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**INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA**

(SECTION 8 COMPANY REGISTERED UNDER COMPANIES ACT 2013)

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OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enroll there under insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhering to fair, just, and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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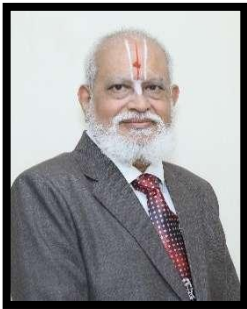
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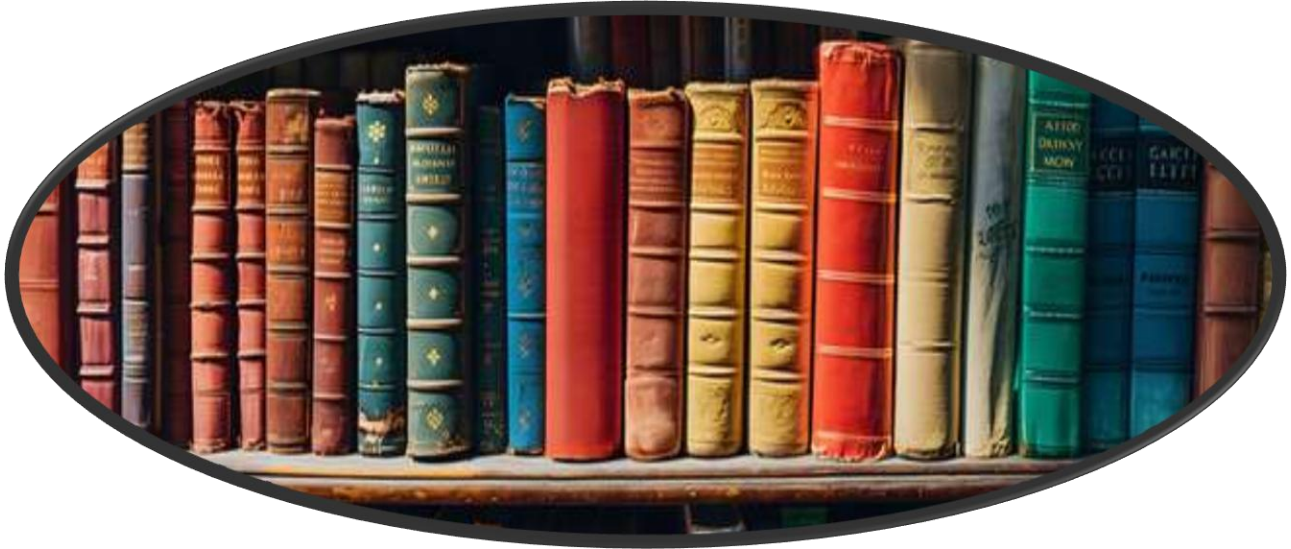


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MESSAGE FROM THE DESK OF THE MANAGING DIRECTOR



Dear Reader,

Greetings to you from all of us in TEAM IPA-ICMAI!

We have just seen the momentous occasion of the Hon. President approving the Insolvency and Bankruptcy Code (Amendment) Act, 2026 on April 6th, marking a major overhaul of the IBC framework. IBBI has also thrown open for discussion the proposed regulations to put the amendment into effect. Given the speed with which this was done, it is to be expected that the amended regulations will also be in place within a couple of months making the amendment operational.

The IP community has participated enthusiastically by discussing threadbare the proposed amendments and contributing comments and suggestions/ comments individually and through associations and of course, IPAs. IPA-ICMAI itself held three roundtables starting as early as in August, 2025 and has organised several workshops and seminars to bring practitioners and experts together to disseminate and discuss all aspects and implications of the changes that will come in. Professional development happens through continuous professional education including updates on changes in code and relevant laws and regulations as also new case laws. The equally important side of professional development is sharing of a professional's knowledge and experience with fellow professionals. In the IBC ecosystem, which is still young and evolving, developments happen quite frequently and swiftly. All the more reason it is that practising professionals need to be keyed in always to be abreast of the latest developments. I invite more and more professionals to contribute articles and opinions to the E-Journal on all aspects that IBC ecosystem and related domains that will enrich the knowledge base of the readers. At the same time, I would also caution professionals against sending Artificial Intelligence (AI) agent generated articles that restate known developments and rehash old rulings.

At IPA-ICMAI, we strive to make our publications relevant, informative, interesting and lucid. This issue of the 'Insolvency Professional – Your Insight Journal' has carries four interesting and very relevant articles –

- 'Implementing Group Insolvency' by Dr. Shardul Shroff, Executive Chairman of Shardul Amarchand Mangaldas & Co. and his colleagues, Ishana Tripathi and Kritika Poddar,
- 'Legal Principles Practical Issues in Avoidance Proceedings' by Chandan Choubey, research scholar,
- A review of Withdrawal Applications u/s12A of IBC by M. L. Kabir, IP,
- Interim Moratorium u/s 95 of IBC by Dr. CS M. Govindarajan, IP

I am sure readers will find all the articles interesting and useful. We welcome your responses to the published articles in this journal. You are welcome to write to publication@ipaicmai.in.

On my personal behalf, I extend my sincere best wishes to all the professionals and readers for a fulfilling and satisfying practice as also excellent health and peace of mind all through .

Jai Hind.

Mr. G.S. Narasimha Prasad
Managing Director



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EVENTS CONDUCTED

APRIL 2026	
DATE	EVENTS CONDUCTED
April 4, 2026	A Webinar Series on “IBC 2026 Unpacked: A Clause-by-Clause Masterclass” held on April 4, 2026, in association with IP Net.
April 17th & 18th, 2026	IPA-ICMAI organised a two-day Certificate Training Program for Professionals under the IBC Ecosystem on April 17th & 18th, 2026, in Ahmedabad, in association with DBS Bank India and IP Foundation.
April 18th, 2026	IPA-ICMAI, jointly with Association of Corporate Advisors & Executives (ACAE) and IP Net, successfully conducted a Conclave on IBC in Kolkata on April 18th, 2026 .
April 19th, 2026	IPA-ICMAI conducted a Virtual Workshop on “Avoidance Transactions including Case Studies & Forensic and Transaction Review Engagements (w.r.t. latest amendments under IBC)” on April 19th, 2026.
April 23rd, 2026	IPA-ICMAI, in association with the Kerala Insolvency Professionals Forum (KIPF), organised a Seminar on “IBC (Amendment) Act 2026 - A Walkthrough” . on April 23rd, 2026
April 24th, 2026	IPA-ICMAI, in association with the Association of Insolvency Professional Entities (AIPE), organised a virtual webinar on “Decoding the Amendments: Navigating IBC’s Transformative Shifts - Strategy, Compliance and Stakeholder Impact.” On April 24th, 2026
April 25th, 2026	A Two-Day Learning Session on “CIRP Strategy & CoC Management” was held on April 25th, 2026 .The programme covered advanced aspects of the CIRP lifecycle, including Information Memorandum drafting and resolution process management.

IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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ARTICLES



**INSOLVENCY PROFESSIONAL AGENCY
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MR. CHANDAN CHOUBEY Research Scholar

Abstract

The Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016, focuses on maximizing the value of the assets of the corporate debtor, and creditors are treated fairly. The other key mechanism that supports this goal is the framework that regulates avoidance transactions, which enables insolvency professionals to recognize and attack any transaction that could have been made to unfairly benefit creditors before the insolvency process is initiated.

The avoidance proceedings under the Code mainly pertain to preferential transactions, undervalued transactions, extortionate credit transactions, and fraudulent trading, regulated by Sections 43 to 51 and Section 66 of the IBC. These sections permit the resolution professional or liquidator to apply to the National Company Law Tribunal to have suitable relief granted, such as an overturn of such transactions and the reversion of assets to the insolvency estate.

Judicial interpretations of the National Company Law Appellate Tribunal and the Supreme Court over the years have made it clear what the avoidance proceedings should cover, the requirements, and the consequences of the proceedings. The landmark decisions have highlighted the responsibility of the Resolution Professional to carry out detailed investigations of the suspect transactions and have touched upon important matters like continuation of the application of avoidance after the resolution plan is approved and distribution of recoveries after such proceedings.

Although there is a statutory framework, and the jurisprudence has evolved in certain aspects, avoidance proceedings still pose a number of practical challenges when undergoing CIRP. These involve challenges in getting financial documents, the time lag in forensic investigations, lack of funds to conduct litigation, complicated related party structures, and long adjudication processes by tribunals. These difficulties tend to impede the successful

implementation of avoidance measures and affect recovery prospects of creditors.

The paper discusses the law of avoiding proceedings under the IBC, evaluates the important trends in judicial decision-making, and also provides practical considerations among insolvency practitioners in CIRP. It also talks about possible reforms that can enhance the effectiveness of avoidance mechanisms and increase the value recovery in the insolvency regime in India.

1. Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a transformative shift in India's bankruptcy system by establishing a time-limited and creditor-based system in settling financial strains of corporate organizations. The main aim of the Code is to maximize the value of assets of the corporate debtor and treat all the parties fairly. To this end, the IBC has introduced clauses that allow the reversal of some of the transactions that the corporate debtor had made before the insolvency procedure begins to unfold, and this might have unfairly favored the interests of the creditors.

In most instances, troubled businesses conduct business transactions right before the commencement of insolvency that divert resources, benefit a few creditors, or sell property to other parties at underpriced rates. These transactions can greatly decrease the value of the insolvency estate that can be distributed to creditors. In acknowledging this risk, the Code gives a systematic process of identifying and reversing such transactions by avoidance proceedings.

The major types of avoidance transactions under the IBC are preferential transactions, undervalued transactions, extortionate credit transactions, and fraudulent or wrongful trading, which are governed by Section 43 to 51 and Section 66 of the Code. These rules will enable the Resolution Professional (RP) or liquidator to

inquire into previous dealings of the corporate debtor and, as deemed necessary, put applications before the National Company Law Tribunal (NCLT) to seek suitable remedies, such as rescission of the transaction or restitution of assets to the insolvency estate.

The meaning and application of the provisions under avoidance have changed over the years with a number of decisions by the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India. Cases that have been judged have shed light on important issues like scope of preferential transactions, responsibilities of the resolution professional in probing suspected transactions, continuance of avoidance proceedings once a resolution plan has been approved, and treatment of recoveries realized by such proceedings.

Although there is a clear statutory framework, the practical application of the avoidance provisions is often a challenging task in the Corporate Insolvency Resolution Process (CIRP). Some common problems that insolvency professionals face include poor access to financial records, non-cooperation with promoters, delays in forensic investigations, complex related-party structures, and an extended period of litigation by adjudicating authorities. These issues can threaten the success of avoidance actions and decrease the possible recovery of creditors.

Avoidance proceedings in this context are very important in ensuring that the value of the corporate debtor is not destroyed and justice is upheld in the insolvency process. The availability of a robust mechanism of detection and reversal of suspect transactions, besides enhancing creditor confidence, facilitates transparency and accountability in corporate governance.

This paper discusses the legal principles of avoidance proceedings in CIRP, the major judicial developments in interpreting the avoidance provisions, and the practical issues of seeking such applications in front of the adjudicating authorities. Possible reforms to improve the effectiveness of avoidance mechanisms in an emerging insolvency regime in India are also discussed.

2. Statutory Framework for Avoidance Transactions

The avoidance transactions framework in the Insolvency and Bankruptcy Code, 2016, is aimed at protecting the insolvency estate of the corporate debtor and preventing any stakeholder from having an unfair advantage due to the transactions made before the insolvency proceedings have been initiated. The code gives the resolution professional (RP) or liquidator the ability to examine the previous dealings of the corporate debtor and reverse the dealings that are harmful to the creditor interests.

The statutory regulations that are concerned with avoidance transactions are mainly found in Sections 43 to 51 and Section 66 of the Code. All these provisions give the legal reasons to identify, investigate, and reverse transactions that might have impacted negatively on the value to be distributed among creditors during the Corporate Insolvency Resolution Process (CIRP).

2.1 Preferential Transactions (Sections 43-44)

Section 43 of the IBC refers to the transactions in which the corporate debtor transfers property or an interest in property to the benefit of a creditor, surety, or guarantor to a position where such person is in a more favorable position to receive priority of payment than other creditors in the event of a liquidation.

