

SUPPLEMENT MATERIAL REFERENCE INDEX FOR INSOLVENCY & BANKRUPTCY LAW AND PRACTICE

**GROUP 2 PAPER 7.5
FOR CS PROFESSIONAL
JUNE 2025 ATTEMPT**



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LESSON 2

CORPORATE INSOLVENCY RESOLUTION PROCESS

TOPIC/HEADING	PARTICULARS/PROVISIONS/DETAILS	PAGE														
REPLACEMENT OF AUTHORISED REPRESENTATIVE	Regulation 16A (1) of the IBBI(CIRP) Regulations 2016 states that the interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class.	1 to 2														
	<div><div>Fees Payable to Authorised Representative</div><p>The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -</p><table><tr><td>Number of creditors in the class</td><td>Fee per meeting of the committee (Rs.)</td></tr><tr><td>10-100</td><td>30,000</td></tr><tr><td>101-1000</td><td>40,000</td></tr><tr><td>More than 1000</td><td>50,000</td></tr></table><p>The authorised representative shall be entitled to receive fee for every meeting of the class of creditors convened by him in the following manner, namely: -</p><table><tr><td>Number of creditors in the class</td><td>Fee per meeting of creditors in class with authorised representative (Rs.)</td></tr><tr><td>10-100</td><td>10,000</td></tr><tr><td>101-1000</td><td>12,000</td></tr><tr><td>More than 1000</td><td>15,000</td></tr></table><p><i>Fee of AR to be part of IRP cost:</i> The payment of fee to authorised representative shall be part of insolvency resolution process cost in respect of two meeting with the creditors he represents corresponding to a meeting of the committee of creditors.</p><p><i>Approval of fee of AR:</i> The fee for any additional meeting beyond two meetings corresponding to a meeting of the committee of creditors shall be part of insolvency resolution process cost subject to approval of committee of creditors.</p></div>		Number of creditors in the class	Fee per meeting of the committee (Rs.)	10-100	30,000	101-1000	40,000	More than 1000	50,000	Number of creditors in the class	Fee per meeting of creditors in class with authorised representative (Rs.)	10-100	10,000	101-1000	12,000
Number of creditors in the class	Fee per meeting of the committee (Rs.)															
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Number of creditors in the class	Fee per meeting of creditors in class with authorised representative (Rs.)															
10-100	10,000															
101-1000	12,000															
More than 1000	15,000															
DUTIES OF AUTHORISED REPRESENTATIVE	<p>The Duties of Authorised Representative shall:</p> <p>...</p> <p>The creditors in a class may propose any additional responsibility upon the authorized representative in relation to the representation of their interest in the committee.</p>	2														

REGULATORY FEE	Regulation 31A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a regulatory fee calculated at the rate of 0.25 per cent of the realizable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realizable value is more than the liquidation value: Provided that this sub-regulation shall be applicable where resolution plan is approved under section 31, on or after 1st October 2022.	3
APPROVAL OF COMMITTEE FOR INSOLVENCY RESOLUTION PROCESS COSTS	Regulation 31B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the insolvency professional shall place in each meeting of the committee, the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process costs.	4
FEE TO BE PAID TO INTERIM RESOLUTION PROFESSIONAL AND RESOLUTION PROFESSIONAL	Regulation 34B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation. The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations. The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.	4
ISSUE OF INFORMATION MEMORANDUM, EVALUATION MATRIX AND A REQUEST FOR RESOLUTION PLANS	Regulation 36B (1) of the IBBI(CIRP) Regulations provides that the resolution professional shall, within five days of the date of issue of the final list under regulation 36A (12), issue the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list: Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.	4
STRATEGY FOR MARKETING OF ASSETS OF THE CORPORATE DEBTOR	According to Regulation 36C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed one hundred crore rupees and may prepare such strategy in other cases. Decision of implementing such strategy along with its cost shall be subject to the approval of the committee. The member(s) of committee may also take measures for marketing of the assets of the corporate debtor.	5
ASSESSMENT OF COMPROMISE OR ARRANGEMENT	Regulation 39BA(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that while deciding to liquidate the corporate debtor under section 33, the committee shall examine whether to explore compromise or arrangement as referred to under sub - regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee's recommendation to the Adjudicating Authority while filing application under section 33	5

