INSTITUTE OF INSOLVENCY PROFESSIONALS
(A wholly owned subsidiary of ICSI and registered with IBBI)
VOL XiV | NO. : 16 | PG. 1-112 | October-December 2024

INSOLVENCY AND BANKRUPTCY JOURNAL

Navigating the Future of Insolvency:
Trends and Innovations

ICSI Institute of Insolvency Professionals (ICSI IIP)

Reach us @ Below

Registered Office:

Third Floor, ICSI House
22, Institutional Area, Lodhi Road
New Delhi 110 003

Corporate Office:

ICSI House, C 36, Third Floor, Sector 62, Noida 201 309
Tel: +91 (120) 408 2142
Email: info@icsiiip.in
Website: https://icsiiip.in/

Working Hours:

Monday to Friday
09:00 AM - 05:30 PM

For any query, feel free to connect at below provided Number/ Email Id

Department	Email Id	Direct Number
Enrolment & Registration as an Individual Insolvency Professional (IP)	enrollment@icsiiip.in	+91 74289 22988
Enrollment & Registration as IPE	enrollment.ipe@icsi.edu	+91 120 408 2142
Monitoring & Inspection/ Authorization for Assignment/ Compliance (IBC)	reporting@icsiiip.in	+91 120 408 2153 +91 96250 53525
Program	programs.icsiiip@icsi.edu	+91 120 408 2142
CPE	programs.icsiiip@icsi.edu	+91 120 408 2142
Research Initiative	research.icsiiip@icsi.edu	+91 120 408 2142
Education & Publication	research.icsiiip@icsi.edu	+91 120 408 2142
Grievance/ Complaint	grievance@icsiiip.in	+91 120 408 2142
Administration & IT	info@icsiiip.in	+91 74289 22988
Finance & Accounts	info@icsiiip.in	+91 120 408 2159

Contents

VOL XiV | NO. : 16 | PG. 1-112 | OCTOBER-DECEMBER 2024

From Chairman's Desk

"The secret of change is to focus all of your energy not on fighting the old, but on buildling the new"

- Socrates

Navigating the Future of Insolvency: Trends and Innovations

Dear Professional Colleagues,

Greetings!

The theme of this month's journal, **"Navigating the Future of Insolvency: Trends and Innovations,"** is both timely and thought-provoking. Insolvency, as a discipline, is evolving at a remarkable pace, shaped by global developments, technological advancements, and innovative practices. To ensure that the profession continues to serve as a cornerstone of economic resilience and growth, it is imperative for all stakeholders to remain agile, informed, and proactive.

Since its inception in 2016, the Insolvency and Bankruptcy Code (IBC) has ushered in a paradigm shift in India's insolvency framework. The IBC has proven to be a catalyst for sustainable economic development by facilitating the resolution of financially stressed corporate debtors, maximizing value for stakeholders, fostering entrepreneurship, enabling access to credit, and balancing competing interests. Beyond enabling the revival of several distressed businesses, the IBC has also ensured the reintegration of idle resources into the economy where revival was unfeasible, contributing significantly to India's economic progress.

The banking sector, too, has seen notable improvement in asset quality in recent years. Gross non-performing assets (NPAs) of scheduled commercial banks have declined from a peak of 11.2% in March 2018 to 2.8% in March 2024. A significant portion of this reduction is directly attributable to resolution processes facilitated under the IBC. As of September 2024, 8,002 cases have been admitted into the Corporate Insolvency Resolution Process (CIRP), with approximately 75% of these cases closed through resolution, withdrawal, review, settlement, or liquidation. Of the closed cases, an impressive 56% were resolved, settled, or withdrawn, showcasing the growing effectiveness of the IBC as a resolution mechanism.

This edition of the journal explores pivotal themes shaping the future of insolvency, including the integration of technology in insolvency practices, the emergence of mediation as an alternative dispute resolution mechanism, and the expanding role of cross-border insolvency frameworks. Additionally, it underscores the importance of professional competence, ethical practices, and collaboration in navigating these transformative changes.

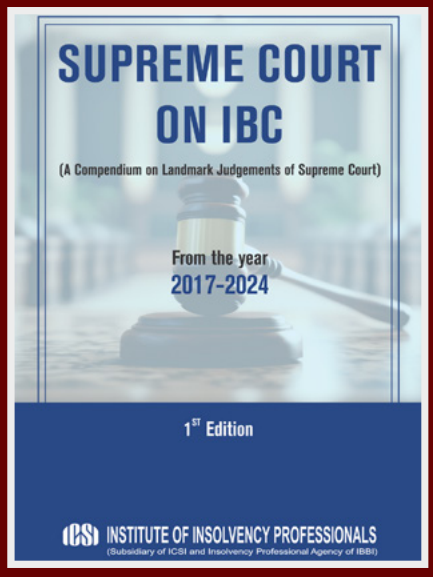
As Albert Einstein aptly said, ***"In the middle of every difficulty lies opportunity."*** This profound insight deeply resonates with the insolvency profession, which is defined by its ability to turn challenges into pathways for resolution, revival, and growth.

As we embrace the future, ICSI IIP remains steadfast in its commitment to empowering insolvency professionals with the tools, knowledge, and opportunities they need to excel in this dynamic landscape. Together, let us strengthen the insolvency framework in India and contribute meaningfully to the nation's journey toward becoming a developed economy.

(P. K. Malhotra)
Chairperson,
ICSI Institute of Insolvency Professionals

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

ICSI IIP's Publications



INR 1400/-
Postage Extra

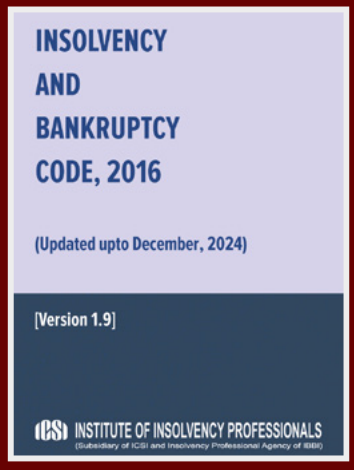
Supreme Court on IBC - A Compendium on Landmark Judgments of Supreme Court (2017-2024)

This comprehensive compilation "Supreme Court on IBC - A Compendium on Landmark Judgments of Supreme Court (2017-2024)." features a selection of more than 100 landmark cases that have shaped the Insolvency and Bankruptcy Code (IBC) since its inception. The judgments, carefully curated from 2017 to September 2024, come with insightful analysis and provide a clear understanding of the evolving legal landscape surrounding IBC.

One of the key strengths of this compendium is its meticulous organization and presentation. By categorizing judgments chronologically and including a convenient annexure of Ready Reckoner of section-wise jurisprudence, the ICSI IIP has made it easy for readers to navigate the complex legal landscape of the IBC.

Insolvency and Bankruptcy Code, 2016 - Updated upto December, 2024 (9th Edition)

The Bare Act in a pocket book format.



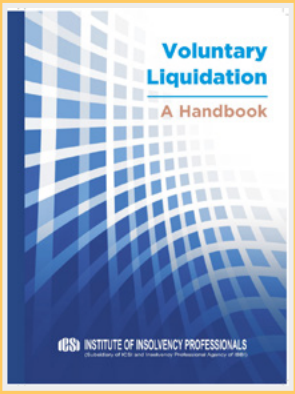
INR 700/-
Postage Extra



IBC Digest: A Compendium of Research Outcomes

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

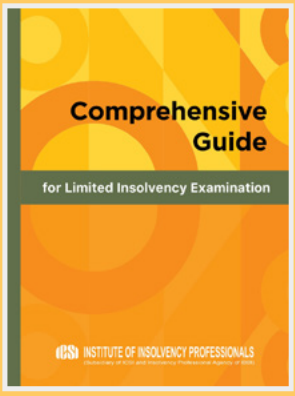
INR 390/-
Postage Extra



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.

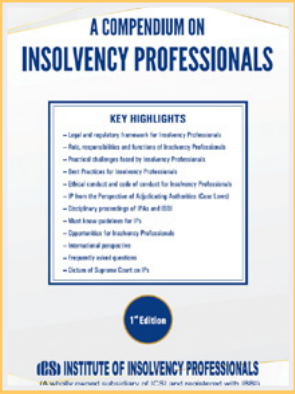
INR 600/-
Postage Extra



Comprehensive Guide for Limited Insolvency Examination (1st Edition)

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

INR 990/-
Postage Extra



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/-
Postage Extra

MD's Message

"The best way to predict the future is to create it."
- Peter Drucker

Message from the Managing Director, ICSI IIP

Dear Readers,

Warm greetings from ICSI IIP!

It gives me immense pleasure to address you through the latest edition of our Journal. This publication serves as a vital platform to exchange ideas, insights, updates and innovations that drive the insolvency profession forward.

The insolvency profession and its professionals are at the forefront of resolving financial stress, a vital objective under the Insolvency and Bankruptcy Code (IBC). The regulatory environment governing Insolvency Professionals (IPs) and Insolvency Professional Entities (IPEs) is of utmost importance due to its profound impact on the ecosystem.

The ICSI Institute of Insolvency Professionals of (ICSI IIP) is pleased to present this edition of the journal, which includes a wide range of insightful articles and updates. We start with the Learners Corner, which features FAQs on Corporate Insolvency Resolution Process (CIRP), providing an easy reference for budding professionals in the field. We also have a section on Legal Maxims that is sure to aid in the understanding of fundamental legal principles.

The theme for this edition, **"Navigating the Future of Insolvency: Trends and Innovations,"** underscores the dynamic nature of our profession. As the insolvency landscape evolves, it is essential for professionals to adapt, innovate, and embrace new opportunities. This journal explores critical aspects such as emerging technologies, alternative resolution mechanisms, cross-border insolvency frameworks, and the transformative potential of mediation in insolvency resolution.

In this edition, we cover the critical topic of 'The Role of Mediation in Insolvency Laws,' shedding light on how alternative dispute resolution mechanisms can contribute to faster and more amicable resolutions under the IBC framework. We also explore 'Bricks and Barriers: Unveiling the Challenges of Real Estate in a Transforming World,' an article that discusses the ongoing transformation in the real estate sector and the challenges it faces in insolvency proceedings.

Additionally, we feature an in-depth analysis of the 'Revival Saga of Jet Airways,' focusing on the complexities and lessons learned from one of the most high-profile insolvency cases in India. The article 'Delay in Insolvency Resolution Process – Recipe for Disaster' emphasizes the dangers of delays in insolvency proceedings and the consequences they can have on the successful resolution of corporate debtors.

A key highlight of this edition is the 'Ready Reckoner on Landmark Judgments of the Supreme Court,' which provides a detailed compilation of pivotal rulings that have shaped the IBC landscape. This resource will serve as a valuable tool for professionals seeking a comprehensive understanding of judicial precedents.

I would like to extend my heartfelt thanks to all the contributors for their well-researched articles and thoughtful perspectives. Your knowledge and experience enrich this journal and make it a valuable resource for professionals and stakeholders alike.

The journal also covers the latest developments in international insolvency laws, IBC updates, and recent judgments, keeping you informed of the ever-evolving legal framework. Moreover, our 'Code of Conduct' section includes important insights from disciplinary proceedings, which serve as essential guidance for maintaining high professional standards.

For some light-hearted engagement, don't miss the 'Games Corner,' where you can test your knowledge and unwind.

At ICSI IIP, we are committed to fostering excellence and supporting insolvency professionals in navigating challenges and seizing opportunities. As the profession grows in importance and impact, let us continue to collaborate, innovate, and build a stronger insolvency ecosystem.

In the words of Helen Keller, **"Alone we can do so little; together we can do so much."** This collective effort is what will propel us toward achieving greater milestones for the profession and the economy.

We hope you find this edition both informative and engaging. As always, your feedback is invaluable to us, so please feel free to share your thoughts by writing to us at peer.mehboob@icsi.edu.

Thank you for your continued trust and support. I wish you an enriching reading experience and a successful year ahead.

Happy reading!

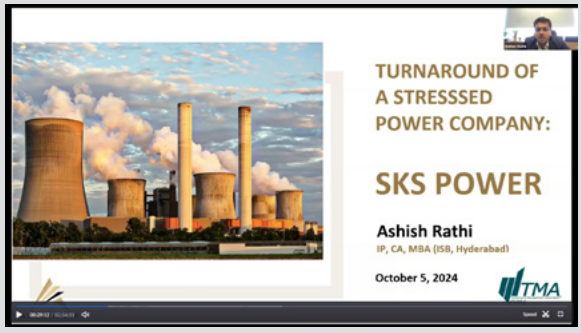
Dr. Prasant Sarangi
Managing Director,
ICSI Institute of Insolvency Professional

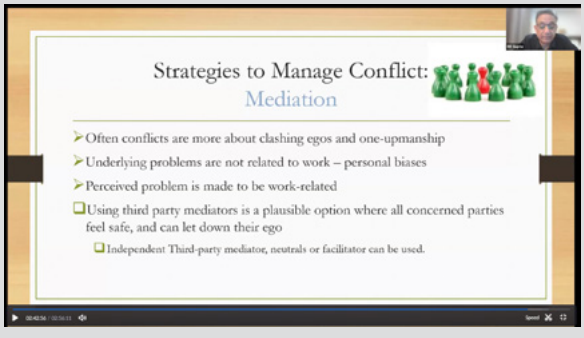
Events @ICSI IIP

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

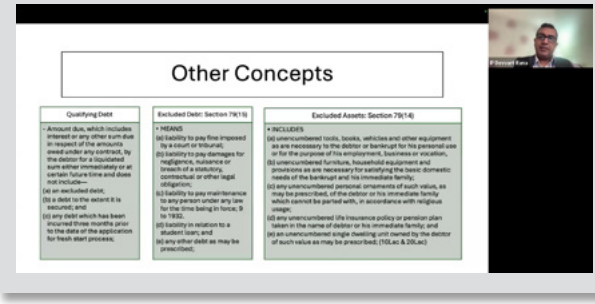
WEBINARS

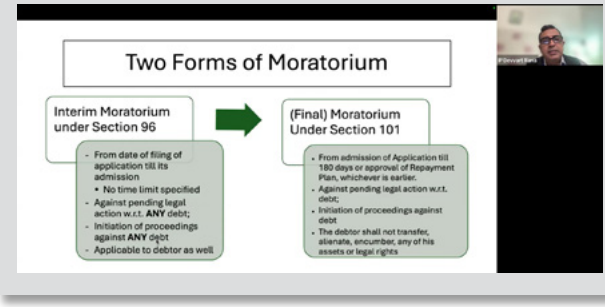
Webinar on Revitalising CD: Turnaround Strategies and Soft Skills on Saturday, 5th October, 2024
Speaker: IP and Advocate Rocky Ravinder Gupta, IP Satish Kumar Gupta, IP and CA Ashish Rathi and Ms. Indu Basu



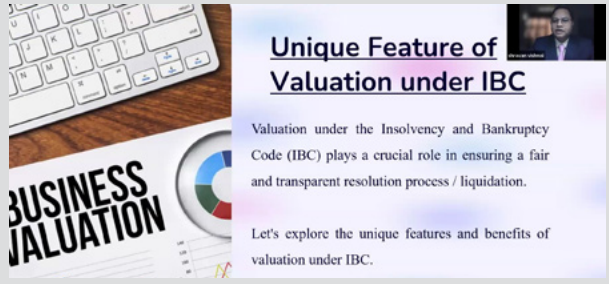


Webinar on Impact of CIRP on Personal Guarantors on Tuesday, 12th November, 2024
Speaker: IP Adv. Devvart Rana





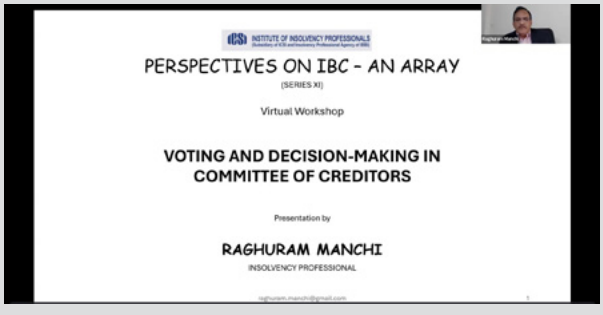
Webinar on Unique Features of Valuation under IBC on Saturday, 23rd November, 2024
Speaker: CS IP Shravan Kumar Vishnoi

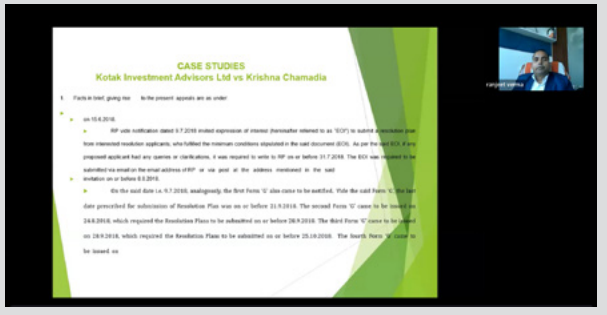


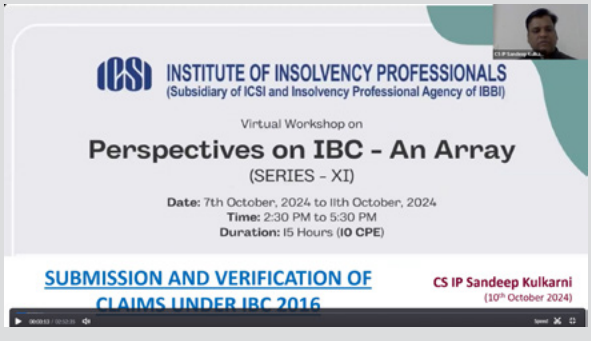
WORKSHOPS

Workshop Series "Perspectives on IBC Series XI-An Array"
From 7th October, 2024 to 11th October, 2024.
Speaker: IP Raghuram Manchi, IP CS Ranjeet Kumar Verma,
IP CS Sucheta Gupta, IP CS Sandeep Kulkarni and IP CS CMA Siva Rama Prasad Puvvala

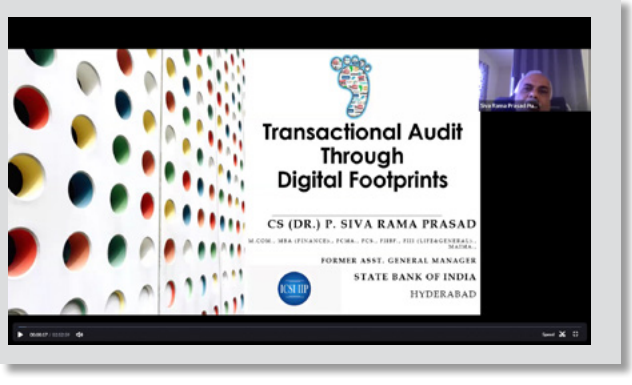
The topics covered in the series such Voting and Decision Making in CoC, Commercial Wisdom of CoC, Winding Up of Companies: IBC 2016 Vs. Companies Act 2013 with relevant case laws, Submission and Verification of Claims under IBC and Managerial Skills of IP in CIRP



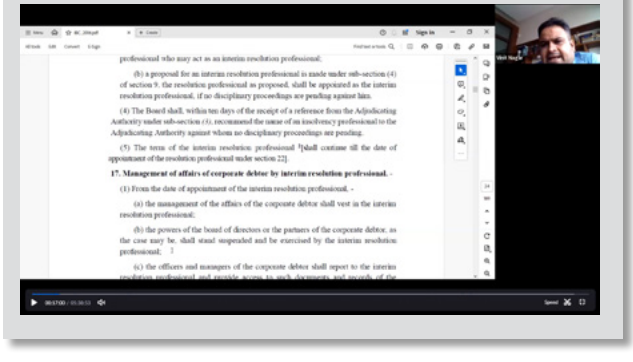




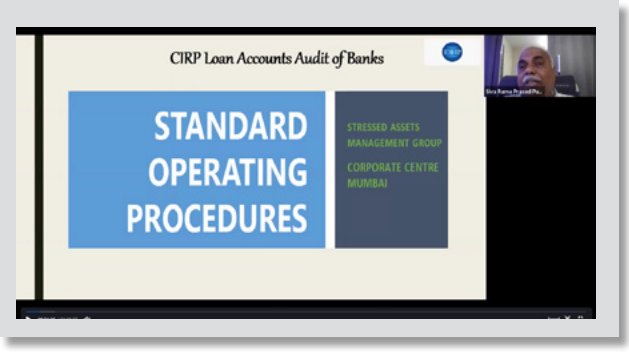
Webinar on Transactional Audit through Digital Footprints
on Thursday, 17th October, 2024
Speaker: IP CS CMA Siva Rama Prasad Puvvala

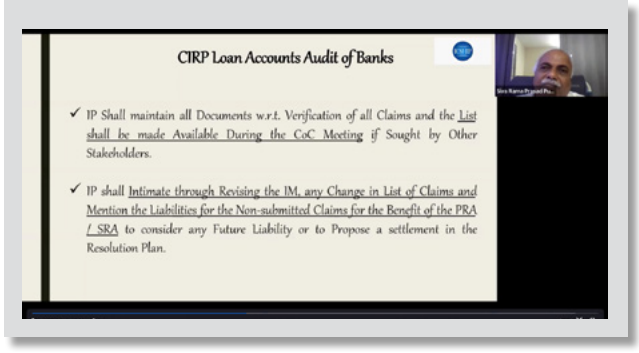


Workshop on Interplay of IBC and Other Laws,
on Saturday, 19th October, 2024
Speaker: IP CS Vinit Nagar and IP CS Harmeet Kaur

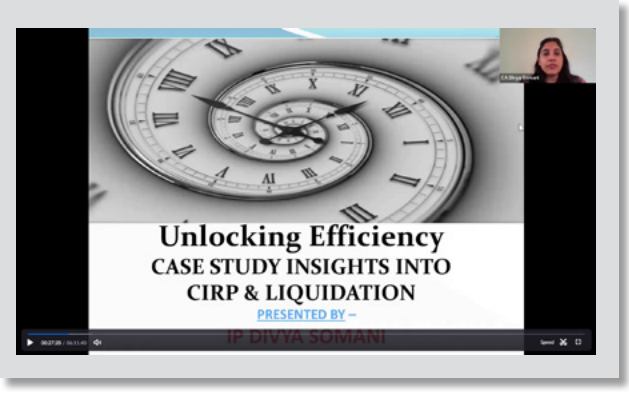


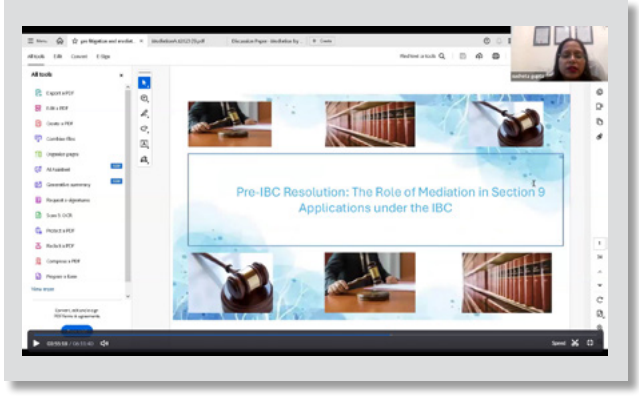
Workshop on CIRP and Liquidation Audit in Banks
on Thursday and Friday, 24th and 25th October, 2024
Speaker: IP CS CMA Siva Rama Prasad Puvvala



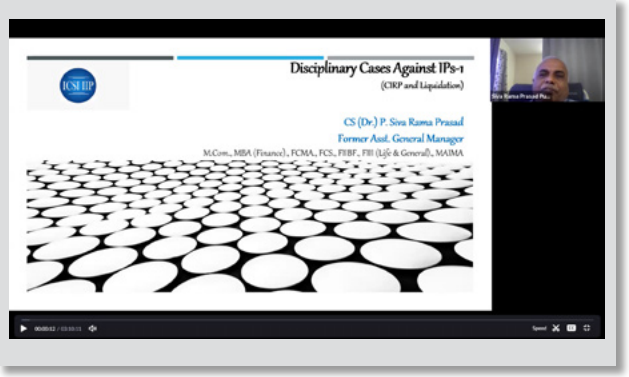


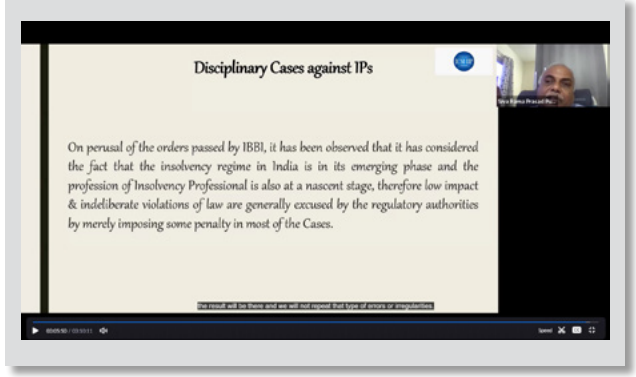
Workshop on Case Studies Insights into IBC and PRE-IBC Resolution
on Saturday, 16th November, 2024
Speaker: CS CA IP Divya Somani and CS IP Sucheta Gupta





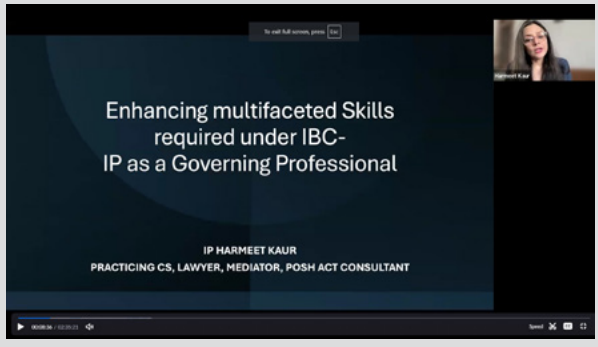
Workshop on Disciplinary Cases against IPs
on Friday and Saturday, 29th November 2024 and 30th November, 2024
Speaker: CS, CMA and IP Siva Rama Prasad Puvvala

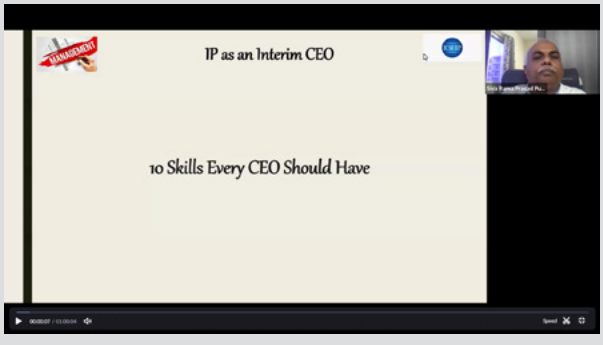




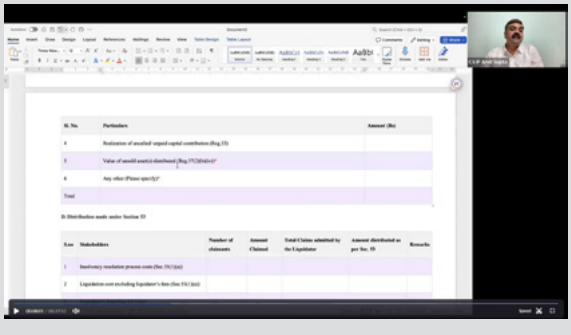
Workshop Series "Perspectives on IBC Series XII-An Array"
from 3rd December, 2024 to 9th December, 2024.
Speaker: IP CS Harmeet Kaur, IP Adv. Manish Paliwal, IP CS CMA Siva Rama Prasad Puvvala, IP CA CS CMA Pramod Jain and IP CA Nilesh Sharma

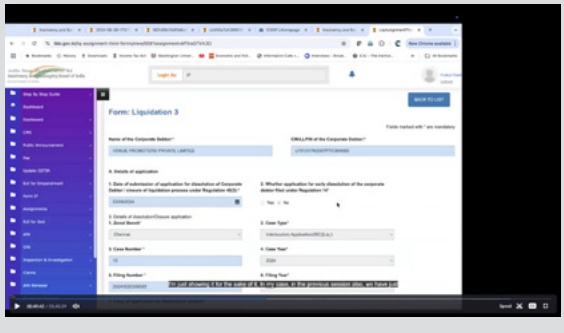
The topics covered in the series Enhancing Multifaceted Skills required under IBC - IP as a Governing Professional, Enhancing Multifaceted Skills required under IBC - IP as a Lawyer, Enhancing Multifaceted Skills required under IBC - IP as a Interim CEO, : Soft Skills and Technical Skills required for IPs under IBC, Enhancing Multifaceted Skills required under IBC - IP as a Chartered Accountant





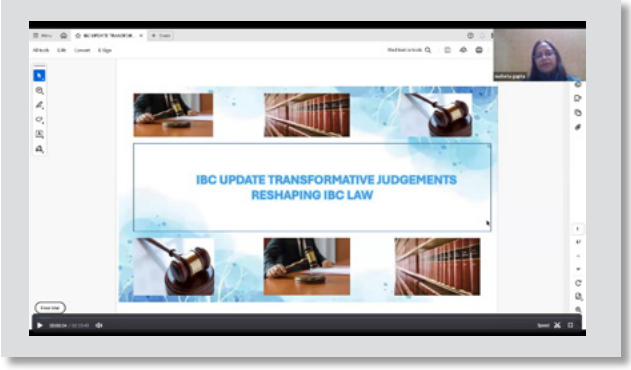
Workshop on Decoding Liquidation and Voluntary Liquidation Forms
on Saturday, 14th December, 2024
Speaker: CS IP Prakul Thadi and CS IP Amit Gupta

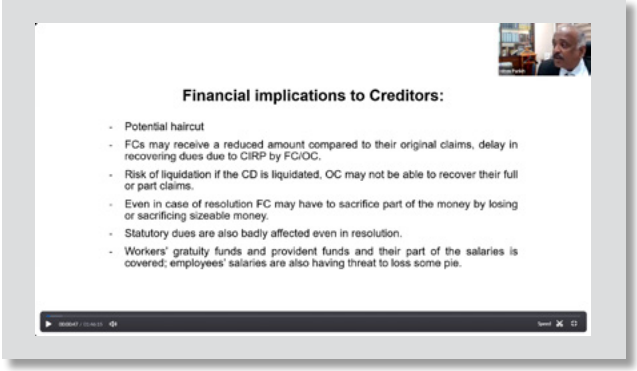


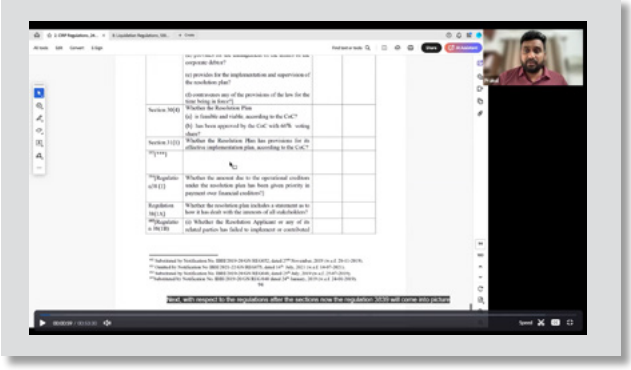


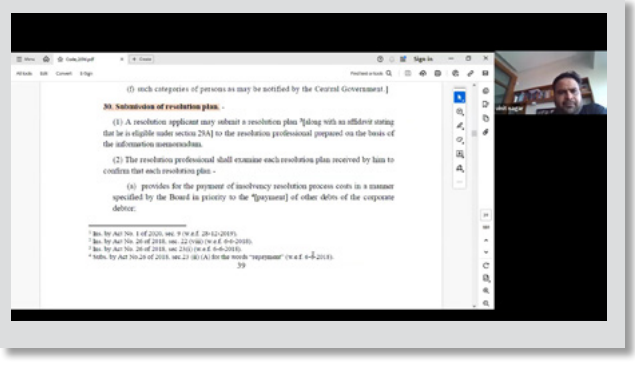
Workshop Series "Perspectives on IBC Series XIII-An Array"
from 17th December, 2024 to 21st December, 2024.
Speaker: IP CS Sucheta Gupta, IP and CA Hiten Parikh, IP CS Prakul Thadi, IP John Vincent A. and IP CS S. Rajendran

The topics covered in the series IBC Update: Transformative Judgement Reshaping Insolvency Law, Decoding the Financial Implications involved under IBC, Decoding of Compliance Certificates under IBC, Digital Transformation in IBC, Decoding the Role and Commercial Wisdom of CoC.

