The Institute of Chartered Accountants of India

Organised by: Insolvency & Valuation Standards Board, ICAI

Hosted by: Eastern India Regional Council, ICAI

CONCLAVE ON

IBC 4.0

REINFORCING THE ROOTS

30TH AUG 2025 | Hotel Taj Bengal, Kolkata

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI

MOTTO

Ya esa suptesu jagarti kamam kamam Puruso nirmimanah |
Tadeva sukram tad brahma tadevamrtamucyate |
Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat ||

य एष सुप्तेषु जागर्ति कामं कामं पुरूषो निर्मिमाण : ।
तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।
तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ।।

(That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman, that, indeed, is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam : desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.

No one ever goes beyond it : cf. Eckhart : 'On reaching God all progress ends.')

Source : Kathopanishad

The Institute of Chartered Accountants of India

Conclave on IBC 4.0 Reinforcing the Roots

on

30th August 2025

at

Taj Bengal, Kolkata

Organised by

Insolvency & Valuation Standards Board of ICAI

Hosted by

Eastern India Regional Council

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Hon'ble Member (Judicial), NCLAT

ESTEEMED GUEST
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Chief General Manager, IBBI

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Shri Shiv Anant Shanker
Chief General Manager, IBBI

SPEAKERS

CA. D. Arvind
Past Member
NCLT Kolkata Bench

Shri Brajesh Kumar Singh
Executive Director
Indian Bank

Adv. Sumant Batra
Insolvency Lawyer

CA. Subodh Kr Agrawal
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Insolvency Professional

CA. Abhisek Somani
Chief Business Officer
Rashmi Group

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30TH AUG 2025 SATURDAY	09:30 AM TO 06:00 PM

Venue: Hotel Taj Bengal, Kolkata

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Hosted by: Eastern India Regional Council, ICAI

PROGRAMME STRUCTURE

CONCLAVE ON

IBC 4.0

REINFORCING THE ROOTS

30TH AUGUST 2025

09:30 AM TO 5:30 PM

AT TAJ BENGAL, KOLKATA

TIME	TOPIC	SPEAKERS
09:00 AM -09:30 AM	Registration & Networking	
09:30 AM -10:15 AM	Personal Insolvency in Practice: Challenges & Learnings	**Ms Tannya Baranwal** Associate Partner, INDIALAW LLP **CA S.Badri Narayanan** Insolvency Professional
10:15 AM -11:15 AM	Inaugural Session	**Hon'ble Justice N. Seshasayee** Hon'ble Member (Judicial), NCLAT - CHIEF GUEST **Mr. Shiv Anant Shanker,** CGM, IBBI - Special Guest **CA. Gyan Chandra Mishra** Chairman, Insolvency & Valuation Standards Board, ICAI **CA. Rajesh Sharma** Vice Chairman, Insolvency & Valuation Standards Board, ICAI **CA Ravi Kr Patwa** Member, Insolvency & Valuation Standards Board of ICAI Central Council Member, ICAI Programme Co -Director **CA Sanjib Sanghi** Central Council Member, ICAI Programme Co - Director
11:15 AM -11:30 AM	TEA BREAK	
11:30 AM-12:30 PM	Panel Discussion: Interplay of IBC with GST, Companies Act & Income Tax	**CA Sushil Kumar Goyal** Past Council Member, ICAI **CA Abhisek Somani** Eminent Speaker
12:30 PM- 01:15 PM	IBC Amendment Bill & Recent Landmark Judgments	**Adv Sumant Batra** Insolvency Lawyer
01:15 PM - 02:15 PM	LUNCH	
02:15 PM - 03:00 PM	Resolution Plans in Action: Navigating Implementation Hurdles	**CA Sandeep Bajaj** Founder, PSL Advocates & Solicitors **Shri. Sutanu Sinha** Partner, BDO Restructuring
03:00 PM - 03:30 PM	CIRP in the Real Estate Sector- Boon or Bane for Home Buyers	**CA Navneet Kr Gupta** Insolvency Professional
03:30 PM - 04:00 PM	Asset Attachments and Insolvency: Can CIRP Survive the ED Roadblock? (PMLA)	**CA Snehal Arvind Kamdar** Insolvency Professional
04:00 PM - 05:00 PM	Panel Discussion: Resolution Professionals: Bridging Expectation and Delivery	**CA D. Arvind** Past member NCLT Kolkata Bench **Shri Brajesh Kumar Singh** Executive Director, Indian Bank **Shri Sanjib Patwari** Promoter, Rashmi Group **CA Jayesh Sanghrajka** Co-Founder, In Corp Advisory Services Pvt. Ltd. **CA Subodh Kr Agrawal** Past President, ICAI - Moderator
05:00 PM-05:15 PM	IBC Quiz	**CA Vishnu K Tulsyan** Chairman, EIRC

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- Shri Mukhmeet Singh Bhatia, IAS-1990, (Retd)

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- CA. Pradeep Kumar Kabra
- CA. Khurana Rajiv
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- CA. Vijay Kumar Gupta
- CA. Geetha A B

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- Sh. Manvendra Goyal, CBDT
- Shri Susanta Kumar Das, SEBI
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- Shri Manoj Kumar Sahu, DII in O/o DGCoA
- Shri Mukhmeet Singh Bhatia, IAS-1990, (Retd)
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IBC 4.0

REINFORCING THE ROOTS

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CA Sandeep Singh

CA Amit Choraria

CA. Manish Gadia

CA. Vikash Goel

MESSAGES

Hon'ble Justice N. Seshasayee

Hon'ble Member (Judicial), NCLAT

MESSAGE

I am delighted to be associated with the upcoming Seminar on the Insolvency and Bankruptcy Code (IBC), being held on 30th August at Taj Bengal. This platform offers an important opportunity for all stakeholders—professionals, regulators, industry leaders, and policymakers—to come together and reflect upon the remarkable journey of the IBC and its impact on strengthening India's financial ecosystem.

Since its inception, the IBC has transformed the landscape of insolvency resolution in India, bringing in transparency, accountability, and momentum to the process of corporate restructuring. It has not only enhanced investor confidence but also reinforced the foundation of ease of doing business in our country.

This seminar is both timely and relevant, as it allows us to review the progress made so far, deliberate upon the practical challenges faced on the ground, and exchange ideas for further strengthening the framework, especially when the Government of India has recently introduced the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, with the aim to speed up resolution timelines, reduce litigations, clarify legal ambiguities and modernise insolvency processes. I firmly believe that the discussions held today will play a vital role in shaping reforms and ensuring that the Code continues to achieve its intended objectives.

I congratulate the organizers for their efforts in bringing this distinguished gathering together and wish the seminar great success. May the interactions and deliberations held here lead to new insights, constructive recommendations, and a stronger insolvency resolution regime for the future.

Shri. Shiv Anant Shanker

Chief General Manager, IBBI

MESSAGE

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CA. Charanjot Singh Nanda

President

The Institute of Chartered Accountants of India

Dear Members,

India's insolvency framework underwent a major transformation in 2016 with the enactment of the Insolvency and Bankruptcy Code (IBC). The code has strengthened the resolution process by ensuring speed, transparency, and preservation of value. At the core of this framework lies valuation-, the tool that ensures fairness, reinforces confidence among creditors, and forms the foundation of viable resolution plans.

As reflected in the IBBI Newsletter for the quarter ending June 2025, the Code has delivered measurable results. Untill June 2025, 3,763 corporate debtors have been rescued through different channels - 1,258 through resolution plans, 1,314 through appeals or settlements, and 1,191 through withdrawals. These outcomes collectively reflect the growing maturity of the ecosystem and its ability to offer second chances to enterprises.

Importantly, creditors have realised ₹3.96 lakh crore through approved resolution plans, equal to 32.57% of admitted claims but more importantly, represents 170.84% of liquidation value and an impressive 94.89% of fair value. These achievements reaffirm that resolution is not only about recovering dues, but about preserving value and reviving business activity.

Against this backdrop, this Conclave on "IBC 4.0: Reinforcing the Roots" takes on special relevance. Discussions on Valuation Challenges under IBC, coupled with recent landmark judgments, will allow us to reflect on how the valuation profession is adapting to practical challenges, regulatory expectations, and judicial scrutiny. Accurate and transparent valuation is central to ensuring that resolution plans are not only fair but also sustainable. Likewise, the topics like Resolution Plans in Action Navigating Implementation Hurdles will provide a real-world perspective on the complexities of moving from plan approval to plan execution. As the data reveals, approved plans have delivered nearly the full fair value of assets, and the challenge before us now is to make sure that such outcomes are consistently realised through robust implementation.

The roots of the Code are strong, but they must be deepened further through professional excellence, regulatory refinement, and practical wisdom. This conclave provides a valuable platform for such dialogue and I am confident that the insights shared here will enrich all stakeholders.

I convey my best wishes to the participants for meaningful and enriching deliberations. May the discussions at this conclave reinforce the roots of the IBC and strengthen its role as a pillar of economic resilience.

With warm regards,

CA. Charanjot Singh Nanda
President, ICAI

CA. Prasanna Kumar D

Vice President

The Institute of Chartered Accountants of India

Dear Professional Colleagues,

The IBC, now in its ninth year, continues to stand as one of the most significant economic reforms shaping India's corporate and financial ecosystem. This seminar, "IBC 4.0: Reinforcing the Roots," is an occasion to reflect on that impact. By resolving corporate distress and promoting credit discipline, the Code has strengthened trust in India's business environment. At the same time, its evolution remains essential ensuring that processes are refined, gaps are addressed, and stakeholder expectations are effectively met.

The proposed IBC Amendment Bill, 2025 is a significant step in this evolutionary process. It introduces clarity and precision to various provisions, and it reflects the collective learnings of nearly a decade of practice. Among its many reforms, the Bill provides clearer timelines for admitting applications, ensuring that entry into the insolvency process does not become mired in procedural delay. It also empowers resolution by providing that avoidance transactions and wrongful trading actions can proceed independently, without holding up the core resolution process. Further, provisions such as the Resolution Plan Implementation Committee will create accountability and monitoring mechanisms, bridging the critical gap between plan approval and execution.

Equally impactful are the provisions ensuring fair treatment for dissenting creditors, thereby strengthening confidence in the collective process, and those enabling the utilisation of guarantor assets during resolution, aligning the interests of guarantors with the corporate debtor's restructuring. Collectively, these amendments have the potential to make Code faster, fairer and more effective.

The Conclave on "IBC 4.0: Reinforcing the Roots" rightly puts a spotlight on themes that resonate with these reforms. The topics like Personal Insolvency in Practice: Challenges & Learnings is particularly timely as the proposed provisions for guarantors and individuals will directly shape how personal insolvency is implemented in practice. This area, though nascent, has immense significance for deepening the culture of credit discipline across the economy. Similarly, the focus on Resolution Plans in Action is aligned with the amendments mandating structured implementation, ensuring that the benefits of resolution are not lost after approval.

As we deliberate, let us remember that the strength of the IBC lies not only in its legislative provisions but also in the way we, as professionals, apply them. Our collective task is to nurture a framework that balances creditor recovery with enterprise preservation, fairness with efficiency, and regulation with innovation.

I extend my heartfelt wishes for an insightful and impactful event. May the discussions guide the profession towards a stronger and more resilient insolvency ecosystem, ensuring that IBC truly reinforces its roots while preparing for the future.

Warm regards,

CA. Prasanna Kumar D
Vice President, ICAI

CA. Gyan Chandra Misra

Chairman,

Insolvency & Valuation Standards Board of ICAI

The Insolvency and Bankruptcy Code, 2016 (IBC), has truly redefined India's approach to insolvency and resolution, ushering in an era of transparency, efficiency, and confidence in the credit ecosystem. What began as a pioneering reform has steadily evolved, adapting to the needs of a dynamic economy and aligning itself with global best practices.

The journey of IBC reflects the maturity of India's insolvency framework and the collective commitment of institutions, regulators, professionals, and stakeholders to strengthen financial stability and business resilience. Each milestone in this evolution from the Code's enactment to its successive refinements has been guided by the objectives of balancing stakeholder interests, maximising value, and reinforcing resolution as the preferred path over liquidation.

The Insolvency and Bankruptcy Code (IBC) has emerged as a key instrument for resolving stressed assets in a time-bound and cost-effective manner. As per the IBBI April–June 2025 Newsletter, resolution processes have taken an average of 602 days, liquidation orders around 512 days, and voluntary liquidations nearly 400 days, with recoveries under resolution plans significantly outperforming liquidation outcomes. Importantly, process costs remain low at under 1% of asset value, highlighting the efficiency of the framework.

To further strengthen it, the Insolvency and Bankruptcy Code (Amendment) Bill 2025, introduced in the Lok Sabha on August 12, seeks to expedite timelines, enhance creditor control, and align with global best practices. The Bill also introduces a Creditor-Initiated Insolvency Resolution Process (CIIRP) an out-of-court mechanism designed for swift, cost-effective resolution of genuine business failures, preserving corporate operations where possible. Additionally, it proposes group insolvency and cross-border insolvency frameworks to synchronize proceedings across related entities and international jurisdictions, safeguarding asset value and stakeholder interests. The Bill also empowers creditors to restore proceedings in exceptional cases, clarifies liquidation priorities, and strengthens governance.

In this context, the initiative of the Insolvency & Valuation Standards Board of ICAI, through knowledge-sharing programs, seminars, and conventions, has been instrumental in nurturing professional excellence and thought leadership. These platforms provide valuable opportunities for dialogue, innovation, and collaboration elements critical for the continued success of the IBC.

I am confident that the conclave will continue to rise to the occasion, harnessing new opportunities, addressing emerging challenges, and contributing meaningfully to the strengthening of India's financial and economic architecture.

I extend my warmest wishes for the success of this landmark program. May this Conclave serve as a beacon of innovation and resilience, guiding the future of insolvency and valuation practices in India.

Warm regards,

CA. Gyan Chandra Misra
Chairman, Insolvency & Valuation Standards Board of ICAI

CA. Rajesh Sharma

Vice-Chairman,

Insolvency & Valuation Standards Board of ICAI

India's insolvency and valuation ecosystem has undergone a remarkable transformation in recent years, shaped by progressive policy refinements, significant judicial pronouncements, and the growing maturity of stakeholders. The Insolvency and Bankruptcy Code (IBC) has firmly established itself as the cornerstone of corporate debt resolution, with an enhanced emphasis on transparency, timeliness, and maximisation of value. In FY 2025, even as the number of admitted CIRP cases declined by nearly 28%, creditor recoveries reached an all-time high of ₹67,000 crore, reflecting stronger outcomes in high-value resolutions and signaling the deepening effectiveness of the framework. Complementing this progress, the adoption of simplified procedures, digital platforms, and robust valuation norms is further reinforcing accessibility, efficiency, and due diligence across sectors, thereby ensuring that resolution processes remain both fair and future ready.

Further, recent reforms have focused on faster admission of cases, simplified procedures for MSMEs, and strengthening the role of valuation professionals to ensure fairness in outcomes. The Code's deterrent impact has been evident, with thousands of cases resolved even before reaching the tribunals, thereby saving time and preserving economic value. At the same time, recovery trends are showing steady improvement, with creditors securing higher realizations and resolution now outpacing liquidation in a majority of cases. These developments underscore that while challenges such as delays and litigation persist, the IBC continues to stand as one of India's most significant economic reforms, driving both accountability and revival in the corporate sector.

Further, as per Economic Times Report, in the real estate and construction sectors, lenders have secured recovery rates averaging 44.7% of admitted claims, which is significantly higher than both fair value (111.6%) and liquidation value (172.15%). Beyond formal proceedings, the Code has instilled a culture of resolution over 30,000 cases involving defaults worth ₹13.78 lakh crore were settled even before admission under IBC, reflecting greater credit discipline and responsiveness.

Together, these initiatives highlight the global convergence of insolvency and valuation practices. As regulatory frameworks become more sophisticated, the emphasis on fairness, transparency, and efficiency will continue to drive confidence in the system, ensuring that insolvency processes not only resolve distress but also contribute to broader economic stability.

I am certain that this conclave will play a pivotal role in seizing opportunities, overcoming emerging challenges, and further fortifying India's financial and economic framework.

I convey my best wishes for the success of this distinguished gathering. May this Conclave continue to illuminate the path of reform, progress, and resilience in insolvency and valuation practices across the nation.

With Regards,

CA. Rajesh Sharma
Vice-Chairman, Insolvency & Valuation Standards Board of ICAI

CA Ravi Kr Patwa

Central Council Member, ICAI

Member, Insolvency & Valuation Standards Board, ICAI

& Programme Co-Director

It gives me immense pleasure to learn that the Eastern India Regional Council of ICAI is hosting a Conclave on "IBC 4.0: Reinforcing the Roots" under the aegis of the Insolvency & Valuation Standards Board of ICAI on 30th August, 2025.

Over the years, the Insolvency and Bankruptcy Code, being a transformative reform, has been strengthening the credit and financial ecosystem of our country. It has not only been effective in restoring confidence in the financial system but has also reinforced the principles of transparency, accountability and orientation of resolutions.

I believe that this Conclave will provide a meaningful platform for enlightening the professionals on the emerging opportunities and challenges and to navigate their way forward in practices linked to the IBC arena. This event will contribute in building a healthy and balanced ecosystem, leading to reinforcement of goals and objectives related to nation building.

I would also take this opportunity to convey my heartfelt appreciation to CA Vishnu Kr Tulsyan, Chairman, EIRC of ICAI and his dynamic team for the successful conduct of the Conclave. May this effort inspire continuous learning and strengthen the role of professionals in upholding the values of trust, excellence and integrity in the economy.

Best wishes always,

CA. Ravi Kr Patwa
Central Council Member, ICAI
Member, Insolvency & Valuation Standards Board, ICAI
& Conference Co-Director

CA Sanjib Sanghi

Central Council Member, ICAI

Programme Co - Director

My Dear Professional Colleagues,

It gives me immense pleasure to welcome you all to the **Conclave on IBC 4.0 – Reinforcing the Roots,** being organised by the **Insolvency & Valuation Standards Board of ICAI** and hosted by the **Eastern India Regional Council of ICAI**.

The **Insolvency and Bankruptcy Code (IBC)** has been one of the most transformative economic legislations of our time, reshaping the contours of credit discipline, corporate governance, and business revival in India. As we move into the fourth phase of its evolution— "IBC 4.0" — our focus must not only be on reforms but also on reinforcement: reinforcing jurisprudence, reinforcing institutional capacity, and reinforcing professional excellence.

This conclave brings together **Chartered Accountants and Insolvency Professionals** under one platform to deliberate on challenges, share perspectives, and explore opportunities. The presence of such an august gathering reflects the collective resolve to strengthen the insolvency ecosystem and ensure that IBC continues to be a beacon of trust and resilience in the Indian economy.

As a Chartered Accountant, I firmly believe that our fraternity holds a unique position in driving the success of IBC — through independence, technical competence, and integrity. Whether as resolution professionals, advisors, auditors, or policy contributors, we are entrusted with safeguarding the interests of all stakeholders and reinforcing confidence in the process.

I am confident that the deliberations at this Conclave on topics like Valuation, Technology Implementation in IBC, Cross-border Insolvency, etc will not only enrich our understanding but will also lay down thought leadership for the road ahead.

Let this be a milestone in our journey of strengthening the roots of IBC for a more robust, transparent, and globally competitive India.

Lastly, I take the opportunity to extend my gratitude to all the eminent dignitaries, speakers, sponsors, contributors and every delegate whose deliberations and valuable contributions are making this event a reality.

Together, let us reinforce the foundation, reimagine the future, and redefine the role of professionals in nation-building.

Warm regards,

CA. Sanjib Sanghi
Central Council Member, ICAI
Programme Co - Director

CA Vishnu K. Tulsyan

Chairman, EIRC of ICAI

Dear Participant,

I am delighted to welcome you all to the **Conclave on IBC 4.0: Reinforcing the Roots,** a landmark event in Eastern India and is one of the unique Conference hosted by EIRC. With the changes introduced under IBC, the legal and financial framework in India will have a new evolving landscape and hence this Conclave is organised for a knowledge building exercise for the Insolvency Professionals and other Stakeholders. The IPs and RVs will have a platform to interact with Judiciary members, the Investors and Bankers, the Policy makers & Regulators, Industry & Domain experts, Financial Consultants & Professionals alongwith Research Scholars.

The Insolvency & Valuation Standards Board of ICAI has been set up for the empowerment of the profession and aims to facilitate a fair corporate regime with the best global practices in the sphere of Insolvency and Valuation. The Eastern India Regional Council through its Insolvency & Valuation Standards Committee is eager to serve the professionals practicing as IPs & RVs in Eastern India.

It is for the information of Members visiting **Corporate Bhawan** for work relating to ROC, RD, OL or NCLT may avail the facility of **Room No. 128** at first floor for their Professional Purpose. We are thankful to Hon'ble Members of the NCLT, Kolkata Bench and their Officials for this nice gesture.

The mega event of EIRC the 50th Golden Jubilee Regional Conference is scheduled on 21st and 22nd November 2025 at Biswa Bangla Convention Centre, Kolkata. In this we are hopeful to have a dedicated Session on IBC which will be an important value addition to all the professionals practicing as IPs. I request you to register for this mega event at https://bit.ly/43QcPoh

I extend my sincere thanks to the **Insolvency & Valuation Standards Board,** ICAI for allowing us to host this Conclave under their aegis. I also thank my Council colleagues and the members of Insolvency & Valuation Standards Committee of EIRC for their support in hosting this Conclave.

Let us all work together to reinforce the roots of Insolvency and Bankruptcy aligning with our Regional Conference theme of **Root – Eye – Sky,** representing the evolution from a strong ethical foundation (Root) to visionary insights (Eye) and boundless aspirations (Sky).

Thank you, and I wish you all a productive and enriching experience at the Conclave.

Warm regards,

CA. Vishnu K. Tulsyan
Chairman, EIRC of ICAI
M - 9831054180


PROFILES

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CONCLAVE ON
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Hon'ble Mr. Justice N. Seshasayee
Hon'ble Member (Judicial), NCLAT -

Justice N. Seshasayee, a native of Nagercoil in Tamil Nadu, was born on 8th January 1963 in Mancompu, Kerala. Son of a judicial officer, he had a diverse early education before graduating with a university rank in Economics from Madurai Kamaraj University, and later earning his law degree from Madras Law College in 1986. After practicing under the mentorship of late N. Chidambarakrishnan and later at the Kerala High Court under his father-in-law, he also had the unique opportunity to assist Justice V.R. Krishna Iyer in his legal writings—an experience that shaped his deep sensitivity toward justice. He joined the Tamil Nadu State Judicial Service as a District Judge in 2004 and served in various capacities before being elevated to the Madras High Court in 2016. He retired as a Judge in January 2025 and currently serves as a Judicial Member of the NCLAT. Deeply philosophical, Justice Seshasayee believes in contributing meaningfully in one's time and holds a profound commitment to judicial integrity, sensitivity, and service. His interests include fine arts, cricket, Indian philosophy, and legal literature.