A look-back period, within which such transactions could be reviewed, is also prescribed in it:

- Two years before the date of commencement of insolvency in case of a transaction with related parties.
- One year before the date of insolvency of transactions with other parties.

In case the National Company Law Tribunal finds that a preferential transaction has been made, the tribunal may issue orders to rewind the status of the position before the transaction was made, which may involve reversal of the transaction or restoration of possession of the transferred property.

2.2 Undervalued Transactions (Sections 45-48)

The following sections (45 to 48) address undervalued transactions, which are transactions where the corporate debtor transfers assets or property at a consideration that is much less than the value of the asset.

These kinds of transactions can occur when assets are sold to related parties or promoters at prices significantly lower than the market value and thus decrease the asset base of the corporate debtor. In case such transactions are found, the resolution professional can make an application before the judging body to obtain suitable relief, which may involve restoration of the property or damages.

Where the transaction is established to have been made with the aim of defrauding creditors, the tribunal can give harsher penalties under Section 49.

2.3 Extortionate Credit Transactions (Sections 50–51)

Sections 50 and 51 deal with the topic of extortionate credit transactions, which is associated with the granting of credit to the corporate debtor at unconscionable or grossly unfair terms. These are usually transactions with very high interest rates or repressive terms of repayment from a company that is financially crippled.

The code enables the adjudicating authority to disregard such transactions in case they were made within the two years before the insolvency commencement date. The tribunal can rearrange the terms of the transaction or rescind the debt altogether in case it concludes that the credit arrangement was extortionate.

2.4 Fraudulent or Wrongful Trading (Section 66)

Section 66 of the IBC covers fraudulent or wrongful trading by a director or partner of the corporate debtor. This is to enable the tribunal to put persons personally in the dock in case it is proved that the business of the corporate debtor was operated with the aim of defrauding the creditors or any other fraudulent reason.

The National Company Law Tribunal can direct the individuals in question to make contributions towards the assets of the

corporate debtor in case it concludes that such a behavior took place.

2.5 Role of the Resolution Professional

The responsibility of identifying and pursuing avoidance transactions primarily lies with the **Resolution Professional** during the CIRP. The RP is required to conduct a thorough review of the corporate debtor's financial affairs, including examination of:

- financial statements
- related party transactions
- bank records and loan agreements
- asset transfers and security interests

The **IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** further prescribe timelines within which the RP must form an opinion regarding avoidance transactions and file appropriate applications before the adjudicating authority.

2.6 Objective of Avoidance Provisions

The avoidance transaction framework serves multiple objectives:

1. **Protection of creditor interests** by preventing preferential treatment.
2. **Preservation of the insolvency estate** by reversing value-eroding transactions.
3. **Promotion of fairness and transparency** in insolvency proceedings.
4. **Deterrence against fraudulent conduct by promoters and management.**

Through these provisions, the Insolvency and Bankruptcy Code, 2016 seeks to ensure that the insolvency process remains equitable and that all creditors receive fair treatment based on the statutory priority framework.

3. Practical Challenges in Avoidance Applications

Although the avoidance transaction regime under the Insolvency and Bankruptcy Code, 2016, offers a detailed legal framework to unwind transactions that erode value, the application of the regime in the real world through the Corporate Insolvency Resolution

Process (CIRP) tends to face a number of operational and procedural difficulties. Resolution professionals and insolvency professionals are often faced with challenges when determining, investigating, and enforcing avoidance applications in the National Company Law Tribunal. These obstacles can greatly affect the efficacy of avoidance proceedings and, ultimately, creditor recoveries.

The key practical challenges are discussed below.

3.1 Lack of Access to Books of Accounts and Financial Records

One of the most common challenges faced by Resolution Professionals is the **non-availability of complete financial records** of the corporate debtor. Promoters and former management often fail to cooperate with the Resolution Professional and may not provide access to:

- books of accounts
- statutory registers
- bank statements
- agreements and contracts
- related party transaction details

In the absence of reliable financial records, it becomes extremely difficult for the Resolution Professional to identify suspicious or preferential transactions within the prescribed look-back period.

3.2 Non-Cooperation from Promoters and Management

The other major obstacle is the uncooperative promoters, directors, and key managerial staff. In a number of CIRP cases, the suspended board of directors either postpones the procedure of submitting information or makes partial disclosures.

The code allows the resolution professional to request tribunal directions in the event of non-cooperation, which might in turn lead to further delays in solving the insolvency process.

3.3 Delay in Conducting Forensic Audits

Avoidance transactions often involve complex financial arrangements and layered corporate structures, which should be thoroughly

examined with the help of forensic audits. Nevertheless, there are a number of issues in carrying out a forensic audit in CIRP:

- Engagement of forensic auditors can be time-consuming.
- Historical financial documents can be missing.
- A trail of transactions can have more than one party.
- investigation schedules can be longer than CIRP deadlines.

As the CIRP is supposed to be filled in a time-constrained system, any delays in the forensic investigations may impact prompt filing of the avoidance applications.

3.4 Funding Constraints for Avoidance Litigation

Avoidance proceedings can be very expensive, and include:

- forensic audit expenses
- legal fees
- expert advisory services
- litigation costs

The corporate debtor, in most cases of insolvency, might not have the funds to undertake such litigation. Despite the Committee of Creditors (CoC) approving funding these expenses, in some cases creditors are reluctant to fund them as they are uncertain about recovering any of their money in case of avoidance actions.

3.5 Complex Related-Party Structures

Related-party arrangements are common in avoidance transactions, such as asset transfers to promoter-controlled parties or group companies. These transactions can be organized so as to have various tiers of corporate bodies that it becomes hard to know the actual path of money.

These complicated structures may need a lot of research to determine:

- beneficial ownership
- control relationships
- final users of the transaction.

This intricacy can greatly postpone the investigation.

3.6 Burden of Proof and Evidentiary Requirements

In avoidance proceedings, the Resolution Professional bears the **burden of establishing that a transaction is preferential, undervalued, or fraudulent as per the applicable provisions of the Code.**

This involves the demonstration of a great deal of documentary evidence, including:

- financial statements
- valuation reports
- transaction agreements
- bank records

This evidence is often difficult to get because of lost records or non-cooperation of old management in most instances.

3.7 Delay in Adjudication of Avoidance Applications

Another major challenge is the **delay in adjudication of avoidance applications** before the National Company Law Tribunal. Such applications can take long durations to be processed due to heavy case loads and complexities involved in the procedure.

In some of the cases, even after

- consent to a resolution plan.
- finalization of liquidation process.

These delays bring in uncertainty on the recovery and distribution of assets that come about as a result of avoidance proceedings.

3.8 Uncertainty Regarding Treatment of Recoveries

It has been greatly debated that recoveries as a result of avoidance transactions should be treated in a particular manner. There are often questions about whether such recoveries should

- form a part of the insolvency estate to be distributed among creditors, or

- be vested in the successful resolution applicant upon the resolution plan being approved.

Despite the efforts by judicial pronouncements to deal with this problem, there still remains practical uncertainty in some cases.

3.9 Strict CIRP Timelines

CIRP is a time-bound process with timelines prescribed by the Code for various activities. But the identification and recovery of avoidance transactions may involve complex financial analysis and investigation, which may not fit within these timelines.

As a result, resolution professionals may struggle to meet these deadlines for investigations and applications.

3.10 Coordination with Other Regulatory Authorities

In some cases, avoidance transactions may overlap with investigations conducted by other regulatory authorities such as enforcement agencies or tax authorities. Coordination between insolvency proceedings and such parallel investigations can create additional procedural complexities.

4. Recommendations for Strengthening the Avoidance Framework

While the avoidance transaction provisions under the Insolvency and Bankruptcy Code, 2016 provide a strong statutory mechanism to address fraudulent and value-eroding transactions, practical experience from several CIRP cases indicates that certain structural and procedural improvements are necessary to enhance their effectiveness. Strengthening the avoidance framework will not only improve recoveries for creditors but also reinforce transparency and accountability within the insolvency ecosystem.

The following measures may be considered to improve the functioning of avoidance proceedings in India.

4.1 Strengthening Investigative Mechanisms

Avoidance applications often require detailed

financial investigation to establish the nature and intent of transactions. The **Resolution Professional (RP)** should be supported through stronger investigative mechanisms, including:

- early appointment of forensic auditors
- standardized investigation procedures
- enhanced access to financial data from banks and statutory authorities

The Insolvency and Bankruptcy Board of India may consider issuing detailed guidelines on **investigation methodologies for avoidance transactions**, which would assist Resolution Professionals in identifying suspicious transactions more efficiently.

4.2 Ensuring Timely Availability of Financial Records

One of the key obstacles in avoidance proceedings is the **non-availability of financial records**. Promoters and former management should be required to provide complete records immediately upon commencement of CIRP. Stricter enforcement of compliance requirements may be introduced, including:

- penalties for non-cooperation by promoters
- mandatory digital preservation of financial records
- stronger enforcement of record submission obligations

Such measures would significantly improve the ability of Resolution Professionals to conduct timely investigations.

4.3 Dedicated Adjudication for Avoidance Applications

Avoidance applications often remain pending before the National Company Law Tribunal due to the heavy workload of insolvency cases. Establishing **dedicated benches or special procedures for avoidance matters** could expedite the adjudication process.

A faster adjudication mechanism would ensure that recoveries from avoidance transactions are realized within a reasonable timeframe.

4.4 Clarification on Treatment of Recoveries

The treatment of recoveries as a result of avoidance transactions is another area that needs to be regulated, especially where the resolution plan is already approved.

Well-defined rules can be implemented stating:

- the presence or absence of recoveries as a part of the insolvency estate.
- whether they ought to be shared with creditors.
- whether the resolution applicant is entitled to such recoveries or not.

It would be desirable to shed some light on this matter so as to reduce lawsuits and enhance some level of certainty for all the stakeholders.

4.5 Strengthening the Role of the Committee of Creditors

The Committee of Creditors (CoC) is a very important body in the management of the insolvency process. The CoC could contribute to the investigation of the avoidance transactions to a greater extent, which could enhance the accountability and resource distribution.

The CoC may:

- authorize the allocation of funds for forensic investigations.
- Check on avoidance application progress.
- monitor recovery efforts

This supervision would ensure that the avoidance proceedings are effectively pursued on behalf of the creditors.

4.6 Use of Technology and Data Analytics

The capacity to identify suspicious transactions can be greatly increased with the help of technological tools. Innovations in data analytics, artificial intelligence, and digital forensic tools can assist insolvency professionals to detect the trends of asset diversion and transactions involving related parties more effectively.

Data on corporate databases, banking information, and regulatory filings could be integrated to help identify potentially avoidable transactions faster.

4.7 Clearer Regulatory Guidelines

The release of regulatory guidelines on avoidance proceedings would help the Resolution Professional and the relevant authority to interpret these provisions.

These guidelines may include:

- investigation standards
- evidentiary requirements
- procedural timelines
- cooperation with other regulators

This will bring consistency in dealing with avoidance applications in insolvency proceedings.

4.8 Post-Resolution Continuation of Avoidance Proceedings

Even when the resolution plan has been approved, avoidance applications are often not decided in many CIRP cases. Providing a legal framework that would enable continuation of avoidance proceedings after the determination would help in ensuring that no recoveries are lost just because of procedural timelines.

This would reinforce the aim of maximizing the value of the insolvency estate.

5. Conclusion

The avoidance transaction regime of the Insolvency and Bankruptcy Code, 2016 is an important protection mechanism aimed at safeguarding the value of the corporate debtor and promoting fairness among creditors in the process of Corporate Insolvency Resolution Process (CIRP). The Code aims to eliminate the diversion or dissipation of assets before the insolvency proceedings begin by enabling the Resolution Professional to question the transactions involving preferential, undervalued, extortionate credit and fraudulent transactions.

The judicial interpretations by the National Company Law Tribunal, the National Company Law Appellate Tribunal and the Supreme Court of India over the years have contributed significantly to the scope and applicability of avoidance provisions. The high-profile cases have highlighted the importance of Resolution Professionals undertaking due diligence to

ensure they understand the transactions between the suspects and have strengthened the overriding purpose of making the most of the insolvency estate to the creditors.