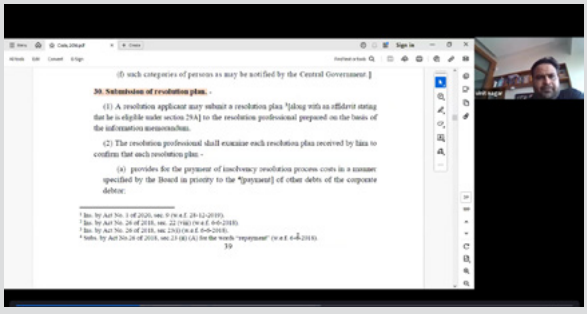


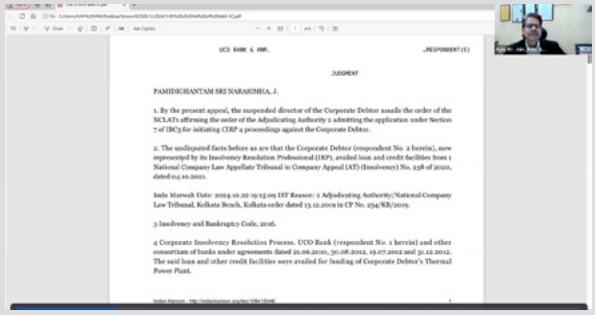






Workshop on Resolution Plan and IBC Case Laws
on Saturday, 28th December, 2024
Speaker: CS IP Vinit Nagar and IP Adv.Ajay Kumar Jain

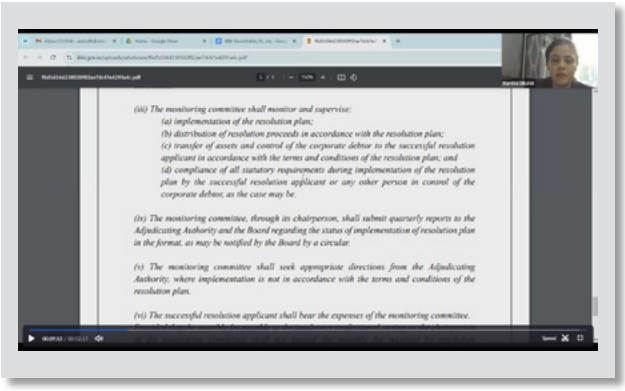


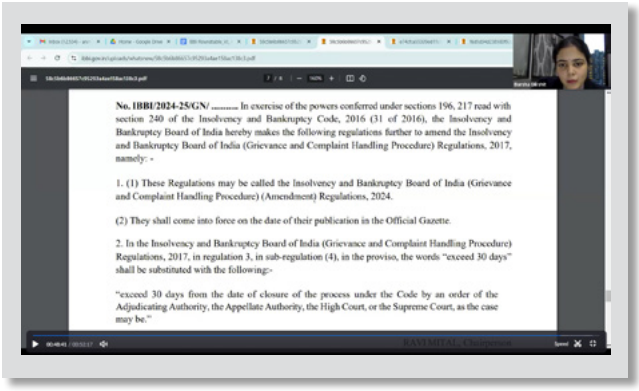


ROUND-TABLE (VIRTUAL) DISCUSSION

Round-table (Virtual) Discussion on IBBI Discussion Paper dated 4th November, 2024 and 7th November, 2024 On Friday, 22nd November, 2024
Moderator & Speaker: CS IP Ashish Singh and CS Barsha Dikshit

Round-table (Virtual) Discussion on IBBI Discussion Papers dated 19th November, 2024 on Thursday, 28th November, 2024
Speaker: CS Barsha Dikshit





JOINT PROGRAMS

ICSI NCLT Conclave organised by ICSI Kochi Chapter In Association With ICSI Institute Of Insolvency Professionals on Saturday, 2nd November, 2024

ICSI NCLT Conclave organised by ICSI Bengaluru Chapter In Association With ICSI Institute Of Insolvency Professionals on Saturday, 16th November, 2024

Learner's Corner

FAQS ON CORPORATE INSOLVENCY RESOLUTION PROCESS

(Source: IBBI)

Q1. What is corporate insolvency resolution process (CIRP)?

Ans: CIRP is the process of resolving the corporate insolvency of a corporate debtor in accordance with the provisions of the Code.

Q2. Who is a corporate person?

Ans: A corporate person means:

a) A company as defined under the Companies Act, 2013;

b) A Limited Liability Partnership as defined under the Limited Liability Partnership Act, 2008; or

c) Any other person incorporated with limited liability under any law It does not include any Financial Service Provider.

However, Financial Service Provider could be notified for the purpose of their insolvency and liquidation proceedings, under section 227 of the Code.

Q3. Who is a corporate debtor?

Ans. A corporate debtor is a corporate person who owes a debt to any person.

Q4. Who can initiate CIRP?

Ans. CIRP may be initiated by a financial creditor under section 7, an operational creditor under section 9 and corporate applicant of corporate debtor under section 10 of the Code.

Q5. What is the minimum default amount for initiating CIRP against a corporate debtor?

Ans. The minimum amount of default for initiating CIRP was ₹ 1 lakh initially. The Government vide notification dated 24th March, 2020, has increased the minimum amount of default to ₹ 1 crore.

Q6. Who is a Financial Creditor?

Ans. Any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Q7. What is Financial Debt?

Ans. It means a debt along with interest, if any, disbursed against consideration of time value of money. It also includes those enumerated in section 5(8)(a) to (i) of the Code, such as money borrowed against the payment of interest, amount of any liability in respect of any lease or hire purchase contract, any amount raised for a transaction having commercial effect of borrowing such as amount raised from allottee under a real estate project etc.

Q8. Who is an Operational Creditor?

Ans. Any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

Q9. What is Operational Debt?

Ans. It means claim arising in relation to supply of goods and services. It also includes claims in relation to employment or dues payable to Central Government, State Government or any local authority.

Q10. Who is a Corporate Applicant?

Ans. Corporate Applicant means:

a) Corporate debtor;

b) A member or partner of the corporate debtor who is authorised to make an application for the CIRP under its constitutional document or

c) An individual who is in charge of managing the operations and resources of the corporate debtor; or

d) A person who has the control and supervision over the financial affairs of the corporate debtor.

Q11. Which court/tribunal has the jurisdiction to hear an application for CIRP?

Ans: National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located serves as the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons.

Q12. Is there a specific form/format for the demand notice/ invoice demanding payment to be sent to corporate debtor under section 8?

Ans: Yes. As per rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the demand notice needs to be furnished to the corporate debtor in Form 3 or copy of an invoice attached with a notice in Form 4.

Q13. Can a corporate debtor undergoing CIRP file an application for initiating CIRP against its own debtors?

Ans: Yes, a corporate debtor undergoing CIRP can do so in terms of section 11 of the Code.

Q14. Is there a form/format for the application to be filed before the Adjudicating Authority?

Ans: Yes. The form of application to be filed by the financial creditor, operational creditor and corporate debtor are provided under Form 1, Form 5 and Form 6 respectively of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Q15. Can a corporate debtor undergoing liquidation, file an application for initiation of CIRP on itself?

Ans: No.

Q16. What is the procedure to extend the time period beyond one hundred and eighty days?

Ans: The committee of creditors is required to pass a resolution, with sixty-six percent of the total voting share, to extend the CIRP. Thereafter, the resolution professional needs to file an application to the Adjudicating Authority seeking approval for such extension.

Q17. Can a CIRP once initiated be withdrawn?

Ans: Yes. It can be withdrawn either before admission by the Adjudicating Authority or even after admission. The Adjudicating Authority may allow withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant through the resolution professional, with the approval of 90 percent of voting share of the committee of creditors. The application for withdrawal may also be made by the applicant through interim resolution professional even before the constitution of committee of creditors.

Q18. What does the Insolvency Resolution Process Costs include?

Ans: The Insolvency Resolution Process Costs is defined to mean those costs indicated in section 5(13) of the Code read with regulation 31 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It includes amount of any interim finance along with cost of raising such finance, fee and expenses of interim resolution professional or resolution professional ratified/ approved by the committee of creditors, fee of the authorised representative representing class of creditor, cost incurred for running the corporate debtor as going concern, amount due to suppliers of essential goods and services etc.

Q19. Who will fix and bear the expenses/ cost incurred by the interim resolution professional?

Ans: As per regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant is required to fix the expenses incurred or to be incurred by the interim resolution professional. In case, the expenses are not fixed by the applicant, the Adjudicating Authority shall fix the expenses. Such costs/expenses shall be borne by the applicant which shall be reimbursed by the committee of creditors to the extent ratified by it. Further, the amount of the expenses ratified by the committee of creditors shall form part of insolvency resolution process costs.

Q20. Who will fix and bear the expenses/ cost incurred by the resolution professional?

Ans: The committee of creditors shall fix the expenses to be incurred on or by the resolution professional and such expenses shall form part of insolvency resolution process costs.

Q21. How is an Interim Resolution Professional appointed in a CIRP?

Ans: The Adjudicating Authority appoints the insolvency professional proposed by the financial or operational creditor in their application, as the interim resolution professional on the insolvency commencement date. However, where the name of the insolvency professional is not proposed in the application filed by an operational creditor, the Adjudicating Authority makes a reference to the Board for the recommendation of an insolvency professional, who may act as an interim resolution professional. The Board within ten days of the receipt of a reference from the Adjudicating Authority, recommends the name of an Insolvency Professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

Q22. What is the term of an interim resolution professional?

Ans: The term of an interim resolution professional continues till the date of appointment of the resolution professional under section 22.

Q23. What is the first step to be taken by interim resolution professional after admission of CIRP?

Ans: After admission of CIRP by the Adjudicating Authority, an interim resolution professional makes a public announcement in Form A within three days from his appointment and calls for submission of claims from the stakeholders.

Q24. Where is the public announcement made?

Ans: The public announcement is published in (a) one English and one regional language newspaper, (b) on the website of corporate debtor, if any, and (c) on the website designated by the Board.

Q25. Is there any prescribed form for public announcement?

Ans: Yes, Form A to the Schedule to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Q26. Who bears the expenses of public announcement?

Ans: The applicant initiating CIRP bears the expenses of the public announcement which may be reimbursed to the extent ratified by the committee of creditors.

Q27. What is the duration of moratorium?

Ans: The order of moratorium comes into force from the date of such order by the Adjudicating Authority till the completion of the CIRP. Further, if the Adjudicating Authority approves the resolution plan under section 31(1) or passes an order for liquidation of corporate debtor under section 33, the moratorium ceases to have effect from the date of such approval of resolution plan or liquidation order, as the case may be.

Q28. Can a supplier terminate or suspend supply of essential goods and services to the corporate debtor during the moratorium period?

Ans: No, essential goods and services specified under regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, cannot be terminated or suspended during moratorium.

Q29. What constitutes essential goods and services as per the Code?

Ans: The essential goods and services specified are (a) electricity; (b) water; (c) telecommunication services; and (d) information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor. For instance, water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, but not for generation of hydroelectricity.

Q30. Will the supply of critical goods and services be terminated, suspended or interrupted during the moratorium period?

Ans: Where the interim resolution professional or resolution professional, as the case may be, considers that supply of certain goods or services are critical to protect and preserve the value of the corporate debtor and manage the operations of corporate debtor as a going concern, then supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium. However, this is subject to the condition that the corporate debtor makes payment for the supplies arising during the moratorium period.

Q31. Who will manage the corporate debtor after admission of CIRP?

Ans: Upon the appointment of the interim resolution professional, the affairs of the corporate debtor shall be managed by him. Thereafter, it shall be managed by the resolution professional upon his appointment.

Q32. What happens to the power of the board of directors or the partners of the corporate debtor?

Ans: The powers of the board of directors or the partners of the corporate debtor as the case may be, shall stand suspended upon the appointment of the interim resolution professional. Such powers shall be exercised by the interim resolution professional and resolution professional, as the case may be.

Q33. To whom does an officer/manager of a corporate debtor report after commencement of CIRP?

Ans: As per section 17(1)(c) of the Code, the officers and managers of the corporate debtor shall report to the interim resolution professional. Upon appointment of resolution professional, the resolution professional shall exercise the same powers and perform duties vested or conferred on interim resolution professional, in terms of section 23(2) of the Code.

Q34. Whether financial institutions of corporate debtor are bound by the instructions of interim resolution professional or resolution professional?

Ans: As per section 17(1)(d) of the Code, the financial institutions maintaining the accounts of the corporate debtor are bound to act on the instructions of the interim resolution professional in relation to such accounts and are required to furnish information relating to the corporate debtor. The same powers are also available to a resolution professional after his appointment.

Q35. Who is required to perform the compliance obligations on behalf of the corporate debtor?

Ans: During CIRP, the responsibility to comply with the requirements under any law on behalf of the corporate debtor lies with the interim resolution professional and resolution professional, as the case may be.

Q36. What are the forms prescribed for submission of claims by the stakeholders?

Ans: The Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides various forms for filing of claims by different stakeholders which are as under:

S.No.	Form	Stakeholder category
1.	Form B	Operation Creditor
2.	Form C	Financial Creditor
3.	Form CA	Class of Creditors
4.	Form D	Workman or employee
5.	Form E	Authorised representative of workmen/employees
6.	Form F	Other Creditors

Q37. How is the committee of creditors constituted?

Ans: The interim resolution professional shall receive and collate all claims submitted by creditors pursuant to the public announcement and thereafter constitute the committee of creditors comprising of financial creditors, which is not a related party.

Q38. What will the committee of creditors comprise in case there is no financial creditor or they are related parties?

Ans: Where the corporate debtor does not have financial creditors or where all financial creditors are its related parties, the committee of creditors shall comprise of operational creditors and shall be set up as per regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Q39. Who shall be the members of the committee of creditors consisting of only operational creditors?

Ans: As per regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the committee of creditors having only operational creditors shall consist of following members: a) eighteen largest operational creditors by value or all operational creditors, where they are less than eighteen in number; b) one representative elected by workmen other than workmen included under 'a'; and c) one representative elected by all employees other than employees included under 'a'.

Q40. How is the resolution professional appointed by the committee of creditors?

Ans: The committee of creditors, may, in the first meeting or subsequent meeting either resolve

to appoint the interim resolution professional as resolution professional or to replace the interim resolution professional by another resolution professional by at least sixty-six percent voting share.

Q41. Who shall be the recipients of the notice of the meeting of committee of creditors?

Ans: The interim resolution professional or resolution professional, as the case may be, shall send the notice of the meeting of committee of creditors to: a) all the members of the committee of creditors including authorised representatives, b) members of suspended board of directors or partners of corporate debtor, and c) operational creditors or their representatives if amount of their aggregate due is not less than 10% of the debt. However, only the members of the committee of creditors shall have voting rights while others shall have right to participation only.

Q42. What is the quorum for the meeting of committee of creditors?

Ans: There should be members holding at least thirty three percent of voting rights either present in person or by video conferencing or by audio visual means, to form a quorum.

Q43. Does a member of committee of creditors need to be physically present in the meeting to cast vote?

Ans: A member of the committee of creditors can participate in the meeting through electronic means also. As per regulation 25 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional is required to take the vote of the members of the committee of creditors present in the meeting. However, in respect of members who did not vote at the meeting on the matters listed for voting, the resolution professional shall also seek a vote, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least 24 hours from the circulation of the minutes.

Q44. When is the first meeting of committee of creditors held?

Ans: The first meeting of committee of creditors is to be held within 7 days of filing of report of its constitution to the Adjudicating Authority. It is held within 30 days from insolvency commencement date.

Q45. Whether interim resolution professional or resolution professional can unilaterally undertake significant actions during CIRP?

Ans: No. Section 28(1)(a) to (m) of the Code, elaborate the list of actions that require prior approval of the committee of creditors by a vote of sixty-six per cent of the voting shares. These include matters like interim finance, creation of security interest over the assets of corporate debtor, change of capital structure or recording any change in ownership interest of corporate debtor, undertaking related party transactions, making change in management, etc.

Q46. What happens when resolution professional acts without approval of committee of creditors for actions listed under Section 28(1)?

Ans: Such action shall be void. The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under the relevant provisions of the Code.

Q47. When can a resolution professional be replaced?

Ans: Where the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may pass a resolution to that effect by a vote of sixtysix per cent of voting shares. The committee of creditors may thereafter apply to the Adjudicating Authority for the appointment of proposed resolution professional along with the written consent from such person in the specified form.

Q48. Who will appoint the valuers and for what purpose?

Ans: The resolution professional appoints two registered valuers within 7 days of his appointment but not later than 47th day from the insolvency commencement date, to determine the fair value and liquidation value of the corporate debtor.

Q49. What is Information Memorandum? Who prepares it? When is it prepared?

Ans: The information memorandum means a memorandum prepared by the resolution professional under section 29(1) containing relevant information of the corporate debtor for formulating a resolution plan. It shall contain those details specified in

regulation 36(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The resolution professional is required to submit the information memorandum in electronic form to each member of the committee of creditors within 2 weeks of his appointment, but not later than 54th day from the insolvency commencement date, whichever is earlier. The sharing of information memorandum by the resolution professional to the members of the committee of creditors or to a resolution applicant is subject to receiving a confidentiality undertaking, in terms of regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Q50. When does the Resolution Professional publish invitation for the Expression of Interest?

Ans: In terms of section 25(2)(h) of the Code, the resolution professional invites prospective resolution applicants who fulfill the criteria laid down with the approval of the committee of creditors , to submit a resolution plan or plans. For this purpose, the resolution professional publishes brief particulars of the invitation for expression of interest in Form G of the Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Form G states where detailed invitation for expression of interest, containing the eligibility criteria for prospective resolution applicants, can be downloaded or obtained and the last date of submission by eligible prospective resolution applicant.

Q51. When does the resolution professional issue Request for resolution plan? To whom it is issued and what are its contents?

Ans: The resolution professional issues the request for resolution plan, along with information memorandum and evaluation matrix to every prospective resolution applicant, appearing in the provisional list and to those who have contested the decision of resolution professional for his non-inclusion in that list. The request for resolution plan is issued within five days of the date of issue of the provisional list. It shall detail each step of the process, the manner and purpose of interaction between the resolution professional and prospective resolution applicant and the timelines for each activity.

Q52. When is the final list of eligible prospective resolution applicants issued by the resolution professional?

Ans: The resolution professional issues the final list of prospective resolution applicants to the committee of creditors, within ten days of the last date for receipt of objections.

Q53. What is Resolution Plan?

Ans: As section 5(26) of the Code, resolution plan means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II. It may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

Q54. Who prepares the Resolution Plan?

Ans: A resolution applicant prepares the Resolution Plan on the basis of the information memorandum given by the resolution professional.

Q55. Is there any list of persons who are not eligible to act as resolution applicants?

Ans: Yes, section 29A of the Code lists out the kind of persons who are not eligible to submit a resolution plan, either individually or acting jointly or in concert. The ineligibilities include undischarged insolvent, willful defaulter as per guidelines of RBI, classification of account as NonPerforming Asset for more than one year, conviction for certain offences, disqualification to act as director of company, prohibition from trading in securities market, invoked guarantee remaining unpaid, having connected person with similar ineligibilities etc.

Q56. How can a resolution applicant submit his resolution plan?

Ans: A resolution applicant may submit a resolution plan to the resolution professional, prepared on the basis of the information memorandum, along with an affidavit stating that he is eligible under section 29A.

Q57. Within what time resolution applicants are to submit their resolution plans?

Ans: The prospective resolution applicants shall be provided a minimum of thirty days to submit the resolution plan(s).

Q58. Is there any requirement for furnishing performance security by the resolution applicant?

Ans: Yes, the request for resolution plan requires the resolution applicant to provide a performance security of such nature, value, duration, and source within the time specified. Further, such performance security is liable to be forfeited in case of any failure or contribution in failure by the resolution applicant in implementation of resolution plan approved by the Adjudicating Authority.

Q59. Who shall examine that the resolution plan meets the requirements laid down under Section 30(2)?

Ans: The resolution professional. Q82: What is the process of approval of resolution plan? Ans: The committee of creditors evaluates all compliant resolution plans as per evaluation matrix and thereafter vote on all such plans simultaneously. The resolution plan needs an approval of atleast sixty-six percent of voting share of the committee of creditors. Further, the resolution plan, which receives the highest votes, is considered as approved. After the resolution plan is approved by the committee of creditors, the resolution professional submits the resolution plan to the Adjudicating Authority. Thereafter, the Adjudicating Authority accords final approval to the resolution plan under section 31(1) of the Code.

Q60. Can a resolution applicant attend meeting of the committee of creditors?

Ans: Yes. The resolution applicant may attend the meeting of the committee of creditors. However, the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

Q61. What is the manner of payment to operational creditors and dissenting financial creditors under a resolution plan?

Ans: The payment to operational creditors and to financial creditors who do not vote in favour of the resolution plan are required to be provided in the resolution plan in the manner stated in section 30(2)(b) of the Code. Further, regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for the mandatory contents of the resolution plan, which inter alia include that amount payable to the operational creditors and to financial creditors who did not vote in favour of the resolution plan shall be paid in priority to financial creditors who voted in favor of resolution plan.

Q62. What happens when the resolution plan is not filed within 180 days of the commencement date or such other extended period?

Ans: The Adjudicating Authority may pass orders for the liquidation of the corporate debtor if the resolution plan is not filed within 180 days of insolvency commencement date or such other extended period.

Q63. Who is responsible for determining and filing applications in relation to avoidance transactions of a corporate debtor against which CIRP has been admitted?

Ans: As per section 25(2)(j) of the Code, it is the duty of the resolution professional to file application for avoidance of transactions under sections 43 (preferential transactions), 45 (undervalued transactions), 50 (extortionate transactions) or 66 (fraudulent transactions) of the Code. In terms of regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the resolution professional is required to form an opinion on such transactions within 75 days, to make determination within 115 days and file application before Adjudicating Authority within 135 days from insolvency commencement date.

Q64. What is the look back period for determination of preferential and other transactions under the Code?

Ans: The look back period for preferential or undervalued transactions is one year preceding the insolvency commencement date in case of non-

related party, and two years preceding the insolvency commencement date in case of related party. For extortionate transactions, the look back period is two years preceding insolvency commencement date. There is no specific look back period for fraudulent transactions.

Q65. What are the timelines for filling an appeal before the National Company Law Appellate Tribunal under the Code?

Ans: Every appeal before National Company Law Appellate Tribunal is to be filed within a period of 30 days from the date of order by National Company Law Tribunal. However, National Company Law Appellate Tribunal may allow an appeal after the expiry of said period on genuine reasons, but such period should not exceed 15 days.

Q66. Can an appeal be made against the order of National Company Law Appellate Tribunal?

Ans: Any person aggrieved by the order of National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law.

Q67. What are the timelines for filling an appeal before Supreme Court of India?

Ans: Every appeal before Supreme Court is to be filed within a period of 45 days from the date of order by National Company Law Appellate Tribunal. However, Supreme Court may allow an appeal after the expiry of said period on genuine reasons but such period should not exceed 15 days.

Q68. What is procedure and timelines for filling online forms by the Insolvency Professional on the electronic platform of the Board?

Ans: Please refer regulation 40B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that prescribes timeline with in which an insolvency professional, shall file the Forms, along with the enclosures thereto, on the electronic platform of the Board.

Q69. Who can go for Fast track corporation insolvency resolution process (Fast Track CIRP)?

Ans: Chapter IV Part II of the Code provides a fast track process for insolvency resolution, which is applicable in respect of the following category of corporate debtors laid down in section 55(2) of the Code: a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or c) such other category of corporate persons as may be notified by the Central Government.

Q70. What are the categories of corporate debtor, notified by the Central Government for the purpose of Fast Track CIRP?

Ans: The Central Government has notified the following categories of corporate debtors: a) a small company as defined under 2(85) of Companies Act, 2013 (18 of 2013); or b) a startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), dated the 23rd May, 2017; or c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding ₹ 1 crore.

Q71. What are the timelines for completion of Fast Track CIRP?

Ans: The fast track process is required to be conducted within a period of 90 days with a provision of one-time extension of up to 45 days.

Legal Maxims

Legal maxims serve as foundational principles in jurisprudence, guiding judicial interpretation and ensuring a fair and just legal process. In the realm of insolvency law, several maxims play a crucial role in shaping the application of the Insolvency and Bankruptcy Code (IBC), 2016. This article explores four significant legal maxims and their relevance to the insolvency resolution framework in India.

1. Ignorantia Juris Non Excusat("Ignorance of the law is no excuse")

This maxim establishes the fundamental principle that ignorance of legal provisions cannot serve as a defense in legal proceedings. In the context of the IBC, all stakeholders—including corporate debtors, creditors, insolvency professionals, and resolution applicants—are expected to be aware of the statutory requirements governing insolvency and resolution processes.

For instance, if a corporate debtor fails to comply with the provisions of the IBC regarding financial disclosures, they cannot claim ignorance as a defense. Similarly, creditors seeking to enforce their rights under the IBC must be well-versed with procedural obligations, ensuring that they adhere to prescribed timelines and documentation requirements.

2. Actori Incumbit Onus Probandi("The burden of proof lies with the person making the claim")

Under this principle, the party asserting a claim bears the responsibility of proving its validity. This maxim is particularly relevant in insolvency proceedings, where creditors seeking to initiate the Corporate Insolvency Resolution Process (CIRP) must provide sufficient evidence to substantiate their claims.

For example, an operational creditor filing an application under Section 9 of the IBC must demonstrate the existence of an undisputed debt and default through documentary evidence, such as invoices, demand notices, and bank statements. If a creditor fails to furnish conclusive proof, the adjudicating authority (National Company Law Tribunal) may reject the claim, reinforcing the significance of this legal principle in insolvency litigation.

3. Audi Alteram Partem("Hear the other side")

This maxim is a cornerstone of natural justice, ensuring that all parties involved in an insolvency process receive an opportunity to present their case before any decision is made. The IBC incorporates this principle in various procedural safeguards, particularly in adjudication and resolution processes.

For instance, before admitting an insolvency application, the NCLT provides the corporate debtor an opportunity to present its defense. Similarly, during the resolution process, operational creditors and dissenting financial creditors have the right to express their views on the resolution plan. This principle safeguards against arbitrary decisions and promotes transparency in insolvency proceedings.

4. Ut Res Magis Valet Quam Pereat("A thing should rather be made effective than made void")

This maxim emphasizes the importance of interpreting laws in a manner that upholds their intended purpose rather than rendering them ineffective. In the context of the IBC, courts have often interpreted statutory provisions in a way that promotes the objective of corporate resolution rather than liquidation.

For example, in several landmark judgments, the Supreme Court of India has held that minor procedural lapses should not derail the insolvency process if the broader objective of corporate revival can still be achieved. This principle ensures that the resolution framework remains dynamic and facilitates the revival of viable businesses, thereby preserving economic value and employment.

Conclusion

The application of legal maxims in insolvency law underscores the need for fairness, responsibility, and judicial pragmatism in insolvency proceedings. By adhering to these principles, the IBC continues to evolve as an effective mechanism for corporate rescue and financial discipline. Understanding and applying these maxims is essential for insolvency professionals, creditors, and all stakeholders engaged in the resolution process, ensuring that the law functions as an enabler rather than an impediment to economic progress.

INSIGHTS

Adv. Atul Kumar,
Advocate-on-Record,
Supreme Court,
Insolvency Resolution Professional

REVIVAL SAGA OF JET AIRWAYS
DELAY IN INSOLVENCY RESOLUTION PROCESS – RECIPE FOR DISASTER

Background:

The Hon'ble Supreme Court in its recent landmark decision in **SBI Vs Consortium of Murari Lal Jalan & Ors (Civil Appeal No.12220-12221/2024)** while ordering the liquidation of Jet Airways by exercising its plenary powers under Article 142 of Constitution, highlighted the major problem of "delay" in CIRP which is plaguing the Insolvency and Bankruptcy Code, 2016 (IBC) since its inception. Significantly, it termed the case as an eye opener for one and all. The Supreme Court elaborately dealt with the ill-effects and negative repercussions of the delay in CIRP on corporate debtor and its assets and this ultimately forced the Supreme Court to order dissolution of

Jet Airways and draw curtains on long standing Jet Airways revival saga.

The Supreme Court, after coming to the conclusion that the terms of the resolution plan have been contravened with impunity and that there has been a failure to implement approved Resolution Plan on the part of Successful Resolution Applicant (SRA), decided that since the Resolution Plan is no longer capable of being implemented, it must ensure that at least liquidation remains as a "viable" last resort for the corporate debtor and its creditors. The Supreme Court noted that the "time and speed are of the essence under the IBC" and to prevent the frustration of this objective, the Court thought fit and necessary to exercise its plenary powers under Article 142 and directed the corporate debtor into liquidation under the provisions of IBC, 2016. The Court held that granting relief to the SRA would run counter to the timelines and predictability that is central to IBC and held that it is better that liquidation commences as soon as possible as it would also be in the best interests of the corporate debtor and the creditors including the workmen/employees who are yet to receive their rightful dues.

The Supreme Court underscored the underlying principle of IBC i.e. Speed is of essence. Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the "calm period" can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.

The Court emphasized that although one of the key objectives of the IBC, 2016 is to ensure the survival of the corporate debtor as a going concern, yet the same must not come at the cost of efficiency. In scenarios such as the present, "timely liquidation" is to be preferred over an endless resolution process.

NCLT /NCLAT Powers to extend timeline

The Supreme Court also took serious exception to the powers of NCLT/NCLAT to extend timeline for implementation of Resolution Plan. Rule 15 of NCLT Rules,2016 and NCLAT Rules, 2016 grants power to the NCLT and NCLAT respectively, to extend the time limits for doing any act which have been fixed, either by the rules or by an order, as the justice of the case may require. The Court held that an extension of the strict timelines fixed under the Resolution Plan must be done by adequately weighing the period of extension sought with the consequences of such extension on the continued implementation of the Resolution Plan as such a discretion cannot be exercised to the detriment of the Resolution plan and its implementation itself.

The Court emphasized that the discretion in extending the time limits fixed under the Resolution Plan must be exercised in a much more circumspect manner, especially in cases such as the present, which pertains to the aviation sector, wherein timely resolution and revival of the corporate debtor is all the more crucial since the sector operates in such a way that a continuous flow of cash is required to maintain the company in a position of status quo. The Supreme Court referred to its recent decision in ***Glas Trust Company LLC v. Byju Raveendran and Others (2024 SCC Online SC 3032),*** taking the view that the Court must be circumspect in deviating from the prescribed procedure, especially in the context of the IBC. However, if such a deviation is made, then the Court must justify as to why the deviation was necessary to prevent the abuse of the process of the Court.

Case an eye-opener & Supreme Court's recommendations on IBC

The Hon'ble Supreme Court treated this litigation as an eye opener and highlighted certain key deficiencies in the implementation of IBC, 2016 which require immediate attention :-

1. **Strict adherence to IBC Code:** There must be strict adherence to the existing provisions of the IBC, both in letter in spirit. Strict following of the provisions of the IBC along with behavioural and ethical discipline is required from the key participants of the IBC who are central to its design i.e., the Adjudicating Authorities, Corporate Debtor, Resolution Professionals, Committee of Creditors, potential and Successful Resolution Applicants, Approved valuers and Liquidators. A Resolution Plan evolves through these players.

2. **Commercial wisdom of COC is paramount:** The commercial wisdom of CoC should be given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the IBC. It is the "commercial wisdom of the CoC" that assumes a position of superiority and becomes binding on all the stakeholders. The NCLT who has to approve the Resolution Plan under Section 31 of the IBC, 2016 cannot trespass into the commercial wisdom exercised by the CoC. The decision to restrict the scope of interference on the commercial wisdom of the CoC was conscious and taken to obviate time delays that may arise out of a subsequent adjudication of the resolution plans approved by the CoC. Therefore, the commercial wisdom of the CoC has achieved paramount status, immune from any judicial intervention. The position that the "commercial wisdom" of the CoC is non-justiciable and only a limited judicial review is available in this regard is well-settled through several decisions of the Supreme Court. The Supreme Court in the case of K Shashidhar v. Indian Overseas Bank and Ors. (2019) 12 SCC 150, has held that upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.

3. **Decision-making by COC to be based on fairness and sound reasoning:** The Supreme Court also underlined that the CoC must exercise their commercial wisdom and approve/reject the Resolution Plans placed before them exhibiting fairness and with good reasons. Such a reasoned decision making on their part will only serve to further enable the other key players like the adjudicating authorities to understand the rationale behind their decision and to uphold the correctness of the same. The Court also suggested that the Central Government or the IBBI should explore the possibilities of better enforcement of the standards and practices through an independent mechanism under an oversight committee.

4. **Implementing Resolution Plan is a collaborative effort:** The Supreme Court emphasized that implementing an approved Resolution Plan requires collaborative efforts on the part of all stakeholders. Once a Resolution Plan is approved under the IBC, the SRA undertakes a profound responsibility to implement the plan in both letter and spirit. This obligation is not merely an empty formality but an enduring commitment to restore the corporate debtor to viability and ensure a meaningful turnaround. The role of SRA is thus far more than a transactional duty towards the creditors or stakeholders. It embodies a pivotal responsibility to the distressed entity itself, which must be approached with utmost dedication. Regardless of the challenges, the SRA cannot treat its obligations as optional or conditional, nor can it abdicate its responsibility in the face of unforeseen obstacles. Its efforts must reflect a determination to implement the plan fully and to rejuvenate the debtor company, as this is integral to the success of the IBC framework. The approach, therefore, must not be frugal or narrowly profit-driven, limited to viewing the transaction through a purely commercial lens. Consequently, it must make thoughtful and sustained efforts, demonstrating adaptability and resilience even when faced with obstacles or operational impediments. Simply put, the SRA cannot step back or dismiss its obligations by attributing delays or setbacks to the conduct of other stakeholders, as this would undermine the very purpose of insolvency resolution. The Court further observed that in this collaborative effort, the duty to implement the plan does not fall on the SRA alone, lenders and creditors are equally obligated to support the process by offering constructive and continuous cooperation. They must not impede the implementation process through unnecessary demands beyond the pale of the resolution plan or with delays in implementation plan but rather should facilitate the SRA's efforts to revive the corporate debtor. Given their vested interest in the corporate debtor's successful revival, lenders have a fundamental duty to act in good faith and with transparency, recognizing that their cooperative

stance is essential for overcoming the inevitable challenges of the resolution process. The lender's role is not merely passive, it requires active support that aligns with the ultimate goal of the IBC, 2016 — to provide a fair and equitable resolution that maximizes asset value while enabling the debtor's recovery.

