LL.M in Insolvency & Bankruptcy Laws

FIRST EDITION | MARCH 2025

InsolvED

THE INSOLVENCY DIGEST

WHAT'S INSIDE ?

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PUBLISHED BY

LL.M (INSOLVENCY & BANKRUPTCY LAWS)
NALSAR UNIVERSITY OF LAW, HYDERABAD &
INDIAN INSTITUTE OF CORPORATE AFFAIRS (IICA), NEW DELHI.

ABOUT LL.M. IBL COURSE

The LL.M course offered by the National Academy of Legal Studies and Research (NALSAR University) and Indian Institute of Corporate Affairs (IICA) is first of its kind LL.M Degree Programme in Insolvency and Bankruptcy Laws and Procedures Law in India. India has a huge, emerging sector for helping distressed and bankrupt companies come out of financial difficulty. But it faces a huge shortage of bankruptcy professionals who can oversee the process. As of 2023, the country had nearly 3000 insolvency professionals; however, the number of Insolvency Professionals and Insolvency Associates are very less considering the number of filings taking place every day at NCLT. On an average, one Insolvency Professional needs at least 20 associates to assist in big-ticket CIRP and Liquidation cases. Therefore, there is a serious need to produce good insolvency associates and ecosystem at mass level for providing the support to IPs, IPEs, Consultancies, Law Firms, ARCs and Academia. Therefore, the Master level course/ orientation in Insolvency and Bankruptcy Laws is the need of the hour. There is a vacuum in this area in the legal educational system in the country and this course seeks to fill up this vacuum.

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FROM COURSE DIRECTOR'S DESK

Dr. Pyla Narayana Rao
Associate Professor,
Head, School of Corporate Law, IICA.

It is a moment of great pride and enthusiasm to introduce the inaugural edition of the newsletter for the LL.M in Insolvency and Bankruptcy Laws. This specialized program, a collaborative initiative between NALSAR University of Law and the Indian Institute of Corporate Affairs (IICA), represents a significant milestone in legal education, offering a unique platform for professionals to deepen their expertise in the ever-evolving field of insolvency and bankruptcy laws.

The establishment of this LL.M program reflects our unwavering commitment to academic excellence, research, and professional development in corporate distress resolution and financial restructuring.

This program is designed not only to impart theoretical knowledge but also to provide practical insights, enabling our students to analyze complex insolvency cases, engage in critical discussions, and apply their learning to real-world challenges. Through a combination of rigorous coursework, research, and interactions with industry experts, our students will gain the skills and confidence needed to become thought leaders in this domain.

As we embark on this journey together, I encourage each of you to approach this opportunity with curiosity, dedication, and a commitment to excellence. Your contributions, research, and insights will play a pivotal role in shaping the future of insolvency jurisprudence. I am confident that this program will empower you to make meaningful contributions to the legal and corporate landscape, both in India and beyond.

Wishing you all a rewarding and enriching academic experience.

EDITORIAL NOTE

THE RESEARCH & PUBLICATION COMMITTE (2023-25) WITH CAO OF IICA

Greetings, Readers!

We are delighted to present the inaugural issue of The Insolved – Insolvency Digest. This publication is designed to keep our readers informed on the latest developments, analyses, and insights in the field of Insolvency Law in India. In this edition, we explore several contemporary themes at the intersection of law, economics, business, and policy.

Our discussions in this issue include recent amendments in the IBBI Regulations, Supreme Court judgments, and the future role of mediation in the Insolvency and Bankruptcy Code (IBC). Our contributors provide valuable updates and commentary on recent NCLAT and Supreme Court decisions, offering in-depth analyses of their significance and impact. Additionally, we feature a thought-provoking discussion on international best practices and examine how Indian law can evolve to meet emerging economic challenges.

We would like to extend our heartfelt gratitude to our esteemed Expert Panel:

- Dr. Bayola Kiran, Assistant Professor, NALSAR University
- Dr. S.K. Gupta, Managing Director, ICMAI Registered Valuers Organization
- Dr. Pyla Narayana Rao, Head, School of Corporate Affairs, IICA

Their invaluable contributions have been instrumental in shaping this issue.
The vision and leadership of the members of the Research & Publication Committee have played a pivotal role in bringing this inaugural edition to life. We would also like to express our sincere thanks to Col. Amandeep Singh Puri, CAO - IICA, for his continued support.

Our heartfelt appreciation extends to all our contributors, reviewers, and, of course, our readers. A special mention is due to the student editors whose enthusiasm, care, and dedication have made this edition possible. Their tireless efforts have truly brought this issue to fruition. We are also grateful to our advisors for their insightful input in shaping the content of this publication.

In the spirit of growth and improvement, we welcome your feedback, submissions, and ideas for future collaborations to make our newsletter even more impactful. Please feel free to reach out with any thoughts or suggestions.

Until the next issue, we wish you all good health and safety. Let the discourse continue!

Warm regards,
Research & Publication Committee, LL.M IBL (2023-25).

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Articles

LACUNAS IN IBC INVOLVING LIABILITY OF LEGAL HEIRS IN CASE OF DEATH OF A PERSONAL GUARANTOR OF A CORPORATE DEBTOR

- Akila V, Advocate

The IBC (Insolvency and Bankruptcy Code) was designed with the specific aim of offering an effective and time-bound method for resolving insolvency with a view to maximizing asset value. But when the question of making legal heirs responsible for the debts of a deceased personal guarantor to a corporate debtor (CD) arises, some loopholes in the legal system become evident. The legal heirs' treatment in the insolvency resolution process is a cause of serious concern, and on closer examination, there are some shortcomings that need to be addressed.

1. Limited Scope of Liability Imposed on Legal Heirs Under Section 123(5) of IBC.

Section 123(5) of the IBC, which pertains to bankruptcy orders against individuals and companies, permits a creditor to file for bankruptcy against the legal representatives of a deceased debtor. The provision is unduly limited and restrictive in its application to the legal heirs of personal guarantors of corporate debtors. It places legal heirs directly into the bankruptcy process, excluding the potential for them to contribute to a resolution plan. This is problematic on a number of grounds:

- **Bias Against Revival:** The IBC's primary objective is to encourage the revival of a distressed entity rather than leading to its liquidation. Yet, by forcing legal heirs into a bankruptcy process immediately after the death of the personal guarantor, the opportunity for them to propose a repayment plan is circumvented. This undermines the potential for asset revival, which is a key aim of the IBC.
- **Lack of Options**: Legal heirs may have the capacity to resolve the financial obligations left by the deceased through a repayment plan or other financial restructuring. By denying them the option to participate in the insolvency resolution process, the law is prematurely pushing them towards liquidation, which may not be in the best interests of creditors or the estate of the deceased guarantor.

2. Uncertainty Over the Status of Legal Heirs in Bankruptcy

Even where the process of bankruptcy is initiated under Section 123(5), there is a significant lacuna in dealing with the legal position of the heirs. The important issues are:

- **Restrictions on Legal Heirs:** As per Section 141 of the IBC, a person who is declared bankrupt is subject to various restrictions like travel, holding property, and creditworthiness. The issue here is whether these restrictions automatically extend to the legal heirs too. Since the legal heirs did not give the guarantee in the first instance, it does not seem fair to put these limitations on them.

Yet if legal heirs are excluded from restrictions under such provision, this potentially provides a loop that can exploit creditors in the process of recovery. There has to be well-defined demarcation in reference to the responsibilities and rights being taken over by legal heirs from the personal guarantor.

- **Exemption from Restriction and Effects:** If there is exemption provided for legal heirs from restrictions as per Section 141, effectiveness of bankruptcy procedure may be prejudiced. Legal heirs, who inherit the deceased guarantor's estate, may utilize this immunity to protect their own interests at the expense of efficiency in the settlement process. Alternatively, failing to provide them with an opportunity to negotiate a repayment might be causing unnecessary hardship and is most likely an infringement of their rights.

3. The Rights of Legal Heirs and Their Lack of Intent in Providing Guarantees

One of the major gaps in the IBC is its failure to differentiate between a personal guarantor who voluntarily provides a guarantee and legal heirs who inherit liability involuntarily after the guarantor's death. Legal heirs, by inheritance, are put in a position where they can be held liable for financial commitments they did not undertake or even expect. This brings into question:

- **Effect on the Rights of Legal Heirs**: The rights of legal heirs are likely to be violated if they are equated with the same punishment as the deceased surety. For example, placing restrictions on travel or confiscating personal properties of the heirs, who did not have any intention to give guarantees, appears excessive and unfair.
- **Involuntary Assumption of Liability:** The law fails to adequately take into account that legal heirs did not voluntarily enter into the financial deal. The provisions of the IBC at present treat them like the personal guarantor without considering the involuntary nature of their involvement. This might raise ethical and legal issues since the heirs are compelled to bear a burden they did not agree to contractually.

Despite the concerns surrounding the liability of legal heirs, there are certain legal and financial rationales for making them responsible for the debts of a deceased personal guarantor: Continuity of Financial Obligations, Creditor Protection, Avoidance of Fraudulent Transfers, Encouraging Financial Responsibility, Legal Precedent and Inheritance Laws.

However, while these rationales support making legal heirs liable to an extent, the current IBC provisions fail to provide a fair balance. Legal heirs should not be treated in the same manner as voluntary guarantors, nor should they be automatically subjected to restrictions without a fair assessment of their involvement. A reformed approach —one that allows them to engage in resolution proceedings and negotiate settlements before facing bankruptcy—would ensure both creditor protection and fairness in legal obligations.

RE-INITIATION OF CIRP AFTER FAILED RESOLUTION PLAN IMPLEMENTATION: ANALYZING THE SHARON BIO MEDICINE LTD. CASE

- *Rugveda Satbhai, Advocate*

It is well-settled within the evolving dynamics of the IBC Code **1** that the decision to consider a Resolution Plan falls within the commercial wisdom of the CoC. If the Resolution Plan is found unsatisfactory, the CoC, in its commercial wisdom, may approve a fresh issuance of Form G to maximize the value of the corporate debtor.**2** The case of corporate debtor, Sharon Bio Medicine Ltd. presents an interesting scenario beyond the ordinary circumstances of re-initiation. This article examines this case, referencing orders passed in CIRP of Sharon Bio Medicine Ltd. to understand the factors leading to a fresh CIRP after the failure of a previously approved plan.

Factual Background:

Edelweiss Asset Reconstruction Company Ltd. v. Peter Beck and Peter Vermoegensverwaltung Ltd. & Anr (Company Appeal AT 161 of 2021) NCLAT **3**

Vide its judgment dated 05.01.22, the NCLAT addressed the captioned appeal against an Order dated 02.02.21 passed by the Adjudicating Authority (NCLT Mumbai). In this case, by the Impugned Order, the AA had given an extra period of two weeks to the Successful Resolution Applicant (Respondent No. 1) to deposit Rs. 10 crores. The Appellant had argued that, although three years had passed since approval, the Successful Resolution Applicant had failed to implement the Resolution Plan as per its provisions. Therefore, the Appellant prayed that the CIRP should be re-initiated along with reinstating the previous Resolution Professional, and 90 days of an extra period should be provided in CIRP to invite Expressions of Interest (EOI) for inviting Resolution Plans.

