under the Code) issued by an IPA to an IP, who is its professional member.

Q10. How can one obtain, 'Authorisation for Assignment'?

Ans. AFA is issued to the IP by IPA of which IP is a professional member. IBBI has made available an online facility to enable an IP to make an application for issuance / renewal of AFA to the respective IPA and enable the IPA to process such applications electronically.

If you are an IP, you can apply online to your IPA, for obtaining AFA by accessing your online IP account at https://www.ibbi.gov.in/users/login with your log in credentials.

Legal Maxims

A fortiori.

Meaning: From stronger.

Example: "If the recording of confession by police is found to be necessary by Parliament and if it is in tune with the scheme of law, then an additional safeguard under Section 32(4) and (5) is *a fortiori* legal. In our considered opinion the provision that requires producing such a person before the Magistrate is an additional safeguard. It gives that person an opportunity to rethink over his Confession."- People's Union for Civil Liberties and Ors. vs. Union of India (UOI) (16.12.2003 - SC)

Ut res magis valet quam pereat.

Meaning: It is better for a thing to have effect than to be made void.

Example: "A statute must be construed as a workable instrument. "Ut-res-magis-valet-quam-pereat" is a well known principle of law and on this principle the provision of a statute must be construed as to make it effective and operative. The Courts will reject that construction which will defeat the plain intention of the legislature even though, there may be some inexactitude in the language used. Reducing the

legislation to futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the Court should accept the bolder construction for the purposes of bringing about an effective result." - Ravindra Babu Shriwas and Ors. vs. State of U.P. and Ors. (06.12.2017 - ALLHC)

Fraus et jus nunquam cohabitant.

Meaning: Fraud and justice never dwell together.

Example: "***Fraud and justice never dwell together." (Franc et jus nunquam cohabitant)*** is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" United India Insurance Co. Ltd. vs. Rajendra Singh and Ors. (14.03.2000 - SC)

Non obstante verdicto.

Meaning: Notwithstanding the verdict.

Example: "As a parenthetical note, we point out that judgment n.o.v. literally means judgment ***non obstante verdicto***, or a judgment not withstanding the verdict rendered by the jury. Black's Law Dictionary, 5th ed. 1979. Plaintiffs, as verdict winners, had no reason to pursue such a remedy."- McLAUGHLIN Vs . FELLOWS GEAR SHAPER CO . (24 . 03 . 1986)

Vigilantibus non dormientibus iura subveniunt.

Meaning: Law aids the vigilant and not the indolent.

Example: "If I may be permitted some more Latin: ***vigilantibus non dormientibus iura subveniunt***, ***meaning that the laws aid those who are vigilant and not those who sleep.*** (Both principles provide a safer guide to the correct answer than the Court below's 'just and equitable' principle. The fact that it is 'fortuitous' that the vigilant person perfects his rights first does not make the act either unjust or inequitable.)"- Contract Forwarding (Pty) Ltd v. Chesterfin (Pty) Ltd and Others (27.11.2002 - SASC)

INSIGHTS

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AUTHORIZED REPRESENTATIVES UNDER INSOLVENCY & BANKRUPTCY CODE, 2016 (ROLE & RESPONSIBILITIES)

Abstract

The Insolvency & Bankruptcy Code, 2016[i] ("IBC") represent a pivotal shift in people's approach towards insolvency resolution process in India. Within this framework, the Authorized Representatives play an important role during an Insolvency Resolution process, who acts as an intermediary between the creditors, insolvency resolution professional managing resolution process and the Committee of Creditors ("CoC"). This article explores the roles and responsibilities of authorized representatives under The Insolvency & Bankruptcy Code 2016, delving

[i] Insolvency & Bankruptcy Code (2016)

into their function in facilitating communication among the parties and helping them take informed decisions. This article speaks about the legal provisions contained under the IBC and regulation framed thereunder for their appointment, scope of authority, rights & duties and challenges faced by them. This article tries to provide a brief insight into the evolving landscape of authorized representatives in the insolvency process, highlighting their crucial role in effective implementation of IBC. This article is written with a aim of offering a more enhanced understating of the functions, role & responsibilities of an authorized representative.

Introduction

The Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "IBC") is an act passed by the Indian Parliament to consolidate & amend law related insolvency. It came into force w.e.f. 28th May 2016. The aim of this act is to maximize the value of assets, promote entrepreneurship and balance the interests of all stakeholders.

Under IBC, an authorized representative (hereinafter referred to as "AR") is a person who represents the interest of financial creditors ("FC") in the Committee of Creditors ("COC") and he plays an important role in the insolvency resolution process. The concept of "AR" was first introduced in the IBC through IBC (Second Amendment) Act, 2018 and came into force w.e.f. 6th June 2018. Accordingly, Sub-Section 6A & 6B were inserted in Section 21 of the principal act and Regulation 4A & 16A was inserted in the CIRP regulation w.e.f. 4th July 2018. Thereafter several changes were made to CIRP regulation to include provisions related to replacement of "AR", payment of fees and his role, responsibilities & duties.

The code didn't provide any specific definition of an authorized representative. However, the word authorized representative has been described under various sections & regulations which highlights his role and responsibilities.

The IBC requires the appointment of authorized representative when a "class of creditors", as defined under Regulation 2(1) (aa) of the CIRP Regulation, has at least ten members. The AR represents that class during the meeting of CoC and take care of their interest while CoC taking up matters related to approving of resolution plan and other related matters. He plays a very crucial role in decision making process during the CoC meetings.

Authorized Representatives Under Ibc

- **Legal provisions as contained in IBC and its regulations**

"Section 21" of the IBC, 2016 contains the provisions related to committee of creditors. "Sub-section 6A" authorizes the financial creditors to appoint an authorized representative while "Sub-section 6B" talks about the remuneration to be paid to the AR. "Section 25A" speaks about the rights and duties of authorized representative.