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Shri Shiv Anant Shanker,
Chief General Manager, IBBI

Shri Shiv Anant Shanker is an MBA and LLB from Delhi University with over two decades of distinguished experience in the financial and regulatory sector. He has served with premier regulatory institutions including the National Housing Bank (NHB), the apex authority for licensing and regulation of housing finance companies in India, and the Reserve Bank of India (RBI), the nation's central bank and primary regulator of the banking system.He has also been a Board Member of the largest Regional Rural Bank, where he contributed significantly towards advancing financial inclusion and strengthening rural credit delivery mechanisms. Over the years, he has developed extensive domain expertise in financial inclusion, MSME sector development, payment and settlement systems, compliance, accounts, regulation, and the insolvency ecosystem. Presently, Shri Shanker is serving as Chief General Manager, Insolvency and Bankruptcy Board of India (IBBI), New Delhi, where he has been on deputation since April 2022. At IBBI, he is entrusted with leading key functions of the Inspection and Investigation Division, Advocacy Division, and Research Division, playing a pivotal role in strengthening regulatory oversight, stakeholder awareness, and evidence-based policy development in India's insolvency framework.

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CA D Arvind
Past Member - NCLT Kolkata Bench

CA D. Arvind, Hon'ble Technical Member of NCLT, is a Chartered Accountant from ICAI and ICAEW, a Company Secretary, Registered Valuer, and Insolvency Professional with over four decades of rich experience. He is also an NISM-certified Investment Advisor, Chartered Wealth Manager, and a certified Corporate Governance Professional. With 17 years in industry as Head of Tax and Legal at a large MNC and over 20 years in consulting, he served as Executive Director/Partner in two Big Four firms before founding *D Arvind & Associates LLP*, specializing in taxation, valuation, turnaround, and business advisory. A prolific writer with 50+ published articles on tax, IBC, and economic subjects, he is also a regular speaker at ICAI, ICSI, and industry forums. Widely respected for his strategic insights and innovative solutions, he now brings his expertise to the Bench as Technical Member of the National Company Law Tribunal.

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CA Subodh Kr Agrawal
Past President ICAI & IP

CA Subodh Kumar Agrawal, Past President of ICAI (2013–14), is a Chartered Accountant and Lawyer with over 27 years of professional experience. His expertise spans finance, law, management, corporate governance, audits, restructuring, mergers and acquisitions, SEBI and company law matters. He has served as a member of the Board of IRDA in 2013, contributing to policy formation in the insurance sector, and has also been a SEBI-approved Merchant Banker with NCL Research and Financial Services Ltd. In addition, he has acted as an arbitrator with BSE and NSE. A commerce graduate from Kanpur University, CA Agarwal is also a registered Insolvency Professional, widely respected for his leadership and contributions to the profession.

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Shri Brajesh Kumar Singh
Executive Director, Indian Bank

Shri Brajesh Kumar Singh is an Agriculture graduate from Allahabad Agriculture Institute and MBA Finance. He is also a Certified Associate of Indian Institute of Bankers.He has rich banking experience of more than 28 years. Prior to joining as Executive Director of Indian Bank, he was serving as Chief General Manager HR of Bank of Baroda. He has also completed Executive Leadership Development Programme at IIM Bangalore.Shri Brajesh Kumar Singh has worked in various strategic positions viz. Credit Officer, Branch Head, Loan Factory Head, Regional Head, Zonal Head. He was also Convenor of State level Bankers Committee. His business exposure includes Overseas tenure at Durban, South Africa. At Corporate Office, he has steered Retail Assets and Human Resource Management departments with his rich expertise.He has also served as Director in the Board of Bank of Baroda UP Gramin Bank.

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Adv. Sumant Batra
Insolvency Lawyer

Adv. Sumant Batra is a globally renowned insolvency lawyer with over three decades of expertise in insolvency, bankruptcy, and related laws. His contributions span policy-making, legislative drafting, best practice design, client advisory, judicial assistance, and capacity building. He is the only Indian elected as an International Fellow of the American College of Bankruptcy and has served on numerous government and international expert committees, including assignments with the IMF, World Bank, OECD, and ADB. Sumant also holds the distinction of being the youngest and first Asian President of INSOL International, where he played a key role in shaping global insolvency benchmarks.

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CA Sushil Kumar Goyal
Past Council Member, ICAI

CA Sushil Kumar Goyal [B.Com (Hons.), LLB, FCA, DISA (ICAI)] is a Partner at P. K. Mitra & Co., Chartered Accountants. A commerce graduate from Tinsukia College, Dibrugarh University and a law graduate from West Bengal State University, he has been practicing in Kolkata since 1997 in the field of Service Tax and, since 2017, in Goods and Services Tax (GST). He is the author of *Service Tax Guide*, the first book on Service Tax from Eastern India, published in 10 editions between 2007 and 2017, with the last edition brought out by Bharat Law House, New Delhi. The Institute of Chartered Accountants of India (ICAI) reviewed the book in 2010 as "a useful book and very good source of reference on Service Tax," and published the review in the CA Journal. A three-term Central Council Member of ICAI, he has held several key positions including Chairman and Vice Chairman of various committees, and earlier served as Regional Council Member of the Eastern India Regional Council (2007–2013), where he was Chairman (2011–12), Vice Chairman (2010–11), and Treasurer (2009–10). A well-known speaker on Service Tax and GST, he is regularly invited by professional and business organizations across India. He also serves as Vice President of the Customs, Excise and Service Tax Bar Association, Kolkata, and as Chairman of the Indirect Tax Committee of the Merchant's Chamber of Commerce and Industry, Kolkata. Born on 6th January 1967, he became a member of ICAI on 22nd January 1996.

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CA Jayesh Sanghrajka

CA. Jayesh Sanghrajka is a senior professional with 38+ years of experience in Corporate Finance, Investment Banking, Corporate Restructuring, Private Equity, Revival plans, and M&A Advisory. He is an Insolvency expert with a 100% track record of successful resolutions under Insolvency, involving debts exceeding INR 11,000 Crore ($1.3Bn) and ~5K home buyers. He has assisted creditors with IBC matters in achieving settlements in many cases pre-CIRP. He has also served as a transaction advisor for various types of fundraising, including debt and equity. He is a Key Speaker at various professional seminars about his experience on Insolvency and Restructuring matters. He is a Registered Insolvency Professional, a Rank holder Chartered Accountant and a Member of The Institute of Chartered Accountants of India, a Member of the Institute of Company Secretaries of India, and a Bachelor of Laws.

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Shri Sutanu Sinha
Partner, BDO Restructuring Advisory LLP

Shri Sutanu Sinha is a distinguished Insolvency Professional registered with IBBI and Partner at BDO Restructuring Advisory LLP, with rich experience as Resolution Professional and Liquidator in several high-profile CIRPs including IVRCL Ltd., Patna Highway Projects Ltd., and Simplex Projects Ltd. He previously served as the Chief Executive of the Institute of Company Secretaries of India (ICSI), where he was instrumental in reforming the CS profession by introducing curriculum changes post-Companies Act, 2013, driving digital transformation, and strengthening the culture of governance, compliance, and ethics. With over 18 years of corporate exposure at Brooke Bond, IBP, and Biecco Lawrie, he also held the position of Director at Canara Bank, appointed by the Government of India. A Fellow Company Secretary (ICSI), Fellow Chartered Secretary (CGI-UK), and postgraduate in Commerce from Calcutta University, he is widely recognized for his deep expertise in corporate law, governance, insolvency resolution, and regulatory compliance, coupled with strong leadership and policy-making credentials.

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CA Sandeep Bajaj
Founder, PSL Advocates & Soliciters

CA Sandeep Bajaj, founder of PSL (formerly Pamasis Law Chambers), began his practice in 2007 and has since built a leading law firm with offices in Delhi, Mumbai, Chandigarh, and an overseas reference office in China. With extensive experience across civil and corporate laws, he has advised private enterprises, government agencies, and the Union of India on high-stake commercial disputes involving billions of rupees. Under his leadership, PSL has grown into a 40+ member team recognized for excellence in corporate, restructuring, and insolvency matters. He has worked extensively on the Insolvency and Bankruptcy Code, 2016, representing complex cases before the Hon'ble Supreme Court, NCLAT, and NCLT. Widely regarded as an expert in insolvency law, he regularly advises resolution professionals, liquidators, and financial institutions on banking, lending, and recovery-related disputes.

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Shri Sanjib Patwari
Rashmi Group

Shri Sanjib Patwari is the Promoter of Rashmi Group, one of the fastest-growing conglomerates in Eastern India with a turnover of ₹41,393 crores and a net worth of ₹26,791 crores in FY 2024–25. Under his visionary leadership, the Group has expanded its integrated steel, power, cement, ferro alloys, mining, and mineral businesses across West Bengal, Jharkhand, Odisha, and Arunachal Pradesh. A sharp strategist with expertise in financial planning, M&A, and corporate governance, he has driven multiple successful acquisitions through NCLT and private channels. Widely respected in the Indian steel fraternity, he holds leadership positions in ISA, FICCI, CII, PMAI, ASSOCHAM, WBSIMA, BCC, MCCI, and ICC. He has been recognized with several awards including the Assocham Award for Best Expansion/Diversification Project (2025), Eastern India Best Employer Brand Award (2024), Times Bengal Icons (2023), and ET Industry Leaders East (2023).

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CA Abhisek Somani
Chief Business Officer - Rashmi Group

CA Abhisek Somani is a Chartered Accountant with 20+ years of post-qualification experience in establishing consistent & appropriate business practices and achieving organizational growth through organic and inorganic growth strategies. He has been part of Advisory firms like PwC and KPMG as well as worked in multinational corporation like Aditya Birla Group. Using his wealth of expertise in Mergers and Acquisitions, Divestment, Valuation and Deal structuring, Abhisek has used the NCLT route to acquire several assets in his current role as Chief Business Officer of Rashmi Group.

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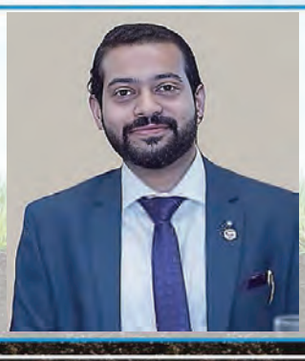

CA S. Badri Narayanan
Insolvency Professional

CA S. Badri Narayanan is a qualified Chartered Accountant, Company Secretary, and Lawyer, with a Master's in Commerce (First Division) and a law degree from the University of Delhi. He has also completed certifications in Forensic Accounting and Fraud Detection, Sustainability Reporting, and French Language. With significant expertise in the Insolvency and Bankruptcy Code (IBC), he has advised on corporate insolvency resolutions, liquidation processes, transaction reviews, resolution plans, and one-time settlements for companies with large debt exposure. His industry experience spans sectors such as steel, thermal and gas-based power, and EPC contracting. A regular contributor to reputed journals including ICAI, ICSI, and International Corporate Rescue, he also serves as guest faculty at institutions like ICAI, IIBF, NISM, and ICSI IIP. He is currently a Special Invitee to ICAI's Insolvency and Valuation Standards Board (2025–26), a key contributor to the *RESOLVE* Convention, and part of the INSOL International "Future Leader Programme" 2024–25 and Insol India's Young Practitioners Committee.

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Ms Tannya Baranwal
Associate Partner, INDIALAW LLP

Ms. Tannya Baranwal heads the Kolkata office of IndiaLaw LLP and specializes in litigation with a strong focus on Insolvency & Bankruptcy, Corporate & Commercial laws, Arbitration, Securitization, RERA, and Consumer matters. She has successfully represented a wide range of clients including corporate entities, promoters, nationalized banks, resolution professionals, and applicants before the National Company Law Tribunal and Appellate Tribunal in high-value IBC cases. Her practice also extends to RERA and REAT, where she appears for builders as well as home buyers. With a proven track record in handling complex litigations before civil courts, tribunals, appellate bodies, and High Courts, she is recognized for her expertise in litigation strategy, drafting, and effective advocacy. In addition, she actively engages in commercial arbitration and advisory work, particularly in the area of insolvency laws, delivering strategic and result-oriented solutions across diverse legal domains.

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CA. Snehal A Kamdar
Insolvency Professional

CA Snehal Arvind Kamdar, Partner at Jain Jagawat Kamdar & Co., is a Fellow Chartered Accountant, Lawyer, DISA-qualified professional, and a registered Insolvency Professional with IBBI. With extensive experience in insolvency, restructuring, taxation, and forensic audits, he has acted as IRP, RP, and Liquidator in several high-profile corporate insolvency resolution processes (CIRP) across diverse sectors such as textiles, pharma, cement, real estate, and automobiles. He has also provided critical support services in numerous CIRP and liquidation matters, including preparation of resolution plans, conducting PUFE audits, advisory assignments, and managing complex restructuring cases. Backed by a strong pan-India presence with offices in Mumbai, Ahmedabad, Pune, Surat, Bhopal, Delhi, and Aurangabad, he has successfully revived distressed companies, arranged interim finance, conducted auctions, and maximized value for stakeholders, establishing himself as a trusted name in the insolvency ecosystem.

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CA Navneet Kumar Gupta

CA Navneet Kumar Gupta, FCA, is a seasoned professional with over two decades of rich experience in India and the USA, specializing in insolvency, restructuring, and financial management. He holds the distinction of being the **first Chartered Accountant in India to be registered as an Insolvency Professional**. Over the years, he has managed and led a dedicated team of professionals to handle complex insolvency matters initiated by financial creditors, homebuyers, operational creditors, and promoters. His extensive roles include serving as Interim Resolution Professional (IRP), Resolution Professional (RP), Liquidator, Auditor, Credit Controller, Recovery Head, and M&A Advisor on both buy and sell sides. With deep industry exposure spanning real estate, textiles, power, EPC, financial services, and media, he brings a unique global perspective and hands-on expertise in resolving complicated cases under the Insolvency and Bankruptcy framework.

ARTICLES

Adv. Edna K Shibu
Associate - Legal, DAA Consulting

The Struggles of Revenue Authority in the IBC Framework

Introduction

The enactment of the IBC Code 2016 aims to restructure and resolve the stressed assets. With changing times, people prioritise quick resolution over drawn-out litigation, seeking a faster recovery from disputes. One of the most prominent features of the IBC is the time-bound redressal of grievances. Conversely, taxation laws aim to stabilise the economy by meeting the government's fiscal requirements, ensuring the state possesses sufficient resources to fulfil public needs.

Income tax focuses on collecting taxes from various sources, including direct and indirect taxes. The role of corporations in shaping the Indian economy is significant. In contrast, the IBC aims to revive the corporate debtor as a going concern. In contrast, the taxation statute seeks to restore economic stability and transform the nation into a developed economy. However, the true potential of the Indian economy remains untapped due to gaps between procedural efficiency and timely intervention, stemming from a lack of serious attention to such matters.

There is a well-known principle that prevention is better than a cure. Without waiting for the problem to escalate, timely action can prevent losses—both monetary and physical and mental strain. Similarly, timely intervention by the department, avoiding unnecessary delays, can contribute significantly to the growth and stability of the Indian economy.

Historical Perspective of Taxation Statutes

Taxation statutes are not the product of a single day; they result from practices followed since time immemorial. Even ancient scriptures make references to the payment of taxes. The principle of stare decisis et non quieta movere, which says that "to stand by decisions and not to disturb what is settled", —has long guided this domain. To this day, the fundamental principles of taxation remain undisturbed. The amendment was introduced as a response to the evolving needs and economic changes. However, the practice is still being followed.

Shift in Approach Under the IBC

Before the Insolvency Code, there was no concept of reviving the company into a going concern. With the advent of the Insolvency and Bankruptcy Code, the focus has shifted from liquidating companies to reviving and restoring them.

Challenges Faced by Tax Authorities

One of the significant challenges under these statutes is the delay in filing claims, which has resulted in a loss of revenue for the authority. The IBC is enacted as a binding law, where dates and timelines are crucial in ensuring its effective implementation and success. To seek redress under this Act, one must take proper action at the right time; no one can take the plea of ignorantia juris non excusat (ignorance of the law excuses not).

Numerous judgments clarify that delays in filing claims are not acceptable unless there is sufficient cause to justify them. Such delays ultimately have a significant impact on the revenue authority. Under the waterfall mechanism provided in Section 53 of the IBC, government dues rank lower in priority than several other categories of claims. The definition clause in the IBC doesn't define the term statutory debt. Instead of that Section 5 (21) describes the Operational debt as "operational debt" means a claim in respect of the provision of goods or services including

employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority; hence the statutory dues comes under the ambit of Operational Creditor, for this reason the tax authorities filed the claim under Section 9 of the IBC.

In the matter of Commercial Taxes Department, Govt. of Rajasthan v. Mamta Binani, (2025) ibclaw.in 25 NCLT The Hon'ble NCLT Kolkata Bench observed that under

Regulation 12 of the IBBI (CIRP) Regulations, 2016, a creditor must submit their claim along with supporting evidence by the deadline specified in the public announcement. If missed, the claim may still be submitted up to either the date of issuance of the request for resolution plans under Regulation 36B or within 90 days from the insolvency commencement date, whichever is later. The Tribunal has consistently ruled that claims submitted after the Committee of Creditors (CoC) approves the resolution plan cannot be admitted.

On the contrary, it is pertinent to note that in the matter of Employees Provident Fund Organisation (EPFO) v. Incab Industries Ltd. and Anr., reported in (2025) ibclaw.in 75 NCLT, the Hon'ble NCLT, Division Bench, Kolkata, had a different observation. It is held that.

> *"24. In view of above rulings, we condone the delay in filing the claim by the applicant and direct that actual provident fund dues (employees and employers) contribution with interest fixed by the government from time to time is payable in full, whereas, penal interest, penalty, damages if any that might have been imposed by the EPFO will have to be treated as an unsecured operational debt and be dealt as per Section 30(2)(b) of the IBC. This is because such penalties or damages etc. imposed cannot be treated as the asset of the EPFO in the books of the corporate debtor.' "In view of above, we direct resolution professional to verify the claim and accordingly, admit the claim and apprise CoC and SRA for necessary approval/modification in the plan as may be required."*

(Emphasis Added)

The delay in filing EPFO's claim warranted condonation, despite the claim being submitted after the deadline for the resolution plan. The Tribunal observed that provident fund dues constitute a statutory liability and do not form part of the assets of the Corporate Debtor. Furthermore, the NCLT directed the Resolution Professional (RP) to verify the claims and apprise the Committee of Creditors and the Successful Resolution Applicant so that the resolution plan could be modified accordingly.

Judicial Observations

In the matter of Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Ltd. and Ors. reported in (2021) ibclaw.in 63 SC, the Hon'ble Apex Court has categorically observed:

> *"135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12."*

[Emphasis added]

Further, in RPS Infrastructure Ltd. v. Mukul Kumar & Anr, reported in 2023 ibclaw.in 102 SC, the Hon'ble Apex Court ruled that delays in filing a claim under the IBC cannot be condoned. The intention behind the enactment of the statute is to ensure the timely enforcement of action. Moreover, such delays ultimately result in a loss to the Revenue authority, as they are deprived of accurate and timely information.

The heart and soul of the IBC lies in the Section 53 waterfall mechanism, wherein the claims of operational creditors and government dues rank significantly lower in priority compared to those of financial creditors. Under the paralance of English common law, Statutory dues are considered as Crown Debts which were prevailed over the rights or dues

[1] Civil Appeal No. 2853 of 1993

of an ordinary citizen. In the matter of Dena Bank v. Bhikhabhabi Prabhudas Parekh1, the Hon'ble Supreme Court held that the common law doctrine of priority of crown debts would not extend to providing preference crown debts over private debts. At this present scenario the Apex Court re-examine that whether the Statutory dues in the waterfall mechanism are prevailed over the Secured creditors. In the matter of State Tax Officer v. Rainbow Papers Ltd., (2022) ibclaw.in 107 SC The Supreme Court held that the State is a secured creditor under the IBC by virtue of the statutory charge under Section 48 of the GVAT Act. The time period for submission of claims under the CIRP Regulations is directory, not mandatory, and delay in filing a claim cannot be the sole ground for rejection. A Resolution Plan that does not provide for statutory dues owed to the State cannot be approved and is not binding on the State. The NCLAT and NCLT erred in law in rejecting the State's claim and in holding that Section 53 of the IBC overrides Section 48 of the GVAT Act.

In the matter of Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Ltd. and Ors reported in (2021) ibclaw.in 63 SC, the Hon'ble Apex Court has categorically observed:

> *"135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12."*
>
> [Emphasis added]

Legislative Intent and the Preamble of the IBC

The preamble of the IBC states that:

> *"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."*

The preamble clearly states that one of the objectives of the Act is to ensure priority for statutory dues—a principle reiterated by the Hon'ble Supreme Court in State Tax Officer v. Rainbow Papers Ltd2. (2022 ibclaw.in 107 SC).

Need for Early Detection of Dues

Ultimately, the most effective way to address these issues is through the early detection of unpaid tax amounts. Section 73 of the CGST Act, 2017 mandates that the proper officer must issue the order under sub-section (9) within three years from the due date for furnishing the annual return for the relevant financial year, in cases where tax has not been paid, has been short paid, or where input tax credit has been wrongly availed or utilised, or from the date of an erroneous refund. However, this three-year period is often too long; rather than waiting until its expiry, proactive measures should be taken to identify and recover pending dues at the earliest opportunity, ensuring prompt payment to the Government.

Similarly, Section 74 of the CGST Act provides that the determination of the tax amount by the proper officer must be completed within five years from the due date for filing the annual return. Without waiting for this prolonged period, if the dues are detected early, the statutory amount can be recovered more efficiently. This delay in detection and recovery remains a key issue that negatively impacts the revenue authority.

Conclusion

Delays in claim filing and prolonged statutory timelines under Sections 73 and 74 of the CGST Act erode the Government's ability to recover rightful dues, especially when coupled with the IBC's waterfall mechanism that ranks statutory claims low in priority. Taxes are the lifeblood of nation-building, and placing them on a weaker footing undermines India's fiscal strength and economic potential. Early detection, proactive claim filing, and swift recovery—without waiting for companies to slip into litigation— are not just administrative choices but economic imperatives.