5. **NCLT/NCLAT should defer implementation of Resolution Plan in rare situations:** The Supreme Court reiterated that the NCLT and NCLAT must not entertain repeated attempts at violating the integrity of a CoC approved Resolution Plan by accommodating the incessant requests of the Successful Resolution Applicants. The exercise of discretion as regards altering the binding terms of the Resolution Plan, including the timelines imposed, must be kept at a minimum. The NCLTs/ NCLATs need to be sensitised of not exercising their judicial discretion in extending the timelines fixed under IBC, 2016 or the Resolution Plan, in such a way that it may make the Code lose its effectiveness thereby rendering it obsolete.

6. **Implementation of Resolution Plan**: Section 30(2) (d) of the IBC, 2016 provides that the resolution professional shall mandatorily examine each resolution plan that is received to confirm that it provides for the implementation and supervision of the resolution plan. Regulation 38 of the 2016 Regulations provides for the mandatory contents of a Resolution Plan. Regulation 38(2) specifically states that the resolution Plan shall provide for the term of the plan and its implementation schedule, along with adequate means for supervising its implementation. Further, under Regulation 38(3), a resolution plan must demonstrate that it addresses the cause of default, is feasible and viable, has provisions for its effective implementation, has provisions for approvals required and the timelines for the same and, that the resolution applicant has the capability to implement the resolution plan.

7. **Punishment for violation of terms of Resolution Plan:** The Supreme Court underlined that IBC has stringent provision for any knowing and willful contravention of the terms of the resolution plan, committed by any person, on whom the approved resolution plan has been made binding under Section 31 of the IBC, 2016. A punishment of minimum one year which may extend up to five years or minimum fine of one Lakh which may be up to one Crore rupees, or both, has been prescribed for such a contravention. In light of such strict consequence provided for the contravention of the resolution plan envisaged under the scheme of the Code itself, it is important to ensure that the successful resolution applicants abide by their commitments made under the resolution plan. Therefore, Supreme Court suggested that the authorities including the NCLT and NCLAT must not aid the successful resolution applicants in circumventing the strict mandates of the law by acceding to their requests to relax the terms of the plan itself.

8. **Steps for implementation of Resolution Plan to be recorded in NCLT order:** The Supreme Court further recommended that the Adjudicating Authority while approving a Resolution Plan under Section 31 of the IBC, 2016, should record the next steps which are to be taken by the respective parties for implementation of the approved Resolution Plan. This will ensure that the parties are ad idem about their obligations that each of them is required to discharge under the approved Resolution Plan and that they do not delay the implementation by initiating any further litigation on this aspect. If such an approach is adopted, the parties would be able to put forth any difficulty that they might face in performing those next steps before the NCLT itself and seek necessary relief in that regard. Recording the next steps that are to be undertaken in the order of the Adjudicating Authority, will keep the parties more vigilant since a non-performance of the obligation may lead to a violation of the terms of the approved Resolution Plan and also violation of the order approving the Resolution plan as well.

9. **Constitution of a Monitoring Committee:** To bolster implementation mechanism, the Supreme Court suggested that the IBC should statutorily provide for the constitution of a Monitoring Committee once the plan has been approved for a smooth handover of the Corporate Debtor to the successful resolution applicant. Presently, such a provision is absent in the Code and it is

the Adjudicating Authority that orders for the constitution of a Monitoring Committee to ensure smooth implementation of the Plan. The CoC must be empowered to constitute the Monitoring Committee which may, by default, include the Resolution Professional and also include other nominees from the CoC and the resolution applicant respectively. Such a Monitoring Committee would be entrusted with the powers of monitoring and supervising the resolution plan till the expiry of the term of the resolution plan. The Committee shall also be required to ensure all statutory compliances during the implementation of the plan along with updating the Adjudicating Authorities, Financial and other Creditors about the status of implementation of the resolution plan, on a quarterly basis.

10. **Functioning of NCLT/NCLAT:** The Supreme Court underlined that there is a lack of timely admission and disposal of the applications filed as regards the initiation of CIRP, approval of the resolution plan and liquidation. This only adds to the uncertainty of the process and prolongs the dispute thereby jeopardizing the interest of all the stakeholders involved. Adjudication in a time-bound manner would help prevent any further deterioration of the value of the corporate entity. The Supreme Court also highlighted that there is often a shortage of members in the Tribunals and inadequate infrastructure to support their functioning. These vacancies heavily impact the insolvency reform initiative undertaken by the government since they lead to operational inefficiencies. The Supreme Court strongly emphasized that a shortfall of members and the lack of requisite strength has led to serious issue in Tribunals functioning and the Government must take urgent note of it.

CA IP Sunit Shah
Practicing Chartered Accountant & Insolvency Professional
Managing Partner at SKYZ Revival & Restructuring LLP

CS (Dr.) Yashree Dixit
Practicing Company Secretary
Partner at SKYZ Revival & Restructuring LLP

PRACTICAL DILEMMAS IN CORPORATE INSOLVENCY: BRIDGING GAPS BETWEEN IBC AND COMPANIES ACT, 2013

INTRODUCTION:

With the increasing awareness amongst the stakeholders with respect to Insolvency and Bankruptcy Code, 2016 there's been surge in resolution of corporates under the well settled regime of Insolvency and Bankruptcy Code through approval of resolution plan as provided by successful resolution applicant. Under the provisions of IBC, the Interim Resolution Professional ("IRP)/Resolution Professional ("RP") is primarily being responsible for the compliances applicable to the companies under various laws. The major part of the said compliances

is being associated under the Companies Act, 2013.

It seems to be a simple compliance and filing of forms with MCA portal that suddenly becomes complicated and lengthy process. When company is undergoing CIRP and Liquidation, IRP/RP are being held responsible for complying with the various provisions as applicable under Companies Act, 2013 and SEBI (LODR) Regulations, 2015. The Ministry of Corporate Affairs ("MCA") vide its General Circular No. 08 of 2020 dated 06th March, 2020[1] had issued a circular describing the duties of Interim Resolution Professional/ Resolution Professional during the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor.

Insolvency Professionals is not only responsible for compliances during the CIRP process but after the approval of resolution plan they will be acting as Chairperson of the Monitoring Committee and are required to complete the process of Implementation of the resolution plan of Successful Resolution Applicant ("SRA").

It is a tremendous task to revive the company and it is already difficult for the SRA to turnaround the operations of the corporate debtor, the compliance procedure is giving new challenges to the buyer. In this article, we would be focusing on the compliances applicable to the corporate debtor during the Corporate Insolvency Resolution Process ("CIRP") and Liquidation Process and the practical difficulties being faced by the professionals during the implementation process on day-to-day basis.

COMPLIANCE BY COMPANY DURING CORPORATE INSOLVENCY RESOLUTION PROCESS

Corporate Insolvency Resolution Process is the process initiated against the corporate debtor who have defaulted in payment of outstanding dues by way of principal, interest and other payments to financial/ operational creditor. On admission of an application by the Hon'ble National Company Law Tribunal ("NCLT"), the Interim Resolution Professional is appointed and is responsible for all the compliances applicable to the Company under various laws.

During the corporate insolvency resolution process, the board of directors of the Company are suspended and all the rights and responsibilites are vested with the Interim Resolution Professional/Resolution Professional.

On admission of application by Hon'ble NCLT against the corporate debtor, the Interim Resolution Professional is required to intimate the statutory authorities regarding initiation of corporate insolvency resolution process and shall firstly file Form INC-28 with the Registrar of Companies, submitting the order passed by the Hon'ble NCLT.

Pursuant to Section 17 of Insolvency and Bankruptcy Code, 2016, the management of the affairs of the corporate debtor vests with the Interim Resolution Professional and simultaneously shall take the custody of the assets of the Corporate Debtor. During the said process the suspended management of the corporate debtor is reluctant to cooperate with the interim resolution professional/ resolution professional, as the case may be, resulting in lack of adequate information about the past operations and financials of the corporate debtor. This tug-of-war between insolvency professional and suspended management leads in delay of the process timeline.

During the Corporate Insolvency Resolution Process, the Interim Resolution Professional/Resolution Professional is entrusted with various duties with respect to the operations and compliances of the corporate debtor. The Resolution Professional has to always strike balance between operations of corporate debtor along with complying with the compliances on their due timelines under various laws.

REGULATORY REQUIREMENTS AT THE TIME OF CIRP

Various Acts, rules and regulations govern the regulatory framework for the time of CIRP. The broader view is summarized as under:

1. The Companies Act, 2013
2. SEBI Act, 1992 read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations"), SEBI (LODR) Regulations, 2015, Prohibition of Insider Trading.

Provided below is the indicative list of compliances required during the corporate insolvency resolution process.

[1] General Circular No. 08/2020 dated 06th March, 2020 issued by Ministry of Corporate Affairs

Sr. No.	Regulation/Event	Timeline
1	Regulation 27(2)(a) – Corporate Governance Report	Within 21 days from the end of the quarter.
2	Regulation 31 (1) (b)- Shareholding Pattern :	Within 21 days from the end of the quarter
3	Regulation 33 (3) (a) - Financial Results alongwith Limited review report/ Auditor's report	Within 45 days from the end of the quarter/Within 60 days from the end of the last quarter
4	Reconciliation of share capital audit report	Within 30 days from the end of the quarter.
5	Regulation 23 (9) - Disclosures of related party transactions	On the date of publication of standalone and consolidated financial results
6	Regulation 24A - Secretarial Compliance Report	within 60 days of the end of the financial year
7	Regulation 34(1) – Annual Report	Not later than the day of commencement of dispatch to its shareholders.
8	Regulation 44(3) - Voting Results	Within two working days of conclusion of Meeting
9	Regulation 30 read with Sub point 16 of Para A of Part A of Schedule III	Disclosures relating to ongoing Corporate Insolvency Resolution Process
10	NSE/ BSE Guidance Note[2]	Prior intimation of at least two working days intimating about the date of hearing where NCLT would be considering the Resolution Plan
11	NSE/ BSE Guidance Note[2]	Disclosure of the approval of resolution plan to be made to the Exchange on oral pronouncement or otherwise of the Order on immediate basis and not later than 30 minutes
12	NSE/ BSE Guidance Note[2]	Impact on the existing holders / investors of listed securities on areas such as status of listing, the value of holding of existing holders, write off/ cancellation/ extinguishment of existing equity shares/ preference shares/ debentures, etc. without any payment to such holders, where applicable

PRACTICAL DIFFICULTIES BEING FACED BY THE INSOLVENCY PROFESSIONAL DURING THE PROCESS AND ITS POSSIBLE SOLUTION IS PROVIDED BELOW:

1. **Non-Cooperation from the suspended management resulting in inadequate data about financial position of the corporate debtor:**

   On initiation of the corporate insolvency resolution process, the interim resolution professional needs to collect the information relating to business operations, financial position and assets and liabilities of the corporate debtor. The primary source for collection of the said information is from the suspended

[2] NSE Guidance note having Ref No: NSE/CML/2021/27 and BSE Guidance Note having notice no. 20210709-9

management and the personnel involved with corporate debtor. The difficult task for the interim resolution professional is to trace the suspended management and further to get the required information from them. Generally, the suspended management of the corporate debtor fail to provide cooperation and required information due to reluctance on the part of promoters to handing over the charge to the external court appointed officer, resulting into inadvertent delay in timelines of the Corporate Insolvency Resolution Process.

Solution: To conduct online search from the MCA portal providing the financial statement of the corporate debtor, which will help in getting the contact details of the statutory auditor of the corporate debtor. Pursuant to Section 19 of the Insolvency and Bankruptcy Code, 2016 any personnel associated with the management of the corporate debtor shall provide assistance to the interim resolution professional/ resolution professional.

IRP/RP can also file an application before Hon'ble National Company Law Tribunal against the suspended management of the corporate debtor under Section 19(2) of Insolvency and Bankruptcy Code, 2016 seeking co-operation from the suspended management and required information to conduct the CIRP on timely manner.

2. Drawing Financial Statements upto the date of Corporate Insolvency Resolution Process:

In accordance with the provisions of the CIRP regulations the suspended management is responsible for providing the latest provisional financial statements of the corporate debtor till the date of initiation of corporate insolvency resolution process, which will assist the interim resolution professional to get the financial position of the corporate debtor.

During the course of CIRP, the suspended management fails to provide financial information of the corporate debtor to the interim resolution professional, over and above the same, the statutory auditors of the corporate debtor in some cases are also not cooperative and therefore not providing the data available with them including financial statements of the company, which ultimately results in delay in finalising the provisional of financial statements and causing unnecessary delay in the process, causing erosion of the business.

Solution: In this case, the financial creditors of the corporate debtor can act as the helping hand to the Resolution Professional by providing the data relevant to the process, in drawing up the financial statements of the corporate debtor. The financial creditors of the corporate debtor have the data related to the immovable properties, financial position, details of inventories and other significant information which would enable the resolution professional in conducting the process in timely manner. Considering the same, the Resolution Professional can call upon the Financial Creditors of the Corporate Debtor to provide the information.

3. Appointment of New Auditor for preparation of Financial Statements

The Interim Resolution Professional/ Resolution Professional is responsible to maintain the company on the going concern basis and thus to comply with the provisions as applicable to the Company. The RP has an option to appoint a new auditor during the CIRP who is independent from the corporate debtor. In the initial phase of the regime of IBC, the professionals were hesitant to take up the assignment considering that there are various ongoing litigations pending against the corporate debtor before various forums and the newly appointed Professional might not be made aware of the same, which brings their individual position as a professional at a risk.

Solution: The resolution professional won't be in the position to perform his duties in an effective manner, if the professionals are hesitant to take up the assignment citing the individual risk while signing the financial statements of the corporate debtor. The Professionals appointed during the Corporate Insolvency Resolution Process does not have adequate data to form an opinion on the matters of the corporate debtor and thus should not be held liable for any such certification of such reports of corporate debtor during CIRP.

4. **Conducting Annual General Meeting and application for grant of extension of AGM:**

   The Resolution Professional while performing his duties towards corporate debtor by fulfilling all the compliances applicable under various laws, faces numerous issues and obstacles in its way. One of them being, conducting annual general meeting of the company, seeking extension, collecting the actual list of shareholders, in case of public listed company and holding the annual general meeting.

   Due to non-cooperation of the suspended management and lack of information with the Resolution Professional, the financial statements of the corporate debtor are not drawn on a timely basis, resulting in conducting the annual general meeting after the due date. In such case, the extension of conducting Annual General Meeting is being sought with the Registrar of Companies by filing Form GNL-1. In such case, the cooperation of suspended management is required for affixing DSC. In most of the cases, due to non-cooperation of the suspended management, the Resolution Professional is unable to file Form GNL-1.

   Also, due to non-payment to the depositories like CDSL & NSDL and corporate debtor's registered transfer agent, they are not providing the data of the shareholders of the company. Therefore it gets very difficult to the professionals to conduct AGM in due time.

   Solution: The Resolution Professional shall be waived off from the responsibility of conducting Annual General Meeting of the shareholders during the corporate insolvency resolution process and instead should be allowed to share the financial statements to the shareholders through electronic mode, which will ultimately save the time and cost involved in conducting Annual General Meeting.

COMPLIANCE BY COMPANY AFTER THE COMPLETION OF CORPORATE INSOLVENCY RESOLUTION PROCESS

Regulation 38(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provide that a Resolution Plan must include the clause of management and control of the business of the corporate debtor during the term of Implementation of the Resolution Plan. Consequently to give effect to such clause a committee is constituted for successful implementation of the Resolution Plan by Resolution Applicant, named Implementation & Monitoring Committee. Generally it consists of Resolution Applicant of individual or partners if partnership firm, or directors and members if case of corporate person and it may be Resolution Professional or any other professional. During such Implementation Period the whole management of the Corporate Debtor is gradually handed over to the new Board of Directors, as agreed by the Resolution Applicant.

On the Completion of Corporate Insolvency Resolution Process various forms have to be filed with the Registrar of Companies (ROC) to make the necessary changes in the Master Data of the company reflected on the site of Ministry of Corporate Affairs (MCA), by the successful Resolution Applicant. All such compliances are carried out by the new resolution applicant during the time of Implementation of the Resolution Plan.

The main objective of the Insolvency and Bankruptcy Code, 2016 is the revival of as many companies as possible. Such number of compliances results into additional expenditure over and above the amount as proposed in the Resolution Plan for the Resolution Applicant, which creates an additional burden on the shoulders of the Successful Resolution Applicant. Due to such number of compliances even after the NCLT order, RAs won't show any interest in the Corporate Debtor and the main object of the Code will be defeated.

PRACTICAL DIFFICULTIES BEING FACED BY THE RESOLUTION APPLICANT AFTER THE PROCESS AND ITS POSSIBLE SOLUTION IS PROVIDED BELOW:

1. **Non-Cooperation from the suspended management to provide the resignation from the Company;**

   Once the Resolution Plan is approved the management of the company will be in the hands of Resolution Applicant. During the on-going Implementation, Resolution Professional hands

over the management of the company to the Successful Resolution Applicant.

Once the management is handed over to the Resolution Applicant much technical issues will be facing in every day. The form DIR-12 is to be filed for the removal of old directors and appointment of the New Director. While filing of Form DIR-12 for the removal of non-cooperative directors, the issue faced is in a matter of attachment that are to be made with the form. In situations where the resignation letter is unavailable with us, there is a grey area regarding removal of such non-cooperative directors. Also no clarifications has been provided under Act, rules or regulations, regarding under which section/regulation they are to be removed, if not by resignation, or any other effects that are to be given.

Solution: In the Form DIR-12 the tab Particulars of Director/KMP shall provide an option of cessation by the IRP/RP/Liquidator should be provided in the Form DIR-12 to remove the non-cooperative directors from the Board of the Company. This will lead in swift handover of the corporate debtor to the successful resolution applicant.

2. **The tag 'Active Non-Complaint' on the site of Ministry of Corporate Affairs restricts the filing of various forms:**

The form INC 22-A (Active Tagline Company) was introduced in the 21st February, 2019. This form requires the SRN of Annual Filing for Financial Year 2017-18. But if Corporate Debtor had not filed annual return forms (AOC-4 & MGT-7) of the F.Y 2017-18 it becomes tedious task to make company active again.

Although the Annual Filing of F.Y 2017-18 is done by the Resolution Applicant or Resolution Professional for the good corporate governance practice through Form GNL-2 the status of Annual filling being done is not reflected on the site of MCA. This creates hurdles in filling other forms through MCA to continue the business of the company.

Solution: An option allowing to file form- PAS-3 without filing of Form INC-22A.

OR

Make the status of the company Active on the portal as soon as the Resolution Plan is approved via NCLT order. Additionally, the master data should get changed based on the Form GNL-2 filed for various purpose broadly for Annual Filing, Appointment of Statutory Auditor or for any other purpose as required under the law.

3. **Filing of Annual Filing forms of the Company for the years before the CIRP was commenced and also during the CIRP:**

Before the company was under CIRP, its directors does not have any financials of such previous years as they were not prepared, and hence Resolution Professional or Resolution Applicant are unable to file all the Past financial years forms related to the annual filling of the Corporate Debtor. In certain scenarios, the directors have not provided financials of the company, which makes it difficult for filing of Forms AOC-4/AOC-4XBRL, MGT-7 and other related forms for years before the CIRP was initiated.

Moreover, the Company is filing forms through the GNL-2 but the date of AGM and financial year are not reflected in the master data.

Solution: The need of Annual filing for the previous financial years when the suspended management does not have financial data before the company was under the CIRP should be waived off to make it easier for the new management to start the business of the company smoothly.

4. **To remove the Charges of the Corporate Debtor from the Master Data reflected on the site of MCA:**

After the approval of resolution plan and on successful implementation of such Plan, Resolution Applicant needs to remove the charges reflected in the Master Data on the site of MCA. For filing E- form CHG-4 (satisfaction of charges) NOC of the Financial Institution is to be obtained, which again becomes the tedious task. Over and above this, in certain cases the financial creditors are untraceable considering the corporate debtor is shut down for previous many years. Also for every individual charge a separate form is to be filled and needs signature of charge holder,

increasing the cost of expense for the RA, which does not form the part of resolution plan.

Already the resolution applicant is acquiring the company through resolution plan and is satisfying the creditors with their claims, it has been a hustle for RA to start the business after acquisition due to same.

Solution: Pursuant to the NCLT approval order, the MCA Master Data should be updated without filing separate CHG-4 for all the charges. One common form should be introduced by the Registry wherein, the reliefs as sought under approved resolution plan shall be filed before the registry and each details as reflected on master data gets changed based on such form filed.

CONCLUSION:

These practical hurdles which often seems as the challenges for navigating the corporate debtor to its successful resolution is also a significant need of an hour for re-invention of the MCA portal, considering the theme of the Insolvency and Bankruptcy Code, 2016 is ***"Minimizing the Procedure and Maximising the Resolution".*** In order to collate the information at one place, the MCA is already proposing a common portal where all the data related to the corporate insolvency resolution process and liquidation process shall be gathered and will be easily accessible for inter-se authorities.

In this newly proposed MCA portal, the consideration shall also be given for introduction of new forms specifically designed for filing of various compliances under Insolvency and Bankruptcy Code, 2016, which on filing shall also enable the Registrar of Companies to update the master data on real time basis. This new portal shall in true sense will serve the purpose of resolution of corporate debtor in a swift and effective manner without causing any additional burden on the shoulders of the successful resolution applicant. An additional assistance from the Ministry of Corporate Affairs is much required in charting out the structural and procedural clarity for prompt implementation of resolution plans.

REFERENCES:

1. The Companies Act, 2013
2. SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015 as amended
3. Insolvency and Bankruptcy Code, 2016
4. General Circular No. 08/2020 dated 06th March, 2020 issued by Ministry of Corporate Affairs
5. NSE Guidance note having Ref No: NSE/CML/2021/27 and BSE Guidance Note having notice no. 20210709-9
6. Announcement on site of BSE for Jet Airways (India) Limited dated 19th January, 2024 intimating Resignation of Directors

CS Dr. Saibal Chandra Pal

INNOVATIVE APPROACHES FOR DISTRESSED ASSETS RESOLUTION

Abstract

IBC has come a long way to resolve stress in entities. Since its implementation creditors have been able to get the most ever since the various enactments were implemented to find ways to keep a firm healthy. Though IBC has been taken from UK but with its implementation it has moved towards adapting to the Indian scenario. What the implementing authority thinks of the Code is that the manner of distressed assets resolution through a centralized platform is the need of the hour and step in the direction has been taken.

Introduction

Simultaneous to the existence of companies formed under the Companies Act, 1956 there has been enactments several enactments were introduced to tackle the problem of stressed assets. There has been attempt to save stressed assets from becoming distressed . After independence India had to adopt twelve five year plans beginning from 1951 till 2017. The last plan was from 2012 to 2017. Planning

Commission has been replaced by Niti Aayog which serves as the apex public policy think tank of the Indian Government. To save capital invested in companies and to protect the investment in assets created out of the capital raised from the public and Institutions, Government first set up development Banks like IDBI , ICICI and Financial Corporations at the state level. To save the capital raised and the loans granted to industries Government enacted several acts inter alia , The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), ***the Recovery of Debts and Bankruptcy Act, 1993,*** Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Insolvency and Bankruptcy Code, 2016. The acts mentioned are illustrative and is not the complete list and are narrated below.

The Companies Act, 1956 & the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)

Under Section 433 of the the then Companies Act, 1956 companies winding petitions could be filed before the High Court if companies owed to a creditor an amount exceeding Rs 500/-. Pursuant to Section 434 such creditor was required to serve three weeks notice to the Company to pay the dues, if the Company failed, the High Court could order liquidation of the company. Section 439 of the Act dealt with the provisions regarding application for winding up of a company. So companies had to face threats of winding from creditors for a sum exceeding Rs 500/-. The said Act dealt with voluntary winding up in case there were sufficient assets to pay off its liabilities.

Central Government found it necessary to protect sick or potentially sick industrial companies. Sickness featured mainly due to and the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was enacted. When the law came into force a number of industrial companies faced sickness. From case study it was found that reason for industrial sickness was mainly due to poor project implementation, overestimating demand, wrong location,poor labor-management relations,Infrastructure bottlenecks,energy crisis,technological changes, Inadequate credit facilities and global market forces . The law aimed for recovery of sick or potentially sick companies recover or close them if found unviable. I company was identified to be sick or potentially sick if (i) it had been in operation for at least five years; and (ii) had accumulated losses equal to or greater than its net worth (Share Capital plus Reserves minus debit balance of profit and loss acoount) at the end of a financial year. The Board for Industrial and Financial Reconstruction (BIFR) was established at Delhi for determining sickness or potential sickness of companies. The BIFR prescribed measures for revivable or closure of the companies. Not referring to BIFR if it was sick or potentially sick was an offence. But companies engaged in manufacturing but employing less than fifty persons did not fall under SICA. With effect from 1st December, 2016, The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, SICA was repealed.

Reforms for an open economy

There were both unlisted companies and listed companies. Listed companies were required to comply with the provisions of Securities Contracts (Regulations) Act, 1956 which dealt with listing of companies. The Controller of Capital Issues set up under the Capital Issues (Control) Act, 1947 dealt with capital issues for listing with Stock Exchanges. All capital issues above Rs 50 Lakh had to be approved by the Controller of Capital Issues, Delhi . While public opinion favoured Indian economy being opened up ,on 24th July, 1991, the then Finance Minister Manmohan Singh presented a path breaking the Budget Speech in the direction of curbing controls. Among the various steps that followed included, repeal of The Capital Issues (Control) Act, 1947 by the Capital Issues (Control) Repeal Act, 1992, The Securities and Exchange Board of India (SEBI) Act, 1992 was passed by the Indian parliament on April 4, 1992, repealing the ordinance that had been promulgated on January 30, 1992. Close to the heal of the enforcement of the SEBI Act, a `Securities Scam' was unearthed. This led to the enactment of The Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992 . The act was passed to bring all transaction in securities entered with a list of securities between 1st April, 1991 to 6th June, 1992. Harshad Mehta, Stock Broker and the related parties were declared tainted. Nationalised Banks, State Bank of India and Financial Institutions were hit by the scam. Funds of the nationalized banks

and financial institutions were found to have been used in the transactions in the securities between 1st April, 1991 to 6th June, 1992 and the Government found it necessary to be protected. Thereafter, on 27th August, ***1993, the Recovery of Debts and Bankruptcy Act, 1993 (`DRT ACT') was enacted . Preamble to the Act*** read that it is an act to provide for the establishment of ***Preamble to the Act*** read that it is an act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions.

Reserve Bank of India (`RBI') announcement of Provisioning Norms for Bank Assets (Loans and Advances)

To deal with the mounting stressed assets of Banks and Financial Institutions due to involvement of nationalized banks in the securities scam and defaults by borrowers, on 17th April, 1993 RBI announced provisioning norms for bank assets .The guidelines defined Non-Performing Assets (NPA) of Banks**.** A loan or advance advanced by a Bank is considered an NPA if interest or principal is overdue for more than 90 days. Loan and advance account were classified as Standard , Sub-Standard, Doubtful and Loss assets and effect was given in the Balance Sheet . An asset can be re-classified from Doubtful to Standard if the days past due (DPD) count is zero.

NPA norms were made applicable to NBFCs from the year 1994. However, Regional Director, Ministry of Company Affairs, Calcutta issued show cause to All Bank Finance Limited wholly-owned subsidiary of Allahabad Bank for applying the provisioning norms in the accounts for the year 1993-94 as the provisioning norms were not applicable to NBFCs like AllBank Finance Limited. The said Show Cause was scrapped by the Hon'ble High Court at Calcutta in a writ petition filed by the Managing Director, Additional Managing Director and Company Secretary. NPA norms defined Overdue amount as an amount not paid on the due date fixed by the bank. An account is said to be out of order if the outstanding balance continues to remain more than the sanctioned limit.

Formation of Debt Recovery Tribunals and Debt Recovery Appellate Tribunals

Preamble to the DRT Act passed on 27th August, 1993 reads, ` it is an act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions'. Banks and Financial Institutions have used the Act to recover the dues from borrowers. Presently, there are thirty-nine DRTs and 5 Debts Recovery Appellate Tribunals (DRATs) in India. Each DRT has a Presiding Officer. DRATs have a Chairperson. Litigants and lawyers can get assistance from Kendras set up at DRT and DRAT complexes regarding case status, e-filing, obtaining copies of judgments and orders, and more. eSKs (Electronic Service Kiosks) are available to help litigants with e-filing. eSKs are equipped with computers, internet, and other infrastructure. Supreme Court in the case Allahabad Bank vs Canara Bank & Another in M.S.Shoe Limited case raised issues relating to the impact of the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter called the RDB Act) on the provisions of the Allahabad Bank the auction purchaser of stressed assets of M.S. Shoe Limited obtained favourable order against Canara Bank the lender against hypothecation of goods. DRT and DRAT are continue to deal with stressed assets for which banks and borrowers file applications for realization of dues.

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002)

SARFAESI Act) was passed on December 17, 2002. It came into force on June 21, 2002. The preamble to the act reads, to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental there

The SARFAESI Act was enacted to help financial institutions recover loans from borrowers by allowing them to auction properties pledged as collateral. Before the act, financial institutions had to go through a lengthy and time-consuming court process to recover dues. The Act contributes to the overall stability of the financial system by addressing non-performing assets (NPAs). Investor confidence is built around a robust legal framework for debt recovery attracts both domestic and foreign investments. The act strikes a balance between lenders and borrowers by incorporating safeguards

and grievance redressal mechanisms. DRT and DART are the forums where the Bank and the borrowers can seek justice. Civil Courts cannot entertain applications unless the outstanding loan amount along with interest exceeds Rs 20 Lac.

On 24th February, 2020, the Central government issued a Notification vide S.O. 856(E) thereby relaxing the eligibility criteria for NBFCs for taking action for enforcement of security interest under the SARFAESI Act. By way of the Notification, a NBFC having assets worth INR 100 Crore and above would be entitled for enforcement of security interest under the SARFAESI Act in cases where the secured debt is at least INR 50 Lakh.

Emergence of Asset Re-construction Companies along with SARFAESI Act, 2002

Following the enactment of the SARFAESI Act, 2002, Asset Reconstruction Companies (ARCs) entered the scene of stressed asset management. Asset Reconstruction Company (India) Limited (`ARCIL') incorporated in 2002 by major Indian banks, State Bank of India , ICICI Bank Limited, Punjab National Bank, and IDBI Bank Limited. It launched the start of a structured approach towards managing NPAs in the Indian banking scene. Thereafter, several ARCs were incorporated complying with the RBI norms related to ARC formation. ARCs acquired stressed assets from Banks and Financial Institutions and sold them to prospective buyers. The primary reason behind the emergence of ARCs was the need to clean up bank balance sheets by transferring NPAs to specialized entities that could focus on recovery strategies like debt restructuring, asset liquidation, and legal actions. As per the nomrs, ARCs are to resolve assets acquired within a period of eight years. They issue Security Receipts ('SRs') against the acquisition and redeem the SRs representing the assets. ARCs raise funds for acquisition of debts from Qualified Buyers (QBs). Currently there are twenty-seven ARCs operating in India. Prominent among them are National Asset Reconstruction Company Limited (NARCL), India Debt Resolution Company Limited (IDRCL), Edelweiss ARC, and ARCIL

The National Company Law Tribunal ('NCLT')

On 1st June, 2016, following the recommendations of Justice V.Balakrishna Eradi Committee, the Central Government under Section 408 of the Companies Act, 2013, formed the National Company Law Tribunal (NCLT).The Company Law Board ceased to exist. NCLT was established to mainly focus on company law procedures, insolvency and company winding up. NCLT further deals with matter related to Competition matters. Currently there are fifteen NCLT Benches all over the country. National Company Law Appellate Tribunal (`NCLAT') is situated at New-Delhi.

The Insolvency and Bankruptcy Code, 2016 ('IBC')

For easing business practices in the country, Government enacted the IBC. With the introduction time frame of liquidation of companies has been brought down from four and half years to about two and half years. Steps are being taken to reduce the time frame further. Financial weak entities were given the opportunity to go for rehabilitation under the Code. The management of Go Airlines (India) Limited filed for bankruptcy under the Code before NCLT, Mumbai to avoid lenders from moving for resolution. The CoC has recommended liquidation of the company. However, NCLT has not passed liquidation order as yet.

On 1st October, 2016, the Insolvency and Bankruptcy Board of India (IBBI) was established to implement the Insolvency and Bankruptcy Code, 2016 (`IBC'). Preamble to the Code states that the purpose of the Act is to *`consolidate and amend the laws relating to insolvency resolution and reorganization of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues, and to establish as Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto'*.

IBC provides a one-stop solution for resolving insolvencies. As per IBC, a corporate insolvency resolution process (`CIRP') is to be resolved within the time frame of one hundred eighty days from the date of admission of application, to initiate the process, with extension of up to ninety days subject to circumstances, fixing the maximum time limit for

resolution upto two hundred seventy days. As of September 2023, creditors realised around Rs 3.16 trillion (or 3.16 Lakh Crore) through resolutions. It is about Thirty-Two per cent of the admitted claims. In the Financial Year 2023-24, there were around two hundred sixty-nine resolutions of stressed firms 189 such firms in the Financial Year 2022-23. Long delays in resolution was mainly for arriving at the larger haircuts by the lenders. The rate of recovery fell to Twenty-Seven per cent of the creditors' admitted claims in 2023-24 against Thirty-Six per cent in the previous year. This brought down the cumulative recovery since 2016 to Thirty-Two per cent. Recovery touched eighty-five per cent of the fair value of the stressed companies at the time of admission of resolution which is One hundred Sixty-one point Eight per cent of the liquidation value of the assets.