Issues Before NCLAT

The issues that arose in these appeals are two-fold:

1. Whether SRA's default in implementing the approved resolution plan was justified considering pending appeals and delays in litigation and initial payments.
2. Whether an extension of the CIRP for inviting fresh EOIs or liquidation of the Corporate Debtor was permissible, given SRA's default.

NCLAT's Decision

The NCLAT dismissed the appeals, observing that "Main hindrance in implementation of the approved resolution plan is submission of a proper bank guarantee of Rs. 10 crores and other payments and actions that had to be taken from zero date i.e. 28.2.2018 in accordance with the approved resolution plan. We are, therefore, of the opinion that it would serve the interests of justice if the Corporate Debtor is not sent into liquidation but its insolvency is resolved so that it continues to be a going concern as that would be in the interest of the Corporate Debtor's stakeholders and creditors."**4**

It was observed by the NCLAT that a contravention of the Approved Resolution Plan by the Successful Resolution Applicant (SRA) had allegedly occurred in the present case, implying that an application could have been made to the Adjudicating Authority for liquidation. However, no such application for liquidation was made by the Appellants or any other stakeholder. Instead, the re-initiation of the CIRP and the invitation of fresh EOIs were sought by the Appellants and the financial creditors after its extension by 90 days, despite no express provision regarding re-initiation of CIRP in the IBC Code being present.

It was not considered by the NCLAT to be a fit case for liquidation of the Corporate Debtor because it is a going concern, and an interest in maintaining its status appeared to be held by all stakeholders. Consequently, a partial modification of the Impugned Order was directed, mandating an enforceable bank guarantee of Rs. 10 crores to be submitted by the Successful Resolution Applicant within 30 days, as required under the Approved Resolution Plan. Payments already overdue in the Approved Resolution Plan should be made by the SRA within two months of the order. If Rs. 10 crores were deposited with the Corporate Debtor by the SRA in lieu of the bank guarantee, that amount would either be adjusted against the pending amounts to be paid or refunded within 30 days.

Appeal Proceedings in Supreme Court

In Peter Beck and Peter Vermoegensverwaltung Ltd v. Edewelweiss ARC & Anr**5** during the hearing held before the Supreme Court on 28.02.2022, the Ld. Counsel of the SRA, on instructions, submitted that it would not be possible to comply with the NCLAT order dated 05.01.2022. The Supreme Court, inter alia, dismissed the appeal and gave liberty for initiation of fresh CIRP of the Corporate Debtor and take all consequential actions in furtherance thereof, in accordance with law.

NCLT Order and Subsequent CIRP

In light of the direction passed by the Hon'ble Supreme Court, State Bank of India (creditor of CD) filed an application bearing IA No. 1062/2022 and an additional affidavit ("Lender's Application) on behalf of all the Lenders of the Corporate Debtor for granting 105 days for inviting EOI; inviting resolution plans from interested prospective resolution applicants; appointment of the undersigned i.e. Mr. Pulkit Gupta as the Resolution Professional and to take all necessary actions for the completion of the resolution process of the Corporate Debtor.

The Hon'ble NCLT allowed the aforesaid lender's application and appointed IP Pulkit Gupta as the IRP. Thereafter, a fresh EOI and Form G was published by the IRP, and the CIRP concluded vide NCLT Order dated 17.05.2022, which approved the Resolution Plan submitted by Innova Captab Limited. Therefore, this case highlights an instance where the failure to implement an approved Resolution Plan did not automatically result in liquidation. Instead, it established a precedent for the possibility of initiating a fresh CIRP and inviting new Expressions of Interest from prospective bidders under specific circumstances, thus expanding the understanding of IBC processes

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1. Insolvency and Bankruptcy Code, 2016, No. 31 of 2016 (India).
2.. Vistra ITCL (India) Ltd. v. Torrent Investments Pvt. Ltd. & Ors., 2023 SCC OnLine NCLAT 110. Also see Ramneek Goel v. Sunil Bajaj and Ors 2023 SCC OnLine NCLAT 514.
3. 2022 SCC OnLine NCLAT 4.
4. Id, para 32.
5. Civil Appeal No. 1305-1306 of 2022 Order dated 28.02.2022.

DO CCD's QUALIFY AS A FINANCIAL DEBT?

- M. Devendra Sai Kumar, Advocate

Under Section 5(8) of the Insolvency and Bankruptcy Code (IBC), 2016, "***financial debt***" is defined as a debt along with interest, if any, which is disbursed against the consideration for the time value of money. It includes various financial transactions such as money borrowed against payment of interest, bonds, debentures, lease transactions, receivables, and any other arrangement having a commercial effect of borrowing.

Over time, judicial pronouncements have expanded this definition to include homebuyer's advances as financial debt**[1]**, clarified that third-party mortgages are not financial debts unless they involve direct disbursement**[2]**, and held that interest is not a mandatory requirement for a transaction to qualify as financial debt**[3]**. The jurisprudence has also recognized inter-corporate deposits as financial debt[4] and ruled that optionally convertible debentures with a maturity date fall under financial debt[5].These interpretations strengthen the idea that financial debt under IBC is not limited to traditional lending but extends to any transaction involving the disbursement of funds with an obligation of repayment, fulfilling the element of the time value of money. Adding to this recently, an NCLAT Delhi bench ruling in the case of Indian Renewable Energy Development Agency (IREDA) v. Waaree Energies Limited and Ors***[6]***on 6 December 2024, examined whether CCDs, despite their convertibility

Brief Facts

Respondent 1, Waaree Energies Ltd., had invested ₹10 crore in Compulsorily Convertible Debentures (CCDs) under a 2012 agreement to the Corporate Debtor (CD), Taxus Infrastructure & Power Projects Pvt. Ltd and later sought repayment with interest after 65 months, claiming a total of ₹21.45 crore. In 2021, an arbitral award recognized this amount as a debt. On the other hand, the Appellant IREDA, initiated a Corporate Insolvency Resolution Process (CIRP) against CD under Section 7 of the IBC.

Initially, the Resolution Professional (RP) admitted Waaree's claim; however, it was later rejected on the grounds that CCDs constitute equity rather than financial debt. Waaree challenged this decision before the National Company Law Tribunal (NCLT).

Major Issues:

1. Whether CCD claims fall under financial debt?

Verdicts:

NCLT Delhi Bench -II

The Adjudicating Authority Observed Respondent No.1 (Waaree) as a Financial Creditor, allowing participation in the Committee of Creditors (CoC). It ruled that the Arbitral Award (2021) recognized the debt, making its rejection unjustified.

The AA noted that while CCDs generally fall under equity, the presence of an interest component upon default signified Time. Value for Money, categorizing it as debt under IBC. Aggrieved by this decision, IREDA has filed an appeal challenging the ruling.

NCLAT Ruling and Analysis

The ruling is that CCDs are considered financial debt under Section 5(8) of the IBC as the transaction involves a time value of money, redemption of the debenture was contemplated, and its conversion was operational at the investor's option. Since redemption is at the option of the party, the debenture is to be treated as a general debenture, thereby qualifying as financial debt under Section 5(8)(c).

Critical Analysis of Judicial Reasoning

The main issue was whether Compulsory Convertible Debentures (CCDs) qualify as financial debt under the IBC. The judges referred to several precedents to support their reasoning. In IFCI Ltd. v. Sutanu Sinha**[7]**, the tribunal held that CCDs are in the nature of 'Equity Instruments and do not fall within the definition of 'Financial Debt'. Since the debentures lacked repayment obligations, they did not satisfy the criteria under Section 5(8) of the IBC.

The IFCI Ltd. filed an Appeal before the Hon'ble Supreme Court**[8]**, the Supreme Court upheld that Since CCDs compulsorily convert into equity, they do not create or establish a debt under Section 3(11) which requires a liability or obligation in respect of a claim that is due. Instead, the obligation qua the issuer is in the nature of an equity commitment, not a repayment obligation. Therefore, CCD holders are equity participants. In the case at hand, the tribunal noted that Waaree's CCDs included explicit interest (24% on default) and redemption rights under the DSA, distinguishing them from the equity-focused CCDs in IFCI.

In Shubham Corporation Pvt. Ltd. v. Kotoju Vasudeva Rao**[9]**, the tribunal dealt with zero-coupon CCDs that were automatically convertible into equity without any repayment mechanism. The ruling held that since these CCDs had no enforceable payment obligations, they could not be classified as financial debt under the IBC.

The Tribunal, relying on the above, emphasised that the nature of the transaction under the DSA must be considered instead of solely whether it has a time value of money or not. Based on that, it does not find any good ground to interfere with the order of the Adjudicating Authority, allowing the Application.

Conclusion

After considering all factors, debentures, traditionally treated as floating security with a covenant for payment on a specified date, have evolved into hybrid instruments such as PCDs, OCDs, and CCDs. The nature of the transaction, as determined by the DSA and its clauses, plays a crucial role in classification. To qualify CCDs as financial debt, the key determinant is the inclusion of a dual clause, allowing conversion at the investor's option while also contemplating redemption. This structural feature aligns CCDs with the definition of financial debt under Section 5(8) of IBC.

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[1] 2019 SCC OnLine SC 1005.
[2] 2020 SCC OnLine SC 237.
[3] 2021 SCC OnLine SC 513.
[4] 2021 SCC OnLine SC 51.
[5] 2023 SCC OnLine SC 372.
[6] Company Appeal (AT) (Insolvency) No. 1380 of 2024.
[7] (2023) ibclaw.in 383 NCLAT.
[8] (2023) ibclaw.in 149 SC.
[9] (2024) ibclaw.in 334 NCLAT.

JUDICIAL ANALYSIS ON THE POSITION OF DISSENTING FINANCIAL CREDITORS

- *Kartikay Vyas , Advocate*

IBC is an act which has collated all of the provisions of insolvency in Indian Legislation, wherein it's one of the objective is to balance the interest of all the stakeholders. In substantiation to it, IBC provides the payment for the dissenting financial creditors. Dissenting financial creditors are the creditors who voted against the resolution plan during the voting for the approval of resolution between the CoC.

Section 30(2) of IBC has gives protection to the dissenting financial creditor, as it creates a mandate on resolution applicant to pay the dissenting financial creditors not less than the amount which can be received during the event of liquidation. regulation 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 also acts as a safeguard, regulation 38 talks about mandatory contents of the resolution plan in which regulation 38(1)(b) provides priority payment to dissenting financial creditors over the creditors who have voted in the favourer the approval of resolution plan.

The main question of law lying behind the curtain here is whether the secured financial creditor who has opted for voting not in favour of the resolution plan has the right to enforce the security interest, in order to satisfy his claim. This question has arisen from standard practice used in liquidation, i.e. financial creditors having the choice of relinquishing their security interest.

