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INSOLVENCY AND BANKRUPTCY JOURNAL

Building Capacity for Insolvency Professionals:
Bridging the Skills Gap

ICSI Institute of Insolvency Professionals (ICSI IIP)

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From Chairman's Desk

Success in where preparation and opportunity meet"

- Bobby Unser

Building Capacity for Insolvency Professionals: Bridging the Skills Gap

Dear Professional Colleagues,

The effectiveness of the Insolvency and Bankruptcy Code (IBC) has been widely recognized in enhancing credit discipline and promoting resolution over liquidation. However, the growing complexity of cases has underscored the need for continuous learning and skill development among Insolvency Professionals (IPs). With this in mind, the theme of this edition— "Building Capacity for Insolvency Professionals: Bridging the Skills Gap"— focuses on the evolving role of IPs and the need for upskilling to ensure efficiency and effectiveness in insolvency resolution.

Since the implementation of IBC, over 8175 Corporate Insolvency Resolution Processes (CIRPs) have been initiated, with nearly 6192 closed through resolution, liquidation, or withdrawal. However, the increasing complexity of cases—ranging from group insolvency, cross-border insolvency, and real estate defaults to contentious valuation disputes—demands that IPs expand their skill sets beyond legal and financial expertise.

For instance, the Jet Airways case, one of India's most high-profile CIRPs, required extensive negotiations with multiple stakeholders, cross-border coordination, and strategic planning to ensure a successful resolution. Similarly, in the Videocon Group insolvency, the concept of group insolvency and consolidation of cases posed unique challenges, necessitating a multidisciplinary approach by professionals.

Despite the remarkable progress of IBC, several challenges persist, including delays in resolution, lack of effective mediation skills, limited financial modeling expertise, and difficulties in distressed asset valuation. A recent study by IBBI found that in cases where CIRP exceeded 270 days, the primary reasons were delays in litigation, lack of consensus among stakeholders, and insufficient expertise in complex transactions. To address these issues, insolvency professionals must develop skills in:

- **Negotiation & Mediation** – Engaging with diverse stakeholders, including creditors, corporate debtors, and resolution applicants, to achieve consensus-driven resolutions.
- **Technology & Data Analytics** – Leveraging artificial intelligence and financial analytics for faster decision-making and due diligence.
- **Distressed Asset Management** – Understanding sector-specific business dynamics to drive better resolutions and recoveries.
- **Global Best Practices** – Learning from international insolvency frameworks to handle cross-border cases efficiently.

At ICSI IIP, we remain committed to strengthening the insolvency profession through structured capacity-building programs. Over the past year, we have conducted: 50+ webinars, and workshops focused on emerging trends in insolvency, Exclusive sessions with industry experts on valuation, forensic audits, and cross-border insolvency and Case study-based learning modules to enhance practical understanding of real-world CIRPs.

A major step in this direction was the second National Convention for Insolvency Professionals and Registered Valuers, organized jointly by ICSI IIP and ICSI on January 11, 2025, in New Delhi. This convention brought together policymakers, industry leaders, and professionals to deliberate on key challenges and opportunities in the insolvency and valuation landscape. Through insightful panel discussions and expert deliberations, the convention reinforced the significance of continuous learning and the evolving role of insolvency professionals in India's economic framework.

As we move forward, the focus must be on building a future-ready insolvency profession that is legally sound and also strategically and technologically adept. I encourage all professionals to actively engage with the insights in this journal, leverage learning opportunities, and commit to continuous professional development.

Together, let us bridge the skills gap, strengthen the insolvency ecosystem, and contribute to a more efficient and globally competitive resolution framework.

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

MD's Message

"Wisdom is not a product of schooling but of the lifelong attempt to acquire it."
- Albert Einstein

Message from the Managing Director, ICSI IIP

Dear Readers,

Warm greetings from ICSI IIP!

It is with great pleasure that I present to you the January–February 2025 edition of the ICSI IIP Monthly Journal. This special issue captures the proceedings and key takeaways from the **2nd National Convention of Insolvency Professionals and Registered Valuers,** held on January 11, 2025, in New Delhi. The convention served as a significant platform for insightful discussions, knowledge exchange, and expert deliberations on strengthening the insolvency and valuation ecosystem in India.

The theme of this edition, **"Building Capacity for Insolvency Professionals: Bridging the Skill Gap,"** aligns with one of the most pressing needs in the industry today. As the insolvency profession continues to evolve, it is imperative to equip professionals with the requisite skills, technical expertise, and a deep understanding of the legal and commercial landscape. The deliberations at the convention underscored the importance of continuous learning, practical exposure, and adopting global best practices to enhance professional competencies.

This journal features expert insights, panel discussions, and key addresses from esteemed speakers at the convention. Additionally, it includes articles on recent legal developments, case studies, and practical perspectives to guide insolvency professionals in navigating the challenges of corporate resolution and liquidation.

At ICSI IIP, we remain committed to fostering excellence in the profession by providing robust capacity-building initiatives, training programs, and knowledge resources. I encourage all stakeholders to actively participate in this journey and leverage the learning opportunities that platforms like this journal offer.

I extend my gratitude to all contributors, thought leaders, and professionals who made the 2nd National Convention a resounding success. I hope this edition serves as a valuable resource for all insolvency professionals in their pursuit of excellence.

Happy reading!

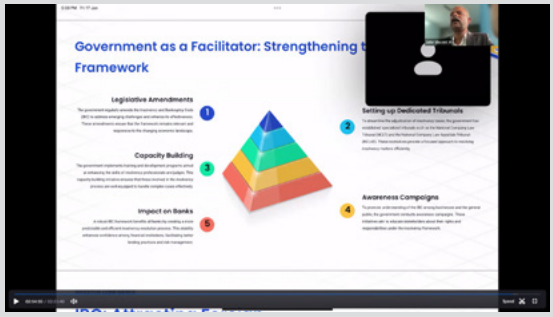
Warm regards,
Dr. Prasant Sarangi
Managing Director,
ICSI Institute of Insolvency Professionals

Events @ICSI IIP

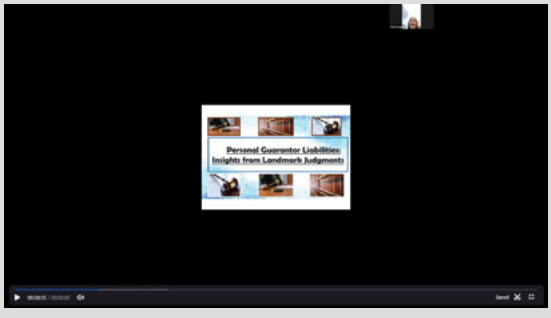
(Workshops, Webinars, Round-table Discussions, Interactive Meets etc.)

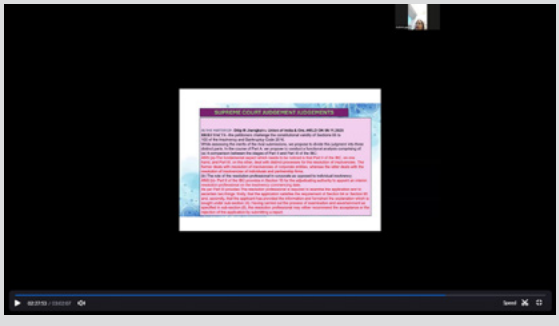
WEBINARS

Webinar on Impact of IBC on Competitive Landscape of Banking Sector
on Friday, 17th January, 2025
Speaker: IP John Vincent A.

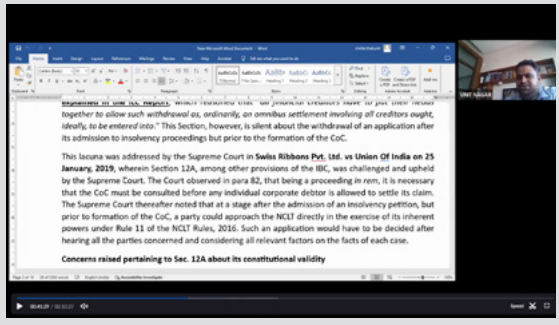


Webinar on Personal Guarantor Liabilities: Insights from Landmark Judgments
on Friday, 24th January, 2025
Speaker: CS and IP Sucheta Gupta

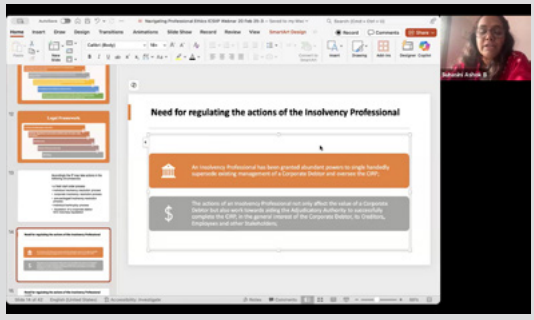




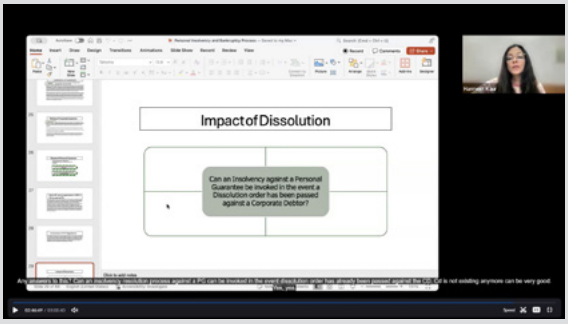
Webinar on Individual settlement vis-a-vis withdrawal of CIRP
on Saturday, 1st February, 2025
Speaker: CS and IP Vinit Nagar

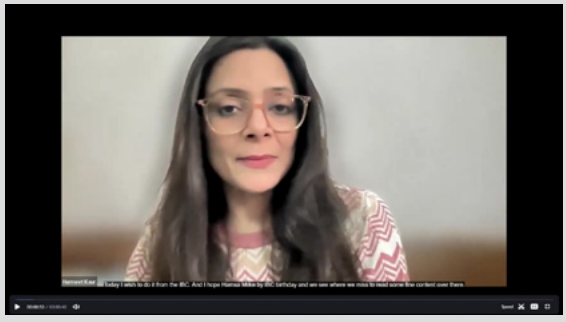


Webinar on Navigating Professional Ethics - A Guide for Insolvency Professionals
on Thursday, 20th February, 2025
Speaker: CS and IP Suhasini Ashok B.



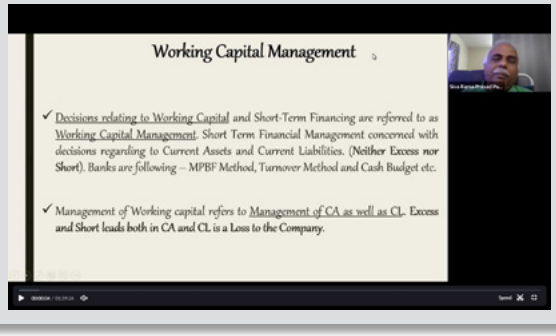
Webinar on Navigating Personal Guarantors under IBC
on Friday, 28th February, 2025
Speaker: CS and IP Harmeet Kaur

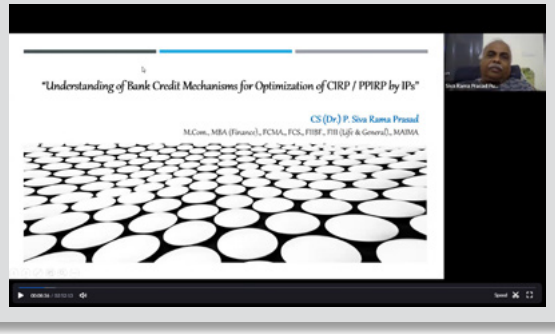




WORKSHOPS

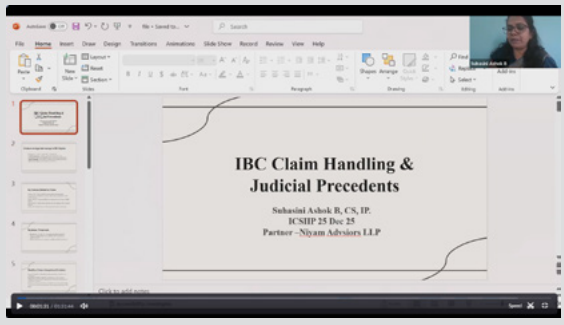
Workshop Series "Perspectives on IBC Series XI-An Array"
From 2nd January, 2025 to 7th January, 2025.
Speaker: IP, CS and CMA Siva Rama Prasad Puvvala
The topic covered in the series is understanding of Bank Credit Mechanism for Optimization of CIRP/ PPIRP by IPs including types of lending including credit management process, security types, follow-up of loans and advances and NPA management.





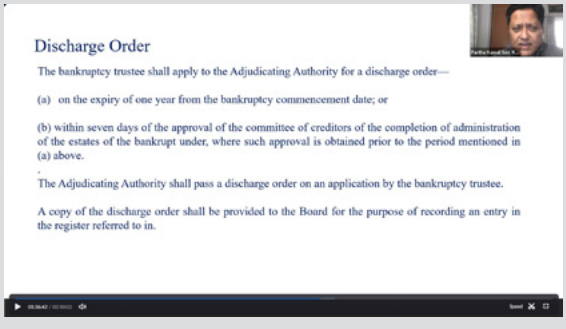
Workshop on "IBC Claim Handling and Judicial Pronouncements on Claims" on Saturday, 25th January, 2025

Speaker: IP and CS Amit Gupta and IP and CS Suhasini Ashok B.



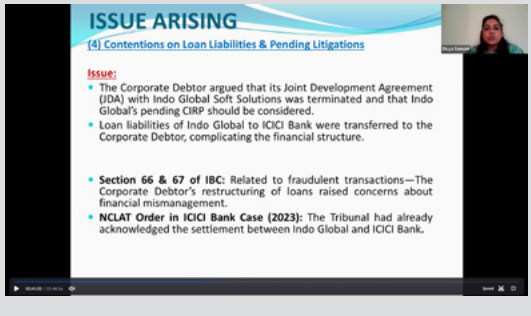
Workshop on Navigating the Insolvency Process: Authorized Representative and Bankruptcy Trustee Perspectives on Wednesday and Thursday, 5th February, 2025 and 6th February, 2025

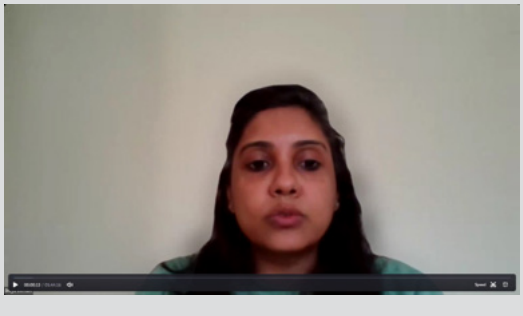
Speaker: IP John Vincent A. and CS and IP Partha Kamal Sen

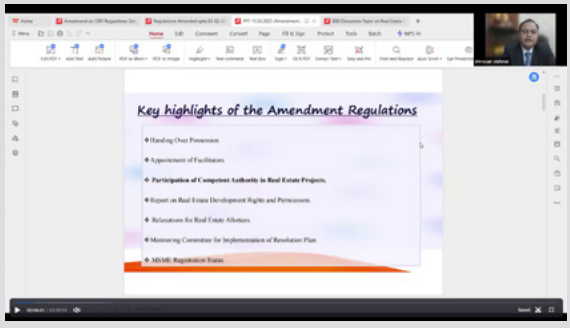


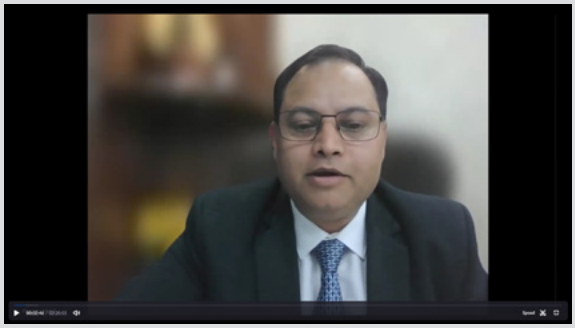
Workshop on Recent IBC Case Laws & Amendments on Saturday, 15th February, 2025

Speaker: CA and IP Divya Somani and CS and IP Shravan Kumar Vishnoi









ROUND-TABLE (VIRTUAL) DISCUSSION

Round-table (Virtual) Discussion on IBBI Discussion Paper dated 4th February, 2025 on Wednesday, 12th February, 2025
Speaker & Moderator: IP Adv. Dr. Ashish Makhija

JOINT PROGRAMS

A physical workshop for Insolvency Professionals organised jointly with IBBI in Bhubaneshwar Chapter of ICSI on 21st February, 2025

2nd National Convention of Insolvency Professionals and Registered Valuers held on January 11, 2025 at New Delhi

Theme: Insolvency and Valuation: Navigating Challenges and Future Pathways
Special Guests: Hon'ble Justice Shri m.M. Kumar, Founder President of National Company Law Tribunal & Former Chief Justice of Jammu & Kashmir High Court
Smt. Anita Shah, Hon'ble Joint Secretary, Ministry of Corporate Affairs
Sh. Mahendra Khandelwal, Hon'ble Member(Judicial), National Company Law Tribunal

INAUGURAL SESSION


ICSI-NIRC


ICSI-NIRC


ICSI-NIRC


ICSI-NIRC


ICSI-NIRC

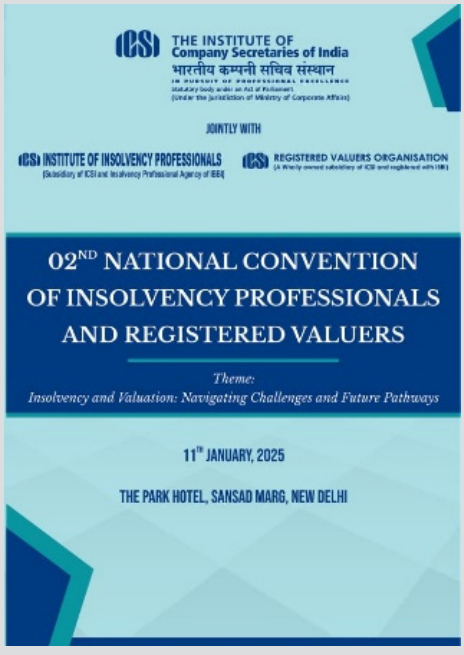

ICSI-NIRC

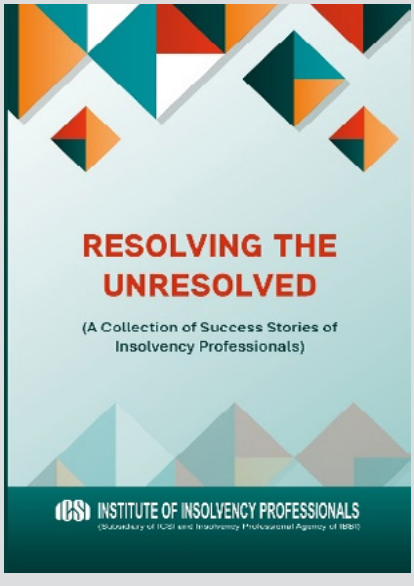

THE INSTITUTE OF
Company Secretaries of India
CS B Narasimhan


Mahendra Khandelwal
Mr Jus. M M Kumar


Mr Jus. M M Kumar
P K Malhotra

Releases at 2nd National Convention of insolvency Professionals & Registered Valuers





First Technical Session - Evolving Dynamics and Legal framework in Insolvency

Second Technical Session Unlocking Value in Distressed Businesses: A Valuer's Perspective

Insolvency and Valuation

Proceedings of the 2nd National Convention of Insolvency Professionals and Registered Valuers held on 11th January 2025 at "The Park", Delhi

Theme: Insolvency and Valuation: Navigating Challenges and Future Pathways

THEME- INSOLVENCY AND VALUATION: NAVIGATING CHALLENGES AND FUTURE PATHWAYS

The Institute of Company Secretaries of India (ICSI) jointly with ICSI Institute of Insolvency Professionals (ICSI IIP), and ICSI Registered Valuers Organization (ICSI RVO) organised 02nd National Convention of Insolvency Professionals and Registered Valuers hosted by ICSI- NIRC to delve into the "Achievements, Challenges, and Expectations" of the transformative Insolvency Landscape. The convention, themed ***"Insolvency and Valuation: Navigating Challenges and Future Pathways"*** provided a platform for insightful discussions on navigating the complexities of the Indian insolvency landscape and charting a path for a more robust and efficient ecosystem. The convention witnessed the present over 150 delegates in person and 400 delegates connected virtually from different parts of the country. A galaxy of distinguished guests, invitees, speakers, professionals and students made the conference a grand success.

INAUGURAL SESSION

The convention received the esteemed presence of Hon'ble Justice Sh. M. M. Kumar, *Founder President of NCLT & Former Chief Justice of J&K High Court*, Sh. Mahendra Khandelwal, *Hon'ble Member (Judicial) National Company Law Tribunal* & Smt. Anita Shah Akela, Joint Secretary, MCA, as the Special Guests, who lent their invaluable expertise to the inaugural session.

CS Manish Gupta, Imm. Past President ICSI & Program Director, delivered a captivating welcome address, offering valuable insights into the evolving landscape of the profession. He highlighted on the role played by the Institute for the Insolvency Professionals. He also updated the audience about the formation of

task force of NCLT by Institute, for streamlining the practices adopted by different courts. Members. The NCLT Practioner Association by ICSI is also being formed which provides support at ground level to the Practioner. He welcomed and introduced the distinguished guests.

Mr. P. K. Malhotra, Chairman-ICSI Institute of Insolvency Professionals, underscored the success of IBC and its achievements. He quoted Hon'ble President of India, Smt. Droupadi Murmu wherein she was appreciating the IBC. He presented the progress report of ICSI IIP, its achievements, functions and road ahead. He also highlighted the key areas where the organization is working for the benefit of its members and IBC as a whole.

CS B. Narasimhan, President, ICSI, reflected on the theme of the convention and highlighted the key challenges an Insolvency Professional face. He also commended the recent advancements by IBBI which were helpful in robusting the IBC framework. He ended his remarks on highlighting the importance of conventions and how they are important for comprehensive understanding of current trends and challenges.

Presidential address was followed by the releases, facilitated at the august hands of the special guests along with other dignitaries present on the dais:

- "**Souvenir"- 2nd National Convention of Insolvency Professionals and Registered Valuers**
- **Resolving the Unresolved: A Collection of Success Stories of Insolvency Professionals"**

Hon'ble Justice Sh. M. M. Kumar, special guest, threw light on pre IBC regime and how IBC combated to recover the dead NPAs. He also highlighted that how World's bank ranking of ease of doing business was 180 out of 190 countries in 2016 and in 2023 it is 63 out of 190 countries, which was achieved mainly because of IBC. He also applauded the working of NCLTs as they are working day and night. He emphasized on recruitments in NCLTs must start well in time. He highlighted few issues which were settled by NCLTs which were benchmarked, such as limitation period, constitutional validity, Swiss ribbons case, dirty dozen cases etc. Further, he highlighted on few areas such as increasing of threshold limit of default, utilization of information utilities, emphasizing proper valuations, Pre packs for general sector etc. which may lead to better results in IBC ecosystem.

Smt. Anita Shah Akela, remarked IBC as biggest reform along with GST in last 10 years**.** She mentioned that healthy balance sheets are a proof that IBC has changed the landscape of credit system and the credit goes to all the stakeholders i.e. INCLTs, IBBI, IPs etc. She stated the Government is working on "Integrated portal for IBC" wherein the interface between NCLT, NCLATs, IBBI and IPs is being channeled which will have the linkage with MCA21. She concluded her address with specifying IPs as doctors which are master of all trades, whose job is very crucial.

Sh. Mahendra Khandelwal, special guest, highlighted the objectives of IBC and to achieve those objectives, involvement of IPs is required. He pressed upon the fact that involvement of IPs is much more than the members of Bar and they should function ethically and legally. IPs should approach NCLTs only when required. He guides the IPs that disposal of cases and justice to cases are two different things. He also emphasized on the role of registered valuers and highlighted that valuers are also important pillar. For fully functional IBC, role of each and every one is important. We should do the best, without ill-will.

CS Jatin Singal, Chairman, ICSI –NIRC, proposed the vote of thanks and expressed his sincere gratitude and greetings to all speakers, participants, and organizers for igniting the spirit at the National Convention. He pressed upon upholding the highest ethical standards in our professional endeavors and Collaborating effectively to ensure the success of the IBC and contribute to the growth of the Indian economy. At the end, he wished all engaging deliberations in the panel discussions.

FIRST TECHNICAL SESSION-

EVOLVING DYNAMICS AND LEGAL FRAMEWORK IN INSOLVENCY

Session coordinators: CS Dwarakanath Chennur, Council Member, the ICSI and CS Suresh Pandey, Council Member, the ICSI

Panel Chair: Mr. Mahendra Khandelwal, Hon'ble Member (Judicial) National Company Law Tribunal

Guest Panelists: Mr. Jithesh John, ED IBBI, Mr. P Nagesh, Senior Advocate and CS Nesar Ahmed Former President, The ICSI.

CS Dwarakanath Chennur, in his introductory remarks briefed about the session theme, welcomed all the learned panelists and invited them for sharing their views and experiences with the delegates.

Mr. Mahendra Khandelwal in his initial remarks highlighted how the Law has been evolved by way of certain amendments, subordinate regulations, Rules made by Central Government. He mentioned that various issues have been clarified and when we talk about the evolution of Law, there are three sources, Legislation, Precedents and Customs & Practices.

Mr. P Nagesh in his address emphasized that integrated digital platform is the need of the hour and proper trainings for the Insolvency Professionals are required. He highlighted that resolution plans are not scrutinized properly and we can use the technology using AIs to see the pitfalls and remedial actions can be taken.

Mr. Jithesh John in his address underlined the key reforms which have been introduced by IBBI in the discussion paper. He also mentioned that IBBI is working towards the betterment of the Insolvency Professionals through constant amendments, circulars, guidelines and trainings.

The panelists delved into the complexities of the IBC, exploring challenges in asset realization, digitalization, personal insolvencies, and delays by judiciary etc. and also answered suitably to various queries which made the deliberations fruitful and interactive.

Thereafter, CS Suresh Pandey summed up the discussions and proposed the vote of thanks.

SECOND TECHNICAL SESSION-

UNLOCKING VALUE IN DISTRESSED BUSINESSES: A VALUER'S PERSPECTIVE

Session coordinators: CS Pawan G Chandak, Council Member, the ICSI and CS Manoj Purbey, Council Member, the ICSI

Panel Chair: Sh. Rajesh Sharma, Hon'ble Former Member, National Company Law Tribunal

Guest Panelists: CS Harish Chander Dhamija, IP & RV, Mr. Rajesh Mittal, RV and CS Rajeet Pandey, former president, the ICSI

CS Manoj Purbey, in his introductory remarks briefed about the session theme, welcomed all the learned panelists and invited them for sharing their views and experiences with the delegates.

Sh. Rajesh Sharma in his initial remarks mentioned valuation as science and Art both. He also expressed that independence is the most important part of the valuation which should be followed by all the valuers. The fair value and intrinsic value are the most important for the revival of any organization under IBC, which should be worked upon fairly by the valuers as they are the pillars for the success of IBC.

CS Harish Chander Dhamija in his address covers the regulatory updates in business valuation under the IBC. He also talks about Section 247 of the Companies Act, 2013 which is the center for valuation. He also talked about the responsibilities of the Resolution professionals towards the registered valuers. He highlighted International valuation standards which are effective from 31st January, 2025.

Mr. Rajesh Mittal in his address talks about the code of conduct of the registered valuers which inter-alia includes their duty and independence. He also talked about how the valuation report is very important document which should be well drafted and should cover each & every minute detail. He also emphasized on importance of unlocking value in distress businesses and how the distressed businesses can be an opportunity. He also mentioned how the Liquidation value is different from the realizable value.

CS Rajeet Pandey in his address focused on "commercial wisdom" and elucidated how it is important for the whole IBC framework. He also mentioned that the *"going concern"* status is very important i.e. resolution professionals should analyze the resolution plans in a way to identify whether the resolution applicant wants to buy out the company to sell it later or to run the business since it affects the overall objective of the Code.

The panelists emphasized on the critical role of accurate and ethical valuation in maximizing value recovery and ensuring fair outcomes for all stakeholders and also answered suitably to various queries which made the deliberations fruitful and interactive.

Thereafter, CS Pawan G Chandak summed up the discussions and proposed the vote of thanks. At the end, he thanked one and all for the success of the 2nd National Convention of the Insolvency Professionals and Registered Valuers.

Learner's Corner

FREQUENTLY ASKED QUESTIONS (FAQS) ON VOLUNTARY LIQUDIATION PROCESS

(Source: IBBI)

INITIATION:

1. Who can initiate voluntary liquidation process of corporate person?

Ans: A corporate person who intends to liquidate itself voluntarily and has either not committed any default, has no debt or in case of having debt, it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, may initiate voluntary liquidation process (section 59 of the Insolvency and Bankruptcy Code, 2016 ("Code")).

2. How to initiate voluntary liquidation process of corporate person?

Ans: Under section 59(3) of the Code read with regulation 3(1) of IBBI (Voluntary Liquidation Process) Regulations, 2017, a corporate person may initiate the voluntary liquidation process after fulfilling the following conditions:

i) A declaration from majority of the directors, designated partners, individuals constituting the governing body of the corporate person, as the case may be, that

   (a) the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets and (b) the corporate person is not being liquidated to defraud any person;

ii) Within four weeks of a declaration, there shall be a resolution of the members, partners, contributories of the corporate person, as the

case may be, requiring the corporate person to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator.

iii) In case the corporate person owes any debt, creditors representing two-thirds in value of the debt of the corporate person shall approve the aforesaid resolution, within seven days of such resolution.

iv) the corporate person has made sufficient provision to meet the obligations arising on account of pending proceedings or assessments before statutory authorities, and pending litigations, in respect of the corporate person.

Subject to the approval of the creditors as stated in point iii) above, the voluntary liquidation process in respect of a corporate person shall be deemed to have commenced from the date of passing of the resolution as stated in point ii) above (section 59(5) of the Code read with regulation 3(3) of Voluntary Liquidation Regulations).

Appointment and Remuneration of Liquidator

3. Does insolvency professional (IP) need to intimate the Insolvency and Bankruptcy Board of India ('Board') about his appointment as liquidator during voluntary liquidation process?

Ans. An IP shall intimate the Board within seven days of his appointment as liquidator during voluntary liquidation process (regulation 5(2) of the Voluntary Liquidation Regulations)

4. What shall be the remuneration of liquidator during voluntary liquidation process?

Ans: The remuneration of liquidator shall be determined by the members, partners, or contributories, as the case may be, while passing the resolution for initiation of voluntary liquidation process of the corporate person under section 59(3)(c) of the Code or regulation 3(1)(c) of the Voluntary Liquidation Regulations (regulation 5(1) of the Voluntary Liquidation Regulations).

