



Confederation of Indian Industry



Insolvency Resolution **Triumphs, Speed Breakers & Way Forward**

May 2025

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Foreword

The Insolvency and Bankruptcy Code (“Code/ IBC”) was enacted on May 28, 2016 and it is the primary legislation that governs the insolvency and restructuring mechanism in India. On introduction of IBC, The Presidency Towns Insolvency Act, 1909 (3 of 1909) and the Provincial Insolvency Act, 1920 (5 of 1920) were repealed. One of the key features of IBC is that its provisions has overriding effect of other laws. While these has been a matter of discussion and adjudication before various Courts and Tribunals, however, the Hon’ble Courts and Tribunals have always upheld the provisions of the Code. The success of the Code depends largely on the smooth conduct of the Insolvency process, role of the Insolvency Professional, commercial wisdom of the Committee of Creditors (CoC) and how the interest of other stakeholders have been dealt with.

Recently, on 2nd May, 2025, a major shocker came in the form of Hon’ble Supreme Court’s order in the matter of Bhushan Power & Steel Limited (BPSL) wherein the resolution plan submitted by JSW Steel was rejected by the Hon’ble Court and BPSL was ordered to be liquidated. The Hon’ble Court has raised concerns over the role of Resolution Professional and the Commercial wisdom of CoC while also giving a warning to the Successful Resolution Applicants who took undue advantage of loopholes and delay the implementation of the Resolution Plan.

The Hon’ble Court had quoted that *the role of the Resolution Professional while conducting the entire CIRP, is not only of an Administrator or Facilitator, but is also of an*

Invigilator, to ensure that the CIR proceedings are completed in a time bound manner, for maximisation of value of assets in order to balance the interest of the stakeholders and that there is compliance of all the mandatory provisions of the Code during the course of entire proceedings. The Hon’ble Court has also observed that not just the Resolution Professional, the CoC also has to take into consideration the mandatory requirements of the Code as well as the Regulations framed by the Board, and to see that the Insolvency Resolution of the Corporate Debtor is completed in a time bound manner and for maximization of value of assets of the Corporate Debtor. If the Resolution Plan does not comply with such mandatory requirements and such plan is approved by the CoC, it could not be said that the CoC had exercised its commercial wisdom while approving such Resolution Plan.

The Hon’ble Court stated that the mandates given in the Regulations to carry out the provisions of the Code have to be strictly complied with by all the stakeholders as well as by the Authorities under the Code.

They expressed their view that *nobody should be permitted to misuse the Process of law nor should be permitted to take undue advantage of the pendency of any proceedings in any Court or Tribunal. Instituting vexatious and frivolous litigations in the NCLT or NCLAT and delaying the implementation of Resolution Plan under the garb of pendency of proceedings, has clearly proved the mala fide and dishonest intention on the part of JSW, in firstly securing highest score making misrepresentation before CoC and then not implementing the same under the garb of pendency of proceedings, though*

the Resolution Plan was supposed to be an unconditional one.

In addition during last 6-8 months, Supreme Court has come out with far reaching orders be it the instance in the case of Jet Airways wherein a Resolution Plan was duly approved by COC and NCLT, however, due to delay in part-payment of first tranche and non-implementation of the Resolution Plan inspite of various extensions granted, the Corporate Debtor was ordered to be liquidated. A detailed analysis, history and background of this case has been covered in this report to understand what led to the downfall of some major players of airlines industry.

Similarly plan submitted for Hindustan National Glass was formed void of initio considering Competition Commission approval was not obtained before CoC's examination.

Additionally, the report broadly covers the concept of Personal Insolvency, journey of Group Insolvency and Insolvency in Real-estate Sector and Judiciary review of treatment of operational creditors. Finally, it highlights selected judgments that hold immense importance in shaping the IBC processes.



Bijay Murmuria

Chairman, Banking & Financial Services Subcommittee
CII Eastern Region

Message

The enactment of the Insolvency and Bankruptcy Code (IBC) in 2016 represented a watershed moment for the Indian economy. This landmark legislation consolidated the fragmented landscape of archaic insolvency laws, establishing a unified and comprehensive framework to address insolvency matters across the nation. Prior to the IBC, a diverse array of insolvency regulations existed, primarily categorized as Government Regulations and Reserve Bank of India (RBI) Regulations. Significantly, the introduction of the IBC led to the suspension of the majority of these pre-existing regulations.

The IBC fundamentally reformed India's insolvency mechanisms by introducing a structured institutional framework. This framework established key entities such as the Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professionals, Insolvency Professional Agencies, and Information Utilities, all operating within the purview of the legislation. Having been in effect for over eight years, the IBC's journey has seen both successes and shortcomings. Consequently, its "efficiency" is currently under scrutiny, particularly in light of various court interventions, procedural bottlenecks, and stakeholder imbalances. This therefore necessitates a critical focus on identifying and rectifying the existing gaps to fortify the overall insolvency ecosystem.

A pressing concern at present is the discomfitingly long resolution timelines under the IBC. These delays lead to a significant erosion of asset value, directly contradicting the foundational spirit of the Code, which aimed for a swift economic revival.



Ratan Kumar Kesh

Co-Chairman, Banking & Financial Services Subcommittee
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Therefore, there is an immediate imperative to ensure a time-bound resolution process to better preserve economic value. Furthermore, addressing the vacancies in various judicial benches, streamlining existing processes for timely case disposal, placing greater emphasis on pre-packaged resolution mechanisms, and actively enforcing guarantees are crucial steps towards optimal value maximization of distressed assets.

Beyond these immediate concerns, several other critical areas require attention. Expanding information utilities remains vital for national data integrity. Enacting cross-border insolvency laws is also essential to protect foreign creditors and improve domestic handling. Furthermore, a structured approach for effective group insolvency resolution remains a key objective for strengthening the IBC framework.

Amidst this ongoing evolution, the report "**Insolvency Resolution Triumphs, Speed Breakers & Way Forward**" provides a thorough analysis of the current state of India's Insolvency and Bankruptcy Code. Recognizing our roles as key stakeholders, let us collectively strive to ensure the Code functions in alignment with its intended objectives.

Looking ahead, we are confident that the Reserve Bank of India, in collaboration with other key stakeholders, will proactively address these challenges and will introduce effective reforms that will further strengthen and future-proof India's insolvency resolution framework.

Message

Bankruptcy laws are integral to any capitalist system. From an economic perspective, bankruptcy laws facilitate efficient re-allocation of capital locked in a failed business. They form the basis for an orderly dissolution or reorganization of various forms of businesses from proprietorship, to partnership to limited liability companies.

Internationally, bankruptcy laws serve a larger public cause of providing an avenue for recycling of capital tied up in inefficient firms and realigning the deployment of this capital in other productive purposes.

In the Indian context, our credit markets are dominated by banks. The stressed debt held by the banks is usually an outcome of anticipated as well as unanticipated risks that have manifested. Since bankruptcy laws involve balancing competing interests of many parties such as banks, suppliers, employees, operational creditors, bondholders, and government, there are obvious distributional consequences in any bankruptcy proceeding. This makes bankruptcy laws sensitive to both political and economic exigencies.

The objective of IBC was to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons in a manner for the maximization of value of assets, to promote entrepreneurship, availability of credit, and balance the interests of all the stakeholders. The law aims at insolvency resolution in a time-bound manner (initially 180 days, extendable by another 90 days under certain circumstances but now extended to 330 days) undertaken by insolvency professionals. The law ensures the separation of judicial and commercial aspects of the resolution process, thereby correcting the mistakes of past legislations.

The socialist hangover on debt recovery laws continued in the post-reform period only to be reversed in 2016 with the enactment of IBC.

As of today, IBC has become the single law that deals with insolvency, bankruptcy, and reorganization of failed business, and has somehow reduced the importance of previous legislations. With the enactment of IBC, a major legislative gap in the resolution of NPAs was removed. The RBI through its 12 February 2018 circular abolished all the then existing CDR guidelines with a harmonized and simplified generic framework for the resolution of stressed assets through IBC.

Promoters, fearing of losing control of the company, do not want to be dragged into IBC. The institution of insolvency professionals is also a major departure from the past and address the deficiencies of official liquidator expertise in the valuation of assets of insolvent companies. From this point of view, IBC has achieved success, and the positive benefits of this change will accrue in the long run. But the progress of IBC and the experience of lenders cannot be described as smooth despite its pro-creditor tilt.

A law is only as good as its implementation. Since the time the law was put into force, borrowers have a stifled resolution process through numerous petitions and counter-petitions. The net result, hardly any major case under IBC was resolved within the time frame of 270 days. In general, the criticisms of the IBC are because of the time taken for resolution and the extent of haircuts vis-à-vis the admitted claims.

However, the most interesting outcome of the IBC has been the substantial behavioural shift ushered in by the Code. The credible 'threat of insolvency' ignited by the Code has strengthened the negotiating powers of the creditors, in the absence of which it is most likely that those defaults would have lingered for much longer, resulting in value destruction. It has to be stated here that the IBC should not be seen as merely a loan recovery instrument; it has to be seen as an instrument which facilitates preservation of economic value of assets through effective resolution or unlocking of capital which is stuck in unviable businesses.

There are certain other aspects like leveraging technology to optimise the disposal of cases, strengthening the judicial infrastructure and regular stakeholder awareness programmes which merit attention under the IBC regime and if the same are given due care, IBC is set to go a long way. Let's hope the spirit of the code is upheld and not diluted.



Samir Agarwal

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Preface

The Insolvency and Bankruptcy Code (“Code/IBC”) has since its inception gone through various amendments and has been one of the most dynamic laws in India. In the year 2024 itself, it had issued over 10 discussion papers covering proposed changes in the Code and Regulations related to Real estate sector, MSME Registration and Disclosure Framework under CIRP, Mediation by Operational Creditors before approaching Adjudicating Authority for filing for CIRP etc among others. Further, in the year 2024, almost each and every regulation of the Code has undergone amendments be it CIRP Regulations, Liquidation Regulations, Information Utilities Regulations, Personal Guarantors or Insolvency Professionals Regulation.

The IBC effectively addresses the need for a comprehensive law to manage the insolvency of debtors, while also maximizing asset value for creditors and facilitating the closure of unviable businesses.

As per IBBI’s Quarterly Newsletter (Oct-Dec 2024), till December, 2024, the creditors have realised Rs. 3.58 lakh crore under the resolution plans. The fair value and liquidation value of the assets available with these CDs, when they entered the CIRP, was estimated at Rs. 3.36 lakh crore and Rs. 2.20 lakh crore, respectively, as against the total claims of the creditors worth Rs. 11.39 lakh crore. The creditors have realised 162.8% of the liquidation value and 87.58% of the fair value (based on 1013 cases where fair value has been estimated).

The haircut for creditors relative to the fair value of assets was less than 13%, while relative to their admitted claims is around 69%. Furthermore, this realisation does not include the CIRP cost, and many probable future realisations such as equity, realisation from corporate and personal guarantees, funds infused into the CD including capital expenditure by the resolution applicants, and recovery from avoidance applications. About 39% of the CIRPs (440 out of 1114 for which data are available), which yielded resolution plans, were earlier with BIFR and/or defunct. In these CDs, the claimants have realised 19.21% of their admitted claims and 152.32% of liquidation value.

A number of initiatives are being taken to improve the outcomes of the Code. These include monitoring of cases pending for admission and ongoing CIRPs. Further, the IBBI revised its mechanisms for real-time sharing of information regarding applications for the initiation of CIRP with the IU. It has further introduced a centralized electronic listing and auction platform for sale of assets under liquidation.

Recently the Singapore High Court has recognised India's Corporate Insolvency Resolution Process (CIRP) for the first time under the UNCITRAL Model Law on Cross-Border Insolvency, as adopted in Singapore. The decision also recognised India's National Company Law Tribunal (“NCLT”) as a “foreign court” and CIRP as a “foreign proceeding”.

While the concept of Group Insolvency has been evolving since inception of the Code, it will be interesting to see when “Cross Border Insolvency” comes into picture and is implemented. This recognition by Singapore High Court is one step towards implementation of Cross Border Insolvency.

In this edition, CII & Sumedha brings together the **“Triumphs, Speed Breakers & Way Forward”** for Insolvency Resolution covering various aspects of Insolvency regime and some important proposed changes that are in the process of being implemented into the code.



Vijay Maheshwari

Chairman, Sumedha Fiscal Services Ltd

&

Director, Sumedha Management Solutions Pvt Ltd

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A Glimpse into the CIRP's Progress

The Code, since its introduction in 2016, has made significant strides in resolving stressed assets. This period has shown marked improvements in dispute resolution and recoveries. Despite all the positives, the Code has its limitations. The resolution process often extends beyond the stipulated timelines due to persistent challenges, notably litigation at various stages of the Corporate Insolvency Resolution Process (CIRP) and inadequate regulatory infrastructure.

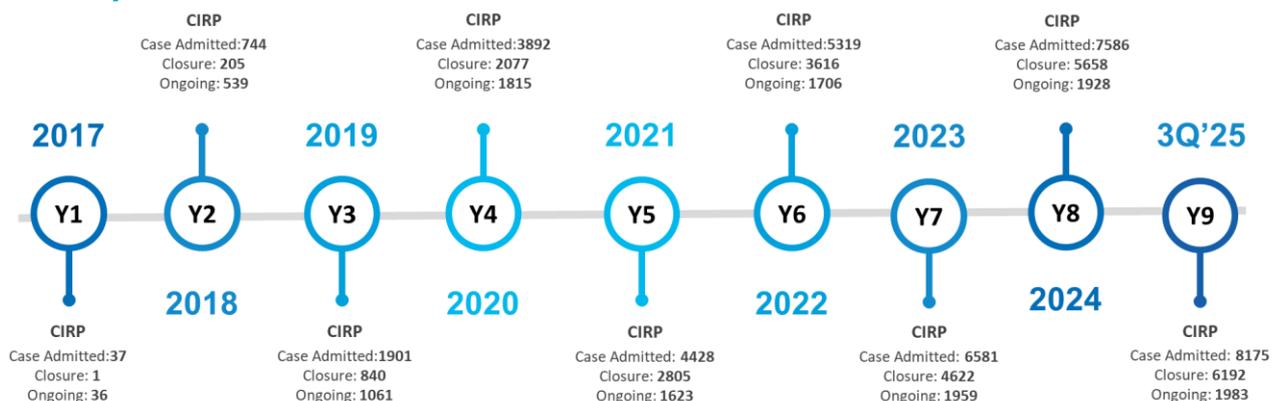
As on December 31, 2024, a total of 8,175 corporate debtors had undergone the CIRP, of which, 6,192 cases were closed - either through approval of the resolution plans,

commencement of liquidation or due to appeal/review/withdrawal under Section 12A of the Code.

CIRPs were concluded with the approval of resolution plans, leading to the revival of the corporate debtor. In cases where resolution plans were not approved, the CIRP led to the commencement of liquidation proceedings. Some CIRPs were closed due to withdrawal applications filed under Section 12A of the Insolvency and Bankruptcy Code (IBC), 2016.