Nevertheless, there are still a number of challenges that the practical implementation of avoidance proceedings has to overcome. Limitations in access to financial records, uncooperative promoters, slow pace of forensic inquiry, inadequate funding to carry on litigation, and lengthy process of adjudication by tribunals are some of the factors that tend to undermine the success of avoidance applications. Such operational challenges can minimize the possible recovery of creditors and erode the overall performance of the insolvency system.

To deal with such challenges, a concerted effort by regulators, insolvency professionals, adjudicating authorities, and creditors will have to be in place. Enhancing investigative procedures, timely availability of financial data, the use of technological solutions to analyse transactions, and offering more straightforward regulatory frameworks can greatly improve the success of the avoidance procedures. Moreover, quicker processing of the avoidance applications and increased understanding of how recoveries would be treated would also enhance the insolvency ecosystem.

To sum up, avoidance proceedings is a necessary tool to safeguard creditor interests and ensure the integrity of the insolvency process. An effective and well established avoidance regime will deter fraudulent behavior by the corporate management as well as play a role in the larger task of creating an open, foreseeable and creditor accommodating insolvency regime in India.

References for the Article

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2. **Insolvency and Bankruptcy Code, 2016** (Sections 43–51 and Section 66 dealing with Avoidance Transactions)
<https://www.ibbi.gov.in/legal-framework/insolvency-and-bankruptcy-code>
3. **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate**

Persons) Regulations, 2016
(Regulation 35A – Identification and determination of avoidance transactions)
<https://www.ibbi.gov.in/legal-framework/regulations>

4. **Companies Act, 2013**
(Relevant provisions relating to fraudulent trading and director responsibilities)
<https://www.mca.gov.in/content/mca/global/en/acts-rules/companies-act.html>

Regulatory and Institutional Publications

4. Insolvency and Bankruptcy Board of India – Discussion Papers and Circulars

Useful for guidance on avoidance transactions and CIRP procedures.
<https://www.ibbi.gov.in/publications/discussion-paper>

5. Insolvency Law Committee Reports

Important policy recommendations on **avoidance transactions and insolvency reforms**.
<https://www.mca.gov.in/content/mca/global/en/reports/insolvency-law-committee-report.html>

6. Insolvency and Bankruptcy Board of India – Educational Material

Provides explanatory material on insolvency framework and avoidance provisions.
<https://www.ibbi.gov.in/en/publication>

Academic & Professional Publications

7. ICAI – Background Material on Insolvency and Bankruptcy Code
<https://resource.cdn.icai.org>

8. IBBI Newsletter – Insolvency and Bankruptcy Board of India
<https://www.ibbi.gov.in/en/publications/newsletters>

DR. CMA M. GOVINDARAJAN
Insolvency Professional

Chapter III of the Insolvency and Bankruptcy Code, 2016 ('Code' for short) provides for the conduct of Insolvency Resolution Process. Section 94 of the Code provides for initiation of insolvency resolution process by the Personal Guarantor either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application. Section 95(1) of the Code provides that A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

Interim moratorium

Section 96 of the Code provides that when an application is filed under section 94 or section 95, an interim moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application. During the interim moratorium period any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed and the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

Issue

The issue to be discussed in this article is as to whether the interim moratorium in the case of application filed under Section 95 or section 94 commences from the date of filing of the application or from the date of registration of the application by the Registry with reference to decided case law as discussed below.

Case law

In '**Kapole Advertising Agency through its proprietor and others v. Standard Chartered Bank and others**' - 2026 (4) TMI 1517 - Bombay High Court, the petitioners failed to repay the loan taken from the respondent bank. Therefore, the bank invoked the provisions of Section 13(2) of the SARFAESI Act. Notice was

issued on 24.03.2023. The bank took the symbolic possession of the properties on 27.06.2023 under Section 13(4) of SARFAESI. The secured assets consisted of two flats in a multi-storeyed building at Mulund (West), Mumbai, which was indeed the mortgaged property. The bank moved an application before the Magistrate and took possession of the properties on 08.04.2025 under section 14 of SARFAESI.

Later one person, claimed to be a financial creditor of the petitioner No. 2 filed an application before the National Company Law Tribunal ('NCLT' for short) under Section 95 of the Code for the initiation of Insolvency Resolution Process. On 15.07.2025, the petitioners filed Securitisation Application No.411 of 2025 to challenge the steps taken by the respondent No. 1 - bank. In this petition, amongst other grounds, the petitioners claimed that interim moratorium has been triggered.

The Magistrate caused to take over the possession of the properties and handed over to the respondent Bank No.1. The bank issued a sale notice on 30.09.2025. In the said notice the sale date was noted as 24.10.2025. The respondent Nos. 2 and 3 are the successful bidders of the properties. On 10.11.2025, the petitioners filed interim applications, seeking restoration of possession of the secured assets as also stay to the steps taken by respondent No. 1 - bank under the Securitisation Act and a prayer was also made for setting aside auction sale conducted on 24.10.2025.

In the meanwhile, the NCLT admitted the application filed by respondent No.2 under Section 95 of the Code on 04.11.2025. The NCLT appointed a Resolution Professional to carry out the insolvency resolution process. The interim moratorium has commenced from 04.11.2025 i.e., the date of admission of the application.

In the time between the petitioners filed writ petition before the High Court with the prayer to stay the respondent Bank No. 1 from issuing and registering the sale certificate and also prayed to maintain status quo. On 24.12.2025, a Division Bench of the High Court disposed of the writ petition by directing the Debts Recovery

Tribunal ('DRT' for short) to dispose of the said pending interim applications expeditiously and a statement made on behalf of respondent No. 1 – bank was recorded to the effect that sale certificate would not be issued in respect of respondent Nos. 2 and 3 – auction purchasers, till the interim applications are decided. On 09.01.2026, the DRT rejected the applications on 09.01.2026. The petitioners being aggrieved against the said orders filed the present writ petition, in which the aforementioned order dated 14.01.2026 was passed, granting limited ad-interim direction of status quo.

The petitioners submitted the following before the High Court-

- The DRT had erred in passing the impugned orders, rejecting the interim applications filed by the petitioners, on wholly irrelevant considerations.
- The DRT refused to be taken into consideration the effect in law of the interim moratorium triggered by filing and pendency of the petition before the NCLT.
- The DRT failed to appreciate that the interim moratorium having been triggered, its effect was to bring to a halt all the steps being taken by creditors, including respondent No. 1 – bank.
- The DRT failed to appreciate that the effect of the moratorium could not be diluted, merely on the ground that respondent No. 1 – bank was not informed or that the email regarding the same, was allegedly sent by the petitioners on a wrong email id.
- The DRT would have to be considered afresh the contents of the report submitted by the Assistant Registrar, NCLT and the Standard Operating Procedure framed by the NCLT with regard to filing and scrutiny of petitions but the DRT did not do so. Therefore, the impugned orders deserve to be set aside.
- The petitioners could certainly not be blamed for any error or default in scrutiny and registration of the petition by the Registry of the NCLT.
- The High Court may consider setting aside the impugned orders and directing that in the face of the interim moratorium, no further steps can be taken by respondent No.

1 – bank in the matter of the aforesaid auction sale conducted by it.

The respondent Bank No.1 submitted the following before the High Court-

- The petitioners filed the securitisation application before DRT only after the application filed by the third party under Section 95 of the Code before the NCLT.
- There is a collusion between the petitioners and the said third party, only with a view to frustrate the steps taken by the said respondent.
- The Respondent Nos. 2 and 3 have parted with valuable consideration, sale certificate has been executed and registered and therefore the petition ought to be dismissed.
- The Registry of the NCLT did not follow the systematic procedure as per the Standard Operating Procedure ('SOP' for short) and the petition filed by the third party, under Section 95 of the Code could not have been registered in terms of the SOP.
- The registration of the petition before the NCLT on 04.11.2025 ought not to accrue to the benefit of the petitioners and that therefore, the writ petition ought to be dismissed.

The High Court heard the submissions of the parties. The High Court perused all the documents on the record, particularly the report submitted by the Registrar of NCLT and the Standard Operating Procedure by NCLT with regard to the procedure to be adopted in filing and scrutiny of petitions.

The High Court observed that the impugned order of DRT rejecting the interim applications filed by the petitioners on the ground no intimation was received on the filing of application before NCLT. Even sale notice and public notices issued with regard to the auction sale of the secured assets were not made known to the respondents. The High Court analysed the sections 95 and 96 of the Code. When an application is filed the interim moratorium is commencing on the date of filing the application. The DRT did not verify the said factors. The DRT was expected to have examined the details with regard to filing of the petition before the NCLT

and as to whether the interim moratorium was triggered or not.

The High Court observed that the High Court in the case '*Bank of Baroda vs. Union of India and another*' - (2024 SCC Online Bom 3964) considered the issue as to whether mere filing of such a petition under Section 94 or 95 of the Code before the NCLT, could trigger interim moratorium. The interim moratorium commences on e-filing of the applications i.e. uploading of the document prior to any scrutiny, there is a possibility that parties who have had their applications declined due to failure to comply with the notices and timelines. In such cases, the aggrieved persons have a remedy under Rule 63 of the NCLT Rules to prefer an appeal within the period stipulated. Any application which had earlier been dismissed and is refiled without resorting to the due process under law, ought not to be considered valid and shall not be considered as 'filed' for the purposes of Section 96 Code.

The High Court also analysed the SOP framed by NCLT in entirety. The High Court found it clear that mere filing of a petition under Section 94 or 95 of the Code before the NCLT, does not trigger interim moratorium under Section 96 thereof and that the interim moratorium is triggered only after the petition is registered and the procedural rigmarole provided under the directions of this Court as well as the aforementioned SOP, is properly undertaken.

In the present case, the High Court observed that the third party filed the petition under Section 95 of the Code against petitioner No. 2 for initiating Insolvency Resolution Process on 09.07.2025. On scrutiny of the petition, 5 defects were found by the Registry and the same was returned to the third-party petitioner on 24.07.2025 for curing the said defects. The said third party petitioner was required to cure the defects within 7 days from 24.07.2025. The defects were not cured within the period of 7 days. The third-party petitioner could then have filed an appeal under Rule 63 of the NCLT Rules to challenge the same.

Then the High Court analysed the report filed by the Assistant Registrar, NCLT. The said report showed that while scrutinizing the aforesaid petition, the directions issued by this Court in the said judgement and the SOP, were not followed and surprisingly, it was recorded in the report that upon the failure of the said third party petitioner in removing the defects and re-filing the petition within 7 days, 'the matter stood

automatically locked for re-filing'. The High Court wondered that how the NCLT took such steps.

The High Court further observed that the matter was re-opened by NCLT on an application filed by the third party citing the technical issues. The re-opening of re-filing was not clearly justified. The report simply recorded that the third-party petitioner did not avail of the appellate remedy under Rule 63 of the NCLT Rules and that eventually, the petition was registered on 04.11.2025. The report further records that thereafter the NCLT heard the petition on various dates from 07.11.2025 onwards and that the next date of listing is 24.04.2026.

On 14.11.2025 the NCLT passed an order appointing the interim resolution professional and declared interim moratorium under Section 96 of the Code. The interim moratorium stood triggered only when the petition was registered i.e. on 04.11.2025 and not from the date of the filing of the petition i.e. 09.07.2025.

The 1st respondent submitted that the interim moratorium stood triggered at least from the day when the said petition filed by the third-party petitioner before the NCLT was registered, i.e. 04.11.2025.

The High Court observed that the Registry of the NCLT committed a serious procedural error in the manner in which it scrutinized the aforesaid petition, the High Court found substance in the contention of the petitioners that the effect of the interim moratorium cannot be ignored or diluted, particularly when the petitioners had no control over the manner of filing and scrutiny of the petition before the NCLT.

The High Court found that the allegation of connivance between the petitioners and the third-party petitioner before the NCLT can best be examined by the NCLT, in the event respondent No. 1 bank and respondent Nos. 2 and 3 auction purchasers choose to approach the NCLT for a direction that the interim moratorium would not operate against them.