In the matter of Vaibhav Goel v. Deputy Commissioner of Income Tax, (2025) ibclaw.in 90 SC The Hon'ble NCLT Delhi Bench observed that:

> *In the resolution plan, relief and concession has been sought in respect of statutory dues for making payment in instalments, no coercive action, waiver of requirement of pre-deposit for filing appeals, waiver of interest, penal interest or damages. These are issues to be decided by the respective government department and appropriate application may be moved before them."[Para 44 of NCLT order dated 21.05.2019]*

[Emphasis added]

The Hon'ble NCLAT upheld the decision of NCLT affirming that the relief sought in respect of statutory dues were beyond the scope of automatic approval in the resolution plan and required separate consideration by the concerned authority.

The Hon'ble Supreme Court in the light of Section 31 (1) of the IBC and the binding precedent in Ghanashyam Mishra and Sons Pvt. Ltd., all statutory dues not included in the Resolution Plan stand extinguished. The subsequent demands by the Income Tax Department for assessmengt years 2012-13 and 2013-14, not being part of the Resolution Plan, are invalid and unenforceable. The orders of the NCLT and NCLAT to the contrary are set aside.

Failing to file the proper claim at the correct time caused a huge loss to the Revenue Department. The only saviour is actively participating in the process of CIRP, and the claims should be filed on time without waiting for the due dates. At the end of the day, the revenue authorities suffered a huge loss. In Section 82 of the CGST Act, 2017

> *"Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person."*

Further, IBC is a complete code and no other provisions can override the IBC . The Act itself given much more importance to IBC than the taxation statutes. In reliance on the provisions the revenue authorities should file the claims on time.

Apart from this, it must be noted that the claim of the Revenue Authority involves public funds and falls within the concept of public justice. Such claims, when filed, in fact, contribute to the progress and stability of the economy. In this context, the role of the Resolution Professional assumes greater significance — it is not limited merely to reviving the corporate debtor from financial distress, but also extends to considering the broader objective of reviving and supporting the economy.

When a public announcement is made by the Insolvency Professional under Regulation 6 of the IBBI (CIRP) Regulations, it becomes essential for the Insolvency Professional to specifically notify the concerned department to ensure that claims are filed within the prescribed timelines. In many cases, the department remains unaware and is therefore unable to submit its claims on time. Given that monitoring every company undergoing CIRP or in the process of CIRP is a challenging task for the department, it would be prudent for the Insolvency Professional — instead of relying solely on newspaper publications and email communications — to directly inform each creditor about the requirement and process for filing claims. Such proactive communication could, to a considerable extent, prevent delays and protect the Revenue Authority from substantial losses.

Timely action can safeguard revenue, reduce dependency on external borrowing, and fortify the nation's path toward sustainable growth and self-reliance. The last resort of everyone is in the Judiciary. There are certain instances in which the approach of the judiciary towards some rare cases goes against the precedents. If the laws are to be taken as per the literal interpretation, then the economic consequences will be

devastating. Apart from that, time is very important in the present scenario. If we wait for filing a claim or issuing a notice, the result would be a negative effect on the economy as well.

i. https://www.barandbench.com/columns/the-crown-vs-secured-creditors-who-prevails

ii. https://ibbi.gov.in/uploads/legalframwork/547c9c2af074c90ac5919fa8a5c60bd4.pdf

iii. https://cbic-gst.gov.in/pdf/CGST-Act-Updated-30092020.pdf

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Navigating Insolvency of Personal Guarantors to Corporate Debtors in India: Detailed Analysis and Evaluation of Insolvency and Bankruptcy Code, 2016

Introduction and role of Personal Guarantor to Corporate Debtor

Personal Guarantor, in layman terms, is an individual who agrees to be responsible for repaying the loan if the Principal Borrower Company **("Corporate Debtor")** defaults. They essentially act as a surety, pledging their personal assets to cover the loan amount. A personal guarantor often is a lifeline for a business loan, offering lenders assurance that the debt will be repaid, even if the company cannot fulfil its obligations. Often, the personal guarantor is a business owner, promoter, director, or someone with a significant stake in the Corporate Debtor. A personal guarantor can significantly improve a company's creditworthiness, making it easier to obtain loans that might otherwise be denied. This makes Personal Guarantor a linchpin in securing corporate loans.

Lenders normally require a personal guarantee at time of extending credit facilities to ensure that promoters are made personally liable, to bring a system of self control so personal gains by promoters are avoided and so that promoters cannot part themselves from the company without permission/Knowledge of lender.

Personal Guarantees are typically a collateral for loan extended to Corporate Debtor and enables broaden the pool of assets available to lenders at time of financial distress and default by Corporate Debtor. A personal guarantor's liability is established through a separate contract of guarantee, which outlines the terms of their obligation. Hence, the Personal Guarantor is often faced with precarious situation when the Corporate Debtor defaults on its loan obligations resulting in possibility of insolvency and bankruptcy proceedings against the Personal Guarantor as well.

The Insolvency and Bankruptcy Code, 2016 **("IBC"/"Code")**, hailed as a watershed legislation for insolvency resolution in India, was enacted primarily on basis of recommendations of Bankruptcy Law Reforms Committee **("BLRC")** which published its report in 2015 . The BLRC was formed to address the shortcomings of the existing insolvency and bankruptcy laws in India.

It proposed a new framework for resolving corporate insolvencies, focusing on time-bound resolution and maximizing asset value. IBC by design included individual insolvency resolution framework as well along with corporate insolvency resolution. IBC classifies individuals into three categories for insolvency and bankruptcy purposes: Personal Guarantors to Corporate Debtors **("PGs")**, partnership firms and proprietorship firms, and other individuals. Due to complexities and multifaceted dynamics, it was decided to notify the individual insolvency resolution provisions in a phased manner starting with PGs.

In its report, BLRC observed that *"It is common practice that Indian banks take a personal guarantee from the firm "s promoter when they enter into a loan with the firm".* [3]

The Insolvency and Bankruptcy Board of India ("IBBI") constituted a Working Group in 2017 to recommend the strategy and approach for implementation of the personal insolvency provisions of the Code dealing with insolvency and bankruptcy of (i) personal guarantors to corporate debtors and (ii) individuals having businesses, and submit a report along with the draft rules and regulations. The Working Group released a report in 2017 , however, it was subsequently reconstituted as the 'Reconstituted Working Group' and given a similar mandate. The Reconstituted Working Group

[1] The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016)

[2] Bankruptcy Law Reforms Committee, "The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design" (November, 2015)

[3] Supra Note 2, Para 3.4.3

undertook a review of the 2017 report, and released two reports, Report of Working Group on Individual Insolvency and Report on Bankruptcy Process , with revised recommendations for implementation of individual insolvency provisions under the Code.

Section 2(e) of the Code was substituted by Amendment in Code (w.e.f. 23.11.2017) incorporating PGs in the provision for Application of Code.

The Second Working Group recommended phase-wise implementation of personal insolvency provisions under IBC. It mooted for implementation of the regime for PGs before others. It is evident that there are some commonalities involved between insolvency proceedings of Corporate Debtor and its Personal Guarantor. Hence, it was decided to notify the provisions with respect to PGs (including Section 2(e)) in the first phase vide Notification dated 15th November, 2019 wherein effective date was stated as 1st December, 2019.

The Central Government had issued the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 **("PGIRP Rules")** and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 **("Bankruptcy Rules")**. On 20 November, 2018, IBBI issued the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, **("PGIRP Regulations")** and the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 **("Bankruptcy Regulations")** detailing the bankruptcy process for personal guarantors of the CD

Broadly, there are two phases under IBC, both for Corporate Debtor and for PGs. One, where insolvency is resolved, by a resolution plan in case of Corporate Insolvency Resolution Process **("CIRP")** w.r.t Corporate Debtor or by a repayment plan in case of Personal Guarantor Insolvency Resolution Process **("PGIRP")**. Secondly, where resolution fails, IBC provides for mechanism of Liquidation for Corporate Debtor and Bankruptcy for PG.

Legal framework w.r.t Guarantee and w.r.t Insolvency Proceedings of PG

a) Broad Relevant Legal Framework relating to Personal Guarantee

A contract of guarantee is defined under section 126 of the Indian Contract Act, 1872 **("ICA")** as *"a contract to perform the promise, or discharge the liability, of a third person in case of his default."*

The person who gives the guarantee is called the 'surety', the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. Simply speaking, therefore, a personal guarantee is a promise, given by an individual to ensure that a third party fulfills its obligations and, if the third party fails to do so, then such individual will be liable to fulfill those obligations . As per Rule 3(e) of PGIRP Rules, "guarantor" means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;"

The liability of personal guarantors is co-extensive with that of the Corporate debtor, as provided under Section 128 of the ICA. A personal guarantor's liability is established through an independent contract, and the contractual terms dictate the nature and magnitude of said liability. The creditor must invoke the guarantee before the guarantor can be held liable for the debt. Further, the doctrine of subrogation, enshrined in sections 140 and 141 of the ICA, ensures that a surety who discharges a debt or obligation of the principal debtor is vested with all the rights of the creditor against the debtor.

[4] IBBI, "Report of the Working Group on Individual Insolvency (Regarding strategy and approach for implementation of the provisions of the Insolvency & Bankruptcy Code, 2016 to deal with the insolvency of Guarantors to Corporate Debtors and Individuals having business)", August 2017

[5] IBBI, "Report of the Working Group on Individual Insolvency (Regarding strategy and approach for implementation of the provisions of the Insolvency and Bankruptcy Code, 2016 in respect of Personal Guarantors to Corporate Debtors; Partnership Firms and Proprietorship Firms; and Other Individuals)", October 2018

[6] IBBI, "REPORT ON BANKRUPTCY PROCESS PROPOSING RULES AND REGULATIONS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS" - March 2019

[7] Subs. by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.e.f. 23.11.2017, for the clause: "(e) partnership firms and individuals,".

[8] Ministry of Corporate Affairs, S.O. 4126(E), 15th November, 2019

[9] The Indian Contract Act (Act 9 of 1872)

b) Provisions in IBC w.r.t Insolvency Resolution Process and Bankruptcy Process for PG

IBC is structured into five parts, each further divided into chapters and sections. Part III pertains to **"Insolvency Resolution and Bankruptcy For Individuals and Partnership Firms".** This part is further broken down into chapters consisting of following:

Part III of IBC	Particulars	Section coverage
Chapter 1	Preliminary	78-79
Chapter 2	Fresh Start Process	80-93
Chapter 3	Insolvency Resolution Process	94-120
Chapter 4	Bankruptcy Order for Individuals and Partnership Firms	121-148
Chapter 5	Administration and Distribution of the Estate of the Bankrupt	149-178
Chapter 6	Adjudicating Authority for Individuals and Partnership Firms	179-183
Chapter 7	Offences and Penalties	184-187

The focus of the current paper is on insolvency resolution and bankruptcy proceedings of the PGs. The framework for PGIRP procedures is provided in the succeeding paragraphs.

Insolvency Resolution Process of PGs - Broad Provisions and Mechanism

Chapter 3, Part III of IBC relates to the first leg of resolution envisaged under IBC w.r.t PGs. The mechanism provided in the first leg can be summarised as follows:

(i) Initiating the Process:

By the Guarantor (Section 94): A personal guarantor can initiate the process by filing an application in Form A of PGIRP Rules, with the Adjudicating Authority ("AA") either themself or through a Resolution Professional ("RP"). This application must include a statement of affairs, details of the debt, and comply with prescribed forms.

By the Creditor (Section 95): A creditor can also initiate the process against the personal guarantor by filing an application in Form C of PGIRP Rules, either by themself or jointly with other creditors or through an RP. Where a creditor wishes to file an application, it shall issue a notice (in Form B of PGIRP Rules) calling upon the PG to make the payment. Only if the PG fails to make the payment within 14 days of receipt of such notice, the creditor may initiate insolvency proceeding against him.

Above application(s) can be in respect of default of debt except excluded debt. Excluded Debt is defined u/s 79(15) of IBC and means "(a) liability to pay fine imposed by a court or tribunal; (b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (c) liability to pay maintenance to any person under any law for the time being in force; (d) liability in relation to a student loan; and (e) any other debt as may be prescribed;".

(ii) Interim Moratorium (Section 96): Upon filing an application, an interim moratorium is imposed in relation to all the debts, preventing further legal proceedings against the guarantor related to the debt. Creditors of the PG shall not initiate any legal action or proceedings in respect of any such debt . This ceases to have effect on the date of admission of application.

(iii) Appointment of Resolution Professional (Section 97): If the application is filed through a RP, the AA checks the database of IBBI for any disciplinary proceedings against the RP. If there are no disciplinary proceedings, the AA appoints the RP. If the application is filed by the applicant himself, or the AA finds disciplinary proceedings against the RP proposed by the applicant, the AA appoints an RP from the panel of IPs shared by the IBBI.

(iv) RP's Role and Report (Section 99): RP examines the application with respect to the eligibility of the PG or creditor, as the case may be, for initiation of insolvency resolution process along with other requirements as specified in section 94 or 95 of the Code and submits a report recommending acceptance or rejection of the application, within ten days of his appointment. As per Hon'ble Supreme Court judgement dated 9.11.2023, in the matter of Dilip B. Jiwrajka v. Union of India and Others , RP only performs a "facilitative task" of collating information/documents for the purpose

[10] Supra Note 5, Page 5 Para 17

of examination of the Petition filed u/s 95 of the Code.

(v) Adjudicating Authority's Decision (Section 100): The Adjudicating Authority, based on the RP's report, decides whether to admit or reject the application within fourteen days of the receipt of report of the RP. Where the AA rejects the application on the basis of report submitted by the RP or that the application was made with the intention to defraud the creditors or the RP, the creditors are entitled to file an application for bankruptcy

(vi) Moratorium (Section 101): When the application is admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier. During this period, every legal action or proceeding pending in respect of any debt owed by the PG is deemed to have been stayed. Further, the creditors of the PG are barred from initiating any legal action or proceedings in respect of any such debt and the PG is barred from transferring, alienating, encumbering, or disposing of any of his assets or legal rights or beneficial interests therein.

(vii) Claims (Section 102-Section 104): AA issues public notice within 7 days of admission inviting creditors to file claims within 21 days of notice. The creditors register claims with RP along with proof. Based on verification of claims, RP prepares a list of creditors on the basis of information provided in the application and based on claims received, within 30 days of public notice. The list of creditors contains the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims.

(viii) Repayment Plan(Section 105 and Section 106): The PG prepares a Repayment Plan, in consultation with the RP, containing a proposal to the creditors for restructuring of his debts or affairs and its implementation schedule as well as the source of funds. (Reg. 17 of PGIRP Regulations). The RP submits the repayment plan along with his report on such plan to the AA within twenty-one days from the last date of submission of claims. (S.106). The report may provide for necessity of summoning a meeting of creditors to consider repayment plan, and if necessary, the date, place, and time of the meeting.

(ix) Meeting of Creditors: Where a meeting is necessary, as per the report of the RP, he summons the first meeting of the creditors to approve the repayment plan by issuing a notice calling the meeting of creditors at least fourteen days before the date fixed for such meeting (S.107 (1)). In the meeting of creditors, creditors may decide to approve, modify or reject the repayment plan. (S.108). The voting share of each creditor is in proportion to the debt owed to such creditor. The repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in the meeting. (S.111).

(x) Approval or Rejection of the Repayment Plan: The RP prepares a report of the meeting of creditors on the repayment plan. (S.112(1)). He provides a copy of the report of the meeting of the creditors to the PG, creditors, and the AA. (S.113). The AA, by an order, approves or rejects the repayment plan based on the report submitted by the RP. The order of the AA may provide for directions for implementation of repayment plan. Where the AA is of the opinion that the repayment plan requires modification, it may direct the RP to re-convene a meeting of the creditors for reconsidering the same. (S.114)

(xi) Other provisions: The Repayment Plan is binding on guarantor and creditors. If AA rejects the repayment plan, creditors can file application for bankruptcy. Upon completion of repayment plan implementation, RP reports to AA along with summary of receipts and payments. There can be premature end to repayment plan for lack of implementation and may trigger bankruptcy. Upon completion of implementation, RP may apply to AA for discharge order.

Bankruptcy proceedings of PGs - Broad Provisions and Mechanism

Chapter 4 and 5 of Part III of IBC, predominantly cover the second leg of resolution by bankruptcy w.r.t PGs. The mechanism provided in the second leg can be summarised as follows:

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[11] 2023 SCC OnLine SC 1530

[12] IBBI, Information Brochure available at https://ibbi.gov.in/uploads/whatsnew/cabcef714322b0eaf0de706f3c135ed3.pdf

[13] Supra Note 12, Page 6

[14] (2018) 17 SCC 394

[15] (2020) 8 SCC 531

(i) Application for initiation (Section 121): Either by the PG himself or by creditor individually or jointly, within 3 months from the date of order passed by the AA rejecting an application for initiation of insolvency process against the PG; rejecting the repayment plan; or recording that the repayment plan has not been completely implemented.

(ii) Interim Moratorium is imposed u/s 124 similar to Section 96

(iii) Appointment of Bankruptcy Trustee ("BT") (Section 125): AA may appoint the BT nominated by applicant, and in other cases, appoint an IP from IBBI panel.

(iv) Upon passing of order u/s 126, PG is considered bankrupt and order continues to have effect till discharge order u/s 138.

(v) On passing of bankruptcy order, the assets of PG, i.e bankruptcy estate vest with the BT. PG to submit statement of financial position to BT within 7 days of admission. (Section 129)

(vi) Section 130, 131, 132, 133, 134: BT issues notice to creditors, public notice of bankruptcy commencement. Creditors are required to register claims with BT within 7 days of public notice. A creditor can claim future payment as well however for interest, rent and payments of periodical nature, creditor can claim only for amounts due and unpaid upto bankruptcy commencement date ("BCD"). Within 14 days from BCD, BT prepares list of creditors and within 21 days from BCD, issues a notice calling for meeting of creditors. During the meeting, a Committee of Creditors is established.

(vii) Section 140 and 141 contains certain disqualifications and restrictions on the bankrupt. Functions and rights of BT are given in Section 149 and 151. The BT is responsible for investigating the affairs, realizing the estate, and distributing the estate of the bankrupt among the creditors

(viii) Payment of Debt: can be by way of interim dividend u/s 174(1), distribution of property in existing form u/s 175 and/or final dividend u/s 176. Order of priority of payment of debt is provided u/s 178

(ix) Discharge of bankrupt: On the completion of the administration and distribution of the estate of the bankrupt, the BT shall convene a meeting of the committee of creditors and submit a report of the administration of the estate of the bankrupt for approval. The BT shall apply to the AA for discharge of the bankrupt on the expiry of one year from the BCD or within seven days of the approval of the committee of creditors and AA shall pass order of discharge (Section 138).

Judicial Precedents shaping our understanding:

The Hon'ble Supreme Court in State Bank Of India v. V. Ramakrishnan held that the approval of a resolution plan under section 31(1) of the Code does not automatically result in the discharge of the guarantor. Instead, it may allow the creditors to continue their efforts to recover any remaining gap or shortfall in the amount owed to them from the corporate debtor by pursuing the guarantor.

In the Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta , the Apex Court based its decision on section 31(1) of the Code, holding that once a resolution plan is approved and authorized, it is binding on the corporate debtor and all other parties, including guarantors.

The Apex Court's ruling in Lalit Kumar Jain v. Union of India declared that releasing the principal borrower by approving a resolution plan does not release the guarantor from its obligations. The Apex Court held that the release

[16] (2021) 9 SCC 321

[17] (2022) ibclaw.in 108 SC

[18] Supra Note 11

[19] (2024) ibclaw.in 170 SC

[20] (2025) ibclaw.in 103 SC

[21] (2025) ibclaw.in 81 SC

[22] Company Appeal (AT) Insolvency No. 60 of 2022

[23] Company Appeal (AT)(CH)(Ins.) No. 8 of 2023

[24] (2024) ibclaw.in 1054

[25] (2025) ibclaw.in 331 NCLT

of the guarantor from its responsibilities is contingent upon two conditions: firstly, unless the language of the contract states otherwise and, secondly, if it is the result of a voluntary action by the corporate debtor, such as a release, discharge, composition, or modification of the guarantee agreement. The Apex Court defined the lines of liability of the personal guarantors under the Code, and, while dismissing the petitions, declared the 2019 Notification w.r.t PGs to be legally sound and legitimate.

In K. Paramasivam Vs. The Karur Vysya Bank Ltd. & Anr. the Apex Court held that the liability of the guarantor is co-extensive with that of the Principal Borrower and it was open to the Financial Creditor to proceed against the guarantor without first suing the Principal Borrower.

Apex Court in Dilip B. Jiwrajka v. Union of India and Others (9 November 2023) made it clear that the RP is only hired by the adjudicatory authority based on a suggestion by the Insolvency and Bankruptcy Board of India. The sole objective of the RP is to assist in the facilitative process of report preparation in accordance with section 99 of the Code. The Court ruled that the current legislative framework does not allow for an extra adjudicatory stage, and adding such a stage would mean "rewriting the terms of the statute". It also made clear that there are strict deadlines for both appointing an resolution professional and for turning in a report. Adding an adjudicatory stage would not only slow down the process but also make it more complicated. Additionally, the Court concluded that sections 95 to 100 of the Code cannot be judged unconstitutional solely on the absence of provisions allowing personal guarantors an opportunity to present their case prior to creditors filing insolvency petitions.

In BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. and Anr , the Hon'ble Supreme Court decided that a corporate guarantor's resolution plan payment does not release the principal borrower from paying back the entire loan balance, less the amount recovered from the guarantor. The Court emphasized that the obligation of the guarantor to the creditor is separate from the obligation of the borrower.

In the matter of Gourishankar Poddar v. State Bank of India and Anr. , Apex Court held that any acknowledgement of debt by the principal borrower is also considered an acknowledgement by the guarantor under the Limitation Act, 1963.

In the matter of Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth and Ors. , the Apex Court held that moratorium under Section 96 of the IBC does not extend to regulatory penalties imposed by regulatory bodies and that penalties arising from regulatory infractions are not covered under the ambit of "debt" under IBC.

Orders w.r.t Adjudicating Authority

Judgements of Hon'ble NCLAT in State Bank of India, Stressed Asset Management Branch vs Mahendra Kumar Jajodia and Mahendra Kumar Agarwal vs PTC India Financial Services Ltd , have clarified that "`Adjudicating Authority' / `Tribunal', has `jurisdiction', to `entertain'/`initiate', the `Insolvency Proceedings' of the `Personal Guarantors', even when `no Corporate Insolvency Resolution Process' proceedings, is `pending', against the `Corporate Debtor'".

