THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

JOINTLY WITH

REGISTERED VALUERS ORGANISATION
(A Wholly owned subsidiary of ICSI and registered with IBBI)

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

# 03RD NATIONAL CONVENTION OF INSOLVENCY PROFESSIONALS AND REGISTERED VALUERS

## THEME

## BRIDGING GAPS, BUILDING TRUST : STRENGTHENING INDIA'S INSOLVENCY AND VALUATION FRAMEWORK

**13TH-14TH**

**DECEMBER, 2025**

ICSI CCGRT, KOLKATA

HOSTED BY: ICSI-EIRC

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*Theme:*
*Bridging Gaps, Building Trust : Strengthening India's Insolvency and Valuation Framework*

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# THE INSTITUTE OF
# Company Secretaries of India
# भारतीय कम्पनी सचिव संस्थान

The Institute of Company Secretaries of India (ICSI) is a premier national professional body constituted under an Act of Parliament, namely the Company Secretaries Act, 1980 (Act No. 56 of 1980) to regulate and develop the profession of Company Secretaries.

ICSI provides top-quality education to the students of Company Secretaries (CS) Course and has set and maintains best quality standards for CS members. The ICSI has on its rolls more than 68,000 qualified CS members including over 11,000 members holding certificate of practice. Around 2,50,000 students are presently pursuing the Company Secretaryship Course.

## Motto

**सत्यं वद। धर्मं चर।**

speak the truth. abide by the law.

## Vision

"To be a global leader in promoting good corporate governance"

## Mission

"To develop high calibre professionals facilitating good corporate governance"

# ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

(Subsidiary of ICSI and Insolvency Professional Agency of IBBI)

**ICSI Institute of Insolvency Professionals (ICSI IIP)** is a frontline regulator registered with the Insolvency and Bankruptcy Board of India (IBBI) under the Insolvency and Bankruptcy Code, 2016. ICSI IIP is registered under section 8 of the Companies Act, 2013 and is a wholly owned subsidiary of Institute of Company Secretary of India (ICSI). ICSI IIP has vested with the power and authority inter alia to enrol, educate, train and also monitor the performance of its registered members as an Insolvency Professional. Its mandate also includes laying down standards of professional conduct and take steps in the direction of disciplining its members, whenever required.

There are more than 1300 Professionals from various professional background and experience who are registered with ICSI IIP as an Insolvency Professional. This inter alia includes Company Secretaries, Management Experts, Advocates, Cost Accountants, Chartered Accountants et al.

Many eminent personalities are on the Board of ICSI IIP as Independent Directors and Nominee Directors.

Ever since its formation, ICSI IIP has been involved in a number of activities aimed at Educating and Developing the Insolvency Professionals. These activities inter alia include issuance of different publications, such as, Practical aspects of Insolvency Law, Interim Resolution Professionals: A Handbook; Monthly Journal; Weekly Journal (Knowledge Reponere) and Daily Learning Curves; Organizing Intensive Pre-registration Educational Training Programmes, Interactive Sessions with Regulators and Insolvency Professionals; conducting Webinar Sessions especially focusing on practical aspects and challenges faced by Insolvency Professionals et al.

# REGISTERED VALUERS ORGANISATION
**(A Wholly owned subsidiary of ICSI and registered with IBBI)**

**The ICSI Registered Valuers Organization (ICSI RVO)** is a Section 8 Company incorporated under the Companies Act, 2013 and formed by ICSI with its 100% capital is owned by ICSI. The Company is recognised as Registered Valuers Organisation with Insolvency and Bankruptcy Board of India, formed with the intent to enrol, register, educate, train, promote, develop and regulate Registered Valuers as per the Registered Valuers Rules, while establishing and promoting high standards of practice and professional conduct and promote good professionalism, ethical conduct and competency ensuring quality of valuation work.

**Duties of ICSI RVO:**

The Organization shall carry out the functions of the Registered Valuers Organisation under the Companies (Registered Valuers and Valuation) Rules, 2017, and functions incidental thereto.

The Organization shall not carry on any function other than those specified in sub-clause (1), or which is inconsistent with the discharge of its functions as registered valuers organisation. Apart from the above, the duties of the Organisation have been set out in Regulation 6 (schedule to Notification No. MCA/3401/2017-18, dated 18-11-2017) as follows:-

The Organization shall maintain high ethical and professional standards in the regulation of its members. The Organization shall –

- ensure compliance with the Companies Act, 2013 and Rules, Regulations and Guidelines issued thereunder governing the conduct of Registered Valuers Organisation and Registered Valuers;
- employ fair, reasonable, just, and non-discriminatory practices for the enrolment and regulation of its members;
- be accountable to the Authority in relation to all Bye-Laws and directions issued to its members;
- develop the profession of Registered Valuers;
- promote continuous professional development of its members;
- continuously improve upon its internal Regulations and Guidelines to ensure that high standards of professional and ethical conduct are maintained by its members; and

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## Message
## From the Desk of the President, ICSI

***"Coming together is a beginning; keeping together is progress; working together is success."– Henry Ford***

This timeless quote perfectly captures the essence of the 3rd National Convention of Insolvency Professionals and Registered Valuers – a landmark initiative that symbolizes collaboration, knowledge sharing, and professional growth in the domains of insolvency and valuation—two critical pillars that underpin India's economic resilience and corporate governance framework.

This Convention jointly organized by ICSI, ICSI Institute of Insolvency Professionals (ICSI IIP), and ICSI Registered Valuers Organization (ICSI RVO), and hosted by ICSI Eastern India Regional Council (EIRC) at ICSI CCGRT, Kolkata on the theme, "Bridging Gaps, Building Trust: Strengthening India's Insolvency and Valuation Framework", reflects our collective resolve to create a transparent, efficient, and inclusive ecosystem.

In today's dynamic business environment, Insolvency Professionals and Registered Valuers have acquired key positions playing vital roles in safeguarding stakeholder interests, ensuring financial discipline, and fostering sustainable economic development. Through initiatives like this Convention, we aim to empower professionals with insights, strategies, and global best practices to navigate emerging challenges and seize new opportunities.

This souvenir is not merely a compilation of messages but a reflection of the collaborative spirit and shared vision of our professional community. It captures the essence of this flagship event, which brings together regulators, thought leaders, and practitioners to deliberate on critical issues and chart the course for the future of insolvency and valuation in India.

I extend my heartfelt gratitude to all contributors, participants, and organizing teams for their unwavering commitment to making this convention a grand success. I congratulate ICSI IIP, ICSI RVO, ICSI EIRC, and ICSI CCGRT for their dedicated efforts in bringing this event to fruition.

I extend a warm welcome to all delegates, speakers, and participants to this flagship event. Your presence here reflects a shared commitment to strengthening India's insolvency and valuation framework and advancing professional excellence. Let us continue to uphold the highest standards of professionalism and work collectively to build a stronger, more resilient economy…

**Wishing the Convention grand success!**

Warm regards,

**CS Dhananjay Shukla**

*President,*

The Institute of Company Secretaries of India

# CONTENTS

# The Art of Pleadings, Advocacy, and Courtroom Conduct : Pillars of Professional Excellence

**CS Sonal Mishra**

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## INTRODUCTION

The practice of law is much more than arguing before a judge or drafting legal documents; it is a disciplined art rooted in clarity, persuasion, ethics, and professional restraint. Among the many dimensions of legal practice, pleadings, advocacy, and courtroom appearances form the foundation of an advocate's role in the justice delivery system. These components not only shape the path of a case but also reflect the advocate's competence, preparation, and adherence to the highest standards of professional conduct. An advocate is considered an officer of the court, entrusted with the responsibility of presenting facts and law with integrity, assisting the court in arriving at the truth, and ensuring that justice is neither delayed nor denied.

Pleadings represent the first stage where a dispute takes its formal legal shape. They set out the material facts, define the issues, and establish the boundaries of the case. Well-drafted pleadings are precise, concise, and structured to provide clarity to both parties and the court. A poorly drafted pleading, on the other hand, creates ambiguity, invites unnecessary litigation, and may even undermine the merits of an otherwise strong case. Thus, the art of preparing pleadings is a vital skill that every advocate must master.

Equally important is the art of advocacy, which encompasses the techniques and strategies used to present a case effectively. Advocacy is not merely about expressiveness; it is a balanced combination of logic, preparation, courtroom etiquette, and the ability to think clearly under pressure. An effective advocate knows when to speak, how to present arguments, how to question witnesses, and, importantly, how to maintain the decorum expected in judicial proceedings. Good advocacy strengthens the administration of justice by enabling the court to understand complex issues with greater clarity.

Courtroom appearances and professional conduct further reflect an advocate's commitment to the ethical standards of the legal profession. The Code of Conduct guides advocate in maintaining dignity, honesty, fairness, and respect for the court, clients, and opposing counsel. It ensures that the pursuit of justice remains the central objective and that personal interests never overshadow professional duties.

Together, pleadings, advocacy, courtroom behaviour, and ethical obligations form the core of an advocate's professional identity. Understanding and mastering these elements not only enhance the effectiveness of legal representation but also uphold the integrity of the legal system as a whole. Pleadings, the art of advocacy, and professional appearances together form the backbone of effective dispute resolution and ethical legal practice, especially for advocates and company secretaries who regularly interface with courts, tribunals, and regulatory forums. When aligned with a robust code of conduct, these skills ensure not only success for clients but also dignity for the profession and confidence in the justice system.

## PLEADINGS: THE FOUNDATION OF LITIGATION

Pleadings are essential in any legal case, acting as formal written statements in which each party sets out their claims and defenses before the court. The plaintiff begins by filing a plaint detailing the grounds for their case. In response, the defendant submits a written statement, explaining their defense and reasons for contesting the plaintiff's claims. The court may also permit or require additional written statements from either party, which are known as supplemental pleadings. Pleadings include both the plaint and any written statements or supplemental pleadings filed by the parties.

### OBJECTIVE OF PLEADING

The main purpose of pleadings is to clarify and narrow down the matters in dispute, thereby streamlining the court process. By outlining the points of agreement and disagreement, pleadings enable both parties and the court to focus on the core issues and the evidence relevant to those issues. The rules of pleadings are intended to promote justice and support the goal of a fair trial by ensuring that proceedings are conducted efficiently and transparently.

### PRINCIPLES OF GOOD PLEADINGS

Effective pleadings must state facts, not law, in a clear, chronological and non-argumentative manner, ensuring that all material facts necessary to sustain the claim or defence are included and nothing relevant is suppressed. Drafting guidelines urge the use of short sentences, simple words, active voice, and avoidance of unnecessary repetition or verbatim reproduction of statutory provisions, with precise references to sections and exhibits where required.

Pleadings are the foundation of every legal suit, as they establish the main issues and shape the arguments that each party will present in court. Through pleadings, the parties articulate their claims or defenses and gain a clear understanding of what the opposing side contends. Throughout the entire litigation process, pleadings serve as guidance for the parties and the court, ensuring that each stage is based on formally recorded positions. Furthermore, pleadings define the scope of permissible evidence, helping to focus the trial on relevant facts. The Code of Civil Procedure sets out essential rules for pleadings and provides mechanisms for amendment. These rules are designed to maintain fairness and balance within the justice system, ensuring that every case is resolved with justice as the ultimate aim

## ADVOCACY: THE ART OF PERSUASION

Advocacy is the process of supporting a cause or proposal by using your voice to express your beliefs and persuade others. It can take various forms, including writing to public officials, speaking at community events, or joining campaigns. While advocacy requires a willingness to stand up for issues, everyone can participate in advocacy that aligns with their interests or values.

### ADVOCACY IN THE LEGAL SYSTEM

In legal contexts, advocacy means pleading or arguing in favor of an individual, group, or cause, often in court. Lawyers typically act as advocates for clients, presenting arguments and evidence on their behalf. The term “advocate” comes from the Latin word “advocatus,” meaning “one called to aid” or “helper”. However, advocacy is not limited to the legal profession; anyone who cares deeply about a cause can become an advocate by voicing their support or defending others.

### NON-LEGAL ADVOCACY

also exists outside the courtroom. Environmental activists, animal rights campaigners, and social justice advocate all work to influence policies and public opinion. These individuals or groups may lobby for legislative changes, promote awareness through protests, or encourage the adoption of fair practices. Ultimately, advocacy empowers people to work towards changes they believe are just and necessary.

Advocacy involves persuading people to adopt a position or take action related to a specific cause. There are various forms of advocacy, each with unique advantages and challenges. Some types focus on personal representation, while others aim for large-scale social or policy changes.

## CORE ADVOCACY SKILLS

Key advocacy skills include thorough preparation of facts and law, mastery of the record, and the ability to present oral arguments with clarity, brevity and respect. Good advocates also exhibit courtroom judgment: they know when to press a point, when to concede, and how to adapt arguments impromptu while staying within the bounds of fairness and professional decorum.

## WHY IS ADVOCACY IMPORTANT?

Advocacy matters for several reasons. It can be a powerful force for social change, helping individuals and communities gain access to essential services and support. It also raises awareness about important issues and promotes understanding. Beyond this, advocacy fosters connections between people who may not have otherwise interacted. These connections often lead to stronger skills, deeper knowledge, and a greater sense of community and belonging.

## HOW CAN YOU BE AN EFFECTIVE ADVOCATE?

Advocacy is an art. To advocate effectively, you must first be clear about your goals and what you hope to achieve. It's also important to remember that advocacy is not a one-size-fits-all process. The strategy you choose will depend on your cause, your audience, and the situation.

Here are some general tips to help you strengthen your advocacy efforts:

1. **BE STRATEGIC IN YOUR APPROACH**

   Think carefully about your goals and who you must reach to achieve them. Then, create a clear plan for how you will advocate – whether through writing letters, meeting people directly, or using other methods. Whatever approach you choose, ensure it is legal, well-planned and tailored to your specific objective.

2. **BE PERSISTENT**

   Do not get discouraged if your first attempt doesn't achieve results. Advocacy requires patience, effort, and commitment. If you truly believe in your cause, remain focused and continue working toward your goals, even when challenges arise.

3. **BE RESPECTFUL**

   Not everyone will share your view point and that's perfectly fine. While advocating for your cause, always remain respectful of others' opinions and perspectives.

   An advocate must always conduct himself in a manner appropriate to his role as an officer of the Court, a privileged member of society, and a person of integrity. He must remember that certain actions which may be lawful or acceptable for others – or even for a lawyer in a non-professional capacity – may still be improper for an advocate in the discharge of his duties.

   Beyond this general responsibility, an advocate is required to uphold his client's interests with courage and loyalty, while adhering to the rules of professional conduct both in letter and in spirit. These rules are established as canons of conduct and etiquette to serve as broad guidelines.

## DUTY TO THE COURT

1. **CONDUCT WITH DIGNITY**

   An advocate must always conduct himself with dignity and self-respect while presenting a case or appearing before the court. He should not behave in a servile manner. If he has a serious and valid grievance against a judicial officer, it is both his right and duty to report it to the appropriate authority.

2. **RESPECT FOR THE JUDICIARY**

   An advocate must maintain a respectful attitude toward the courts, recognizing that the dignity of the judicial office is vital for the functioning and preservation of a free society.

3. **NO IMPROPER INFLUENCE**

   An advocate must not attempt to influence the court's decision through illegal or improper means. Private communications with a judge regarding a pending case are strictly prohibited.

4. **DISCOURAGING IMPROPER CONDUCT**

   An advocate must make every effort to restrain his client from engaging in sharp, unfair, or improper practices toward the court, opposing counsel, or any party involved. He must refuse to represent a client who insists on such misconduct. An advocate must not act merely as a mouthpiece for his client; he must use his own judgment, maintain restraint in correspondence, avoid abusive language in pleadings, and refrain from using intemperate language during court arguments.

5. **PROPER APPEARANCE**

   An advocate must appear in court always in the prescribed professional attire, ensuring that his appearance is neat, presentable, and consistent with the dignity of the profession.

6. **WEARING OF BANDS AND GOWN**

   An advocate shall not wear bands or a gown in public places other than in court, except on ceremonial occasions or at locations specifically prescribed by the Bar Council of India or the Court.

7. **AVOIDING CONFLICT OF INTEREST WITH ORGANISATIONS**

   An advocate shall not appear before any court, tribunal, or authority for or against an organisation, institution, society, or corporation if he is a member of its Executive Committee. The term "Executive Committee" – regardless of the name used – includes any committee or body responsible for the general management and affairs of the organisation, institution, society, or corporation at that time.

## DUTY TO THE CLIENT

1. **ACCEPTANCE OF BRIEFS**

   An advocate is obligated to accept any brief in the Courts, Tribunals, or before other authorities where he practices, provided the fee offered is consistent with his standing at the Bar and the nature of the case. However, special circumstances may justify his refusal to accept a particular matter.

2. **WITHDRAWAL FROM ENGAGEMENTS**

   Once an engagement has been accepted, an advocate should not ordinarily withdraw without sufficient cause and without giving reasonable notice to the client. If he withdraws from a case, he must refund any portion of the fee that has not been earned.

3. **AVOIDING CONFLICT WHEN LIKELY TO BE A WITNESS**

   An advocate should not accept or continue a brief in a matter where he has reason to believe he will be required as a witness. If, after accepting the case, it becomes clear that he is a witness on a material fact, he should cease to appear as an advocate—provided he can do so without jeopardizing the client's interests.

4. **FULL DISCLOSURE TO THE CLIENT**

   At the start of the engagement and throughout its duration, an advocate must make full and honest disclosure to the client regarding any connections with the parties or any interest in the matter that may influence the client's decision to hire or continue with him.

5. **UPHOLDING THE CLIENT'S INTERESTS**

   An advocate must fearlessly protect the interests of his client using all fair and honourable means, regardless of any personal inconvenience or adverse consequences to himself or others. He must defend an accused person even if he personally doubts the accused's innocence, keeping in mind that his loyalty is to the law—which demands that no person should be convicted without sufficient evidence.

## DUTY TO OPPONENT

1. **NO DIRECT COMMUNICATION WITH REPRESENTED PARTIES**

   An advocate must not communicate or negotiate directly with any party who is represented by another advocate. All communication regarding the subject matter of the controversy must be routed exclusively through that party's advocate.

2. **HONOURING LEGITIMATE PROMISES**

   An advocate must make every effort to fulfil all lawful and legitimate promises made to the opposing party, even if such commitments are not formally written down or legally enforceable under court rules.

## DUTY TO COLLEAGUES

1. **NO SOLICITATION OR ADVERTISING**

   An advocate shall not solicit work or advertise his services in any direct or indirect manner. This includes circulars, advertisements, touting, unsolicited personal communications, or interviews unrelated to personal relationships. He must also refrain from encouraging media publicity, including publishing photographs connected to cases he has handled. His signboard or nameplate must be modest in size and should not indicate positions such as President or Member of a Bar Council or Association, nor claim association with any person, organisation, particular cause, or specialised field of work. It should also not indicate that he has been a Judge or Advocate General.

   1. **NO ASSISTANCE IN UNAUTHORIZED PRACTICE**

      An advocate must not allow his name or professional services to be used in any way that enables or supports the unauthorized practice of law by any agency or individual.

   2. **CHARGING APPROPRIATE FEES**

      An advocate shall not accept a fee lower than the fee prescribed under the rules when the client has the ability to pay the full amount.

   3. **ENTERING APPEARANCE IN PENDING MATTERS**

      An advocate must not enter appearance in a case where another advocate has already filed a vakalatnama or memo of appearance for the same party, unless the existing advocate gives consent. If such consent cannot be produced, the advocate must apply to the Court, explaining the reasons for the absence of consent, and may appear only after securing the Court's permission.

An advocate must always conduct himself in a manner that reflects his position as an officer of the Court, a privileged member of society, and a person of honour. He must remember that certain actions which may be lawful and acceptable for others – or even for lawyers in their personal capacity – may still be improper for an advocate in the discharge of his professional duties. In addition to this overarching responsibility, an advocate must fearlessly protect the interests of his client and adhere to the rules of professional conduct set out hereafter, following them both in letter and in spirit.

Advocacy is the skilled presentation of a client's case, combining legal knowledge, factual analysis, and persuasive communication before a decision-making forum. The art of advocacy includes structuring arguments logically, anticipating and answering counter-arguments, using relevant precedents and authorities, and summarising the case in a manner that assists the court in arriving at a just decision.

Advocacy, like any art, takes time to master. The more you practice it, the more confident and effective you become. As you grow in your advocacy journey, you'll discover more ways to create change and make a positive impact. Change may not happen instantly, but with persistence, dedication, and belief in your cause, meaningful progress is always possible.

## CONCEPT OF APPEARANCES

Appearances refer both to the formal act of representing a party before a court or tribunal and to the manner in which an advocate conducts and presents themself in that forum. Rules of professional conduct require that advocates appear only in prescribed dress, maintain a presentable and dignified bearing, and refrain from acting in matters where they have a pecuniary or personal conflict of interest.

## ROLE OF DRAFTING IN MODERN PRACTICE

In contemporary practice, especially for company secretaries and corporate lawyers, drafting extends beyond plaints and written statements to include petitions, applications, contracts, compliance reports, and regulatory submissions. Across all these documents, the same principles apply: identify parties accurately, capture intentions lawfully and unambiguously, ensure compliance with substantive and procedural law, and align drafting style with clarity, precision and enforceability.

## ETHICAL FRAMEWORK AND CODE OF CONDUCT

Codes of conduct, such as the Bar Council rules and related standards, define duties of advocates to the court, the client, the opponent, and the profession. These duties include maintaining a respectful attitude towards the bench, avoiding attempts to influence courts by improper means, preserving client confidentiality, refusing to participate in sharp practices, and avoiding cases involving conflicts of interest or prior adverse engagement.

## INTERPLAY BETWEEN ADVOCACY AND ETHICS

The art of advocacy is inseparable from ethics: an argument that is brilliant but dishonest or abusive undermines both the client's cause and the integrity of the system. Professional rules therefore stress that advocates are not mere mouthpieces of clients; they must exercise independent judgment, use restrained language in pleadings and arguments, and decline to act when a client insists on unfair or illegal tactics.

## PROFESSIONAL EXCELLENCE IN PLEADINGS AND ADVOCACY

True professional excellence lies in harmonising technical drafting skills, persuasive advocacy, and impeccable conduct so that each appearance advances not just a client's interests but also the credibility of the forum. When advocates and company secretaries internalise these norms, they transform pleadings from mere paperwork into precise case maps, advocacy into principled persuasion, and appearances into a living demonstration of the rule of law in action.

## CONCLUSION

To conclude we may say that, Pleadings, the Art of Advocacy, and Appearances including the Code of Conduct collectively form the backbone of the legal profession and define the integrity, discipline, and dignity of an advocate's role within the justice system. Pleadings provide the essential foundation of every legal proceeding, shaping the direction of a case and ensuring that disputes are presented with clarity, precision, and fairness. They reflect not only the legal competence of the advocate but also his ability to present the client's case with accuracy and responsibility. The art of advocacy, on the other hand, extends beyond legal knowledge—it demands intelligence, preparation, strategic thinking, persuasive communication, and the ability to present arguments with logical coherence and emotional balance. An effective advocate must master both written and oral advocacy, understanding that each word spoken or penned carries the weight of justice and has the potential to influence rights, liberty, and the course of a dispute.

Appearances in court form the visible aspect of advocacy, where an advocate's conduct, demeanour, and presentation reflect not only his professional capability but also his respect for the institution he serves. The prescribed dress code, decorum, punctuality, and disciplined behaviour are not mere formalities but symbols of the solemnity and credibility of the judicial process. They remind the advocate that he is an officer of the court and has a duty to maintain its dignity at all times. Standing before the court is therefore not just a professional activity but a representation of constitutional values, ethical responsibilities, and public trust.

Central to all of this is the Code of Conduct, which guides the advocate in his relationship with the court, his client, his colleagues, and society at large. These ethical principles ensure that the profession remains honourable, impartial, and committed to justice. The Code demands fairness, honesty, restraint, and fearlessness in defending clients while ensuring that advocacy never crosses into impropriety or manipulation. It requires that an advocate uphold the highest standards even in challenging situations, maintaining independence of judgment, loyalty to the client, and unwavering respect for the judicial process. Ultimately, the Code of Conduct is not merely a set of rules but a moral compass that distinguishes the noble profession of law from any ordinary vocation.

Thus, when pleadings are properly crafted, advocacy is responsibly exercised, and appearances are dignified and ethical, the legal profession functions as it is intended—to uphold justice, protect rights, and strengthen the rule of law. Together, these elements define the true essence of an advocate's duty: to serve the court, defend the client, honour the profession, and contribute to a just and orderly society. They reinforce that advocacy is not just a skill but an art infused with ethics, discipline, and a deep sense of responsibility. A lawyer who understands and practices these principles not only excels professionally but also upholds the sanctity and trust upon which the entire justice delivery system depends.

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# USE OF TECHNOLOGY: AI, DATA ANALYTICS, AND DIGITAL PLATFORMS IN VALUATION AND INSOLVENCY

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## EXECUTIVE SUMMARY

This article explores the transformative role of technology in valuation and insolvency practices under the Insolvency and Bankruptcy Code (IBC) in India. It examines how Artificial Intelligence (AI), Data Analytics, and Digital Platforms are reshaping traditional processes, enhancing efficiency, transparency, and accuracy. The discussion covers historical evolution, regulatory frameworks, practical applications, sector-specific use cases, and emerging technologies such as blockchain and generative AI. Key challenges including data privacy, algorithmic bias, and cybersecurity risks are addressed, along with mitigation strategies and a roadmap for future adoption. The article concludes with actionable recommendations for insolvency professionals and policymakers to embrace technology responsibly and ethically, ensuring compliance and stakeholder confidence.

## INTRODUCTION

Technology has emerged as a transformative force in the domain of insolvency and valuation, redefining the way professionals approach complex financial assessments and resolution processes. In the context of the Insolvency and Bankruptcy Code (IBC), 2016, which emphasizes time-bound resolution and maximization of value, the integration of advanced technological tools is no longer optional – it is imperative. The traditional methods of valuation, reliant on manual data collection and static financial models, often fail to keep pace with the dynamic business environment and the growing complexity of distressed assets. This gap has paved the way for Artificial Intelligence (AI), Data Analytics, and Digital Platforms to become integral components of modern insolvency practice.

The significance of technology in valuation lies in its ability to enhance accuracy, transparency, and efficiency. AI-driven models can process vast datasets in real time, identify patterns, and predict future performance scenarios, enabling insolvency professionals to make informed decisions quickly. Data analytics complements this by offering deep insights into financial health, operational risks, and market trends, which are critical for crafting effective resolution plans. Digital platforms, on the other hand, facilitate seamless communication among stakeholders, enable secure data sharing, and support e-auctions for asset liquidation, thereby reducing procedural delays and ensuring compliance with regulatory norms.

Globally, jurisdictions such as the United States, United Kingdom, and Singapore have demonstrated the benefits of technology adoption in insolvency proceedings. For instance, blockchain-based systems for asset tracking and AI-powered predictive models for bankruptcy risk assessment have significantly improved resolution timelines and stakeholder confidence. India, with its rapidly evolving insolvency framework, is now embracing similar innovations. The Insolvency and Bankruptcy Board of India (IBBI) has introduced digital platforms for case management and mandated the use of Information Utilities (IUs) to ensure data integrity and accessibility. These initiatives underscore the regulator's commitment to leveraging technology for strengthening the insolvency ecosystem. The objective of this article is to explore the multifaceted role of technology in valuation and insolvency, with a focus on AI, data analytics, and digital platforms. It will examine the regulatory landscape, highlight practical applications, analyze sector-specific use cases, and discuss emerging trends such as blockchain and generative AI. Additionally, the article will address the challenges and risks associated with technology adoption, including data privacy concerns, algorithmic bias, and cybersecurity threats, while offering a roadmap for future integration. By presenting a comprehensive view of technological advancements and their implications for insolvency professionals, this discussion aims to equip practitioners with the knowledge and strategies required to navigate the digital transformation of the insolvency regime in India.

## HISTORICAL EVOLUTION OF TECHNOLOGY IN VALUATION AND INSOLVENCY

The evolution of technology in valuation and insolvency has been a gradual yet transformative journey. In the pre-digital era, valuation was primarily a manual exercise, dependent on traditional accounting principles, physical verification of assets, and static financial models. These methods, while foundational, were time-consuming and prone to human error, often resulting in delays in insolvency resolution and inaccuracies in asset valuation.

The first wave of technological adoption in India began with the digitization of financial records and the introduction of basic spreadsheet tools in the late 1990s and early 2000s. This shift allowed professionals to move away from paper-based systems, enabling faster calculations and better record-keeping. However, these tools were limited in scope and could not address the complexities of large-scale insolvency cases involving multiple stakeholders and cross-border transactions.

The enactment of the Insolvency and Bankruptcy Code (IBC) in 2016 marked a significant milestone in India's insolvency framework. The Code emphasized time-bound resolution, transparency, and accountability, creating a strong impetus for technology adoption. Information Utilities (IUs) were introduced to maintain electronic records of financial transactions, ensuring data integrity and accessibility. Simultaneously, the Insolvency and Bankruptcy Board of India (IBBI) encouraged the use of digital platforms for case management and e-auctions, streamlining processes and reducing procedural delays.

Globally, similar trends were observed. In the United States, bankruptcy courts began experimenting with AI-driven tools for case triage and predictive analytics to assess bankruptcy risks. The United Kingdom adopted blockchain technology for asset tracking and implemented secure digital communication channels for insolvency proceedings. Singapore, known for its tech-forward approach, integrated AI and data analytics into its judicial processes, setting benchmarks for efficiency and transparency.

The second wave of technological transformation, which we are witnessing today, is characterized by the integration of advanced technologies such as Artificial Intelligence, Machine Learning, Big Data Analytics, and Blockchain. These tools have moved beyond mere digitization to enable predictive modeling, automated valuation, and real-time stakeholder communication. AI-powered platforms can now analyze vast datasets, identify patterns, and forecast future performance scenarios, significantly improving the accuracy and speed of valuations. Blockchain ensures immutability and transparency in asset transactions, reducing the risk of fraud and enhancing stakeholder confidence.

This historical evolution underscores a clear trajectory: from manual, paper-based systems to fully digital, AI-driven ecosystems. Each phase has addressed specific challenges – speed, accuracy, transparency – and paved the way for the next level of innovation. For insolvency professionals, understanding this journey is crucial, as it highlights the importance of continuous adaptation and upskilling to remain relevant in an increasingly technology-driven environment.

## INDIAN REGULATORY LANDSCAPE

India's regulatory framework has played a pivotal role in driving technology adoption in valuation and insolvency processes. The Insolvency and Bankruptcy Code (IBC), introduced in 2016, was a landmark reform aimed at ensuring time-bound resolution and maximizing value for stakeholders. To achieve these objectives, the Code emphasized transparency, accountability, and efficiency – principles that align perfectly with technological integration.

One of the most significant innovations under the IBC was the introduction of Information Utilities (IUs). These entities maintain electronic records of financial transactions, ensuring data integrity and accessibility for all stakeholders. The National e-Governance Services Limited (NeSL), India's first IU, has revolutionized the way insolvency professionals access verified financial information, reducing disputes and speeding up resolution timelines.

The Insolvency and Bankruptcy Board of India (IBBI) has also issued multiple circulars and guidelines encouraging the use of technology. For instance, e-auction platforms have become mandatory for asset sales during liquidation, ensuring transparency and wider participation. These platforms leverage secure digital communication channels and encryption protocols to prevent fraud and maintain confidentiality.

The Ministry of Corporate Affairs (MCA) has complemented these efforts by digitizing company filings and introducing online portals for compliance submissions. This digital shift has streamlined processes and reduced paperwork, making it easier for insolvency professionals to access critical data in real time.

Another key regulatory development is the Digital Personal Data Protection Act (DPDP Act), 2023. This legislation mandates strict compliance with data privacy norms, requiring insolvency professionals and platform providers to implement robust security measures. Given the sensitive nature of financial data involved in insolvency cases, adherence to DPDP Act provisions is non-negotiable. Professionals must ensure consent-based data processing, encryption, and secure storage to avoid penalties and reputational risks.

The Securities and Exchange Board of India (SEBI) has also issued valuation guidelines that emphasize transparency and the use of standardized methodologies. Technology-driven valuation tools can help professionals comply with these norms by providing audit trails and automated reporting features. Recent regulatory trends indicate a growing emphasis on integrating advanced technologies such as Artificial Intelligence and Blockchain into insolvency processes. The IBBI has initiated discussions on leveraging AI for predictive analytics and fraud detection, while MCA is exploring blockchain for secure record-keeping. These developments signal a future where technology will be deeply embedded in the regulatory fabric of insolvency practice.

In summary, India's regulatory landscape not only supports but actively promotes technology adoption in valuation and insolvency. By aligning compliance requirements with digital solutions, regulators have created an ecosystem that fosters efficiency, transparency, and stakeholder confidence. For insolvency professionals, understanding these regulations and leveraging technology to meet compliance standards is essential for success in the evolving insolvency regime.

## ARTIFICIAL INTELLIGENCE IN VALUATION AND INSOLVENCY

Artificial Intelligence (AI) has emerged as a game-changer in the field of valuation and insolvency, offering capabilities that go far beyond traditional methods. AI enables insolvency professionals to automate complex tasks, analyze large volumes of data, and generate predictive insights that were previously unattainable.

In valuation, AI-driven tools can process historical financial data, market trends, and operational metrics to deliver accurate and dynamic valuation models. These models adapt to changing market conditions, providing stakeholders with real-time insights into asset performance and recovery prospects. One of the most significant applications of AI in insolvency is predictive analytics. Machine learning algorithms can identify patterns in financial distress, forecast default probabilities, and simulate multiple resolution scenarios. For example, AI can analyze credit histories, operational inefficiencies, and macroeconomic indicators to predict whether a company is likely to recover or head toward liquidation. This predictive capability empowers insolvency professionals to make informed decisions quickly, aligning with the time-bound resolution objectives of the Insolvency and Bankruptcy Code (IBC). AI also plays a critical role in forensic audits and fraud detection. Insolvency cases often involve complex financial structures and transactions that may conceal fraudulent activities. AI-powered forensic tools can scan thousands of transactions, flag anomalies, and identify patterns indicative of fraud. These tools significantly reduce the time and effort required for manual audits, ensuring that resolution plans are based on accurate and transparent data.

Globally, jurisdictions such as the United States and the United Kingdom have embraced AI in insolvency proceedings. U.S. bankruptcy courts have experimented with AI-based case triage systems to prioritize cases based on complexity and risk. In the U.K., AI tools are being used to assess the viability of restructuring plans and predict creditor recoveries. India is gradually moving in the same direction, with regulators like the Insolvency and Bankruptcy Board of India (IBBI) exploring the integration of AI for fraud detection and predictive analytics. Despite its advantages, AI adoption in insolvency is not without challenges. Ethical concerns such as algorithmic bias, lack of explainability, and data privacy issues pose significant risks. Insolvency professionals must ensure that AI models comply with regulatory frameworks, including SEBI valuation guidelines and the Digital Personal Data Protection Act (DPDP Act), 2023. Transparency and accountability are essential to maintain stakeholder trust.

In conclusion, AI has the potential to revolutionize valuation and insolvency by enhancing accuracy, efficiency, and transparency. However, its successful implementation requires a balanced approach that combines technological innovation with robust governance and ethical standards. Insolvency professionals who embrace AI and develop the necessary skills will be well-positioned to lead the digital transformation of India's insolvency ecosystem.

## SECTORAL APPLICATIONS OF AI

Artificial Intelligence (AI) is not confined to a single industry; its applications span across multiple sectors, each leveraging AI to address unique challenges in valuation and insolvency. Understanding these sectoral applications is crucial for insolvency professionals who deal with diverse businesses during resolution processes.

In the manufacturing sector, AI is used to predict asset depreciation and optimize maintenance schedules. Predictive maintenance powered by AI reduces downtime and enhances asset value, which is critical during insolvency proceedings. For example, large-scale steel plants undergoing insolvency have employed AI-driven predictive models to estimate machinery life cycles, ensuring accurate valuation and better recovery planning.

Financial services represent another area where AI has made significant inroads. Banks and non-banking financial companies (NBFCs) use AI to detect fraud, assess credit risk, and predict defaults. During insolvency, these capabilities help professionals identify high-risk accounts and prioritize recovery strategies. Indian NBFCs have successfully implemented AI-based credit scoring models, which later assist insolvency professionals in evaluating distressed portfolios. Real estate valuation has also benefited from AI integration. AI tools analyze geospatial data, market trends, and property characteristics to deliver precise valuations. In insolvency cases involving real estate developers, AI-driven platforms can quickly assess the fair market value of properties, considering factors such as location, infrastructure development, and demand forecasts. Global examples include AI-powered property valuation systems in the U.S. and U.K., which have set benchmarks for accuracy and speed.

Healthcare is another sector where AI plays a transformative role. Hospitals and healthcare providers facing financial distress often have complex asset structures, including medical equipment, intellectual property, and real estate. AI helps in valuing these assets by analyzing usage patterns, technological obsolescence, and market demand. For instance, AI-driven tools have been used in Europe to value diagnostic equipment during hospital insolvency proceedings, ensuring fair outcomes for creditors and stakeholders. Retail and e-commerce sectors leverage AI for inventory optimization and demand forecasting. In insolvency scenarios, these insights assist professionals in determining the liquidation value of stock and planning efficient sales strategies. AI models can predict seasonal demand and adjust pricing strategies, maximizing recovery for creditors.

Globally, AI applications in sector-specific valuations have demonstrated measurable benefits in terms of accuracy, efficiency, and transparency. For Indian insolvency professionals, adopting these practices can significantly enhance the quality of resolution plans and stakeholder confidence. However, successful implementation requires sector-specific expertise, robust data governance, and compliance with regulatory frameworks such as the Insolvency and Bankruptcy Code (IBC) and the Digital Personal Data Protection Act (DPDP Act). In conclusion, sectoral applications of AI underscore its versatility and potential to transform valuation practices across industries. Insolvency professionals must stay abreast of these developments and integrate AI-driven tools into their workflows to achieve optimal outcomes in resolution and liquidation processes.

## ROLE OF DATA ANALYTICS

Data analytics has become an indispensable tool in modern valuation and insolvency practices, offering insights that go far beyond traditional financial analysis. At its core, data analytics involves examining large volumes of structured and unstructured data to identify patterns, trends, and anomalies that can influence decision-making. For insolvency professionals, this capability is critical in assessing the financial health of distressed entities and formulating effective resolution strategies. One of the most impactful applications of data analytics is in risk assessment. Insolvency cases often involve complex financial structures and multiple stakeholders, making it challenging to evaluate risks accurately. Advanced analytics tools can process historical transaction data, credit histories, and market indicators to identify early warning signals of financial distress. Predictive models powered by machine learning algorithms can forecast default probabilities and recovery timelines, enabling professionals to prioritize cases and allocate resources efficiently.

Another significant area where data analytics adds value is Environmental, Social, and Governance (ESG) integration. Investors and regulators are increasingly emphasizing ESG factors in valuation processes. Data analytics allows professionals to incorporate ESG metrics into their valuation models, ensuring compliance with global best practices and enhancing stakeholder confidence. For example, analytics can assess a company's carbon footprint, labor practices, and governance standards, which are critical in determining long-term viability.

Visualization tools such as Power BI and Tableau have further amplified the utility of data analytics. These platforms enable insolvency professionals to present complex data in an intuitive and interactive format, facilitating better communication with creditors, regulators, and other stakeholders. Dashboards can display key performance indicators, recovery projections, and risk assessments in real time, making the resolution process more transparent and collaborative.

Indian case studies highlight the growing adoption of data analytics in insolvency proceedings. For instance, a mid-sized non-banking financial company (NBFC) leveraged predictive analytics to identify high-risk borrowers and restructure its portfolio proactively, reducing non-performing assets (NPAs) by 15%. Globally, jurisdictions such as the United States and the European Union have integrated data analytics into their insolvency frameworks, using it to enhance efficiency and compliance. The OECD and World Bank have also recommended the use of analytics for sustainable valuation practices, reinforcing its importance in the global context.

Despite its advantages, the implementation of data analytics is not without challenges. Issues related to data quality, privacy, and regulatory compliance must be addressed to ensure accurate and ethical outcomes. Insolvency professionals must adhere to the provisions of the Digital Personal Data Protection Act (DPDP Act), 2023, which mandates consent-based data processing and robust security measures.

In conclusion, data analytics is redefining the way valuations are conducted and insolvency cases are managed. By enabling predictive insights, ESG integration, and real-time visualization, analytics empowers professionals to make informed decisions and achieve better outcomes for stakeholders. As technology continues to evolve, the role of data analytics in insolvency practice will only become more prominent, making it essential for professionals to embrace this digital transformation.

## DIGITAL PLATFORMS AND BLOCKCHAIN

Digital Platforms and Blockchain have revolutionized insolvency processes by enabling secure, transparent, and efficient mechanisms for case management and asset liquidation. Platforms such as the IBBI's e-auction system have improved bidder participation and reduced procedural delays. Blockchain technology ensures immutability and transparency in asset transactions, minimizing fraud risks and enhancing stakeholder confidence. Smart contracts are emerging as tools for automating compliance and payment obligations, offering a glimpse into the future of insolvency resolution.

## JUDICIAL AND REGULATORY PRECEDENTS

Judicial and Regulatory Precedents further underscore the importance of technology adoption. Indian courts have supported e-filings and digital evidence, recognizing their role in expediting proceedings. Globally, jurisdictions like the UK and Singapore have integrated AI and blockchain into judicial processes, setting benchmarks for efficiency and transparency. These precedents highlight the need for Indian professionals to align with global best practices.

## EMERGING TECHNOLOGIES

Emerging Technologies such as Generative AI and advanced analytics are poised to redefine valuation and insolvency. Generative AI can assist in drafting resolution plans and simulating multiple scenarios, reducing manual effort and improving accuracy. Similarly, digital asset valuation frameworks will become critical as cryptocurrencies and tokenized assets gain prominence.

## PROFESSIONAL ETHICS AND CAPACITY BUILDING

Professional Ethics and Capacity Building remain central to successful technology adoption. Insolvency professionals must uphold ethical standards while leveraging AI and analytics. Continuous training and certifications offered by ICSI IIP and other bodies will ensure that professionals remain competent in using advanced tools responsibly.

## CHALLENGES, RISKS AND MITIGATION

Challenges, Risks, and Mitigation strategies include addressing data privacy concerns, algorithmic bias, and cybersecurity threats. Compliance with the Digital Personal Data Protection Act (DPDP Act), regular audits, and implementation of explainable AI models are essential to mitigate these risks.

## TECHNOLOGY ADOPTION ROADMAP

The Technology Adoption Roadmap for India should involve a phased approach: short-term goals like digitization of filings and e-auctions, medium-term integration of AI-driven predictive analytics, and long-term adoption of blockchain and cross-border insolvency platforms.

## FUTURE REGULATORY LANDSCAPE

Future Regulatory Landscape will likely include amendments to IBC and SEBI guidelines to accommodate AI and blockchain. India's AI Governance Guidelines emphasize innovation, accountability, and ethical use, aligning with global frameworks such as the EU AI Act and GDPR.

## CONCLUSION AND RECOMMENDATIONS

Technology is an enabler, not a substitute for professional judgment. Insolvency professionals should embrace AI, Data Analytics, and Digital Platforms to enhance efficiency and transparency while mitigating associated risks. A balanced approach combining innovation, compliance, and ethics will define the future of valuation and insolvency practice in India and globally.

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# OUT-OF-COURT RESOLUTION AND THE PRE-PACK FRAMEWORK: INDIA'S EMERGING PATH TO FASTER, VALUE-PRESERVING INSOLVENCY OUTCOMES

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## INTRODUCTION: THE SHIFTING LANDSCAPE OF CORPORATE DISTRESS RESOLUTION

India's insolvency ecosystem has undergone a remarkable transformation since the introduction of the Insolvency and Bankruptcy Code (IBC). For the first time, the country saw a unified unintended consequence of value erosion during framework that placed creditors at the centre, imposed strict timelines, and fundamentally altered the behaviour of borrowers and lenders. Yet, as the sysem matured, the sheer volume of cases, coupled with the increasing complexity of corporate structures, began placing enormous pressure on National Company Law Tribunals (NCLTs). What began as a revolutionary reform soon found itself grappling with delays, rising costs, and the prolonged resolution proceedings.

As India marches towards its aspiration of becoming a five-trillion-dollar economy, the need for more agile and efficient mechanisms becomes evident. The reliance on a single adjudicatory path is no longer sustainable. Across global jurisdictions, the trend is clear: countries are strengthening hybrid and consensual resolution tools that minimise litigation, reduce time, and preserve businesses as going concerns. It is in this context that **out-of-court resolution mechanisms** and the **Pre-Packaged Insolvency Resolution Process (PPIRP)** emerge not as alternatives, but as powerful complements to the IBC.

The present article explores how both these mechanisms – one informal and market-driven, the other structured and statutorily backed – together form a robust dual-track system. By examining their role, relevance, challenges, international parallels, and future potential, the article positions them as essential to India's next stage of insolvency reform.

## UNDERSTANDING OUT-OF-COURT RESOLUTION: THE FIRST LINE OF DEFENCE

Out-of-court resolution, in its essence, is a consensual negotiation between debtors and creditors without formal judicial intervention. Before insolvency becomes unavoidable and before a Section 7, 9, or 10 filing is contemplated, parties often explore whether financial distress can be addressed through discussion, restructuring, refinancing, or settlement. This early-stage engagement is the foundation of out-of-court resolution.

In India, the most structured support for this philosophy comes from the Reserve Bank of India's **Prudential Framework for Resolution of Stressed Assets (June 7, 2019)**. It encourages lenders to identify stress early, classify the account, initiate a review period, and work jointly towards a resolution plan. A central element of this framework is the **Inter- Creditor Agreement (ICA)**, which binds lenders to a collective decision-making process. Though not a statutory moratorium, the ICA is often effective in preventing unilateral enforcement actions during critical negotiation windows.

The strength of out-of-court workouts lies in their flexibility. Negotiations can be tailored, creative solutions can be tried, and the process remains confidential – shielding the company from reputational damage. For businesses dependent on vendors, customers, and seasonal cash flows, confidentiality alone can be the difference between revival and collapse. Most importantly, out-of-court negotiations allow the existing management to retain control, preserving the relationships and operational continuity that are often lost in a formal insolvency process.

Yet, this model is not without challenges. It requires lenders to collaborate, debtors to be transparent, and information to be reliable. The absence of a binding moratorium means that dissenting creditors can still take enforcement actions, undermining collective efforts.

Moreover, the fear of post-factum scrutiny sometimes discourages lenders from exploring restructuring options, even in cases where such options may be economically sound. Despite these challenges, out-of-court resolution remains the most efficient first step in addressing financial distress, and when structured well, it sets the stage for more formal mechanisms like pre-packs.

## WHY OUT-OF-COURT WORKOUTS MATTER IN A GROWING INSOLVENCY ECOSYSTEM

The fundamental value of any business – its brand, employees, customers, suppliers, and operational relationships – is highly vulnerable to uncertainty. When an insolvency filing becomes public, the repercussions are immediate: suppliers tighten credit, customers shift orders, skilled employees begin looking elsewhere, and competitors exploit the situation. Even if a company is fundamentally viable, public knowledge of distress can permanently damage its standing.