Further, "Regulation 4A" of IBBI (CIRP) Regulations 2016 contain provisions regarding the choice of AR. "Regulation 16A" talks about the selection process, remuneration of AR and "Regulation 25A" contains the provisions related to voting by Authorized Representative.

- **Definition and Need of AR**

The term "Authorized Representative" is not defined anywhere in the IBC or any rules and regulations made thereunder. However, in legal terms an AR is a person who has the legal authority to act on behalf of another person or group of people. Under IBC, the class of creditors has the right to appoint an Insolvency Professional as their "Authorized Representative" and get represented by him in "CoC" meetings. "Regulation 16A" of IBBI (CIRP) Regulations 2016 states that the IRP shall select an insolvency professional to act as an authorized representative, who is the choice of the highest number of financial creditors.

Though an "Authorized Representative" can be appointed for any class of financial creditors exceeding the specified numbers viz. debenture-holders, deposit holders and other security holders, the real need of "Authorized Representative" was felt in the real estate matters where large number of home buyer are considered as "Financial Creditors". The Insolvency Law Committee ("ILC") has submitted their report in March 2018, where it emphasized the need of appointment of Authorized representative in the cases where number of financial creditors exceed

a certain number and accordingly proposed to amend Section 21 of the Code. The ILC also proposed to insert explanation to "Section 5(8)(f)" of the code, so the home buyers and allottees under a real estate project also considered as financial creditors under the code. *Supreme Court in its judgement in the matter of Pioneer Urban Land & Infrastructure Vs. Union of India* upheld the amendment in IBC and conferred the homebuyers the status of financial creditors.

■ Appointment of AR

"Section 21 (6 A)" of IBC says that,

a) where there is a financial debt and where the terms of financial debt provide for appointment of a trustee/agent to act as authorized representatives for all the financial creditors, such trustee/agent shall act on behalf of such FCs.

b) where a financial debt is owed by a class of creditors and the number exceeds the specified number, the IRP shall make an application to the "Adjudicating Authority" (AA) along with the list of all FCs, mentioning the name of an IP, to act as their AR who shall be appointed by the AA prior to the first meeting of the CoC.

c) where a financial debt is represented by a guardian, executor or administrator, such person shall act as AR on behalf of such FCs.

IBBI Circular dated 13th July 2018: Appointment of AR for Classes of Creditors under "Section 21(6A)(b)" of the IBC, 2016 that an AR may be appointed to represent their concerns to the members of CoC for the insolvency resolution under the provisions of IBC & Regulation 16A (1) of the Regulations.

The class of creditors does not mean but includes homebuyers or real estate buyers or deposit holders. A class of creditors is a group of Ten or more FCs other than banks and financial institutions or trustees in financial securities or deposits.

Regulation 4A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, where the Insolvency Resolution Professional ("IRP") ascertained a class of creditors, based on books of accounts of the Corporate Debtors ("CD"), he shall identify three insolvency professionals ("IP") who are:

- **not his relatives or related person.**
- **registered with IBBI in the state or UT where maximum number of creditors have registered address as per record of CD.**
- **eligible to be appointed as resolution professional.**
- **willing to act as AR and submit his consent.**

Regulation 16A says that the IRP shall select an IP who is the choice of the highest number of FCs in respective class. IBBI regulation provides Form CA to submit required choice of AR. The IRP shall apply to the AA for appointment of AR within 2 days of the verification of claims.

The financial creditors in the class, not less than ten per cent voting share may seek replacement of the AR with an IP of their choice. The IRP/RP shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours. The IRP/RP shall apply to the AA for appointment of the AR who receives the highest percentage of voting share of financial creditors in that class.

■ Right & Duties of AR

Section 25A of the IBC, 2016 specifies the rights and duties of authorized representatives. It was introduced w.e.f. 6th June 2018 by inserting Section 25 A after existing Section 25 of the IBC. Thereafter, the Insolvency & Bankruptcy Board of India ("IBBI") inserted Sub Regulation (10) in Regulation 16A of IBBI (CIRP) Regulations 2016 by issuing a notification No. No. IBBI/2023-24/GN/REG106, dated 18th September 2023, effective from 18th September, 2023 which more clearly provided the duties of an AR. Some of the rights and responsibilities of an AR are given hereinafter.

Rights & Role

- **The AR has the right to participate in the meetings of CoC on behalf of the FCs he represents.**
- **The AR has the right to vote at CoC Meeting on behalf of the FC in accordance with the voting instruction received. Instruction may be received physically or by electronic means.**

Duties & Responsibilities

- **AR has the duty to circulate the agenda of the CoC meeting.**

- **He is also required to circulate the minutes of the meeting of CoC members.**
- **AR shall not act against the interest of FC he represents.**
- **AR shall act as per the instruction received from FC.**
- **In absence of any such prior instructions, physical or electronic, shall abstain from voting.**
- **AR shall assist creditors in understanding the discussion and help in decision making.**
- **He is required to review the minutes prepared by IRP/RP and share his remark on it.**
- **Work in collaboration with the creditors in class to enhance marketability of the CD's assets.**
- **Help in evaluating the resolution plan submitted by resolution applicant.**
- **Ensure that FC he represents has access to the information/documents necessary to form an opinion on various matters.**
- **Update the FCs about the latest status of CIRP.**
- **Suggest various changes required in the resolution plan.**

IBBI NOTIFICATION DATED 18TH SEPTEMBER 2023 –

IBBI has, vide notification dated 18th September 2023 introduced the IBBI (CIRP) (Second Amendment) Regulations, 2023 effective from the date of notification, which made amendments in the CIRP regulations relating to Authorized Representatives and provide enhanced role and responsibilities of the authorized representative (AR) as detailed above to facilitate the class of creditors especially home buyers.