LESSON 5

LIQUIDATION OF CORPORATE PERSON

TOPIC/HEADING	PARTICULARS/PROVISIONS/DETAILS	PAGE															
FILING FORMS TO MONITOR LIQUIDATION PROCESSES UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AND THE REGULATIONS MADE THEREUNDER	During the liquidation process, the liquidator invites claim from stakeholders, forms a liquidation estate, endeavours to sell assets in consultation with the Stakeholders' Consultation Committee (SCC) and distributes the realized proceeds to stakeholders as per the waterfall mechanism provided under section 53 of the Code. The Insolvency Professional (IP), functioning as a liquidator, is also required to ensure compliance with legal requirements and reporting to the Adjudicating Authority (AA) and IBBI. Presently, the IPs submit the details regarding the liquidation process to the Board through emails, which is time-consuming and inefficient.	6															
OVERVIEW OF THESE FORMS IS AS PER THE TABLE BELOW	<table> <tr> <th>Form No.</th><th>Period Covered and Scope</th><th>Timeline</th></tr> <tr> <td>LIQ1</td><td>From Commencement of Liquidation till Public Announcement; This includes details of the Liquidator, Corporate Debtor (CD), and the liquidator's fee</td><td>On or before the 10th day of the subsequent month, after a public announcement has been made.</td></tr> <tr> <td>LIQ2</td><td>From Public Announcement till Progress Report: This includes details of valuation, sale, litigations, PUF, SCC meetings, Receipts and Payments</td><td>On or before the 10th day of the subsequent month, after submission of the Progress Report</td></tr> <tr> <td>LIQ3</td><td>From last Progress Report to Application for Dissolution: This includes details of unclaimed proceeds, sale, litigations, PUF, Realization, distribution of proceeds, Receipts and Payments. (The details required in these forms are carried forward from the last Progress Report and hence need not be filled again)</td><td>On or before the 10th day of the subsequent month, after submission of the Dissolution/closure application to the AA</td></tr> <tr> <td>LIQ4</td><td>From Application for Dissolution to Order for Dissolution: This includes details of, the distribution of proceeds, Receipts and Payments, etc. (The details required in these forms are carried forward from the last Progress Report and hence need not be filled again)</td><td>On or before the 14 days of passing of the order for dissolution of corporate debtor or closure of the liquidation process by the AA.</td></tr> </table>	Form No.	Period Covered and Scope	Timeline	LIQ1	From Commencement of Liquidation till Public Announcement; This includes details of the Liquidator, Corporate Debtor (CD), and the liquidator's fee	On or before the 10 th day of the subsequent month, after a public announcement has been made.	LIQ2	From Public Announcement till Progress Report: This includes details of valuation, sale, litigations, PUF, SCC meetings, Receipts and Payments	On or before the 10 th day of the subsequent month, after submission of the Progress Report	LIQ3	From last Progress Report to Application for Dissolution: This includes details of unclaimed proceeds, sale, litigations, PUF, Realization, distribution of proceeds, Receipts and Payments. (The details required in these forms are carried forward from the last Progress Report and hence need not be filled again)	On or before the 10 th day of the subsequent month, after submission of the Dissolution/closure application to the AA	LIQ4	From Application for Dissolution to Order for Dissolution: This includes details of, the distribution of proceeds, Receipts and Payments, etc. (The details required in these forms are carried forward from the last Progress Report and hence need not be filled again)	On or before the 14 days of passing of the order for dissolution of corporate debtor or closure of the liquidation process by the AA.	6 to 7
Form No.	Period Covered and Scope	Timeline															
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	It is clarified that an IP who do not comply with applicable provisions of the Code and the Regulations made thereunder, shall be liable for: a) failure to file a Form along with relevant information and records, b) inaccurate and incomplete information and/or records filed in or along with a Form.	7															
TIME FOR COMPLETION OF COMPROMISE OR ARRANGEMENT	Regulation 2B of the IBBI (Liquidation Process) Regulations 2016 provides that where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013, it shall be completed within ninety days of the order of liquidation under section 33.	7															

STAKEHOLDERS' CONSULTATION COMMITTEE	Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 mandates constitution of Stakeholders' Consultation Committee by the Liquidator, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters...	8
EXCLUSION OF CERTAIN ASSETS FROM THE LIQUIDATION ESTATE	Regulation 46A of the IBBI (Liquidation Process) Regulations, 2016, provides for exclusion of certain assets from the liquidation estate. It specifies that wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor for the purposes of clause (e) of sub-section (4) of section 36.	8
EARLY DISSOLUTION	Regulation 14 of the IBBI (Liquidation) Process Regulations, 2016, provides that any time after the preparation of the Preliminary Report, if it appears to the liquidator that: a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and b) the affairs of the corporate debtor do not require any further investigation; he shall consult the consultation committee and if it advises for early dissolution, he may apply, along with a detailed report incorporating the views of the consultation committee, to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.	9