Hon'ble NCLT Orders on threshold

Section 78 of the Code refers to a default threshold of not less than One Thousand Rupees. However, conjoint reading of Rule 3(1)(a) of PGIRP Rules, Section 4 and Section 60(1) of the Code reveals that the threshold limit for invoking the provisions of Section 95 of IBC, 2016 qua the Personal Guarantor to Corporate Debtor before Hon'ble NCLT would be Rs. One Crore only. (Reference Mudraksh Investfin Pvt. Ltd. v. Gursev Singh and in the matter of Mr. Keerthan Kumar Upadhya)

Practical Challenges in PGIRP

1. Clarity is required on the coverage of moratorium. Whether the moratorium covers all debts of the PG or only debts pertaining to Corporate Debtor. Further, based on Apex Court Judgements, regulator may publish a guidance on moratorium coverage on legal proceedings.

2. Contours of repayment plan have to be brought out more clearly as the same is broad and vague as of now. The time limit for repayment plan, if involves deferred payment scenario, would need consideration.

3. Excluded debt and excluded asset information is generally not available with lenders.

4. Information pertaining to PG to assess his credibility to give repayment plan is not generally available with creditors,

like Income Tax Return of previous years, balance sheet/books of account, net worth statements etc.

5. There is lack of clarity as to who is entitled to file claim. Whether it would be all creditors of the PG or only creditors relating to Corporate Debtor

6. Unique challenges as to assets of PG being attached prior to PGIRP under any state enactment like Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, Prevention of Money Laundering Act, 2002 etc.

7. Non-cooperation of PG in the PGIRP including lack of response at stage of preparation of report u/s 99 of Code or post admission of PGIRP by Hon'ble NCLT. In such cases, it should be considered to expedite closure of PGIRP and initiation of bankruptcy proceedings.

8. Admission in PGIRP often takes much more that stipulated time due to litigations triggered by PGs on trivial procedural matters. Measures are required to disincentivise frivolous litigations which hamper the process and disturb the essence of timeline imbibed in the Code.

9.Many PGs take the ground before Hon'ble NCLT that PGIRP process should not proceed considering their Section 12A or resolution plan for CIRP (including settlement of personal guarantee) is pending consideration of CoC of Corporate Debtor. This sometimes result in delays in admission of PGIRP even though the prices is independent of CIRP.

Practical Challenges in Bankruptcy of PGs

Considering that lenders as priority had begun with CIRP / Liquidation against Corporate Debtor and subsequently in recent times, have started individual insolvency resolution process, specially after the Apex Court Judgement in Lalit Kumar Jain (supra), hence, there have been emerging literature, case laws and market dynamics evolvement at least in the PGIRP sphere. However, the bankruptcy proceedings framework is still unchartered with only few admissions and hardly any legal precedents or guidance.

The following practical challenges are being generally faced by a Bankruptcy Trustee in PG bankruptcy proceeding:

a) Lack of cooperation: As per Regulation 12 of Bankruptcy Regulations, the bankrupt, IRP/RP/Liquidator of Corporate Debtor, RP in PGIRP amongst others, shall extend all assistance and cooperation to the undersigned to complete the bankruptcy process. The same is not being effected on ground as the RP/Liquidator of Corporate Debtor state that on account of Corporate Debtor having been taken over by new management in resolution process, necessary documents / cooperation in relation to Corporate Debtor which is required for bankruptcy process of PGs cannot be extended to BT.

b) Section 150 of the the Code, inter alia states that "The bankrupt shall assist the bankruptcy trustee in carrying out his functions under this Chapter by - (a) giving to the bankruptcy trustee the information of his affairs; (b) attending on the bankruptcy trustee at such times as may be required." Section 156 of the Code states, " The bankrupt, his banker or agent or any other person having possession of any property, books, papers or other records which bankruptcy trustee is required to take possession for the purposes of the bankruptcy process shall deliver the said property and documents to the bankruptcy trustee." Section 157(1) states, "The bankruptcy trustee shall take possession and control of all property, books, papers and other records relating to the estate of the bankrupt or affairs of the bankrupt which belong to him or are in his possession or under his control…". However, in a practical scenario, the bankrupt may either not cooperate or be absconding. Hence, obtaining information to identify bankruptcy estate, and then taking custody and control of assets of bankrupt is a significant challenge.

b) Claimants: PGIRP / Bankruptcy proceedings are generally initiated by lenders who were part of the Corporate Debtor lending arrangement. Hence, other creditors of the PG, who are creditors on account of a distinct and independent liability of PG, may not be aware of the proceedings and fail to file claim despite public notice. The Code and Regulation may clarify that the moratorium intended in PGIRP / Bankruptcy is in relation to all debts of PG and not only debts in relation to Corporate Debtor for which guarantee was provided. As a lack of this clarification may lead to situation introducing multiple PGIRP / Bankruptcy Proceedings against a single debtor on account of multiple liabilities, some of which may not even be defaulted.

c) Claim as on BCD: In case of secured creditors relinquishing security interest, the Code is clear that amount should be claimed as on BCD. However, with respect to secured creditors enforcing security interest, Proviso to Section

128(2) states that "no secured creditor shall be entitled to any interest in respect of his debt after the bankruptcy commencement date if he does not take any action to realise his security within thirty days from the said date." The Code does not clarify as to what would constitute sufficient action and if such creditor would be entitled to interest in case such action is undertaken which in a way would put such creditor in a advantageous position as compared to those who have relinquished security interest. Further, as per Regulation 16, "In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the bankruptcy commencement date." Hence, there is confusion amongst creditors with respect to enforcement of security interest and what is to be claimed.

d) Bankruptcy Estate: Due to lack of information and cooperation from bankrupt, and lack of information with creditors, the identification of bankruptcy estate itself comes in jeopardy and the entire process is delayed and leads to litigation.

e) Secured Creditor enforcement: There are creditors with exclusive right and lack of strict mandate on enforcing creditors to take action to realise security interest leads to lethargies and delays which again affect bankruptcy estate as any surplus over and above admitted debt of such enforcing creditor should ideally come to the bankruptcy estate for further interest of other stakeholders. There are also cases where the bankrupt has alienated asset in violation of terms of mortgage and the secured creditor is only aware while filing its claim with BT.

f) Voting right and constitution of CoC - As per Regulation 24 r/w Section 135(2), voting right is based on unsecured portion of admitted debt. In conjoint reading with Code, it may happen that a creditor is Member in CoC but with no voting right. This requires clarification and also it is required that creditors, irrespective of voting right, contribute to bankruptcy cost as per proportion of admitted debt.

g) Lack of Asset Tracing Specialisation and Avoidance Transaction expertise and filings: Since in most cases the bankrupt may not cooperate or disclose assets, such asset tracing agencies and skill set on avoidance transaction review would become crucial.

i) As per Regulation 32 of Bankruptcy Regulations, the BT is required to open a bank account in the name of the bankrupt followed by the words 'in bankruptcy process', in a scheduled bank, for the receipt of all moneys due to the bankrupt. However, this has been a challenge as the scheduled banks do not have a SOP/Account opening guideline for opening such accounts and hence compliance with Regulation 32, engagement of valuers, legal counsel who require payment of advance, receipt of EMD for auction proceeds etc are being hampered.

Role of Insolvency Professional in Insolvency Resolution vs Bankruptcy Proceedings

The role of IP in the PGIRP is merely facilitative. The IP facilitates resolution of the guarantor similar to a fashion how an Resolution Professional facilitates resolution and revival of Corporate Debtor in a CIRP. The RP in PGIRP assists the Tribunal w.r.t identification/assessment of debt and default and submitting a report u/s 99, and thereafter, subsequent to admission, facilitates verification of claim, convening of meetings of creditors to enable creditor decision making, also facilitates submission of repayment plan by coordinating with the guarantor and finally facilitates implementation of repayment plan or termination of proceedings.

On the other hand, the role of IP, appointed as BT in a bankruptcy process is very similar to that of a liquidator in liquidation proceedings of Corporate Debtor. The assets of the bankrupt vest with the BT and the BT has a broader range of functions and duties including identification and preservation of assets, investigating into affairs of bankrupt, realisation of assets and distribution of proceeds amongst creditors amongst other requirements.

Recommendations and Proposal for improvement of existing framework

A) Creditors / Lenders of Corporate Debtor or otherwise should obtain relevant documents/information from PG in anticipation of PGIRP/Bankruptcy in the pre-CIRP or CIRP stage itself. A promoter PG may be more approachable and willing to provide required information at time of submitting a Section 12A proposal or submission of resolution plan as compared to when being in a individual insolvency proceeding

B) The creditors should obtain frequent updated details on excluded assets / excluded debts so that it is easier at time of preferring application for PGIRP / Bankruptcy

C) The creditors should obtain at least yearly audited net worth statement of PGs

D) The creditors should conduct quarterly due diligence check on securities/collaterals to identify any siphoning of funds / alienation of asset by PG and to prevent ring fencing of asset by PG prior to PGIRP/Bankruptcy.

E) The creditors, specially lenders, should implement strong internal controls in treasury as well as legal department to fool proof the legal measures like issuing of notice u/s 13(2) of SARFAESI Act, 2002, undertaking of necessary and timely filing before DRT, ensuring sanctity of limitation period, proper service of notices to registered and available address of PGs along with email notices, compliance with relevant Rules and Regulations notified in IBC and ensuring a proper and well substantiated filing before Hon'ble NCLT.

F) IBBI may consider bringing in necessary Regulation and guidance to clarify the intent of Code w.r.t moratorium, opening of bank account, excluded debt, interplay of resolution plan in CIRP and independent proceeding of PGs under PGIRP, role of RP in PGIRP and role of BT in bankruptcy proceedings.

G) Since the provisions were framed at inception of Code but are being put into practise only now, the provisions may be re-looked with refreshed perspectives based on learnings obtained so far. More clarity on moratorium coverage, implementing cooperation of bankrupt and other stakeholders, provisions to build ecosystem of specialised domains and skill set like asset tracing may be evaluated.

Conclusion

The object of individual insolvency resolution is to rehabilitate the individual debtor and to remove the social taboo surrounding the mechanism. The concept of moratorium, both in PGIRP and bankruptcy, allows breathing space to debtor and creditors for negotiation / realisation of assets and the Code allows for automatic discharge as well u/s 119 as part of repayment plan in PGIRP. Even in bankruptcy, the notion is to achieve a discharge by realisation of assets and settling of claims as per order of priority of payment so as to enable the bankrupt to start a fresh chapter in their life and not be bogged down my parallel / multiple insolvency and bankruptcy proceedings which run throughout their life and deprive them to live with dignity. Hence, although we have a great start with availability of an constitutionally upheld framework, we need to evaluate practical challenges, prevalent practices and market dynamics to fine tune the Code and Regulations with required changes to make the framework more efficient and effective.

CA. Binay Kumar Singhania
Insolvency Professional

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025: Analysis and Detailed Commentary

This bill has been placed before Parliament and has been sent to select committee and it will become effective after approval from Parliament and public notification.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 is a transformative attempt to plug critical loopholes, streamline insolvency proceedings, and respond to judicial precedents that have caused policy dilemmas. Below is an elaborated, structured article integrating your supplied points with authoritative recent updates and commentary from legal and policy sources.

MANDATORY ADMISSION OF CIRP: NULLIFYING VIDARBHA

The Bill codifies three clear grounds for CIRP admission under Section 7: (i) Proof of default, (ii) Complete application, and (iii) No disciplinary proceedings against the resolution professional. No rejection is permitted on additional grounds. The previous Vidarbha Industries judgment, which allowed NCLT discretion on admitting CIRP, is expressly nullified—discretion is now eliminated.

- Records from information utilities (IU) are now conclusive evidence of default.
- The Adjudicating Authority must admit a CIRP if these three conditions are met—no further inquiry into merits is allowed.

GOVERNMENT DUES: RESOLVING THE RAINBOW PAPERS DILEMMA

One of the most impactful changes under the IBC Amendment Bill, 2025 is its explicit override of the Rainbow Papers Ltd. Supreme Court ruling (2022), which had allowed government statutory dues to be treated on par with secured debt under section 53 in the liquidation waterfall. The Amendment now directly clarifies (Section 3(31), 53):

- Security interest arises only by mutual agreement between parties, not by mere operation of law. Tax dues and similar government claims do not create security interest, even if statutory language purports to do so.
- Waterfall provision clarified: Government dues for the two years preceding liquidation commencement, whether secured or unsecured, fall under clause (e) which covers operational creditors, while the rest go under clause (f) which is any remaining debt.
- No contractual or statutory priority above secured creditors: Senior chargeholders take precedence, and workmen's parity cannot be negated by contracts. Preferential treatment for Workmen dues van not be negated by Contractual agreement but contractual agreement between secured financial creditors will prevail.

  This brings commercial certainty, restores the intended creditor rights under IBC, and addresses widespread concerns over diluted recoveries for lenders.

WITHDRAWAL OF CIRP APPLICATIONS: PROCEDURAL REFINEMENT

The Bill restricts withdrawal of CIRP applications post-admission:

- Withdrawal possible only after Committee of Creditors (CoC) is constituted, and only with 90% CoC consent,
- No withdrawal after first invitation for resolution plans,
- Establishes a strict 30-day timeline for courts to decide withdrawal applications, with mandatory reasons for any delay.

  This reduces settlement-induced litigation and forum shopping, encouraging settlements before formal processes begin.

SERVICE PROVIDERS' DUTY TO COOPERATE

Section 19 (and 34(3)) extends the cooperation mandate:

- Not only personnel or promoters but also service providers (auditors,Consultamts etc.) must cooperate with insolvency professionals (IPs).
- Enhances outreach for IPs and streamlines the gathering of information essential for resolution and liquidation.

TRANSFER OF GUARANTOR ASSETS TO CORPORATE DEBTOR'S CIRP

A new Section 28A enables creditors who have enforced security interest against guarantors (under SARFAESI, 2002) to transfer such assets into the CIRP of the principal Corporate Debtor (CD).

In case of CIRP proceedings of Corporate Guarantor continues, the subject to CoC approval and, if the guarantor is also in insolvency, with 66% creditors' approval.

SEPARATE APPROVALS FOR RESOLUTION PLAN IMPLEMENTATION AND DISTRIBUTION

Section 31(1) now allows CoC to:

- Approve resolution plan implementation, and,
- Separately approve the manner of distribution—a reform first proposed in the Discussion Paper (Feb 2025).

  This untangles approval bottlenecks for complex cases with multiple stakeholder groups and competing priorities. This will enable NCLT to approve Resolution Plan pending Distribution.

RESTORATION/REINSTATEMENT OF CIRP POST LIQUIDATION INITIATION

Two new provisions provide "second chances" for revival:

- Life after CIRP (Section 33(1A)): If the CoC (with 66% supermajority) votes to restore CIRP after the case is fit for liquidation, the entity gets a 120-day window for resolution.
- Reinstatement for Contravention (Section 33(4)): If a successful resolution plan is violated, any affected party may apply to reinstate CIRP offering flexibility to recover value for stakeholders if a plan fails during implementation.

DIRECT DISSOLUTION AFTER FAILED CIRP

Direct dissolution (with CoC's 66% majority approval) if CIRP fails, bypassing lengthy liquidation. Section 54(2A). However, avoidance actions and suits concerning proceeds remain unaffected.

MORATORIUM DURING LIQUIDATION AND FORUM SHOPPING

Moratorium under Section 14 is extended to liquidation:

- Suits and enforcement against the CD's assets are suspended during liquidation,
- Section 33(6) clarifies that liquidators need Adjudicating Authority (AA) permission for new or continued suits.

  This aims to prevent disruptive litigation and forum shopping.

RESTRICTIONS ON APPOINTMENT OF RESOLUTION PROFESSIONAL AS LIQUIDATOR

- Section 34(4): Resolution Professionals (RPs) whose plans fail for non-compliance cannot become liquidators for that case.

  Committee of Creditor continue even in Liquidation

- Liquidation Consultation: The former stakeholder consulting regime (Section 35(2)) is deleted; CoC now supervises liquidation directly (creditor-driven process). The liquidator updates claims from CIRP and makes decisions under direct CoC oversight; NCLT/IBBI deviations must be reported, clarifying responsibilities.

CHANGES IN FRAMEWORK FOR AVOIDANCE TRANSACTIONS

- Look-back periods for preferential/undervalued/fraudulent transactions now start from CIRP application date—not just commencement, meaning the period between filing and admission also counts. It

- Assets routed through related parties to be given "good faith" protection; It expands the reach of avoidance actions to prevent asset stripping.

ENFORCEMENT OF SECURITY INTEREST AND PRIORITIES DURING LIQUIDATION

- Majority consensus (66%) required to enforce security interest over same asset(s) outside liquidation.
- The "value rule": Secured creditor can recover only up to the current value of security; excess claim is treated as unsecured. This clarification may retrospectively affect many past cases.
- Inter-se priority: Senior chargeholders outrank second chargeholders, and this principle applies to both liquidation and resolution plans.

  Workmen's parity is protected: Any attempt to contractually subordinate workmen's dues below secured creditor entitlements is nullified.

COC ROLE IN LIQUIDATION, AND "CLEAN SLATE" PRINCIPLE

The CoC supervises liquidation throughout; the "clean slate principle" is codified to ensure that post-resolution, prior claims are extinguished, giving certainty to new management and investors.

FATE OF AVOIDANCE PROCEEDINGS AT DISSOLUTION

The CoC determines how pending avoidance proceedings and distribution of their proceeds are handled, as well as decisions regarding ongoing suits at the time of dissolution.

BYE-BYE FAST-TRACK CIRP

Chapter IV (fast-track CIRP) is deleted; no cases had utilized this regime, streamlining the Code.

CREDITOR-INITIATED INSOLVENCY (CIIRP): A NON-ADJUDICATORY TRACK

A new Chapter IV-A creates a creditor-driven insolvency route (CIIRP):

- Creditors holding at least 51% of financial debt may initiate insolvency after a 30-day notice for representation.
- The RP is appointed by the initiating creditor, and the Board remains operative.
- Moratorium is not automatic; it must be requested and ordered.
- Resolution plan must still be AA-approved.
- If default is unproven, or process breaches occur, the initiation may be void or converted to standard CIRP.

GROUP INSOLVENCY

Chapter VA enables group insolvency for entities linked via control, ownership, or holding–subsidiary or associate relationships as per the Companies Act, 2013. Mechanisms include procedural coordination, potential for common benches, and shared CoC/RP under Central Government-framed rules.

Salient Features of Group Insolvency Framework

- Common Bench: The Central Government may mandate a single NCLT bench for group entities, allowing coordinated hearing and orders.
- Coordination Mechanisms: Provision for coordination between insolvency professionals, CoCs, and liquidators of entities involved in group proceedings (e.g., via a common resolution professional, coordination agreements, or joint CoC deliberations).
- Committee of Group CoCs: The rules may provide for a joint committee comprised of CoCs from all companies within the group being resolved.
- Binding "Coordination Agreements": Participating companies and their CoCs may enter into binding arrangements for information sharing, joint sales/strategy, or sequencing of resolution, subject to court ratification.
- Cost Allocation: Rules may specify how coordination costs are split among group companies.
- Parliamentary Oversight: Any rules made under this section must be tabled before both houses.

- Flexibility: The framework allows for modifications to existing IBC provisions strictly for group insolvency—enabling the government to adapt the law as needed for effective administration.

Why Group Insolvency Matters

- Addressing Value Loss and Complexity: Previously, insolvency processes ran independently for each company, even when assets/operations were tightly interlinked (as in many Indian conglomerates or real estate groups). This led to value erosion, duplicated efforts, and stakeholder confusion.
- Coordinated Solutions: Group insolvency allows for joint sale, financing, restructuring, or partial asset resolutions that more closely match actual business realities, maximizing value for all creditors and stakeholders.
- International Best Practice Alignment: The provision aligns India's regime with evolving global best practices, as many advanced jurisdictions now recognize the necessity of coordinated group insolvency to address modern business structures.

Key Opportunities and Challenges

- Opportunity: Unlocks higher recoveries and transactional value in group corporate failures.
- Challenge: Requires sophisticated operational rules, judicial understanding, and creditor cooperation. Precise boundaries of "control/significant ownership" and processes for dissent or cross-claims could generate complex, novel legal questions.

CROSS BODER INSOLVENCY

India's first comprehensive framework for cross-border insolvency, aligning it with international best practices, particularly the UNCITRAL Model Law. This enables Indian courts to recognize and cooperate with foreign insolvency proceedings, facilitating smoother coordination for creditors and asset recovery across jurisdictions. By empowering the government to create specific rules for these cases, the amendment seeks to resolve challenges posed by conflicting court orders and fragmented claims, thereby protecting stakeholder interests and boosting global investor confidence. The new regime is critical for multinational companies operating in India and Indian corporates with international footprints, ensuring that insolvency processes are predictable, transparent, and efficient, and that overseas assets are effectively included in Indian proceedings or vice versa.

VOLUNTARY LIQUIDATION: NOW REVERSIBLE

Section 59(5A) allows a corporate debtor to reverse voluntary liquidation through special resolution and creditor approval.

PENALTY FOR VEXATIOUS PROCEEDINGS

Section 64A introduces significant penalties (up to ₹5crore or three times undue gain/loss) for vexatious/frivolous proceedings to deter misuse of the AA, freeing up NCLT for substantive insolvency matters. Section 183A applies similar penalties for individuals/partnerships.

TIMELINE REDUCTION FOR LIQUIDATION

Liquidation must now be completed by the liquidator within 180 days (six months) from commencement. A further 90-day extension is possible for sufficient cause. This reduces the delays and expedites closure, though practical challenges remain.

PENALTY REGIME AND EXPANDED RULEMAKING POWERS

Section 235A mandates penalty for breaches, empowering AA to swiftly penalise violators. Sections 239/240 enhance powers for rule-making covering information access, critical goods/services moratorium termination, CoC composition and voting, valuation and sale during liquidation.

AMENDMENTS IN FRAMEWORK FOR PERSONAL INSOLVENCY

- No interim moratorium for personal guarantors.
- Bankruptcy is triggered if no repayment plan in 21days post claim-submission.

- Meetings for repayment plans are mandatory for personal guarantors of CDs.
- Waterfall priority extended: Government dues are paid at 4th priority for two-year preceding period, rest as residual claims.

Undervalued transactions intended to place assets beyond reach of claimants will be reversed.

Penalty for frivolous proceedings related to personal insolvency inserted (Section 183A).