5. What is the process of replacing the liquidator?

Ans: The liquidator may be replaced by the same procedure as was followed for initial appointment of the liquidator under regulation 3(1)(c) of the Voluntary Liquidation Regulations or section 59(3)(c) of the Code (regulation 5(1) of the Voluntary Liquidation Regulations).

C. Role of Liquidator and Corporate Person

6. What are the duties of liquidator during voluntary liquidation process?

Ans: The liquidator may, inter-alia, perform the following duties:

i) Make public announcement to call upon stakeholders to submit their claims;

ii) Verify claims of stakeholders;

iii) Realise all assets of the corporate person;

iv) Distribute the proceeds from realization;

v) File application to the Adjudicating Authority for dissolution of the corporate person.

7. Does the corporate person cease to carry on its business upon commencement of voluntary liquidation process?

Ans: The corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business (regulation 4(1) of Voluntary Liquidation Regulations). The corporate person shall continue to exist until it is dissolved under section 59(8).

8. Whether all the powers of board of directors, key managerial personnel and the partners of the corporate person, as the case may be, cease to have effect on the appointment of liquidator during voluntary liquidation process?

Ans: The powers of the board of directors, key managerial personnel and the partners of the corporate person, as the case may be, may continue to exist during voluntary liquidation process to monitor the process, approve the manner and mode of sale of assets of the corporate person by the liquidator, etc.

D. Claims

9. What is the stipulated timeline for making public announcement calling upon the stakeholders to submit their claims?

Ans. The liquidator shall make public announcement in Form A of Schedule I within five days from his / her appointment calling upon the stakeholders to submit their claims (sub-regulation (1) and (2) of regulation 14 of Voluntary Liquidation Regulations).

10. What is the process of filing claim as a stakeholder?

Ans. A stakeholder shall submit the proof of his claim to the liquidator in the specified Form:

i) through electronic means only, if he is a financial creditor (regulation 17(1) of the Voluntary Liquidation Regulations);

ii) in person, by post or by electronic means, if he is an operational creditor including workmen and employee or any other stakeholder (regulation 16(1), 18(1) and 19(1) of the Voluntary Liquidation Regulations).

11. What forms have been specified for submitting the claims by various stakeholders during voluntary liquidation process?

Ans. The forms to be filed by various stakeholders, accessible through link https://ibbi.gov.in/home/downloads, are:

S.No.	Particulars	Prescribed Form
1.	Operational Creditors except Workmen and Employees	B
2.	Financial Creditors	C
3.	Workmen or employee	D
4.	Authorised Representative of workmen or employees	E
5.	Any other stakeholder	F

12. Can mutual dealings between corporate person and creditors be set-off?

Ans. Regulation 28 of the Voluntary Liquidation Regulations provides that where there are mutual dealings between the corporate person and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate person or to the other party.

13. Can a creditor appeal the admission or rejection of claims by the liquidator?

Ans. A creditor has the option to file an appeal to the Adjudicating Authority against the decision of the liquidator within 14 days of receipt of such decision (section 42 of the Code).

E. Valuation

14. Whether valuation of assets of the corporate person get conducted during voluntary liquidation process?

Ans. Section 59(3)(b) of the Code read with regulation 3(1)(b) of the Voluntary Liquidation Regulations provides for submission of valuation report, if any prepared by registered valuer, of assets of the corporate person at the time of declaration of its solvency by majority of directors, designated partners, or individual constituting the governing board, as the case may be, of the corporate person. Further, regulation 31 of Voluntary Liquidation Regulations provides that the liquidator may value and sell the assets of the corporate person in the manner and mode approved by the corporate person.

F. Sale

15. What are the modes by which liquidator can sell assets of the corporate person?

Ans. The liquidator may sell the assets of the corporate person in the manner and mode approved by the corporate person (regulation 31 of Voluntary Liquidation Regulations).

16. Where should the liquidator keep proceeds received during voluntary liquidation process?

Ans. The liquidator is required to open a separate bank account in the name of the corporate person followed by the words 'in voluntary liquidation' for receipt of all money received by him as the liquidator (regulation 34(1) of Voluntary Liquidation Regulations).

G. Reporting

Question 17.

17. What are the reporting requirements for liquidator during voluntary liquidation process?

Ans. In accordance with regulation 8(1) of the Voluntary Liquidation Regulations, the liquidator shall prepare: i) Preliminary Report; ii) Annual Status Report; iii) Minutes of consultations with stakeholders; and iv) Final Report prior to dissolution.

18. Does the liquidator need to share the reports / documents mentioned under regulation 8(1) of

the Voluntary Liquidation Regulations, with the stakeholders?

Ans. In case a stakeholder submits an application in writing together with confidentiality undertaking and provides the cost of making such reports available, the liquidator shall make such reports available (regulation 8(2) of Voluntary Liquidation Regulations).

H. Appointment of Professionals

19. Is there any upper limit on the number of professionals to be appointed by liquidator and their fees?

Ans. No upper limit has been stipulated either on the number of professional to be engaged or their fee. However, the number of professionals appointed and the fee payable to them should be commensurate with the size and complexity of the voluntary liquidation process.(Reg.11 of IBBI Voluntary Liquidations Regulations)

20. Is there any restriction on the liquidator regarding appointment of professionals?

Ans. The liquidator shall not appoint a professional, under regulation 11 of the Voluntary Liquidation Regulations, if:

i) he / she is his / her relative;

ii) he / she is a related party of the corporate person; or

iii) he / she has served as an auditor to the corporate person in the five years preceding the liquidation commencement date.

21. Are there any disclosure requirements regarding appointment of professionals?

Ans. Regulation 11(3) of the Voluntary Liquidation Regulations provides that a professional appointed or proposed to be appointed by the liquidator shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders, or the concerned corporate person as soon as he becomes aware of it, to the liquidator.

I. Unclaimed Dividends / Undistributed Proceeds

22. Where should the unclaimed dividends and / or undistributed proceeds be deposited during voluntary liquidation process?

Ans. In accordance with regulation 39(1) and (2) of the Voluntary Liquidation Regulations, the liquidator shall deposit the amount of unclaimed dividends and / or undistributed proceeds, if any, into Corporate Voluntary Liquidation Account operated as part of the Scheduled Bank. However, since the said account has not yet been operationalised, the liquidator needs to deposit the said amount into Corporate Voluntary Liquidation Account maintained by the Board with a scheduled bank. The liquidator shall thereafter submit Form-G, mentioning the nature of the amount deposited, etc., along with the supporting documents, to the Board and the authority with which the corporate person is registered (regulation 39(5) of the Voluntary Liquidation Regulations).

23. When should the liquidator deposit unclaimed dividends and / or undistributed proceeds into Corporate Voluntary Liquidation Account?

Ans. The unclaimed dividends and / or undistributed proceeds, if any, needs to be deposited into Corporate Voluntary Liquidation Account by the liquidator prior to submission of application for dissolution of the corporate person to Adjudicating Authority under section 59(7) of the Code (regulation 39(2) of the Voluntary Liquidation Regulations).

24. How should a stakeholder apply for withdrawal from the Corporate Voluntary Liquidation Account?

Ans. Prior to dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the liquidator in Form-I for withdrawal of the amount.

On receipt of request, the liquidator after verification of the claim, shall request the Board for release of amount to him for onward distribution.

The Board on receipt of request, may release the amount to the liquidator.

The liquidator shall, after making the distribution to the stakeholder shall intimate the Adjudicating Authority of such distribution.

After dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in Form-I for an order for withdrawal of the amount.

If any other person other than the stakeholder claims to be entitled to any amount deposited to the Corporate Voluntary Liquidation Account, he shall submit evidence to satisfy the liquidator or the Board, as the case may be, that he is so entitled on (regulation 39(7), (7A), (7B), (7C) and 7(D) of the Voluntary Liquidation Regulations).

J. Detection of Fraud or Insolvency

25. What action should be taken if it is detected that the voluntary liquidation process has been initiated to defraud a person or the corporate person shall not be able to pay its debts completely from realization of assets?

Ans. If it is detected that the voluntary liquidation process has been initiated to defraud a person or the corporate person will not be able to pay its debts completely from the realization of assets, the liquidator shall make an application to the Adjudicatory Authority to suspend the process of liquidation and pass appropriate orders (regulation 40 of the Voluntary Liquidation Regulations).

K. Completion of Liquidation

26. What is the stipulated timeline for completion of voluntary liquidation process?

Ans: The liquidator shall endeavour to complete the voluntary liquidation process of the corporate person within twelve months from the liquidation commencement date (regulation 37(1) of the Voluntary Liquidation Regulations).

27. What happens if the process continues for more than twelve months?

Ans: The liquidator shall endeavour to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 within: -

(a) two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under clause (c) of subsection (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, and

(b) ninety days from the liquidation commencement date in all other cases.

(regulation 37(1) of the Voluntary Liquidation Regulations).

28. What steps are to be taken by the liquidator post dissolution of corporate person?

Ans: The liquidator has to submit a copy of the dissolution order to the authority with which the corporate person is registered and the Board.

L. Withdrawal

29. Can voluntary liquidation process be withdrawn once it has commenced?

Ans. There is no provision for withdrawal from the voluntary liquidation process once it has been initiated.

M. Non-Cooperation

30. Against whom, the liquidator can file application for non-cooperation during voluntary liquidation process?

Ans. Where any personnel of the corporate person, its promoter or any other person required to assist or cooperate with the liquidator does not assist or cooperate, the liquidator may make an application to the Adjudicating Authority for necessary directions (section 34(3) read with section 19(2) of the Code).

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. *A fortiori*. ("From stronger. ")

An a fortiori argument is an "argument from a stronger reason", meaning that because one fact is true, that a second related and included fact must also be true. If something less likely is true, then something more likely will probably be true as well.

For instance, if the recording of confession by police is found to be necessary by Parliament and if it is in tune with the scheme of law, then an additional safeguard is *a fortiori* legal.

2. *Actori incumbit probatio*. ("On the plaintiff rests the proving. ")

Under this principle, the burden of proof is on the plaintiff.

For example, A Commission of the Institute has this year stated the basic principle for international litigation in the same terms: The basic principle relating to evidence and proof is *actori incumbit probatio, i.e. the claimant must prove the assertion of facts that he makes*.

3. *Damnum sine injuria*. ("Damage without legal injury. ")

This maxim emphasizes damage in the sense of money, Loss of comfort, service, health etc. without

infringement of a legal right / injury to legal right. It refers to injury which is being suffered by the plaintiff but there is no violation of any legal right of a person. It is not actionable in law even if the act so did was intentional and was done to cause injury to other but without infringing on the legal right of the person.

4. ***Ut res magis valet quam pereat.***
   ("It is better for a thing to have effect than to be made void. ")

This maxim emphasis that liberal interpretations are to be made of deeds, so that the purpose may rather stand than fall; and every grant is to be taken most strongly against the grantor. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim. A liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties.

For example, a statute must be construed as a workable instrument. "Ut-res-magis-valet-quam-pereat" is a well known principle of law and on this principle the provision of a statute must be construed as to make it effective and operative.

5. ***Audi alteram partem.***
   ("Let the other side be heard as well.")

Under this principal, no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

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

"BUILDING CAPACITY FOR INSOLVENCY PROFESSIONALS: BRIDGING THE SKILLS GAP"

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Abstract

The insolvency profession faces a growing challenge: a widening skills gap. This article explores critical strategies for building capacity within the field, ensuring professionals possess the necessary expertise to navigate increasingly complex financial landscapes. It examines the vital role of training and development programs in equipping insolvency practitioners with up-to-date knowledge and practical skills, crucial for effectively managing insolvencies and maximizing stakeholder value. The article further emphasizes the importance of investing in education, fostering a pipeline of future insolvency professionals equipped to handle the evolving demands of the industry. A proposed roadmap for capacity building is presented, outlining key steps for addressing the skills gap, including

curriculum development, mentorship programs, and continuing professional education. Finally, the article highlights the significance of collaboration and innovation, advocating for partnerships between educational institutions, professional bodies, and industry stakeholders to develop and implement effective capacity-building initiatives, ensuring the long-term health and effectiveness of the insolvency profession.

The Skills Gap in Insolvency Professionals under the Insolvency and Bankruptcy Code (IBC

The Insolvency and Bankruptcy Code (IBC), 2016, has revolutionized the insolvency landscape in India, providing a structured framework for resolving insolvency and bankruptcy. However, the successful implementation of the IBC hinges on a robust and skilled insolvency professional (IP) ecosystem. A significant challenge currently faced is the widening skills gap amongst IPs, threatening the efficacy and timely resolution of insolvency processes. This article examines the nature of this skills gap within the context of the IBC, its underlying causes, and the urgent need for capacity building within the Indian insolvency profession.

The IBC mandates that insolvency processes be managed by IPs, who play a crucial role in maximizing value for stakeholders. They are responsible for a wide range of tasks, from taking control of the debtor's assets and conducting investigations to formulating resolution plans and overseeing their implementation. This requires a diverse skillset, encompassing legal, financial, operational, and managerial expertise, all within the framework of the IBC.

The skills gap in the Indian insolvency professionals manifests in several ways.

- Firstly, there's a shortage of IPs with expertise in navigating the nuances of the IBC itself. The Code, while comprehensive, is complex and constantly evolving through amendments and judicial pronouncements. IPs need to possess a deep understanding of the legal framework, including timelines, procedural requirements, and the interplay between different stakeholders. The lack of professionals with this in-depth knowledge can lead to delays, compliance issues, and suboptimal outcomes.
- Secondly, the IBC has introduced new concepts like information utilities, registered valuers, and resolution professionals, requiring IPs to effectively collaborate with these professionals. This necessitates understanding their respective roles and responsibilities, as well as possessing strong communication and coordination skills. The ability to leverage the expertise of these allied professionals is crucial for successful insolvency resolution.
- Thirdly, the IBC emphasizes timely resolution, placing a premium on efficient and effective management of the insolvency process. IPs need to be adept at utilizing technology, including data analytics and financial modeling tools, to streamline processes, monitor progress, and make informed decisions. The adoption of technology is still nascent in many insolvency practices, contributing to the skills gap.
- Fourthly, the IBC's focus on maximizing stakeholder value necessitates strong negotiation and communication skills. IPs must be able to effectively communicate with creditors, debtors, and other stakeholders, build consensus, and negotiate mutually beneficial resolutions. These soft skills are critical for achieving successful outcomes under the IBC.

Several factors contribute to this skills gap. The IBC is a relatively new legislation, and the profession is still developing. There is a need for more structured training programs and educational initiatives specifically designed to equip aspiring IPs with the necessary skills and knowledge. Furthermore, the limited number of experienced IPs available to mentor and guide newcomers exacerbates the problem.

Adding to the challenge, the Insolvency and Bankruptcy Board of India (IBBI) has taken disciplinary actions against IPs for various lapses, highlighting the need for higher professional standards and capacity building. Some examples include:

- **Misconduct and Negligence:** IPs have faced action for failing to exercise due diligence in managing the corporate debtor's assets, leading to losses for stakeholders. This underscores the need for training on asset management and ethical conduct.

- **Non-compliance with IBC provisions:** IPs have been penalized for not adhering to the timelines and procedural requirements of the IBC, causing delays in the resolution process. This highlights the need for a deeper understanding of the Code and its intricacies.
- **Lack of Transparency and Communication:** Cases have emerged where IPs have been accused of not maintaining transparency in their dealings with stakeholders, leading to mistrust and disputes. This emphasizes the importance of communication and stakeholder management skills.

These cases underscore the critical need for capacity building within the insolvency profession. IPs need to be equipped with not only technical expertise but also strong ethical values, communication skills, and a deep understanding of the IBC framework.

Addressing the skills gap requires a multi-pronged approach. The IBBI plays a crucial role in regulating the profession and setting standards for IP qualification and training. The IBBI should continue to strengthen its curriculum, incorporating practical case studies, simulations, and exposure to the latest amendments and judicial pronouncements. Furthermore, promoting continuous professional development programs is essential to keep IPs abreast of the evolving legal and regulatory landscape.

Professional bodies and industry associations also have a role to play in developing and delivering training programs, organizing workshops, and facilitating knowledge sharing among IPs. Creating platforms for mentorship and networking can help bridge the gap between experienced professionals and newcomers.

Educational institutions should collaborate with the IBBI and industry stakeholders to develop specialized courses on insolvency and bankruptcy, equipping students with the necessary theoretical and practical knowledge. This will help create a pipeline of future IPs who are well-versed in the IBC framework.

Finally, promoting the insolvency profession as a rewarding and challenging career is crucial for attracting young talent. Highlighting the important role that IPs play in the Indian economy and showcasing the diverse range of skills required can help to attract more qualified individuals to the field.

Training and Development: Key to Bridging the Insolvency Skills Gap

The insolvency profession plays a critical role in a healthy economy, ensuring the orderly resolution of financial distress. However, this crucial function is threatened by a widening skills gap. Insolvency professionals (IPs) require a diverse and evolving skillset to navigate the complexities of modern business and legal landscapes. Training and development are no longer optional but essential for bridging this gap and ensuring the effectiveness of insolvency proceedings. This article explores the vital role of training and development in equipping IPs with the necessary skills and knowledge to thrive in this challenging field.

The insolvency landscape is constantly changing. New regulations, evolving business models, and technological advancements demand that IPs stay ahead of the curve. A robust training and development framework is crucial for equipping professionals with the latest knowledge and best practices. This includes not just technical expertise in areas like financial analysis, legal frameworks, and valuation, but also essential soft skills like communication, negotiation, and stakeholder management.

Effective training programs should encompass a variety of learning methodologies. Traditional classroom-based learning, while valuable for foundational knowledge, needs to be supplemented with practical, hands-on experience. Case studies, simulations, and real-world scenarios provide IPs with the opportunity to apply their knowledge in a controlled environment and develop critical problem-solving skills. These experiential learning opportunities are vital for bridging the gap between theory and practice.

Furthermore, training should not be a one-time event but a continuous process. The dynamic nature of the insolvency field necessitates ongoing professional development to keep IPs abreast of the latest changes in legislation, regulations, and industry best practices. Continuing Professional Education (CPE) programs are essential for ensuring that IPs maintain their competency and stay relevant in a rapidly evolving environment. These programs can take various forms, including workshops, seminars, online courses, and conferences, allowing professionals to choose

formats that best suit their needs and learning styles.

The content of training programs should be carefully curated to address the specific skills gap. This includes not only technical knowledge but also crucial soft skills. IPs often act as mediators, negotiators, and communicators, requiring strong interpersonal skills to effectively manage stakeholders and achieve optimal outcomes. Training programs should therefore incorporate modules on communication, negotiation, conflict resolution, and stakeholder management.

In addition to technical and soft skills, training programs should also focus on developing ethical awareness and professional conduct. IPs handle sensitive information and make decisions that can significantly impact stakeholders. Instilling a strong ethical compass is crucial for maintaining trust and integrity within the profession. Training should cover ethical dilemmas, professional responsibility, and the importance of adhering to the highest standards of conduct.

Mentorship programs play a vital role in bridging the skills gap. Pairing experienced IPs with newer professionals provides valuable opportunities for knowledge transfer, guidance, and support. Mentors can share their practical insights, offer advice on navigating complex situations, and help develop the next generation of insolvency professionals. Mentorship programs can be structured formally or informally, but the key is to create a supportive environment where knowledge and experience can be shared effectively.

Technology is transforming the insolvency landscape, and training programs need to reflect this reality. IPs must be proficient in using various technological tools and platforms for data analysis, financial modeling, communication, and process management. Training should therefore include modules on relevant software, data analytics techniques, and the use of technology to enhance efficiency and effectiveness in insolvency proceedings.

Collaboration between educational institutions, professional bodies, and industry stakeholders is essential for developing effective training and development programs. Educational institutions can play a crucial role in incorporating insolvency-related content into their curricula, creating a pipeline of future professionals with foundational knowledge. Professional bodies can contribute by developing and delivering CPE programs, setting standards for professional competency, and promoting ethical conduct. Industry stakeholders can provide practical insights, support mentorship programs, and offer opportunities for internships and experiential learning.

Finally, access to training and development opportunities should be equitable and inclusive. Efforts should be made to ensure that professionals from diverse backgrounds have access to the resources they need to develop their skills and advance their careers. This includes providing affordable training options, offering scholarships and financial assistance, and creating flexible learning formats that accommodate different schedules and needs

Investing in Education: Building Capacity for Future Insolvency Professionals

Investing in education is paramount to building capacity for future insolvency professionals. The insolvency landscape is becoming increasingly complex, demanding specialized knowledge and skills. Educational institutions must play a proactive role in equipping aspiring professionals with the necessary tools to navigate this challenging field. This requires a shift from traditional theoretical approaches to more practical, application-oriented learning.

Curricula should be designed to incorporate the intricacies of insolvency law, financial restructuring, valuation techniques, and stakeholder management. Case studies, simulations, and real-world scenarios provide valuable opportunities for students to apply their knowledge and develop critical thinking skills. Exposure to technology used in the industry, such as data analytics and financial modeling tools, is also crucial.

Collaboration between educational institutions and industry stakeholders is essential. Internships, mentorship programs, and guest lectures from experienced insolvency professionals bridge the gap between academia and practice. This provides students with valuable insights into the real-world challenges and opportunities within the profession.

Furthermore, promoting the insolvency profession as a rewarding and impactful career is vital for attracting

top talent. Highlighting the crucial role insolvency professionals play in the economy and showcasing the diverse skillset required can pique the interest of potential candidates. Scholarships, career counseling, and industry outreach programs can further encourage students to pursue a career in insolvency.

Investing in education is not just about equipping individuals with technical skills; it's about fostering a new generation of ethical and responsible insolvency professionals. Emphasis on professional conduct, ethical decision-making, and stakeholder responsibility is crucial for maintaining trust and integrity within the profession. By prioritizing education, we can ensure a robust pipeline of future insolvency professionals equipped to navigate the complexities of the field and contribute to a healthy economy.

A Roadmap for Capacity Building: Addressing the Insolvency Skills Gap

The insolvency profession faces a critical challenge: a widening skills gap. This gap threatens the effectiveness of insolvency proceedings and the overall health of the economy. Addressing this challenge requires a strategic and comprehensive approach – a roadmap for capacity building. This article outlines a potential roadmap, encompassing key steps for bridging the insolvency skills gap and ensuring a robust pipeline of qualified professionals.

1. **Comprehensive Needs Assessment:** The first step in building capacity is understanding the precise nature and extent of the skills gap. A thorough needs assessment should be conducted to identify the specific skills and competencies required by insolvency professionals in the current and future landscape. This assessment should involve surveying existing professionals, analyzing industry trends, and consulting with stakeholders, including regulators, industry associations, and educational institutions. The assessment should not only focus on technical skills but also on crucial soft skills like communication, negotiation, and ethical decision-making. Furthermore, it should consider the impact of technological advancements and the evolving regulatory environment**.**
2. **Curriculum** Development and Enhancement: Based on the needs assessment, educational institutions should develop and enhance their curricula to align with the identified skill requirements. This includes incorporating practical case studies, simulations, and real-world scenarios into their programs. The curriculum should cover the legal and regulatory framework governing insolvency, financial analysis, valuation techniques, stakeholder management, and ethical considerations. Furthermore, it should integrate training on relevant technologies used in the industry, such as data analytics and financial modeling tools. Collaboration with industry professionals is crucial in ensuring that the curriculum remains relevant and up-to-date.
3. **Expanding Training and Development Opportunities:** Beyond formal education, a wide range of training and development opportunities should be made available to both aspiring and existing insolvency professionals. This includes workshops, seminars, online courses, conferences, and continuing professional education (CPE) programs. These programs should focus on bridging the identified skills gap, covering both technical and soft skills. Specialized training on niche areas like cross-border insolvency, forensic accounting, and complex restructuring should also be offered. Making these programs accessible and affordable is crucial for maximizing participation.
4. **Fostering Mentorship and Knowledge Sharing:** Mentorship programs play a vital role in transferring knowledge and experience from seasoned professionals to newer entrants. Pairing experienced IPs with aspiring professionals provides valuable guidance, support, and practical insights. Creating platforms for knowledge sharing, such as online forums and communities of practice, can further facilitate the exchange of best practices and expertise within the profession. Encouraging participation in industry events and conferences can also promote networking and knowledge sharing.
5. **Integrating Technology into Training:** Technology is transforming the insolvency landscape, and it is essential to integrate technology into training programs. Insolvency professionals need to be proficient in using various technological tools and platforms for data analysis, financial modeling,

communication, and process management. Training programs should therefore include modules on relevant software, data analytics techniques, and the use of technology to enhance efficiency and effectiveness in insolvency proceedings. This will ensure that professionals are equipped to leverage technology to improve their work.

6. **Promoting Ethical Awareness and Professionalism:** Ethical conduct is paramount in the insolvency profession. Training programs should emphasize ethical awareness, professional responsibility, and the importance of adhering to the highest standards of conduct. Case studies involving ethical dilemmas can be used to stimulate discussion and critical thinking. Furthermore, professional bodies should play a crucial role in setting ethical standards, providing guidance on professional conduct, and enforcing disciplinary measures when necessary.
7. **Attracting and Retaining Talent:** Addressing the skills gap also requires attracting and retaining talented individuals in the insolvency profession. This can be achieved by promoting the profession as a rewarding and impactful career, highlighting the diverse range of skills required, and showcasing the important role that insolvency professionals play in the economy. Scholarships, career counseling, and industry outreach programs can further encourage students to pursue a career in insolvency. Creating a supportive and inclusive work environment is crucial for retaining talent within the profession.
8. **Collaboration and Partnerships:** Building capacity in the insolvency profession requires a collaborative effort from various stakeholders. Educational institutions, professional bodies, industry associations, regulators, and insolvency practitioners themselves all have a role to play. Establishing partnerships and working together can ensure that training programs are aligned with industry needs, that resources are utilized effectively, and that the profession is well-prepared for the future.
9. **Continuous Monitoring and Evaluation:** The roadmap for capacity building should be continuously monitored and evaluated to ensure its effectiveness. Regular reviews of training programs, feedback from participants, and assessments of the skills gap are essential for making necessary adjustments and improvements. This iterative process will ensure that the roadmap remains relevant and responsive to the evolving needs of the insolvency profession.

By implementing this roadmap, stakeholders can work together to bridge the insolvency skills gap, build capacity within the profession, and ensure that India has a robust and skilled IP ecosystem capable of handling the challenges of insolvency resolution.

Collaboration and Innovation: Building Capacity for Insolvency Professionals

The insolvency profession stands at a critical juncture. Faced with a widening skills gap, evolving regulations, and increasingly complex financial landscapes, building capacity is paramount. While training and development are crucial, they are most effective when combined with collaboration and innovation. This article explores how these two forces can work synergistically to create a robust and future-ready insolvency profession.

Collaboration: A Foundation for Capacity Building

Collaboration is the cornerstone of effective capacity building. It involves bringing together diverse stakeholders – educational institutions, professional bodies, industry associations, regulators, technology providers, and insolvency practitioners themselves – to share knowledge, resources, and expertise. This collaborative approach fosters a holistic and integrated strategy for addressing the skills gap.

- **Educational Institutions & Industry:** Partnerships between universities and insolvency firms are essential. These collaborations can take various forms, including:
    - **Curriculum Co-creation:** Involving practitioners in curriculum design ensures that academic programs align with industry needs, equipping graduates with relevant skills.
    - **Internships & Apprenticeships:** Providing students with hands-on experience in real-world insolvency settings bridges the gap between theory and practice.

- **Joint Research Projects:** Collaborative research can explore emerging challenges and develop innovative solutions for the insolvency profession.

- **Professional Bodies & Practitioners:** Professional organizations play a critical role in setting standards, providing training, and fostering a sense of community. They can:
  - **Develop & Deliver CPE Programs:** Offer continuing professional education tailored to the evolving needs of IPs, covering technical skills, soft skills, and ethical considerations.
  - **Facilitate Mentorship Programs:** Connect experienced IPs with newer professionals for guidance and knowledge transfer.
  - **Create Communities of Practice:** Establish platforms for IPs to share best practices, discuss challenges, and collaborate on solutions.
- **Industry Associations & Regulators:** Industry associations can act as a bridge between practitioners and regulators, advocating for policies that support capacity building. They can:
  - **Identify Skills Gaps & Advocate for Training:** Conduct research to pinpoint specific skills shortages and work with regulators to develop targeted training initiatives.
  - **Promote Best Practices & Ethical Standards:** Develop and disseminate guidelines for professional conduct and ethical decision-making.
  - **Foster Dialogue & Collaboration:** Organize conferences, workshops, and forums to facilitate communication and collaboration among stakeholders.

Innovation: Driving Efficiency and Effectiveness

Innovation is equally crucial for building capacity in the insolvency profession. It involves embracing new technologies, developing innovative approaches to insolvency resolution, and continuously improving processes.

- **Technology Integration:** Technology is transforming the insolvency landscape, offering opportunities to streamline processes, improve efficiency, and enhance decision-making. IPs need to be proficient in using:
  - **Data Analytics & AI:** Leveraging data analytics and artificial intelligence for asset tracing, financial modeling, and risk assessment.
  - **Cloud-based Platforms:** Utilizing cloud technologies for secure data storage, collaboration, and communication.
  - **Blockchain Technology:** Exploring the potential of blockchain for enhancing transparency and security in insolvency proceedings.
- **Process Improvement:** Continuously evaluating and improving insolvency processes is essential for maximizing efficiency and effectiveness. This includes:
  - **Developing Standardized Procedures:** Creating standardized procedures for common insolvency tasks to reduce errors and improve consistency.
  - **Implementing Project Management Methodologies:** Utilizing project management techniques to ensure timely completion of insolvency proceedings.
  - **Adopting Alternative Dispute Resolution Mechanisms:** Exploring the use of mediation and arbitration to resolve disputes and reduce litigation.
- **Innovative Solutions:** Developing innovative solutions to address emerging challenges is crucial for the future of the insolvency profession. This includes:
  - **Exploring New Business Models:** Developing innovative business models for insolvency practices to adapt to changing market conditions.
  - **Developing Specialized Expertise:** Building expertise in niche areas like cross-border insolvency, forensic accounting, and complex restructuring.
  - **Promoting Research & Development:** Investing in research and development to explore new approaches to insolvency resolution.

The Synergistic Effect

Collaboration and innovation are not mutually exclusive; they are complementary forces that reinforce each other. Collaboration provides a platform for sharing innovative ideas and best practices, while innovation drives the need for further collaboration. By working together, stakeholders can create a virtuous cycle of continuous improvement, ensuring that the insolvency profession is well-equipped to meet the challenges of the future.

In conclusion, building capacity for insolvency professionals requires a two-pronged approach: collaboration and innovation. By fostering strong partnerships among stakeholders and embracing new technologies and approaches, the insolvency profession can bridge the skills gap, enhance its effectiveness, and contribute to a healthy and stable economy. This collaborative and innovative spirit is essential for ensuring that the profession remains relevant, resilient, and ready to navigate the complexities of the evolving business landscape.

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STATUS QUO OF INSOLVENCY PROFESSIONAL – G.O.A.T OR SCAPEGOAT?