The increasing number of cases admitted annually (1005 in FY 2023-24, and 589 in the first nine months of FY 2024-25) underscores the effectiveness of the code in resolving distressed assets. As of December 31, 2024, a total of 1983 cases are active and are at various stages of the CIRP process.

Progress in the Corporate Insolvency Resolution Process (Cumulative Cases)



Source: IBBI

Outcome of CIRP Initiated Stakeholder-wise, as on December 31, 2024

| Outcome | Description | CIRPs initiated by | | | | Total |
|-----------------|---|--------------------|-------------|------------|----------|-------------|
| | | FCs | OCs | CDs | FiSPs | |
| Status of CIRPs | Closure by Appeal/Review/Settled | 385 | 841 | 10 | 0 | 1236 |
| | Closure by Withdrawal u/s 12A | 332 | 790 | 8 | 0 | 1130 |
| | Closure by Approval of Resolution Plan | 667 | 366 | 82 | 4 | 1119 |
| | Closure by Commencement of Liquidation | 1261 | 1158 | 288 | 0 | 2707 |
| | Ongoing | 1165 | 706 | 112 | 0 | 1983 |
| | Total | 3810 | 3861 | 500 | 4 | 8175 |
| Resolution | Realisation by Creditors as % of Liquidation Value | 176.9 | 131.2 | 145 | 134.9 | 162.8 |
| | Realisation by Creditors as % of their Claims | 31.4 | 25.4 | 18.1 | 41.4 | 31.4 |
| | Average Time Taken for Closure of CIRP | 706 | 717 | 589 | 677 | 701 |
| Liquidation | Liquidation Value as % of Claims | 5.5 | 8.9 | 8.4 | - | 6.3 |
| | Average Time Taken for Closure of CIRP | 517 | 511 | 449 | - | 508 |

Source: IBBI

Resolution of Claims Amounting to INR 11.39 Lakh Crores

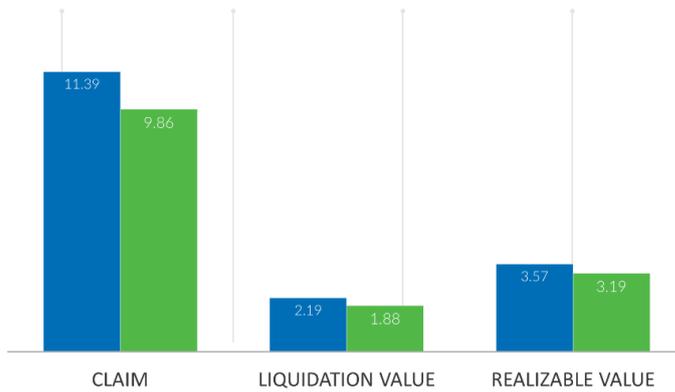
By December 31, 2024, the CIRP process had resulted in 1,119 cases being resolved with the approval of resolution plans. Creditors were able to recover INR 3.58 Lakh Crores against a total claim of INR 11.39 Lakh Crores representing a recovery rate of 31.39%, therefore creditors saw only 31.39 cents returned for every dollar they had claimed. The creditors were able to recover 62.79% higher value compared to the liquidation value determined by the valuer. A significant portion, roughly 39%, of these corporate debtors were either undergoing BIFR restructuring or had become defunct. In such instances, the debtors managed to realize as much as 19.21% of their admitted claims and 152.32% of liquidation value.

Closure by Liquidation Dominates

From all closed cases, it is seen that liquidation is more frequent than resolution, where 43.72% of cases resulted in liquidation compared to just 18.07% cases concluding with the approval of a resolution plan.

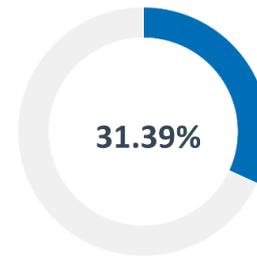
The Committee of Creditors (CoC) often opts for liquidation over approving a resolution plan. Many of these corporate debtors were too weak to attract any resolution plan proposals. 78% of liquidation cases involved corporate debtors that were either under BIFR restructuring or already defunct before their admission into the Corporate Insolvency Resolution Process (CIRP). On average, these companies had assets worth just 6.3% of their outstanding debt. A total of 2,707 CIRPs have been referred to liquidation by the end of 2024. 1,274 cases have reached the final report stage, meaning those companies are officially in liquidation. 1,433 companies are still undergoing liquidation. The total admitted claims amount to INR 2,43,703.2 Crore. From the 851 closed liquidation cases, only INR 5,460.03 Crore was distributed to stakeholders, which represents a recovery rate of just 2.24%. Notably, 93 of these cases were closed by sale as going concern. The total claims for these 93 companies were a massive INR 1,48,537.56 Crore. However, the amount realized from selling these companies as going concerns was only INR 4,408.59 Crore.

1119 CIRPs Ended with Approval of Resolution Plans



● Total 1119 Resolution Cases; value in Lakh Crore

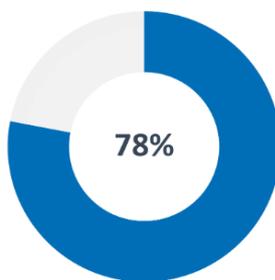
● Outcome of 164 large accounts out of 1119 resolutions (Lakh Crore)



Realization by Creditor as % of their Claims

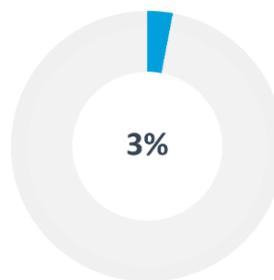
The cumulative collecting efficiencies from concluded resolution cases stood at 31.39%.

Cases of Liquidations



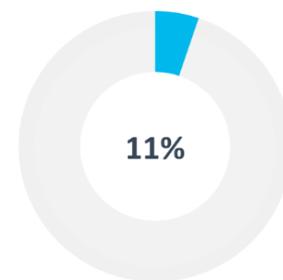
Liquidation - BIFR/Defunct

Approx. 78% of CIRPs resulted liquidation were earlier with BIFR and/or defunct



Liquidation - Recovery

INR 5,460 Crore were distributed from 851 closed cases against claim of INR 2,43,703 Crore, approx. 3% recovery



Sale as Going Concern under Liquidation

93 CDs out of 851 closed liquidation cases were closed by sale as going concern, approx. 11% of the total.

Source: IBBI

A Delay in the Process

Out of the 1,983 cases currently in CIRP, roughly 74% have been underway for over 270 days. Pursuant to regulations, the CIRP is required to be concluded within a period of 330 days from the insolvency commencement date. The IBBI data indicated that, on average the CIRP process for resolution plans typically lasted around 821 days (including excluded time). Similarly, for liquidation, the average duration is around 655 days (including excluded time).

In summary, since the inception, the Code has resolved claims amounting to INR 24.39 Lakh Crore¹. While the total claims have been resolved, the recovery rate in many cases has fallen short of creditors' expectations. The overall recovery rate, despite these factors, is relatively low. The effectiveness of the CIRP under the Code has been significantly impacted by the involvement of companies with minimal assets, many of which were previously under BIFR or defunct. The recovery rate under the IBC has experienced a downward trend over the years. The process is behind schedule and the completion time is notably extended beyond the code's requirements.

¹ Includes both CIRP cases resulting in approved resolution plans and claims admitted during the liquidation process (as of December 31, 2024; Source: IBBI)

Judiciary Review on the Treatment of Operational Creditors – Issues, Observations and Solutions

Insolvency and Bankruptcy Code, 2016 (IBC/Code) was introduced with an objective of consolidating and amending the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. While the Code has been successful in promoting entrepreneurship, making credit available and resolving insolvency in time bound manner, however, when it comes to balancing the interest of all stakeholders, it might not have performed well for all the categories of stakeholders.

Among various stakeholders, one of them is homebuyers who has seen a positive change in their rights under the Code. When the code was enacted, home-buyers in a real-estate projects were at a loss because they had invested their lifetime savings into such projects and the fate of their money already invested or securing possession of their houses was unknown.

However, through the years, with various amendments, homebuyers had acquired rights over their property including securing possession on making payments. Further, their property (house, flat, apartment etc.) is specifically excluded from liquidation estate. Another category of stakeholders is Government. While not all the government departments have received recovery of their dues, however, the Provident Fund Department has through various judgments and also as specifically mentioned under Code has right to full recovery of their dues. However, one of the stakeholders that suffers the most is Operational Creditors. As per Code, “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. Further, “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. In most of the cases, the Operational Creditors (OCs) are mostly MSME category or very small businessmen who do not earn much.

As much as homebuyers put in their lifetime savings into real-estate projects, some operational creditors also invest their lifetime savings into running their businesses and non-recovery of their dues can result in such OCs running out of business and money too. In more than 8 years of the Code coming into the picture, many operational creditors have suffered in the hands of the legislation, with zero recovery on their dues (in some cases the dues have been in crores) and run out of business.

Through various other rulings, the judiciary has emphasized the balanced protection of interests of all stakeholders, be it creditors, corporate debtors, or employees. An example of how the NCLAT contributes towards steering policy change in the interest of a disadvantaged class of contributors is illustrated in the matter of Damodar Valley Corporation Vs. Dimension Steel and Alloys [Company Appeal (AT) (Insolvency) No. 62 of 2022], wherein the NCLAT expressed concerns towards nil and almost negligible payment to operational creditors generally made under the resolution plans, to both the Central Government and the IBBI. The NCLAT urged the Government and the Board to find out whether there are any grounds for considering a change in the legislative scheme towards the payment to the Operational Creditors, which also consist of Government dues and other statutory dues.

Further, in the matter of State Tax Officer v. Rainbow Papers Limited (Civil Appeal No. 1661 of 2020), the Supreme Court interpreted the definition of 'secured creditor' to hold that any government or governmental authority shall be a secured creditor as the charge created by a statutory law can be considered as a 'security interest'. The Hon'ble Court recognized the State as a secured creditor under the GVAT Act. Many CIRP and liquidation processes thereafter

recognized Statutory/ Government dues and "Secured Creditors". However, later this judgment was also reversed by various Tribunals and Courts. The Hon'ble NCLAT, Chennai Bench in the matter of the Assistant Commissioner of Central Tax Vs. Mr. Sreenivasa Rao Ravinuthala RP Samyu Glass Pvt. Ltd. (Company Appeal (AT) (CH) (INS.) NO. 346/2021- NCLAT Chennai) had held that Central Excise cannot be treated as a secured creditor under IBC. Further, the Hon'ble Supreme Court in Pr. CIT v. Monnet Ispat & Energy Ltd. (Petition(s) for Special Leave to Appeal (C)No(s). 6483/2018- Supreme Court) held that the income tax dues, are in the nature of crown debt, they get little to no precedence over secured creditors. In another of its ruling, in the case of Moser Baer Karamchari Union v. Union of India (WRIT PETITION (C) NO. 421 OF 2019), the Supreme Court put emphasis on sequence of payments under IBC and held that these provisions have been carefully thought out and crafted. The Hon'ble SC had in the matters of Raman Ispat and Sundaresh Bhatt itself observed that the ruling of the court in Rainbow Case was ignorant of other provisions of IBC and reinstated the viability of the code.

Further, Insolvency and Bankruptcy Board of India (IBBI) had issued a Notice on 18.01.2023 inviting public comments on changes being considered to the Insolvency and Bankruptcy Code, 2016, wherein it was proposed that the Code may be amended to statutorily provide an equitable scheme of distribution of proceeds received pursuant to a resolution plan(s) through a separate waterfall mechanism in the CIRP. As per this scheme, creditors will receive proceeds up to the Corporate Debtor's (CD's) liquidation value for their claims in the order of priority provided in section 53. Any surplus over such liquidation value will be rateably distributed between all creditors in the ratio of their unsatisfied claims. Finally, any remaining amount or further surplus would be distributed to the shareholders and partners of the corporate debtor, as the case may be.

However, this amendment is yet to be implemented/ notified.

Recently, in the matter of NCC Ltd. V/s. M/s Golden Jubilee Hotels Pvt. Ltd. & Ors., the Hon'ble NCLAT has suggested a **calibrated waterfall mechanism instead of a straight waterfall mechanism**. Before understanding the suggestion provided by the Hon'ble Tribunal, let us understand the issues raised in this appeal-

Issue I- Whether separate class of creditors can be created under the broad category of Operational Creditors especially "special operational creditor".

Issue II- Whether, differential treatment inter-se the same class of creditors is permissible.

Issue III- Whether this Appellate Tribunal can exercise jurisdiction and direct redistribution without any change in Resolution Plan and not infringing upon commercial wisdom of CoC.

With respect to Issue Nos. I, II and III as mentioned above, the observations of the Hon'ble NCLAT are as follows-

"We have noted from the pleadings that different Operational Creditors in the present case have given different services or supplies to the Corporate Debtor like supplying material, construction of facade, providing furniture, providing interior decorations or even the land which has been given on lease by Youth Advancement Tourism and Culture Department (YATCL) and the Society on two different plots owned by these government entities.

It is the case of the Appellants that the Resolution Plan has categorized a sub-class within the class of Operational Creditors giving special and preferential treatment to YATCL and Society (Special Operational Creditor).

We note that the 100% of claims of both the entities have been provided for payment in the approved Resolution Plan and they have been classified as "special Operational Creditors"; in contrast to other Operational Creditors who have been clubbed together (other than Special Operational Creditors) and given NIL payment in the Resolution Plan.

The Code specifically and consciously stipulated provisions only for the Financial Creditor and the Operational Creditor. The Code also recognises secured and unsecured creditors, but we do not find any mention of Special Operational Creditor in the Code.

It seems that the parliament never intended to do further bifurcation within same category of Creditors i.e., Financial Creditor and Operational Creditor, otherwise, sub-clause in Section 7 or Section 9 of the Code would have been provided or at least covered under explanation to the same. Even the definition contained under Section 3 and 5 also do not have such sub-classification of creditors within same set of creditors.

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

Be that as it may, although the term Special Operational Creditor is not found in Code or in the Regulations, the fact remains is that it is for the SRA to allocate the funds proposed to be distributed amongst the Creditors based on his overall business Plan and strategy for revival of the Corporate Debtor and to ensure viability and feasibility of such Resolution Plan.

Similarly, exercise of the commercial wisdom by CoC is undertaken to look into various parameters including viability and feasibility of the Resolution Plan and once satisfied, as long as the Operational Creditor are provided at least the liquidation value w.r.t. their claims, such Resolution Plan can be approved as done in present case.

We cannot find any fault in such approach. In fine, issue No. I, II & III goes in favour of the Respondents.”

Suggestions by the Hon’ble NCLAT –

We note that the Operational Creditors have little say in the resolution of the Corporate Debtor since they are not part of the CoC. At the same time, they are prone to maximum haircut and which may adversely affect their own survival. Legally speaking, in terms of waterfall management under Section 53 of the Code, the Operational Creditors are entitled to claim payments as per liquidation value of the Corporate Debtor or actual proposed payment whichever is more. In most of the cases, for Operational Creditors, liquidation value is nil as CIRP cost, dues towards Secured Creditors, employees, workman, other Financial Creditor takes precedent over Operational Creditor. The Operational Creditor will have a chance only, if any, residual amount remains available as per liquidation value of the Corporate Debtor.