- **Fee payable to AR**

Regulation 16A (8) specifies the fee payable to AR for the services rendered by him. The provisions read as under:

(a) The AR shall be entitled to receive fee for every meeting of CoC attended by him in the following manner:

Number of creditors in the class	Fee per meeting of the committee
10-100	INR 30000
101-1000	INR 40000
More than 1000	INR 50000

(b) The AR shall be entitled to receive fee for every meeting of the CoC convened by him in the following manner: -

Number of creditors in the class	Fee per meeting of creditors in class with authorized representative
10-100	INR 10000
101-1000	INR 12000
More than 1000	INR 5000

(c) The payment of fee to AR shall be part of CIRP cost in respect of two meeting with the creditors he represents corresponding to a meeting of the CoC.

(d) The fee for any additional meeting beyond two meetings corresponding to a meeting of the CoC shall be part of CIRP cost subject to approval of CoC.]

■ Challenges faced by AR

Although the role of AR seems very simple and limited to participate and vote on behalf of the financial creditor, he represents but he faces many challenges while performing his duties. Some of the challenges faced by an AR are outlined hereinafter:

- **As number of creditors in a class many goes in hundreds, it is very difficult to bring them all on the same page and get consent on any topic.**
- **Mostly, the class of creditors consists of home buyers, which may go in thousands in numbers. They are also not aware of the provisions of IBC and regulations made thereunder, which create lot of difficulties for AR to make them understand the technical issues.**
- **It is very difficult for him to correspond with so many creditors and respond to their queries, emails and phone calls.**
- **As most of the home buyers are not familiar with the provisions of IBC and regulations, they face lot of issues in filing claims, updating their details and other matters for which they rely on AR who has to take care of all their concerns.**
- **While AR has duty to attend meetings and vote, most of the home buyers are under impression that it was he who is appointed to help them to get their property or money back from the builder.**

CONCLUSION

The AR is appointed to represent the class of creditors at CoC meeting and vote as per wishes and decision taken by them on the agenda items proposed for resolution. The role of AR in the insolvency resolution process is found to be of most important in the case of real estate matters where a large number of homebuyers constitute a class of creditors. There are AR appointments for debenture holders and fixed depositors as well, but the number of participants and complexities faced to be higher in the case of real estate matters. AR helps all classes of creditors to put forward their decision, communicate and participate more effectively in the resolution process. He not only bridges communication between the various parties but also ensures that the interests of minority creditors are adequately represented and protected. His role and responsibilities are much more complicated and vaster than supposed by various people.

In short, an AR is a key player in ensuring that insolvency resolution process is conducted with integrity and fairness. As the insolvency laws are continuously updating, the role of AR will also increase in line with the objectives of the IBC.

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ENHANCING INSOLVENCY RESOLUTIONS: ANALYSING PUFE TRANSACTIONS UNDER THE INSOLVENCY AND BANKRUPTCY CODE OF 2016

Abstract:

The Insolvency and Bankruptcy Code of 2016 (IBC) represents a transformative shift in India's insolvency framework, focusing on safeguarding creditor rights and revising the previous debtor-centric approach. This article examines Preferential, Undervalued, Fraudulent, and Extortionate (PUFE) transactions that occur during the 'look-back period' preceding insolvency. It explores the IBC's provisions that

enable resolution professionals to identify and reverse such transactions to protect creditor interests. By analysing key case laws and regulatory requirements, this paper highlights the enforcement challenges and underscores the necessity for stringent measures to uphold the integrity of the insolvency process.

The Look-Back Period and Related Party Transactions:

The IBC defines the 'look-back period' as the period preceding the commencement of insolvency proceedings, during which transactions may be challenged. The IBC delineates the scope of 'related parties,' including directors, key managerial personnel, and associated entities. In Phoenix Arc v. Spade Financial Services Limited, the Supreme Court clarified the definition of 'related party' under Section 5(24) of the IBC. Related party transactions, which involve favouritism towards specific creditors, are subject to scrutiny under Section 43 of the IBC. The resolution professional must assess these transactions within a specified timeframe and seek remedies from the National Company Law Tribunal (NCLT) as stipulated.

Preferential Transactions:

Under Section 43 of the IBC, preferential transactions occur when a CD favors specific creditors, sureties, or guarantors by transferring assets or benefits, thereby placing them in a superior position. These transactions are reviewable within a relevant period defined as either two years for related parties or one year for others. Case law, such as Venus Recruiters (P) Ltd. v. Union of India and S.V. Ramkumar v. Orchid Pharma Ltd., provides guidance on distinguishing between ordinary course transactions and preferential transfers, illustrating the application of these provisions. These transactions must occur within a defined 'relevant period' preceding the commencement of insolvency proceedings. The National Company Law Tribunal (NCLT) has the power to overturn such transactions and mandate the recovery of benefits accrued from them.

Undervalued Transactions:

Section 45 of the IBC addresses transactions where assets are transferred at values significantly below their actual worth. Such transactions, which may not align with ordinary business practices, are scrutinized for fairness. Precedents such as Cethar Ltd., In re, and Adriatic Sea Foods (P.) Ltd. v. Suresh Kumar Jain highlight the importance of timely and diligent action to challenge undervalued transactions and ensure equitable distribution among creditors. The National Company Law Tribunal (NCLT) has the power to overturn such transactions and mandate the recovery of benefits accrued from them.

Fraudulent Transactions:

Fraudulent transactions, defined under Section 66(1) of the IBC, involve actions intended to defraud creditors. This provision applies without a specific look-back period, covering a broad range of deceptive practices. Case laws like Shiv Kant v. Union of India and Edelweiss Asset Reconstruction Company Ltd. v. Net 4 India Ltd. illustrate the enforcement of these provisions and the imposition of liabilities on those found guilty of fraudulent conduct. The NCLT has the power to impose liabilities on persons involved in such transactions.

Extortionate Transactions:

Section 50 of the IBC addresses extortionate transactions, where CDs incur debt under onerous terms. This provision allows for the scrutiny of transactions within two years preceding insolvency. The case of Shinhan Bank v. Sungil India (P.) Ltd. exemplifies the identification and rectification of predatory lending practices, ensuring fair treatment of creditors. These transactions may be challenged within two years preceding the insolvency commencement date.