Thus, IBC and regulations does not set out the manner of recovery to be used by the dissenting financial creditor. In the following cases Indian judiciary has answered that whether dissenting financial creditor has right to enforce his security interest or not and they are: .

Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd, 1

In the above case Supreme Court held that it is a trite law that dissenting financial creditors are secured creditor and being a secured creditor, they have a right over the security interest created over the assets of the corporate debtor. Thereby, enforcing such security interest, to the extent his entitled to, dissenting creditors could also satisfy their claim.

***India Resurgence Arc Private Limited v. Amit Metaliks Limited*. 2**

In 2021 Supreme Court held that the intent of the legislature is that security interest available to a dissenting financial creditor does not create a right over the other financial creditors, and such enforcement may not be allowed. Therefore, this court took the opposite approach that the J*aypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd,* **3** and held that if the payment of dissenting financial creditor

DBS Bank Limited, Singapore v. Ruchi Soya Industries Limited. 4

In 2024 Supreme Court took a different approach than India *Resurgence Arc Private Limited v. Amit Metaliks Limited* **5** ,and referred the question of law to the higher bench.

Since then no verdict has came out and this lacuna hasn't been addressed by the supreme court, thus creating a vacuum in this are of law and currently dissenting financial creditors may or may not enforce security interest as India Resurgence Arc Pvt ltd came in 2021 but since it was three judge bench judgement it may have preference over the DBS Bank Case as it came in 2024 but it was delivered by three judge bench.

1. Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd, (2022) 1 SCC 401.
2. India Resurgence Arc Private Limited v. Amit Metaliks Limited., 2021 SCC Online SC 409.
3. Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd (2022) 1 SCC 401 .
4. DBS Bank Limited, Singapore v. Ruchi Soya Industries Limited, CIVIL APPEAL NO. 9133 OF 2019 .
5. Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd (2022) 1 SCC 401.

IS THE GOING CONCERN SALE DURING LIQUIDATION TENABLE?

- *Nikhil Pathak, Advocate & Kamakshi, Advocate.*

A "GOING CONCERN SALE" ON AN "AS IS WHERE IS BASIS"

Introduction

The sale of the Corporate Debtor as a going concern or its business(s) as a going concern (GCS) was added in the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) vide amendment dated 22.03.2018 in furtherance of the objective of the Code, i.e., revival of distressed entities. The regulations also envisage that GCS must be explored first by the Liquidator either on the recommendation of the CoC or on his own volition within 90 days from the Liquidation commencement date.

The Bankruptcy Law Committee Report (BLRC) did not envisage the concept of GCS. It has evolved through judicial precedents which were later incorporated in the CIRP Regulations and the Liquidation Regulations. The case of Gujarat NRE Coke Limited**[1]** was instrumental in catalysing the introduction of the amendment wherein consequences of liquidation on the workmen and the employees were considered and direction to liquidator was given to attempt a GCS.

Preserving Continuity During Liquidation

The IBBI had provided rationale for adding the GCS concept**[2]** stating that many viable companies could face liquidation merely due to lack of interested parties or the resolution plan fails to secure the required voting for approval or for other reasons and lead to dire consequences such as job losses, disruptions for operational creditors, diminished returns for both secured and unsecured creditors as well as reduced tax and revenue collections for the government.

There are various benefits of GCS such as transfer of the entire entity, transfer or extinguishment of existing equity shareholding with the issuance of new shares, the expectation that the purchaser will continue the business operations post-sale, protects existing employees, and further reduces the need for new permits/licenses.

Challenges of a going concern sale

In Invest Asset Securitisations & Reconstruction Pvt. Ltd vs. Mohan Gems & Jewels Pvt. Ltd.**[3]** the tribunal observed that liquidation requires dissolution under IBC and regulations that provide for liquidation as a going concern are ultra vires.**[4]** The 32nd Report of the Standing Committee on Finance recommended deleting Regulation 32(e) and amending Regulation 32(f) of the Liquidation Regulations.

The Insolvency Law Committee ("ILC") (February 2020) noted that the liquidation commences only when the CIRP fails and no common agreeable solution can be found to keep CD as a going concern, i.e., entry into liquidation itself implies the inability of the CD to be continued as a going concern. There also might be a situation of deliberate non-submission of the Resolution Plan during CIRP so as to acquire the CD at a lower value through a backdoor entry and bypass the standard CIRP route.

(cont.)

1. Gujarat NRE Coke Limited, 2018 SCC OnLine NCLT 4072..
2. Mohan Gems & Jewels Pvt. Ltd. v. Vijay Verma and Anr. (2021) ibclaw.in 402 NCLAT.
3. Invest Asset Securitisations & Reconstruction Pvt. Ltd vs. Mohan Gems & Jewels Pvt. Ltd, CP No. 590(PB) of 2018 NCLT.
4. Ibid.

Ambiguity in the definition

In absence of definition of "going concern" sale under IBC, the meaning of the term has gone through a roller coaster ride. Although a general GCS involves the transfer of liabilities along with assets, such a transfer in liquidation should be different. As per IBBI Discussion Paper on Corporate Liquidation Process and the judgement in Visisth Services Limited v. Mr. S. V. Ramani and Others**[5]**, GCS means sale of assets as well as liabilities. However, in Gaurav Jain Vs. Sanjay Gupta, Liquidator of Topworth Pipes & Tubes Pvt. Ltd. **[6]**

NCLT, Mumbai has observed that as far as GCS in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the CD has to be settled in accordance with Section 53 of the Code and hence the purchaser of this assets takes over the assets without any encumbrance or charge and free from the action of the Creditors.**[7]**

Lower Realisation

Creditors recovered only 2.4% through GCS (75% of liquidation value), but 3.7% via regular dissolution (101% of liquidation value). **[8]** This indicates that GCS provides no additional value compared to a regular dissolution. Further, out of 2707 liquidation orders passed, only 93 cases adopted a GCS. **[9]**

Disclosure of Reserve Price in Auction

The reserve price is publicly known from the first auction which allows bidders to anticipate price reductions in subsequent auctions, leading to strategic delays in bidding and ultimately resulting in lower realizations - often below the liquidation value.

Increase in Liquidation Cost and Value Erosion due to extended timelines

In the Gujarat NRE Coke Limited matter, the absence of an interested buyer for the CD as a going concern left employees in limbo for over three years. The dilemma of how to move this company out of liquidation as a “Going Concern” and effecting its revival continued to cloud the minds of shareholders, bankers, other creditors, the promoter and the Liquidator till the end. Therefore, if an attempt to operate the company is made even during liquidation, it would incur extra costs and deteriorate the liquidation value.

Relinquishment of Security Interest

One of the challenges to GCS is the option provided to the secured creditors to realise their security interest outside the liquidation process.

- **Employment Issues**

One of the reasons for origin of the concept of GCS was the concern regarding the employees. Albeit the inclusion of GCS, the fate of the employee after the acquisition of CD depends on the whim of the acquirer.

- **Tax Issues**

The provisions of the Income tax act provide benefit of carry forward and set off of unabsorbed depreciation and carry forward of losses of the company pursuant to resolution plan, however, no such exemption has been provided to a successful bidder under GCS. As such the bidder seeks various reliefs and exemptions from time to time which enhances the litigation and uncertainty

Conclusion

The tribunal often grants reliefs that benefit successful bidders, including clearing all dues, protection from prosecution for past offenses, exemptions from civil liabilities, and dismissal of pending legal cases which provide a strong safety net and mirrors the reliefs available to SRAs under CIRP. This signals a growing trend towards viewing GCS as a "second chance" for struggling enterprises.

However, there is a clear distinction as unlike the resolution plan, a GCS acquirer is not bound by the mandate provided under section 30(2) and 30(4) of the Code. Therefore, it is not necessary that a GCS will yield a similar value as CIRP or preserve the assets and value of the CD in a similar manner. Recently, IBBI**[10]** has proposed to omit the provisions related to GCS from the Liquidation Regulations. However, the revival of the company is the objective of first order and shouldn’t be subsided easily for the viable companies that have unfortunately landed in Liquidation.

In the view of abovementioned challenges, clear guidelines and procedures for GCS should be established. The Liquidator should be able to choose the most value-maximizing method from the get go as, at present, the Code inadvertently pushes the Liquidator to first consider GCS and precludes him from choosing alternatives that could yield higher realisation.

Streamlining the procedure will mitigate the litigation that follows after a successful bid due to lack of clarity in the Code with regards to GCS and facilitate expeditious completion of the Liquidation process.

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5. Visisth Services Ltd. v. Mr. S. V. Ramani and Ors., (2022) ibclaws.in 33 NCLAT.
6. Gaurav Jain v. Sanjay Gupta, Liquidator of Topworth Pipes & Tubes Pvt. Ltd., (2021) ibclaws.in 824 NCLT.
7. Ibid.
8. Insolvency and Bankruptcy Board of India, Discussion Paper on Streamlining Processes , Under the Code (Feb. 2023).
9. Insolvency and Bankruptcy Board of India, [Quarterly newsletter Oct-Dec 2024], pg 14.
10. Ibid.

REVIEWING EXPERT COMMITTEE REPORT ON MEDIATION AS A TOOL FOR INSOLVENCY

- *Lahari Dam, Advocate*

Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC), has revolutionized insolvency resolution in India by providing a comprehensive and time-bound framework for resolving distressed assets. However, the IBC has faced challenges, particularly in terms of delays and litigation, which have hindered the efficient resolution of insolvency cases. To address these challenges, the Insolvency and Bankruptcy Board of India (IBBI) constituted an Expert Committee to explore the potential of mediation as an complementary mechanism for resolving disputes under the IBC.

Scope of Mediation in IBC

Mediation has a potential to emerge as a crucial alternative dispute resolution (ADR) mechanism in insolvency proceedings, providing a flexible and efficient solution to complex financial disputes. Traditionally, insolvency cases under the Insolvency and Bankruptcy Code (IBC) have been resolved through structured legal processes involving resolution professionals, creditors' committees, and judicial oversight by tribunals like the NCLT. While effective, these processes have proven to be time-consuming and costly. Mediation offers a more streamlined approach, enabling parties to negotiate mutually acceptable solutions without formal adjudication. Although the IBC currently lacks specific rules for mediating insolvency processes or liquidation, the IBBI is recognizing mediation's importance in resolving insolvency-related disputes.

Ambit of S. 12A

The IBC by nature encourages settlements that comply with the law, rather than prohibiting them. Section 12A**[1]** of the Code provides the withdrawal of a Corporate Insolvency Resolution Process (CIRP) application after its admission if the same is consented by ninety percent of members of the committee of creditors by way of vote. Furthermore, the NCLT has used its powers under Rule 8**[2]** of the CIRP Rules, 2016, for withdrawal of CIRP application before admission.