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LESSON 6

VOLUNTARY LIQUIDATION OF COMPANIES

TOPIC/HEADING	PARTICULARS/PROVISIONS/DETAILS			PAGE															
FILING FORMS TO MONITOR VOLUNTARY LIQUIDATION PROCESSES UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AND THE REGULATIONS MADE THEREUNDER	A corporate person (CP) may initiate voluntary liquidation in terms of section 59 of the Insolvency and Bankruptcy Code and the IBBI (Voluntary Liquidation Process) Regulations, 2017. During the process, the liquidator invites claims and prepares a list of stakeholders based on the verified claims, sells assets of the CP in the manner and mode approved by the CP, and distributes proceeds as per section 53 of the Code. Upon completion, the liquidator submits the Final Report and an application for dissolution of CD, to the Adjudicating Authority.			10															
	<table><tr><th>Form No.</th><th>Period Covered and Scope</th><th>Timeline</th></tr><tr><td>VL 1</td><td>This includes details of the Corporate Debtor (CD) and the details of the Voluntary Liquidation Process</td><td>On or before the 10th day of the second month after the public announcement.</td></tr><tr><td>VL 2</td><td>Details of the meetings of contributories with the reasons for delay in the process and details of replacement of liquidator, if any</td><td>On or before the 10th day of the subsequent month, after 2 the meeting of contributories or replacement of liquidator.</td></tr><tr><td>VL 3</td><td>Details of dissolution application, details of Unclaimed Proceeds, Details of realization and distribution made to stakeholders, Details of Pending Litigations, Detection of Fraud, or Insolvency, if any.</td><td>On or before the 10th day of the subsequent month, after submission of the dissolution application of the CP or withdrawal /suspension application for the voluntary liquidation process, to the Adjudicating Authority</td></tr><tr><td>VL 4</td><td>Details of order for Dissolution: This includes details of, the distribution of proceeds, Receipts and Payments, etc. (The details required in these forms are carried forward from the VL-3 form and hence need not be filled again)</td><td>On or before the 14 days of passing of the order for dissolution of the CP. or withdrawal / suspension of the voluntary liquidation process.</td></tr></table>			Form No.	Period Covered and Scope	Timeline	VL 1	This includes details of the Corporate Debtor (CD) and the details of the Voluntary Liquidation Process	On or before the 10th day of the second month after the public announcement.	VL 2	Details of the meetings of contributories with the reasons for delay in the process and details of replacement of liquidator, if any	On or before the 10th day of the subsequent month, after 2 the meeting of contributories or replacement of liquidator.	VL 3	Details of dissolution application, details of Unclaimed Proceeds, Details of realization and distribution made to stakeholders, Details of Pending Litigations, Detection of Fraud, or Insolvency, if any.	On or before the 10th day of the subsequent month, after submission of the dissolution application of the CP or withdrawal /suspension application for the voluntary liquidation process, to the Adjudicating Authority	VL 4	Details of order for Dissolution: This includes details of, the distribution of proceeds, Receipts and Payments, etc. (The details required in these forms are carried forward from the VL-3 form and hence need not be filled again)	On or before the 14 days of passing of the order for dissolution of the CP. or withdrawal / suspension of the voluntary liquidation process.	10 to 11
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	VL 1	This includes details of the Corporate Debtor (CD) and the details of the Voluntary Liquidation Process	On or before the 10th day of the second month after the public announcement.																
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IBBI (Voluntary Liquidation Process) Regulations, 2017 apply to the voluntary liquidation of corporate persons under Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016																			
Regulation 3(1) of the IBBI (Voluntary Liquidation Process) Regulations provides that without prejudice to section 59(2), liquidation proceedings of a corporate person shall meet the following conditions, namely: As per Regulation3(2), the corporate person shall notify the Registrar and the Board about the resolution under sub-regulation (1) to liquidate the corporate person within seven days of such resolution or the subsequent approval by the creditors, as the case may be. Subject to approval of the creditors under sub-regulation (1), the liquidation proceedings in respect of a corporate person shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-regulation (1).																			
INITIATION OF LIQUIDATION				12 to 13															

REPORTING	According to Regulation 8(1), the liquidator shall prepare and submit- a) Preliminary Report; b) Status Report; c) Minutes of consultations with stakeholders; and d) Final Report in the manner specified under these Regulations.	13
COMPLETION OF LIQUIDATION (REGULATION 37)		14