As regards the steps taken in accordance with law by the respondent No. 1 bank (secured creditor), the High Court in any manner holding that the interim moratorium would not apply due to the grave procedural irregularities in the Registry of the NCLT, would adversely affect the third party petitioner also, who has filed the petition before the NCLT, even when it is not a party in the present writ petition. Even if this Court were to consider the contention of

connivance between the petitioners and the third party raised on behalf of the respondent No. 1 bank, or the allegation that the scrutiny of the petition before the NCLT was deliberately held up and kept in hibernation, findings thereon would affect the said third party petitioner, who is not a party before this Court.

The High Court agreed with the contentions of the petitioner that the DRT, in the present case, should have considered the effect of the interim moratorium triggered on 04.11.2025, particularly when the applications were considered by the DRT on 09.01.2026. The DRT could not have rejected the applications only on the ground that the commencement of the interim moratorium was not brought to the notice of the respondent No. 1 bank. The High Court found that the commencement and effect of the interim moratorium cannot be contingent upon the same being brought to the notice of the respondent No. 1 bank.

The High Court held that it is for this reason that on 14.01.2026, while considering the present petition, the Court had granted ad-interim relief of *status-quo*. It is to be noted that in the meanwhile, the sale certificate stood registered and any further consequential steps in the matter would clearly be in the teeth of the said interim moratorium.

The High Court was of the opinion that appropriate directions are required to be issued to the Registry of the NCLT to scrupulously follow the procedure indicated by the High Court in the judgement in the case of **'Bank of Baroda vs. Union of India and another'** (*supra*) in the context of Rule 28 of the NCLT Rules and the SOP framed by the Registry of the NCLT itself, to ensure that parties filing such petitions under Section 94 or Section 95 of the Code, do not deliberately keep the petitions pending at scrutiny stage, so as to mislead authorities / tribunals / courts about the effect of such filing.

Therefore, the High Court allowed the present appeal and set aside the impugned order passed by the DRT on 09.01.2026 passed by DRT-II, Mumbai. The High Court held that interim moratorium operates in the light of the abovesaid facts, due to which further steps can be taken by the respondents only after the interim moratorium ceases to operate or the NCLT holds that the interim moratorium does not operate as against the respondents, in the event the respondents choose to approach the NCLT. The High Court further directed the respondent to approach the NCLT to

demonstrate as to why the interim moratorium ought not to operate, at least insofar as they are concerned. The High Court directed the Registry of NCLT to ensure that the procedural irregularities committed by the said Registry, while scrutinizing the said petition, are not repeated in future. The High Court was of the opinion that the report submitted by the Assistant Registrar of the NCLT demonstrates that in the present case, while scrutinizing the petition filed by the said third party petitioner, the Registry of the NCLT failed to follow the procedure indicated by the Bombay High Court in the judgement in the case of **'Bank of Baroda v. Union of India and another'** (*supra*) in the context of Rule 28 of the NCLT Rules. The SOP dated 19.03.2025 framed by the Registry of the NCLT itself was not followed in letter and spirit.

Conclusion

Section 96(1) provides that when an application is filed under [section 94](#) or [section 95](#) an interim moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application. The application filed by the applicant may be returned by the registry to remove the defects pointed out by the Registry. The applicant is to remove the defects within 7 days from the date of receipt of the notice of defect. The case law discussed in this article clearly said that the interim moratorium under Section 95 or 94 will commence only from the date of registration of the application and not from the date of filing the application.

Summary

Insolvency Resolution Process may be initiated by the Financial Creditor or the Personal Guarantor himself under Section 95 or section 94 of the Code respectively. The application under either of these sections is to be scrutinised by the Registry of the NCLT. The High Court directed the NCLT to frame a Standard Operating Procedure for verifying the application. In the present case law discussed the application was filed on 15.07.2025 and the application was registered only on 04.11.2025. The High Court observed that the SOP framed by NCLT was not followed by the Registry. The High Court held that the date of registration of the application is the date of commencement of insolvency resolution process and the interim moratorium starts only on that date and not the date of filing.

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Abstract

This article examines the evolution of insolvency resolution of group companies and introduction of a formal group insolvency framework within the Insolvency and Bankruptcy Code, 2016 (“**IBC 2016**”). Group companies connected through ownership, control, financial or operational linkages pose unique challenges in situations of financial distress, as the failure of one entity often triggers detrimental effects across related entities and the enterprise group. In the absence of a formal framework governing the insolvency resolution of such enterprise group companies under the IBC 2016, the insolvency resolution of such companies has been handled by the tribunals on an *ad-hoc* basis drawing on international practices. In this context, Indian tribunals have provided various practical guidelines from procedural coordination methods and tests such as substantive consolidation or single economic entity that have found in- practice feedback. Policy and law reform proposals have also recommended the adoption of a group insolvency framework within the IBC 2016 which has resulted in the Insolvency and Bankruptcy Code (Amendment) Act, 2026 (“**2026 Amendment Act**”).² The 2026 Amendment Act has introduced a group insolvency framework with voluntary procedural coordination framework for domestic enterprise group companies. This article discusses the current case evolution, the 2026 Amendment Act and proposes potential implementation considerations.

1.1 Introduction

In India, “group companies” refer to companies that are related to each other through ownership and control such as holding³, subsidiary⁴ or associate⁵ companies. Such companies often have operational and financial linkages — for

instance, operational dependencies in the form of supply of raw material or services such as distribution arrangements. They are also structured with financial interdependence such as inter-corporate guarantees and extension of collateral security for loans and credit facilities.⁶

The prevailing company legislation - Companies Act, 2013 (“**CA 2013**”) embodies the principle of separate legal personality and treats each company distinctly from its shareholders and connected corporate entities. The test of corporate veil has been reset on account of legal personality in India.⁷ Under CA 2013, a company also has the power to acquire, hold and dispose of property.⁸ This framework enables versatile holding structures. Corporate ownership through group structures has become a dominant pattern of shareholding in India with large conglomerates operating in varied industries through such structures, in particular with the growing economic and investment market.⁹ Indian companies have significantly increased the number of their subsidiaries¹⁰, reflecting a growing trend towards a group based operational model.

In cases of distress, when such interconnected companies – whether operationally, financially or both – experience debt-default, the consequences rarely remain isolated. The failure of one company often triggers consequential operational failure and financial distress owed to corporate interdependence.

Large complex insolvency resolutions, in the roll out of the IBC 2016 have demonstrated the need for harmonisation, not on a court and case basis but as necessary action for formal procedures. Broadly, two main coordination strategies have through case law and action emerged to address the challenges of group insolvency: (i) procedural coordination which aims to coordinate the different insolvency proceedings, while keeping the assets of each group company separate,¹¹ and (ii) single economic entity or substantive consolidation, to combine all the

assets and liabilities of different group companies, treating them as a single insolvency estate.¹² Notably, frameworks of the European Union,¹³ Germany,¹⁴ etc. legislatively confine themselves to procedural coordination mechanisms and have not incorporated provisions for substantive consolidation. Further, jurisdictions like the US,¹⁵ New Zealand,¹⁶ Australia¹⁷ etc., where substantive consolidation is recognised either statutorily or through judicial precedent, it is regarded as an extraordinary remedy and is invoked only in rare circumstances where disentangling the assets and liabilities of group entities is either impossible or expensive resulting in creditor recovery erosion.¹⁸

1.2 Resolution of group companies under the IBC 2016

The structural complexity of enterprise groups has posed significant challenges under the IBC 2016 which has seen various companies forming part of bigger groups being admitted into corporate insolvency resolution process ("CIRP"). The central issue pertains to the original framework of the IBC 2016 which was primarily designed to resolve the financial distress of an individual corporate debtor and did not provide for a comprehensive mechanism to deal with insolvency of group companies including asset ownership, governance, business dependence and cross border issues involving them such as assets owned in foreign territories.

One of the earliest cases under the IBC 2016 which demonstrated the need for a group insolvency framework was the insolvency resolution of the Amrapali Group where the real estate allottees (the flat owners, homebuyers) in different real estate projects developed by different companies of the Amrapali group filed a writ petition before the Supreme Court to protect their interests in the light of CIRPs of different Amrapali group companies.¹⁹ These applications in 2017 also tested the strength of the processes contained in the insolvency law. The Supreme Court in this case dealt with the enterprise group as a whole and ordered that the properties of all forty group companies be attached and the bank accounts of all companies and their directors be frozen.²⁰ As one of the first cases to test the contours of the CIRP, the Amrapali case brought several issues: (i) the

treatment of sectoral insolvencies - i.e., the real estate project and the real estate company, (ii) the protection of homebuyer investors, (iii) the conflict of anti-money laundering investigations and the private market resolutions of insolvency and (iv) the assessment of fraudulent and antecedent transactions with close considerations of misusing group structures to redirect funds. Reviewing the limitations of a newly implemented IBC 2016 and in public interest of over 40,000 real estate allottees, in its approach, the court appointed a receiver to oversee the completion of the projects and using the principles of CIRP with promoter exclusion and suspension of board of directors, authorised the NBCC, a public body to manage the affairs of completion. Given the fraud and anti-money laundering issues, the court also oversaw the return of funds recovered from the investigations towards the completion of such projects. The court further stayed all claims that would cause detriment to resolution of the real estate developments and handovers.²¹ The Amrapali case resolution is currently ongoing, with court monitored measures.

The challenges arising from group insolvency extended to the entanglement of critical assets held across related entities. The CIRP of Essar Steel India Limited and Odisha Slurry Pipeline Infrastructure Limited highlighted complex challenges that arise when critical assets are legally held by one group company but are essential to the connected entity.²² While both companies were eventually acquired by the same resolution applicant,²³ however, the lack of coordination between the insolvency proceedings resulted in prolonged litigation, increased costs, and uncertainty for all stakeholders. Asset entanglement was also evident as an issue in the insolvency proceedings of Jaypee Infratech Limited where the company had created a mortgage to benefit the lenders of its parent company Jaiprakash Associates Limited ("Jaypee case").²⁴ The Jaypee case also raised considerations of the treatment of preferential transactions in connected enterprises and a deeper assessment of evaluating related party transactions that would fall within categorisation as antecedent or avoidance.²⁵

Cases of asset interdependence and overlapping interests have seen voluminous litigation but in particular the application of commercial tests through judicial intervention have

demonstrated a holistic approach towards enterprise group resolutions. In the case of Videocon,²⁶ 13 out of 15 group companies were to be treated as a single economic entity for the purpose of the CIRP and a common forum was designated to hear proceedings of all companies. The remaining two companies were excluded on account of separately identifiable assets.

Building on this approach, subsequent cases refined coordination mechanisms for effective resolution including suggestions for the appointment of a common insolvency resolution professional.