In 2022, the National Company Law Appellate Tribunal (NCLAT) ruled that the power granted to the NCLT under Section 442 is limited to the Companies Act, 2013, and does not extend to provisions under the IBC. This means that the NCLT currently does not have the authority to refer cases to mediation within the IBC framework.[3]

The Mediation Act, 2023, has introduced an outline for mediating disputes, encompassing both commercial and non-commercial conflicts. This legislation promotes voluntary as well as collaborative mediation. However, the Act remains silent on its applicability to the IBC, as it is not included in the Scheule I, which lists the statutes where the umbrella Act would not be applicable. . This ambiguity leaves room for interpretation regarding the integration of mediation under the IBC. The Expert Committee provided certain recommendations to explore the potential of mediation in insolvency proceedings:**[4]**

Hightlights of the Committee Report

Mediated Settlement Agreements (MSAs): A Mediated Settlement Agreement (MSA) is a formal agreement reached between parties involved in a dispute through the mediation process. This agreement is designed to resolve some or all of the disputes between the parties in a mutually acceptable manner.

- **Recognition and Enforcement:** MSAs should be recognized and enforced under the IBC. Parties can approach the Adjudicating Authority (NCLT) directly for enforcement without instituting separate legal proceedings. MSAs should be incorporated into an NCLT order, similar to the process under Rule 8 of the AA Rules, 2016.
- **Post-Admission Settlements:** At the post-admission stage, process disputes can be settled under Section 12A of the Code. Settlements should be recorded in the NCLT order, providing statutory sanctity. In case of breach, the aggrieved party can approach the NCLT for revival of the CIRP. Mediation should be implemented in such a manner that third-party interests are not altered or impacted without their express consent.

Voluntary Mediation at Different Stages:

- Pre-institution Stage: Parties can voluntarily refer disputes to mediation before filing an application, subject to the dispute being identified as fit for mediation. This stage falls outside the scope of the IBC but should be mentioned in the application.
- **Post-institution but Pre-commencement Stage:** Parties can refer disputes to mediation with express intimation to the NCLT. The mediator's mandate will automatically terminate upon CIRP admission or 30 days from reference, whichever is earlier.
- **Post-commencement Stage**: Specific disputes during the insolvency resolution process (e.g., claims collation, inter-creditor issues) can be referred to mediation by a 66% CoC majority or by the creditor.. The mediator's mandate will terminate at the expiry of the underlying stage's timeline.
- **Plan Implementation Stage**: Disputes during the plan implementation stage can be referred to mediation as prescribed under the Code or Rules.

Operational Infrastructure:

- A dedicated NCLT-annexed insolvency mediation cell with an independent secretariat should be established to administer and oversee mediations.
- Adequate infrastructure for e-mediation, including e-meetings and e-filings, should be provided to facilitate online or paperless mediation.

Mediators:

- The pool of mediators should include retired NCLT/NCLAT members, senior advocates with insolvency experience, ex-regulatory officials, and insolvency professionals. Additional mediators could include legal practitioners, experienced mediators, and technical experts in insolvency, accounting, valuation, and industry operations. Adequate training and a Code of Ethics for Mediators should be provided to uphold professional standards.

Timelines

- Ensure mediation timelines run parallel with the statutory timelines under the IBC. For example, any mediation during the post-institution but pre-commencement stage of CIRP will be subject to automatic termination within 30 days of its reference or upon NCLT's admission of the CIRP, whichever is earlier.

Costs

- **Cost Sharing:** Costs arising from the mediation process to be borne by the parties equally or as mutually agreed.
- **Exclusion from Insolvency Costs**: Costs incurred for mediation during the CIRP process to be excluded from the insolvency resolution process costs.
- **Reimbursement Provisions:** Introduce provisions for reimbursing expenses incurred by the parties at the NCLT (or NCLAT or the Supreme Court).

The committee has emphasized that the "one size fits all"[5] approach of the Mediation Act, 2023, is not suitable for the complex and specialized nature of insolvency mediation. Instead, a customized and phased procedure of mediation is recommended to ensure that the mediation process complements the existing insolvency resolution mechanisms without compromising the Code's objectives[6]. the Committee also recommended to specifically exclude the IBC from the scope of the Mediation Act, 2023, to avoid conflicts and ensure tailored mediation processes.

Conclusion & Recommendation

The integration of mediation as an ADR mechanism under the IBC holds substantial potential to improve the effectiveness of insolvency resolution processes in India. Mediation has the potential to offer a flexible, cost-effective, and time-efficient alternative to traditional litigation, preserving business relationships and maintaining confidentiality. The Expert Committee's recommendations including a phased introduction of voluntary mediation, specialized infrastructure, and reorganized enforcement of MSAs, if it is implemented would provide a tailored framework that aligns with the IBC's objectives and statutory timelines.

Formal recognition and integration of mediation into the IBC framework could lead to quicker resolutions, reduced litigation, and a more simplified resolution process, ultimately benefiting all stakeholders involved. The author believes that mediation is flexible enough to fit into any context and be relevant to many kinds of disputes. Specialized training for current and potential mediators, particularly as Insolvency Mediators, would enhance the effectiveness of mediation, creating the magic that mediation has the potential to offer.

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[1]Section 12A of Insolvency and Bankruptcy Code, 2016.
[2] Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
[3] White Stock Ltd. Vs. Prajay Holdings Pvt. Ltd.(2022) ibclaw.in 682 NCLAT
[4] Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016 by Expert Committee constituted by the Insolvency and Bankruptcy Board of India; at Page 16, Summary of Recommendations of the Committee.
[5]Ibid; at Page 65, Para 5.34; (31st January, 2024).
[6]Ibid.

SNIPPETS

INDEPENDENT SUGAR CORPORATION LTD. V. GIRISH SRIRAM JUNEJA AND ORS. (2025 INSC 124)

DATE OF THE JUDGEMENT - 29 JANUARY 2025

- Kamakshi, Advocate

Brief Facts

The case stemmed from appeals filed under Section 62 of the IBC related to the CIRP of Hindustan National Glass and Industries Ltd (HNGIL), the largest player in India's glass packaging industry. On 21 October 2021, the NCLT, Kolkata Bench, admitted the CIRP application filed by DBS Bank under Section 7 of IBC against HNGIL. Independent Sugar Corporation Ltd. (INSCO) and AGI Greenpac Ltd. had submitted their respective Resolution Plans in April 2022, for consideration. INSCO challenged the approval of the resolution plan submitted by AGI Greenpac Ltd. by the Committee of Creditors (CoC), contending that the resolution applicant had failed to secure the requisite prior approval from the Competition Commission of India. The proposed combination between AGI Greenpac and HNGIL, expecting to secure a market share of approximately 80-85% in the food and beverage (F&B) and 45-50% in the alcoholic beverages segment, raised a significant issue. The merger of these two major players would have likely resulted in an Appreciable Adverse Effect on Competition (AAEC) in the glass packaging industry generally and particularly within the F&B and alcoholic beverages segments.

Key Issue

Should the approval of a proposed combination by the CCI mandatorily precede the approval of the Resolution Plan by the CoC, as stipulated under the proviso to Section 31 (4) of IBC?

Decision of the NCLAT

NCLAT upheld the approval accorded to AGI Greenpac's Resolution Plan, stating that although the CCI's approval requirement was mandatory in nature, the CoC's prior approval was only directory. This is because the CCI's timeline for deciding upon a combination proposal is much longer and should not lead to a situation where the CIRP is frozen or halted because of a pending application before the CCI.

Decision of the Supreme Court

The Supreme Court, in its majority opinion, emphasised the need for a literal interpretation of statutes unless it contradicts the legislative intent. The Apex Court firmly stated that CCI approval must precede CoC approval to maintain the integrity of competition law. CoC's commercial wisdom should be exercised based on a fully compliant plan, not a conditional one awaiting regulatory clearance. The CIRP timeline argument is weak, as regulatory scrutiny under the Competition Act is necessary to prevent monopolistic control and market distortions. Harmonising IBC with the Competition Act is crucial, and procedural expediency should not override statutory requirements protecting market competition. However, Justice SVN Bhatti dissented, arguing that the word 'shall' in the proviso could be interpreted as 'may' in a purposive manner. He contended that the requirement for CCI approval before CoC approval is directory and not mandatory, suggesting that the timing of approval should not be rigidly enforced.

Significance of the Judgement

The judgment mandates that CCI clearance must be obtained before the approval of CoC for resolution plans containing a provision for combination, as referred to in section 5 of the Competition Act, 2002, requiring resolution applicants to secure the approval at the outset. It further affirms that any change to IBC or Competition Act provisions must be enacted by the legislature and not through judicial interpretation, thereby bolstering investor confidence with enhanced procedural safeguards. However, while these measures fortify regulatory integrity and predictability, there is a major concern relating to the resulting increase in the time taken for approval of the resolution plan. Therefore, it remains to be seen how CCI may refine its approach and provide conditional approvals while scrutinizing the resolution plans submitted by the resolution applicants during CIRP.

GST REGISTRATION: LEGAL FRAMEWORK AND RECENT DEVELOPMENTS

- Harshitha Ulphas, Advocate

For any taxation regime and system to function properly, it requires identification of taxpayers to ensure compliance, and the most efficient way to achieve the same is through Registration. The Indian Indirect Taxation regime under Goods and Services Tax Act, 2017, through Registration, provides businesses with a unique number to collect taxes and also to avail Input Tax Credit. It is essential to note, that without a registration, one can neither collect tax nor claim credit for tax paid by them.**1**

The said GST Registration is PAN based and State specific in nature which essentially requires businesses to register in each State or Union Territory from where there is supply of goods and/ or services. It is pertinent to note that a person registered in one State is considered 'unregistered person' outside the State. Additionally, separate registration required for SEZ units or SEZ developers, even within the same State.**2**

Unlike the service tax regime, GST does not allow centralized registration across multiple States and Upon registration, businesses receive a 15-digit GST Identification Number (GSTIN). Most GST registration details can be amended without approval, except for core details like the legal name, State, or additional place of business, which require an application within 15 days of the change and approval from the tax officer within the same timeframe. If a taxpayer no longer requires registration, they must apply for voluntary cancellation within 30 days of the event. However, a tax officer may also initiate suo-moto cancellation if the taxpayer is not conducting business from the registered place or is issuing tax invoices without actual supply. Once a taxpayer applies for cancellation, their registration is suspended from the application date or the requested cancellation date, whichever is later. Similarly, if the officer deems cancellation necessary, suspension may be imposed until proceedings are completed, during which the taxpayer cannot make taxable supplies or file returns. If the tax officer cancels the registration, the taxpayer may apply for revocation within 30 days, provided all pending returns and tax dues are cleared if the cancellation was due to non-filing. Additionally, revocation under SGST/ UTGST automatically applies under CGST.

It is essential to note that while there are certain reasons due to which the registration can be denied, the reasons for those have to be those laid down in the relevant Statutes and the Rules, and not beyond their scope. The same has also been upheld by the Andhra Pradesh High Court at Amravati, in the case of ***Tirumala Balaji Marbles and Granites v. The Assistant Commissioner of State Tax & Ors.*****3** The issue in the case was whether the GST registration can be denied merely based on the apprehension of tax evasion.