Out-of-court workouts offer a way to shield businesses from this exposure. The negotiations remain private, the restructuring takes place without alarming stakeholders, and there is no mandatory change in control unless creditors insist. This allows viable businesses to correct temporary disruptions – such as sudden market shifts, temporary demand compression, or unforeseen losses – without undergoing the trauma of formal insolvency.

In more mature markets such as the UK, US, and Singapore, a significant portion of distressed cases are resolved long before a formal insolvency filing becomes necessary. This is possible because the institutional culture encourages early intervention. For India to reach that level of maturity, out-of-court workouts must be seen not as a sign of weakness, but as a responsible exercise in preserving enterprise value.

## THE PRE-PACK FRAMEWORK: A STRUCTURED ALTERNATIVE WITH JUDICIAL PROTECTION

If out-of-court negotiations represent the first stage of resolution, **Pre-Packs** represent the bridge between private negotiation and public adjudication. Introduced in India through the 2021 amendment to the IBC, the Pre-Packaged Insolvency Resolution Process (PPIRP) currently applies only to MSMEs. Although its adoption has been limited so far, it represents one of the most thoughtful and forward-looking innovations in the Code.

At its core, a pre-pack allows the debtor and creditors to negotiate a resolution plan privately, before approaching the NCLT. Once consensus is achieved on a base plan, the debtor files for PPIRP, triggering a limited moratorium. The Resolution Professional (RP) steps in primarily as a monitor rather than a manager, verifying the plan and ensuring procedural compliance.

The CoC evaluates the base plan, invites competing plans if needed, and approves the final plan with the requisite majority. The NCLT then grants formal approval, making the plan binding on all stakeholders.

This hybrid design solves many challenges inherent in both out-of-court negotiations and full CIRP. For debtors, it provides protection from individual enforcement actions, a transparent process, and the comfort that the plan – once approved – cannot be easily reopened. For creditors, it provides a statutory framework, voting rights, supervision by an independent RP, and the assurance that the NCLT's approval gives legal finality.

Perhaps the most sophisticated aspect of the Indian Pre-Pack model is the **Swiss Challenge mechanism**, which ensures fairness and avoids allegations of backdoor entry. If the debtor's base resolution plan adversely affects operational creditors or does not meet certain economic criteria, competing plans can be invited, ensuring that value maximisation remains central.

## WHY PRE-PACKS PRESERVE VALUE BETTER THAN TRADITIONAL CIRP

One of the strongest arguments for pre-packs is that they minimise disruption. Under CIRP, management is displaced and control shifts to the Resolution Professional. While necessary in many cases, this transition can destabilise operations. Customers often become cautious, vendor relationships deteriorate, and employees – uncertain about the future – may leave.

Additionally, CIRP is often expensive, with costs rising as litigation and delays accumulate.

In contrast, pre-packs follow a **debtor-in-possession but creditor-in-control** philosophy. The management continues running the business, but with close oversight from the RP and CoC. This combination preserves operational continuity, reduces conflict, and significantly lowers costs. Businesses that rely heavily on the promoter's knowledge or relationships – such as engineering firms, logistics companies, or specialised manufacturers – benefit immensely from this continuity.

Furthermore, because much of the negotiation happens before formal filing, the actual NCLT process is faster. The statutory timeline of 120 days ensures efficiency, and since the debate is not about replacing the promoter but about strengthening the business, the tone remains collaborative rather than adversarial.

## A CASE EXAMPLE: A QUIET REVIVAL THROUGH OUT-OF-COURT NEGOTIATION FOLLOWED BY A PRE-PACK

To illustrate how the two mechanisms can work together, consider the example of a mid- sized manufacturing MSME located in western India. The company produced industrial components and had a stable customer base, but during a sudden downturn in demand, it faced a severe liquidity crisis. Its working capital limits were fully utilised, payments to suppliers were delayed, and the company fell behind on instalments to its consortium banks.

The promoters approached lenders early, before the account slipped into deeper stress. During the review period under the RBI framework, the lenders appointed an independent restructuring expert, who performed a viability study and suggested a mix of temporary concessions – interest deferment, partial restructuring of term loans, and infusion of promoter funds. Although most lenders agreed, a couple of them were hesitant to sign the ICA. Their concerns delayed the process, and the account risked slipping into default.

Sensing the urgency, lenders and the debtor explored the possibility of transitioning the partially negotiated plan into a Pre-Pack. The groundwork done during the out-of-court phase – financial projections, valuation inputs, and restructuring contours – allowed the debtor to prepare a base resolution plan quickly. Once the PPIRP was initiated, the limited moratorium gave comfort to the working capital lenders, and the plan was voted upon and approved within the stipulated time.

Within six months, the company stabilised its cash flows and regained its operational rhythm. Customers who were unaware of the distress never withdrew orders, employees stayed, and suppliers continued their support. The company survived without the damage that a public insolvency filing might have caused.

This case demonstrates how out-of-court negotiations can serve as a preparatory platform, and how Pre-Packs can give legal shape and finality to the negotiations.

## INTERNATIONAL PERSPECTIVES: LEARNING FROM MATURE INSOLVENCY JURISDICTIONS

Globally, pre-packs and out-of-court workouts are not new concepts. In the United Kingdom, the pre-pack administration model allows companies to negotiate sales or restructuring proposals confidentially before filing, with the court approving the pre-arranged plan. The speed and efficiency of UK pre-packs have made them a preferred option, especially in industries where public insolvency can lead to immediate value erosion.

In the United States, pre-arranged or pre-negotiated processes operate similarly. Creditors and debtors negotiate key elements beforehand, and the court process simply formalises what has already been agreed. This significantly shortens the duration of traditional proceedings, which otherwise can be long and expensive.

Singapore's model, introduced in 2017, incorporates court approval after negotiation but allows for cram-down provisions, enabling binding decisions even when some creditor classes dissent. This close alignment with international best practices has strengthened Singapore's reputation as a global restructuring hub.

India's Pre-Pack framework, though still evolving, shares the fundamental philosophy of these jurisdictions: encourage negotiation, protect value, and use the courts for final approval rather than for micromanaging the entire process. What sets India apart is the unique blend of creditor rights, promoter participation, and the Swiss Challenge mechanism, creating a model that blends global principles with local realities.

## THE COMPLEMENTARY NATURE OF OUT-OF-COURT WORKOUTS AND PRE-PACKS

Out-of-court mechanisms and Pre-Packs are most effective when used in tandem. Out-of- court workouts allow creditors and debtors to explore multiple restructuring ideas without the pressure of strict timelines or public disclosure. When consensus is nearly achieved but legal enforceability or creditor unity becomes necessary, the transition to a Pre-Pack offers the ideal bridge.

This synergy creates a **sliding scale of resolution** based on the severity of distress. In early stress, informal negotiation is sufficient. As the situation becomes complex or requires stronger protection, Pre-Packs can provide the necessary structure. Only in cases of deep insolvency, severe mismanagement, fraud, or hostility do traditional CIRP mechanisms become necessary.

The CoC, lenders, and debtors increasingly recognise that value preservation should be the guiding principle of any insolvency regime. By shifting more cases to the early-stage out-of- court or pre-pack channels, NCLTs can focus on the most complex cases while businesses with viable prospects receive timely interventions.

## THE EVOLVING ROLE OF INSOLVENCY PROFESSIONALS IN THIS NEW ECOSYSTEM

The shift towards hybrid and consensual mechanisms fundamentally changes the role of the Insolvency Professional (IP). In traditional CIRP, the IP operates as an administrator, custodian, and manager of the debtor's assets. The role is process-heavy, driven by compliance, public announcements, monitoring, verification, and managing day-to-day operations.

In out-of-court workouts and Pre-Packs, the role is more nuanced. The IP becomes a **facilitator, negotiator, and impartial advisor**, often working behind the scenes to mediate between parties, evaluate viability, and ensure fairness. The skill set required for this is broader, encompassing financial restructuring, negotiation strategy, forensic awareness, and a deep understanding of industry-specific realities.

Within Pre-Packs, the IP – acting as the Resolution Professional – must maintain a careful balance. Unlike CIRP, the management continues to run the company, but the RP must ensure transparency, prevent value leakage, verify claims, and oversee compliance. The RP's integrity and objectivity directly influence creditor confidence and the credibility of the process.

For Company Secretaries who are part of the insolvency ecosystem, the Pre-Pack model expands their role significantly. Their expertise in governance, compliance, and documentation becomes essential in ensuring that the base plan and related transactions meet statutory and ethical standards. As the use of Pre-Packs expands to larger corporates in the future, the role of IPs and CS professionals is likely to grow even more critical.

## CHALLENGES AND CONCERNS IN IMPLEMENTING THESE MECHANISMS

Despite their potential, both out-of-court workouts and Pre-Packs face practical challenges. In out-of-court negotiations, the absence of a statutory moratorium can cause uncertainty. A single dissenting lender can disrupt the process, making collective decision-making difficult. Furthermore, lenders sometimes hesitate to explore restructuring due to concerns about regulatory scrutiny.

Pre-Packs, though promising, have seen limited use among MSMEs. The current eligibility restrictions exclude larger corporates, which are often the ones facing the most complex financial distress. Lenders also worry about promoters misusing the process or using Pre- Packs as a strategy to bypass CIRP, even though safeguards like the Swiss Challenge exist.

Another challenge lies in awareness. Many MSMEs are unaware of the PPIRP route, banks are still aligning their internal policies, and stakeholders are waiting to see how early cases evolve. For a new mechanism to succeed, confidence must be built through successful examples, regulatory clarity, and capacity-building efforts among professionals.

## THE WAY FORWARD: BUILDING A MATURE DUAL-TRACK INSOLVENCY SYSTEM

The future of India's insolvency ecosystem must be multi-layered. Out-of-court workouts should be encouraged as the default first step for stress resolution. Banks should be incentivized to engage early, supported by safe-harbor provisions that protect them when acting in good faith. India could also consider formalizing mediation frameworks for financial disputes, similar to models seen in Singapore or the EU.

Pre-Packs should eventually extend beyond MSMEs. Large corporates often suffer catastrophic value loss when distress becomes public. Pre-Pack mechanisms offer a discreet, structured alternative that can preserve value, protect jobs, and avoid unnecessary disruption. Introducing cross-class cram-down provisions, enhancing transparency norms, and improving NCLT capacity will strengthen the framework further.

Above all, India must cultivate a culture that views insolvency not as a failure, but as an opportunity for financial reorganization. Out-of-court workouts and Pre-Packs embody this philosophy. They shift the tone from confrontation to collaboration, from crisis to corrective action, and from litigation to negotiation.

## CONCLUSION: TOWARDS FASTER, FAIRER, AND MORE EFFICIENT RESOLUTION

As India continues to grow and diversify, the insolvency landscape must evolve to support a dynamic economy. Out-of-court workouts and Pre-Packs represent the next phase of this evolution – faster, more efficient, and more respectful of enterprise value than traditional litigation-driven approaches. They empower stakeholders to resolve distress in a manner that is pragmatic, confidential, and economically sensible.

The success of these mechanisms will depend on the collective efforts of lenders, regulators, professionals, and businesses. Insolvency Professionals, in particular, will play a central role as architects of informed negotiation, guardians of fairness, and facilitators of efficient resolution.

On the foundation day of the Insolvency Professional Agency, it is fitting to envision an insolvency ecosystem that is agile, balanced, and forward-looking. Out-of-court resolution and the Pre-Pack framework are essential pillars of that vision. Together, they promise a future where resolution is not merely an end-of-road remedy, but a timely and value- preserving intervention – ensuring that viable businesses continue contributing to India's economic growth story.

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# OUT-OF-COURT SETTLEMENTS, ALTERNATIVE DISPUTE RESOLUTION, AND PRE-PACK FRAMEWORKS: A BLUEPRINT FOR ACCELERATED, ROBUST INSOLVENCY PRACTICE IN INDIA

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## EXECUTIVE SUMMARY

The IBC has moved India from a regime of fragmented creditor action and prolonged litigation to a more coherent system centred on time bound resolution and a creditor in control model. India's ranking in the World Bank's Doing Business 2020 "Resolving Insolvency" indicator improved significantly compared with the pre-IBC era, but remains some distance from the highest performing OECD economies in terms of recovery value and duration. At the same time, data and commentary show that many large CIRP cases have taken longer than the statutory 330-day outer limit once litigation and other delays are included, and recoveries in several high-profile resolutions have varied widely across sectors.

Internationally, jurisdictions that achieve more predictable recovery outcomes make extensive use of :

- Out of court or "informal" workout frameworks, often supported by regulator led or market led coordination mechanisms.
- Mediation, facilitated negotiation and other ADR techniques to structure multistakeholder deals
- Hybrid "prepackaged" or "prenegotiated" insolvency procedures that combine prefiling agreement on a plan with a shorter, focused court process for binding effect.

India has elements of each of these:

- RBI's 2019 Prudential Framework for Resolution of Stressed Assets encourages lender driven out of court resolution;
- the Mediation Act, 2023 gives statutory recognition to mediation in civil and commercial disputes; and
- the Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs, notified in 2021, is a first step towards a pre pack model.

However, these areas are still evolving and remain underutilised relative to their potential.

## OUT OF COURT SETTLEMENTS : DEFINITION, RATIONALE AND PRACTICE

### CONCEPT AND INSTRUMENTS

Out of court settlements, in the insolvency and restructuring context, refer to consensual, contract-based arrangements through which a debtor and its key stakeholders agree changes to payment terms, capital structure or business arrangements without invoking formal insolvency processes. Such arrangements may be purely bilateral (for example, between a borrower and a single lender) or multi-party (involving consortium of banks, non-bank lenders and material trade creditors).

**TYPICAL TOOLS INCLUDE**:

- **One-time settlements (OTS)**: negotiated lump sum or structured repayments that are less than the total contractual amount but considered acceptable given realistic prospects of enforcement and recovery.
- **Restructuring of terms**: extensions of tenor, temporary reduction of interest rates, or conversions of overdue interest to funded interest term loans, under prudential norms.
- **Standstill agreements**: arrangements where multiple lenders agree not to enforce security or pursue legal action for a defined period while a resolution plan is prepared.
- **Supplier and counterparty adjustments**: rescheduling of trade payables, re negotiation of supply volumes and pricing, or operational adjustments to preserve supply chain viability.
- **Equity or quasi equity infusions**: introduction of new capital from existing owners or third-party investors, combined with lender concessions where that improves overall viability.

These instruments operate outside the IBC, under general contract law, RBI regulations and sector specific norms. In some cases, an out of court plan may subsequently be incorporated into a scheme of arrangement, a pre pack or even an IBC resolution plan, but it is not, in itself, an IBC process.

### INDIAN REGULATORY ARCHITECTURE

The RBI's "Prudential Framework for Resolution of Stressed Assets" dated 7 June 2019 is the principal regulatory basis for formalising lender led out of court restructuring in India.

**Key features include:**

- Early identification of stress and a review period after default within which lenders must decide on a resolution strategy.
- Flexibility for banks and certain non-bank lenders to implement a range of resolution plans, including regularisation, restructuring and change of ownership, without being forced into insolvency filings.
- Requirements for inter creditor agreements among lenders in multi bank exposures, including voting thresholds for approval of a resolution plan.
- Conditions for upgraded asset classification and provisioning, aimed at balancing resolution incentives with prudential safeguards.
- Prior frameworks such as Corporate Debt Restructuring (CDR), Joint Lenders' Forum (JLF) and Strategic Debt Restructuring (SDR) similarly sought to create organised workout mechanisms, but were ultimately phased out or subsumed into the 2019 framework due to mixed outcomes and concerns over delays, coordination challenges and prudent recognition of stress.

## GLOBAL EVIDENCE ON OUT OF COURT REGIMES

Comparative studies – such as the World Bank's Doing Business reports and OECD policy work – indicate that jurisdictions with well-functioning out of court or "informal" workout frameworks tend to exhibit faster restructuring and higher recoveries than those relying primarily on formal insolvency proceedings. Examples include:

- The "London Approach" in the UK, an informal but influential practice in which banks coordinated standstill and restructuring of large corporate exposures through multi creditor negotiations, especially during periods of systemic stress.
- Preventive restructuring frameworks in the EU, encouraged by Directive (EU) 2019/1023, which require member states to provide mechanisms for early restructuring of viable businesses outside full liquidation procedures.

- Out of court and hybrid mechanisms in jurisdictions such as Singapore, where the Insolvency, Restructuring and Dissolution Act (IRDA) 2018 supports schemes of arrangement and moratoriums in conjunction with negotiated plans.

These experiences do not translate mechanically to India, but they underline the importance of having credible non insolvency routes for resolving distress in a timely, coordinated manner.

**ADR MECHANISMS AS THE ENGINE OF CREDIBLE OUT OF COURT SOLUTIONS**

Alternative Dispute Resolution (ADR) provides the structure and neutrality that often determines whether an out of court process succeeds or collapses into litigation. In financial distress, mediation and conciliation are particularly suited because they allow parties to explore options confidentially, without prejudicing their rights if a formal process later becomes necessary.

## THE MEDIATION ACT, 2023 AND COMMERCIAL DISPUTES

The Mediation Act, 2023 creates a general legal framework for mediation in India, including for commercial matters. Key features relevant to insolvency adjacent disputes include:

- **Legal recognition of written mediated settlements** as having the status of a contract that is enforceable in the same manner as a court decree, subject to the Act's conditions.
- **Emphasis on confidentiality, neutrality** of the mediator, and voluntariness of settlement, with parties free to withdraw from mediation at any stage before agreement.
- **Provision for institutional mediation** and panels of accredited mediators, supporting specialisation, including in complex commercial and financial disputes.

Although the Act does not specifically target insolvency cases, its architecture is compatible with pre insolvency workouts. Distressed borrowers and creditors can, in appropriate cases, choose to use statutory mediation to reach a restructuring or settlement that may, if necessary, be later reflected in a scheme, consent order or, in limited instances, an IBC withdrawal.

## WHY MEDIATION AND CONCILIATION FIT DISTRESSED DEBT SITUATIONS

Mediation and conciliation align well with the practical challenges of distressed companies and their creditors**:**

- **Multi-party coordination**: A mediator can manage joint sessions and separate discussions with several banks, non-bank lenders and key operational creditors, reducing the risk of fragmented, inconsistent negotiations.
- **Information and perception gaps**: Neutral facilitation helps clarify business realities, viability assessments and alternative scenarios (including enforcement and potential IBC outcomes) without parties feeling they are conceding legal positions.
- **Time sensitivity**: Mediation can typically be organised and conducted more quickly than formal court or tribunal hearings, an important factor where cash flow constraints and market confidence are fragile.

Arbitration, by contrast, is less frequently used to resolve core insolvency related issues because it is not suited to binding large groups of diverse creditors or altering statutory rights, though it may still be relevant for specific contractual disputes that sit alongside financial stress.

## ROLE OF INSOLVENCY PROFESSIONALS AND VALUERS IN ADR DRIVEN SETTLEMENTS

Insolvency professionals and registered valuers play an important supporting role in making ADR processes robust in distressed debt contexts:

- **Valuation and scenario analysis**: Independent valuation of business and security, and realistic projections of cash flows and recovery under different options, anchor negotiations in credible numbers rather than optimistic or pessimistic assumptions.

- **Process integrity**: Structured agendas, documentation of offers and counter offers, and clear recording of agreed terms help satisfy regulatory and audit concerns, particularly for regulated lenders.
- **Interface with formal processes**: Practitioners can assess whether a mediated outcome is sufficient on its own, or whether it should be supplemented by a scheme, consent decree, or, in some cases, a pre pack or CIRP plan to achieve finality.

## ADVANTAGES AND SAFEGUARDS

Properly designed, ADRdriven outofcourt settlements offer several advantages:

- **Confidentiality**: Negotiations remain off the public record and outside tribunal databases, preserving business reputation and reducing the risk of market over reaction.
- **Cost and time efficiency**: Disputes can often be narrowed or resolved quickly or a small number of structured meetings rather than over years of adversarial litigation.
- **Relationship preservation**: Lenders, suppliers and customers who expect to continue dealing with the business may prefer negotiated solutions over contentious proceedings.

At the same time, safeguards are essential. Parties should ensure full disclosure of material liabilities and security interests, use independent valuation where significant haircuts or equity conversions are contemplated, and remain alert to potential issues such as preferential transfers or related party benefits that could later attract scrutiny in an insolvency context. ADR is most effective when it complements, rather than attempts to sidestep, applicable regulatory and fiduciary duties.

## PRE-PACK FRAMEWORKS: HYBRID INNOVATION, STATUTORY SAFEGUARDS

Pre pack frameworks occupy a middle ground between informal workouts and full-scale insolvency proceedings. They aim to capture the benefits of early, confidential negotiation while still providing the legal certainty, moratorium and collective binding effect that only a statutory process can offer.

### Concept and comparative models

In a typical pre pack, the debtor and key creditors negotiate a restructuring or sale plan before any formal filing, then use a short, focused court or tribunal process to obtain approval and make the plan binding on all affected parties. This significantly compresses the time spent in formal insolvency while maintaining transparency and oversight at the approval stage.

Illustrative models include:

- **United Kingdom**: Pre pack administrations have been widely used, especially for small and medium sized enterprises. A sale of the business or assets is negotiated before the administrator's appointment and completed immediately or shortly after, subject to statutory duties and regulatory guidance designed to protect creditors and address concerns over connected party sales.
- **United States**: Pre-packaged and pre negotiated Chapter 11 cases allow companies to solicit creditor votes on a restructuring plan prior to filing. Where strong pre-petition support exists, court proceedings are considerably shorter than fully contested Chapter 11 cases, reducing cost and uncertainty while still subjecting the plan to statutory tests and judicial scrutiny.
- **Singapore**: Under the Insolvency, Restructuring and Dissolution Act 2018, court supervised schemes of arrangement support early, hybrid solutions, including moratoriums and provisions for approving "pre pack schemes" where a sufficient majority of creditors has agreed to the plan before court involvement.
- **European Union**: Directive (EU) 2019/1023 on preventive restructuring frameworks encourages

member states to provide mechanisms for early restructuring of viable debtors, combining out of court negotiations with limited court involvement, moratoriums and protections for new financing.

Across these models, common themes are early engagement, creditor coordination and a short but meaningful court process focused on fairness, proper classification and compliance with priority rules.

## INDIAN EXPERIENCE: PPIRP FOR MSMES

India's first formal step towards pre pack structures is the Pre-Packaged Insolvency Resolution Process (PPIRP) for micro, small and medium enterprises (MSMEs), introduced by the IBC (Amendment) Act 2021 and associated regulations. PPIRP seeks to offer eligible MSME corporate debtors a quicker, less disruptive alternative to full CIRP, while retaining core IBC safeguards.

Key features include:

- **Eligibility**: Available to corporate debtors classified as MSMEs under applicable law, subject to criteria such as minimum default thresholds, absence of recent PPIRP or CIRP, and compliance with section 29A.
- **Base plan and creditor consent**: Before filing, the debtor prepares a "base resolution plan" and obtains approval from unrelated financial creditors representing at least 66% in value, as required by section 54A.
- **Time bound process**: Once admitted, PPIRP has a maximum of 120 days from commencement to approval of the plan, including 90 days for CoC approval and 30 days for the tribunal's decision.
- **Moratorium and role of IP**: A moratorium applies, and a resolution professional oversees the process. Unlike CIRP, existing management generally continues to run the business under supervision, reflecting a "debtor in possession, creditor in control" hybrid.
- **Safeguards and competition**: If the CoC is dissatisfied with the base plan, or if it impairs operational creditors, the CoC may invite competing plans and select the best through comparative evaluation, subject to statutory voting thresholds and tribunal approval.

Public information suggests PPIRP uptake has so far been modest, with only a limited number of cases admitted and a subset resulting in approved plans. Reasons cited include limited awareness among MSMEs, cautious lender attitudes towards a new process, and perceived stigma around any formal insolvency label. Nonetheless, early resolved cases indicate that PPIRP can deliver time bound outcomes with less disruption than full CIRP, particularly where debtors cooperate, financial information is reliable and advisers help structure viable, well documented base plans.

## STRATEGIC STRENGTHS OF PRE-PACKS

Compared with purely informal workouts and full CIRP, pre packs such as PPIRP offer several strategic advantages:

- **Reduced value erosion**: Because negotiation and plan formulation occur largely before formal commencement, the period of maximum uncertainty is shortened, preserving customer and supplier confidence and reducing liquidity stress.
- **Speed with structure**: Statutory timelines for pre packs are typically shorter than for full insolvency, yet still provide creditor voting, oversight by an insolvency professional, and judicial review at approval.
- **Better alignment of interests**: Early dialogue between debtor and key creditors can produce plans more closely tailored to the business and sector, and therefore more sustainable than last minute solutions.

- **Preservation of going concern value**: Emphasis on reorganisation supports continuity of operations, employee retention and maintenance of supplier and customer relationships.
- **Lower process costs**: Shorter formal proceedings usually mean lower professional and administrative expenses, improving net recoveries and freeing resources for reinvestment.

In India, these strengths are especially pertinent for MSMEs and service or technology-oriented businesses that depend heavily on reputation and continuity.

## SAFEGUARDS AND CONCERNS

Despite their advantages, pre packs raise legitimate concerns regarding transparency, treatment of non-participating creditors and potential abuse in connected party transactions. Jurisdictions with extensive pre pack use have responded with specific safeguards in legislation, regulation or professional standards, such as:

### COMMON SAFEGUARDS INCLUDE:

- **Independent valuation and disclosure**: Requiring one or more independent valuations and disclosure of key information to creditors prior to approval helps address fears of undervalue transfers or favoured counterparties.
- **Oversight of connected party sales**: Additional scrutiny where sales are to connected parties, sometimes involving independent review panels or mandatory marketing.
- **Creditor voting thresholds and classes**: Retaining statutory requirements for approval by value and, where relevant, by class ensures plans have meaningful creditor support.
- **Judicial review**: Courts or tribunals can refuse approval where statutory conditions are not met, where plans unfairly prejudice creditor groups, or where evidence of fraud or misconduct exists.

In PPIRP, the IBC and regulations incorporate several of these protections, including disclosure of specified transactions, involvement of a resolution professional, independent valuation, CoC oversight and the option to seek competing plans where the base plan does not adequately protect creditor interests

## POSITIONING PRE-PACKS WITHIN THE INDIAN INSOLVENCY LANDSCAPE

Pre packs are best seen as part of a continuum rather than a substitute for out of court workouts or CIRP. A simplified positioning is:

- Out of court settlements and ADR suit cases where the debtor is viable, creditor numbers are manageable and a consensual plan is realistic without needing a binding order on dissenters.
- Pre packs like PPIRP fit situations where early negotiation is possible but statutory protection, a moratorium or binding effect is required – for example, when hold out risk is high or a "clean slate" is important for new capital.
- Full CIRP remains necessary where there is severe creditor fragmentation, serious dispute or fraud, non-cooperation, or a high likelihood of liquidation or heavily contested resolution

For Indian policymakers and practitioners, the strategic challenge is not choosing one tool to the exclusion of others, but designing clear interfaces between them. RBI's stressed asset framework, the Mediation Act regime, PPIRP and CIRP can, in principle, be sequenced so that viable cases are resolved early and privately, hybrid cases flow into pre packs, and only genuinely intractable situations proceed to full CIRP. A layered approach, supported by capacity building for insolvency professionals, valuers and mediators, would align Indian practice with international trends while remaining rooted in local institutional realities.

## DETAILED COMPARISON: OUT-OF-COURT, ADR, PRE-PACK, AND CIRP

A practical framework for choosing between tools is essential. The following narrative comparison synthesises common features drawn from Indian law and comparative practice.

1. **Out of court settlements (including ADR supported workouts)**

   Out of court arrangements operate entirely on a contractual and regulatory basis, without invoking the IBC. Speed can be high because parties are not bound by tribunal schedules, and participation can be tailored to the most relevant stakeholders. Recovery potential can be medium to high in viable cases, particularly when independent valuation and realistic business plans underpin negotiations. However, these solutions generally do not bind non consenting creditors and offer no automatic moratorium; enforcement risk from hold outs remains. ADR mechanisms – especially mediation and conciliation – enhance these settlements by adding process discipline, neutrality and confidentiality, but they cannot override statutory rights or prudential obligations.

2. **Standstill and ADR led frameworks**

   Standstill agreements coupled with formal mediation or conciliation sit between purely bilateral OTS arrangements and hybrid statutory tools. They aim to stabilise the situation by halting enforcement for a limited period while parties explore options in a structured ADR setting. Where successful, they can deliver outcomes comparable to informal restructurings but with better documentation and stakeholder alignment. Their statutory foundation lies partly in the Mediation Act, 2023 and partly in contractual freedom; they still lack the full binding force and moratorium of IBC processes, but can significantly reduce the need for such filings in appropriate cases.

3. **Pre-pack frameworks (PPIRP and potential extensions)**

   Pre packs such as India's PPIRP occupy a hybrid position: negotiation is primarily out of court, but the implementation and binding effect of the plan are statutory, with moratorium, CoC oversight and tribunal approval under the IBC. Speed is designed to be very high, as much of the commercial work precedes filing and the post commencement timeline is compressed. Recovery potential can be high where businesses are fundamentally viable and base plans are carefully prepared. Safeguards include eligibility criteria, creditor voting thresholds, independent valuation and the possibility of competing plans. Pre packs are particularly suited to cases where early consensus exists among key creditors but a binding "clean slate" and short moratorium are still required.

4. **CIRP (full IBC process)**

   CIRP remains the core, comprehensive mechanism for resolving corporate insolvency under the IBC. It provides the strongest statutory backing: a wide-ranging moratorium, a CoC representing all financial creditors, formal claims processes, and tribunal oversight throughout. It is also the most resource intensive and, in practice, often the slowest route, especially in large or heavily litigated cases. Recovery outcomes range from high in certain marquee resolutions to modest in many others, reflecting sector, capital structure, litigation and market conditions. ADR can be used within or alongside CIRP – for example, to settle specific disputes or support Section 12A withdrawals – but remains optional.

In short, out of court and ADR driven processes emphasise speed, privacy and flexibility; pre packs emphasis speed with statutory structure; CIRP emphasises comprehensive statutory treatment at the cost of time and complexity. An effective system uses all four in a coherent sequence rather than treating them as competitors.

## POLICY RECOMMENDATIONS AND PRACTITIONER MANDATES

Policymakers and practitioners both have roles in embedding these tools coherently in India's insolvency ecosystem.

1. **Strengthen and broaden pre-pack options**
   - Consider piloting pre pack frameworks beyond MSMEs, with carefully calibrated eligibility criteria and oversight, drawing on comparative experience and the current PPIRP design.
   - Enhance guidance on valuation, disclosure and connected party scrutiny in PPIRP, informed by UK and EU safeguards, to build creditor confidence and mitigate concerns about opacity.
   - Provide clear, principles based regulatory comfort to lenders who approve commercially reasonable pre pack plans following prescribed processes, reducing fear of retrospective scrutiny where good faith can be demonstrated.
2. **Institutionalise ADR as a pre insolvency filter**
   - Encourage or, in specified classes of cases, require time bound mediation or conciliation before admission of certain creditor-initiated insolvency applications, with exemptions for fraud or clear non-cooperation, taking cues from Singapore's restructuring practice and the flexibility of the Mediation Act, 2023.
   - Support specialised training and accreditation for mediators and insolvency professionals handling distressed debt matters, through professional bodies such as ICSI, ICAI, ICMAI and the IBBI.
   - Explore the development of registries or panels of mediators experienced in financial restructuring, to improve quality and predictability of outcomes.
3. **Enhance transparency and accountability across all mechanisms**
   - Promote consistent use of independent valuation and clear documentation for out of court restructurings and pre packs, including the rationale for haircuts and treatment of different creditor classes, aligned with RBI and IBBI expectations.
   - Encourage anonymised publication of high-quality case studies and aggregate data on out of court, pre pack and CIRP outcomes, so that market participants can learn from practice without compromising commercial sensitivities.
   - Maintain robust scrutiny of related party transactions, antecedent transfers and other risk areas, with tribunals and regulators empowered to intervene where misuse is evident.
4. **Elevate the professional skillset**
   - Insolvency professionals and valuers increasingly need a blended skillset: deep understanding of IBC procedures, comfort with negotiation and mediation, sector specific insight, and the ability to model recoveries and business viability in several scenarios.
   - Professional curriculum and continuing education programmes should reflect this, moving beyond purely legal or accounting content to incorporate negotiation, behavioural, ESG and risk management dimensions.

Together, these measures can help India move towards a more graduated, nuanced and efficient distress resolution architecture, in which the right tool is applied at the right time, and formal insolvency is reserved for cases where it is truly necessary.

## CONCLUSION: THE PRACTITIONER'S CALL TO ACTION

Out of court settlements, ADR and pre packs are no longer peripheral ideas; they form an essential continuum around CIRP. Each offers a different balance of speed, flexibility, transparency and statutory protection, and the real test of India's insolvency regime will be how intelligently they are sequenced and combined. Practitioners stand at the centre of this transition. The mandate is clear: detect stress early, structure credible negotiations, know when a hybrid pre pack is appropriate, and reserve full CIRP for genuinely hard cases. Regulators and professional bodies can accelerate this shift by clarifying expectations, supporting specialisation and disseminating evidence-based practice. Done well, this will move insolvency from being an end stage label towards a managed process of business rescue and responsible exit.

***REFERENCES***


1. World Bank Doing Business 2020 (Resolving Insolvency);
2. RBI Prudential Framework for Resolution of Stressed Assets (7 June 2019);
3. Mediation Act 2023;
4. Directive (EU) 2019/1023;
5. UK pre pack reports;
6. Singapore IRDA 2018;
7. IBBI and press material on PPIRP and IBC outcomes.


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# THE EVOLVING ROLE OF PLEADING AND APPEARANCE FOR REGISTERED VALUERS IN INSOLVENCY PROCEEDINGS

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**ABSTRACT**

*In the evolving insolvency and regulatory environment in India, Registered Valuers are increasingly required to engage with adjudicatory and disciplinary forums beyond the preparation of valuation reports. This article examines pleading and appearance as essential professional skills for Registered Valuers under the Insolvency and Bankruptcy Code, 2016 and the Companies (Registered Valuers and Valuation) Rules, 2017. It conceptualises the valuation report as the primary technical pleading, analyses supporting legal and regulatory pleadings, and explores the jurisprudential and ethical dimensions of appearance before the Committee of Creditors, NCLT/ NCLAT, and disciplinary authorities. The article argues that disciplined pleading and credible appearance are central to professional accountability and institutional confidence in valuation practice.*

**KEY WORDS:**

Registered Valuer; Pleading; Appearance; Insolvency and Bankruptcy Code; Valuation Report; Expert Witness

## INTRODUCTION

Pleading and Appearance before the Committee of Creditors / NCL / NCLAT is one of the most under-appreciated yet decisive competence areas for valuers operating within statutory, quasi-judicial, and judicial ecosystems - particularly under the Insolvency and Bankruptcy Code, 2016 (IBC).

In valuation practice, pleading and appearance collectively refer to the ability of a Registered Valuer (RV) to frame, defend, and explain valuation conclusions in a legally intelligible manner. These competencies also require the RV to respond effectively to challenges, objections, and adverse observations raised by members of the Committee of Creditors (CoC) / NCLT / NCLAT. Further, they entail appearances before the CoC as well as judicial and quasi-judicial authorities, demanding conduct that is professional, ethical, and disciplined. Consequently, a Registered Valuer must maintain strict adherence to statutory provisions and professional codes of conduct, even under adversarial or high-pressure circumstances. Valuation today is no longer a back-office numerical exercise; rather, it directly influences the rights of creditors and debtors, the approval or rejection of resolution plans, and judicial outcomes involving assets worth thousands of crores. Pleading and appearance, therefore, have emerged as core professional competencies for Registered Valuers, and not merely optional soft skills.

## PLEADING

Black's Law Dictionary defines *pleading as a formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials, or defences, emphasising that pleadings are not casual communications, but structured legal instruments intended to frame the* *issues for adjudication*.[1] Under Indian civil procedure, the term "pleadings" has a precise statutory definition. Section 2(1) of the Code of Civil Procedure, 1908 (CPC) states: "*'Pleadings' mean plaint or written statement.*"[2] While the Insolvency and Bankruptcy Code does not expressly define the term 'pleading' in relation to valuation, the functional role of pleadings by a Registered Valuer emerges in practice through: (i) *primary technical pleading* - the valuation report itself, which constitutes a formal and statutory representation of professional opinion; (ii) *supporting legal pleadings* - affidavits and written submissions filed before the NCLT and NCLAT in IBC proceedings; and (iii) *regulatory / disciplinary pleadings* - replies to Show Cause Notices and other written representations submitted during disciplinary proceedings under the Companies (Registered Valuers and Valuation) Rules, 2017. Let us examine the three distinct forms of pleadings undertaken by a Registered Valuer, one by one.

## VALUATION REPORT

In contemporary insolvency and regulatory practice, particularly under the Insolvency and Bankruptcy Code, 2016 (IBC) and the Companies (Registered Valuers and Valuation) Rules, 2017, the valuation report prepared by a Registered Valuer has assumed a status far beyond that of a mere technical document. It now functions as the **primary technical pleading** of the valuer. While the IBC framework does not explicitly employ the term "pleading" in relation to valuation, a functional and jurisprudential analysis unmistakably reveals that the valuation report performs precisely the role that pleadings perform in classical adjudicatory systems: it places material facts on record, articulates professional positions, circumscribes the scope of inquiry, and binds the author to a defensible and consistent narrative.

Traditionally, pleadings in legal theory serve to crystallise disputes by stating material facts upon which claims or defences rest. Translating this principle into the valuation domain under IBC, the valuation report is the first, most comprehensive, and most authoritative articulation of the valuer's factual findings and professional judgments. It is the earliest point at which the valuer's mind is applied to the asset, the market, and the governing valuation premise, and it is on the basis of this document that multiple stakeholders - including resolution professionals, committee of creditors, adjudicating authorities, appellate forums, and regulators - subsequently engage with the valuation exercise. Consequently, the valuation report becomes the foundational pleading from which all later explanations, affidavits, or oral submissions must logically and ethically flow.

This naturally leads to the next question: what are the basic ingredients of an ideal valuation report that can function as the primary technical pleading in insolvency proceedings? To find the answer, it is necessary to examine the directions prescribed under Rule 8(3) of the Companies (Registered Valuers and Valuation) Rules, 2017, together with IVS 106 of the International Valuation Standards, 2025. The following are the minimum contents of an IVS and Companies (Registered Valuers and Valuation) Rules compliant valuation report:[3]

a) agreed scope of the work,

b) assets and/or liabilities being valued,

c) the identity of the valuer,

d) client,

e) intended use,

f) intended users, if applicable,

g) valuation currency(ies) used,

h) valuation date(s),

1. *H. C. Black, Black's Law Dictionary, 11th ed. St. Paul, MN, USA: Thomson Reuters, 2019, p. 1337.*
2. *The Code of Civil Procedure, 1908 (Act No. 5 of 1908), Government of India, s. 2(1).*
3. *IVS 106, International Valuation Standards 2025, para 30.06, p. 60*

i) basis/es of value adopted,

j) the valuation approach(es) adopted,

k) valuation method(s) or valuation model(s) applied,

l) sources and selection of significant data and inputs used,

m) significant environmental, social and governance factors used and considered,

n) significant or special assumptions, and/or limiting conditions, to the extent they explain or elucidate the

o) limitations faced by valuer, which shall not be for the purpose of limiting his responsibility

p) for the valuation report.,

q) findings of a specialist or service organisation,

r) value and rationale for valuation,

s) IVS compliance statement,

t) the date of the report (which may differ from the valuation date)

u) disclosure of valuer interest or conflict, if any

A valuation report must provide, in sufficient detail, a clear and well-structured description of the basis for the conclusion of value. It may refer to other documents, which may include, but are not limited to, the scope of work, internal policies, and procedures. The valuation report should include all information necessary to provide the client with a clear understanding of the scope of work, the work performed, the professional judgements made, and the basis for the conclusions reached. The valuer must exercise due care in selecting the evidence used to support the valuation and should, to the extent possible, rely on observable inputs as evidential support. A valuation report grounded primarily in observable inputs constitutes a robust and defensible primary technical pleading.

In conclusion, within the framework of the IBC and allied valuation regulations, the valuation report stands as the primary technical pleading of the Registered Valuer. It is the initial and most critical articulation of material facts, professional judgment, and ethical compliance. All subsequent pleadings - whether in the form of replies to show cause notices, affidavits, or oral submissions - are merely extensions or explanations of this foundational document. Mastery of pleading discipline at the stage of valuation reporting is therefore not an ancillary skill but an essential professional competence for the modern Registered Valuer.

## AFFIDAVITS AND WRITTEN SUBMISSIONS

While the valuation report constitutes the primary technical pleading of a Registered Valuer in the insolvency framework, its effective integration into adjudicatory proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) is achieved through **supporting legal pleadings**, principally in the form of affidavits and written submissions filed before the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). These documents perform a crucial procedural function: they place valuation-related facts, explanations, and professional reasoning on record in a form cognisable to a judicial forum, thereby subjecting them to the discipline of oath, record, and adversarial scrutiny.

IBC proceedings before the NCLT and NCLAT are governed not only by the substantive provisions of the Code but also by the NCLT Rules, 2016 and NCLAT Rules, 2016, which recognise affidavits and written submissions as essential instruments for placing facts and explanations before the adjudicating authority. Although Registered Valuers are rarely principal applicants or respondents, their valuations are frequently relied upon in applications relating to avoidance transactions under different sections of the Code. In such matters, affidavits and submissions explaining valuation methodology, assumptions, and conclusions become indispensable supporting pleadings.

When a Registered Valuer affirms an affidavit before the NCLT or NCLAT - whether directly or through incorporation in an application - the valuer is no longer merely expressing a professional opinion but asserting facts and explanations under oath. Written submissions, though not sworn, function as equally significant pleadings. Tribunal practice under the IBC routinely requires parties to file concise written submissions to crystallise issues, summarise evidence, and assist the Bench in complex factual or technical matters. Where valuation is in issue, such submissions often summarise the valuation exercise, justify the choice of approach, and respond to specific objections raised by creditors or other stakeholders. In effect, these submissions translate the technical content of the valuation report into a legally intelligible narrative, enabling the tribunal to appreciate the relevance and limits of the valuation evidence. Please remember that a Registered Valuer cannot improve, modify, or contradict the valuation report through affidavits or written submissions. Any material assumption, investigation limitation, or methodological rationale not disclosed in the valuation report cannot ordinarily be introduced later without inviting adverse inference.

In this sense, affidavits and written submissions act as secondary or supporting pleadings, the sole purpose of which is to explain and contextualise the primary technical pleading represented by the valuation report. For Registered Valuers, this demands strict pleading discipline: clarity, brevity, factual accuracy, and faithful adherence to what has already been stated in the valuation report.

In conclusion, affidavits and written submissions filed before the NCLT and NCLAT in IBC proceedings constitute supporting legal pleadings that operationalise the valuation report within the insolvency adjudicatory process. Mastery of this form of pleading is therefore an essential skill for today's Registered Valuers, ensuring that technical valuation opinions withstand judicial scrutiny without ethical or procedural infirmity. Most importantly, Registered Valuers may be required to submit affidavits and written submissions before the NCLT or NCLAT, when so directed; however, such services are to be rendered against a separate professional fee, distinct from the fee already contracted between the Resolution Professional (RP) and the Registered Valuer for the preparation of the valuation report.

## REPLIES TO SHOW CAUSE NOTICES AND OTHER WRITTEN REPRESENTATIONS

In the current regulatory architecture governing valuation practice in India, **disciplinary pleadings** occupy a position of exceptional importance for Registered Valuers. Among these, replies to Show Cause Notices (SCNs) and other written representations submitted during disciplinary proceedings under the Companies (Registered Valuers and Valuation) Rules, 2017 constitute the most formal and consequential forms of pleading by a valuer. Almost every month, notifications are issued by the regulatory authority reporting disciplinary actions initiated or taken against Registered Valuers on the basis of SCNs and their written submissions, as well as physical appearances before the regulator. Unlike valuation reports or affidavits filed in insolvency proceedings, disciplinary pleadings are addressed directly to the regulator or the disciplinary authority and are expressly scrutinised for both professional competence and ethical conduct.

From a jurisprudential perspective, the reply to an SCN functions as a defensive pleading. It is the document through which the Registered Valuer places his version of material facts, professional justification, and mitigating circumstances on record. The disciplinary authority's final order invariably recites the contents of the SCN, the valuer's written reply, and the authority's evaluation of those pleadings. In this sense, the SCN reply defines the scope of adjudication in a manner analogous to a written statement in civil procedure, a principle implicitly supported by general pleading jurisprudence.

The Valuer Rules impose a distinctive discipline on such pleadings. The allegations in an SCN typically relate to breaches of Rule 8 (Conduct of Valuation), non-compliance with valuation standards, lack of independence, inadequacy of disclosures, or violation of the Code of Conduct for Registered Valuers. Consequently, the reply must be confined to material facts and professional explanations directly responsive to the charges. Assertions unrelated to the alleged misconduct, rhetorical narratives, or criticism of the regulator are not only irrelevant but may aggravate the authority's perception of non-compliance. This pleading discipline flows directly from the objective of the Valuer Rules, which emphasise transparency, accountability, and professional restraint.

Written representations submitted during disciplinary proceedings - whether in response to supplementary notices, directions of the Disciplinary Committee, or queries raised during hearings - serve as continuing pleadings. They do not create a fresh cause of action or defence, but rather supplement and clarify the original reply to the Show Cause Notice (SCN). Importantly, consistent with settled principles of pleadings, facts or explanations not disclosed in the valuation report are ordinarily viewed with suspicion if raised at a later stage, unless supported by cogent and convincing reasons. For instance, in the RV Veer Singh case (*SCN No. RV-13012/1/2023-IBBI/375/708, dated 20 September 2024*), the Registered Valuer produced copies of his working papers indicating that he had made market inquiries with three different individuals regarding land values. However, as these inquiries were not disclosed in the valuation report, the authority accorded no evidentiary weight to them, treating such disclosure as a possible afterthought. Disciplinary orders issued by Registered Valuers Organisations (RVOs) and regulators consistently demonstrate that contradictions between the valuation report, the SCN reply, and subsequent representations are frequently relied upon as indicators of lack of due diligence or post facto justification.

The ethical dimension of disciplinary pleadings warrants special emphasis. The Code of Conduct for Registered Valuers mandates integrity, fairness, objectivity, and cooperation with regulatory authorities, and these obligations apply with heightened force in disciplinary pleadings. Where warranted, candid admissions of inadvertent error are often viewed more favourably than strained defences of indefensible positions. Conversely, evasive replies or selective disclosures may themselves be construed as independent violations of professional conduct. This principle is clearly illustrated by two disciplinary orders – first, the RV Veer Singh case (SCN No. RV-13012/1/2023-IBBI/375/708, dated 20 September 2024), and second, the RV S. J. Ranganatha case (SCN No. RV-13012/1/2023-IBBI/368/551, dated 9 August 2024). In the former case, the Registered Valuer was suspended for three months, whereas in the latter, the proceedings were disposed of with a direction to the Registered Valuer to exercise greater care in the preparation of valuation reports. Regulatory jurisprudence thus reinforces the proposition that disciplinary pleadings are not merely legal defences, but ethical documents reflecting the valuer's professional judgement, integrity, and maturity.