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LESSON 15

PROFESSIONAL AND ETHICAL PRACTICES FOR INSOLVENCY PRACTITIONERS

TOPIC/HEADING	PARTICULARS/PROVISIONS/DETAILS	PAGE
DUTIES OF RESOLUTION PROFESSIONAL	<p>Regulation 3A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for assistance and cooperation by the personnel of the corporate debtor as follows:</p> <ul style="list-style-type: none"> • Duty to take custody and control • Obligation of personnel/promoter etc. to provide list of assets and records while handing over their custody and control • Duty of IRP/RP to prepare list of assets and records • Signing of list of assets and record • Requisition by IRP/RP for information required under the Code but not handed over • Requisition by IRP/RP for assets in records but not handed over • An application made under sub-section (2) of section 19 in respect of failure to provide any asset or record as requisitioned under the Code and this regulation, shall show presence of such asset or record in the notice of requisition and absence of such asset or record in the list of assets and records taken in control and custody under sub-regulation (2) and (3). 	15 to 16
ELIGIBILITY FOR REGISTRATION OF INSOLVENCY PROFESSIONALS	Regulation 4(1) of the IBBI (Insolvency Professionals) Regulations, 2016 provides that no individual shall be eligible to be registered as an insolvency professional if he- ...	16
OPERATING SEPARATE BANK ACCOUNT FOR EACH REAL ESTATE PROJECT	According to Regulation 4D, where the corporate debtor has any real estate project, the interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project.	17
APPLICATION FOR CERTIFICATE OF REGISTRATION	According to Regulation 6(1) an individual enrolled with an insolvency professional agency as a professional member may make an application to the Board through the insolvency professional agency of which he is a member, in Part – II of Form A of the Second Schedule to these Regulations, along with a nonrefundable application fee of twenty thousand rupees to the Board.	17
SURRENDER OF CERTIFICATE OF REGISTRATION.	<p>Regulation 10A provides that an insolvency professional may surrender its certificate of registration by making a request to the Board, in writing along with the certificate of registration in original.</p> <p>If the Board is satisfied, it may accept the request for surrender of certificate of registration within thirty days of its receipt and upon acceptance, the registration of such insolvency professional shall stand cancelled.</p> <p>On and from the date of cancellation of certificate of registration, the concerned person shall not represent itself to be a holder of the certificate for carrying out the activity for which such certificate had been granted.\</p>	18
SPECIAL PROCEDURE FOR ACTION ON SURRENDER, EXPULSION, ETC.	According to Regulation 10A (1), while disposing of the matter under this regulation, the Board shall not be bound by the procedure specified in regulation 11.	18

RECOGNITION OF INSOLVENCY PROFESSIONAL ENTITIES	Regulation 12 of the IBBI (Insolvency Professionals) Regulations, 2016 states that a company, a registered partnership firm or a limited liability partnership may be recognised as an insolvency professional entity, if –... It may be noted that ‘net worth’ means- (i) the net worth as defined under section 2(57) of the Companies Act, 2013 in case of a company; (ii) sum of partners’ contribution in the capital account and their undistributed profits net of accumulated losses, if any, in case of a registered partnership firm or limited liability partnership.	18 to 19										
CODE OF CONDUCT FOR INSOLVENCY PROFESSIONAL	<ul style="list-style-type: none">Integrity and ObjectivityIndependence and Impartiality <p>Explanation: For the purposes of clause 8B and 8C above, ‘relationship’ shall mean any one or more of the following four kinds of relationships at any time or during the three years preceding the appointment of other professionals:</p>	19 to 21										
	<table><tr><th>Kind of Relationship</th><th>Nature of Relationship</th></tr><tr><td>A</td><td>Where the insolvency professional or the other professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party.</td></tr><tr><td>B</td><td>Where the insolvency professional or the other professional, as the case may be, is a shareholder, director, key managerial personnel or partner of the related party.</td></tr><tr><td>C</td><td>Where a relative (spouse, parents, parents of spouse, sibling of self and spouse, and children) of the insolvency professional or the other professional, as the case may be, has a relationship of kind A or B with the related party.</td></tr><tr><td>D</td><td>Where the insolvency professional or the other professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an insolvency professional entity or registered valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party.</td></tr></table>	Kind of Relationship	Nature of Relationship	A	Where the insolvency professional or the other professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party.	B	Where the insolvency professional or the other professional, as the case may be, is a shareholder, director, key managerial personnel or partner of the related party.	C	Where a relative (spouse, parents, parents of spouse, sibling of self and spouse, and children) of the insolvency professional or the other professional, as the case may be, has a relationship of kind A or B with the related party.	D	Where the insolvency professional or the other professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an insolvency professional entity or registered valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party.	22
Kind of Relationship	Nature of Relationship											
A	Where the insolvency professional or the other professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party.											
B	Where the insolvency professional or the other professional, as the case may be, is a shareholder, director, key managerial personnel or partner of the related party.											
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D	Where the insolvency professional or the other professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an insolvency professional entity or registered valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party.											
	<ul style="list-style-type: none">Professional CompetenceRepresentation of Correct Facts and Correcting MisapprehensionsTimelinessInformation ManagementConfidentialityOccupation, Employability and Restrictions	23										
	<ul style="list-style-type: none">Resignation by an Insolvency ProfessionalRemuneration and CostsGifts and Hospitality	25										