In deciding the case, the court made the following observations:

- That there is no restriction on individuals from other states obtaining GST registration in Andhra Pradesh.
- That the apprehension of tax evasion, however well-founded, cannot override the right to trade and business, which is protected under Article 19 of the Indian Constitution.

The ruling reaffirmed that registration cannot be refused based on reasons not outlined in the Statute or Rules and therefore, registration cannot be denied on the mere apprehension of tax evasion. In the light of the same, the court set aside the rejection order and directed the tax authorities to grant registration to the petitioner, however, the authorities were given liberty to monitor the taxpayer's returns and business activities to prevent tax evasion.

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1. Registration under GST Law, GST Council, https://gstcouncil.gov.in/sites/default/files/e-version-gst flyers/Registration_under_GST_Law_new.pdf.
2. Registration under GST Law, GST Council, https://gstcouncil.gov.in/sites/default/files/e-version-gst flyers/Registration_under_GST_Law_new.pdf.
3. W.P.No.1200/2025 decided on 5th February, 2025.

EBKRAY: LIQUIDATION SIMPLIFIED

THE IBBI VIDE ITS CIRCULAR1 DATED 29TH OCTOBER 2024

- Mathew Jacob, Advocate

The Insolvency and Bankruptcy Board of India (IBBI) vide its circular1 dated 29th October 2024 introduced **eBKray,** a centralised platform for conducting e-auctions and listing of assets. This initiative aims to combat delays, increase bidder participation, and enhance transparency in the liquidation process, ultimately making it faster, fairer, and more efficient. It is the fruit of IBBI's collaboration with the Indian Banks Association (IBA) and is currently managed by PSB Alliance Private Limited (a consortium of 12 public sector banks).

Prior to eBKray, liquidators were relying on multiple auction mechanisms wherein the details of the assets were only made public at the time of the auction notice.**2** This led to information asymmetry as potential buyers had limited time to assess the value of the assets resulting in lower recovery rates.**3** By introducing a centralised platform where all information of the assets would constantly be available to the public, IBBI has greatly simplified the process. IBBI's beta testing of the platform has been a success. As on the circular**4** dated 10th January 2025, 210 assets have been listed, and 25 auctions were scheduled/conducted.**5** Encouraged by such a great response, IBBI vide the same circular, mandated the exclusive use of the eBKray auction platform with effect from 1st April 2025 and further directed that listing of all unsold assets undergoing liquidation to be completed by 31st March 2025.**6** It's interesting to note that eBKray is not something new as it has been used for conducting auction of assets mortgaged to public sector banks under the SARFAESI Act for the past 5 years. The decision to extend its application to liquidation under the IBC is a great step forward by the IBBI.

Now, with the information of all the assets of distressed companies listed publicly in one place at all times, the liquidation process will be further accelerated, making the lives of many liquidators easy/. Potential Bidders can constantly be on the lookout for any new assets that pop up further increasing participation in future auctions. While India has now moved toward a single, mandatory platform for all liquidation auctions, the approach in other jurisdictions differs.

In the US and the UK, there is no equivalent single stop e-auction platform for selling assets of distressed companies. Instead, multiple platforms exist, and liquidators have discretion in choosing auction methods. In the US, platforms like **'Bid4Assets'** facilitate online sales of foreclosed and government-seized assets, while other specialized auctioneers assist in assets sales as mentioned under Section 363 **7** of the US Bankruptcy Code. Similarly, in the UK, platforms like **'John Pye Auctions'** and **'Eddisons'** conduct auctions for assets from insolvent companies, working alongside insolvency practitioners. However, the use of such platforms is not mandatory, and liquidators can also opt for private sales, public auctions, or other disposal methods based on asset type and market conditions. By making eBKray the sole e-auction platform, India is charting a different course, ensuring greater transparency and efficiency in asset sales. If successfully implemented, eBKray has the potential to significantly improve maximization of assets and acceleration of the liquidation process aligning with the time bound character of the IBC.

1. No. IBBI/LIQ/78/2025
2. Id.
3. Id.
4. No. IBBI/LIQ/81/2025
5. Id.
6. Id.
7. 11 U.S.C. § 363 (2018)

CASE NAME- MOHAMMED ENTERPRISES (TANZANIA) LTD. VS FAROOQ ALI KHAN (2025 INSC 25)

DATE OF JUDGEMENT- SUPREME COURT OF INDIA JANUARY 03, 2025

- Ritansh K Nand, Advocate

Brief Facts

In this case High Court of Karnataka intervened in a CIRP by setting aside an approved resolution plan by exercising its writ jurisdiction. The petitioner of the writ had also applied to the Adjudicating Authority for relief before filing the Writ. The Hon'ble Supreme Court of India clarified that in this case, it was not appropriate for the High Court to have exercised its writ jurisdiction. Thereby, disturbing the laid down processes of the Insolvency Bankruptcy Code, 2016 ("Code") SLPs were filed in the Supreme Court against the order of the High Court.

Key legal principles

The Hon'ble Court stressed on the fact that legislated statutes need to be strictly followed to "maintain legal discipline and preserve the balance between need for order and the quest for justice". The High Courts are Constitutional Courts having a supervisory role and the power of judicial review, the cases in which they exercise their powers need to be rigorously scrutinized and such powers should be applied judiciously. In the present case, High Courts exercise of their writ jurisdictions was detrimental to the Corporate Insolvency Resolution Process.

Ratio Decidendi

Thus, intervention of High Courts where the statute does not provide for High Court's jurisdiction, should be subject to rigorous scrutiny and judicious application, even in cases where violation of principle of natural justice is claimed. Here, when, the statutory remedy is already applied for by the applicant, the High Court should not delay the process of the code, which aims to be a time bound process to ensure timely Insolvency resolution, by exercising their writ jurisdictions.

Significance

The judgment highlights the importance of "Code", a code is a consolidation of laws and procedures which aims to consolidates proceedings under a single umbrella, prime examples being the Code of Civil procedure which establishes all the procedures under the courts established therein, same goes for the Criminal Procedure Code (now BNSS), which is a code which consolidates the criminal procedures and provides for the trials of cases of criminal nature under all criminal laws. Similarly, IBC is also a code. Which in itself is sufficient and provides statutory remedies by directing the applicants to the Adjudicating authority u/s 60, to the Appellate Authority u/s 61 and to the Supreme Court u/s 62.

EXPERTS OPINIONS

REVISITING THE LARGER PUBLIC GOOD

- Dr. P. Bayola Kiran, Assistant Professor,
NALSAR University Of Law.

The general notion of insolvency is that there is not enough to cover everyone's due. To ensure a fairly reasonable outcome for all, there existed the problem of streamlining, regulating or even precluding, the better placed, better situated, or vigilant stakeholders from racing for a remedy. General Stay, Automatic Stay, or Moratorium was posited to be the answer to this question. It built on the belief that it serves the greater good to the stakeholders by preventing the race to the court. Under the IBC, 2016, Section 14 postulated the idea of a moratorium. The courts have time and again made it clear that the provision aims at the orderly completion of the insolvency resolution process and also safeguards the assets of the debtor thus preventing simultaneous multifarious proceedings.

The greater good envisaged for justifying the moratorium is seemingly convincing to preclude the creditors and make them join the collective proceeding against the debtor. Though there are distinctions in the application of the general stay among jurisdictions, the underlying motivation remains the same. Although it is necessary for the preservation of value by leaving no scope for delay occasioned by multiple proceedings before multiple fora, the challenge to the motivation at times takes a hit due to the diversity of stakeholders and the complexity of the debtor's relationships.

To put things in perspective, the restriction premised on the greater good might be subject to access premised on an even greater good (larger good). The Indian experience on the premises of Public Interest and Public Purpose poses questions on the applicability of said restriction under S. 14. The social engineering function of law compels the court to balance the interests and the consequence of such exercise results in preferring larger good under some law over the greater good under IBC.

A recent order of the NCLT (Mumbai) in the case of Aegis Resolution Services Pvt. Ltd. v. Slum Rehabilitation Authority and Mumbai Metropolitan Region Development Authority, Government of Maharashtra, illustrates social engineering function in operation. An application was filed by the RP seeking direction against the acquisition of land of the corporate debtor by the concerned authority as a part of the construction of a four-lane tunnel road connecting Thane and Borivali. The applicant (RP) relied on the application of S.14 to preserve the assets of the corporate debtor, as the acquisition can result in the depletion of the debtor's assets thereby affecting the value during the CIRP.

The NCLT rejected the application by noting that the authority is well within the rights to acquire and, as per law, adequate compensation has to be paid. Considering this, NCLT opined that the protection under S.14 (premised on the greater good) by no stretch of imagination be extended against the larger public interest (the larger good). The NCLT referred to the decisions of other fora (including the Supreme Court of India) supporting the premise that the acquisition is not a transaction prohibited under S.14.

There is a renewed significance of Environment and Climate Change in recent times and the fact that the remedies, processes, and enforcement mechanisms envisaged under the same are based on public interest and public good. Considering that the crystallization of priority to larger good (premised on public interest, public purpose) over the greater good, could pave the way to enforce the penalty imposed by the National Green Tribunal against the corporate debtor. If considered and construed in a similar sense, the proposed plans in a CIRP may even factor in the liability.

By revisiting the larger public good, though sounding like a prophesy, it may at some point secure a place before the CoC or even a place in it for the relevant environmental office/ authority. Alternatively, the larger public good perspective may even be employed to include environmental dues, penalties, etc., in the waterfall mechanism/ bankruptcy ladder.

CATALYZING VALUATION ARCHITECTURE FOR ACHIEVING THE OBJECTIVES OF IBC

-Dr. S K Gupta , Managing Director , ICMAI Registered Valuers Organization

The perspective

The Code aims at maximisation of value through resolution of viable businesses. It envisages resolution within the firm as a going concern, as closure of the firm destroys organisational capital and renders resources idle till reallocation to alternate uses. It empowers and facilitates the stakeholders to complete the resolution process in time. It envisages limitless possibilities of resolution – with or without the, existing products, technology. The key objective of the Code is the maximization of the value of assets of the corporate debtor, aiming to realize as much value as possible for creditors through a time-bound resolution process. A critical element in attaining this goal is transparent and reliable estimation of value that enables informed decision making. The entire CIRP is therefore based on a value representation of the corporate debtor's worth. Valuation is a cornerstone of insolvency processes as determining the value of a debtor's assets, is critical for viable restructuring plans, creditor discussions, and, ultimately, the success of the bankruptcy process. The credible and timely valuation of the corporate debtor assets is one of the essential components of resolution process under IBC. This valuation plays a critical role in maximizing asset value for creditors and guarantee a just return for all stakeholders Valuation gives insight into the company's current financial situation, including the values of the CD as a whole, its core operating assets, and potential sources of liquidity. This analysis is fundamental in determining which areas require intervention and whether restructuring is feasible. Valuation guides the CoC to assess the possibility of restructuring the CD as a going concern and to compare the proposals provided by resolution applicants.