In conclusion, replies to Show Cause Notices and written representations submitted under the Valuer Rules, 2017 constitute regulatory and disciplinary pleadings of the highest order. They define the boundaries of disciplinary adjudication, bind the Registered Valuer to a professional narrative, and serve as the principal basis for regulatory findings. Mastery of this form of pleading is therefore an indispensable skill for today's Registered Valuers, integral to professional survival and institutional credibility within the regulated valuation framework.

## APPEARANCE

In the regulated insolvency ecosystem under the Insolvency and Bankruptcy Code, 2016 (IBC), the concept of "**appearance**" by a Registered Valuer has undergone a decisive normative shift - from an incidental professional interaction to a statutorily recognised and functionally necessary act within the insolvency resolution process. This shift is most explicitly reflected in Regulation 35(1)(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as amended, which mandates that *the resolution professional shall facilitate a meeting in which the registered valuers are required to explain the methodology adopted for arriving at valuation to the members of the Committee of Creditors (CoC), before the computation of estimates*.[4] This proviso is of profound significance: it constitutes a clear legislative acknowledgment that valuation under IBC is not complete upon submission of a report, but requires personal appearance and explanation by the valuer within the decision-making forum.

This statutory recognition places "appearance" at the heart of modern valuation practice under IBC. It makes it evident that valuation is not merely a document-centric exercise but a dialogic and adjudicatory process, wherein the valuer is expected to stand by his methodology, explain

*4. Insolvency and Bankruptcy Board of India, Insolvency Resolution Process for Corporate Persons Regulations, 2016, reg. 35(1)(a) proviso (as amended).*

professional judgment, and respond to informed questioning by economically interested stakeholders. The appearance contemplated under Regulation 35 is not adversarial; it is explanatory, anticipatory, and preventive - designed to ensure that valuation methodologies are understood, interrogated, and accepted before they crystallise into figures with binding legal and financial consequences. In this sense, appearance becomes an integral extension of the valuation process itself, rather than a post-dispute phenomenon.

Beyond this explicit statutory instance, the necessity of appearance by Registered Valuers arises more broadly from the quasi-judicial character of proceedings before the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). These fora adjudicate matters involving approval of resolution plans, determination of liquidation values, and examination of avoidance transactions under sections 43 to 51 of the IBC, all of which are profoundly valuation-dependent. Where valuation methodology, assumptions, or conclusions are questioned, the valuer may be required to appear personally to aid the adjudicating authority. Such appearance is governed by tribunal rules, procedural discipline, and principles of natural justice, rather than by adversarial advocacy norms.

It is essential to distinguish the appearance of a Registered Valuer from that of a legal practitioner. A valuer does not appear as an advocate or representative of a party, but as an independent expert or professional witness, owing a primary duty to the tribunal and the statutory framework rather than to the appointing authority or stakeholder. Judicial precedent consistently underscores that *the role of an expert is to assist the adjudicating body with specialised knowledge, not to advance partisan interests*[5]. Accordingly, appearance by a valuer is characterised by restraint, neutrality, and fidelity to professional standards. Persuasion yields to explanation; argument yields to clarification.

The procedural framework further reinforces this limited yet critical role. Under the NCLT Rules, 2016 and NCLAT Rules, 2016, tribunals are empowered to call for explanations, documents, and personal attendance where necessary for effective adjudication. When a Registered Valuer appears pursuant to such directions, the appearance is implicitly governed by principles analogous to examination of expert witnesses under the Code of Civil Procedure, 1908, particularly those relating to consistency with the record and truthfulness of statements. Oral explanations are therefore not autonomous narratives but must remain strictly tethered to the valuation report and written pleadings already on record.

Appearance also acquires a distinct regulatory dimension in disciplinary proceedings under the Companies (Registered Valuers and Valuation) Rules, 2017. Rules 15 to 17 envisage a structured process involving issuance of show cause notices, consideration of written replies, and grant of an opportunity of being heard [8]. The oral hearing provided in such proceedings constitutes a formal appearance before the disciplinary authority or committee, and its purpose is limited to clarification and response within the framework of the written pleadings. Regulatory orders demonstrate that oral submissions are evaluated in conjunction with valuation reports and written representations, and that inconsistencies or overreach during appearance often attract adverse observations.

From a jurisprudential standpoint, appearance does not permit the creation of new pleadings. Courts have repeatedly affirmed that oral submissions cannot substitute for or expand upon written pleadings, nor can they introduce facts not previously placed on record[6]. Applied to valuation practice, this principle implies that a Registered Valuer cannot cure deficiencies in a valuation report through oral explanation, nor retrospectively justify undisclosed assumptions during appearance. Any such attempt risks being construed as post-facto rationalisation, undermining both professional credibility and regulatory compliance.

Many believe, the express recognition of valuers' appearance obligations under Regulation 35 marks a watershed moment in the evolution of valuation as a regulated profession in India. It signals a departure from purely document-based valuation towards a model of accountable professional engagement. Appearance thus emerges as a substantive professional competence, inseparable

5. *Supreme Court of India, State of H.P. v. Jai Lal, (1999) 7 SCC 280.*

6. *Supreme Court of India, Union of India v. Ibrahim Uddin, (2012) 8 SCC 148.*

from technical valuation skills. Mastery of appearance - understood as disciplined professional explanation within adjudicatory and regulatory fora - is therefore essential for sustaining individual credibility and institutional trust in the valuation profession.

It is now essential for a Registered Valuer to acquire the skills of expert witnessing and to develop certain core professional qualities, including:

(i) in-depth knowledge of the subject matter;

(ii) the patience to listen to others;

(iii) the composure to remain undisturbed by irrelevant or extraneous questions;

(iv) effective oral communication skills; and

(v) overall reasonableness and balance in approach.

Further, a Registered Valuer, while acting as an expert witness, must remain vigilant against the following common pitfalls:

(a) sloppiness or lack of preparation;

(b) making remarks that portray the expert as an advocate rather than an independent professional;

(c) improperly stating opinions, including the excessive use of hedging expressions such as "may," "could," or "possible" while expressing professional conclusions;

(d) lack of clarity or conciseness in oral or written statements;

(e) failure to articulate reasons supporting the opinion expressed;

(f) failure to list or identify documents and data relied upon; and

(g) failure to personally review and take responsibility for the valuation report.

It is also essential that a Registered Valuer, prior to appearance before any judicial, quasi-judicial, or disciplinary forum, internalise and practise the well-recognised Seventeen Golden Rules of Testifying, which may be summarised as follows:

- First: An expert witness should tell the truth simply and directly.
- Second: An expert witness should remain strictly within his or her area of expertise.
- Third: If the expert does not know the answer to a question, the appropriate response is, "I do not know."
- Fourth: An expert witness should meticulously prepare for cross-examination.
- Fifth: An expert witness should not argue with counsel.
- Sixth: An expert witness should not appear arrogant, hostile, or condescending.
- Seventh: An expert witness should pause briefly before responding to a question.
- Eighth: An expert witness should not exaggerate, speculate, or guess.
- Ninth: An expert witness should remain calm, composed, and self-controlled at all times.
- Tenth: An expert witness should actively and attentively listen to each question.
- Eleventh: All facts and data should be clearly understood and reconciled before taking the stand.
- Twelfth: An expert witness should employ accepted and recognised methodologies.
- Thirteenth: If interrupted, the expert witness should seek to complete the answer appropriately.
- Fourteenth: When questioned about a document, an expert witness should request to see the document before responding.
- Fifteenth: An expert witness should avoid the use of slang or informal language.

- Sixteenth: Prevention is ninety-five per cent of the professional battle.
- Seventeenth: An expert witness should be prepared to respond appropriately if opposing counsel commits a material error.[7]

Therefore, appearance for Registered Valuers under the IBC and the Valuer Rules is not a procedural afterthought but a legislatively and jurisprudentially grounded professional responsibility. Anchored in statutory mandates such as Regulation 35, governed by tribunal rules and principles of natural justice, and constrained by ethical obligations, appearance represents the point at which valuation practice is most visibly tested against the expectations of law. Within the broader construct of pleading and appearance, it is appearance that ultimately determines whether a valuer can confidently and credibly stand by his professional judgment when it matters most.

## CONCLUSION

In conclusion, pleading and appearance have emerged as integral professional competencies for Registered Valuers operating within the statutory framework of the Insolvency and Bankruptcy Code, 2016. Valuation today no longer ends with the submission of a report; it extends into a continuum of technical pleadings, regulatory explanations, and disciplined personal appearances before stakeholders, tribunals, and regulators. The valuation report operates as the primary technical pleading, while affidavits, written submissions, and disciplinary responses function as supporting and regulatory pleadings that bind the valuer to a consistent professional narrative. Appearance, whether before the Committee of Creditors, the NCLT/NCLAT, or disciplinary authorities, constitutes the ultimate test of valuation competence, ethical integrity, and professional maturity. Mastery of pleading and appearance is therefore indispensable for the contemporary Registered Valuer.

*REFERENCES*


| | |
|---|---|
| [1] | D. F. Mulla, The Code of Civil Procedure, 19th ed. Gurugram, India: LexisNexis, 2017, pp. 852–855. |
| [2] | D. R. Suplee and D. S. Donaldson, The Deposition Handbook. Herndon, VA, USA: American Society of Appraisers. |
| [3] | Government of India, The Insolvency and Bankruptcy Code, 2016, as amended, New Delhi, 2016. Available: Ministry of Law & Justice / India Code. |
| [4] | H. C. Black, Black's Law Dictionary, 11th ed. St. Paul, MN, USA: Thomson Reuters, 2019, p. 1337. |
| [5] | Insolvency and Bankruptcy Board of India, Code of Conduct for Registered Valuers, issued under the Companies (Registered Valuers and Valuation) Rules, 2017. |
| [6] | Insolvency and Bankruptcy Board of India, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27 and 35, as amended. |
| [7] | J. H. Baker, An Introduction to English Legal History, 5th ed. Oxford, U.K.: Oxford University Press, 2019, pp. 93–96 |
| [8] | M. C. Sarkar and S. C. Sarkar, Sarkar's Law of Civil Procedure, 11th ed. New Delhi, India: LexisNexis, 2016, pp. 675–678. |
| [9] | Ministry of Corporate Affairs, Companies (Registered Valuers and Valuation) Rules, 2017, notified 18 Oct. 2017 and subsequent amendments. Available: MCA / IBBI portals. |
| [10] | Ministry of Corporate Affairs, Companies (Registered Valuers and Valuation) Rules, 2017, r. 8(3). |
| [11] | Supreme Court of India, State of H.P. v. Jai Lal, (1999) 7 SCC 280. |
| [12] | The Code of Civil Procedure, 1908 (Act No. 5 of 1908), Government of India, s. 2(1). |
| [13] | Union of India v. Ibrahim Uddin, (2012) 8 SCC 148, Supreme Court of India. |


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*7. D. R. Suplee and D. S. Donaldson, The Deposition Handbook. Herndon, VA, USA*

# REDEFINING LIQUIDATION: THE IBC AMENDMENT BILL, 2025 AND THE SHIFT TO VALUE REALIZATION

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## BACKGROUND

The Insolvency and Bankruptcy Code (IBC) of 2016 was enacted to address India's long-standing challenges in managing financial distress, some of them can be characterized by inefficient insolvency resolution, low recovery rates, and a culture of delayed payments. The Insolvency and Bankruptcy Code (IBC) of 2016 was aimed to consolidate and amend the plethora of existing laws relating to reorganization and insolvency resolution, introducing a unified, time-bound, and market-driven framework.

The Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) initiates upon admission of an insolvency application. CIRP aims to revive the distressed corporate debtor by finding a resolution plan acceptable to the Committee of Creditors (CoC) within a strict 330-day timeline, including extensions. During CIRP, a moratorium prevents creditors from enforcing claims individually, preserving the debtor's assets. The Resolution Professional manages the debtor's affairs and facilitates creditor consultation. The CoC evaluates resolution plans, approving one with at least 66% voting share. If approved, the resolution plan is executed, enabling business continuity. Failure to approve results in liquidation proceedings, where assets are sold to repay creditors. Liquidation involves appointing a liquidator to realize assets.

Thus, under the Insolvency and Bankruptcy Code, 2016 (IBC), liquidation has historically been seen as a last resort or an indication of unsuccessful attempts at resolution. When a resolution (CIRP) proved unattainable or failed, then it highlights the official end of a company's life cycle. But the proposed Insolvency and Bankruptcy Code (Amendment) Bill, 2025 seeks to completely rethink liquidation era, turning it from a state of residual failure into a methodical, profitable process of value realization. The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 transforms liquidation into an active instrument intended to optimize recoveries and maintain economic value by introducing strong procedural timelines, improved creditor control, distinct distribution prioritization, and enhanced recovery powers.

## THE IMPERATIVE FOR REFORM: WEAKNESSES IN THE CURRENT LIQUIDATION PROCESS

Before analysing the reforms, it is crucial to understand the challenges plaguing the existing liquidation framework (under the IBC, 2016):

1. **The Value Erosion Problem**

   Liquidation, by its nature, involves the breaking up and sale of assets, which often leads to a "fire sale" discount compared to a going-concern sale. This value erosion is severely compounded by delays. The current Code lacks explicit, strict timelines for the liquidation process, leading to protracted proceedings – often lasting years – during which the operational value of assets deteriorates, machinery rusts, and market conditions change unfavourably.

2. **Lack of Commercial Drive**

   The existing process places the liquidator at the centre, advised by a Stakeholder Consultation Committee (SCC). Crucially, the liquidator is not bound by the advice of the SCC. This structure often results in a process that is procedural and bureaucratic rather than commercially driven.

Creditors (who bear the financial loss) lack the direct supervisory control necessary to compel a rapid and strategic sale, leading to misaligned incentives and slower asset disposal.

3. **Legal and Judicial Bottlenecks**

   Ambiguity regarding the priority of certain debts, particularly statutory government dues, created uncertainty in the distribution waterfall (Section 53). Furthermore, the frequent and often redundant need for judicial approval (from the NCLT) for simple operational decisions slows down the entire process, burdening the already overworked National Company Law Tribunal (NCLT).

4. **Difficulty in Asset Recovery**

   The window to scrutinize and overturn avoidance transactions (preferential, undervalued, or fraudulent transfers) was often too narrow, calculated from the date of admission of the insolvency plea. This allowed unscrupulous promoters to effectively dilute the value of the corporate debtor's estate between the application date and the commencement date.

   These systemic flaws underscored the need for a legislative intervention to transform liquidation into a swift, efficient, and commercially sensible process. The 2025 Amendment Bill addresses these head-on.

## KEY REFORMS: REDEFINING LIQUIDATION

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 introduces six pivotal reforms that collectively transform the liquidation stage.

1. **Enhanced Role of the Committee of Creditors (CoC)**

   A key reform is the elevation of the CoC's role from mere consultation to direct supervision during liquidation. The Bill proposes that the CoC assumes powers similar to those held during the Corporate Insolvency Resolution Process (CIRP).

   - **Supervisory Authority**: Unlike the existing system, where liquidators only consult the Stakeholder Consultation Committee (SCC) without binding obligations, the CoC now has definitive supervisory and decision-making authority. This includes guiding the liquidation strategy, approving key decisions regarding the sale of assets, and ensuring that creditor interests drive the course of proceedings.
   - **Accountability in Appointment**: The Bill empowers the CoC to appoint or replace the liquidator with a significant majority – typically a 66% voting share approval. This imposes a direct accountability framework, ensuring liquidators align their performance with creditor expectations, reducing delays caused by underperforming professionals, and ensuring the process remains commercially driven and responsive to market realities, rather than purely procedural.

2. **Fixed and Non-Negotiable Timelines for Completion**

   Delays in liquidation proceedings have long been the primary cause of eroded recoveries. To tackle this, the Amendment Bill mandates strict, fixed timelines:

   - **180-Day Mandate**: The entire liquidation process must be completed within 180 days from the commencement order.
   - **Limited Extension**: Only a single extension of up to 90 days may be granted in exceptional cases upon the liquidator's application, making the total maximum duration 270 days.
   - **NCLT Timeline**: Furthermore, the NCLT is required to pass the liquidation commencement order within 30 days of receiving the application or intimation for liquidation, addressing institutional delays at the adjudication stage.

This strict timeline framework fosters operational discipline, incentivizes prompt sale or assignment of assets (potentially on a going-concern basis), and mitigates the value erosion typical in extended processes.

3. **Moratorium Extension and Option to Restore CIRP**

   The Bill makes strategic changes to the legal protection afforded to the debtor:

   - **Comprehensive Moratorium**: The Bill expands the moratorium's coverage to encompass all proceedings during liquidation, including litigation and enforcement actions. This "umbrella moratorium" prevents piecemeal creditor actions that fragment asset value and ensures the entire estate can be managed cohesively. Such a comprehensive stay supports higher recoveries by allowing liquidators to maximize returns from the consolidated estate.

   - **Restoration of CIRP (The Reversal Clause)**: Uniquely, the Bill introduces a provision for restoring CIRP from liquidation. This allows a one-time reversal back to the resolution phase up to 120 days after the liquidation order, subject to a 66% CoC majority approval and NCLT order. This provides crucial flexibility to revisit resolution prospects when market conditions improve or new bidders emerge, preventing immediate and irreversible business shutdowns. This treats liquidation as a reversible intermediary instead of an irredeemable outcome.

4. **Clarity on Government Dues in Distribution Waterfall**

   The issue of government dues has been a significant point of legal contention, particularly following the Supreme Court's "Rainbow Papers" judgment (2022), which considered certain statutory government dues as secured debts with high priority.

   - **Legislative Override**: The Amendment Bill explicitly legislates that 'security interest' applies only to rights created by mutual contractual agreement (e.g., mortgage, hypothecation) and not to statutory dues (like tax demands or other government levies).

   - **Reinstatement of Priority**: This reform effectively deprioritizes government claims in liquidation distribution, placing them firmly behind secured financial creditors. It reinstates certainty and fairness in the waterfall (Section 53), ensuring private creditors' recoveries are not compromised by disproportionate government claims, aligning with the Code's core creditor hierarchy principles.

5. **Efficient Claim Management**

   To streamline liquidation, the Bill proposes reusing the verified claim list from the CIRP.

   - **No Fresh Invitation**: The liquidator is no longer required to invite and verify a fresh list of claims. Instead, they are empowered to maintain and update the list finalized during the CIRP.

   - **Reduced Friction**: This avoids the administrative and procedural burdens of creating and verifying a new claims list, leading to faster claim resolution and reduced litigation. This measure avoids operational delays and redundant procedural wrangling, accelerating creditor payouts.

6. **Widened Scope for Scrutiny of Avoidance Transactions**

   Avoiding transactions that dilute the insolvency estate (preferential, undervalued, or fraudulent transfers) is key to maximizing recovery.

   - **Extended Look-Back Period**: The Amendment Bill extends the look-back period for scrutiny from the insolvency commencement date (date of admission) to the date of filing of the CIRP application. This wider window is critical for capturing suspect transactions that occur during the often-lengthy period between the initial application and the formal admission of the case.

- **Liquidator's Power**: Liquidators are explicitly granted powers to initiate applications against fraudulent or wrongful trading (Sections 66/67), backed by judicial oversight for scrutiny. The enhanced powers and extended look-back period bolster asset recovery efforts, safeguarding creditor interests by reclaiming value that might otherwise dissipate.

## COMPARATIVE ANALYSIS: GLOBAL BEST PRACTICES

The reforms proposed in the IBC Amendment Bill, 2025, bring India's liquidation framework closer to global best practices, particularly those observed in mature insolvency regimes like the United States and the United Kingdom.

1. **Focus on Creditor Control (US Chapter 11/UK Administration)**

   - **US Chapter 7 (Liquidation)**: While Chapter 7 is liquidation, the US system emphasizes debtor-in-possession (DiP) in Chapter 11 (Reorganization), which is overseen intensely by creditor committees. The proposed IBC reform of empowering the CoC during liquidation mirrors the strong fiduciary duty and oversight role of creditor committees in successful regimes, ensuring that the primary financial stakeholders drive the commercial decisions.

   - **UK Administration**: The UK process often utilizes an Administrator who is appointed by the creditors and whose primary duty is to act in the interests of the creditors as a whole. The new IBC provision allowing the CoC to appoint/replace the liquidator (with 66% majority) instils a similar level of accountability to the appointing body.

2. **Time-Bound Liquidation (Singapore and South Korea)**

   Many successful jurisdictions impose strict time limits to prevent value erosion. The new 180-day mandate (with a 90-day extension) is aggressive and aims to match the efficiency of systems that prioritize rapid asset disposal to maximize the time value of money and assets. This move is crucial for improving India's ranking on the 'Resolving Insolvency' parameter in the World Bank's Ease of Doing Business Index (though this index is currently discontinued, the principle of speed remains a key indicator of commercial environment quality).

3. **Clarity in Priority Waterfall**

   The move to legislatively overturn the Rainbow Papers judgment aligns the IBC more closely with the absolute priority rule (APR) principles, as used in global finance. By strictly defining 'security interest' as purely contractual, the Bill protects the expectations of private financial creditors, who lend money based on the promise of secured recourse. This certainty is vital for attracting foreign direct investment and strengthening the bond market.

## ECONOMIC AND SYSTEMIC IMPACT ON STAKEHOLDERS

The collective impact of these reforms extends far beyond procedural changes, promising significant positive consequences across the Indian economic ecosystem.

1. **Impact on Creditors (Financial and Operational)**

   - **Higher Recoveries**: Strict timelines and CoC supervision will compel faster and more strategic asset sales, mitigating value erosion and leading directly to higher recovery rates.

   - **Increased Certainty**: The clarification on government dues provides predictability in the distribution waterfall, allowing financial creditors to price their risk more accurately and rely on their secured status.

   - **Stronger Governance**: Creditors gain stronger governance tools to monitor and influence proceedings, ensuring liquidators are acting diligently and transparently.

2. **Impact on Liquidators and Insolvency Professionals (IPs)**

- **Mandate for Speed**: Liquidators now face firm deadlines, demanding increased professionalism, efficiency, and the proactive use of technology for claim and asset management. This may necessitate greater use of e-auctions and packaged sales (going concern or slump sales).
- **Clearer Mandate**: The expanded powers regarding avoidance transactions provide a clearer mandate for asset recovery, backed by judicial oversight.

3. **Impact on Promoters and Debtors**

- Discouraging Delays: The strict timelines and enhanced scrutiny of avoidance transactions discourage strategic defaults and dilatory tactics by unscrupulous promoters who previously sought to benefit from protracted proceedings.
- Second Chance: The provision for the restoration of CIRP from liquidation offers a genuine, albeit limited, second chance for viable businesses caught in the system, provided there is creditor majority support for a resolution.

4. **Macroeconomic Impact**

- **Capital Unlock**: Quicker liquidations with better asset realization unlock capital trapped in non-performing assets (NPAs). This enhances bank liquidity, frees up capital for reinvestment, and supports the overall credit market.
- **Investor Confidence**: Feasible timelines and clear rules on priority boost domestic and international investor confidence in India's legal and business environment. The reforms significantly improve the perception of contract enforcement, improving India's overall ranking as a business-friendly jurisdiction.

## IMPLEMENTATION CHALLENGES AND WAY FORWARD

While the Bill is a significant step forward, its success will hinge on effective implementation, which presents its own set of challenges.

1. **NCLT Capacity and Judicial Interpretation**

- **Workload**: The NCLT is already burdened. While the 30-day timeline for passing the liquidation order is positive, the courts must have the capacity and resources to adhere to it consistently. Any delays in the NCLT will directly impact the 180-day liquidation clock.
- **New Litigation**: The restoration of CIRP clause, while beneficial, might open a new avenue for litigation if unsuccessful promoters or dissenting creditors challenge the CoC's decision to restore or not restore the resolution process.

2. **Market Readiness for Speedy Sales**

- The 180-day timeline is extremely aggressive for large, complex cases involving vast real estate or intricate operational assets. The market may not always be ready to absorb such assets in a short period, potentially leading to forced sales at lower valuations, counteracting the goal of maximizing recovery. Liquidators will require sophisticated marketing and asset-packaging skills.

3. **Role of the IBBI**

- The Insolvency and Bankruptcy Board of India (IBBI) will play a critical role in enforcing compliance with the stricter deadlines, monitoring the performance of liquidators, and issuing necessary regulations to clarify the operational aspects of the CoC's new supervisory powers. Clear guidelines on what constitutes "exceptional circumstances" for the 90-day extension are essential.

## CONCLUSION

The IBC Amendment Bill, 2025, fundamentally redefines liquidation from a residual failure state to an integral, value-driven phase of insolvency resolution. The enhanced CoC engagement, strict timelines, extended moratoriums, clearer claim and dues management, and powerful avoidance controls collectively aim to elevate liquidation as a time-efficient, commercially grounded process.

These reforms signify a proactive move by the legislature to address the practical deficiencies of the Code's liquidation framework. By aligning the process with the principles of speed, efficiency, and creditor control, the Bill promises better creditor recoveries, faster resolution of distressed assets, and preservation of enterprise worth, thereby substantially strengthening the IBC as a comprehensive insolvency and bankruptcy framework in India. Its successful implementation is poised to be the next major milestone in India's journey toward an effective economic closure mechanism thereby contributing significant to Growth cells to Economy of India.

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# REDEFINING RESOLUTIONS: IBC'S NEXT FRONTIER

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## INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 ("IBC" or "the Code") represents one of the most transformative legal reforms in India's economic history. Enacted in response to severe credit distress and fragmented, inefficient recovery mechanisms, the Code established a consolidated framework intended to promote time-bound resolution, maximize value, and balance stakeholder interests. The Supreme Court, in *Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17*, recognized the IBC as "a legislation which seeks to reorganize corporate debtors in a manner that ensures revival wherever possible," cementing the centrality of resolution over liquidation.

Over the years, the Code has evolved significantly, shaped by judicial interpretation, legislative amendments, and practical market realities. As it completes nearly a decade of implementation, the discourse around insolvency has shifted from mere *resolution* to *value maximization*, *stakeholder protection*, and *systemic resilience*. Today, the Code stands at a crucial juncture its "next frontier" where policy choices, market innovations, and enforcement efficiency will determine its future trajectory.

While the IBC has brought landmark changes by instilling credit discipline and creating a time-bound mechanism for resolving insolvency, several structural and operational challenges have also surfaced. These include delays in the admission of cases, prolonged resolution timelines, shrinking pool of viable bidders, frequent litigations, and the increasing tendency for liquidation. At the same time, new opportunities have emerged through asset reconstruction mechanisms, pre-pack insolvency models, cross-border insolvency considerations, group insolvency frameworks, and the growing role of distressed asset funds. Understanding this evolving landscape is crucial for identifying the Code's next phase of evolution and the strategic reforms necessary to position India as a mature insolvency jurisdiction.

This article argues that the next frontier of the IBC lies in **redefining "resolution"** itself – from a procedural exercise or recovery mechanism **to a dynamic, market-based, multi-stakeholder process aimed at sustainable business revival.** Drawing on jurisprudence, committee reports, international best practices, and empirical studies, the article proposes a forward-looking framework for IBC 2.0.

## EVOLUTION OF THE IBC FRAMEWORK: THE ORIGINAL INTENT AND CHANGING LANDSCAPE

### Pre-IBC Landscape: The Need for Reform

Prior to 2016, insolvency in India was governed by a patchwork of statutes including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). These frameworks suffered from:

- **Delays and overlapping jurisdictions**
- **Debtor-friendly provisions, particularly under SICA**
- **Weak enforcement mechanisms**
- **Lack of a unified insolvency philosophy**

The Bankruptcy Law Reforms Committee (BLRC) Report (2015) famously described the pre-IBC system as "a highly fragmented, contradictory, and ineffective regime." The BLRC recommended a modern, creditor-driven, time-bound insolvency process that eventually formed the basis of the IBC.

**Foundational Phase (2016-2019)**

When the IBC was enacted, its primary focus was to ensure the survival of distressed businesses through resolution plans that would preserve value and revive operations. The law's time-bound framework, coupled with the shift of control from debtor to creditor, was intended to correct the inefficiencies of the earlier regime. For the initial few years, the Code delivered strong outcomes NCLT admission was relatively swift, Committee of Creditors (CoC) activity was focused, and several marquee resolutions such as Essar Steel and Bhushan Steel showcased recovery beyond expectations.

**Maturity Phase and Emerging Challenges (2019-2024)**

However, as the number of cases increased, the system began facing pressures. The NCLT infrastructure struggled with capacity constraints, resulting in delays at every stage – from admission to approval of resolution plans. Lenders grew cautious due to fears of post-approval litigation and personal liability. Meanwhile, the number of viable applicants willing to acquire stressed assets diminished due to legacy issues, compliance burdens, and challenges in reviving deeply insolvent companies. This prompted the insolvency market to mature and expand beyond classical Corporate Insolvency Resolution Processes (CIRP), giving rise to pre-packs, asset-level resolutions, and hybrid distress solutions.

**The Challenge of Timelines and Delays**

Timeliness is the backbone of the IBC. The legislature envisioned a 180-day resolution period (extendable to 330 days), ensuring speedy outcomes. Yet, empirical data indicates that the average resolution timeline has crossed 600 days in many cases due to admissions, litigations, and operational complexities. One of the primary reasons is the rising number of appeals at NCLAT and the Supreme Court, often on issues related to eligibility, distribution of proceeds, and treatment of claims.

The Supreme Court has repeatedly emphasized the importance of adhering to timelines, but practical constraints continue to persist. Delays erode asset value, discourage bidders, and disrupt the confidence of creditors. Hence, the next frontier for the IBC must address procedural bottlenecks through structural augmentation of NCLT benches, streamlined case-management systems, and greater use of technology such as AI-assisted claim verification and digital case monitoring.

**Redefining the Role of Resolution Applicants**

The success of any resolution framework depends on the strength and diversity of resolution applicants. Initially, a wide range of investors, including steel majors, infrastructure players, and global funds, participated in the bidding process. Over time, interest gradually declined, primarily due to prolonged litigation, unpredictable timelines, legacy liabilities associated with environmental and statutory dues, and challenges in taking operational control post-acquisition.

As the market matures, the next phase will require redefining how applicants engage with the insolvency ecosystem. This includes clear protection against unforeseeable liabilities, faster statutory clearances post-approval, and a transparent due-diligence environment. Encouraging sector-specific investors and enabling cross-border participation through a robust international insolvency regime will be essential for revitalizing investor confidence.

This evolution is not only necessary for safeguarding value but also for ensuring that the Code remains investor-friendly and globally competitive.

**Balancing Resolution and Liquidation**

One of the most significant concerns in recent years is the rising number of liquidations compared to successful resolutions. Data suggests that a substantial percentage of companies entering the insolvency framework ultimately end up in liquidation, often due to late admission of cases, inadequate assets, or lack of market interest. Most of these companies are already defunct by the time they enter CIRP, making revival impractical.

The next frontier for the IBC must strengthen early-warning systems and promote pre-insolvency restructuring mechanisms. This includes mediation, out-of-court settlements, and RBI-driven frameworks that can address stress before it turns irreversible. Simultaneously, liquidation should evolve to become more efficient, allowing for partial business continuity, asset-level sale, or going-concern liquidation where feasible. Preserving jobs and safeguarding economic value should remain guiding principles throughout the process.

**Pre-Packaged Insolvency: The Next Big Step**

The introduction of the pre-packaged insolvency resolution process (PPIRP) marked a significant milestone for the IBC, particularly for MSMEs. Unlike traditional CIRP, pre-packs allow stakeholders to negotiate a resolution plan before formal admission, ensuring speed and minimal disruption. While the MSME focused model has gained attention, experts have highlighted the potential of extending pre-packs to larger corporates with appropriate safeguards.

Pre-packs represent an opportunity to minimize litigation, reduce costs, and maintain confidentiality. They also allow promoters to play a more constructive role in the revival of their enterprises. As India aspires to build a sophisticated insolvency ecosystem, an expanded pre-pack framework, supported by strict oversight and transparent valuation norms, can serve as a powerful tool for early resolution.

**The Rise of Distressed Asset Investors**

Another dimension of the IBC's evolution is the emergence of liquidity sources for distressed companies' private equity, asset reconstruction companies (ARCs), alternative investment funds (AIFs), and sovereign wealth funds. These investors are increasingly playing a larger role in acquiring or financing stressed assets, either through CIRP or outside the IBC. Their participation brings global expertise, better capital infusion, and a more sophisticated restructuring strategy.

For this investor segment to thrive, the regulatory ecosystem must offer clarity on issues such as debt assignment, priority of claims, tax implications, and exit rights. Promoting a stable and predictable environment that facilitates both competitive bidding and debt aggregation will be crucial in attracting high-quality investors.

**Cross-Border Insolvency: An Unfinished Chapter**

In an interconnected global economy, cross-border insolvency is no longer optional – it is essential. Indian companies increasingly have assets, creditors, and subsidiaries overseas, raising complex legal questions during insolvency. While the IBC has enabling provisions for cross-border insolvency under Sections 234 and 235, a comprehensive framework based on the UNCITRAL Model Law is still pending formal adoption.

The next frontier must prioritize a seamless mechanism for recognizing foreign insolvency orders, coordinating parallel proceedings, and ensuring protection of assets across borders. This will not only enhance India's reputation as a jurisdiction aligned with global standards but also provide much-needed clarity to multinational creditors and debtors.

**Operational vs. Financial Creditors: Evolving Equilibrium**

The landmark **Essar Steel** judgment laid down the principle of "equality does not mean uniformity" and upheld the commercial wisdom of the CoC. While this strengthened the decision-making powers of financial creditors, it also raised concerns about the rights of operational creditors, particularly in cases where they received nominal or zero recovery. The jurisprudence continues to evolve as courts attempt to strike a balance between commercial wisdom, fairness, and judicial scrutiny.

Going forward, the system must ensure that operational creditors have access to timely payments, transparent claim verification, and equitable treatment during distribution. A future-ready insolvency framework should not only preserve rights but also foster trust among all classes of creditors.

**Group Insolvency and Consolidated Resolution**

Large corporate groups often function through a network of subsidiaries, associates, and SPVs. Treating each entity in isolation during insolvency makes resolution extremely difficult. Countries like Singapore, the UK, and the US have adopted group insolvency frameworks that enable collective proceedings, coordinated decision-making, and consolidation of assets and liabilities where appropriate.

India has initiated work in this direction, and pilot frameworks are under consideration. Implementing group insolvency will be a transformative reform that aligns the IBC with global best practices, enabling smoother restructuring of large conglomerates and infrastructure businesses.

**Technology as a Catalyst for the Next Phase**

The future of insolvency resolution in India will be heavily shaped by technology. Digital insolvency platforms, AI-enabled claim verification, automated data collection from statutory authorities, and real-time dashboards for monitoring progress can significantly improve efficiency. The adoption of smart contracts and blockchain-based asset tracking can also minimize disputes related to inventories, receivables, and contractual obligations.

A technologically integrated IBC ecosystem will enhance transparency, reduce human errors, and strengthen institutional trust critical elements for the next frontier.

**The Road Ahead**

As the IBC stands at the threshold of its next phase, a holistic recalibration is essential. Strengthening institutional capacity, enhancing predictability in outcomes, encouraging investor participation, and introducing global-standard reforms will define the Code's evolution. The future lies in shifting the narrative from mere resolution to sustainable economic revival, where distressed assets are not merely liquidated but strategically redeployed to create value. The next frontier of the IBC will therefore be defined by its ability to blend legal robustness with practical adaptability, ensuring that the insolvency ecosystem remains resilient, forward-looking, and growth-oriented.

## CONCLUSION

The Insolvency and Bankruptcy Code has now reached a stage where the focus is shifting from merely completing resolution processes to enhancing the quality, consistency, and efficiency of outcomes. As India's insolvency ecosystem matures, the next frontier lies in reducing delays, strengthening market driven solutions, and ensuring that resolutions genuinely revive distressed businesses rather than simply achieve paper recoveries. With the emergence of specialised stakeholders, greater judicial clarity, and technological integration into insolvency proceedings, the IBC is gradually evolving into a more predictable and commercially aligned framework.

Going forward, a balanced approach one that protects creditor confidence while preserving enterprise value will determine how effectively the Code supports India's economic ambitions. The success of this next phase will depend not only on legislative refinements but also on disciplined implementation and sustained institutional capacity across tribunals, insolvency professionals, and financial creditors. Ultimately, the "next frontier" of the IBC is not about changing the law alone, but about transforming the culture of resolution into one that is timely, transparent, and truly value-maximising. The next frontier lies in redefining "resolution" not as a transactional debt recovery event, but as a holistic, preventive, market-based mechanism to revive distressed businesses and preserve economic value. With systematic strengthening of pre-insolvency frameworks, tribunal capacity, group insolvency rules, IP training, and distressed market depth, the IBC can evolve from a reactive insolvency law into a proactive engine of economic renewal.

*REFERENCES*


**Statutory Sources**

- Insolvency and Bankruptcy Code, 2016.
- IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- RBI Prudential Framework for Resolution of Stressed Assets (7 June 2019).
- Insolvency and Bankruptcy Board of India (IBBI) Annual Reports

**Judicial Decisions**

- Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.
- Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416.
- Supreme Court Judgment: *Committee of Creditors of Essar Steel v. Satish Kumar Gupta*(2019)

**Academic & Policy Literature**

- NCLAT and NCLT Case Analyses on Resolution Plans and Liquidation
- UNCITRAL Model Law on Cross-Border Insolvency
- RBI frameworks on restructuring and stressed asset resolution
- Ministry of Corporate Affairs Reports on IBC Reforms

**International Comparative Sources**

- U.S. Bankruptcy Code, Chapter 11.
- Singapore Insolvency, Restructuring and Dissolution Act, 2018.
- UK Corporate Insolvency and Governance Act, 2020.
- EU Directive on Preventive Restructuring (2019/1023).


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# COMPENDIUM OF SUPREME COURT DECISIONS ON 'LIMITATION' UNDER IBC REGIME

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## INTRODUCTION

*'Law of Limitation' is one the important aspect of any legal systems. On introduction of Insolvency and Bankruptcy Code, 2016, litigations sprouted in large numbers paved for insertion of Section 238A in the Code in 2018. Still the connected intricacies with 'limitation' brought series of litigations which went upto the Supreme Court. Hitherto, there are 18 Supreme Court important judgements on the matters connected with 'Limitation'. This Articles tries to consolidate all the decisions by the Apex Court in one place for the benefit of all Stakeholders.*

The law of limitation is a fundamental part of the justice system. It ensures fairness, prevents misuse of judicial processes, and promotes responsible and timely legal action. Once the limitation period expires, the right to seek a legal remedy in court is generally barred, even if the underlying right still exists. In India, these time periods are governed by the Limitation Act, 1963. Once the Insolvency and Bankruptcy Code (IBC), 2016 was enacted, the Courts were mounted with time claims, hence, an important amendment was brought by way of inserting Section 238A to incorporate the provisions of limitation for the IBC Matters.

The newly inserted Section 238A of IBC, (With effect from 6th June, 2018) reads as 'the provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.'

Though this insertion has rested on fundamental question of applicability of 'limitation' to the IBC matters, there were lots of intricate issues connected with limitation were decided by the Supreme Court India since, 2018. This Article tries to consolidate all those decisions under one place for the benefit of stakeholders of the IBC. The Cases in the Articles are arranged chronological manner for the users benefit. The Article tries to capture the crux of the each judgement of the Apex Court and anyone who wants to understand the full context of the judgement can always refer the respect judgements available in the public domain.

## KEY JUDGEMENTS

- In **B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates** decided on **11/10/2018** the Supreme Court held that the Limitation Act, 1963 applies to applications filed under Sections 7 and 9 of the Insolvency and Bankruptcy Code, 2016 from the inception of the Code. Article 137 is attracted, and the right to sue accrues when default occurs. Applications filed more than three years after default are barred unless delay is condoned under Section 5 of the Limitation Act.

  The Supreme Court held that the Insolvency Law Committee Report (March 2018) clarified that the intent of the Code was not to revive time-barred debts and that the law of limitation should apply to prevent the resuscitation of stale claims. The Committee recommended insertion of a specific section applying the Limitation Act to the Code.

  Limitation, being procedural, ordinarily applies retrospectively, except that a new law of limitation cannot revive a dead remedy. The intention of the legislature was to apply the Limitation Act to NCLT/NCLAT from the inception of the Code.

In this case, the Court examined the definitions in a detailed manner: Section 3(11) defines "debt" as a liability or obligation in respect of a claim which is "due". Section 3(12) defines "default" as non-payment of a debt that has become "due and payable". These terms refer to debts that are not time-barred.

Section 7 (financial creditor) and Section 8 (operational creditor) both use "default" in the same sense, i.e., non-payment of a debt due in law. The existence of a "dispute" or pendency of suit/arbitration under Section 8(2)(a) brings in the Limitation Act, as time-barred suits/arbitrations would be dismissed. The same meaning of "default" applies throughout the Code, so CIRP can only be initiated for debts not time-barred.

On the question, whether Section 433 of the Companies Act, 2013, applies the Limitation Act to proceedings under the Code before the NCLT/NCLAT, the Court clarified that Section 434 allows transfer of proceedings (including winding up) from District Courts/High Courts to the Tribunal. Such proceedings, being before courts, are governed by the Limitation Act. Upon transfer, the Limitation Act continues to apply. It cannot be that the Limitation Act applies to transferred cases but not to fresh applications under the Code.

- In **Vashdeo R Bhojwani Abhyudaya Co-Operative Bank Ltd & Anr** decided on **02/09/2019** the Supreme Court concluded that the application under Section 7 of the IBC was barred by limitation, as the default and the issuance of the Recovery Certificate occurred more than three years prior to the filing of the application, and Section 23 of the Limitation Act was inapplicable since the injury was complete upon issuance of the Recovery Certificate.

  Application under Section 7 of the IBC is governed by Article 137 of the Limitation Act; limitation commences from the date of default, and if the default occurred more than three years prior to the application, it is barred unless Section 5 applies. Section 23 of the Limitation Act, relating to continuing wrongs, is inapplicable where the injury is complete upon issuance of a Recovery Certificate. The appeal is allowed, and the orders of the NCLT and NCLAT admitting the Section 7 application are set aside as the claim is time barred.

- In **Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd & Anr** decided on **18/09/2019** the Apex Court held that Application under Section 7 of the IBC is governed by Article 137 of the Limitation Act, not Article 62; limitation period is three years from the date of default (NPA), and not from the date of commencement of the IBC; application filed beyond this period is time-barred.

  The Supreme Court held that Article 137 of the Limitation Act applies to applications under Section 7 of the Insolvency and Bankruptcy Code, and the limitation period begins from the date of default (NPA). The Section 7 application in this case, filed beyond three years from the date of default was time-barred, and the contrary findings of the NCLT and NCLAT were set aside.

- In **Jignesh Shah and Anr. v. Union of India and Anr**. decided on **25/09/2019** the Supreme Court held that with the introduction of Section 238A of the IBC, the Limitation Act applies to applications under the Code, and a winding up petition transferred to the NCLT as a Section 7 application under the IBC cannot be revived if it was already time-barred on the date of filing. The period of limitation for such petitions is three years from the date of default, and the pendency of a suit for recovery or specific performance does not extend or revive the limitation period for a winding up petition. On the facts, the winding up petition filed by IL&FS against La-Fin was held to be time-barred, and the orders of the NCLT and NCLAT admitting the petition were set aside. Civil Appeal allowed; winding up petition held time-barred.

- In **Sagar Sharma and Anr. v. Phoenix Arc Pvt. Ltd. and Anr**. decided on **30/09/2019**, the Supreme Court held that the limitation period for applications under Section 7 of the Insolvency and Bankruptcy Code, 2016, is governed by Article 137 of the Limitation Act, 1963, and not by the date of commencement of the Code or by Article 62, even where a mortgage exists. The impugned NCLAT judgment was set aside and the matter remanded for fresh determination in accordance with this principle.

- In **Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.** decided on **14/08/2020**, the Supreme Court held that the application under Section 7 of the IBC, filed by Respondent No. 2 in March 2018 with the date of default as 08.07.2011, is barred by limitation as per Article 137 of the Limitation Act. The Court rejected the applicability of the twelve-year limitation for mortgage suits and the argument that acknowledgment in balance sheets or OTS proposal could extend limitation in the absence of specific pleadings. The impugned orders of NCLT and NCLAT were set aside, the Section 7 application was rejected as time-barred, and all proceedings thereunder, including the appointment of the IRP, were annulled.
- In **Ms. Sagufa Ahmed & Ors. v. Upper Assam Plywood Products Pvt. Ltd. & Ors**. Decided on **18/09/2020,** the Apex Court held that the period of limitation of 45 days for filing an appeal under Section 421(3) commences from the date on which a copy of the NCLT order is made available to the aggrieved person; the Appellate Tribunal may condone delay up to a further 45 days only. The Supreme Court held that the benefit of the order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020, extending the period of limitation due to the COVID-19 pandemic, applies only to the prescribed period of limitation and not to the period up to which delay can be condoned by discretion. The appeals against the NCLAT's dismissal of the condonation application and the appeal as time-barred were dismissed.
- In **Reliance Asset Reconstruction Company Ltd. v. Hotel Poonja International Pvt. Ltd.** decided on **21/01/2021** the Supreme Court held that the Application under Section 7 of the IBC is governed by Article 137 of the Limitation Act; the right to sue accrues when default occurs, and if such default occurred more than three years prior to the application, the claim is time-barred – Section 18 of the Limitation Act applies only if a written acknowledgment of liability is made before expiry of the limitation period – On facts, no such acknowledgment was made within limitation, and the application was held barred – Appeal dismissed; no infirmity found in the NCLAT's order dismissing the Section 7 application as time-barred.
- In **Sesh Nath Singh and Anr. v. Baidyabati Sheoraphuli Co-Operative Bank Ltd and Anr., Sesh Nath Singh v. Baidyabati Sheoraphuli Cooperative Bank Ltd** decided on **22/03/2021** The Supreme Court held that the provisions of the Limitation Act, 1963, including Sections 5 and 14, apply to proceedings under Section 7 of the IBC before the NCLT/NCLAT, as far as may be, by virtue of Section 238A of the IBC; exclusion of time under Section 14 is available for bona fide proceedings under the SARFAESI Act, which are deemed civil proceedings, and such exclusion is not contingent on the formal termination of the earlier proceedings; a formal application for condonation of delay under Section 5 is not mandatory if sufficient cause is otherwise established; the NCLAT's decision affirming the application's timeliness and rejecting the contrary view in Ishrat Ali v. Cosmos Cooperative Bank Ltd. is upheld; appeal dismissed.
- In **Laxmi Pat Surana v. Union Bank of India** decided on **26/03/2021** the Supreme Court held that a Financial creditor may initiate CIRP against a corporate person (corporate debtor) who has given a guarantee for a loan availed by a principal borrower, even if the principal borrower is not a "corporate person" under the Code; the liability of the guarantor is coextensive and triggers upon default by the principal borrower – Limitation – Section 18 of the Limitation Act applies to IBC proceedings; fresh period of limitation accrues from each acknowledgment of debt by the principal borrower or corporate guarantor – Application under Section 7 filed within three years from the last acknowledgment is within limitation – Appeal dismissed; NCLAT order upheld.
- In **Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr.** decided on **15/04/2021** Whether entries in a corporate debtor's balance sheet constitute an acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act, as applicable to IBC proceedings – The Apex Court held that Section 18 of the Limitation Act applies to

IBC proceedings by virtue of Section 238A; entries in a balance sheet, if unequivocal and not qualified by caveats or notes, can amount to an acknowledgement of liability, thereby extending limitation; the majority decision of the NCLAT in V. Padmakumar holding otherwise is set aside; all impugned orders following the contrary view are also set aside; matters remanded for fresh consideration in accordance with this judgment.