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ABSTRACT:

The Insolvency and Bankruptcy Code (IBC) 2016, since its inception has been a game changing legislation in the domains of revival, restoration, resolution and restructuring. The frame work hammers on the nails of delayed resolutions and denied justice. The prominent pillar of this legislation is the appointment of Insolvency Professional as the torch bearer for the entire process in different roles such as Interim Resolution Professional (IRP), Resolution Professional (RP), Liquidator, Authorised Representatives (AR) etc. IBBI data (as of September 2024) shows that there are 4425 registered Insolvency Professionals (IP) and total Corporate Insolvency Resolution Processes (CIRP) initiated till date are 7998 against companies at the stages of National Company Law Tribunal (NCLT), let alone the

Liquidation, Insolvency Resolution of Personal Guarantors, CIRP of Financial Service Providers (FSP), Voluntary Liquidations etc. Hence, knowledge upgradation and building capacity for these unique skilled set individuals plays a pivotal role for attaining the objectives enshrined in the code.

Who is an Insolvency Professional?

As per Regulation 6 of IBBI (Insolvency Professional) Regulations 2016 - An individual who is a professional member of an Insolvency Professional Agency (IPA) – (one of the three IIIP ICAI, ICSI IIP or IPA of ICMAI), possesses the necessary qualifications and experience, and thereafter has qualified the Limited Insolvency Examination, is then becomes eligible to get registered as an Insolvency Professional (IP). Since January 1, 2020, an IP is required to obtain an Authorization for Assignment (AFA) before taking up any assignment under the IBC.

To further necessary qualifications and experience requires -

- **Ten years of experience as a member of the ICAI, ICSI, ICMAI or a Bar Council or**
- **Ten years of experience in the field of law, after receiving a Bachelor's degree in law or**
- **Ten years of experience in management, after receiving a Master's degree in Management or Two-year full time Post Graduate Diploma in Management or**
- **Ten years of experience in management, after receiving a Bachelor's degree**

And mandatorily have to qualify Limited Insolvency examination to become eligible as Insolvency Professional. Now, after being through this rigorous churning of professional expertise and experience, IBBI data (till September 2024) recorded a striking number of 4425 registered insolvency professionals but shockingly only 2195 of them have valid AFA (Authorisation For Assignment) for taking up new assignments.

With Great power, comes Great responsibility!

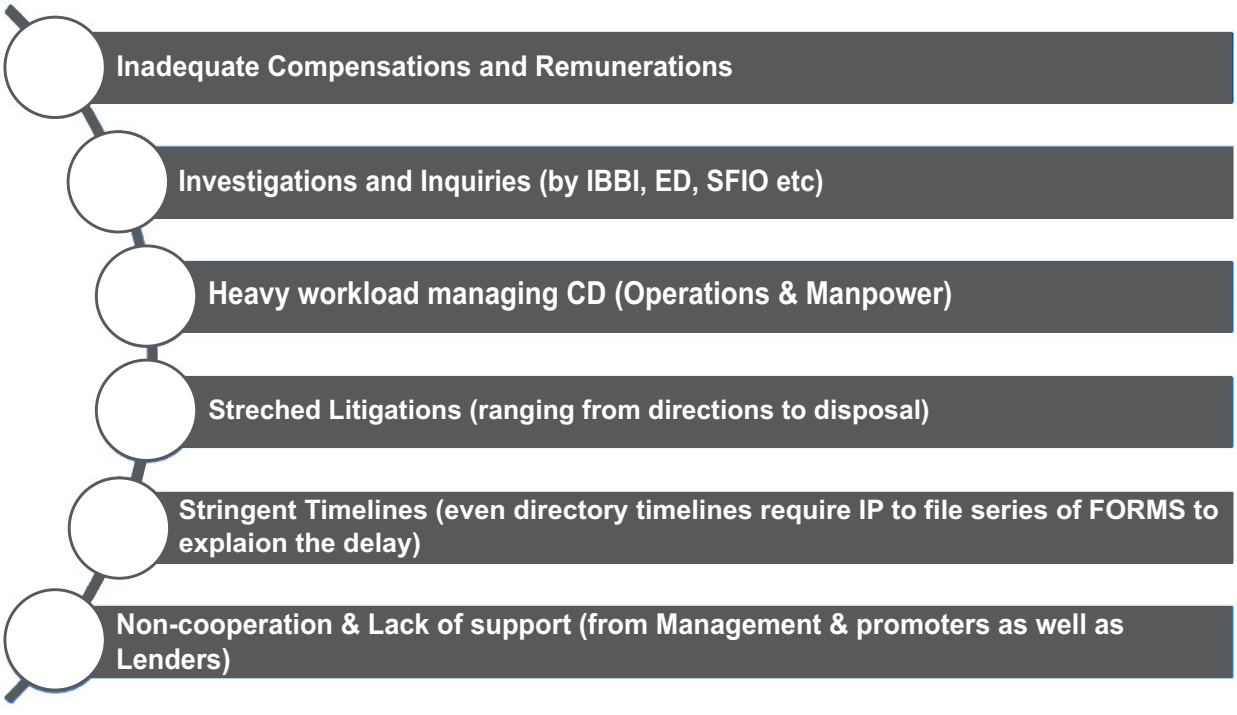
Once an insolvency professional is appointed to discharge duties as IRP/ RP of a company under IBC, the responsibilities on him are doubled as he has to keep the CD (Corporate debtor) as a going concern (or status quo) alongside managing the compliances

and directory timelines envisaged under the code. IP has to take control and possession of the CD alongside has to preserve its value. The NCLT CIRP Initiation order suspends the board of directors and empowers the IP to take decisions going forward. Though he can appoint professionals to support him in endeavour of revival of CD in timely manner but ultimate onus of every decision lies in the insolvency professional so appointed. The IP has to facilitate the entire insolvency process and must comply with all applicable laws in force on behalf of CD and any deviation or omission results in inquiry concluding as "deliberate dereliction of duties". It has been often witnessed that the promoters try to make a backdoor entry into the CD through the route of IBC process and they tend to get IPs so occupied by either non-cooperating with them while providing the crucial data and steam-lining the operations of corporate debtor or reigning a series of frivolous litigations against the appointed IP so that they can leverage the same at later stage. More so often complaints were also made against the conduct of IP to IBBI by either promotors or promoter motivated officials which puts the IP under radar and making his approach submissive. To address this, adjudicating authorities as well as appellate authorities should fast track the applications filed by IP or devise a mechanism so that quick remedy becomes available to the court appointed professional preventing him to become scapegoat in entire process of revival of CD.

Major reasons of declivitous trend -

Being a profession of such intellectually elite, still this can be witnessed that there has been a declivitous trend in number of professionals with valid AFA. According to a recent article there has been a wide void in the professionals taking up the career as Insolvency professionals attributing to various reasons -.

To substantiate the argument, it should be noted that in registration of insolvency professionals in FY 18 was 1716 to registration in FY 19 was 648 to registration in FY 20 was 554 to registration in FY 21 was 506 to registration in FY 22 was 549 to registration in FY 23 was 209 and to registration in FY 24 was only 116. Therefore, there is pressing need to ease the practice & profession and parallelly keeping more knowledge sharing activities like seminars, webinars, round table workshops, training workshops with IP's etc. These events should be kept at minimum fees and should be industry-centric so that IPs can benefit from them in knowledge as well as their in-hand assignments of same industry.



More so, **OPPORTUNITY QUIZES** can be introduced wherein more IPs should participate and answer questions to earn CPE hours which will be credited once they write a mini- article on the subject matter of question answered by them. This would bring in problem specific articles to IPA and other IPs can always benefit from them.

PEER-LEARNING PROGRAMS can be of support in bridging the knowledge gaps where inter-region as well as intra-regional programs be conducted and the same should be again economically viable so as to knowledge upscaling be done and more professionals get incentivized to enter the profession.

INTRODUCTION OF KYIP – Know your Insolvency Professional – can be induced to establish connectivity with the IPs in real time. The grievances of IPs be resolved in record time and assistance to them should be provided in real time. A team of executives would definitely be required to establish this program but once done, it can be hoped that downhill trend pace will slow down.

WORKSHOPS ON DC ORDERS - Mandatory "Four workshop series" be introduced for the benefit of all insolvency professionals outlining the real scenarios wherein the experienced faculty outlines the steps that should not be taken by an insolvency professional after appointment as IRP/ RP/Liquidator. This would benefit the new IPs as well as existing IPs and they will be cautious of the same in their own assignments.

CONCLUSION:

This is well established fact that looking at the rise in bad-loans, the need of qualified and competent professionals to take up as 'insolvency professional' as career option is going to rise in coming future. Presently out of 4425 registered IPs only 2195 have valid AFA i.e. 49.6%. Kindly note that out of 2195 IPs with valid AFA – 933 IPs are already in the age range of 50 years to 70 years i.e. 42.5%. Hence, a resource building approach is much required which caters to keeping the numbers of insolvency professionals with intellectual acumen into the profession and more so invites more noetic array of individuals to join the profession. A consistent and persistent approach of knowledge building; where the IPs can interact freely, expression the problems and salvage a situation with discussions and brainstorming should be promoted. I am reminded of a fine proverb that *"He who will not reason, is bigot; He who can not reason, is fool & He who does not dare to reason, is a slave"*.

Meanwhile the inspecting authorities should also not treat the insolvency professionals like defunct personnel of a financially distressed company just because they are in the position of the management after the orders of Adjudicating Authority. Though an insolvency professional does not hold any adjudicatory power but sure holds the administrative powers and hence should come within the ambit of public servant[2] and be treated accordingly. A brief skirmish often leads to an awry notion for generations.

[2] https://ibclaw.in/is-resolution-professional-a-public-servant-by-ms-reyyi-sameera-and-ms-rapaka-sravya/

ROLE OF THE RESOLUTION PROFESSIONAL DURING INSOLVENCY

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INTRODUCTION:

The Insolvency and Bankruptcy Code was introduced by the Parliament on 28th May 2016 in the sixty seventh year of republic of India with an aim to maximise the value of individuals' assets, promote entrepreneurship, increase credit availability, and balance the interests of all stakeholders[2]. This includes changing the order of payment of government dues and establishing an Insolvency and Bankruptcy Board of India. Insolvency is referred to a situation where an individual or business is unbale to fulfil their debt and Bankruptcy is referred when insolvency is declared such insolvency is declared by the Court and the Court through an Order permitted the resolution of the insolvency.[3] India did not have a single legislation earlier on Insolvency and Bankruptcy. Government of

[2] Insolvency and Bankruptcy Code, 2016, No. 31 Acts of Parliament, 2016 (India)

[3] Vrinda Agrawal, Resolution Professional : Balancing the Interests of Stakeholders under IBC, September 10, 2024, https://ibclaw.in/resolution-professional-balancing-the-interests-of-stakeholders-under-ibc-by-vrinda-agrawal/?print=pdf

India established different committees to review the existing insolvency laws in India.[4] Later, the Insolvency and Bankruptcy Code (IBC) was implemented by the Bankruptcy Law Reform Committee under ministry of Finance in 2015 and it was passed by Rajya Sabha on May 11th 2016 and President's assent on 28th May 2016[5].

Section 5(27)[6] of the Code defines Resolution Professional as "an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional".

Resolution Professionals, including Interim Resolution Professionals, are designated to oversee the Corporate Insolvency Resolution Process (CIRP). The resolution professional is being appointed by the adjudicating authority to look after the Insolvency and Bankruptcy Process[7]. Insolvency professional and resolution professional means the same in Insolvency resolution process, interim resolution professionals take necessary steps to revitalise the company.[8]

The Code recognizes different categories of stakeholders[9]:

- Financial creditors
- Operational Creditors
- Corporate Debtors
- Resolution Applicants
- Employees
- Investors and Shareholders

Multiple stakeholders form a business entity and the aim of that entity is to maximize the value of its assets and protect the interests of all the parties involved. The law specifies certain norms to ensure that the value of the assets of a company are increased and it is able to balance the interests of the stakeholders involved. In few cases, resolution preserves and maximises the enterprise value as a continuing company. In the remaining circumstances, the Code facilitates liquidation by optimising value for all stakeholders[10].

RESEARCH OBJECTIVES:

The research objectives of the current research paper are as follows:

i. To examine the legal framework providing for the balance of interests of the stakeholders.

ii. To know the effectiveness of resolution plans in balancing the interests.

iii. To know the importance of balancing the interests of the stakeholders in resolution process.

RESOLUTION PROFESSIONAL:

Section 22[11] of the Code deals with the appointment of Resolution Professional. It states that:

The first meeting of committee of creditors shall take place within seven days of its formation.

Through majority of votes of the financial creditors, the appointment of interim resolution professional as resolution professional or the replacement shall be determined in that meeting. The interim resolution professional shall be informed about the appointment or the replacement. In the event of replacement, the suggested name of the resolution professional will be given to the Board by the Adjudicating authority. Before the appointment the Board has to confirm the same and if confirmation is not received in ten days, then Adjudicating authority shall give directions to the interim resolution professional to act as resolution professional till confirmation is given by the Board.[12]

The resolution professional is appointed to operate the corporate debtor business productively and it is required that the appointed resolution professional under the Code to keep themselves in the shoes of the CEO of the company and resolve the potential challenges while maximizing stakeholder value[13]. The resolution professional is appointed to look after the

[4] Ibid

[5] Supra Note 2

[6] Insolvency and Bankruptcy Code, 2016 § 5(27), No. 31 Acts of Parliament, 2016 (India)

[7] Supra Note 1

[8] Supra Note 1

[9] Balancing Stakeholders' Interests under the Insolvency and Bankruptcy Code, August 23, 2023, https://medium.com/@resurgentresolution1/balancing-stakeholders-interests-under-the-insolvency-and-bankruptcy-code-82d328632e

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[11] Insolvency and Bankruptcy Code, 2016 § 22, No. 31 Acts of Parliament, 2016 (India)

[12] Ibid

[13] Bhargava, Aashna, Role of Resolution Professional in Corporate Insolvency Resolution Process in the Light of Corporate Governance (March 18, 2024), SSRN: https://ssrn.com/abstract=4763623

process of CIRP, to keep the situation in control[14] and to guarantee that there is resolution not liquidation as when compared resolution serves the interests of all parties involved and liquidation ought to be the last resort. The Supreme Court in the case of *Swiss Ribbon Pvt. Ltd. v. Union of India*[15], believed that RP only acts as a facilitator in the resolution process, it has to act as per the CoC.

DUTIES OF RESOLUTION PROFESSIONAL:

Section 25[16] of the Code deals with duties of Resolution professional and states as follows:

1. Preserving and protecting corporate debtor assets that includes the ongoing concern of the corporate debtor.
2. The resolution professional shall undertake the following actions, namely:
   a) Take possession of the assets of the corporate debtor including company records
   b) Represent the corporate debtor while interacting with other parties and exercise rights in judicial, quasi-judicial and arbitration proceedings.
   c) Subject to section 28 raise interim monetary support
   d) Appointment of solicitors, accountants and other professionals should be according to the guidelines provided by the Board
   e) Keep a list of claims till date
   f) Attend the meetings of committee of creditors
   g) compile the information memorandum in compliance with section 29; (f) call and attend all committee of creditors meetings;
   h) invite potential applicants for resolution, who meet the requirements he sets with the committee of creditors' approval, considering the complexity and scope of the corporate debtor's operations as well as any additional requirements the board may specify, to submit a resolution plan or plans.]
   i) present all resolution plans during committee of creditors meetings;
   j) submit an application for the avoidance of transactions in compliance with Chapter III, if applicable; and
   k) take any additional procedures that the Board may specify[17].

It is the duty of the resolution professional to ensure that CIRP process is fair and transparent. It is the duty of the resolution professional to take care of the operations of the company in a way that it benefits every stakeholder and prepare a suitable resolution plan. The committee of creditors have the authority to check on the powers of resolution professional and ensure the process is fair and transparent[18].

Under section 18[19] of the Code, the powers of corporate debtor and board of directors can be suspended while passing them to the resolution professional so that without any interference the professional can initiate CIRP process and uphold the spirit of entrepreneurship.

BALANCE OF STAKEHOLDERS INTERESTS:

One of the objectives of the Code is to balance the interests of the stakeholders[20]. The Code ensures to reach the objective through various sections. The Code prescribes several balances in resolution process: prioritizing payment of interim finance, adopting a resolution plan by 75% voting power, repayment of at least liquidation value to operational creditors[21]. The regulations relating to CIRP provides that a dissenting financial creditor can choose to exit at value of liquidation to protect its interests[22]. The regulations safeguards the interests of financial creditors by allowing them to choose to leave at the liquidation value. The creditors who chose to leave at liquidation value leave the value of the enterprise behind. This works in favour of balancing the interests of the creditors in monetary terms.

[14] Vinod Kothari & Sikha Bansal, "IBC: Ushering in a New Era" pg. 5

[15] Swiss Ribbon Pvt. Ltd. v. Union of India AIR 2019 SUPREME COURT 739,

[16] Insolvency and Bankruptcy Code, 2016 § 25, No. 31 Acts of Parliament, 2016 (India)

[17] Ibid

[18] Wajahat Monaf Jilani, Role of Insolvency & Bankruptcy Code in Corporate Governance: A Legal Analysis, JOURNAL OF CORPORATE GOVERNANCE AND TRANSPARENCY.

[19] Insolvency and Bankruptcy Code, 2016 § 18, No. 31 Acts of Parliament, 2016 (India)

[20] IBC

[21] Supra Note 6

[22] Supra Note 6

Resolution Professional play a pivotal role in balancing the interests of different stakeholders. In the case of *State Bank of India vs. M/s Metenere Ltd*[23]. There was a contention that whether an ex-employee of a financial creditor be appointed as resolution professional for a corporate debtor. There were doubts regarding the impartiality of the resolution professional in his case. The NCLT has held that the appointment of resolution professional was valid and unless there is a reasonable apprehension in the mind of the party the impartiality of the resolution professional is not a matter of interest. According to the Code, the resolution professional must remain impartial. The following provisions explain how the resolution professional acts towards balancing the interests of the stakeholders:

- According to section 23[24] of the Code, the resolution professional shall take care of the business of the corporate debtor during CIRP. Through this, the business of the corporate debtor will be functioning there by preserving the value of the assets which protects the interests of employees, creditors of that business. In the case of *M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr*[25], it was held that while managing the company the resolution professional should act in an ongoing concern.
- According to section 30[26] of the Code, the resolution professional shall check each resolution plan which he has received and confirm that each resolution plan provides for:
    i. Payment of insolvency resolution process costs
    ii. Payment of debts of operational creditors according to the directions specified by the Board
    iii. Management of affairs of corporate debtor after the approval of resolution plan.
- According to section 24[27] resolution professional shall conduct the meetings of committee of creditors and facilitates fair voting process and by this the resolution professional is ensuring that the interests of the financial creditors are considered in the decision making process.
- According to section 20[28] of the Code the resolution professional has to take care of the business of corporate debtor as a going concern which means he has to ensure that the operations of the business are not disrupted and by this the interests of various people like employees, creditors are secured.
- According to section 21[29], it is the duty of the resolution professional to form committee of creditors but the resolution professional has to make sure that that operational creditors are also represented and to ensure that rights of the operational creditors are taken into consideration during decision making process.
- Section 29[30] of the Code, states that the resolution professional shall prepare an information memorandum that contains all the necessary information to prepare resolution plan. And through this section it can inferred that the resolution professional shall collect the accurate information which can help in maximizing the asset value of the debtor.
- The resolution professional has to act impartially and comply with the Code while carrying out the resolution process under section 208[31].

As mentioned previously, the resolution professional has to keep the company operational so that the value of the company can be maximised. The resolution professional balances the interests of the stakeholders by representing them in the meetings, providing a resolution plan which can maximise their assets value, ensuring fair and transparent CIRP, making sure that the interest of the operational creditors is considered while making a decision, by ensuring that the proposed resolution plan is in compliance with the Code. In the case of *Prabodh Kumar Gupta vs. Jaypee*

[23] State Bank of India vs. M/s Metenere Ltd (2020) ibclaw.in 159 NCLT

[24] Insolvency and Bankruptcy Code, 2016 § 23, No. 31 Acts of Parliament, 2016 (India)

[25] M/s. Subasri Realty Private Limited Vs. Mr. N. Subramanian & Anr., [2018] ibclaw.in 22 NCLAT

[26] Insolvency and Bankruptcy Code, 2016 § 30, No. 31 Acts of Parliament, 2016 (India)

[27] Insolvency and Bankruptcy Code, 2016 § 24, No. 31 Acts of Parliament, 2016 (India)

[28] Insolvency and Bankruptcy Code, 2016 § 20, No. 31 Acts of Parliament, 2016 (India)

[29] Insolvency and Bankruptcy Code, 2016 § 21, No. 31 Acts of Parliament, 2016 (India)

[30] Insolvency and Bankruptcy Code, 2016 § 29, No. 31 Acts of Parliament, 2016 (India)

[31] Insolvency and Bankruptcy Code, 2016 § 208, No. 31 Acts of Parliament, 2016 (India)

Infratech Ltd[32]., it was observed that the petitioner is also a stakeholder and directed the resolution professional to consider and protect the interests of the petitioner along with other stakeholders.

CHALLNEGES FACED IN BALANCING THE INTERESTS:

The following are the challenges faced while balancing the interests of various stakeholders:

- Limited representation of operational creditors in committee of creditors compared to financial creditors.
- Conflict of interests among the stakeholders might lead to litigation which hampers the resolution process.
- Creating a resolution plan that satisfies the expectations of every stakeholder.
- The resolution professional may face challenges in gathering accurate information to prepare suitable resolution plan.
- Sometimes, it will be difficult to the resolution professional to maintain the business as going concern.

CONCLUSION:

Resolution professional is appointed to look after the process of CIRP. The Code prescribes the qualifications of Resolution professional and also the duties through different sections. It can be concluded that the resolution professional plays a very crucial role in balancing the interests of the stakeholders through CIRP by acting impartially and fairly. As the main task of the resolution professional is to facilitate CIRP, he has the duty to align the interests of various stakeholders and this balancing of interests is one of the objectives of the Insolvency and Bankruptcy Code 2016. The resolution professional maintains fairness through CIRP and takes care of the business of corporate debtor as a going concern and through this the resolution professional is protecting the interests of different stakeholders of the business such as employees by helping them in retaining the jobs and by continuing the business he is helping in generating the wealth which in turn preserves the asset value of the debtor and there by serving the interest of employees, investors and creditors. One of the most difficult part of CIRP is balancing act of resolution professional. The resolution professional upholds the values of impartiality and transparency ensures lines of communication open with all parties involved.

In conclusion, the successful resolution depends on the ability of resolution professional where the resolution professional creates a strategy which balances the actual business needs and legal compliances and at the same time working towards optimising the interests of various stakeholders.

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[32] Prabodh Kumar Gupta vs. Jaypee Infratech Ltd CP No. (IB) 68/Ald/2017 (28.08.2017, NCLT- Allahabad).

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A STUDY INTO THE INHERENT/DISCRETIONARY POWERS OF NCLT/NCLAT – PROVIDING MECHANISM FOR DEFICIENCY-FREE 'ENDS OF JUSTICE' FOR ALL

Abstract:

The Companies Act 2013 established National Company Law Tribunal under Sec 408 as a quasi-judicial body with jurisdiction to resolve disputes for Companies established under such Act. While doing so the Act and the Rules governing the Tribunal as well as its Appellate body makes provision with powers for the Tribunal to make such orders or recalling of the same to enable it to render justice as well

as to correct any procedural or substantive errors that may have occurred in delivering any order on its part to dispense justice and avert the abuse of the process of the tribunal. The Apex Court in its recent order in Glass Trust Company LLC and SBI v Murari Lal Jalan & Florian Fritsch dealt with such powers as laid out under Rule 11 & Rule 15 of NCLT and NCLAT Rules in detail and sets certain guidelines in the exercise of such powers by the Tribunals. This article attempts to understand these guidelines in the backdrop of various case laws where such discretionary/inherent powers have been used by the Tribunals in the past and the underlying jurisprudence forming cornerstone of such guidelines.

Introduction:

The objective of any judiciary system is to render justice in the most efficient and timely manner. While aiming at meeting such an objective it becomes imperative that the delivery of justice remains a flawless process so that all stakeholders in the subject case are treated at par during the entire process of court proceedings including the basic tenets of hearing & right of appeal available to all stakeholders. However, a pragmatic look into any system including that of judiciary would reveal that possibility of errors cannot be done away with even with best possible care to minimize the same. It is for this reason and to handle such eventuality in case a procedural or other type of error/s would have occurred during a proceeding, the court has been empowered to rectify and remove such procedural error/s. Again, there could be a situation arising out of absence of a clear provision of law in a matter that would have arisen during the proceedings. Since the case is required to be decided without being waiting for the required legal proviso to be framed, the Court is required to be empowered to exercise its own interpretation in the matter to bring a successful completion of the proceedings. These powers are also needed in such situations where there might arise such circumstances for which no provisions in law might have been laid down. In all such instances the so-called 'inherent powers' would come into play to enable NCLT or NCLAT to exercise such powers most judiciously based on proper grounds and circumstances to deliver justice without delay. It is needless to mention here that exercise of the powers that are categorized under the discretionary/inherent category by the law makers have to be done with utmost care to avoid exceeding/ overstepping such Laxman Rekha that have now been laid down by Supreme Court in their judgment in Glass Trust Company LLC and SBI v Murari Lal Jalan & Florian Fritsch. However, before we delve into these guidelines set by the Apex Court, we shall first take a look into a couple of prominent case laws where the Judiciary has used such powers in the past. The next section presents a short brief of some of those cases to help us comprehend the essence of such powers provided in the statute.

A historical perspective into the use/exercise of Inherent/Discretionary Judiciary powers of the Judiciary:

In the graphics above we have indicated on two types of review while an order is being recalled for corrections using the inherent powers of the Court. Whereas the first type of review is merely a *'procedural'* one i.e. for example not providing opportunity for hearing or not allowing for appeal or similar such procedural gaps, the second one *'on merit'* could include *'question of law'* or use of *'fraudulent facts'* to obtain a favorable order by one of the contesting parties. This may involve matter of *'substance'* to be dealt with in review. When we look into a few of such cases we encounter varied interpretation by the Court of Justice in the application/ exercise of such inherent and discretionary power of the Court. In the case of ***Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning & Weaving Mills Ltd. & Anr. [6]*** provides an interesting perspective on this matter. In this given case the issue was to decide whether the 'recall' order of the Industria Tribunal was justified or not or whether the Tribunal had been within its power to recall its own order. The appeal before High Court was turned down with the logic that in the absence of *'express provision of law'* (we shall deal with this term when we discuss Apex Court orders in Glass Trust and Jalan Karlock later in this article) it cannot be presumed that to review its judgement is an inherent power conferred in the tribunal. Here the court dealt with the difference between a *'procedural review'* and a *'review on merit'*. While the later can be done only when an *'express provision of law'* provides (meaning that in the absence of such express provision the Court would not be within its powers to bring out its own interpretation in the matter of law) the court with

such power, the former i.e. recalling of its own order can be done when due to such procedural errors the whole proceeding gets vitiated and invalidated. In another case ***of Agarwal Coal Corporation Private Limited v. Sun Paper Mill Limited and Another [7]*** the applicant prayed to the Tribunal to recall its judgment invoking such inherent powers since vitiated with *'fraud'* touching the very substantive part of the proceeding. Here the court, however, held that since it is not having the substantive power to handle the *'question of law'* to review its own judgement in the absence of any express provision in this regard it could not do so. It went on to further hold the view that Rule 11 of National Company Law Tribunal Rule, 2016 is not a substantive rule which provides any power to the tribunal but to direct the appellant towards appeal on the matter. All these contradictory views by various Courts and quasi-judicial authorities i.e. there are a few more cases like Union Bank of India (Erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian & Ors.[9], or K. Sashidhar v. Indian Overseas Bank [11], where similar views led to a situation of uncertainty in delivering justice to the aggrieved parties although such objectives reside at the core of the function of the judiciary. All these finally made it essential for the Apex Court to bring transparency and lay down guidelines for uniform code of practice for the judiciary in this regard. In the next section we shall be analyzing the recent Apex Court judgments as regards its essence and principles in the matter of Inherent and Discretionary powers of the tribunals while delivering justice in a fair, transparent and timely manner.

The Apex Court intervention in defining and laying down guidelines for Judiciary while using such Inherent/Discretionary Powers:

While we now attempt to analyze the judgments of the Apex Court in the matter of *Glass Trust Company LLC v. Byju Ravindran and Ors.(2024) and SBI and Others v The Consortium of Murari Lal Jalan & Florian Fritsch And Another(2024),* it is coming out to be amply clear from the above case discussions that exercise of the powers by NCLT/NCLAT that are categorized under the inherent as well as discretionary category by the law makers have to be done with utmost care to avoid exceeding/ overstepping such Laxman Rekha that have now been laid down by Supreme Court in their judgment in the above matters. These guidelines are applicable for both inherent as well as discretionary powers of NCLT and NCLAT under Rule 11 as well as Rule 15.

With reference to the above two cases the Apex Court reemphasized upon the importance and relevance of the inherent powers that are spelt out under Rule 11 in no uncertain terms. It says *"If the proposition that there ought to be no exercise of the inherent powers where a procedure is laid down were to be blanketly accepted then it may have a very chilling effect whereby the very purpose of vesting this Court with inherent powers under Article 142 and tribunals Rule 11 of the NCLT Rules would be rendered otiose and meaningless."*

Again, while touching upon Rule 15, the question that arises: *Can the NCLT, exercising its powers under Rule 15 of the NCLT Rules, 2016, extend the timelines for implementation set in the approved Resolution Plan?* If we see, Rule 15 says as regards *'Power to extend time'* as under: - the Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefor is not made until after the expiration of the time appointed or allowed". Hence Rule 15 of NCLT & NCLAT Rules 2016 pinpoints to granting powers to NCLT or NCLAT respectively to extend the time limit for doing any act which have been fixed, either by the rules or by an order, as the justice of the case may require.

In its judgment the Apex Court additionally laid down clear boundary lines for judiciary to use its inherent power only in such cases where there is no '*express provision*' under the legal framework. Similarly in the other case of State Bank of India & Others vs the Consortium of Murari Lal Jalan and Mr. Florian Fritsch and Another (2024), the

Apex Court went on to define the limits and boundaries for use of *'discretionary power'* by restricting use of such powers '*merely mechanically'* but to be used only with the '*application of mind'*. Here in its judgments the Apex Court re-emphasized the importance of exercising such inherent powers within the scheme of the Insolvency and Bankruptcy Code, 2016 and as such powers cannot be exercised '*in contravention of, conflict with or in ignorance of express provisions of law*'.

