



KINGS & ALLIANCE LLP
LAW FIRM

IBC INSIGHTS

A Monthly Newsletter for Insolvency Matters

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from the editor

We are pleased to present the inaugural edition of "K&A IBC Insights", a monthly newsletter crafted for Insolvency Professionals, Advocates practicing under the Insolvency and Bankruptcy Code (IBC), and aspiring legal professionals. Drawing on our deep expertise, this newsletter is curated to keep you informed of the regulatory updates, key judicial pronouncements and real world application of law. Each edition will provide concise, impactful updates, important case laws, upcoming events, and expert guidance to enhance your professional acumen.

KEY HIGHLIGHTS 2024

28,818

applications for CIRP initiation, involving defaults of Rs. 10.22 lakh crore, resolved before admission (Till March 2024)

₹3.55 lakh crore

realized by creditors from 1068 CIRPs, achieving 86.13% of the fair value of Corporate Debtors.

161%

realization rate achieved against liquidation value for 3,409 Corporate Debtors navigated through the insolvency process by June 2024.

0.83%

of the resolution value and just 1.37% of the liquidation value highlight the remarkably low costs involved in the resolution processes

REGULATORY UPDATES

IBBI Expert Committee Report on Mediation

Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016

[view full report](#)



Mandating IPs to Upload Judicial Orders

Uploading of judicial orders related to insolvency proceedings by Insolvency Professionals

[view full report](#)



Transparency and stakeholder engagement

Liquidators to share quarterly progress reports, seek stakeholder input for preliminary report, submit the final report and more

[view full report](#)



Guidelines on dividends & undistributed proceeds

ensuring they are deposited in the Corporate Liquidation Account and distributed to stakeholders in compliance with legal procedures

[view full report](#)



REGULATORY UPDATES

Amendments to IP Regulations

Key Insight

This amendment focuses on strengthening the framework governing insolvency professionals (IPs) by addressing issues related to resignation procedures and the role of insolvency professional entities (IPEs). It introduces stricter norms on how and when IPs can resign from ongoing cases to ensure continuity and protect stakeholder interests. Furthermore, the role of IPEs is clarified to increase accountability in handling large and complex cases.

Impact

This regulation is aimed at improving the governance and professional conduct of IPs, ensuring that they do not leave cases mid-way without due process. It also formalizes the responsibilities of IPEs, which are increasingly playing a larger role in corporate insolvency resolution processes.

[click to view update](#)



Regulations to Enhance Efficiency

Key Insight

This amendment is aimed at enhancing the efficiency of the Corporate Insolvency Resolution Process (CIRP). It introduces new provisions to speed up the process, reduce litigation, and improve timelines for resolution. Changes include stricter deadlines for submitting resolution plans and making the process more debtor-friendly in terms of engaging with creditors.

Impact

By introducing reforms to improve process efficiency, this amendment seeks to address delays, one of the biggest criticisms of the insolvency framework. Faster resolution will enhance creditor recovery and reduce the burden on courts, benefiting stakeholders and improving India's insolvency resolution rankings.

[click to view update](#)



REGULATORY UPDATES

Integrated Technology Platform (Announced in Budget 2024)

The finance minister Nirmala Sitharaman in the 2024-25 budget announced development of an integrated technology platform to transform the Insolvency and Bankruptcy Code (IBC). The platform will connect MCA, Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and insolvency professionals, among others. It will provide a common interface for sharing information among MCA, Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and insolvency professionals, it is also expected to have features such as red flags in case of delays and alerts on the app.



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VITAL JUDGMENTS

Statutory Set-Off Or Insolvency Set-Off Does Not Apply To Corporate Insolvency Resolution Process (CIRP) Proceedings Under The Insolvency And Bankruptcy Code 2016

The Supreme Court has clarified that statutory set-off or insolvency set-off does not apply to Corporate Insolvency Resolution Process (CIRP) proceedings under the Insolvency and Bankruptcy Code (IBC), 2016. Additionally, Regulation 29 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which allows for mutual dealing and set-off, is not applicable to CIRP proceedings under Part II of the IBC.