- In **Kotak Mahindra Bank Ltd. v. A. Balakrishnan & Anr.** decided on **30/05/2022,** the question before the Apex Court was that Whether a liability arising out of a Recovery Certificate constitutes a "financial debt" under Section 5(8) of the IBC and whether the holder of such certificate is a "financial creditor" entitled to initiate CIRP, it was Held that a claim arising from a Recovery Certificate is a "financial debt" and its holder is a "financial creditor" under the IBC; such person may initiate CIRP within three years from the date of issuance of the Recovery Certificate, the Supreme Court affirms Dena Bank v. C. Shivakumar Reddy and sets aside the NCLAT's order, holding the Section 7 application to be within limitation.

- In **Dena Bank v. C. Shivakumar Reddy and Anr.** decided on **04/08/2021** Application under Section 7 of the IBC is not barred by limitation if there is an acknowledgment of debt by the corporate debtor before expiry of the limitation period, thereby extending limitation by three years; a final judgment and decree or a recovery certificate in favour of the financial creditor gives rise to a fresh cause of action to initiate proceedings under Section 7 of the IBC within three years from such date; there is no bar to amendment of pleadings or filing of additional documents before final order of admission or dismissal – NCLAT's order holding the application barred by limitation set aside; appeal allowed; order of Adjudicating Authority admitting the petition restored.

- In **Kotak Mahindra Bank Ltd. v. Kew Precision Parts Pvt. Ltd. & Ors.** decided on **05/08/2022**, in this case the Apex Court clarified the distinction between acknowledgment under Section 18 of the Limitation Act and a promise under Section 25(3) of the Contract Act, and held that an agreement to pay a time-barred debt is enforceable if the requirements of Section 25(3) are met. The NCLAT erred in not considering Section 25(3) and in closing CIRP proceedings without affording the Financial Creditor an opportunity to explain delay or file additional documents.

  Both acknowledgment under Section 18 of the Limitation Act and a promise under Section 25(3) of the Contract Act can create a fresh starting point for limitation, but differ in requirements:

  Under Section 18 of the Limitation Act, acknowledgment must be made within the limitation period and need not include a promise to pay; it may extend limitation even if there is a denial to pay, provided a jural relationship is shown.

  Under the Contract Act, Section 25(3) is attracted only when there is an express, clear, and unconditional promise to pay a time-barred debt or part thereof, which can be inferred from the document.

  The impugned NCLAT order was set aside to the extent of closure of CIRP, and the matter remitted to the Adjudicating Authority for fresh consideration in accordance with law, after giving both parties opportunity to file additional affidavits and documents. Appeal allowed; NCLAT order set aside; matter remitted for fresh consideration.

- In **M/s Tech Sharp Engineers Pvt. Ltd. v. Sanghvi Movers Ltd.** decided on **19/09/2022,** in this case the Supreme Court held that for limitation purposes, the relevant date is when the right to sue accrues, i.e., the date of default, not the date of IBC enforcement or when an application could first be filed under the IBC – **Pendency of winding up proceedings in another forum does not save limitation for IBC proceedings unless the prior forum lacked jurisdiction. Proceedings in good faith in a forum lacking jurisdiction or acknowledgment of liability may save limitation.** In the present case, no acknowledgment of liability after 07.11.2013; last payment in June 2013 – Section 14(2) and Section 18 of the Limitation Act discussed – NCLAT's finding of continuous cause of action and claim being within limitation was set aside – Appeal allowed, NCLAT order set aside – Respondent not precluded from pursuing other remedies as per law.

- In **Sabarmati Gas Ltd. v. Shah Alloys Ltd.** decided on **04/01/2023** the issue in this case was whether the period of suspension of legal proceedings under Section 22(1) SICA can be excluded in computing limitation for an application under Section 9 IBC – Held, such exclusion is not available under IBC; instead, the period of suspension may be considered as 'sufficient cause' for condonation of delay under Section 5 of the Limitation Act.
- In **Next Education India Pvt. Ltd. v. K12 Techno Services Pvt.Ltd.** decided on **27/03/2023** in the case the question before the Apex court was whether the claim under Section 9 of the IBC was barred by limitation by considering the starting point as 12.03.2011, without considering subsequent invoices within three years prior to the application. The Supreme Court noted that the appellant raised 187 invoices for services provided between 12.03.2011 and 30.06.2017, and the amounts remained unpaid, leading to the Section 9 application before the NCLT. The NCLT considered the starting point of limitation as 12.03.2011 and held the claim barred by limitation, but did not consider subsequent invoices at least for the period preceding three years from the date of filing of the Section 9 application, which ought to have been considered. The Supreme Court held that the NCLT ought to have considered the invoices at least for the period preceding three years from the date of the application under Section 9, rather than considering the starting point of limitation as 12.03.2011. Accordingly, the orders passed by the NCLT and affirmed by the NCLAT were found to be unsustainable.
- In **Tottempudi Salalith v. State Bank of India & Ors.** decided on **18/10/2023**, in this case Application under Section 7 of the IBC based on three DRT recovery certificates – Whether limitation period is governed by Article 137 or Article 136 – Whether post-filing acknowledgment or promise to pay revives limitation – Whether doctrine of election bars CIRP after DRT proceedings – Held: Limitation for Section 7 IBC application runs from date of recovery certificate (Article 137); post-filing acknowledgment or promise to pay does not extend limitation; doctrine of election does not bar CIRP after DRT recovery; recovery certificate is a deemed decree, and the question of twelve-year limitation under Article 136 for the 2015 certificate is remanded to NCLAT for consideration; appeal dismissed with directions under Article 142 of the Constitution.

Though the connected issues are based on the facts and issues which are specific to each case but the decisions of the Supreme Court in these cases goes down as landmark decisions and this consolidation of all the cases on limitation will immensely help the readers.

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# AI, DIGITAL TRADE DATA, & TREDs ARE ALL TRANSFORMING INSOLVENCY OUTCOMES FOR MSMEs

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## BACKGROUND

Micro, Small and Medium Enterprises (MSMEs) are foundational to India's economic fabric. This group contains around 30.1% of the Gross Domestic Product (GDP), produces 35.4% of India's total manufacturing output and helps generate 45.73% of all exports from India. They support millions of livelihoods and drive manufacturing, services, and exports. While MSMEs provide significant benefits to India as a whole, when they feel financial pressure, close to half of them will not be able to make a full recovery, not because they lack potential, but because their financial health becomes invisible or unable to be verified at the right time.

Delayed receivables, informal bookkeeping, and manually reconciled transactions mean that by the time insolvency proceedings begin, much of the operational value has already decayed. Static balance sheets rarely capture real-time cash flows, working capital cycles, customer behaviour or emerging demand patterns. Hence, many viable small businesses end up liquidated, not due to terminal business failure, but due to outdated or opaque financial visibility.

As India's formal insolvency and bankruptcy law is still evolving, creating a lack of financial visibility for many MSMEs, the overall results of the current system (e.g., MSME owners and lenders) are typically suboptimal. However, with the digitisation of the trade-to-cash cycle, via digital trade receivable data being available through platforms such as the TReDS (Trade Receivable Discounting System), MSMEs will have a more accurate view of their current and future cash flow situations.

This isn't just technology talk, it represents a potential lifeline to millions of MSME entrepreneurs, their employees, suppliers and to the larger ecosystem reliant on their continued existence.

## THE IMPORTANCE OF MSMES AND THE IMPACT OF THEIR COLLAPSE

To understand the stakes, it's important to recognise the immense economic weight carried by the country's small businesses. The MSME Sector is the second largest employer after Agriculture and provides jobs for tens of millions of people living in both urban and rural parts of India. Despite this central role in India's economic engine, they continue to face a disproportionate vulnerability to financial stress.

According to the most recent data from the Udyam Portal, the cycle of distress among Indian small-sized companies is quickly worsening. Over the past five years, more than 75,000 MSMEs have shut down across the country since July 1, 2020. Alarmingly, in the ongoing financial year alone, 35,567 MSMEs have already closed operations as of February 28, 2025, accounting for nearly 47.4% of all closures recorded so far. Shutdowns have almost doubled compared to FY 2023-24, which saw 19,828 MSMEs cease operations. This sharp spike stresses the persistent challenges such as squeezed demand, rising input costs, and delayed receivables.

A growing number of small businesses have recently entered into a Special Mention Account (SMA) category, a classification defined by the *Reserve Bank of India (RBI)* to flag early signs of financial stress when repayments are overdue but before an account becomes a *Non-Performing Asset (NPA)*. This increase in SMA-tagged accounts signals heightened repayment delays and mounting liquidity strain across the sector. Furthermore, the increased number of closures suggests that the MSME sector is experiencing increasingly fragile financial conditions, and timely interventions are essential to prevent fundamentally viable enterprises from collapsing unnecessarily.

For a sector that contributes massively to GDP, manufacturing, exports, and employment, these numbers represent more than business failures; as they indicate a decline in income, disrupted supply chains, reduced competitiveness and reduced capacity for the economy of India to be elastic. In this environment, the *Insolvency and Bankruptcy Code (IBC)* is expected to offer structured revival or resolutions, yet real-world outcomes often tell a different story.

## THE TRADITIONAL INSOLVENCY PROBLEM: VALUE ERODES WHILE DATA LAGS

Insolvency procedures today continue to be determined based on balance sheet, audited financial statements and financial statements that are static at the time of the Enterprise's valuation process. However, this does not apply to MSMEs, as:

- Financial statements may be outdated, inaccurate, or fail to capture recent but critical trade activity.
- Receivables, which account for a significant percentage of working capital, are often considered invisible until the invoices are verified or the payments have cleared.
- Disputes between creditors and debtors are quite common and thus cause delays in the process, relating to claims of suppliers/creditors for payments that are overdue and disputes surrounding receivables status.

As a result, by the time that insolvency professionals are appointed, the business viability has often degraded significantly, production has typically ceased, clients are unlikely to return to the enterprise, and working capital cycles have been compromised. While the Enterprise may still have latent value, that is not visible at the time insolvency professionals take over a case.

Given this context, it is not surprising that the average asset recovery is low within the framework of the IBC. According to the most recent data available to me as of Q4 FY25, the overall recovery rate under the insolvency resolution process is estimated to be approximately 32.76%. That menas creditors often face trims of roughly 70%. In this context, even a fundamentally viable MSME may be deemed "*non-viable*" simply because the financial footprint necessary to prove its viability doesn't exist or is inaccessible. For MSMEs, insolvency becomes a verdict of "*liquidate, because you cannot prove worth*" rather than "*rescue, because you can show potential*".

## DIGITAL TRADE DATA: A NEW SOURCE OF CREDIBILITY AND CLARITY

Digital trade platforms like TReDS change this narrative by providing:

- **Legitimate and credible source for MSME trade receivables/payables:** Actual invoices reflecting true business terms between buyers (corporates) and MSMEs vs. self-declared or estimated figures.
- **Up-to-date cash flow cycle insights:** Allows for insight regarding working capital velocity, payment timelines, and recurring buyer behaviour.
- **Transaction tracking & verification:** Provides an accurate historical record of business activity; repeated buyer orders & relationships; provides a dependable history of when/how payments were made & used.
- **Transparency for all stakeholders:** Tracking & verifying transactions eliminates ambiguity and reduces risks associated with disputes between creditors and debtors.

When an MSME's trade history and receivable patterns are visible, the valuation under insolvency can factor in actual operational strength and potential recovery rather than relying only on dusty balance sheets. For example, TReDS-enabled invoices may reveal that despite temporary stress, the

MSME was consistently getting new orders, payments (although delayed), and repeat clients strong signals of underlying viability.

In short, TReDS has now emerged as a critical part of India's formal credit infrastructure because it standardises invoice data, authenticates transactions through buyer confirmation, and creates a verifiable trail of MSME trade activity. As an RBI-regulated mechanism, it enables uniformity in how receivables are recorded and validated across thousands of enterprises, reducing information asymmetry between borrowers and lenders. This strengthens credit discipline, improves transparency for insolvency professionals, and brings MSME financial behaviour into the formal ecosystem in a way traditional documentation processes have not been able to achieve. By functioning as a digital public-good layer similar in spirit to GSTN or UPI, though serving a different purpose TReDS provides a scalable foundation for data-driven decision-making during restructuring and insolvency.

## ARTIFICIAL INTELLIGENCE (AI) INSIGHT: CLARITY THROUGH COMPLEXITY

The value of collecting and utilising an abundance of raw trade data is hard to overstate, but when combined with AI and other analytical methods, it has the potential to create a much more robust outcome through the use of trade data to solve business performance challenges at the MSME level.

1. Warning Signals and Stress Signals AI-based models offer the capacity to analyse a company's entire collection of trade invoices in order to identify and monitor warning signals. For example, patterns associated with delayed invoicing, repeated dunning (notice of past due invoices), continuing order decreases, and extended buyer payment cycles may indicate that the company is under stress. These early warning signals provide a business stakeholder with the opportunity to develop a plan to restructure or to provide working capital to the business before it is too late to do so and the business is in a position to continue operating, preserve value, and avoid liquidation.
2. Actual Viability Assessment and Valuation Using only Receivable and Payable Data – via Invoice Frequency, Buyer Payment History, Buyer Order Volumes, and Buyer Concentration AI can provide an in-depth analysis of a company that takes into account its cash flow cycle and develops a viability score. The Viability Score offers business stakeholders, through the lens of an AI-based algorithmic technology, the opportunity to obtain a more accurate valuation method of a company than static historical balance sheets alone.
3. Quicker Agreement and Conflict Settling. Thanks to digital data on each invoice level, all company creditors (suppliers, customers, and lenders) can verify their claims faster. Using AI to match invoices greatly reduces the chances of creditors/debtors disputing the obligation for a payment, the possibility of having the same invoice issued twice, or when billings are not received. The quicker those issues are resolved, the lower the amount that is litigated and therefore the greater the preservation of value within the company and a better recovery for the creditor.
4. Detection of Fraud and Minimisation of Risk A company that utilises digital signature technology combined with the tracking of the parties to the transaction and the use of AI for identifying incorrect activity will be able to detect frauds, duplicate bills, shell companies, etc. that exist with manually processed documentation and the associated claims. The result will be greater confidence of creditors and reduced loss, which in turn will lead to more equitable, transparent, and reliable resolution of the insolvency process. Thus, the use of AI in trade data is transforming trade data from being a passive record to an effective decision support tool for resource management and not for winding up.

## DIGITAL DATA VS LIQUIDATION: RESCUING BUSINESSES

The switch to "dynamic truth", an insolvency assessment evaluation, is no longer a static event based on the past but rather a method for recovering businesses.

This new focus gives new meaning and direction to the restructuring and revival of Micro, Small, and Medium Enterprises (MSMEs). The new focus allows:

- High Recovery Rate of Creditors
- The presence of confirmed receivables, buyer payments that can be projected, as well as the presence of operational data, will make the business a candidate for reorganisation/ recuperation rather than asset liquidation. Reality tells us the amount of recoverable value will be greater than selling off an asset at a steep discount.
- Reduced Litigation, Resolved Quicker. By having a common understanding of the information involved in an insolvency event, less time will be spent on resolving disputes related to missing invoices and claim disputes that are at odds. Faster reconciliations mean less time will be spent on claims and invoices in dispute, which will allow the parties to conclude the insolvency event sooner, thus maintaining the goodwill of the business and preserving the business's supply chain relationships and the business's human capital.
- Protecting the Job Functions and the Economic Ecosystem. Reviving these businesses allows for the retention of the employee base, the vendor network of supply chain partners, and the vendor networks of other small businesses and their employees. For those businesses and sectors that have an economic impact, reviving a saved small business is a boost to the economic strength of India.

The importance of valuing and recovering businesses based on transparent, verifiable data rather than on estimates will help lenders, buyers, and insolvency practitioners develop confidence in the MSME (Micro, Small, and Medium Enterprises) finance ecosystem over time, as the entire MSME finance ecosystem will grow to become less risk averse and more supportive of viable but distressed businesses and will also become increasingly robust.

## WHY THE TRADITIONAL IBC REGIME HAS FALLEN SHORT FOR MSMES AND HOW DIGITAL TOOLS FILL THE GAP

The IBC has been a game-changer for the legal structure of the insolvency process; however, it presents difficulties for MSMEs. According to the current data regarding the recovery rate under IBC (overall recovery is approximately 32.76 percent), creditors are typically recovering approximately one-third of their total claims. The pre-packaged insolvency resolution process (PPIRP) launched in 2021, specifically targeting MSMEs, has also seen very limited success, with only 13 total cases having been filed up to the beginning of the year 2023, the majority of which are still pending, withdrawn, or unresolved, with only a few successfully reaching a viable resolution. The numbers indicate the existence of structural barriers within the MSME insolvency process, which may include, but are not limited to, a lack of credible data on the value of MSMEs, concerns about the potential for disagreement, and a lack of comfort on the part of creditors to support MSME businesses in improving their financial performance. With the combination of digital trade data and the use of artificial intelligence (AI), this information can inject transparency, traceability, and predictive clarity into the insolvency process, which will ultimately resolve the primary issue of not having enough visible information on actual business performance.

## THE BROAD ECONOMIC CASE: SAFEGUARDING MSMES = PROTECTING THE GROWTH ENGINE OF INDIA

Strengthening insolvency outcomes for the small business sector is not just a means of ensuring business survival; it is also a means of maintaining economic continuity for the country. Given that small businesses are at the core of India's output, export, and employment, supporting small businesses through the insolvency process will allow small businesses to preserve their employees, provide stability to their vendors and suppliers, and retain their production capacity and will provide the lenders of these businesses with increased confidence through better data visibility.

What the restructuring process provides for small businesses after the insolvency process is that the destruction of the small business has a positive ripple effect that goes beyond the impact on that single enterprise, as it stabilises the economy in that area and enhances the growth engine of India. Digital finance has changed the process of insolvency from a dead end to a second chance by providing an easier opportunity for a business to recapitalise and continue in business.

## THE PATH AHEAD: BUILDING A DIGITAL-FIRST INSOLVENCY AND RESTRUCTURING ECOSYSTEM

1. Encourage widespread use of trade receivable discounting systems (TReDS) for micro, small, and medium-sized enterprises (MSMEs). The greater the number of MSMEs that use TReDS to process their receivables, the larger the data set available to make viable assessments using artificial intelligence (AI).
2. Include dashboards based on trade data to assess viability in the restructuring workflow. This will allow the insolvency professional to have a "live" view of the business (i.e., cash flows, buyer behaviour, orders, etc.), as opposed to only having access to historical financial statements.
3. Accept valuations that are based on trade data by all stakeholders (creditors, lenders, and courts) to base their decisions related to restructuring on.
4. Use AI to identify early signs of stress in a business and to facilitate preventive restructuring efforts. By having the ability to identify warning signs prior to defaulting, working capital may be injected to assist with renegotiating or restructuring a business prior to its insolvency.
5. Facilitate quicker, more equitable, and less adversarial settlements through the use of digital data for claims reconciliation and dispute resolution.

By following these steps, it's likely that the insolvency process will evolve from being a last-ditch effort to save a business to an opportunity to rejuvenate it when data, transparency, and trust are present.

## LAST THOUGHTS: FROM UNDERSTANDING WHAT IS MISSING TO CREATING AN EMPOWERED RECOVERY

For many years, the MSMEs (Medium & Small Enterprises) of India have been dismissed because of their invisibility in a financial perspective, rather than a lack of capability. In a system where the information utilised to support recovery is based on available or outdated data, the results have invariably led to the liquidation of entities rather than rehabilitation.

Today, the paradigm can be switched from what has been indicated. The digitisation of trade, access to real receivables data, and the utilisation of AI provide visibility to previously hidden value. Disputes over liabilities become confirmed cash flow information. A company's viability can be assessed based on quantifiable performance, as opposed to the use of presumptions or disparities. The Paradigm Shift provides MSMEs with what has been denied to them for such an extended period of time: a fair second opportunity. With these new technologies, liquidations resulting from bankruptcy can be translated into continuity, recovery, and new growth for both MSMEs and the entire Indian economy. Thus, the need for MSMEs and India's economy is imminent.

India now possesses the digital-technology-enabled infrastructure, regulatory and supporting mechanisms, and proven platforms to keep viable companies from disappearing in silence. Therefore, there must be an aggressive implementation of these technologies, which will assist in ensuring quality data and AI provide the foundation for all bankruptcy decisions made, allowing MSMEs to continue to innovate, to hire new employees, and to offer their contribution toward India's growth story.

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# THE DIGITAL BRIDGE: HOW AI, ANALYTICS, AND PLATFORMS ARE REDEFINING TRUST IN INDIA'S INSOLVENCY AND VALUATION FRAMEWORK

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## INTRODUCTION: THE ARCHITECTURE OF TRUST IN "AMRIT KAAL"

As India marches resolutely toward the ambitious milestone of a $5 trillion economy, the robustness of its financial ecosystem has never been more critical. At the heart of this ecosystem lies the Insolvency and Bankruptcy Code (IBC), 2016 – a piece of legislation that fundamentally altered the credit culture of the nation. It shifted the paradigm from "debtor-in-possession" to "creditor-in-control," attempting to replace a culture of infinite delays with a regime of time-bound resolution.

However, legislation alone is merely the skeleton of a system; *trust* is the lifeblood that makes it function. As we stand on the threshold of the Code's next evolutionary phase, we must acknowledge that the efficacy of any insolvency regime depends not merely on the letter of the law, but on the "trust capital" it commands among stakeholders. In the high-stakes environment of corporate distress, trust is a derivative of three specific factors: **Transparency, Speed, and Accuracy.**

Historically, the "trust deficit" in the Indian framework was fueled by physical and informational gaps. Creditors battled with fragmented records; Resolution Professionals (RPs) struggled to assemble the "truth" from disorganized filings; and Registered Valuers (RVs) were forced to rely on lagging historical indicators to value assets in a volatile present. These gaps bred suspicion, leading to a litigious environment where every decision was challenged, eroding the very value the Code sought to preserve.

Today, we are witnessing a tectonic shift. The bridge over these gaps is no longer built solely on regulations and judicial precedents; it is being constructed with lines of code, vast lakes of data, and intelligent algorithms. As we convene for the **3rd National Convention** under the aegis of the Institute of Insolvency Professionals and Registered Valuers, it is imperative to recognize that the sub-theme of this discourse – *Use of technology: AI, Data Analytics, and Digital Platforms* – is not a conversation about "modernization" or "efficiency" alone. It is an existential conversation about the integrity, transparency, and future of our profession.

Technology is ceasing to be a mere support function; it is becoming the infrastructure of trust. From the moment a default is detected to the final distribution of proceeds via a waterfall mechanism, digital tools are redefining how we perceive value and process resolution. This article explores how the convergence of Artificial Intelligence (AI), advanced Data Analytics, and integrated Digital Platforms is bridging the critical gaps of information asymmetry, valuation variance, and process inefficiency, thereby strengthening the stakeholder trust that is vital for a resilient insolvency ecosystem.

## THE INFORMATION GAP: FROM DATA SILOS TO INTEGRATED INTELLIGENCE

The primary enemy of trust in any insolvency proceeding is Information Asymmetry. When a Corporate Insolvency Resolution Process (CIRP) is initiated, the Resolution Professional often steps into a chaotic environment – a "fog of war" – where financial data is missing, manipulated, or siloed across disparate departments.

1. **The Evolution of Information Utilities (IUs)**

   The establishment of **National E-Governance Services Ltd (NeSL)** as India's first Information

Utility was the foundational technological intervention to bridge this gap. By creating an immutable record of financial debt, the IU system has significantly reduced the time taken for the admission of cases at the National Company Law Tribunal (NCLT).

However, the future lies in expanding the scope of IUs toward a "Single Source of Truth" model. We are moving toward an era of **API-driven Open Banking** and **Account Aggregator** frameworks. Imagine a scenario where the IU is not just a repository of debt records but is integrated via APIs with the Goods and Services Tax Network (GSTN), the Ministry of Corporate Affairs (MCA), the Employees' Provident Fund Organisation (EPFO), and the Central Board of Direct Taxes (CBDT).

When the Committee of Creditors (CoC) convenes, they should not be relying on a static Information Memorandum (IM) prepared weeks ago. They should be looking at a dynamic dashboard that pulls real-time data: *Has the corporate debtor filed its latest GST returns? Is there a sudden spike in inventory write-offs in the last quarter?* This democratization of data eliminates the "he said, she said" disputes that often plague the admission and verification stages.

2. **Forensic Analytics: The Trust Restorer**

   One of the most significant erosions of trust occurs due to preferential, undervalued, fraudulent, or extortionate (PUFE) transactions. In the pre-digital era, detecting these in a company with thousands of daily transactions using manual audits was akin to finding a needle in a haystack. It relied heavily on whistleblowers or serendipity.

   Here, **Data Analytics and Forensic AI** are game-changers. Modern forensic tools utilize **Graph Analytics** and **Network Theory** to map relationships between entities. By ingesting bank statements, vendor master data, and related-party disclosures, these algorithms can visualize hidden networks.

   **Example:** Consider a distressed manufacturing unit purchasing raw materials at inflated prices. A manual audit might miss this if the paperwork is clean. However, an AI model trained on "anomaly detection" will flag that the vendor was incorporated only two months prior, operates from a residential address shared by a former director, and charges 15% above the market median.

   **Impact:** This capability shifts the role of the insolvency professional from a reactive investigator to a proactive guardian of asset value. When creditors know that an algorithm is scrutinizing every transaction for fraud, their trust in the process – and their willingness to take a "haircut" for a resolution – increases substantially.

3. **Alternative Data and Sentiment Analysis**

   Traditional insolvency assessment looks at the balance sheet (historical data). However, a company's health is often reflected first in "Alternative Data."

   AI tools can now scrape the web for non-financial signals. Employee sentiment on job portals (e.g., Glassdoor reviews complaining about delayed salaries), supplier complaints on social media, or a drop in website traffic can serve as leading indicators of distress. For the Resolution Professional, this "Sentiment Intelligence" is crucial for managing the "Going Concern" status. It allows the RP to address stakeholder anxiety proactively, preventing a mass exodus of talent or vendors during the critical initial days of the CIRP.

## THE VALUATION GAP: BRIDGING ART AND SCIENCE WITH AI

Valuation has traditionally been described as an art and a science. However, in the high-stakes arena of insolvency, "art" is often misinterpreted as "subjectivity," leading to wide variances between two Registered Valuers assessing the same asset. This variance creates doubt in the minds of the CoC and the Adjudicating Authority, often stalling the approval of resolution plans.

Technology is not replacing the valuer's judgment; it is augmenting it, effectively bridging the gap between subjective opinion and objective reality.

1. **Automated Valuation Models (AVMs) and Predictive ML**

   In the realm of real estate and standard plant and machinery, Automated Valuation Models (AVMs) are revolutionizing the speed and accuracy of estimates. Traditional valuation relies on "comparable transactions" (comps) selected by the valuer, which can be limited by the individual's geographic reach or network.

   - **Machine Learning (ML)** models, conversely, can ingest millions of data points. For a distressed commercial property, an AI model analyzes not just the registration data from sub-registrar offices but also:
   - **Hyper-local Trends:** Footfall data from mobile networks to assess commercial viability.
   - **Infrastructure Impact:** Satellite imagery analyzing the progress of nearby metro lines or highways.
   - **Liquidity Discounts:** Analyzing the "Time to Sell" for similar distressed assets in that specific pin code.

   **Case Scenario:**

   Imagine a Registered Valuer assessing a fleet of trucks for a logistics company in liquidation. Instead of manually checking depreciation tables, the Valuer uses an AI tool connected to a used-vehicle marketplace API. The tool analyzes 50,000 recent transactions of that specific truck model, adjusting for engine hours and region-specific demand (e.g., mining bans in a certain state lowering demand). The result is a Probabilistic Valuation Range (e.g., "85% probability of sale between ₹8-9 Lakhs") rather than a single static number. This statistical rigor builds immense confidence among financial creditors.

2. **The "Digital Twin" and Drones: The End of the Physical Gap**

   Physical verification of assets is a mandatory requirement under the rules, yet it is often fraught with challenges, especially for assets located in remote areas, large industrial complexes, or hazardous zones.

   - **Drone Technology (UAVs)** coupled with **Computer Vision** is bridging this physical gap.
   - **Inventory Audits:** Drones equipped with RFID scanners and volumetric sensors can fly through warehouses, calculating the volume of coal piles or counting steel coils in hours – tasks that would take human teams days.
   - **Asset Health Monitoring:** Thermal imaging cameras on drones can detect heat signatures in machinery to verify if a plant is truly operational or if a blast furnace has gone cold.

   Taking this a step further is the concept of the **Digital Twin**. For large distressed infrastructure projects (like power plants or ports), technology can create a virtual replica of the physical asset. This Digital Twin is fed by IoT (Internet of Things) sensors. The Resolution Professional, sitting in Mumbai, can monitor the operational efficiency, maintenance needs, and output of a power plant in Odisha in real-time. This transparency ensures that the asset value does not deteriorate during the CIRP, preserving the "Going Concern" value for potential resolution applicants.

3. **Valuing the Intangible: The New Frontier**

   As the Indian economy matures, the composition of distressed assets is shifting. We are seeing more service-based companies and startups entering insolvency. How do you value a failed ed-tech company whose primary assets are its code repository, customer database, and brand?

Traditional Net Asset Value (NAV) methods fail here. **Natural Language Processing (NLP)** and AI-driven IP valuation tools come into play.

**Patent Valuation:** AI can analyze global patent databases to determine the citation frequency and "technological relevance" of the company's IP, predicting its licensing revenue potential.

**Brand Strength:** Sentiment analysis algorithms scrape millions of social media interactions to quantify "Brand Health," helping Valuers assign a justifiable monetary value to the brand equity, which is often the only salvageable component in tech insolvencies.

## THE PROCESS GAP: DIGITAL PLATFORMS AS THE ENGINE OF EFFICIENCY

The Insolvency and Bankruptcy Board of India (IBBI) has been a pioneer in adopting technology, but the ecosystem needs to move from disparate tools to integrated platforms. The "Process Gap" refers to the friction caused by manual workflows – physical meetings, paper-based voting, and disjointed communication channels.

1. **Virtual Data Rooms (VDRs) 2.0**

   In the resolution phase, the maximization of value is contingent on attracting the highest number of serious Resolution Applicants (RAs). The efficiency of the due diligence process is the key determinant here. Modern Virtual Data Rooms (VDRs) are no longer just cloud storage folders; they are intelligent platforms equipped with **Information Rights Management (IRM)**.

   **Behavioral Analytics:** The modern VDR provides the RP with analytics on bidder behavior. *Which bidder spent 4 hours reading the environmental clearance documents? Which bidder skipped the litigation section entirely?* These insights allow the RP to gauge the seriousness of applicants and anticipate their concerns, allowing for more targeted negotiations.

   **Q&A Automation:** In a complex CIRP, RAs may ask thousands of queries. AI-driven VDRs can auto-categorize these queries and even suggest answers based on the document repository, significantly compressing the due diligence timeline.

2. **The Online Dispute Resolution (ODR) Frontier**

   The sheer volume of litigation is the single biggest bottleneck in the IBC framework. While major approval hearings must happen at the NCLT, smaller disputes – claims verification, procedural delays, or minor inter-creditor disagreements – clog the judicial pipeline.

   Integrating **Online Dispute Resolution (ODR)** platforms into the insolvency framework serves as a "triage" mechanism. These platforms use algorithms to facilitate negotiation and mediation. By resolving routine disputes digitally and outside the courtroom, we preserve judicial bandwidth for complex restructuring matters. This is not just about saving time; it is about "Access to Justice." Operational Creditors with small claims often abandon them due to the cost of litigation. An ODR platform offers them a low-cost, digital avenue to settle, thereby enhancing the inclusivity of the framework.

3. **Cross-Border Insolvency and Global Platforms**

   As India moves toward adopting the UNCITRAL Model Law on Cross-Border Insolvency, technology will be the bridge between jurisdictions. When a company with assets in India, the UK, and Singapore goes bust, navigating three legal systems is a nightmare.

   Secure, cloud-based platforms that allow for joint hearings (via video conferencing) and shared access to authenticated court records across borders will be essential. Technology will facilitate the cooperation and communication required under Sections 234 and 235 of the Code, ensuring that Indian creditors can access assets stashed abroad efficiently.

## THE TRUST PROTOCOL: BLOCKCHAIN AND IMMUTABLE RECORDS

While AI provides intelligence, **Blockchain** provides integrity. In an environment where trust is low, the ability to prove that a record has not been altered is priceless. Blockchain is often misunderstood as just cryptocurrency, but its application in insolvency is structural.

1. **Immutable Audit Trails and Voting**

   The entire lifecycle of a CIRP – from the constitution of the CoC to the voting on the resolution plan – can be recorded on a private, permissioned blockchain.

   **The Voting Problem:** Disputes often arise regarding the timing of votes or the receipt of notices. On a blockchain, every notice sent and every vote cast is a transaction on the ledger, timestamped and immutable. This eliminates any possibility of voting manipulation or post-facto alteration of minutes of meetings.

   **Valuation Integrity:** For Registered Valuers, blockchain can serve as a repository for valuation reports. Once a report is hashed and stored on the blockchain at a specific date and time, it cannot be tweaked later to suit a specific narrative. This protects the valuer from undue pressure and assures the Adjudicating Authority of the report's sanctity.

2. **Tokenization of Distressed Assets**

   One of the boldest frontiers is the Tokenization of distressed debt. Currently, the market for distressed assets (secondary market) in India is limited to a few Asset Reconstruction Companies (ARCs) and special situations funds.

   Blockchain technology allows for the fractionalization of distressed debt into digital tokens. This could theoretically allow a broader range of investors (including retail or high-net-worth individuals, subject to regulation) to purchase "slices" of a distressed loan. This deepens the market, improves price discovery, and provides banks with a faster exit route.

3. **Smart Contracts for the Waterfall Mechanism**

   Section 53 of the IBC dictates the "waterfall mechanism" for the distribution of proceeds. This is often a contentious process involving complex calculations and inter-creditor disputes regarding priority.

   Smart Contracts – self-executing codes on a blockchain – can automate this. Once the liquidation proceeds are digitized, the smart contract can automatically distribute funds to secured creditors, workmen, and unsecured creditors strictly according to the coded hierarchy. This removes human error, bias, and delay from the distribution process, ensuring instant and undisputed settlements.

## THE FUTURE: GENERATIVE AI AND THE "BIONIC" PROFESSIONAL

No discussion on technology in 2024-25 is complete without addressing **Generative AI (GenAI)** and Large Language Models (LLMs). We are moving from "Analytical AI" (analyzing data) to "Generative AI" (creating content).

1. **Drafting and Legal Research**

   Insolvency Professionals spend a disproportionate amount of time on drafting – Public Announcements, RFRPs (Request for Resolution Plans), and progress reports. GenAI models, fine-tuned on IBC case law and regulations, can draft these documents in seconds.

   Furthermore, these models can act as "Legal Co-pilots." An IP can ask the AI: "Summarize the latest NCLAT rulings on the treatment of home buyers in the last 6 months," and receive a synthesized answer. This frees up the professional to focus on strategy and negotiation rather than rote research.

2. **Predictive Resolution Modeling**

   Imagine a tool where the CoC can input different parameters of a proposed Resolution Plan (haircut percentage, payment term, equity conversion) and the GenAI simulates the outcome: *"Based on 500 previous cases, this plan has a 72% chance of approval by NCLT and a 40% chance of successful implementation."* This allows the CoC to make evidence-based commercial wisdom decisions.

## CHALLENGES, RISKS, AND ETHICAL GUARDRAILS

While the potential is limitless, we must tread with caution. The bridge of technology must be built on a foundation of ethics and security. We must guard against the "Technological Fallacy" – the belief that tech can solve cultural or structural problems on its own.

1. **The "Black Box" Problem and Explainability**

   In valuation and forensic analytics, if an AI model churns out a figure based on a neural network that no human can decipher, it creates a "Trust Paradox." We trust the math, but we don't understand the method.

   To build real trust, we must insist on Explainable AI (XAI). Valuers must demand tools that show the "why" behind the "what." If an algorithm discounts a property value by 20%, it must explicitly state that the discount is due to "rising local crime rates" or "projected regulatory changes." The Registered Valuer must remain the master of the tool, not its servant.

2. **Data Privacy and the DPDP Act**

   With the enactment of the Digital Personal Data Protection (DPDP) Act, 2023, Insolvency Professionals and Valuers face a new compliance frontier. Insolvency data often contains personal information of promoters, employees, guarantors, and operational creditors.

   Using public cloud platforms or open-source AI tools to process this data could lead to breaches of privacy. The ecosystem must build "Privacy-First" architectures where data is anonymized before it is fed into analytics engines. The bridge of trust cannot be built by breaching the fundamental right to privacy.

3. **The Digital Divide and MSMEs**

   While large corporate insolvencies can afford expensive VDRs and AI forensics, what about the MSME insolvencies? There is a risk of creating a two-tier system.

   To bridge this "Digital Divide," the costs of these technologies must be amortized. Industry bodies like the Institutes of Insolvency Professionals (IPAs) and the IBBI could consider negotiating bulk access to these platforms for their members, or developing subsidized "Public Good" versions of these tools for smaller cases.

4. **Admissibility of Digital Evidence**

   As we rely more on AI and drones, we must address the legal admissibility of this evidence under the **Bharatiya Sakshya Adhiniyam** (which replaced the Evidence Act). RPs and Valuers must ensure that their digital tools comply with the certification requirements (formerly Section 65B) to ensure that the AI's findings stand up to scrutiny in the NCLT.

## CONCLUSION: THE HUMAN ELEMENT IN A DIGITAL WORLD

As we conclude, it is vital to return to the core theme: '*Bridging gaps, building trust*'.

Technology builds the bridge, but it is the professional – the Insolvency Professional and the Registered Valuer – who must walk across it. The future belongs not to the AI, but to the **"Bionic Professional"** – one who leverages AI for processing power, blockchain for integrity, and platforms for efficiency, but retains the distinctly human qualities of empathy, negotiation, and ethical judgment.

An algorithm can calculate the liquidation value, but it cannot sit across the table and negotiate a settlement between a distraught promoter and an aggressive banker. An AI can flag a transaction as suspicious, but it requires a human mind to understand the intent behind it.

By embracing these digital tools, we do not just modernize our practices; we strengthen the very fabric of India's credit culture. We move from a system of suspicion to a system of verification, from opaque valuations to transparent assessments, and from delayed resolutions to timely revival.

The integration of AI, Data Analytics, and Digital Platforms is our opportunity to prove that the Indian insolvency framework is world-class – transparent, predictable, and efficient. It is time for us to stop viewing technology as a disruption and start viewing it as the ultimate fiduciary partner. In doing so, we ensure that the IBC remains not just a piece of legislation, but a dynamic, trusted living framework that powers the economic engine of a rising India.

This is the digital promise of our profession. Let us build this bridge, together.

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# THE FOUNDATION OF JUSTICE - PLEADINGS, ADVOCACY, AND PROFESSIONAL CONDUCT

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## BACKGROUND

The practice of law, particularly in litigation, rests on three interdependent pillars: **Pleadings**, which form the written map of the dispute; the **Art of Advocacy**, which is the skill of persuasive presentation; and **Appearances and Code of Conduct**, which govern the lawyer's professional behaviour and decorum. Mastery of all three is essential for the effective administration of justice and the protection of a client's rights.

## PLEADINGS: THE WRITTEN FOUNDATION OF A CASE

Pleadings are the formal written statements submitted to the court by the parties in a lawsuit. They outline the essential facts that constitute the plaintiff's claim and the defendant's defence. A well-drafted pleading serves as the **blueprint of the entire case**.

**Key Principles of Effective Pleadings:**

1. **State Facts, Not Law:** The fundamental rule is to state the **material facts** (*facta probanda*) upon which a party relies, leaving it to the court to apply the relevant legal principles. Evidence (*facta probantia*) should generally be omitted, as it is presented later during the trial.
2. **Conciseness and Precision:** Pleadings must be brief and to the point. Every material fact should be stated, but extraneous details or vague allegations must be avoided. Clarity ensures the opposing party knows exactly what case they have to answer, preventing surprise at trial.
3. **Particularity:** Where serious allegations like **fraud, misrepresentation, or undue influence** are made, the specific particulars, including dates and items, must be stated clearly. Generalised, scurrilous attacks on the opponent are strictly forbidden and may be struck out by the court.
4. **Consistency:** A party must generally be consistent in their case. Departure from the facts or claims made in the original pleadings is not permissible, except through a formal amendment process allowed by the court.

Effective litigation begins long before the first witness is called or the first argument is made in court; it starts with the **pleadings**. The bedrock of a strong legal case lies in the **Statement of Claim** or **Complaint**, specifically in how the material facts are presented. Drafting these facts with **precision and conciseness** is not just good practice – it's an essential art that determines the trajectory and, often, the outcome of the litigation.

## THE GOAL: NOTICE AND THE MATERIAL FACTS RULE

The primary purpose of a pleading is to give the opposing party **fair notice** of the claims being made against them and the factual basis for those claims. This prevents trial by ambush and allows the defendant to prepare an adequate defense.

The core principle governing factual pleading is the requirement to state the **material facts** upon which the claim is based.

- **Material Facts:** These are the essential, critical facts that, if proven, would legally entitle the plaintiff to the relief sought. They are the building blocks of the cause of action.

- **Avoid Evidence:** A common mistake is pleading **evidence** - the means by which the material facts will be proven. Pleadings should state *what* happened, not *how* you intend to prove *what* happened. For example, the material fact is that a contract was breached; the evidence might be a series of emails or a witness's testimony.[1]
- **Avoid Legal Conclusions:** Equally important is avoiding statements of pure **legal conclusion** (e.g., "The defendant was negligent" or "The defendant acted in bad faith") without the supporting material facts.

## THE ART OF CONCISENESS AND PRECISION

Conciseness and precision are two sides of the same coin in effective pleading.

1. **Precision: Using the Right Words**

   Precision ensures that the facts alleged are **specific, unambiguous, and directly relevant** to the legal claims.

   - **Who, What, When, Where:** For most claims, the facts should clearly identify the **parties** involved, the **specific conduct** at issue, the **date** (or time period) the conduct occurred, and the **location**.
   - **Specificity over Generalizations:** Instead of "The parties disagreed on the payment," be precise: "On **January 15, 2024**, the defendant refused to pay the **$\$10,000$ invoice** for consulting services provided in **December 2023**." This specificity anchors the claim and limits the scope of the defense.
   - **Clear Causation:** The facts must establish a clear link, or **causation**, between the defendant's alleged wrongful act and the plaintiff's claimed injury or loss.

2. **Conciseness: Eliminating the Superfluous**

   Conciseness means stating the material facts in the **fewest possible words** without sacrificing clarity or completeness. A concise pleading is easier to read, understand, and respond to.

   - **Avoid Adjectives and Adverbs:** Overuse of descriptive language ("egregiously," "severely," "unjustifiably") clutters the pleading and often borders on argumentative language, which is inappropriate for a factual statement. Let the facts speak for themselves.
   - **Use Short Paragraphs and Sentences:** Each paragraph should ideally contain a **single, distinct material fact** or a closely related sequence of facts. Short sentences maintain a strong, declarative tone.
   - **Logical Flow:** Arrange the facts in a **chronological or logical sequence**.[3] This narrative flow makes the claims easily digestible and demonstrates the factual basis of the cause of action clearly.

## KEY BENEFITS OF PRECISE PLEADING

Drafting facts with this level of meticulousness offers significant tactical and procedural advantages:

1. **Surviving Motions to Dismiss:** A pleading that fails to state the material facts of a cause of action (i.e., fails to meet the legal standard) is vulnerable to an early Motion to Dismiss. Precision ensures all elements of the claim are adequately covered.
2. **Focusing Discovery:** A precise set of material facts narrows the scope of discovery, preventing costly and time-consuming fishing expeditions for irrelevant information. The focus remains on proving or disproving the specific facts alleged.
3. **Jury Presentation:** The factual narrative established in the complaint often serves as the **initial roadmap for the trial**. A concise, logical, and clear pleading translates directly into a more compelling and understandable presentation to the trier of fact.

4. **Credibility with the Court:** Judges appreciate pleadings that are clear, professional, and to the point. An overly long, confusing, or argumentative complaint erodes the drafter's credibility and frustrates the court's efforts to manage the case efficiently.

The essence of effective pleading is the discipline of stripping away all that is irrelevant to reveal the naked, material facts that form the heart of the dispute. By mastering the art of drafting concise and material facts, legal practitioners transform a mere document into a powerful, persuasive, and legally sound foundation for victory in litigation.

## THE ART OF ADVOCACY: PERSUASION AND STRATEGY

Advocacy is the art of effectively presenting a client's case and arguments to a judicial authority. It transcends mere knowledge of law and facts, requiring a strategic blend of rhetoric, preparation, and emotional intelligence.

### Core Elements of Effective Advocacy:

- **Thorough Preparation:** This is the bedrock of advocacy. It involves meticulous case analysis, exhaustive research of both law and facts, anticipating the opponent's arguments and weaknesses, and preparing witnesses. An unprepared advocate cannot be persuasive.
- **Engaging Communication:** This involves both **written** (in submissions and appellate briefs) and **oral** (in arguments and examinations) skills. A powerful advocate speaks and writes with **clarity, logic, and coherence**, simplifying complex issues for the judge or jury. The delivery must be confident, measured, and respectful.
- **Court Craft and Strategy:** This includes the tactical use of evidence, the skill of cross-examination (to test the opposing side's evidence), and the ability to think on one's feet to address the court's queries or counter unexpected developments.
- **Honesty and Candour:** A good advocate never knowingly misleads the court. The duty to the court supersedes the duty to the client in matters of honesty. This integrity builds trust, which is the advocate's most valuable asset.

Advocacy is far more than simply reciting the law or the facts of a case; it is the **strategic and persuasive communication** aimed at convincing a decision-maker – be it a judge, jury, or administrative panel – to rule in favor of one's client. It is a fusion of legal scholarship, rhetorical skill, psychological insight, and rigorous ethical practice. Mastering this art is what distinguishes a competent lawyer from an exceptional advocate.

### Strategy: Mapping the Case

The foundation of persuasive advocacy lies in comprehensive preparation and strategic planning long before the first word is spoken in court.

1. **Know the Audience and the Forum**

   An advocate must tailor their presentation to the specific context. Arguing a point of law before an appellate panel requires formal, technical, and scholarly presentation. Conversely, arguing a question of fact before a jury demands storytelling, clarity, and relatable analogies.

   - **Judges:** Focus on legal precedent, statutory interpretation, and the logical application of law.
   - **Juries:** Focus on narrative, credibility, and the emotional resonance of the facts.