However, if the waterfall mechanism as provided under Section 53 of the Code is tweaked, in the sense that instead of straight waterfall mechanism approach, **the calibrated waterfall mechanism could be considered**, then these may be some chances for the Operational Creditors to get some payments. **Their tweaking can be done in several ways.**

One of the way could be, distribution of corpus available in Resolution Plan to Operational Creditors in some pre-determined percentage of the payments propose to be paid to Financial Creditors in the Resolution Plan. This will ensure that Operational Creditors will get some minimum amount due to insolvency of Corporate Debtor in relation to amount payable to the Financial Creditor in the Resolution Plan. This amount may be much lower in comparison to amount being paid to the Financial Creditors due to obvious and valid reasons. We feel that even this small amount will help such Operational Creditors, specially the smaller Operational Creditors, to tide over the financial crises which happens due to CIRP of the Corporate Debtor. We consciously note that such approach would require legal provision by way of suitable amendments in the Regulations and Code. We request the IBBI to look into this aspect if found feasible after due examination. We would like to make it clear that this only a suggestion for consideration of IBBI and by no way it should be considered as recommendation or directives.

In another matter namely The National Sewing Thread Co. Ltd., (Post Insolvency Resolution under IBC), Represented by its Successful Resolution Applicant, V/s. The Superintending Engineer, TANGEDCO, the issue was with respect to payment of electricity dues. This is not the first time that an appeal or a petition has been filed by a Corporate Debtor or a Successful Resolution Applicant (SRA) requesting the electricity department for restoring electricity connection of the CD without payment of pre-CIRP electricity dues.

Electricity dues are considered as an ‘essential service’ under IBC and the same needs to be provided uninterrupted during an ongoing CIRP/ liquidation period (provided that the dues incurred during the CIRP/liquidation period are being paid). However, in most of the cases, the pre-CIRP dues, if unpaid post approval of resolution plan/ sale as a going concern under liquidation, are extinguished as ruled by various judgments/orders. Even if the SRA or the CD does not pay the pre-CIRP dues, the electricity connection has to be restored. In this case, in terms of the resolution plan, only the financial creditor of the petitioner was partially benefited, since the value of the assets of the petitioner was far short of the value of the liability it faced. So far as Operational Creditors are concerned, the resolution plan directed that they would be paid pro rata at 1% of the value of their claim. The petitioner accordingly redeemed itself from the debt-trap it faced. Contending that the demand of arrears of electricity charges runs counter to the spirit behind the IBC engineered Resolution Process, the claim of the TANGEDCO itself is arbitrary and illegal, the petitioner challenged it in this proceeding.

And, the petitioner being a MSME, the same promoters or the Board of Directors of the petitioner continued to be in the management of its affairs, but significantly free of all its liability, with its only financial creditor walking away with the chunks, and the operational creditors forced to settle for the crumbs which the IBC regime generously feed them with.

TANGEDCO, a statutory entity, a Generator cum Distribution licensee of electricity had a claim of around Rs. 32 lakhs against the CD but it did not file its claim during CIRP. Further, the petitioner also did not disclose its dues to TANGEDCO in its Resolution Plan.

TANGEDCO had demanded its dues, but the petitioner had given a prompt response to it: “We had one great holy dip in the IBC, and all our sins are washed away. Today, we are a new born, with a clean-slate balance sheet, with all assets and no liability. Hence, we owe TANGEDCO nothing. And if there are any doubts, read Ghanashyam Mishra case.” They further insisted TANGEDCO to provide it with a new electricity service connection but without payment of arrears of electricity charges. TANGEDCO responded that: “We are governed by the Electricity Act and the Supply Code, and we are not bound to provide you, the petitioner, with a fresh electricity connection unless our dues are paid. And, we have our powers intact to realise the arrears as per our governing statute.”

The Hon’ble Madras High Court expressed their views *that the contentions of the petitioner sound absolutely unconscionable. The petitioner appears to have literally negotiated with its only financial creditor to deny its operational creditors of their dues. This possibility disturbs the consciousness of this court and also disquiets its conscience.*

The IBC is a statutory contrivance for consolidating all the statutes that were hitherto in force which dealt with the issue of insolvency – be it an individual or proprietary concern, or a partnership firm, or a registered company, not with an eye to drive the debtors into forced liquidation, but to salvage them even as their creditors are paid reasonably. Not a novel idea as the theme appears to have been borrowed or lifted from Sick Industrial Companies (Special Provisions) Act, 1985 (for convenience, SICA). The principle aim of SICA was to investigate into the cause for the commercial sickness of the debtor-company and to conduct a feasibility study for devising a measure to rehabilitate the company.

SICA, however, was repealed in 2004, and one of the reasons behind this move appears to be the rampant misuse of the moratorium provided under Sec.22. One noticeable difference which is instantly visible on a broader comparison of SICA and the IBC is that while SICA was debtor driven, the IBC is financial creditor driven. In effect the soul of the IBC appears to be that which the Parliament has junked vis-à-vis the SICA. The IBC aims to settle the corporate creditors with minimal damage to the existential possibilities of a corporate debtor. Surely on paper it appears to provide possibilities of a win-win situation, something which the draftsmen of IBC may elate about. In that sense IBC may be acclaimed as a path breaking legislation, but it is doubtful if it has broken the path without breaking the back of some of the stakeholders – more particularly the Operational creditors.

The legislative intent as conveyed through the body of the IBC highlights three aspects on the right of the operational creditors: (i) The operational creditors has the right to initiate an insolvency proceedings; (ii) it can participate in the meeting of the CoC; and (iii) it is required to take whatever the CoC grants it with the minimum assurance that it would not be less than the minimum that they would obtain in the eventuality of the corporate debtor going into liquidation. But their inherent right to defend its interest is significantly denied to them as the Parliament embarked on a hitherto unheard of legislative invention of requiring one set of creditors, the financial creditors, to decide on the right of another set of creditors. In that sense IBC has been truly path-breaking.

But has not the Parliament unwittingly reduced the operational creditors with lesser insurance against economic uncertainties, to a sacrificial goat to feed the financial creditors, essentially the banking sector, which has greater and better shock-absorbers in-built within its structure against economic turbulences, with the RBI sitting to audit its operational efficiency? This aspect cannot be ignored as the TANGEDCO's grievance will find a slot here.

The object of the IBC evidently is to minimize the loss of various categories of creditors even as it attempts to salvage the corporate debtor from its commercial extinction. Appreciable it is, but it may not be let to gloss over the fact that every claim of the operational creditors involves a right to their property under Article 300 A of the Constitution, which the Supreme Court now reads it as a facet of human right and as integral to the right to life under Article 21 of the Constitution.

There cannot be a dispute that there exists no fiduciary relationship between the CoC and the operational creditors, since for a fiduciary relationship to emerge between two persons or entities, there ought to be in existence an equation where they either share a mutual relationship in absolute confidence, or at least one investing all its confidence on the other. Now, given the fact that an operational creditor is as much a creditor as the financial creditor, and since an operational creditor's value for its money is no inferior to that of the financial creditors' (as they constitute right to property in their respective hands), and since both are competing to secure its right to property from the same source, it is inconceivable an operational creditor would have wasted its confidence by investing it on its competitor

– read it as the financial creditor, or would have voluntarily outsourced its right to decide on what it may be interested in obtaining from his or its debtor by forsaking its own commercial wisdom. The IBC has however, placed the interest of the operational creditors on the lap of the CoC and authorized the latter to decide what the operational creditor might get.

Let it be illustrated. Suppose both the corporate debtor and an operational creditor had borrowed from the same financial creditor. While applying its mind with utmost fairness to the resolution plan made available before it, if the CoC by a majority of 66% or more approves payment of only 10% to an operational creditor, will the same financial creditor, while demanding the loan repayment from the operational creditor grant the latter a rebate of 90% on its loan liability? The answer is an obvious no, for it will be incongruent to its commercial wisdom since a financial creditor is not doing any charity, nor is expected to be charitable in its business. Therefore, the commercial wisdom of the CoC can never extend to the extent of protecting the interest of the operational creditor. It is like expecting a lion to share a slice of his catch with a lesser predator when we all know that it is not even known to share its meal with its own pride. Therefore, unless one understands the role of the CoC for the purposes of Sec.30(2)(b) as a trustee of the operational creditor, fairness of its action cannot be exacted from it in terms of Explanation I to Sec.30(2). The operational creditors shall have the same access to information as the CoC, since IBC has only stripped the operational creditors of their right to decide on their right, and not their right to know.

Let the facts be examined closely again: Here is a MSME in debt-trap. It has one secured financial creditor, and God knows how many operational creditors it had. At least TANGEDCO was not one of its disclosed operational creditor. If the aim of the IBC is to preserve the assets of the MSME as a going concern even as it struggles to find a way out of it, and if the only financial creditor had shared this concern and had chosen not to liquidate the MSME, then it could have easily invoked the SARFAESI Act, more particularly Sec.13(4)(b) and could have taken over the management of the MSME. This would have ensured that not only the MSME is saved, but the interests of the operational creditors are also preserved intact. This must also be appreciated in the context of the nature of solution that had eventually developed in the resolution plan offered and accepted: The MSME petitioner offered to sell its non-core assets for paying off its debts to its only financial creditor. This still could have been achieved without a CIRP under the IBC regime, as it only required that the MSME petitioner and its only financial creditor shared due consensus. But the charm and the temptation in invoking the IBC is that, unlike the regime it has created, SARFAESI does not have a clean slate theory inbuilt in its statutory scheme nor has the advantage of any judicial pronouncements to bring it out, with the result the MSME debtor will still be under an obligation to pay the liability to all its other creditors. It will be appreciable if the Parliament considers the views of Supreme Court in K. C.Ninan's case in all seriousness for protecting the statutory dues and other commercial dues payable to Government run companies or corporations which has the potential of adding to the financial burden of the common man.

It is not about what constitutes a statutory liability that concerns this Court, but why should there be a social distribution of the liability of the corporate debtor, when in the best of times the latter hardly may have shared its profit with the society, except perhaps to the extent mandated by law through Corporate Social Responsibility. For instance, if electricity-distribution licensees suffer loss in the water-fall mechanism because of their classification as operational creditors, this loss will eventually be spread socially on other consumers.

While the legislative intent to save the corporate debtor as a going concern may be appreciable, should it be at the cost of others, more so when IBC offers adequate space for engineering manipulation? The larger question therefore, is why should the Parliament bend backwards to protect one corporate debtor at the risk of exposing the public interest to peril? The present case, a case-study merely, illustrates how IBC could be manipulated to defeat the interests of the undisclosed creditors of the corporate debtor. Incidentally, has the Parliament taken note of the percentage of recovery generally achieved out of a successful resolution process of the corporate debtor?

Conclusion

Considering the above observations, the petition was dismissed by the Hon'ble High Court.

While the legislation is yet to make amends for treating the dues of the operational creditors at par with the financial creditors, however, the Hon'ble Tribunals and the Hon'ble Courts at various instances, have ruled out in favour of operational creditors as is evident from the above. IBBI had also sought public comments on introducing changes in the Code for ensuring equal treatment of operational creditors. However, it has been over 2 years now and it is yet to be implemented. Till the Code is amended, the Insolvency Professionals and Financial Creditors shall, within their power and rights, endeavour to protect the interests of Operational Creditors as well while approving any resolution plan or realising assets under liquidation process.



Jet (Air), Set, Go (Air) & Grounded: The Painful Saga of Indian Airline's Industry under IBC

The insolvency proceedings of Jet Airways (India) Limited & Go Airlines (I) Ltd, as per the order of the Hon'ble National Company Law Tribunal (NCLT), set the stage for India's most

complex corporate insolvency cases concerning Airlines Industry & thereafter order for liquidation as per following details:

| Details | Insolvency Commencement Date | Liquidation Commencement Date |
|-------------|------------------------------|-------------------------------|
| Jet Airways | 20-06-2019 | 26-11-2024 |
| Go Air | 10-05-2023 | 20-01-2025 |

Currency: INR Crore

| Claims | Jet Airways | Go - Air |
|-------------------------|---------------|--------------|
| SFC | 7,258 | 3,753 |
| USFC | 196 | 1,867 |
| OC- Employees / Workers | 1,254 | 75 |
| OC – Govt. Dues | 129 | 152 |
| Others | 6,596 | 2,728 |
| Total | 15,432 | 8,576 |

Financial Summary of **Jet Airways** (Currency: INR Crore)

| Particulars | 2023 | 2022 | 2021 | 2020 | 2019 |
|---------------------------|---------|---------|---------|---------|---------|
| Total Income | 55 | 144 | 282 | 354 | 23,314 |
| PBT | -1,002 | -528 | -220 | -2,115 | -4,828 |
| PAT | -1,002 | -773 | -152 | -2,841 | -5,536 |
| Equity (Shareholder Fund) | -17,507 | -16,504 | -15,732 | -15,580 | -12,695 |

| Financial Summary of Go Air (Currency: INR Crore) | | | | |
|--|--------|--------|--------|-------|
| Particulars | 2021 | 2020 | 2019 | 2018 |
| Total Income | 2,327 | 7,258 | 5,937 | 4,601 |
| PBT | -1,346 | -1,877 | -718 | -37 |
| PAT | -870 | -1,271 | -387 | -31 |
| Equity (Shareholder Fund) | -2,360 | -1,491 | -1,013 | -626 |

Progress of Airline Industry in India

The aviation industry in India has developed significantly in the recent years. Despite the impediments faced during Covid-19, the aviation industry is one of the most promising sectors in India. In order to cater to the enormous demand, airline companies in India have been increasing their aviation fleet, which is expected to result in significant growth in the said aviation sector. A distinctive characteristic of the Indian airline industry is its preference for acquiring aircraft through leasing, particularly via the 'sale and leaseback' model. This approach is favoured for several reasons, including appealing interest rates, capital efficiency, the flexibility to scale fleet size in response to demand changes, and the ability to circumvent obsolescence, among others. Interestingly, around 80 per cent of India's commercial fleet is leased, compared to the global average of 53 per cent.

The passenger traffic in India (domestic and international) has increased from 10.53 crore (in FY 2021-22) to 19.06 crore (in FY 2022-23), and is slated to increase manifold in the near future. As per the latest market forecast by Airbus, India will require 2,210 new aircraft over the next 20 years. The combined value of these aircraft will be over Rs. 20,40,000 crores, and financing of about Rs. 35,000 crores would be required for taking deliveries of 100 of these aircraft each year.

With global aircraft leasing market expected to grow from \$172.9 billion in 2023 to \$317.5 billion by 2030, it is anticipated that the majority of the financing for the import of new aircraft in India would be through lease arrangements backed by global financiers. However, the cost of availing financing through such lease-backed arrangements would be dependent on the level of legal protection available to the aircraft lessors/financiers, especially in repossession of the aircraft if the airline faces insolvency.