We have tried to put the guidelines/boundary lines as under in a tabular format for better understanding: -

Scope of Inherent Powers under Rule 11 of NCLT/ NCLAT Rules 2016 & Rule 15-

Its applicability norms and guidelines as per Supreme Court Judgment in

Glass Trust v. Byju Ravindran & SBI & Othr. v. Jalan Karlock Consortium

Case Situation	Whether Inherent Power Exercisable (Yes/No)	No-go & Prohibition Guidelines & Points	Remarks & Deviation
No express provision of law existing in the matter	Yes	- Contravention of - Conflict with - Ignorance of any express provision of of law	
Express provision of law existing in the matter	No	No power shall be exercised otherwise than in the manner prescribed in the said provision	In case of any deviation the court must justify why this was necessary to "prevent the abuse of the process of the Court"
	No	There is need to be circumspect while invoking "inherent powers" when there is an exhaustive legal framework existing like IBC	Ebix Singapore (Pvt)Ltd v. CoC of Educomp Solutions Ltd.

Conclusion:

It is often said that the Tribunals are lacking power to recall its orders and make correction therein for the purpose of ensuring delivery of justice in the most fair and transparent manner. However, the above judgments of Supreme Court clearly reassert on the exercise of such power and also emphasizes on the use of the same in a judicious manner where rendering of justice demands such. It further clarified that Glass Trust LLC decision should in no manner be read so as to restrict the plenary powers under Article 142 of the Constitution even while in deviating from the statutory procedure and framework of the IBC 2016 or the rules and regulations thereunder, if such deviation is very much necessary. It has only re-emphasized on the point that, where there is a prescribed procedure in place for a particular purpose, then that particular thing must be done only in the manner prescribed. It in no way lays a dictum that even where cogent reasons exist warranting such deviation, the court would be powerless to exercise such *'inherent powers*.

In conclusion we can say that the Supreme Court guidelines as have been laid down thru' these judgments have brought a great deal of clarity in the use of the inherent as well as discretionary powers of NCLT and NCLAT. It has garnered a great deal of awareness on the subject of Court's power in delivering judgments in an error-free manner by recall of its own order and correcting the same to render justice in a fair and equitable manner for all stakeholders thru' the judicial process.

Reference & Resources: -

i) NCLT Rules 2016

ii) NCLAT Rules 2016

iii) Insolvency and Bankruptcy Code 2016 I 12 A, No.31, Acts of Parliament

iv) Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning &Waeving Mills Ltd. & Anr. (Appeal (civil)3475 of 2003)

v) Agarwal Coal Corporation Private Limited v. Sun Paper Mill Limited. 2021 SC Online NCLAT 367

vi) IBBI (Insolvency Resolution Process of Corporate Persons) (Fourth Amendment) Regulation 2022, w.e.f. 16-9-2022

vii) Glass Trust Company LLC v Byju Ravindran and Ors. 275 SC

vii) State Bank of India and Ors. V. The Consortium of Murari Lal Jalan and Florian Fritsch 290 SC

DIGITAL DISRUPTION IN INSOLVENCY: IBBI'S EBKRAY PLATFORM SETS NEW STANDARDS FOR ASSET AUCTIONS

CA IP Pankaj Gupta

Introduction:

Insolvency and Bankruptcy Board of India (IBBI) has taken a phenomenal step towards improving the transparency, efficiency, and accessibility of the liquidation process under the Insolvency and Bankruptcy Code (IBC), 2016. By taking this historic step, IBBI has mandated the use of the eBKray platform for conducting auctions of liquidation assets. This digital intervention intends to streamlining the selling of distressed assets and maximization of value realization while ensuring a fair and competitive bidding process. The implications of the eBKray platform, its features, benefits, and larger ramifications on India's insolvency resolution framework will be discussed in this article.

Need for Digital Auction Platform:

Liquidation process under the IBC comprises the selling of assets of a corporate debtor against the repayment of creditors. Traditionally this process has suffered from many inadequacies, such as:

- **Transparency Issues:** The physical form of holding auctions is often shrouded in a veil of darkness regarding transparency, causing suspicion of favoritism or undervaluation of assets.
- **Limited Participation:** Often buyers are not able to reach auctions of interest due to geographic constraints, or the publicity regarding physical auctions is lacking. This reduces competition and eventually harms the realization of asset value.
- **Too Much Time Consuming:** Such manual auctions are prone to delays and can lengthen liquidation procedures and increase expenditures.
- **Regulatory Compliance:** In this process, with all legal and procedural requirements involved, great care must be exercised, otherwise errors may creep in.

In view of the above difficulties, the IBBI has inaugurated the eBKray platform for the conducting of auctions for the liquidation of assets-a digital marketplace. It makes the process of liquidating assets more effective, transparent, and inclusive.

What is the eBKray Platform?

The eBKray platform is an online auction portal created by the IBBI aimed at facilitating the sale of assets under liquidation. It is a centralized marketplace where liquidators can offer their assets and potential buyers can bid for them from anywhere in the world. Some of the special features of the platform are:

- **User-Friendly:** The platform has been created to be easily navigable, thus ensuring ease of experience for both liquidators and bidders.
- **Wide Reach:** By operating in the online mode, eBKray will not have any geographic restrictions, thereby enabling participation from any potential buyer across the globe.
- **Transparency:** The platform gives real-time updates on auction status, bid amounts, and other pertinent matters, adding full-turn transparent approach.
- **Transaction Security:** eBKray involved high-security norms to protect sensitive information and uphold the concert of the auction.
- **Compliance with IBC:** The Platform is in complete consonance with the provisions of the IBC, and all auctions conducted on the platform remain within the ambit of legal and regulatory processes.

How Does eBKray Work?

The eBKray platform essentially provides a systematic and efficient workflow for auctioning:

1. **Listing of Assets**

   It is the liquidator who registers on the platform and lists assets for auction, giving a detailed description of the assets together with photos and an evaluators' report. The list will also mention the reserve price, the timeline for the auction, and the terms and conditions.

2. **Bidder Registration**

   Interested buyers are required to register on the platform by providing relevant details and submitting relevant documents. Registered bidders may view and participate in the auction for the listed assets.

3. **The Auction Process**

   The auction itself takes place online, and bidders may join the auction in real-time while placing their bids. The platform also shows the current highest bid, motivating more bidders to submit bids. Bidders may continue to bid until the end of the auction.

4. **Auction Closure**

   Once the bidding is completed, the highest bidder is found by the platform, and the liquidator is notified. The liquidator independently verifies the credentials of the highest bidder and confirms compliance with the auction terms.

5. **Payment and Transfer of Assets**

   The payment is made to the liquidator for transfer through the eBKray platform by the winning bidder.

The eBKray platform will issue a digital transaction record for accountability and transparency.

Advantages of eBKray platform:

The eBKray platform has many advantages for the stakeholders involved in the liquidation process, such as:

1. **Maximizing Asset Value**

   The platform enables worldwide participation, which enhances competition and yields ever-higher bids and better value realization for creditors.

2. **Transparency**

   The digital manner of the platform ensures total transparency of the process, thereby reducing any possible malpractice, which will help in establishing trust from all stakeholders.

3. **Efficiency and Speed**

   The online process eliminates any requirement of a physical auction, which in turn will greatly reduce the time and cost incurred in selling off the assets.

4. **Accessibility**

   The platform is available to a broad spectrum of buyers-from individuals to businesses and institutional investors.

5. **Legal Validity**

   The eBKray is one of the few platforms that ensures compliance with the provisions of the IBC concerning all auctions, thereby reducing the risk of legal challenges and delays.

6. **Data Analytics**

   The platform generates useful data regarding auction trends, bidder behavior, and asset performance, ensuring that all stakeholders can use this information for decision-making.

Challenges and the Way Forward

Some challenges have to be resolved if eBKray is to be regarded as a platform of change:

- **Digital Literacy:** Awareness campaigns and training programs will need to be initiated to assist all stakeholders, especially small businesses and individuals, in being able to use the platform.
- **Internet Connectivity:** Without reliable internet access, the success of the platform would remain under questionable premises, laying further emphasis on the need for improved digital infrastructure in rural as well as remote areas.
- **Fraud Prevention:** There shall be a strong mechanism against fraudulent activities, including but not limited to fake bidding or impersonation.
- **Continuous Improvement:** The platform must continuously update itself based on new user feedback and emerging technologies.

Conclusion:

Therefore, in the opinion of the authors, allowing the IBBI to run the eBKray platform for the sale of assets in liquidation may be amongst one of the biggest transformational steps in India's journey of modernizing the entire insolvency resolution framework. The emphasis remains on bringing in technology to create transparency, efficiency, and inclusiveness, while at the same time addressing many of the historical challenges with the liquidation process to the benefit of maximizing recovery for creditors.

The eBKray platform provides a simple and secure way for insolvency professionals, liquidators, and interested bidders to partake in property auctions. The broader economy benefits by limiting NPAs, boosting investor confidence, and facilitating business activities.

On its way to prominence, the platform has potential to become a global best practice for digital insolvency resolution. With innovation at the helm, the IBBI is creating a flexible and innovative infrastructure for insolvency in India via the cooperation of all concerned parties.

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VOLUNTARY LIQUIDATION UNDER IBC: LEGAL FRAMEWORK, TAX IMPLICATIONS AND KEY INSIGHTS FROM DATA

Voluntary Liquidation (VL) is a structured process that enables solvent companies and Limited Liability Partnerships (LLPs) to wind up their operations while adhering to legal and regulatory frameworks. As part of India's commitment to enhancing the ease of doing business, voluntary liquidation provides a dignified and straightforward pathway for various entities—including private limited companies, public limited companies, limited liability partnerships (LLPs), one-person companies (OPCs), start-ups, foreign subsidiaries, and other eligible businesses—to exit the market without legal complications. This mechanism aligns with global best practices, making India's regulations progressive and business-friendly. Below, we explore the

various aspects of voluntary liquidation, including its procedures, taxation implications, and practical challenges, along with its relevance in the Indian context.

The Legal Framework for Voluntary Liquidation

The streamlined process of Voluntary Liquidation, outlined under the Insolvency and Bankruptcy Code (IBC) and read with The Voluntary Liquidation Process Regulations, 2017, issued by the Insolvency and Bankruptcy Board of India (IBBI), enables companies to wind up their operations in a structured and efficient manner while safeguarding the interests of creditors, shareholders, and other stakeholders.

Enacted in 2016, the Insolvency and Bankruptcy Code (IBC) transformed India's insolvency framework by establishing a unified legal process for resolving distressed companies. Section 59 of the code specifically governs voluntary liquidation for solvent entities that wish to cease operations for strategic reasons such as market shifts, mergers, or restructuring (VL now part of IBC was earlier under the Companies Act, 2013). The process prioritizes efficiency by ensuring transparency, protecting creditors' interests, and strictly adhering to defined timelines. It is available exclusively to companies that are capable of paying all their debts and liabilities.

The Insolvency and Bankruptcy Board of India (IBBI) regulates the voluntary liquidation process by setting rules, monitoring compliance, and maintaining a registry of Insolvency Professionals (IPs). The Voluntary Liquidation Process Regulations, 2017 outline the procedural steps, including the Declaration of Solvency (DoS), public announcements, and record-keeping, emphasizing trust through strong oversight and ethical standards.

Exit Strategies Available for Solvent Companies and LLPs in India

Companies or LLPs that are solvent and wish to exit the market can consider the following options:

Voluntary Liquidation

This process is suitable for entities that have no financial distress and wish to close operations voluntarily. It involves distributing the remaining assets among stakeholders after settling all liabilities. The board of directors must affirm the company's solvency and ability to pay its debts within a set period. Shareholder approval is required through a resolution to start the Members' Voluntary Liquidation (MVL) process. A licensed insolvency practitioner is then appointed to oversee the process, which involves asset sales, debt settlement, and distribution of any remaining assets to shareholders.

Striking off / Fast Track Exit Scheme

The Fast Track Exit Scheme, introduced by the Ministry of Corporate Affairs, provides an efficient and cost-effective way for inactive companies to exit the register of companies. Eligible companies must have been inactive for at least two years, with no outstanding liabilities or assets, and must not have engaged in any business activities during this period.

The process involves submitting an application with required documentation to the Registrar of Companies under Section 248 of the Companies Act, 2013, and the Companies (Removal of Name of Companies from the Registrar of Companies) Rules, 2016. Upon approval, the company is struck off the register if it meets the specified conditions.

The Registrar may also strike off a company directly for reasons such as failure to commence business within a year of incorporation, inactivity for two years without dormant status, non-payment of subscription by subscribers within 180 days of incorporation, or being found inactive after physical verification under Section 12(9).

The company must cease trading, selling assets, and making payments, and publish a notice to inform interested parties of its intention to stop operations. Once struck off, the company's status cannot be restored, though a new business can be registered under the same name.

Under this provision, any aggrieved party may apply to the Hon'ble NCLT to revive the company within 20 years from the date of its strike-off. In other words, strike-off does not necessarily offer a clear exit from the business; the company's status remains in a state of suspension.

Sale of Business

Selling a business or its assets is an effective exit strategy for solvent companies aiming to divest operations and maximize value. The process involves valuing the business or assets, identifying potential buyers, negotiating sale terms, and finalizing legal documentation to transfer ownership. This approach can offer higher returns compared to liquidation and enables owners to exit while ensuring that operations continue smoothly under new management.

Merger or Acquisition

As a strategic exit strategy, companies can choose to merge with or be acquired by another entity, providing quick liquidity and potentially favourable outcomes for shareholders. The process involves negotiating terms with potential partners or buyers, conducting due diligence, obtaining necessary regulatory approvals, and finalizing and executing the merger agreement.

When a solvent company intends to close its operations, the most efficient option available is voluntary liquidation as provided under the IBC, 2016.

VOLUNTARY LIQUIDATION

Under Section 59(1) of the Insolvency and Bankruptcy Code, 2016, a corporate person, including companies, limited liability partnerships, and other entities with limited liability, is eligible for voluntary winding up, except financial service providers. This process can only be initiated by entities that have not committed any defaults.

Pre-Voluntary Liquidation Steps

Initial Check for Solvency under Section 59

Before initiating voluntary liquidation, companies must determine their solvency status. This involves the following steps:

1. Declaration of Solvency: Directors affirm the company's solvency and ability to pay debts within a stipulated period.

- Required Documents:
  - Affidavit: Declares no outstanding liabilities or intent to settle all debts during liquidation.
  - Audited Financial Statements: Reflect solvency status.
  - Asset Valuation Report: Prepared by a registered valuer detailing asset values.
  - Board Resolution: Approves the declaration of solvency and liquidation process.

2. Independent Audit:

- Ensures financial transparency and supports the solvency declaration.
- Required Documents:
  - Third-Party Audit Report: Verifies financial statements.
  - Compliance Certificate: Confirms statutory obligations are met.

3. Stakeholder Consent:

- Stakeholders, including shareholders, creditors, and regulatory authorities, must be notified of the company's financial status. Liquidation proceedings for a corporate entity commence on the date the members pass a special resolution with creditor approval.
- Required Documents:
  - Notice to Shareholders: Details of the general meeting.
  - Special Resolution: Approved by at least 75% of shareholders.
  - Creditor Consent: Agreement from creditors holding at least two-thirds of the debt value.

VOLUNTARY LIQUIDATION PROCESS

Appointment of a Liquidator

The company's members must appoint an Insolvency Professional, registered with the IBBI as the Liquidator to oversee the voluntary liquidation process. This appointment is typically made through the same resolution passed by shareholders and /or creditors, granting the Liquidator full responsibility for managing the company's affairs during liquidation.

Before being appointed as a Voluntary Liquidator, the liquidator must issue a consent letter and file it with the IBBI within three days of its issuance.

The Liquidator's responsibilities include issuing a public notice within five days of appointment. **Rule 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017** prescribes

the format, timelines, and languages in which the public announcement is to be made. Specifically, it mandates that the public announcement must be published in one English newspaper and one regional language newspaper. Additionally, if the company had operations across multiple states, the liquidator is required to publish the announcement in those states as well.

It is crucial for the liquidator to identify all locations where the corporate person conducted business. In cases where the company operated extensively across various parts of India, the liquidator must exercise due diligence and make an informed decision to ensure that public announcements are published appropriately in all relevant regions.

Further, the public announcement must be uploaded on the company's website, if available, and an intimation must be filed with the IBBI to enable publication on their website. The liquidator is also required to update the assignment details in their IBBI login, thereby facilitating the inclusion of the public announcement in the assignment section of the IBBI portal.

Intimation to ROC & IBBI

As per the Insolvency and Bankruptcy Code (IBC), 2016, the company initiating voluntary liquidation must notify the ROC and IBBI within the prescribed timelines, typically within seven days of passing the special resolution for liquidation.

Since the company passes a special resolution, Form MGT-14 is required to be filed for both the shareholders' resolution and any creditors' resolution, if applicable. While the Companies Act prescribes a timeline of 30 days for filing this form, the IBC mandates that it must be filed within 7 days. Therefore, the liquidator must ensure that Form MGT-14 is filed within this 7-day period, using the Digital Signature Certificate (DSC) of any one director. This is to be followed by the filing of Form GNL-2.

Once Form MGT-14 is approved, the company's status in the MCA records will be updated to "Under Liquidation", and the liquidator's details will be reflected as the signatory details in the MCA records.

Additionally, the liquidator is required to file the assignment details, Form IP-1 for consent letters, and the public announcement with the appropriate authorities.

It is also noteworthy that even for the board resolution passed to initiate the voluntary liquidation process, Form MGT-14 must be filed with the ROC in compliance with Section 117 of the Companies Act, 2013.

Verification of Claims

The Liquidator must verify the claims within 30 days from the deadline for submission. Claims are either accepted or rejected based on their validity, and the Liquidator must document the reasons for any rejection. However, if the business operations of the corporate person are still ongoing, there may be instances where claims are filed even after the 30-day period following the public announcement.

Preparation of Stakeholder List

Within 45 days from the last date of claim submission, the Liquidator must prepare a detailed list of stakeholders. This includes the amounts of admitted claims, the classification of debts as secured or unsecured, and whether claims were fully or partially rejected. The list will serve as a comprehensive record of the company's liabilities.

Asset Valuation and Realization

After verifying the claims, the Liquidator identifies and values the company's assets. These assets are then sold to generate funds for settling the admitted liabilities. This step is essential for converting the company's assets into liquid funds, which will be used to pay off creditors in order of priority.

Preparation of Reports

Once asset realization begins, the Liquidator prepares and submits several reports to the IBBI and other relevant authorities. Key reports include:

- Preliminary Report: Submitted within 45 days from the liquidation commencement, detailing the company's financial status.
- Assets and Liabilities Report: A comprehensive report outlining the company's assets, liabilities, and the estimated value of assets for liquidation.
- Liquidation Progress Reports: Regular reports detailing the progress of the liquidation process, including the status of asset sales, claim settlements, and any challenges faced.

Settlement of Claims

The Liquidator uses the funds generated from asset realization to settle the claims of creditors. Payments are made in a specified order of priority, as outlined in Section 53 of the Insolvency and Bankruptcy Code (IBC), 2016, which prioritizes secured creditors, unsecured creditors, and then other stakeholders.

Distribution of Remaining Assets

Once all claims are settled, any remaining funds or assets are distributed among the company's shareholders or members in proportion to their shareholding.

Completion of Liquidation and Final Report

After the settlement of all liabilities and distribution of residual assets, the Liquidator prepares a **Final Report**, summarizing the liquidation process, including details of asset realization, claim settlements, and the distribution of surplus funds. This will include an audited statement of accounts for the liquidation period. This report is submitted to:

- The Registrar of Companies (ROC) through the prescribed forms (e.g., Form GNL-2).
- The Insolvency and Bankruptcy Board of India (IBBI)

Application for Dissolution

The Liquidator files an application for the company's dissolution with the appropriate Bench of the National Company Law Tribunal (NCLT), along with the Final Report and other requisite documents. Upon receiving the application, the NCLT reviews the submission and, if found satisfactory, lists the matter for hearing.

As part of the process, the NCLT will seek reports from the local Registrar of Companies (ROC) and the Insolvency and Bankruptcy Board of India (IBBI). It is, therefore, essential for the Liquidator to ensure that the company has no past violations under the Companies Act and that all required filings with the IBBI have been completed in a timely manner. Any objections or discrepancies raised by the ROC or IBBI in their respective reports may adversely impact the dissolution proceedings.

Following the hearing and after confirming compliance with all applicable legal requirements, the NCLT will issue the order for dissolution.

Intimation of Dissolution

Once the dissolution order is passed, the Liquidator ensures that the order is filed with the ROC to update the company's status as dissolved in the public records.

TAX IMPLICATIONS DURING VOLUNTARY LIQUIDATION

The tax implications during the Voluntary Liquidation process under the Income Tax Act, 1961, involve various tax liabilities at different stages.

Tax on Distributed Income to Shareholders

- After settling liabilities, any surplus funds distributed to shareholders are treated as Deemed Dividend under Section 2(22)(c), and the company must pay Dividend Distribution Tax (DDT) at 15% (plus surcharge and cess) on the grossed-up amount.
- For companies under the new regime where DDT is abolished (post-April 2020), the shareholders are liable to pay tax on dividends received at their applicable slab rates.

TDS Compliance

- The Liquidator must deduct Tax Deducted at Source (TDS) while making payments to creditors, employees, or professionals. He must confirm that all payees furnish their PAN to prevent excessive tax deductions, preserving the company's limited resources and upholding legal compliance throughout the process.
- During voluntary liquidation, TDS rates applicable are as follows: 10% for professional payments under Section 194J, 1% or 2% for contractor payments under Section 194C, and 30% for non-resident payments, subject to applicable Double Taxation Avoidance Agreements (DTAAs), which may provide exemptions with specific documentation.
- Under Section 206AA of the Income Tax Act, if the payee does not provide a PAN, TDS must be deducted at the higher of the specified rate, the rate in force, or 20%. This means that payments to professionals or contractors may see TDS increase from 10% or 1-2% to 20% in the absence of a PAN.

- The distribution made to shareholders is categorized into two parts. The portion equivalent to the original share capital investment is treated as a return of capital and is not subject to tax. However, any amount distributed in excess of the original capital investment is classified as a dividend, which is taxable as per the applicable provisions outlined below.

Handling IT and GST Cases during Voluntary Liquidation

Income Tax Cases:

The Liquidator must ensure all pending assessments, appeals, or disputes are addressed. They must file returns, respond to notices, and settle outstanding tax liabilities before finalizing the liquidation process.

The Liquidator is responsible for filing any outstanding tax returns, as the sale of assets during the liquidation process may attract capital gains tax, which must be duly complied with. Additionally, a final income tax return must be filed to ensure that all tax liabilities are fully settled.

As per the IBBI circular, obtaining a No Objection Certificate (NOC) from the Income Tax Department is not mandatory for the distribution of surplus funds to shareholders. However, it is prudent for the liquidator to review the company's historical records and conduct thorough due diligence to ensure there are no violations of tax laws. If any potential liabilities are identified, it is advisable for the liquidator to address and settle such dues, exercising best judgment, before proceeding with the distribution of funds.

GST Cases:

The Liquidator is responsible for filing final GST returns, ensuring compliance with ongoing audits or investigations, and resolving any disputes related to GST liabilities.

During the liquidation process, the company is required to continue filing GST returns until its GST registration is officially cancelled, irrespective of whether any business activities are ongoing. The sale of assets by the Liquidator is subject to GST, with applicable rates varying based on the nature of the asset—typically 18% for goods and services. Additionally, if the company holds any unutilized input tax credits (ITC), the Liquidator can apply for a refund of the same. It is crucial for the Liquidator to maintain full GST compliance throughout the liquidation process and to initiate the cancellation of GST registration upon completion.

In both cases, the Liquidator coordinates with relevant authorities to resolve matters, as unresolved cases can delay the closure of the liquidation process.

Applicability of Moratorium

In Voluntary Liquidation (VL), the moratorium under the Insolvency and Bankruptcy Code (IBC) does not apply. The moratorium is a key feature of the Insolvency Resolution Process (IRP) and is designed to protect the assets of a company undergoing Corporate Insolvency Resolution Process (CIRP) by halting any legal proceedings or actions by creditors.

However, in the case of voluntary liquidation, the company itself initiates the process through a special resolution passed by its members and creditors. Since VL is a voluntary action by the company to wind up its affairs and not a result of insolvency, it does not trigger the automatic moratorium provisions under the IBC.

Instead, once the liquidation process begins, the Liquidator takes control of the company's assets and responsibilities, including handling creditor claims. The creditors can continue with their claims against the company, and legal proceedings related to the company's affairs can proceed unless the Liquidator decides to resolve or settle them.

Therefore, the moratorium under IBC is not applicable during the voluntary liquidation process.

De-materialization during Voluntary Liquidation (VL)

The Ministry of Corporate Affairs (MCA) in India has mandated that all private companies, except small companies, must convert their physical shares into electronic form by September 30, 2024, under Rule 9B of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023. This requirement, aimed at enhancing transparency and reducing fraud, is also applicable to subsidiaries and holding companies of foreign entities, particularly if their financial year closes on or after March 31, 2023. As per the recent notification, the due date has been extended to 30th June 2025.

In the context of companies undergoing **Voluntary Liquidation (VL)**, the applicability of the de-materialization mandate remains ambiguous. The statute does not explicitly address whether companies in the process of winding up are exempt from this requirement. This creates a compliance grey area, especially for foreign subsidiaries or holding companies where the focus during VL shifts to realizing assets and settling liabilities, rather than meeting operational compliance requirements.

The recent MCA notification does not mandate companies undergoing voluntary liquidation to dematerialize their shares for the purpose of distributing liquidation proceeds. Taking advantage of this provision, companies opting for voluntary liquidation may choose not to convert their shares into demat form prior to Distribution.

Repatriation and Banking Requirements:

Under the IBC framework, the Liquidator is required to open a new current account in the name of the company, with the Liquidator designated as the authorized signatory.

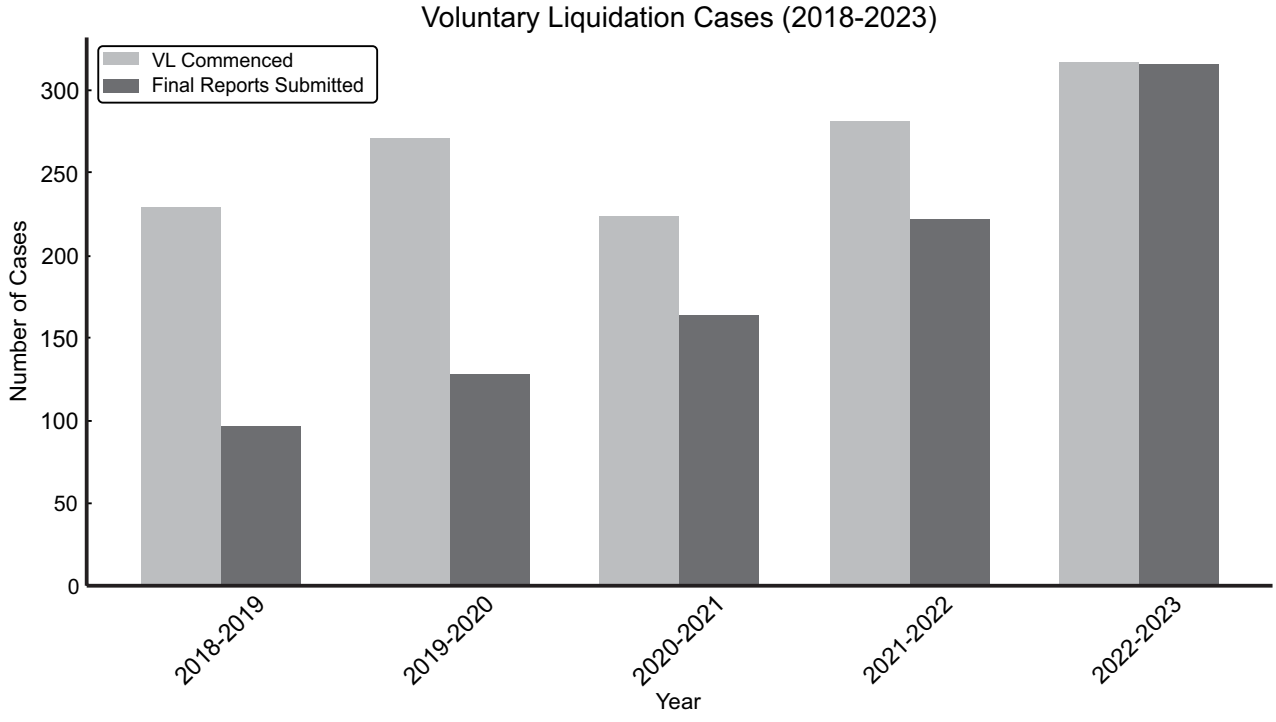
In cases where shareholders are foreign nationals or non-residents, it is essential for the Liquidator to ensure compliance with FEMA regulations prior to repatriation. This includes verifying whether all necessary filings, such as Form FC-GPR and Form FC-TRS, have been submitted on time and duly approved by the Authorized Dealer (Bank). In instances where delays or non-compliances are identified, the Liquidator must initiate appropriate compounding proceedings and resolve any pending issues before effecting repatriation.

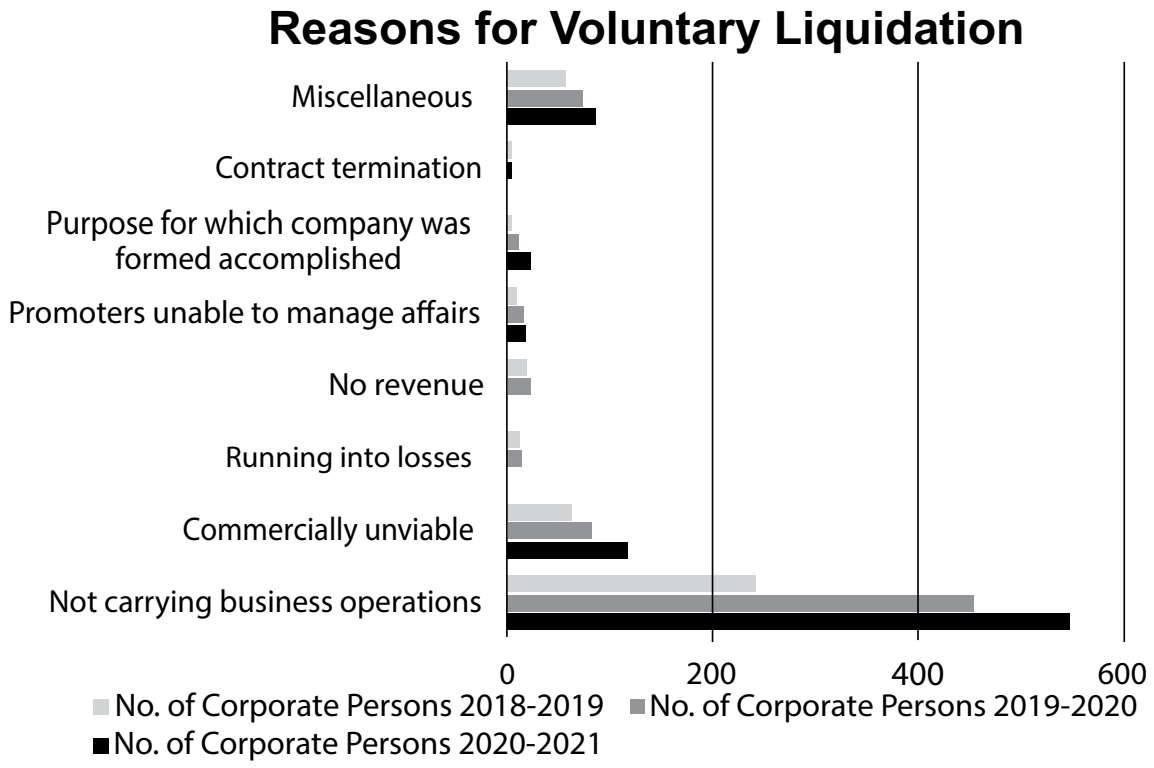
Coordination with bankers plays a crucial role in this process. In practice, Liquidators often face several challenges, as bankers may raise additional compliance queries or request documentation—particularly since IBC-related liquidations are relatively new. It is imperative for the Liquidator to address such queries professionally and ensure that all remittances are in strict compliance with the applicable laws and regulations.