Challenges and Necessity of Stringent Enforcement

Despite the IBC's provisions, there is a substantial backlog of claims pending at NCLTs nationwide, totalling approximately Rs. 2.8 lakh crores. The Insolvency and Bankruptcy Board of India (IBBI) can address these issues by establishing clear frameworks that define the roles of resolution professionals and liquidators in these transactions, and by standardizing procedures for reviewing applications before they are filed with the NCLT. Additionally, focusing on the success rate of PUFE transaction applications is essential to prevent the process from being used to unjustly harass erstwhile management.

Conclusion:

The primary objective of PUFE transaction avoidance under the IBC is to restore assets to the CD, enhancing recovery for creditors. However, a substantial backlog of claims and delays in Corporate Insolvency Resolution Processes (CIRPs) highlight the need for improved frameworks and procedural efficiency. The Insolvency and Bankruptcy Board of India (IBBI) should establish clearer guidelines for RPs and liquidators, standardize application procedures, and enhance transparency to mitigate misuse and ensure effective enforcement of PUFE provisions. These measures will bolster the fairness and integrity of the insolvency resolution process, ultimately benefiting creditors and upholding the IBC's transformative vision.

References:

1. Phoenix Arc v. Spade Financial Services Limited, (2021) 3 SCC 475
2. Venus Recruiters (P) Ltd. v. Union of India, (2020) 2020 SCC Online Del 1479
3. S.V. Ramkumar v. Orchid Pharma Limited, 2019 SCC OnLine NCLT 23912
4. Chitra Sharma v. Union of India, (2018) 18 SCC 623
5. Dipti Mehta v. Shivani Amit Dahanukar, 2019 SCC OnLine NCLT 5754
6. Ram Ratan Kanoongo v. Sunil Kathuria, (2019) 105 taxmann.com 328
7. Cethar Ltd., In re [2021] 127 taxmann.com 331
8. Adriatic Sea Foods (P.) Ltd. v. Suresh Kumar Jain, 2022 SCC OnLine NCLAT 2288
9. Shiv Kant v. Union of India, 2018 SCC OnLine Del 12301
10. Edelweiss Asset Reconstruction Company Ltd. v. Net 4 India Limited, 2021 SCC OnLine NCLT 435
11. Shinhan Bank v. Sungil India (P.) Ltd., 2019 SCC OnLine NCLT 27094

This article provides a comprehensive overview of PUFE transactions under the IBC, analyzing key provisions and case laws while emphasizing the need for improved enforcement and procedural efficiency in insolvency resolutions.

REVAMPING MEXICO'S INSOLVENCY FRAMEWORK: KEY PROPOSED AMENDMENTS TO THE MEXICAN INSOLVENCY ACT

Introduction

In a significant move to address the limitations of Mexico's current insolvency framework, a proposed amendment to the Mexican Insolvency Act (Ley de Concursos Mercantiles) has been put forward. This reform, filed on July 31, 2024, seeks to enhance the efficiency of insolvency proceedings and address the challenges faced by financially struggling companies. Despite being in effect for over two decades, the Insolvency Act has not fully realized its potential, with many companies still reluctant to engage with its provisions due to costs, complexity, and lengthy procedures. Here's a detailed look at the key changes proposed and their anticipated impact.

Background

The Mexican Insolvency Act, known formally as the "Ley de Concursos Mercantiles" (LCM), was enacted in 2000. This legislation was a landmark reform aimed

at modernizing Mexico's insolvency framework, aligning it with international best practices, and improving the mechanisms available for dealing with financially distressed companies. The Act introduced a structured process for companies to either reorganize their debts or, if reorganization was not feasible, to liquidate their assets to pay off creditors.

Challenges and limitations

Despite its comprehensive framework, the Mexican Insolvency Act has faced criticism and challenges over the years:

1. Underutilization

The Act has not been fully utilized, with relatively few insolvency proceedings initiated compared to the number of companies facing financial difficulties. Many companies avoid formal insolvency proceedings due to the perceived high costs, complexity, and lengthy nature of the process.

2. Complexity and Costs

The insolvency process under the Act can be complex and expensive, particularly for small and medium-sized enterprises (SMEs). The costs associated with the proceedings, including legal fees and administrative expenses, can be prohibitive for smaller companies.

3. Efficiency Issues

Critics have pointed out inefficiencies in the current system, including delays in the adjudication of claims and the execution of protective measures. The two-phase process, while comprehensive, has been seen as cumbersome and slow.

4. Limited Impact

The limited number of companies benefiting from the Act suggests that it has not been fully effective in addressing the needs of all financially distressed companies, particularly SMEs.

The proposed amendment aims to tackle these issues. If approved, the main changes that this amendment will bring include reorganizing the **insolvency** process to make it more efficient and allowing for more proactive measures to safeguard the companies› assets from individual creditors› actions.

Key Proposed Changes

1. Restructuring the Insolvency Process

- **Three-Phase Approach:** The bill proposes a restructuring of the insolvency process into three distinct phases: credit recognition, conciliation, and bankruptcy. This change aims to streamline proceedings and provide greater certainty for creditors, addressing inefficiencies seen under the current two-phase system.
- **Enhanced Protective Measures:** Judges will be mandated to issue protective measures within 24 hours of an insolvency request. This swift action is intended to safeguard the company's assets and minimize risks during the insolvency process, ensuring better preservation of company resources.

2. New Provisions for Small and Medium-Sized Enterprises (SMEs)

- **Cost Reduction**: The amendment seeks to alleviate the financial burden on SMEs by exempting them from certain procedural stages and costs, such as the visitation stage and associated fees. This move aims to make insolvency proceedings more accessible and viable for smaller businesses, which are crucial to Mexico's economy.
- **Access to Financing**: SMEs would also be permitted to incur new debt during insolvency proceedings, with financial institutions allowed to provide loans, thereby facilitating their recovery and continued operations.