Jet Airways and Go Airlines: progress and grounded

Jet Airways since its beginning in 1993 has built a strong and reputed image in the aviation market and was a preferred airline in the country. The company dealt with all the major activities in the aviation sector and thereafter became a public company and issued its IPO in 2005. With the aim to increase its brand value and become the top private airlines in the country, Jet Airways acquired Air Sahara. The acquisition took place in 2006 which many experts termed as the start of the downfall of the Jet Airways.

The famous tagline **"The Joy of Flying"** became niche distinct competitive edge with its unrivalled product and services. Since 2018 onwards, the Jet Airlines management faced all downfalls and financial burden increased with events that happened in such a rapid space.

The company started to face the threat of bankruptcy and insolvency consequent to Goyal's departure from the company. From the beginning, the strategic goal of Jet Airways has been to impress the customers base to provide best world class air hospitality.

Similarly **Go First**, founded as **Go Air**, was an Indian low-cost airline based in Mumbai, Maharashtra. Owned by the Indian business conglomerate Wadia Group, it commenced operations on 4 November 2005 and operated a fleet of Airbus A320 aircraft in an all-economy configuration.

In 2021, the airline planned to launch an IPO to raise INR 36 billion (US\$420 million). In 2023, the airline faced difficulties with the availability of Pratt & Whitney engines used on its entire fleet of Airbus A320 aircraft, alleging that the problem was impacting its operations. Subsequently, the airline ceased operations on 3 May 2023 and filed for voluntary insolvency with the National Company Law Tribunal.

In a significant development, both Jet Air & Go Air was within a gap of 3 months between November, 2024 and January, 2025 were ordered for liquidation raising concerns for the airline industry.

The inability to revive these airlines has also raised questions about the effectiveness of the Insolvency and Bankruptcy Code (IBC) in this sector. The effectiveness of the IBC in the airline industry is a concern because the industry operates differently from others.

Apart from the commercial benefits, the lessor community has growing concerns over the legal framework concerning the aviation sector.

Despite the Aircraft Rules, 1937 (the 'Aircraft Rules'), which lays down detailed provisions regarding deregistration and export of aircrafts, the possession of aircrafts by lessors faces deterrents due to ongoing proceedings against airline companies. The primary reason being that the IBC is a later legislation with a non obstante clause that supersedes older statutes/regulations such as the Aircraft Rules. As a result, despite complying with the deregistration and export requirements of the Aircraft Rules, lessors have been impeded from taking possession of aircrafts and forced to intervene in the ongoing insolvency proceedings to seek possession from the insolvency tribunals in India, that is, the Hon'ble National Company Law Tribunals (NCLT).

Moratorium was not applicable on Airlines

The challenges faced by lessors in deregistering and repossessing aircraft due to ongoing insolvency proceedings have been exemplified by recent insolvency proceedings concerning Jet Airways Ltd and Go Airlines (India) Ltd ('GoAir'). In the proceedings concerning Jet Airways, the NCLT prevented the Directorate General of Civil Aviation (DGCA) from deregistering the leased aircraft due to the ongoing moratorium under the IBC. Despite admitting the lessor's claims to the insolvency proceedings, the same remained unpaid.

The lessors of Go Air, which was undergoing insolvency, faced similar issues as those faced by the lessors of Jet Airways about four years ago. With huge outstanding dues in terms of the respective lease agreements, all attempts to deregister aircraft have been thwarted by the DGCA, citing the moratorium imposed by the NCLT under the IBC.

For the past year, the lessors of Go Air have been unsuccessfully attempting to obtain possession of leased aircrafts in various forums. The non-coherence between the IBC and the Convention has led to higher borrowing costs for Indian airline companies, consequently necessitating more stringent leasing terms to airline companies in India to safeguard the interests of lessors contractually.

Perhaps taking a cue from this, the Ministry of Corporate affairs, vide the Notification, notified that moratorium provisions of the IBC shall not be applicable to any transactions, arrangements or agreements under the Convention, which includes aircrafts, aircraft engines, airframes and helicopters. The lessors now have a remedy to repossess a leased aircraft and to enforce their security interest on aircraft and the machineries regardless of an ongoing insolvency proceeding under the IBC. While this Notification marks a significant step forward for lessors, it falls short of fully addressing the requirements for a lessor-friendly jurisdiction.

Factual Background to Jet Saga

Jet was admitted into CIRP on June 20, 2019. Subsequently, the Plan submitted by the Jalan-Kalrock Consortium (SRA) was duly approved by the CoC, and thereafter by the NCLT on June 22, 2021. The SRA submitted a performance bank guarantee of INR 150 crore ("PBG") as required under Regulation 36B(4A) of the CIRP Regulations. The Plan contained several conditions precedent ("CPs") for its implementation to revive Jet's business, which were to be fulfilled by the 'Effective Date' (i.e., date falling on the 90th day from the Plan approval date (extendable by another 180 days)).

Further, as per the terms of the Plan, the first tranche payment of Rs 350 crore was to be made within 180 days, post the Effective Date. Only part of the CPs were achieved by the SRA, and it argued that the rest could only be done in a phase-wise manner. However, the Plan contained no provision for the SRA to declare satisfaction or waiver of the CPs. Despite this, the NCLT agreed with the SRA's submissions and held that the relevant CPs were achieved. During the appeal proceedings before the NCLAT, the lenders had offered, by way of an affidavit ("Lenders' Affidavit") that if the SRA inter alia infused the first tranche payment by August 31, 2023, then they would withdraw their appeals. However, despite multiple extensions of this date granted by the NCLT, the NCLAT and the Supreme Court, the SRA failed to deposit the entire amount in cash by the prescribed deadline (it deposited Rs 200 crore in cash) and sought to adjust the PBG against part of its payment obligations. The NCLAT allowed such adjustment. This was assailed by the lenders before the Supreme Court, which culminated in the SC Judgment dated 7th November, 2024.

Findings of the Supreme Court

The Supreme court determined the following issues –

The Supreme Court criticized the SRA's claim that pending litigation tied its hands, deeming it a mala fide excuse to evade obligations under the Resolution Plan. The Court emphasized that delays are unacceptable given the IBC's goal of timely corporate revival. It noted that the effective date had been frozen at 20.05.2022, with multiple extensions granted for the first tranche payment, including a final deadline of 31.01.2024.

The Court further held that adjusting the PBG against the first tranche was contrary to the RFRP provisions in the Resolution Plan and Regulation 36B(4A) of the IBBI Regulations. It clarified that an approved Resolution Plan is binding and cannot be altered. In light of its prior order dated 18.01.2024, the PBG of INR 150 crore could not be adjusted with the INR 350 crore first tranche payment. The SRA's non-compliance constituted a breach of its obligations to implement the plan.

Whether non-implementation of the Resolution Plan by the SRA necessarily leads to the consequence of liquidation as provided under Section 33 (3) of the IBC.

The Supreme Court observed that the SRA had defaulted on several aspects of the Resolution Plan, including failing to infuse the first tranche of INR 350 crore and the non-payment of CIRP costs, such as Airport dues. It also noted that the NCLAT's order dated 21.10.2022 clearly required the SRA to pay Provident Fund and Gratuity dues to avoid invalidating the Resolution Plan under Section 30(2) (e) of the IBC, 2016. The SRA's failure to comply with this further compounded the defaults.

The Court emphasized that while the IBC aims to ensure the corporate debtor's survival, it should not come at the cost of efficiency. In such cases, "timely" liquidation is preferred over an indefinite resolution process. This approach prevents harm to creditors, who are already suffering due to the delays, and ensures maximizes the remaining assets' value.

Whether the timely implementation of the Resolution Plan is also one of the objectives of the IBC, 2016?

The Supreme Court highlighted the importance of a timely resolution process under the IBC, 2016, referencing several decisions that emphasized the new time-bound completion of the CIRP as per Section 12 and the avoidance of unnecessary delays during liquidation. The Court emphasized that delays during aviation, where continuous cash flow is vital to maintaining operational status. Given the nature of the aviation industry, timely resolution and revival of the Corporate Debtor are critical to preserving the business's value. In light of these considerations, the Supreme Court invoked its powers under Article 142 of the Constitution and ordered the liquidation of the Corporate Debtor.

Suggestions by the Supreme Court

The SC Judgment also cited this case as an eye opener towards various shortcomings in the Code and the functioning of the NCLT and NCLAT. Highlighting them, the Court went on to provide some important suggestions to strengthen the insolvency ecosystem, some of which are as follows:

- ✓ CoC should record reasons while approving/rejecting a resolution plan. This will enable the NCLT/NCLAT to understand the rationale behind the CoC's decision-making and avoid unwarranted interpretation. Further authorities should not shy away from taking decision to put Corporate debtor to liquidation to avoid delay & further erosion.
- ✓ An oversight committee should be constituted for better enforcement of standards and practices set out in the guidelines issued by the IBBI for functioning of the CoC, which are otherwise self-regulatory in nature.

- ✓ NCLTs, while approving a resolution plan, should record the next steps that are to be taken by the respective parties for implementation of the approved plan, to ensure that parties are more vigilant as regards their obligations and to prevent unnecessary delay in implementation.
- ✓ The NCLTs and NCLAT have also been directed to adjudicate applications under the Code in a time-bound manner, by adhering to the timelines prescribed under the Code and to not ignore requests for urgent listings and orders passed by the Supreme Court.
- ✓ The Court also highlighted the need to improve the existing infrastructure in the NCLTs and appoint adequate number of members to aid the insolvency reform initiative undertaken by the Government.

Assets of an Airline Under CIRP Process:

- Owned Aircrafts (Majority are usually on lease basis);
- Owned Vehicles, offices, Aircraft Spares & Equipment's;
- Route/Traffic Rights & Landing Slots at Premier Airports;
- Brand Name;
- Customer Loyalty Programmes;
- Trained Manpower;

The Cape Town Convention

The CTC and its Aircraft Protocol provide a detailed legal framework aimed at protecting the interests of lessors and financiers of high-value mobile equipment, including aircraft.

India has acceded to the Convention, but has not ratified it yet. The CTC ensures that creditors and lessors have a clear and enforceable right to repossess assets in the event of a default by the lessee, thereby reducing risks in cross-border transactions. The Aircraft Protocol further refines this by introducing specific remedies, such as Alternative A, which obligates countries to enforce the timely de-registration and export of aircraft within a fixed period (typically 30 to 60 days, after default). This approach creates an efficient environment for aircraft leasing and financing, which is essential for the global aviation industry as it reduces the risks associated with leasing aircraft to airlines, especially those operating in jurisdictions with weaker insolvency frameworks. The CTC aims to not only protect lessors, but also makes asset-based financing more appealing. This in turn facilitates lower leasing and financing costs for airlines.

However, giving lessors unrestricted rights to repossess aircraft during insolvency poses challenges. Without operational aircraft, an airline's ability to restructure is significantly hampered, affecting stakeholders such as passengers, employees, vendors and financial institutions. A balanced approach is crucial - one that protects lessors' rights while also providing struggling airlines an opportunity to revive and restructure.

International Financing Challenging for Airline

Many countries have adopted the CTC guidelines, which mandates the de-registration and export of aircraft after a set waiting period, generally thirty to sixty days, without lengthy court proceedings. This approach favours lessors by providing a clear timeline for repossession.

For example, Singapore and the United Arab Emirates (UAE) enforce waiting periods of thirty and sixty days, respectively. In Australia, the courts have upheld the CTC's provisions, ruling that the obligation to "give possession" requires removing legal impediments, such as stays under local insolvency laws, without making the debtor bear the costs of delivering the aircraft. The United States, while recognising the CTC's Alternative A, offers airlines the option to file for reorganisation under Chapter 11 of its bankruptcy code. This allows debtors to assume or reject certain leases and prioritise restructuring over immediate repossession. In contrast, the UK ratified the CTC in 2015, adopting Alternative A alongside the Corporate Insolvency and Governance Act of 2020.

While this Act generally prohibits clauses allowing contract termination upon insolvency, it makes exceptions for aircraft leases to comply with the CTC's sixty-day waiting period.

The explanatory note to the draft Bill released by the Ministry of Civil Aviation raises the issues faced by the aviation industry due to the absence of legislation giving force to the Convention. Currently, India lacks an electronic international registry for registration of international interests in aircrafts and objects which is universally accessible to lessors. These 'international interests' include security-type interests contemplated in security agreements, lease agreements or title reservation agreements. Moreover, in the absence of such a directory, there is no international recognition among the contracting states. Lastly, the default interim remedies for the creditor, such as de-registration and export of aircraft as contemplated under the Convention, is amiss in absence of domestic legislation. Although the Notification is a welcome move to

free the leased aircraft/equipment from the strongholds of the IBC, there is a dire need for enactment of the Bill to synchronise the Indian legal framework with the legal framework of other signatory countries which have enforced the Convention. The Bill allows the debtor or the resolution professional to maintain possession of the aircraft, subject to rectification of pre-insolvency breaches of the agreement and commitment to fulfil all future obligations under the agreement. The Bill, in consonance with Articles 2-7 of the CTC, gives effect to the creation of international interest in relation with aircraft objects. It also ensures that such interest is exempt from the registration of charges requirement under the Companies Act 2013. The Bill also provides the rights of the charge to de-register and export an aircraft to the territory in which it is situated. In addition to de-registration and export, the Bill enables a creditor to seek preservation, possession, immobilisation, management or sale from a civil court. There are numerous provisions under the Civil Procedure Code, 2008, Companies Act, 2013 and Specific Relief Act, 1963 which create a charge or additional liabilities over the aircraft/equipment. The Bill contains a non-obstante provision that supersedes every other statute in existence on the day of its enactment. This ensures that the Bill does not face the same fate as the Aircraft Rules and its enforcement is without any procedural impediments.

IBC Vs. Aircraft Laws changing tides against IBC

The judgments in the matters of Jet Airways and Go Air espoused the primacy of the IBC over Aircraft Laws in cases of conflict. However, the aforesaid legal position appears to be on the cusp of undergoing substantial modifications to tilt the tide in favour of Aircraft Laws over IBC considering larger requirements of International Financing & Industry Structure.

i. Notification issued by the Central Government under section 14(3)(a) of the IBC dated October 3, 2023

The legal position according to primacy to the provisions of IBC over Aircraft Laws underwent a volte face in view of the Notification issued by the Ministry of Civil Aviation. The Central Government (acting through MCA) issued the Notification in exercise of its the IBC, 138 clarifying that the moratorium 14 of the IBC is not applicable to transactions/arrangement/agreements related to aircraft, aircraft and the Protocol apply.

In other words, the Jet Airways Order and the Go Air Order accorded primacy to the provisions of IBC over Aircraft Laws and curtailed the rights of lessors to repossess their aircraft during the moratorium period. However, the Central Government took the legislative route to hold that a right available to a lessor under the Aircraft Laws to recover possession of its aircraft by exercising their right as an IDERA Holder shall continue to be available to the lessors, notwithstanding the moratorium imposed in terms of Section 14 of the IBC.

ii. Notification issued by the Ministry of Civil Aviation being Notification Number G.S.R 2961 dated April 13, 2022

As a part of pre-legislative consultation, the Ministry of Civil Aviation issued a notification dated April 13, 2022, inviting public comments in relation to the proposed 'Protection and Enforcement of Interests in Aircraft Objects Bill, 2022' (Aviation Bill), which is proposed to be enacted to solidify India's commitment to its obligations under the CTC and the Aircraft Protocol.