Voluntary Liquidation in India: Key Insights and Statistics

1. Number of Voluntary Liquidations:

   The graph highlights a consistent increase in voluntary liquidation cases from 2018 to 2023. While initiated liquidations surpass final closures, the gap narrows, reflecting improved process efficiency and growing adoption of this exit strategy.





2. Reasons for Voluntary Liquidation:

- 69% of cases involve cessation of business operations.
- 2% were due to promoters being unable to manage business effectively.
- Other reasons include strategic exits and closure of dormant subsidiaries.

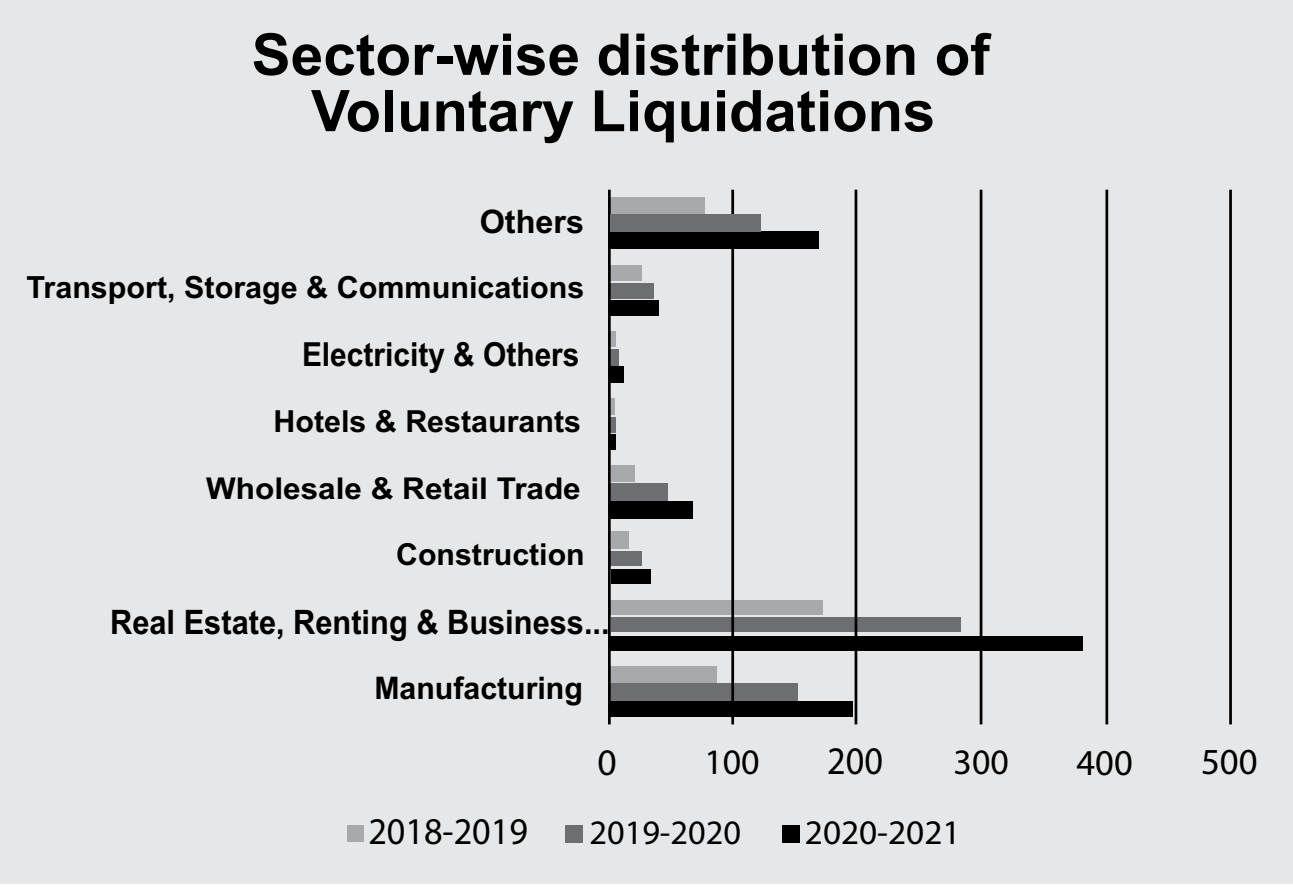
The graph below shows that most voluntary liquidations result from ceased operations, followed by commercial unviability, with other reasons like losses and lack of revenue playing smaller roles. Overall, the data underscores that operational stagnation is a primary driver for initiating VLs, reflecting entities' strategic decisions to wind up under favourable conditions.

3. Timeframe for Voluntary Liquidation:

- As per the Insolvency and Bankruptcy Code (IBC), if there are no creditors at the time of initiating the liquidation, the entire process must be completed within **90 days**.
- In cases where creditors exist, the liquidation process must be concluded within **270 days**.
- If the Liquidator is unable to complete the process within the stipulated timelines (90 or 270 days, as applicable), it is mandatory for the Liquidator to convene a **meeting of contributories within 15 days** from the expiry of the prescribed period. At this meeting, the Liquidator must seek approval for an extension of time.
- The extension process must be carried out in strict compliance with **Regulation 37 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017**.

3. Voluntary Liquidations in various sectors:

The statistics reveals the sector-wise trend in voluntary liquidations across three years (2018–2021). Real Estate, Renting, and Business Activities lead, reflecting major restructuring efforts. Manufacturing ranks second, indicating market-driven exits. Sectors like Construction, Wholesale & Retail Trade, and Transport show gradual growth, highlighting the increasing use of voluntary liquidation as a strategic exit tool. This sectorial insight supports informed decision-making, ensuring smoother exits and aligning with India's ease of doing business framework.



Voluntary liquidation helps eliminate non-performing entities, contributing to a healthier corporate ecosystem and enabling better resource allocation. Challenges in the process include complexities in tax settlements, prolonged stakeholder approvals, and difficulties in asset valuation and realization. Despite these hurdles, the voluntary liquidation process ensures that all dues, including taxes and statutory obligations, are cleared.

With increasing awareness and potential legislative reforms, such as faster resolution timelines and clearer tax guidelines, the number of cases is expected to rise, improving overall efficiency in corporate exits.

Voluntary liquidation provides a structured and legally compliant method for solvent companies to exit operations. Its integration into India's regulatory framework underscores the government's commitment to facilitating the ease of doing business. By addressing taxation, ongoing cases, and stakeholder concerns proactively, the process ensures fairness to all parties involved. Voluntary liquidation has become an essential tool for businesses seeking an orderly exit. Its relevance continues to grow, particularly for start-ups and SMEs, as it provides a strategic and efficient mechanism for adapting to evolving market dynamics.

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

UNLOCKING INDIA'S ECONOMIC POTENTIAL: THE TRANSFORMATIVE POWER OF CORPORATE MEDIATION IN THE INSOLVENCY AND BANKRUPTCY CODE

Background:

India is on an ambitious journey to become a global economic leader. To achieve this, a strong and efficient business environment is absolutely essential. Think of it like building a skyscraper – you need a solid foundation. In the business world, a key part of this foundation

is how quickly and fairly you can resolve financial disputes when companies face trouble. This is where the Insolvency and Bankruptcy Code (IBC) comes in. It's like India's rulebook for dealing with companies that can't pay their debts, aiming to resolve these situations quickly and in a way that benefits everyone involved as much as possible.

The IBC has been a game-changer, no doubt. But imagine you have a super-tool that could make the IBC even *more* effective, faster, and fairer. That tool is **corporate mediation**. While mediation is gaining traction in India, its full potential within the IBC, especially for resolving complex corporate disputes, is still largely untapped. It's like having a powerful engine but only using it at half speed.

The recent move by the Insolvency and Bankruptcy Board of India (IBBI) to discuss incorporating mediation into the IBC is a very positive sign. It's like the government saying, "Hey, we need to explore this mediation tool seriously!" This article is all about explaining *why* corporate mediation is so crucial for India right now, *how* it benefits everyone involved, and *what* India needs to do to make it a real success. We'll look at global examples and suggest concrete steps to make India a world leader in resolving corporate financial troubles, making it an even better place for business and investment.

The Untapped Goldmine: Let's Explain Why Mediation is the Perfect Partner for the IBC

The IBC is designed to be quick and market-driven. Think of it as a fast-track process to either rescue a struggling company or, if necessary, wind it down efficiently. It sets clear timelines and rules for creditors (those who are owed money) and debtors (the companies that owe money) to navigate financial distress. However, even with the IBC's streamlined approach, the process can still become adversarial. Imagine a courtroom battle – it can be long, expensive, and often leaves everyone feeling bruised.

Mediation offers a completely different approach. It's like a guided conversation, not a battle. It's about bringing people together to talk, understand each other's perspectives, and find solutions *together*. Let's break down why this collaborative approach is so powerful in the context of corporate insolvency:

- **Faster Resolution = Saving Time and Money:** Think of IBC timelines as a race against the clock. The longer a company is in financial distress, the more value it loses. Traditional legal processes, even within the IBC, can get bogged down in paperwork, court hearings, and legal arguments. Mediation, on the other hand, is designed for speed. It's like taking a direct flight instead of a connecting one. A skilled mediator helps parties focus on the core issues and negotiate quickly. This speed is crucial in insolvency because it:
  - **Reduces Delays:** Bypasses lengthy court procedures, saving months or even years.
  - **Preserves Value:** Stops the company's assets from losing value due to prolonged uncertainty.
  - **Allows for Quicker Restructuring:** Enables faster implementation of rescue plans, if possible.
- **Cost-Effective = More Money for Everyone:** Legal battles are expensive. Think of lawyer fees, court costs, and the time spent by company management dealing with legal issues instead of running the business. Mediation is significantly cheaper. It's like choosing a cost-effective negotiation table over a costly courtroom. By resolving disputes faster and more amicably, mediation:
  - **Reduces Legal Expenses:** Lower mediator fees compared to prolonged litigation costs.
  - **Minimizes Opportunity Costs:** Allows management to focus on business recovery instead of legal battles.
  - **Maximizes Returns for Creditors:** More money is available to pay back creditors because less is spent on legal processes.
- **Confidentiality = Protecting Reputation and Relationships:** Insolvency proceedings are public. It's like airing a company's dirty laundry in public. This can damage the company's reputation, scare away customers, and harm relationships with suppliers and partners. Mediation is private and confidential. It's like having a private meeting behind closed doors. This confidentiality is incredibly valuable because it:

- **Protects Brand Image:** Prevents negative publicity associated with public insolvency proceedings.
- **Maintains Business Relationships:** Allows parties to negotiate openly without fear of damaging public perception.
- **Encourages Honest Dialogue:** Creates a safe space for parties to discuss sensitive issues without public scrutiny.

- **Flexibility = Tailored Solutions, Not One-Size-Fits-All:** The IBC provides a structured framework, but sometimes it can be rigid. It's like having a set menu when you need a customized meal. Mediation is incredibly flexible. It allows parties to create solutions that are specifically tailored to their unique situation. Mediated agreements can be much more creative and nuanced than what a court might impose. This flexibility means:
  - **Creative Restructuring Options:** Parties can explore solutions beyond just resolution plans or liquidation, like debt rescheduling, asset swaps, or strategic partnerships.
  - **Win-Win Outcomes:** Mediation aims for solutions that benefit all parties as much as possible, rather than a winner-takes-all outcome.
  - **Addresses Specific Needs:** Agreements can be designed to address the particular concerns and priorities of different stakeholders.
- **Relationship Preservation = Building Bridges, Not Burning Them:** Insolvency involves many stakeholders – creditors, debtors, employees, suppliers, customers, and even government agencies. Traditional legal battles can create animosity and damage these relationships. Mediation focuses on communication and collaboration. It's like building bridges instead of walls. By fostering a more constructive environment, mediation:
  - **Maintains Business Continuity:** Preserves relationships with suppliers and customers, crucial for potential business revival.

- **Improves Stakeholder Harmony:** Reduces conflict and fosters a more cooperative approach among all parties involved.
- **Facilitates Future Collaboration:** Even after insolvency, positive relationships can be valuable for future business dealings.

- **Higher Success Rates = More Agreements, Fewer Failures:** Globally, mediation has a much higher success rate in resolving disputes compared to litigation. Agreements reached through mediation are also more likely to be followed because they are based on mutual agreement, not imposed by a court. This translates to:
  - **More Successful Resolutions:** Higher chance of reaching a mutually acceptable agreement and avoiding prolonged legal battles.
  - **Sustainable Outcomes:** Agreements are more likely to be implemented effectively because parties have ownership of the solution.
  - **Reduced Future Disputes:** Amicable resolutions minimize the likelihood of further conflicts down the line.

Learning from the World's Best: Global Mediation Success Stories

India isn't the first to realize the power of mediation. Many developed countries have already successfully integrated mediation into their insolvency systems. Think of it as learning from the best athletes in the world to improve your own game. Countries like the USA, UK, Singapore, and Australia have shown how mediation can revolutionize insolvency resolution. Let's look at some key lessons:

- **Laws and Rules that Support Mediation:** These countries have made mediation a formal part of their insolvency laws. It's not just an option; it's actively encouraged. Some even make mediation mandatory in certain cases. This sends a clear message that mediation is a serious and valuable tool. India's new Mediation Act is a great start, but we need to specifically link it to the IBC.
- **Strong Mediation Infrastructure:** Successful mediation needs support. Think of it like needing good roads and airports for smooth travel. These countries have:
  - **Accredited Mediator Institutions:** Organizations that train and certify mediators to ensure quality.
  - **Professional Mediator Training:** Programs to equip mediators with the specialized skills needed for complex corporate disputes.
  - **Mediation Facilities:** Dedicated spaces for mediations to take place, creating a neutral and conducive environment. India needs to build this kind of infrastructure specifically for IBC-related mediations.
- **Judges Who Champion Mediation:** Judges in these countries actively promote mediation. They understand its benefits and encourage parties to try it. They might even suggest mediation or refer cases to mediation themselves. The Indian judiciary needs to similarly embrace mediation within the IBC context, seeing it as a valuable partner in resolving cases efficiently.
- **Awareness and Education for Everyone:** For mediation to truly work, everyone needs to understand it – businesses, lawyers, judges, and the public. It's like promoting a healthy lifestyle – you need to educate people about its benefits. These countries invest in awareness campaigns and training programs to make mediation a mainstream approach. India needs to do the same to change mindsets and build expertise in corporate mediation.

IBBI's Discussion Paper: A Step in the Right Direction

The IBBI's discussion paper dated 04th November 2024 is a really important step forward. It's like laying the first brick in building a mediation-friendly IBC. The paper acknowledges the benefits of mediation and suggests different ways to integrate it into the IBC process. This includes using mediation:

- **Before Formal Insolvency (Pre-Initiation):** Trying mediation *before* even starting the formal IBC process. This is like trying to resolve a problem informally before escalating it.
- **During the IBC Process (CIRP):** Using mediation while the company is undergoing the Corporate Insolvency Resolution Process. This is like using mediation to resolve specific disputes that arise during the rescue attempt.

- **After a Resolution Plan is Approved:** Using mediation to help implement the resolution plan smoothly and resolve any disagreements that might come up afterwards.

This discussion paper is a great starting point. But now, we need to move from discussion to action. It's like having a blueprint – now we need to start building!

Concrete Steps for India: Making Mediation a Core Part of the IBC

To truly make corporate mediation a game-changer for India's IBC and its economy, we need to take specific, practical steps. Think of these as the key ingredients for a successful mediation recipe:

1. **Change the IBC Laws and Rules:** We need to officially recognize and encourage mediation within the IBC through legal changes. This is like writing mediation into the IBC's DNA. Specifically, we should:
    - **Introduce Pre-IBC Mediation:** Make it mandatory or offer incentives for parties to try mediation *before* starting formal IBC proceedings. This could prevent unnecessary formal insolvencies.
    - **Enable Mediation During CIRP:** Clearly allow the Resolution Professional (the person managing the insolvency process) and the Committee of Creditors (the group of lenders) to use mediation to resolve disputes during the CIRP.
    - **Facilitate Post-Resolution Mediation:** Make it easy to use mediation to resolve issues that arise *after* a rescue plan is approved, ensuring smooth implementation.
    - **Make Mediated Agreements Legally Binding:** Clearly state that agreements reached through mediation within the IBC are legally valid and can be enforced by the courts (NCLT). This gives parties confidence in the mediation process.
2. **Build a Strong Mediation System for IBC:** We need to create a specialized infrastructure to support IBC mediations. This is like building specialized hospitals for specific medical needs. This includes:
    - **Create a Panel of Expert Mediators:** Establish a list of mediators who are specially trained in corporate insolvency and IBC law. These mediators should have expertise in finance, law, and business restructuring.
    - **Set up Mediation Centers at NCLTs:** Consider creating dedicated mediation centers within or near the National Company Law Tribunals (NCLTs), the courts that handle IBC cases. This makes mediation easily accessible for IBC disputes.
    - **Develop IBC Mediation Rules:** Create specific rules and procedures for mediation in IBC cases, ensuring fairness, efficiency, and consistency across all cases.
3. **Get the Judiciary on Board:** Judges play a crucial role in promoting mediation. It's like having influential leaders endorse a new initiative. We need to:
    - **Train NCLT Judges in Mediation:** Provide training to judges of the NCLTs on the principles and benefits of mediation, encouraging them to actively support its use.
    - **Encourage Judges to Refer Cases to Mediation:** Encourage NCLT judges to proactively suggest or refer suitable IBC cases to mediation, especially those where amicable settlement is possible.
    - **Streamline Enforcement of Mediated Settlements:** Make it quick and easy for the NCLT to recognize and enforce mediated agreements, ensuring they are effectively implemented.
4. **Invest in Awareness and Skills:** We need to educate everyone about the benefits of corporate mediation and build the necessary skills. This is like investing in education and training for a new technology. This involves:
    - **Public Awareness Campaigns:** Launch campaigns to inform businesses, lawyers, and the public about the advantages of corporate mediation in the IBC.
    - **Training Programs for Professionals:** Develop training programs for mediators, lawyers, insolvency professionals, and business

executives on how to effectively use corporate mediation in the IBC context.

- **Integrate Mediation into Education:** Include mediation principles and techniques in law and business school curricula to build a mediation-friendly culture from the start.

India's Rise to the Top: The Mediation Advantage Explained

By making corporate mediation a central part of the IBC, India can achieve remarkable progress and become a global leader in insolvency resolution. Think of it as adding a powerful engine to India's economic growth machine. Faster, cheaper, and more effective insolvency resolution will:

- **Make Doing Business Easier:** A smooth and efficient insolvency system is a key factor in making it easier to do business in a country. Mediation will significantly contribute to this by reducing delays and costs.
- **Attract More Investment:** Investors, both from India and abroad, prefer countries with reliable and efficient dispute resolution systems. A mediation-focused IBC will signal that India is a business-friendly and predictable place to invest.
- **Boost Creditor Confidence and Recoveries:** When creditors are confident that they can recover their money efficiently, they are more willing to lend. Mediation will increase creditor confidence and improve recovery rates in insolvency cases.
- **Build a Collaborative Business Culture:** Promoting mediation will foster a more collaborative and less confrontational business environment in India, leading to stronger relationships and a more harmonious economy.
- **Position India as a Global Leader:** By effectively using mediation in its IBC, India can become a role model for other countries, especially developing economies, and gain international recognition for its innovative and efficient approach to insolvency resolution.

Conclusion: Mediation – The Key to a Brighter Economic Future for India (Explanatory Summary)

Corporate mediation within the IBC is not just a minor adjustment; it's a transformative change that can unlock significant economic benefits for India. It's about moving away from purely adversarial approaches and embracing collaboration, consensus, and value preservation in resolving corporate financial distress.

The IBBI's discussion paper is a crucial first step. Now, it's up to policymakers, regulators, judges, and the business community to work together to champion corporate mediation, turn these ideas into action, and build a strong mediation system within the IBC. By doing so, India can not only improve its insolvency resolution process but also create a more attractive business environment, attract greater investment, and ultimately, become a global leader in efficient, fair, and humane insolvency resolution. It's time to fully embrace the power of corporate mediation and pave the way for a more prosperous and globally competitive India. Let's unlock this untapped potential and build a brighter economic future, together.

INSIGHTS

CS IP Parveen Kumar Garg

MEDIATION IN INSOLVENCY MATTERS IN INDIA- A GROWING ALTERNATIVE FOR RESOLUTION

ABSTRACT

Mediation is a non-adversarial process where the dispute between the parties is settled by themselves with the help of a Mediator. It is a way to resolve the dispute through communication and negotiation between the parties whereby a neutral third party facilitates them to reach a mutually acceptable agreement. Mediation is an Alternative Dispute Resolution (ARD) mechanism and provides a voluntary, confidential and flexible mechanism to resolve disputes.

On the other hand, the Insolvency & Bankruptcy Code, 2016 was introduced with the intent to resolve the insolvency matters related to

body corporates, individuals or partnership firms under distress, whether by way of resolution or liquidation. The IBC is a specialized beneficial legislation with the object of reviving stressed enterprises through a time-bound insolvency resolution process.

In this article, we will try to find out the possible role of mediation and mediator in the insolvency resolution process and how it can help the Hon'ble Adjudication Authority (AA) by reducing the active cases, the stressed business houses (CDs) by reducing the cost of the insolvency process and the creditors, both financial and operational, to recover the defaulting amount more efficiently and quickly. This article aims to provide a brief insight into the term mediation, the mediation process, legal provisions related to mediation in India and how it can be useful as an alternative to litigation to resolve insolvency matters in India and abroad.

INTRODUCTION

The Insolvency & Bankruptcy Code, 2016 (IBC) was enacted in the year 2016 to maximize the value of assets, promote entrepreneurship and balance the interest of all stakeholders in time time-bound manner. The root cause of Insolvency is the disability to repay the borrowed amount. It is also well acknowledged fact that the IBC has supported "ease of doing business" in India and helped the resolution/ liquidation of distressed business assets efficiently.

Despite the success of IBC and the resolution of stressed assets under its ambit, it is a time-consuming and adversarial process which is not as per the intent of the legislator. The time taken to resolve the insolvency matters took much more time than prescribed under the code due to the number of stakeholders involved, which put an extra burden on persons under insolvency. Recognizing these challenges, the need for the use of a non-adversarial process in insolvency matters was felt and formal discussion on application of mediation in insolvency matters was started.

Mediation is a flexible, cost-effective, time-bound and out-of-court settlement process, which can play a vital role in addressing the challenges faced under IBC. Accordingly, an expert committee was constituted by IBBI under the chairmanship of Dr. T. K. Vishwanathan to propose a framework for the use of mediation under IBC.

MEDIATION IN INSOLVENCY MATTERS

Mediation is a voluntary, confidential and flexible mechanism to resolve disputes. It is a negotiation process where a neutral third party called a mediator assists both parties and guides them towards a mutually agreeable solution and creates creative options for the resolution of their disputes. It is a non-adversarial approach which helps in maintaining cordial business relationships and saves the financially stressed enterprises from the stigma of insolvency. Mediation provides a win-win situation where the interests of all parties are taken into account at the time of settling the issue.

Mediation in insolvency matters is a process where parties involved in a financial dispute (such as creditors, debtors, and stakeholders) come together with the help of a neutral third party (the mediator) to try to reach a mutually agreeable resolution. This approach can offer several benefits over the CIRP process under IBC, especially in complex financial scenarios.

The Insolvency & Bankruptcy Code, 2016 (IBC) lacks any specific provision for the use of mediation process in insolvency and bankruptcy matters, however, the IBBI expert committee on the use of mediation in insolvency matters has recommended the use of mediation in the insolvency matter, either before or after filing a case. It will be helpful for financial institutions and banks to recover their money from defaulters in a more effective and timely manner. It will also reduce the workload on the NCLTs and NCLATs.

BENEFITS OF MEDIATION IN INSOLVENCY MATTERS

ADR is different from adjudication. It is a process, which is designed to resolve a dispute, voluntarily and with the help of a neutral third party with minimum intervention of the judiciary. Some of the benefits of the use of mediation in insolvency cases may be listed below:

- **Cost-Effective:** Mediation offers a less expensive solution to financially stressed enterprises in comparison to the lengthy insolvency processes.
- **Win-Win Situation:** Whereas adjudication is based upon the winner/loser paradigm, means one party wins and another loses. Mediation increases the likelihood of win-win situations as the disputing parties arrive at a mutually agreed solution.

- **Quick Resolution:** Mediation offers quick outcomes and resolution/reorganization of stressed assets as compared to the slow pace of CIRP processes as time is crucial in insolvency matters.
- **Confidentiality:** The mediation process is confidential in nature, which allows the parties to discuss more openly and without fear of public exposure.
- **Flexibility:** The mediation process is less rigid than a court process. The parties can customize the resolution process with the help of mediators. Solutions can be tailored to the needs of the parties involved.
- **Preservation of Relationships:** In insolvency matters, especially where ongoing business relationships are critical, mediation allows parties to solve while maintaining these relationships.
- **Control Over the Outcome:** In mediation, the parties are in control of the solution and find a mutually agreeable solution that may align with the interests of all parties.

GLOBAL USE OF MEDIATION IN INSOLVENCY MATTERS

Many countries successfully introduced, used and implemented mediation in insolvency matters, i.e., pre-insolvency and during the insolvency process. Since the evolution of bankruptcy norms, courts have been empowered to decide on the disputes of insolvency. However, this perception has changed globally over the past few decades, when more disputes have been resolved not only by adjudication but also by ADR mechanisms, especially, mediation. ADR is a set of techniques that allows the parties to a dispute to reach an amicable settlement. It helps out-of-court settlement by avoiding lengthy legal processes.

- **Mediation in the USA:** In the USA, mediation began to resolve community and family disputes in the 1960s. However, a major shift took place during the Pound Conference, where the concept of a multi-door courthouse was introduced, and different dispute-resolution methods were encouraged. Mediation was introduced for insolvency cases in the year 1986 when the Bankruptcy Court for the Southern District of California established the mediation program.

The major change towards the use of mediation in insolvency cases was the adoption of the ADR Act, of 1998, which required that each federal district court authorize ADR in all civil actions, including adversary proceedings in bankruptcy.

- **Mediation in Europe:** ADR has also been gradually used as a dispute resolution method among the European Union members. Several EU members introduced pre-insolvency dispute resolution methods. In France, the French insolvency law provides for two special procedures, the ad hoc mandate and conciliation. In Germany, the insolvency law enables the debtor and creditor to settle the dispute by negotiation. The Italian insolvency law offers a way for an enterprise facing financial issues to restructure its debts and make out-of-court settlements.

PRESENT LEGAL SYSTEM IN INDIA

To keep pace with foreign countries, the Indian Government has also taken various steps to promote mediation in India and insolvency matters. Some of the steps taken by the Government of India are enumerated below:

- Section 442 of the Companies Act 2013 allows the NCLT and NCLAT to refer disputes related to company law matters for mediation.
- Section 12A of the Commercial Court Act 2015 mandatorily requires pre-institutional mediation in commercial disputes.
- Section 32(g) of RERA 2016 provides for an amicable settlement of the dispute between the buyer and builder.
- The Consumer Protection Act 2019 also advocates the settlement of disputes via mediation.
- Section 18 of the MSME Act 2006 mandated conciliation when disputes arise regarding payment.
- The Industrial Dispute Act, of 1947 also provides for settlement of industrial disputes with the help of conciliation officers.
- Now, the government is also taking steps to use mediation as a tool to resolve insolvency matters and accordingly, the IBBI has also formed a high-level expert committee to advise on this issue.

RECOMMENDATION OF EXPERT COMMITTEE

The "expert committee" constituted by IBBI, on the role of mediation in the insolvency resolution process, was formed with a view to recommend a framework for use of mediation in various processes under the IBC and address the issues thereunder. The committee held various meetings with its members to discuss the issue, engage/discuss with various experts and various stakeholders in India and see the global practices on the matter to understand the use, operability and challenges that may come up in drafting the required framework. After having a discussion with all stakeholders and taking experts' opinions into account, the "Experts Committee" proposed to incorporate a voluntary mediation framework into the Insolvency Bankruptcy Code.

The aim of providing this framework was to streamline the insolvency procedure, enhance the value of stressed assets under insolvency, and offer the resolution in a more amicable manner. After thorough discussion, the committee was of the view that the blanket introduction of mediation in insolvency matters may not meet the required objective and require a specific and tailor-made mechanism to suit the insolvency process. Accordingly, the committee have recommended a "stage-based" and a "phased introduction" approach to address the bottlenecks in the IBC. The following are the key recommendations of the Expert Committee:

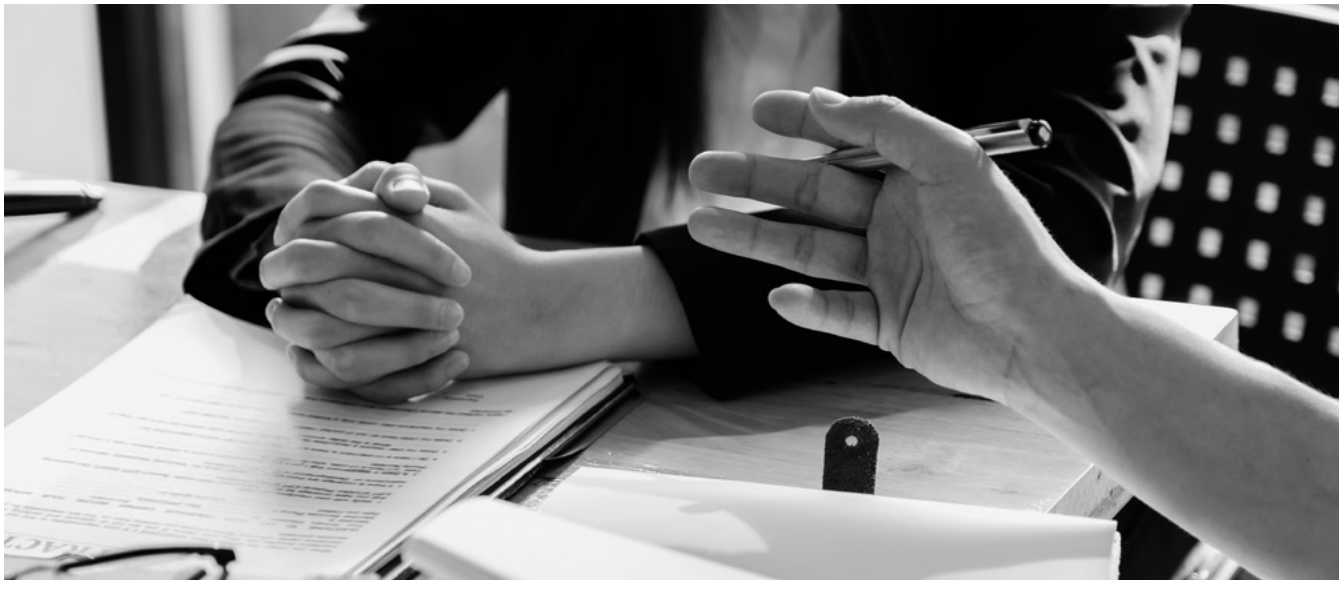
- **Establishment of Dedicated Mediation Cell:** One of the main recommendations of the expert committee is the formation of a specialized insolvency mediation cell annexed to the Adjudication Authority, which will be responsible for administering, overseeing and managing the conduct of mediation processes.
- **Adoption of Voluntary Mediation Framework:** The committee considered both available mediation frameworks, i.e., the voluntary mediation process and mandatory mediation process and recommended, the "voluntary mediation framework" to be used in the first phase in insolvency matters, so mediation process can be start with the mutual consent of the parties. It was aimed at protecting the stakeholder's autonomy while providing alternative methods for dispute resolution.