CONCLUSION

The IBC Amendment Bill, 2025 closes critical gaps in priority disputes, enhances creditor empowerment, introduces new creditor-initiated and group insolvency regimes, strengthens procedural discipline, and affirms commercial certainty. By legislatively overriding Rainbow Papers and Vidarbha, and elevating the Committee of Creditors' role, the Bill restores the primacy of consensual creditors, expedites value recovery, and moves India closer to global insolvency standards.

These reforms are expected to timely completion of insolvency cases, value maximization of CD, curtailment of time taken by adjudicating authorities, reinstatement of security interests, clarity over government dues and ultimately strengthen corporate governance and market stability.

At the same time, The Code has become more complicated and will invite more litigations.

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Ensuring Fair Play: Section 65 and the Fight Against Fraudulent CIRP in India

The Supreme Court of India has consistently held that any legal proceeding, no matter how formal, is rendered void if built on a foundation of fraud. It is a well-established principle that those who approach the courts with dishonest intentions seeking not justice but to manipulate the judicial system for malicious purposes should not be entertained. Fraud vitiates everything even the utmost solemn proceedings.

Similarly, the Insolvency and Bankruptcy Code, 2016 has brought in Section 65 to combat and weed out the fraudulent initiations which have been filed to defraud creditors, escape from financial fraud, using CIRP as a shield to avoid fulfilling obligations under arbitral awards, etc. Therefore, Section 65 penalizes any person who maliciously and fraudulently initiates the insolvency resolution process or liquidation process thereby imposing penalty ranging from a minimum of one lakh rupees to a maximum of one crore rupees.

A. Section 65: The IBC's Watchtower

It is significant to note that Section 65(1) deals with a situation where CIRP is initiated fraudulently "for any purpose other than for the resolution of insolvency or liquidation". It provides a safeguard against the fraudulent initiation by any person, including producing or omitting to produce false material facts knowing them to be material to the case, or wilfully concealing a dispute between the parties before the initiation of CIRP, or filing false facts to evade financial or operational debt. The conjoint sections to be read with are Section 75 for Financial Creditors, Section 76 for Operational Creditors and Section 77 for Corporate Debtors.

However, in practice the legal jurisprudence remains unclear on the stage at which the Courts have to decide whether the proceedings initiated by any person is initiated with fraudulent intent or malice. At present, as a trend, it can be seen that, in cases where the corporate debtor has admitted the debt in the reply affidavit or has just admitted the debt and has only challenged technical grounds/errors by the financial creditor, the respective NCLTs have caught hold of the fraudulent initiation and imposed penalties accordingly. For example in the matter of S.R. Data Services Pvt. Td. V. LQI Infra Ltd. C.P. (IB)/187(KB)2023, the NCLT Kolkata bench noted identical pattern of disbursements from the Financial Creditor to the Corporate Debtor, mirrored by deposits from another company on the same dates between February 2017 and March 2019. This suggested round-tripping of funds, indicating an intent to artificially create a scenario to push the Corporate Debtor into insolvency. Further, the Financial Creditor, with an authorized and paid-up capital of only Rs. 1 lakh, was lending crores to the Corporate Debtor, which the court found implausible and indicative of a sham transaction. The court concluded that the CIRP was initiated to exploit the moratorium benefits under the IBC, rather than for genuine insolvency resolution, violating the spirit of Section 65. Consequently, a penalty was imposed on each party, and the petition was rejected.

In fact, the abovesaid is one of the reasons why the Supreme Court in Beacon Trusteeship Ltd. v. Earthcon Infracon (P) Ltd., 2020 SCC OnLine SC 1233 and the NCLAT in Hytone Merchants (P) Ltd. v. Satabadi Investment Consultants (P) Ltd., 2021 SCC OnLine NCLAT 598 held that it is not mandatory for the Courts to deal with Section 7 admission first if Section 65 has been filed. The Application for fraudulent initiation is to be treated first before admission of

the Corporate Debtor. However, this Order has been modified by an Order of Division Bench on 21.03.2024 passed in LPA 236/2024 wherein Hon'ble Delhi High Court directed that NCLT shall proceed with the hearing of both Section 7 and Section 65 petitions simultaneously in accordance with law.

B. Adjudicating Authority's Discretion: A Closer Look at their Power

The Code grants the Adjudicating Authority significant degree of discretionary power, which means they have the freedom to make decisions based on their own judgment, in line with the provisions of the Code and its intent. This is particularly crucial in situations where a fraudulent act is detected well after the Corporate Insolvency Resolution Process (CIRP) has begun. If a narrow interpretation of Section 65 of the IBC is adopted, limiting its applicability to the pre-admission stage, the provision would lose its relevance in such cases. Consequently, Section 65 of the IBC can be invoked by an aggrieved party at any stage, whether pre-admission or post-admission. On the other hand, Section 65 also states it is applicable only in cases where a party initiates insolvency proceedings with fraudulent or malicious intent i.e., when there is no real debt or default, and the objective is to harm or harass the opposite party. It is the Court's discretion to decide on the merits of the Application filed by the creditor to categorize the meaning of "fraudulent" by way of establishing no real debt or default or any other loopholes.

In the matter of Rishima SA Investments LLC and Ors. vs. Sarga Hotel Private Limited and Ors. (27.08.2021 - NCLAT) the Hon'ble NCLAT held that in view of the submissions and arguments made by the parties and a close perusal of documents submitted by the Operational Creditor and other parties lead to the conclusion that the application U/s 9 of the IBC,2016 contained documents of doubtful origin which do not inspire confidence. The allegations of collusion between the Operational Creditor and the Corporate Debtor raised reasonable doubt. The tribunal observed that it was quite strange that the corporate debtor, instead of responding to the allegations regarding the debt and opposing the application to avoid the effect of CIRP, proceeded to admit the debt. This is a clear sign of collusion between the corporate debtor and the Operational Creditor.

Rishima SA Investments LLC and Ors. vs. Sarga Hotel Private Limited and Ors. (27.08.2021 - NCLAT) : MANU/NL/0366/2021 admission of the debt, coupled with the timing of the application—filed right after an adverse arbitration award—raised serious doubts about collusion and malicious intent, suggesting the CIRP was initiated to stall legal proceedings rather than for genuine insolvency resolution. As a result, the NCLAT set aside the CIRP, quashed all actions taken under the process, and released the company from the moratorium.

In State Bank of India vs. L.R. Builders Pvt. Ltd. (23.05.2025 - NCLAT), the Ld. Appellate Tribunal reiterated the law laid down by the Hon'ble Supreme Court in 'Kranti Associates v. Masood Ahmed Khan (2010) 10 SCR 1070] wherein the Apex Court held that judicial orders must be reasoned, reflecting the Tribunal's application of mind to the facts and legal principles involved. Therefore, though the Tribunal has discretionary powers under Section 60(5) r/w Rule 11 of the NCLT, Rules 2016, a complete application of the mind and law by correct reading of the facts and evidence is of utmost importance and shall be followed before passing a judgement.

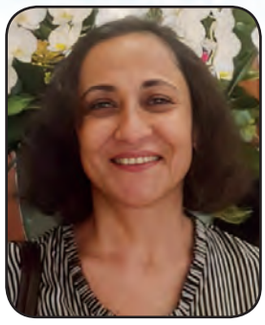
C. A legal tug-of-war on power of courts

The judgment rendered by the Hon'ble Supreme Court in Vidarbha Industries Power Ltd. v. Axis Bank Ltd. on July 12, 2022, introduced a significant degree of legal uncertainty, unsettling the established position concerning the discretionary admission of Section 7 applications by the NCLT. This judgment prompted the Ministry of Corporate Affairs, Government of India, to invite comments from the public on proposed amendments to the Code sometime on January 18, 2023. In the notification, the MCA observed that although Section 65 specifically provides a remedy through penal provisions for false or malicious CIRP applications but the Code lacks similar safeguards for other types of baseless or frivolous proceedings filed before the Adjudicating Authority. To prevent such a situation the MCA has suggested empowering the Tribunal to impose penalties on any party filing a frivolous or vexatious application irrespective of the specific section under which it is filed. However, the same remains ambiguous due to the position laid down in the Vidarbha Judgment wherein only "debt" and "default" has to be ascertained by the NCLT to admit a Section 7 Application.

As of today, the future on discretionary power is in a tug-of-war. The Supreme Court is currently reviewing the matter, which could bring some much-needed clarity. The Supreme Court has issued a notice in the civil appeal Maganlal Daga H.U.F & Anr vs Jag Mohan Daga & Ors. This case will re-examine the observations made in the Vidarbha Industries judgment. Since the case is still being heard, the final word on this isn't out yet. The ongoing developments highlight a dynamic legal landscape where the balance between judicial discretion and legislative intent is still being negotiated. Until the Supreme Court settles the question, it's crucial for anyone filing a Section 7 application to be thorough with the documentary evidence to prove that the Corporate Debtor is truly insolvent thereby necessitating the process of initiation of CIRP.

D. Conclusion

The law is clear that fraud vitiates everything, and the IBC is no exception. Section 65 of the Code specifically addresses situations where any person initiates CIRP with fraudulent or malicious intent for a purpose other than genuine insolvency resolution. This includes cases where false material facts are provided, disputes are concealed, or false claims are filed. However, the legal jurisprudence on the exact stage at which these fraudulent intentions should be adjudicated remains somewhat unclear. Courts have to carefully examine the facts to determine if there is a fraudulent association between parties.



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THE BHUSHAN STEEL SAGA - In defence of the judgment dated 2nd May, 2025, presently under review

I. PRELUDE, AND PRELIMINARY DISCUSSION

On 2nd May, 2025, vide a detailed judgment and order passed in the case titled "KALYANI TRANSCO V. BHUSHAN POWER AND STEEL LTD. AND ORS.", the Hon'ble Supreme Court rejected the resolution plan of the Successful Resolution Applicant ('SRA'), JSW Steel Ltd., for the Corporate Debtor ('CD'), Bhushan Power and Steel Ltd., and directed that the CD be liquidated in the manner envisaged by the Insolvency and Bankruptcy Code ('IBC' / 'Code'). Since the order was passed close to six years after approval of the plan by the Committee of Creditors ('COC') of the CD, and by the National Company Law Tribunal, and since JSW Steel Ltd., was stated to be successfully implementing the plan and turning around the beleaguered CD, the order created ripples and sent shock waves. The Court however listed out and dealt with significant procedural lapses in the conduct of the corporate insolvency resolution proceedings ('CIRP') ; and did not mince words in holding that the SRA, the Resolution Professional ('RP') and even the COC had failed to adhere to mandatory provisions of the Code and Regulations framed thereunder in the conduct of the CIRP of the CD. In deciding upon the liquidation route for the CD, the Court also based itself on its earlier, relatively recent judgment in the matter titled "STATE BANK OF INDIA AND OTHERS VS. CONSORTIUM OF MURARI LAL JALAN AND FLORIAN FRITSCH AND ANOTHER", and after excerpting the relevant paragraph from the said judgment, held as follows :-

"81. Recently, this Court in State Bank of India and Others Vs. Consortium of Murari Lal Jalan and Florian Fritsch and Another, has made very apt observations, with regard to the delaying tactics adopted by the Successful Resolution Applicant in implementing the Plan, and the NCLT and NCLAT adopting casual approach in exercising discretion in granting extension of the timelines fixed under the Code. The Court while directing the Corporate Debtor to be taken into liquidation, observed thus :-

> *'173. This litigation is an eye-opener also as regards the manner in which the implementation of plans are handled by the successful resolution applicant and the lenders involved in the process. Once a resolution plan is approved under the Insolvency and Bankruptcy Code, 2016 the successful resolution applicant undertakes a profound responsibility to implement the plan in both letter and spirit. This obligation is not merely an empty formality but an enduring commitment to restore the corporate debtor to viability and ensure a meaningful turnaround. The role of the successful resolution applicant is thus far more than a transactional duty towards the creditors or stakeholders; it embodies a pivotal responsibility to the distressed entity itself, which must be approached with utmost dedication and an earnest sense of duty. Regardless of the challenges that may arise, the successful resolution applicant cannot treat its obligations as optional or conditional, nor can it abdicate its responsibility in the face of unforeseen obstacles. Its efforts must reflect a determination to implement the plan fully and to rejuvenate the debtor company, as this is integral to the success of the Insolvency and Bankruptcy Code, 2016 framework and the spirit of economic revival it seeks to foster. The approach, therefore, must not be frugal or narrowly profit-driven, limited to viewing the transaction through a purely commercial lens. Instead, it must recognise that rescuing a distressed company is a responsibility of significant social and economic value, demanding a holistic and responsible strategy. This involves a dedication to long-term outcomes, where the successful resolution applicant adopts measures that genuinely support the debtor's rehabilitation, rather than making minimal or half-hearted attempts at implementation. The courts and Tribunals have consistently underscored that the successful*

resolution applicant's role transcends commercial interest and embodies a commitment to the larger purpose of corporate revival. Consequently, it must make thoughtful and sustained efforts, demonstrating adaptability and resilience even when faced with obstacles or operational impediments. Simply put, the successful resolution applicant cannot step back or dismiss its obligations by attributing delays or setbacks to the conduct of other stakeholders, as this would undermine the very purpose of insolvency resolution.

174-175……

176. The Insolvency and Bankruptcy Code, 2016 is silent as regards the phase of implementation of the resolution plan by the successful resolution applicant. This is mostly due to the fact that each resolution plan might be unique and customized to the specific needs of the corporate debtor and an excessive amount of statutory control over the implementation of the plan may prove to be counterproductive to the cause of the corporate debtor. However, this has unfortunately led to the consequence of giving excessive leeway to the successful resolution applicants to act in flagrant violation of the terms of the resolution plan in a lackadaisical manner. The successful resolution applicants repeatedly approach the Adjudicating Authority or the National Company Law Appellate Tribunal for the grant of reliefs in relation to relaxation of the strict compliance to the terms of the plan, including the timelines imposed therein. The National Company Law Tribunal and National Company Law Appellate Tribunal more often than not, accede to such requests in exercise of their inherent powers under rule 11 or their power to extend time under rule 15 of the National Company Law Tribunal and National Company Law Appellate Tribunal Rules, 2016 respectively. It is reiterated that the National Company Law Tribunal and National Company Law Appellate Tribunal must not entertain such repeated attempts at violating the integrity of a committee of creditors approved resolution plan by accommodating the incessant requests of the successful resolution applicants. The exercise of discretion as regards altering the binding terms of the resolution plan, including the timelines imposed, must be kept at a minimum, at best. The National Company Law Tribunals/National Company Law Appellate Tribunals need to be sensitized of not exercising their judicial discretion in extending the timelines fixed under the Insolvency and Bankruptcy Code, 2016 or the resolution plan, in such a way that it may make the Code lose its effectiveness thereby rendering it obsolete."

(Highlighting added)

It is in this backdrop that the Hon'ble Court passed its order dated 2nd May, 2025.

Aggrieved by the judgment and order of the Hon'ble Court, the Punjab National Bank, being one of the Financial Creditors ('FC) of the CD, then filed a review petition seeking review of the same. Since the Hon'ble Judge who authored the order had by then retired, another bench was constituted for dealing with the review petition. An order then came to be passed in the same on 31.07.2025. Vide paragraph 3 of this order the Hon'ble Court held as under :-

"We are of the view that the common impugned judgment and order dated 02.05.2025 does not correctly consider the legal position as laid down by a catena of judgments, including the following:

1. Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., reported in (2021) 10 SCC 401.

2. Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., reported in (2021) 9 SCC 657.

3. Vallal RCK v. Siva Industries & Holdings Ltd. reported in (2022) 9 SCC 803.

4. Ngaitlang Dhar v. Panna Pragati Infrastructure (P) Ltd., reported in (2022) 6 SCC 172.

5. K. Sashidhar v. Indian Overseas Bank, reported in (2019) 12 SCC 150.

6. Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta reported in (2020) 8 SCC 531.

7. Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., reported in (2022) 1 SCC 401.

8. Swiss Ribbons Private Limited v. Union of India, reported in (2019) 4SCC 17.

9. Arcelor Mittal (P) Ltd. v. Satish Kumar Gupta, reported in (2019) 2 SCC 1.

10. B.K. Educational Services Private Limited Vs. Parag Gupta and Associates, reported in (2019) 11 SCC 633."

In this cryptic order passed by the Court while considering the review petition however, seeking review of the order dated 2nd May, 2025, it is not discussed, even summarily, which aspect of the legal position had not been considered correctly in the order dated 2nd May, 2025, under review. A catena of judgments is indeed referred to, and the review was allowed on the ground that there is an error apparent on the face of the earlier judgment and order, without

however discussing the same as the Hon'ble Courts usually doing when accepting a plea for review of an earlier order. Paragraph 10 of the order dated 31.07.2025 does record that "all questions of law shall remain open for both parties to argue at the stage of final hearing", however, some discussion on which aspect of the legal position the previous order has considered incorrectly, as well as the error apparent on the face of the order, would have been welcome. In any event, the case was finally argued again by the learned counsel before the Supreme Court on 11th August, 2025, and judgment has been reserved. It is keenly awaited by all stakeholders.

While we await pronouncement of judgment, please find in this article, a summarization of and discussion on the judgment of the Supreme Court passed on 2nd May, 2025, review of which is sought, and do assess for yourself whether it was flawed in its assessment of the legal position, and application of the law to the facts at hand.

II. A BRIEF SUMMARY OF FACTS RELEVANT TO APPRECIATE THE CONTEXT

CIRP proceedings against the CD were triggered pursuant to admission of a petition under Section 7 of the IBC filed by the Punjab National Bank, on 26.07.2017. The CD, Bhushan Power and Steel Ltd., was one of the "dirty dozen" identified by the RBI vide circular dated 13.06.2017, for insolvency resolution under the IBC. The RP admitted FC claims to the tune of Rs. 4,72,04,51,78,073.88, and Operational Creditors' ('OC') claims to the tune of Rs. 6,21,37,61,735. Resolution plans were invited and submitted by JSW, Tata Steel and Liberty House. In 18th Meeting COC, JSW was found to have scored the highest in terms of the said evaluation matrix. Eventually, COC e-voting resulted in the approval of the Consolidated Resolution Plan, as amended and clarified by an Addendum Letter issued by JSW, after the 19th COC meeting. The RP then filed an application under Sections 30(6) and 31(1) of the IBC, read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations ('CIRP Regulations') before the NCLT for approval of the Resolution Plan submitted by the JSW. Pending these proceeding, the CBI registered an FIR against the CD, its Directors, and others on 05.04.2019, under Section 120B read with Sections 420, 468, 471, 477A of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The Directorate of Enforcement ('ED') registered a case on 25.04.2019 for the offences under the Prevention of Money Laundering Act, 2002 ('PMLA'). Vide a common judgment and order dated 05.09.2019, the NCLT dismissed various applications that had come to be filed by the erstwhile Directors, and approved the Resolution Plan of JSW, subject to the conditions listed out in Para 128 of the judgment. The SRA, JSW, challenged some of the conditions mentioned in plan approval order passed by NCLT in appeal under Section 61 before the NCLAT. In the meantime, the ED passed a provisional attachment order ('PAO') attaching some assets of the CD on 10.10.2019 under Section 5 of the PMLA. This was challenged by JSW before NCLAT. The NCLAT stayed the PAO as well as the Resolution Plan so far it related to payment of creditors, vide order dated 14.10.2019. The COC challenged the PAO before the Supreme Court, which stayed the same vide order dated 18.12.2019. In addition to the appeal filed by JSW before the NCLAT against the plan approval order, other Company Appeals had also come to be filed by various parties. Vide the Judgment and Order dated 17.02.2020, titled JSW STEEL LTD. V. MAHENDER KUMAR KHANDELWAL & ANR, the NCLAT upheld the plan approval order dated 05.09.2020 passed by the NCLT, subject to certain modifications/clarifications by it in the judgment. Appeals were then filed against the order of the NCLAT before the Supreme Court, but it is pertinent that there was no stay against implementation of the Resolution Plan.

III. SOME CONDITIONS IMPOSED BY THE NCLT'S PLAN APPROVAL ORDER WHICH WERE MODIFIED BY THE NCLAT'S ORDER DATED 17.02.2020

(i) The NCLT had refused various reliefs sought from statutory authorities, but permitted the SRA to file appropriate applications before the competent authorities. The NCLAT held that all penalties, interest, delayed payment charges and any other liabilities for non-compliance with statutory obligations would stand settled in accordance with the provisions of the approved plan.

(ii) NCLT had permitted the COC to file appropriate applications if criminal proceedings against the erstwhile board resulted in recovery of money that had been siphoned off or on account of tainted transactions, etc., but the NCLAT set this aside.

IV. REGARDING CIVIL APPEALS BEFORE THE SUPREME COURT AND IMPLEMENTATION OF THE PLAN

The Hon'ble Supreme Court while admitting the Civil Appeal by Kalyani Transco, an OC of the CD, as well as other appeals filed by other parties, had vide order dated 06.03.2020, recorded the statement of the Senior Counsel appearing for the COC affirming that were the COC to receive money, it would return the said amount within two

months if the appeal were to succeed. The SRA, JSW, filed an application ostensibly seeking clarification with respect to this order, suggesting that or enquiring whether it was obligated to implement the Resolution Plan during pendency of the SLPs. This was stoutly resisted by the COC, which contended this was misuse of process of the Court, and sought direction to JSW to implement the plan. The State Bank of India ('SBI') being one of the FCs of the CD then filed an application, and while pointing to the fact that the Court had categorically observed during the hearing on 10.06.2020 that there was no stay against implementation of the plan, invited the Court's attention to discussions held between the COC and JSW. It was also stated that JSW vide letter dated 26.02.2021 had expressed the desire to implement the Resolution Plan, and offered to deposit an amount of Rs. 19,350,00,00,000 (Rupees Nineteen Thousand Three Hundred and Fifty Crores) into an escrow account, as an 'Upfront Payment Amount', as defined in the Resolution Plan, within 30 days of acceptance of the said letter in writing by the FCs. It was also submitted that this would be in consonance with the approved Resolution Plan, and would in any case be subject to the order passed by the Court on 06.03.2020. Further, that if the Hon'ble Court were to grant the benefit under Section 32A of the Code to the CD/SRA, resulting in attachment of assets by the ED being set aside, the COC would have no obligation to refund the upfront payment amount to the SRA. It is pertinent that civil appeals were also filed by the COC before the Hon'ble Supreme Court vis-à-vis the order of attachment of the CD's assets by the ED; and by the ED against the order passed by the NCLAT staying the attachment and approving the resolution plan. These appeals were disposed off vide an order passed with the consent of parties, without expressing any view on merits, directing the ED to handover the control of the properties of the CD to JSW.