It is relevant to note that the Ministry of Civil Aviation espoused the enactment of a separate and dedicated legislation for implementing the CTC and the Aircraft Protocol as a few of their provisions are in conflict with the provisions of existing laws such as the Civil Procedure Code, 2008, the Specific Relief Act, 1963, the Companies Act, 2013 and the IBC. 139 In other words, the Ministry of Civil Aviation has proposed the Aviation Bill with the expressly avowed objective of giving primacy to India's obligations under the CTC and the Aircraft Protocol over all other laws for the time being in force, including the IBC.

What we lost in Airlines liquidation

- ✓ Closure of two major Airlines – Jet, Go Air leading to consolidation and few players;
- ✓ Jet being listed: 1.43 lakh investors are facing potential wipe-out;
- ✓ International investors / lessors having a relook into larger financing option to Airlines Industry;
- ✓ Employees are worst hit: grappling with uncertain future;
- ✓ Industry caught in a web of structural challenges in parting efficiency and profitability.

Conclusion

As outlined, the most important asset of an airline company, which is crucial for its insolvency resolution, is the aircraft. However, in terms of the Notification, upon the commencement of the CIRP of an airline company, the lessors are provided with near unbridled right to strip the airline company off its most valuable asset.

In view of this, while the Notification no doubt protects the interests of the lessors, it is likely to prejudicially affect the prospects of the insolvency resolution of an airline company. As regards the legal framework envisaged in the Aviation Bill, while it attempts to balance the interests of both the lessors and the airline company, there are practical challenges which may create substantial roadblocks for the RP to undertake Retention Obligations and retain possession of the aircraft. *Recently Spice Jet is also facing tremors as multiple cases being filed by lessors, vendors and creditors and corporate debtor is seeking time to resolve the same.*

Certain changes in present IBC laws that can bring a balance and interplay are:

- i. Treating lessors at par with secured creditors (as Financial Creditors) in committee of Creditors (CoC) and in the liquidation waterfall mechanism;
- ii. Allowing airline company to take benefit of prepacked insolvency resolution process or a Creditor Oriented Resolution in a time bound manner;
- iii. Allowing airline companies to take benefit of interim moratorium so as to continue running the Airlines;
- iv. Preservation of aircraft and fleet during Insolvency period;
- v. Enactment of cross border insolvency resolution framework.
- vi. The airlines industry is in a cusp of gigantic growth but requires certain protection for various stakeholders much different to a normal Insolvency methodology. These amendments would make overall approach effective.

Recent Development

- ✓ **The Protection of Interests in Aircraft Objects Bill, 2025**, which was passed by Parliament in April 2025 is a pivotal reform towards Aviation Sector. The Bill establishes a legal framework to resolve disputes between airlines and aircraft lessors aligning Indian aviation law with the Cape Town Convention.
- ✓ In response to the challenges posed by the insolvencies of airlines like **Go First** and **Jet Airways**, the Indian Government has implemented this Bill to make the aviation sector more investor-friendly.
- ✓ This regulation brings India into full compliance with the Cape Town Convention and Protocol, a United Nations treaty adopted by the International Civil Aviation Organization (ICAO) in 2021.
- ✓ Although India acceded to the Cape Town Convention and Aircraft Protocol in 2008, it lacked a domestic enforcement mechanism. This gap was addressed through new legislation, which has given the treaty a legal effect within the country.

04

Recent Amendments in Insolvency and Bankruptcy Code 2016 – Changes in Insolvency Regime for Real-Estate Sector

Background

²The Insolvency and Bankruptcy Code, 2016 (“Code/IBC”) is the umbrella legislation for insolvency resolution of all entities in India—both corporate and individuals. The provisions relating to insolvency and liquidation of corporate persons came into force on December 1, 2016, while those of insolvency resolution and bankruptcy of personal guarantors to corporate debtors (CDs) came into effect on December 1, 2019. For CDs facing insolvency, the Code spells out two processes: insolvency resolution (Corporate Insolvency Resolution Process or CIRP) and liquidation. When insolvency is triggered under the IBC, all attempts are made to resolve the insolvency in a time-bound manner. If the attempt fails, the company, or the CD, will be liquidated. This is a significant departure from the previous winding up regime, which did not provide for this two-stage time-bound processes.

However, over its course of more than 8 years, the Code has developed a lot including introduction of various new trends and innovations in CIRP and liquidation process. There have been various amendments in the Code which has resulted from landmark

judgments that has shaped how IBC stands as on date and also guides the future course for IBC. However, there is one category of corporate debtor whose insolvency process has seen major changes over the years. The insolvency regime for the real-estate sector has developed a lot since inception. In this regard, the phases of insolvency in real-estate sector and the recent amendments brought therein is detailed hereinbelow:

a. The concept of Reverse-CIRP

When IBC was enacted, one of the most affected areas of business was real-estate projects. Insolvency in real-estate projects not only affects the secured financial creditors but it also majorly affects the home-buyers who have invested their lifetime savings into these projects for securing possession of their homes. When the Code was introduced, it did not have enough consideration for such home-buyers. Irrespective of the fact whether a CD is resolved through resolution in CIRP or through liquidation, they were at a loss in either of the way.

² Reference – Understanding the IBC: Key Jurisprudence and Practical Considerations – A Handbook by IBBI

With more and more real-estate projects going into insolvency, various issues were raised on question of law and the gaps in the Code as insolvency in such cases shall be dealt with in a different manner that considers the ground of home buyers as well. The concept of Reverse CIRP came into picture through various judicial pronouncements that has resulted in amendments in IBC and regulations for incorporating necessary provisions to protect the interest of the home-buyers.

³Reverse CIRP is an innovation developed by the judiciary that allows real estate developers (promoters) and/or creditors to infuse funds and complete stalled projects without undergoing a full-fledged CIRP. Unlike traditional insolvency proceedings, where control shifts to a resolution professional (RP) and the Committee of Creditors (CoC), reverse CIRP allows promoters and/or creditors to act as financial creditors by providing interim finance to complete pending projects. This ensures that homebuyers receive their flats without getting entangled in prolonged insolvency proceedings.

b. IBBI Discussion Paper on “Real-Estate Related Proposals- CIRP & Liquidation”

IBBI had issued a Discussion Paper on “Real-Estate Related Proposals- CIRP & Liquidation” on 06th November, 2023 that proposed various amendments to the Code and the CIRP and Liquidation regulations w.r.t. Real-Estate sector. A few extracts of the discussion paper are mentioned hereinbelow –

- 1. The discussion paper deals with the following issues being faced in insolvency processes of real-estate projects:**
 - i. Mandatory registration and extension of projects under Real Estate Regulatory Authority (RERA);
 - ii. Operating a separate bank account for each real estate project;
 - iii. Execution of registration/sublease deeds with approval of committee of the creditors (CoC) during corporate insolvency resolution process (CIRP);
 - iv. CoC to examine and invite separate plans for each project; and
 - v. Exclusion of property in possession of homebuyers from the liquidation estate.

2. Implementation of Amitabh Kant’s Committee Report on Real-Estate projects

A Committee formed under the Chairmanship of Sh. Amitabh Kant on issues related to Legacy Stalled Real Estate Projects recommended that “the IBC needs to be reformed to better accommodate the complexities of the real estate sector.” Some of the recommendations with respect to reforms in the Insolvency and Bankruptcy Code, 2016 (Code/ IBC) are:

- i. *Project wise CIRP - All projects need to be pre-registered with RERA. Since RERA registration is project-wise, this can be adopted under IBC.*
- ii. *Transfer of ownership/possession to allottees: The Committee proposes that the IBC may enable Resolution Professionals (RPs) to transfer the ownership and possession of a plot, apartment, or building to the allottees during the resolution process.*

³ Reference - The concept of reverse CIRP and recent amendments to the IBC around the real estate sector – By Ayushi Agarwal & Jenul Bhati on IBC Laws

An option may also be given to allottees to acquire such units on 'as is where is' basis or on payment of balance required to complete the unit during the process. Houses which are under possession of allottees should not be included in the IBC process.

- iii. *Registration/ Transfer of ownership where possession transferred: Where possession of a plot, apartment, or building to the allottees have already been transferred, these transactions must be formalised through registration during a CIRP or a project-specific resolution process under the IBC.*

3. The Colloquium on Functioning and Strengthening of the IBC Ecosystem, in November 2022 recommended as under:

*"Improving outcomes in real estate cases
4.8 Recommendation 3: The Code may provide that a resolution mechanism tailor-made to address the needs of the real estate sector be specified with necessary variations from the CIRP, including project wise admission and resolution, delivery of completed house to homebuyers during CIRP, allowing homebuyers to become Resolution Applicants etc..."*

Rationale: A large number of real estate cases have remained unresolved for long period of time as the current framework of CIRP is not conducive to address the issues specific to this sector. In real estate cases, CDs have multiple projects that are at different stages of construction. The prospective resolution applicants (PRAs) are more inclined to take over the projects closer to completion than those at early stages of construction.

There exist situations where the default is related to one particular project, while the other projects are on track but the initiation of CIRP puts the other projects also under duress. Several experiments have been attempted by courts to address these issues through reverse CIRP and project-wise resolution. Thus, there exists a pressing need to have a separate resolution mechanism for real estate sector."

c. Amendment in CIRP Regulations

Thereafter, IBBI vide its notification dated 03.02.2025, amended the CIRP regulations, wherein a few of the recommendations of the above-mentioned discussion paper were incorporated. Some of the key highlights of the amendment regulations as per IBBI Press Release are as follows:

- i. **Handing Over Possession:** The Resolution Professional, after obtaining approval of the committee of creditors and upon fulfilment of all obligations by the homebuyer, can now hand over possession of plots, apartments, or buildings to the homebuyers while the resolution process is still ongoing. Thus, the distressed homebuyers would not have to wait for long periods in order to get possession of their properties.
- ii. **Appointment of Facilitators:** Facilitators can now be appointed for sub-classes within large creditor classes such as homebuyers to ensure their effective participation in the insolvency resolution process. The roles and responsibilities of the facilitators include facilitating communication between the authorised representative and the creditors assigned to him and providing information and clarifications to the creditors about the insolvency resolution process.

iii. **Participation of Competent**

Authority in Real Estate Projects:

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

iv. **Report on Real Estate Development**

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

v. **Relaxations for Real Estate Allottees:**

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

d. Amendment in Liquidation Regulations

IBBI has vide its Notification dated 12.02.2024, introduced certain amendments to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

One of the amendments was regarding exclusion of certain assets from the liquidation estate. As per the amendment, wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor.

These recent amendments have been made to ensure that the rights of the homebuyers are not affected as they have invested their lifetime savings into such projects to secure possession. The judiciary has also vide its various judgments emphasized the need for a separate insolvency mechanism for real-estate sector as the stakes are higher in such cases, not just for financial creditors but for other stakeholders too. While bringing in a separate Act or Code entirely for Real-estate sector may or may not be considered, however, such amendments restores the faith that various stakeholders especially homebuyers have on the working and outcome of the Insolvency legislation in India.

05

Group Insolvency

The Insolvency and Bankruptcy Board of India has issued a Discussion Paper on 'Streamlining Processes under the Code: Reforms for Enhanced Efficiency and Outcomes' on 4th February 2025. While the discussion paper has covered various aspects under IBC, one of the most important aspect being proposed is regarding Group Insolvency. An extract of the discussion paper is mentioned hereinbelow-

Coordinated Insolvency Resolution for Interconnected Entities

Issue

The increasing prevalence of complex corporate structures with intertwined operations and finances in sectors such as real estate, power generation etc. necessitates a more nuanced approach to insolvency resolution. In its current form, the insolvency process treats each entity as a standalone unit, overlooking the intricate web of interdependencies often present in modern business ecosystems. This siloed approach can inadvertently diminish the collective value of connected firms and introduce unnecessary complications to the resolution process. The absence of a formal mechanism for coordinating CIRPs across interconnected entities leads to inefficiencies, escalated costs, and potential conflicts. This is particularly evident when multiple related entities undergo CIRP concurrently, without a structured methodology to leverage their interconnections effectively.

Moreover, the current framework misses crucial opportunities to capitalize on synergies and mutual dependencies within corporate groups. This oversight can result in suboptimal outcomes, as the resolution process fails to tap into the collective strength and inherent value of these business relationships. Stakeholders, including creditors, resolution professionals, and potential investors, face uncertainty due to the lack of clear guidelines for coordinated resolution strategies. This ambiguity can discourage comprehensive resolution plans that could potentially yield superior outcomes for all parties involved.

While recent judicial precedents in cases such as Videocon Industries Ltd. and SREI Infrastructure Finance Ltd. have acknowledged the need for a more sophisticated approach to interconnected entities, the regulatory framework has yet to evolve to provide a standardized, efficient process for such scenarios. Addressing these issues is imperative to align the insolvency resolution framework with the realities of contemporary business structures. A more coordinated approach could significantly enhance the efficiency, effectiveness, and value realization in the resolution of interconnected entities.

Proposal

It is proposed to amend the CIRP Regulations to introduce a mechanism for coordination of CIRP of interconnected entities. This may include:

- a. Provisions for joint hearings*
- b. Appointment of a common resolution professional*
- c. Information sharing protocols*
- d. Coordinated timelines.*

This amendment aims to increase efficiency, reduce costs, and improve outcomes in cases involving multiple interconnected entities undergoing CIRP simultaneously.

To understand the concept behind the proposed changes, first let us understand the beginning of Group Insolvency and the development of the concept of Group Insolvency in India over the years.

⁴With the introduction of the Insolvency and Bankruptcy Code, 2016 (“Code/ IBC”), India consolidated the fragmented laws relating to inter alia reorganisation, insolvency resolution and liquidation of corporate persons. Although the Code comprehensively deals with the insolvency of corporate debtors as separate entities, it does not envisage a framework to either coordinate insolvency proceedings of corporate debtors belonging to a group or to have a common resolution for them. Consequently, the insolvency of different corporate debtors belonging to the same group is dealt with through separate insolvency proceedings for each corporate debtor.

The first Group Insolvency case in India was that of Videocon Industries wherein a consortium of banks led by the State Bank of India, moved a petition before NCLT, Mumbai, asking for substantial consolidation of the group of 15 companies under the “Videocon Group”, which was undergoing separate corporate insolvency resolution process (CIRP). Thereafter, the insolvency proceedings of 13 out of 15 companies belonging to the same group were ordered to be consolidated based on the following set of factors: -

- i. Common control;
- ii. Common directors;
- iii. Common assets;
- iv. Common liabilities;
- v. Inter-dependence of the companies;
- vi. Interlacing of finance;
- vii. Pooling of resources;
- viii. Co-existence for survival
- ix. Intricate links between companies;
- x. Intertwined accounts;
- xi. Inter-looping of debts;
- xii. Singleness of economic of units;
- xiii. Common financial creditors.

Due to the lacuna in the Code, the Adjudicating Authority relied on jurisprudence in jurisdictions like the US and UK for dealing with this matter.