Steps to improve distressed asset realisation

Lately, sale of stressed assets through centralised listing and auction platform is take place. This will provide information to the public. This is set to effectively fasten the distressed asset resolution. Earlier to this auctions of such assets were through single auction mode. This definitely did not give realization price always. Organising a single platform to sell the stressed assets will give effectiveness in dealing with stressed assets. The single platform could reach out to persons who might be interested in the sale of such assets. This will fetch more price for the stressed assets sold as there would be more public awareness. Public awareness would invite more bids hence there would be a better realization price. Sale of the assets should be widely circulated. Entities interested to buy such assets could get such assets at a cheaper price. For them price could have been a constraint. Stressed assets might be a distress asset for the stressed firm but it might not be so for another firm. Better market information will add to an efficient secondary market. Even though there are auction notices for sale of assets of stressed firms but there should be sector wise linkage so that the assets could find a proper user and also fetch a better price. The centralized system announced could support the realization process. Further a cadre of trained man power could be created to add efficiency to the system. All lenders should have a website dedicated to stressed assets so that there can be more information. In the sale of stressed assets should be further opened and should not be dealt in a way that the asset does not get fetch a proper price. Lenders should develop specialized branches to have detail on the stressed assets so that prospective buyers could visit the branches and get the benefit by purchasing the stressed assets.

Conclusion

For an efficient economy it is necessary to have specialized system of weeding out companies that cannot keep pace with the market. This leave a market of efficient firms which will add to the momentum of growth a firm is always striving at. There is a need for a secondary market for sale of stressed assets. A stressed asset to one might not be stressed to another. So that the provisions of IBC match the market demand to maximize the result of the thought behind introduction of the Code in India. Much has been achieved in resolution of stressed assets for a stressed entity through IBC in the country. But more can be achieved and that is the needs to be done.

Rajeev Mawkin,
FCA & Insolvency Professional

JET AIRWAYS RESOLUTION FIASCO – SUPREME COURT'S OBSERVATIONS & SUGGESTIONS

SYNOPSIS

On 07th November, 2024, Hon'ble Supreme Court **(SC)** pronounced a landmark judgement on the Jet Airways India Limited ***(Jet Airways/ CD)*** resolution plan matter ***(SBI Vs Consortium of Murari Lal Jalan & Florian Fritsch – Civil Appeal no. 5023-5024 of 2024)***, which was being aggressively litigated by the Successful Resolution Applicant (**SRA**), M/s M L Jalan – Florian Fritsch Consortium, before NCLT, NCLAT and the Supreme Court. This judgement brought down the curtains ***finally*** on a corporate insolvency resolution process, which had continued for 5 long years and was yet to reach any conclusion due to ongoing

litigations. On due consideration of facts of the case and substantial question of law involved, the Hon'ble SC held that the corporate debtor, ***i.e. Jet Airways India Limited, was to be liquidated*** as per provisions of the IBC since the SRA had failed to implement the resolution plan as approved by NCLT.

In this article, the author has attempted ***to highlight the guidance provided by Hon'ble Supreme Court, in form of certain suggestions,*** to the IBC fraternity at large which may be considered by the Parliament for introducing suitable amendments in the IB Code and by all other stakeholders for streamlining the IBC process so as to ensure smoother and faster conclusion of the CIRP process within the specified timelines.

The Jet Airways corporate insolvency resolution process generated a lot of heat and dust during the period of 5 (Five) long years, where the factual matrix of this case and legal issues involved therein, were deliberated at length before the NCLT, NCLAT and Supreme Court. The resolution plan of Jet Airways was approved by NCLT on 22/06/2021 and certain conditions precedent had to be fulfilled within a period of 90 days from the date of approval of the resolution plan before the first tranche of infusion of funds for resolution of CD. After several extensions, the conditions precedent were finally met by 20/05/2022. Thereafter, the SRA was required to to infuse funds amounting to Rs 350.00 Crores on or before 16/11/2022. However, the SRA failed to infuse this amount as proposed in the approved resolution plan and it contested the matter on all legal forums on one count or another.

Certain other issues relating to payment of provident fund and gratuity dues of workmen and employees, encashment of performance bank guarantee ***(PBG)*** by monitoring committee due to non-payment by SRA within the timeline mentioned in the resolution plan approved by NCLT, adjustment of the amount of PBG against the initial tranche of funds to be infused by SRA, etc were agitated by SRA before NCLT, NCLAT and SC.

The Hon'ble SC did not agree with the contentions raised by the SRA with regard to adjustment of PBG against the initial tranche of funds to be infused by the SRA and held the SRA in default for failing to infuse funds as proposed in the resolution plan approved by NCLT. On conclusion, Hon'ble SC held that the CD was to be liquidated as per provisions of IBC as the SRA was held to be in default, so far as the implementation of the resolution plan was concerned, and the PBG issued by SRA was ordered to be forfeited.

While concluding the judgement, ***their Lordships spelt out certain shortcomings and deficiencies in the IB Code and included their suggestions for strengthening of the IB Code and for improvement and streamlining the IBC process.*** The gist of these shortcomings and suggestions have been compiled as follows -

SHORTCOMINGS AND SUGGESTIONS TO IBC, 2016 INCLUDED IN SC JUDGEMENT:-

General Issues:

1) The litigation in the matter of Jet Airways is an eye opener for one and all and therefore it is absolutely necessary to bring to light certain deficiencies in the IBC, 2016 which require immediate attention.

2) It is imperative that the insolvency ecosystem be continuously strengthened through a regular identification of its shortcomings and a quick redressal of its practical deficiencies.

3) Scrupulous following of the provisions of the Code along with behavioural and ethical discipline is especially required from the key participants of the IBC who are central to its design i.e., the Adjudicating Authorities, Corporate Debtor, Resolution Professionals, Committee of Creditors, potential and Successful Resolution Applicants, Approved Valuers' and Liquidators.

Observations on Committee of Creditors (CoC):

4) It is the "commercial wisdom of the CoC" that assumes a position of superiority and becomes binding on all the stakeholders. The NCLT, which is the Adjudicating Authority and who has to approve the Resolution Plan under Section 31 of the IBC, 2016 also cannot trespass into the commercial wisdom exercised by the CoC as has been upheld in various cases.

5) The decision to restrict the scope of interference on the commercial wisdom of the CoC was conscious and possibly taken bearing in mind the

time delays that may arise out of a subsequent adjudication of the resolution plans approved by the CoC.

6) The position that the "commercial wisdom" of the CoC is non-justiciable and only a limited judicial review is available in this regard is well-settled through several decisions of the Court.

7) The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.

8) However, in order to foster a much more effective and time-bound decision making by the members of the CoC, in the interests of maximization of value of the assets of the Corporate Debtor, certain self-regulating guidelines, which are applicable to the functioning of CoC, were issued by the IBBI on 06.08.2024 which were applicable with immediate effect.

9) Adding to the aforesaid guidelines, it is suggested that the CoC exercise their commercial wisdom and approve/reject the Resolution Plans placed before them exhibiting fairness and with good reasons.

10) Such a reasoned decision making on their part will only serve to further enable the other key players like the Adjudicating Authorities to understand the rationale behind their decision and to uphold the correctness of the same.

Observations on Successful Resolution Applicant (SRA) –

1) Once a resolution plan is approved under the IBC, 2016 the SRA undertakes a profound responsibility to implement the plan in both letter and spirit. This obligation is not merely an empty formality but an enduring commitment to restore the corporate debtor to viability and ensure a meaningful turnaround.

2) Regardless of the challenges that may arise, the Successful Resolution Applicant cannot treat its obligations as optional or conditional, nor can it abdicate its responsibility in the face of unforeseen obstacles. Its efforts must reflect a determination to implement the plan fully and to rejuvenate the debtor company, as this is integral to the success of the IBC framework and the spirit of economic revival it seeks to foster.

3) The approach, therefore, must not be frugal or narrowly profit-driven, limited to viewing the transaction through a purely commercial lens. Instead, the SRA should recognize that rescuing a distressed company is a responsibility of significant social and economic value, demanding a holistic and responsible strategy.

4) This involves a dedication to long-term outcomes, where the SRA adopts measures that genuinely support the debtor's rehabilitation, rather than making minimal or half-hearted attempts at implementation. The Courts and tribunals have consistently underscored that the SRA's role transcends commercial interest and embodies a commitment to the larger purpose of corporate revival.

5) Consequently, the SRA must make thoughtful and sustained efforts, demonstrating adaptability and resilience even when faced with obstacles or operational impediments. Simply put, the Successful Resolution Applicant cannot step back or dismiss its obligations by attributing delays or setbacks to the conduct of other stakeholders, as this would undermine the very purpose of insolvency resolution.

Observations on Other Stakeholders –

1) In this collaborative effort, the duty to implement the plan does not fall on the SRA alone. The lenders and creditors are equally obligated to support the process by offering constructive and continuous cooperation. They must not impede the implementation process through unnecessary demands beyond the pale of the resolution plan or with delays in implementation plan but rather should facilitate the SRA's efforts to revive the corporate debtor.

2) The lender's role is not merely passive. It requires active support that aligns with the ultimate goal of the IBC, 2016 and that is to provide a fair and equitable resolution that maximizes asset value while enabling the debtor's recovery.

3) Therefore, the lenders must balance their financial interests with the broader objective of rehabilitation. They should not take an obstructive approach or seek to leverage the resolution process solely for individual benefit, as such actions would risk destabilizing the corporate debtor's recovery trajectory. Instead, they must be prepared to collaborate fully, sharing the responsibility to make the resolution process work in practice.

Observations on implementation of Resolution Plan by SRA –

1) The IBC, 2016 is silent as regards the phase of implementation of the Resolution Plan by the SRA. However, this has unfortunately led to the consequence of giving excessive leeway to the SRAs to act in flagrant violation of the terms of the Resolution Plan in a lackadaisical manner.

2) The SRAs repeatedly approach the Adjudicating Authority or the NCLAT for the grant of reliefs in relation to relaxation of the strict compliance to the terms of the Plan, including the timelines imposed therein. The NCLT and NCLAT, at times and in the interest of resolution of CD, accede to such requests in exercise of their inherent powers under Rule 11 or their power to extend time under Rule 15 of the NCLT and NCLAT Rules, 2016 respectively.

3) It is suggested that the NCLT and NCLAT may not entertain such repeated attempts made by SRAs. The exercise of discretion as regards altering the binding terms of the Resolution Plan, including the timelines imposed, should be kept at a minimum. The NCLTs/ NCLATs should exercise their judicial discretion in extending the timelines fixed under IBC, 2016 or the Resolution Plan, in such a way that it does not make the Code lose its effectiveness thereby rendering it obsolete.

4) The resolution plan should be impermeable to any shortcuts that prevent its implementation, including timely implementation, by the SRA. A consideration of these provisions reinforces the idea that timely implementation and strict adherence to the terms of the resolution plan is crucial.

5) The Code comes down heavily on any knowing and wilful contravention of the terms of the Resolution Plan, committed by any person, on whom the approved Resolution Plan has been made binding under Section 31 of the IBC, 2016. A punishment of minimum one year which may extend up to five years or minimum fine of one Lakh which may be up to one Crore rupees, or both, has been prescribed for such a contravention.

6) Therefore, the authorities should not discourage the SRAs from circumventing the strict mandates of the law by not acceding to their requests to relax the terms of the plan itself.

7) As regards the implementation of the approved Resolution Plan, the IBC, 2016 should statutorily provide for the constitution of a Monitoring Committee, once the plan has been approved, for a smooth handover of the Corporate Debtor to the SRA. Presently, such a provision is absent in the Code and it is the Adjudicating Authority that orders for the constitution of a Monitoring Committee to ensure smooth implementation of the Plan.

8) The Monitoring Committee shall also be required to ensure all statutory compliances during the implementation of the plan along with updating the Adjudicating Authorities, Financial and other Creditors about the status of implementation of the Resolution Plan, on a quarterly basis.

9) The Adjudicating Authority, while approving a Resolution Plan under Section 31 of the IBC, 2016, should record the next steps which are to be taken by the respective parties for commencement of implementation of the approved Resolution Plan. This will ensure that the parties are ad idem about the next round of their obligations that each of them is required to discharge under the approved Resolution Plan and that they do not delay the implementation by initiating any further litigation on this aspect.

10) If such an approach is adopted, the parties would be able to put forth any difficulty that they might face in performing those next steps before the NCLT itself and seek necessary relief in that regard. Recording the next steps that are to be undertaken in the order of the

Adjudicating Authority, will keep the parties more vigilant since a non-performance of the obligation may lead to a violation of the terms of the approved Resolution Plan and also violation of the order approving the Resolution Plan as well.

Observations on Adjudicating Authority -

With regard to certain issues relating to functioning of NCLT and NCLAT benches, the observations and suggestions of Hon'ble Supreme Court were –

1) There have been instances where there has been delays in admission and disposal of the applications filed as regards the initiation of CIRP, approval of the resolution plan and liquidation.

2) Adjudication in a time-bound manner would help prevent any further deterioration of the value of the corporate entity. The original timelines laid down by the Code and the Resolution Plan should be adhered to in order to preserve the objective of the Code in its entirety, prevent erosion of investor confidence and for aiding all corporate restructuring efforts.

3) The benches of NCLT(s) and NCLAT should sit for longer hours on regular basis. They are presently faced with limited capacity to manage the growing number of cases and giving undivided attention required in such matters.

4) There is no effective and well laid down procedure in place before the NCLTs for urgent listings. The staff of the Registry is given wide powers to list or not to list a particular matter, which should be regulated.

5) There is no laid down procedure for urgent mentionings and listings of time-sensitive matters. Similarly, long-pending unheard/ partly heard matters result in value erosion of the assets of the Corporate Debtor and render their insolvency resolution process a foregone conclusion.

6) There is often a shortage of members in the Tribunals and inadequate infrastructure to support their functioning. These vacancies heavily impact the insolvency reform initiative undertaken by the government since they lead to operational inefficiencies. A shortfall of members and the lack of requisite strength has led to Tribunals only adversely effects the functioning of the benches on day-to-day basis.

7) Even in Tribunals where there is no vacancy, the absence of requisite infrastructure has forced the benches to share courtrooms or halls on a rotation basis. As a consequence, it becomes a challenge to adhere to the strict timelines provided in the IBC, 2016. Filling such vacancies with experts having adequate domain knowledge in the field should be prioritized by the Government along with addressing the infrastructure needs of the Tribunals to prevent any adverse effect on the resolution process.

8) The appointment of new members on benches of NCLT and NCLAT should be done in a manner such that it coincides with the date of retirement of the sitting members in a seamless manner to avoid such operational inefficiencies. The persons with high ideals & impeccable integrity should be appointed as Members in the NCLT and NCLAT.

Suggestions for Central Government & IBBI –

1) Furthermore, it is also suggested that the Central Government or the IBBI explore the possibilities of better enforcement of the standards and practices enumerated in the guidelines through an independent mechanism under the auspices of an oversight committee instead of making them self-regulatory.

2) It is for the Parliament to look into the suggestions in consultation with the Insolvency Bankruptcy Board of India and the Ministry of Finance.

CONCLUSION:

Hon'ble Supreme Court has provided valuable guidance on critical issues related to the corporate insolvency resolution process of corporate debtors. These wide ranging observations and suggestions are aimed at providing a much needed direction to the entire IBC spectrum. They will go a long way in enabling the government in making much needed amendments in the IB Code and will also help the regulator and other stakeholders in streamlining procedures and process involved in a resolution process.

BRICKS AND BARRIERS: UNVEILING THE CHALLENGES OF REAL ESTATE IN A TRANSFORMING WORLD

CS IP Sucheta Gupta
Sucheta Gupta & Associates

Introduction:

The Insolvency and Bankruptcy Board of India (IBBI) has proposed significant amendments to tackle the complexities of real estate insolvencies under the Insolvency and Bankruptcy Code (IBC), 2016.

In a move aimed at improving the resolution process, the IBBI released a discussion paper on November 7, 2024. This paper follows recommendations made by a study group formed by the Indian Institute of Insolvency Professionals of ICAI (IIIPI), focusing on enhancing real estate resolutions under the IBC and ensuring better coordination with the Real Estate (Regulation and Development) Act (RERA).

The IBBI has put forward a total of seven (7) proposals aimed at addressing the challenges associated with real estate insolvencies under the IBC. These proposals are designed to enhance the resolution process and improve the overall framework for handling real estate-related insolvencies.

I. First Proposal from IBBI related to the role of Land Authorities in Insolvency:-

The proposal made by the IBBI for amendment in the Regulation name "**Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2024 by inserting a new sub-regulation (5) of Regulation 18 as under-**

"(5) Where the corporate debtor has any real estate project, 'competent authority' as defined in section 2(p) of The Real Estate (Regulation and Development) Act, 2016, related to such project shall be invited to attend the meeting of committee of creditors without voting rights, for providing inputs on matters associated with development of such project."

After inserting this sub regulation, it is mandatory to include the competent authorities as invitees to CoC meetings in cases involving real estate companies, without voting rights. The presence of such competent authorities in CoC meetings can enhance transparency and build confidence among homebuyers and other stakeholders in the resolution process.

Analysis:

1. **Objective:** The proposal aims to include competent authorities from RERA in CoC meetings for real estate projects under insolvency.
2. **Non-Voting Rights**: Competent authorities will attend CoC meetings but will not have voting rights, providing insights without influencing decisions.
3. **Transparency:** The inclusion of RERA authorities enhances transparency by sharing information on the project's progress and challenges.
4. **Informed Decision-** Making: CoC members will benefit from the expertise of RERA authorities, leading to better-informed decisions on project viability.
5. **Homebuyer Confidence:** The presence of competent authorities can reassure homebuyers about the project's compliance with regulatory standards.
6. **Improved Coordination:** The proposal strengthens the connection between IBC and RERA, aligning both regulatory frameworks for more effective resolutions.
7. **Consumer Protection:** It ensures that real estate projects under insolvency comply with RERA rules, safeguarding the interests of homebuyers and stakeholders.
8. **Better Resolution Outcomes:** With RERA authorities' input, CoC members are more likely to make decisions that support the timely and compliant completion of projects.
9. **Limitations:** While valuable, the non-voting role of competent authorities limits their direct influence in the resolution process.

II. Second Proposal from IBBI-Navigating the Challenges of Cancelled Land Allotments in Real Estate Insolvency Cases:

In cases where land allotments have been cancelled and possession has been reclaimed by authorities before the Insolvency Commencement Date (ICD), it creates uncertainty in the Corporate Insolvency Resolution Process (CIRP), as the primary asset of the Corporate Debtor (CD) may no longer be available. Currently, the Insolvency and Bankruptcy Board of India (IBBI) regulations do not have a specific provision to address this issue.

To address this gap, the IBBI has proposed an amendment to the "Insolvency Resolution Process for Corporate Persons" Regulations, 2016. The proposed amendment would require the Insolvency Professional (IP) to report to the Committee of Creditors (CoC) and the Adjudicating Authority when a land allotment has been cancelled and possession has been taken back by authorities before the ICD. This vital information will help the CoC make well-informed decisions regarding potential alternatives, such as withdrawal, early liquidation, dissolution, or the continuation of the CIRP.

Analysis:

- The proposed amendment aims to ensure that the Committee of Creditors (CoC) and the Adjudicating Authority are informed about the status of the land allotment, providing essential details for making an informed decision during the CIRP.
- With this information, the CoC can evaluate alternatives such as withdrawal of the CIRP, early liquidation, dissolution, or continuation of the resolution process, depending on the availability and value of assets.

III. Third Proposal from IBBI-for empowering CoC: Integrating Allottee Associations as Resolution Applicants:-

The Code is designed to ensure the timely resolution of corporate insolvency while maximizing the value of assets. In real estate insolvencies, allottees are a crucial stakeholder group as financial creditors. Under the current regulatory framework, associations of allottees are allowed to participate in the Corporate Insolvency Resolution Process (CIRP) as resolution applicants.

The IBBI has suggested that associations or groups of allottees should be permitted to participate as resolution applicants in the CIRP. To facilitate this, there is a proposal to amend the CIRP regulations to explicitly allow the Committee of Creditors (CoC) to grant relaxations on eligibility criteria, earnest money deposits, and performance security requirements for allottee associations or groups representing at least 10% of allottees or 100 allottees, whichever is higher.

Analysis:

1. **Objective of the Code:**The Code aims to ensure timely corporate insolvency resolution while maximizing asset value.
2. **Allottees as Key Stakeholders:** In real estate insolvencies, allottees are a significant stakeholder group, acting as financial creditors in the process.
3. **Current Participation:** Under the new regulatory framework, associations of allottees are allowed to participate in the Corporate Insolvency Resolution Process (CIRP) as resolution applicants.

IV. Fourth Proposal from IBBI- Clarification about inclusion of Interest in Homebuyers' Claims in CIRP:-

The Insolvency and Bankruptcy Code, 2016 (Code) recognizes homebuyers as financial creditors, granting them a significant role in the Corporate Insolvency Resolution Process (CIRP). However, an issue has arisen regarding the treatment of notional interest for homebuyers' claims.

To address this, the IBBI has proposed an amendment to Regulation 8A of the principal regulations. The proposal suggests that after sub-regulation (3), the following sub-regulation be inserted:

(4) The interest calculated at the rate of eight per cent per annum for the purpose of determining the voting share of a creditor in a class under sub-regulation 16A(7) shall also be included in the claim amount of such creditor unless a different arrangement has been agreed between parties."

This clarification ensures that, unless an alternative agreement exists, homebuyers' claims will include an interest component calculated at 8% per annum, providing consistency in how claims are handled across cases.

Analysis:

1. The IBBI proposal ensures fair representation for homebuyers in the Committee of Creditors (CoC) by including an 8% per annum notional interest in their claims. This standardizes their claims, reflecting the true value of their financial stake and ensuring they have a voice in the decision-making process.
2. The amendment safeguards homebuyers by ensuring their claims, including notional interest, are calculated fairly. This protects homebuyers from project delays and ensures their financial interests are prioritized during the insolvency process.
3. The proposal clarifies the treatment of notional interest, reducing ambiguity and potential legal disputes. By standardizing claims, it helps prevent conflicts between creditors and homebuyers, streamlining the resolution process and promoting efficient outcomes.

By this approach a clearer claim calculation could expedite the resolution process, as fewer disputes arise over voting shares or payout distributions.

V. Fifth Proposal of IBBI- Facilitating Creditor Representation through Facilitators:-

In cases where a class has a very large number of creditors, a single AR may face challenges in effectively representing and communicating with all creditors.

Facilitators are envisioned as a solution to these problems, helping to represent the interests of large groups of creditors in a structured and organized manner. By doing so, they enhance communication and ensure that the CoC is better equipped to make informed decisions.

Analysis:

1. Facilitators ensure better communication by acting as intermediaries, improving the flow of information between creditors and the Committee of Creditors (CoC), thereby reducing the risk of misunderstandings.
2. With the support of facilitators, the CoC can make more informed decisions. Facilitators help ensure that the views and interests of all creditors, especially in large groups, are effectively conveyed, leading to better decision-making in the insolvency process.
3. Facilitators help organize large creditor classes by breaking down communication barriers and ensuring that each creditor's concerns are addressed in an efficient manner, making the insolvency process more manageable.

VI. Sixth Proposal of IBBI-For Sharing CoC Meeting Minutes with All Real Estate Creditors-

In real estate insolvency cases under the Insolvency and Bankruptcy Code (IBC), 2016, the role of the Authorized Representative (AR) is crucial in representing homebuyers who are financial creditors. However, there are significant challenges in ensuring effective communication between the AR and the homebuyers, leading to a lack of clarity and participation among the creditors.

The IBBI's proposal aims to address this gap by suggesting that the Resolution Professional (RP) make the minutes of CoC meetings available on the website where other CIRP-related documents are uploaded by the RP.

The minutes would be accessible to all creditors, with a specific emphasis on homebuyers, who can view the documents through a secured login system. This proposal serves to create a more transparent and efficient communication channel, providing homebuyers with the information they need to stay informed about the insolvency proceedings that impact their investments.

Analysis:

1. The IBBI proposes that the Resolution Professional (RP) make the minutes of Committee of Creditors (CoC) meetings available on the website where other CIRP-related documents are uploaded, ensuring accessibility for all creditors, particularly homebuyers.
2. The minutes of CoC meetings would be uploaded online, making the proceedings transparent. Homebuyers can access these documents through a secured login system, allowing them to stay informed about the insolvency process.
3. By providing homebuyers with direct access to meeting minutes and related documents, the proposal enhances their ability to understand the decisions being made and actively participate in the resolution process.
4. This initiative aims to improve overall transparency in the insolvency process by giving creditors, especially homebuyers, the necessary tools to track and review the progress of the case.
5. Homebuyers are better equipped to stay updated on the developments in the CIRP, which ensures their concerns are addressed and helps them make informed decisions regarding their investments.

VII. Seventh Proposal of IBBI-Streamlining Real Estate Possession Handover-

In the realm of real estate insolvencies under the Corporate Insolvency Resolution Process (CIRP), delayed possession handovers have become a significant concern for homebuyers.

The Insolvency and Bankruptcy Board of India (IBBI) has put forth a proposal to streamline the process

by allowing the Resolution Professional (RP) to facilitate the transfer of ownership to homebuyers during the resolution process, with the Committee of Creditors' (CoC) approval. This will help expedite possession transfer, even if some units are incomplete. By this proposal allow RP to handover the ownership of a plot, apartment, or building to the allottees through transfer during the resolution process, with the approval of CoC. Further, to avoid delays due to unnecessary holds-ups, it is also proposed that with the approval of the CoC, RP may also be permitted to hand over the possession of units to the allottees on 'as is where is' basis or on payment of balance amount, if any, after taking in to account the funds due and funds required for completing the unit.

Analysis:

1. The IBBI proposes that the Resolution Professional (RP) be empowered to facilitate the transfer of ownership to homebuyers during the resolution process, with the approval of the Committee of Creditors (CoC). This aims to speed up the possession handover, even for units that may not be fully completed.
2. The proposal allows the RP to transfer ownership of plots, apartments, or buildings to allottees during the CIRP, enabling homebuyers to take possession of their properties even if the construction is unfinished.
3. To avoid delays in possession handovers, the proposal permits the RP, with CoC approval, to transfer possession of incomplete units to allottees on an "as is where is" basis or after payment of any outstanding balance. This could help streamline the process and avoid unnecessary hold-ups.
4. The proposal ensures that, before possession is handed over, the RP must take into account the funds already paid by the homebuyer and the funds required to complete the unit, ensuring fairness and transparency in the process.
5. By enabling quicker possession transfers, this proposal aims to enhance homebuyer confidence in the insolvency process, addressing their concerns about delays and providing them with more control over their investments.
6. The proposal encourages a more efficient and streamlined resolution process, reducing bottlenecks and ensuring that homebuyers receive their properties as soon as possible, even if the units are incomplete.

Conclusion:

The recent proposals by the Insolvency and Bankruptcy Board of India (IBBI) in its discussion paper mark a significant shift towards innovation and efficiency in the real estate insolvency landscape under the Corporate Insolvency Resolution Process (CIRP). These forward-thinking measures reflect a deep understanding of the challenges faced by homebuyers, developers, and creditors within the real estate sector, aiming to balance the interests of all stakeholders while facilitating smoother resolutions.

By empowering the Resolution Professional (RP) to transfer ownership of real estate units to homebuyers during the resolution process and introducing flexible options such as the 'as is where is' basis handover, IBBI ensures that delays are minimized, and homebuyers can gain possession without unnecessary hindrances. The proposal to allow the Committee of Creditors (CoC) to approve these measures ensures that the interests of creditors are safeguarded while accelerating the process for end-users.

The additional focus on increasing transparency—through proposals like disseminating CoC minutes to all creditors and offering secured access for allottees—further enhances accountability and communication throughout the process. These changes promise to break down traditional barriers to resolution by providing more clarity, creating a predictable environment for all involved, and potentially improving recovery rates for creditors.

Adv. Shailendra Singh
(Advocate & Mediator)
Supreme Court of India

THE ROLE OF MEDIATION IN INSOLVENCY LAWS: A CASE FOR INDIA

Introduction:

In the intricate and often contentious realm of insolvency law, the traditional adversarial approach to dispute resolution can be both time-consuming and costly. As India continues to evolve its legal framework to address the complexities of corporate insolvencies, it is imperative to consider alternative dispute resolution (ADR) mechanisms that can enhance efficiency, reduce costs, and preserve relationships among stakeholders. One such mechanism is mediation, which has proven its efficacy in various jurisdictions worldwide. This article explores the concept of mediation, its benefits within the context of insolvency laws in India, and whether India should adopt mediation as a part of its insolvency framework.

Concept and Introduction of Mediation:

Mediation is a form of ADR that involves a neutral third-party facilitator who assists disputing parties in reaching a mutually acceptable agreement. Unlike arbitration or litigation, mediation does not impose a decision but rather guides the parties towards finding their own solution. This process is characterized by its voluntary nature, confidentiality, and flexibility.

In essence, mediation provides a structured environment where parties can communicate effectively, identify common interests, and explore creative solutions that might not be available through traditional litigation. The mediator's role is not to decide the outcome but to facilitate open dialogue and negotiation between the parties.

Benefits of Mediation in Insolvency Laws:

1. **Speed and Efficiency:** Insolvency proceedings are inherently time-sensitive due to the financial stakes involved. Delays can exacerbate financial distress and reduce the chances of successful restructuring or recovery. Mediation can significantly reduce the time taken to resolve disputes compared to traditional court processes.
2. **Cost-Effectiveness:** Litigation costs can be prohibitively high for both creditors and debtors. These costs include legal fees, court charges, and other expenses associated with prolonged legal battles. Mediation offers a more cost-effective alternative by avoiding lengthy court battles.
3. **Preservation of Relationships:** In many cases, especially in business insolvencies, maintaining relationships between parties is crucial for future collaborations or settlements. Mediation fosters an environment where these relationships can be preserved or even strengthened.
4. **Customized Solutions:** Unlike court judgments which may not fully address all parties' concerns due to their rigid nature, mediated agreements are tailored to meet the specific needs and interests of each party involved.
5. **Reduced Stress:** The adversarial nature of litigation can be highly stressful for all involved—debtors, creditors, employees, and other stakeholders. Mediation provides a less confrontational setting where parties can engage constructively without the emotional toll associated with litigation.

International Precedents:

Several countries have successfully incorporated mediation into their insolvency frameworks:

- **United States:** The U.S. Bankruptcy Code allows for mediation in various stages of bankruptcy proceedings through court-appointed mediators or private mediators agreed upon by the parties. For instance, under Chapter 11 reorganization plans, mediation is often used to facilitate negotiations between debtors and creditors.

  Example: In the case of In re: Lehman Brothers Holdings Inc., mediation played a crucial role in resolving complex disputes among numerous stakeholders during the bankruptcy proceedings.
- **United Kingdom:** The UK's Insolvency Act 1986 includes provisions for voluntary arrangements which often involve mediated negotiations between debtors and creditors. The UK's Insolvency Service also promotes the use of Alternative Dispute Resolution (ADR) methods including mediation.

  Example: Under the UK's Company Voluntary Arrangement (CVA) process, companies can enter into mediated agreements with their creditors to avoid formal insolvency proceedings.
- **Singapore:** Singapore has introduced pre-insolvency mediation schemes aimed at helping companies avoid formal insolvency proceedings through early intervention and negotiation. The Singapore Mediation Centre offers specialized mediation services for insolvency-related disputes.

  Example: Singapore's Simplified Insolvency Programme (SIP) encourages debtors to engage in mediated discussions with their creditors before initiating formal insolvency processes.

Should India Adopt Mediation Under Insolvency Laws?

Given the complexities and delays often associated with Indian insolvency proceedings under the Insolvency and Bankruptcy Code (IBC), introducing mediation could be highly beneficial.

- **Existing Frameworks:** India already uses mediation successfully in other areas such as commercial disputes under the Commercial Courts Act 2015. Extending this approach to insolvency would leverage existing infrastructure and expertise.

  Example: The Delhi High Court has established a dedicated Mediation Centre which handles commercial disputes efficiently; similar centers could be set up specifically for insolvency-related mediations.

- **Potential Implementation:** The IBC could be amended to include provisions for mandatory or voluntary mediation at various stages of the insolvency process—such as during the moratorium period or before initiating liquidation proceedings.

  Example: During the Corporate Insolvency Resolution Process (CIRP), mediation could be mandated between the Resolution Professional (RP) and creditors/debtors to resolve their dispute and arrive at the mutually amicable understanding and solution.

Conclusion:

Incorporating mediation into India's insolvency laws could be a game-changer in enhancing the efficiency and effectiveness of the insolvency process. By drawing from international best practices and adapting them to India's unique legal landscape, policymakers can create a more robust framework that benefits all stakeholders involved in insolvency proceedings.