In the case of Adel Landmarks Limited²⁷, group insolvency was initiated based on various factors including joint consortium of corporate debtors for a common project, consolidation of assets for a unified purpose, collaboration agreements among the corporate debtors, corporate guarantees securing a common debt and joint statutory licenses and approvals. Importantly, in this case, the insolvency appellate tribunal (the National Company Law Appellate Tribunal) directed the appointment of a common resolution professional to ensure that the CIRPs of the group companies were jointly proceeded and completed together through a consolidated resolution plan.²⁸ Further, Committee of Creditors (“CoCs”) have on several occasions voluntarily appointed the same resolution professional, illustrated in the cases of Amtek Auto Group²⁹, Adhunik Group³⁰ and Reliance Communications,³¹ to achieve the information asymmetry necessary to resolve corporate distress. It is also categorical to note that cross default clauses, resultant issues of owning security interest and charge holder rights are also key concerns within the insolvency framework.³²

Other procedural coordination mechanisms such as filing of joint petitions³³ as well as simultaneous admission of insolvency applications for group companies has also been permitted.³⁴ In various cases, the insolvency adjudicator - the National Company Law Tribunal (“NCLT”) has ordered case based innovative approaches with the aim of achieving a single resolution. For example, in the insolvency proceedings of Regen Powertech Private Limited and its wholly owned subsidiary, the NCLT appointed a mediator to conduct joint meetings with the resolution professionals and CoC of both companies for the

facilitation of a joint resolution process.³⁵ The approved consolidated resolution plan implementation faced disruption on account of challenges to its implementation which the Supreme Court affirmed to be subject to the commercial wisdom of the CoC.³⁶ However, the delays impacted the restructuring process and the group resolution. Similarly, in the proceedings of KSK Mahanadi Power Company Limited³⁷ and its subsidiaries, the NCLT directed the CoCs to coordinate their efforts to identify a common resolution applicant for the group companies. Although not every effort has resulted in a maximized outcome, collectively they have demonstrated a consistent willingness amongst stakeholders to seek coordinated solutions. Courts have also observed that for corporate debtors that are intrinsically linked, a coordinated framework by way of a joint information memorandum involving the consolidated assets in a combined insolvency process would lead to value maximization.³⁸

In the above context, the group insolvency landscape also saw the development of Government reports such as the Report of the Working Group on Group Insolvency (September 2019)³⁹ and Report of Cross-Border Insolvency Rules/ Regulations - II Committee on Group Insolvency (December 2021)⁴⁰ (together “Group Insolvency Reports”) which recommended measures for the resolution of group enterprises under the IBC 2016. The Group Insolvency Reports recommend adoption of only procedural coordination mechanisms limited to domestic groups.⁴¹ Other correspondingly impactful issues include multiple jurisdictions, appointment of common insolvency professionals in more than one country, creditor rights, value maximised resolutions, capacity building measures in multiple countries and continuation of parallel proceedings from a cost-efficiency perspective. These issues require the insolvency regulator to consider such changes, especially with foreign decree enforcement concerns that may create delays in insolvency resolutions.⁴² With regard to substantive consolidation, ownership and enforcement of foreign asset and other questions of cross-border group insolvency, the Group Insolvency Reports recommended that they may be contemplated at a later stage on the basis of practice and jurisprudence evolved under the IBC 2016.⁴³

1.3 Group Insolvency Framework under the 2026 Amendment Act

Consistent with the recommendations of the Group Insolvency Reports, the 2026 Amendment Act has introduced a new Chapter VA titled “Group Insolvency” to the IBC 2016 which prescribes a voluntary procedural coordination framework for enterprise groups in India. The objective of the framework is to “efficiently resolve insolvencies involving complex corporate group structures, minimising value destruction caused by fragmented proceedings and maximising value for creditors through coordinated decision-making.”⁴⁴ Thus, the framework seeks to facilitate enhanced coordination between insolvency resolution and liquidation proceedings of Indian corporate debtors forming part of the same group with a view to maximise asset value.⁴⁵

The 2026 Amendment Act adopts a functional definition of ‘group’ in addition to the CA 2013. Corporate debtors who are interconnected by ‘control’ or ‘significant ownership’, including holding, subsidiary and associate companies as defined under the CA 2013, will be considered as a group.⁴⁶ It further defines “significant ownership” as the right to exercise 26% or more voting rights while “control” follows the definition under the CA 2013,⁴⁷ with suitable modifications to cover limited liability partnerships and the right to appoint key managerial personnel in a corporate person. By doing so, the 2026 Amendment Act ensures that operationally and financially connected entities may be dealt with together. Notably, the 2026 Amendment Act provides the central government with general rule-making powers to prescribe the manner and conditions for conducting group insolvency proceedings.⁴⁸ Without prejudice to the generality of this power, it sets out an indicative list of subjects on which the central government may make rules including:⁴⁹

- Constitution of a common bench of the NCLT for the insolvency proceedings of group companies and transfer of pending proceedings to such bench.
- Mechanisms for coordination of the proceedings of the group debtors including coordination between their CoCs, interim resolution professionals, resolution professionals, or

liquidators.

- Appointment and replacement of a common insolvency professional to facilitate coordination between the insolvency proceedings of group companies to facilitate cost savings.
- Formation of an intercompany group CoC and appointment of a group coordinator to facilitate communication, information sharing, and alignment of proceedings.
- Facilitation of coordination by making agreements among participating corporate debtors and their CoCs that provide measures to coordinate and synchronise different aspects of the group insolvency. This would also need an examination of inter creditor group agreements, which would need an examination with respect to the IBC 2016 and their functionality within the group.
- Treatment of all costs incurred for coordinating the proceedings.

For the implementation of the proposed framework into rules, the central government is also empowered to apply the provisions of the IBC 2016 with suitable modification as they may be necessary,⁵⁰ a draft of which is currently in the pipeline.

1.4 Implementation of Proposals and Existing Roadblocks

Certain issues such as the precise contours of the power of the group CoC, permissibility and procedure for making joint applications, and the modalities for developing a coordinated strategy across multiple debtors, are still open. In the current regime, the 2026 Amendment Act nevertheless addresses some of the most persistent challenges of the present framework.

The NCLT’s fragmented territorial jurisdiction has been a fundamental difficulty in the context of group companies.⁵¹ As a result, group companies with registered offices in multiple states often find themselves before multiple benches, with no formal means of aligning proceedings. The provision enabling the constitution of a common administrative and judicial bench resolves this structural problem.

The role of resolution professionals and CoCs also acquires greater significance in a group insolvency. In the insolvency of a single

company, the insolvency professional's task is limited to preserving the operations and maintaining the single corporate debtor as a going concern.⁵² Further, the CoC is also constituted with respect to the individual corporate debtor.⁵³ When there are multiple interconnected companies in insolvency, the two key actors in a CIRP — insolvency professionals and CoCs, operating in silos across different group companies can give rise to significant coordination problems. In such cases, the proposal of appointing a common insolvency professional and creation of a group CoC can significantly enhance efficiency at inception. This measure may improve information flow, prevent duplication of efforts and allow creditors to pursue coordinated strategies that reflect the economic reality of the group.⁵⁴ This ensures that the insolvency proceedings are not running in isolation, and efforts are made to maximise value for all stakeholders.

Further, with the 2026 Amendment Act permitting multiple resolution plans for the same corporate debtor allows assets of related corporate debtors to be restructured in a coordinated yet flexible manner, rather than through a single resolution plan.⁵⁵

1.5 Open Considerations

A key open consideration with the proposed group insolvency framework is the prevalence of cross-border issues. Globalisation of economic activity has led to significant growth in the number of enterprise groups in international trade and commerce.⁵⁶ Thus, large conglomerates are increasingly expanding operations beyond local territorial boundaries through group structures.⁵⁷ Consequently, it becomes important to consider potential challenges while designing an insolvency framework for such companies including operational, procedural and court to court coordination across jurisdictions including time and meeting coordination across courts and forums, increased costs of management and difficulties in asset tracing and recovery. India would benefit from a cross-border insolvency framework capable of addressing the intricate structure of multi-jurisdictional companies as the current legislation is not well-suited for this purpose.

While cross border insolvency and the adoption of an international framework such as the model

law on Enterprise Group Insolvency is a different debate, the strength of the local infrastructure and its expertise determines the ability to transplant the procedure to group cases. In this context, insolvency professional entities (“**IPEs**”) can also play an enabling role. Given their organizational infrastructure and collective expertise, IPEs can play a significant role in managing group insolvency cases. Their capacity could be expanded to function as asset managers in such proceedings facilitating coordinated asset assessment, valuation and disposal across group companies, amongst others. In this regard, the draft Reserve Bank of India (Securitization of Stressed Assets) Directions, 2025⁵⁸ (“**Draft Directions**”) provide diverse insights which may be utilized. The Draft Directions propose creation of a distinct entity of facility providers known as the resolution managers (“**ReM**”). Under this framework, ReMs would be responsible for administering the resolution and recovery of underlying stressed exposure, with the primary objective of resolving such assets and maximizing value realization. A parent and holding company of resolution managers in different jurisdictions and a registry under all country laws can be a way of making this process implementable. The Draft Directions envisage that ReMs will have extensive experience in the workout of NPAs, including preparation of business plans, recovery strategies etc. The framework also imposes specific eligibility conditions such as ensuring ReMs are not disqualified under section 29A of IBC 2016 or equivalent laws of foreign jurisdictions. There is considerable merit in exploring whether a similar category of asset or resolution managers should be introduced specifically for group insolvency cases which typically involve diverse and interlinked assets and therefore require a more sophisticated approach to resolution.⁵⁹ Accordingly, building the capacity of IPEs to perform such roles should be considered, with the objective of enabling an asset disposal in a manner that maximizes value for creditors.

Further, the existing reform would benefit from a strengthened institutional infrastructure and composite benches of the NCLT which are better equipped with technical members possessing commercial expertise. It would require permanent benches of NCLT coordinating with multiple jurisdictions and resolving complex asset ownership structures. Such an arrangement would allow a comprehensive

assessment of intra-group transactions, interdependencies and overall business value, thereby facilitating value maximizing outcomes.

Viewed in perspective, the 2026 Amendment Act is a logical progression of India's insolvency law implementation that has been undertaken in a phased manner since its enactment. Since its inception, the IBC 2016 has sought to promote speed and maximise value. India's cautious approach may need to evolve to demonstrate its capacity and recognition of urgency in dealing with cross border situations.

With the growth in investment and economy, developing possible solutions for group insolvency is a natural next step in recognising that businesses operate in networks and a framework limited to individual companies is insufficient to address existing and futuristic complexities in financial distress. By codifying group coordination in India, the 2026 Amendment Act strengthens the capacity of the IBC 2016 to respond to modern corporate realities and the proposals of above may aid in its procedural effectuation.

Footnotes

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² The Insolvency and Bankruptcy Code (Amendment) Act, 2026
<https://ibbi.gov.in/uploads/legalframework/2026-04-07-115842-i5nsk-7ed69ef2a4d23a8b0d472cc0fcd55e79.pdf>

³Section 2(46), Companies Act, 2013.

⁴Section 2(87), Companies Act, 2013.

⁵Section 2(6), Companies Act, 2013.

⁶Report of the Working Group on Group Insolvency, (September 2019)

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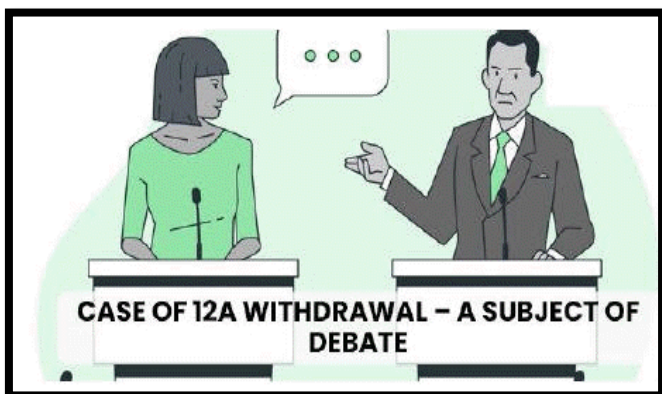
A 360 DEGREE VIEW OF WITHDRAWAL APPLICATION U/S 12AA OF IBC 2016 – A LOOK INTO THE EVOLVING JURISPRUDENCE & WAYS AND MEANS TO EFFECTIVELY ADDRESS THE CHALLENGES & CONCERNS

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Synopsis:

The genesis of Sec 12 A of IBC dates back to the year 2017 when the honorable Supreme Court in their judgment in the case of Lokhandwala Kataria Construction Pvt. Ltd. Vs Nisus Finance and Investment Managers LLP (2017), allowed withdrawal of CIRP on the basis of 'consent terms' between both sides. Subsequently, as per the Insolvency Law Committee's recommendation in this matter, Section 12A of the IBC was inserted through an Amendment in the year 2018. This Amendment made provision for empowering NCLT to allow withdrawal of an on-going CIRP provided such withdrawal application is approved by CoC with a 90% voting share in the cases where such withdrawal application is initiated after formation of CoC. In a word, this provision over its 7 years of operation has turned out to be a flagship provision that gives the promoters a last chance to regain control of the company on complying/satisfying the binding clauses relating to this Section. In this article an attempt has been made to capture this journey of the operation of Sec 12 A through the evolutionary process of various judicial enactments and the various challenges that has been encountered during this journey by the IRP/RP, Creditors, CDs, Judiciary and the Insolvency Community as a wholedo read on...