2. **Developing the Theory of the Case**

   Every case must be anchored by a single, compelling **Theory of the Case**. This is a cohesive, simple, and persuasive narrative that explains *why* your client should win.

- The theory must integrate the law, the facts, and the undisputed evidence into a coherent story.
- It serves as a **filter** for all decisions: if a piece of evidence or an argument doesn't support the central theory, it should be discarded to maintain focus and clarity.

3. **Anticipating and Neutralizing Counter-Arguments**

   A strategic advocate doesn't ignore the opponent's strongest points; they address them head-on. By **anticipating opposing arguments** and proactively offering a superior explanation or counter-precedent, the advocate maintains credibility and minimizes the impact of the opposition's attack. This is often done by framing the opponent's case as a **"red herring"** or a misinterpretation of the central facts.

## PERSUASION: THE ELEMENTS OF EFFECTIVE DELIVERY

Persuasion in advocacy is achieved through a combination of *logos* (logic), *pathos* (emotion), and *ethos* (credibility).

1. **Logos: The Power of Logic and Structure**

   Arguments must be logically sound. The advocate must present their case in a clear, linear, and understandable structure, leading the decision-maker inexorably toward the desired conclusion.

   - **Signposting:** Clearly outline the structure of the argument (e.g., "I will first address the issue of contract formation, and then the issue of damages...").
   - **Simple Language:** Simplify complex legal concepts and jargon. The judge or jury should spend their energy absorbing the substance of the argument, not decoding the language.

2. **Ethos: Candour and Credibility**

   **Credibility** (**Ethos**) is the advocate's most valuable asset. Once trust is lost, no amount of logical argument will suffice.

   - **Candour with the Court:** The advocate has an overriding **duty of candour** to the court. This means accurately citing case law (even those cases adverse to the client's position), truthfully representing the evidence, and never knowingly misleading the tribunal.
   - **Measured Demeanour:** Maintaining a respectful, professional, and calm demeanour, even under aggressive cross-examination or intense judicial questioning, reinforces the perception of control and trustworthiness.

3. **Court Craft: Thinking on Your Feet**

   True advocacy is dynamic, often diverging from the prepared script due to judicial intervention or an unexpected witness answer.

   - **Handling Questions:** A skilled advocate views judicial questions not as interruptions, but as opportunities to address the judge's specific concerns. Answers should be **direct, concise, and immediately return to the core argument**.
   - **Cross-Examination:** This is the most challenging aspect of oral advocacy. The goal is not to fight the witness, but to use leading questions to **control the testimony** and elicit facts that support the Theory of the Case, while remaining courteous and professional.

### The Ethical Imperative

The **Art of Advocacy** must always be exercised within the bounds of the **Code of Professional Conduct**. The duty to the client is to **represent them fearlessly** within the law, but the duty to the court is to uphold justice and the integrity of the system. This means refusing to advance a case based on falsehoods and maintaining respectful interactions with opposing counsel.

Ultimately, effective advocacy is about the **persuasive synthesis** of a client's story with the governing law, delivered with impeccable ethics and strategic purpose. It is the vital engine that drives the judicial machinery.

**Appearances and Code of Conduct**

The conduct of an advocate, both inside and outside the courtroom, is governed by a strict **Code of Professional Conduct and Etiquette**. This code preserves the dignity of the judicial process, fosters respect between all parties, and maintains public confidence in the legal profession. The legal profession stands as a pillar of the justice system, and the **advocate** is its central figure, serving as an officer of the court and a fiduciary to the client. The conduct of an advocate, both **inside and outside the courtroom**, is therefore not a matter of personal discretion but is stringently governed by a comprehensive **Code of Professional Conduct and Etiquette**.

This code, typically prescribed by the apex regulatory body (like the Bar Council of India, under the authority of the Advocates Act, 1961), imposes ethical duties designed to maintain the dignity of the profession, ensure the fair administration of justice, and protect the client's interests.

**I. Duty to the Court: The Officer of Justice**

An advocate's foremost obligation is to the court, recognizing that the judicial office's dignity is vital for the survival of a free community. These duties predominantly govern conduct inside the courtroom but also extend beyond its doors.

- Dignified Conduct: An advocate must, at all times, conduct themselves with dignity and self-respect. They must not be servile but must maintain a respectful attitude toward the courts, judges, and tribunal members.
- Decorum and Dress Code: Strict adherence to the prescribed dress code (bands and gowns, where applicable) is mandatory. Furthermore, advocates must maintain court decorum, avoiding loud talking, laughter, or disrespectful gestures during proceedings. They must always stand when addressing the court or examining a witness.
- No Improper Influence: The most critical duty is to refrain from influencing the decision of a court by any illegal or improper means. Private communication with a judge regarding a pending case is strictly forbidden.
- Assisting the Court: An advocate must not suppress any relevant material or evidence and has a duty to be candid with the court. They are not merely the client's mouthpiece; they must exercise their own judgment to prevent the client from resorting to sharp or unfair practices.
- Pecuniary Interest and Relations: Advocates must avoid appearing in matters where they have a direct pecuniary interest (e.g., being a creditor of a bankrupt client) or where they are related to the presiding judicial officer.

**II. Duty to the Client: The Fiduciary Relationship**

The advocate-client relationship is one of trust and confidence (a fiduciary relationship), demanding unwavering loyalty, integrity, and competence.

- Fearless Upholding of Interest: The advocate must fearlessly uphold the client's interests by all fair and honourable means, regardless of personal opinion regarding the client's guilt or the consequences to themselves.
- Confidentiality (Privilege): An advocate is bound not to disclose any communications made to them by their client or the advice given in the course of professional engagement. This duty of confidentiality is sacrosanct and continues even after the retainer ends.

- Full Disclosure: The advocate must make a full and frank disclosure to the client about any connection with the opposing parties or any interest in the controversy that might affect the client's decision to engage or continue with them.
- No Conflict of Interest: An advocate must not accept a brief or continue to appear in a case where they are likely to be a material witness. They must also not represent two clients whose interests are in conflict.
- Accountability of Funds: Advocates must maintain clear and accurate accounts of all money received from the client and should not use the client's money for personal purposes. They must not lend money to their client for the purpose of legal proceedings.
- No Contingency Fees: Charging fees contingent upon the success of the matter or as a percentage of the amount or property recovered is strictly prohibited.

**III. Duties to the Opponent and Colleagues (Outside the Courtroom)**

The rules extend to defining appropriate behaviour towards all participants in the justice system, even in non-court settings.

- Duty to the Opponent: An advocate shall not communicate or negotiate directly upon the subject matter of controversy with any party who is already represented by an advocate, except through that advocate. They must also fulfil all legitimate promises made to the opposite party, even if not reduced to writing.
- Duty to Colleagues: Professional courtesy and respect must be maintained towards fellow advocates. An advocate should not appear in a case where another advocate has already filed a Vakalatnama (Authorisation) without their consent.
- No Solicitation or Advertising: A cornerstone of the professional code is the ban on soliciting work or advertising either directly or indirectly, whether through touts, personal communications, or the furnishing/inspiring of newspaper comments related to cases. Signboards must be of a reasonable size.

## CONSEQUENCES OF MISCONDUCT

An advocate who violates any of these professional standards is liable for professional misconduct. The Bar Council (State or National) is empowered to investigate complaints and, upon finding guilt, can impose penalties ranging from a reprimand to suspension from practice for a specified period, or even removal of the advocate's name from the State roll.

The advocate's code is thus more than just a set of rules; it is the ethical compass guiding the profession, ensuring that the privilege of practicing law is always accompanied by the responsibility to serve the cause of justice with integrity and honour.

The combination of technically sound **pleadings**, persuasive **advocacy**, and an unblemished **code of conduct** defines the consummate legal professional. Together, they ensure that every legal dispute is framed accurately, presented effectively, and resolved fairly within the bounds of law and ethics.

*REFERENCE*


1) K.V. Krishnaswami Aiyar's Professional Conduct and Advocacy
2) The Advocates Act, 1961 (and the Bar Council of India Rules)
3) Sarkar's Civil Court Practice & Procedure Manual
4) 'Chartered Secretary' Journal


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# FROM MY LORD TO SIR : EVOLUTION OF ADVOCACY & JUDICIAL ADDRESSAL

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## BACKGROUND

Advocacy is more than just professional representation. It is an important tool of our legal system to secure justice under the Constitution. The relationship between the advocate and the judiciary is defined by both professional ethics and ceremonial decorum and is a direct reflection of our legal system's foundational philosophy. In fact, Courtroom decorum, especially the manner in which judges are addressed is not a trivial matter of etiquette. Advocates are tasked with representation while simultaneously upholding the dignity and respect maintained towards the judicial office.

Through this article, I attempt to trace the evolution in how we have been addressing the judiciary in India over the years when we used to use terms of colonial reverence such as **"My Lord", "My Lady"** and **"Your Lordship"** to the present day simple terms like **"Sir"** or **"Madam"**. I will also examine the reason behind this profound shift of judicial addressal.

## HISTORICAL PERSPECTIVE

Prior to the formal administration of justice under the British Raj, legal systems in the Indian subcontinent were primarily rooted in customary practices and religious prescriptions.

Initially, we had the Classical Hindu Law period where the legal system was centred around *dharma*, which signifies righteousness and duty. Dharma consisted of both legal and religious duties and served as the principal guidance by which one was expected to lead life. In those times, our sacred scriptures consisting of *Vedas i.e. Rig Veda, Yajur Veda, Sama Veda and Atharva Veda* along with other written texts like *Manusmriti* and *Yajnavalkya Smriti* were the fulcrum of the legal system. This framework meant that judicial authority and legitimacy were derived from spiritual and traditional knowledge, rather than inherited political titles bestowed by a monarch or temporal ruler.

We followed Classical Hindu Law until the late 1700s before the advent of the British Raj in India, after which the British began integrating and systematizing their justice administration into the existing legal frameworks. This transition introduced foreign procedural elements, but the formal, hierarchical nomenclature of the British system was fully solidified with the subsequent establishment of British superior courts.

With the establishment of the British legal system following events like the implementation of the Regulating Act of 1773 and later the Indian High Courts Act of 1861, we saw institutionalization of structures. Firstly, the establishment of the Supreme Court of Judicature in Fort William in Calcutta. Yes we had the Supreme Court first established in Calcutta as India was being governed from Calcutta. Later, The High Courts Act of 1861 created a professional and modern judicial framework. This system and appellate structure laid the groundwork for the eventual establishment of the Federal Court of India under the Government of India Act, 1935, and ultimately the modern Supreme Court of India in 1950.

The British legal system was formally established and its traditions and forms of address were fully integrated into the Indian judicial system. This included the direct transplantation of the terms used in the United Kingdom judiciary, where senior judges, such as those in the Court of Appeal and High

Court, were customarily addressed as **"My Lord"** or **"My Lady"**. This nomenclature was directly applied to Indian judges across courts. As a consequence, this kind of terminology created a sub-conscious system of explicit deference and perceived subordination giving the impression of addressing kings and queens rather than judges in the courtrooms.

**Post-Independence**

Following the attainment of independence in 1947 and the establishment of the Republic of India in 1950, our government strategically retained many of the legal traditions and institutions inherited from the British Raj. This continuity included the practice of addressing judges as **"My Lord", "My Lady"** or **"Your Lordship"**.

The persistence of using British titles was not primarily due to an ideological commitment to imperialism but was more a function of institutional inertia. After the turmoil and scars of partition, there was a need for stability. Retaining established procedural norms, including the widely understood forms of judicial decorum and address, provided necessary administrative stability and served as a symbol of continuity for the people of India. However, this practice went on to create a long-term philosophical and ideological contradiction with our Constitution, whose core commitment was to equality and democracy. The continued use of **"Lordship"** symbolized a reverence for a hierarchical power structure fundamentally incompatible with the concept of a sovereign republic like India where all citizens, including judicial officers and advocates, are fundamentally equal. Consequently, a need was felt both amongst the Bar and the Bench to remedy this situation.

## NEED FOR CHANGE - BRITISH TITLES WERE MARKERS OF INEQUALITY

The primary constitutional objection to titles like **"My Lord"** and **"Your Lordship"** was that they inherently contradict the core principle of equality guaranteed by the Constitution (Article 14). Using the term **"Lordship"** inherently **propagates a semblance of hierarchy** within the courtroom, suggesting that judges are elevated significantly above the common citizen and the advocate, who is supposedly an equal officer of the court.

Furthermore, the language carried connotations of subjugation. The continued use of **"My Lord" or "My Lady"** has been explicitly criticized as indicating a state of being *enslaved*. This elevates the criticism beyond mere etiquette to a fundamental constitutional issue – the address implies a feudal / colonial subservience incompatible with the dignity guaranteed to every person in a free republic like India. The judicial institution of the modern state must project equality, where respect is earned by the office and the law, not demanded through aristocratic nomenclature.

**Attempts by the Bar Council of India**

The ethical responsibilities of advocates in India are codified by the Bar Council of India (BCI) Rules, which stress the maintenance of professional conduct and judicial dignity. An advocate is obligated to show respect towards the court, recognizing that the dignity maintained towards the judicial office is essential for democracy. Specifically, an advocate must at all times conduct himself / herself with self-respect and act in a dignified manner during the presentation of a case. These rules also govern professional language, requiring the use of dignified language in correspondence and during arguments, and prohibiting the use of unparliamentary language. Taking a cue from the professional code of conduct applicable to lawyers, other professionals like Company Secretaries and Chartered Accountants have also followed suit and their respective governing bodies have laid down similar rules for professional conduct. It is pertinent to note here that while such rules of professional conduct establish a duty of respect, but they do not inherently demand that a judge be addressed as **"My Lord"** or **"My Lady".** Rather, they require a professional to conduct himself or herself in a manner commensurate with that of a professional officer of the court. A controversy over titles arose when the BCI attempted to codify the specific terms of address.

In 2006, the BCI Rules underwent an amendment with the explicit goal of instituting uniform standards of professional decorum for lawyers across the nation. Through a gazette notification in May 2006, a new Chapter IIIA was introduced into the BCI Rules which mandated that lawyers should employ either **"Your Honour" or "Your Lordship"** when addressing judges of the High Courts and the Supreme Court, making this choice binding on lawyers. This action reinforced the requirement of formal respect by providing specific, albeit still colonial, terminology for high courts.

Crucially, in the same period, the BCI had also passed a parallel resolution sometime in April 2006 that urged advocates *not* to address a judge as **"My Lord"** or **"Lordship".** Although this resolution was later gazetted on May 6, 2006, it was framed as an advisory request or a desire for abolition, rather than a binding statutory prohibition.

This was indeed a unique and contradictory situation. While on the one hand the BCI enacted a mandatory rule that required the use of addressing judges as **"Your Lordship"** , at the same time it had also passed a resolution that ***discouraged*** **the use of "My Lord" and "Lordship"**. This contradiction indicated a disconnect between the administrative processes of the rule-making body and the growing reformist sentiment within the Bar. As a consequence, since there was no clarity and given the deeply ingrained professional tradition fuelled by caution and deference, the non-mandatory advisory resolution failed to be adopted universally.

The non-adherence demonstrated the inherent difficulty in changing professional tradition solely through advisory mandates, particularly when judges themselves often tacitly or explicitly preferred the traditional terms of address. To change this ingrained practice, explicit judicial intervention rooted in constitutional principles, rather than just a non-binding request from the BCI, became necessary.

## THE PRESENT POSITION: JUDICIAL DIRECTIVES AND EMERGING UNIFORMITY

The decolonization of addressal has reached its most decisive phase in recent years, driven primarily by the highest judicial offices in the country. The courts have sought to move the debate beyond simply professional courtesy, but one anchored in constitutional mandate on the basis that retention of feudal titles is contrary to the ideal of human dignity. The courts have encouraged a shift towards simpler, dignified address.

### A. Supreme Court of India

The most impactful change has been boosted by judicial observations from the various courts, particularly from the Hon'ble Supreme Court of India. Chief Justice of India D.Y. Chandrachud publicly endorsed the shift during a proceeding when a lawyer, initially addressing him as "**Sir**," corrected himself by reverting to the customary "**Your Lordship**." CJI Chandrachud, recognizing the deviation, specifically lauded the use of "**Sir**" and expressed his appreciation for the lawyer's egalitarian preference, overriding the conventional practice.

Earlier, there was also an instance of Justice PS Narasimha, who was sitting on the bench with senior presiding judge Justice AS Bopanna, visibly frustrated with the colonial judicial address and he remarked to the arguing senior lawyer before him *"How many times you will say "My Lords"? If you stop saying this, then I will give you half of my salary!"*

This judicial legitimation establishes a clear, high-level precedent for constitutional modernity in courtroom interaction. An endorsement from the apex court of India provides the necessary assurance to the Bar and the Bench alike that using non-colonial terms is not only acceptable but preferred, effectively bypassing the ambiguity created by the BCI's earlier conflicting rules and advisory resolutions.

This mandate for change has also been reflected at the state level in various High Courts as well.

### B. Madras High Court

Justice K Chandru was one of the first judges who banned the use of the terms "My lord" and "Your lordship" by lawyers addressing his court. Advocates whose cases were listed for hearing before

Justice Chandru were in for a surprise, when they saw a notice board requesting them not to address the court using the traditional phrase "My Lord". As per the rule, lawyers could address the court as "Your Honour" and refer to it as "Honorable Court". If it is a subordinate court, lawyers could use terms such as "Sir" or any equivalent phrase in the regional language concerned.

**C. Rajasthan High Court**

In a landmark decision in July 2019, the Rajasthan High Court made history by asking lawyers to abandon the colonial practice of addressing its judges as **"My Lord"** or **"Your Lordship"**, stating that judges were comfortable with simply being called **"Sir"**. This decision was taken unanimously in a Full Court meeting, and the notification explicitly requested lawyers and litigants to address judges simply as **"Sir" or "Srimanji"**. Crucially, the resolution linked the action directly to the need to *'honour the mandate of equality enshrined in the Constitution of India'*.

**D. Other Jurisdictions**

Similar judicial preferences have been voiced across the country. Justice Arun Kumar Tyagi of the Punjab and Haryana High Court requested lawyers to refrain from using **"My Lord"** or **"Your Lordship**", and also discouraged overly submissive language like **"Obliged"** or **"Grateful"**. Judges of the Calcutta High Court and Kerala High Court have also presented their views concerning this issue.

Despite this broad consensus among judges over the years that the colonial titles should be done away with, the lack of a current, mandatory, universally binding code creates a non-uniform application across the country. The integrated judicial system of India, with the Supreme Court at the apex followed by High Courts, theoretically demands uniformity. However, the diverse observations made by various individual judges leave lawyers in a predicament, uncertain of the standard to apply in every single courtroom. The transition is therefore fragmented as compliance relies heavily on respect for the individual judge's publicly stated preference, rather than an enforced rule. The author has over the last two and half decades practising in the courts and tribunals, observed that there is a sub-conscious tendency amongst a majority of the judges to lend a more kinder / receptive ear to a practitioner using colonial titles rather than to someone using egalitarian titles. During judicial training if the egalitarian philosophy of judicial address is imparted to all the prospective judges, then it will help in universal acceptance and applicability.

## CONCLUSION

Be that as it may, the true evolution of advocacy extends beyond the mere semantics of addressal. It ultimately does not matter whether a judge is called **"My Lord"** or "**Sir",** what matters is that a professional must always maintain dignity, self-respect, and professionalism, and use dignified language, ensuring they do not use unparliamentary language during arguments. Furthermore, professionals must refuse to act in an illegal or improper manner towards the opposing counsel or parties, and must not blindly follow client instructions if they insist on using unfair or improper means. The ultimate measure of a true professional is not judged by his semantics or waxing eloquent before a judge, but by the quality of preparation, integrity and professional conduct that is displayed.

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# USE OF TECHNOLOGY: AI, DATA ANALYTICS, AND DIGITAL PLATFORMS IN VALUATION AND INSOLVENCY


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## INTRODUCTION: VALUATION AT THE HEART OF TRUST

Valuation under the Insolvency and Bankruptcy Code, 2016 (IBC), is not simply a technical formality; it is the framework upon which resolution outcomes, creditor voting patterns, and stakeholder confidence are built. Strict timetables, complicated and increasingly complex capital structures, and often judicial scrutiny have raised the standard of valuation in the Indian context. Simultaneously, the world is entering a global revolution with artificial intelligence (AI), advanced data analytics and digital platforms that will significantly alter the way we conceptualise, undertake, review and challenge valuation.

In this regard, the theme of the conference, “Bridging Gaps, Building Trust: Strengthening India’s Insolvency and Valuation Framework,” seems timely. Technology, when deliberately applied, can bridge an information asymmetry, reduce subjectivity, ensure consistency, and, in due course, increase trust in the valuation report itself, without diminishing the valuer’s professional judgement.

Technology is no longer a support function in valuation, it’s the foundation of trust, transparency, and timely outcomes under the IBC.

## REGULATORY BACKDROP: FROM RULES TO DIGITAL RAILWAYS

Currently, valuation in India is carried out primarily in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017 (as amended), supplemented by various circulars and guidance from the Insolvency and Bankruptcy Board of India (IBBI).

Parallelly, IBBI and allied institutions have built digital “railways” for the insolvency ecosystem:

- An electronic platform for auction notices for liquidation assets, improving transparency and discovery of prices.
- Information Utilities (IUs) with technical standards for data submission, authentication, and retrieval, creating a structured digital repository of debt information.
- Online portals for examinations, registrations, and disclosures for insolvency professionals and registered valuers.

The expectation is clear: the law requires practitioners to operate within the context of an increasingly technological world.

It is now appropriate to incorporate artificial intelligence and data analytics for valuers while staying firmly grounded in the recommendations in the IBBI Handbook on Best Practices in Valuation for Registered Valuers.

## WHY TECHNOLOGY IN VALUATION IS NO LONGER OPTIONAL

In the Indian insolvency context, many factors are driving the adoption of technology in valuation:

- Tight deadlines under the IBC and the necessity for timely yet robust valuations for fair value and liquidation value.
- Explosion of data at financial, operational, transnational-level and market data that cannot be effectively processed through manual spreadsheets alone.
- Complex instruments and capital structures (convertibles, options, structured debt) that need robust modelling;
- Increased scrutiny by the adjudicating authorities, regulators, and lenders requires better documentation, evidence of assumptions, and audit trails.

AI, data analytics and digital platforms are quickly becoming enablers of professional quality, and not merely "nice to have" overlays.

## AI IN VALUATION: FROM AUTOMATION TO AUGMENTED JUDGEMENT

AI can significantly enhance business valuation by automating repetitive tasks, mining complex datasets, and providing predictive insights.

**Key use cases include:**

1. **Automated Data Extraction and Cleaning**

   Valuation professionals often devote excessive time to gathering and cleaning data from financial statements, bank statements, management reports, ROC filings, and market databases. Artificial intelligence-enabled tools can extract relevant metrics (e.g., revenues, EBITDA, and debt schedules) from PDF and scanned documents, using OCR and natural language processing to flag inconsistencies, missing periods, and unconventional spikes, allowing professionals to review at a deeper level. This shifts the effort from simply crunching numbers for hours to reviewing inconsistencies and quality issues.

   This provides built-in quality to the data that underpins the valuation models.

2. **Predictive Modelling and Scenario Analysis**

   Machine learning models can analyse historical financials, sector cycles, macro indicators and alternative data (such as GST collections, e-invoicing trends, and web traffic) to assist in revenue forecasting, margin stability, and working capital potential. In the case of a stressed asset under IBC, AI-enabled scenario engines can:

   - Simulate multiple turnaround scenarios of the business,
   - Perform cash flow stress-testing under various proposed demand, pricing, or cost structures, and
   - Produce not a point estimate value but a probabilistic distribution of values.

   The valuer is still asked to choose and rationalise which would be the "most likely" scenario, but can provide a more robust analytical foundation.

3. **Benchmarking and Market Multiples at Scale**

   AI tools have demonstrated an unparalleled ability to retrieve and compile comparable transactions, trading multiples, and sector benchmarks substantially beyond the capabilities of a manual desktop search. Application includes:

   - Provisioning multiples (EV/EBITDA, P/E, EV/Revenue) for peer groups that are updated dynamically on a current/recent basis.
   - Adjusting for size, leverage, geography, or product mix differences using statistical measures.

- Identifying outlier transactions that may skew averages.

This further strengthens the market approach and the multiple transaction approach.

4. **Document Generation and Consistency Checks**

Integrating generative AI into valuation reports can assist in drafting the valuation report, including tables, charts, narrative rationale, and sensitivity analysis, as structured inputs can be utilised for these aspects. More importantly, AI can conduct consistency checks:

- Are the narrative assumptions reflected in the model's numbers?
- Are discount rates, growth rates, and risk factors used consistently throughout the analysis?
- Are regulations and standards correctly cited?

These consistency checks enhance the valuation by reducing clerical errors and improving internal quality control, while still holding the valuer accountable for the final product.

5. **Advanced Data Analytics: Turning Raw Data into Valuation Insight**

Data analytics encompasses a broader domain than AI, including descriptive, diagnostic, predictive, and prescriptive analytics. In valuation and insolvency, data analytics enhances valuation alternatives in at least four dimensions:

- **Analysis at the transaction level**: With predominantly retail or MSME organisations, samples of transactions for everyday stress, fraud, or seasonality could likely miss patterns. Analytics will utilise the full dataset (population) of transactions to analyse transactional behaviour for abnormalities, trends, and other insights.
- **Profitability by customer and/or product**: By analysing segmentation data, the valuer can determine which products and/or customer segments will drive future cash flow under a resolution plan.
- **Operational performance analytics**: Process metrics (inventory turns, asset utilisation, turnaround time, etc.) describe whether efficiency gains are in place or will produce a realistic value change in future viability.
- **Risk analytics**: Historical volatility, concentration risk, and counterparty risk can all be quantified and accounted for in valuation through notional risk, either to cash flows or via discount rates.

In M&A valuations, global practice indicates that data analytics is now a standard component of duly diligence in both creating/enhancing value, or for risk mitigation in an M&A transaction.

## DIGITAL PLATFORMS: CREATING AN END-TO-END DIGITAL VALUATION ECOSYSTEM

The strength of technology is maximised when it is not restricted to a type of tool but is integrated across an end-to-end digital journey. For example, in the IBC space, we can envision an entire digital valuation ecosystem that consists of:

1. **Data Ingestion from Digital Sources**

- Information Utilities deliver verified records of debt and security interests.
- GST, ROC, and MCA21 filings, when permitted, are delivered through API and secure data-sharing agreements.
- Banking and payment information (with consent and confidentiality) is being fed into the cash-flow analysis.

2. **Valuation Workflows and Collaboration Platforms**

The cloud-based valuation platforms provide:

- Version control for models and reports;
- Assignment of tasks to valuation team members; and
- Secure collaboration with insolvency professionals, applicants for settlement, and lenders using virtual data rooms.

They also provide an audit trail, which is highly valuable for potential future challenges before the Adjudicating Authority or Appellate Tribunal.

3. **Digital Auction and Market Discovery**

   The utilisation of the e-auction platform by the Insolvency and Bankruptcy Board of India (IBBI) for liquidation assets is a significant move in the use of digital platforms for price discovery. The forum will also provide invaluable longitudinal data, if enriched with analytics (such as bidder behaviour, bid timing, bundles of asset classes, and recovery ratios), for future valuations and calibrating haircuts, especially for secondary market investors and asset reconstruction companies (ARCs).

## USE OF TECHNOLOGY IN INSOLVENCY: STRENGTHENING TRANSPARENCY, MONITORING AND RESOLUTION EFFICIENCY

While valuation remains a central pillar in resolution, insolvency, as a broader process, has also benefited from digitally driven innovations. The Insolvency and Bankruptcy Code (IBC), 2016, introduced market-based insolvency resolution in India, and technology is increasingly becoming the mechanism that improves its outcomes.

**The key technology-driven interventions transforming insolvency administration include:**

1. **Digital Case Management and Workflow Platforms**

   IBBI, along with the NCLT, have moved towards a digitised mechanism for adjudication:

   - E-filing and virtual hearings enhance accessibility and reduce delays attributable to adjournments
   - Integrated workflow platforms assist in tracking every stage of CIRP, documentation, timelines and milestones of compliance
   - Dashboards provide real-time monitoring by stakeholders of CoC, IRP, RP and regulatory agencies

   This improves both timeliness and procedure discipline – both of which are important for a time-bound system under the IBC.

2. **Information Utilities (IUs): Single Source of Truth**

   IUs have emerged as a critical data infrastructure:

   - They provide authenticated financial information relating to claims, security interests, and defaults.
   - AI-enabled analytics on IU data can detect related-party concentration, evolving stress patterns, and possible fraud triggers.
   - Machine-readable IU records expedite the verification and collation of claims, which is often the most time-consuming part of CIRP.

3. **Digital Forensics and Fraud Analytics**

   Resolution professionals encounter significant difficulties within matters such as:

   - round-tripping,

- diversion of funds,
- undisclosed related parties
- irregular asset transfers.

AI and analytics tools can assist with:

- transaction forensics by using trail analytics between bank accounts, GST, and MCA21 filings
- network-relationship mapping for promoters, suppliers, and sister entities
- early risk alerts to mitigate value erosion during the CIRP.

4. **Virtual Data Rooms (VDRs) for Bidding and Due Diligence**

   A comprehensive digital due diligence process provides:

   - Secure remote access to sensitive business information
   - Controlled document sharing with dynamic permissions
   - An audit trail of bidder access and interactions
   - Increased bidder confidence, increased bidder participation, increased recovery rates

   This democratises participation and circumvents geographical barriers.

5. **Digital Auction Platforms & Post-Resolution Monitoring**

   A lack of price discovery frequently impedes liquidation. Digital auctions provided by IBBI:

   - Increase competition amongst bidders
   - Capture behaviour by bidders, timing of bids, and selling prices
   - useful analytics for pricing reserves and haircuts when a similar situation arises

   Following the resolution, AI-steeped covenant and performance monitoring systems can monitor:

   - compliance with repayment timelines,
   - enforcement timeline
   - operational changes the Resolutions plans have committed to.

   In this way, CoCs and Regulators may intervene earlier if slippages occur, concurrent with the objective of resolution, not recovery.

## BENEFITS: SPEED, TRANSPARENCY AND TRUST

When thoughtfully developed and regulated, technology can improve upon the following elements:

1. **Bridging Gaps**

   - AI and analytics reduce information asymmetry between promoters, creditors and resolution applicants by making visible relationships that may not exist in raw data.
   - Digital platforms provide access to information and an auction similar to traditional markets, reducing the sense of opacity that may develop.

2. **Building Trust**

   - Standard workflows and audit trails assist stakeholders and regulators in understanding "how" a valuation was done.
   - Objective data-based benchmarks coexist with professional judgment, supporting the defensibility of valuations.

3. **Strengthening the Framework**

   Objective facts from digital platforms can inform changes to policy based on haircut prospects, stress patterns, or thresholds of viability in resolution plans, among others.

## RISKS, LIMITATIONS AND ETHICAL CONCERNS

Technology alone cannot save us. Global standard-setting bodies, such as the International Valuation Standards Council (IVSC), have also noted new risks that are introduced when utilising AI (and technology more generally).

The most serious risks/concerns include:

1. **Model risk and opacity**
   - Black box models could produce outputs that their developers cannot explain.
   - For a valuation that is to be subject to scrutiny in court, a lack of explainability is a significant disadvantage.
2. **Data quality and bias**
   - "Garbage in, garbage out." In other words, biased or incomplete datasets can lead to valuations driven by irrelevant data.
   - A heavy reliance on foreign benchmarks or poor representations of transactions could result in an incorrect value in the Indian context.
3. **Cybersecurity and confidentiality**

   Valuation models use trade-sensitive business information. A cloud-based platform and AI technology must have robust security and confidentiality measures that meet high standards.
4. **Over-financialisation of AI**
   - International regulators are already highlighting what appear to be frothy valuations in AI-related businesses and an "AI bubble" emerging in capital markets.
   - For valuers, the implication is to remain cautious if they have not cross-checked AI-generated projections that involve AI-heavy businesses.
5. **Professional responsibility**

   To say that "the software gave this number" does not absolve the valuer from the responsibility for that output. Professional scepticism, independent judgement, and adherence to standards remain non-delegable.

## PRACTICAL ROADMAP FOR VALUERS AND INSOLVENCY PROFESSIONALS

To make use of AI, data analytics, and digital platforms responsibly, an experienced insolvency practitioner or registered valuer in India can pursue the following pathway:

1. **Construct a Data Strategy**
   - Identify the main datasets that one would typically require for the assignments (financial, operational, industry, macroeconomic, comparable transactions).
   - Identify the data sources (IUs, MCA21, GST data, industry databases, auction platforms).
   - Establish data validation routines; that is, all AI-assisted ingestion is followed by human review.
2. **Select Tools with Governance Considerations:**
   - Select tools that have audit trails, versioning, and explainability of their responses.
   - Assess whether the vendor meets Indian data protection and confidentiality requirements, and consider how to obtain client consents.

3. **Upskill the Team**
   - Encourage employees to participate in courses focused on AI and analytics in business evaluation, with several Indian professional bodies running such programmes.
   - Develop internal guidelines on how to integrate AI outputs with professional judgement.
4. **Embed Controls and Peer Review**
   - Consider more complex AI/analytics-based models as "high-risk models" requiring independent validation or peer review.
   - Keep a manual cross-check of reasonableness by using simpler methods (for example, basic DCF and rule-of-thumb multiples).
5. **Engage with Stakeholders Transparently**
   - In the report, explain where and how technology was utilised - data extraction, benchmarking, scenario analysis, etc.
   - Clearly state any assumptions and limitations to the analysis, particularly in relation to any AI/ML models.
   - Be able to show a reasonably transparent basis for conclusions reached before CoCs, regulators and/or courts.

## ILLUSTRATIVE USE CASES IN THE IBC CONTEXT

Let us now examine a few realistic scenarios of Indian insolvency and valuation practice:

1. **Assessment of the Sufficiency of the Resolution Plan**
   - Utilise AI systems to model multiple operating scenarios for the business, and, drawing on historical and sector-specific information, develop a range of enterprise values that vary according to different levels of demand/price/cost structure.
   - Use analytics to determine if the proposed repayment schedule aligns with a realistic cash flow forecast.
2. **Liquidation Value for Asset-heavy Businesses**

   Merge information from prior auctions (recovery ratios by asset class, geographies, vintage) with contemporaneous market information to position discounts for the forced-sale situation.
3. **MSME and Pre-pack Cases**

   For smaller businesses with limited detailed financial information, analysing GST data, bank transactions, and other data sources can provide a more accurate estimate of business continuity potential, thereby enhance the robustness of valuations and restructure plans.
4. **Group Insolvency / Complex Structure**

   Network analytics can help map inter-company exposures, guarantees, and cash-flow inter-relationships, which will assist valuers in understanding the enterprise value on a consolidated basis versus the value of standalone entities.

   These examples illustrate how technology enhances, rather than replaces, professional judgment regarding the business and its context.

## CONCLUSION: FROM TECH ADOPTION TO TECH STEWARDSHIP

Valuation and insolvency processes are converging into a unified digital discipline where data, technology and professional judgement operate together. Artificial Intelligence (AI), data analytics, and digital platforms are no longer peripheral conveniences they comprise an evolving infrastructure of trust, transparency, and timeliness. The symmetry is evident:

- In valuation, technology enables the ability to assist with a fair measurement of what a business is worth.
- In insolvency, technology supports fair realisation of that worth for stakeholders.

Together, they:

- Bridge gaps between data and decisions, process and outcomes
- Build trust through traceable methods, secure workflows, and explanations
- Strengthen India's insolvency framework by creating feedback loops into policy and market discipline

However, technology's utility increases the responsibility on valuers and insolvency professionals to act as stewards ensuring explainability, avoiding bias, protecting confidentiality, and ultimately preserving professional scepticism.

India's insolvency and valuation journey is entering a transformative phase where technology does not disrupt the profession it elevates it. If embraced in a thoughtful manner, AI-enabled valuations and analytics-driven insolvency resolutions can achieve outcomes that represent a quicker, fairer, more credible, and fully aligned with the IBC philosophy of value maximisation and timely resolution - and ultimately contribute to building a stronger, more resilient Indian economy.

Finally, it can be said that technology elevates the valuer, not replaces them strengthening trust in every number presented. AI and analytics enable a resolution ecosystem that is quicker, fairer, and fully aligned with value maximisation.

*REFERENCES*


- *https://economictimes.indiatimes.com/news/economy/policy/ibbi-amends-technical-standards-for-information-utilities-rules/articleshow/117745974.cms, Jan 30, 2025*
- *https://equitest.net/business-valuation-blog/valuation-methods-blog/item/295-how-ai-is-transforming-the-business-valuation-industry.html, 28 April 2024 Business Valuation Methods.*
- *Farahani, M. S. (2024). Analysis of business valuation models with AI emphasis. Sustainable Economies, 2(3), 132-132.*
- *https://ibbi.gov.in*
- *https://ibclaw.in/placing-the-artificial-intelligence-on-the-insolvency-spectrum-an-analysis-by-sakshi-pandey-and-harshvardhan-singh-sikarwar/, By Sakshi Pandey and Harshvardhan Singh Sikarwar, July 21, 2022*
- *https://ivsc.org/navigating-the-rise-of-ai-in-valuation-opportunities-risks-and-standards/, 23 July 2025*
- *https://www.business-standard.com/industry/banking/how-digital-technology-platforms-are-lubricating-the-npa-disposal-process-125071000118_1.html, Srinivasan RAmar Saxena, Jul 10 2025*
- *https://www.legalserviceindia.com/legal/article-20769-the-role-of-ai-and-digital-platforms-in-bankruptcy-resolution-a-technology-and-insolvency.html, By _Nehagupta@22*
- *https://www.legalserviceindia.com/legal/legal/article-19300-digitalisation-of-the-ibc.html, By Mahesh Parimi*
- *https://www.lawaudience.com/navigating-cross-border-insolvency-in-the-digital-age-challenges-trends-and-technological-innovations/, By Varun Kumar, June 06, 2025*
- *https://www.plantemoran.com/explore-our-thinking/insight/2022/06/data-analytics-and-due-diligence-key-ways-to-drive-value-creation, Authors: Sean McBride, Jon Tanis, January 5, 2024*
- *https://right2vote.in/e-auction-for-insolvency-transforming-resolutions-right2vote/*
- *https://www.tribe.ai/applied-ai/how-ai-is-transforming-business-valuation, Mar 20, 2025*


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# IBC 2.0: TRANSFORMING THE LANDSCAPE OF CORPORATE RESOLUTION

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*"Insolvency is not the end of an enterprise; it is the moment where clarity, courage, and lawful resolution decide its future."*

**ABSTRACT**

The Insolvency and Bankruptcy Code, 2016 ("IBC") has fundamentally changed India's treatment of corporate distress by shifting from a debtor-in-possession model to a creditor-in-control, time-bound framework. After eight years of implementation and continuous refinement, the ecosystem has matured, but new stress points have become visible: prolonged timelines, a high share of liquidations, growing complexity of group structures, cross-border assets, and the rise of asset-light, technology-driven businesses.

As on June 30, 2025, about 8,487 corporate debtors had been admitted into CIRP; only about 14.8% had ended in approved resolution plans, while more than 2,800 cases (around 33%) had gone into liquidation, and the rest remained in process or were closed on appeal, settlement or withdrawal. Creditors have realised, on average, about one-third of their admitted claims through approved resolution plans. At the same time, IBBI data shows that a large majority of companies ending in liquidation were already defunct or BIFR-type cases with severely eroded value even before admission.

Against this backdrop, the "next frontier" of IBC is not simply more resolutions, but better-quality, value-maximising, technologically enabled and globally aligned resolutions. This article examines key pressure points in the current framework and explores future directions: strengthening pre-pack processes, designing a group insolvency regime, adopting a cross-border framework based on the UNCITRAL Model Law, integrating technology and data-centric valuation, encouraging earlier intervention, and redefining the role of insolvency professionals.

## IBC AT NINE: FROM PATCHWORK TO INTEGRATED CODE

Before IBC, India's insolvency landscape was governed by multiple overlapping laws such as SICA, RDDBFI Act, SARFAESI Act and company law provisions. Proceedings under these laws often ran in parallel, resulting in delay, forum shopping and low recovery. IBC replaced this patchwork with a consolidated framework featuring:

- A time-bound Corporate Insolvency Resolution Process (CIRP)
- Creditor-in-control via the Committee of Creditors (CoC)
- A regulated class of Insolvency Professionals (IPs)
- Information Utilities (IUs) for authenticated financial information
- A dedicated adjudicatory hierarchy (NCLT/NCLAT, with Supreme Court supervision)

The Code has been repeatedly tested and upheld by the Supreme Court in landmark decisions such as *Swiss Ribbons*, which affirmed its constitutional validity and recognised value maximisation and revival as its central objectives, and *Essar Steel*, which reinforced the primacy of the CoC's commercial wisdom. These rulings have given IBC a strong constitutional and jurisprudential foundation.

However, the experience of more than eight years, supported by IBBI's own empirical analysis, shows that the framework must now evolve to address second-generation issues like complex group structures, cross-border exposure, and digital-first business models

## PRESENT STRESS POINTS IN THE RESOLUTION FRAMEWORK

1. **Timelines and Delays**

   The Code prescribes an outer limit of 330 days for completion of CIRP, including time spent in litigation. In practice, the average time taken for cases yielding resolution plans has been significantly higher. Recent analyses show that many such cases are taking well over 600 days on average, excluding time formally condoned by the adjudicating authority. This prolonged duration dilutes the very objective of a time-bound process, erodes asset value and contributes to higher haircuts.

2. **Liquidation as the Dominant Outcome**

   As on June 30, 2025, more than **2,800 CIRPs** had ended in liquidation (about **33%** of all admitted cases), whereas only **about 14.8%** resulted in approved resolution plans. It is equally important to recognise, however, that IBBI's detailed analysis has consistently shown that over three-fourths of companies that eventually went into liquidation were either already defunct or erstwhile BIFR cases, with very low asset value at the time of admission. This suggests that many corporates still come to IBC too late, when meaningful revival is no longer feasible.

3. **Haircuts and Valuation Concerns**

   Aggregate data shows that, till FY 2024–25, creditors have typically realised **around 32–33% of their admitted claims** through resolution plans, implying an average haircut of about **67%**. While many factors drive these numbers – legacy NPAs, delay pre-IBC, poor quality of assets and market conditions – high haircuts in marquee cases have raised questions about:

   - Quality and timing of valuations
   - Level of competition among resolution applicants
   - Ability of the process to attract strategic capital versus purely financial distress investors

   This perception challenge needs to be addressed if IBC is to remain a credible restructuring platform rather than a forum for deep discount sales.

4. **Intangible and Digital Assets**

   Traditional insolvency systems evolved around brick-and-mortar assets, whereas today's enterprises rely heavily on:

   - Technology platforms and software
   - Intellectual property and patents
   - Brands and customer networks
   - Data assets and digital goodwill

   Valuation and resolution planning under IBC are still largely geared towards physical and financial assets. There is a growing consensus in professional literature and IBBI's engagements that specialised guidance is required for valuation of intangible and digital assets to avoid under-realisation.

## PRE-PACKAGED INSOLVENCY: FROM MSME PILOT TO WIDER USE

The Pre-Packaged Insolvency Resolution Process (PPIRP) was introduced in 2021 through a special framework for corporate debtors classified as MSMEs under section 54A of the Code. It is available where the default is at least ₹10 lakh and is designed as a hybrid process: informal negotiation of a plan between the debtor and financial creditors, followed by a formal, NCLT-supervised process.

Key advantages highlighted by regulators and professional bodies include:

- Shorter timelines compared to regular CIRP
- Lower process costs
- Continuity of operations with less disruption
- Early engagement of stakeholders, enabling rescue at a less distressed stage

While empirical data on PPIRP outcomes is still emerging, initial experience suggests that pre-packs can be an effective tool where promoters are cooperative and lenders are aligned. Current law, however, restricts PPIRP to MSMEs.

From a policy perspective, the next frontier for pre-packs would be:

- Extending the framework, with appropriate safeguards, to non-MSME corporates in sectors where continuity of operations is critical.
- Creating sector-specific guidance (e.g., for infrastructure and service sectors) to balance speed with transparency.

Such expansion would require careful calibration to avoid abuse, but global experience – especially from the UK and parts of Europe – shows that well-designed pre-packs can significantly improve revival rates.

## GROUP INSOLVENCY: MOVING BEYOND CASE-BY-CASE COORDINATION

Modern corporate entities routinely operate through group structures: holding companies, subsidiaries, SPVs and joint ventures with shared management and cross-guarantees. IBC, however, still treats each corporate debtor as a separate unit for CIRP and liquidation.

Recognising this gap, IBBI constituted a Working Group on Group Insolvency in January 2019 under the chairmanship of Shri U.K. Sinha. The Working Group's 2019 report recommended a phased framework beginning with procedural coordination (joint hearings, information sharing, aligned timelines) and, in appropriate cases, moving to substantive consolidation (pooling of assets and liabilities of closely integrated entities).

So far, India has addressed group insolvency issues through judicial innovation and ad hoc coordination (for instance, in some large infrastructure and conglomerate cases), but there is no dedicated statutory regime.

The next frontier here is clear:

- Introducing a formal group insolvency chapter or sub-framework under the Code
- Providing objective tests for when group coordination or consolidation is appropriate
- Allowing appointment of a single resolution professional and, where justified, a coordinated CoC approach for inter-linked entities

This will reduce duplicative proceedings, minimise conflicting outcomes and assist in maximising the value of integrated businesses.

## CROSS-BORDER INSOLVENCY: FROM DRAFT "PART Z" TO IMPLEMENTATION

India's corporates increasingly have assets, creditors and operations abroad. Presently, IBC provides only two limited cross-border provisions (sections 234 and 235), which require bilateral treaties and letters of request; these are cumbersome and have rarely been utilised.

In 2018, the Insolvency Law Committee recommended that India adopt the UNCITRAL Model Law on Cross-Border Insolvency, 1997, with suitable modifications. A draft chapter, informally referred to as "Part Z" of the IBC, was released for public consultation outlining a model-law-based framework.

Despite broad support in professional circles, formal legislative adoption is still pending as of late 2025.

High-profile cases such as Jet Airways and Videocon exposed the limitations of ad hoc cross-border coordination using domestic procedural law alone. A dedicated Model-Law-based regime would:

- Provide clear rules for recognising foreign main and non-main proceedings
- Enable cooperation between Indian courts and foreign courts/insolvency representatives
- Allow efficient handling of assets and creditors located in multiple jurisdictions
- Improve investor confidence and reduce transaction costs for cross-border financing

Thus, a comprehensive cross-border framework is one of the most important structural reforms for IBC's next phase.

## DIGITAL ECONOMY AND NEW ASSET CLASSES

India has seen rapid growth in sectors such as fintech, SaaS, digital media, e-commerce and platform businesses. Many of these entities have limited physical assets but significant value in:

- Source code and proprietary algorithms
- User and transaction data (subject to privacy laws)
- Online platforms and network effects
- Brand and content libraries

Professional literature and regulatory discussions now recognise that conventional valuation methods – based primarily on tangible assets and historic cash flows – are not always suitable for these models.