As India continues on its path towards economic growth and stability, embracing innovative dispute resolution mechanisms like mediation will be crucial in ensuring that businesses can navigate financial difficulties with minimal disruption. With careful planning, implementation, and support from legal professionals and government authorities alike, India can leverage mediation to make its insolvency laws even more effective.

VOLUNTARY LIQUIDATION UNDER IBC: A FAST-TRACK EXIT FOR SOLVENT INOPERATIVE COMPANIES

IP Bharat Upadhyay
Practicing Company Secretary, Insolvency Professional and Independent director.

Concept of Solvent Inoperative Company & Need for Voluntary Liquidation

In certain cases, the Board of Directors considered to close down its business by way of voluntary liquidation as the Company had not been carrying business operations in India for a long period of time plus **not earning any profits** and **neither** has any reasonable future prospects or has incurred losses due to several **business constrains** and **adverse economic situation** and on-going market conditions or the **shareholders of the Corporate Person do not want to continue with the business** or due to unforeseen circumstances arises out of Covid-19 worldwide, so, it was not financially viable to continue and carry on the business activities, it is in the best interest of the Company to close down the business.

Laws & Regulations Deals with Solvent Liquidation Under the Insolvency & Bankruptcy Code 2016

Section 59 of the Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as **"Code"**) provides that a corporate who **intends** to liquidate itself voluntarily and has not committed any default - that is, **solvent liquidation** - may initiate voluntary liquidation proceedings under the provisions of **Chapter V of Part II** of the Code. The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (For Short **"IBBI Regulation"**) govern the process. This process has been adapted in regulation 3 of the IBBI Regulation for corporate persons other than a company. It does not envisage the intervention of the NCLT for commencing voluntary liquidation process.

However, before passing an order of dissolution U/s.59(8) of the Code, the NCLT is concerned to check whether the Corporate Person's petition has complied with the provisions of S.59(7) of the Code and necessary compliances as per provisions of the Code, further, IBBI Regulations have been made by the Corporate Person and the Liquidator.

This process is considered to be an easier exit option, **cost-effective tool** as well as **speedier** wherein a solvent inoperative company (who does not have any secured and unsecured creditors; there is no requirement of getting No objection certificate as per proviso to sub section 3 of S.59 of Code) can be liquidated within 90 days, so, that the funds of Corporate Person could have been duly distributed between the stakeholders as per their claims. Additionally, the procedure for payment of debts by the Corporate Person in full within a specified period, aims to balance the interests of all stakeholders and promote a streamlined process. Voluntary liquidation process is followed for winding down a corporate person (which includes both a company and an LLP).

The then, Rao Inderjit Singh, who was Minister of State for Corporate Affairs stated in the Lok Sabha "From FY 2018-19 to FY 2023-24 (up to 30th September 2023) final reports of 1,168 companies have been submitted by Liquidators under section 59 of Code, of which final dissolution orders have been passed by NCLT in 633 cases during the said period".

Effect of S.248(2) & S.59 IBC on Indian Economy

Section 248(2) of the Companies Act, 2013 pertains to voluntary exit of companies while Section 59 of the IBC relates to voluntary liquidation of companies.

In May 2023, the government set up the Centre for Processing Accelerated Corporate Exit (C-PACE) to centralise and expedite voluntarily exit of companies under Section 248(2) of the Companies Act, 2013.

"Under C-PACE the time taken for voluntary exit during the current year is around 110 days. 470 cases are currently pending for voluntary liquidation under section 59 of Code till September 2023. Further, 3,695 cases are pending for voluntary corporate exit under section 248(2) of the Companies Act, 2013 with C-PACE".

The Corporate Affairs Minister Nirmala Sitharaman stated 7,946 foreign companies have registered their Indian subsidiary companies during the period from FY 2018-19 to FY 2022-23 (up to November).

"The increase in foreign direct investment indicates the confidence of the foreign investors in the business atmosphere of the country".

Prior to IBC, the Companies Act 1956, dealt with the winding up and liquidation of companies. A company could initiate voluntary liquidation under Section 304 of the Companies Act, which was subsequently omitted by the IBC in 2016. Further, the processes of winding up and liquidation under the Companies Act, 1956, resulted in extraordinary delays, which often led to almost complete erosion of the asset value of the debtor company. It also failed to provide a balanced or effective framework addressing all levels of financial distress.

Understanding S.59 of Code r/w IBBI Regulations (2017) with Practical Considerations

Before initiating Voluntary Liquidation, the Corporate Person is required to prepare a **valuation report** and a statement of assets and liabilities of the company as on the liquidation commencement date (i.e., the date from when the company has no liabilities, employees and assets, except cash and bank balance required to make payments if any claim is filed and to cover the liquidation expenses). Then, U/s.59(3)(a) and (3)(b) of Code as per Regulation

3(1)(a), a corporate person, who **intends**, may initiate a Voluntary Liquidation proceeding if majority of the directors or designated partners of the Corporate Person submit a **Declaration of Solvency Affidavit**, affirming that they have made a **full inquiry** into the **affairs** of the Company and formed an **opinion** that (i) the Corporate Person has **no debt** (no liabilities to pay) or it will be able to pay its debts in full from the **proceeds** of the assets to be sold under the proposed liquidation, (ii) the Corporate Person is not being liquidated to **defraud** any Creditor, Government, Company, Firm or any person (iii) further affirm that the Corporate Person has not committed **any default,** and (iv) further the Corporate Person shall makes a disclosure about **pending proceedings** or **assessments** before **statutory authorities**, and **pending litigations** and shall also declare that **sufficient provision** has been made to meet the likely obligations arising, if any, on account of the pending proceedings [Regulation 3(1)(iii) & (b) (iii) of Voluntary Liquidation Regulations **Amendment**, 2024, effective from 31st January 2024, which amends the Regulation 3 sub regulation (1) of IBBI Regulation, 2017]. The declaration shall be accompanied with the following documents namely: (i) Audited financial statements and record of business operations of the Company for the previous two years or for the period since its incorporation, whichever is later; (ii) Valuation Report prepared by a registered valuer regarding the assets of the company (iii) details of the all the existing Directors.

Within four weeks of the declaration, as per the provision of the Companies Act 2013, a **special resolution** needs to be passed by a **special majority** of the **partners or contributories**, as the case may be, of the Corporate Person requiring the Corporate Person to be liquidated and appointing a resolution professional as the Liquidator [required U/s.59(3)(c)(i) as per IBBI Regulation 3(3)(i) and 3(4): 2017], following which the Company shall cease to carry on its business operations except as far as required for the **beneficial** winding up of its business. The legal status of the corporate entity continues to exist during the period of liquidation, until it is finally and formally dissolved [IBBI Regulation].

Though the meaning of the term "special resolution" can be easily deciphered from the Companies Act, 2013; however, what constitutes "**special majority**" of partners/ contributories has not been defined under the IBBI Regulation 2017.

Approval of Creditors

If the Corporate Person **owes** any debt to **any person**, creditors representing two-thirds in value of the debt of the Corporate Person also need to approve the resolution passed by the partners or contributories within seven days of such resolution [Proviso S.59(3)(c)] as per IBBI Regulation 3 proviso: 2017].

Commencement of Liquidation Proceedings

S.59(5) of the Code says the liquidation proceedings shall be deemed to have commenced from the date of passing of the shareholder's resolution, subject to the creditor's approval and the company appoints a registered insolvency professional (IP) as the Liquidator, under Regulation 5, who is eligible under Regulation 6 of IBBI Regulation 2017, to act as the Liquidator of the Company.

Similarly, as stated under Regulation 3(3) of IBBI Regulation 2017, the voluntary liquidation proceedings in respect of the Corporate Person (other than a company) shall be taken to commence from the date on which the partners, or contributories (as the case may be) resolve as such, subject to the creditor's approval.

Application of Sections 35 to 53 of the IBC

Section 59(6) states that sections 35 to 53 of Chapters III and VII shall apply to voluntary liquidation proceedings of Corporate Persons.

Chapter III deals with the liquidation process of a Corporate Person in case of failure of the insolvency resolution process to receive a resolution plan and the subsequent order by the Adjudicating Authority for liquidation of Corporate Persons. Chapter VII deals with offences and penalties.

Hence, provisions in the IBC relating to the powers and duties of the Liquidator, claim verifications, the conduct of the liquidation process, and offences and penalties that apply to a post-CIRP liquidation also apply to voluntary liquidation.

Intimation, Public Announcement and Claims

In compliance of Section 117 of the Companies Act, 2013, the Liquidator shall notify and filed the Board Resolution passed by the Directors and the Special Resolution passed by the Shareholders for Voluntary Winding up with the Registrar of Companies (vide e-form MGT 14 and Form GNL-2) and the IBBI, [sub section (4) S.59 of Code] to liquidate the company within **seven days** of such resolution. This means, the role of government regulators is restricted since the Corporate Person is merely required to notify them. This ensures that there should be no delay in commencing the liquidation process.

The Liquidator makes a public announcement within five days from his appointment calling upon stakeholders to submit their claims along with the proof within thirty (30) days from the liquidation commencement date. The announcement is published in one **English** and in one **regional** language newspaper and on the website, if any, of the Corporate Person and on the website, if any, designated by the Board for this purpose [in Form A of Schedule I as per IBBI Regulation 14(1)(2) and (3): 2017].

The copy of public announcement is to be send to IBBI with request to place it on its website and same is to be published on the website of IBBI.

Then the Liquidator has to addressed a letter to Income Tax Dept., under **Section 178 of the Income Tax Act 1961**, intimating the initiation of Voluntary Liquidation of the Company and appointment of the Liquidator.

The Liquidator submits a preliminary report to the directors of the Corporate Person within a prescribed time limit of forty-five (45) days from the liquidation commencement date, detailing the capital structure of the Corporate Person, estimates of its assets and liabilities as on liquidation commencement date, the proposed plan of action, etc.

He verifies the claims submitted withing thirty days from the last date for receipt of claims and prepares the list of stakeholders within forty-five (45) days from the last date for receipt of claims [IBBI Regulation 29 and 30: 2017].

Realisation of Assets & Completion of Proceedings

He endeavours to recover and realise all assets of and dues to Corporate Person in a time-bound manner for maximisation of value for the stakeholders [IBBI Regulation 31 and 32].

He shall open a liquidation bank account in the name of the Corporate Person followed by the words 'in voluntary liquidation', in a scheduled bank, for purpose of depositing/realisation by the Corporate Person and payments as per S.53 with IBBI Regulation 34. The Liquidator distributes the proceeds from realisation within **thirty days** from the receipt of the amount to the stakeholders [Regulation 35(1) of Voluntary Liquidation Regulations Amendment, 2022 (effective from 05 April 2022) r/w S.53 of the Code].

After making payments towards the liquidation expenses of the Company, distribution to the shareholder, payment of taxes, other charges and expenses, the Liquidator shall close the said Bank Account and accordingly, this date marks the completion of Voluntary Liquidation Process.

He endeavours to complete the liquidation process within 90 days (in certain specified cases) and in other cases, in 270 days (if the company has creditors who have approved the special resolution under clause (c) of sub section (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3).

If the Liquidator fails to liquidate the Corporate Person within stipulated period of 90 days or 270 days as the case may be, he shall hold a meeting of contributories of the Corporate Person and present a status report within fifteen days from the end of such period and thereafter at the end of every such succeeding period, specifying the reasons for not completing the process within the stipulated time period and apprise the meeting about additional time required for completing the process [Regulation 37 of Voluntary Liquidation Regulations Amendment, 2024].

Thus, the role of Liquidator is principally akin to the role of a liquidator in compulsory liquidation, to manage the process, verify and collate claims, and to oversee the realisation and distribution of assets.

In **Swiss Ribbons Private Limited & Another Vs. Union of India & Others** [(2019) 4 SCC 17], the

Supreme Court noted that there is a distinction between the roles of an RP and a liquidator under the IBC, especially in respect of claim verification and determination. The court held that the RP has to vet and verify claims made, and ultimately determine the amount of each claim. As opposed to this, the **Liquidator has to consolidate and verify the claims, and either admit or reject such claims under sections 38 to 40 of the IBC.** Referring to sections 41 and 42, the Supreme Court held that when the liquidator determines the value of claims admitted under section 40, such determination is a decision that is quasi-judicial in nature, and it can be appealed against before the Adjudicating Authority (NCLT) under section 42 of the IBC.

Final Report

On completion of the liquidation process, Liquidator prepares the final report consisting of audited accounts of the liquidation, disposal of the assets of the corporate person, sale statement, etc.

Before dissolution, the Liquidator has to submit its Final Report to the Registrar of Companies in Form GNL-2 and to IBBI through speed post and electronically through an email [IBBI Regulation 38: 2017].

Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the Liquidator shall submit the Final Report and the compliance certificate in Form-H along with the application under sub-section (7) of section 59 to the Adjudicating Authority for the dissolution of such Corporate Person.

Application to Adjudicating Authority

On the said application, the Adjudicating Authority passes an order that the Corporate Person shall be dissolved from the date of that order and the Corporate Person shall be dissolved accordingly [S.59(8)].

A copy of the order shall within fourteen days from the date of such order, is forwarded to the concerned Registrar of Companies, Income Tax Department, and IBBI for information and necessary action as well as with other Statutory Authorities for information [S.59(9)].

Under the IBC, the average time taken for dissolution of companies after submission of final report by the liquidator has been in the range of 7-9 months. The average time taken by Liquidator to submit final report for Adjudication to NCLT has been about 14 months

Fraud Detection or Insolvency

If at any time, the Liquidator is of the opinion that the liquidation is being done to **defraud** a person or the Corporate Person will **not** be able to pay its debts in full from the proceeds of the assets to be sold in the liquidation, he makes an application to the Adjudicating Authority to suspend the process of liquidation and pass any orders as it deems fit [IBBI Regulation 40: 2017].

Preservation of Records

Under Regulation 41 IBBI (Voluntary Liquidation Process), a mandatory duty has been cast upon the Liquidator to preserve a physical or electronic copy of the reports, registers, books of account including Bank's statement evidencing closure of the Bank Account(s) and other documents referred to in Regulation 8 and 10 for at least eight years for electronic copy and at least three years for physical copy after the dissolution of the company at a secure place.

Miscellaneous

Subject to such conditions as the Tribunal may impose if on the winding up or dissolution of a limited company registered under Section 8 of the Companies Act, 2013, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under the same section and having similar objects, or may be sold and proceeds thereof will be credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

Process's Drawbacks

Evidently, though this process has its own advantages, however, there are **serious concerns** about its potential misuse for fraudulent intentions, particularly to defraud creditors. Even though it is incumbent upon the company to satisfy the solvency test by fully paying its creditors, what if the company fails to recognise its creditor's claim based on false contentious issues,

fabricated legal defences or contested facts? **Whether the IBC provides complete justice to such a creditor remains a concern.**

Section 33(5) of the IBC, covering 'moratorium', is not applicable by virtue of Section 59(6), while the rights of the creditors to bring legal proceedings, including recovery suits, against the company are generally suspended in view of the whole scheme of the IBC, particularly Section 63. Thus, creditors resort to remedies available under the Code. In doing so, the claim is brought before the liquidator. However, since the liquidator's role is primarily to review and verify claims, claims involving disputed facts, contentious issues, or those not backed by sufficient proof are likely to be rejected.

As per Section 42 of the Code, such rejection of claims can be appealed before the NCLT. However, the NCLT's role and procedures are distinct from those of a civil court. The NCLT operates within a specialised legal framework, and adjudication processes do not involve evidentiary hearings, cross-examination, discovery by interrogatories, etc. Thus, it heavily relies on documents, financial records, and submissions made by the parties involved. The NCLT ruling is further contestable, but the adjudication's limited scope remains unchanged. This limitation can highly prejudice the creditors' claims and their **right** to receive **just and fair treatment.** This potential and probable misuse defeats the fundamental aspect of voluntary liquidation, which is that the company must pay its debts.

The Liquidator is also expected to investigate the company's affairs, including fraudulent transactions and preferential payments. However, voluntary liquidation generally lacks the transparency and scrutiny that are typically associated with formal insolvency. The Liquidator is required to suspend the process of liquidation if he believes that it is being carried out to deceive or defraud creditors or if he believes the company will be unable to fully repay its debts from the proceeds of its liquidated assets. However, the company-appointed liquidator is likely to be beholden to the interests of his appointee and so partisanship cannot be ruled out.

The likelihood of **fraud or unjust treatment of creditors** increases further because throughout voluntary liquidation proceedings, up to the time a Liquidator submits a dissolution application, the NCLT has no regulatory or supervisory role.

Speed Breaker & Challenges in dissolution of corporate person

- Delay in passing dissolution order by Adjudicating Authorities U/s.59(8) of Code
- Often, the Bank policies plus compliances related to opening the liquidation bank account till closing it, is cumbersome, complex and undefined, mostly causes prolonged delays, many times, disturbs the process's statutory timeline(s) majorly, which leads to restlessness for the Liquidator to complete the process on time.

Solutions & Suggestions

- Considering the necessity of voluntary liquidation while at the same time protecting the rights of creditors, it is essential to be vigilant by introducing proper checks and balances and having regulatory measures providing for stringent oversight.
- Also, the claim verification process in cases of voluntary liquidation and involuntary liquidation must be distinct, considering the objectives of each type of liquidation. In voluntary liquidation, the verification process must be completely transparent, and the liquidator needs to cooperate and be held accountable (if required) to ensure a fair and equitable outcome for creditors.

CS PEER MEHBOOB
Assistant Director, ICSI IIP

LANDMARK SUPREME COURT JUDGMENTS ON THE INSOLVENCY AND BANKRUPTCY CODE: A SECTION-WISE READY RECKONER

Since its enactment in 2016, the Insolvency and Bankruptcy Code (IBC) has played a transformative role in the Indian financial landscape, providing a structured mechanism for resolving insolvency The Supreme Court of India has contributed significantly to shaping the IBC through landmark judgments, addressing ambiguity, upholding procedural fairness, and reinforcing the Code's objectives.

This article presents a comprehensive overview of the more than 100 landmark Supreme Court judgments since the year 2017 to 2024 that have shaped the IBC, organized section-wise in the form of Ready Reckoner for ease of reference.

S. No.	Date of Order	Section / Rules / Regulations	Citation	Held
Constitutional Validity and Objectives of the Code				
1.	January 25, 2019	Section 7, 8, 9, 10, 12A, 30 and Section 53 of the IBC	Swiss Ribbons Pvt. Ltd. & Anr. v/s. Union of India & Ors. [Writ Petition (Civil) No.99 of 2018 and other petitions]	Supreme Court upheld the constitutional validity of the Insolvency and Bankruptcy Code and also held classification between financial creditor and operating creditor is neither discriminatory nor arbitrary and nor violative of Article 14 of the Constitution of India.
2.	August 09, 2019	Explanation to Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016, Section 21 (6A) (b) and 25A of the Insolvency and Bankruptcy Code, 2016, Section 88 of Real Estate (Regulation and Development) Act, 2016.	Pioneer Urban Land and Infrastructure Limited & anr. v/s. Union of India and Ors.(Writ Petition (Civil) No. 43 of 2019 with ors.)	Supreme Court upheld constitutional validity of amendments made to IBC clarifying status of allottees/ homebuyers as financial creditors.
3.	May 21, 2021	Section 1(3) of the IBC, MCA Notification dated 21.05.2021	Lalit Kumar Jain v/s. Union of India & Ors. (Transferred Case (Civil) No. 245/2020)	The Hon'ble Supreme Court upheld the Notification dated 15th November 2019 passed by the Central Government, which allows creditors to initiate insolvency proceedings against personal guarantors, i.e., the bankers can pursue insolvency proceedings against promoters, guarantors, etc. of defaulter companies simultaneously or after the conclusion of the CIRP under IBC.
4.	November 09, 2023	Chapter III of Part III of the IBC comprising Section 94 to Section 120	Dilip B Jiwarika v/s. Union of India (Writ Petition No. 2021)	Supreme Court upheld the validity of Section 95 to Section 100 under Part III of the IBC, pertaining to the insolvency of individuals including personal guarantors.

Definitions				
5.	January 5, 2018	Section 5(6) of IBC	Shivam Water Treaters Pvt. Ltd. v/s Union of India Secretary to Govt. Ministry of Corporate Affairs & Ors. (SLP (C) No. 1740/2018)	A person to whom debt has been legally assigned or transferred to is also a financial creditor and is entitled to initiate the corporate insolvency resolution process under the IBC
6.	February 01, 2021	First proviso to Section 21(2), Section 5(6) and Section 5(24) of IBC	Phoenix Arc Private Limited v/s. Spade Financial Services Limited & Ors. (Civil Appeal No. 2842 of 2020)	Supreme Court disallows entities with non-genuine financial transactions to be classified as creditors and participate in insolvency proceedings.
7.	March 15, 2021	Section 5(13) and Section 60(5) of the IBC	**Alok Kaushik v/s. Mrs. Bhuvaneshwari Ramanathan and other (Civil Appeal No.4065 of 2021)**	The Adjudicating Authority is sufficiently empowered under Section 60(5)(c) of the IBC to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs.
8.	March 26, 2021	**Section 5(5A) of the IBC;** Section 5 and Section 18 of the Limitation Act, 1963	**Laxmi Pat Surana v/s. Union Bank of India & Anr. (Civil Appeal No. 2734 of 2020)**	An action under section 7 of the Code could be legitimately invoked against a corporate guarantor concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a "corporate person".
9.	February 04, 2022	Section 5(20) and Section 5(21) of the IBC	M/s. Consolidated Construction Consortium Limited v/s. M/s. Hitro Energy Solutions Private Limited	Debt arising out of advance payment made for availing goods or services would be understood as an Operational Debt.
10.	May 17, 2022	Section 5(7) and Section 5(8) of the IBC	New Okhla Industrial Development Authority v/s. Anand Sonbhadra (Civil Appeal 2222 of 2021)	New Okhla Industrial Development Authority (NOIDA) is an operational creditor and not a financial creditor.

11.	May 30, 2022	Section 19(22A) of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993; Section 5(7) and 5(8) of the IBC and Section 18 of the Limitation Act, 1963	Kotak Mahindra Bank Limited v/s. A Balakrishnan & Anr. (Civil Appeal No. 689 of 2021)	A recovery certificate issued under the Recovery of Debts and Bankruptcy Act, 1992 (RDB Act) would qualify as a "financial debt" under the Insolvency and Bankruptcy Code, 2016 (IBC).
12.	July 17, 2023	Section 5(21) and Section 238 of the IBC read with Sections 173 and 174 of the Electricity Act, 2003	Paschimanhal Vidyut Vitran Nigam Ltd. v/s. Raman Ispat Pvt. Ltd. & Ors. (Civil Appeal No.7976 of 2019)	Electricity dues constitute an operational debt under the Insolvency and Bankruptcy Code (IBC).
13.	April 25, 2024	Section 5(8), Section 5(11) and Section 5(6) of the IBC	Global Credit Capital Limited & Anr. v/s. Sach Marketing Private Limited & Anr. (Civil Appeal No. 1143 of 2022)	Security Deposit may constitute a Financial Debt in certain circumstances.
Section 7: Initiation of corporate insolvency resolution process by financial creditor				
14.	August 03, 2018	Section 7(3)(a) of the IBC	Sunrise 14 A/S Denmark v/s. Ravi Mahajan (Civil Appeal No. 21794-21795 of 2017)	Supreme Court upheld the validity of petition filed by an Advocate on behalf of the foreign creditor (not by party in person) under the Insolvency and Bankruptcy Code, 2016.
15.	January 19, 2021	Second Proviso to Section 7(1) of the IBC	Manish Kumar v/s. Union of India and Another (Writ Petition (C) No. 26 of 2020 and ors.)	Supreme Court validates minimum homebuyer threshold for initiating insolvency but allows proceedings to continue even if the number falls below 10% later
16.	December 14, 2021	Section 7 of the IBC	E S Krishnamurthy & Ors. v/s. M/s. Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No. 3325 of 2020)	Once an application is filed under Section 7 of IBC, the NCLT has only jurisdiction to admit the application or reject it. NCLT cannot compel the parties to settle the matter.
17.	July 12, 2022	Section 7(5)(a) of the IBC	Vidarbha Industries Power Limited v/s. Axis Bank Limited (Civil Appeal No.4633 of 2021)	National Company Law Tribunal ("NCLT") can reject an application even if the financial creditor fulfills the twin test of establishing "debt" and "default" on the part of the corporate debtor."

18.	September 22, 2022	Section 7 of the IBC	Maitreya Doshi v/s. Anand Rathi Global Finance Ltd. And Anr. (Civil Appeal No. 6613 of 2021)	CIRP can be initiated against a person who acted in dual capacity as a borrower and a pledgor.
19.	May 11, 2023	Section 7(5) of the IBC	M. Suresh Kumar Reddy v/s. Canara Bank & Ors. (Civil Appeal No. 7121 of 2022)	Once default is established, the NCLT has limited discretion in refusing admission under Section 7 of the I&B Code. Decision in Vidharbha Industries is an exception and not a rule.
Section 9: Application for initiation of corporate insolvency resolution process by operational creditor				
20.	19 Sep 2017	Section 9(5) of IBC	Surendra Trading Company v/s. Juggilal Kamlapat Jute Mills Company Limited and Others (Civil Appeal No. 8400 of 2017)	The condition of seven days' time limit provided under section 9(5) of IBC, 2016 and its proviso is only directly and not mandatory.
21.	21 Sep 2017	Section 8 and 9 of IBC	Mobilox Innovations Private Limited v/s Kirusa Software Private Limited (Civil Appeal No. 9405 of 2017)	Genuine disputes about debt, even if a demand notice has been issued, can halt the CIRP initiation
22.	December 15, 2017	Section 9(3(c) of the IBC	Macquarie Bank Ltd. v/s. Shilpi Cable Technologies Ltd. (Civil Appeal No. 15135 Of 2017 and ors.)	Lawyers as authorised representative of operational creditors can issue demand notice to corporate debtor on behalf of operational creditor. Also the provision contained in Section 9(3)(c) of the Code is not mandatory.
23.	August 14, 2018	Section 9(5)(ii)(d) of IBC and Section 34 of Arbitration and Conciliation Act, 1996:	K. Kishan v/s Vijay Nirman Company Pvt. Ltd. (Civil Appeal Nos. 21824 & 21825-2017)	Challenge to the Arbitral award constitutes a 'dispute' under section 8 and hence, bars the initiation of the corporate insolvency resolution process under section 9 of the Code.
24.	October 23, 2018	Section 9(5)(2)(d) of the IBC and Section 34 of Arbitration and Conciliation Act, 1996	Transmission Corporation of Andhra Pradesh Limited v/s. Equipment Conductors and Cables Limited (Civil Appeal No. 9597 of 2018)	Whenever there is existence of real dispute, the IBC provisions cannot be invoked.

25.	July 15, 2022	Section 8 & 9 of the IBC	M/s. S.S. Engineers v/s. Hindustan Petroleum Corporation Ltd. & Ors. (Civil Appeal No. 4583 of 2022)	National Company Law Tribunal ("NCLT") is not a Debt Recovery Forum.
26.	October 13, 2022	Section 8 and Section 9 of the IBC	Rajratan Babulal Agarwal v/s. Solartex India Pvt Ltd. (Civil Appeal No. 2199 of 2021)	Insolvency proceedings should not be used to enforce payment when a genuine dispute exists.
Section 12: Time limit for completion of insolvency resolution process				
27.	December 01, 2021	Section 12 of the IBC	Committee of Creditors of Amtek Auto Limited through Corporation Bank v/s. Dinkar T. Venkatsubramanian and others (Civil Appeal No. 6707 of 2019)	Resolution process has to be completed within the period stipulated under Section 12 of IBC.
28.	September 11, 2023	Section 12 of the IBC	M/s. RPS Infrastructure Ltd. v/s. Mukul Kumar & Anr. (Civil Appeal No. 5590 of 2021)	The mere fact that the resolution plan is yet to be approved by the adjudicating authority does not necessarily mean that the successful resolution applicant will be left to face unresolved claims, leading to a protracted and indefinite CIRP.
Section 12A: Withdrawal of applications admitted under section 7, 9 or 10				
29.	July 24, 2017	Article 142 of the Constitution of India; Rule 11 of NCLT Rules, 2016 and Section 12A of the IBC	Lokhandwala Kataria Construction v/s. Nisus Finance and Investment Managers LLP(Civil Appeal No. 9279 of 2017)	Once a bankruptcy petition is filed, it cannot be withdrawn without the leave of the Adjudicating Authority.
30.	December 14, 2018	Section 12A of the IBC read with Regulation 30A of the IBBI(CIRP) Regulations, 2016	Brilliant Alloys Private Limited v/s. Mr. S Rajagopal & Ors. (Petition for Special Leave to Appeal (C) Nos. 31557/2018	Regulation 30A of the CIRP Regulations must be read along with section 12A of the Code. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts of each case.

31.	September 13, 2021	Section 12A and Section 30 of the IBC	Ebix Singapore Private Limited v/s. Committee of Creditors of Educomp Solutions Limited (Civil Appeal No. 3224 of 2020)	A Successful Resolution Applicant cannot modify or withdraw resolution plan approved by the committee of creditors ("CoC").
32.	March 03, 2022	Article 142 of the Constitution of India and Section 12A of the IBC	Amit Katyal v/s. Meera Ahuja And others (Civil Appeal No. 3778 of 2020)	SC resorts to Article 142 of the Constitution to cut short IBC technicalities to benefit home-buyers.
33.	September 22, 2022	Section 12A of the IBC read with Rule 11 of the National Company Law Tribunal Rules, 2016	Ashok G Rajani v/s. Beacon Trusteeship Ltd. & Ors (Civil Appeal No. 4911 of 2021)	Withdrawing an admitted CIRP application prior to the constitution of the committee of creditors is not prohibited under IBC.
Section 14: Moratorium				
34.	October 23, 2017	Section 14 of the IBC	Alchemist Asset Reconstruction Company Ltd. v/s M/s. Hotel Gaudavan Pvt. Ltd. & Ors. (Civil Appeal No.10673 Of 2018)	Moratorium under section 14 of the IBC applies to all proceedings, including arbitration, to ensure a fair and efficient resolution of insolvency.
35.	August 14, 2018	Section 14 and Section 31 of the IBC	State Bank of India v/s. V Ramakrishnan & Anr. (Civil Appeal No. 3595 of 2018)	The period of moratorium under Section 14 of the IBC does not apply to the personal guarantors of a corporate debtor.
36.	March 01, 2021	Section 14(1) (a) and Section 238 of IBC Section 138 of the Negotiable Instrument Act, 1881	P. Mohanraj & Ors. v/s. M/s. Shah Brothers Ispat Pvt. Ltd (Civil Appeal No. 10355 of 2018)	When an order of moratorium is passed under the Insolvency and Bankruptcy Code (IBC), parallel proceedings under Section 138 of the Negotiable Instruments Act (NI Act) against the Corporate Debtor cannot be allowed to continue.
37.	March 28, 2022	Section 14 of the IBC read with Section 138 and Section 141 of the Negotiable Instruments Act, 1881	Narinder Garg & Others v/s. Kotak Mahindra Bank Ltd. And others (Civil Appeal No.	Bar under Section 14 of IBC applies only to corporate debtors; Directors being natural persons continue to be liable for cheque bounce.

38.	January 5, 2023	Section 14 of the IBC	Shekhar Resorts Ltd. v/s. Union of India (Civil No. 1669 of 2020)	Appellant cannot be punished for not doing something which was impossible for it to do.
39.	March 28, 2023	Section 14 and Section 12A of the IBC read with Regulation 30A of the IBBI(CIRP) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016	Abhishek Singh v/s. Huhtamaki PPL Ltd. & Anr. (Civil Appeal No. ____of 2023 Arising Out of SLP(Civil) No. 6452 Of 2021)	The moratorium under Section 14 of the Insolvency and Bankruptcy Code (IBC) does not prohibit settlement between creditors and debtors prior to the formation of the Committee of Creditors (CoC).
40.	March 15, 2023	Section 14 of the IBC read with Section 138 of the Negotiable Instruments Act, 1881	Ajay Kumar Radheshyam Goenka v/s. Tourism Finance Corporation of India Ltd. (Criminal Appeal No. 172 of 2023)	The moratorium under Section 14 of the Insolvency and Bankruptcy Code does not extend to criminal proceedings initiated against signatories/ directors under Section 138 of the Negotiable Instruments Act.
41.	January 17, 2024	Section 14 of the IBC	Ansal Crown Height Flat Buyers Association (Regd.) v/s. M/s. Ansal Crown Infrabuild Pvt. Ltd. & Ors. (Civil Appeal No. 4480-4481 of 2023)	Notwithstanding moratorium under IBC, the liability, if any, of the directors/officers will continue even though moratorium under section 14 of IBC is in operation against the company.
42.	December 6, 2023	Section 13 of the SARFAESI Act, 2002 and Section 14 of the IBC	Haldiram Incorporation Pvt. Ltd. v/s. Amit Hatcheries Pvt. Ltd. & Ors. (Civil Appeal No. 1733 of 2022)	The properties of a defaulting borrower sold in an auction sale could not be treated as liquidation assets if the sale was concluded before the declaration of a moratorium under the Insolvency and Bankruptcy Code 2016.
Section 24: Meeting of Committee of Creditors				
43.	January 31, 2019	Section 24(3) of the IBC read with Regulation 21(3)(iii) of the CIRP regulations.	Vijay Kumar Jain v/s. Standard Chartered Bank & Ors. (Civil Appeal 8430 of 2018)	Every participant in a CoC meeting (including suspended directors) is entitled to notice of the meeting containing an agenda along with copies of all documents to be discussed, including resolution plans.