CASE LAWS

TOPIC/HEADING	PARTICULARS/PROVISIONS/DETAILS	PAGE
Prabhat Jain Liquidator of Narmada Cereal Pvt Ltd Vs. MP Industrial Development Corporation& Ors , Comp. App. (AT) (Ins.) No. 697 of 2023 & I.A. No. 2322 of 2023 judgement dated November 27, 2024	In the case of Prabhat Jain Liquidator of Narmada Cereal Pvt Ltd Vs. MP Industrial Development Corporation& Ors , Comp. App. (AT) (Ins.) No. 697 of 2023 & I.A. No. 2322 of 2023 judgement dated November 27, 2024 Hon'ble NCLAT observed that the Section 35(1)(d) of the Code does not entitle a Liquidator to grant sub-leases over properties not owned by the Corporate Debtor and therefore Section 238 of the Code cannot be interpreted in a manner that has the effect of overriding the Respondent No. 1 duty to enforce the relevant Rules on how public lands are to be regulated. NCLAT has already noted earlier that this is supported by a three-judge bench decision of the Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai vs. Abhilash La/, (2020) 13 SCC 234. NCLAT found this judgment clearly negates the contention of the Appellant, that Section 238 of the Code override the provisions of the M.P. State Industrial Land and Building Management Rules, 2019.	27
Murlidhar Vincom Pvt Ltd Vs. Skoda (India) Pvt Ltd, Company Appeal (AT) (Insolvency) No. 1334 of 2024	In the case of Murlidhar Vincom Pvt Ltd Vs. Skoda (India) Pvt Ltd, Company Appeal (AT) (Insolvency) No. 1334 of 2024 judgement dated November 26, 2024, the question before the NCLAT is whether share application money can be treated as financial debt under IBC, where such money had not been refunded within the period prescribed under Section 42 of the Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules, 2014. Hon'ble NCLAT inter alia observed that when we look at Rule 2(c)(vii) of the CADR Rules, 2014 and the explanatory clause appended thereto, it becomes clear that it refers to any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money. NCLAT did not find any infirmity in the order of the Adjudicating Authority rejecting the Section 7 application of the Appellant. It shall however remain open to the Appellant to seek refund/recovery of the share application money in appropriate proceedings before an appropriate forum in accordance with law. There is no merit in the Appeal. The Appeal is dismissed.	28
State Bank of India & Ors {Appellant(s)} Versus the Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr {Respondent(s)}, Civil Appeal Nos. 5023-5024 of 2024 with Civil Appeal Nos. 12220-12221 of 2024	In the case of State Bank of India & Ors {Appellant(s)} Versus the Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr {Respondent(s)}, Civil Appeal Nos. 5023- 5024 of 2024 with Civil Appeal Nos. 12220-12221 of 2024 judgement dated November 07, 2024, the question before the Supreme Court of India is whether a Resolution Applicant is entitled to withdraw or modify its Resolution Plan, once it has been submitted by the Resolution Professional to the Adjudicating Authority and before it is approved by Adjudicating Authority under Section 31(1) of the IBC, 2016? In the above case, Hon'ble Apex Court referred the decided case of Ebix Singapore Private Limited v. Committee Of Creditors of Educomp Solutions Limited and Another reported in (2022) 2 SCC 401 , wherein Supreme Court was faced with the issue whether withdrawals or modifications by successful resolution applicants were permissible under the IBC, 2016 i.e., whether a resolution applicant is entitled to withdraw or modify its Resolution Plan, once it has been submitted by the Resolution Professional to the Adjudicating Authority and before it is approved by such authority under Section 31(1) of the IBC, 2016. It was unequivocally held that, based on the plain terms of the IBC, 2016, the Adjudicating Authority lacks the power to allow the withdrawal or modification of the Resolution Plan by a successful resolution applicant or to give effect to any such clauses in the Resolution Plan...	28