⁵Thereafter, during the insolvency of **Lavasa Corporation**, the NCLT, Mumbai permitted the consolidation of insolvency proceedings of Lavasa Corporation and its 4 wholly-owned subsidiaries, including 2 subsidiaries that were not undergoing insolvency resolution (subject to the approval of their creditors). The NCLT based its decision on the fact that the debts of all 4 subsidiaries were guaranteed by Lavasa Corporation, and the resolution plan was conditional on the consolidation of the insolvency process of all the entities.

The National Company Law Appellate Tribunal (**NCLAT**) has also permitted a form of group insolvency for 5 entities who jointly owned a plot of land and were operating as a consortium in **Edelweiss Asset Reconstruction Co Ltd v. Sachet Infrastructure Pvt Ltd & Ors**. In that case, the NCLAT directed that the corporate insolvency resolution process (**CIRP**) of the 5 entities occur simultaneously through a single resolution professional.

⁴ Report of CBIRC-II on Group Insolvency (December 2021)

⁵ Group Insolvency - The Need of the Hour by Bharucha & Partners on <https://www.lexology.com/>

From the jurisprudence, it is clear that group insolvency is predicated on the insolvent entities being intricately linked and operating as a single economic unit. In addition, the consolidation of insolvency proceedings must be consistent with the objectives of the IBC. Working Groups and Committees have been formed to review and recommend the provisions for Group Insolvency. The Report of CBIRC-II on Group Insolvency (December 2021) recognized the need for a comprehensive insolvency framework and some of its recommendations are as follows –

- a.** In the group insolvency framework under the Code, a broad and inclusive definition of ‘group’ should be provided so as to include a large number of corporate debtors within the ambit of the framework. The definition of ‘group’ may be based on the criteria of control and significant ownership. This definition should be applicable to all entities that fall within the definition of a ‘corporate debtor’ under the Code, i.e., companies and limited liability partnerships. The group insolvency framework may not apply to financial service providers notified under Section 227 of the Code.
- b.** The group insolvency framework under the Code should only apply to corporate debtors in respect of whom a corporate insolvency resolution process or liquidation process is ongoing. The law shall not apply to solvent members of the group.
- c.** Filing of joint applications for initiation of corporate insolvency resolution proceedings against multiple corporate debtors belonging to the same group may be permitted.
- d.** All proceedings related to corporate debtors belonging to a group may take place under the same Adjudicating Authority. To give this effect, all pending applications and proceedings under the Code in respect of a group member may be transferred to the NCLT that is the first to admit an application for triggering an insolvency resolution process in respect of any corporate debtor belonging to the group. All new applications in respect of any group member should also be filed in such NCLT.
- e.** A common insolvency professional may be appointed as the resolution professional or liquidator of corporate debtors that belong to the same group.
- f.** Group CoC may be formed with adequate representation from CoCs of all group members. This may be at discretion of the CoCs and its constitution and formation may be subject to negotiation amongst parties. The group CoC (outside of a group coordination proceeding) may only provide procedural assistance and should not be tasked with taking decisions that affect the substantive rights and obligations of the parties, which right shall continue to be available to the CoCs of the relevant group members.

- g.** The CoCs and insolvency professionals appointed in respect of corporate debtors belonging to the same group should mandatorily be required to cooperate, coordinate and share information with each other.
- h.** The costs of conducting group coordination proceedings should form part of the insolvency resolution or liquidation process costs of the participating group members. Further, where group coordination proceedings are opened, an additional 90 days may be added to the time period for completion of the insolvency resolution process for the participating corporate debtors.

However, till date, there has been no defined framework for group insolvency. The concept of group insolvency has developed based on jurisprudence only. There is no common ground or rule for dealing with such cases as different NCLT benches have provided different opinions.

Now with respect to IBBI's Discussion Paper dated 4th February, 2025, the following amendments have been proposed to CIRP regulations. The proposed amendments and the rationale behind the proposed changes is as follows-

40E. Coordination of insolvency resolution process of interconnected entities.

- 1.** *Where two or more corporate debtors undergoing corporate insolvency resolution process are interconnected which may be based on the existence of control or significant ownership, the resolution professional of any such corporate debtor may file an application with the Adjudicating Authority for coordinated conduct of the processes,*

subject to obtaining prior approval of each committee of creditors by a vote of not less than sixty-six percent in value of the creditors voting in that CoC. For the purposes of this sub-regulation the term 'control' shall be as defined in the Companies Act, 2013, and in respect of Limited Liability Partnerships, it shall mean the ability, by virtue of voting rights, partnership interest, or contractual arrangements, to direct the management or policies of the Limited Liability Partnership or to appoint or remove the majority of its designated partners, and the term 'significant ownership' shall be defined as the ability to exercise 26% or more voting power.

- 2.** *The Adjudicating Authority may, if satisfied that coordination would be in the best interests of the corporate debtors and their stakeholders, pass appropriate orders for:*

- a. joint hearings** – *The rationale for introducing the concept of joint hearings is that all the corporate debtors under the same group have interlinked transactions. In most of the cases, they have common creditors too. Joint hearings will ensure that all the parties concerned can be aware of the proceedings and fate of the other group companies.*

- b. appointment of a common resolution professional** – *Appointment of common resolution professional for two or more group companies will result in better handling of the group insolvency as some of them have common assets and liabilities, common creditors and mutual set-offs. In such cases, a single Resolution Applicant can submit a Resolution Plan for such corporate debtors forming part of a group that shares common assets.*

This will result in faster resolution. Having a common resolution professional will ensure that process runs smoothly under one person. Having different resolution professionals can sometimes cause more delays in the process.

c. information sharing between the resolution professionals – *In most of the cases in India, all the corporate debtors under the same group did not have a common resolution professional. In such cases, if the resolution professional of one CD sought information from the resolution professional of another CD, the information was not provided citing confidentiality issues. If the Code makes it mandatory to share information between the resolution professionals, it will ensure better coordination and smooth conduct of the insolvency proceedings.*

d. coordination of timelines – *For instance, where there is a common Resolution Applicant and common assets and liabilities, having similar timelines will make it easier for him to implement the resolution plan faster rather than waiting for the approval of his resolution plan in other group entities.*

e. any other measure as deemed fit.

Recently, the Singapore High Court has in the matter of *Re Compuage Infocom Ltd and Anr*, [2025] SGHC 49 recognised India's Corporate Insolvency Resolution Process (CIRP) for the first time under the UNCITRAL Model Law on Cross-Border Insolvency, as adopted in Singapore. The decision also recognised India's National Company Law Tribunal ("NCLT") as a "foreign court" and CIRP as a "foreign main proceeding". While the concept of Group Insolvency has been evolving since inception of the Code, it will be interesting to see when "Cross Border Insolvency" comes into picture and is implemented. This recognition by Singapore High Court is one step towards implementation of Cross Border Insolvency.



Personal Insolvency/ Personal Guarantors

⁶The Insolvency and Bankruptcy Code, 2016 (IBC/ Code) is aimed to resolve corporate persons and individuals in stress in a time-bound manner for value maximisation. The provisions for resolving corporate persons were notified in 2016, and in the year 2018, the Code was amended to trifurcate the individuals into these categories: personal guarantors (PGs) to corporate debtors (CDs); partnership firms and proprietorship firms; and other individuals, to enable implementation of the provisions for resolution of individuals in a phased manner.

Since insolvency proceedings of CD and PG are interwoven pursuant to a common debt, the Central Government, in November, 2019, notified the provisions related to the insolvency resolution and bankruptcy process for the PGs to CDs. This afforded creditors the flexibility to initiate proceedings against both CDs and PGs concurrently, enhancing the recovery prospects for the stakeholders and ensuring a synergized approach to insolvency resolution. The Hon'ble Appellate Authority in the matter of SBI v. Athena Energy Ventures (P) Ltd. (Company Appeal (AT) (Ins) No.633 of 2020- NCLAT, Delhi) also held that the IBC permits concurrent initiation of corporate insolvency resolution process (CIRP) against a principal borrower and its corporate guarantor.

Since the notification came into effect, rights

and responsibilities of PGs under the IBC have been challenged in various High Courts and the Hon'ble Supreme Court (SC). In 2021, Hon'ble SC in Lalit Kumar Jain v. Union of India & Ors. (TRANSFERRED CASE (CIVIL) NO. 245/2020) upheld the legality of aforesaid notification and clarified that approval of a resolution plan relating to a CD does not operate so as to discharge the liabilities of PGs to CDs. Thereafter, concerning the procedural aspect, several writ petitions were again filed before various High Courts and the Hon'ble SC challenging the constitutionality of the provisions related to PG to CD on the ground that impugned provisions did not adhere to the due process of law and are in contravention of Articles 14 and 21 of the Constitution. In deciding all the petitions, the Hon'ble SC in the matter of Dilip B. Jiwrajika v. Union of India & Ors.(Writ Petition (Civil) No 1281 of 2021) upheld the constitutionality of provisions of sections 95 to 100 related to PGs and inter alia stated that:

- i. No judicial adjudication, including determination of 'jurisdiction facts', is involved at the pre-admission stages envisaged in sections 95 to 99 of the IBC;
- ii. The RP serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process. The report to be submitted to the AA is recommendatory in nature on whether to accept or reject the application;

⁶ Reference – The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India (October to December 2023)- Personal Guarantors under IBC (from Chairperson's Desk at page 3)

- iii. The RP may exercise the powers vested under section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;
- iv. There is no violation of natural justice under sections 95 to 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the RP;
- v. The AA must observe the principles of natural justice when it exercises jurisdiction under section 100 for the purpose of determining whether to accept or reject the application; and
- vi. The purpose of the interim-moratorium under section 96 is to protect the debtor from further legal proceedings.

This judgement has cleared the roadblocks for insolvencies involving PGs, providing relief for lenders whose petitions for insolvency proceedings against PGs were getting stuck in various judicial forums due to the legal challenge of various provisions. This inter-alia facilitates a more holistic resolution of the CD and its PGs aligning with the IBC's mandate for value maximization.

To improve the efficiency and transparency of insolvency resolution process for PGs, the Insolvency and Bankruptcy Board of India (IBBI) has taken regular measures from time to time. Recently, it has taken three key measures. Firstly, same RP has been allowed to manage both insolvency resolution process of PG and CIRP of CD for enhanced harmonization of both the processes.

Secondly, RP is mandated to share his recommendations with both debtors and creditors in order to facilitate informed decision-making among stakeholders. Lastly, RP is mandated to conduct creditors' meetings for all PG cases to ensure that the collective voice of creditors is factored into the resolution process, providing a more holistic perspective on the repayment plan.

It is seen that CIRP proceedings are often delayed due to excessive litigation. The debtors' attempt to prolong the admission or the resolution process leads to erosion in CD's value. Paradoxically, this prolongation amplifies the liabilities of PGs, and hence it is in the interest of the debtors to cooperate during the resolution of the CD.

While the CD is reorganized during CIRP, the insolvency resolution process for the PGs prioritises debt restructuring. This is the opportunity the IBC affords over outright bankruptcy, with bankruptcy serving as a last resort should the debtor's repayment plan falter. By co-operating in the process and submitting a repayment plan for approval by creditors, debtors can effectively discharge their debt liabilities instead of initiation of their bankruptcy process.

Now, coming to the adjudication of various PGs cases, some of the important judgments/orders that have been passed recently are mentioned hereinbelow-

1. In the matter of **Bank of Baroda V/s. Farooq Ali Khan & Ors.**, the Personal Guarantor (PG) had preferred a writ petition before the High Court under Article 226 of the Constitution to prohibit the Adjudicating Authority from entertaining the personal insolvency petition against him, primarily on the ground that his liability as a personal guarantor stood waived and discharged.

The High Court allowed the writ petition and held that the personal insolvency proceedings are not maintainable as the PG's liability as a guarantor had stood waived.

The Hon'ble Supreme Court was of the view that the High Court incorrectly exercised its writ jurisdiction. It is well-settled that when statutory tribunals are constituted to adjudicate and determine certain questions of law and fact, the High Courts do not substitute themselves as the decision-making authority while exercising judicial review. Further, in the present case, the proceedings had not even reached the stage where the Adjudicatory Authority was required to make such determination. Rather, the High Court exercised jurisdiction even prior to the submission of the resolution professional's report, thereby precluding the Adjudicating Authority from performing its adjudicatory function under the IBC.

While there is no exclusion of power of judicial review of High Courts, and the limits and restraint that the constitutional court exercises and must exercise are well articulated, the primary issues involved in the present case, including the factual determination of whether the debt exists, is part of the statutory and regulatory regime of the Insolvency and Bankruptcy Code. The High Court should have permitted the statutory process through the resolution professional and the Adjudicating Authority to take its course.

2. In the matter of **Sanjay Dhingra V/s. IDBI Bank Limited & Ors.**, the Hon'ble High Court of Delhi has observed that once the interim moratorium has come into play

on account of the insolvency proceedings against the petitioner (Personal Guarantor) under the IBC, 2016, the respondent-bank cannot proceed any further in the proceedings under the SARFAESI Act with respect to the property mortgaged by the petitioner with the bank, in his capacity as a personal guarantor.

3. In the matter of **Anita Goyal V/s. Vistra ITCL (India) Ltd. & Anr.**, the issues raised was that when no CIRP or liquidation proceedings of a Corporate Debtor is pending before the NCLT, whether an Application for personal insolvency against a Personal Guarantor can be filed before NCLT?

Earlier, in the matter of **State Bank of India vs. Mahendra Kumar Jajodia – (2022) SCC OnLine NCLAT 58**, an Application under Section 95 was filed by the State Bank of India before NCLT, Kolkata Bench, seeking initiation of CIRP against Personal Guarantor, which Application was rejected by the Adjudicating Authority as premature relying on Section 60, sub-section (2) and holding that for an insolvency resolution process to be initiated against the guarantor there must be CIRP or liquidation process pending against the principal borrower/ Corporate Debtor. The said order of the Adjudicating Authority was challenged by the State Bank of India before Hon'ble NCLAT. The Hon'ble NCLAT observed that the Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor are pending the application under Section 95(1) filed by the Appellant is not maintainable.

The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT.

Further, the Hon'ble NCLAT judgment in **Mahendra Kumar Jajodia** case was also challenged before the Hon'ble Supreme Court, and the Hon'ble Court dismissed the Appeal. Therefore, the view taken by NCLAT in **Mahendra Kumar Jajodia** has also received the approval of the Supreme Court.

In this matter (**Anita Goyal V/s. Vistra ITCL (India) Ltd. & Anr.**), the Hon'ble NCLAT observed that even if no CIRP or liquidation is pending against the Corporate Debtor, Application under Section 95 can be filed before the NCLT. With regard to maintainability of Application under Section 95 by a Financial Creditor against a Personal Guarantor, it was held that even if no insolvency resolution process or liquidation proceedings of a Corporate Debtor is pending, the Application filed by Financial Creditor without there being any pending proceeding against Corporate Debtor, is fully maintainable.