Section 29A: Persons not eligible to be resolution applicant				
44.	October 04, 2018	Section 29A of the IBC	Arcelormittal India Private Limited v/s. Satish Kumar Gupta & Ors. (Civil Appeal No. 9402-9405 of 2018)	State of ineligibility as per Section 29A (c) of the IBC attached when the resolution plan is submitted by a resolution applicant and not prior to that, i.e., at the time of submitting expression of interest
45.	March 15, 2021	Proviso to Sub-section (1) of Regulation 2B of IBBI(Liquidation Process) Regulations, 2016; Section 29A of IBC and Section 230 of the Companies Act, 2013	Arun Kumar Jagatramka v/s. Jindal Steel and Power Ltd. & Anr. (Civil Appeal No. 9664 of 2019)	The disqualification under Section 29A of the IBC (prohibiting promoters from submitting resolution plans) also applies to schemes of arrangement under Section 230 of the Companies Act when the company is undergoing liquidation under the IBC's umbrella.
46.	January 18, 2022	Section 29A(h) of the IBC	Bank of Baroda & Anr. v/s. MBL Infrastructures Limited & Ors. (Civil Appeal No. 8411 of 2019)	A Defaulting Guarantor of a Corporate Debtor is not eligible to submit a resolution plan.
47.	November 29, 2023	Section 29A and Section 240A of the IBC	Hari Babu Thota v/s. None (Civil Appeal No. 4422/2023)	The eligibility of an MSME promoter to submit a resolution plan should be determined based on the date of the plan's submission, not the date of CIRP initiation.
Section 30 and Section 31: Submission and approval of Resolution Plan				
48.	January 22, 2020	Section 30 and Section 31 of the IBC read with Regulation 35 of IBBI(CIRP) Regulations, 2016	Maharashtra Seamless Limited v/s. Padmanabhan Venkatesh & Ors. (Civil Appeal No. 4242 of 2019)	The CoC has the final say in approving resolution plans based on their commercial judgment, and the liquidation value is not a minimum threshold that must be met for a plan to be approved.
49.	March 10, 2021	Section 30 and Section 31 of the IBC	Kalpraj Dharamshi & Anr. v/s Kotak Investment Advisors Ltd. & Anr. (Civil Appeal No. 2943-2944 of 2020)	NCLT/NCLAT Can't Interfere with Commercial Wisdom of CoC Except Within Limited Scope Under Sections 30 & 31 IBC.

50.	April 13, 2021	Section 31 and Section 238 of the IBC	Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v/s. Edelweiss Asset Reconstruction Company Limited Through the Director & Ors. (Civil Appeal No. 8129 of 2019)	Post-approval of the resolution plan, no creditor including any government or tax authority will have any claim against the corporate debtor.
51.	May 13, 2021	Section 6, Section 30(4), Section 36(2), Section 53 and Section 61(3) of the IBC	India Resurgence ARC Private Limited v/s. M/s. Amit Metaliks Limited & Anr. (Civil Appeal No. 1700 of 2021)	Secured Creditor cannot challenge the resolution plan for receiving higher amount in the resolution plan based on value of security interest.
52.	November 21, 2023	Section 30 and Section 31 of the IBC	Ramkrishna Forgings Limited v/s. Ravinder Loonkar, Resolution Professional of ACIL Limited & Anr.	NCLT should not interfere with the commercial decisions of the CoC, especially when there were no irregularities raised.
53.	February 12, 2024	Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016	Greater Noida Industrial Development Authority v/s. M/s. Prabhjit Singh & Anr. (Civil Appeal No. 7590-7591 of 2023)	Even if a claim submitted by a creditor against the CD is in a Form not as specified in the CIRP Regulations, 2016, the same has to be given due consideration by the IRP or the RP, as the case may be, if it is otherwise verifiable, either from the proof submitted by the creditor or from the records maintained by the CD.
54.	March 06, 2024	Section 31 of the IBC	Deccan Value Investors L.P. & Anr. v/s Dinkar Venkatasubramian & Anr. (Civil Appeal No. 2801 of 2020)	Once a resolution plan submitted by a successful resolution applicant ('SRA') is approved by the Committee of Creditors ('CoC'), the SRA cannot unilaterally withdraw it.
PUFE Transactions				
55.	February 26, 2020	Sections 43, 44, 45 and 66 of the IBC	Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v/s. Axis Bank Limited, etc. (Civil Appeal No. 8512-8527 of 2017)	Supreme Court allows insolvency resolution professional to challenge transactions by a company with its holding company if they benefit the holding company at the expense of creditors.

Section 53: Distribution of assets				
56.	November 15, 2018	Section 53 of IBC	Committee of Creditors of Essar Steel India Limited through Authorised Signatory v Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019 and Ors.]	Committee of Creditors has broad power to approve resolution plans, including extinguishing guarantors' subrogation rights, but due process must be followed when dealing with individual guarantees of promoters.
57.	April 19, 2022	Section 5(13)(c) and Section 53 of the IBC	Sunil Kumar Jain & others v/s. Sundaresh Bhatt and others. (Civil Appeal No. 5910 of 2019)	Wages/salaries of only those employees who worked during CIRP are to be included in CIRP costs.
58.	September 6, 2022	Section 48 of GVAT and Section 53 of the IBC	State Tax Officer v/s. Rainbow Papers Limited (Civil Appeal No. 1661 of 2020)	State is a secured creditor for tax purposes under GVAT Act; Section 53 of IBC doesn't override Section 48 of GVAT Act.
59.	May 02, 2023	Section 326 and Section 327 of the Companies Act, 2013 read with Section 53 of the IBC	Moser Baer Karamchari Union Thr. President Mahesh Chand Sharma v/s.Union of India & Ors. (Civil Appeal No. 421 of 2019)	Section 327(7) of the Companies Act, 2013, is not arbitrary and does not violate Articles 14 and 21 of the Constitution of India; and that the exclusion of Sections 326 and 327 was to ensure a uniform insolvency process.
60.	May 4, 2023	Section 3(31), Sections 52 and 53, Sections 30(2) and 31 of IBC	M/s. Vistra ITCL (INDIA) Ltd. & Ors. v/s. Mr. Dinkar Venkatasubramnian & Ors. (Civil Appeal No.3606 of 2020)	Secured Creditors Are Entitled to Retention of Sale Proceeds of Shares Pledged by Corporate Debtor. A resolution plan cannot negate any third-party security provided by the corporate debtor.
61.	August 18, 2023	Section 529A and Section 530 of the Companies Act 1956	Industrial Development Bank of India (Through Stressed Assets Stabilization Fund Constituted by the Government of India) v/s Superintendent of Central Excise and Customs and Ors. (Civil Appeal No. 2568 of 2013)	Secured creditors have priority over government dues, including those of the Central Excise and Customs Department, in cases of liquidation.

62.	October 30, 2023	Section 53 of the IBC	Principal Commissioner of Customs v/s. Rajendra Prasad Tak Etc. (Civil Appeal 6432-6433 of 2023)	The dues of the Central Board of Indirect Taxes & Customs, Department of Revenue will be paid as per the waterfall stipulated under Section 53 of the Insolvency and Bankruptcy Code, 2016.
63.	January 03, 2024	Section 30 and Section 53 of the IBC	DBS Bank Limited Singapore v/s. Ruchi Soya Industries Limited and Another (Civil Appeal No. 9133 of 2023**)**	Dissenting secured creditor cannot claim preference over another secured creditor at the stage of distribution on the ground of a dissent or assent, otherwise the distribution would be arbitrary and discriminative.
Section 61: Appeals and Appellate Authority				
64.	September 14, 2021	Section 61, Section 30 and Section 31 of IBC	National Spot Exchange Limited v/s. Mr. Anil Kohli, Resolution Professional for Dunar Foods Limited (Civil Appeal No. 6187 of 2019)	NCLAT has no power to condone the delay (of more than 30 + 15 days) in an appeal made to it beyond the prescribed limit provided under Section 61(2) of the IBC.
65.	October 22, 2021	Section 61(2) of the IBC	V Nagarajan v/s. SKS Ispat and Power Ltd. & Ors. (Civil Appeal No. 3327 of 2020)	The delay in filing appeal could not be condoned due to the strict timelines mandated by the IBC.
66.	December 4, 2023	Section 61(2) of the IBC, Rule 146, Rule 150 and Rule 151 of NCLAT Rules, 2016	Sanjay Pandurang Kalate v/s. Vistra ITCL (India) Limited and others (Civil Appeal No. 7467-7468 of 2017)	The limitation period for filing an appeal would commence only when the order being challenged gets uploaded on the NCLT's website if the contents of the same are not made available/ pronounced to the parties otherwise.
67.	September 27, 2024	Section 61(2) of the IBC, Rule 22 of NCLAT Rules, 2016 and Rule 50 of NCLT Rules, 2016	State Bank of India v/s. India Power Corporation Limited (Civil Appeal No. 10424 of 2024)	Free certified copies provided by the NCLT Registry can be used to file an appeal under the NCLAT Rules.

Section 238: Provisions of this Code to override other laws				
68.	31 Aug 2017	Section 238 of the IBC	Innoventive Industries Ltd. v/s ICICI Bank and Anr. (Civil Appeal Nos. 8337-8338 of 2017)	IBC Supremacy Established: The Supreme Court declared the Insolvency and Bankruptcy Code (IBC) of 2016 as the dominant law in insolvency matters, overriding the conflicting Maharashtra Debt Relief Act of 1976.
69.	August 10, 2018	Section 238 of the IBC	PR Commissioner of Income Tax v/s. Monnet Ispat and Energy Ltd. (Petition for Special Leave to Appeal (C) No. 6483 of 2018)	Insolvency and Bankruptcy Code, 2016 prevails over the Income Tax Act, 1961
70.	December 12, 2018	Section 434 of the Companies Act, 2013 read with the Companies (Transfer of Pending Proceedings) Rules, 2016 Section 238 of the IBC	Jaipur Metal & Electricals Employees Organisation v/s. Jaipur Metals & Electricals Ltd. (Civil Appeal No. 12023 Of 2018)	Company insolvency case shifted to focus on revival over winding-up, with employee rights a key consideration.
71.	January 22, 2019	Section 434 of the Companies Act, 2013 read with the Companies (Transfer of Pending Proceedings) Rules, 2016; Section 238 and Section 11(d) of the IBC	Forech India Limited v/s. Edelweiss Assets Reconstruction Co. Limited (Civil Appeal No.818 of 2018)	Section 7 application filed under the Code is an independent proceeding and must run its entire course, which has nothing to do with the pendency of winding up proceedings before the High Court.
72.	October 04, 2019	Section 238 of the IBC and Section 16G(1)(C) of the Tea Act, 1956	Duncan Industries Ltd. v/s. A J Agrochem (Civil Appeal No. 5120 of 2019)	IBC shall have an overriding effect over the Tea Act, 1953.
73.	November 18, 2019	Section 238 and Section 231 of the IBC	Mr. Anand Rao Korada, Resolution Professional v/s. M/s. Varsha Fabrics (P) Ltd. & Ors (Civil Appeal No. 8800-8801 of 2019)	Once proceedings under IBC had commenced and an order declaring moratorium was passed by NCLT, the High Court could not have proceeded with auction of assets of corporate debtor.

74.	March 08, 2021	Section 238, Section 14 and Section 20 of IBC read with Regulation 32 of IBBI(CIRP) Regulations, 2016	Gujarat Urja Vikas Nigam Limited v/s. Mr. Amit Gupta & Ors	Termination of critical supply contracts during CIRP are not permissible if they affect the insolvency resolution process.
75.	March 26, 2021	Section 8 of the Arbitration and Conciliation Act, 1996 and Section 238 of the IBC	Indus Biotech Private Limited v/s. Kotak India Venture (Offshore) Fund (earlier known as Kotak India Venture Limited) & Ors. (Arbitration Petition (Civil) No. 48 of 2019)	If an insolvency petition under Section 7 of the IBC has not yet been admitted, the arbitration process can proceed. Once the insolvency petition is admitted, the IBC proceedings take precedence over arbitration.
76.	May 18, 2022	Section 14(1)(c) and Section 238 of the IBC	Indian Overseas Bank v/s. M/s. RCM Infrastructure Ltd. and another (Civil Appeal No. 4750 of 2021)	The Bank cannot continue the proceedings under the SARFAESI Act once the CIRP was initiated, and the moratorium was ordered.
77.	December 14, 2022	Section 238 of the IBC and PMLA	Ashok Kumar Sarawagi v/s. Enforcement Directorate & Anr. (Special Leave Petition (C) No. 30092 of 2022)	Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 takes priority over other proceedings, including those under the PMLA
Section 238A: Limitation				
78.	October 11, 2018	Section 238A of the IBC read with Section 433 of the Companies Act, 2013	B.K Educational Services Pvt Ltd. v/s Parag Gupta and Associates (Civil Appeal No.23988 Of 2017)	Limitation Act is applicable to corporate insolvency resolution process since inception of the Insolvency and Bankruptcy Code.
79.	September 25, 2019	Section 7 and Section 238 of the Insolvency and Bankruptcy Code, 2016; Article 137 of the Limitation Act, 1963; Section 433(e), Section 434 and Section 439 of the Companies Act,	Jignesh Shah & Anr. v/s. Union of India & Anr. (Civil Appeal No. 455 of 2019)	The limitation laws strictly apply to insolvency proceedings, ensuring timely action by creditors.
80.	September 30, 2019	Section 238A of the IBC and Article 137 of Limitation Act, 1963	Sagar Sharma & Anr. v/s. Phoenix ARC Pvt. Ltd. & Anr. (Civil Appeal No.7673 of 2019)	For applications under Section 7 of the Code, Article 137 of the Limitation Act will apply.

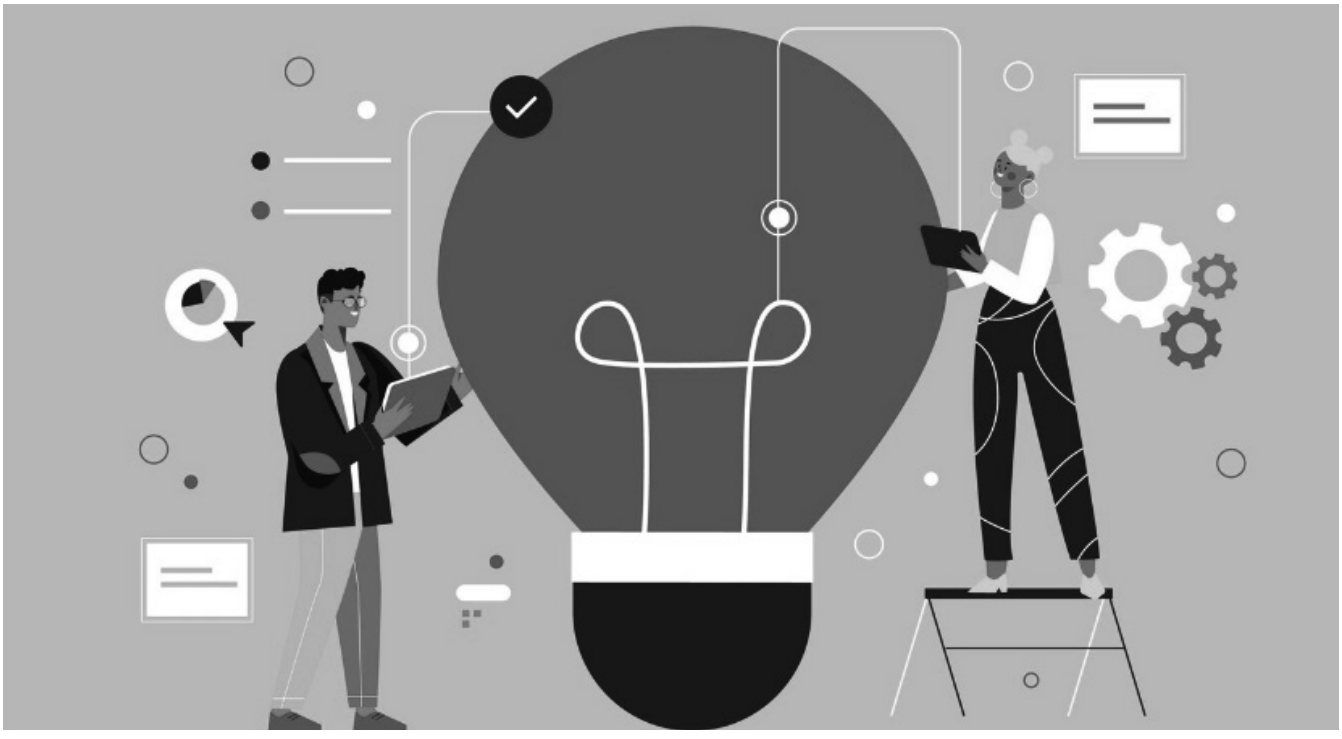
81.	August 14, 2020	Section 238A of the IBC	Babulal Vardharji Gurjar v/s. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No. 6347 of 2019)	Acknowledgment in balance sheets doesn't extend limitation period for initiating CIRP in India.
82.	August 5, 2021	Section 238A of the IBC, Section 5 and 18 of the Limitation Act, 1963; Section 25 of the Indian Contract Act, 1872	Kotak Mahindra Bank Limited v/s. Key Precision Parts Private Limited & Ors. (Civil Appeal No. 2176 of 2020)	NCLT/ NCLAT has the discretion to entertain an application/appeal after the prescribed period of limitation and that the condition precedent for exercise of such discretion is the existence of sufficient cause for not preferring the appeal.
83.	March 27, 2023	Section 14 and Section 238A of the IBC	Next Education India Private Limited v/s. K12 Techno Services Private Limited (Civil Appeal No. 1775 of 2021)	An application for initiation of Corporate Insolvency Resolution Process (CIRP) cannot be dismissed if some invoices are time-barred.
84.	May 01, 2023	Section 61(2) of the IBC	Sanket Kumar Agarwal & Anr. v/s. APG Logistics Private Limited (Civil Appeal No. 748 of 2022)	Period taken by the Court to provide a Certified Copy of the order is to be excluded while determining the period of Limitation.
85.	October 18, 2023	Section 13(2) of the SARFAESI; Section 18 of the Limitation Act and Section 238A of the IBC	Tottempudi Salalith v/s. State Bank of India & Ors. (Civil Appeal No. 2348 of 2021)	A DRT Recovery Certificate holder has, from the date of the Recovery Certificate, three years to initiate CIRP proceedings and twelve years to lodge a claim in CIRP.
IBC vis-a vis-Limitation Act, 1963				
86.	September 18, 2019	Article 62 and Article of 137 of the Limitation Act 1963	Gaurav Hargovindbhai Dave v/s. Asset Reconstruction Company (India) Ltd. and Anr. (Civil Appeal No. 4952 of 2019)	Article 137 of the Limitation Act applies to applications filed under Section 7 of the IBC.
87.	March 22, 2021	Section 5 and Section 18 of the Limitation Act, 1963	Sesh Nath Singh & Anr. v/s. Baidyabati Sheoraphulli Co-Operative Bank Ltd and Anr. (Civil Appeal No. 9198 of 2019)	Limitation Act, 1963 is applicable to the insolvency proceedings under IBC and Court/Tribunal can condone delay under section 5 limitation act even in the absence of a formal application.

88.	April 15, 2021	Section 5 and Section 18 of the Limitation Act, 1963	Asset Reconstruction Company (India) Limited v/s. Bishal Jaiswal & Anr. (Civil Appeal No. 323 of 2021)	Acknowledgement of debt in the books of the company extends the period of limitation.
89.	August 4, 2021	Section 5 and Section 18 of the Limitation Act, 1963; and Section 19(22A) of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993	Dena Bank (Now Bank of Baroda) v/s. C. Shivakumar Reddy and Anr. (Civil Appeal No. 1650 Of 2020)	A decree or a recovery certificate constitutes a fresh cause of action for IBC proceedings.
90.	September 30, 2021	Section 18 and Section 19 of the Limitation Act, 1963	Rajendra Narottamdas Sheth & Anr v/s. Chandra Prakash Jain & Anr. (Civil Appeal No. 4222 of 2020)	Application under section 7 of the IBC by the Power of Attorney holder of the financial creditor is maintainable.
91.	April 15, 2022	Section 18 of the Limitation Act, 1963 and Section 7 of the IBC	M/s. Invent Asset Securitization and Reconstruction Pvt Ltd. v/s. M/s. Girnar Fibres Ltd. (Civil Appeal No. 3033 of 2022)	Provisions of IBC are intended to support corporate debtor and not for money recovery proceedings.
92.	April 18, 2022	Section 18 of the Limitation Act, 1963 and Section 7 of the IBC	State Bank of India v/s. Krishidhan Seeds Private Limited (Civil Appeal No. 910 of 2021)	Unqualified acknowledgement of debt in the balance sheet extends the period of limitation for filing of CIRP.
93.	August 1, 2022	Section 18 of the Limitation Act	Asset Reconstruction Company (India) Limited v/s. Tulip Star Hotels Limited & Ors (Civil Appeal No.84-85 of 2020)	Entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment of liability in respect of debt payable to a financial creditor.
94.	January 4, 2023	Section 5 of the Limitation Act, 1963	Sabarmati Gas Ltd. v/s. Shah Alloys Ltd. (Civil Appeal No. 1669 of 2020)	The delay in initiating Corporate Insolvency Resolution Process (CIRP) is condonable on sufficient grounds.
95.	September 12, 2023	Section 5 and Section 18 of the Limitation Act, 1963	Axis Bank Limited v/s. Naren Sheth & Anr. (Civil Appeal No. 2085 of 2022)	Acknowledgment of debt in balance sheets and settlement proposals constituted a valid extension of the limitation period, allowing the insolvency petition to proceed even after the initial three-year period had passed.

Homebuyers in IBC process				
96.	August 9, 2018	Article 32 of the Constitution of India, Section 21 of IBC, Section 29A and Section 33(1) and Regulation 9A of CIRP Regulations.	Chitra Sharma v/s Union of India (WP No.744 of 2017 and other petitions)	Homebuyers are to be considered as financial creditors under the Insolvency and Bankruptcy Code (IBC).
97.	June 29, 2021	Article 21 of the Constitution of India; Section 12(1) of the Consumer protection act, 1986; and Section 7 and Section 53 of the IBC	Bikram Chatterji & Ors. v/s. Union of India & Ors. (Writ Petition (C) No. 940 of 2017)	On failure of the Amrapali Group to deliver promised homes to thousands of buyers despite receiving significant amounts of money from them, led to a legal battle where homebuyers sought justice and remedies for the financial and emotional distress they had endured.
98.	October 06, 2023	Section 5(8)(f) of the IBC	Vishal Chelani & Ors. v/s. Debashis Nanda (Civil Appeal No. 3806 of 2023)	Homebuyers/allottees in real estate projects, regardless of whether they pursued remedies under RERA, should be treated as financial creditors under the IBC.
Commercial Wisdom of Committee of Creditors				
99.	February 5, 2019	Section 62 and Section 30 of the IBC	K. Sashidhar v/s. Indian Overseas Bank & Ors. (Civil Appeal No. 10673 of 2018)	Commercial wisdom of Committee of Creditors reigns supreme.
100.	September 04, 2020	Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	The Karad Urban Cooperative Bank Ltd. v/s. Swwapnil Bhingardevay & Ors. (Civil Appeal No. 2955 of 2020)	Once the committee of creditors have approved a resolution plan, the Corporate Debtor cannot raise dispute/issue in that regard except in certain circumstances.
101.	June 03, 2022	Section 12A of the IBC read with Regulation 30A of the IBBI(CIRP) Regulations, 2016	Vallal RCK v/s. M/s Siva Industries and Holdings Limited and Others (Civil Appeal No. 1811-1812 of 2022)	NCLT/NCLAT should not sit in appeal over commercial wisdom of the CoC to allow withdrawal of CIRP.

Proceedings against corporate guarantors and personal guarantors				
102.	September 06, 2022	Section 5(5A) of the IBC and Section 128 of the Indian Contract Act, 1872	K Paramasivam v/s. The Karur Vysya Bank Ltd. and Anr. (Civil Appeal No. 9286 of 2019)	CIRP can be initiated against the Corporate Guarantor without proceeding against the principal borrower.
103.	July 23, 2024	Section 140 of the Contract Act, 1872 and Section 36(4)(d) of the IBC	BRS Ventures Investments Ltd. v/s. SREI Infrastructure Finance Ltd. & Anr. (Civil Appeal No. 4565 of 2021)	Part Payment by Guarantor cannot Shield Corporate Debtors from CIRP.
Liquidation Process				
104.	September 6, 2023	Section 35 and Section 42 of the IBC Para 11A of Schedule I of IBBI(Liquidation Process) regulations, 2016	Eva Agro Feeds Private Limited v/s Punjab National Bank and Anr. (Civil Appeal No. 7906 of 2021)	A liquidator cannot cancel the auction merely in the anticipation of fetching a higher price. Liquidator's discretion is not absolute and must align with the law's objectives. Mere expectations of higher bids cannot justify canceling a valid auction.
105.	January 03, 2024	Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016	M/s. Bharti Airtel Limited and Another v/s. Vijay Kumar v/s. Iyer and others (Civil Appeal No.3088-3089 of 2020)	Statutory set off or insolvency set off is not applicable to Corporate Insolvency Resolution Process under IBC.
Miscellaneous				
106.	April 02, 2019	RBI Circular dated 12th February, 2018 Section 35 AA and Section 35AB of Banking Regulations Act, 1949	Dharani Sugars and Chemicals Limited v/s. Union of India & Ors.(Transferred Case (Civil) No. 66 of 2018 in Transferred Petition (Civil) No. 1399 of 2018 with ors.	Supreme Court strikes down the RBI's circular on Resolution of stressed assets, mandating stressed assets to enter the IBC process, deeming it ultra vires as it exceeded RBI's powers and lacked due process.
107.	August 19, 2020	Regulation 3 of the IBBI(CIRP) Regulations 2016	State Bank of India v/s. Metenere Limited (Civil Appeal No. 2570 of 2020)	Supreme Court allows retired bank employee as insolvency resolution professional but prioritizes appointing someone with no potential bias.

108.	November 23, 2021	Section 60(5)(c) of the IBC	TATA Consultancy Services Limited v/s. Vishal Ghishulal Jain, Resolution Professional, SK Wheels Private Limited (Civil Appeal No. 3045 of 2020)	The residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor.
109.	November 26, 2021	Section 34 of the SARFAESI Act, 2002; Section 14(1) of the Contract Act, 1872; Order VI Rule 4, Civil Procedure Code, 1908	Electrosteel Castings Limited v/s. UV Asset Reconstruction Company Limited & Ors. (Civil Appeal No. 6669 of 2021)	Civil courts cannot entertain cases related to debt recovery under the SARFAESI Act unless there is clear and specific evidence of fraud, which must be pleaded with particularity.
110.	March 14, 2023	Section 18(f) and Section 25(2)(a) of the IBC	Victory Iron Works Ltd. v/s. Jitendra Lohia & Anr. (Civil Appeal No. 1743 & 1782 of 2021)	Development rights of the Corporate Debtor are indeed part of its intangible assets and must be included in the CIRP.
111.	April 19, 2024	Section 435 of Companies Act, 2013; Section 12A and Section 236(1) of the IBC	Insolvency and Bankruptcy Board of India v/s. Satyanarayan Bankatlal Malu & Ors. (Criminal Appeal No. 3851 of 2023)	The Special Courts with sessions judges can try offences under IBC.



CS Pratibha Khandelwal
Practicing Company Secretary & Insolvency Professional

RESILIENCE IN ACTION: THE SUCCESSFUL RESOLUTION OF MOUNT SHIVALIK INDUSTRIES LIMITED

INTRODUCTION:

Mount Shivalik Industries Limited (MSIL), a corporate debtor incorporated on January 19, 1993, was originally established to manufacture beer. With a brewery unit located in Behror, Alwar, Rajasthan, and an installed capacity of 3 lakh HI per annum, MSIL quickly gained recognition for its well-known brands such as Thunderbolt, PB 6K, Thunder 10K, and Golden Peacock. In addition to its brewing business, MSIL ventured into the hospitality sector with heritage restaurants in the royal tourist destinations of Jaipur and Jodhpur. One of these restaurants, located

at the Amer Fort in Jaipur, was operated under an agreement with the Rajasthan Tourism Development Corporation, catering to high-end international tourists, including guests of "Palace on Wheels."

However, around 2012, MSIL's business faced significant setbacks. A sudden shift in government taxation policies, coupled with the liquor ban in states like Bihar, caused a sharp decline in operations. As a result, MSIL was declared a "Sick Company" by the Board for Industrial and Financial Reconstruction (BIFR) in 2015, following the erosion of its net worth by accumulated losses. Unable to maintain financial discipline, MSIL's sole banker, Oriental Bank of Commerce, filed an application under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, to initiate Corporate Insolvency Resolution Process (CIRP). The application was admitted by the Hon'ble NCLT, New Delhi Bench on June 12, 2018, and the Interim Resolution Professional (IRP), Ms. Pratibha Khandelwal, was appointed, later confirmed as the Resolution Professional. The matter was subsequently transferred to the NCLT, Jaipur Bench after the establishment of its jurisdiction.

BACKGROUND OF THE CORPORATE DEBTOR:

Mount Shivalik Industries Limited	
Company type	Public
Industry	Beer Manufacturer
Founded	1993; 21 years ago
Headquarters	140th Mile Stone, N.H.-8, Vill-Gunti, Teh-Behror, Alwar, Rajasthan-
Key products	Thunderbolt, PB 6K, Thunder 10K, Golden Peacock
Authorised Capital	Rs. 10,00,00,000/-
Paid up capital	Rs.1,00,00,000/-
Insolvency Commencement Date	12.06.2018
Insolvency Completion Date	13.10.2021
Claim	Rs 17 cr was claim of FCs. Total claims were approx. 98 cr

Mount Shivalik Industries Limited (MSIL), a prominent player in the beer manufacturing sector, was incorporated on January 19, 1993. The company gained significant market presence with its brewery unit located in Behror, Alwar, Rajasthan, which boasted an impressive installed capacity of 3 lakh hectolitres (HI) per annum. Over the years, MSIL became synonymous with its flagship beer brands, including *Thunderbolt, PB 6K, Thunder 10 K*, and *Golden Peacock*, which enjoyed widespread popularity across India.

To diversify its portfolio, MSIL ventured into the hospitality industry by establishing heritage restaurants at iconic tourist destinations in Rajasthan, such as Jaipur and Jodhpur. One of its marquee projects was a prestigious restaurant situated within the historic Amer Fort, Jaipur, operated under an agreement with the Rajasthan

Tourism Development Corporation. This restaurant attracted elite international tourists, including those traveling on the luxury train Palace on Wheels.

COMMENCEMENT OF CIRP

The Oriental Bank of Commerce, a financial creditor of Mount Shivalik Industries Limited, filed a petition under Section 7 of the Code before this Adjudicating Authority NCLT, New Delhi Bench seeking initiation of CIRP against the said corporate debtor. This Adjudicating Authority vide its order dated 12.06.2018 admitted the said CP and declared moratorium. Further, Ms. Pratibha Khandelwal was appointed as the Interim Resolution Professional.

PUBLIC ANNOUNCEMENT

Public announcement in Form A was made on 15.06.2018. Pursuant to the public announcement, claims were received from 5 (five) financial creditors. After the verification and admission of the claims, the Committee of Creditors (CoC) was constituted consisting of 5 (five) financial creditors. The CoC in its 1st Meeting on 12.07.2018, unanimously resolved to continue Interim Resolution Professional as the Resolution Professional.

INFORMATION MEMORANDUM

CoC in its 2nd meeting dated 04.08.2018, the Resolution Professional informed that an undertaking is required for the members of the CoC to maintain confidentiality of the information contained in Information Memorandum. The CoC in the same meeting has discussed and decided the eligibility criteria for submission of resolution plan which is mentioned as follows:

(a) Net worth of at least Rs. 50 Crores

(b) Along with Expression of Interest, the prospective resolution applicant shall deposit Rs. 50 lakhs towards earnest money deposit in favour of corporate debtor.

EXPRESSION OF INTEREST

The Form G for the first time was published on 22.08.2018 and thereafter, CoC in its 4th meeting was informed that four prospective resolution applicants have submitted the Expression of Interest along with the earnest money of Rs. 50 lakhs. An undertaking under Section 29A was also submitted by the prospective resolution applicants.

As per order dated 05.10.2018, the CoC was reconstituted and the voting shares of the members of the CoC were revised.

In the 6th Meeting of the CoC which was held on 19.11.2018, out of four prospective resolution applicants, only two prospective resolution applicants namely Carlsberg India Private Limited and Som Distilleries Pvt. Ltd. submitted their resolution plans. The other two resolution applicants withdrawn from the process and their EMD was refunded. In the 8th Meeting of CoC, the resolution plans of resolution applicants were discussed in length and the resolution applicants were asked to submit the revised offer. Thereafter, CoC discussed the resolution plan of Som Distilleries Pvt. Ltd. but the negotiations with the resolution applicants were unsuccessful. Afterwards, CoC has decided to issue fresh Expression of Interest for invitation of submission of resolution plan in the same meeting.