I. Introduction:



The genesis of Sec-12A of IBC dates back to the Year 2017 when the Honorable Supreme Court in their judgment in the case of Lokhandwala Kataria Construction Pvt. Ltd. Vs Nisus Finance and Investment Managers LLP (2017), allowed withdrawal of CIRP on the basis of 'consent terms' between both parties. Also, in the case of Uttara Foods & Feeds (Pvt) Ltd. Vs Mona Pharmachem (2017), the Supreme Court held that the competent authority may amend the rules to enable NCLAT to exercise its inherent power under Rule 11 of NCLAT Rules 2016 to allow a compromise even after admission of CIRP application. After this the Insolvency Law Committee submitted its recommendation for inclusion of a provision for withdrawal application (vide Insolvency Law Committee Report, March 2018). With this in the background, IBC 2016 was amended in 2018 by including a provision u/s 12A which empowered the Judiciary to allow withdrawal of an ongoing CIRP provided such application is approved by COC with a 90% voting mandate. Subsequent to this amendment, IBBI has framed Regulation 30A to handle the nitty-gritty of the process of withdrawal application under Sec-12A.

II. Data Overview of Withdrawal u/s 12A : (Source: IBBI Quarterly Journal, Issue: July-Sep 2025)

As per IBBI data source (IBBI Quarterly Journal Issue : July-Sep 2025), out of a total of **8659 nos.** CIRP cases admitted, **1223 nos.** cases were withdrawn u/s 12A. Out of this 1223 cases, a total of 378 cases (31%) were initiated by FCs (Financial Creditors) whereas 837 cases (69%) were initiated by OCs (Operational Creditors) and the balance 8 cases were by the CDs (Corporate Debtors). If we now take a look into the closure data of CIRP cases we find that out of the 6761 closure cases, the closure due to withdrawal u/s 12A forms a significant proportion i.e. approx.. 18% of the total number of closure. justifying the amendment carried out

in IBC 2016 in this regard.

This article aims to highlight the working of Sec 12A in the last few years of its existence from the following perspectives :-

A. Broad Oversight of the 'withdrawal process' u/s 12A

- Looking into the structural format and relevance of Sec 12A provision and its allied clauses as it has evolved over time thru' various judicial interpretations and also with respect to the nature and circumstances that triggered withdrawal application during the CIRP process.

B. Deep Insights into the Judicial Jurisprudence & its underlying Challenges & Concerns

- Diving deep into the working of Sec 12A and its allied provisions and clauses during the last few years through the various judgments and judicial pronouncements while addressing the challenges that each withdrawal application proposes.

C. Looking into Comparative Legislatures in 'settlement and withdrawal' across International Jurisdictions

- Jurisdictions across international boundaries in handling settlements with varying degrees of judicial oversight, creditor protection, and regulatory frameworks. In this section we shall take a look into these legislatures as regards how such situations are dealt with in the developed continents like Europe, UK, USA, and Singapore.

With the above approach in place, we hope to take a complete 360-degree view of this important section in the domain of settlement and withdrawal forming the very core of the Insolvency and Bankruptcy Code 2016.

A) Broad Oversight of the 'withdrawal process' u/s 12A

Initially at the time when the March 2018 Amendment was brought into existence through Sec 12A to handle withdrawal process of CIRP petition, the process was categorized into two parts to handle the same i.e., (i) *Withdrawal Application initiated 'Before admission of CIRP'* and (ii) *the other type being Withdrawal Application initiated 'After admission of CIRP'*.

(i) **Withdrawal Application u/s/ 12A before admission of CIRP**

- At its inception IBC 2016 did not contain any provision for withdrawal of CIRP once the same has got initiated. Rule 8 of IBC (Application to Adjudicating Authority Rules 2016) provided that the Adjudicating Authority may permit such withdrawal only on the request made by the Applicant before the Petition gets admitted. There was absolutely no such provision that could provide scope of approval for withdrawal once the Petition gets admitted.

(ii) **Withdrawal Application u/s/ 12A after admission of CIRP**

- As explained in the introductory part of this article, the first such provision got introduced by the Amendment Act 2018, which gave the required power to Adjudicating Authority to allow Withdrawal Application that is backed by 90% of the voting share of the CoC (Committee of Creditors). Subsequently IBBI introduced Rule 30A that laid down detailed procedure of withdrawal as under:-

(a) The Applicant shall submit their Application for Withdrawal u/s 12A in the prescribed Form 'FA' as mentioned in the Rule.

(b) The Application for Withdrawal must be made before invitation for 'Expression of Interest'(EOI) is issued.

(c) The Application for Withdrawal shall be accompanied by a BG towards estimated CIRP Cost incurred by the IP till the date of filing of the Application for Withdrawal.

(d) Once the Application as mentioned in (a), (b) and (c) above is received by the IRP/RP, he/she shall put the same before CoC for approval.

(e) The CoC shall consider the same within 7 days of its receipt or within 7 days of its constitution whichever is later.

(f) The Withdrawal Application must be approved by a voting share of 90% or more.

(g) Once the approval as mentioned in point (f) is received, the IRP/RP shall submit the same before the Adjudicating Authority for consideration within 3 days from the date of approval as given in point (f).

(h) The Adjudicating Authority may by order approve the application submitted for withdrawal.

However, Regulation 30A was substituted by a new Regulation dt. 25th July 2019 which made room for two types of withdrawals – namely (a) Withdrawals before the constitution of CoC and (b) Withdrawals after the constitution of CoC. The synopsis of these two types of Withdrawal Application process and allied rules are summarized below:-

- a) *Withdrawals before the constitution of CoC – In such an eventuality the IRP is required to submit the said Application for Withdrawal before the Adjudicating Authority within 3 days of its receipt;*
- b) *Withdrawals after the constitution of CoC – In such a case the CoC would be required to consider the application within 7 days of its receipt. After consideration of the Application if the CoC desires to approve the same with a voting share of 90% or more, the IRP/RP as the case may be mandated to submit the said application before the Adjudicating Authority within 3 days of its approval by CoC.*
- c) *If the Application gets approved by the Adjudicating Authority, the Applicant would be required to deposit within 3 days of such approval, the actual amount of CIRP expenses incurred till the date of the approval by the Adjudicating Authority, failing which the Bank Guarantee submitted by the Applicant shall be invoked.*

(B) Deep Insights into the Judicial Jurisprudence & its underlying Challenges & Concerns

The judicial jurisprudence around Sc 12A Withdrawal Application has been evolving since its inception, while opening up many new and unexplored facades of the process and its implication vis-à-vis the goals and objectives of the legislation. As explained at the outset the Insolvency and Bankruptcy Code (IBC) did not include any provision for the withdrawal of proceedings after an application was filed. It was only Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, that allowed the National Company Law Tribunal (NCLT) to permit withdrawal of an application before its admission, upon the applicant's request. If we explore Rule 8 it states that *'The Adjudicating Authority may permit withdrawal of the application made under rules 4, 6, or 7, as the case may be, on a request made by*

the Applicant before its admission.'

Additionally, Rule 11 provided the NCLT with inherent powers to act in the interests of justice when withdrawal is sought after admission. However, the Tribunal has often relied on inherent powers or the concept of procedural closure to address such requests. In cases where the need for withdrawal warranted extraordinary intervention, the matter could be escalated to the Supreme Court, which, under Article 142 of the Constitution, has the authority to permit withdrawal of IBC applications in the interests of justice.

In the case of ***Mother Pride Dairy India Pvt. Ltd. v. Portrait Advertising & Marketing Pvt. Ltd.*** (2017), the National Company Law Appellate Tribunal (NCLAT), took the view that once an application is admitted, it cannot be withdrawn since other creditors are entitled to raise claims. An alternative course was worked out, and it was held that, *"if the appellant satisfies the claim of other creditors, whoever has made claim, in that case Insolvency Resolution Professional will bring the matter to the notice of learned Adjudicating Authority for closure of the resolution process. The learned Adjudicating Authority in such case will consider the case in accordance with law, even before completion of Resolution process and may close the matter."*

Later-on in appeal, the Supreme Court also allowed the settlement under Article 142 of the Constitution, while observing that *"we find that the order passed by the National Company Law Appellate Tribunal is correct, yet we think it is a fit case to exercise power under Article 142 of the Constitution and accept the settlement that has been entered into between the parties. As we are accepting the settlement, the proceeding pending before the National Company Law Tribunal, stands disposed of."*

Post enactment of the 12A provision, the Supreme Court in the case of ***Swiss Ribbons Private Limited and Another v. Union of India and others*** and in the case of ***Kamal K. Singh v. Dinesh Gupta & Another*** permitted withdrawal of CIRP proceedings in view of the settlement entered between the parties. In Swiss Ribbons case, it was also clarified that even after a petition under Section 7 of the IBC is admitted and before the Committee of Creditors is formed, the parties can settle the dispute.

In the case of ***Brilliant Alloys Pvt. Ltd. v. Mr. S.***

Rajagopal & Ors., the Supreme Court expanded the jurisprudence on withdrawal of applications, allowing for such withdrawal even up to the stage of invitation for Expression of Interest (EOI). The Court observed that Regulation 30A(1) is directory, not mandatory, acknowledging that exceptional cases may permit withdrawal post-invitation for expression of interest under Regulation 36A. This decision emphasizes that once the Code is triggered by admission of a creditor's petition under Sections 7 to 9, *'the proceeding becomes a collective process in rem, binding all stakeholders. Accordingly, given the proceeding's collective nature, it is essential that the Committee of Creditors (CoC), the body responsible for overseeing the resolution process, be consulted before permitting any individual corporate debtor to settle its claim independently.'*

In Vallal RCK Vs. M/s Siva Industries and Holdings Ltd. the Supreme Court reinforced the principles established in *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.*, clarifying that *'if the Committee of Creditors (CoC) arbitrarily rejects a fair settlement or withdrawal proposal, the NCLT, and subsequently the NCLAT, can intervene to set aside such a decision under the IBC. The Court further emphasized the significance of the CoC's commercial wisdom, holding that when 90% or more of the creditors, after thorough deliberation, agree that a settlement and withdrawal of CIRP is in the best interest of all stakeholders, the Adjudicating Authority or Appellate Authority should not second-guess or override this decision.'*

Challenges & Concerns

Even after the above landmark judgments of the Apex Court a few issues and concerns remained live and unanswered. The provisions as such did not provide for any clear direction or instructions as regards the same but we still need to reply on various judicial pronouncements in this regard. A few of those are listed below and it is suggested that future amendments in Section 12A should include those as a clear directive to be followed in the event of such eventualities occurring.

For better understanding and clarity a few of those concerns and issues are listed below along with the accompanying judicial jurisprudence in this regard: -

1. Whether an Application for Withdrawal can be filed by a person other than the Applicant who initiated the CIRP Petition?

If we look for an answer to the above question we do not have it mentioned in Sec 12A provisions and accompanying Rules/Regulations since Sec 12 A says that "The AA may allow the withdrawal of Application admitted under Sec 7 or Sec 9 or Section 10 , on an application made by the **Applicant** with the approval of 90% voting share of the CoC, in such manner as may be specified." While we look for a judicial jurisprudence we find that NCLAT in the matter of *Sukhbeer Singh Vs Dinesh Chandra Agarwal , RP in Maple Realcom Pvt. Ltd. & others.*(259 of 2019) held that *"promoters of the real estate company Maple Realcom Pvt. Ltd. can settle the matter with all the Financial Creditors, Operational Creditors including the allottees and for that they may give their proposal and the Resolution Professional is bound to place it before the CoC which is supposed to consider such application in the light of Section 12A" and hence there is no bar in initiating such withdrawal application by a person other than the Applicant.*

2. Whether an Application for Withdrawal can be filed during the Liquidation Process?

Again, if we look for an answer in this regard, the provision does not mention the same in it. While we look for judicial pronouncements in this regard, we find that NCLAT in *V Navaneetha Krishnan Vs Central Bank of India, Coimbatore and Anr.* (288 & 289 of 2018) and in *S. Rajendran, Liquidator of M/s. Arohi Infrastructure Pvt. Ltd. Vs Tata Capital Financial Services Pvt. Ltd.* held the following: *"even during the liquidation period if any person, not barred u/s 29A, satisfy the demand of CoC, then such person may move before the AA giving offer which may be considered by the CoC, and if by 90% voting share of CoC, accept the offer and decide for withdrawal of the application under Sec 7 of the IBC, the observation as made above or the order of liquidation passed by the AA will not come in the way of AA to pass appropriate order".*

3. The Application for Withdrawal under Sec 12A is to be filed by the IRP/RP as mentioned in Regulation 30A or by the Applicant as is mentioned in Sec 12A?