Perils of valuation architecture under IBC

- Registered Valuer's of different asset classes conduct valuation for particular asset classes such as land, buildings, machinery, plant, and financial assets.
- Interdependencies among assets (such as the combined worth of business wherein various assets of CD viz. Land and building, Plant and machinery along with financial assets are synergistically employed together in operations are not be taken into consideration due to fragmented / asset class wise valuation approach
- The sum of the parts approach results in a fragmented /scaled down assessment of CD's worth and does not provide fair estimation of the true value of the assets of the corporate debtor.
- Intangible assets and other resources of the company other than the assets under the 3 asset classes are not considered in arriving at Fair value and Liquidation value
- The valuation under the IBC is in silos for distinct assets; the valuation of "corporate debtor as a whole i.e. the consideration of the complete corporation and its assets is not thought for. The consideration of the entire worth of the CD has been overlooked; therefore, The CDs assets are undervalued, resulting into lower resolution plan value and low realisation to creditors
- It becomes challenging to evaluate the company's worth as a single operating unit in the absence of a unified CD valuation.

The DC of IBBI in its order dated 17.02.2023 had observed that

- The element of synergy among the different units of the CD and the value derived from such synergy has not been considered.
- The synergy valuation is not provided for the CD while submitting the Fair Value (FV) and Liquidation Value (LV)

IBBI discussion paper dated May 2024

In order to streamline the process and remove ambiguities around the present framework of appointment of valuers for the purpose of valuation of the CD and to align the regulations with the valuation rules, it is proposed that the CIRP Regulations may be amended to specify that the RP shall assign for carrying out the valuations of the CD as a whole to the RV. The RV may conduct the valuation as per rule 8(2) of the Valuation Rules taking inputs for other asset classes or get the valuation for an asset class conducted from another registered valuer, if required.

The valuation under the IBC is in silos for distinct assets; the valuation of "corporate debtor as a whole i.e. the consideration of the complete corporation and its assets is not thought for. The consideration of the entire worth of the CD has been overlooked; therefore, The CDs assets are undervalued, resulting into lower resolution plan value and low realisation to creditors.

A case for enterprise value consideration under IBC

It is pertinent to amend valuation guidelines to mandate estimation of the CDs enterprise value or going concern value, based on which resolution plans must be created and considered for achieving the objective of the Code, i.e., Maximization of the value of assets of the CD.

STATUS OF CONSUMERS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016- NEED FOR A RELOOK

- Pavithra R, Assistant Professor of Law, GNLU.

Insolvency means the inability to pay debts that have resulted in a default. Creditors who have facilitated debt to the debtors are equipped with appropriate remedies through different legislations across the countries. In India, debt recovery has formed part and parcel of the Sick Industries Companies Act of 1985, the Recovery of Debts and Bankruptcy Act of 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 and the Companies Act, 2013. These legislations failed to fetch the desired results, and hence, a consolidated law was brought to the fore in 2016 called the Insolvency and Bankruptcy Code 2016.

The new law covered the detailed process of corporate insolvency and individual bankruptcy. However, the ability of the consumer to be called a creditor and to enforce his claims in a CIRP process to date remains a question that has not been touched upon or thought of. A counterargument that might arise to the same would be that the role of IBC is to take care of a larger system of debtor in possession and creditor in control law rather than to bring in inclusivity of consumers within the new framework.

The law as it stands, focuses primarily on corporates being insolvent and the efforts taken to reorganize and allow restructuring by paying off the debts to the creditors. As an offset, there are generic references to ensuring a balanced approach in the treatment of all stakeholders. When one applies the principles of noscitur-a-sociis and grouping stakeholders as distributors, suppliers, and government, a stretch is possible to be made to bring consumers under the ambit of stakeholders. However, the protection extended to such stakeholders is not that great in the eyes of the law. The law merely tries to provide a simple protective and binding mechanism that is to act and apply to all stakeholders fairly. It does not, in reality, route for claiming the rights of those stakeholders either under the CIRP mechanism or under the liquidation process.

The purpose of the law as was drafted does not cater to the needs of consumer protection. The same was clearly witnessed when the majority of homebuyers had to knock on the doors of the Supreme Court of India to get their claims from the real estate allottees who were primarily not allotted houses and also failed to receive the principal amount that was paid. In the case of homebuyers, starting from the case of Chitra Sharma to Jaypee Industries Case, there had to be timely intervention to ascertain the rights of the homebuyers.

Further, their rights as decree holders had to be clarified through the case of Vishal Chelani, 2023. The inclusion of home buyers as a financial creditor through cases and amendments was not taken as a first measure in IBC. It was rather introduced through a series of interventions and batches of cases, showing the indifference that the law has towards including creditors who are not the ones who provide for the working capital of the corporate debtor or have charge over the assets of the corporate debtor or not the ones who are day-to-day traders with the corporate debtor. This being the case, being a consumer and providing debt in any case, cannot at this moment, think of knocking on the doors of IBC for remedy and redress.

One may argue that the Consumer Protection Act, 2019 should be the main enactment and should be considered self-sufficient to protect the interests of the consumers. But to be noted is that the Consumer Protection Act, 2019 is a general law dealing with the protection of the general interests of consumers and intends to provide compensation to that extent under varied forums. Whereas, IBC, 2016 is a special consolidated comprehensive self-sufficient legislation in cases of matters of debt. In such a situation, where a consumer could prove that he has indeed provided the corporate debtor, with debts, he should be allowed to file his claims with the resolution professional that has to be validly accepted to prepare an information memorandum.

True that the consumers might not have greater numbers as debts given to the corporate debtor, in such instances, the overall debt of the consumers as a class has to be considered or where there is a single consumer, the worth of the debt should be allowed to be scrutinised, and a specific trigger amount may be given to the consumer category to allow them to approach appropriate adjudicating authority under IBC. To exclude consumers from approaching IBC is not warranted, and to that extent, IBC has to be made and remain accommodative.

CONVERSATION & INSIGHTS

NAVIGATING COMPLEX LIQUIDATIONS: INSIGHTS FROM AN INSOLVENCY PROFESSIONAL

R&P Committee in Conversation with IP Mr. Prakul Thadi

The members of the Research and Publication Committee recently had the privilege of interviewing Insolvency Professional (IP) Prakul Thadi, a practitioner since 2021, who is also part of the foundation batch of the Post Graduate Insolvency Program (PGIP). In this engaging conversation, Mr. Prakul shared invaluable insights into the challenges and strategic decisions involved in the liquidation process of a Co-borrower companies.

Research and Publication Committee (R&PC): Mr. Prakul, thank you for joining us. Let's begin by discussing the case of Jeffson Universal Logistics Private Limited. Could you provide some background on the liquidation process of this group of companies?

Prakul Thadi (IP): Absolutely! The case involved Jeffson Universal Logistics Private Limited and 18 other companies that acted as Special Purpose Vehicles (SPVs), primarily holding land. These companies had a complex financial structure, with a network of co-borrowers who had collectively taken loans but directed funds into a single entity. This intricate setup allowed for the inclusion of all 19 companies into insolvency proceedings by the National Company Law Tribunal (NCLT), Chennai Bench, leading to their liquidation.

R&PC: That sounds like quite a complex structure. How did you approach the decision to opt for liquidation in this case?

IP: Liquidation is often seen as a failure, but in many cases, it is a strategic decision. In this case, the Committee of Creditors (CoC) and I determined that liquidation was the best option. The companies had no operations other than landholding, and the ongoing costs—such as the fees for Resolution Professionals (RPs) and other compliance-related expenses—were significant. Continuing with the resolution process was unlikely to maximize value for stakeholders, so liquidation became the more viable path.

R&PC: Managing the liquidation of 19 companies must have been a huge logistical challenge. How did you manage the operational aspects of this process?

IP: Yes, it was quite a task. We took a meticulous approach to ensure everything was in order. Documentation, stakeholder communication, and legal compliance had to be carefully managed. The team played a crucial role in coordinating the process. We also set up structured meetings at regular intervals to keep stakeholders informed and to address any concerns that could have led to future litigation. One unique challenge was conducting joint liquidation meetings, which had never been attempted before in such a case. To avoid legal risks, we opted for individual meetings instead, which ensured transparency and kept things on track.

R&PC: When it comes to asset management, you mentioned selling large tracts of land in Tuticorin. What were the challenges involved in managing these assets?

IP: The challenge was twofold. First, identifying and verifying the exact location of the lands, which were spread across several villages, required careful attention. Local resources, including government officials and village maps, were invaluable in ensuring the accuracy of asset identification. The second challenge was finding the right buyers for these land parcels, as many were in remote locations with limited access. It required a lot of effort to attract suitable buyers who could effectively utilize the properties.

R&PC: Communication with creditors and stakeholders must have been crucial in this case. How did you ensure effective communication throughout the process?

(cont.)

IP: Absolutely, communication was key. Each creditor had a specific interest in certain companies or land parcels, so we tailored updates to meet their concerns. Regular email communication and scheduled meetings helped to keep everything transparent. We also made sure that every decision, document, and update was meticulously recorded to maintain the integrity of the process. Clear, honest communication was critical in building trust, reducing disputes, and ensuring smooth decision-making.

R&PC: One of the highlights of the liquidation process was the innovative auction approach. Can you tell us more about how you maximized value through the auction?

IP: Sure! Initially, we thought about selling the assets individually, but that approach seemed unlikely to work given the remote locations of some of the land parcels. Instead, we decided to hold a single auction for all the assets across the 19 companies. This decision required careful coordination with all the stakeholders to get their permissions. The auction proved to be highly successful, with the first round surpassing our expectations—bidding started at INR 12 crores and ultimately reached INR 32 crores. Unfortunately, the successful bidder could not complete the purchase, and the second round failed due to lack of participation. However, in the third round, we managed to secure a bid of INR 23 crores, which was still significantly higher than the estimated liquidation value. It was a lesson in adaptability and strategic thinking.

R&PC: That was a remarkable achievement. What advice would you give to young insolvency professionals looking to enter the field?

IP: For those just starting, I think it's essential to focus on practical decision-making. It's easy to get caught up in legal interpretations, but what really matters is the broader impact of those decisions. Legal advisors should aim for solutions that drive the objectives of the Insolvency and Bankruptcy Code (IBC) forward. Additionally, stay updated on changes in insolvency laws and engage in cross-disciplinary learning—especially in restructuring and finance. Hands-on exposure through internships and professional mentorship is also critical for developing a deep understanding of insolvency processes.

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R&PC: Thank you for these insightful comments, Mr. Prakul. In conclusion, what do you think this case teaches us about the insolvency process?

IP: This case is a great example of how strategic decisions, like tailored asset sales and transparent stakeholder communication, can maximize value even in a complex and large-scale liquidation. The key takeaway is the importance of adaptability, practical decision-making, and legal acumen. The goal is always to achieve the best outcome for stakeholders while navigating the challenges of insolvency and bankruptcy.