V. ISSUES RAISED, & DECISION OF THE SUPREME COURT THEREUPON, INCLUDING REASONS THAT WEIGHED WITH IT IN EVENTUALLY SETTING ASIDE THE APPROVED RESOLUTION PLAN

(i) A very pertinent issue raised was with respect to 'person aggrieved' as contemplated by Sections 61 and Section 62 of the IBC, and the maintainability of the appeals. Relying on the Supreme Court's three-judge Bench judgment in GLAS TRUST COMPANY LLC V. BYJU RAVEENDRAN AND ORS. the Court held that there is no rigid locus requirement to institute an appeal challenging the order of NCLT before the NCLAT, or an order of NCLAT before the Supreme Court. Any person who is aggrieved by the order may institute an appeal.

(ii) With respect to the challenge and appeal by the SRA however, the Court held that since the NCLT vide order dated 05.09.2019 had approved the SRA, JSW's resolution plan, it could not be said to be 'person aggrieved'. Further, that its appeal did not in any case fit in within the parameters set out in Section 61 of the Code. The approved resolution plan was binding on all stakeholders including JSW as per Section 31(1) of the Code, but the NCLAT vide the impugned judgment dated 17.02.2020 had not only entertained but also allowed the appeal filed by JSW, which in fact was not legally maintainable.

(iii) The Supreme Court also decried the NCLAT's directions with respect to declassifying the CD as Promoter of any other company, entity, etc., which was neither subject matter before the NCLT nor before the NCLAT in the company appeal.

(iv) The Supreme Court also stated that it was stunned to note that the NCLAT had virtually justified the non-disclosure and suppression of material facts in JSW's Resolution Plan regarding a Joint Venture agreement dated 05.03.2008 between it and the CD, Bhushan Power and Steel Ltd., and Jai Balaji pursuant to an order of the Government of India in the matter of joint allocation of Rohne Coking Coal block. That these facts had surfaced during the PMLA proceedings initiated against the CD and others, but since the issue whether JSW was therefore a 'related party' of the CD was not pressed by the counsel appearing before it, the Court did not deal with the same. The Court did however look at this issue from the context of mandatory requirements under Section 29A of the IBC. The Court noticed that the Resolution Professional had not submitted the Compliance Certificate in Form H along with the plan approval application, which requires the Resolution Professional to certify that the Resolution Plan complies with all provisions of the IBC and the CIRP Regulations, and does not contravene the provisions of any law in force. The Court then held that since the eligibility/ineligibility of the Resolution Applicant to submit the Resolution Plan goes to the root of the matter, the Resolution Professional ought to have verified and certified that the contents of the affidavit filed by the SRA confirming eligibility under Section 29A were in order. The Court also opined that this then raised serious doubts in its mind regarding the very eligibility of JSW to submit

the Resolution Plan, which were further fortified by the observations made and justification given by the NCLAT for the non-disclosure and suppression by JSW in the resolution plan regarding the joint venture agreement between JSW, Bhushan Power and Steel Ltd. and Jai Balaji.

(v) The Court then considered whether the NCLAT had powers of judicial review with respect to decisions taken by the Statutory Authority under the PMLA. The Court noticed that the PAO passed by the ED attaching the assets of the CD, was after the approval of the resolution plan of JSW. JSW challenged the same vide an appeal filed before the NCLAT. The NCLAT vide the order dated 14.10.2019 stayed the PAO dated 10.10.2019. The NCLAT vide its judgment dated 17.02.2020 also held that in view of Section 32A of the IBC, the ED did not have the power to attach assets of the CD once the Resolution Plan stood approved, and that the criminal investigations against the CD also would stand abated. The NCLAT also declared the attachment of assets of the CD by the ED as illegal and without jurisdiction. After noticing the above the Court noticed that the NCLT and NCLAT are constituted under Sections 408 and 410 of the Companies Act, 2013 and not under the IBC. Their jurisdiction and powers are circumscribed under Sections 31 and 60 respectively of the IBC. Furthermore, that neither the NCLT nor the NCLAT were vested with powers of judicial review over decisions taken by the government or any statutory authority in relation to a matter in the realm of Public Law. In so holding the court relied upon its three-judge Bench judgment in the case of EMBASSY PROPERTY DEVELOPMENTS PVT. LTD. VS. STATE OF KARNATAKA & ORS. The Court held that the NCLAT did not have any power or jurisdiction to review decisions of the statutory authority under the said law.

(vi) The Court emphasized that the objective of the Code is that CIRP be conducted and concluded in a time bound fashion, and allowing proceedings to be indefinitely delayed frustrates the very object of the Code. The Court noticed that in this case, since CIRP had commenced on 26.07.2017, Section 12 of the IBC as it stood prior to its amendment on 16.08.2019, would apply. Further, that in view of the judgment in ARCELORMITTAL INDIA PVT. LTD. VS. SATISH KUMAR GUPTA & ORS, Section 12(1) would have to be construed as mandatory in nature, and in that pre-amendment stage, 270 days' time limit was statutorily provided for the completion of proceedings. In terms of Section 12(2) of the IBC, the RP was required to file an application seeking extension of time before expiry of the 180 days period, which he however failed to do. Neither did he comply with Regulation 39(4) of the CIRP Regulations, which envisages that submission of the resolution plan approved by the COC to the A.A. by the RP at least 15 days before the expiry of the maximum period permitted under Section 12 for completion of CIRP. Moreover, that the consequence of there being no Resolution Plan for the CD before the maximum period permitted for completion of CIRP had expired, was that an order be passed in terms of Section 33 of the Code for the liquidation of the CD. The Court also noticed that in this case the RP had filed the application for approval of resolution plan beyond even the period of 330 days, which had expired much prior to the filing of the said application. Hence, the Court held that the NCLT had committed a grave error of law in approving the plan vide its order dated 05.09.2019.

(vii) The Court then deliberated further upon the role of RPs in CIRP proceedings, and particularly noticed how the RP in the present case had conducted the proceedings. The Court noticed that there was an inexplicable delay on the part of the RP to file application under Section 31 of the IBC. Notwithstanding an order dated 12.07.2018 by the NCLAT in the appeal filed by one of the Prospective Resolution Applicants ('PRAs') (Tata Steel) holding that the COC could act in terms of Section 30(4) of the Code, and the RP could place the approved plan before the A.A. for appropriate orders under Section 31 of the IBC, and notwithstanding that the e-voting process was conducted on 15.10.2018 - 16.10.2018, the plan was placed by the RP before the NCLT for its approval only on 14.02.2019, without any justification submitted for this delay. Expounding on the role of the RP, the Court emphasized that as per the scheme of the Code, the role of the RP while conducting CIRP was not only of an 'Administrator or Facilitator', but also of an 'Invigilator', to ensure that such proceedings are completed in a time bound manner, for maximisation of value of assets, and in order to balance the interest of the stakeholders. The Court stressed that all mandatory provisions of the Code have necessarily to be complied with ; and a very significant duty cast upon the RP under Section 30(2) of the Code is that after receipt Resolution Plans from the PRAs, he examine each plan and confirm that it conforms to the requirements of law. Further, that he is required

also to specifically confirm that the Resolution Plan does not contravene any of the provisions of the law for the time being in force. He has to present to the COC for its approval, only such Resolution Plans which are compliant in this manner. Moreover, as per Section 31(1) of the IBC, the A.A. is empowered to approve only such Resolution Plans approved by the COC under Section 30(4), that meet the requirements of Section 30(2).

(viii) "NON-COMPLIANCE OF MANDATORY PROVISIONS AND MISUSE OF PROCESS OF LAW"

(As spelt out in the judgment, with the portions in italics in this section excerpted from the judgment)

The Hon'ble Court, after hearing the parties and assessing their submissions opined inter alia that "in the instant set of Appeals, the respondents-JSW, CoC and Resolution Professional have sought to sweep many seminal issues under the carpet to cover up gross violations of the provisions of the IBC and of the Regulations 2016, at every stage of the CIR proceedings initiated against the CD-BPSL".

The Court noticed submissions to the effect that the Resolution Plan in question had been implemented in part by making payments to the FCs in March, 2021, and to the OCs in March, 2022. Further, that the 'Effective Date' was envisaged as being the date which 'shall in any event not exceed 30 (thirty) days from the NCLT Approval Date or such extended period which may be permitted by 66% majority of the lenders forming part of the erstwhile CoC'.

The Court also discussed that there was nothing on record to show how, when and by whom the Effective Date as contemplated in the Resolution Plan was extended. Thereafter, "If the Effective date was surreptitiously extended by some lenders, claiming to be part of CoC which had become functus officio and which had no authority to do so, any payment made or Equity infused by JSW under the garb of such decision, cannot be vindicated by the Court".

Furthermore, that, "no party can be permitted to deliberately create a situation where the proceedings in the Court would be frustrated or the Court's decision would become irrelevant or ineffective. A situation of fait accompli cannot be permitted to be created in the Court to frustrate the proceedings, more particularly when the CIR proceedings had ex facie stood vitiated on account of non-compliance of the mandatory provisions of law and on account of the misuse of the process of law by the parties."

(ix) In these facts and circumstances, the Court accepted the submission of counsel representing the ex-promoters that apart from the fact that there was gross non-compliance of the mandatory provisions of the IBC and the CIRP Regulations, there was also a "dishonest and fraudulent attempt made by JSW, misusing the process of the Court by not making the upfront payments as committed by it for about two and a half years and thereby enriching itself unjustly, and thereafter considering the rising prices of steel in the market, JSW sought to comply with the terms of Resolution Plan at a very belated stage, in collusion with the CoC and the Resolution Professional. The changing stance of CoC in the present proceedings also smacks of its bona fides and raises serious doubts about the exercise of its so-called commercial wisdom". These observations regarding changing stance of the COC were made after considering and listing out its back and forth during the course of the proceedings and the litigation. For instance, the manner in which the COC initially, on affidavit, had affirmed that because of the delay on the part of the SRA in implementing the Resolution Plan, it was entitled to compensation and to interest on claim amount of Rs.19,350 crores. It had also written letters raising grievances regarding non-payment of this upfront amount of Rs.19,350 crores within 30 days of the approval of the plan. Inexplicably however, it eventually changed its stance and accepted the payment of Rs. 19350 crores without demur, even though the Effective Date for implementation of the plan had already expired. No material whatsoever was placed on record to show how and when and by whom the Effective Date as stated in the Resolution Plan was extended. In this backdrop the Court considered the concept of 'commercial wisdom of the COC', and observed that commercial wisdom "is not a matter of rhetoric but is denoting a well-considered decision by the CoC as the protagonist of CIRP". Further, that the COC has to be mindful of the mandatory requirements of the Code as well as the Regulations framed by the Board, and ensure that the insolvency resolution of the CD is completed in a time bound manner. The Court then held that "If Resolution Plan does not comply with such mandatory requirements and such plan is approved by the CoC, it could not be said that the CoC had exercised its commercial wisdom while approving such Resolution Plan".

(x) With respect to the SRA, JSW, the Court concluded that it had demonstrated mala fides in failing to implement the resolution plan in a time-bound fashion. Further, than "An illegality of any nature cannot be permitted to be perpetuated, and a plea of fait accompli cannot be permitted to be raised by any party to cover up their illegal acts, after achieving the ill motivated intentions circumventing the law." Furthermore, that neither the Tribunal nor the Courts should give excessive leeway to SRAs, enabling them to act in flagrant violation of the terms of Resolution Plans or in a lackadaisical manner. The Court also held that any contravention of the terms of the approved Resolution Plan by any person on whom such plan is binding under Section 31, is liable to be prosecuted and punished under Section 74(3) of the IBC.

VI. THE HON'BLE COURT'S CONCLUSIONS (as excerpted from the judgment itself)

"(i) The Resolution Professional had utterly failed to discharge his statutory duties contemplated under the IBC and the CIRP Regulations during the course of entire CIR proceedings of the Corporate Debtor- BPSL.

(ii) The CoC had failed to exercise its commercial wisdom while approving the Resolution Plan of the JSW, which was in absolute contravention of the mandatory provisions of IBC and CIRP Regulations. The CoC also had failed to protect the interest of the Creditors by taking contradictory stands before this Court, and accepting the payments from JSW without any demurer, and supporting JSW to implement its ill-motivated plan against the interest of the creditors.

(iii) The SRA-JSW after securing the highest score in the Evaluation matrix in the 18th meeting of CoC, submitted the revised consolidated Resolution Plan with addendum under the garb of complying with the amendments made in the CIRP Regulations, 2016, and got the same approved from the CoC. However, JSW even after the approval of its Plan by the NCLAT, wilfully contravened and not complied with the terms of the said approved Resolution Plan for a period of about two years, which had frustrated the very object and purpose of the IBC, and consequently had vitiated the CIR proceedings of the Corporate Debtor-BPSL.

(iv) The Resolution Plan of JSW as approved by the CoC did not confirm the requirements referred to in sub- section (2) of Section 30, the same being in flagrant violation and contravention of the expressed provisions of the IBC and the CIRP Regulations. The said Resolution Plan therefore was liable to be rejected by the NCLT under sub-section (2) of Section 31, at the very first instance.

(v) The impugned judgment passed by the NCLAT in allowing the Company Appeal of JSW and issuing the directions without any authority of law and without jurisdiction is perverse, coram non judice and liable to be set aside."

VII. FINAL OUTCOME AND SUMMING

After thus concluding the Court quashed and set aside the judgments and orders dated 05.09.2019 and 17.02.2020 passed by the NCLT and NCLAT respectively. The Resolution Plan of JSW as approved by the COC was rejected, as being not in conformity with Section 30(2), read with Section 31(2) of the IBC. Thereafter, in view of the provisions of Section 33(1) of the IBC, and in exercise of the jurisdiction conferred under Article 142 of the Constitution of India, a direction was issued to the NCLT to initiate liquidation proceedings against the CD. A slew of consequential directions was also issued.

In the opinion of this author, in this backdrop of facts of this case, and the flagrant violation of law disclosed and discussed, the order and judgment dated 2nd May, 2025, currently under review could have acted as the 'corrective' that the present ethos of the IBC and its implementation by various stake-holders urgently requires. The law can be amended many times over ; but unless its provisions are implemented in letter and spirit by all stake-holders, especially those upon whom the obligation to ensure that its objectives are met is principally cast, its salutary vision is rarely, if at all, achieved.

All sights are now set on the judgment to be passed by the Hon'ble Court in review.

Shri Ravi Prakash Ganti
Insolvency Professional

Impact of IBC Amendment Bill 2025 on the Duties and Responsibilities of Insolvency Professionals

The IBC Amendment Bill 2025 has introduced sweeping changes in respect of most aspects of the insolvency resolution and to some extent liquidation processes. In respect of many of the amendments the Bill also provides for Regulations to be made to elaborate on the mode and manner in which the amended provisions are to be implemented.

The Bill has not just amended existing provisions to provide clarifications and remove pain points but has also made substantive changes to such provisions. But it has not stopped there. It has gone beyond and introduced many substantive provisions which did not even exist in the current Act.

Almost all amendments of older provisions as well as introduction of new provisions will have a significant impact on the understanding of their duties and responsibilities by Insolvency Professionals and the manner in which they are to be performed.

While we need to wait for the consequential amended Regulations to be proposed, finalised and notified, which can only happen after the amendment bill is passed by Parliament and notified by the Government, in this article I have attempted to identify, summarize and tabulate below all those amendment provisions, upto section 58J, which are likely to impact the role and the performance of duties by Insolvency Professionals:

Amended Sec	Subject Matter	Impact on IPs
3(31)	"Security interest" redefined to exclude impact of only operation of law	IRP/RP would need to draw up distribution tables for assenting and dissenting FCs in respect of each resolution plan received which would need to take into account the impact of this revised definition on the section 53 waterfall mechanism along with the illustrations and explanations added in sec 53
5(11)	"Initiation date" – proviso added	The "look back" period for avoidance transactions increases and IPs will need to take this change into account while arriving at any determination that the CD has been subject to any such transactions
5(26)	Expansion of features that can be part of a resolution plan	With the inclusion of "sale of one or more assets" that may be allowed, drafting of the IM and the RFRP will be impacted to clearly define which assets may be specified for sale as part of any resolution plan
5(28)	"voting share" clarified	Clarificatory; denominator not to include admitted claim amount of related parties while calculating vote share of each voting member of the CoC
12A	Conditions changed	IRP has to mandatorily make public announcement, collate and verify claims, constitute CoC and hold the first meeting irrespective of any proposal received for withdrawal of application u/s 7, 9 or 10
14(1)	Reference to sub-section 2A included	No immediate impact till Board makes any regulations regarding other excluded circumstances
18(b)	Collating of claims explained	Clarified that IRP/RP has power to verify and determine value of verified claims. IPs need to be vigilant that they do not start "adjudicating" claims which have not crystallized as that would lead to litigations and possibly disciplinary actions

Amended Sec	Subject Matter	Impact on IPs
19(1 & 2)	Description of persons required to assist and cooperate expanded	IRP/RP can now approach any person who has been "engaged in a contract for service with the corporate debtor" for "assistance and cooperation". This may include auditors, advisors, vendors, suppliers, service providers, customers and clients. IRP/RP may approach AA u/s 19(2) against all such persons for directions
21(11)	CoC to supervise liquidation	CoC constituted under CIRP provisions shall continue to supervise Liquidation process also and by implication the regulations providing for constitution of the Stakeholders' Consultation Committee shall stand deleted. While the provision does not address the issue, it would be reasonable to assume that the voting share during liquidation process shall be on the basis of fresh or updated claims filed by the creditors in response to the public announcement u/s 33(1)(ii) r/w applicable regulations. This provision shall also apply to ongoing liquidation processes where an application for dissolution has not been filed
22(3)(a)	Regarding confirmation of IRP as RP	Communication of continuation of IRP as RP shall be communicated to the Board and no longer to AA
26	Regarding continuation of avoidance proceedings	Proceedings for avoidance, wrongful trading etc not to be affected even after completion of CIRP or Liquidation process
28A	Transfer of assets of guarantors during CIRP or Liquidation of CD	Drafting of the IM and the RFRP, or the auction process document, will be impacted to clearly define which assets of guarantors are being transferred by creditors to be included as part of any resolution plan. Manner of such transfer to be specified via regulations would need to be complied with. IP would need to ensure that the underlying guarantees have been properly invoked and the transfer is within limitation
30(2)(ba)	Payment to dissenting FC	To be not less than lower of LV or amount proposed in R-Plan if distributed as per sec 53; will be applicable to ongoing CIRP where no Plan has been approved by CoC
30(2)(d)	Supervision of plan implementation	Provides for (monitoring) committee on conditions and in manner as specified
31(1)	Proviso added for "split" approval of R-Plan	Application can now be made for initial approval in relation to plan implementation and separate approval within subsequent 30 days in relation to manner distribution
31(2)	Rectification of defects	AA may give time to CoC to rectify any defects in the Plan
31(4)	Proviso relating to CCI approval	Now required before Plan is submitted to AA for approval
31(5)	Additional reliefs	License, permit, quota etc to continue after approval of Plan by AA for the residual period of such license, permit etc provided CD/RA fulfill their obligations for the remaining period
33(1A)	Recommencement of CIRP	May be allowed if no resolution plan is received or if plan is rejected for non-compliance with requirements of sec 31, AA, on an application by CoC (with 66% approval), restore the CIRP for a maximum period of 120 days on conditions to be specified. This shall apply to ongoing CIRP also. This restoration can happen only once
33(2)	Early liquidation and dissolution	Direct dissolution also allowed subject to conditions as specified
33(6)	Legal proceedings	Liquidator to seek permission of IA for commencing any legal proceeding or continuing with any pending proceedings
34(1)	Appointment of Liquidator	CoC by 66% vote can propose name of existing RP or a different IP and AA shall appoint such person
34(3)	Aligned with sec 19	Clarifies powers of Liquidator in respect of seeking assistance and cooperation

Amended Sec	Subject Matter	Impact on IPs
34(4)	RP disqualified to act as Liquidator	If R-Plan is rejected for non-compliance with sec 30(2)
34A	Replacement of Liquidator	CoC may decide by 66% vote to replace the Liquidator at any time and propose another IP who shall be so appointed by AA
35(1)(a, j)	Claims	Liquidator to maintain updated list of claims; and to settle claims (clauses relating to verification and invitation of claims dropped)
35(1)(l)	Pursuing avoidance transactions	Continue or institute proceedings for avoidance transactions and wrongful / fraudulent trading
35(2)	Role of CoC	CoC shall supervise liquidation process in the manner as specified
38, 39, 40, 41, 42	Provisions omitted	These provisions dealt with receipt, verification, consolidation, admission / rejection of claims and appeal against decision of the Liquidator. The implication appears to be that claims can now ordinarily be filed only during CIRP; the requirement of filing them again during liquidation is dispensed with; and regulations may specify how to deal with delayed filing of claims. This process, combined with CoC taking over the job of supervision of process, will reduce workload of Liquidator, save time (around 75 days usually) and allow sale of assets to start within a few days from liquidation commencement date
47	When RP or Liquidator does not file avoidance etc applications	Provides for "a creditor, either by itself or jointly with other creditors, a member, or a partner of the corporate debtor, as the case may be, may make an application to the Adjudicating Authority" Provides for AA to direct Board to initiate disciplinary proceedings against such IP concerned
49	Transaction defrauding creditor	Scope extended to include related parties of the CD
52	Realisation of security interest by creditor	Creditor needs to identity the asset and intimate Liquidator within 14 days from LCD; If such asset is subject to joint charge, then creditors representing at least 66% by value of claims secured by such security interest need to agree; Such secured creditor needs to transfer to the liquidation estate, in the manner, period and on conditions as specified, the amounts of insolvency resolution process costs and the liquidation costs, and workmen's dues Provisions will not apply to ongoing liquidation processes
53(1)(b)(ii)	Explanation added	Value of secured debt shall be the lower of claim value or value of security interest (to be determined as specified)
53(1)(e)(i)	Explanation added	Government dues, whether secured (by operation of law or even by an agreement or arrangement) or unsecured, for a period of two years prior to LCD are to be distributed under this sub-clause and balance under sub-clause (f)
53(2)	Illustrations added	Creditors of same ranking (for example workmen and secured creditors), cannot have an arrangement in violation of sec 53(1)(b) However, there can be an arrangement between secured creditors by which one or more secured creditors shall be paid before some others (e,g. first charge holders paid before second charge holders) This amendment clarifies the long-held norm that ranking of charges as agreed among creditors of same category shall not be disturbed during insolvency unless such an express provision has been made in the law. The validity of the concept of first/second charge has thus been expressly clarified
54(1)	Period for completing liquidation	Reduced to 180 days with a one- time maximum extension of 90 days Note: no clarity on consequences if the liquidation could not be completed within the said timelines

Amended Sec	Subject Matter	Impact on IPs
54(1A, 1B)	Pursuit of avoidance transactions and any other legal proceedings	CoC to determine the manner of pursuing such proceedings and the distribution of the proceeds arising out of such proceedings, in the manner and on conditions as may be specified
54(2A)	Disposal of remaining assets	In case of early dissolution u/s 33(2), any remaining assets shall be disposed of in the specified manner and the proceeds used to meet CIRP costs and surplus credited to the Insolvency and Bankruptcy Fund *Note: No clarity on liquidation process costs*
Ch IV-A (sec 58A to 58K)	Creditor Initiated Insolvency Resolution Process (CIIRP)	New process with "debtor in possession" model and limited role of RP and CoC Eligibility criteria to be notified by the Central Govt CIIRP may be initiated by such class of financial institutions as may be notified RP shall be appointed by the initiating FC with the concurrence of FCs of same class holding 51% of debt due by the CD CD may make representation to the initiating FC against the proposal within 30 days of being intimated If initiating FC decides to pursue the CIIRP after considering such representation, it shall obtain concurrence of FCs of same class holding 51% of debt due within 30 days of receipt of the representation RP to be appointed by the initiating FC after receipt of representation, or after expiry of the 30-day period allowed and after receiving concurrence of FCs holding 51% debt The RP so appointed shall make a public announcement of the initiation of the CIIRP and communicate the same along with a report confirming whether the financial creditor meets the requirements under sections 58A and 58B, to the Adjudicating Authority and the Board
		The CIIRP shall be deemed to have commenced from the date of such public announcement CD may file objection with the AA to the commencement of the CIIRP within 30 days of such commencement. The AA may declare such CIIRP commencement as ab initio void if a default has not occurred. It may convert the CIIRP to a regular CIRP if default has occurred but sections 58A or 58B have been breached The CIIRP is to be completed within 150 days extendable by a maximum of 45 days If no R-Plan is approved within stipulated time, the AA may convert the CIIRP to a regular CIRP with conditions and stage of starting During CIIRP the duties and powers of the RP shall be – calling for submission of claims; prepare IM; prepare a report as specified regarding compliance of the CIIRP with procedural requirements, compliance of R-Plan with sec 29A and 30 etc; duties referred to in clauses (a) to (c) of section 18 and clauses (e) to (j) of sub-section (2) of section 25; powers as referred to in sub-sections (3) and (4) of sec 54F Existing management of CD will continue; provisions of sec 54H shall apply RP will attend all meetings of the BOD (or partners) RP shall have the power to reject any resolution passed by the BOD subject to conditions and manner as specified RP, with the approval of the CoC (or with consent of 51% FCs if CoC has not been constituted) may apply to AA for declaration of moratorium u/s 14. The moratorium will commence from date of such application and continue unless rejected by AA RP shall make public announcements regarding commencement of CIIRP and rejection of application for moratorium At any time during the CIIRP the CoC may, with 66% approval, resolve to convert the process into a regular CIRP The CoC may, with 90% vote share, and before the first invitation for a resolution plan, resolve to close the CIIRP and withdraw the public announcement and direct the RP to file an application before AA accordingly An R-Plan shall be approved with minimum 66% vote share

It is hoped that this tabulation will be of help to all practicing Insolvency Professionals

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IBC & SARFAESI: Harmony or Overlap?