- **Time-Bound Mediation Process:** The committee suggested that the mediation process must be completed in a time-bound manner so it may enhance the efficiency of the insolvency process and provide resolution to disputes in a time-bound manner. The committee suggested there should be a clear provision for automatic termination of the mediator's mandate on the date of admission and/or upon expiry of timelines under the code or 30 days from the commencement of the mediation process, whichever is earlier.
- **Recognition and enforcement of Mediated Settlements:** To maintain the value of the agreed settlements, the settlement must be legally binding and enforceable under the law. It provides for the recognition and enforcement of mediated settlements under the IBC.
- **Exclusion of certain types of transactions:** The framework also recommends the exclusion of some of the transactions from the ambit of mediation such as avoidance transactions. The committee was of the view that in the first phase, avoidance actions may not fit categories for the introduction of mediation.
- **Applicability to individual insolvency:** Regarding the implementation of mediation in individual insolvency cases, the committee recommended the use of mediation on a voluntary basis for both the pre-institution and post-filing stages.
- **Mediators' Qualifications:** The committee recommended that a pool of experienced professionals, having expertise in the field of legal, insolvency, mediation, retired judges, and ex-officials of the financial sector be created. The committee also recommended a comprehensive curriculum that may be prescribed for the training of the mediators.

CONCLUSION

Mediation can play a significant role in resolving insolvency disputes amicably. It can be a valuable tool for an out-of-court settlement of insolvency disputes at different stages. The use of mediation in insolvency matters shall be beneficial to the stakeholders involved during the dispute. It provides low-cost settlement procedures which are very valuable for the corporate debtors already facing financial crunch. It also saves the precious time of Hon'ble NCLT, which is now overburdened due to the number of cases filed for insolvency. It can also be very useful in cross-border insolvency matters as it helps in maintaining good relationships with foreign partners.

In short, the use of mediation in insolvency resolution matters can play and major role in resolving enterprise financial disputes quickly, amicably, with low cost and without hurting the image of the corporate debtor. If an insolvency-related dispute is settled with the help of a mediation process, it will be a win-win situation for all parties.



Rajesh Sureshchandra Sheth
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NAVIGATING CHALLENGES AND ACHIEVING OPERATIONAL EXCELLENCE: RESOLUTION OF KARAIKAL PORT PRIVATE LIMITED

INTRODUCTION:

Karaikal Port came into the ambit of the Corporate Insolvency Resolution Process (CIRP) when the Hon'ble National Company Law Tribunal, Chennai Bench (NCLT) approved an application for initiation of CIRP on 29th April 2022. Mr. Sheth was appointed as the Interim Resolution Professional and thereafter he was appointed as the RP. As per the provisions of the Insolvency & Bankruptcy Code 2016 (IBC), various functions were undertaken by Mr. Sheth as the RP including inviting claims from public, managing the operations of the port as a going concern and engaging with prospective resolution applicants to

submit a resolution plan for Karaikal Port as a going concern.

Taking control over the operations of a running port is an intricate and multifaceted endeavor that presents a myriad of challenges. From navigating complex logistical operations to mitigating financial risks and complying with stringent regulatory frameworks, port management requires a delicate balance of strategic foresight and operational agility. Factors such as fluctuating market demands, geopolitical tensions, environmental concerns, and technological advancements further compound the challenges faced by port authorities. Additionally, ports often serve as crucial hubs for trade and commerce, amplifying the pressure to ensure seamless connectivity and efficient handling of goods. Thus, while ports play a pivotal role in facilitating global trade and economic growth, the task of managing them demands meticulous planning, robust risk management strategies, and adept leadership to navigate the complexities inherent in the maritime industry.

BACKGROUND OF THE CORPORATE DEBTOR:

Karaikal Port Private Limited

Company type	Private
Industry	Marine
Founded	2006; 18 years ago
Headquarters	Karaikal Port Private Limited, Khezhavanjoor Village, T.R.Pattinam, Karaikal – 609602, India
Key people	Mr. Gautam Adani
Authorised Capital	Rs.35,00,00,00,000/-
Paid Up Capital	Rs. 1,00,00,000/-
Owner	APSEZ (2023–present)
Claim	Rs.2804, 55, 70, 549/- (Rupees Two Thousand Eight Hundred and Four Crore Fifty Five Lakhs Seventy Thousand Five Hundred and Forty Nine

Government of Puducherry had granted to Marg Limited, the rights to build, develop and operate the project located in the Karaikal District in the Union Territory of Puducherry in accordance with the terms of Concession Agreement dated 23.01.2006.

In order to execute the project, Marg Limited had incorporated the Corporate Debtor as a 'Special Purpose Vehicle' (SPV). Corporate Debtor is a private limited company incorporated under the provisions of Companies Act, 1956 on 16th December 2006 and having its Registered Office at Khezhavanjoor Village, T. R. Pattinam, Karaikal -609606.

Marg Limited has assigned its rights under the aforesaid Concession Agreement to the Corporate Debtor as per the terms contained in the Deed of Assignment which was accepted by the Government of Puducherry. In pursuance of this assignment of rights under the aforesaid Concession Agreement, the Corporate Debtor has been engaged in the business of building, developing and operating the project.

COMMENCEMENT OF CIRP

In connection with the construction and development of the project, the Corporate Debtor has availed various financial assistance, inter-alia, under the consortium from Indian Overseas Bank, Allahabad Bank, Central Bank of India, Punjab National Bank of Commerce, United Bank of India, Indian Bank, India Infrastructure Finance Company Limited, Corporation Bank, State Bank of Hyderabad and Syndicate Bank. With respect to such financial assistance, various facility documents and security document came to be executed from time to time between the Corporate Debtor and Lenders. Indian Bank was designated as Leader or Lead Bank of the consortium.

The Corporate Debtor did not adhere to the schedule of payment of instalment to the lenders and requested consortium member banks to consider restructuring of the term loan, merge the loans into a single term loan and grant funded interest term loan to the corporate debtor. Out of aforesaid 11 lenders mentioned hereinabove, 9 lenders (except Corporation Bank and State Bank of Hyderabad) assigned their respective debts pertaining to the corporate debtor along with underlying security to Edelweiss Asset Reconstruction Company Limited (hereinafter referred to as 'EARC').

After acquiring the debt along with underlying securities, EARC at the request of the Corporate Debtor vide Restructuring Agreement dated 26.07.2018 (hereinafter referred as "Restructuring Agreement of 2018") restructured the debt, on the terms and conditions stated therein. Subsequently, EARC was trying to sell its debt pertaining to corporate debtor through Swiss Challenge E-Auction Method. Marg Limited filed a writ petition before the Hon'ble High Court of Judicature of Madras, inter-alia, praying that Reserve Bank of India may direct EARC not to hold the Swiss Challenge E-Auction as it is voilative of the directions issued by it. By the said petition, Marg Limited challenged the validity of selling the debt of the corporate debtor by not following the requisite procedure. The Hon'ble High Court of Judicature at Madras vide order dated 20.09.2021 dismissed the writ petition filed by Marg Limited.

CORPORATE INSOLVENCY RESOLUTION PROCESS:

The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor viz. Karaikal Port Private Limited was initiated by the NCLT, Chennai Bench vide order dated 29.04.2022 under Section 7 of the IBC, 2016 by Omkara Asset Reconstruction Private Limited and consequently, Rajesh Sureshchandra Sheth was appointed as the Interim Resolution Professional.

PUBLIC ANNOUNCEMENT

Mr. Sheth in terms of Section 15 of IBC, 2016 has caused a Public Announcement in Financial Express and Business Standards, and Daily Thanthi (English) as well as in Makkal Kural and Dinamani (Tamil) on 02.05.2022 inviting claims in relation to corporate debtor.

Based upon the claims submitted by the stakeholders, Mr. Sheth constituted the Committee of Creditors (CoC) comprising of two financial creditors, namely (i) Omkara Reconstruction Private Limited & (ii) Phoenix ARC Private Limited. The initial list of financial creditors as well as voting shares of the CoC is as follows:

S.No.	Particulars of the claims	Amount Claimed (Rs.)	Amount Admitted (Rs.)	Voting Share
1	Omkara Assets Reconstruction Private Limited	2864, 72, 70, 079	1563, 77, 36, 620	96.60%
2	Phoenix ARC Private Limited	99, 12, 01, 518	55, 00, 06, 000	3.40%
	Total	**29, 63, 84, 71, 597**	**16,18,77,96,620**	**100%**

On 26.05.2022, the CoC during its 1st meeting by a majority of 96.60% in voting share, confirmed the appointment of Mr. Sheth (IRP) as the Resolution Professional. Thereafter, one of the two financial creditors i.e. Phoenix ARC Private Limited holding 3.4% voting share of the CoC proceeded to assign its debt to the Omkara Assets Reconstruction Private Limited, and as a result Omkara Assets Reconstruction Private Limited became the sole member of CoC with 100% voting rights.

INFORMATION MEMORANDUM

The Information Memorandum (IM) prepared by the RP in terms of Section 29 of the IBC, 2016 was approved by the CoC in its 02nd meeting held on 22.06.2022. During the said meeting the eligible criteria with respect to net worth and consortiums proposals in relation to the Corporate Debtor were deliberated and fixed as follows:

1. In relation to net worth of Rs.500 crores at individual level and in case of corporates, net worth of Rs. 500 crores in the immediately preceding financial year for which audited financial financials are available not earlier than 31.03.2021 and for financial institutions/PE funds/Assets Reconstruction Companies having assets under management of atleast Rs. 2000 crores as on 31.03.2022 or committed funds available for investment/deployment in Indian Companies or Indian assets of atleast Rs. 300 crores as on 31.03.2022.
2. In relation to consortium, the eligibility criteria was fixed at weighted average net worth of Rs. 500 crores at Consortium levels in the case of body corporate or individuals. In the case if the consortium is a financial institution/ PE funds/ NBFCs/ARCs AIF the minimum weighted average of Rs.1000 crores as on 31.03.2022 or weighted average committed funds available for investment/deployment in Indian companies or assets of atleast Rs. 300 crores as on 31.03.2022.

EXPRESSION OF INTEREST

The Resolution Professional proceeded with the proceeded with the issuance of 'Form-G' calling for Expression of Interest (EOI) in relation to the Corporate Debtor on 23.06.2022 in five newspaper namely; Business Standard, Financial Express (English Daily), Dina Mani, Dina Thanthi & Makkal Kural (Tamil Daily). Subsequently, the Resolution Professional published a revised 'Form-G' dated 09.07.2022 in the abovementioned newspaper inviting PRAs to submit their EOI for participation in the CIRP of the Corporate Debtor followed by submission of the Resolution Plan. Pursuant to the same, the Resolution Professionals had received five (5) EOIs. The Resolution Professional after carrying out due diligence prescribed under the Regulations submitted the final list of the eligible Prospective Resolution Applicants (PRAs) to the CoC by way of an email dated 17.08.2022 and uploaded the same on the website of the Corporate Debtor.

The Evaluation Matrix i.e. the evaluation criteria which were to be incorporated in the Request for Resolution Plan (RFRP) was approved by the CoC during its 03rd meeting held on 01.08.2022. The Resolution Professional proceeded to issue the RFRP to Prospective Resolution Applicants along with the Information Memorandum which was uploaded on a 'virtual date room' by which documents, data and information in relation to the Corporate Debtor could be accessed by the PRAs for their due diligence. On request by PRAs, the CoC during its 04th and 5th meeting extended the last date for the submission of the Resolution Plan.

The Resolution Plan had finally received two resolution plans from **(i) Adani Port and SEZ Limited & (ii) Vedanta Limited** on the last date for submission of Resolution Plan

and the same were placed before the CoC on its 6th meeting which was held on 03.10.2022. In the said meeting, the Resolution Applicants were invited to brief and to make their presentation of their respective Resolution Plan to the CoC. After several discussions and deliberations during the 7th & 8th CoC meetings, the Resolution Professional vide email dated 19.10.2022 and 20.10.2022 requested the PRAs to submit a revised plan addressing the deficiencies indicated by the Resolution Professional and his agents. Revised Resolution Plans from the two PRAs were received and the Resolution Professional had undertaken to carryout a final compliance check.

In the meantime, NCLT vide order dated 01.12.2022 in the application filed by the Resolution Professional extended the CIRP in relation to the Corporate debtor by a period of 60 days.

RESOLUTION PLAN

During the 9th CoC meeting held on 19.11.2022, the CoC and the Resolution Professional on being satisfied that the Resolution Plan(s) were compliant in terms of section 30(2) of IBC, 2016 proceeded to place the same for voting by way of e-voting line. The said e-voting on the Resolution Plan (s) commenced on 22.11.2022 and concluded on 30.11.2022. The CoC had evaluated both the plans from a commercial perspective and a discussion on the evaluation of both the plans in accordance with RFRP was undertaken in the 9th CoC meeting and scores were accorded to the Resolution Plan by the CoC members based on Quantitative and Qualitative parameters included in the Evaluation Matrix as follows:

S. No.	CATEGORY	APSEZL	VEDANTA LTD.
1.	Quantitative Score	57.36	3.10
2.	Qualitative Score	19.00	17.00
	Total	**76.36**	**20.10**

Therefore, the e-voting on the Resolution Plan commenced on 22.11.2022 and the e-voting concluded on 30.11.2022 and consequently, the CoC voted 100% in favour of the Resolution Plan submitted by M/s. Adani Ports and SEZ Limited.

CLAIMS RECEIVED AND ADMITTED

In the insolvency resolution process of the Corporate Debtor a total of 239 claims were received from various categories of the claimants amounting to INR 3045.11 Cr out of which 144 claims were accepted, amounting to INR 2977.66 Crs. which is approximately 97.78% of the total claims received. Out of the total admitted claims 99.38% belonged to the Financial Creditors and remaining 0.62% belonged to Employees, Government Dues and other Operational Creditors.

The summary of the claims admitted by the RP for the various classes of creditors is given below:

PARTICULARS OF CLAIMANTS	NO OF CLAIMS	AMOUNT ADMITTED (RS.)
Financial Creditor	1	2959,29,25,467
Operational Creditor	140	17,50,90,757
Statutory Authorities and Government Body	4	45,392
Employees and Workmen	95	92,47,965
Total	**240**	**2977,73,09,581**

ABOUT RESOLUTION APPLICANT- ADANI PORTS AND SEZ LIMITED

Adani Port and Special Economic Zone Limited is stated to be the largest commercial ports operator in India accounting for nearly one-fourth of the cargo movement in the country. The SRAs presence is stated to be wide spread across 12 domestic ports in seven maritime states of Gujarat, Maharastra, Goa, Kerala, Andhra Pradesh, Tamil Nadua and Odisha. The port facilities are equipped with the latest cargo handling infrastructure which are best in class and capable of handling the largest vessel at the Indian Shore.

The SRAs has a net worth of Rs. 26219.08 crores as per the audited financial statements of the financial year ended 31.03.2022. The SRA is stated to have promoters and management who have a strong track record of accomplishment of acquisition and turnaround of distressed companies post acquisitions and track record of executing several large and complex projects.

DETAILS OF RESOLUTION PLAN:

As per the Resolution Plan approved by the CoC, the SRAs intended to acquire the Corporate Debtor as an ongoing concern and upon approval of the resolution plan by the NCLT, the SRA was to settle the admitted claims by the Resolution Professional in accordance with the terms and timelines contained under the Resolution Plan.

The SRA proposed to acquire the complete control of the ownership of the Corporate Debtor on the 'Effective Date' (60th day from the date of this order in terms of the Resolution Plan. The SRA on the 'Effective Date' would infuse an Rs. 1485 crores as an upfront infusion amount along with utilization of Rs.95 crores of the available cash balance of the corporate debtor for payment towards the settlement of the claims of the financial creditors.

Further, the SRA was also required to utilize the cash balance of the corporate debtor for the settlement of CIRP costs and interim period costs and the claims of the Operational Creditors to the extent of Rs.3.06 crores. The SRA intended to acquire the complete ownership of the corporate debtor on the effective and further to infuse the additional funds to the tune of Rs. 153 crores as and when required in order to facilitate the Corporate Debtor as an ongoing concern.

FINANCIAL PROPOSALS UNDER RESOLUTION PLAN

The SRA under the Resolution Plan committed to make a payment of Rs.1583,06,53,357/- towards discharge of all claims of the creditors against the corporate debtor prior to the effective date as per the list of creditors dated 08.11.2022 and undertook to pat the CIRP costs and the interim period costs at actuals. The payment agreed under the resolution plan is tabulated under the application as under:

S.NO.	CLASS OF CREDITORS	ADMITTED AMOUNT	AMOUNT PROVIDED IN THE RESOLUTIOIN PLAN
1.	Financial Creditors	2959,29,25,467	1580,00,00,000
2.	Employees and Workmen	92, 47,965	92, 47,965
3.	Statutory Authorities and Government Body	45,392	45,392
4.	Operational Creditors (Other than Government, employees and workmen)	17,50,90,757	2,13,60,000
5.	Other Creditors	Nil	Nil

WORKMEN AND EMPLOYEE

As per the successful resolution plan, the SRA has assessed the liquidation value of the Corporate Debtor to be insufficient to even satisfy the claims of financial creditors and hence NIL amount is required to be paid to employees as per Section 30(2)(b) of the IBC. However, the Resolution Applicant has proposed to pay Rs.92,47,965/- out of the available cash balance of the corporate debtor towards the settlement of all claims of employees against the corporate debtor.

OPERATIONAL CREDITORS (OTHER THAN GOVERNMENT, WORKMEN AND EMPLOYEE)

As per the Resolution Plan, the SRA assessed the liquidation value of the corporate debtor to be insufficient to even satisfy the claims of financial creditors and hence NIL amount was required to be paid to operational creditors (other than Government, workmen and employee). However, the Resolution Applicant proposed to pay to Rs.2,13,60,000/- out of the available cash balance of the corporate debtor towards full and final settlement of the claims of the operational creditors (Other than Government, Workmen and Employee).

FOR CLAIMS OF GOVERNMENT AUTHORITIES:

As per the Resolution Plan, the SRA assessed the liquidation value of the corporate debtor to be insufficient to even satisfy the claims of financial creditors and hence NIL amount was required to be paid to Government authorities as per section 30(2) of the Code. However, the SRA proposed to pay Rs. 45,392/-out of the available cash balance.

Resolution plan provides that in case the amount payable to any operational creditor under the section 30(2) of the Code is more than the amount provided under this successful resolution plan to such operational creditors as per applicable law then such operational creditor shall be paid from the available cash balance with the corporate debtor on the effective date and in the event that the cash balances of the corporate debtor are insufficient to pay whole or part of such amounts then such unpaid amount will be paid from contingent funds.

APPROVING FINANCIAL CREDITORS

The resolution plan provides that after payment of dissenting financial creditors (if any) and excluding the admitted financial creditors debt constituting necessary bank guarantees, the SRA proposed to pay Rs. 1,485/- crores to the approving financial creditors as upfront infusion amount on the effective date towards full and final settlement of the admitted financial creditors debt.

Additionally, the Resolution Plan also proposed to provide for payment of amount not exceeding Rs. 95,00,00,000/- to the approving financial creditors from the available cash balance of the corporate debtor on the effective date.

ACQUISITION OF THE CORPORATE DEBTOR AS A GOING CONCERN

The Resolution Applicant subscribed the 10,00,000 equity shares of the Corporate Debtor of Rs.10 each aggregating to Rs.1,00,00,000/- (Rupees One Crore only) such that the Resolution Applicant and/or its Affiliates/Nominees (which entity shall be eligible under section 29A of the Code) were holding 100% of the share capital of the corporate debtor and following the Capital reduction, acquired control of the corporate debtor. The Resolution Applicant agreed to hold and maintained 51% or more of the shares and voting rights of the corporate debtor and control the management and affairs of the corporate debtor, till the implementation of the Resolution Plan with the condition that Resolution Applicant can transfer the shares of the corporate debtor to its affiliates.

FEATURE OF THE RESOLUTION PLAN:

In the face of the formidable challenges, the RP received a comprehensive plan aimed at achieving balance and equitable treatment for all stakeholders of Karaikal Port. Key features of the plan included:

1. **Balanced treatment**: Ensuring fair treatment for all stakeholders, ranging from vendors and creditors to government entities, is paramount in fostering a conducive environment for resolution.

   By upholding principles of equity and transparency, trust is built among all parties involved in the resolution process, laying a solid foundation for constructive dialogue and collaboration. Fair

treatment not only promotes a sense of justice but also encourages stakeholders to actively engage in negotiations, thereby increasing the likelihood of reaching mutually beneficial agreements. Moreover, when all stakeholders feel respected and valued, it enhances the likelihood of successful implementation of resolution plans and paves the way for sustainable outcomes. Ultimately, prioritizing fair treatment for all stakeholders is not only ethically imperative but also instrumental in achieving long-term stability and success for the port and its associated entities.

2. **Bullet payments**: Prioritizing payments as per the provisions of the IBC is essential for facilitating a swift resolution process and instilling confidence among stakeholders. By ensuring timely payments to these crucial parties, the resolution process gains momentum, minimizing disruptions and uncertainties. This proactive approach demonstrates a commitment to honoring financial obligations and upholding contractual agreements, which in turn fosters trust and confidence among stakeholders. Financial creditors are reassured of their investments being safeguarded, operational creditors can continue their business operations without interruption and government entities receive the dues owed to them, thereby contributing to the stability of the overall business environment. Prioritizing payments not only accelerates the resolution process but also sets a positive precedent for future dealings, positioning the port for sustainable growth and success in the long term.

3. **Unconditional plan with capex potential**: Presenting an unconditional plan with provisions for further capital expenditure signifies a steadfast commitment to the long-term growth and sustainability of the port. By offering a plan devoid of contingencies or conditions, stakeholders were assured of a clear and unwavering vision for the port's future development. This approach instilled confidence among employees, creditors, and other stakeholders, as it demonstrates a willingness to invest in the port's infrastructure and expansion initiatives. Moreover, the plan also acknowledges the importance of continual investment in upgrading facilities, enhancing operational efficiency, and adapting to evolving market demands. This forward-looking strategy not only ensures the port's competitiveness in the short term but also lays the groundwork for its enduring success and resilience in the face of future challenges. Ultimately, by presenting an unconditional plan with provisions for capital expenditure, the port underscores its commitment to fostering sustainable growth and prosperity for years to come.

VALUE REALIZATION FROM THE RESOLUTION PLAN

The below table provides a snapshot of the value realized from the resolution plan in comparison to the admitted claims, Fair value of the Corporate Debtor and Liquidation value of the Corporate Debtor:

Date of Commencement of CIRP	Date of Approval of Resolution Plan	Amount (in ₹ crore)				Realizable value as % of		
		Total Admitted Claims	Liquidation Value	Fair Value	Total Realizable Value	Admitted Claims	Liquidation Value	Fair Value
29-04-22	31-03-23	2977.67	822.18	1215.8	1583.07	53.16	192.54	130.2

The resolution plan's successful implementation not only provided significant returns to creditors but also preserved the operational viability of the port, safeguarding its strategic importance in the region.

MONITORING COMMITTEE

Upon occurrence of the NCLT approval date, a committee was also constituted which comprised of one nominee each of the Resolution Professional, the Resolution Applicant and the Approving Financial Creditors ("Implementation and Monitoring Committee"). On and from the NCLT approval date and till the effective date, the management and affairs of the corporate debtor was managed by the monitoring and implementation committee. The implementation and monitoring committee stood dissolved on and

from the effective date without any further action or deed required from the effective date.

On the Effective Date, the suspended Board of Directors of the corporate debtor was dissolved and all directors of the suspended board of directors of the corporate debtor were deemed to have resigned without any further act or deed from any other person and the Resolution Applicant reconstituted the Board of the Corporate debtor on such date, in accordance with the applicable law.

COMPLIANCE CERTIFICATE BY RESOLUTION PROFESSIONAL

The Compliance Certificate in Form-H was filed by the Resolution Professional, provided the averments pertaining to mandatory compliances prescribed under IBC, 2016.

As per the Compliance Certificate filed by the Resolution Professional, the fair value of the corporate debtor was arrived at Rs. 1215, 88,27,500/- and the Liquidation Value of the corporate debtor was arrived at Rs.822,18,01,500/-. The present Resolution Plan submitted by the Resolution Applicant was for a value of Rs. 1583,06,53,357/-

CHALLENGES FACED BY THE RESOLUTION PROFESSIONAL

1. **Remote location and vendor network**: The port's remote location posed logistical challenges, compounded by a limited vendor network with significant outstanding dues from the pre-CIRP period. With limited understanding of the legal and financial implications of the insolvency proceedings, vendors were understandably cautious about extending their support. The uncertainty surrounding the resolution process, including the potential impact on their outstanding dues and future business prospects, further exacerbated their reluctance.

2. **Dependency on vendors and Government entities**: Given its operational nature, the port heavily relied on manpower agencies to fulfill essential staffing needs. These agencies provided skilled labor for a wide range of tasks, including cargo handling, maintenance, security, and administrative duties. However, the port's dependence on these agencies became a double-edged sword in the context of the insolvency proceedings. This dependency underscored the urgency of addressing vendors' apprehensions and ensuring their continued participation to maintain operational efficiency and uphold the port's essential functions. Moreover, governmental entities like the Government of Puducherry had limited familiarity with the Insolvency and Bankruptcy Code (IBC), thereby adding to the existing challenges. The RP proactively engaged with all stakeholders including government agencies to educate them on the workings of the IBC framework. Through these interactions, the RP provided insights into the intricacies of the process, ensuring clarity on the roles and responsibilities involved.

3. **Customer engagement**: Similarly, certain key customers, including TENGEDCO, a State Utility Company, had no prior exposure to the intricacies of the IBC, further complicating negotiations and resolutions. Through interactions, the RP effectively managed port operations through proactive engagement and effective communication.

4. **Employment uncertainty**: The port's financial instability casted a looming cloud of uncertainty over the livelihoods of local employees and villagers, exacerbating existing socio-economic challenges within the community. As the backbone of employment and economic activity in the region, any disruption or instability in the port's operations directly impacts the lives of those dependent on it for their livelihoods. With the specter of potential job losses and economic downturn looming large, families and individuals in the vicinity were grappling with heightened anxiety and insecurity. However, regular and proactive interactions helped the RP and the port officials to effectively manage the operations at the site.

5. **Operational and legal battles**: The port faced ongoing litigations with the Goods and Services Tax (GST) department, along with challenges from a financial creditor during the initial phases of the CIRP. Despite these legal challenges, the port's management, under the guidance of the Resolution Professional, remained resolute in their determination to navigate through the legal intricacies and also emerge successfully from the insolvency proceedings.

KARAIKAL PORT POST -IMPLEMENTATION:

The implementation of the resolution plan for Karaikal Port yielded tangible results, catapulting the port into a new era of prosperity and stability. Post-implementation:

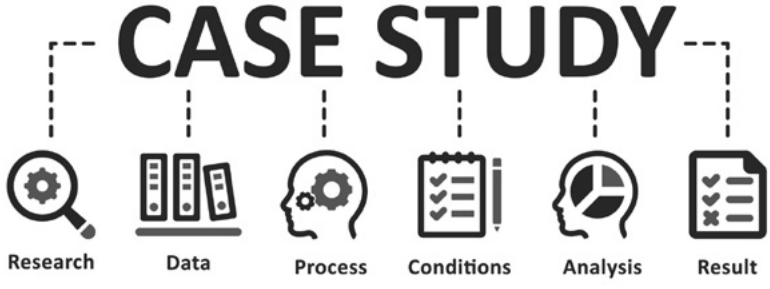
1. **Successful handover**: The port was seamlessly handed over to the Successful Resolution Applicant (SRA), ensuring continuity in operations. The completion of all formalities and requirements within a remarkably short timeframe of less than two weeks stands as a testament to the efficiency and dedication of the port's management team. This swift and decisive action not only demonstrates a high level of organizational preparedness but also underscores a proactive approach towards resolving the port's financial challenges. This achievement not only signifies compliance with regulatory obligations but also marks a significant milestone in the port's journey towards financial stability and operational excellence. With the CIRP over, the port can now focus its efforts and resources on implementing strategic initiatives as outlined in the resolution plan, thereby charting a course towards sustained growth and prosperity.
2. **Positive Cash Flows and EBITDA**: The port achieved positive cash flows and Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), demonstrating its newfound financial resilience and operational efficiency.
3. **Seamless Transition:** The port was handed over to the Successful Resolution Applicant (SRA) within two weeks, ensuring operational continuity and stakeholder satisfaction.
4. **Financial and Operational Resilience:** Post-implementation, the port achieved positive cash flows and robust EBITDA margins, marking a turnaround in its financial health.
5. **Strategic Growth:** Under new ownership, the port has been poised for further expansion and increased market presence, enhancing its strategic value in the region.

CONCLUSION:

Under Mr. Sheth's leadership, the port was managed as a going concern, ensuring operational continuity and engaging with stakeholders to achieve a resolution plan.

Managing a running port involves intricate challenges, including logistical operations, financial risks, regulatory compliance, and addressing fluctuating market demands. Despite these hurdles, Karaikal Port, with its strategic importance as a trade hub, was effectively guided towards stability and growth. The resolution journey of Karaikal Port highlights the critical role of efficient governance, stakeholder management, and adherence to IBC provisions in addressing complex insolvency cases.

The resolution of Karaikal Port serves as a testament to the effectiveness of the IBC framework and the pivotal role of a dedicated Resolution Professional in addressing complex insolvency cases. Through equitable treatment of stakeholders, transparent processes, and strategic foresight, the port emerged as a model of success, showcasing the potential of collaborative problem-solving and innovative strategies. This case underscores the importance of resilience, adaptability, and stakeholder engagement in achieving operational excellence during insolvency proceedings. The Karaikal Port resolution story not only highlights the success of the IBC framework but also inspires confidence in its ability to revitalize distressed assets and contribute to economic stability.