A fresh Expression of Interests were issued on 01.01.2019 in Form G as per terms of Section 25 (2) (h) of the Code. Thereafter, only one EOI has been received by RP and Corrigendum was issued on 20.01.2019 extending the timelines for submission of EOI by 10 days. The copies of newspaper publication made in Business Standard (English) and Punjab Kesari (Hindi) of Form G.

In the 11th meeting of CoC, RP has informed to the members of CoC that four Expression of Interests have been received. In the meanwhile, vide order dated 28.02.2019 (Annexure A-19), this Adjudicating Authority has allowed the application for exclusion of certain period which was lost in litigation.

EXTENSION OF CIRP PERIOD

This Adjudicating Authority NCLT, Jaipur Bench extended the period of CIRP by 90 days vide order dated 29.11.2018.

SETTLEMENT OF CLAIMS

- The resolution applicant undertook to pay any outstanding Insolvency Resolution Process cost in priority to any other payment under the resolution plan and has made a provision of Rs.1.25 Crores in respect of the same.

- Dues of 150 unrelated employees of the corporate debtor were settled at 33% of the admitted claim.
- The claims of non-related operational creditors (Goods and Services) were settled at 10% of the admitted claims.
- The statutory dues of the corporate debtor are also settled at 10% of the admitted claims.
- The statutory dues which were not admitted were settled at 0.1% of the principal amount.
- The resolution applicant has submitted a performance guarantee of ₹2 Crores by way of fixed deposit receipt dated 11.06.2019 has been received by RP with lien marked to Oriental Bank of Commerce, New Delhi.

APPROVAL OF RESOLUTION PLAN BY TRIBUNAL

NCLT, Jaipur Bench vide its order dated 13th October, 2021 approved the Resolution Plan submitted by the "Kals Distilleries Pvt. Ltd."

RESOLUTION STRATEGY

The Resolution Professional adopted a multi-pronged strategy to attract potential investors and revive MSIL:

1. **Asset Valuation and Marketing**: A comprehensive valuation of MSIL's assets, including its brewery, heritage restaurants, and brand portfolio, was conducted. The brewery's strategic location and its established brands were highlighted as key selling points to attract prospective investors.
2. **Stakeholder Engagement**: The RP actively engaged with financial creditors, operational creditors, and other stakeholders to build consensus on a viable resolution plan. The creditors' support was crucial in ensuring the success of the CIRP.
3. **Operational Revival Plan**: A detailed plan to revive brewery operations was prepared, focusing on modernization, cost optimization, and expansion into new markets.
4. **Attracting Bidders**: The RP launched a transparent bidding process, inviting expressions of interest from strategic investors and financial institutions. Given MSIL's brand value and operational potential, the process attracted multiple bidders, including Multinationals.

SUCCESSFUL RESOLUTION

After several rounds of negotiations, a leading strategic investor with expertise in the beverage industry emerged as the successful resolution applicant. The approved resolution plan involved a significant capital infusion to modernize the brewery and expand its distribution network. The resolution plan also ensured a substantial recovery for the financial creditors, operational creditors, and other stakeholders, marking a successful turnaround for MSIL.

CHALLENGES AND HARDSHIPS IN THE PROCESS

At the time of this CIRP in 2018, IBC,2016 was in its infancy and the law was evolving. The process was new not only for all the stakeholders but also for all the agencies involved such as Insolvency Professionals, Adjudicating Authority, Local courts, High Courts, Government departments, Financial Institutions, Sectoral Regulators and the other Regulators like SEBI, Stock Exchanges (BSE/NSE), Depository Participants.

"With great power comes great responsibility" the famous saying seem to be doomed. All around the Resolution professional, there was a hostile environment. On papers it looked that RP is entrusted with great power and position but the powers were clinched. It was exactly like "inheritance of loss".

Corporate debtor was handed over to RP with no usable productive assets and loads of responsibilities. There were no funds even for essential services like Security, Insurance, electricity and water. The employees were suddenly put into the lurch, with little hope of the revival of Brewery.

The Corporate debtor had a Restaurant division that was in operation and it was to be managed as a going concern. The news of initiation of CIRP spread like a wild-fire amongst all the vendors. And before RP took reins, they were misled and misguided by outside forces. The vendors ranging from Sabji-wala to Accounting services, Web site managers, Tour operators, Transporters, Security agencies, Grocers, Decorators, Cooking Gas agency, employees threatened to disassociate themselves from the CD till the time their outstanding dues were cleared. The existing support system of the CD was on the verge of collapse and at the same time no one new was inclined to sail in the so called "sinking boat".

It was hard to make them understand that pre CIRP period dues cannot be paid now and claim has to be submitted for the same. With continuous communication and dialogue with all of them, slowly the process was streamlined by the RP.

Form G was published three times and owing to the strategic location of the Brewery, few of well- known Companies in the Liquor sector including multi nationals submitted their Resolution plans. But for the one or the other reason, no Resolution plan could see the light of the day.

Suddenly the savior in the name of "Kals Distilleries Private Limited" made a sort of "wild card entry", of course, with the due approval of Hon'ble NCLT and presented its Resolution Plan which was duly approved by COC.

But that was not the end of the road blocks. The road to success was blocked when the approval of Resolution plan remained stucked with NCLT due to pending appeals and later on disappointing addition was caused due to massive disruptions by COVID.

IN THE WORDS OF MS. KHANDELWAL

During the process, there were times, when everyone feared that the Corporate Debtor will be forced into Liquidation. With my endeavor to resolve the CD, we all made untiring efforts and used all the available tools in our kit like Extension, Exclusion and publishing Form G three times.

The insolvency profession is a demanding, 24/7 endeavor, requiring practitioners to embrace and overcome challenges posed by various stakeholders and regulators. Early on, I realized that the role of a Resolution Professional (RP) often feels like being a "punching bag" for frustrations and grievances. But I resolved to transform this perception and became a "comforting bag" for all stakeholders, providing them with reassurance and a sense of direction during turbulent times.

The cumulative efforts of my team cannot be understated. This collaborative synergy kept us moving forward despite a process that spanned nearly six years. The contentious matter of classifying security deposits as either financial or operational credit remained a crucial issue. The issue of treatment of Security Deposit as Financial Creditor ultimately reached attained finality on April 2024 by the Apex Court for the good of all.

This endless litigation, dragged the shut and open case for almost six years. But "**All is well that ends well".** Now its implementation is on the verge of the completion and we are in the process of filing Closure Report with Hon'ble NCLT, Jaipur Bench.

CONCLUSION

The successful resolution of Mount Shivalik Industries Limited stands as a testament to the effectiveness of the Insolvency and Bankruptcy Code in reviving distressed companies. The case highlights the critical role of an Insolvency Professional in navigating complex challenges, balancing the interests of diverse stakeholders, and steering a financially troubled company toward revival and growth.

Today, MSIL has regained its position in the market, with its flagship brands once again enjoying popularity. This success story highlights the importance of timely intervention, strategic planning, and collaborative efforts. It offers valuable insights for insolvency professionals and industry stakeholders, emphasizing the potential of the IBC framework to revitalize distressed assets and contribute to economic growth.

*****

Global Arena

AN INTRODUCTION TO ENGLISH INSOLVENCY PROCEDURES AND PRACTICAL ACTION TO TAKE

Introduction

Insolvency continues to plague construction supply chains across the UK, causing widespread financial distress and disruption not only for businesses and their employees, but also for those they work with and the projects they work on. Monitoring site activity and your trade partners for signs of distress has become an essential part of project management – as has the need for collaboration across the supply chain, and early action to support business partners and avoid project disruption.

Unfortunately, many in the industry will know from experience when a trade partner is struggling, but what about when insolvency does occur? What procedures are triggered and what, for example, is the difference between administration and liquidation?

In this briefing, we explain the most common, formal restructuring and insolvency processes in England: administration and liquidation (or "winding-up"). We also explain some insolvency issues of interest to those dealing with a counterparty in an insolvency process including: (i) communication between the liquidator/ administrator and creditors; (ii) how creditors claim against a counterparty in administration/liquidation; and (iii) what is the pari passu principle (which deals with the order in which creditors are paid). Finally, we provide some practical action steps for those managing construction projects when one party is in financial difficulty.

Insolvency: some basics

What is insolvency?

A business in financial difficulties becomes insolvent if: (i) it fails to meet a statutory demand; (ii) it is proven that its assets are less than its liabilities; and/or (iii) it is unable to pay its debts as they become due. In this article, we focus on the two key procedural options available to distressed businesses and their creditors for dealing with insolvency: administration and liquidation. The effects of these procedures and their outcomes are very different and it is therefore important to understand how they operate.

Administration

What is administration?

Administration is the main formal rescue procedure in England and Wales. There are three ways to appoint an administrator, namely: (i) the company, a creditor, court official or existing insolvency officeholder applies to the court for an administration order; (ii) a holder of a "qualifying floating charge" appoints out of court (via electronic filing to the court); or (iii) the company itself or its directors appoint out of court (again, electronically).

The court has discretion to order an administration.

The court always has a discretion as to whether to make an administration order. To do so, the court must be satisfied that "the company is, or is likely to become, unable to pay its debts" as defined in Section 123 of the Insolvency Act 1986 (the Act). The court must also be satisfied that the administration appointment is reasonably likely to achieve its purpose.

The three statutory objectives of administration

The statutory purposes of an administration are compulsory. Ranked in order of priority, they are: (i) to rescue the company as a going concern; (ii) to achieve a better result for creditors as a whole compared to a liquidation; and (iii) to realise property to distribute to the company's secured or preferential creditors. The priority ranking matters – only if the administrator "thinks" the first purpose is not reasonably practicable will the second purpose of the administration apply and so.

Key benefit: the moratorium

Once in administration, the company benefits from a "moratorium" immediately, either on the appointment of an administrator (whether in or out of court) or by way of interim moratorium when someone: (i) applies to court for an administration order (but before the court makes the actual order); or (ii) files a notice of intention to appoint an administrator out of court.

What is the moratorium: what effect does it have?

The administration moratorium gives the distressed company breathing space during which it is protected from its creditors in a number of crucial ways. Creditors cannot bring or continue legal proceedings against the company or its assets without the administrator's or court's permission. Shareholders cannot pass a winding-up resolution. Securities against the company cannot be enforced, nor can goods be repossessed. Winding-up petitions will either be dismissed or suspended. An administrator can also require a fixed charge receiver appointed by a secured creditor to leave office.

What does the administrator do?

An administrator will work out a plan for the company based on the statutory objectives – often to sell the business as a going concern if it cannot continue to trade – which is then put to the creditors for approval by a simple majority. If approved, the administrator will carry out the plan and then leave office. The administrator is not traditionally the one who pays out realisations to creditors (this tends to be a subsequent liquidator) but it can do so. The administrator is an officer of the court and acts as the company's agent. An administrator can allow directors to exercise such management roles as appropriate but will usually

take over control of the company. The administrator can also pay secured and preferential creditors and distribute to unsecured creditors with the court's permission.

Potentially ... on to liquidation

Within 12 months (or longer if extended), and after the administrator has either achieved the administration's objectives or decided they are no longer achievable, the administrator will move the company into liquidation.

Note – if you are a creditor of a distressed company …

You can end contracts but, if you breach a contract with the distressed company, it can still sue you. The moratorium often prevents you, the creditor, from enforcing your rights. If the company breaches or fails to perform its contractual obligations, you cannot sue.

Liquidation (Or "Winding-Up"):

What is the effect of a liquidation?

Commonly known as a "winding-up", a traditional liquidation usually ends a company's existence. A liquidation can last years and ends in the company's dissolution. A company in liquidation continues to exist – it does not end until the liquidator dissolves it.

What happens in liquidation?

The liquidator: (i) gathers in the company's assets; (ii) calculates its liabilities; (iii) unwinds any objectionable transactions according to insolvency laws; (iv) reports on the conduct of the relevant officers; (v) divides the assets among the creditors according to the set priority laid out in the Act; and (vi) finally dissolves the company.

What are the three types of liquidation?

A members' voluntary liquidation (MVL) is a solvent liquidation (i.e. where the company is able to pay its debts). A creditors' voluntary liquidation (CVL) is an insolvent liquidation – the company is unable to pay its debts within the meaning of Section 123 of the Act. It is started by the shareholders (not the creditors) who pass an extraordinary resolution to wind up the company and an ordinary resolution to appoint a liquidator. The directors must call a creditors' meeting within 14 days of the shareholders' meeting at which the creditors decide whether to approve the members' choice of the liquidator or substitute a liquidator of their own choice (hence the name "CVL"). In a compulsory liquidation, a creditor (usually) presents a petition to court to wind up the company. However, the company, its directors, the Secretary of State, a voluntary liquidator, an administrator or an administrative receiver may also petition. If satisfied the company is unable to pay its debts within the meaning of Section 123 of the Act, or it is just and equitable to do so, the court can make a compulsory winding-up order. **The Official Receiver acts as liquidator until the creditors' first meeting.**

What is the effect of a liquidation?

A liquidation effectively ends the company. The liquidator takes control and the directors' powers end. In addition: • the court stays (i.e. pauses) all actions against the company in a compulsory liquidation and may stay actions against the company in an MVL or a CVL;

- there are limits on re-use of the company name;
- no one may enforce rights on goods, land or debt;
- employment contracts impliedly end (except on voluntary liquidation);
- other contracts usually end expressly on their terms;
- a liquidator can disclaim (i.e. end) any onerous contracts; and
- secured creditors can (and should) realise their security and usually prove as unsecured creditors for any balance.

Communication between the Liquidator/ Administrator and Creditors

Notices to creditors (and filing a proof of debt in the insolvency process)

The liquidator/administrator must inform the known creditors of the company that the insolvency procedure has started. Creditors will be required to give official notice of their claims against the company (the timing for which will depend on the particular process) (see below for how creditors make claims). These notices (or "proofs of debt") decide a creditor's rights both to vote on certain aspects of the insolvency procedure and to be paid under the order of priority.

An administrator must prepare proposals for the conduct of the administration within eight weeks of appointment and send them to all creditors whose claim and address is known. The creditors vote on the proposals at a creditors' meeting and the value of each creditor's vote is generally in proportion to the value of their claim.

How creditors make claims in an administration/ liquidation

The procedure for a creditor to make a claim ("file a proof") is similar in administration and liquidation. Broadly speaking, any creditor wishing to take part in or be told of any later dividend should:

- notify the administrator/liquidator of their claim in writing; and
- specify the details of the documents proving the debt in the proof and may (but does not need to) enclose copies.

The administrator/liquidator may require additional evidence, where necessary. A creditor does not need to file a proof but, if it does not do so before the first creditor's meeting, the opportunity to vote and influence the meeting's outcome will be lost.

Communication between the Liquidator/ Administrator and Creditors

A proof can be filed later. If the company moves from administration to liquidation, proofs will be passed to the liquidator – a creditor who has filed a proof in the administration does not need to file a proof in the liquidation. If the creditor did not file a proof in any prior administration, it will need to file a proof in the liquidation. Creditors' rights If an administrator or liquidator rejects a proof in whole or in part, he/she must give reasons for the decision to the creditor. The creditor can then apply to the court to reverse or vary the decision.

What is the pari passu principle?

An administrator/liquidator should divide the net assets of an insolvent entity equally among each class of creditors in proportion to the value of their claims (the pari passu insolvency principle). This principle can override contractual terms providing otherwise. Mandatory and statutory insolvency set-off rules provide that an administrator/liquidator must take an account of mutual credits, mutual debts or other mutual dealings between the company and any creditor in the administration/ liquidation. The set-off rules are complex and the outcome will depend on the particular facts. For an assessment of the effect of these rules on you, and what is or may become payable, speak to one of the Key Contacts.

In what order of priority will creditors be paid?

The pari passu principle and mandatory insolvency set-off applies within classes of creditors. However, between classes of creditors, there is a defined order of payment known as the "waterfall".

Where an administrator/liquidator distributes the assets, payments will generally be made in the following order:

- those owed insolvency procedure expenses (including the insolvency officeholder's pay);
- holders of fixed charges; preferential creditors (including employees for certain benefits and wages);
- unsecured creditors up to a maximum of £800,000 (on prescribed assets only);
- floating charge holders;
- unsecured creditors; and, lastly
- shareholders.

Protecting Companies in Financial Distress (The Corporate Insolvency And Governance Act 2020)

What are the aims of the Corporate Insolvency and Governance Act 2020 (CIGA)?

CIGA is designed to:

- provide protection for companies in distress by safeguarding supply of goods and services to promote rescue; • avoid key suppliers holding the insolvent company to ransom and taking advantage of the company in its time of need (by terminating, threatening to terminate, charging inflated prices etc.); and
- keep in step with other countries, including the US, which have similar (but arguably more far-reaching/effective) rules on preservation of contracts.

In effect, any term in a contract that allows a supplier of goods or services to terminate on a company's entry into an insolvency process will be invalid. It does not matter whether that provision operates automatically or requires an election to be made or notice given by the other party. Further, a supplier cannot demand payment of outstanding pre-insolvency charges as a condition of continuing supply.

What does CIGA provide? (the "ipso facto" provisions)

CIGA, which came into force on 26 June 2020, introduced permanent changes to UK insolvency law (in what are known as the "ipso facto" provisions) which, in theory at least, apply to all contracts for the supply of goods and services.

In essence, CIGA provides that, when a company enters into certain formal insolvency processes (including administration and liquidation), a supplier to that company is not entitled to cease supplying goods or services under their contract simply because of the insolvency or restructuring process unless:

- the supply company or the supply contract/ arrangement falls within certain exceptions as set out in CIGA. Broadly speaking, these exceptions include financial contracts (for example, finance leases and guarantees) and those cases where the insolvent company or supplier is a form of financial institution/ business (such as a bank/insurer/e-money business etc.);
- the defaulting company or its insolvency office holder agrees to the termination; or
- the court finds (on the supplier's application) that continuation of the contract would cause the supplier "hardship".

Other insolvency processes

Other processes (e.g. Scheme of Arrangement or Company Voluntary Arrangement) As well as any consensual and informal/contractual restructuring and compromise arrangements that a company may agree with its creditors, a company can propose a scheme of arrangement or Company Voluntary Arrangements by appointing an insolvency professional to oversee a

compromise with its creditors. These are still relatively formal processes (governed by statute or sanctioned by the court) but are usually started by the company itself. A company may also take advantage of a new standalone moratorium procedure if it meets certain criteria.

Practical action for those managing construction projects when one party is insolvent

Monitor

Collate as much information as you can from and about the distressed business on the issues they face.

Manage

Review your contracts: check the terms closely. What can you do now? Can you terminate? (Is it prudent to do so? Termination could lead to a number of consequences. Seek legal advice before acting.)

Plan for the worst. If the distressed business fails, do you have a replacement lined up? How quickly can you get them signed up? Have you assessed the costs?

Mitigate

Continue to monitor the solvency of the current business but take prompt action if an insolvency appointment is made. The earlier you take action, the better the chances of avoiding disruption, keeping costs to a minimum and the project programme on track.

Legal World

Case Title: State Bank of India & Ors v/s. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr.
Case no.: Civil Appeal Nos.5023-5024 of 2024
Decision Date: November 7, 2024
Court/Tribunal: Supreme Court of India

"SRA cannot be permitted to modify the plan once approved by Adjudicating Authorities."

Brief Facts:

Jet was admitted into CIRP on June 20, 2019. Subsequently, the Plan submitted by the SRA was duly approved by the CoC, and thereafter the NCLT on June 22, 2021. The SRA submitted a performance bank guarantee of INR 150 crore ("PBG") as required under Regulation 36B(4A) of the CIRP Regulations. The Plan contained several conditions precedent ("CPs") for its implementation to revive Jet's business, which were to be fulfilled by the 'Effective Date' (i.e., date falling on the 90th day from the Plan approval date (extendable by another 180 days)). Further, as per the terms of the Plan, the first tranche payment of Rs 350 crore was to be made within 180 days, post the Effective Date. Only part of the CPs were achieved by the SRA, and it argued that the rest could only be done in a phase-wise manner. However, the Plan contained no provision for the SRA to declare satisfaction or waiver of the CPs. Despite this, the NCLT agreed with the SRA's submissions and held that the relevant CPs were achieved.

During the appeal proceedings before the NCLAT, the lenders had offered, by way of an affidavit ("Lenders' Affidavit") that if the SRA inter alia infused the first tranche payment by August 31, 2023, then they would withdraw their appeals. However, despite multiple extensions of this date granted by the NCLT, the NCLAT[7] and the Supreme Court, the SRA failed to deposit the entire amount in cash by the prescribed deadline (it deposited Rs 200 crore in cash) and sought to adjust the PBG against part

of its payment obligations. The NCLAT allowed such adjustment. This was assailed by the lenders before the Supreme Court, which culminated in the SC Judgment.

Decision:

The Supreme Court allowed the lenders' appeal and inter alia held as follows:

The SC held that the NCLAT had committed an error in allowing the PBG adjustment, as the same was contrary to its directions given on January 18, 2024, and also it didn't align with the provisions of the Plan, read with the terms of the RFRP as well as Regulation 36B(4A) of the CIRP Regulations. As per Regulation 36B(4A) (which was introduced to ensure security in case of failure of plan implementation), a performance security submitted by a resolution applicant (of such nature, value, duration and source, as may be specified in the RFRP) shall stand forfeited if the resolution applicant fails to implement the plan or contributes to its failure. The SC held that the PBG had to be kept alive until the complete implementation of the Plan, as per Regulation 36B(4A).

The SC Judgment rejected SRA's contention that the condition in the Lenders' Affidavit (which stipulated that the first tranche payment of Rs 350 crore had to be made in cash) was different from the Plan, as the terms/ conditions in the Lenders' Affidavit could not have modified the Plan. It referred to the principles laid down in its judgment in the Ebix case, as per which there is no scope for any modifications to a resolution plan (either by the NCLT, CoC or the SRA) in both cases, i.e., (A) post submission of such plan to the NCLT, after approval by the CoC, and (B) once it is approved by the NCLT under Section 31(1) of the Code.

The Supreme Court held that, considering that time bound resolution is an objective of the Code, obligations of an SRA under an approved resolution plan cannot be endlessly postponed/ extended, including under the garb of ongoing litigation. It was noted that in the instant case, the SRA cannot use pending litigation as an excuse to shy away from its obligations under the Plan, which are absolute in nature, and it shows a mala fide intention on its part to not fulfill its obligations. Implementation of the Plan in a time bound manner is imperative to avoid value erosion. The court also held that the CoC is duty-bound to act in good faith and co-operate in the implementation of an approved resolution plan. In this context, the Court has also held that while the NCLT and NCLAT has powers to grant extension of time limits, such powers cannot be exercised mechanically, without application of mind and without weighing the consequences of such extension.

The Supreme Court held that, per Section 33(3) of the Code, consequences of non-implementation of the Plan by the SRA must necessarily be liquidation of the corporate debtor. It was noted that while liquidation under the Code is a matter of last resort, time being a crucial facet of the scheme under the Code, a delayed resolution must not come at the cost of efficiency. Further, any delay in arriving at the decision of putting the company in liquidation may cause further detriment to the company and hamper the realisations that can be made through liquidation. Considering that in the instant case, more than five years have passed and implementation of the Plan still seems to be a dim light at the far end of a long tunnel and therefore, in such scenarios, "timely liquidation is indeed preferred over an endless resolution process".

Basis the above, the Supreme Court held that the SRA has failed to implement the Plan despite numerous opportunities. Accordingly, the Court used its plenary powers under Article 142 of the Constitution of India to order Jet into liquidation under the Code. The Court, while being cognizant of its judgment in the Glas Trust case (where it emphasised the need for exercising caution while invoking its inherent powers to deviate from the statutorily prescribed timelines and procedures especially in the context of the Code), held that the existence of exceptional circumstances in this case warrants the exercise of the plenary powers to ensure that at least liquidation remains as a "viable" resort for the company and its creditors.

While ordering liquidation, the SC also permitted lenders to encash the PBG, and stated that the rest of the funds infused by the SRA also stood forfeited.

Case Title: State Bank of India & Ors v/s. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr.
Case no.: Civil Appeal Nos.5023-5024 of 2024
Decision Date: November 7, 2024
Court/Tribunal: Supreme Court of India

"SRA cannot be permitted to modify the plan once approved by Adjudicating Authorities."

Brief Facts:

Jet was admitted into CIRP on June 20, 2019. Subsequently, the Plan submitted by the SRA was duly approved by the CoC, and thereafter the NCLT on June 22, 2021. The SRA submitted a performance bank guarantee of INR 150 crore ("PBG") as required under Regulation 36B(4A) of the CIRP Regulations. The Plan contained several conditions precedent ("CPs") for its implementation to revive Jet's business, which were to be fulfilled by the 'Effective Date' (i.e., date falling on the 90th day from the Plan approval date (extendable by another 180 days)). Further, as per the terms of the Plan, the first tranche payment of Rs 350 crore was to be made within 180 days, post the Effective Date. Only part of the CPs were achieved by the SRA, and it argued that the rest could only be done in a phase-wise manner. However, the Plan contained no provision for the SRA to declare satisfaction or waiver of the CPs. Despite this, the NCLT agreed with the SRA's submissions and held that the relevant CPs were achieved.

During the appeal proceedings before the NCLAT, the lenders had offered, by way of an affidavit ("Lenders' Affidavit") that if the SRA inter alia infused the first tranche payment by August 31, 2023, then they would withdraw their appeals. However, despite multiple extensions of this date granted by the NCLT, the NCLAT[7] and the Supreme Court, the SRA failed to deposit the entire amount in cash by the prescribed deadline (it deposited Rs 200 crore in cash) and sought to adjust the PBG against part of its payment obligations. The NCLAT allowed such adjustment. This was assailed by the lenders before the Supreme Court, which culminated in the SC Judgment.

Decision:

The Supreme Court allowed the lenders' appeal and inter alia held as follows:

The SC held that the NCLAT had committed an error in allowing the PBG adjustment, as the same was contrary to its directions given on January 18, 2024, and also it didn't align with the provisions of the Plan, read with the terms of the RFRP as well as Regulation 36B(4A) of the CIRP Regulations. As per Regulation 36B(4A) (which was introduced to ensure security in case of failure of plan implementation), a performance security submitted by a resolution applicant (of such nature, value, duration and source, as may be specified in the RFRP) shall stand forfeited if the resolution applicant fails to implement the plan or contributes to its failure. The SC held that the PBG had to be kept alive until the complete implementation of the Plan, as per Regulation 36B(4A).

The SC Judgment rejected SRA's contention that the condition in the Lenders' Affidavit (which stipulated that the first tranche payment of Rs 350 crore had to be made in cash) was different from the Plan, as the terms/ conditions in the Lenders' Affidavit could not have modified the Plan. It referred to the principles laid down in its judgment in the Ebix case, as per which there is no scope for any modifications to a resolution plan (either by the NCLT, CoC or the SRA) in both cases, i.e., (A) post submission of such plan to the NCLT, after approval by the CoC, and (B) once it is approved by the NCLT under Section 31(1) of the Code.

The Supreme Court held that, considering that time bound resolution is an objective of the Code, obligations of an SRA under an approved resolution plan cannot be endlessly postponed/ extended, including under the garb of ongoing litigation. It was noted that in the instant case, the SRA cannot use pending litigation as an excuse to shy away from its obligations under the Plan, which are absolute in nature, and it shows a mala fide intention on its part to not fulfill its obligations. Implementation of the Plan in a time bound manner is imperative to avoid value erosion. The court also held that the CoC is duty-bound to act in good faith and co-operate in the implementation of an approved resolution plan. In this context, the Court has also held that while the NCLT and NCLAT has powers to grant extension of time

limits, such powers cannot be exercised mechanically, without application of mind and without weighing the consequences of such extension.

The Supreme Court held that, per Section 33(3) of the Code, consequences of non-implementation of the Plan by the SRA must necessarily be liquidation of the corporate debtor. It was noted that while liquidation under the Code is a matter of last resort, time being a crucial facet of the scheme under the Code, a delayed resolution must not come at the cost of efficiency. Further, any delay in arriving at the decision of putting the company in liquidation may cause further detriment to the company and hamper the realisations that can be made through liquidation. Considering that in the instant case, more than five years have passed and implementation of the Plan still seems to be a dim light at the far end of a long tunnel and therefore, in such scenarios, "timely liquidation is indeed preferred over an endless resolution process".

Basis the above, the Supreme Court held that the SRA has failed to implement the Plan despite numerous opportunities. Accordingly, the Court used its plenary powers under Article 142 of the Constitution of India to order Jet into liquidation under the Code. The Court, while being cognizant of its judgment in the Glas Trust case (where it emphasised the need for exercising caution while invoking its inherent powers to deviate from the statutorily prescribed timelines and procedures especially in the context of the Code), held that the existence of exceptional circumstances in this case warrants the exercise of the plenary powers to ensure that at least liquidation remains as a "viable" resort for the company and its creditors.

While ordering liquidation, the SC also permitted lenders to encash the PBG, and stated that the rest of the funds infused by the SRA also stood forfeited.

Case Title: China Development Bank. vs. Doha Bank Q.P.S.C. & Ors.
Case no.: Civil Appeal No. 7298 of 2022 and Ors.
Decision Date: December 20, 2024
Court/Tribunal: Supreme Court of India

"No Requirement U/S 5(8) IBC That There Can Be A Debt Only When There Is A Default"

Brief Facts

Doha Bank was lender and secured creditor of Reliance Infratel Ltd (RITL). CIRP was initiated against RITL.

Deed of Hypothecation (DOH) was executed between the Appellants and each of R Com entities (Reliance Communications Infrastructure Ltd (RCIL). Reliance Communication Ltd (RCL), Reliance Telecom Ltd. (RTL) and Reliance Infratel Ltd (RITL) whereby a charge was created by RCom entities over their property for securing repayment of the facilities advanced by Appellants. RCom entities agreed to provide their assets as security and further undertook to pay any shortfall of debts owed by each of the RCom entities. All the RCom entities pooled their resources to provide security for the facilities availed by any of the entities ensuring that each entity was individually liable to pay the debt of all the entities. In terms of DOH, if there was any default by any entity, all the R Com entities were liable to make good the shortfall in recovery of the amounts after realization of hypothecated assets.

Appellants filed their claims in the category of Financial Creditors, which were admitted. Appellants were made part of CoC. Doha Bank challenged before NCLT treatment of Appellants as Financial Creditors as they were not direct lenders but only deed of hypothecation has been executed by them.

During pendency of the Application, Resolution Plan was approved without determining the application of Doha Bank. Resolution Plan was challenged before the NCLAT wherein the NCLAT directed NCLT for determination of Application of Doha Bank. NCLT held them as Financial Creditors. NCLAT reversed the order of the NCLT and held that they are not Financial Creditors as only object of DOH was to create a charge on property of the Appellants and they cannot be treated as Financial Creditors.

The Appellants filed appeal before the Supreme Court.

Decision:

The Supreme Court observed that Appellants had vested authority in Security Trustee by executing Master Security Trustee Agreement (MSTA) to

execute hypothecation deed with Appellants. Under the MSTA, Appellants were original lenders, who were also treated as secured lenders. R. Com entities are shown as chargors. The Chargors executed Deed of Hypothecation in favour of Secured Trustee.

The issue before the Supreme Court was whether Corporate Debtor is a guarantor who has guaranteed the repayment of loan amount by the borrowers of the appellant.

Appellants had advanced credit facility to other R Com entities (R Com and RTL) but no credit facility has been advanced to the RTIL (Corporate Debtor).

The Supreme Court observed that the Appellants claimed their case of being Financial Creditor under Section 5 (8) (i) IBC which provides that the amount of any liability in respect of any guarantee of the items referred to in clauses (a) to (h) becomes financial debt. It was contended that when Section 5 (8) (i) is applicable, it is not necessary that the Financial Creditor tenders any amount to the Corporate Debtor. It was contended that the amount of liability covered by clause (i) is in respect of money borrowed by the RCom. Entities (excluding Corporate Debtor) against payment of interest under facility agreements. There is no dispute that facilities were granted by the appellants to RCom entities. The amount of any liability in respect of any of the guarantees for money borrowed against the payment of interest is a financial debt under Section 5 (8) of IBC.

The Supreme Court observed that the name of the document is not a decisive factor. Only because the title of the document contains the word hypothecation, it cannot be concluded that the guarantee is not a part of this document. The Security Trustee has been appointed to act as trustee for the benefit of secured parties which included Secured Lenders. The Secured Lenders have authorized and directed the Security Trustee to execute and deliver security documents to which the Security Trustee is to be a party and to accept the security, all related deeds and documents as may be required to be submitted by the Obligors for the benefit of secured parties. It was duty of the Security Trustee to enforce the security in accordance with the provisions of the agreement and to receive and apply all money in accordance with the security documents. Therefore, the Secured Lenders have authorized the Security Trustee to accept the security on their behalf.

The Supreme Court noted that under deed of hypothecation all four RCom entities, including Corporate Debtor, hypothecated assets by way of first ranking ***pari passu*** charge to Security Trustee, who was in trust and for the benefit of the secured parties for the purpose of securing due discharge of the Obligor's obligations in connection with secured facilities. The Security Trustee acted on behalf of the appellants by accepting the security of hypothecation. Therefore, the DOH is a document on behalf of the appellants. The effect of DOH is that for the discharge of liabilities of the R Com entities, all four R Com entities hypothecated their properties for securing repayment of the facilities extended by the appellants to RCom and RTL.