[view judgment](#)



Execution Of A Decree Against Promoters/Directors Of Company Is Not Barred Even If Moratorium Is In Operation U/S 14 Of IBC

The Supreme Court in a significant ruling held that only because there is a moratorium under Section 14 of the IBC against the company, it cannot be said that no proceedings can be initiated against the directors/officers of the company for execution, provided that they are otherwise liable to abide by and comply with the order, which is passed against the company. The protection of the moratorium will not be available to the directors/officers of the company.

[view judgment](#)



Creditor Can Still Recover Balance Debt from Borrower After Partial Recovery from Surety

In an important judgment, the Supreme Court clarified that If the creditor recovers a part of the amount guaranteed by the surety from the surety and agrees not to proceed against the surety for the balance amount, that will not extinguish the remaining debt payable by the principal borrower. In such a case, the creditor can proceed against the principal borrower to recover the balance amount.

[view judgment](#)



VITAL JUDGMENTS

IBC Shall Be Given Precedence Over SEZ Act, Says Supreme Court

In a significant development, the Supreme Court held that the IBC shall be given precedence over the SEZ Act in light of section 238 of the code.

The court held that “as far as the submission of the Learned Senior Counsel that exemptions from NSEZ payments, including any type of fees or penalty for renewal of sub-lease and/or for transfer charges due with regard to the change of directorship or shareholding in favour of the Resolution Applicant has to be dealt with as per Clause 10.9 of the Resolution Plan cannot be accepted in the light of Section 238 of IBC 2016, which provides for the provisions of IBC 2016 to have an overriding effect over the other laws. If that be so, the obvious effect is that the same would prevail, leading to the provisions as contained in the SEZ Act 2005 giving way to IBC 2016.”

[view judgment](#)



Moratorium Under Section 14 Of IBC Does Not Extinguish Claim

In an important judgment, the Supreme Court clarified that no suit in respect of a claim can be filed when moratorium is in operation but that does not mean that the claim itself is extinguished.

The court held that “Section 14(1) imposes an embargo or prohibition on certain acts. However, it does not extinguish the claim. If the argument that the claims of all the creditors of the Corporate Debtor are extinguished once the moratorium comes into force is Civil Appeal No.7298 of 2022, etc. accepted, no creditor would be able to file a claim. For example, if money advanced is secured by a promissory note or a negotiable instrument, a suit for recovery based on the said documents will not lie once a moratorium comes into force. But, the liability under the documents will continue to exist. In fact, after moratorium, no creditor can recover any dues from the Corporate Debtor. But still, there is a provision for making a claim.”

[view judgment](#)



VITAL JUDGMENTS

Inherent Powers Cannot Be Used To Subvert Legal Provisions, Supreme Court Observes In Byjus Matter

The Supreme Court, in an important judgment, held that inherent powers cannot be used by the NCLT/NCLAT to bypass well entrenched procedure prescribed under the code for the CIRP withdrawal.

It was held that “‘inherent powers’ cannot be used to subvert legal provisions, which exhaustively provide for a procedure. To permit the NCLAT to circumvent this detailed procedure by invoking its inherent powers under Rule 11 would run contrary to the carefully crafted procedure for withdrawal. In the Impugned Judgment, the NCLAT does not provide any reasons for deviating from this procedure or the urgency to approve the settlement without following the procedure.”

[view judgment](#)



No Compulsion In Law To Specify Names Of Creditors In Balance Sheet, Mere Acknowledgment Of Debt Is Sufficient

The Supreme Court bench of Justices PS Narasimha and Sandeep Mehta held that it isn't necessary that name of the creditor should be reflected in the balance sheet. Mere acknowledgement of debt in the entry book is sufficient.

It was held that “there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.”