There seems to be some inconsistencies in this

regard in IBC provisions as **Regulation** framed by IBBI does not quite flow from the substantive provision i.e. Sec 12A. This was also held by NCLAT in the matter of Francis John Katuikuran Vs The Federal Bank Ltd. & Anr. (242 of 2018) while it said “30-A cannot over-ride that substantive provisions of Sec 12A according to which the ‘Applicant’ can only move ‘Application for Withdrawal’ before the AA and not by the RP”. However, same NCLAT on a later date in December 2018 allowed the RP to file the Application.

Here, we have made an attempt to address a few concerns/issues in the legislation but the same is not to be treated as exhaustive since there could be many other concerns that require remedial measures. The primary point that is being emphasised here is that an important section like Sec 12A, should be self-sustaining and address most of the issues thru’ clear provisions, rules and regulations within the code itself thereby reducing scope for interpretations of the same by referring to various judicial pronouncements in his regard. Such self-content legislation greatly save time and energy in the judicial process and court proceedings.

It is very encouraging to see such steps getting initiated to make Sec 12A self-sustaining while The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill No.107 of 2025) proposes amendments to Sec 12 A to be substituted once the Bill is presented and approved during the winter session of Parliament.

Rejoinder after passing of the The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill No.107 of 2025)

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill No.107 of 2025) is now passed by the Parliament and it has taken care of the substantive issue of Sec 12A by inserting Clause 8 which is as under: Clause 8 of the Bill seeks to substitute section 12A of the Code to provide that the Adjudicating Authority may allow an application admitted under section 7, 9, or 10 to be withdrawn on an application made by the resolution professional with the prior approval of ninety per cent. of the voting share of the committee of creditors. The consent of the applicant who made these applications will not be required at the stage of filing the application for

withdrawal, and he shall be provided an opportunity for hearing during the adjudication of this application before the Adjudicating Authority.

Further, it clarifies that the Adjudicating Authority shall not allow the application admitted under section 7, 9, or 10 to be withdrawn either before the committee of creditors is constituted under section 21 of the Code or after the first invitation to submit a resolution plan by the resolution professional under any circumstances.

Additionally, a period of thirty days is provided for the Adjudicating Authority to decide the withdrawal application. If the application is not decided within thirty days, the Adjudicating Authority is required to record reasons for such delay in writing.

Concluding Remarks:

IBC 2016 is an evolving legislation and it is maturing with the passage of time as more and more avenues and facades of insolvency are opening up with each case throwing lights for improvement in the legislation. With all these happening it is important for us as IP that we remain strong and consistent and stick to the core objectives of the legislation that have been spelt out time and again in no uncertain terms. The first objective of the Code remains ‘resolution’ and throughout the Code we have various processes and procedures laid down to achieve this primary objective. The Withdrawal Application U/s 12A comes as a ‘lifeline of hope’ for the CD and we need to encourage the same within the tenets of Insolvency Law and its framework. We as IRP/RP has the most critical role to play in this ‘resolution process’.

Reference & Resources: -

- a. NCLT Rules 2016
- b. NCLAT Rules 2016
- c. Insolvency and Bankruptcy Code 2016 I 12 A, No.31, Acts of Parliament
- d. IBBI (Insolvency Resolution Process of Corporate Persons) (Fourth Amendment) Regulation 2022, w.e.f. 16-9-2022
- e. *The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill No.107 of 2025)*



**INSOLVENCY AND BANKRUPTCY
CODE (IBC) 2016**

CASE LAWS

SECTION 220 - DISCIPLINARY PROCEEDINGS

Vikas Prakash Gupta vs. Insolvency and Bankruptcy Board of India [2026] 183 taxmann.com 253 (Delhi)

Where IBBI's Disciplinary Committee, while imposing penalty of one year's suspension on RP, failed to account for prejudice already suffered by RP on account of prolonged pendency of proceedings and mitigating circumstances, penalty of one year suspension from taking any assignment as Resolution Professional was reduced to period already undergone; suspension would be deemed to have come to an end from date of order.

NCLT admitted an application under section 7 for initiation of CIRP of the corporate debtor and the petitioner was appointed as Interim Resolution Professional (IRP) to conduct CIRP. CoC of the corporate debtor fixed fees for RP and support service provider. A complaint was filed before IBBI alleging that CoC had approved fees to be paid directly to support service provider, but that the petitioner engaged other professionals instead. The IBBI issued a show cause notice alleging that the petitioner improperly received consolidated fees without segregating payments for himself and support services. Disciplinary

Committee of IBBI passed an order suspending registration of the petitioner for a period of one year. The petitioner filed instant petition challenging said order on ground that show cause notice was issued nearly three years later and after almost 11 months from date of receipt of reply filed by the petitioner, Disciplinary Committee acted in furtherance of show cause notice.

Held that there is no mandatory statutory prescription obligating Disciplinary Committee to conclude proceedings within sixty days from date of filing of reply to show cause notice, absence of an express upper time limit cannot be construed as conferring unfettered discretion upon Disciplinary Committee to pass orders after an inordinate and unexplained delay. Since Disciplinary Committee, while imposing penalty of one year's suspension, failed to account for prejudice already suffered by the petitioner on account of prolonged pendency of proceedings and mitigating circumstances, penalty of one year suspension from taking any assignment as Resolution Professional was reduced to period already undergone; suspension would be deemed to have come to an end from date of instant order.

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

State Bank of India vs. Union of India [2026] 183 taxmann.com 418 (SC)

Spectrum allocated to Telecom Service Providers (TSPs) cannot be subjected to insolvency proceedings under IBC as licensee unequivocally undertook to comply with all contractual obligations, acknowledging that grant conferred only a regulated right to use spectrum and not any proprietary interest therein.

The corporate debtors were granted telecom licences by the DoT under Unified Access Service Licences (UASL) pursuant to Licence Agreements. In spectrum auctions conducted by DoT, the corporate debtor acquired rights to use spectrum upon payment of certain amount. The corporate debtors failed to pay licence fee. When DoT attempted to recover these amounts, they invoked IBC by filing an application under section 10 for voluntary corporate insolvency resolution process. The application was admitted by the NCLT. Upon

constitution of the Committees of Creditors (CoC) for corporate debtors, claims were invited from all stakeholders. The DoT filed its claim asserting a claim of certain amount as a licensor, arising from Annual Licence Fee and Spectrum Usage Charges payable under the Licence Agreements. A resolution plan submitted by UV Asset Reconstruction Company was approved by the CoC and thereafter sanctioned by the NCLT. On appeal, the NCLAT held that spectrum was a natural resource and the Government was holding the same as cestui que trust. Spectrum, being intangible asset of the Licensee/TSPs/TelCos/Corporate Debtor, could be subjected to insolvency/liquidation proceedings. Dues of Central Government/ DOT under the Licence fell within the ambit of Operational Dues under I&B Code.

Held that spectrum allocated to telecom service providers (TSPs) and shown in their books of account as an 'asset' cannot be subjected to proceedings under IBC. Operation of laws concerning telecommunications governing spectrum trading cannot be overridden or bypassed on basis of an interpretation adopted to expression 'asset' and its treatment as also section 238. Spectrum trading is not a private commercial arrangement, but a part

of privilege vested in Central Government under section 4 of Indian Telegraph Act, 1885. Licensee unequivocally undertook to comply with all contractual obligations, acknowledging that grant conferred only a regulated right to use spectrum and not any proprietary interest therein. Use, transfer or trading of spectrum is permissible only in strict conformity with Spectrum Trading Guidelines, 2015, and any deviation would amount to a breach of licence conditions, statute and its policy. Statutory regime under IBC cannot be permitted to make inroads into telecom sector and re-write and restructure rights and liabilities arising out of administration, usage, and transfers of spectrum which operate under exclusive legal regime concerning telecommunications. Therefore, under IBC framework, spectrum licensing rights is not a part of pool of assets for insolvency or liquidation and spectrum allocated to TSPs and shown in their books of account as an 'asset' cannot be subjected to proceedings under IBC.

Case Review: Union of India vs. Vijaykumar V. Iyer [2021] 126 taxmann.com 147 (NCL-AT)/ [2021] 168 SCL 168 (NCL-AT), modified.

SECTION 3(12) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEFAULT

B. Prashanth Hegde vs. State Bank of India [2026] 183 taxmann.com 483 (SC)

Where NPA dates, based on subsequent working capital consortium agreements, coupled with acknowledgment of debt(s) in balance sheets signed on 30.09.2015, extended limitation period up to 29.09.2018, thus section 7 application filed on 25-4-2018 was within period of limitation.

The financial creditor-bank filed an application under section 7 for initiating

corporate insolvency resolution process against the corporate debtor alleging that the corporate debtor was a defaulter of dues, payable against various credit facilities extended by members of the consortium. The corporate debtor contested the application on the ground that the same was filed beyond three years from the date when the right to apply had accrued and, therefore, the application under section 7 was liable to be dismissed on the ground of limitation. The National Company Law Tribunal admitted the CIRP petition and declared a moratorium

under section 14. The National Company Law Appellate Tribunal dismissed the appeal of the suspended Managing Director and held the section 7 application to be within limitation. On appeal before supreme court:

Held that if application is substantially in conformity with prescribed Form 1 under Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and discloses necessary ingredients for making an application under Section 7(1) and provides relevant materials/information to substantiate those ingredients, purpose of adhering to Form is served, and such application is not liable to be rejected under Section 7(5)(b) on ground of any insignificant omission or error in application. Initiation of proceedings by a financial creditor under other statutes does not bar filing of an application under provisions of IBC. Mere pendency of a counterclaim for damages against a financial creditor will not operate as a bar on right of

the financial creditor to invoke provisions of IBC. Mere allegations about commission of offences by officers of the financial creditor cannot stifle proceedings under IBC, particularly when those offences have no bearing on existence of financial debt. Where the corporate debtor had entered into various working capital consortium agreements with banks while availing further credit facilities and in process acknowledged its past debt, it would constitute a valid acknowledgment for extending limitation period. Where NPA dates, based on subsequent working capital consortium agreements, coupled with acknowledgment of debt(s) in balance sheets signed on 30.09.2015, extended limitation period up to 29.09.2018, thus section 7 application filed on 25-4-2018 was within period of limitation.

Case Review: B. Prashanth Hegde v. State Bank of India [2022] 139 taxmann.com 11 (NCLAT- New Delhi), affirmed.

SECTION 10A - CORPORATE INSOLVENCY RESOLUTION PROCESS – SUSPENSION OF INITIATION OF

Power Trust vs. Bhuvan Madan [2026] 183 taxmann.com 568 (SC)

Where restructuring proposals had not fructified into valid agreements novating original contract, and pre-implementation conditions were not complied with, plea of bar under section 10A was a non-starter and default date would relate to 31-3-2018 as per section 7 application.

A financial creditor filed an application under section 7 for initiation of CIRP against the corporate debtor on ground that the corporate debtor had defaulted under a common loan agreement dated 19-6-2013. The corporate debtor contended that the common loan agreement had been subsequently restructured vide the first restructuring proposal dated 21-2-2020, whereby the first instalment became payable on 31-12-2020, attracting the prohibition under section 10A. It was further submitted that the restructuring proposals dated 21-2-

2020 and 29-9-2020 were final and binding between the parties and had novated the earlier common loan agreement dated 19-6-2013. The Adjudicating Authority dismissed the application of the corporate debtor and admitted the section 7 application initiating CIRP. The NCLAT upheld order passed by the Adjudicating Authority. An ameliorative measure, section 10A was incorporated in IBC which barred initiation of CIRP against a corporate debtor in event default arose on or after 25-3-2020, for a period of 6 months or such period not exceeding one year as may be notified. Instant appeal was filed.

Held that plea of bar under section 10A was a non-starter as restructuring proposals had not fructified into valid agreements novating original contract and pre-implementation conditions were not complied with. Therefore, default date would relate to 31-3-2018 as per section 7 application, and proceeding could not be held to be barred in light of Explanation to section 10A.