3. **Strengthened Enforcement Mechanisms**

- **Judicial Authority**: The proposed changes grant judges enhanced authority to enforce court orders, including notifying the Public Prosecutor's Office of non-compliance and initiating enforcement proceedings against those responsible for damages. This aims to ensure that the insolvency process is respected and properly implemented.

4. **Revised Role for Joint Obligor and Guarantors**

- **Expanded Protections**: Joint obligors and guarantors will now be subject to precautionary measures and may benefit from any debt relief or concessions granted under the reorganization agreement. This adjustment addresses gaps in the current system, providing additional protections for those financially tied to the insolvent company.

Implications on Creditors & Companies

1. **For Creditors**: The new amendments introduce complexities for creditors, who must navigate revised procedures and potential impacts on personal or real guarantees. Creditors will need to carefully evaluate the implications of the reorganization agreements and adapt to increased court oversight.
2. **For SMEs**: The proposed changes are particularly advantageous for small and medium-sized businesses, offering them a more feasible pathway to debt restructuring and operational continuity. Lower costs and improved access to financing could significantly enhance their chances of recovery.

Conclusion

The proposed amendments to the Mexican Insolvency Act represent a transformative step towards making insolvency proceedings more efficient and accessible. By addressing the current system's shortcomings, particularly for SMEs, and introducing stronger enforcement mechanisms, the reforms aim to provide a more robust framework for companies facing financial distress. As these amendments await further analysis by the Joint Commissions of Economic and Legislative Studies of the Senate, their potential to reshape Mexico's insolvency landscape and support struggling businesses is clear. If enacted, these changes could revitalize the insolvency process, offering new hope and practical solutions to companies in need.

Judgments

1
Case Title: Shri Gurudatta Sugars Marketing Pvt. Ltd. vs. Prithviraj Sayajirao Deshmukh & Ors.
Case no.: Criminal Appeal Nos. of 2024 (Special Leave to Petition (Crl.) Nos. 8849-8850 of 2023)
Decision Date: July 24, 2024
Court/Tribunal: Supreme Court of India

FACTS:

- The appellant, Shri Gurudatta Sugars Marketing Pvt. Ltd. is a company involved in the sugar industry.
- The Respondent, Prithviraj Sayajirao Deshmukh & Ors. is a group including individuals and entities associated with Cane Agro Energy (India) Ltd.
- Shri Gurudatta Sugars Marketing Pvt. Ltd. entered into an agreement with Cane Agro Energy (India) Ltd. for the purchase of sugar. The appellant paid a total amount of Rs.63.46 crores to Cane Agro Energy for the supply of sugar.
- Cane Agro Energy (India) Ltd. failed to deliver the sugar as agreed, thereby breaching the contract.
- To settle the outstanding payment, Cane Agro Energy issued two cheques to the appellant - Cheque 1: Amounting to Rs.31.64 crores and Cheque 2: Amounting to Rs.20 crores.
- Both cheques were presented for payment but were dishonoured due to insufficient funds in the account of Cane Agro Energy.
- The appellant filed a complaint against Cane Agro Energy (India) Ltd. and its signatories under Section 138 of the Negotiable Instruments Act, 1881. This section deals with the dishonour of cheques due to insufficient funds.
- Under Section 143-A of the NI Act, the Judicial Magistrate ordered interim compensation to be paid to the appellant. This provision allows for the payment of interim compensation pending the outcome of the case.

- The order for interim compensation was challenged by the respondents, who argued that the interim compensation should not be directed at them personally. The High Court stayed the interim compensation order, leading to the appeal.

ISSUES INVOLVED:

- Whether an authorized signatory of a cheque, who is not the drawer of the cheque, can be directed to pay interim compensation under Section 143-A of the Negotiable Instruments Act, 1881.
- Is the signatory of a cheque, authorized by the company, considered the "drawer" under Section 143-A?
- Can the signatory be held liable for interim compensation, leaving aside the company?

DECISION:

- The Supreme Court addressed the issue of whether interim compensation under Section 143-A of the Negotiable Instruments Act could be ordered against individual respondents personally.
- The Supreme Court held that the individual respondents, who were signatories to the cheques, could be personally liable for interim compensation.
- The court confirmed that the interim compensation is meant to provide immediate relief to the complainant, and it can be directed at individuals who are found liable.
- The Supreme Court decided that the interim compensation ordered by the Judicial Magistrate should not be stayed, and the High Court's stay order was overturned. This meant that the respondents were required to comply with the interim compensation order issued by the Magistrate.
- This ruling reinforced the principle that interim compensation under Section 143-A is an essential part of the legal process in cases of dishonoured cheques. It ensures that the complainant receives prompt relief and that personal liability for such compensation is valid when linked to the actions of the accused in the cheque dishonour case.

2.
Case Title: BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. & Anr.
Case no.: Civil Appeal No. 4565 of 2021
Decision Date: July 23, 2024
Court/Tribunal: Supreme Court of India

FACTS:

- The 2nd respondent–Gujarat Hydrocarbon and Power SEZ Limited, is a corporate debtor. The corporate debtor approached the 1st respondent–SREI Infrastructure Finance Limited (the financial creditor), for a grant of a loan. The financial creditor granted the corporate debtor a loan of Rs.100 crores for setting up a SEZ project.
- The corporate debtor is a subsidiary of M/s. Assam Company India Limited (ACIL). The loan granted by the financial creditor to the corporate debtor was secured by a mortgage made by the corporate debtor of its leasehold land and a pledge of shares of the corporate debtor and ACIL.
- The loan was also secured by the corporate guarantee dated January 2011 furnished by ACIL. The financial creditor filed an Original Application before the Debt Recovery Tribunal-I, Kolkata ('the DRT') to recover the outstanding loan amount.
- A "debt repayment and settlement agreement" was executed to which the financial creditor, the corporate debtor and ACIL (the guarantor) were parties.
- On account of the default committed by the corporate debtor, the financial creditor invoked the corporate guarantee of ACIL. Thereafter, an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('the IBC') was filed concerning ACIL as the guarantee was not honoured.
- The adjudicating authority admitted the said application. Thus, the Corporate Insolvency Resolution Process ('CIRP') of ACIL commenced.
- The appellant is the successful Resolution Applicant of ACIL. The appellant submitted a resolution plan which was approved by the Committee of Creditors and the adjudicating authority. The order of the adjudicating authority

was confirmed in appeal by the National Company Law Appellate Tribunal.