Global Arena

INSOLVENCY LITIGATION PROCEEDINGS IN AUSTRALIA- AN OVERVIEW

Introduction

Insolvency litigation in Australia is a critical mechanism for addressing financial distress, ensuring equitable asset distribution, and upholding corporate governance. Governed by robust legal frameworks, these proceedings balance creditor rights with opportunities for debtors to restructure. This article explores the intricacies of insolvency litigation, including legal foundations, common disputes, procedural steps, and recent trends.

Insolvency litigation is ubiquitous in Australia, with the most common sources of dispute falling into three categories as follows:

- Proceedings by creditors seeking to force a debtor into liquidation or bankruptcy: while invariably brought in the hope that the debtor will be pressured to pay, such proceedings can generally only be brought in respect of undisputed debts. It is, however, not unheard

of for debtors to defend such proceedings as a delay or negotiation tactic.

- Disputes regarding the beneficial ownership of, and security interests in, assets held by an insolvent debtor: these claims often turn upon general law principles not limited to insolvency but are by their nature of most relevance to a debtor that cannot otherwise pay their debts.
- Proceedings brought by a liquidator or bankruptcy trustee to recover assets for the benefit of the insolvent estate, either by recovering assets dissipated to third parties or (in the case of corporate insolvency) by pursuing a breach of duty or 'insolvent trading' claim against a company director with the goal of having them held liable for some of their company's losses.

Legal Framework

Australia's insolvency regime is primarily regulated by the Corporations Act 2001 (for companies) and the Bankruptcy Act 1966 (for individuals). Key reforms, such as the 2017 Safe Harbour provisions and ipso facto clause restrictions, emphasize restructuring over liquidation. The Treasury Laws Amendment Act 2017 introduced these changes, encouraging directors to pursue viable recovery plans without immediate liability.

Personal insolvency is governed by the Bankruptcy Act 1966 (Cth) and Bankruptcy Regulations 2021 (Cth). Corporate insolvency is governed by the Corporations Act 2001 (Cth) and Corporations Regulations 2001 (Cth).

Other aspects of Australian law that often arise in insolvencies include the following:

- in the case of debtors who are trustees, common law principles are applied – rather than the insolvency laws – to determine what rights (if any) the insolvent debtor and its creditors have to that property; and
- in respect of security interests in the property of a debtor, different regimes apply in respect of interests in real property (which are principally governed by a mix of common law principles and state-based land title legislation) and interests in personal property (which are principally governed by the Personal Property Securities Act 2009 (Cth)).

Types of Insolvency Proceedings

1. Corporate Insolvency

- **Liquidation:** Voluntary (initiated by shareholders) or court-ordered (creditor-driven), involving asset realization by a liquidator.
- **Voluntary Administration:** A 25–30-day moratorium allows administrators to propose restructuring via a Deed of Company Arrangement (DOCA).
- **Receivership:** Secured creditors appoint receivers to manage specific assets, often bypassing broader company operations.

2. Personal Insolvency

- **Bankruptcy:** Individuals unable to meet debts may enter voluntary bankruptcy or be compelled by creditors, leading to asset distribution by a trustee.

Courts

Personal insolvency matters can be heard in either the Federal Court or the Federal Circuit Court. While their jurisdiction is concurrent, it is generally the case that larger and more complex proceedings are brought in the Federal Court, while simpler matters are brought in the Federal Circuit Court as it is lower in Australia's judicial hierarchy.

In relation to corporate insolvency:

- most matters, including all applications to bring about an involuntary insolvency, must be brought in either the Federal Court or in state supreme courts, with those courts having a concurrent jurisdiction and being equivalent in Australia's judicial hierarchy; but
- some purely monetary claims available to liquidators can be brought in lower courts so long as the claim is within that court's usual jurisdictional limit for money claims.

Where an insolvency proceeding relevantly overlaps with a family law proceeding, the Family Court of Australia can also exercise jurisdiction in either personal or corporate insolvency.

There are no specialised insolvency courts in Australia but, within the superior courts, insolvency matters

are typically case-managed separately from other litigation by judges with appropriate expertise.

Jurisdiction

Section 1337B of the Corporations Act empowers the Federal Court and state supreme courts to deal with matters arising under the corporations legislation.

Section 27 of the Bankruptcy Act gives the Federal Court and the Federal Circuit Court jurisdiction over bankruptcy matters.

Section 10 of the Cross-Border Insolvency Act 2008 (Cth) also gives the Federal Court and the Federal Circuit Court jurisdiction in cross-border insolvencies under the UNCITRAL Model Law on Cross-Border Insolvency, save that in personal insolvency only the Federal Court is given jurisdiction.

Procedure

Insolvency litigation is governed by the rules of the court in which the matter is being heard. While each court has its own different procedural rules, in the case of corporations litigation (including corporate insolvency) there is a degree of harmonisation by way of a set of uniform corporations rules applied across all superior courts when exercising corporations jurisdiction.

A common procedural hurdle relates to companies that traded as a trustee of a trust (being a commonly used structure for tax reasons), where it has been held that the liquidator will generally have no power to deal with the company's assets unless they obtain court orders appointing them as 'receiver' of the trust (McLean v Hill, in the matter of TMC Plumbing & Drainage Pty Ltd (in liq) [2019] FCA 1439). As a separate application to the court is generally required to obtain such orders, it gives rise to both costs and delays.

Procedural Steps in Litigation

1. **Pre-Action:** Demand letters and negotiations, often involving mediation.
2. **Commencement:** Filing claims in the Federal Court or state Supreme Courts.
3. **Pleadings:** Statements of claim and defenses outline parties' positions.
4. **Discovery** Exchange of relevant documents**.**
5. **Trial:** Evidence and arguments presented, followed by judgment.
6. **Appeals:** Limited grounds for contesting decisions.

Limitation periods

While the precise limitation periods vary depending on the cause of action, the most common limitation period in Australian law is six years. Most insolvency-related claims can be brought within six years of the commencement of the insolvency (though that commencement may be deemed to be a date earlier than the liquidator or the bankruptcy trustee's actual appointment).

A notable exception applies in corporate insolvency, where most claims to recover assets (or the value of assets) transferred by the company in the lead up to its insolvency must be brought within three years, unless a proceeding is brought before then seeking an extension of time.

Interim remedies

In involuntary insolvencies, there is provision for a petitioning creditor to seek interim relief taking control of a debtor's property pending determination of the proceeding. While not unheard of, in practice this is relatively rare – if there is a well-founded fear that a debtor may dissipate assets then that is more commonly dealt with by freezing orders in general law proceedings to vindicate the creditor's underlying claim, which would typically occur well before any insolvency proceedings.

Evidence

While not yet adopted by all Australian jurisdictions, a uniform Evidence Act has been adopted by the federal government and by Australia's largest states, such that it applies to most insolvency litigation.

Expert witness testimony is widely used in insolvency litigation, particularly in providing a retrospective assessment of a debtor's solvency. A common issue arising is that, in Australia, solvency is assessed on a 'cash flow' – this means that proving a company's solvency or insolvency generally requires a broad examination of many factors rather than purely an examination of its balance sheet, which can be very difficult in practice.

One of the notable difficulties associated with a cash flow test is the relevance of future payable debts to a company's immediate solvency. The New South Wales Court of Appeal recently held that the test of insolvency is prospective in outlook and that, therefore, future debts may be considered to establish insolvency where there is no expectation that the company will be able to pay upcoming debts when they fall due. However, the Court expressed that restraint should be exercised and this analysis must take into account how far into the future these debts are due. Consequently, the further away the debt, the less likely it will factor in determining solvency on a debt payable in the future.

Australian courts can order public examinations (a court process where the examinee gives evidence) of company officers and others who can talk to the examinable affairs of the company. Such examinable affairs include, but are not limited to, exploring potential claims and recoverability. The court can also order the production of documents to be made. These processes can take place before litigation is started and are thus powerful tools in the hands of a liquidator (and some others) to gather evidence – which often leads to early settlement of claims. A similar process exists in personal bankruptcy proceedings.

In relation to mandatory public examinations *under section 596A of the Corporations Act, the High Court of Australia has recently confirmed in* Walton v ACN 004 410 833 Limited (formerly Arrium Limited) (in liquidation) *[2022] HCA* 3 that the scope of this process is not confined to examinations that will confer a benefit on the company or its creditors. Rather, the examination of an officer for the purpose of pursuing a private claim against the corporation in external administration can be a legitimate use of the power conferred by section 596A. Therefore, the practical effect of this judgment is now that public examinations are available even in proceedings that only have a tenuous connection with the examination of a company.

Time frame

Applications for the involuntary insolvency of a company are usually dealt with expeditiously and within a matter of months even when opposed. However, there is a greater degree of leniency and tolerance for delay shown in respect of personal debtors, such that bankruptcy proceedings may be much slower if defended.

Where an insolvency has occurred and claims are brought by a liquidator or bankruptcy trustee against third parties, those claims are dealt with by the courts in much the same way as any other claim by a litigant in Australia and progress at the same pace. Simple defended matters may be dealt with in a matter of months, while especially complex matters can take up to several years.

Appeals

Insolvency-related judgments are generally subject to the same requirements and time limits for appeals as any other judgment in the court in which they were made, such that those requirements and limits vary from court to court. However, generally, appeals are typically required to be brought within 21 or 28 days of the original judgment, though in some courts, that period may be extended by serving notice of an intention to appeal.

Costs and litigation funding

Costs in insolvency proceedings are dealt with in a similar 'loser pays' fashion to ordinary litigation. In that respect:

- claims in personal bankruptcy, and some corporate insolvency claims, are brought on behalf of the insolvent estate in the name of the appointed insolvency practitioner personally such that they may be personally liable for costs ordered; and
- in those corporate insolvency claims that do not have the liquidator as a party, the court will commonly order as a condition of the claim progressing that the liquidator put up a sum of money as security to ensure the defendant may recover costs if the claim fails.

For relatively strong and straightforward claims, it is common for the claims to proceed without funding, with lawyers acting on the basis that they are only to be paid out of any recovery and the insolvency practitioner accepts the risk of personal liability for the defendant's costs.

Voidable Transaction

- **Unfair Preferences(S588FA):** Payments favoring creditors within six months (or four years for related parties) pre-insolvency.
- **Uncommercial Transactions (S588FB):** Non-arm's length dealings two years pre-insolvency.
- **Insolvent Trading Claims (S588G):** Directors face personal liability for debts incurred during insolvency, with defenses under S588H.
- **Director Duties Breaches:** Allegations of misconduct under the Corporations Act.
- **Proofs of Debt Disputes:** Challenges to creditor claims during asset distribution.

Challenges and Considerations

- **Cost and Duration:** Litigation can be protracted and expensive, prompting reliance on litigation funding.
- **Director Defenses:** Demonstrating reasonable solvency expectations or adherence to Safe Harbour requirements.
- **Cross-Border Issues:** Part 5.6 of the Corporations Act adopts the UNCITRAL Model Law, facilitating international insolvency recognition.

Recent Trends and Developments

- **Safe Harbour:** Increased restructuring attempts by directors, reducing premature liquidations.
- **Ipso Facto Reforms:** Contract termination clauses suspended during restructuring efforts.
- **COVID-19 Impact:** Temporary government relief measures delayed insolvencies, with a surge expected post-support.
- **Technological Integration:** Virtual meetings and digital filings enhance procedural efficiency.

Conclusion

In respect of larger and more complex claims, third-party litigation funding is commonly used, in respect of which Australia has a thriving market. However, in corporate insolvency, it is generally a requirement that the approval of creditors or the court be obtained before any third-party funding agreement is entered into.

Insolvency litigation in Australia serves as a pivotal tool for resolving financial distress while promoting accountability and fairness. Stakeholders must navigate evolving laws, such as Safe Harbour and ipso facto reforms, to optimize outcomes. As economic pressures persist, understanding these proceedings remains vital for directors, creditors, and practitioners alike, ensuring compliance and fostering resilient business practices.

References

- Corporations Act 2001 (Cth)

- Bankruptcy Act 1966 (Cth)

- Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017

- Australian Securities and Investments Commission (ASIC) Guidelines

- UNCITRAL Model Law on Cross-Border Insolvency

Legal World

Case No.1

Resolution Professional cannot accept any claim which has been adjudicated during the moratorium period.

CASE TITLE	**The Regional Provident Fund Commissioner-II(Legal) V/s CA Rajendra Jain IRP of Kimaya Industries Pvt Ltd.**
CASE CITATION	IA/1465(AHM)2024 IN CP(IB)/4(AHM)2022
DATE OF ORDER	10th January, 2025
COURT/ TRIBUNAL	National Company Law Tribunal, Ahmedabad, Court-2
SECTION/ REGULATION/ RULES REFERRED	· Section 14 of the Insolvency and Bankruptcy Code, 2016: Moratorium · Section 238 of the Insolvency and Bankruptcy Code, 2016: Provisions of the Code to override the other laws

Brief Facts of the Case:

Corporate insolvency resolution proceedings was initiated against the corporate debtor- M/s. Kimaya Industries Private Limited vide order dated 03/02/2023. Respondent-Resolution Professional in rejecting the claim of Provident Fund dues of the Workmen and Employees, preferred by the applicant for the total sum of Rs. 1,98,74,168/- - towards assessed Payable contributions under Section 7A for the default period 07/2019 to 03/2022 and Tentative payable Damages under Section 14B and Tentative payable Interest under Section 7Q, for the default period 01.01.2017 to 31.03.2023. Liability of Rs.1,98,74,168/- did not exist as on the date of commencement of the CIRP vide order dated 03.02.2023 and the same has been assessed by the applicant during the CIRP period.

Decision:

The Hon'ble NCLT Ahmedabad Bench held that the applicant being the EPF authority has raised certain demands which were adjudicated during the CIRP period which was after the initiation of the moratorium under Sec. 14(1) of IBC, when

no assessment proceedings can be continued by the applicant irrespective of whether certain documents were sought from the Resolution Professional. This does not, however, as per Sec. 33 (5) prohibit the applicant to continue with or even initiation of proceedings after the liquidation order is passed. When the liquidation order is passed, the moratorium ends which enables the protected assets of the Corporate Debtor to be free of any further consideration under liquidation estate.

Link of the Order:

https://efiling.nclt.gov.in/ordersview.drt?path=VJOAJEt%2B4FEFG5aaDWryLnb5hX4tkiRcaO9oQTZ7zg12SiSHjBft0Ol04ASZ3%2Fhr9PPA%2FUf4JrY24j9KDzl6%2BN%2BPX441RF31fovgulbR%2B0T4BB%2BeT2QxwhC9wn8VzUg9W2SQDWFuv%2B1cyGgR1tcMwhjJ1NaNe8m8v6eKjMnqNKR0foHjrWPnl7HKFTkRtZpM

Case No.2

Liability arises on the part of Corporate Debtor in respect of sale agreement, which, being in the nature of a financial lease under Ind AS, is Financial Debt under the Code.

CASE TITLE	**Ghaziabad Development Authority V/s Mr. Amit Agarwal**
CASE CITATION	IA-3686/2022 in Company Petition No. (IB)- 652(PB)/2019
DATE OF ORDER	22nd January, 2025
COURT/ TRIBUNAL	National Company Law Tribunal, Principal Bench, New Delhi
SECTION/ REGULATION/RULES REFERRED	Section 5(8) of the Insolvency and Bankruptcy Code, 2016: Definition of Financial Debt
BENCH	Mr. Justice(Retd) Ramalingam Sudhakar (President) and Shri Avinash K. Srivastava (Technical Member)

Brief Facts of the Case:

In the year 2006, Ghaziabad Development Authority (GDA), being the owner of the Plot in Ghaziabad, through a public auction, invited bids for sale wherein Celebration City Project Pvt. Ltd. (Corporate Debtor) (Earlier known as M/s Vridhi Merchant Pvt. Ltd.), being the highest bidder for a total consideration of Rs.100 crores, for developing a commercial complex at the site was declared successful as a purchaser of the said plot of land.

On 6th July 2007, a registered Agreement to Sale was executed between the GDA, the First Party and Celebration City Project Pvt. Ltd. (Corporate Debtor), the Second Party.

This agreement to sale acknowledges the receipt of payment of Rs.25 crores i.e. 25% of sale consideration + freehold charges etc. and the balance 75% of sale consideration payable in 16 quarterly instalments along with the 12% interest. In the event of default, the interest @ 15% would be charged. Further, the physical possession of the plot was handed over to the Corporate Debtor.

The Agreement to sale provided that the Corporate Debtor shall have the right to contract to sale for constructed space together with required appurtenant portion of the plot. The GDA will have no objection to the Corporate Debtor raising loan against the Plot, in that case, the Corporate Debtor will execute a tripartite agreement with GDA and the Financial Institution. The GDA will permit the Corporate Debtor to mortgage the property in question for raising loans, and create the charge to the financial institution in proportionate part of the premium paid. Corporate Debtor failed to make the payment of the sale consideration and for which, the re- scheduling of the said consideration was carried out, on repeated occasions.

On 21.03.2022, CIRP was initiated by order of this Adjudicating Authority against the Corporate Debtor. GDA filed its claim dated 13.04.2022 for recovery of Rs. 147,59,04,687/- before the RP as a financial creditor. The RP rejected the claim of GDA as a 'financial creditor' stating that the said claim falls under the category of 'operational creditor'.

Decision:

- The judgment in *Sandeep Mittal v. ASREC (India) Ltd. and Ors.* of the Hon'ble NCLAT covers the situation that applies to the facts of that particular case, wherein the Corporate Debtor had taken over the property in an auction against consideration of payment in which he defaulted. Therefore, the submission of the Respondent in the appeal that sub Section 5(8)(f), which is a residuary clause would be attracted has been turndown by Hon'ble NCLAT. The facts of the present case basis the various clauses of the agreement, the nature of transaction and the debt and interest in default that is conceded at various stages in different proceedings makes the case different. However, the instant case would be covered under definition 5(8)(d) of the IBC.
- It is rightly contended by Ld. Sr. Counsel for GDA that the liability arises on the part of the Corporate Debtor in respect of the sale agreement which is in the nature of a financial lease under the Indian Accounting Standard. Therefore, the judgment of Hon'ble NCLAT in *Sandeep Mittal v. ASREC (India) Ltd. and Ors.* does not come to the rescue of the Corporate Debtor.
- The Hon'ble Tribunal is of the view that the judgment, in *Sandeep Mittal v. ASREC (India) Ltd. and Ors.* relied by Corporate Debtor is on a different footing based on a different factual matrix in which primarily the ingredients of Section 5(8)(f) of the Code were covered whereas in the present case ingredients of Section 5(8)(d) of the Code is applicable wherein it is a case of liability of Corporate Debtor, as is in the form a financial lease with the element of time value of money being incorporated in the agreement to sale itself and part transacted and balance defaulted with interest liability.
- In view of the above and for the reasons recorded therein the Hon'ble Tribunal is inclined to allow IA No. 3686 of 2022 filed for directing the RP to admit the claim of Applicant/GDA as a financial creditor.

Link of the Order:

https://images.assettype.com/barandbench/2025-01-24/u2h5ecbg/GDA_Vs_Amit_Agarwal.pdf

Case No.3

CCI's Approval of Proposed Combination Must Be Obtained Before Approval Of Resolution Plan By CoC under IBC.

CASE TITLE	**Independent Sugar Corporation Limited v. Girish Sriram Juneja & Ors**
CASE CITATION	Civil Appeal No.6071 of 2023
DATE OF ORDER	29th January, 2025
COURT/ TRIBUNAL	Supreme Court of India
SECTION/ REGULATION/ RULES REFERRED	Section 31(4) of the Insolvency and Bankruptcy Code, 2016: Definition of Financial Debt
BENCH	Hon'ble Justice Mr. Hrishikesh Roy, Hon'ble Justice Mr. Sudhanshu Dhulia and Hon'ble Justice S.V.N. Bhatti

Brief Facts of the Case:

Hindustan National Glass and Industries Ltd (Corporate Debtor) was referred to corporate insolvency resolution process (CIRP) pursuant to an order dated 21 October 2021 passed by Hon'ble National Company Law Tribunal, Kolkata (NCLT). During the CIRP, the resolution professional (RP) received 2 (two) resolution plans from: (i) Independent Sugar Corporation Limited (ISC); and (ii) AGI (AGI Resolution Plan). Notably, each of ISC and AGI were required to obtain approval from the CCI for the CIRP. AGI sought a relaxation from the resolution professional (RP) on the requirement to obtain prior CCI approval for the AGI Resolution Plan. Allowing AGI's request, the RP required AGI to procure CCI approval after CoC Approval, but prior to filing the application with the NCLT for its approval (Approval Application).

Further to the relaxation by the RP, AGI filed the notice with the CCI (through a Form-I) for approval for its acquisition of the Corporate Debtor on 27 September 2022. Whilst ISC was eligible for deemed approval under the Green Channel Route (GCR) i.e., without any waiting period, AGI (since it was engaged in the same business as the Corporate Debtor) had to approach the CCI under the normal route, i.e., with a waiting period.

Given the potential high market shares ((i) 80-85% in the food and beverages segment, and (ii) 45-50% in the alco-beverage segment) of the post-combined entity, the CCI termed the notice filed by AGI as invalid and directed AGI to re-file notice in Form-II.

The resolution plans were placed before the CoC for their consideration on 22 October 2022, i.e., before AGI could re-file notice and obtain CCI Approval. The CoC approved the AGI Resolution Plan on 28 October 2022 (AGI CoC Approval). Critically, AGI did not have CCI Approval nor did it have an application pending with the CCI, as on date of the AGI CoC Approval, whilst ISC had procured CCI Approval. On the AGI CoC Approval, the RP filed the Approval Application praying for approval of the AGI Resolution Plan. In the interim, while the Approval Application was sub-judice, as directed by CCI, AGI submitted the Form-II with the CCI. Observing that the proposed combination would result in AAEC in the relevant market (on account of inter alia the high market shares), the CCI issued a show-cause notice to AGI (under Section 29(1) of the Competition Act) (SCN). Responding to the SCN, AGI submitted voluntary modifications (i.e., voluntarily hiving off / divestment of a key plant of the Corporate Debtor) (Modification) on receipt of approval from the NCLT. Observing that the Modification proposed assuaged AAEC concerns, the CCI issued a conditional approval for the proposed combination (on 15 March 2023). Pertinently, the conditional approval was based on the successful implementation of the Modification and required appointment of independent agencies (monitoring and divestment) to this end.

At this stage, ISC filed an application before NCLT challenging the approval of AGI Resolution Plan on the ground that prior approval of CCI had not been obtained by AGI at the time of AGI CoC Approval. Rejecting the application, the NCLT held that AGI had obtained CCI Approval whilst the Approval Application was sub-judice, in line with the scheme of the IBC (28 April Order). Challenging the 28 April Order, ISC filed an appeal with the National Company Law Appellate Tribunal (NCLAT). ISC also filed a separate appeal before the NCLAT challenging the CCI approval granted to AGI, on grounds that the conditional approval granted was not in compliance with the requirements of the IBC. Dismissing the appeals filed by ISC, the NCLAT observed: (i) the requirement to obtain CCI Approval prior to CoC Approval was only directory in nature and in light of the present facts, the AGI Resolution Plan could be implemented, and (ii) the scheme of the Competition Act allowed CCI to deviate from prescribed procedure (public consultation, publication of details in the public domain), if transacting parties mitigated / assuaged AAEC concerns arising from a combination. Further, the NCLAT held that the CCI failed to comply with Section 29(1) of the Competition Act, since it issued the SCN only to AGI and not the Corporate Debtor.

ISC preferred an appeal before the Supreme Court against the decisions of the NCLAT (collectively, the "Appeals"). Both the Appeals were tagged and heard together by the Hon'ble Supreme Court in the captioned matter.

Decision:

The Supreme Court held that the approval of a proposed combination by the Competition Commission of India (CCI) must be obtained before the approval of Resolution Plan by the Committee of Creditors (CoC) under Section 31(4) of the Insolvency and Bankruptcy Code, 2016 (IBC). The Court held thus in a batch of Civil Appeals preferred against the Judgment of the National Company Law Appellate Tribunal (NCLAT) pertaining to the Corporate Insolvency Resolution Process (CIRP) of the Hindustan National Glass and Industries Ltd. (HNGIL). The three-Judge Bench of Justice Hrishikesh Roy, Justice Sudhanshu Dhulia, and Justice S.V.N. Bhatti observed, "In the present case, for reasons discussed above, the statutory provision and legislative intent unequivocally affirm the mandatory nature of the proviso to Section 31(4) of the IBC. For a Resolution Plan containing a combination, the CCI's approval to the Resolution Plan, in our opinion, must be obtained before and consequently, the CoC's examination and approval should be only after the CCI's decision. This interpretation respects the original legislative intent, and deviation from the same would not only undermine the statute but would also erode the faith posed by the stakeholders in the integrity of our legal and regulatory framework."

The Bench added that, where the provisions allow for dilution or departure from the intended scheme of the IBC or the Competition Act, 2002, it is the responsibility of the legislature to rectify such inconsistencies

through appropriate legislative measures and the Judiciary should not normally venture into the legislative domain.

The Supreme Court in the above context of the case, noted, "… a provision would not be considered ambiguous merely because it contains a word which in different contexts, is capable of a different meanings, but instead if it contains a word or phrase which is capable of having more than one meaning in that particular context." The Court further said that the Courts must always attempt to uphold a provision as it is and not invalidate it, merely because one of the possible interpretations could lead to such a result and when there is no ambiguity in the words used, the question of finding a disguised intention or purpose behind the use of a particular word (the word 'prior' in this case), would not ordinarily arise. "The legislative intent in the proviso to Section 31(4) IBC, is in clear and unambiguous terms. The same specifically provides for prior approval of the CCI before the approval of the Resolution Plan, by the COC. This provision introduced with straightforward and clear words must be interpreted and understood as being mandatory in nature. Otherwise the object behind the enactment of the said proviso, would be defeated", it also observed. The Court elucidated that after the COC's approval, the Resolution Plan cannot be modified in any manner since the Adjudicating Authority can only approve the Resolution Plan, as has been approved by the CoC and the same is made clear by Section 31(1) of the IBC. "The interplay between the provisions of the Competition Act and the IBC necessitates a careful balancing of competing interests, underscoring the indispensability of procedural compliance. The lack of participation by the Target in the voluntary modification process, especially where the modification entails the divestment of their assets, vitiates the approval granted by the CCI and warrants remedial intervention by this Court", it added. Furthermore, the Court remarked that, as India aspires to establish itself as a global manufacturing powerhouse and investment hub, it is imperative that it is able to provide a reliable, robust and competitive business environment for both domestic and international stakeholders. "In essence, the introduction of the Green Channel route, which strives to create a level-playing field and enable new entrants to effectively compete with established players in the Indian market, is a significant step in that direction. However, to ensure that entities operate with utmost confidence in the sanctity and fairness of India's legal and regulatory system, the objectives of the IBC and the Competition Act must also necessarily be in harmony with one another", it emphasised. The Court said that, providing relief for stressed assets must necessarily align with the statutory framework, as adherence to legal principles is fundamental to a fair and just resolution process. "… a balance between the need for expeditious relief and adherence to the statutory framework must necessarily be maintained, in order to ensure that the objectives of both, the IBC and the Competition Act are met in a manner that supports India's long-term economic aspirations", it also enunciated. In his concurring opinion, Justice S.V.N. Bhatti said, "I have had the opportunity to read the well-crafted judgement circulated by my Learned Brother, Justice Hrishikesh Roy. In spite of my effort to subscribe to the view taken by my Learned Brother, for the subtle distinction I noticed in interpreting the proviso to section 31(4) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), I find it apt to express my position on the same through this opinion." He observed that the failure of the resolution process will finally result in the sale of scrap of the assets of the corporate debtor, and again, a scenario experienced under previous regimes is reflected. "It is axiomatic, more particularly in commercial matters, that costs and consequences of adjudication follow the event. In corporate and commercial matters, as a corollary, the cost must follow the result", he added. Justice Roy in a separate Order remarked, "In these matters, the three of us could not reach a common conclusion. Brother Justice Sudhanshu Dhulia has concurred with the opinion that has been penned by me, while Brother Justice S.V.N. Bhatti has decided to write a separate opinion canvassing an alternate view, reaching a different conclusion." He added that such differences must be understood as useful steps towards the evolution of jurisprudence in the field of IBC and the Competition Act. Accordingly, the Apex Court allowed the INSCO's Appeal and quashed the impugned approval.

The Hon'ble Supreme Court has clarified that prior approval from the CCI is mandatory "before" the CoC decides on a resolution plan containing a combination

proposal. The majority's emphasis on the literal meaning of "prior to the approval ... by the committee of creditors" indicates that legislative intent must be given effect as written. The dissent's more flexible reading was outweighed by the majority's conviction that relaxed timelines would defeat the plain words of Section 31(4).

Link of the Order:

https://api.sci.gov.in/supremecourt/2023/38828/38828_2023_4_1503_59041_Judgement_29-Jan-2025.pdf

Case No.4

Corporate Debtor Cannot Be Prosecuted After Successful IBC Resolution For Offences Committed Prior To Commencement Of CIRP

CASE TITLE	**Bhushan Power & Steel Limited Versus Union of India & Anr.**
CASE CITATION	W.P.(CRL) 1261/2024
DATE OF ORDER	30th January, 2025
COURT/ TRIBUNAL	High Court of Delhi at New Delhi
SECTION/ REGULATION/ RULES REFERRED	Section 32A of the Insolvency and Bankruptcy Code, 2016: Liability for Prior Offences, etc.
BENCH	Hon'ble Justice Manmeet Pritam Singh Arora

Brief Facts of the Case:

The National Company Law Tribunal (NCLT) initiated CIRP against BPSL on July 26, 2017, under Section 7 of the IBC. Subsequently, JSW Steel Ltd. emerged as the successful resolution applicant. Meanwhile, the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) initiated criminal proceedings against BPSL and its former management for alleged financial misconduct, including a bank fraud of Rs. 47,204 crore.

On September 5, 2019, the NCLT approved JSW Steel's resolution plan but did not grant protection from liability for acts committed under BPSL's previous management. The ED then issued a Provisional Attachment Order under the Prevention of Money Laundering Act, 2002 (PMLA), which was later stayed by the National Company Law Appellate Tribunal (NCLAT). The NCLAT ultimately declared the attachment illegal, citing Section 32A of the IBC.

BPSL, argued that under Section 32A of the IBC, a Corporate Debtor's liability for offences committed before CIRP ceases once a resolution plan is approved. They contended that the ED's attachment of BPSL's assets was unlawful as it was issued after the resolution plan's approval.

the ED, acknowledged that Section 32A(1) shields the Corporate Debtor from prosecution post-resolution but argued that as the resolution plan was under challenge before the Supreme Court, BPSL's role in money laundering must still be examined. He emphasized that under the second proviso to Section 32A(1), the erstwhile management could still face prosecution.