Summary Of Important Judgments

1. For a Resolution Plan containing a combination, the Competition Commission of India (CCI's) approval to the Resolution Plan must be obtained before CoC's examination

Brief Background- In this matter various appeals were filed pertaining to the Corporate Insolvency Resolution Process of the Hindustan National Glass and Industries Ltd. [hereinafter referred to as 'HNGIL']. Additionally, there were set of appeals arising out of the NCLAT Order dated 28.07.2023, pertaining to the approval accorded to the combination between HNGIL and AGI Greenpac.

One key party in this matter is HNGIL i.e., the Corporate Debtor/Target Company with a 60% market share of the glass packaging industry in India. The Resolution Professional represents them. Incorporated in 1946, HNGIL has manufacturing plants located in Bahadurgarh (Haryana), Rishra (West Bengal), Neemrana (Rajasthan), Naidupeta (Andhra Pradesh), Sinnar (Maharashtra), Puducherry and Rishikesh (Uttarakhand), catering to a wide range of industries, including pharmaceutical and wellness, cosmetics, food & beverage, and alco-beverages, etc.

Combining with HNGIL is AGI Greenpac Ltd. [hereinafter referred to as 'AGI Greenpac'] i.e., the Successful Resolution Applicant, which is the second largest company in the field of glass packaging and manufacturing in India, after HNGIL.

With two manufacturing plants in Telangana, AGI Greenpac is the leading manufacturer of container glass. The combination between AGI Greenpac and HNGIL, with potential market share of 80-85% in F&B segment and 45-50% in alco-beverage segment, generated a key issue for adjudication since the combination of the two major players in this sector is likely to result in an Appreciable Adverse Effect on Competition in the glass packaging industry generally and in particular, within the subsegments of F&B and alco-beverages.

Issue - The principal issue raised was whether the approval of a proposed combination by the CCI must mandatorily precede the approval of the Resolution Plan, by the CoC, as stipulated under the proviso to Section 31 (4) of IBC.

Section 31(4) of IBC states that *where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.*

Hon'ble NCLAT's view - The Hon'ble NCLAT, concluded that though CCI's approval is mandatory, obtaining 'prior approval', is directory. Such a conclusion was reached on the understanding that the Resolution Applicant does not have control over the timeline within which the CCI may render its approval or disapproval, towards the combination application. This may in turn, lead to a situation wherein the insolvency proceeding is unduly delayed because of a pending application seeking approval from the CCI. That might undermine the very objective of the Corporate Insolvency Resolution Process ['CIRP'] itself. The absence of any explicit statutory consequences for non-compliance with the proviso to Section 31(4) IBC was therefore interpreted by the NCLAT as an indication that the requirement for prior approval was meant to be only directory.

Hon'ble Supreme Court's Observations and Judgment - The interplay between the IBC and the Competition Act presents a delicate balance. While the IBC focused on expeditious revival of distressed assets, the Competition Act ensures that the resolution process does not distort market dynamics. The Competition Act operates on a suspensory regime, under which no transaction involving a combination can be completed, without prior approval from the CCI. Such mandate ensures that competitive equilibrium in the market is not disrupted during the CIRP.

For a Resolution Plan containing a combination, the CCI's approval to the Resolution Plan, in our opinion, must be obtained before and consequently, the CoC's examination and approval should be only after the CCI's decision. This interpretation respects the original legislative intent, and deviation from the same would not only undermine the statute but would also erode the faith posed by the stakeholders in the integrity of our legal and regulatory framework.

Therefore, the Resolution Plan in question was found to be unsustainable as it failed to secure prior approval from the CCI, as mandated under the proviso to Section 31(4) of the IBC. Consequently, the approval granted by the CoC to the Resolution Plan without the requisite CCI approval was set aside and quashed.

Reference: Judgment of the Hon'ble Supreme Court dated 29.01.2025 in the matter of Independent Sugar Corporation Ltd. V/s. Girish Sriram Juneja & Ors. (CIVIL APPEAL NO. 6071 OF 2023)

2. Right to forfeit EMD and any other payment received during e-auction process on failure of balance payment by successful bidder

In this matter, the Highest Bidder/ Successful bidder defaulted in payment of the Balance Sale Consideration and sought refund of EMD and additional amount deposited with the liquidator. The Hon'ble NCLAT, New Delhi observed that the terms and conditions of the sale as finalized by the Liquidator under which the e-Auction was held is binding on all including the bidders. Further, the bidders give an unqualified undertaking for participation in the e-Auction after knowing fully well of clauses of the e-Auction Process Document and undertook to abide by the clauses. The submission of the Successful bidder cannot be accepted that his EMD cannot be forfeited even though he has committed default in making the payment of balance amount and the Liquidator should file a suit for forfeiting amount deposited by him. The Hon'ble Tribunal further observed that Liquidation Process is conducted under the statutory Liquidation Process Regulations, 2016. The terms and conditions of the Process Document has been framed as per statutory empowerment given to the Liquidator by Schedule I of the Liquidation Process Regulations, 2016.

When the clauses of the Process Document clearly empowers the Liquidator to forfeit the EMD and any payment made in event default is committed by the Highest Bidder, no exception can be taken to the action of the Liquidator in cancelling the sale and forfeiting the amount deposited by the successful bidder.

Reference: Order of the Hon'ble NCLAT, New Delhi bench dated 08.04.2024 in the matter of Potens Transmission & Power Pvt. Ltd. V/s. APEX Buildsys Ltd. in Liquidation through Gian Chand Narang, Liquidator (Comp. App. (AT) (Ins) No. 1543 of 2023)

3. Treatment of Performance Bank Guarantee in case of failure of Implementation of Resolution Plan

The NCLT vide its order dated 20.06.2019 admitted the application for initiation of Corporate Insolvency Resolution Process (hereinafter, the "CIRP") filed by State Bank of India (hereinafter, "SBI") in respect of Jet Airways (India) Limited (hereinafter, the "Corporate Debtor") in accordance with Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, the "IBC, 2016").

The Consortium of Murari Lal Jalan and Florian Fritsch (hereinafter, the "Respondent No.1 / SRA") submitted its Resolution Plan which was duly approved by COC and thereafter by NCLT. The "Effective Date" was 90th day from Plan Approval Order as there were certain approvals that were required to be taken. Various extensions and exclusions were sought by the SRA for the effective date, which were duly granted by NCLT. The first tranche of payment to be made was Rs. 350 Crore, out of which Rs. 200 Crore in cash has been made and the SRA had failed to infuse the remaining Rs. 150 Crore in cash. The Appellants wanted to invoke and adjust the Performance Bank Guarantee of Rs. 150 Crore towards the payment of first tranche.

The Hon'ble NCLAT in one of its orders had restrained the Appellants from invoking the PBG without the leave of the NCLT.

The Hon'ble Supreme Court observed that *Regulation 36B(4A) states that the performance security shall stand forfeited if the resolution applicant fails to implement or contributes to the failure of implementation of the plan, in accordance with the terms of the Resolution Plan and its implementation Schedule.*

Therefore, the PBG had to be kept alive until the complete implementation of the Resolution Plan as per Regulation 36B(4A) as well. This is also what is provided under Clauses 3.13.2 and 3.13.8 of the RFRP respectively wherein the PBG was required to be kept alive and was to be returned to the SRA only upon 100% completion of the implementation of the Resolution Plan. This binding nature of the RFRP was transferred onto the Resolution Plan through Clauses 7.3 and 9.4 respectively of the Resolution Plan.

A bare perusal of the above observations would indicate that the NCLAT proceeded on an incorrect understanding of Regulation 36B(4A) and its First Explanation. Regulation 36B(4A) does not state that if the Resolution Applicant, after approval, fails to implement the PBG, then it shall stand forfeited. Instead, what the Regulation actually states is that the performance security shall stand forfeited, if the resolution applicant of such a plan, after its approval by the Adjudicating Authority, "fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule". It is not the failure to implement the performance security i.e., the PBG, that is dealt with in this Regulation but the consequence of the failure to implement "the Plan" by the SRA.

The SRA failed to implement the Resolution Plan by not infusing the first tranche payment of Rs. 350 Crore in cash.

The Hon'ble Court further stated that PBG of Rs. 150 Crore could not have been allowed to be adjusted with the first tranche payment of Rs. 350 Crore. Non-compliance of the SRA with the order of this Court has led to a dereliction of its obligations to implement the Resolution Plan.

Order – The Corporate debtor was ordered to be liquidated.

The Hon'ble Court further directed – “The consequence of the failure to implement the Resolution Plan in terms of Clause 9.4 of the Resolution Plan and Clause 3.13.7(iii) of the RFRP is that the Appellants are entitled to invoke the PBG automatically without any reference to the SRA. Therefore, it is directed that the PBG may be invoked by the Appellants in accordance with the terms of the Resolution Plan.

The amount of Rs 200 Crore already infused by the SRA stands forfeited.

The Lenders/ Creditors are further permitted to encash the Performance Bank Guarantee of Rs. 150 Crore furnished by the SRA.”

Reference: Judgment of the Hon'ble Supreme Court dated 07.11.2024 in the matter of State Bank of India & Ors V/s. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr (CIVIL APPEAL NOS. 5023-5024 OF 2024)

4. TDS deduction on the interest payable does not constitute any acknowledgment of liability/ debt

In this matter, an operational creditor had filed an application against the corporate debtor wherein the principal amount was less than the threshold limit of 1 crore. However, along with interest claimed, the threshold limit was met. The Hon'ble NCLT observed that there is no agreement nor any clause in the purchase order executed by the parties for payment of interest.

It is only in the invoices; the interest clause has been mentioned and therefore, interest cannot be clubbed along with the debt. It was further contended that the corporate debtor had deducted TDS on such interest claimed by the operational creditor. The Hon'ble Tribunal observed that TDS deduction on the interest payable does not constitute any acknowledgment of liability as outstanding claimed to be in default, and hence, rejected the application.

Reference: Order of the Hon'ble NCLT, Kolkata bench dated 02.09.2024 in the matter of Sudarshan Paper & Board Private Limited V/s. Verges Properties LLP (Company Petition (IB) No. 54 of 2024)

5. Treatment of Security Deposit made in pursuance of lease deed

Facts of the case - The Appellant and the Corporate Debtor (CD) executed a lease deed wherein the Corporate Debtor agreed to provide their premises on lease to the Appellant. In terms of the lease deed, the Appellant had provided Security Deposit and a Bank Guarantee to the Corporate Debtor. However, the CD failed to handover the possession of the leased premises to the Appellant. Thereafter, the CD was admitted into CIRP on 31.03.2023, following which the Appellant lodged its claim in respect of the BG and Security Deposit in Form-C and Form-F with the Resolution Professional (RP). The claim was admitted by the Resolution Professional in the category of “Other Creditors”. Thereafter, the Appellant filed an application wherein one of the prayers was to direct the RP to admit the amount of Security Deposit as financial debt owned by the Corporate Debtor and admit the Appellant's claims as financial creditor.

The Hon'ble NCLAT ruled that the claim cannot be treated as Financial Debt. However, it cannot be placed under "Other Creditors" as well. The Hon'ble Tribunal observed that for a debt to be classified as an 'operational debt', it must bear some nexus with the provision of goods or services, without specifying who is to be the supplier or the receiver of such goods or services as has been held by the Hon'ble Supreme Court in M/s Consolidated Construction Consortium Ltd. Vs M/s Hitro Energy Solutions Pvt. Ltd. in Civil Appeal No. 2839 of 2020. Hence, the payment of Security Deposit as advance for use of the Leased premises is clearly included in the "provision of services" and therefore falls within the purview of operational debt. Therefore, the RP was directed to admit the claimant/ appellant as Operational Creditor and the Appellant was allowed to submit a revised form in correct format i.e., Form-B.

Reference: Judgment of the Hon'ble NCLAT, New Delhi bench dated 08.11.2024 in the matter of Corob India Pvt. Ltd. V/s. Mr. Birendra Kumar Agrawal & Ors. (Company Appeal (AT) (Insolvency) No. 749 of 2024)

6. Treatment of Security Deposit with the Electricity Department

The application was filed by the liquidator of the corporate debtor (CD) seeking directions against the electricity department (Respondent) to deposit the security deposit amount and interest thereon (as applicable upto the date of deposit) into liquidation account maintained by the applicant for the Corporate Debtor.

On liquidation commencement, the Respondent duly filed its claim and the security deposit amount along with interest was adjusted/set-off/retained by them towards the arrears of electricity dues of the Corporate Debtor in terms of provisions of the Electricity Supply Code, 2005. As per the Applicant, the deposit is considered part of the liquidation estate of the Corporate Debtor in accordance with Section 36 of the Code.

The Hon'ble NCLT observed that the Hon'ble Supreme Court has in the matter of Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Ltd. and Ors. (being Civil Appeal No.7976 of 2019), already held that Section 238 of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") overrides the provisions of the Electricity Act, 2003. In view of the fact, security deposit being an integral part of the payment made by the erstwhile Corporate Debtor would therefore be part of the liquidation estate. The electricity department can file their claims with the Liquidator which will be disbursed as per section 53 of the Code.

Reference: Order of the Hon'ble NCLT, Allahabad Bench, Prayagraj dated 03.04.2025 in the matter of Sandeep Goel, Liquidator for Chaudhary Ingots Pvt. Ltd. V/s. Paschimanchal Vidyut Vitran Nigam Ltd. (IA No.147/2022 IN CP (IB) No.356/ALD/2019)

7. Agreement to Sell Does Not Confer Title on the Immovable Property, if not registered in the name of the Corporate Debtor

In this matter, the appellant had acquired ownership rights of an immovable property by way of a Registered Sale Deed. Appellant's business in the name of proprietorship concern was taken over by Corporate debtor and in the Take Over Agreement it was mentioned that the *said property shall devolve upon Corporate Debtor and Appellant shall offer to pledge/mortgage the said property, for and on behalf of Corporate Debtor.* The said property was mortgaged for securing credit facilities for the corporate debtor, however, it was not registered in favour of the corporate debtor. The appellant has contended that at no time the subject property was ever transferred to Corporate Debtor by way of any registered sale deed and shall not form part of corporate debtor's assets.

During CIRP, the Appellant had admitted due to lack of funds to purchase the stamp duty, the title deeds for the said Property could not be executed in the favor of Corporate Debtor. The Hon'ble NCLAT observed that the absence of a registered sale deed can be treated as a defect in the title of the property which defect may be perfected by the Resolution Professional/Corporate Debtor in civil litigation and this imperfect title in peculiar facts of this case would not entitle the appellant the restoration of its possession. The Resolution Professional admittedly is in possession of the subject property and just because a formal sale deed has not been executed/registered, does not mean the appellant be handed over the possession of such property which he himself willingly had agreed to transfer, upon receipt of consideration, to company owned and managed by him, viz. the Corporate Debtor. Therefore, the Resolution Professional cannot be allowed to hand over the possession of subject property to the appellant herein despite the sale deed being in favour of the appellant. The appeal was dismissed while giving liberty to parties to resort to civil remedies to perfect title and/or to seek possession.