R&PC: Thank you so much, Mr. Prakul, for sharing your experiences and insights with us today. Your perspective will undoubtedly be valuable to our readers and aspiring insolvency professionals.

IP:It was my pleasure. Thank you for the opportunity to share my experiences.

Conclusion

The liquidation of Jeffson Universal Logistics Private Limited and 18 other co-borrower companies exemplifies the complexities involved in insolvency and the critical role of strategic decision-making, transparency, and stakeholder management. Aspiring insolvency professionals can take valuable lessons from this case in terms of maximizing value, navigating legal and operational challenges, and ensuring that every decision made is aligned with the broader objectives of the Insolvency and Bankruptcy Code.

R&P Committee Members in Conversation with IP Mr. Prakul Thadi.

EXPLORING MEDIATION IN INSOLVENCY & BANKRUPTCY: AN EXPERT INTERVIEW WITH MR. SANJEEV AHUJA

-R&P Committee in Conversation with Mr. Sanjeev Ahuja

Our LL.M. (Insolvency and Bankruptcy Law) program is a unique initiative jointly conducted by NALSAR University of Law and the Indian Institute of Corporate Affairs (IICA). It is designed to provide in-depth knowledge and practical exposure in insolvency, bankruptcy, asset reconstruction, and financial restructuring.

As part of our academic and research endeavours, members of the Research and Publication Committee conducted an insightful interview with Mr. Sanjeev Ahuja, President of Missing Bridge – Centre for Conflict Management and Dispute Resolution.

The discussion focused on the role of mediation in insolvency, the impact of online dispute resolution (ODR), and the integration of mediation into the Insolvency and Bankruptcy Code (IBC). Key insights were shared on how mediation, as both an art and a science, can be a powerful tool in dispute resolution while also posing certain challenges in insolvency proceedings.

Interview Q&A with Mr. Sanjeev Ahuja

How do you define the role of mediation in conflict resolution? What challenges arise in navigating complex disputes? (R&PC)

Mr. Ahuja's Perspective:

Mediation plays a crucial role in preventing and resolving disputes by facilitating communication between parties. It is both an art and a science, with the art—the ability to navigate emotions and rebuild trust—being more significant. A neutral mediator helps parties communicate and reach amicable solutions through joint and private sessions. However, mediation faces several challenges. Power imbalances can arise when one party dominates the discussion, making it difficult to achieve a fair resolution. Lack of trust between disputing Parties further complicate the process, as rebuilding confidence requires time and effort. The complexity of disputes, particularly in multi-stakeholder conflicts such as those in insolvency proceedings, demands careful facilitation to ensure that all perspectives are considered. Additionally, enforceability remains a concern, as mediation is non-binding, unlike arbitration, which may hinder compliance and the implementation of mediated agreements.

How is technology transforming mediation and facilitating remote dispute resolution? (R&PC)

Technology has significantly impacted mediation, especially with the rise of Online Dispute Resolution (ODR). The COVID-19 pandemic accelerated the adoption of ODR, but its success depends on having the right people and technology in place. Virtual mediation enhances accessibility by removing geographical barriers, allowing parties to resolve disputes remotely. The integration of AI and data analytics assists mediators in understanding dispute trends, enabling more informed decision-making. Additionally, ODR simplifies logistics by reducing travel costs and scheduling conflicts. However, challenges remain. Ensuring data security is crucial to maintaining confidentiality in online mediation. Technical limitations, such as internet disruptions and platform accessibility, can hinder smooth proceedings. Moreover, virtual mediation may lack the personal engagement necessary to build trust effectively, making it challenging for parties to connect on a deeper level and reach mutually agreeable solutions.

Is a median agreement legally binding and enforceable? (R&PC)

Mr. Ahuja's Perspective:

There has been a debate for a while with respect to the 'binding' nature of the settlement agreement and its enforcement and a school of thought has been that Mediation either fails or is successful with no any guarantee of a settlement.

However, now the Mediation Act 2023 has put to rest any and every speculation in this regard through section 27, which deals with the finality and binding nature of the mediated settlement agreement. Furthermore, Section 28 deals with very limited grounds of challenge available, highlighting the fact that it is the parties who decide and agree on the settlement, and hence cannot be appealing or challenging their own decisions, which are supposed to be taken in a conducive environment with the aid of the Mediator. Further, equating such a Mediated Settlement Agreement to be akin to a judgment or a decree passed by a court gives it the legit power it deserved.

(cont.)

Should IBC be excluded from the Mediation Act, 2023? Should mediation in insolvency matters have separate regulations? (R&PC)

Mr. Ahuja's Perspective:

The Insolvency and Bankruptcy Code (IBC) is a special legislation designed with strict, time-bound processes to ensure the efficient resolution of financial distress. While mediation can facilitate dispute resolution, it cannot override the structured mechanisms established under IBC. There are strong arguments for excluding IBC from the scope of the Mediation Act, primarily because IBC follows an adversarial and time-sensitive process, where statutory timelines must be strictly adhered to. Introducing mediation without clear integration could potentially disrupt the Corporate Insolvency Resolution Process (CIRP) and cause unnecessary delays. However, mediation still holds value in certain areas, particularly in pre-insolvency disputes, where parties can explore amicable settlements before formal proceedings begin. Instead of a broad application under the Mediation Act, a tailored mediation framework within IBC could be more effective, ensuring that mediation supports rather than disrupts the insolvency resolution process.

What policy changes are necessary to integrate mediation into insolvency resolution? (R&PC)

Mr. Ahuja's Perspective:

The Insolvency and Bankruptcy Board of India (IBBI) is actively exploring alternative dispute resolution mechanisms to enhance the efficiency of insolvency proceedings. To formally integrate mediation into the IBC framework, several policy changes are necessary. First, a structured mediation framework should be introduced through amendments in IBC, allowing mediation at the pre-admission stage to facilitate early dispute resolution and reduce litigation. Second, IBC-specific mediation panels comprising certified insolvency mediators should be established to assist in Corporate Insolvency Resolution Process (CIRP) cases, ensuring that mediation is conducted by professionals with expertise in insolvency matters. Lastly, mandatory mediation for small disputes can be encouraged to promote settlements before initiating proceedings at the National Company Law Tribunal (NCLT), thereby reducing the burden on judicial forums and expediting the resolution process.

Without clear IBC provisions, should a deceased guarantor's liability pass to legal heirs? (R&PC)

Mr. Ahuja's perspective:

The Insolvency and Bankruptcy Code (IBC) currently does not provide explicit provisions on the inheritance of a personal guarantor's liability. However, under general contract law principles, the liability of a deceased guarantor can pass to their legal heirs unless explicitly excluded in the contract. If the guarantee agreement expressly includes legal heirs as liable parties, they may be held responsible for the obligations. Conversely, if the contract explicitly excludes heirs from liability, the obligation does not transfer. Courts have generally upheld contractual obligations extending to legal heirs(R&PC) unless there is a specific clause negating such a transfer, making the terms of the contract a crucial factor in determining liability.

What is 'Missing Bridge'? What areas does it cover, and what is its significance? ((R&PC)

Mr. Ahuja's Perspective:

Missing Bridge – Centre for Conflict Management and Dispute Resolution is a platform dedicated to promoting non-adversarial conflict resolution through dialogue-driven mediation rather than litigation. It focuses on advocacy, training, and raising awareness about mediation as an effective alternative dispute resolution mechanism. With a panel of experienced conflict managers, the platform assists parties in resolving disputes amicably. In the context of insolvency, Missing Bridge can serve as a neutral forum for creditor-debtor disputes, enabling businesses to explore alternative resolution strategies before initiating formal insolvency proceedings. By fostering constructive negotiations can help reduce litigation, streamline settlements, and preserve business value.

Conclusion:

The interview provided valuable insights into the evolving role of mediation in dispute resolution, particularly in the insolvency landscape. It highlighted the potential of mediation to facilitate early settlements, reduce litigation, and complement the structured framework of the IBC. While challenges such as enforceability and statutory timelines remain, a well-defined mediation framework tailored to insolvency proceedings could enhance efficiency. The discussion reinforced the need for policy reforms, awareness, and integration of mediation at appropriate stages to strike a balance between flexibility and legal certainty in insolvency resolution.

R&P Committee in Conversation with Mr. Sanjeev Ahuja

EVENTS ARCHIVE

Dr. M. S. Sahoo - Former chairperson of the Insolvency and Bankruptcy Board of India.

The enriching session by Dr. Sahoo gave the students a completely new perspective. The session covered the objectives of a public policy, particularly focusing on the Insolvency and Bankruptcy Code ("IBC"), the purpose for having an exit mechanism like IBC, the causes of companies entering into distress, and a comparative analysis of certain provisions with other jurisdictions. Further, the session was made interactive by making the students discuss case scenarios.

Ms. Misha, Partner, SAM

Expert Session on Financial Services under the IBC Framework

Key takeaways from the session:

- *Insights into insolvency resolution and liquidation of Financial Service Providers (FSPs) under the IBC.*
- *Challenges stemming from the lack of a specific legal framework and controversies surrounding the FRDI Bill.*
- *A deep dive into how the CIRP for FSPs differs, especially in handling third-party assets.*
- *Discussion of key judgments shaping the resolution process for FSPs.*

Dr. Ashish Makhija, Managing Attorney at AMC Law Firm

Day 1 - Delved deep into the alteration of share capital and capital reduction, unpacking the differences between the two. Discussed mergers, buybacks, and practical examples to solidify key concepts. Covered types of mergers and essential considerations during M&A deals.

Day 2 - Focused on external restructuring, emphasizing risk and risk management in mergers. Discussed various types of risks, their implications, and their impact on shareholders (both positive and negative). Explored the fascinating dynamics of hostile takeovers and their methods. Stressed the critical importance of due diligence in M&A transactions.

Dr. Siddharth Srivatsava - Partner - Khaitan & Co

Effective Resolution Plans – Bidder Perspective
Dr. Srivastava expertly navigated complex topics such as the treatment of third-party security under a resolution plan and the pass-through of available cash, key issues that lenders must consider when crafting and evaluating resolution plans, shedding light on the practical challenges faced by all stakeholders involved.
The session also addressed the structure of resolution plans, offering valuable insights into their intricacies, as well as the tax efficiency of unsettled debt—a topic that is often overlooked but essential in maximizing value for all parties involved. Dr. Srivastava's approach to the subject matter was not just academic, but also highly practical,

Mr. Ashish Chhawchharia, Partner, Deals - Debt & Special Situations, Grant Thornton Bharat

Drawing from his experience as the IRP of Jet Airways, Mr. Chhawchharia shared invaluable insights into navigating the complexities of insolvency resolution, including rebuilding trust, managing data challenges, and leading with resilience.
This session deepened our understanding of real-world insolvency challenges and the leadership required to resolve them.