- As per the resolution plan, a sum of Rs.38.87 crores was paid to the 1st respondent-financial creditor, which was in full and final settlement of the dues of the 1st respondent-financial creditor.
- The appellant submitted that Section 140 of the Indian Contract Act, 1872 would squarely apply as the rights of the 1st respondent-financial creditor shall stand subrogated in favour of the appellant.
- The Financial Creditor then filed an application against the Corporate Debtor and claimed the balance amount. The Adjudicating Authority admitted the application. Aggrieved by the order, the appellant preferred an appeal before the NCLAT. NCLAT by the impugned judgment dismissed the appeal.

ISSUES INVOLVED:

- Whether the assets of the subsidiaries included in the Resolution Plan of the holding company.

DECISION:

- The Supreme Court held that payment of the sum of Rs.38.87 crores to the 1st respondent-financial creditor under the resolution plan of the corporate guarantor-ACIL will not extinguish the liability of the 2nd respondent/principal borrower/corporate debtor to pay the entire amount payable under the loan transaction after deducting the amount paid on behalf of the corporate guarantor in terms of its resolution plan;.
- The Supreme Court further observed that a holding company is not the owner of the assets of its subsidiary. Therefore, the assets of the subsidiaries cannot be included in the resolution plan of the holding company, and.
- The financial creditor can always file separate applications under Section 7 of the IBC against the corporate debtor and the corporate guarantor. The applications can be filed simultaneously as well;
- Thus, the view taken by NCLAT cannot be faulted. Accordingly, the appeal is dismissed with no order as to costs.

3.
Case Title: Mr. Rajan Chadha & Anr. Vs. Mr. Sanjay Arora & Anr.
Case no.: CONT.CAS(C) 75/2021 & CM APPL. 62249/2023
Decision Date: July 03, 2024
Court/Tribunal: High Court of Delhi, New Delhi

FACTS:

- The petitioners were directors and shareholders of RBT Private Limited (the "company"), engaged in manufacturing and exporting garments.
- A Memorandum of Understanding (MOU) was executed on 21st December 2019, under which respondent no. 1, a shareholder and director, was to buy the petitioners' shares and manage the company.
- Disputes arose when the petitioners alleged that respondent no. 1 failed to fulfill his obligations under the MOU, including misuse of the company's premises and failure to pay Equated Monthly Installments (EMIs) on a loan.
- A petition under Section 9 of the Arbitration and Conciliation Act, 1996, was filed to restrain respondent no. 1 from disposing of or creating third-party interests in the company's assets.
- The petitioners claimed that respondent no. 1 did not comply with the orders and failed to pay the EMIs. The petitioners had to pay ₹4.10 Crores to the bank themselves. The petitioners also alleged that respondent no. 1 sold hypothecated machinery, which was against the court's orders.
- A Local Commissioner was appointed and found that machinery was missing or dismantled at the company premises, indicating non-compliance with the orders. According to the Minutes of Meeting of the COC, respondent no. 1 removed several items from the company's premises and failed to return them as promised.
- Respondent no. 1 was found guilty of contempt by the court for not complying with its orders and was directed to show cause why he should not be punished under the Contempt of Courts Act, 1971.

- The aforesaid order was assailed by way of an appeal. However, the appeal was dismissed as being non-maintainable.
- It is submitted that respondent no. 2-compnay is facing Corporate Insolvency Resolution Process ("CIRP"). Once the company went into insolvency, the arbitration proceedings stood terminated. Thus, the present petition is not maintainable.

DECISION:

- The Hon'ble Court noted that Courts have to adopt a cautionary approach and a sentence for contempt cannot be imposed, on mere probabilities. The act has to be committed willfully, intentionally, deliberately, and knowingly, before a party can be proceeded under the Contempt of Courts Act.
- Thus, if the disobedience of an order is the result of some compelling circumstances, then, a party cannot be held guilty of contempt.
- The Hon'ble Court observed that the respondent no. 1 has been unable to pay the EMIs of the bank on account of financial inability and constraints, which have arisen due to the various reasons, as elucidated in the said additional affidavit.
- This Court is satisfied that the present is not a case where it can conclusively be said that respondents have willfully and deliberately disobeyed the order passed by this Court and the learned Arbitral Tribunal.
- Accordingly the Court dismissed the petition.

4.
Case Title: Sikkim Power Investment Corporation Ltd Vs Mr. Umesh Garg, Resolution Professional & Ors.
Case no.: Company Appeal (AT) (Insolvency) No.1006, 1007 & 1008 of 2024
Decision Date: July 26, 2024
Court/Tribunal: NCLAT, New Delhi

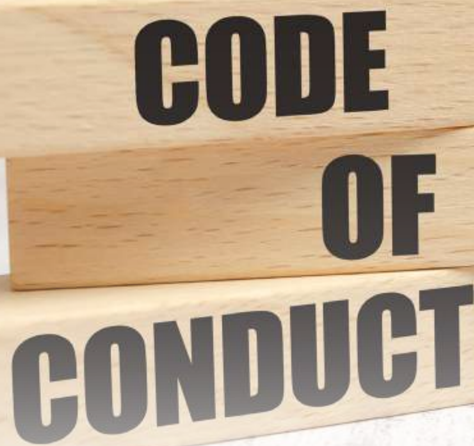
FACTS:

- Athena Energy Ventures Pvt. Ltd. (Holding Company of the Corporate Debtor) was awarded the development and implementation of 1750 Mw Hydro Electric Power Project at river Lohit, Arunachal Pradesh.
- On 03.08.2007, Athena Demwe Power Ltd. (Corporate Debtor) was incorporated as a Special Purpose Vehicle ("SPV") to implement the Project.
- On failure of the Corporate Debtor (CD) in repayment of facilities availed, on an Application filed by the Indian Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority initiated the CIRP against the CD.
- The Resolution Professional (RP) issued Form-G, in pursuance to which 2 Resolution Plans were submitted, one by the Appellant and another by Navayuga Engineering Company Ltd. ("NECL"). The Committee of Creditors ("CoC") declared NECL as disqualified under Section 29A and approved the Resolution Plan submitted by the Appellant.
- The RP after submitting the Application before the Adjudicating Authority for approval of Resolution Plan of the Appellant, sent several emails to the Appellant to submit the Performance Bank Guarantee (PBG) of Rs.72.73 crores as per the obligation of SRA.
- The Appellant entered into correspondence with the RP and promised to submit the PBG. Several dates were given by the Appellant to deposit the PBG, which, however, was not submitted.
- The Adjudicating Authority dismissed the IA filed by the NECL, challenging its disqualification. Company Appeal (AT) (Insolvency) No.783 of 2023 was filed by the NECL, in which initially an order of status qua was passed, but the Appeal came to be dismissed.
- The Adjudicating Authority heard all the Applications and by the impugned order dated 09.04.2024, held that SRA having not deposited the PBG, the Resolution Plan submitted by Appellant cannot be approved and CA No.246 of 2018 was disposed of accordingly.
- The Adjudicating Authority directed the CoC to invite the fresh Expression of Interest ("EoI"), so that all interested party may submit their Resolution Plan and CIRP was extended for a period of 120 days.

- Aggrieved by the order Appeal have been filed by the Appellant.

DECISION:

- The NCLAT noted that the Performance Bank Guarantee was not submitted by the Appellant despite dozens of reminders sent by the Resolution Professional to the Appellant.
- There was clear non-compliance of provisions of the RFRP Clause 1.9.3 which oblige the Resolution Applicant after approval of the Resolution Plan by the CoC to furnish the Performance Bank Guarantee of an amount equivalent to 20% of the bid consideration amount within two business days.
- The NCLAT noted that the requirement of submission of PBG was contained in the RFRP. Clause (4-A) which was inserted in Regulation 36B only made it mandatory for Request of Resolution Plan to provide a performance security within time specified therein.
- The application for intervention filed by the Appellant became inconsequential when the application for plan approval of the Appellant stood rejected on account of non-compliance by the Appellant.
- NCLAT, thus, do not find any substance in the submission of the Appellant that the order passed by the Adjudicating Authority is in violation of principle of natural justice.
- The NCLAT granted two weeks time to the Appellant to submit a Resolution Plan before the Resolution Professional which may also be considered along with the other Resolution Plans which have already been received in the CIRP of the Corporate Debtor.
- Subject to the liberty granted to the Appellant, the Appeal is dismissed by the NCLAT.



IBBI ORDER NO. IBBI/DC/226/2024 DATED 8th JULY, 2024

Contravention	Submission by IP	Violation of Provision	Findings by Disciplinary Committee
Submission of revised resolution plan before AA without approval of CoC The SRA submitted the revised resolution plan to IP and the said revised resolution plan was submitted before the AA directly without first placing the same before the CoC for its approval.	IP submitted that the resolution plan was to be revised by the Resolution Applicant only for the limited purpose of distribution to the dissenting creditor as per section 30(2) of the Code. By virtue of the re-allocation, no prejudice was caused to any of the stakeholders.	Sections 30(3), 30(6), and 208(2) (a) & (e) of the Code, regulation 39(2) of the CIRP Regulations, regulation 7(2) (a) & (h) read with Clauses 12 and 14 of the Code of Conduct of the IP Regulations	The DC notes that although there may not be any malafide on the part of IP such omission being a resolution professional, shows lack of understanding of the role the CoC plays being the authority approving the final modified plan. If there was any intention on the part of the CoC that such modified plan need not be put before it again, the same does not stand reflected in the minutes of CoC meeting approving the pre-revised plan.

	IP also submitted that he had brought to the notice of the members of the CoC through email before the filing of the application before the AA that the resolution applicant submitted the revised resolution plan and that the same will be placed before the AA. IP further submitted that the resolution applicant had also given an undertaking that there will not be any reduction of amount payable to the assenting financial creditors and that the dissenting financial creditors will get as per section 53 of the Code. In effect, there would not have been any occasion for the CoC to revote.		The importance and primacy of CoC in approval of resolution plan is utmost and therefore the same should not be handled in a casual manner. IP was required to be more diligent and cautious in performance of his duties under the Code. Accordingly, the DC is of the view that the conduct of IP has led to violation.
Issue related to Resolution Plan submitted by M.K. Rajagopalan	IP submitted that when the Resolution Applicant (RA) submitted his EOI, it was the IRP who had conducted the Section 29A compliance based on due diligence and available information in public domain and cleared the RA as eligible to submit the Resolution plan and the Resolution plan of this particular RA was received by the IRP, even before he took over as RP and that he had also conducted the necessary due diligence, including public domain search, third party reports if any, as well as scrutiny of defaulters list at MCA/ROC to ensure that the RA is not barred to act as Director under the companies act as part of my compliance check for 29A and also relied on the signed affidavits and declarations submitted by the RA.	Sections 30(2)(e), 208(2)(a) and (e) of the Code, and Regulation 7(2)(a) and(h) of IP regulations, read with clause 14 of the Code of Conduct.	The DC observes that this issue of ineligibility of SRA was not raised by any intervenors and therefore was not examined. Therefore, in light of the above, and considering that these issues with respect to ineligibility of SRA came to the knowledge of IP only after the approval of resolution plan by the AA, the DC is inclined to accept the submissions of IP regarding the appropriateness of his due diligence in examining the eligibility of resolution applicant by verification of the documents and data available on the public domain, negative or default list maintained by MCA or any other agencies and also the available third party sources, search,