Telecom Regulatory Authority of India (Appellant) Versus Reliance Telecom Ltd. & Ors. (Respondents), Company Appeal (AT) (Insolvency) Nos. 273 & 355 of 2024, judgement dated November 05, 2024	<p>In the case of Telecom Regulatory Authority of India (Appellant) Versus Reliance Telecom Ltd. & Ors. (Respondents), Company Appeal (AT) (Insolvency) Nos. 273 & 355 of 2024, judgement dated November 05, 2024 National Company Law Appellate Tribunal (NCLAT) held that Section 238 of the IBC gives overriding effect to the provisions of the IBC to all other laws. Section 238 of the IBC is as follows:</p> <p>“238. Provisions of this Code to override other laws. - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”</p> <p>Hon’ble NCLAT held that in view of the clear pronouncement of the above law, submission of the Appellant that TRAI Act is a special statute and would prevail over the IBC, has to be rejected.</p>	29
Ramkrishna Forgings Limited (Appellant) Vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.(Respondents), Civil Appeal No.1527 of 2022 judgement November 21, 2023	<p>In the case of Ramkrishna Forgings Limited (Appellant) Vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.(Respondents), Civil Appeal No.1527 of 2022 judgement November 21, 2023, Hon’ble Supreme Court inter alia observed that having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval.</p> <p>Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver’s seat, so to say, of the Corporate Debtor.</p>	30
Mr. Shiv Charan & Ors vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 & Ors, Writ Petition (L) No.9943 of 2023 along With Writ Petition (L) No.29111 of 2023	<p>In the case of Mr. Shiv Charan & Ors vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 & Ors, Writ Petition (L) No.9943 of 2023 along With Writ Petition (L) No.29111 of 2023 judgement dated March 01, 2024, Hon’ble Bombay High Court inter alia observed that Section 32A (2) of the IBC, 2016 protects the property of the corporate debtor from any attachment and restraint in proceedings connected to the offense committed prior to the commencement of the CIRP. Once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan (the same ingredients as set out in Section 32A (1) are stipulated here too), the property of the corporate debtor would get immunity from further prosecution of proceedings. Clause (i) in the Explanation to Section 32A (2) removes all doubt about what the assets are given immunity from...</p>	30
Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr Civil Appeal Nos.7590-7591 OF 2023 (Arising out of Diary No.3628 of 2023) judgement dated February 12, 2024	<p>In the case of Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr Civil Appeal Nos.7590-7591 OF 2023 (Arising out of Diary No.3628 of 2023) judgement dated February 12, 2024 Hon’ble Supreme Court of India inter alia observed that a Court or a Tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the Court. Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) of the IBC, which opens with a non-obstante clause, empowers the NCLT (the Adjudicating Authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal.</p> <p>In a recent decision (i.e., Union Bank of India vs. Dinakar T. Vekatasubramanian & Ors.), a five-member Full Bench of NCLAT held that though the power to review is not conferred upon the Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT Rules, 2016.</p>	31

<p>Dilip B Jiwrajka{Petitioner(s)} Vs. Union of India & Ors {Respondent(s)}, Supreme Court of India, Writ Petition (Civil) No 1281 of 2021</p>	<p>In the case of Dilip B Jiwrajka{Petitioner(s)} Vs. Union of India & Ors {Respondent(s)}, Supreme Court of India, Writ Petition (Civil) No 1281 of 2021 judgement dated November 09, 2023, Hon'ble Supreme Court while upholding the constitution validity of Section 95-100 of the Insolvency and Bankruptcy Code (IBC), held that</p> <ol style="list-style-type: none"> No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC; The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application; The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review; The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application; There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional; No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100; The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application; The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution. 	32
<p>Sunil Kumar Agrawal (Appellant)vs. New Okhla Industrial Development Authority (Respondent) 12th January, 2023, National Company Law Appellate Tribunal, Principal Bench, New Delhi Company Appeal (AT) (Ins.) No. 622 of 2022</p>	<p>In the case of Sunil Kumar Agrawal (Appellant)vs. New Okhla Industrial Development Authority (Respondent) 12th January, 2023, National Company Law Appellate Tribunal, Principal Bench, New Delhi Company Appeal (AT) (Ins.) No. 622 of 2022. Hon'ble National Company Law Appellate Tribunal inter-alia observed that Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent.</p>	32
<p>Shri Guru Containers(Appellant)vs. Jitendra Palande (Respondent), National Company Law Tribunal, Mumbai Bench Company Appeal (AT) (Insolvency) No.106 of 2023 judgement dated 22/02/2023</p>	<p>In the case of Shri Guru Containers (Appellant)vs. Jitendra Palande (Respondent), National Company Law Tribunal, Mumbai Bench Company Appeal (AT) (Insolvency) No.106 of 2023 judgement dated 22/02/2023 Hon'ble National Company Law Tribunal inter alia observed that though the scope of CIRP related work became limited and restricted by the fact that progress got stonewalled due to lack of flow of information and lack of claims, diligence on the part of the IRP in proceeding with the CIRP cannot be found to be wanting. Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified. It is equally important for the creditors to play a catalytic role in the insolvency resolution process given the present regime of creditor-driven IBC.</p>	33