The next frontier demands:

- Specific guidance for valuers on data and IP-centric valuation
- Robust protocols for preserving, securing and transferring digital assets and access credentials during CIRP and liquidation
- Coordination between RPs, data protection law, sectoral regulators and potential resolution applicants in data-heavy industries

Failure to adapt could result in severe under-realisation of value in technology-driven companies undergoing insolvency.

## TECHNOLOGY AS AN ENABLER OF BETTER RESOLUTION

Globally, insolvency practice is becoming increasingly technology-enabled. In the Indian context, there is significant scope to use:

- Digital claim filing and verification through standardised online portals
- AI-assisted analytics for reviewing large volumes of transactions to detect avoidance transactions and potential fraud
- Virtual data rooms and e-discovery tools for due diligence by resolution applicants
- Secure electronic voting platforms for CoC decision-making
- Blockchain or similar technologies for tamper-proof records of claims and distributions

IBBI and professional institutions have already begun emphasising the need for IPs to be technologically competent, and certain regulations have been amended over time to permit more digital processes. A more systematic integration of technology can meaningfully improve timelines, reduce disputes and enhance transparency.

## FROM "LAST RESORT" TO EARLY INTERVENTION

IBBI's own data shows that a substantial proportion of companies that end in liquidation were economically non-viable even at the time of admission, often being legacy NPAs or long-defunct entities. This indicates that many stakeholders still view IBC as a last-resort recovery mechanism, instead of an early-stage restructuring platform.

The next stage of policy development should therefore focus on:

- Strengthening early warning systems in banking regulation and corporate governance
- Encouraging boards and independent directors to consider pre-IBC restructuring options (including out-of-court workouts and PPIRP where available)
- Incentivising timely filing of applications when viability still exists, rather than after prolonged deterioration
- Developing sector-specific turnaround expertise, particularly for infrastructure, real estate and MSME sectors

Shifting the culture from "insolvency as failure" to "insolvency as structured rehabilitation" is essential if the Code is to function as an economic stabiliser.

## THE EVOLVING ROLE OF INSOLVENCY PROFESSIONALS

Insolvency Professionals are at the centre of the IBC architecture. With the growing complexity of cases, their role has evolved well beyond compliance and process management into one that requires:

- Deep financial and commercial understanding
- Ability to coordinate among multiple regulators, lenders, and operational stakeholders
- Familiarity with sector-specific issues, especially in regulated industries (power, telecom, financial services)
- Competence in forensic review, identification of preferential and undervalued transactions and pursuing appropriate applications
- Strong ethics and independence, as repeatedly emphasised in disciplinary precedents and IBBI guidance

IBBI's continuing professional education initiatives and disciplinary jurisprudence are gradually shaping expectations of IP conduct and capability. The "next frontier" demands that the profession continues to invest in:

- Technology skills
- International best practices in restructuring
- ESG considerations and stakeholder-sensitive decision-making

## ESG AND SOCIAL DIMENSIONS OF RESOLUTION

While IBC is a commercial law, its outcomes have significant social implications - employment, suppliers, local communities and environmental liabilities. Globally, ESG factors are increasingly influencing restructuring decisions and investor appetite.

In India, ESG-linked expectations are beginning to manifest indirectly through lenders' internal policies, investor diligence and the stance of regulators. Over time, it is reasonable to expect that resolution plans will be evaluated not only for their financial value but also for their governance and sustainability commitments, especially in sensitive sectors such as chemicals, infrastructure and mining.

RPs and CoCs can voluntarily incorporate ESG parameters in evaluation matrices – such as commitments regarding continuity of critical jobs, compliance remediation and governance reforms – without diluting the primacy of value maximisation for creditors.

## KEY JURISPRUDENTIAL THEMES SHAPING THE FUTURE

Apart from *Swiss Ribbons* and *Essar Steel*, several Supreme Court and NCLAT rulings have clarified foundational issues: treatment of different classes of creditors, limitation periods, homebuyer status, distribution waterfalls and sanctity of CoC's commercial decisions. Collectively, these decisions have:

- Confirmed that IBC is a resolution-first law, with liquidation as a fall back
- Strengthened the finality of approved resolution plans, subject to limited judicial review
- Provided guidance on issues like government dues, avoidance applications and personal guarantors

As the law matures, the focus of courts has increasingly shifted from broad constitutional questions to micro-level procedural and interpretative issues, which is a sign of stabilisation.

## WAY FORWARD: ELEMENTS OF IBC'S "NEXT FRONTIER"

Based on data trends, committee reports and emerging jurisprudence, the next stage of IBC's evolution may be anchored around the following reforms and practices:

1. **Formal Group Insolvency Framework** – Implementing a structured regime for coordinated or consolidated resolution of closely linked entities.
2. **Adoption of UNCITRAL Model Law-based Cross-Border Insolvency** – Moving the draft "Part Z" from proposal to legislation with appropriate safeguards.
3. **Considered Expansion of PPIRP** – Using the MSME PPIRP experience to evaluate extending pre-packs to other classes of corporate debtors, with calibrated checks and transparency.
4. **Clear Guidance on Intangible and Digital Asset Valuation** – Developing model principles for valuation of IP, data and platform-based businesses.
5. **Deeper Technology Integration** – Mandating or encouraging digital claim platforms, secure e-voting, virtual data rooms and analytics-driven scrutiny of transactions.
6. **Early-Warning and Pre-IBC Restructuring** – Aligning banking, securities and corporate governance norms to promote early detection and treatment of financial stress.
7. **Continuous Capacity Building of IPs and CoC Members** – Focusing on interdisciplinary training integrating law, finance, valuation, technology and ethics.
8. **Voluntary Incorporation of ESG and Stakeholder Sensitivities** – Particularly in large or systemically important cases.

## CONCLUSION

The Insolvency and Bankruptcy Code, 2016 has successfully transformed India's insolvency regime from a fragmented, delay-ridden framework into a coherent, creditor-centric system backed by specialised institutions and strong jurisprudence. At the same time, hard empirical data shows that significant challenges remain in timely completion of processes, improving the mix of resolutions versus liquidations, and capturing full enterprise value especially in complex groups and digital-first businesses.

The **"next frontier"** of resolution under IBC therefore lies in refinement, not replacement: embedding group and cross-border frameworks, expanding smart tools like pre-packs, embracing technology and new asset classes, and pushing the culture towards earlier, more responsible intervention.

If these reforms are pursued with the same clarity of purpose that shaped the original Code, IBC can move from being primarily a recovery mechanism to becoming a robust economic stabiliser – rescuing viable businesses, preserving employment, and enhancing trust in India's financial and corporate governance architecture.

*REFERENCES*


- *https://www.careratings.com/uploads/newsfiles/1755597239_Insolvency%20and%20Bankruptcy%20Code%20Update%20June%202025.pdf*
- *https://www.business-standard.com/industry/news/ibc-haircuts-2025-creditor-recovery-cirp-delays-ibbi-data-125112300278*
- *https://ibbi.gov.in/uploads/publication/de2f17cca103664da3f2c845fef35505.pdf*
- *https://ibbi.gov.in/uploads/whatsnew/9bc46bf1e4b86dab3b0310cb8284cb74.pdf*
- *https://msme.icai.org/wp-content/uploads/2022/12/Pre-Pack-IPR-for-MSME-Committee-on-MSME-Startup-ICAI-October-2022-Edition-in-English.pdf*
- *https://ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf*
- *https://ibbi.gov.in/uploads/resources/eab27488d871106920be49844c1a78fe.pdf*
- *https://www.pib.gov.in/PressReleasePage.aspx?PRID=1550197&reg=3&lang=2*
- *https://www.mondaq.com/india/insolvencybankruptcy/1622318/insolvency-globalization-indias-adoption-of-the-uncitral-model-law*
- *https://msme.icai.org/wp-content/uploads/2022/12/Pre-Pack-IPR-for-MSME-Committee-on-MSME-Startup-ICAI-October-2022-Edition-in-English.pdf*
- *https://ibbi.gov.in/uploads/whatsnew/9bc46bf1e4b86dab3b0310cb8284cb74.pdf*
- *https://www.iiipicai.in/wp-content/uploads/2025/02/The-Resolution-Professional-January-2025-1.pdf*


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# DIGITAL TRANSFORMATION IN VALUATION - ROLE OF AI, DATA ANALYTICS AND DIGITAL PLATFORMS

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**SYNOPSIS**

Technology is reshaping valuation practice in India through the increasing use of artificial intelligence, data analytics and digital platforms. For both Insolvency Professionals and Registered Valuers across asset classes, these tools are enabling faster access to authenticated data, enhancing analytical depth and improving transparency in decision-making. Digital ecosystems such as MCA-21, GSTN, Account Aggregators and e-auction platforms have created opportunities for standardisation and evidence-based valuation, particularly in distressed situations under the Insolvency and Bankruptcy Code. At the same time, concerns related to data quality, regulatory alignment, ethical safeguards and excessive reliance on automated models continue to demand caution.

## INTRODUCTION

Valuation has traditionally been a professional discipline grounded in expert judgment, financial analysis and market-based assessment. In India, the evolution of this discipline has accelerated significantly over the past decade due to regulatory reforms, especially the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC) and the establishment of a structured valuation framework through the Companies (Registered Valuers and Valuation) Rules, 2017. These developments have not only formalised valuation practice but also created a greater demand for transparency, standardisation and defensibility in valuation reports. Against this backdrop, technology has emerged as a transformative force, reshaping how information is accessed, processed and interpreted across all stages of valuation.

The integration of artificial intelligence (AI), data analytics and digital platforms is no longer a theoretical possibility but a practical and evolving reality. Globally, valuation firms and financial institutions are deploying machine learning models for predictive pricing, automated report generation and scenario simulation. In India, these applications are still in early stages, but adoption is steadily rising due to increasing availability of structured datasets, digital public infrastructure and regulatory encouragement towards improved governance.

For insolvency professionals, technology has become particularly relevant because valuation under IBC frequently involves distressed, information-scarce, or rapidly changing businesses. The need to determine both fair value and liquidation value within strict timelines has pushed practitioners to explore tools that can expedite data collection, conduct forensic style evaluations and support decision-making with greater confidence. Similarly, registered valuers across all asset classes viz. land & building, plant & machinery, and securities or financial assets are beginning to leverage digital solutions for market data extraction, comparable analysis, asset tracing and workflow automation.

However, the increased use of technology also raises critical professional considerations. While automation can support efficiency and reduce subjectivity, it cannot replace professional judgment. Issues such as algorithmic bias, data reliability, privacy constraints and lack of explainability pose genuine risks. The regulatory framework in India has not yet issued explicit standards on technology deployment, and valuers remain fully responsible for the conclusions expressed in their reports, regardless of technological assistance.

A balanced examination of how technology is shaping valuation practice in India can explore current applications, emerging possibilities and practical limitations while recognising the unique challenges faced in an evolving regulatory environment. This can also cover the major asset classes and is addressed to both insolvency professionals and registered valuers, reflecting the increasing convergence of roles under modern economic realities. By analysing developments in AI, data analytics and digital platforms, a forward-looking view of the profession can be derived where technology enhances capability without compromising integrity, independence or professional judgment.

## REGULATORY CONTEXT IN INDIA

The adoption of technology in valuation must be understood within the framework of India's evolving regulatory landscape. The Insolvency and Bankruptcy Code, 2016 (IBC) created a time-bound resolution framework that elevated the role of valuation by making it central to decision-making during the corporate insolvency resolution process. While the Code does not prescribe specific technological tools, its emphasis on accuracy, transparency and accountability has indirectly encouraged greater use of data-driven methods. Similarly, the Companies (Registered Valuers and Valuation) Rules, 2017 formalised valuation practice by introducing eligibility criteria, valuation standards and disciplinary oversight through the Insolvency and Bankruptcy Board of India (IBBI). These Rules require registered valuers to maintain detailed records, justify methodologies and ensure independence, all of which can be supported through digital documentation, audit trails and analytical tools.

Although the regulatory framework does not yet mandate the use of technology, several policy directions indicate increasing openness to digital enablement. IBBI-issued discussion papers and circulars have highlighted the importance of reliable data sources and standardisation of valuation processes. The increasing digitalisation of insolvency workflows - such as electronic public announcements, virtual creditor meetings and online submission of resolution plans - has made it natural to integrate technology into related valuation activities. Further, registered valuers are required to adhere to Valuation Standards issued by Registered Valuer Organisations (RVOs), which emphasise transparency, consistency and the need to disclose assumptions and limitations. As technology tools generate structured outputs and recorded logic, they can support compliance with these requirements by making valuation conclusions more traceable and defensible.

In the wider policy environment, India's digital public infrastructure has created a supportive ecosystem for data-centric valuation. Platforms such as MCA21, GSTN, CERSAI and land record digitisation initiatives provide access to historical and real-time information that previously required manual retrieval. Although regulatory caution persists particularly in the areas of confidentiality, data privacy and reliance on automated systems, there is a growing recognition that technology can strengthen professional practice when used responsibly. The regulatory trajectory suggests that while technology may never replace expert judgment, it will increasingly become an expected component of a robust valuation process in India.

## ARTIFICIAL INTELLIGENCE IN VALUATION PRACTICE

Artificial intelligence (AI) is emerging as one of the most influential technological developments in valuation, offering capabilities that extend beyond traditional analytical techniques. In practice, AI can support valuers by processing large volumes of structured and unstructured data, detecting patterns and generating insights that may not be immediately visible through manual review. In the securities and financial assets space, predictive algorithms are being used globally to model equity and debt valuations, forecast cash flows and simulate market scenarios under varying economic conditions. While adoption in India remains limited, early experiments by financial institutions and advisory firms indicate that AI-enabled models may gradually become supplementary analytical tools for complex valuations.

One of the most practical applications of AI is in automation of repetitive tasks, such as data extraction, report drafting and document classification. Natural language processing tools can scan financial statements, loan documents and legal filings to identify relevant information, reducing the time spent on manual data review. For plant and machinery or land and building valuation, computer vision-based systems are being developed internationally to interpret images, detect asset conditions and support estimation of useful life. Though these tools are not yet commonly used in India, rapid improvements in imaging technology and drone-based surveying suggest that adoption may increase in the near future, particularly for large industrial facilities or geographically dispersed assets.

AI also plays an emerging role in risk identification and anomaly detection, which can be particularly valuable in distressed and insolvency contexts. Algorithms trained on financial ratios, payment behaviour and operational indicators can highlight unusual patterns that may signal asset impairment, potential fraud or data inconsistencies. Such insights can assist valuers and insolvency professionals in forming better judgments, especially where information gaps exist. However, reliance on AI raises important professional considerations. Models may produce inaccurate results if trained on incomplete or biased data and their internal logic may not always be transparent. Since regulatory standards hold valuers fully accountable for their conclusions, AI outputs should be treated as decision-support tools rather than definitive answers. Human expertise, professional skepticism and independent reasoning remain indispensable.

Overall, AI presents significant potential to enhance valuation efficiency and analytical depth, but its adoption must be gradual, well-documented and aligned with ethical and regulatory expectations. The profession is likely to move towards hybrid models, where technology assists in processing information while final opinions continue to rest with trained and accountable professionals.

## DATA ANALYTICS AND THE EXPANDING ROLE OF INFORMATION IN VALUATION

Data analytics has become one of the most influential elements in modern valuation practice, primarily because it enhances the depth, reliability and defensibility of conclusions. Traditional valuation methods have always relied on financial statements, market data and industry benchmarks, but the availability of digitally accessible information has transformed how valuers source and interpret inputs. In India, platforms such as MCA21, GSTN, SEBI filings, RBI databases, CIBIL and sectoral statistical repositories now provide structured information that can be analysed systematically rather than manually extracted. This shift enables valuers to validate assumptions more effectively, test sensitivity across multiple variables and identify trends that may not be visible through conventional spreadsheet-based calculations.

Data analytics strengthens valuation across all asset classes. For securities and financial assets, time-series data can be used to model volatility, perform stress testing and evaluate probabilistic outcomes under changing economic conditions. In plant and machinery valuation, digital inventories and maintenance logs can support estimation of remaining useful life and obsolescence. For land and building assets, GIS-enabled datasets, circle rates, land registries and transaction heatmaps can assist in identifying comparable properties and analysing price dispersion across micro-markets. As more states digitise land records and integrate mapping systems, the reliability of data-driven benchmarking is expected to increase significantly, reducing dependence on informal market feedback.

A major advantage of data analytics is its ability to support scenario-based valuation, particularly in uncertain or distressed environments. Rather than relying on single-point estimates, valuers can model multiple outcomes by adjusting revenue, cost and discount rate assumptions to reflect macroeconomic developments. This is especially relevant for IBC-driven valuations, where the future viability of a business may depend on operational restructuring, changes in working capital, or asset sales. Data analytics also enhances transparency, because analytical models generate traceable outputs that can be recorded, stored and reproduced - features that are increasingly useful when valuations are scrutinised by creditors, stakeholders or regulatory bodies.

However, the use of data analytics requires caution. The accuracy of results depends on the quality, completeness and relevance of the underlying data. In India, digital datasets may contain gaps, inconsistencies or obsolete data, which can create false confidence if not critically evaluated. Valuers must exercise professional judgment in determining whether digital information reflects actual market behaviour and must clearly disclose any limitations that could influence the reliability of conclusions. Data analytics is therefore not a substitute for expertise but a tool that has to be applied responsibly to strengthen professional decision-making.

## DIGITAL PLATFORMS AND TECHNOLOGY-ENABLED WORKFLOWS

Digital platforms have significantly reshaped how valuation and insolvency processes are executed in India by improving access to information, reducing administrative friction and creating audit-friendly environments. The most visible transformation has occurred within the IBC ecosystem, where electronic platforms are now used for public announcements, submission of claims, conducting virtual meetings and monitoring of timelines. These changes have indirectly influenced valuation by creating faster, more structured and more transparent workflows. Insolvency professionals increasingly rely on virtual data rooms (VDRs) to share financial records, asset registers, litigation details and operational information with valuers and resolution applicants. VDRs not only streamline document access but also ensure traceability through access logs and version controls, which reduces the risk of information gaps or disputes.

Digital platforms have also become central to asset monetisation. E-auction systems used by banks, insolvency professionals and government agencies have introduced standardised bidding formats, bidder verification and real-time monitoring. These features improve market discovery and provide a useful reference point for valuers when estimating liquidation value or analysing past realisations under distressed scenarios. In plant and machinery or land & building valuations, globally drone based surveys, laser scanning and digital mapping tools are being adopted to capture accurate site measurements and asset conditions.

Beyond insolvency-specific systems, broader national digital infrastructure is opening new possibilities. The Account Aggregator framework enables consent-based financial data sharing, which may eventually facilitate real-time verification of bank statements, cash flows and credit exposures. India Stack's authentication layers ensure secure identity verification, while digital registries such as CERSAI, IP India and vehicle and equipment databases provide reliable information for asset tracing and ownership confirmation.

For valuers, these platforms reduce dependence on manual submissions and increase confidence in documentary evidence. At the same time, cloud-based valuation software is emerging as a workflow solution, allowing teams to standardise templates, track revisions and maintain audit trails. While commercial adoption remains limited, growing expectations for defensible and well-documented valuation processes suggest that technology enabled platforms will soon become mainstream.

Despite these advantages, digital platforms introduce challenges that must be managed carefully. Cybersecurity risks, confidentiality concerns and inconsistent digital literacy across stakeholders can affect implementation. Additionally, technology may create an impression of precision even when data inputs are incomplete or outdated. Valuers must therefore remain cautious, ensuring that digital convenience does not override professional skepticism or verification requirements. The role of digital platforms is ultimately supportive as they enhance efficiency and transparency while retaining independent assessment.

## APPLICATION OF TECHNOLOGY IN INSOLVENCY AND DISTRESSED VALUATION

Valuation under the IBC presents unique challenges due to information scarcity, operational disruption and compressed timelines, making technology particularly valuable in this context. Artificial intelligence and data analytics can help bridge information gaps by analysing historical financial performance, sector trends and early warning indicators to assess viability and risk. Digital platforms enable faster access to operational data, while VDRs ensure that valuers receive uniform and authenticated information, reducing discrepancies between fair value and liquidation value assessments. In distressed situations, technology assisted asset tracing through regulatory databases, public registries and digital search tools can help identify encumbrances, related-party transactions and undisclosed assets, which in turn strengthens the accuracy of valuation conclusions.

However, even in insolvency-driven assignments, technology remains an enabler rather than a determinant. Distressed businesses often experience rapid changes in performance, meaning that historical data may not accurately reflect future recoverability. AI-generated projections must therefore be balanced with ground-level insights, management interactions where available, and industry benchmarking. Professional judgment continues to play a dominant role, particularly when valuers are required to justify assumptions made. The appropriate use of technology can improve confidence in outcomes, but the accountability for conclusions remains firmly with the valuer.

## BENEFITS AND EFFICIENCY GAINS FROM TECHNOLOGY ADOPTION

The integration of technology into valuation practice offers several tangible advantages that enhance both efficiency and quality of output. One of the most significant benefits is the reduction in turnaround time. Automated data extraction, digital documentation and analytics-driven modelling allow valuers to process large volumes of information more quickly than manual workflows. This is particularly valuable in IBC-driven assignments, where statutory timelines require rapid completion of valuation and related decision-making. Technology also improves the consistency and transparency of valuation reports. Digital tools generate structured outputs, apply uniform templates, and enable traceable revision histories, thereby reducing variability and strengthening the defensibility of conclusions presented to stakeholders.

Another advantage is the improvement in data reliability and verification. Access to authenticated sources, whether through statutory databases, financial registries or digital public platforms, minimises dependence on unverified submissions and enhances confidence in the documented evidence. In addition, workflow platforms and virtual data rooms create clear audit trails that capture access logs, document versions and supporting materials, which help valuers demonstrate due diligence and ensure compliance with professional standards. Technology also expands analytical capability by enabling scenario modelling, sensitivity testing and benchmarking across broader datasets, which improves the depth of valuation analysis and supports more informed professional judgment.

However, the most meaningful benefit is not automation alone but the enhancement of decision-making. Technology enables valuers to focus more on interpretation, reasoning and articulation - core elements of professional expertise - rather than administrative processing. When appropriately used, technology strengthens the credibility of valuation practice and supports the larger objective of transparency and accountability in financial and insolvency systems.

## RISKS, LIMITATIONS AND ETHICAL CONSIDERATIONS

Despite its advantages, the use of technology in valuation introduces important risks that must be managed carefully. The most fundamental limitation arises from the quality and completeness of available data. Digital systems may contain outdated, inconsistent or unverified information, which can produce misleading analytical outcomes if relied upon without professional scrutiny. In India, land records, industrial asset inventories and private company filings may exhibit gaps, requiring valuers to corroborate digital inputs with physical inspection, market intelligence and independent verification.

Another significant concern is algorithmic bias and lack of explainability. Artificial intelligence models may produce results based on patterns that are not transparent or logically interpretable, making it difficult for valuers to justify conclusions as required under regulatory and professional standards.

Since accountability remains with the valuer - not the technology - reliance on opaque systems can create professional and legal vulnerabilities. Ethical risks also arise from over-reliance on automation, leading to potential dilution of expertise and judgment, especially among less experienced practitioners.

Data privacy and confidentiality present additional challenges. The use of cloud-based systems, VDRs and digital data-sharing platforms requires strict access control, encryption and compliance with applicable legal frameworks. Cybersecurity threats pose real risks, particularly during insolvency proceedings where sensitive commercial information is frequently circulated. Valuers must therefore adopt secure practices, maintain documented policies and ensure that digital processes do not compromise confidentiality obligations.

Ultimately, technology must be treated as a decision-support mechanism rather than a substitute for professional reasoning. Clear disclosure of assumptions, limitations and reliance on digital tools remains essential to maintaining integrity and stakeholder trust.

## FUTURE LANDSCAPE FOR VALUATION IN INDIA

The future of valuation in India is likely to be shaped by increasing convergence between regulatory expectations and technological capability. As digital public infrastructure matures, access to real-time and authenticated data will become more seamless, potentially enabling dynamic valuation models that reflect ongoing market conditions. In the medium term, valuation standards may evolve to include guidance on technology usage, documentation requirements and acceptable levels of reliance on automated outputs. Internationally, professional bodies are exploring AI-assisted valuation frameworks and similar dialogues may emerge in India through IBBI, RVOs and various standard-setting institutions.

Technological adoption will also expand across asset classes. Plant and machinery valuation may increasingly use digital twins, sensor-based monitoring and predictive maintenance data to estimate useful life and obsolescence. Land and building assessments may benefit from GIS integration, remote sensing and drone-based surveys, especially as urban and industrial mapping initiatives progress. For securities and financial assets, usage of algorithmic modelling, alternative data sources and real-time market analytics may support more robust valuations in volatile conditions. Within the insolvency ecosystem, digitisation of records, automated claim verification and standardised data - sharing protocols are expected to improve consistency and reduce disputes.

However, the profession's evolution will depend not only on technology but also on capacity-building. Valuers and insolvency professionals will require structured training, updated competencies and interdisciplinary understanding of data, technology and ethics. The future is therefore one of augmentation rather than replacement, where technology enhances capability while professional judgment remains central to credibility and trust.

## CONCLUSION

Technology is reshaping valuation practice in India by transforming how information is accessed, analysed and presented. Artificial intelligence, data analytics and digital platforms offer powerful tools that enhance efficiency, accuracy and transparency across all asset classes and particularly within the time-bound environment of the Insolvency and Bankruptcy Code. While adoption is still evolving, the direction is clear that technology will increasingly become an integral part of a robust valuation process. At the same time, its use requires careful consideration of data reliability, ethical implications and regulatory responsibility. Professional judgment remains the foundation of valuation, and technology should serve to strengthen and not to replace the expertise and independence of valuers. As India's digital ecosystem matures, the valuation profession stands at an important inflection point, with significant opportunities to build a more transparent, data-driven and resilient practice for the future.

*REFERENCES*


- Insolvency and Bankruptcy Code, 2016.
- Companies (Registered Valuers and Valuation) Rules, 2017.
- IBBI (2023–2024). Discussion papers, circulars and valuation guidelines.
- International Valuation Standards Council (IVSC) - International Valuation Standards.
- Reserve Bank of India publications on financial sector digitalisation.
- SEBI and MCA21 publicly available filings and digital access frameworks.
- World Bank (2020–2024) reports on digital governance and insolvency reforms.
- Industry reports on AI and data analytics adoption in financial services.


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# REVIVING INDIA'S MSMES: A COMPARATIVE ANALYSIS OF THE PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP)

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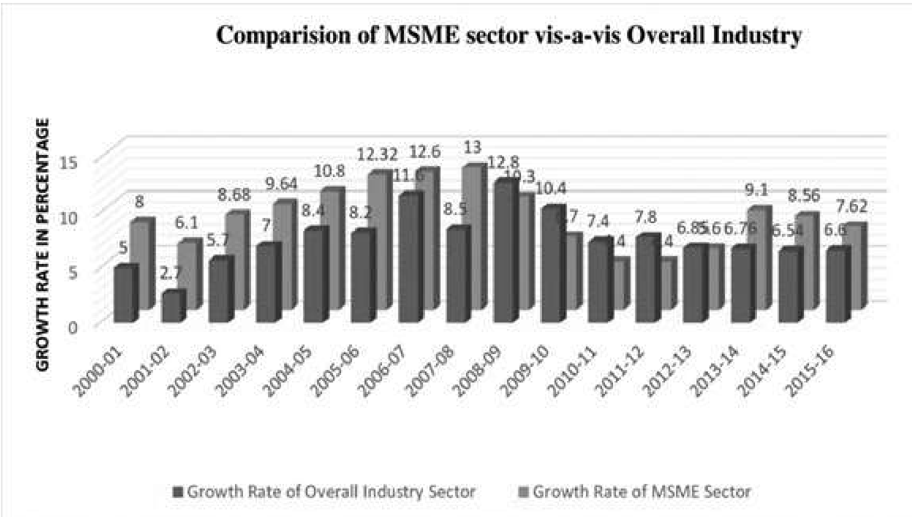
## BACKGROUND

**Micro, small, and medium enterprises (MSMEs)** are a driving force behind India's ambitious goal to become the world's third-largest economy. Contributing nearly 30.1% of India's GDP in FY 202223, they support inclusive growth and embody the government's vision for economic transformation. Additionally, MSMEs account for approximately 45.7% of India's exports, enhancing the country's global trade competitiveness.

Encouraged by proactive policies like streamlined Udyam registration, expanded credit guarantee schemes (CGTMSE), and digital platforms under Atmanirbhar Bharat, the sector has flourished. As a result of simplified compliance, enabling broader access to financing and incentives, over 4.77 crore MSMEs had registered by July 2024.

Despite generating employment for over 120 million people and facilitating thousands of firms upgrading from micro to medium scale, MSMEs still face persistent challenges: market fluctuations, the rising cost of operations, slow technological adaptation, and cyclical industry downturns.




| Year | Employment (In Lakh) | Growth Rate |
|---|---|---|
| 2001-02 | 249.33 | – |
| 2002-03 | 260.21 | 4.36% |
| 2003-04 | 271.42 | 4.31% |
| 2004-05 | 282.57 | 4.11% |
| 2005-06 | 294.91 | 4.37% |

| | | |
|---|---|---|
| 2006-07 | 805.23 | 173.04% |
| 2007-08# | 842.00 | 4.57% |
| 2008-09# | 880.84 | 4.61% |
| 2009-10# | 921.79 | 4.65% |
| 2010-11# | 965.15 | 4.70% |
| 2011-12# | 1011.69 | 4.83% |
| 2012-13# | 1061.40 | 4.91% |
| 2013-14# | 1114.29 | 4.98% |
| **CAGR** | **13.29%** | |

*Source: Ministry of Micro, Small & Medium Enterprises, GoI, Annual Reports 2013-14 & 2014-15,*
*# indicates projected figures*

## CURRENT SITUATION: OF MSMES IN CRISIS OR SHUTTING DOWN

The small and medium enterprises, which was once a bread basket for the majority of Indian families, are now suffering from a deep crisis. Poor Cash flow, Inflation, business disputes, lack of legal awareness are challenging the survival of MSMEs. Around 35,567 MSMEs across India, registered on the Union government's Udyam portal, have shut down in the financial year 2024-25 as on February 28 2025. As reported by The Mint, since the portal was launched on July 1, 2020, nearly 75,000 MSMEs have shut down across the country resulting over three lakh people were made jobless.

One of the Major pain points among the many challenges faced by the MSMEs, that is delayed payments. In spite of enacting **Micro, Small, and Medium Enterprises Development (MSMED) Act of 2006** which puts a compulsion to make the payment within 45 days, the majority of buyers continue to flout the norm. As a result, the MSMEs face a liquidity crunch and are forced to borrow at a higher interest rate to fuel the working capital. As a consequence, the working capital cycles will be disrupted, the workers will face a delay in wages/salary and a massive impact on the growth of the entity. This Cash flow struggle not only affects an individual entity but also has a ripple effect on an economy like India, which is highly dependent on the small entities for its growth. It reflects a glaring failure in implementation at the global level.

## PPIRP UNDER IBC: INDIA'S RESPONSE TO GLOBAL BEST PRACTICES

The Government of India, introduced the Pre-Packaged Insolvency Resolution Process (PPIRP) in 2021 under the Insolvency and Bankruptcy Code (IBC), 2016, showcasing its foresight and commitment to supporting small and medium enterprises (SMEs) that play a vital role in the economy. PPIRP aligns with international best practices, such as the UK's Scheme of Arrangement and the US Chapter 11 Pre-packaged Bankruptcy Plan, which focus on creditor-debtor consensus and pre-negotiated resolutions. India's move to implement PPIRP underscores its dedication to protecting and empowering its SME sector on the global stage. From a governance perspective, this reform strengthens India's business-friendly environment and supports broader initiatives like "Atmanirbhar Bharat" and Ease of Doing Business. Overall, PPIRP is a timely and commendable reform that modernizes India's insolvency framework while addressing the real-world challenges of its business ecosystem.

The economic disruptions caused by the COVID-19 pandemic further emphasized the need for the enactment of the Pre-Packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code (IBC), 2016. It was designed as a targeted, swift, and minimally disruptive solution to address insolvency in MSMEs while ensuring the preservation of viable businesses and jobs.

## ENTITIES ELIGIBLE UNDER THE FRAMEWORK

A Corporate debtor, being a Company or Limited Liability Partnerships which is registered as MSMEs under the **MSMED Act** is eligible to opt for PPIRP, if it-

1. has committed a default of at least INR 10 lakh;
2. is eligible to submit a resolution plan under section 29A of the Insolvency and Bankruptcy Code, 2016;
3. has not undergone a PPIRP during the 3 years preceding the initiation date;
4. has not completed a CIRP during the 3 years preceding the initiation date;
5. is not undergoing a CIRP; and
6. is not required to be liquidated by an order under section 33 of the Code.

Before initiating the process, approval is required from unrelated financial creditors holding not less than 66% of the financial debt.

## TIME FRAME

- The Pre-Packaged Insolvency Resolution Process (PPIRP) in India, introduced under the Insolvency and Bankruptcy Code, 2016, is strictly time-bound and must be completed within 120 days from the date of admission by the NCLT, with no provision for extension.
- Once admitted, the resolution professional is appointed immediately, and the corporate debtor must submit a Base Resolution Plan within 2 days.
- In case if the plan is rejected by the Committee of Creditors (CoC), competing plans may be invited. The CoC is required to approve a resolution plan within 90 days.
- The approved plan must then be submitted to the NCLT, which is mandated to pass an order within the next 30 days.

## HOW PRIRP HELPS MSMES

1. Time-bound process: It ensures a swift resolution by mandating completion within 120 days.
2. Cost-efficient: The process is cost-effective compared to the traditional CIRP.
3. Debtor-in-possession model: It follows a debtor-in-possession model, allowing existing management to retain control and preserve the going concern status of the business.
4. It enables promoters to initiate early restructuring without immediately losing control.
5. The base resolution plan mechanism offers a chance to resolve distress without competition if fair.
6. It reduces litigation due to its pre-negotiated and collaborative nature.

## WHY PPIRP WAS ESSENTIAL IN THE INDIAN AND GLOBAL SCENARIO:

India's PPIRP shares many structural similarities with global pre-pack frameworks. To better understand the structure and intent behind India's Pre-Packaged Insolvency Resolution Process (PPIRP), it is useful to examine how other jurisdictions have addressed the challenge of restructuring financially distressed small and medium enterprises (SMEs):

1. **United states of America:**

   **Background:** Similar to a pre-packaged process in India, US provides for reorganization process, small business restructuring regime ("SBR Regime") for small companies Enacted under the Small Business Reorganization Act (SBRA), 2019 Codified as subchapter V under Chapter 11 of the U.S. Bankruptcy Code. Effective from February 19, 2020, it is tailored for small businesses to reorganize the business faster, and cost-effectively.

- **Eligibility:** A debtor, being a person or entity engaged in commercial or business activity, with Total debts (Secured + Unsecured) below a threshold of USD $7.5 million (There is a proposal for an increase in the limit), is eligible. Additionally, 50% debts must arise from business activities.

  However, Public companies, public companies or businesses owned or controlled by public companies and single-asset real estate companies are not eligible.

- **Control:** In an attempt to expedite the process and overall duration of the regime the control stays in the hands of the existing management (Debtor-in-control). Notably, the process eliminates the creditors' committee instead appointing a trustee who will supervise the entire process to reduce the cost and time involved.

- **Timeframe:** Compared to the regular resolution process, the provisions under the Sub-Chapter V regime offer a quicker resolution, as the SME debtor is required to submit the resolution plan within 90 days from the date of application.

- **Regulation:** The American Bankruptcy Institute has established the Sub-Chapter V Task Force to review the implementation and administration of Sub-Chapter V.

**2. United Kingdom:**

- **Background:** The United Kingdom has enacted the Company Voluntary Arrangement ("CVA") under Chapter 11 Insolvency Act 1986 and Statement of Insolvency Practice Statement of Insolvency Practice (SIP) 16 guidelines., also described as the commercial agreement containing Resolution plan proposed by the directors of the SME to the creditors against the claims received.

  During COVID-19 as an emergency measure, a second regime was introduced for the SMEs known as the Restructuring Plan. It was intended to facilitate a well-designed rescue mission for a financially distressed company by serving the interests of all stakeholders.

  Additionally, Third Moratorium was also introduced during the COVID-19 pandemic, which facilitated the SMEs to opt for a statutory moratorium. This came with a "one size fits all" approach, eliminating the traditional moratorium procedure and provided some additional breathing space to keep the business as a going concern.

- **Eligibility:** Irrespective of the size, any business that is registered as SME can enter into the CVA process.

- **Control:** The CVA regime facilitates the debtor's retention of control during the process. The existing management is entrusted with the preparation of the resolution plan and restructuring. However, an Insolvency Practitioner will be appointed as a nominee to carry out the supervisory role throughout the process.

- **Timeframe:** The total time frame available for the proposal of a plan under the CVA regime is 6 – 8 Weeks. The time frame commences from the date of appointment of the nominee.

- **Regulation:** In the UK, all insolvency and restructuring mechanisms, the Company Voluntary Arrangement (CVA), Restructuring Plan, and Statutory Moratorium are regulated primarily under the Insolvency Act 1986. Subsequently, it was amended by the Corporate Insolvency and Governance Act 2020 (CIGA 2020).

**3. Australia:**

- **Background:** Australia introduced the Small Business Restructure (SBR) process in January 2021 to tackle the COVID-19 pandemic under the Corporations Act 2001 – Part 5.3B. The aim was to provide a cost-effective and time-bound restructuring process for the small businesses that were adversely affected by the pandemic. SBR provides the SME debtor with a tool to negotiate with the creditors and re-establish the stability in the business.

- **Eligibility:**
    1. The total liabilities of the SME must not exceed AUD 1 million (Excludes employee entitlements.
    2. The SME must be insolvent or on the verge of becoming insolvent.
    3. Must ensure that all tax lodgements are up to date.
    4. An SME cannot enter the small business restructure process if its directors have been involved in a company that has undergone restructuring or a simplified liquidation within the past 7 years. This restriction also applies to former directors who resigned within the past 12 months.
    5. All employee entitlements that are due and payable must be paid in full (including superannuation).
- **Control:** During the SBR process, the directors of the SME continue to manage day-to-day business operations, Minimizing disruption to the business. The existing management prepare and propose the Restructuring Plan in consultation with the Small Business Restructuring Practitioner (SBRP) Similar to an Insolvency professional in India. However, the SBRP functions solely as a supervisor and does not exercise any control over the management of the business.
- **Timeframe:** The SBR process in Australia is divided in two parts, constituting an overall period of 35 business days. In the initial 20 business days, the directors of the SME appoint an SBRP for the preparation of restructuring plan and submit it before the creditors. Once the restructuring plan is placed, Creditors they will have 15 business days to vote on the plan. If more than 50% in value of voting creditors approve, the plan becomes binding and is implemented. if rejected, the company may pursue other insolvency options.
- **Regulation:** The process is regulated by the Australian Securities and Investments Commission (ASIC), which oversees filings, practitioner conduct, and overall compliance, and the Australian Financial Security Authority (AFSA) plays a role in the registration and regulation of Small Business Restructuring Practitioners (SBRPs). These bodies ensure that the process is carried out transparently, fairly, and in accordance with the statutory framework.

## A BIRD EYE VIEW ON CROSS-COUNTRY COMPARISON

| Basis of Comparison | India | USA | United Kingdom | Australia |
|---|---|---|---|---|
| 1. Legal Framework | The Insolvency and Bankruptcy Code, 2016 (Sections 54A to 54P) | Subchapter V under Chapter 11 of the U.S. Bankruptcy Code | Chapter 11 Insolvency Act 1986 and Statement of Insolvency Practice (SIP) 16 guidelines. | Corporations Act 2001 – Part 5.3B |
| 2. Title | Pre-Packaged Insolvency Resolution Process (PPIRP) | Small business restructuring regime ("SBR Regime") | Company Voluntary Arrangement (CVA) /Pre-pack Administration | Small Business Restructuring (SBR) Process |

| | | | | |
|---|---|---|---|---|
| 3. Objective | Fast-track MSME restructuring | Reorganize and preserve business value | Preserve going concern value via sale | Low-cost rescue for small businesses |
| 4. Eligibility | Debt limit INR 10 Lakh. | Debt Limit <$USD7.5M (including secured and unsecured debt but excluding related debt) | No Limit as such. However, approval from majority of Directors & Members required | AUD 1 million. |
| 5. Time Frame | 90 days for plan submission + 30 days for approval | 90 days from the date of application | 6 – 8 Weeks from the date of application | 35 business days from the date of application |
| 6. SME Control | Debtor-in-possession with Insolvency Professional oversight | Debtor-in-possession | Debtor-in-possession with an Insolvency Practitioner acting as supervisor | Debtor-in-possession with Small Business Restructuring Practitioner (SBRP) acting as supervisor |
| 7. Who Can Initiate the Process | Debtor company (voluntary) with the approval of Financial Creditor | Debtor company | Directors or secured creditors | Debtor company |
| 8. Group Company Coverage | Not addressed specifically | Chapter 11 allows group filings | Multiple entities can be included | Not allowed |
| 9. Creditor Approval Requirement | 66% of unrelated financial creditors | The majority of each impaired class (by number & claim value) | No pre-sale approval; post-sale disclosure applies | >50% of voting creditors (by value) |
| 10. Court Involvement | NCLT approval required | Bankruptcy Court mandatory | Court Interference is minimal – only during sale | No involvement of court, ASIC approval required |
| 11. Moratorium | Automatic moratorium on admission | Automatic stay on filings of any legal proceedings | Moratorium begins on Insolvency Practitioner appointment | During restructuring plan is under review |
| 12. If Plan is Rejected | May Converts to CIRP or liquidation | Converts to traditional Insolvency proceeding under chapter 11 | Proceed to Company Voluntary Arrangement (CVA) or liquidation | voluntary administration or liquidation may begin |

## SIGNIFICANCE OF PPIRP

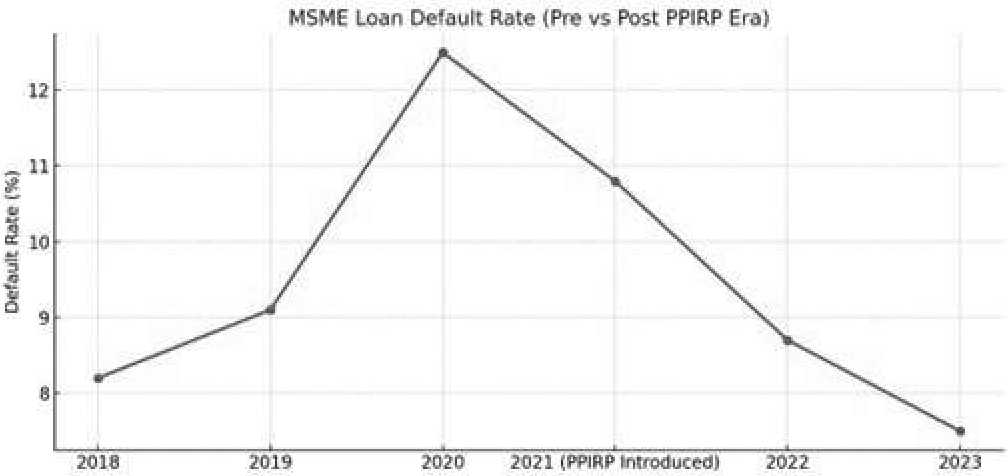
**I. Pre-PPIRP - MSME Distress:**

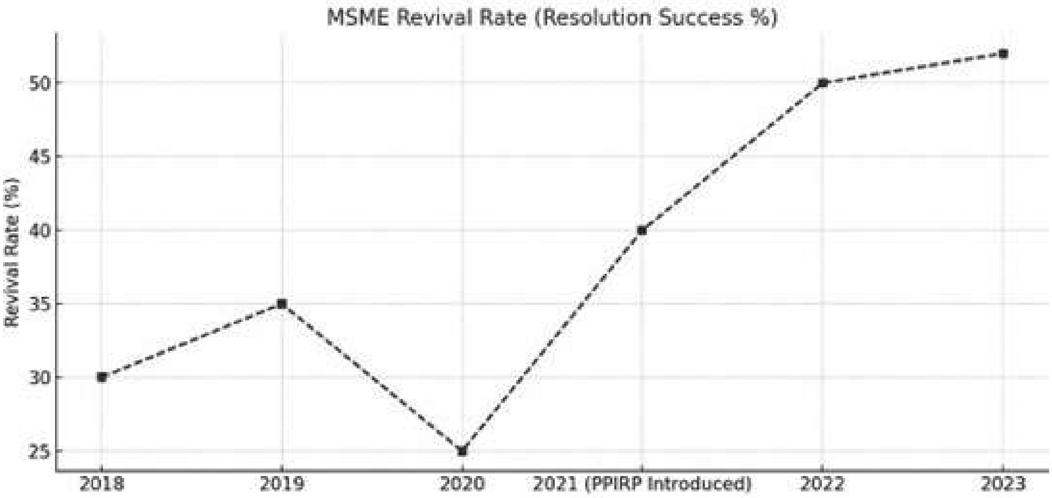
- India hosts around 63 million MSMEs, yet only approximately 2.64 million are registered through Udyam; the rest were ineligible for formal restructuring. Without PPIRP, MSMEs faced prolonged defaults under CIRP or forced liquidation. Over 49,000 MSMEs shut down between 2011-2020, costing 3 Lakh jobs.

- About one-fifth of MSME loans under the **Emergency Credit Line Guarantee Scheme** (ECLGS) program where defaulted, and banks viewed SME credit as high-risk, tightening lending.

**II. Post-PPIRP - Revival & Resolution:**

- Since the introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) in April 2021, the uptake has been limited but strategically significant.
- As of March 2024, only about 10 to 13 cases have been formally in process under PPIRP, as reported by the Insolvency and Bankruptcy Board of India (IBBI).
- Despite limited usage, the outcomes have been promising. Of these admitted cases, around five resolution plans have already been approved, and a few others are ongoing. This indicates a revival or resolution success rate of approximately 50%, which compares favorably with the traditional Corporate Insolvency Resolution Process (CIRP).




## WAY FORWARD: RECOMMENDATIONS TO STRENGTHEN PPIRP IMPLEMENTATION

**1. Building Mutual Trust Between the SME Debtor and the Creditor through an Arbitration Mechanism:**

A successful PPIRP depends heavily on pre-negotiation and cooperation between the debtor and financial creditors. Currently, there's often a lack of trust and confidence due to past defaults or a perceived conflict of interest. Introducing a structured arbitration or mediation framework during the pre-negotiation phase can significantly enhance trust. This ensures that disagreements do not derail the resolution plan and fosters a **more balanced, collaborative, and time-bound process**

2. **Thorough Due Diligence by the Creditor Before Approval of the PPIRP Plan:**

   Before proceeding with the base resolution plan submitted by the debtor, creditors must perform detailed financial and operational due diligence. This ensures the plan is viable, legally compliant, and capable of maximising value for all stakeholders. Involvement of independent valuation experts and Auditors can further mitigate the risk of bad-faith filings or manipulations in valuation.

3. **Appointment of an Authorised Representative of the Creditor as a Nominee Director:**

   Allowing creditors to appoint a person as a nominee director on the SME's board pre-approval helps safeguard the interests of financial institutions during plan implementation. This individual would act as an observer, not interfering in day-to-day operation, but ensuring that the agreed plan is being adhered to ethically and efficiently.