Decision:

The Court affirmed that under Section 32A of the IBC, once a resolution plan is approved, the Corporate Debtor cannot be prosecuted for offences committed before CIRP commencement. However, it clarified that the former promoters, directors, and officers responsible for the alleged offences could still face prosecution.

The Court further held that the role of BPSL would still be relevant in the trial of its former management, particularly in light of allegations under Section 70 of the PMLA. Nonetheless, the court partially allowed BPSL's writ petition, setting aside the order dated January 17, 2020, as it pertained to the Petitioner Company. "...it is clarified that the role of the Corporate Debtor, as elaborately stated in the prosecution complaint filed before the Special Court for PMLA cases under the PMLA, will necessarily have to be examined in the trial of the erstwhile promoters/directors of the Petitioner Company as it relates to the commission of the offence by the Petitioner Company in its earlier avatar as it was under the erstwhile management, when the offence was committed, more so when there are allegations under Section 70 of the PMLA," the Court said. It also

noted that the ruling would be subject to the final outcome of the pending Supreme Court challenge to the resolution plan's approval. "It is clarified that the above order will be subject to the final outcome of the challenge to the approval of the resolution plan pending in various civil appeals filed by various stakeholders before the Supreme Court in Civil Appeal No(s). 1808/2024 and connected cases. Needless to state that the observations made by this Court in the present order are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial. With the aforesaid observation the petition is disposed of along with pending applications if any," the Court said.

The Single Bench of Justice Manmeet Pritam Singh Arora made the observation in a case involving Bhushan Power and Steel Limited (BPSL).

"A plain reading of the above provision would reveal that there is no dispute over the legal position that once a resolution plan has been approved by the adjudicating authority under Section 31 of IBC and the conditions specified in Section 32A of the IBC are fulfilled, the Corporate Debtor shall not be prosecuted for an offence committed prior to the commencement of the CIRP," the Bench said.

Section 32A of IBC also clarifies that any erstwhile officer of the Corporate Debtor who was in any manner in charge of, or responsible to the Corporate Debtor for the conduct of its business or associated with the Corporate Debtor in any manner or who was directly or indirectly involved in the commission of such offence prior to the commencement of CIRP as per the complaint filed by the investigating authority, shall continue to be prosecuted and punished for such an offence committed by the Corporate Debtor, notwithstanding that the Corporate Debtor's liability has ceased."

Link of the Order: https://www.verdictum.in/pdf_upload/bhushan-power-steel-limited-vs-union-of-india-anr-1687706.pdf

CASE NO. 5

NCLT recalls insolvency order, citing 'fraudulent, mala fide' intentions.

CASE TITLE	**Mr. Ankopor B Sarkar & Anr. Versus M/s. Experts Realty Professionals Private Limited, in Experts Realty Professionals Private Limited versus M/s. Logix Infrastructure Private Limited**
CASE CITATION	IA-6541/2023 in IB-237(ND)/2023
DATE OF ORDER	06th February, 2025
COURT/ TRIBUNAL	National Company Law Tribunal, New Delhi Bench, Court-III
SECTION / REGULATION/ RULES REFERRED	Section 65 of the Insolvency and Bankruptcy Code, 2016: Fraudulent trading or wrongful trading
BENCH	Shri Bachu Venkat Balaram Das, Member(Judicial) Shri Atul Chaturvedi Member (Technical)

Brief Facts of the Case:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Experts Realty Professionals Private Limited against the Corporate Debtor i.e. M/s. Logix Infrastructure Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 14.07.2023. The Applicants, who are allottees in the Logix Blossom Country project related with the Corporate Debtor, filed this application under Section 65 of the Insolvency and Bankruptcy Code, 2016, seeking the dismissal of the ongoing Insolvency Application and also seeking the matter to be referred to the Serious Fraud Investigation Office (SFIO) for an in-depth investigation. Furthermore, the Applicants sought penalties against both the Corporate Debtor and the Financial Creditor, alleging a collusive and malicious initiation of the Corporate Insolvency Resolution Process (CIRP).

Applicant alleged that Financial Creditor and the Corporate Debtor were guided by a 'controlling mind' and acted 'in concert' to evade obligations and liabilities, indicating an element of fraud in initiating the CIRP against the Corporate Debtor.

Decision:

In a rare move, NCLT has recalled and set aside its own order directing insolvency proceedings against realty firm Logix Infrastructure in July 2023, saying the plea was initiated with "fraudulent and mala fide intentions" and a collusive petition was filed by the financial creditor. NCLT said:

- There is a nexus and connection" between its financial creditor Experts Realty Professionals whose plea for insolvency was initiated against Logix Infrastructure. The corporate tribunal said the entire transaction was "orchestrated" and forum was used "with purported malicious intent".
- The insolvency petition filed "with an ulterior motive" against Logix Infrastructure and its financial creditor has used this forum for purposes other than the insolvency resolution of the realty firm with purported malicious intent, contrary to the objectives of the IBC.
- We are of the considered view that the Section 7 application filed by the financial creditor (Experts Realty Professionals) is a collusive application filed in collusion with the corporate debtor (Logix Infra) with an ulterior motive.
- The present application is a gross abuse of the process of law. We, therefore, impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) to be deposited by the Financial Creditor, M/s. Experts Realty Professionals Private Limited in the Prime Minister's National Relief Fund (PMNRF) within ten days from the date of passing of this order. Failing this, the amount shall be realized through the due process of law.
- The National Company Law Tribunal (NCLT) also asked for a thorough probe by the Serious Fraud Investigation Office (SFIO) and lifting of the veil to comprehensively examine the alleged fraudulent and collusive actions.

Link of the Order:

https://efiling.nclt.gov.in/ordersview.drt?path=VJOAJEt+4FEFG5aaDWryLnb5hX4tkiRcaO9oQTZ7zg1ukqku6Q+ZqOmQhFlNkDs9c1WSmjYsF37JCWSQAzjiKYjoK0/ZqzDQL1JfXEvclA3AUb+YA7g7MSzGfSZg0ezoUEjqAcmEpeWCFYqGGZr3H6VV+1KqPfuKsgknFycNf+O+EX7Qplfes5I6WWFdlalc

CASE NO.6

NCLT's Approval of Resolution Plan Overturned. NCLAT found Material Irregularities and Misconduct by Resolution Professional.

CASE TITLE	**Mr. Amit Sangal Proprietor of M/s. Nitin Plastic versus Mr. Kairav Anil Trivedi and Ors.**
CASE CITATION	Company Appeal (AT) (Insolvency) No. 916 of 2023 & I.A. No. 1662 of 2024
DATE OF ORDER	20th February, 2025
COURT / TRIBUNAL	National Company Law Appellate Tribunal, Principal Bench, New Delhi
SECTION/ REGULATION / RULES REFERRED	Section 61(3)(ii) of the Insolvency and Bankruptcy Code, 2013: An appeal against an order passed by the Adjudicating Authority approving the Resolution Plan may be filed if there have been material irregularities in exercise of the powers of Resolution Professional during CIRP.
BENCH	Hon'ble Justice Rakesh Kumar Jain, Mr. Naresh Salecha, Member(Technical) and Mr. Indevar Pandey, Member(Technical)

Brief Facts of the Case:

The case involved an operational creditor, Mr. Amit Sangal, proprietor of M/s. Nitin Plastic, who initiated

Corporate Insolvency Resolution Process against Prince MFG Industries. Mr. Trivedi was appointed as the Interim Resolution Professional (IRP). Mr. Sangal alleged that Mr. Trivedi, despite the Committee of Creditors (CoC) dissenting to his appointment as RP, misrepresented his appointment as RP, manipulated voting results, and engaged in fraudulent transactions, including the execution of a Memorandum of Understanding (MoU) with potentially related party, M/s. Sarvashree Industries Private Limited (SIPL), without CoC approval. These actions, Mr. Sangal argued, violated several sections of the Insolvency and Bankruptcy Code, 2016 and the CIRP regulations.

NCLAT's Decision and Implication:

The NCLAT, after a thorough examination of the evidences and arguments, found in favour of Mr. Sangal. The Tribunal highlighted the multiple instances of misconduct and material irregularities by Mr. Trivedi, and the fact that the resolution plan was approved based on misrepresentations. The NCLAT specifically noted that the IBBI's findings against Mr. Trivedi.

The NCLAT observed that:

- The CoC's initial dissent to Mr. Trivedi's appointment as RP was overlooked. The NCLAT found that the RP was never formally appointed by the CoC.
- The MoU with SIPL was executed without the CoC's prior consent, violating section 28 of the IBC.
- Mr. Trivedi allegedly misrepresented facts to the NCLT and the CoC regarding the MoU and the voting results.
- Multiple violations of CIRP regulations, including inadequate notice for CoC meetings and delayed filings, were cited.
- The IBBI had already suspended Mr. Trivedi's registration for six months due to similar misconduct in this case and other cases.

The NCLAT set aside the NCLT's order approving the Resolution Plan.

Significance of the case

This decision underscores the importance of procedural integrity and the accountability of Resolution Professionals under the IBC. It serves as a strong warning against the misconduct and emphasizes the NCLAT's commitment to safeguarding the interests of all stakeholders in insolvency proceedings. The case is remanded back to the NCLT for further proceedings.

The judgement is likely to have significant implications for future CIRP Proceedings, emphasizing the importance of transparency, proper procedure and accountability of insolvency professionals. The NCLAT's decision reinforces the need of rigorous oversight of RPs and the

Link of the Order: https://nclat.nic.in/display-board/view_order

CASE NO. 7

Single homebuyer cannot be allowed to question the approval of the

Resolution Plan.

CASE TITLE	**Jai Prakash Keswani Versus MB Malls Pvt. Ltd. & Ors. And Harvinder Singh Versus MB Malls Pvt. Ltd.**
CASE CITATION	Company Appeal (AT) (Insolvency) No. 92 & 93 of 2025 & I.A. No. 294, 295, 378, 379 of 2025 and Company Appeal (AT) (Insolvency) No. 94 of 2025 & I.A. No. 289, 383 of 2025
DATE OF ORDER	21st February, 2025
COURT / TRIBUNAL	National Company Law Appellate Tribunal, Principal Bench, New Delhi
SECTION/ REGULATION / RULES REFERRED	Regulation 38 of Insolvency and Bankruptcy Code, 2016: Mandatory contents of the Resolution Plan
BENCH	Hon'ble Justice Ashok Bhushan (Chairperson), Mr. Barun Mitra, Member(Technical) and Mr. Arun Baroka, Member(Technical)

Brief Facts of the Case:

These appeals have been filed challenging the same order passed by the Adjudicating Authority by which the Adjudicating Authority has approved the Resolution Plan of the Corporate Debtor. It is submitted that the Resolution Plan is not implementable and there is no viability and feasibility of the plan. the time for implementation of the plan i.e. handing over of units within 9 months is not possible and further it is subject to receipt of Occupancy Certificate, hence, the plan is conditional and contingent and ought not to have been approved.

NCLAT's Decision:

The Hon'ble NCLAT dismissed the appeal observing that:

"..the plan has already been approved by 100% vote share of the CoC. Appellant who is one of the homebuyers has to go with the majority decision of the homebuyers and cannot be allowed to question the approval of the plan which is law settled by the Hon'ble Supreme Court in "Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Limited & Ors., (2022) 1 SCC 401". The Supreme Court having already held that single homebuyer cannot be allowed to question the approval of the Resolution Plan. He has to sail or sink with the majority decision and in the present case, plan has approved with 100% voting share. We, thus, are of the view that on behalf of one lone homebuyer challenge to the Resolution Plan cannot be maintained."

Link of the Order: https://ibbi.gov.in//uploads/order/63a0a7d2b4abebd1c07ab5f9f523cdd6.pdf

CASE NO. 8

"Creditors cannot demand pre-CIRP dues post-approval of a resolution plan if they failed to file claims within the CIRP process."

CASE TITLE	**Maharashtra State Electricity Distribution Company Limited Versus Twentyone Sugars Limited**
CASE CITATION	Civil Appeal No.1238/2025
DATE OF ORDER	14th February, 2025
COURT / TRIBUNAL	Supreme Court of India, Civil Appellate Jurisdiction
SECTION/ REGULATION / RULES REFERRED	Section 61(3)(ii) of the Insolvency and Bankruptcy Code, 2013: An appeal against an order passed by the Adjudicating Authority approving the Resolution Plan may be filed if there have been material irregularities in exercise of the powers of Resolution Professional during CIRP.
BENCH	Hon'ble Justice J B Pardiwala; Hon'ble Justice R Mahadevan

Brief Facts of the Case:

This matter was initially adjudicated by the National Company Law Appellate Tribunal (NCLAT), which ruled against the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), ordering it to refund ₹2.11 crores collected from Twentyone Sugars Ltd. towards pre-CIRP electricity dues.

Maharashtra Shetkari Sugar Ltd. (Corporate Debtor) entered into CIRP on **30.08.2018**, with a moratorium imposed. **Resolution Plan** was approved on **07.11.2019**, with a settlement amount of **₹109.4 crores**. The Corporate Debtor's electricity connection had been **disconnected** by Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) due to **pre-CIRP dues**. Twentyone Sugars Ltd., the **Successful Resolution Applicant (SRA)**, sought **restoration of the electricity connection**. MSEDCL refused to restore the connection **without clearing pre-CIRP dues**, despite not filing a claim in the CIRP process. The SRA **paid ₹2,11,42,540/- under protest**, citing urgency in restoring power for sugarcane processing. The SRA later **filed an application (IA No.32/2021)** before NCLT seeking a **refund** of the amount paid towards pre-CIRP dues.

The **NCLT dismissed the refund application**, citing that the resolution plan did not explicitly mention electricity dues and that the appellant paid voluntarily. **NCLAT set aside the NCLT order**

and ruled in favour of **Twentyone Sugars Ltd., directing MSEDCL to refund ₹2.11 crores** within six weeks. Aggrieved by the order, applicant moved to Apex Court.

Supreme Court's Judgement:

After hearing both parties, the Supreme Court found no error in the NCLAT's reasoning. The appeal was dismissed, upholding the refund order passed by NCLAT.

The Supreme Court affirmed that operational creditors, including power distribution companies, cannot demand pre-CIRP dues post-approval of a resolution plan if they failed to file claims within the CIRP process.

Significance of the case

The case of Maharashtra State Electricity Distribution Company Ltd. vs. Twentyone Sugars Ltd. has reinforced a crucial principle under the Insolvency and Bankruptcy Code, 2016 (IBC) — that once a resolution plan is approved, all claims not forming part of the plan stand extinguished.

This case highlights the primacy of IBC over statutory dues, especially when such dues were not claimed within the insolvency resolution process. The ruling sets a clear precedent preventing service providers from coercing resolution applicants into making payments for pre-CIRP liabilities under the guise of service restoration. It also reinforces the Supreme Court's stance in cases like Ghanshyam Mishra vs. Edelweiss ARC, ensuring that resolution applicants get a clean slate upon acquiring a corporate debtor.

The judgments emphasize that power distribution companies cannot unilaterally impose financial conditions on successful resolution applicants in violation of an approved resolution plan.

Link of the Order:

https://www.sci.gov.in/sci-get-pdf/?diary_no=17312025&type=o&order_date=2025-02-14&from=latest_judgements_order

CASE NO. 9

"Creditors cannot demand pre-CIRP dues post-approval of a resolution plan if they failed to file claims within the CIRP process."

CASE TITLE	Ashish Arjunkumar Rathi, The Resolution Professional Versus Mr. Sunil Gutte & Ors. In the matter of American Express Banking Corp. Versus Sunil Hitech Engineer Limited
CASE CITATION	I.A. 1833 of 2019 in the matter of C.P.(IB) No.2295/MB/2018
DATE OF ORDER	04th February, 2025
COURT / TRIBUNAL	Supreme Court of India
SECTION/ REGULATION / RULES REFERRED	Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Section 14, 74 of the I&B Code
BENCH	Hon'ble Justice Shri V.G. Bisht, Shri Prabhat Kumar, Hon'ble Member (Technical)

Brief Facts of the Case:

An application for initiation of the CIRP of the Corporate Debtor (Sunil Hitech Engineers Ltd.) was filed by American Express Banking Corporation (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016. The said application was admitted by this Tribunal's Mumbai Bench vide order dated 07.09.2018 (CIRP Order). Some payments were made from the account of the Corporate Debtor after commencement of CIRP at the instance of the Respondent No. 1 & Respondent No.2, without the approval of the IRP. These payments were made in two phases in the first phase the payments amounting to Rs. 9,54,50,084/- were made during 10.09.2018 to 14.09.2018 and in the second phase the payments amounting to Rs. 6,80,92,628/- were made through cheques from 27.09.2018 to 10.10.2018. So, in aggregate, the payments amounting to Rs. 16,35,42,712/- were made in both the phases after the initiation of CIRP of the Company and appointment of the IRP. The present application was filed by the Resolution Professional (Applicant) seeking, inter alia, directions for refund of certain amounts by the Respondents, for making contribution to the assets of the Corporate Debtor and for imposing punishment upon the Respondents for breach of moratorium by

them and for fraudulently transferring the property of the Corporate Debtor.

Supreme Court's Judgement:

After hearing both parties, the Supreme Court found no error in the NCLAT's reasoning. The appeal was dismissed, upholding the refund order passed by NCLAT.

The Supreme Court affirmed that operational creditors, including power distribution companies, cannot demand pre-CIRP dues post-approval of a resolution plan if they failed to file claims within the CIRP process.

Significance of the case

The case of Maharashtra State Electricity Distribution Company Ltd. vs. Twentyone Sugars Ltd. has reinforced a crucial principle under the Insolvency and Bankruptcy Code, 2016 (IBC) — that once a resolution plan is approved, all claims not forming part of the plan stand extinguished.

This case highlights the primacy of IBC over statutory dues, especially when such dues were not claimed within the insolvency resolution process. The ruling sets a clear precedent preventing service providers from coercing resolution applicants into making payments for pre-CIRP liabilities under the guise of service restoration. It also reinforces the Supreme Court's stance in cases like Ghanshyam Mishra vs. Edelweiss ARC, ensuring that resolution applicants get a clean slate upon acquiring a corporate debtor.

The judgments emphasize that power distribution companies cannot unilaterally impose financial conditions on successful resolution applicants in violation of an approved resolution plan.

Link of the Order:

https://www.sci.gov.in/sci-get-pdf/?diary_no=17312025&type=o&order_date=2025-02-14&from=latest_judgements_order

IBC UPDATE

09.01.2025: 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.

The Insolvency and Bankruptcy Board of India (IBBI) has vide its circular dated 09th January 2025 extended the last date of submission of the liquidation and voluntary liquidation forms till 31.03.2025 considering representations received from the liquidators and insolvency professional agencies for extending the dateciting the technicalities and issues involved in submission of the forms.

Furthermore, IBBI observed that some IPs have been submitting incorrect information in the forms, such as entering zero values in all fields. In this regard, it is directed that IPs shall ensure the information submitted is accurate, truthful, and consistent with the supporting documents attached.

Link of the circular: https://ibbi.gov.in/uploads/legalframwork/0558d78c825f16e1a0d6d5acf419d711.pdf

10.01.2025: Mandatory Use of eBKray Auction Platform for Liquidation Processes

In continuation of efforts to streamline the liquidation process and improve transparency, the Insolvency and Bankruptcy Board of India (IBBI), through circular No. IBBI/LIQ/78/2024 dated 29th October 2024, issued directions regarding the use of the eBKray auction platform.

Subsequently, vide circular dated 10th January 2025, IBBI directed all IPs handling liquidation processes to exclusively use the eBKray auction platform for conducting auctions for sale of assets during the liquidation process with effect from 1 st April 2025. It is further directed that listing of unsold assets in all ongoing liquidation cases shall be completed by 31st March 2025.

Link of the Circular: https://ibbi.gov.in/uploads/legalframwork/43ec517d68b6edd3015b3edc9a11367b.pdf

28.01.2025: Insolvency and Bankruptcy Board of India(Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2025

IBBI has amended the IBBI(Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016. Following are the two amendments made through amendment regulations:

1. An application for renewal of an authorization for assignment shall be made any time before the date of expiry of the authorization, but not earlier than **90 days** before the date of expiry of authorization. Earlier this time limit was 45 days before the date of expiry of authorization.
2. If the authorisation for assignment is not issued, renewed or rejected by the agency within **90 days** of the date of receipt of application, the authorisation shall be deemed to have been issued or renewed, as the case may be by the agency. Earlier this time limit was 15 days from the date of receipt of application.

Link of the Amendment Regulations: https://ibbi.gov.in/uploads/legalframwork/3cb80eed24447e96f3bc9f11ac7fc2de.pdf

28.01.2025: Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2025

IBBI has amended the IBBI(Inspection and Investigation) Regulations, 2016. Following Explanation has been inserted in the Regulations:

"Explanation: It is hereby clarified 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."

Link of the amendment regulations: https://ibbi.gov.in/uploads/legalframwork/1daffd2f268657b3e0b93b53180c5fe2.pdf

28.01.2025: Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2025

IBBI has amended the IBBI(Grievance and Complaint Handling Procedure) Regulations, 2016 vide its Amendment Regulations. It is clarified by inserting in the sub-regulation 4 of regulation 3 that:

"A grievance or complaint may be filed after the period of 45 days of the occurrence of the cause of action for the grievance or complaint, if there are sufficient reasons justifying the delay, but such period shall not exceed 30 days from the closure of all proceedings related process under the Code before the Adjudicating Authority, the Appellate Authority, the High Court or the Supreme Court, as the case may be."

Link of the amendment regulations: https://ibbi.gov.in/uploads/legalframwork/01fa48df4122ac4410b1d2734c1b2e08.pdf

28.01.2025: Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025 and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2025

The Insolvency and Bankruptcy Board of India has notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025 ('Amendment Liquidation Regulations') and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2025 ('Amendment Voluntary Liquidation Regulations') dated 28 th January 2025.

The amendments, which come into immediate effect, seek to enhance the efficiency, transparency, and integrity of the Liquidation and Voluntary Liquidation process while addressing emerging challenges.

The key highlights of the amendments are as follows:

1. Strengthening the Auction Process

a. Prospective bidders are now given more time to participate in the auction process (from 14 days to about 30 days) by streamlining the verification process thereby facilitating wider participation.

b. The liquidator shall mention in the auction notice that the Earnest Money Deposit (EMD) of the successful bidder shall be forfeited if found ineligible during the auction process.

c. All prospective bidders must submit necessary documents, including a declaration of eligibility under Section 29A, as specified in the auction notice on the electronic auction platform or as mentioned in the auction notice.

d. The liquidator is required to verify the eligibility of the highest bidder (H1) within three days of the auction and consult the Stakeholder Consultation Committee (SCC) on the auction results.

e. If the highest bidder (H1) is found ineligible, the next highest eligible bidder (H2) may be considered, subject to consultation with the Stakeholder Consultation Committee.

2. Submission of final report:

Liquidators are now mandated to file the final report, including Form H, with the Adjudicating Authority when a scheme of compromise or arrangement under Section 230 of the Companies Act, 2013, is approved. Implementing this measure will improve accountability and regulatory oversight.

3. Corporate Liquidation Account and Corporate Voluntary Liquidation Account:

The IBBI will continue to manage the Corporate Liquidation Account and Corporate Voluntary Liquidation Account in a separate bank account with a scheduled bank as it has proven to be efficient in expeditious claim processing and overall fund management.

4. Realisation of uncalled or unpaid capital:

Voluntary Liquidation processes can now be completed even if there is uncalled capital as there are adequate safeguards already in the regulations to protect the creditors and the provisions for realisation of uncalled capital or unpaid capital contribution may only result in avoidable delays.

5. Filing of forms:

Insolvency Professionals are now required to submit the details related to liquidation and voluntary liquidation processes in the electronic forms available on IBBI's portal. To ensure timely submission it has been notified that filing delays will attract a late fee of ₹500 per form per calendar month from a date to be notified later.

6. Disclosure of tax deductions:

Regulations now require detailed disclosure of tax deductions by the liquidator before depositing unclaimed dividends and undistributed proceeds into the Corporate Liquidation Account or Corporate Voluntary Liquidation Account. Forms have been updated to include fields for tax deduction confirmation, applicable provisions, and reasons for unclaimed dividends or undistributed proceeds.

Link of the amendment regulations:

https://ibbi.gov.in/uploads/legalframwork/f29cfcc87c52482ca3244b73ecb63ebb.pdf

https://ibbi.gov.in/uploads/legalframwork/12b4f473ee1720c64d2cb96a53e77454.pdf

04.02.2025: Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations)

The Insolvency and Bankruptcy Board of India (IBBI/Board) has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2025 (Amendment Regulations) on 3 rd February, 2025. The amendments, which come into immediate effect, seek to further streamline the corporate insolvency resolution process with a special focus on real estate projects.

Key highlights of the Amendment Regulations are as follows:

ii. **Handing Over Possession:** The Resolution Professional, after obtaining approval of the committee of creditors and upon fulfilment of all obligations by the homebuyer, can now hand over possession of plots, apartments, or buildings to the homebuyers while the resolution process is still ongoing. Thus, the distressed homebuyers would not have to wait for long periods in order to get possession of their properties.

iii. **Appointment of Facilitators:** Facilitators can now be appointed for sub-classes within large creditor classes such as homebuyers to ensure their effective participation in the insolvency resolution

process. The roles and responsibilities of the facilitators include facilitating communication between the authorised representative and the creditors assigned to him and providing information and clarifications to the creditors about the insolvency resolution process.

iv. **Participation of Competent Authority in Real Estate Projects:** Committee of Creditors (CoC) can now invite relevant land authorities such as NOIDA, HUDA etc to their meetings for inputs and perspectives on regulatory and land development related matters. Participation of land authorities would not only enhance the viability and feasibility of resolution plans but also build confidence among homebuyers and other stakeholders in the resolution process.

v. **Report on Real Estate Development Rights and Permissions:** Resolution Professionals must now prepare a detailed report on the status of development rights, approvals, and permissions for real estate projects within 60 days of insolvency commencement. This will provide clarity on project viability thereby helping creditors make informed decisions in a timely manner.

vi. **Relaxations for Real Estate Allottees:** Committee of creditors have now been empowered to relax certain conditions for associations or group of homebuyers to participate as resolution applicants in the insolvency resolution process. These include relaxations in eligibility criteria, performance security and deposits for submitting resolution plans.

vii. **Monitoring Committee for Implementation of Resolution Plan:** Committee of creditors (CoCs) must now consider forming a monitoring committee to monitor and supervise the implementation of resolution plan. The committee, which may comprise of the Resolution Professional and representatives of creditors and the successful resolution applicant, must submit quarterly progress reports to the Adjudicating Authority. The proposal aims to enforce accountability and ensure timely execution of approved plans.

viii. **MSME Registration Status:** The Resolution Professional is now required to disclose the corporate debtor's registration status as a micro, small, or medium enterprise. This will encourage greater participation of potential resolution applicants as they can avail benefits and relaxations available for MSMEs under the Code.

Link of the amendment regulations:

https://ibbi.gov.in/uploads/legalframwork/69518dbf0bcccfeafdae76b906fcdaab.pdf

04.02.2025: IBBI Releases Revised Syllabus for the Limited Insolvency Examination with effect from 05.05.2025

On 04.02.2025, the Insolvency and Bankruptcy Board of India (IBBI) has announced the syllabus for Phase 9 of the Limited Insolvency Examination (LIE), which will be applicable for examinations conducted from May 5, 2025, onwards.

A key highlight of the revised syllabus is the inclusion of two significant legislative developments—The Mediation Act, 2023, and the Digital Personal Data Protection Act, 2023. These additions reflect the evolving regulatory landscape and aim to equip aspirants with a broader understanding of alternate dispute resolution mechanisms and data protection compliance in insolvency proceedings.

Candidates preparing for the examination are advised to familiarize themselves with the updated syllabus to align their studies with the latest regulatory framework.

The revised syllabus (also attached) can be viewed at https://ibbi.gov.in/Syllabus-LIwef05may2025.pdf

04.02.2025: IBBI Discussion Paper on streamlining the processes under the Code.

On 04.02.2025, IBBI has floated another discussion paper titled "Streamlining Processes under the Code: Reforms for Enhanced Efficiency and Outcomes. The paper proposed key amendments to the relevant regulations including management of essential services, coordinated resolution of inter connected entities and streamlining of submission of resolution plans.

The key highlights of the proposals in the discussion paper are as follows:

1. **Review of expenditure on Goods and Services availed during the CIRP:** The RP is mandated to present comprehensive assessment of all

substantial operational expenses, particularly on leased properties, to the CoC within 30 days of its formation. Quarterly review of these expenditure in the CoC meeting agenda is mandatory.

2. **Coordinated Insolvency Resolution for Interconnected Entities:** A mechanism for coordination of CIRP of inter-connected entities including provisions for joint hearings, appointment of a common resolution professional, information sharing protocols, and coordinated timelines, will be introduced.
3. **Presentation of all resolution plans before the CoC:** It is proposed to mandate the resolution professional to present all resolution plans received to the CoC, regardless of their compliance status. Further, the RP must provide to CoC a detailed compliance report with each resolution plan including the reasons for considering any plan as non-compliant.
4. **Mandatory submission of statement of affairs by corporate debtors:** It is proposed to mandatorily provide the statement of affairs at the stage of consideration of application for initiation of CIRP by the Adjudicating Authority.
5. **Reliefs and concessions subsequent to approval of Resolution Plan:** It is proposed to provide specifically that no modifications can be sought once a resolution plan is approved under section 31.
6. **Incentivizing the Interim Finance Providers:** It is proposed to empower CoC to decide on inviting interim finance providers to attend CoC meetings as observers with no voting rights.
7. **Disclosure and Treatment of Avoidance Transactions:** Mandatory detailed disclosure of identified avoidance transactions in the Information memorandum. Regular update to the IM. Avoidance transaction disclosed in the IM may be incorporated into the resolution plan and the undisclosed avoidance transactions cannot be incorporated in resolution plan.
8. **Request for resolution plans for part wise resolution of corporate debtor:** To allow RP with CoC approval, to invite resolution plans concurrently for both the corporate debtor as a whole and for specific business or assets of the CD.
9. **Empowering CoC for expedited implementation of resolution plans:** Over the concerns about the value erosion during the period between the submission of resolution plans and their final approval by the Adjudicating Authority, it is proposed to empower the CoC to request the AA for two stage approval process of resolution plans where financial bid and basis implementation framework may be approved early and the subsequent hearing could address inter creditor disputes, distribution matters and other related aspects etc.
10. **Non-receipt of Repayment Plan under the Insolvency Resolution of Personal Guarantor:** To mandate the RP to submit a report to AA, notifying it of the non-submission of a resolution plan. Based on this report, the AA may terminate the insolvency resolution process of the PG, thereby enabling the debtor or creditor to file an application for bankruptcy.
11. **Sale of Corporate Debtor as a going concern:** It is proposed to omit the provisions relating to sale as a going concern in Liquidation Process Regulations.

Link of the Discussion Paper:
https://ibbi.gov.in/uploads/whatsnew/97b96d2fa7051099112f6dc347807006.pdf

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