	<p>The rigours of similar standards of discipline should also apply on the creditors. This is clearly a case where the CIRP process was being hindered due to want of cooperation and participation from the creditors. The conduct of the Operational Creditor in the present case is deprecatory in that once the CIRP process had commenced, the Operational Creditor went into a sleeping mode. This position has been further aggravated by the fact that it was the Appellant/Operational Creditor who had triggered this judicial process and then abdicated himself from all responsibilities. That the Operational Creditor did not seem interested in resolution of the Corporate Debtor is evident from the fact that till date no claim has been filed with the IRP.</p>	
<p>Vallal RCK Vs. M/s Siva Industries and Holdings Limited and Ors. [Civil Appeal Nos. 1811-1812 of 2022]</p>	<p>In the matter of Vallal RCK Vs. M/s Siva Industries and Holdings Limited and Ors. [Civil Appeal Nos. 1811-1812 of 2022] the Hon'ble Supreme Court in its judgment dated 3rd June, 2022 observed that Section 12A was brought on the basis of the Insolvency Law Committee's Report. Though by the Amendment Act No. 26 of 2018, the voting share of 75% of CoC for approval of the resolution plan was brought down to 66%, section 12A of the Insolvency and Bankruptcy Code, 2016 (Code) which was brought by the same amendment, requires the voting share of 90%.</p> <p>The provisions under section 12A of the Code have been made more stringent as compared to Section 30(4) of the Code. Whereas under section 30(4) of the Code, the voting share of CoC for approving the resolution plan is 66%, the requirement under section 12A of the Code for withdrawal of CIRP is 90%.</p> <p>The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, and irrational and de hors (outside) the provisions of the statute or the Rules.</p>	33
<p>NOIDA vs. Anand Sonbhadra [Civil Appeal No. 2222, 2367-2369 of 2021] Judgement dated 17th May, 2022</p>	<p>In the case of NOIDA vs. Anand Sonbhadra [Civil Appeal No. 2222, 2367-2369 of 2021] Judgement dated 17th May, 2022, Hon'ble Supreme Court inter-alia observed that a debt is a liability or an obligation in respect of a right to payment. Irrespective of whether there is adjudication of the breach, if there is a breach of contract, it may give rise to a debt. In the context of section 5(8), disbursement has been understood as money, which has been paid. In the context of the transaction involved in such real estate projects, the homebuyers advance sums to the builder, who would then utilise the amount towards the construction in the real estate project.</p> <p>'Debt' means a liability or obligation, which relates to a claim. The claim or right to payment or remedy for breach of contract occasioning a right to payment must be due from any person.</p> <p>In the lease in question, there has been no disbursement of any debt (loan) or any sums. by the NOIDA to the lessee... The lease in question does not fall within the ambit of section 5(8)(f). This is for the reason that the lessee has not raised any amount from the Appellant under the lease, which is a transaction. The raising of the amount, which, according to the Appellant, constitutes the financial debt, has not taken place in the form of any flow of funds from the Appellant/Lessor, in any manner, to the lessee. The mere permission or facility of moratorium, followed by staggered payment in easy instalments, cannot lead to the conclusion that any amount has been raised, under the lease, from the Appellant, which is the most important consideration.</p> <p>The appeal failed, Supreme Court held that the Appellant is not a Financial Creditor. However, the Apex court indicated that the Centre can bring a prospective amendment to classify NOIDA as a financial creditor. Hon'ble Justice K.M. Joseph in his initial remark noted that hardly six years old, the Insolvency and Bankruptcy Code (hereinafter referred to as the 'IBC') continues to be a fertile ground to spawn 2 litigation.</p>	34
<p>Sunil Kumar Agrawal (Appellant)vs. New Okhla Industrial Development Authority (Respondent) 12th January, 2023, National Company Law Appellate Tribunal,</p>	<p>In the case of Sunil Kumar Agrawal (Appellant)vs. New Okhla Industrial Development Authority (Respondent) 12th January, 2023, National Company Law Appellate Tribunal, Principal Bench, New Delhi Company Appeal (AT) (Ins.) No. 622 of 2022, Hon'ble National Company Law Appellate Tribunal inter-alia observed that Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor....</p>	35