The Indian legal framework for resolving financial distress has undergone significant transformation over the past two decades. Following which two major legal statutes were enacted to govern the complexities of the debt recovery process being the Insolvency and Bankruptcy Code, 2016 (IBC) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). Though at the first glance one might believe that the two similar acts are incorporated on the same objective and purpose, howsoever a deeper analysis will reveal that both differ in their scope, approach and recovery means.

Whereas SARFAESI is primarily a creditor-oriented legislation allowing banks and financial institutions, especially the secured financial creditors to realise their secured assets without court intervention, the IBC has been designed as a comprehensive insolvency resolution framework that prioritizes revival of the corporate debtor as a going concern before liquidation is considered. Thus, while both seek to address the issue of non-performing assets and bad loans, their operational philosophies diverge.

The interplay of these two legislations has given rise to pertinent questions: Do they operate in harmony, offering creditors alternative remedies at different stages of default? Or do they create overlaps, resulting in judicial conflicts, forum shopping, and procedural delays?

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

Owing to the mounting levels of Non-Performing Assets (NPAs) of the Indian Banking Sector during the late 1990s and early 2000s, a landmark legislation was implemented being the SARFAESI Act of 2002. This recovery-driven legislation was enacted to empower banks and financial institutions to enforce security interests without the need for judicial intervention. It provides for debt recovery measures like securitization of assets, establishment of Asset Reconstruction Companies (ARCs), and possession of secured assets.

Insolvency and Bankruptcy Code, 2016:

Enacted as Act 31 of 2016, the Insolvency and Bankruptcy Code (IBC) was introduced to combat the issue of multiplicity of overlapping debt recovery legislations which had resulted in uncertainty, procedural dilemmas, and undue delays in the resolution process. The Code was designed as a consolidated and comprehensive insolvency framework applicable to corporates, partnership firms, and individuals. It provides structured mechanisms for insolvency resolution with the aim of revival of the Debtor, and, where such revival is not possible, offers a time-bound process for liquidation or bankruptcy as in the case of individuals and partnership entities.

SARFAESI and IBC: Is it an Intersection?

At the outset both legislations share a common goal that is recovery of outstanding debt amounts that is through identifying the debtor's assets and aligning the same towards the debt repayment of the creditors. The relationship between SARFAESI and the IBC is best understood not as one of conflict, but of complementarity and harmony.

A closer examination reveals that the SARFAESI Act is primarily a "collateral law", i.e., a creditor-centric framework that permits secured lenders to take possession of and realize collateral upon default, without the need for lengthy judicial intervention. The IBC, on the other hand empowers a comprehensive resolution framework including various class of creditors, and as the Indian courts have clarified time and again clarified - the IBC was enacted with the objective of

revival before recovery, emphasizing the resolution of the debtor as a going concern, with liquidation being the last resort.

Accordingly, the two statutes are complementary rather than competing. SARFAESI functions as a pre-insolvency enforcement tool, offering creditors an avenue for direct recovery, whereas the IBC provides a collective resolution mechanism that comes into play when individual enforcement measures prove insufficient. This harmonious interpretation has also found judicial support. The National Company Law Appellate Tribunal (NCLAT) in Punjab National Bank v. M/s Vindhya Cereals Pvt. Ltd. held that financial creditors are entitled to pursue simultaneous actions under both SARFAESI and the IBC, subject to the moratorium under Section 14 of the Code and such shall not constitute as forum shopping.

It is therefore understood that SARFAESI was never intended to be displaced by the IBC, but rather to coexist as a complementary regime, each addressing distinct stages and facets of debt recovery and insolvency.

SARFAESI and IBC: Is it an Overlap?

Despite this harmonious framework, the interface between SARFAESI and IBC has also led to friction. Both legislations operate in overlapping domains of debt enforcement and resolution, and conflicts inevitably arise when their provisions intersect. The pivotal question then becomes: which law prevails in the event of inconsistency?

The answer lies with Section 238 of the IBC, i.e., the non-obstante clause of IBC which provides it with an overriding power over other prevalent laws.

Section 238 of the IBC says as follows:

"The provisions of this Code shall have an effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

This clause grants the IBC overriding power over all other laws, including SARFAESI, in cases of inconsistency.

The Indian Judiciary system has long debated on the same conflict. For the first time in M/S Unigreen Global Private Limited v. Punjab National Bank, NCLAT observed the overriding effect of IBC over SARFAESI, wherein it concluded that the moratorium imposed under IBC ceases proceedings initiated under Section 13(4) of SARFAESI

Thereafter in the landmark case of Encore Asset Reconstruction Company Pvt. Ltd. v. Ms. Charu Sandeep Desai, while propounding on a matter of inconsistency with respect to Section18 of the IBC which grants the Interim Resolution Professional (IRP) the power to take physical possession over the assets of the Corporate Debtor and between Section 13(4) of SARFAESI which grants power to the creditors to take possession over the assets of the Debtor, reiterated and upheld the overriding effect of provisions of IBC over SARFAESI.

Furthermore where issues regarding asset control and sale arise, it is clarified under the code, wherein Corporate Insolvency Resolution Process (CIRP) has been initiated, the IBC takes explicit precedence over SARFAESI proceedings by virtue of Section 14 of the IBC which establishes a moratorium that prohibits enforcement of security interests, including actions under the SARFAESI Act. This moratorium ensures that all assets remain within the resolution framework, preventing individual creditors from pursuing separate enforcement actions that could undermine the collective resolution process.

Thus, conclusively it can be observed that in practice, SARFAESI remains useful for quicker recovery and wherein there is individual creditor, but in complex corporate distress involving various classes of creditors, the IBC's collective process ensures potential revival and maximized value. However, still issues such as jurisdictional conflict, asset control disputes, procedural confusion yet remain unresolved.

Key Differences in Approach of the two legislatures:

Aspect	SARFAESI Act	IBC
Objective	Enforcement and recovery of secured debt	Insolvency resolution, revival, and liquidation
Stakeholder Approach	Focus on secured financial creditors	Collective approach, considering all classes of stakeholders
Process	Direct enforcement by secured creditor (possession & sale of assets)	Tribunal-driven resolution via Adjudicating Authority with moratorium
Debtor's Position	Limited protection; primarily creditor-centric	Balanced: Debtor revival is prioritized before liquidation
Outcome	Quick recovery for secured creditors	Equitable distribution, time-bound resolution

Conclusion:

The duality of proceedings initiated under IBC and SARFAESI though legally settled to some extent vide the inherent non-obstante clause Section 238 of the IBC, which still creates practical challenges in coordination and asset management. It is observed that creditors often shift between SARFAESI and IBC depending on convenience leading to fragmented proceedings and delays. Furthermore, disputes with respect to taking control of assets and the manner of sale of the assets are not synchronized between the statutes. Therefore, the need for harmonization and aligning of the procedures of the two statues is realized for making debt-enforcement process transparent, time-bound and fairer.

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Income Tax and Insolvency & Bankruptcy Code (IBC): Who is superior?

Introduction

The interaction between tax laws and insolvency frameworks has long been a contested issue in India. With the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), the legislature attempted to create a consolidated, time-bound, and efficient mechanism for insolvency resolution, superseding the fragmented regime that existed earlier. However, the interface of IBC with the Income Tax Act, 1961 continues to raise complex questions—particularly on whether tax statutes can override, coexist with, or be subordinated under the IBC process. This article explores these issues by examining statutory provisions, judicial interpretations, and practical implications.

IBC as an Overriding Legislation

- **Section 238 of IBC, 2016** declares that the Code shall have effect notwithstanding anything inconsistent in any other law in force.
- The Supreme Court in Innoventive Industries Ltd. v. ICICI Bank emphasized that IBC is a **complete code in itself,** enacted to address delays and inconsistencies in earlier insolvency laws.
- The **Third Schedule** of the IBC amended Section 178(6) of the Income Tax Act, explicitly excluding IBC from the overriding powers of tax authorities, thereby reinforcing its primacy.
- Section 238 of the Insolvency and Bankruptcy Code, 2016 (IBC) states that the provisions of this code shall override other laws. The section is reproduced as below:

  > "The provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

  The simple and literal interpretation of above section 238 can be enumerated as below:

- Section 238 will come into play only when a particular provision in any other law is in conflict with the provisions of the IBC.
- Therefore, till there is no inconsistency with the provisions of IBC, the provisions of other laws will prevail.

Journey Through the IBC Framework

1. **Trigger of Insolvency:**
   - Corporate Insolvency Resolution Process (CIRP) is initiated upon default by a Corporate Debtor (CD).
   - Applications can be filed by Financial Creditors (Sec. 7), Operational Creditors (Sec. 9), or the Debtor itself (Sec. 10).
   - Income Tax dues qualify as **operational debt,** making the Income Tax Department an **operational creditor**.
2. **CIRP Proceedings:**
   - Upon admission, claims must be filed by creditors within 14 days of the public announcement (Form B for tax authorities).

- As per CIRP Regulation 12, even belated claims can be filed up to 90 days or up to the date of issue of RFRP under Regulation 36B, whichever is later, subject to explanation for delay.
- As per CIRP Regulation 13(1B) and 13(1C) a claim can be received even beyond the time stipulated in CIRP Regulation 12, but the same can be done up to seven days before the date of meeting of CoC for voting on the resolution plan or the initiation of liquidation. The IRP/RP shall verify such claims and categorize them as acceptable or non-acceptable for collation.
- If IRP/RP categorize the claim received under CIRP Regulation 13(1B) as non-acceptable for collation, he shall intimate the creditors within seven days of such categorization.
- If IRP/RP categorizes the claim received under CIRP Regulation 13(1B) as acceptable and collated by him, he shall put up such claim before the next meeting of the CoC for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any and submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.

3. Resolution Plan:

- The Committee of Creditors (CoC), consisting primarily of financial creditors, negotiates with resolution applicants.
- Plans require approval by at least 66% voting share and subsequent confirmation by the Adjudicating Authority (AA).
- Once approved, the plan becomes binding on all stakeholders—including the central and state governments, as clarified under Section 31(1) of IBC.

4. Liquidation Waterfall (Sec. 53):

The priority order ensures:

1. CIRP and liquidation costs
2. Workmen's dues & secured creditors
3. Employees' wages (12 months)
4. Unsecured creditors
5. Dues to government (tax claims)
6. Other debts, preference shareholders, equity holders

Thus, **government dues rank below secured and unsecured creditors,** a significant departure from earlier practice where crown debts enjoyed priority.

Key Judicial Pronouncements

- **Pr. DGIT (Admn.) v. Synergies Dooray Automotive Ltd. [2019 SCC OnLine NCLAT 691]** – Held that tax departments qualify as operational creditors.
- **Pr. CIT v. Monnet Ispat & Energy Ltd. [(2018) 18 SCC 786]** – Supreme Court held that tax dues do not override IBC.
- **Essar Steel India Ltd. v. Satish Kumar Gupta [(2019) SCC OnLine SC 1478]** – Affirmed that once a resolution plan is approved, it is binding on all stakeholders. Fresh slate principle was propounded.
- **Ghanshyam Mishra & Sons v. Edelweiss ARC [(2021) 9 SCC 657]** – Reinforced that government dues not included in a resolution plan cannot be recovered subsequently.

Income Tax Act Amendments in Light of IBC

1. **Verification of Return (Sec. 140):**

   In cases where CIRP is admitted, returns must be verified by the Insolvency Professional.

2. **Carry Forward of Losses (Sec. 79):**

   Relaxation for companies undergoing resolution; change in shareholding pursuant to an approved resolution plan does not bar carry-forward of losses.

3. **Book Profit Calculation (Sec. 115JB):**

   Companies under CIRP can reduce both brought-forward losses and unabsorbed depreciation from book profits for MAT purposes.

4. **Unresolved Issues:**

   - Applicability of Sec. 56(2)(x) (FMV-based taxation) to assets acquired under resolution plan – whether valuation done under IBC can be accepted by the ITD?
   - Continuity of MAT benefit across all assessment years during CIRP: The language used in sub-clause "B" of sub-section (iih) of section 115JB (2) suggests that this benefit is allowable in case of a company against whom CIRP has been admitted by the Adjudicating Authority. Therefore, in the year in which the CIRP is admitted, this benefit will undoubtedly be available. But whether the same benefit will be available in other years where CIRP is spreading to more than one assessment year. In view of the author, the same should be available in all the years encompassed in the CIRP. However, a clarity in this regard by the CBDT would be welcome.

Moratorium Under Section 14 of IBC -Tax Proceedings

The Assessment proceedings to finalize tax liability have been considered permissible by some courts, though recovery is barred. This remains an area of judicial divergence. The divergent view is based on the premise that assessment proceedings are quasi-judicial in nature and hence moratorium will apply. In Kohinoor Steel (P) Ltd. vs. ITO (2024) 159 taxmann.com 571[Calcutta High Court] – held that where the company is in CIRP, no proceeding could be initiated against the corporate debtor. Similar ruling was delivered by Calcutta High Court in PCIT vs. Subhlabh Steels (P) Ltd. (2022) 141 taxmann.com 190 (Cal)

- In Ireo Fiveriver Pvt. Ltd. vs. ITO (Delhi High Court) [(2024) 161 Taxmann.com 772], it was held that any liability other than those specified in the resolution plan which is pertaining to the period prior to the resolution plan is bad in law and to be set aside.
- In PCIT vs. Patanjali Foods Ltd. [(2024 161 taxmann.com 675(Bombay High Court)] it was held that notice under section 148 after the resolution plan is approved is bad in law.
- It has been held by NCLT Guwahati in Kitply Industries Limited Vs. ACIT (TDS) (2019) 102 taxmann.com 116, that where the Income tax department has frozen the bank account of the Corporate Debtor the same is a Quasi Judicial proceeding and the same cannot be continued during moratorium under section 14 of IBC.
- In MSP Metallics Limited Vs ACIT & Ors (WPA 12285 of 2023), Calcutta High Court, 2023 SCC OnLine Cal 1223, in its order delivered on 25th May 2023 has held, while dealing with the validity of an order under section 148A(d) of the Income Tax Act, 1961 against a company which was subjected to CIRP, has quashed the order under section 148A(d) of the Income Tax Act, 1961 and the subsequent proceedings in view of the fact that CIRP proceedings has commenced and no fresh proceedings can be initiated.
- In JCIT vs S R Foils & Tissues P Limited, ITA No. 540/Del/2019 ITAT, Delhi has held that in view of the provisions of Section 238 of the IBC, the proceedings before NCLT would have overriding effect.

SRA Liability for Undecided Claims

- In the landmark judgement of Hon'ble Supreme Court in Essar Steel Ltd vs. Satish Gupta, it has been clearly ruled that no undecided claims can be fastened on SRA. "No hydra head can pop up – these words were used in this judgement.
- In another landmark judgement by Hon'ble Supreme Court in Ghanashayam Mishra case, it has been held that claims which are not the part of resolution plan shall stand extinguished and proceedings related thereto shall stand terminated. If subject-matter of claim is prior to the approval of the resolution plan, the same cannot continue.
- Delhi High Court in National Sewing Thread Company Ltd. vs. DCIT (2024) 163 taxxmann.com 768, it was held that no demand notice can be issued once the corporate debtor is revived in IBC.

Taxation Issues During Liquidation

- **Capital Gains:** Sale of assets during liquidation may attract capital gains, though no TDS under Sec. 194-IA can be deducted. The ruling in LML Limited vs. CIT by NCLT Allahabad Bench that the capital gain shall be payable as per section 53 is worth noting.
- **GST Liability:** Directors of private companies may be personally liable for unrecovered GST dues post-liquidation.
- There should not be any tax on extinguishment of liabilities on closure of liquidation because, in the author's view, the same is not a remission of liability.

Taxation of Waiver of Loans/Debts:

- *CIT v. Mahindra & Mahindra Ltd.* [2018 SCC OnLine SC 534]– Waiver of loan used for capital purposes is not taxable as business income. It was also held therein that section 28(iv) is not applicable to the loan waiver since the waiver tantamounts to receipt in cash and the same is outside the purview of section 28(iv) because as per the view of the Supreme Court section 28(iv) is applicable to only non-cash transactions.
- Subsequently, the Finance Act, 2023 amended section 28(iv) by including therein all receipt /transactions whether cash or non-cash. Sec 28(iv) - Any Waiver is considered as benefit or perquisite arising to the business: whether convertible in money or not or in cash or in kind or partly both (w.e.f 01-04-2024) taxable under the head "business or profession".
- TDS 194(R)- CBDT Circular No 18/2022 dated 13-09-2022- No TDS by Financial Institution, banks, NBFC and other financial service provider on Settlement, i.e. haircuts of debts.
- Thus, the scenario after the Finance Act, 2023 is as follows: (a) only cessation trading liabilities are taxable under section 41(1) of the Income Tax Act, 1961, (b) cessation of capital liabilities (non-trading liabilities) is not taxable under section 41(1), (c) cessation of capital liability or trading liability, both, are taxable under section 28 (iv) and (d) no TDS to be deducted under section 194R if the loan waiver is by FI, banks, NBFC or financial service provider.
- Hon'ble High Court in CIT v. Ramaniyam Homes (P) Ltd, (2016) 384 ITR 530 (Madras HC) has held that if the waiver includes outstanding interest which has been claimed as a deduction in earlier years or loan obtained for the purpose of business, then such waiver may continue to be subjected to tax in the hands of the borrower.
- When waiver is done, remission of liability happens. But it is post approval of Resolution Plan. IBC does not help here and as a result, in my humble view, the haircuts/waivers will be subject to the provisions of the Income Tax Act, 1961.
- Recent trends in some resolution plans: (a) it is sought by way of relief that the resolution applicant should be allowed to recast the opening balances in the accounts after the approval of the plan by the Adjudicating Authority and (b) in some cases, the resolution applicant gets the portion of the haircut assigned to him by the lender and the corporate debtor in turn allots the resolution applicant CCPS in lieu of such assigned loan (waived portion of loan only). However, the validity of these insertions in the resolution plan remains to be tested by the courts.

Modification of Tax Demands (Section 156 A):

- If Adjudicating Authority reduces any demand, income tax department shall modify the demand accordingly. But in practical life, it is seen that Adjudicating Authority while approving the resolution plan do not reduce the tax demand generally. Instead, the Adjudicating Authority mention in the order that income tax authority will take their call on a particular issue keeping in mind the judgement of Apex Court in Ghanashyam Mishra case (supra).

Conclusion

The above article deals only with some of the important issues related to the income tax matter in IBC proceedings. The endeavour of the author was to bring light on diverse judicial pronouncements on certain tax issues. The readers are advised to take their own considered call before relying on any part of this article. The article is merely intended to elicit response among the readers.

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Dual Compliance Mandate under Regulation 31A(10) of the IBBI Liquidation Regulations: A Legal Analysis of Liquidator's Reporting Obligations

Introduction: The Evolving Paradigm of Liquidator Accountability

Insolvency law in India has undergone transformative changes since the introduction of the Insolvency and Bankruptcy Code, 2016. The Code redefined the landscape of corporate resolution and liquidation by emphasizing time-bound processes, stakeholder protection, and professional accountability. Within the liquidation regime, the role of the liquidator is not only crucial but also legally complex, requiring a delicate balance between commercial discretion and stringent regulatory discipline. A core area that frequently invites interpretational queries is the extent and nature of reporting obligations when a liquidator chooses to act contrary to the advice of the Stakeholders' Consultation Committee (in short 'SCC'). Regulation 31A(10) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter, "Liquidation Regulations"), specifically addresses this situation and imposes compliance mandates that merit close examination.