4. **Creation of a Platform Connecting SME Debtors with Strategic Investors:**

   To enhance value discovery and resolution efficiency under PPIRP, a dedicated **digital marketplace** functioning similarly to e-commerce platforms should be established. This digital platform allows the investors to discover the potential business entities by providing all the details, Financials and other non-financial data – allowing the interested buyer to buy the business or acquiring parts of it (e.g., brands, intellectual property, operations). This would enhance value discovery through competitive bidding, promote business continuity, preserve employment, and support faster resolution.

5. **Streamlining Approvals by Reducing One Layer of NCLT Intervention:**

   One of the key criticisms of PPIRP is that, despite being positioned as a faster alternative to CIRP, it still involves multi stages of NCLT approval. To address this, it is recommended to eliminate one layer of NCLT approval, particularly the requirement for post-approval of the base resolution plan, especially where no competing plan exists or where the CoC has already approved the final plan by the required majority. Instead, the CoC's approval (backed by a certified insolvency professional's report) could be treated as final, with the NCLT stepping in only when disputes or legal challenges arise.

6. **Promoting Awareness Through IBBI and IPA-Led Capacity Building Programs:**

   One of the major hurdles in the effective implementation of PPIRP is the lack of awareness and understanding among MSME promoters and stakeholders. Many entrepreneurs remain unfamiliar with the process, its eligibility, benefits, and the ideal stage at which the process should be initiated.

   It is essential for the Insolvency and Bankruptcy Board of India (IBBI) and the Insolvency Professional Agencies (IPAs) to proactively raise awareness and undertake initiatives such as; Awareness campaigns targeting MSME hubs, Workshops and seminars addressing promoters and entrepreneurs in collaboration with industry bodies, Knowledge-sharing sessions involving case studies and Simplified guides and digital resources in regional languages to explain the procedure. Such initiatives encourage early and voluntary participation before business distress becomes irreversible.

## ROLE OF ICSI IN PPIRP FRAMEWORK

The Institute of Company Secretaries of India (ICSI) plays a significant role in the effective implementation of the Pre-Packaged Insolvency Resolution Process (PPIRP) by promoting awareness, capacity building, and professional support. Through specialised training programs, seminars, and publications, Knowledge capsules, ICSI equips its members and stakeholders, particularly MSMEs with the knowledge required to navigate the PPIRP framework.

The Institute actively promotes awareness about the benefits of PPIRP among MSMEs and other stakeholders through its publications and outreach initiatives. By upholding high standards of professional competence and ethics, ICSI ensures that PPIRP cases are handled effectively and responsibly. Additionally, ICSI contributes policy feedback, develops standard templates, and advocates best practices, thus supporting the government's objective of a streamlined, MSME-friendly insolvency resolution mechanism.

## PPIRP'S ROLE IN MSME SURVIVAL

The primary objective of PPIRP was **not to shut down businesses but to maximize the value of viable MSMEs and ensure their continuity**. After analysing the unique challenges faced by Micro, Small, and Medium Enterprises (MSMEs), the Government of India introduced the PPIRP in 2021 as a rehabilitation-centric mechanism.

Unlike the traditional Insolvency proceedings, PPIRP is designed as a fast-track process which is debtor-in-possession driven and entered with the mutual agreement between the debtor and the financial creditor providing MSMEs with a realistic chance to restructure their liabilities while preserving ownership and business operations.

## SUMMARY

The PPIRP process has not been successfully implemented in the past 5–7 years, and its objectives have not been achieved as expected. However, with better efforts and targeted initiatives, it holds potential for effective execution. PPIRP addresses critical gaps in the MSME crisis by offering a structured, efficient, and flexible mechanism for early intervention. So far, its implementation has been modest – only around 10 cases were admitted as of March 31, 2024, of which one was withdrawn and resolution plans were approved in five cases. With enhanced lender participation, wider MSME registration, and stronger regulatory support, PPIRP can play a significant role in improving insolvency resolution, expanding credit access, and driving sectoral growth in India's MSME landscape.

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# FOUNTAIN-HEAD OF LITIGATION – PLEADINGS

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## INTRODUCTION

Pleading is written submission filed by the parties to a case in the Hon'ble Courts, Tribunals. Oxford Dictionary defines the pleadings as "*the action of making an emotional or earnest appeal to someone*". Therefore, pleadings basically refers to act of a person to some higher authority or other person to incite it/him so as to obtain a favourable outcome.

In legal parlance, pleading has specific meaning. It is specific factual submission made in writing by parties before the Court of Law, so as to persuade Court to rule in its favour. It is prepared and filed during initial proceedings/hearings by parties to the *lis*. It is foundation of a case on the basis of which parties proves or disprove their respective case before the Court or tribunal. It is the basic documents which helps courts, tribunal to ascertain the truth and adjudicate the case. It is the four corner and boundary within which the Court proceeds and decide the case.

The author is deliberating on the concept of pleadings with reference to Code of Civil Procedure, 1908 and National Company Law Tribunal Rules, 2016 ("Rules 2016"). This will help professionals to understand the concept and importance of pleadings and shall also ensure that the such understanding helps all at the time of drafting pleadings for filing before Court or National Company Law Tribunal. Though the Rules 2016 is a complete code in itself having detailed procedure which is followed and adopted by Tribunal, still the author proposes the aforesaid understanding for the reason that in Tribunals where Company Secretary or professionals, other than advocate, appears, the Tribunal normally take recourse to and take guidance from the procedure prescribed in the Code of Civil Procedure 1908 and refers to the precedents laid by Higher Courts in the event of dispute pertaining to pleadings of the parties. In the article, efforts have been made to explain the meaning, purports and importance of pleading in simple words.

## MEANING AND PURPORTS OF PLEADING:

Word 'Pleadings' has not been defined in definition Section 2 of Code of Civil Procedure 1908 (CPC). The same is defined in schedule of CPC. Order VI of CPC deals with the Pleadings and Rule 1 defines it as *"Pleading" shall mean plaint or written statement* .

So from the aforesaid definition, it is clear that in terms of the CPC, only two documents filed by parties in the court of law are considered as pleading. At this point it is essential to understand that once this document is submitted in the legal proceedings, the same cannot be altered/changed without following the procedure prescribed under law.

## PLAINT

It may please be noted that *Plaint* is not defined under CPC but in terms of the Section 26 of the CPC, a suit is instituted by presentation of plaint by plaintiff (applicant before Court). Therefore in order to understand, it could be said that a plaint is a written application or petition filed by person before the Court of Law, seeking some relief and praying for passing of order in terms of the prayer made therein on the basis of the facts and cause shown in the application or petition. It is held in catena of judgement that all facts are required to be stated in the plaint in support of the fact disclosed by the plaintiff. It is mandated under law that all material facts available with the plaintiff must be disclosed in the plaint. Facts, which should be ordinarily known and available with plaintiff prior to filing of suit, cannot be allowed to be incorporate by means of amendment unless the Court permits on an application filed before the commencement of trial and upon being convinced by the reasons for non-disclosure being bonafide and genuine. Particular to be provided in the plaint and production of documents, on which the plaintiff relies, is specifically provided under Order VII of Code of Civil Procedure. Hence greatest care is required while preparing a plaint while filing before the Court of Law.

## WRITTEN STATEMENT

Written Statement is the response of the Defendant to the plaint filed by the Plaintiff. Written Statement is explained in Order VIII Rule 1 of CPC to be Written Statement submitted by defendant presented in defence. Written Statement is to be presented within 30 days of the service of summon and outer limit of 90 days is allowed under the Code with reason to be recorded in writing by the Courts. It is pertinent to mention here that time limit prescribed is not mandatory and directory in nature. It means that the delay beyond the aforesaid time period could be condoned by Courts on being satisfied with the reason and in some cases with imposition of costs. In some of the states, the outer limit of 120 days has been prescribed and thereafter Rule prescribes that right to file Written Statement stands forfeited. Outer Limit of 120 days and thereafter forfeiting right to file Written Statement is prescribed under Commercial Courts Act 2015 in respect of Commercial Suit of specified Value.

In terms of Rule 3 & 5 under Order VIII of CPC, it is required that if the defendant is denying any facts mentioned in the plaint, then there has to be specific denial of each of such facts. Rule 4 Order VIII prescribes that there should not be evasive denial of facts. Therefore even general Denial is not sufficient and in absence of specific denial, court may consider the same as being admitted facts. Once defendant specifically denies a facts of the plaint, onus to prove such facts is vested on the shoulder of plaintiff. Further, the documents to be relied upon by defendant, needs to be filed or if documents are not in possession of defendant, but are relied in Written Statement, then the same should be specifically mentioned with details in whose possessions are such documents. Details particulars to be provided in Written Statement, along with filing of set-off or counter claim may also form part of the Written Statement. Any additional submission made with respect to set-off or counter claim needs to be backed up by the specific averments and material evidence on which it relies.

Written Statement is essential and important for the reason that in absence of filing of the same or rights having been forfeited, Court has power to pass judgement based on the plaint and evidence presented by the plaintiff. Though being very difficult, still, upon forfeiture of such right, defendant still could exercise right to disprove the case of plaintiff by discrediting the evidence and pleadings in the plaint at the stage of evidence.

## REPLICATION/ REJOINDER

Law provides that ordinarily, pleading is completed with the filing of Written Statement. However, there are circumstances where subsequent pleadings are permitted. The same is prescribed under Rule 9 Order VIII of CPC, which is as under:-

> *"9. Subsequent pleadings. – No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties cut and fix a time of not more than thirty days for presenting the same."*

Hon'ble High Court of Delhi in the ***Anant Construction (P) Limited Vs Ram Niwas*** has elaborately dealt with the concept of replication and rejoinder and law laid down in this case has been approved by Hon'ble Supreme Court of India. This judgement is authored by R. C. Lahoti, J, as His Lordship then was. It delas with the terms 'Replication' and 'Rejoinder' which is commonly used for subsequent pleading. Hon'ble Delhi High Court while summing up the concept held as under:-

*"24. To sum up: (1) 'Replication' and 'rejoinder' have well defined meanings. Replication is a pleading by plaintiff in answer to defendant's plea. 'Rejoinder' is a second pleading by defendant in answer to plaintiff's reply i.e. replication.*

*(2) To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy of the I.A. to the counsel for opposite party is a notice of application. Reply, if any, may be filed in between, if the time gap was reasonable enough, enabling reply being filed.*

*(3) I.A.s which do not involve adjudication of substantive rights of parties and / or which do not require investigation or inquiry into facts are not supposed to be contested by filing written reply and certainly not by filing replication.*

*(4) A replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. A replication is permissible in three situations:*

*i. when required by law;*

*ii. when a counter claim is raised or set off is pleaded by defendant;*

*iii. when the court directs or permits a replication being filed.*

*(5) Court would direct or permit replication being filed when having scrutinised plaint and written statement the need of plaintiff joining specific pleading to a case specifically and newly raised in written statement is felt. Such a need arises for the plaintiff introducing a plea by way of 'confession and avoidance'.*

*(6) A plaintiff seeking leave of the Court has to present before it the proposed replication. On applying its mind the court may grant or refuse the leave.*

*(7) A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue.*

*(8) Subsequent pleadings are not substitute for amendment in original pleadings.*

*(9) A plea inconsistent with the plea taken in original pleadings cannot be permitted to be taken in subsequent pleadings.*

*(10) A plea which is foundation of plaintiff's case or essentially a part of cause of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected, cannot be introduced for the first time by way of replication."*

Therefore, from the aforesaid, it is clear that the subsequent pleading is not permitted unless the same satisfies 3 situations mentioned at para 4 above. Further, the plaint needs to have all essentials which are foundation of plaintiff case and replication is not a substitute to amendment of original pleadings.

Therefore, for all practical purpose plaint and Written Statement should be comprehensive and should contain material facts and references to support the case of respective parties to the suit.

## PLEADINGS UNDER NATIONAL COMPANY LAW TRIBUNAL RULES:

Common law governing the pleadings is prescribed in Code of Civil Procedure 1908. Companies Act 2013 and Insolvency and Bankruptcy Code (IBC) framework provides that the proceedings under these laws are not bound by provision of CPC but it is driven by the Principle of Natural Justice. NCLT has power to govern by its own procedure. Therefore, the concept of pleadings strictly in terms of CPC, per se, is not applicable. However, general principle applicable w.r.t. pleadings as specified in CPC and law laid down by Hon'ble Supreme Court shall be applicable.

Pleadings have been defined specifically under National Company Law Tribunal Rules 2016 (NCLT Rules). Pleadings under Rule 2(19) is defined as under:-

*"pleadings" means and includes application including interlocutory application, petition, appeal, revision, reply, rejoinder, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal.*

From bare perusal of the aforesaid definition, it is clear that pleadings under NCLT rules is liberalised version of concept of pleadings provided in CPC i.e. Plaint, Written Statement and subsequent pleadings. Every documents filed by parties is covered in the aforesaid definition.

It is worth mentioning that NCLT Rules 2016 is complete in itself meaning thereby it provides for exhaustive procedure which is to be followed while filing and pursuing case before NCLT and there is no need to take help of any other code or law. With reference to pleadings there is limitation imposed under the NCLT Rules itself under Rule 55 which is as under:-

*"55. Pleadings before the Tribunal. – No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit."*

Therefore, it has been made clear in the Rules itself that pleadings is complete with filing of Reply. However exception is the power of the NCLT as provided in the abovementioned rule itself. NCLT also has power under Rule 155 to allow amendments in pleadings. Rule is as under:

*"155. General power to amend. – The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."*

The aforesaid rules make it clear that the concept of pleadings have been imported from CPC but with some changes. It is to note that in cases of NCLT also there is concept of presentation of Petition or appeal under Rule 23 with Rule 41 stipulating that the Reply be filed to the Petition or appeal or application.

The difference lies in the concept of Rejoinder under NCLT. Under CPC there is no written concept of Rejoinder but CPC stipulates rule for subsequent pleadings whereas Rule 42 specifically defines Rejoinder to be filed by Petitioner to the Reply to the additional facts pleaded in the Reply with the leave of the NCLT.

## FOUNDATION OF CASE – PLEADING

The fate of a case, whether under CPC or NCLT Rules, is sealed by the pleadings. It is the most important factor to which professional should pay attention to and devote time and energy for ensuring success before Court or tribunal. It may be apt to mention here that party to *lis* cannot go beyond the pleadings while pursuing respective case.

The law governing the field w.r.t. importance of pleadings and the principle that Courts and Tribunals must confine themselves strictly within the four corners of Pleadings while adjudicating is well settled. It is trite that Courts and Tribunal cannot travel beyond the pleadings and also cannot consider any amount of evidence in absence of pleadings. Some of the important case law on the point clarify the aforesaid legal precedents.

Recently in the case of ***Manisha Mahendra Gala v. Shalini Bhagwan Avatramani,*** Hon'ble Supreme Court has held that though the pleadings may be required to be construed liberally but that does not mean that essential requirement of pleading material fact even though not pleaded should be construed what is actually pleaded. The following law has been laid down in the said case:-

> ***"23.*** *In this connection Shri Ahmadi, learned counsel for the appellants, relying upon Ram Sarup Gupta v. Bishun Narain Inter College [Ram Sarup Gupta v. Bishun Narain Inter College, (1987) 2 SCC 555] submitted that the pleadings must be construed liberally and it is not necessary that the precise language or expression used in the statute should be used. The aforesaid decision lays down that pleadings should be liberally construed and need not contain the exact language used in the statutory provision but it does not mean that the pleadings even if fail to plead the essential legal requirement for establishing a right, the same be so construed so as to impliedly include what*

*actually has not been pleaded more particularly when it happens to be an essential ingredient for establishing a right. Thus, the aforesaid pleadings cannot be treated to be of sufficient compliance of the statutory requirement.* ***It is settled in law that a fact which is not specifically pleaded cannot be proved by evidence as evidence cannot travel beyond the pleadings."***

(Emphasis Supplied)

Therefore, the pleading plays an important role and is decisive factor determining the outcome of a case. There are catena of Judgement that have clarified the law as to importance of the pleadings one among it is Law laid down by Hon'ble High Court of Delhi in *Prakash Rattan Lal v. Mankey Ram*, wherein following has been held:-

*4. The sole purpose of pleadings is to bind the parties to a stand. When the plaintiff makes certain allegations, the defendant is supposed to disclose his defence to each and every allegation specifically and state true facts to the court and once the facts are stated by both the parties, the court has to frame issues and ask the parties to lead evidence. It is settled law that the parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings. If the parties are allowed to lead evidence beyond pleadings then the sacrosancy of pleadings comes to an end and the entire purpose of filing pleadings also stand defeated. The other purpose behind this is that no party can be taken by surprise and new facts cannot be brought through evidence which have not been stated by the defendant in the written statement. The law provides a procedure for amendment of the pleadings and if there are any new facts which the party wanted to bring on record, the party can amend pleadings, but without amendment of pleadings, a party cannot be allowed to lead evidence beyond pleadings.*

Furthermore, the pleadings being the foundation is established by the Ruling  f Hon'ble Supreme Court in the case of *Ravinder Singh v. Janmeja Singh*, wherein in reference to election petition filed and decided by Hon'ble High Court, the Apex Court held as under:-

***7.*** *The election petition is singularly silent about any such averment that the returned candidate, even if, it be assumed for the sake of the arguments, had published and distributed certain documents (Annexures A-1 to A-7), as alleged in the election petition either himself or through any other persons with his consent, that those statements were false and that the returned candidate either believed them to be false or did not believe them to be true, though in para 9 of the election petition, which has been verified as correct on the basis of legal advice, this requirement emanating from Section 123(4) has been mentioned* ***but without any assertion*** *that the returned candidate in this case published the false statements knowing them to be false and/or not believing them to be true. The submission of Mr Talwar that at the trial the petitioner could have said so in his evidence, is futile.* ***It is an established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings.***

(Emphasis Supplied)

Therefore, the pleading is foundation and plays very important part in the advocacy and should be given by Professionals.

## CONCLUSION

Detailed and specific pleadings are fundamental requirement in terms of law laid down. It is imperative that legal professionals should pay utmost care while preparing the pleadings on behalf of the parties. This requirement is to be met to being successful in the litigation. Pleadings before the NCLT/NCLAT plays as important role as before the Court of Law. In catena of cases Hon'ble Tribunal has held that it cannot go beyond pleadings. The success in a case, whether under the CPC or the NCLT Rules, is ultimately determined by the pleadings. Pleading is most critical aspect of the litigation process, requiring attention and professional diligence. It is therefore imperative that professional devote time and efforts to craft clear, complete, and appropriate pleadings, for ensuring success in the case.

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# Demystifying Pre-Pack Resolution: A Comprehensive Overview

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## BACKGROUND AND GENESIS OF PPIRP

The Insolvency and Bankruptcy Code, 2016 (IBC) was designed to provide a time-bound framework for insolvency resolution in India. However, certain structural challenges emerged when applying the Code to Micro, Small, and Medium Enterprises (MSMEs). While Section 240A, introduced by the 2018 Amendment, exempted MSMEs from the stringent disqualification norms under Section 29A, enabling them to be resolution applicants, the practical reality was different. MSMEs, with their limited capital and simplified structures, found the Corporate Insolvency Resolution Process (CIRP) cumbersome and costly.

Further, the increase in the default threshold from ₹1 lakh to ₹1 crore effectively excluded MSMEs from the Code's provisions, creating a pressing need for a more practical and efficient resolution mechanism. Given the unique nature of MSME businesses and their relatively simpler corporate structures, resolving such stress requires a distinct approach. This led to the conceptualization of the Pre-Packaged Insolvency Resolution Process (PPIRP). PPIRP serves as an alternative to the Corporate Insolvency Resolution Process (CIRP)

The idea of PPIRP originated from deliberations of the Insolvency Law Committee (ILC), which recognized the need for a swifter resolution mechanism within the IBC. A sub-committee chaired by Dr. M.S. Sahoo under the Ministry of Corporate Affairs examined its feasibility and submitted recommendations on October 31, 2020. Acting on these recommendations, the Government promulgated an Ordinance on April 4, 2021, which was later formalized through the IBC (Amendment) Act, 2021, introducing Chapter III-A (Sections 54A to 54P) under Part II of the Code.

The preamble to the Ordinance underscored the severe impact of the COVID-19 pandemic on businesses and financial markets globally, with MSMEs being among the worst affected. Recognizing their critical role in India's economy, the Government sought to provide an alternative insolvency resolution process that was swift, cost-effective, and value-maximizing, while ensuring business continuity and job preservation. Thus, PPIRP was born – a hybrid model combining the benefits of informal restructuring with formal oversight by the Adjudicating Authority.

## WHAT IS A PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS?

PPIRP is an out-of-court informal resolution plan worked out and drafted by the creditors and corporate debtor (CD) for the insolvency resolution before initiating formal insolvency proceedings. Once the plan is finalised and approved by the creditors, it is submitted to the National Company Law Tribunal (NCLT) for ratification, ensuring a resolution that adheres to strict timelines and efficiency.

PPIRP is an alternative to the Corporate Insolvency Resolution Process (CIRP) under the IBC, available only to Micro, Small, and Medium Enterprises (MSMEs) and offers a distinctive approach aimed at combining the advantages of informal workouts with the legal certainty provided by formal insolvency proceedings. Unlike the lengthy and financially draining processes of traditional formal processes (like CIRP), or Informal workouts lacking statutory backing and legal certainty; pre-packs serve as a hybrid solution. It allows out-of-court resolutions to be approved by a legal authority while ensuring safeguards for all involved parties.

In a pre-pack, initiated by the corporate debtor, an independent insolvency professional is appointed to oversee the process. Notably, pre-packs are proposed before the occurrence of a default. Throughout the process, the insolvency professional is tasked with adhering to the objectives of the Insolvency and Bankruptcy Code (Code) and maximizing the value of the corporate debtor's assets. Additionally, to maintain transparency and accountability, the insolvency professional is subject to liability post-process if any misconduct is identified.

## NEED FOR PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

The normal corporate insolvency resolution process under Part II, Chapter II of the Insolvency and Bankruptcy Code (Sections 4 to 32A) is often considered lengthy and complex. To address this, a simplified and time-bound mechanism has been introduced through Chapter III-A (Sections 54A to 54P) in Part II of the Code.

Micro, Small, and Medium Enterprises (MSMEs) play a vital role in India's economy, contributing significantly to GDP and generating employment for a large segment of the population. However, the COVID-19 pandemic severely disrupted their operations, pushing many into financial distress.

Given the unique characteristics of MSMEs, such as simpler corporate structures and limited resources, their resolution requires a tailored approach. Therefore, the PPIRP framework was designed to provide an efficient, cost-effective, and less disruptive alternative to the regular insolvency process. It aims to:

- Ensure speedy resolution within a fixed timeline.
- Preserve business continuity and protect jobs.
- Maximize value for all stakeholders while minimizing procedural complexity.

This approach reflects the need for a balanced solution that safeguards MSMEs and supports economic stability during challenging times.

## WHAT IS MSME?

The one of the primary eligibilities for PPIRP is that Corporate Debtor must be an MSME as defined under Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006. Proof such as **Udyam Registration Certificate** or other prescribed documents must be provided.

Micro, Small, and Medium Enterprises (MSMEs) are businesses characterised by specific thresholds of investment in equipment and annual turnover. They operate across manufacturing, services, and trade sector7s. MSMEs are critical to India's economic framework, generating employment, encouraging entrepreneurship, and fostering innovation. Originally governed by the MSMED Act of 2006, the classification criteria have evolved over time to better accommodate modern business realities.

| Enterprise Category | Investment Limit | Turnover Limit |
|---|---|---|
| Micro Enterprise | ₹2.5 crore | ₹10 crore |
| Small Enterprise | ₹25 crore | ₹100 crore |
| Medium Enterprise | ₹125 crore | ₹500 crore |

Most MSMEs would not be eligible for this under the IBC. It's due to the fact that a corporate debtor should be registered as an MSME of the MSMED Act of 2006 to be eligible for the pre-pack process as specified in Chapter III-A of the ordinance.

There is another restriction that limits MSMEs, PPIRP is restricted to the companies and LLPs. The sole proprietorship, partnerships, and HUF forms of MSMEs are not in frame of the aforementioned process, thereby restricting the eligible MSMEs for PPIRP.

## SALIENT FEATURES OF PPIRP

| S. No. | Parameter | Pre-Pack Insolvency Resolution Framework |
|---|---|---|
| 1. | Objective | Fusion of formal and informal mechanisms for finalization of a resolution plan in a swift manner. |
| 2. | Applicability | Corporate Debtor (CD) classified as MSME u/s. 7(1) of MSMED Act, 2006 |
| 3. | Initiation of process | Minimum Default of Rs. 10 Lacs as specified by the Government which shall not be more than one crore rupees; |
| 4. | Initiation by | CD, with consent of 66% of unrelated FCs |
| 5. | Management of the CD | Debtor-in-possession with creditor-in-control; |
| 6. | Role of IP | RP, to be appointed with approval of 66% of unrelated FCs; Conducting the process |
| 7. | Claim collation | CD to provide. RP to verify and confirm. |
| 8. | Information memorandum | Prepared by CD and finalised by RP |
| 9. | Moratorium | Limited moratorium |
| 10. | Interim finance | Yes |
| 11. | Avoidance transactions | Yes |
| 12. | IRPC | Does not include cost of running operations |
| 13. | Invitation for resolution plans | Base resolution plan from CD, challenged by plan submitted by the resolution applicant |
| 14. | Ineligibility for resolution plan | Section 29A to apply |
| 15. | Approval of resolution plan by CoC | 66% of voting share |
| 16. | Binding outcome | Resolution plan binding |
| 17. | Regulatory benefits | Yes |
| 18. | Clean slate, post resolution | Yes |
| 19. | Timeline | 90 days for filing of resolution plan with the AA plus 30 days for the AA to approve it. Process should be completed within 120 days of commencement of PPIRP |
| 20. | Outcomes, other than resolution of a PPIRP | • Early termination of process suo moto by CoC with approval of 66% of voting share;<br>• Termination of PPIRP without approval of resolution plan by application to Adjudicating Authority;<br>• Initiation of CIRP;<br>• Liquidation order. |

## GOVERNING FRAMEWORK

The provisions governing PPIRP are available in:

(i) Section 54A to 54P under the Insolvency and Bankruptcy Code, 2016;

(ii) The Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021; and

(iii) The Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021.

## ADVANTAGES OF PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

1. **Preliminary work was already conducted before applying to the Adjudicating Authority**

   Under this process, the preliminary steps such as i) obtaining approval from at least 66% of shareholders ii) financial creditors and corporate debtors approving the name of the resolution professional iii) special resolution of 75% of the members of the Corporate Debtor iv) preparation of the base resolution plan by the corporate debtor; are already undertaken before applying to the Adjudicating Authority.

2. **Understanding the creditors before making a formal application to AA for approval**

   Under this process, the creditors and debtors first work on an informal plan and then apply for initiation of PPIRP to the AA for approval. So in a way, it becomes a joint application by Corporate Debtor and Financial Creditor thereby reducing the chances of objections against the initiation of PPIRP. Further, it also becomes easy for the banks and financial institutions to audit objections, and objections from RBI are also likely to be less as the NCLT has already accorded its approval.

3. **Management Control remains with the Corporate Debtor**

   Under this process, the management control continues to be with the Corporate Debtor so there is no disturbance in the routine management of the business. Unlike in the CIRP process where management vests with the Interim Resolution Professional (IRP) making it impossible for him to manage a business of which he has no idea. So in PPIRP, effective management can be ensured.

4. **Corporate Debtor is allowed to partner with another person**

   Under this process, the base resolution plan is submitted by the corporate debtor either individually or jointly with another person. Explanation 1 to section 54K of IBC provides for the same. This allows the corporate debtor to work with financial or technical or marketing partners to submit the best possible resolution plan.

5. **Base Resolution Plan is a good starting point**

   Under the PPIRP, the management of the corporate debtor determines the manner of recovery. The management has inside knowledge of the business and there is no impairment of operational creditors making the base resolution plan acceptable by the CoC, with some improvements.

6. **Swiss Challenge method to make the best possible resolution plan**

   The PPIRP regulations provide for the ‘Swiss Challenge’ where an interested party initiates a proposal for a contract or bid for a project. The details of the project are provided to the public and proposals are invited from interested parties to execute it. The Swiss challenge is a mixture of both an open auction and a closed tender to discover the best price for an asset. Further, regulation 48(3) of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations provides the manner for improving the plan.

7. **Fast approval and reduced burden on NCLT**

   As there is an informal understanding between the financial creditors and corporate debtors, obtaining approval becomes fast as there is very less possibility of opposition to the resolution plan so a detailed examination of the issues will also not be required.

## UNDERSTANDING PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP): –

**Definition:**

The term **'Pre-Pack'** does not have a statutory definition under Indian law. However, in practice, it refers to a pre-arranged insolvency resolution mechanism where a distressed company and its creditors negotiate and agree on the terms of a resolution plan before formally initiating insolvency proceedings under the

This approach combines the benefits of speed, cost-efficiency, and reduced Insolvency and Bankruptcy Code (IBC) disruption, as the groundwork for resolution is completed prior to filing. Once the plan is agreed upon, it is submitted to the Adjudicating Authority (NCLT) for approval, ensuring legal sanctity and creditor protection.

**Introduction in India:**

- Introduced through the IBC Amendment Act, 2021, which inserted Chapter III-A (Sections 54A to 54P).
- Designed primarily for corporate MSMEs to provide a faster, cost-effective, and less disruptive alternative to the Corporate Insolvency Resolution Process (CIRP).

**Illustrative Example:**

KBC Electronics Pvt. Ltd., is facing a ₹10,50,000 debt amid declining demand, proposed a Pre-Packaged Insolvency Resolution Plan (PPIRP). Negotiating with major creditors DEF Bank and supplier PQR, they agreed to reduce the debt to ₹5,00,000, extending the repayment period. After NCLT approval, XYZ executed the plan, selling assets and restructuring. Successful completion reduced uncertainty, enabling XYZ to pay the reduced debt, fostering a financial revival and saving the business from liquidation.

The PPIRP process is governed by Sections 54A to 54P of the IBC, which were introduced by way of an amendment in 2021. Here is a brief snapshot of the sections involved in PPIRP:

| Sections | Provisions |
|---|---|
| **Section 54A** | Applicability of the PPIRP mechanism to corporate debtors classified as MSME. It lays down the eligibility conditions for initiating the PPIRP process. |
| **Section 54B** | Duties of resolution professional to prepare report, confirming the requirements under section 54A. |
| **Section 54C** | Application to initiate PPIRP, appointment of an insolvency professional. The PPIRP shall commence from the date of admission of application. |
| **Section 54D** | Time limit for completion of PPIRP. The PPIRP shall be completed within 120 days of commencement of PPIRP and within 90 days of commencement of PPIRP, RP shall submit the resolution plan as approved by CoC. |
| **Section 54E** | AA while passing the admission order shall declare moratorium, appoint RP and direct public announcement to be made by RP. |
| **Section 54F** | Duties and powers of RP during PPIRP. |

| | |
|---|---|
| **Section 54G** | Implementation of the resolution plan by the debtor or any other person authorized by the debtor, with the approval of the AA. |
| **Section 54H** | Management of CD shall be vested with the board of directors of CD. |
| **Section 54I** | Constitution of CoC within 7 days of commencement of PPIRP. The CoC shall comprise financial creditors. The first meeting shall be convened within 7 days of constitution. |
| **Section 54J** | Vesting the management of CDS with RP during PPIRP, if affairs of CD have been conducted in fraudulent manner; or there has been gross mismanagement. The application will be filed before AA, if approved by CoC with 66% vote. |
| **Section 54K** | The consideration and approval of resolution plan. The CD shall submit the base resolution plan to RP within 2 days of PPIRP commencement and RP shall present it to CoC. The CoC may provide an opportunity to revise base resolution plan or invitation of prospective resolution applicant. |
| **Section 54L** | AA shall approve the resolution plan as approved by COC, if it meets the requirements. |
| **Section 54M** | An appeal may be filed against an order approving resolution plan. |
| **Section 54N** | Termination of PPIRP, if resolution plan is approved by AA and CoC, or when no resolution plan is approved by CoC. |
| **Section 54O** | CoC is empowered to initiate CIRP after the PPIRP commencement but before approval of resolution plan, by approval of 66% Coc members. |
| **Section 54P** | Chapter II, Chapter III, Chapter VI and Chapter VII of CIRP process will be applicable to PPIRP under Chapter IIIA. |

## PROCESS FLOW

A typical process flow chart of PPIRP is as under:

| | |
|---|---|
| **Pre Initiation Requirements** | ● Mutual Understanding between financial creditors and corporate debtor. (Approval from shareholders by passing special resolution and from atleast 66% financial creditors.<br>● Identification of IP to act as IRP<br>● Declaration from majority of directors that process is not being initiated to defraud. |
| **Initiation of Pre-pack process** | ● CD files application before the AA with report of IP.<br>● AA either admits or rejects the application within 14 days.<br>● If admits, moratorium kicks in. |
| **Conduct of the Pre-pack process** | ● The management of affairs of the CD continues to be vested in the board.<br>● RP to conduct the entire process with the oversight of CoC. |
| **Consideration & approval of resolution plan** | ● The management of affairs of the CD continues to be vested in the board.<br>● RP to conduct the entire process with the oversight of CoC. |

| | |
|---|---|
| **Closure of pre-pack process** | ● Approval of resolution plan by the AA; or<br>● Termination of PPIRP where CoC approves termination with 66% voting shares; or<br>● Initiation of CIRP by AA on the request of CoC<br>● On expiry of 90 days, if no resolution plan is submitted to AA |

## COMPARISON BETWEEN CIRP PROCESS AND PPIRP PROCESS

The comparison analysis of the both the process i.e. CIRP process and PPIRP process, are as follows:

| S.NO. | CRITERIA | CIRP PROCESS | PPIRP PROCESS |
|---|---|---|---|
| 1 | **Eligibility** | All companies and LLP | Companies and LLPs classified as MSME |
| 2 | **Minimum amount of Default** | 1 Crore Rupees | 10 Lakhs Rupees |
| 3 | **Application for Initiation** | Financial Creditor, Operational Creditor and Corporate Debtor himself | Corporate Debtor, authorized person of CD, Person in control of financial affairs of the CD |
| 4 | **Timeline** | 180 Days + 90 Days + 60 Days | 120 Days (No Extension) |
| 5 | **Interim Resolution Professional (IRP)** | IRP will get appointed on the Insolvency Commencement Date (ICD) | No Such Concept under this Process |
| 6 | **Resolution Professional** | RP will get appointed on the 1st COC meeting held on 30th day of ICD | RP will get appointed on the Pre-Packaged Insolvency Commencement Date (PICD) |
| 7 | **Base Resolution Plan [Sec 5(2A)]** | No Such Concept under this Process | It will be submitted by the Corporate Debtor to financial creditors before PICD |
| 8 | **Moratorium & Public Announcement** | Applicable U/s 14 & 15 of IBC | Applicable U/s 54E of IBC |
| 9 | **Constitution of Committee of Creditors (COC)** | 23rd Day from the Insolvency Commencement Date (ICD) | 7th Day from the Pre-Packaged Insolvency Commencement Date (PICD) |
| 10 | **First Meeting of Committee of Creditors** | To be held within 7 days of Constitution of COC | To be held within 7 days of Constitution of COC |
| 11 | **Preliminary Information Memorandum [Sec 5(23A)]** | No Such Concept under this Process | It will be submitted by Corporate Debtor within two days of PICD to RP |
| 12 | **Management of the Corporate Debtor** | Vested with the IRP on ICD and subsequently transmitted to RP (Sec 17) | Vested with the old management and RP shall monitor it (Sec 54F(2)(d)) |

| | | | |
|---|---|---|---|
| 13 | **Initiation of CIRP (Sec 54O)** | Not Applicable | COC at any time may decide upon for initiation of CIRP with voting not less than 66% |
| 14 | **Resolution Plan** | Equal Opportunity to All | First Opportunity to Promoters |
| 15 | **Termination** | Results in Liquidation | Only in case of 54J order – Liquidation Other case – Management continues CD |

## LIMITATIONS OF PPIRP

One of the key reasons behind the PPIRP being unsuccessful is that the promoters of the MSME companies do not come forward for initiation of Pre-Packaged Insolvency Resolution Process rather they stay silent even though on occurrence of default. Some other reasons were as follows:

1. **Lack of Knowledge**

   Most promoters of MSME companies are unaware that there exists a Pre-Packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code (IBC), 2016, in addition to the Corporate Insolvency Resolution Process (CIRP) for the resolution and restructuring of distressed companies. While most MSME company promoters are aware that they can submit a resolution plan under the CIRP process, they may not be aware of the PPIRP option, which provides them with more flexibility in the bidding process. This is due to the relaxation available to them under Section 29A of the Insolvency and Bankruptcy Code, 2016.

2. **Control of CD stays with Promoters**

   Although the Pre-Packaged Insolvency Resolution Process (PPIRP) has been initiated, the management of the company is still with the promoters or board of directors who will continue to manage its operations[4]. In contrast, during the CIRP process, the entire management and control of the company is transferred to the Resolution Professional (RP) upon admission of the application under the Insolvency and Bankruptcy Code, 2016.

   However, in the case of PPIRP, the RP only monitors and oversees the operations undertaken by the promoters/board of directors. The COC members of the Corporate debtor may wish for the management of the company to be taken care of by the RP, rather than the defaulted promoter or board of director, which is the usual course of action under CIRP. Under PPIRP, the COC must decide by a majority vote of at least 66% whether the management of the CD should vest with the RP or not, in case the affairs of the CD are conducted fraudulently or improperly.

3. **Creditors Perspective**

   The issue that arises with regard to Micro, Small and Medium Enterprises (MSMEs) is that they often deal with small loans that are lent by one or two lenders, rather than a consortium of lenders. Bringing court proceedings for the purpose of debt recovery can be a time-consuming process, and these creditors are hesitant to enter into an agreement until there is a chance of a substantial recovery, as they fear significant losses. These creditor companies operate on a small scale and face numerous challenges. Allowing the promoters to evade payment will lead to asset quality challenges for the creditors. In the present situation, most small financial creditors await the decision of larger ones to initiate a process, but this has yet to happen.

4. **Connected Person Involvement**

   The Pre-Packaged Insolvency Resolution Process (PPIRP) allows connected parties to buy the business of a debtor. However, this can lead to a lack of transparency and a false impression of restructuring. In contrast, the Corporate Insolvency Resolution Process (CIRP) does not allow connected parties to apply to buy the debtor's business. If a connected party does purchase the debtor's business, the debtor may not exit the company, which could cause problems for creditors in the future.

Here are some additional reasons why MSMEs may not adopt PPIRP:

- Court procedural delays.
- Lenders may prefer OTS (One Time Settlement) as it allows them to receive their money faster.
- PPIRP is a costly process, typically requiring an additional burden of 10-15 lakhs in expenses.
- The risk of losing the company in case of a "haircut" (debt reduction), if someone else competes in the plan, which causes promoters to fear potential loss.

## CURRENT STANDING OF PPIRP

Since the introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs corporates in 2021, only sixteen applications have been admitted as on 30th September, 2025[1]. Out of these, one case has been withdrawn, resolution plan has been approved in 10 cases.

| S. No. | Name of the CD | Date of Admission | Name of NCLT Bench | Current Status |
|---|---|---|---|---|
| 1 | GCCL Infrastructure & Projects Ltd | 14/09/2021 | Ahmedabad | Approved |
| 2 | Loonland Developers Pvt. Ltd | 29/11/2021 | Principal Bench, New Delhi | Withdrawn |
| 3 | Enn Tee International Limited | 10/10/2022 | Principal Bench, New Delhi | Approved on 19/10/2023 |
| 4 | Amrit India Limited | 28/11/2022 | Principal Bench, New Delhi | Approved on 10/08/2023 |
| 5 | Sudal Industries Limited | 20/04/2023 | Mumbai | Approved |
| 6 | Shree Rajasthan Syntex Limited | 19/04/2023 | Jaipur | Approved on 22/08/2023 |
| 7 | Mudra Lifespaces Private Limited | 06/12/2023 | Mumbai | Approved on 12/03./2025 |
| 8 | Garodia Chemicals Limited | 16/04/2024 | Mumbai | Approved on 24/02/2025 |
| 9. | Kvir Towers Private Limited | 12/02/2024 | Principal Bench, New Delhi | Approved on 12/12/2024 |
| 10. | RG Residency Private Limited | 20/02/2024 | Principal Bench, New Delhi | Approved on 13/05/2025 |
| 11 | Kratos Energy & Infrastructure Limited | 01/02/2024 | Mumbai | Approved on 28/07/2025 |
| 12 | Kethos Tiles Private Limited | 04/01/2024 | Hyderabad | Ongoing |
| 13 | Shreemati Fashions Private Limited | 05/01/2024 | Kolkata | Ongoing |
| 14 | Vedik Ispat Private Limited | 05/02/2025 | Bengaluru | Ongoing |
| 15 | Medhansh Snacks Private Limited | 08/08/2025 | New Delhi | Ongoing |
| 16 | G Security (India) Private Limited | 10/12/2024 | Mumbai | Ongoing |

1. *IBBI Quarterly newsletter (July-September, 2025)*

## INTERPLAY BETWEEN SARFAESI, MSMED AND IBC IN TERMS OF MSME CORPORATES

Micro, Small, and Medium Enterprises (MSME) corporations are regulated by the MSMED Act, 2006. The Act's Sections 15 to 23 provide for a special mechanism for settling disputes and enforcing certain business and contractual terms. Meanwhile, Section 26E of the SARFAESI Act, 2002 states that debts owed to secured creditors must be paid with priority over all other debts, revenue taxes and cesses, and other rates payable to the Central Government or State Government or Local Authority, subject to the provisions of the Insolvency and Bankruptcy Code, 2016.

In a recent judgment in the case of "***Kotak Mahindra Bank Ltd.* v. *Girnar Corrugators Pvt.*** *Ltd.* " it was held that the priority provided under Section 26E of the SARFAESI Act, 2002 would supersede the recovery mechanism of the MSMED Act, 2006 under sections 15 to 23. This means that secured creditors have the option to recover their dues under the SARFAESI Act in case of default by MSME corporations, enabling them to enforce security interests and ensure faster recovery for assets charged to them.

However, the introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code, 2016, has opened another door for MSME corporations who are unable to pay their debts to secured lenders. PPIRP enables them to resolve and restructure their debts without affecting their operations and going concern state.

In recent times, it has been observed that banks and Financial Institutions (FIs) tend to resort to SARFAESI Act provisions as the first option for recovering MSME corporate loans. This preference has led to the closure of MSME corporates that are unable to pay their dues to these secured lenders, who invoke Sec 13 of SARFAESI Act for recovery.

Despite the introduction of Pre-Packaged Insolvency Resolution Process (PPIRP) specifically for MSME Corporates, secured lenders still opt for SARFAESI Act for enforcement and recovery of dues from the security interest created in their favor. This is because the secured lenders focus on recovering the dues they lent and not on the functionality or importance of the corporates in the economy.

The secured lenders who have given loans to these MSME corporates tend to look for an OTS settlement or turn towards SARFAESI Act process to recover their dues as it is the easiest means of clearing their NPAs in their books. They do not follow the new process of Pre-Packaged Insolvency Resolution Process (PPIRP) under IBC, where the process accepts the base resolution plan or resolution plan submitted before the COC members and decides upon the same.

Under the PPIRP process, secured lenders need to share their security interest with other lenders and also face haircuts on their dues lent. Here, they also need to consider the going concern nature of the corporates and feasibility and viability of those businesses. In contrast, the OTS or SARFAESI Act process allows these secured lenders to enjoy the benefit entirely without the need to share with any other lenders/claimants. These processes do not involve court intervention or any other management cost.

It is clear that the commercial credit exposure of MSME corporates has increased annually. Here are the details:

Following are some of the suggestive measures that would be helpful for Pre-Packaged Insolvency Resolution Process (PPIRP) to unwrap into our economy and become a revolutionary resolution process for corporate MSMEs:

1. **Assisting in the education of Micro, Small, and Medium Enterprises (MSMEs)**

   Most of the companies that fall under the category of Micro, Small & Medium Enterprises (MSMEs) are governed by the Ministry of Micro, Small & Medium Enterprises. The ministry aims to promote the growth and development of MSMEs. The Insolvency and Bankruptcy Board of India (IBBI), through the Ministry, plans to educate MSMEs about the Pre-Packaged Insolvency

Resolution Process (PPIRP) available under the Insolvency and Bankruptcy Code, 2016. This will provide MSMEs facing financial distress with an option to restructure their debt and resolve their issues. The Ministry, through IBBI, should emphasize that the PPIRP process aims to help companies overcome their financial difficulties and not to take away the company from its promoter.

2. **Need for perspective change**

   Although MSMEs corporates may have one or two lenders, they should still accept the restructuring decision of the promoter and decide on the base resolution plan submitted by them. The court process can be time-consuming, but without their intervention, it would be difficult to have authority, order, and direction on the implementation of such plans. Most MSMEs corporates face short-term financial distress, which can be overcome by providing some time to recover from it and with some small haircuts accepted by the creditors. Henceforth, the larger creditors should be in a position to accept such decisions of haircuts so as to allow the MSMEs corporates to operate as a going concern without interruption for the greater benefit of the economy.

3. **Keeping the entity as a going concern**

   MSMEs (Micro, Small and Medium Enterprises) are smaller in size compared to large corporates. Due to their size, there are small details that only the promoter of the company knows, which are delegated to other managers in large corporates. In the case of MSMEs, the promoter needs to be involved in day-to-day operations to keep the entity running. Therefore, shifting the management of these entities to a Resolution Professional is not a viable and feasible decision for the entity's going concern nature. Creditors need to understand this. Although the Pre-Packaged Insolvency Resolution Process (PPIRP) involves staying the operation of the company with the promoter, it does not mean that creditors should not opt for this. They should understand that they are the most eligible persons who can manage such entities in a going concern in the best possible way.

4. **Prohibition of Connected Persons**

   The Pre-Packaged Insolvency Resolution Process (PPIRP) differs from the CIRP process in that it allows the promoter or connected person to submit a base resolution plan, which will be considered by the financial creditor in the pre-initiation stage. This is unlike the CIRP process, where connected persons are disqualified from submitting a resolution plan under Sec 29A of the Insolvency and Bankruptcy Code, 2016.

However, creditors have expressed concerns about this procedural aspect, as they fear that problems may arise in the foreseeable future. It is important to change this perspective, especially for MSMEs, as the company cannot be better managed than by its promoter or connected persons. This is because the events involved are small and limited to them, and a new management team may not be aware of all the details that could affect the going concern nature of the business.

Therefore, unless there is suspicion of fraud or unlawful activity with regard to the Corporate Debtor, the base resolution plan submitted by the promoter or connected persons should be given equal consideration to the resolution plan submitted by external parties.

## REAL ESTATE DEVELOPER COMPANIES AND PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

Some real estate developers also fall within the definition of MSMEs if their thresholds match the threshold prescribed for the MSMEs and avail the benefits of PPIRP. However, in the case of PPIRP of real estate development companies, the interest of the home buyers will have to be protected. Further, it is also necessary to ensure that the financial creditors are presenting a plan which aligns with the interest of the home buyers.