Reference: Order of the Hon'ble NCLAT, New Delhi Bench dated 16.04.2025 in the matter of Mr. Gaurav Mahendru V/s. Mr. Sunil Kumar Aggarwal, RP, KPG International Pvt Ltd. (COMPANY APPEAL (AT)(Ins) No.1590/2024)

8. IBC proceedings can be initiated against the Corporate Debtor even if it is struck off

The Hon'ble NCLAT observed that the liabilities of the company cannot be simply washed out by action of company of non-compliance of the provisions of Companies Act, non-filing of the relevant financial documents and other filings. IBC proceedings can still be initiated against the Corporate Debtor which is struck off.

Reference: Judgment of the Hon'ble NCLAT, New Delhi bench dated 22.05.2024 in the matter of Protima Arora V/s. Maya Gupta & Ors. (Company Appeal (AT) (Insolvency) No. 72 of 2024, 29 of 2024 and 204 of 2024)

9. Rule 12 of Schedule I of IBBI (Liquidation Process) Regulations, 2016 is mandatory in nature

There have been various instances in law wherein the provisions of Act or Code has been considered mandatory in nature but the provisions of rules and regulations has been seen as directory in nature. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. In this matter, the Hon'ble Supreme Court has ruled that Rule 12 of Schedule I is ought to be treated as mandatory and not directory in character. Rule 12 deals with payment of balance sale consideration and in case of non-payment within prescribed timelines, the sale shall stand cancelled. The Hon'ble Court stated that – “In view of the analysis undertaken above, Rule 12 would have to be treated as mandatory in character for the reason that it contemplates a consequence in the event of non-payment of the balance sale consideration by the highest bidder within the stipulated timeline of 90 days, which is cancellation of the sale by the Liquidator. To that extent, there is substance in the submission made on behalf of the appellant that since the second proviso under Rule 12 contemplates a consequence of cancellation of the auction on non payment of the balance sale consideration within 90 days, the Liquidator was not empowered to extend the timeline.”

Reference: Judgment of the Hon'ble Supreme Court dated 28.08.2024 in the matter of V.S. Palanivel V/s. P. Sriram, Cs, Liquidator, Etc. (Civil Appeal Nos. 9059-9061 OF 2022)

10. Withdrawal application shall be submitted only by IRP or RP

In this matter, it was contended that the requirement under Regulation 30A (1) to move an application before the NCLT through the IRP, in cases where the CoC is not constituted, is a mere technicality which can be dispensed with. It was further contended that the regulation does not require adjudication by the NCLT about the factum of the settlement, the mode of settlement or adjudication on any other ground. Regulation 30A (1) only requires that the withdrawal application be submitted to the IRP, which is then forwarded to the NCLT to mechanically approve the settlement. At this stage, the NCLT is not required to hear any other parties, but only approve the application and thus, whether the application is submitted through the IRP or whether it is before the NCLT or the NCLAT, is a mere technicality.

The Hon'ble Supreme Court stated that once the application is admitted and CIRP is initiated, it is the IRP who takes charge of the affairs of the corporate debtor. The proceedings become collective proceedings and the interests of the former management of the corporate debtor, become disjunct from the interest of the corporate debtor. Therefore, the parties (such as the former management of the corporate debtor) must submit their application for withdrawal through the IRP who is now the person in control of the insolvency proceedings. The Hon'ble Court further observed that the NCLT cannot be considered a post office that merely puts a stamp on the withdrawal application submitted by the parties through the IRP. Similarly, this Court in *Swiss Ribbons* (supra), in response to which Regulation 30A was amended, specifically observed that in cases where withdrawal is sought after initiation of CIRP, but before the CoC is constituted, the NCLT must decide on the application after "hearing all the parties concerned and considering all relevant factors on the facts of each case."

Therefore, the NCLT does conduct an adjudicatory exercise when the application for withdrawal is placed before it, and the procedure is not a mere technicality.

Reference: Judgment of the Hon'ble Supreme Court dated 23.10.2024 in the matter of GLAS Trust Company LLC V/s. BYJU Raveendran & Ors. (Civil Appeal No. 9986 of 2024)

11. Promoter cannot seek any benefit of the moratorium under IBC for seeking an exemption from making the pre-deposit in terms of Section 43(5) of the RERA

It was contended that while admitting the CIRP application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, a moratorium has been granted for any claim against the Corporate Debtor and therefore, insisting on a pre-deposit under Section 43(5) of the RERA would, in fact, be contrary to the spirit of the order passed by the learned NCLT.

The Hon'ble Court observed that the appellant/ Corporate Debtor, cannot seek any benefit of the moratorium that has been issued by the learned NCLT for seeking an exemption from making the pre-deposit in terms of Section 43(5) of the RERA.

Reference: Order of the Hon'ble High Court of Delhi dated 05.12.2024 in the matter of Umang Realtech Pvt. Ltd. V/s. Mrs Daphne Reita Rajan Sharma & Anr. (RERA APPEAL 7/2024)

12. Section 238 of the Code does not override the ability of a public body to regulate its lands in accordance with relevant statutory provisions

Facts of the case: This appeal was filed by the liquidator of M/s Narmada Cereal Pvt. Ltd. (Corporate debtor or CD) against MP Industrial Development Corporation Limited, against the order of the Hon'ble NCLT, whereby the Adjudicating Authority rejected the plea of the Appellant to allow the Appellant to sub-lease the factory of the Corporate Debtor to a third party.

MP Industrial Development Corporation Limited (“MPIDCL”) is the statutory authority of Government of MP who had given the said land on lease to the Corporate Debtor.

As per MPIDCL, the land which legally belongs to them can be further sub-leased only in accordance with the relevant M.P. State Rules and the stipulations contained in the Lease Deeds. As per the M.P. State Industrial Land and Building Management Rules, 2019, a sub-lease can be created on their land only with their prior permission.

Observations and Order: The Hon’ble NCLAT observed that the Section 35(1)(d) of the Code does not entitles a Liquidator to grant sub-leases over properties not owned by the Corporate Debtor and therefore Section 238 of the Code cannot be interpreted in a manner that has the effect of overriding MPIDCL’s duty to enforce the relevant Rules on how public lands are to be regulated.

We note that the Hon'ble Supreme Court of India (in another matter) has categorically held that the statutory powers of a public body to regulate public lands cannot be overridden by provisions of the Code.

Therefore, the liquidator did not have the right to create sub-leases over a third party's land.

Reference: Judgment of the Hon’ble NCLAT, New Delhi bench dated 27.11.2024 in the matter of Prabhat Jain, Liquidator of Narmada Cereal Private Limited V/s. MP Industrial Development Corporation Limited & Ors. (Comp. App. (AT) (Ins.) No. 697 of 2023 & I.A. No. 2322 of 2023)

13. Any amount paid by the Corporate Debtor after insolvency commencement date shall only be adjusted against CIRP dues while pre-CIRP dues shall be paid in accordance with the approved resolution plan

Facts of the case - As on the insolvency commencement date i.e., 18.05.2017, an amount of Rs. 1.76 cr. was due and payable by the Corporate Debtor to the Appellant-Uttarakhand Power Corporation Ltd. (‘UPCL’) towards electricity bills for the months of April and May, 2017 which fell during the pre-CIRP period. Such dues were paid by the Respondent/ Corporate Debtor after the commencement of CIRP. Further, UPCL had not filed its claim before the Resolution Professional (RP) during the CIRP period for claiming pre-CIRP dues. The resolution plan, however, provided that the pre-CIRP dues of electricity of UPCL was to be paid in 8 instalments beginning from June 2022 to March 2024. The Resolution plan was approved by Adjudicating Authority (AA) on 12.12.2017.

On 31.10.2020, the Corporate Debtor issued a letter to the Appellant giving details of the CIRP proceedings of the Corporate Debtor also stating therein that the amount of Rs 1.89 cr. already paid to the Appellant towards pre-CIRP dues, which was otherwise required to be paid in 8 quarterly instalments, is required to be adjusted against current bills for September and October 2020.

On 24.11.2020, the Respondent filed an IA before AA claiming that in terms of the resolution plan, the payment of pre-CIRP electricity dues made by them was liable to be adjusted with the bills which arose during the CIRP period and that such adjustment would absolve them from making payments of current electric dues of the corresponding sum.

On 21.02.2024, the Adjudicating Authority passed the final order by which the pre-CIRP dues were to be paid by the Corporate Debtor in accordance with the approved resolution plan and amount, if any, paid by the Corporate Debtor after insolvency commencement date be appropriated towards the dues which became payable on account of availing of services during CIRP period.

Observations of the Hon'ble NCLAT –

The Hon'ble NCLAT observed that it is an undisputed fact that the resolution plan provided for payment of pre-CIRP dues of the Appellant in 8 quarterly instalments commencing from June 2022 to March 2024. It is pertinent to note that though the Appellant had admittedly not filed their claims during CIRP, the payment of pre-CIRP dues of the Appellant had been provided for in the resolution plan.

Given this backdrop, when the Respondent has chosen to adhere to the terms of resolution plan in respect of clearing pre-CIRP dues by way of 8 quarterly instalments, the Respondent cannot be held to have acted in contravention of the resolution plan or acted in a manner which was detrimental or prejudicial to the interests of the Appellant.

On the one hand, when the Appellant had not staked any claim in respect of pre-CIRP dues and yet the resolution plan has taken care of their entire pre-CIRP dues, and the Respondent has chosen to abide by the said terms of the plan, there is no cogent ground for the Appellant to object to the endeavours of the Respondents of satisfying the pre-CIRP dues of the Appellant in 8 quarterly instalments commencing from June 2022 until March 2024 in accordance with the resolution plan. Merely because the Corporate Debtor had paid the pre-CIRP dues of Rs 1.76 Cr. in May-June 2017, the Appellant cannot insist that this payment has to be accounted only towards payment of pre-CIRP dues and that this amount cannot be subjected to

adjustment against current CIRP electricity dues.

Once moratorium had been declared, it was not open to the Corporate Debtor to appropriate any amount from its account not even to clear pre-CIRP dues as it did not fall within the definition of the “insolvency resolution process costs” as defined under Section 5(13) of the IBC.

When we look at the impugned order, we find that the Adjudicating Authority has rightly observed that any payment made by the Corporate Debtor to the Appellant after the insolvency commencement date cannot be appropriated towards electricity charges which have arisen prior to or became due as on the insolvency commencement date and that such payment, if already made, must be appropriated only towards the dues which become payable during CIRP period on account of availing of services during CIRP period only. Hence any amount, if paid, by the Corporate Debtor after insolvency commencement date shall only be adjusted against CIRP dues while pre-CIRP dues shall be paid in accordance with the approved resolution plan.

We are of the considered view that the Appellant was entitled to the payment of its pre-CIRP dues from the Respondent only in the manner as provided in the resolution plan of 12.12.2017 and hence payment of the pre-CIRP dues from the assets of the Corporate Debtor after insolvency commencement has been correctly appropriated by the Respondents towards current CIRP dues. The view taken by the Adjudicating Authority is therefore reasonable and sound and does not call for any interference.

Reference: Judgment of the Hon'ble NCLAT, New Delhi bench dated 19.09.2024 in the matter of Uttarakhand Power Corporation Ltd. V/s. M/s Shirdi Industries Ltd. & Ors. (Company Appeal (AT) (Insolvency) No. 799 of 2024)

Glossary

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| AA | Adjudicating Authority |
| AT | Appellate Tribunal |
| BIFR | Board for Industrial and Financial Reconstruction |
| CCI | Competition Commission of India |
| CD | Corporate Debtors |
| CIRP | Corporate Insolvency Resolution Process |
| CTC | Cape Town Convention |
| DGCA | Directorate General of Civil Aviation |
| EMD | Earnest Money Deposit |
| GVAT Act | Gujarat Value Added Tax Act |
| IBBI | Insolvency and Bankruptcy Board of India |
| IBC | Insolvency and Bankruptcy Code |
| M/s | Messrs |
| MCA | Ministry of Civil Aviation |
| MSME | Micro, Small and Medium Enterprises |
| NCLAT | National Company Law Appellate Tribunal |
| NCLT | National Company Law Tribunal |
| NOIDA | New Okhla Industrial Development Authority |
| OCs | Operational Creditors |
| RERA | Real Estate Regulatory Authority |
| RFRP | Request for Resolution Plan |
| RP | Resolution Professional |
| SC | Supreme Court |
| SFC | State Financial Corporation |
| SRA | Successful Resolution Applicant |
| TANGEDCO | Tamil Nadu Generation and Distribution Corporation Limited |
| UNCITRAL | United Nations Commission on International Trade Law |
| USFC | Unrelated Secured Financial Creditors |



Sumedha Management Solutions Pvt. Ltd.

(Insolvency Professional Entity)

- Sumedha Management Solutions Pvt. Ltd. (SMSPL) is sponsored by Sumedha Fiscal Services Limited (SFSL) – a listed Investment Banking Company providing professional services under IBC, 2016;
- SMSPL is an IBBI recognized Insolvency Professional Entity vide IPE Recognition no: IBBI/IPE/0020 & CIN: U93000WB2017PTC219387;
- Board of Directors of SMSPL consists of Insolvency Professionals, Experts, & In-house team of Lawyers, Company Secretaries, MBAs, assisting in legal and compliance matters.

Major Services

- Advise both Lenders & Borrowers on Insolvency & Bankruptcy Code, 2016;
- Assist Lenders (both Financial & Operational) towards recovery strategy on defaulting;
- Identification of Stressed assets, formulating strategies, pre-pack plan & execution for making recoveries;
- Assisting Corporates in working out resolution plan, turnaround strategies & restructuring packages;
- Resolution/Recovery under IB Code with experienced professionals;

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Confederation of Indian Industry

The Confederation of Indian Industry (CII) works to create and sustain an environment conducive to the development of India, partnering Industry, Government and civil society, through advisory and consultative processes.

CII is a non-government, not-for-profit, industry-led and industry-managed organization, with around 9,000 members from the private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 365,000 enterprises from 294 national and regional sectoral industry bodies.

For more than 125 years, CII has been engaged in shaping India's development journey and works proactively on transforming Indian Industry's engagement in national development. CII charts change by working closely with Government on policy issues, interfacing with thought leaders, and enhancing efficiency, competitiveness, and business opportunities for industry through a range of specialized services and strategic global linkages. It also provides a platform for consensus-building and networking on key issues.

Through its dedicated Centres of Excellence and Industry competitiveness initiatives, promotion of innovation and technology adoption, and partnerships for sustainability, CII plays a transformative part in shaping the future of the nation. Extending its agenda beyond business, CII assists industry to identify and execute corporate citizenship programmes across diverse domains including affirmative action, livelihoods, diversity management, skill development, empowerment of women, and sustainable development, to name a few.

For 2024-25, CII has identified "Globally Competitive India: Partnerships for Sustainable and Inclusive Growth" as its Theme, prioritizing 5 key pillars. During the year, it would align its initiatives and activities to facilitate strategic actions for driving India's global competitiveness and growth through a robust and resilient Indian industry.

With 70 offices, including 12 Centres of Excellence, in India, and 8 overseas offices in Australia, Egypt, Germany, Indonesia, Singapore, UAE, UK, and USA, as well as institutional partnerships with about 300 counterpart organizations in almost 100 countries, CII serves as a reference point for Indian industry and the international business community.

Confederation of Indian Industry

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