The SCC, established under Regulation 31A, plays an advisory role by offering guidance to the liquidator on a range of critical matters, including the mode of sale, valuation methodology, distribution strategy, and the pursuit of legal proceedings. Although its advice is not binding on the liquidator, the Liquidation Regulations recognize the imperative of robust stakeholder engagement by requiring that any deviation from such advice must be formally recorded and reported. This is codified under the proviso to Regulation 31A(10), which mandates that when a liquidator takes a decision divergent from the SCC's recommendation, the liquidator must record the reasons in writing and submit the records to both the Adjudicating Authority (AA) and the Insolvency and Bankruptcy Board of India (IBBI) within five days of the said decision. Additionally, the same information must be incorporated in the next quarterly progress report filed under Regulation 15.

This article undertakes a comprehensive legal analysis to clarify the precise scope and nature of these dual reporting obligations, drawing upon principles of statutory interpretation, regulatory circulars, and the broader jurisprudence emanating from the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT).

The "Within Five Days" Mandate: A Dual and Simultaneous Obligation

The interpretation of the phrase in Regulation 31A(10) "submit the records… to the Adjudicating Authority and to the Board within five days" has been the subject of considerable discussion among practitioners. The pivotal element in this phrase is the use of the conjunction "and." In the canons of statutory construction, "and" is generally understood to indicate a cumulative obligation, meaning that all conditions connected by it must be fulfilled, unless the context unequivocally suggests a disjunctive intent. Hence, the requirement to submit the records within five days is equally applicable to both designated recipients—the Adjudicating Authority and the IBBI.

This interpretation is not merely predicated on grammatical construction but is definitively substantiated by regulatory guidance issued by the IBBI itself. IBBI Circular No. IBBI/LIQ/57/2022, dated December 21, 2022, explicitly directs insolvency professionals to utilize a prescribed electronic proforma for reporting to "the Board and **Adjudicating Authority,** under proviso to sub-regulation (10) of regulation 31A". This circular leaves no ambiguity about the dual and simultaneous nature of the submission, reinforcing that the electronic platform established by the IBBI facilitates a single, consolidated submission to both regulatory bodies.

The rationale underpinning this immediate reporting obligation is rooted in the principle of real-time oversight. The five-day timeframe commences from the date on which the liquidator makes the decision contrary to the SCC's advice. The objective is to provide prompt notification to both judicial and regulatory authorities, enabling timely review and potential intervention if deemed necessary. This mechanism serves as an early warning system, ensuring that significant deviations from stakeholder advice are brought to the immediate attention of oversight bodies, thereby upholding transparency and accountability in the liquidation process.

Cumulative Compliance: Separate Submission vs. Inclusion in Progress Report

The second critical aspect of the liquidator's reporting obligations concerns whether merely mentioning a divergent decision in the quarterly Progress Report (Regulation 15) suffices, or if a separate, immediate submission is also mandatory.

The cumulative reading of Regulation 31A(10) makes it unequivocally evident that these two reporting obligations are not mutually exclusive; rather, they are distinct and cumulative. The proviso states: ***"...submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report".*** The persistent use of "and" connecting these two clauses signifies that both actions are mandatory and must be independently discharged.

These two reporting mechanisms serve complementary, yet distinct, objectives:

The Five-Day Event-Driven Report - This report, submitted within five days, serves the purpose of immediate transparency and enables swift scrutiny of a specific, high-impact decision. Its focus is narrow, concentrating solely on the divergent decision, the reasons for it, and the SCC's original advice. The IBBI's proforma for this report mandates detailed inputs, including the agenda of the SCC meeting, the advice given, voting outcomes, and a cogent rationale for deviation, ensuring that the regulatory and judicial stakeholders are fully apprised of the factual and legal context.

The Quarterly Progress Report (Regulation 15) - In contrast, the Progress Report is a comprehensive, retrospective summary of the entire liquidation process. It encompasses a wide array of information, including the progress in asset realization, distributions made to stakeholders, details regarding the appointment of professionals, updates on material litigations, and overall expenses incurred. The inclusion of the divergent decision within this report serves to embed the event into the ongoing documentary trail of the liquidation process, providing a periodic summary for ongoing monitoring and record-keeping purposes. Liquidators are also obligated to share these progress reports with the members of the SCC, provided a confidential undertaking is received from them.

The principle of effective statutory interpretation dictates that no part of a regulation should be rendered redundant. Were the quarterly report sufficient in itself, the five-day requirement would become otiose - a conclusion not supported by the structure or legislative intent of the regulation. The deliberate drafting by the IBBI, including the introduction of Regulation 31A(6B) to ensure SCC is presented with liquidation costs and legal proceedings status at every meeting, further reinforces the intent for multiple layers of information dissemination and oversight, rather than a single, all-encompassing report.

Judicial Trends and Compliance Imperatives

While direct judicial pronouncements specifically interpreting the precise interplay of the "within five days" submission and the "inclusion in the next progress report" under Regulation 31A(10) may not be extensively documented in the provided materials, the broader jurisprudence from the NCLT and NCLAT consistently underscores the paramount importance of strict adherence to the procedural timelines and reporting obligations stipulated under the IBC.

Judgments from the NCLT and NCLAT frequently emphasize the mandatory nature of consultation with the SCC, even though its advice is not binding on the liquidator. For instance, the NCLT has denied post-facto litigation approval to a liquidator, mandating prior SCC consultation and presentation of an economic rationale, thereby highlighting the pivotal role of the SCC in decision-making and the necessity for transparency and justification for the liquidator's actions. The NCLT has also upheld the advisory role of the SCC while simultaneously scrutinizing the liquidator's diligence and actions, particularly when an application for replacement of the liquidator is filed. This implies that while the liquidator has autonomy, this autonomy is subject to rigorous review, and proper reporting forms a crucial part of demonstrating diligent conduct.

Additionally, the NCLT routinely takes quarterly Progress Reports filed by liquidators under Regulation 15 on record. This practice signifies the formal importance of these reports as a record of the liquidation proceedings and a mechanism for the Adjudicating Authority to monitor the overall progress. The general principle that timelines under the IBC are to be adhered to strictly, unless specifically provided otherwise for condonation of delay, is a recurring theme in NCLT/ NCLAT judgments. This reinforces the interpretation that the "within five days" requirement in Regulation 31A(10) is a critical, mandatory obligation designed to ensure prompt oversight and accountability. Any non-compliance or delay without proper justification could attract adverse observations or actions from the adjudicating or regulatory authorities.

Practical Implications and Recommendations for Liquidators

The practical implication of non-compliance with either of these dual obligations is significant. Failure to submit the five-day report may be construed as dereliction of statutory duty and may expose the liquidator to disciplinary proceedings by the IBBI or adverse orders from the NCLT. Furthermore, such lapses may erode stakeholder confidence and affect the credibility, reputation, or even continuation in the assignment of the liquidator. In a regime where the speed and integrity of resolution are paramount, such reporting mechanisms are not optional - they are legal imperatives.

Accordingly, it is recommended that liquidators institutionalize robust internal processes to ensure seamless compliance :-

1. **Immediate Documentation -** Upon taking any decision that deviates from SCC advice, meticulously record the reasons in writing.
2. **Timely Electronic Submission -** Within **five days** of such a decision, submit the records, including the detailed reasons, to both the Adjudicating Authority and the IBBI through the designated electronic platform and prescribed proforma.
3. **Mandatory Inclusion in Progress Report -** Ensure that the details of the divergent decision and its rationale are also incorporated into the **next quarterly Progress Report** filed under Regulation 15.
4. **Comprehensive Record Keeping -** Diligently maintain particulars of all consultations with stakeholders as specified in Form A of Schedule II (Regulation 8(2)).
5. **Objective Justification -** Ensure that every decision taken contrary to SCC advice is objectively justified, well-reasoned, and capable of withstanding regulatory and judicial scrutiny.

Conclusion

In conclusion, Regulation 31A(10) stands as a critical pillar of the IBBI's endeavor to enhance fiduciary standards and ensure robust stakeholder governance during liquidation. The five-day reporting requirement to both the Adjudicating Authority and the IBBI is not a mere procedural formality; ***it is a substantive legal duty,*** designed to provide ***immediate, event-driven transparency***. Likewise, the inclusion of such decisions in the ***quarterly progress report is not a substitute but a supplement,*** serving to integrate these specific events into the comprehensive periodic overview of the liquidation process.

Together, these obligations reinforce the broader ethos of the IBC - transparency, accountability, and efficiency. For insolvency professionals functioning as liquidators, a precise and prompt execution of these dual duties is not merely a matter of regulatory compliance - it is fundamental to upholding the trust reposed in them under the law and ensuring the integrity and efficacy of India's insolvency regime.

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Managing Corporate Debtor As Going Concern

Background

It is big challenge to continue corporate debtor as going concern. The Insolvency and Bankruptcy code, 2016 ("Code") is an Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish the Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

Section 20 of the Code on "Management of Operations of Corporate debtor as a going concern" lays down the responsibility on the Insolvency Professional to make every effort to ensure the continuity of going concern status of the Corporate Debtor. It looks easy to talk about but I practical field it is extremely difficult to manage corporate debtor as going concern, which has been left out unmanaged by corporate debtor.

Process can be explained considering few centre points:

" The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. "

For the purposes of sub-section (1), the interim resolution professional shall have the authority to appoint accountants, legal or other professionals as may be necessary; to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process; to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property: **Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.**

The main emphasis of the Code is to arrive at resolution of the Corporate Debtor in a time bound manner for maximization of values of assets. The role of the Resolution Professional (RP) is to make all efforts that the corporate debtor continues to remain as a going concern. The Corporate Debtor on commencement of Corporate Insolvency Resolution Process (CIRP) is behest with liquidity issues as it does not have adequate funds to meet its liabilities. Thus it faces problems in getting adequate credit from suppliers, vendors and also service providers to run its business.

"The continuation of the operations of the Corporate Debtor is a challenge for the Resolution Professional."

The Resolution Professional ought to have adequate negotiation skill and understanding of business profile and financials of the corporate debtor for managing the business operations. The Resolution Professional is thus required to understand business profile, negotiate with various stakeholders including customers, suppliers and employees/ workers; working capital management; monitor cash flows; take necessary steps for improving productivity and liquidity position and to seek approval of Committee of creditors on issues as laid down in Code. Review of Business Profile Competition Whether the Corporate Debtor has developed niche market. How it has been able to cater to the market; face competition in terms of delivery, quality, price, and credit terms and compete with its competitors. Discussion with the employee/workmen, customers and visit of various facilities will facilitate understanding of these issues. Availability of Inputs the Corporate Debtor remains dependent on various inputs like Raw Materials including spares and tools, power, labour, water and other services to continue with the operations. Each Industry has different challenges in terms of availability of these inputs.

"The Resolution Professional is required to have an immediate review and take measures for timely availability of these inputs. "

Customer Profile the Corporate Debtor remains dependent on the orders from customers and have to cater to their requirement in terms of delivery, quality and price. The Resolution Professional will have to understand the customer profile of the Corporate Debtor in terms of length and value of relationship, regularity in receipts of payment, proportionate of total sales of products/services by a particular customer and any major issues faced in the past while dealing with these customers. All the information can be gathered by discussing with the concerned employees/ workers in sales, marketing and production department. Further, the information can be known on perusal of sales ledger, account recoverable and customer wise ledger. This information will be useful to know the extent a customer is vital for the Corporate Debtor, while negotiating with them on various terms of trade. Each business has its peculiarities in terms of competition, availability of inputs, customer profile, production issues, productivity of workmen/employees, flow of orders, terms of trade and regulatory compliance. In order to take control of the operations of the corporate debtor as a going concern, it is pertinent to have a broad understanding of these business dynamics. Production issues and obsolete items The Corporate Debtor is expected to be facing financial crunch when admitted to CIRP. It is likely that it may be facing issues in terms of repairs and maintenance, adherence to quality standards, shortage of various spares, timely availability of raw material and obsolete finished goods that may not be put in use.

"Genuine concerns of workmen/employees need to be understood and they be appraised of various efforts required to keep the Corporate Debtor as a going concern for eventual resolution to protect interest of various stakeholders including workmen/employees. "

Wherever required excess staff need to be redeployed to improve productivity. Flow of orders and terms of trade The RP will have to examine all the pending orders and make efforts to get fresh orders from existing and new customers. As the Corporate Debtor is in financial stress, it is likely that the inputs from suppliers may be at a high rate while sales price negotiated with customers may be very competitive leaving little margin. Further, terms of payment may not be favourable with customers as well as suppliers. The Resolution Professional will have to peruse each such order and examine whether any such orders are at a loss.

Managing Corporate Debtor as a going concern- Review of Business Profile Regulatory compliances

The RP will have to understand and ensure various compliances that are required in terms of renewal of various licenses required for operating the business activity, Payment of statutory dues, filings with ROC, stock exchanges and other authorities, finalisation of financial statements, holding meetings at regular intervals as per the requirement of various laws applicable on the Corporate Debtor and such other compliances as are applicable from time to time.

Managing Corporate Debtor as a going concern- Working Capital Management

Effective Working Capital management is a crucial factor in managing business activities especially in the manufacturing industry. It requires understanding of business cycle. The Corporate Debtor requires raw materials which have to processed and then converted into finished goods. These will be dispatched and will be converted into sales (Sundry debtors) and payment will be received based on terms of the credit. Hence Working Capital will be required in maintaining optimum level of stock of raw material, stores and spares, stock in process, finished goods and sundry debtors. The Corporate Debtor will have to assess total Working Capital requirement so as to sustain the production and arrange for funding accordingly. In a stress situation, managing Working Capital is a difficult proposition and require control of various expenses and negotiation with various stakeholders. The Corporates are generally short of Working Capital funds which impact production and timely delivery. Thus it requires managing with limited Working Capital funds in a liquidity strain situation. To overcome this situation, optimum level of inventory and receivables have to be determined and efforts made to arrange for working capital funds to meet these requirements. Inventory Holding The Corporate Debtor will have to maintain optimum level of inventory of Raw material, stock in process, Finished Goods, stores and spares. The levels are based on availability of these materials, time taken in ordering, alternate sources, minimum ordering quantity etc. Raw Materials In case raw material is available locally and there are large number of suppliers and no difficulty is envisaged in its procurement, the Resolution Professional may decide to hold a minimum level of stock of Raw Material to save on working capital. However, if there are difficulty in procuring these materials with long ordering period, sufficient inventory of Raw Material is required to avoid any production loss. Stock in process The Corporate Debtor will have to maintain regular production process to remain as a going concern. The level of working capital funds that remain blocked in stock in process will be based on the total time taken in production process. The RP is required to examine the time taken at various stages of production and to cut delays. This will reduce the funds blocked in stock in process. These inadequacies generally creep in when the Corporate Debtor is in financial stress. Stores and Spares Certain item of stores and spares are found to be critical

for continuity of production process and it is required to maintain their adequate stock. Finished Goods (FG) The Corporate Debtor need to maintain a minimum level of FG so as not to block the working capital funds in higher inventory. The RP and his team need to carry out analysis/scrutiny of these at regular intervals so as to minimize funds blocked in finished goods. Receivables Management- The Corporate Debtor may have long pending receivables which need to be followed up so as to improve cash flows.

"The RP need to seek specific approval of Committee of Creditors(CoC) as per section 28(h) of IBC,2016 for delegating its authority to any other person, if required. Follow up of sale proceeds"

The Corporate Debtor will be in a position to continue as a going concern only when it is proactive in follow up in sales realization. The RP need to assign this task to various employees in accounts and finance / sales and marketing so that this important task does not remain unattended. Regular meetings need to be conducted with the concerned employees to follow up on these issues. The Resolution Professional is required to have a strict control on cash flows of the Corporate Debtor. He/ She needs to coordinate with various banks where the Corporate Debtor maintains account and extract all relevant information regarding the current position of such accounts. The banks need to be communicated regarding permitting withdrawals from these bank accounts only with approval of RP and include his/ her name in the authorised signatory.

Managing Corporate Debtor as a going concern- Interim Finance

Interim Finance It is likely that the Corporate Debtor may be facing liquidity issues due to various reasons including losses and funds blocked in obsolete stock and bad debts. It may not be possible to manage the business operations with the internal cash flows and thus it may require interim finance for funding the business. The RP needs to examine the financial position of the Corporate Debtor including available cash flows and determine minimum working capital fund requirement to arrive at possible options. A cash budget needs to be prepared that will project deficit in the short term range (3-6 months) that need to be funded. The RP will have to first satisfy that the Corporate Debtor can generate orders and execute them at a positive EBITDA level. In case operations likely to result in negative EBITDA, it is reflective of the non viability and cannot sustain for a long period. Thus RP will have to first satisfy that the going on concern status will be at positive EBITDA level. **These issues needs to be discussed in meeting of CoC and specific approval as required under Section-28 of IBC,2016 needs to be obtained for raising such finance.** The assets of the Corporate Debtor that are already charged in most cases with Financial Creditors (Banks), hence, prior approval of existing lenders are required to be obtained for extending charge on such assets for securing Interim Funding. Generally, the interest rate charged by NBFC and Banks who are active in providing Interim funding for Corporate debtor who are in CIRP is very high. The RP should examine all the pros and cons of raising interim funding.

Dealing with Committee of Creditors (CoC)

The aim of the Code is to facilitate resolution of the Corporates that are undergoing insolvency. The efforts in this direction include continuity of the operations as a going concern. Section 28 (1) of Code lays down the actions where approval of CoC is required for further carrying out the process that also include raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting; create any security interest over the assets of the corporate debtor; undertake any related party transaction; and delegate its authority to any other person; In furtherance to above, **Regulation 29 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** allows resolution professional to sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case. A sale of assets under this Regulation shall require the approval of CoC. Keeping in view the role of CoC in the resolution process, RP is expected to apprise the CoC about every relevant information/data pertaining to Corporate Debtor enabling the members of CoC to take appropriate action wherever necessary. Also, the RP shall evaluate the assets of the Company and its current status to decide whether there are any assets that can be sold in terms of Regulation 29 and place the matter before CoC. This shall enable the RP to dispose of such assets that can provide funds to improve operations as a Going Concern.

Conclusion

The continuation of Corporate Debtor as a going concern is dependent on various permutations and combinations and no common approach will suit each case. The specific strategies have to be devised depending on each case. Based on these strategies, RP and his team to negotiate with all the stakeholders to seek their cooperation. The employees/ workers are interested to continue the Corporate Debtor as a going concern so that their jobs are not impacted. The RP may demand support/cooperation from workers/employees. The suppliers may be benefitted if Corporate Debtor continues as a going concern and thus seek their support for regular supplies. The expertise RP gains over a period of time goes long in resolving these issues that works well for the Corporate Debtor to continue as a going concern.

NOTES


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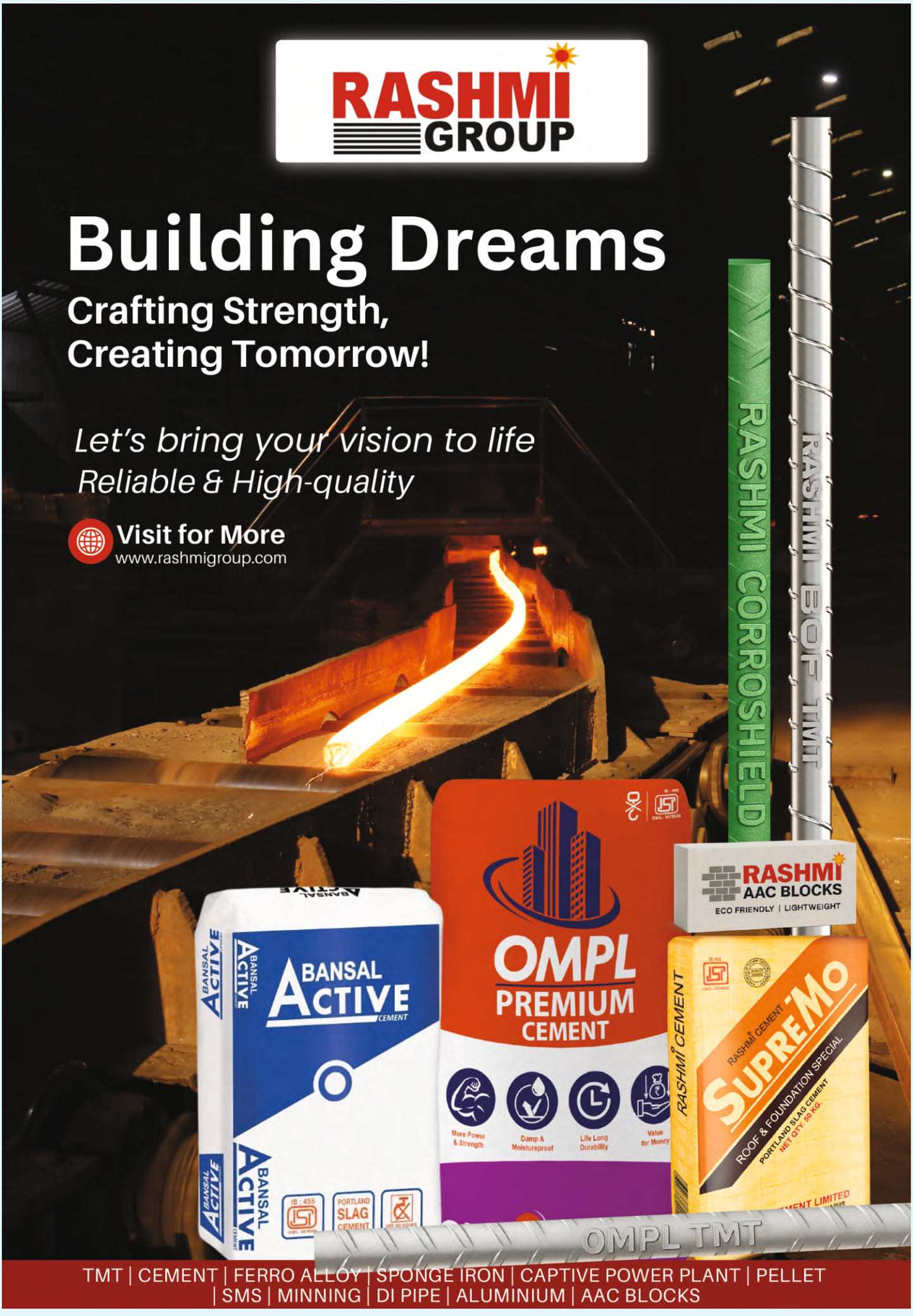
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