## EXPANDING THE SCOPE OF PRE-PACKAGED INSOLVENCY AND STRENGTHENING SECURED CREDITORS' RIGHTS

Currently, the **Pre-Packaged Insolvency Resolution Process (PPIRP) under the IBC is available exclusively for Corporate MSMEs** (Micro, Small, and Medium Enterprises). It is not yet expanded to non-MSME or larger corporate debtors.

There have been ongoing discussions and proposals to extend the PPIRP framework to larger companies. A sub-committee of the ILC has suggested the potential for expanding PPIRP to all corporate debtors, provided appropriate safeguards (such as robust operational creditor protection and independent valuation) are put in place. The Insolvency and Bankruptcy Board of India (IBBI) issued a discussion paper in early 2023 have shown intent for amending Section 54A to include prescribed categories of non-MSME corporate debtors. The goal is to provide a quicker, more cost-effective, and less disruptive resolution mechanism to a wider range of businesses.

### Insolvency and Bankruptcy Code (Amendment) Bill, 2025

The **Insolvency and Bankruptcy Code (Amendment) Bill, 2025** was introduced in the Lok Sabha on August 12, 2025, and subsequently referred to a select committee for review. The Bill inter-alia proposes to expand the scope of the pre-packaged insolvency resolution process (PPIRP) from Micro, Small & Medium Enterprises (MSMEs) to larger corporate debtors.

### Expansion of PPIRP Scope

Initially, the PPIRP framework, introduced in 2021, was limited to MSMEs. The 2025 amendment is a major turning point, as it expands eligibility to mid-sized and potentially larger corporations. This expansion aims to address the drawbacks of the standard Corporate Insolvency Resolution Process (CIRP), such as long delays and high costs, by providing a faster, more flexible alternative.

The amendments brought several key reforms, like:

- Section 54A of the Insolvency and Bankruptcy Code expanded the eligibility, so larger companies can now opt for PPIRP.
- Section 54K enhanced the authority of the Committee of Creditors (CoC), enabling creditors to reject weak-based resolution plans and invite new ones, guaranteeing higher standards and better results.
- Safeguards taken in CIRP were also adopted in PPIRP, such as strict disclosure requirements, to ensure transparency and fairness.
- Retention of the 120-day statutory limit ensures the speed and efficiency of the resolution process.

The implications are important for all stakeholders, like the debtors can retain flexibility and continue managing their companies while restricting the company to prevent the company from complete displacement, while the creditors will benefit from quicker recoveries and stronger bargaining power through the CoC's enhanced role. Even though these amendments have benefits, there are still some concerns, like the risk of promoters who may exploit pre-pack deals, the possibility of limited competition in resolution plans, and challenges in ensuring transparency during pre-negotiations. By extending PPIRP, India has moved closer to global best practices, aiming to strike a balance between speed, creditor protection, and value preservation.

Key aspects of the expanded PPIRP framework in the Bill include:

- **Debtor-in-Possession Model**: The management of the corporate debtor remains with its existing board of directors or partners, subject to oversight by a resolution professional (RP). This minimizes business disruption and preserves the company as a going concern.

- **Faster Timelines**: The process has a statutory time limit of 120 days, which is significantly shorter than the average CIRP timelines.
- **Pre-negotiated Plan**: The process relies on a pre-negotiated base resolution plan agreed upon with creditors before formal insolvency proceedings begin, which speeds up the resolution.
- **Enhanced Creditor Authority**: The Committee of Creditors (CoC) retains significant power, including the ability to reject a weak resolution plan and invite new ones to ensure better outcomes and value maximization.
- **Conversion to CIRP**: If the PPIRP fails or the debtor does not cooperate, the process can be converted into a standard CIRP.
- **Potential Benefits of Expansion:** Extending PPIRP could significantly reduce the burden on the National Company Law Tribunals (NCLT) and align the Indian framework with global best practices (e.g., in the UK and US), where similar processes are used for larger firms.
- **Concerns and Safeguards:** The primary concerns with expanding the scope include Since the Pre-Packaged Insolvency Resolution Process (PPIRP) has not taken off as expected since its inception, the risk of misuse by promoters (given the "debtor-in-possession" model) and ensuring transparency and fairness, especially for unsecured and operational creditors. Any future expansion would likely incorporate strict disclosure requirements and vigilant oversight by the Resolution Professional and the Adjudicating Authority.

## CURRENT STATUS

As of late 2025, the Bill is **under scrutiny by a select committee of the Parliament**. It is not yet law, and its final approval is anticipated, potentially during an upcoming parliamentary session.

The implementation and final shape of the expanded PPIRP framework will depend heavily on the specific rules and regulations that the Central Government and the Insolvency and Bankruptcy Board of India (IBBI) will notify once the Bill is enacted.

In summary, while the *expansion is not a current reality*, it is a subject of active legislative consideration and future reform under the IBC.

## CONCLUSION

It is important to note that the PPIRP (Pre-Packaged Insolvency Resolution Process) is a relatively new process that was introduced in the IBC (Insolvency and Bankruptcy Code) of 2016 in its later stage. This process allows for the resolution of MSMEs (Micro, Small and Medium Enterprises) corporates through a base resolution plan that is agreed upon by the debtor and the creditor. On the other hand, CIRP (Corporate Insolvency Resolution Process) is a more established process that involves the appointment of an insolvency professional to manage the affairs of the debtor and to prepare a resolution plan that is approved by the creditors.

The reasons for the lower success rate of PPIRP compared to CIRP are somewhat clear, but measures should be taken to overcome them. Educating people about the availability and benefits of the PPIRP process is one such measure. Additionally, the fact that PPIRP is a voluntary process that requires the consent of the promoter. In upcoming years, the PPIRP process would be a well-established process as it looks promising in expediting the resolution of MSMEs corporates which is both economical and flexible. Thus, the need for a Pre-Packaged Insolvency Resolution Process (PPIRP) need to be advocated and even adjudicating authority should also speedy their decisions in such process.

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# INSOLVENCY IN THE AGE OF GEOPOLITICAL SHIFTS: HOW GLOBAL CONFLICTS IMPACT VALUATION & RESOLUTION PATHWAYS

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## INTRODUCTION: A WORLD WHERE BALANCE SHEETS BEND TO BORDERS

Over the past decade, the world has witnessed a dramatic transformation – one that has redefined not only global politics and economic power structures but also the very fundamentals of corporate solvency. Wars, trade realignments, sanctions, technology blockades, and the weaponisation of supply chains are no longer distant diplomatic events – they are decisive forces shaping business survival. The modern corporation does not operate in an isolated bubble of profit and loss. Its very existence is now entangled with geopolitical currents that determine access to markets, availability of raw materials, ease of financial flows, security of shipping lanes, and stability of global demand.

In this age where the world feels simultaneously more connected and more fractured, insolvency increasingly originates from outside the company's boardroom – from borders, not balance sheets. A container stuck at the Red Sea due to geopolitical tensions, a sanctioned supplier in Russia or Iran, a rerouted shipping path that doubles freight costs, a sudden energy price spike caused by war, or a semiconductor export ban between global powers – each can trigger a chain of distress powerful enough to push a solvent company toward financial collapse.

For India, a nation deeply integrated with global trade but also strategically navigating its rise as a geopolitical and economic power, understanding this intersection between global conflict and domestic insolvency becomes not just relevant, but essential. Insolvency professionals, valuers, and policymakers must reimagine traditional frameworks and incorporate geopolitical risk as a central analytical pillar. The future of corporate distress resolution will belong to those who understand that geopolitical vulnerabilities today are not "externalities" – they are fundamental determinants of value.

This article explores the profound ways in which global conflicts, shifting alliances, sanctions, and supply-chain restructurings are reshaping the insolvency and valuation landscape. It also examines what this new reality demands from India's insolvency ecosystem, how valuation models must evolve, and why trust and transparency in the resolution process require a deeper integration of geopolitical intelligence.

## THE RISE OF GEO-ECONOMIC FRAGMENTATION: UNDERSTANDING THE NEW BUSINESS REALITY

The world is no longer governed by the assumptions that defined globalisation in the 1990s and early 2000s. Stability, free movement of goods, predictable trade arrangements, and open global markets have been replaced by fragmentation, economic nationalism, strategic decoupling, and supply-chain defensiveness. The era of the World Trade Organisation's harmonious trade model has given way to a world where countries pursue "friend-shoring," "near-shoring," and "de-risking" from geopolitical rivals.

This fragmentation has created deep ripple effects across corporate operations and financial health.

At the heart of this shift is a new understanding: geopolitics is now a core economic variable. It dictates the cost of doing business, the availability of inputs, the reliability of customers, and the speed of cash flows. The world has moved from "just-in-time" to "just-in-case." Companies are forced to maintain higher inventories, multiple supplier networks, alternative shipping routes, and diversified production bases – all of which increase cost structures and reduce operating flexibility.

This structural transformation means that geopolitical shocks – armed conflicts, diplomatic standoffs, sanctions, and trade wars – exert direct financial pressure on businesses. For example:

- The Russia–Ukraine war disrupted global grain markets, energy flows, and shipping routes.
- The US–China technology conflict rewrote the rules around semiconductors, AI, and critical minerals.
- Red Sea hostilities have doubled shipping costs for companies' dependent on Europe-Asia maritime routes.
- Sanctions on Iran, Venezuela, and Russia have frozen assets, blocked payments, and invalidated contracts.

Each of these disruptions creates a domino effect in which companies with previously stable business models find themselves confronting unanticipated distress. Insolvency today must therefore be seen through a broader lens – one that integrates global political dynamics into corporate financial analysis.

## WARS AS ECONOMIC SHOCKWAVES: HOW ARMED CONFLICTS ACCELERATE CORPORATE DISTRESS

War has always impacted economies, but the interconnected nature of the 21st-century global supply-chain ecosystem means that even distant conflicts can create severe economic turbulence for businesses across continents. Modern armed conflicts do not merely destroy infrastructure – they disrupt global networks. These disruptions take the form of increased freight charges, soaring marine insurance premiums, port congestion, diverted shipping routes, and unpredictable delivery timelines.

Consider the Russia–Ukraine war. What began as a geopolitical conflict quickly turned into a global economic shock. Oil and gas prices surged. Fertiliser supplies collapsed. Steel and grain markets shook. Energy importers – including India – faced unprecedented price volatility. Manufacturers dependent on imported metallurgical coal, crude oil, or natural gas struggled with fluctuating input prices. Exporters encountered shipping delays and contract uncertainties. Financial markets also reacted with volatility, affecting currency stability and borrowing costs.

Similarly, the Red Sea crisis forced shipping companies to reroute vessels around the Cape of Good Hope, adding thousands of kilometres and significant cost. Indian exporters in sectors such as textiles, engineering goods, and FMCG suddenly found their transportation timelines doubled and freight costs inflated. Margins shrank, working capital cycles extended, and order fulfilment reliability weakened – factors that can easily nudge distressed companies into insolvency.

Wars create additional pressures through fluctuating demand. European buyers reduced imports during energy crises. Middle Eastern markets witnessed unpredictable consumption patterns due to political instability. Companies facing unilateral cancellation of contracts or reduction in order volume often slide into liquidity crises.

For insolvency professionals, the key challenge becomes understanding not just financial mismanagement but the external, uncontrollable shocks triggered by geopolitical conflicts. This requires analysing force majeure clauses, re-assessing contract viability, estimating loss of business continuity, and recalibrating working-capital requirements. Wars have made it clear: insolvency does not always emerge from misgovernance – it often arises from geopolitical turbulence.

## SUPPLY CHAIN REWIRING: A HIDDEN FAULTLINE IN CORPORATE SOLVENCY

If wars create acute shocks, supply-chain rewiring represents a chronic, long-term shift with far more lasting implications. After COVID-19, and then amid geopolitical tensions, the world began redefining its supply-chain architecture. The traditional China-centric model is evolving into a diversified framework driven by concerns over economic coercion, geopolitical vulnerability, and risk concentration.

India sits at the crossroads of this transformation, benefiting from "China+1" strategies while also being vulnerable to dependencies of its own. For example:

- Indian pharmaceutical companies depend heavily on Chinese APIs, with limited immediate alternatives.
- Electronics manufacturers rely on East Asia for semiconductors and micro-components.
- Renewable energy companies depend on imported polysilicon, cells, and modules.
- Auto manufacturers face shortages when global chip supply is rerouted or disrupted.

These dependencies mean that supply-chain delays or realignments directly influence operational costs, production capacity, and financial stability. A delayed shipment of APIs or chips can halt entire production lines, creating revenue losses disproportionate to the immediate shock.

From a valuation perspective, supply-chain fragility demands recalibrated assumptions. Discounted cash flow (DCF) models must now account for:

- extended lead times
- uncertainty in sourcing
- increased inventory buffers
- diversified supplier portfolios
- hedging costs
- logistic unpredictability

Traditional valuation models that assume stable procurement and predictable cost structures no longer align with reality. Supply-chain rewiring is now a determinant of long-term viability. Companies unable to reduce concentration risks or diversify procurement sources face structural vulnerability, making them more likely candidates for insolvency.

## COMMODITY VOLATILITY: THE SILENT KILLER OF MARGINS

Commodity markets today are geopolitical battlegrounds. Energy, metals, grains, fertilisers, rare earths, and industrial materials now fluctuate based on global political tensions. This volatility directly impacts industries such as cement, steel, textiles, pharmaceuticals, automotive, aviation, and agriculture.

A small shift in crude oil prices can wipe out profit margins for logistics companies. A spike in coal or gas prices can push power-intensive manufacturing units into losses. Export-driven industries reliant on commodity inputs face severe uncertainty, particularly when global prices rise faster than domestic pricing power allows.

For companies already grappling with capital constraints or high debt, commodity volatility creates a margin squeeze that accelerates the slide toward insolvency. This volatility also complicates resolution because valuers cannot rely on stable input-cost assumptions. They must incorporate geopolitical risk premiums, variable commodity trajectories, and sensitivity analyses to reflect realistic cash flows.

Currency volatility adds another layer of complexity. Depreciation of the rupee inflates import bills, increases foreign debt obligations, and reduces global competitiveness. Currency fluctuations also distort valuation benchmarks and discount rates. Insolvency professionals must carefully assess whether financial distress is temporary or structural, influenced by price cycles or deep geopolitical realignments.

## SANCTIONS AND COUNTERPARTY EXPOSURE: THE NEW CLASS OF INSOLVENCY TRIGGERS

Sanctions have become the preferred tools of geopolitical dominance. Countries use financial, trade, and technology sanctions to isolate adversaries and exert economic pressure. For companies integrated in global trade networks, sanctions create immediate vulnerabilities.

Indian businesses dealing structurally or transactionally with sanctioned entities face risks such as:

- frozen payments stuck in international banking channels
- cancelled contracts with foreign partners
- inability to secure shipments
- blocked receivables
- loss of insurance coverage
- invalidation of letters of credit
- compliance penalties

This creates a new category of insolvencies – not driven by internal failures but by legal and diplomatic constraints. Even indirect exposure – such as dealing with a supplier sourced through a sanctioned intermediary – can create liabilities. Counterparty risk assessments have become far more complex in this environment.

For insolvency professionals, due diligence today must include geopolitical background checks. Understanding sanction regimes, cross-border regulatory compliance, and exposure mapping is essential. Resolution plans involving foreign assets or bidders must consider legal feasibility in sanctioned jurisdictions. Valuers, too, must assess how sanction risks affect enterprise value, buyer interest, and asset liquidation timelines.

## 5A. DEEPER DIVE INTO LEGAL AND CONTRACTUAL CHALLENGES: FORCE MAJEURE IN A GEOPOLITICAL WORLD

Insolvency cases emerging from geopolitical shocks increasingly confront a thorny legal question: When does a geopolitical event truly qualify as force majeure? The answer is far from uniform – and this inconsistency itself shapes the fate of distressed companies. Cross-border contracts complicate matters because common-law and civil-law jurisdictions interpret force majeure and frustration of contract very differently, especially when sanctions, partial embargoes, or undeclared hostilities blur the line between “unforeseeable event” and “commercial risk.” For example, businesses entangled in the Russia–Ukraine conflict have discovered that while civil-law jurisdictions may automatically excuse performance when war or sanctions make performance impossible, common-law systems often demand far higher thresholds of impossibility – leaving companies legally exposed even when supply chains collapse. Geopolitical crises also amplify sovereign risk, where governments suddenly impose export bans, alter licensing conditions, freeze assets, or nationalise foreign-controlled facilities. Such interventions can derail contract performance overnight, yet the availability of legal remedies varies widely across jurisdictions. Moreover, the traditional risk-mitigation tools – trade credit insurance and political-risk insurance – are confronting their own limits. Many insurers reject claims by invoking “war exclusions” or classify supply-chain breakdowns as commercial rather than political risks, leaving companies stranded in limbo without indemnification. As a result, insolvency professionals today must scrutinise not only contractual language but also the geopolitical context, governing law, and insurability of disruptions. Force majeure is no longer a boilerplate clause – it is a determinant of survival and recovery in a world where contracts bend under geopolitical pressure.

## CYBER WARFARE AS THE NEW INSOLVENCY TRIGGER

Geopolitically motivated cyber warfare has evolved into one of the most potent and least understood insolvency triggers of the decade. Unlike kinetic disruptions that affect physical supply chains, cyber-attacks collapse solvency from within – by paralysing operations, corrupting data, and eroding trust at systemic speed. State-sponsored attacks on ports, financial-service platforms, logistics networks, or energy grids can instantly freeze business continuity. A ransomware attack that disables a port's digital interface, a malware strike on a power utility, or the breach of a financial intermediary's payment system can produce liquidity stress equivalent to weeks of operational shutdown.

These incidents are no longer treated as mere IT failures – they are treated as strategic geopolitical events. Businesses targeted during geopolitical escalations face cascading consequences: regulatory penalties for non-compliance, mandatory forensic audits, loss of customer confidence, claim rejections from insurers citing "act of war" exclusions, and extended downtime that drains working capital. Insolvency professionals increasingly observe companies sliding into distress not because markets changed but because their digital backbone was compromised. Cyber warfare has transformed liquidity risk into an overnight event, making cyber-insolvency analysis a core requirement in any modern resolution process.

## CYBER-ATTACKS AS SUDDEN LIQUIDITY EVENTS

What makes cyber warfare uniquely lethal is the speed at which it converts an operational disturbance into a liquidity crisis. When digital infrastructure is crippled, billing systems halt, receivables stall, supply-chain visibility collapses, and contractual delivery timelines fail – often triggering penalties and cancelled orders. Companies must simultaneously spend heavily on cybersecurity remediation, forensic experts, data restoration, and regulatory reporting. This dual pressure – no inflows, spiralling emergency outflows – creates a rapid liquidity crunch that resembles a geopolitical shock more than a traditional operational risk. For firms already operating on thin working-capital margins, a single state-enabled cyber-attack can compress months of stress into days, forcing them into insolvency proceedings with little warning.

## SECTORAL DEEP-DIVE: WHICH INDUSTRIES FACE THE HIGHEST GEOPOLITICAL INSOLVENCY RISK?

- **Pharmaceuticals**

  India's pharma industry relies heavily on China for APIs. Any geopolitical tension or trade restriction can halt production and destabilize financial metrics. Regulatory changes abroad can also reduce export potential, affecting cash flows.

- **Electronics & Semiconductors**

  Technology decoupling between the US and China, semiconductor export bans, and global chip shortages expose Indian manufacturers to severe vulnerabilities.

- **Logistics, Shipping, and EPC**

  These sectors feel the first shock of maritime disruptions, port congestion, and freight volatility. EPC companies especially struggle with contract delays and force majeure interpretations.

- **Oil & Gas, Petrochemicals**

  Energy markets are highly sensitive to geopolitical conditions. Price fluctuations and supply constraints impact refiners, transporters, and downstream industries.

- **Automotive & Engineering Goods**

  Dependence on global components and cyclic demand patterns makes these sectors particularly vulnerable.

- **Gems, Jewellery, and Textiles**

Export dependency exposes these industries to geopolitical shifts in consumer markets and currency fluctuations.

Each sector faces unique vulnerabilities, making sector-specific geopolitical risk mapping necessary for accurate insolvency resolution.

## HOW GEOPOLITICAL RISK IS RESHAPING RESOLUTION PATHWAYS

Traditional insolvency resolution frameworks assume stable macroeconomic and legal environments. But in a geopolitically volatile world, resolution strategies become more complex and unpredictable.

- **Cross-border complexities**

  Resolution plans involving foreign bidders face regulatory scrutiny, delays, and sometimes rejection due to geopolitical sensitivities. Political alignments influence bidder eligibility in strategic sectors like defence, critical minerals, or technology.

- **Valuation uncertainty**

  Geopolitical instability increases valuation volatility. Recoveries become unpredictable. Creditors must incorporate discounting for geopolitical exposure. Bidders also price risks differently.

  One of the most complex challenges in today's resolution landscape is the valuation of intangible assets – data repositories, proprietary algorithms, patents, digital infrastructure, and technology systems – when these assets sit at the intersection of geopolitical technology conflicts. The US–China semiconductor and AI restrictions have demonstrated how technology blockades can instantly devalue assets dependent on restricted chips, tools, or software ecosystems. Distressed companies holding advanced tech capabilities may find those assets significantly impaired if cross-border licensing, cloud interoperability, or component availability is threatened by geopolitical regulations. Valuers must now incorporate technology-dependence maps, origin risks, and export-control exposure when assessing the fair value of intangible assets, making intangible valuation far more geopolitical than ever before.

- **Impact on timelines**

  Cross-border asset sales, international regulatory approvals, and sanction checks extend resolution timelines.

- **Changing bidder preferences**

  Committees of Creditors prefer domestic bidders in sensitive industries. Foreign bidders face higher compliance burdens and political risk premiums.

  Resolution professionals need to understand how global developments impact bidder confidence, valuation reliability, and the viability of long-term turnaround strategies.

## THE NEW SKILL SET FOR INSOLVENCY AND VALUATION PROFESSIONALS

This new geopolitical environment demands an expanded skill set:

- **Geopolitical Literacy**

  Professionals must understand global conflicts, diplomatic shifts, sanctions, and international trade dynamics.

- **Supply Chain Intelligence**

  Mapping supplier networks, input sources, and logistics dependencies becomes essential.

- **Scenario-Based Valuation**

  Instead of single-case valuations, professionals must incorporate multiple geopolitical scenarios.

- **Risk-Sensitive Discounting**

  Using geopolitical risk premiums, currency-adjusted discount rates, and volatility forecasts is now essential.

- **Cross-Border Regulatory Awareness**

  Understanding sanction regimes, export controls, and trade compliance enhances accuracy and credibility.

- **Sector-Specific Vulnerability Mapping**

  Different industries face different geopolitical exposures. Professionals must tailor assessments accordingly.

## INDIA'S STRATEGIC OPPORTUNITIES AMID GLOBAL TURBULENCE

Geopolitical disruptions also create advantages for India:

- Shift in global manufacturing toward India
- Rising investor confidence in Indian stability
- Opportunities to acquire distressed global assets
- Strengthening Indo-Pacific partnerships
- Greater access to critical mineral supply chains
- Potential to emerge as a logistics and maritime hub

These opportunities can influence insolvency resolution in India by attracting new bidders, enhancing cross-border interest, and improving long-term business viability for distressed sectors.

## THE FUTURE OF INSOLVENCY: THE NEED FOR GEOPOLITICAL INTEGRATION

The future of India's insolvency and valuation ecosystem lies in integrating geopolitical risk assessment into every stage of resolution. This includes:

- creating geopolitical risk indices for valuation
- establishing standard protocols for assessing cross-border exposure
- training professionals in geopolitical intelligence
- enhancing supply-chain and counterparty due diligence frameworks
- incorporating real-time political risk analysis into IBC practice
- updating regulatory guidelines for foreign bidders

In a world where borders are shifting and global order is being redefined, insolvency cannot rely solely on financial models developed for a stable world.

## CONCLUSION: A NEW PARADIGM FOR TRUST AND TRANSPARENCY

Geopolitical volatility is not a temporary phase – it is the defining characteristic of the 21st century. For insolvency professionals and valuers, this reality presents both a challenge and an opportunity. The challenge lies in recognising that corporate distress now arises as much from external instability as from internal inefficiencies. The opportunity lies in creating a robust, future-ready insolvency framework that integrates geopolitical intelligence, supply-chain resilience, and global risk mapping.

Strengthening India's insolvency ecosystem in this new era requires bridging the gap between economics and geopolitics. It requires building trust based on deep, multidimensional analysis – trust among creditors, resolution applicants, regulators, and global investors. It demands that we move beyond spreadsheets and into strategic understanding.

Insolvency in the age of geopolitical shifts is not just a financial exercise; it is a study of global forces shaping corporate destiny. Recognising this truth will define India's readiness for the next decade – a decade where geopolitical turbulence will continue to rewrite valuation narratives and resolution pathways.

*REFERENCES*


- Commodity Market Reports
- Global Insolvency & Bankruptcy Trends
- International Sanctions Briefings
- Maritime Security & Shipping Disruption Bulletins
- Supply Chain & Geo-Economic Fragmentation Studies
- Technology & Export-Control Regulations
- War & Geopolitical Conflict Assessments


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# NCLT- ENTIRE CORPORATE JURISDICTION, UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016 AND COMPANIES ACT, 2013

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## INTRODUCTION

The National Company Law Tribunal (hereinafter referred to as *'NCLT'*) was established under the Companies Act, 2013, with the objective of providing a centralized, specialized forum for adjudicating corporate disputes in India. Its establishment marked a significant step towards strengthening the corporate governance, reducing litigation delays, and ensuring efficient resolution of corporate conflicts. With the enactment of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as *'IBC'*), NCLT's role was further expanded, making it the adjudicating authority for corporate insolvency matters, including petitions by financial and operational creditors, corporate debtors, and other stakeholders.

The understanding of NCLT's jurisdiction is critical for ensuring compliance, safeguarding stakeholder interests, and enhancing the reliability of India's corporate dispute resolution framework. The Tribunal functions as a quasi-judicial body, combining judicial authority with specialized expertise in corporate law, insolvency, and valuation matters.

**NCLT exercises its jurisdiction under the following statutes:**

i. Insolvency and Bankruptcy Code, 2016 (IBC) – Governing corporate insolvency resolution, liquidation, moratorium, appointment of resolution professionals, and adjudication of creditor claims.

ii. Companies Act, 2013 – Governing mergers and amalgamations, compromise and arrangements, oppression and mismanagement petitions, winding-up, capital reduction, and rectification or investigation of corporate records.

This article focuses on the topic "NCLT – Entire Corporate Jurisdiction under IBC, 2016 and Companies Act, 2013". It aims to provide a detailed yet concise understanding of how the Tribunal exercises its powers, the procedural and substantive aspects of its jurisdiction, and the practical significance of its role in strengthening India's insolvency and corporate governance framework.

## JURISDICTION OF NATIONAL COMPANY LAW TRIBUNAL UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016:

The IBC represents one of the most transformative legislative reforms in India's commercial landscape and aims at creating a well-organized and time-bound system for dealing with corporate financial distress. That the NCLT functions as the exclusive adjudicating body for Corporate Insolvency Resolution and Liquidation of a corporate body. It is relevant to note herein that NCLT draws the exclusive authority empowering it to oversee and decide every legal dispute/issue connected to the insolvency process by virtue of section 60 of the IBC. This exclusive jurisdiction ensures uniformity, specialised adjudication, and enhanced judicial efficiency that were severely lacking in the pre-IBC era. That by vesting broad powers in the NCLT and simultaneously excluding the jurisdiction of civil courts, the IBC creates a smooth structure where all corporate insolvency disputes can be taken up before a single specialised forum.

**NCLT exercises its jurisdiction under the IBC in the following manner:**

1. **Initiation of Insolvency Proceedings**

   A foundational component of NCLT's role under the IBC is the adjudication of initiation petitions filed under Section 7 (financial creditors), Section 9 (operational creditor) and Section 10 (corporate debtor). These provisions represent three distinct pathways into the insolvency framework, reflecting different stakeholder perspectives. When a financial creditor files a petition under Section 7, the Tribunal's purview is only limited to verifying the existence of default, a standard that has been deliberately kept objective to ensure speedy determination. Applications filed by operational creditors under Section 9, however, involve an additional layer of scrutiny because the NCLT must determine whether a genuine pre-existing dispute exists between the parties. Section 10 petitions, filed voluntarily by corporate debtors themselves, allow a defaulting company to trigger insolvency, though recent statutory amendments impose safeguards to prevent misuse. Despite these distinctions, all insolvency initiation petitions must be filed before the NCLT alone, making it the sole gateway to the Code's resolution and liquidation framework.

2. **Supervisory Authority Throughout the CIRP**

   Once a petition is admitted, the NCLT's jurisdiction expands into an ongoing supervisory role that remains active throughout the Corporate Insolvency Resolution Process (hereinafter referred to as '*CIRP*'). The Tribunal oversees the appointment and functioning of the Interim Resolution Professional (hereinafter referred to as '*IRP*') and Resolution Professional (hereinafter referred to as '*RP*') to ensure compliance with statutory duties. It addresses grievances relating to mismanagement, misconduct, or procedural lapses by IPs, and intervenes when necessary to safeguard the interests of the creditors and maintain the integrity of the CIRP. The Tribunal also reviews decisions of the Committee of Creditors (hereinafter referred to as '*CoC*') when challenged. This supervisory jurisdiction ensures that the resolution process remains transparent and efficient.

3. **Interpretation and Enforcement of the Moratorium (Section 14)**

   The moratorium under Section 14 is one of the most powerful protections within the IBC, and its interpretation frequently brings parties before the NCLT. The moratorium puts a halt on all the suits, execution proceedings, recovery steps, security enforcement actions and foreclosure proceedings pending or to be initiated against the corporate debtor. That the questions often arise regarding its applicability to government recovery mechanisms, statutory dues, arbitral proceedings, contractual terminations, or third-party assets. The NCLT plays a central role in clarifying the scope of the moratorium, ensuring that the corporate debtor's assets and operations remain protected during the resolution period. Through these determinations, the Tribunal effectively safeguards and ensure that the corporate debtor's ability to function as a going concern while stakeholders work toward resolution.

4. **Jurisdiction Over Liquidation Proceedings (Section 33)**

   Where resolution is not feasible and there is no scope of the company's revival, then the company goes into liquidation. That the liquidation stage is also placed entirely under the NCLT's supervision by virtue of section 33 of IBC. The Tribunal orders liquidation based on statutory triggers such as failure to receive a resolution plan, rejection of a plan for non-compliance with mandatory requirements, or decision of the CoC. Once liquidation is ordered, the Tribunal appoints the liquidator, oversees the liquidation estate, approves or modifies asset sale processes, resolves disputes over claims or priorities, and ultimately issues the dissolution order in accordance with Section 54 of IBC. This concentrated jurisdiction ensures procedural consistency and prevents extraneous litigation from stalling or interfering with liquidation.

5. **Residuary Jurisdiction Under Section 60(5)**

   Section 60(5) grants residuary powers to the NCLT under IBC and is one of the broadest conferrals of jurisdiction upon the NCLT, allowing it to adjudicate any dispute that arises "out of or in relation to" insolvency proceedings. It grants the NCLT a broad authority to entertain and decide any application, proceeding, or claim concerning a corporate debtor and operating as a non-obstante provision that prioritises NCLT's jurisdiction over all other forums. However, this authority extends only to matters that have a direct concern with the insolvency process, and it does not confer unlimited or inherent jurisdiction on the NCLT to deal with issues that fall outside the scope of the IBC. That the Supreme Court has also clarified that this power does not convert the NCLT into a general civil court, Section 60(5) remains a crucial tool in ensuring that all issues integral to the insolvency process are decided by a single competent authority.

6. **Insolvency of Personal Guarantors to Corporate Debtors**

   The jurisdiction of the NCLT over personal guarantors to corporate debtors has been firmly established through both legislative provisions and judicial interpretation. While Section 79 of the IBC designates the DRT as the adjudicating authority for individuals, this is expressly subject to context, and Section 60(1) clarifies that for personal guarantors to corporate debtors, the NCLT is the appropriate forum. This position has been affirmed in key decisions, including *Lalit Kumar Jain v. Union of India*, *Anita Goyal v. Vistra ITCL*, and *SBI v. Mahendra Kumar Jajodia*, which emphasized that personal guarantors are closely linked to the corporate debtor which necessitates a unified forum to prevent parallel proceedings and conflicting outcomes. The legislative intent, reinforced by the Insolvency Law Committee's recommendations and subsequent notifications, is to ensure that all insolvency and bankruptcy matters concerning personal guarantors of corporate entities are adjudicated exclusively by the NCLT, whether or not a CIRP is pending against the corporate debtor.

7. **Bar on Civil Court Jurisdiction**

   Sections 63 and 231 of the Code ensure that no civil court or consumer forum can entertain matters that fall under the jurisdiction of the NCLT. This statutory exclusion is essential to preventing parallel disputes and avoiding delays caused by multiple legal proceedings. It reinforces the IBC's design of a centralised and efficient adjudicatory system.

   The jurisdiction of the NCLT under the Insolvency and Bankruptcy Code, 2016 is not merely procedural. By granting the Tribunal exclusive powers across initiation, supervision, adjudication of disputes, liquidation and dissolution, the Code ensures that corporate insolvency is handled by a specialised and consistent forum. This consolidation of authority has transformed the insolvency landscape in India, replacing fragmented legal processes with coherence, efficiency and predictability.

   However, the expansive jurisdiction of the NCLT also brings challenges. Increasing caseloads, infrastructural shortages and the complexity of insolvency matters often strain the system. Despite these limitations, the Tribunal has emerged as a pivotal institution in India's economic governance framework. Its jurisdiction under the IBC not only supports value maximisation and creditor's protection but also strengthens market confidence in India's corporate regulatory environment.

## AUSTRALIAN INSOLVENCY FRAMEWORK AND ITS RELEVANCE TO INDIA

Australia's corporate insolvency system is primarily governed by the Corporations Act, 2001 (for companies) and the Bankruptcy Act 1966 (for individuals), along with the Insolvency Practice Schedule and Rules. The Australian Securities & Investments Commission (ASIC) oversees insolvency processes. Key mechanisms include voluntary administration, receivership, winding-up, and schemes of arrangement, providing companies with options for rescue, restructuring, or orderly liquidation.

Licensed insolvency practitioners supervise these processes under regulatory oversight, ensuring transparency and accountability.

Several features of Australia's regime influenced India's Insolvency and Bankruptcy Code, 2016 (IBC). For instance, IBC mirrors Australia's approach by providing a time-bound CIRP, regulated professional oversight through the Insolvency and Bankruptcy Board of India (IBBI), and prioritization of value maximization and stakeholder protection. The IBC, like Australia's law, balances rehabilitation and liquidation, promoting efficient corporate rescue while safeguarding creditor rights.

**However, differences remain**: Australia distinctly separates personal and corporate insolvency, while IBC currently integrates both domains partially. India also faces unique structural and market challenges that necessitate procedural adaptations, such as multi-creditor frameworks, judicial supervision via NCLT, and sector-specific valuation norms.

Australia's framework provides valuable insights for strengthening India's corporate insolvency system, particularly in areas of rescue mechanisms, professional oversight, and structured resolution processes, while requiring careful adaptation to India's legal and economic environment.

## JURISDICTION OF NATIONAL COMPANY LAW TRIBUNAL UNDER COMPANIES ACT, 2013:

The NCLT, established under the Companies Act, 2013, serves as the principal adjudicatory authority for corporate law matters in India. The Tribunal was created to consolidate the powers previously exercised by the Company Law Board (hereinafter referred to as '*CLB*'), High Courts, and other regulatory authorities, thereby providing a single, specialised forum for the resolution of disputes arising in corporate governance. The NCLT's jurisdiction encompasses both original and appellate authority, covering matters related to company management, shareholder rights, corporate restructuring, and winding-up processes. Sections 408 to 434 of the Companies Act, 2013 outline the scope of its powers, while Section 420(2) bars civil courts from interfering in matters within the Tribunal's competence, ensuring a streamlined and efficient dispute resolution framework.

### What was CLB?

The CLB was originally constituted under the Companies Act, 1956 (Section 10E) to deal with a variety of company law disputes in India. CLB was created as a quasi judicial forum to relieve the burden on civil courts and High Courts by adjudicating company law matters like shareholder management disputes, oppression and mismanagement, rectification of registers, share transfers, and other statutory corporate affairs. The Board generally constituted of not more than 9 (nine) members, all appointed by the Central Government, one of which would act as Chairman.

However, over time the CLB faced various limitations such as backlog of cases, limited benches/ locations (only a few benches across country), procedural delays, restricted powers in certain advanced corporate restructuring or insolvency related matters.

In recognition of these structural difficulties and the need for a more comprehensive, unified corporate adjudicatory mechanism and especially with the enactment of the Insolvency and Bankruptcy Code, 2016, CLB was replaced with NCLT by virtue of the Companies Act, 2013.

## COMPARATIVE ANALYSIS: CLB VS NCLT

### Jurisdiction and Scope

- CLB's mandate was largely limited to "company law disputes" under the old Companies Act regime which included shareholder management conflicts, oppression/mismanagement, rectification of registers, share transfers, etc.
- Whereas NCLT holds a far broader, consolidated jurisdiction covering traditional company law disputes, as well as insolvency/liquidation (under IBC), restructuring, winding-up, mergers/ amalgamations, class action suits by shareholders or depositors, corporate governance disputes, and many matters which used to be fragmented among various forums.

**Efficiency, Infrastructure & Capacity**

- CLB had limited benches (reportedly five national benches), which hindered access and speedy disposal.
- Whereas NCLT started with 11 (eleven) benches at inception and was envisioned to expand, aiming at a bench for each High Court seat, thereby increasing accessibility and capacity.

**Integration with Insolvency Framework**

- CLB had no role in insolvency or liquidation frameworks as the IBC did not exist during its functional form.
- Whereas NCLT was designed to function as the single consolidated forum for both "company law" and "insolvency law" which a major advantage in reducing fragmentation and conflicting forum jurisdiction.

**Reduction in Litigation Multiplicity and Complexity**

- Under CLB, company disputes, winding-up petitions, insolvency, restructuring involved multiple forums (CLB, High Courts, civil courts), leading to over-lapping litigation, inconsistent orders, delays.
- Whereas NCLT's creation has reduced multiplicity as it absorbs CLB's domain, many corporate disputes, and insolvencyrelated cases; with its appellate authority (NCLAT), it has streamlined the appellate path too.

**Procedural & Institutional Strengthening**

- CLB's procedures were often criticised for being slow. There was limited standardisation, and backlog was significant.
- Whereas NCLT, being established under 2013 Act, was given procedural regulations, expanding statutory powers, and better procedural safeguards. For example, unlike CLB, NCLT has provisions for appointment of technical experts, benches across country, and broader powers under both company law and insolvency law.

**NCLT exercises its jurisdiction under the Companies Act, 2013 in the following manner:**

1. **Original Jurisdiction of the NCLT**

   The NCLT has wide-ranging original jurisdiction under the Companies Act, 2013, which allows it to entertain and dispose of matters concerning the internal management, financial affairs, and restructuring of companies. Key areas includes the following:

   i. **Capital Alteration and Reduction**: Under Sections 61 and 66, the Tribunal is empowered to approve applications for reduction or alteration of share capital. The NCLT examines whether the reduction is in the interest of shareholders and creditors, ensures compliance with statutory safeguards, and protects the rights of dissenting stakeholders.

   ii. **Mergers, Amalgamations, and Reconstructions**: Sections 230 to 240 provide for the approval of schemes of compromise, arrangement, mergers, or demergers. The Tribunal assesses whether the scheme is fair, equitable, and in the best interests of all stakeholders. It also considers the impact on minority shareholders, creditors, and public interest before granting approval. This jurisdiction has become particularly significant in the context of corporate restructuring and consolidation in India's evolving business environment.

   iii. **Oppression and Mismanagement Cases**: Sections 241 and 242 enable the NCLT to intervene where company affairs are being conducted in a manner oppressive to minority shareholders or prejudicial to public interest. The Tribunal can issue directions for the regulation of company management, removal of directors, or modification of governance structures. This jurisdiction ensures accountability and equitable treatment within corporate management.

iv. **Investigation of Companies**: Under Sections 210 and 211, the NCLT has the power to direct investigations into company affairs when fraud, mismanagement, or statutory violations are alleged. The Tribunal oversees such investigations to safeguard the interests of shareholders, creditors, and the public, ensuring transparency and compliance with corporate governance norms.

v. **Winding-Up Proceedings**: Sections 271, 272, 275, and 434 place both voluntary and compulsory winding-up proceedings under the Tribunal's exclusive jurisdiction. NCLT supervises the appointment of liquidators, ensures proper asset valuation and distribution, and adjudicates disputes regarding creditor claims or priority of payments. This comprehensive oversight ensures an orderly dissolution process and prevents misuse of corporate assets.

**2. Appellate Jurisdiction of the NCLT**

The NCLT also exercises appellate authority, functioning as a forum for reviewing decisions of registrars, company officers, and other administrative authorities. Section 421 empowers stakeholders to appeal against orders passed by regulatory officers, such as the Registrar of Companies, and ensures that grievances related to statutory compliance, filing of returns, or enforcement of penalties can be heard in a specialised forum. In addition, the Tribunal can review its own orders under Section 421(3), thereby correcting procedural errors or misinterpretations, which strengthens procedural fairness and legal certainty in corporate matters.

**3. Special and Supervisory Powers**

The Companies Act confers several special powers upon the NCLT to regulate proceedings effectively. Sections 422 to 426 empower the Tribunal to summon parties, examine documents, enforce attendance, and issue interim orders as necessary. The NCLT can also adjudicate minority shareholder grievances, derivative actions, inter-company disputes, and compliance-related conflicts, ensuring that corporate affairs are conducted in accordance with the law. This combination of supervisory and adjudicatory powers enables the Tribunal to act as a central authority that balances corporate autonomy with accountability.

**4. Preventing Multiplicity of Litigation: Exclusion of Civil Courts**

In line with the objective of a single-window adjudication, Section 420(2) of the Companies Act bars civil courts from entertaining matters that fall under the Tribunal's jurisdiction. This statutory bar prevents conflicting orders, reduces delays, and ensures that disputes are resolved by a forum equipped with the technical expertise required to handle corporate law issues.

The NCLT under the Companies Act, 2013 has emerged as a central institution in India's corporate legal framework, providing an expert and specialised forum for resolving complex corporate disputes. By combining original, appellate, and supervisory powers, the Tribunal ensures that corporate governance, restructuring, and winding-up proceedings are conducted transparently, efficiently, and fairly. Its exclusive jurisdiction, statutory authority to regulate proceedings, and interpretative role enhance investor confidence, streamline dispute resolution, and strengthen India's corporate regulatory environment. As corporate transactions and restructurings grow increasingly complex, the NCLT's role in maintaining a balanced and predictable legal framework will continue to be pivotal.

## EVIDENCE AND SUMMARY NATURE OF NCLT'S JURISDICTION

The NCLT, as established under the Companies Act, 2013, and empowered by the IBC, exercises both adjudicatory and quasi-judicial powers. One of its key features is its ability to conduct evidence in a manner tailored to the efficient disposal of corporate disputes.

**Conduct of Evidence by NCLT**

Unlike regular civil courts, NCLT follows flexible evidentiary procedures, balancing thorough fact-finding with expediency. Under Section 424 of the Companies Act, 2013, read with relevant procedural regulations, the Tribunal has powers to:

- Examine witnesses directly, either orally or through affidavits.
- Call for documents, records, or statutory filings from companies, auditors, or other stakeholders.
- Take evidence on affidavits or through affidavits in certain matters, reducing procedural delays.
- Appoint experts or technical members to assist in valuation, corporate governance issues, or complex accounting matters.

In insolvency proceedings under IBC, NCLT often conducts evidence in a streamlined, summary form, focusing on the essential facts required for resolution or liquidation rather than following exhaustive trial procedures under the Code of Civil Procedure (CPC). This approach enables it to adhere to the strict timelines mandated under IBC, such as the 330-day resolution period for Corporate Insolvency Resolution Process (CIRP).

**Why NCLT's Jurisdiction is Summary in Nature**

1. **Legislative Intent:** Sections like 60 and 61 of the IBC empower NCLT to act as the single forum for corporate insolvency and related corporate disputes, emphasizing speed and efficiency over procedural technicalities.
2. **Time-bound Disposals:** IBC prescribes strict timelines for CIRP and other corporate resolution processes. A summary procedure allows NCLT to avoid protracted litigation typical of traditional civil courts.
3. **Flexible Procedural Rules:** Unlike courts governed by CPC, NCLT's procedural regulations (Companies (Management and Administration) Rules, 2014, and NCLT Rules 2016) provide discretionary powers to summon evidence, examine parties, and accept documents, streamlining dispute resolution.
4. **Focus on Substantive Justice:** NCLT prioritizes substance over form, ensuring that the merits of corporate disputes, restructuring plans, or insolvency petitions are resolved efficiently without being bogged down by procedural formalities.
5. **Integration with Technical Expertise:** The presence of technical members on benches allows NCLT to evaluate evidence, accounting records, and financial documents swiftly and accurately, supporting the summary nature of its jurisdiction.

## SUGGESTIONS AND RECOMMENDATIONS

Based on the analysis of NCLT's corporate jurisdiction under the IBC, 2016 and the Companies Act, 2013, and considering comparative insights from Australia's insolvency framework, the following suggestions may help strengthen India's corporate insolvency and resolution ecosystem:

1. Streamlined Evidence and Procedural Reforms: While NCLT already follows summary procedures, further clarity in evidentiary rules, standardized timelines for different petition types can enhance efficiency and transparency.
2. Strengthening Professional Oversight: Continuous training and regulation of insolvency professionals under IBBI can ensure technical and ethical competence, drawing from Australia's model of licensed practitioners supervised by a national authority.
3. Accounting Standards: accounting standards for insolvency and restructuring processes will reduce disputes, speed up resolution, and align India with international best practices.

4. Specialized Benches for Complex Matters: Expanding benches with technical members for financial, accounting, and sector-specific issues can ensure expert-led decisions, reducing delays and enhancing quality of adjudication.
5. Public Awareness and Early Warning Mechanisms: Encouraging early identification of distressed companies and sensitizing creditors, auditors, and directors about insolvency norms can prevent unnecessary escalation and promote timely resolution.

**CONCLUSION**

The NCLT, as the dedicated forum for corporate disputes and insolvency matters, has been instrumental in transforming India's corporate resolution landscape. Its summary jurisdiction, flexible evidentiary powers, and time-bound processes ensure that corporate insolvency and governance issues are resolved efficiently, balancing the interests of creditors, stakeholders, and corporates.

Comparative insights from Australia's insolvency framework underline the importance of structured rescue mechanisms, professional oversight, and technical expertise, elements that have influenced the design of India's IBC, 2016. While India's system is still evolving, the legislative intent, coupled with judicial clarifications, positions NCLT as a central, specialized, and effective forum for corporate dispute resolution.

Incorporating the above recommendations can further enhance the efficiency, credibility, and global alignment of India's corporate insolvency framework, bridging gaps and strengthening trust in the system.

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# NOTES

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## Motto

सत्यं वद। धर्मं चर।

speak the truth. abide by the law.

## Vision

"To be a global leader in promoting good corporate governance"

## Mission

"To develop high calibre professionals facilitating good corporate governance"


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