Principal Bench, New Delhi Company Appeal (AT) (Ins.) No. 622 of 2022	The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent.	
Ms. Ashish Ispat Private Limited Vs Primuss Pipes & Tubes Ltd., NCLAT	In the matter of Ms. Ashish Ispat Private Limited Vs Primuss Pipes & Tubes Ltd., NCLAT held that when a withdrawal application u/s 12A of the Code is filed prior to constitution of CoC, the requirement of 90% vote of CoC is not applicable, and the Adjudicating Authority has to consider the application without requiring any approval from CoC. Approval of 90% shall be applicable only when Committee of Creditors is constituted and withdrawal application u/s 12A of IBC has been filed post that.	36
Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors.	Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. held that: ➤ The AA has limited jurisdiction in the matter of approval of a resolution plan. In the adjudicatory process concerning a resolution plan under IBC, NCLT does not have scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by CoC. ➤ There is no scope for the NCLT or the NCLAT to proceed on basis of perceptions or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors. ➤ There is no prohibition in the scheme of IBC and CIRP Regulations, that CoC cannot simultaneously consider and vote upon more than one resolution plan at the same time for electing one of the available plans. i.e. CoC can vote upon multiple resolution plans at the same time.	36
Lalit Kumar Jain Vs. Union of India & Ors. Upheld the validity of notification dated November 15, 2019	The Supreme Court in the matter of Lalit Kumar Jain Vs. Union of India & Ors. Upheld the validity of notification dated November 15, 2019 enforcing the provisions related to personal guarantor to corporate debtor under the Code. Approval of resolution plan of a corporate debtor undergoing CIRP does not per se operate as a discharge to its surety/guarantor of their liabilities under the contract of guarantee. The nature and extent of liability would depend upon the terms of guarantee.	36
Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Others, Supreme Court	In the matter of Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Others, Supreme Court held that: • Any debt due to government (Central/State/Local Authority) including statutory dues is covered under the term "Creditor" and in any other case by the term "Other Stakeholders" as provided u/s 31(1) of IBC, 2016 and hence an approved resolution plan is also binding on government. • After the approval of Resolution Plan no surprise claim should flung upon the successful resolution applicant. Once a resolution plan is approved by an Adjudicating Authority, the claim forming part of Resolution Plan stands frozen and claims not forming part of Resolution Plan stands extinguished and no one would be entitled to initiate or continue any proceeding in respect of the claim which is not part of the approved Resolution Plan. • An approved Resolution Plan is binding upon the Corporate Debtor, its employees, members, creditors, government (Central/State/Local Authority) and any other stakeholder.	36

Vbuiltfine Properties Private Ltd(Appellant) vs. Registrar of Companies, Mumbai (Respondent) Company Appeal (AT) No.27 of 2023

In the case of Vbuiltfine Properties Private Ltd(Appellant) vs. Registrar of Companies, Mumbai (Respondent) Company Appeal (AT) No.27 of 2023, the appellant's name was struck off from the register of companies and an appeal for restoration of the name was filed by the Appellant before the NCLT. By the impugned order under challenge, NCLT directed the ROC Mumbai to restore the name of the company i.e., Vbuiltfine Properties Pvt Ltd, to the register of Registrar of Companies with imposition of cost of Rs. 5,00,000/- Appellant challenged the imposition of this huge cost.... The order does not meet either of the three criteria under Section 252(3) of the Act. Moreover, since the appeal was preferred under Section 252(1) of the Companies Act, 2013 the learned NCLT was required to examine the appeal strictly in accordance with the provision under Section 252(1) of the Companies Act, 2013. In absence of exact date of striking off it would be difficult to approve the impugned order. Moreover, learned NCLT has imposed cost of Rs. 5 lakhs but no plausible reason has been given for imposing such cost. In such view of the matter, we are left with no option but to set aside the order and remit back the matter to the NCLT for passing order afresh after affording opportunity to both the parties i.e., Appellant and ROC.

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