Two Expressions of Interest (EoIs) were submitted by SRA Mr. M. K. Rajagopalan, one in individual capacity and another as managing director of Sri Balaji Vidyapeeth (Trust) wherein Mr. M.K. Rajagopalan is a founder and managing trustee. The EoI submitted by Balaji Vidyapeeth was declared ineligible since a charitable trust cannot run a profit-making entity. However, the plan submitted by Mr. M. K. Rajagopalan in its individual capacity has been declared eligible despite being managing director of the same trust. IP had failed to carry out the required due diligence in ascertaining the eligibility of Mr. Rajagopalan in terms of Section 88 of the Indian Trust Act, 1882 and Section 166(4) of the Companies Act.	IP replied to the observation of him not exercising caution to the violation of section 166(4) of the Companies Act, 2013 by submitting that it is not possible for any insolvency professional to go beyond the documents and data available on the public domain, search, verification of documents, apart from the affidavit and declarations provided by the RA and a reasonable view of any negative or default list maintained by MCA or any other agencies and also the available third-party sources. He further submitted before the DC that this issue of ineligibility of SRA was raised first time before the NCLAT and therefore the same was not considered either by the CoC or the AA, while approving the resolution plan.		verification of documents, affidavit and declarations provided by the RA. Accordingly, the contravention alleged in the SCN in this regard is not upheld.

Order of Disciplinary Committee: The DC in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations, suspended the authorization of assignment of IP for a period of three months and warns him to be extremely careful and diligent in performance of his duties under the Code.

NEWS UPDATE

❖ NCLAT GRANTS SUPERTECH TOWNSHIP PROJECTS TWO WEEKS TO SUBMIT SETTLEMENT PROPOSAL

The Insolvency Appellate Tribunal NCLAT has given Supertech Township Projects two more weeks to circulate a settlement proposal to its lenders and home buyers. The proposal aims to resolve the insolvency proceedings and will be published on the company's website for transparency. A hearing will follow to decide on its acceptance.

Read More at:

https://economictimes.indiatimes.com/industry/services/property-/-cstruction/nclat-grants-supertech-township-projects-two-weeks-to-submit-settlement-proposal/articleshow/113732965.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

❖ NCLAT ADJOURNS BYJU'S CASE HEARING

On September 26, the Supreme Court temporarily halted all meetings concerning Byju's insolvency proceedings, as Glas Trust, the trustee for lenders to which Byju's owes $1.2 billion, moved the apex court challenging its removal from the committee of creditors (CoC) by interim resolution professional (IRP) Pankaj Srivastava. Read more at:

https://economictimes.indiatimes.com/tech/technology/nclat-adjourns-byjus-case-hearing-to-november-6/articleshow/113848191.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

❖ FUTURE LIFESTYLE LENDERS APPROVE BID FROM SPACE MANTRA & GUPTAS' CONSORTIUM

The lenders of Future Lifestyle Fashions Ltd, going through insolvency resolution, have approved the bid from a consortium of Space Mantra and Sandeep Gupta & Shalini Gupta.

The Committee of Creditors (CoC) of Future Lifestyle Fashions Ltd (FLFL) has voted in favour of the resolution plan submitted by the consortium, according to a regulatory filing from the company.

Read more at:

https://www.business-standard.com/companies/news/future-lifestyle-lenders-approve-resolution-plan-of-space-mantra-guptas-consortium-124092800401_1.html

❖ IBBI AMENDS RULES TO ENHANCE CREDITOR REPRESENTATION IN INSOLVENCY PROCESS

The IBBI has amended the Insolvency Resolution Process for Corporate Persons norms to introduce significant changes to enhance creditor representation in the insolvency process. The board notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations 2024 on September 24.

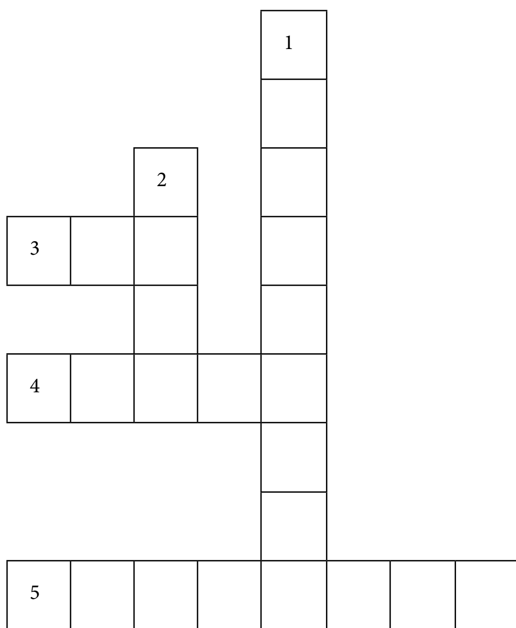
Read more at:

https://www.business-standard.com/companies/news/ibbi-amends-rules-to-enhance-creditor-representation-in insolvency-process-124092601290_1.html

TIME TO THINK!

GAMES CORNER

The Corporate Debt Restructuring (CDR) Quiz



ACROSS

3. CDR guidelines are issued by ______________

4. CDR has a ______________ tier system

5. The CDR Forum general body of all banks participating in CDR system.

DOWN

1. The individual cases of CDR shall be decided by the CDR ______________ Group.

2. The cases not eligible for restructuring under the CDR system.

Answer key:

1. Empowered
2. BIFR
3. RBI
4. Three
5. Standing

NOTES

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