Deed of Hypothecation provides that in the event of default committed by the borrowers (in the case of the appellants, the borrowers are R Com and RTL), the Security Trustee is entitled to take charge and/or possession of seize, recover, receive and remove the hypothecated goods and/or sell by public auction or private contract, dispatch or consign for realization or otherwise despose of or deal with any part of the hypothecated property. The security of hypothecation can be enforced by the Security Trustee on behalf of the appellants. The DOH further provided that each of the Chargors agree to accept the Security Trustee's account of sales and realization as sufficient proof of the amount realized and relative expenses and to pay on demand by the Security Trustee and/or receiver any shortfall or deficiency thereby shown. Under the DOH, even the Corporate Debtor hypothecated its goods. If after the sale of hypothecated assets, there is any shortfall in discharge of the liabilities of R Com or RTL, the Corporate Debtor is under an obligation to pay the shortfall or deficiency. It is indicated that RITL (Corporate Debtor), who is not the borrower of the appellants, agreed to discharge the liability of the third parties (R Com and RTL) to the appellants in the case of the default of R Com and RTL, which amounts to a guarantee provided by the Corporate Debtor to the appellants in terms of Section 126 of the Contract Act.

The Supreme Court observed that the definition of "default" becomes relevant only while invoking the provisions of Section 7 (1) of the IBC when the CIRP is sought to be initiated by the Financial Creditor. For submitting claim by a Financial Creditor, there is no requirement of actual default.

The Supreme Court observed that no creditor can recover any dues from the Corporate Debtor during moratorium, but still a creditor can filed its claim.

The Supreme Court set aside the judgment of NCLAT and affirmed the judgment of NCLT.

Case Title: NCC Ltd. Versus M/s. Golden Jubilee Hotels Pvt Ltd.
Case no.: Comp. App. (AT) (Ins.) No. 426 of 2020 & I.A. No. 1702, 2198, 2199 of 2023
Decision Date: December 11, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"Differential treatment inter-se the same class of creditors is permissible."

Brief Facts:

There were six appeals arising out of common Impugned Order dated 07.02.2020 under 61(3) of the Insolvency & Bankruptcy Code, 2016 (in short 'Code') passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad (in short 'Adjudicating Authority').

There are four Operational Creditors i.e., NCC in Company Appeal (AT) (Ins.) No. 426 of 2020; Consolidated Engineering company in Company Appeal (AT) (Ins.) No. 430 of 2020; Infinity Interior Private Limited in Company Appeal (AT) (Ins.) No. 432 of 2020; and Ahuja Furniture in Company Appeal (AT) (Ins.) No. 710 of 2020. All these four appeals have been filed by Operational Creditors who have supplied different services to the Corporate Debtor.

The appeals in this case challenged the approved Resolution Plan of Golden Jubilee Hotels Pvt. Ltd., which gave preferential treatment to some creditors labeled as "Special Operational Creditors," while others in the same category received nothing.

Following the initiation of the Corporate Insolvency Resolution Process (CIRP) for Golden Jubilee Hotels Pvt. Ltd. (the Corporate Debtor), various operational creditors submitted claims to the Resolution Professional (RP). These claims were either partially admitted or entirely excluded. The approved resolution plan, proposed by the Successful Resolution Applicant (SRA), established a distinct category for two operational creditors—Telangana State Tourism Corporation Limited (formerly known as Youth Advancement Tourism and Culture Department) (YATCL) and Shilparamam Arts, Crafts & Cultural Society (Society) — labelling them as "Special Operational Creditors". Under this plan, these two entities were set to receive full payment of their claims, while other operational creditors received nothing due to the Corporate Debtor's nil liquidation value.

Decision:

The Tribunal dismissed the appeals, upheld the Resolution Plan, and affirmed the CoC's commercial wisdom. It also suggested that the Insolvency and Bankruptcy Board of India (IBBI) explore mechanisms to ensure fairer treatment for Operational Creditors in future cases. Hon'ble NCLAT held that:

(i) No word like "Special Operational Creditor" has been defined under Section 3 or 5 of the Code or anywhere else or even in the regulations.

(ii) The role of the Adjudicating Authority is to ensure that the Resolution Plan complies with the requirements of the Code especially under Section 30(2) of the Code.

(iii) CoC has no role in deciding the position of the creditor either as financial or Operational Creditor and such decision in true sense cannot be treated as commercial wisdom.

(iv) While the Code does not categorize any operational creditors as "special," it does recognize different classes of operational creditors based on their claims. For instance, operational debts can include dues related to the supply of goods and services, employment-related obligations, and statutory dues payable to government authorities. However, all operational creditors are treated under the same legal framework without special distinctions within their category.

(v) The legislative intent is clear that MSMEs creditors have no special rights over other creditors.

(vi) NCLT had no jurisdiction to impose such conditions with regard to amounts as may be recoverable by the corporate debtor in future. Any amount receivable by the corporate debtor, being an asset of the company, would continue to remain with the Corporate Debtor upon implementation of the resolution plan.

Case Title: Mr. Suresh Kumar & Anr. Versus Central Bank of India
Case no.: Company Appeal (AT) (Insolvency) No.1006, 1007 & 1008 of 2024
Decision Date: November 27, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"Mere execution of a guarantee does not qualify a guarantor as a financial creditor under the IBC. The guarantor must discharge their liability by paying the debt to the creditor"

Brief Facts:

Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s. Ram Hari Auto Private Ltd., commenced on an Application filed by an Operational Creditor vide Order dated 14.02.2020. Interim Resolution Professional (IRP) constituted the CoC of only Unsecured Financial Creditors and held first CoC Meeting on 16.03.2020. Central Bank of India filed its claim of ₹12,15,30,369/- as Secured Creditors on 09.03.2020. On 19.03.2020, IRP informed Central Bank of India about admission of its claim and its eligibility to become Member of the CoC. Resolution Professional (RP) vide email dated 08.06.2020, sent a Report on the reconstitution of the CoC by adding two more Unsecured Financial Creditors who had given Personal Guarantee to the Applicant Bank to secure the loan taken by the Corporate Debtor, namely Suresh Kumar and Rajesh Kumar, who are Appellant in these Appeals. Adjudicating Authority held that Appellant having not paid anything to the Creditor, they cannot be Member of the CoC. Adjudicating Authority directed reconstitution of the CoC, aggrieved by which Order, the Appellants herein have filed the Appeal.

Decision:

The NCLAT noted that the we are of the view that Personal Guarantors who have not made any payment in discharge of their Guarantee given to the Central Bank of India cannot be accepted as Financial Creditor of the Corporate Debtor, nor any voting share can be allocated to them in the CIRP of the Corporate Debtor.

The Appeal was dismissed by the NCLAT.

Case Title: Mr. Vinay Rai (Personal Guarantor) Versus Technology Development Board and Anr.
Case no.: Company Appeal (AT) (Insolvency) No.1891 of 2024
Decision Date: November 8, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"The scheme of Section 98 of IBC, does not require that a particular ground has to be proved by debtor or creditor seeking replacement of Resolution Professional (RP)."

Brief Facts:

The Appellant through Mr. Prabhat Ranjan Singh herein filed an application under Section 94 (1) of the IBC for insolvency resolution process of the Appellant. The NCLT issued notice to IBBI and after obtaining confirmation from the IBBI, the Adjudicating Authority appointed Prabhat Ranjan Singh as RP and by order dated 06.12.2023, directed the RP to submit a Report in terms of Section 99 of IBC. A Report was submitted by the RP on 14.02.2024.

The Adjudicating Authority while passing order on application under Section 98 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") has partly allowed application – IA No.1904 of 2024 filed by the Financial Creditor for replacement of Resolution Professional ("RP") – Mr. Prabhat Ranjan Singh. Prayer (B) made in the application was rejected. The Appellant aggrieved by the said order came up in this Appeal.

Decision:

The National Company Law Appellate Tribunal (NCLAT) dismissed the appeal filed by the Personal Guarantor, Mr. Vinay Rai. The Tribunal upheld the order of the National Company Law Tribunal (NCLT),

New Delhi, which had allowed the Financial Creditor's application under Section 98 of the Insolvency and Bankruptcy Code, 2016 (IBC), for replacing the Resolution Professional.

Hon'ble NCLAT held that Section 98(1) does not contain or enumerate grounds, on which replacement can be asked for. The fact that application was filed by the Appellant through RP under Section 94, does not give any indefensible right to the Appellant to claim that said RP cannot be replaced. Under the scheme of the IBC, replacement of RP is at a different stage, which comes subsequent to appointment of RP under Section 97. Hence, the fact that application was filed by the Appellant through RP is immaterial for the purpose of Section 98(1).

Case Title: Chandrakant Khemka versus Santanu Bhattachrjee
Case Title: **Case no**.: Company Appeal (AT) (Insolvency) No.1064 of 2023
Decision Date: November 12, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"The scheme of Section 98 of IBC, does not require that a particular ground has to be proved by debtor or creditor seeking replacement of Resolution Professional (RP)."

Brief Facts:

The primary dispute centered around the corporate office property (referred to as "White House") in possession of the Corporate Debtor (CD), Nandini Impex Private Limited. The property was leased to the CD under leave and license agreements, which were terminated pre-CIRP. During the CIRP, creditors sought possession of the property through applications before the NCLT, which directed the Resolution Professional (RP) to hand over the property. This decision was challenged on grounds that it violated the moratorium under Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016 (IBC).

Decision:

The NCLAT observed that Section 14(1)(d) creates an absolute prohibition on the recovery of any property by an owner or lessor if such property is occupied by or in possession of the CD during the moratorium. The provision ensures that third parties cannot disrupt the CD's possession of leased or licensed assets while the CIRP is ongoing.

The Tribunal emphasized the mandatory nature of Section 14(1)(d), binding both the Adjudicating Authority (NCLT) and the RP. The provision is designed to protect the CD's operational stability and prevent any piecemeal recovery actions by lessors or owners during CIRP.

The NCLAT scrutinized the minutes of the 3rd, 5th, and 6th CoC meetings. It found that while the CoC had discussed the possibility of vacating the property, no conclusive resolution authorizing the handover of the premises was passed. Instead, the RP had independently conveyed to the NCLT that the property was not required for CIRP purposes.

The Tribunal clarified that decisions to relinquish possession of lease assets must be explicitly approved by the CoC, given its commercial wisdom. Without such approval, the RP's unilateral decision to hand over possession was procedurally flawed.

The Tribunal referred to the earlier NCLAT judgment in Sangita Fiscal Services Pvt. Ltd. v. Duncan Industries, where the CoC's decision to release a vacant property (not being actively used by the CD) was upheld. In that case: The property was not necessary for the CD's ongoing operations. No moratorium concerns under Section 14(1)(d) were raised. The decision to vacate was explicitly made in the CoC's commercial wisdom.

The NCLAT indicated that an RP, acting with explicit CoC approval, could potentially move an application before the Adjudicating Authority to relinquish possession of leased property if it is deemed unnecessary for CIRP purposes. However: The RP must provide robust justification for such a decision, ensuring it aligns with the CD's interests and resolution objectives. The CoC must pass a clear resolution authorizing the handover, reflecting its commercial wisdom. The Adjudicating Authority must consider the applicability of Section 14(1)(d) and evaluate whether releasing possession would contravene the moratorium.

The NCLAT held that the NCLT erred in allowing recovery applications filed by the property owners/ lessors without examining the moratorium provisions under Section 14(1)(d).

The RP's decision to relinquish possession, without formal CoC approval, was deemed procedurally unsound.

The Tribunal remanded the matter to the NCLT, directing it to re-examine the applications in light of Section 14(1)(d), the CoC's role, and the procedural lapses.

The NCLAT clarified that applications for releasing possession of lease assets during CIRP must originate from the RP, supported by the CoC's commercial wisdom, and be justified as necessary for achieving the resolution objectives.

Case Title: Mehul Patel (Member of Suspended Board of Anupam Port Cranes Corporation Ltd. Versus Nandish S. Vin & Anr.
Case no.: Company Appeal (AT) (Insolvency) No.2191 of 2024
Decision Date: December 23, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"Application U/S 12A Of IBC Can Be Withdrawn By Resolution Professional Before It Is Heard Or Allowed."

Brief Facts:

The appeal arose from a Section 9 application filed by an operational creditor, which was admitted, followed by a settlement between the parties and the filing of a Section 12A withdrawal application. The Resolution Professional informed the Adjudicating Authority that Mitsubishi Heavy Industries Ltd. (MHIL), a financial creditor, had filed claims that were admitted, and the cheque issued to the operational creditor had been encashed. Consequently, the RP filed a purshish to withdraw the Section 12A application, citing the need to reconstitute the CoC due to MHIL's inclusion. The Adjudicating Authority allowed the withdrawal of the Section 12A application. The appellant contended that the RP lacked jurisdiction to withdraw the Section 12A application, arguing that the procedure prescribed under Section 12A and Regulation 30A of the IBC had not been followed. It was also argued that the RP acted beyond their authority, as the withdrawal was contrary to the Supreme Court's ruling in the **GLAS Trust Company LLC v. BYJU Raveendran & Ors (2024)** case. The appellant further submitted that the inclusion of MHIL in the CoC, with a 92.35% voting share, invalidated the earlier CoC decision permitting withdrawal, as the inclusion required the CoC to be reconstituted.

Decision:

The NCLAT New Delhi bench has held that a Resolution Professional (RP) is authorized to withdraw a CIRP withdrawal application under Section 12A of the Insolvency and Bankruptcy Code (IBC) before the application is heard and allowed.

The Tribunal rejected the appellant's arguments, holding that the RP has the authority under Regulation 30A to file a withdrawal application, as the insolvency process becomes an **in rem** proceeding upon admission. The Tribunal observed that the RP's actions were consistent with the statutory framework and judicial precedents, including the Supreme Court's interpretation of Section 12A. It was noted that Regulation 12(3) ensures that decisions taken by the CoC before the inclusion of a new creditor remain valid, and the validity of the earlier decision was not challenged in this case.

The Tribunal concluded that the withdrawal of the Section 12A application was necessitated by the subsequent admission of MHIL's claim and the requirement to reconstitute the CoC. The RP acted within their jurisdiction in filing the purshish, and the withdrawal was permitted in accordance with law. The appeal was dismissed, affirming the RP's authority and adherence to procedural requirements under the IBC.

Case Title: State Bank of India & Ors. Versus Jyoti Structures Ltd & Ors.
Case no.: Company Appeal (AT) (Insolvency) No.1962 & 1963 of 2024 & I.A. No. 7303, 7304 of 2024
Decision Date: December 9, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"Once a Resolution Plan is approved by the CoC, it becomes binding on all stakeholders, and post-approval reassessment by lenders is not permissible."

Brief Facts:

The appeals were filed by State Bank of India and other financial creditors against an order of the National Company Law Tribunal (NCLT), Mumbai, directing the release of NFB facilities to the Corporate Debtor without further evaluation of its financial viability. The primary issue in this case revolved around the refusal of lenders to release Non-Fund Based (NFB) facilities—such as Bank Guarantees (BGs) and Letters of Credit (LCs)—that were part of the Resolution Plan approved by the Committee of Creditors (CoC). The Successful Resolution Applicant (SRA) contended that the refusal hindered the effective implementation of the Resolution Plan.

The lenders argued that the release of NFB facilities was subject to compliance with regulatory norms, including the Reserve Bank of India's (RBI) circulars aimed at fraud prevention. Given the delay in implementation, lenders contended that the corporate debtor's (CD) financial health and repayment capacity needed to be reassessed before extending NFB facilities. The lenders relied on the Supreme Court's decision in Venkatraman Krishnamurty & Anr. vs. Lodha Crown Buildmart Pvt. Ltd., which held that courts cannot alter or rewrite contractual obligations.

The SRA argued that the CoC had explicitly approved the roll-over of NFB facilities, making it legally binding on all stakeholders, including the lenders.The non-issuance of BGs and LCs would render the CD incapable of executing contracts, thereby affecting its ability to generate revenue and meet repayment obligations under the Resolution Plan. The SRA highlighted that the CD had already infused ₹170 crores and secured key contracts, demonstrating financial stability. Further, there was no history of default in existing BGs or LCs, addressing concerns about potential misuse.

Decision:

The NCLAT emphasized that once a Resolution Plan is approved by the CoC, it becomes binding on all stakeholders, and post-approval reassessment by lenders is not permissible. The Tribunal held that denying BGs and LCs would cripple the CD's ability to perform contracts and generate revenue, defeating the purpose of the Resolution Plan. While directing lenders to evaluate individual projects before issuing BGs, the NCLAT clarified that lenders retained the right to monitor the CD's financial performance post-issuance and take corrective measures if necessary. The NCLAT cited ***State Bank of India vs. MBL Infrastructure Ltd.***, reaffirming that an approved Resolution Plan must be implemented as agreed. The Supreme Court's dismissal of an appeal against a similar ruling further supported this position.

The NCLAT dismissed the appeals filed by the lenders, holding that the NCLT's directions struck a fair balance between the interests of the lenders and the CD, ensuring both compliance and business continuity.

Case Title: Fintech Restructuring LLP, Through Mr. Niraj Kumar Versus M/s. Fairdeal Multifilament Private Limited and Anr.
Case no.: Company Appeal (AT) (Insolvency) No.1823 of 2024
Decision Date: December 3, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"NCLAT Upholds CoC's Commercial Wisdom, Validates E-Voting, and Expunges Adverse Remarks Against RP."

Brief Facts:

The case revolved around allegations of irregularities in the voting process and the evaluation of resolution plans by the erstwhile Resolution Professional (RP). The NCLT raised concerns regarding the RP's conduct, leading to an order for reinitiating the Corporate Insolvency Resolution Process (CIRP). The NCLT directed a restart of the CIRP from the Form-G issuance stage due to alleged procedural lapses. The process was extended by 90 days to rectify the perceived irregularities. The RP was replaced on the grounds of alleged non-compliance with CIRP regulations. NCLT held that repeated modifications violated **Regulation 39(1A)**, which mandates strict adherence to timelines. Alleged violations of **Regulation 25(3)**, as some Committee of Creditors (CoC) members participated in voting without attending meetings.

The appellants argued that Regulation 39(1A) does not prohibit the CoC from seeking improved offers. The RP defended the revisions, asserting that they were undertaken per the CoC's commercial wisdom rather than arbitrary decisions.

However, the NCLAT clarified the legal position by expunging adverse remarks against the RP while allowing the CIRP to proceed under the newly appointed RP.

Decision:

The NCLAT observed that The RP completed all required steps, including Form-G publication, Information Memorandum (IM) preparation, and necessary filings. The concerns raised by the NCLT only surfaced at the resolution plan evaluation stage, casting doubt on the necessity of adverse observations. The Tribunal reaffirmed that plan modifications fall within the CoC's domain, citing Vistra ITCL v. Torrent Investments. Regulation 39(1A) allows seeking better resolution plans, thus invalidating the NCLT's objections. The NCLAT found TATA Steels Ltd. v. Liberty House inapplicable, as the amended Regulation 25(5)(b) clearly permits e-voting by absent CoC members. The CoC adhered to Regulation 39(3)(B), which prioritizes majority approval over strict reliance on evaluation matrices.

The Tribunal upheld the resolution plan by Parth Poly Coat Yarn Pvt. Ltd., which secured 84.52% CoC approval, as a valid exercise of commercial wisdom. The NCLAT expunged the adverse remarks against the erstwhile RP, restoring professional credibility. However, it allowed the CIRP to proceed under the new RP, ensuring continuity in the insolvency resolution process.

Case Title: Yogeshkumar Jashwantilal Thakkar and Anr. Versus George Samuel, Resolution Professional of Jason Dekor Private Limited and Anr.
Case no.: Company Appeal (AT) (Insolvency) No.1417 of 2024
Decision Date: December 5, 2024
Court/Tribunal: National Company Law Appellate Tribunal, Principal Bench, New Delhi

"NCLAT Upholds CoC's Commercial Wisdom, Validates E-Voting, and Expunges Adverse Remarks Against RP."

Brief Facts:

The case revolved around allegations of irregularities in the voting process and the evaluation of resolution plans by the erstwhile Resolution Professional (RP). The NCLT raised concerns regarding the RP's conduct, leading to an order for reinitiating the Corporate Insolvency Resolution Process (CIRP). The NCLT directed a restart of the CIRP from the Form-G issuance stage due to alleged procedural lapses. The process was extended by 90 days to rectify the perceived irregularities. The RP was replaced on the grounds of alleged non-compliance with CIRP regulations. NCLT held that repeated modifications violated **Regulation 39(1A)**, which mandates strict adherence to timelines. Alleged violations of **Regulation 25(3)**, as some Committee of Creditors (CoC) members participated in voting without attending meetings.

The appellants argued that Regulation 39(1A) does not prohibit the CoC from seeking improved offers. The RP defended the revisions, asserting that they were undertaken per the CoC's commercial wisdom rather than arbitrary decisions.

However, the NCLAT clarified the legal position by expunging adverse remarks against the RP while allowing the CIRP to proceed under the newly appointed RP.

Decision:

The NCLAT observed that The RP completed all required steps, including Form-G publication, Information Memorandum (IM) preparation, and necessary filings. The concerns raised by the NCLT only surfaced at the resolution plan evaluation stage, casting doubt on the necessity of adverse observations. The Tribunal reaffirmed that plan modifications fall within the CoC's domain, citing Vistra ITCL v. Torrent Investments. Regulation 39(1A) allows seeking better resolution plans, thus invalidating the NCLT's objections. The NCLAT found TATA Steels Ltd. v. Liberty House inapplicable, as the amended Regulation 25(5)(b) clearly permits e-voting by absent CoC members. The CoC adhered to Regulation 39(3)(B), which prioritizes majority approval over strict reliance on evaluation matrices.

The Tribunal upheld the resolution plan by Parth Poly Coat Yarn Pvt. Ltd., which secured 84.52% CoC approval, as a valid exercise of commercial wisdom. The NCLAT expunged the adverse remarks against the erstwhile RP, restoring professional credibility. However, it allowed the CIRP to proceed under the new RP, ensuring continuity in the insolvency resolution process.

IBC UPDATE

09.10.2024: Extension of time for filing Forms to monitor voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder

Vide Circular No. IBBI/LIQ/77/2024 dated 09.10.2024, the IBBI extended the last date of submission of forms relating to voluntary liquidation till 30.11.2024. Earlier, the liquidators were directed to file forms relating to the voluntary liquidation latest by 30.09.2024.

09.10.2024: Extension of time for filing Forms to monitor liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder

Vide Circular No. IBBI/LIQ/77/2024 dated 09.10.2024, the IBBI extended the last date of submission of forms relating to liquidation till 30.11.2024. Earlier, the liquidators were directed to file forms relating to the liquidation latest by 30.09.2024.

29.10.2024: Centralized Electronic Listing and Auction Platform for the Sale of Assets under Liquidation Process

Vide Circular No. IBBI/LIQ/78/2024 dated 29.10.2024, IBBI directed IPs to:

- list the details of all the unsold assets in respect of the ongoing liquidation processes on the eBKray platform; and
- list all the assets within 7 days of submission of the asset memorandum to the Adjudicating Authority in respect of liquidation processes commencing on or after this circular; and
- use the eBKray auction platform for the sale of assets on or after this circular in respect of all ongoing cases.

It was informed by IBBI that it has collaborated with the Indian Banks' Association (IBA) to

facilitate the auction of assets through the eBKray platform which is presently owned and managed by PSB Alliance Private Limited (a consortium of 12 public sector banks). eBKray has been conducting auctions for assets mortgaged to public sector banks under the SARFAESI Act for the past five years.

Accordingly, PSB Alliance has developed a module within the eBKray platform to facilitate the listing and auction of assets under IBC.

eBKray a single listing platform to host all assets being sold in liquidation cases. This platform will require liquidators to list all assets of the CD as mentioned in the Asset Memorandum, including comprehensive details such as the status of the attachment or lien, geographical coordinates, and the likely date of auction. For GCS, the entire CD would be listed on this platform.

The IPs can access the platform using their login details on the IBBI platform. The platform may be accessed by the prospective buyers at https://ebkray.in and FAQs and guide to use the platform are placed at https://ibbi.gov.in/en/home/psb-alliance

04.11.2024: Discussion Paper on Mediation by the operational creditors (OCs) before approaching Adjudicating Authority (AA) for filing Section 9 application

IBBI vide its discussion paper dated 04.11.2024 proposed to have that an option of mediation can be exercised by the operational creditors before filing insolvency applications under Section 9 of the IBC. The operational creditor can undergo mediation with the aid of mediator, as provided under the Mediation Act, 2023 In case of failure of mediation settlement, the mediator will prepare a non settlement report which shall be annexed with the application for initiation of CIRP before the AA. The proposal aims to reduce the burden on the AA and thereby expediting admissions.

07.11.2024: Discussion Paper on issues related to Real Estate

IBBI vide its discussion paper outlines the proposals focusing on real estate resolutions under IBC, inlcluding:

1. Proposed Inclusion of Land Authorities in Committee of Creditors (CoC) Meetings
2. Handling Cancelled Land Allotments in Real Estate Insolvency Cases
3. Empower CoC to Facilitate Participation of Associations of Allottees as Resolution Applicants
4. Clarification about inclusion of Interest in Homebuyers' Claims in CIRP
5. Representation of large numbers of creditors through facilitators
6. Proposal to disseminate Committee of Creditors (CoC) minutes of the meeting to all creditors in class of real estate projects
7. Streamlining Possession Handover in Real Estate Projects

19.11.2024: Discussion Paper on amendments to Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

The IBBI's discussion paper proposes various amendments to the liquidation process under the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. Part A proposes changes in the liquidation regulations in relation to (a) Review of the auction Process (b) ensuring transparency in compromise or arrangement schemes by mandating liquidator for applying closure of the liquidation process to the Adjudicating Authority and (c) improving

the management of unclaimed proceeds in the Corporate Liquidation account by (i) dispensing with the requirements of the Public Account of India and (ii) utilizing interest income for stakeholder awareness campaigns. Part B proposes changes in the voluntary liquidation regulations in relation to (a) uncalled capital or unpaid capital contribution and (b) improving the management of unclaimed proceeds in the Corporate Voluntary Liquidation account by (i) dispensing with the requirements of the Public Account of India, (ii) utilizing interest income for stakeholder awareness campaigns, and (iii) facilitating the claim withdrawal process

19.11.2024: Discussion Paper on Review of Grievance Redressal and Enforcement Framework and Rationalisation of Timelines Regarding Authorisation for Assignment

To enhance clarity in the conduct of insolvency processes, foster a more conducive redressal and enforcement ecosystem for stakeholders and improve operational efficiency in AFA processing, the IBBI vide its discussion paper sought to review/clarify the following areas: -

(a) Association of Whole-time member in the Disciplinary Committee (DC) with Investigation or Inspection

(b) Timeline for filing of grievance or complaint to the IBBI

(c) Rationalisation of timelines regarding application and processing of AFA by the IPAs

IBBI has proposed that:

- to add an explanation to the definition of DC under the I & I Regulations to clarify that "associated" shall mean involvement in the conduct of investigation or inspection or consideration of the investigation or inspection report or issuance of show cause notice.
- to extend the time limit for filing grievances or complaints to 30 days from the closure of the process by an order of the Adjudicating Authority, Appellate Authority or a Court.

In the interest of operational efficiency and greater flexibility to the IPs and IPAs, it is proposed to relax the following timelines:

(a) Submission of application for renewal of AFA to IPA [Clause 12A(3)]: The timeline is proposed to be relaxed from existing 45 days before the date of expiry of previous AFA to 90 days before the data of expiry of previous AFA.

(b) Approval or Rejection of AFA Application (Issuance or Renewal) by the IPA [Clause 12A(5)]: The timeline is proposed to be relaxed from existing 15 days from date of receipt of application to 45 days from date of receipt of application.

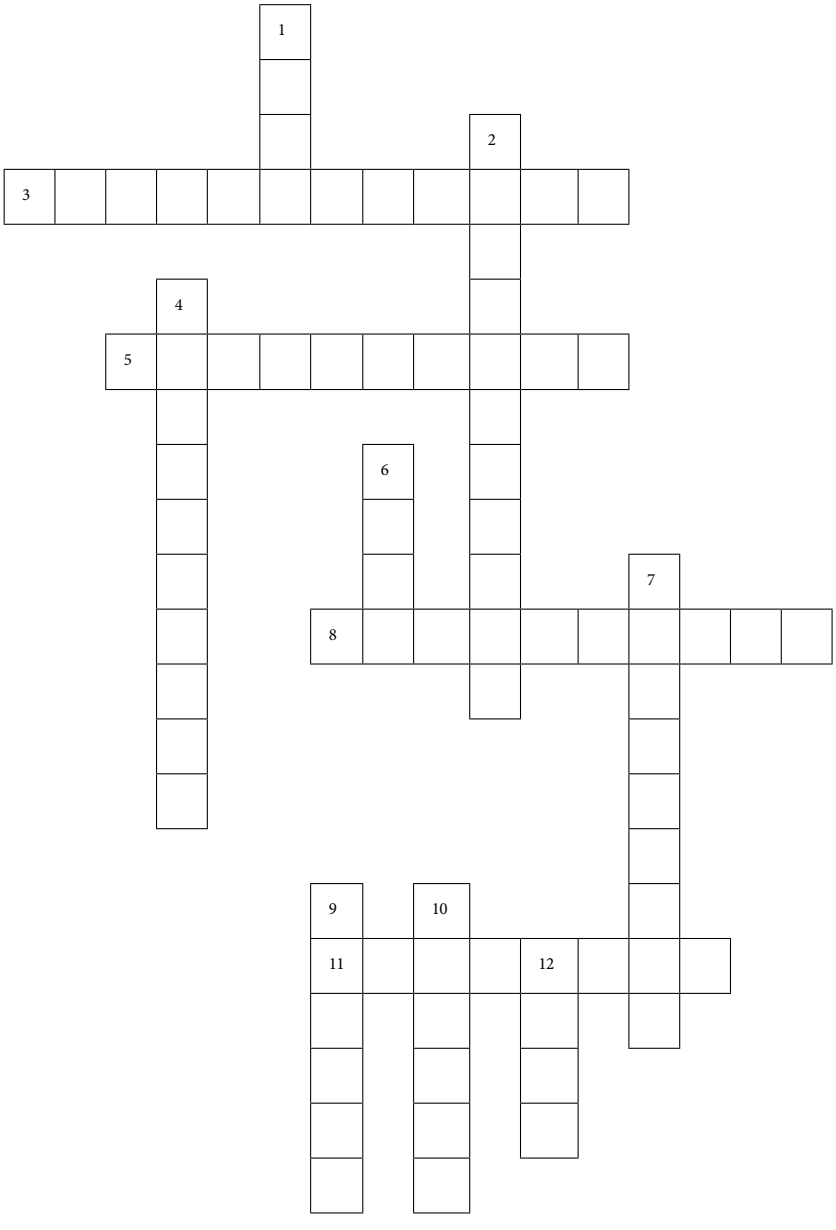
19.11.2024: Discussion Paper Monitoring Committee under CIRP

In light of the observations made by the Hon'ble Supreme Court in the matter of State Bank of India & Ors v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr, IBBI vide its discussion paper proposed to strengthen the regulatory framework governing monitoring committees under the Code. While the current framework under Regulation 38 of the CIRP Regulations provide certain basic recognition to monitoring committees, the proposed amendments aim to make their constitution mandatory for implementation of all resolution plans. Since the CoC is vested 2 with commercial wisdom and is the primary decision-making body during CIRP, the proposed framework empowers the CoC to take the final decision on the constitution, composition, and functioning period of the monitoring committee, as part of the resolution plan. The CoC shall retain the flexibility to decide for constitution of monitoring committee with lesser period if the resolution plan provides for substantial implementation during such tenure with recorded reasons.

02.12.2024: Extension of time for filing Forms to monitor liquidation and voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder

Vide Circular No. IBBI/LIQ/79/2024 dated 02.12.2024, the IBBI extended the last date of submission of forms relating to voluntary liquidation till 31.12.2024. Earlier, the liquidators were directed to file forms relating to the voluntary liquidation latest by 30.11.2024.

GAMES CORNER



ACROSS

3. A significant feature of insolvency proceedings that involves the evaluation of claims by creditors
5. The term for a person or entity authorized to carry out the insolvency process
8. A process under IBC that aims to resolve the debts of a corporate debtor
11. (A person or body that loans money to a company or individual)

DOWN

1. The statutory body overseeing the functioning of insolvency professionals
2. The process of selling assets to pay off creditors
4. A document detailing a proposal to settle debts in an insolvency proceeding.
7. A framework for resolving disputes outside of court in insolvency matters.
10. A legal term for an entity that owes money
12. The governing body of the Insolvency and Bankruptcy Code in India.

Answers Key:

Across:

1. **Insolvency** (A process under IBC that aims to resolve the debts of a corporate debtor)
2. **Resolution** (The term for a person or entity authorized to carry out the insolvency process)
3. **Debtor** (A legal term for an entity that owes money)
4. **IBBI** (The governing body of the Insolvency and Bankruptcy Code in India)
5. **Resolution** (A document detailing a proposal to settle debts in an insolvency proceeding)
6. **Liquidation** (The process of selling assets to pay off creditors)

Down:

1. **IBBI** (The statutory body overseeing the functioning of insolvency professionals)
2. **Creditor** (A person or body that loans money to a company or individual)
3. **Verification** (A significant feature of insolvency proceedings that involves the evaluation of claims by creditors)
4. **Mediation** (A framework for resolving disputes outside of court in insolvency matters)

NOTES

NOTES

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

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