Mr. Anil Goel, Chairman @ AAA Insolvency Professional LLP
Mr. Ankit Goel, Founder Partner at AAA Insolvency Professionals LLP

"Empowering Financial Insights." The session provided valuable insights into critical areas such as recognizing corporate debtor assets, addressing challenges faced by resolution professionals (RPs), verifying balance sheets to identify gaps, and fostering collaboration with key managerial personnel.

INSOLVENCY LAW ACADEMY

An Indian Institute of Excellence in Insolvency

At Tijara, we will explore the trajectory of the future through the lens of history. Discussions will focus on what we may have overlooked from the past in shaping our present actions, as well as our preparedness for the future. In other words, the technical sessions will revolve around lessons from the past, navigating present challenges, and planning for the future. Drawing primarily on ILA research and studies, along with insights from experts across India and worldwide, the conference seeks to engage in meaningful debates on critical issues that should influence insolvency policy and practice, ultimately contributing to a better world for humanity.

3rd ANNUAL CONFERENCE

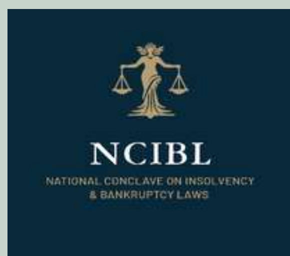
3RD MEETING OF INSOLVENCY SCHOLARS FORUM
2ND MEETING OF EMERGING SCHOLARS GROUP

14th-16th March, 2025

Tijara Fort Palace, Alwar, Rajasthan, India

INSOLVENCY REGIMES: A HISTORY OF TOMORROW

UPCOMING EVENTS



Important dates -
April 12th & 13th, 2025

Venue:
NALSAR University of LAW , Hyderabad

National Conclave on Insolvency and Bankruptcy Laws (NCIBL) 2025

For Whom - Students, Legal Professionals, Insolvency Professionals, Industry stakeholders, academicians, and researchers to engage in thought-provoking discussions and deliberations on the contemporary challenges and opportunities within the insolvency and bankruptcy landscape.

Feature Addresses - Eminent jurists, Legal scholars, and Corporate professionals

Highlights - A dedicated paper presentation session, Interactive discussions on practical challenges in insolvency practice, restructuring mechanisms, and legal frameworks governing corporate debt resolution.

Mode - Hybrid

For further details and participation inquiries, please contact:

Akshat Mittal | Mob: +91 93574-96094

Dhruv Goel | Mob: +91 99102-72352

Riya Gupta | Mob: +91 89109-33361

Linkedln - NALSAR-IICA LLM IBL.

Important dates - March 22nd and 23rd, 2025

Venue - Indian Institute of Corporate Affairs , Manesar

SAMARTHYA: National Competition on Corporate Rescue Strategies, 2025

Who Can Participate?

The Competition is open to students who are pursuing full-time 3-year or 5-year Undergraduate or Postgraduate programmes in Law and Undergraduate or Postgraduate programmes in Finance, Management, or Economics from any recognized university, college, or institution.

Why Participate?

Participants will gain practical experience in financial distress assessment and corporate rescue strategies, gain valuable insights from industry experts, and network with professionals, academicians, and industry leaders. All participants will be provided with a certificate of participation, and attractive cash prize for winners.

Panel Discussions | 23rd March, 2025

Join thought leaders, professionals, and researchers from Law, Finance, Management, and Economics for insightful discussions on corporate distress resolution. Open to students, professionals, and academicians.

Mode: Hybrid

For more details and participation inquiries, contact us at events.llmibl@iica.in or visit https://iica.nic.in/nccrs/.

Creativity Column

Corporate Schematic

- Jahanvi Barnwal

The Insolvency conundrum..

1. Due to my obligation, I pledge to behave with consideration and trust and to prioritise your requirements. Serving with all of my strength is my work, and I lead them towards what is good, whether it involves money or choices. What am I?

2. You must carefully check everything before committing; there is no detail to overlook. I look closely for the truth, reveal what is hidden, and make sure choices are well-considered and sensible. What am I?

3. I act as a shield to hide, but occasionally, it breaks. The truth comes to light when justice demands it. Who's really at fault behind the mask? I disclose the identity of the person behind the name. What am I?

4. I intervene to correct what others avoid when harm is done to the group as a whole, not just to one person. The voice of a shareholder, for the company's defense, pursuing justice when something is wrong. What am I?

5. With a well-known name and a reliable theme, I am a ready-made fantasy, a business in a box. If you purchase my brand, I will guide you, and we develop day by day. What am I?

6. I am an investment in futures, a piece of a dream, a part in the game, a fortune bonds or stocks, I am your ally. Where fortunes fluctuate in marketplaces. What am I?

7. I give you the ability to look for what is fair when agreements are made and you disagree. To guarantee that your stake is paid appropriately, a court will determine the actual value in sight. What am I?

8. I have the last say and seal the deal, I seal all previous agreements, No promises falter, no loose ends remain, I keep everything in one document. What am I?

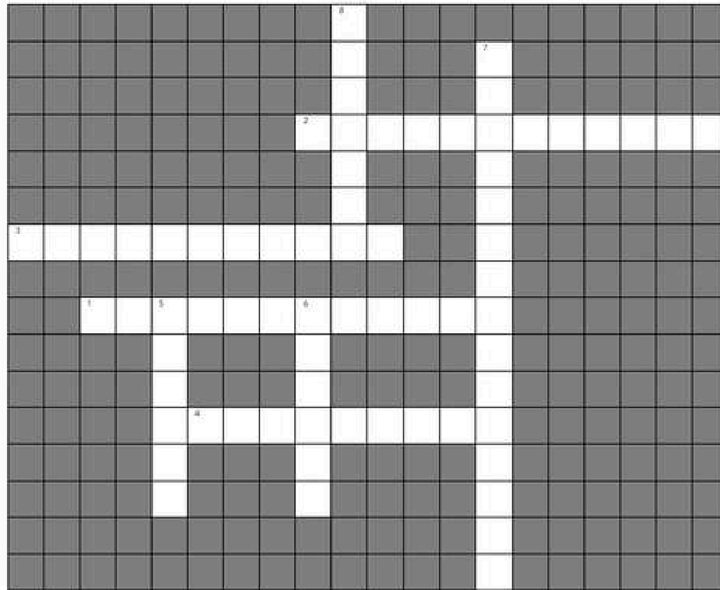
9. When many people are harmed, I stand up for what is right and unite the battle. We demand justice together, we fight for it together, A common remedy with a common name. What am I?

10. I am initially a loan, but I have a secret, I have the ability to change right before your eyes, I change my form from debt to ownership, An adaptable instrument in the investor's storm. What am I?

-E. Sushmitha, Advocate

Crossword

CROSSWORD (Chaitya Hiremath)



Across:

1. Financial statement showing the company's assets, liabilities, and equity (7,5)
2. Decrease in asset value over time (12)
3. Money owed to external parties (11)
4. Remaining profit after all expenses (3,6)

Down:

5. Record of all financial transactions (6)
6. Basic accounting equation: Assets = Liabilities + ___ (6)
7. Statement showing profit and loss (6,9)
8. Money received from sales (7)

PUZZLE

E	L	B	I	G	I	L	E	W	A
B	S	I	C	A	I	N	T	R	S
R	E	S	O	L	U	T	I	O	N
A	L	H	E	P	R	L	K	N	A
I	U	O	O	N	D	L	M	G	I
N	R	N	D	U	T	J	I	F	C
B	P	V	A	N	O	I	D	U	B
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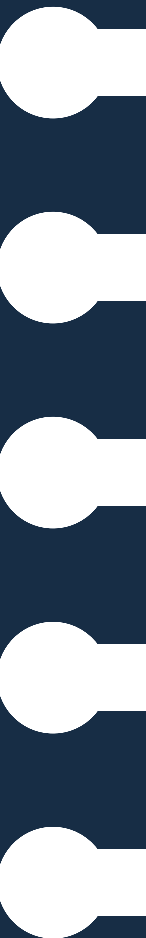
W	F	O	D	E	F	A	U	L	T
R	O	T	A	D	I	U	Q	I	L



A short story...

pic credits: Narsingh Yadav

FROM RUIN TO RESURGENCE: THE REDEMPTION OF VIRATH

Long ago, in the village of Baranha, Sayyaji (a secured creditor) loaned money to Virath (a corporate debtor) for his thriving cattle business, securing the debt against Virath's fertile land. For years, Virath's efforts bore fruit—his cattle grazed freely, and his milk produce nourished the village. Then disaster struck. A devastating bovine virus wiped out his cattle. With no income, Virath defaulted on his loan. Sayyaji, determined to recover his dues, approached Maharaja (NCLT), who appointed his trusted advisor Rahat (Resolution Professional) to oversee the business. However, he strictly forbade any asset sales. Rahat, unfamiliar with cattle rearing, struggled to manage the business, while Sayyaji eyed Virath's land for sale. Helpless, Virath pleaded for another chance, but Sayyaji demanded full repayment of his debt. The stalemate continued until Rahat announced a search for someone to revive the business. Enter Asara, a cattle expert with capital to invest. He proposed a revival plan, but Sayyaji rejected it, fixated on selling the land. Frustrated, they turned to Maharaja again, only to receive a cryptic decree—he would neither permit the land's sale nor interfere in Sayyaji's decision. Desperate, Virath again begged for control over his own business. To mediate, Maharaja summoned Bhagwan, a renowned lender and financial advisor. Bhagwan proposed restructuring the loan—Virath could keep his land, the business would be revived, and Sayyaji's principal would be repaid, with interest in tranches. Though reluctant, Sayyaji accepted the Maharaja-backed proposal. With Bhagwan overseeing the business until full repayment, Virath's fate was sealed—not as a landless debtor, but as a man given a second chance. His revived cattle business flourished once again, and he repaid the debt ahead of time. Sayyaji, impressed, offered to invest in Virath's expansion rather than claim his land. The tables had turned—Virath was no longer just a debtor; he was now a leader in Baranha's dairy trade, proving that even in ruin, a comeback is always possible.

-Ayushi Agarwal, Advocate

ACADEMIC GALLERY

NALSAR UNIVERSITY OF LAW
HYDERABAD

IICA Indian Institute of Corporate Affairs
IAN INSTITUTE OF CORPORATE
MANESAR, GURGAON
INAUGURATED BY
Dr. MANMOHAN SIN
PRIME MINISTER OF INDI
FRIDAY, APRIL 13, 201

NALSAR UNIVERSITY OF LAW
HYDERABAD

The Federation of Telangana
Chambers of Commerce and Industry
Two days Programme on
olution Plan: Drafting, Negotiation and Challeng
Chief Guest : Dr. Pyla Narayana Rao, Associate Professor, IICA New Delhi
FTCCI
V.S. RAJU
SURESH KUMAR SINGH

BATCH OF 2023-25, LL.M (INSOLVENCY & BANKRUPTCY LAWS) NALSAR UNIVERSITY OF LAW, HYDERABAD & INDIAN INSTITUTE OF CORPORATE AFFAIRS (IICA), NEW DELHI.

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