SECTION 35 - CORPORATE LIQUIDATION PROCESS - LIQUIDATOR - POWERS AND DUTIES OF

JFC Finance (India) Ltd. vs. Arvind Garg Liquidator of Moser Baer Solar Ltd. [2026] 183 taxmann.com 588 (Delhi)

Where petitioner alleged wrongful exclusion from participation in e-auction of corporate debtor's assets due to non-receipt of link despite depositing EMD and challenged auction proceedings for non-compliance with prior court undertakings, liquidator subsequently sought to set aside e-auction and conduct a re-auction at revised reserve price, thus instant court found no need to examine petitioner's contempt allegations.

The petitioner sought to participate in sale of corporate debtor as a going concern. The petitioner alleged that it was deprived of participation in e-auction process due to non-receipt of link/instructions despite depositing EMD and uploading documents. The petitioner filed an application before NCLT seeking quashing of e-auction. NCLT dismissed said application. The petitioner filed an appeal before NCLAT. NCLAT directed that status quo with regard to assets be maintained. The petitioner filed instant contempt petition alleging wilful and deliberate disobedience of undertaking recorded by High Court on 09.04.2025 that.

no further steps pursuant to e-auction process would be taken till 21.04.2025, except for internal meetings with banks/stakeholders. It was noted that liquidator proceeded to conclude necessary regulatory exercise and obtain requisite approvals to clear decks for declaring successful bidder without even waiting for outcome of judicial proceedings then pending before NCLT, and despite statement/undertaking recorded in order dated 09.04.2025.

Held that since liquidator had sought to affect a course correction in terms of statement recorded in order dated 21.01.2026 that it would move NCLAT seeking to set aside e-auction already conducted and seek permission for conduct of a re-auction of concerned assets with a reserve price of Rs. 54 crores, instant Court did not find it necessary to delve deeper into aforementioned allegations of the petitioner. Instant Court was not inclined to entertain third party applications seeking recall of order dated 21.01.2026 and/or objecting to re-auction. Utilisation/encashment of bank draft of Rs. 54 crores furnished by the petitioner would be subject to orders of NCLAT.

SECTION 238 - OVERRIDING EFFECT OF CODE

Omkara Assets Reconstruction (P.) Ltd. vs. Amit Chaturvedi [2026] 183 taxmann.com 683 (SC)

Where respondent opposed initiation of CIRP under Section 7 based on ground of pendency of a defunct Scheme of Arrangement (SOA) under Companies Act, proceedings under IBC were not required to be stalled, as there existed no operative SOA and, therefore, order of Appellate Tribunal was to be set aside.

The appellant-financial creditor sought

initiation of CIRP under section 7 to recover about Rs. 154.33 crores from the respondent-corporate debtor. The respondent resisted on ground of a pending Scheme of Arrangement (SOA) under sections 391-394 of Companies Act before High Court. Adjudicating Authority (NCLT) observed non-compliance with section 391 of companies act requirements and relying on section 238, invoked section 7, declared a moratorium under section 14, and appointed an IRP. On appeal by respondent's

erstwhile director, Appellate Authority (NCLAT) kept section 7 application in abeyance until disposal of proceedings pending before High Court. It was noted that SOA of 2008 never came into operation and sanction in year 2019 was without jurisdiction and after it had become redundant and inoperable for sheer passage of time, terms of which having not been complied with by respondent company.

Whether there was no reason to stall proceedings for initiation of CIRP by

resorting to provisions of IBC, as has been now attempted by the appellant herein, which would ensure rehabilitation of company. There was absolutely no reason to sustain order of Appellate Tribunal, and same was to be set aside restoring order of Company Law Tribunal, Adjudicating Authority under IBC.

Case Review: order of NCLAT(Delhi) in CAAT(I)-1715-2024, dated 18-08-2025, reversed.

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

Catalyst Trusteeship Ltd. vs. Ecstasy Realty (P.) Ltd. [2026] 183 taxmann.com 687 (SC)

Where procedure prescribed under Debenture Trust Deed (DTD) for modification and variation of terms thereunder was not adhered to and, thus, terms of DTD could not have been modified, application filed by financial creditor under section 7 for initiation of insolvency process against respondent company was to be admitted.

The respondent real estate company issued non-convertible debentures to meet its requirement of funds for a residential-cum-retail project in Mumbai. The financial creditor (debenture trustee) was appointed on behalf of debenture holders. Respondent company proposed restructuring of loan repayment under debentures and requested for principal and interest moratorium of 18 months. The financial creditor informed the respondent company that it was agreeable to provide extension but would need to run entire process internally based on overall resolution plan and final restructuring approval would be provided. The respondent company filed commercial suit before High Court seeking a declaration that Debenture Trust Deed (DTD) stood amended by virtue of e-mails exchanged between the respondent company and one of debenture holders and for consequential reliefs. High

Court refused to grant an interim injunction restraining defendants from initiating any action under DTD and from demanding any payments thereunder. The financial creditor demanded overdue amount and issued a loan recall notice and later, filed an application under section 7 seeking initiation of insolvency process against the respondent company. Said application was dismissed by NCLT and same stood confirmed by NCLAT. It was an admitted fact that procedure prescribed under DTD for modification and variation of terms thereunder was not adhered to. Further, debenture trustee and other debenture holders were not even privy to discussion as to modification of DTD at relevant time, let alone being consenting parties thereto.

Held that NCLT and NCLAT erred in ignoring binding terms of DTD and in reframing terms thereof on strength of surmises, conjectures and assumptions, which were not borne out on facts and were completely unsustainable in law. Therefore, application filed by the financial creditor was to be admitted.

Case Review: Order of National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No. 467 of 2023, Dated 16.04.2025 (Para 24) reversed.

SECTION 101 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS – MORATORIUM

Purusottam Behera (Resolution Professional for Mrs. Manisha S Patil) vs. State Bank of India [2026] 183 taxmann.com 730 (NCLAT- New Delhi)

Where moratorium for personal guarantors commenced upon admission of insolvency applications but creditors sought extensions for finalising repayment plan beyond 180 days, statutory scheme restricts moratorium to 180 days but does not limit PIRP period itself, so NCLT erred in refusing PIRP extension, and RP's applications for extending PIRP period were permissible.

CIRP against the corporate debtor was initiated. Resolution plan was approved. SBI had filed an application under section 95 against personal guarantors. RP was appointed who submitted a report recommending admission and commencement of PIRP against personal guarantors. NCLT admitted section 95 application triggering moratorium under section 101. RP issued public notice for inviting claims. Personal guarantors submitted a repayment plan to RP. RP filed repayment plan along with report under section 106 before NCLT. NCLT passed an order taking on record repayment plan and report under section 106. RP convened meeting of creditors. Meeting of creditors authorised RP to seek extension of PIRP period by 150 days beyond 120 days from commencement of PIRP to facilitate effective

negotiations and finalisation of repayment plan. Final revised repayment plan was submitted. E-voting concluded, resulting in 100 per cent approval of repayment plan. RP filed an application seeking condonation of delay and extension of PIRP period, which came to be dismissed by impugned order passed by NCLT.

Held that regulation 19 of 2019 regulations is only procedural provisions and has to be held to be directory. Section 101 provides for a limit of moratorium and conceding any power to Adjudicating Authority to extend said period shall be completely against statutory scheme. Although moratorium period is limited till 180 days maximum, statutory provisions does not limit PIRP period to any particular period. However, extension of such PIRP period shall not mean extension of moratorium whose outer limit is 180 days, thus, impugned order was to be set aside and RP's applications for extension of PIRP period were to be allowed.

Case Review: Order of National Company Law Tribunal, Mumbai in I.A. No.136/2026 in C.P. No.400(IB)/MB/2024, I.A. No.137/2026 in C.P. No.717(IB)/MB/2023, I.A. No.138/2026 in C.P. No.719(IB)/MB/2023, I.A. No.139/2026 in C.P. No.398(IB)/MB/2024, I.A. No.140/2026 in C.P. No.(IB)399/MB/2024; and I.A. No.141/2026 in C.P. No.718(IB)/MB/2023, reversed.

SECTION 61 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

Torrent Power Ltd. vs. Ashish Arjunkumar Rathi [2026] 183 taxmann.com 741 (SC)

Where resolution professional acted strictly on instructions of committee of creditors during CIRP and resolution plan approved by CoC, NCLT and NCLAT had already been implemented, such conduct did not amount to

material irregularity under section 61 and there was no scope for intervention, as commercial wisdom of CoC enjoys primacy and cannot be supplanted by judicial review.

CIRP was initiated against the corporate debtor and SEML was declared as successful resolution applicant (SRA). Resolution plan submitted by SEML was approved by CoC.

Appellants, unsuccessful resolution applicants, filed application before NCLT alleging that resolution professional (RP) committed material irregularity by seeking/accepting SEML's clarifications on bank guarantees and upfront/deferred payment option, which amounted to post-bid modification of SEML's plan. NCLT by impugned order rejected said application. NCLAT by impugned order affirmed order of NCLT.

Held that since RP had acted strictly on instructions of CoC, such conduct could not, by any stretch of imagination, be characterised as a 'material irregularity' within meaning of Section 61(3)(ii). Since

resolution plan stood approved by both NCLT and NCLAT and had since been implemented, there was absolutely no scope for intervention by Supreme Court. Commercial wisdom of CoC enjoys primacy and cannot be supplanted by judicial review. Neither NCLT, nor NCLAT nor even Supreme Court is empowered to substitute its assessment in place of commercial decision arrived at by a requisite majority of CoC, therefore, impugned order passed by NCLAT was to be affirmed.

Case Review: *Order of NCLAT, New Delhi in Company Appeal (AT) (Ins) Nos.1621-1622 of 2024, Dated 01.10.2024, affirmed.*

SECTION 95 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

Rajkumar Nandlal Dhoot vs. State Bank of India [2026] 183 taxmann.com 767 (NCLAT- New Delhi)

Where personal guarantors executed on demand guarantees for loans availed by corporate debtor and bank invoked such guarantees by issuing demand notices on 02.02.2018 and 20.02.2018, application under section 95 filed by bank on 31.08.2020 was within three-year limitation from demand date, establishing that plea of limitation was meritless and upholding NCLT's admission of applications.

The corporate debtor had availed rupee term loan and working capital facilities in 2010 and 2012. Personal guarantors executed a Deed of Guarantee dated 08.08.2012 and a Supplemental Joint Deed of Guarantee dated 25.05.2012, both being on-demand guarantees. Bank issued recall/demand notices to principal borrower on 18.01.2018 (RTL) and 23.01.2018 (working capital). CIRP against the corporate debtor commenced on 06.06.2018. Demand certificates/notices invoking guarantees were issued to personal guarantors on

02.02.2018 and 20.02.2018. Bank filed applications under Section 95 against each personal guarantor. NCLT admitted section 95 applications by orders dated 04.06.2024 and 14.06.2024.

Held that cause of action against guarantor shall commence when notice of demand is issued i.e. guarantee is invoked against guarantor. Since demand notice was issued to personal guarantor on 02.02.2018 and application under section 95 having been filed on 31.08.2020 was well within period of three years, submission of the appellant that application was barred by time had no merit. Thus, there was no good ground to interfere with impugned order and appeal was to be dismissed.

Case Review: *Order of National Company Law Tribunal, Mumbai in C.P. (IB) No.1195/MB/2020 and C.P. (IB) No.1198/MB/2020, dated 14.06.2024, affirmed.*

TWO DAYS CERTIFICATE TRAINING PROGRAM FOR PROFESSIONALS UNDER THE IBC ECOSYSTEM ORGANISED BY IPA-ICMAI IN ASSOCIATION WITH IP FOUNDATION AND DBS BANK INDIA , HELD ON APRIL 17TH & 18TH, 2026 IN AHMEDABAD



IPA-ICMAI, JOINTLY WITH ASSOCIATION OF CORPORATE ADVISORS & EXECUTIVES (ACAE) AND IP NET, SUCCESSFULLY CONDUCTED A CONCLAVE ON IBC ON APRIL 18TH ,2026 IN KOLKATA.



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The articles sent for publication in the journal “The Insolvency Professional” should confirm to the following parameters, which are crucial in selection of the article for publication:

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4. The length of the article may be 2500–3000 words.
5. The article should include an Abstract of approximately 200–250 words.
6. The article should contain clear, concise, and engaging headings.
7. Authors may provide a list of references, if any, at the end of the article.
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