[view judgment](#)



VITAL JUDGMENTS

High Court Cannot Defer CIRP Process When Main Reliefs Sought In A Writ Petition Are Refused

In a crucial ruling, the Supreme Court held that when main reliefs sought in the writ petition were refused, the High Court was not justified in deferring the CIRP process.

It was held that “the High Court declined to grant the main relief which was sought in the petition for the consolidation of the CIRP of three corporate entities. After coming to that conclusion, there was absolutely no reason for the High Court to exercise its jurisdiction under Article 226 by directing the deferment of the CIRP. Such a direction under Article 226 breaches the discipline of the law which has been laid down in the provisions of the Insolvency and Bankruptcy Code 2016.”

[view judgment](#)



Resolution Plan Once Approved By CoC Cannot Be Modified Or Withdrawn By Resolution Applicant

The Supreme Court in an important judgment observed that Resolution Plan once approved by CoC and subsequently sanctioned by Adjudicating Authority under section 31 of the code cannot be withdrawn or modified by Resolution Applicant.

It was held that “the effect of approval by the adjudicating authority under Section 31(1) of the Code makes the resolution plan binding on all stakeholders, even those who are not members of the Committee of Creditors. The scrutiny by the adjudicating authority for grant of approval in terms of Section 31(1), read with other provisions of the Code, is limited and restricted. It does not allow or permit the resolution applicant to unilaterally amend/modify, or withdraw the resolution plan post approval by the Committee of Creditors.”

[view judgment](#)



VITAL JUDGMENTS

Criminal Liability Of Signatory of Cheque Is Not Discharged Merely Because Insolvency Proceedings Are Initiated Against Corporate Debtor

The Madhya Pradesh High Court, in a significant judgment, held that directors of the corporate debtor are not absolved from their criminal liability under the Negotiable Instruments Act just because insolvency proceedings have been initiated against the corporate debtor.

The court relied on the Supreme Court judgment in *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited*, (2023) wherein it was held that “a bare reading of Section 14 IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the NI Act. We are unable to appreciate the plea of the learned counsel for the appellant that because Section 138 of the NI Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the NI Act are not recovery proceedings. They are penal in character.”

[view judgment](#)



Resolutions



INDUSTRY TRENDS

Real Estate

1400

Real estate/construction companies admitted into CIRP

645

companies successfully rescued

261

number of companies liquidated

2.5

times ratio of rescued companies to liquidated companies

>60%

Recovery rate in large real estate cases

The IBC has proven instrumental in rescuing the Indian real estate sector, evident in successful cases involving companies like Jaypee Infratech, Kohinoor CTNL, and SARE Gurugram. Rescued companies now outnumber liquidated ones, and large cases boast impressive recovery rates exceeding 60%. The successful resolution of Jaypee Infratech, benefiting over 20,000 homebuyers, exemplifies the IBC's ability to protect consumer interests. This positive trajectory underscores the IBC's crucial role in addressing insolvency and fostering a healthier real estate market in India.

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ANALYZING LANDMARK Judgments

Getz Cables vs. SBI: Can Filing a Section 10 Petition After SARFAESI Act Actions Be Fraudulent or Malicious?



The article explores the NCLAT Judgment in Getz Cables Pvt. Ltd. vs. SBI on whether filing a Section 10 petition after SARFAESI Act actions can be considered fraudulent or malicious under Section 65 of the IBC.

The NCLAT in a recent decision titled Getz Cables Private Limited Versus State Bank of India and Another[1] has held that filing an application under section 10 of the IBC is not barred merely because actions under the SARFAESI Act had been taken before the application was moved.

It was further held that “merely because proceeding under Section 13, sub-section (2) and (4) has been initiated by the creditor prior to filing of Section 10 application, cannot be a ground to hold that Section 10 application is filed with malicious and fraudulent intent. For proving fraudulent and malicious intent, something more is required to be pleaded and proved apart from initiation of proceedings...

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ANALYZING LANDMARK Judgments

BYJU's Insolvency



Inherent Powers Under Rule 11 Cannot Be Used To Subvert Well Entrenched Procedure Under Section 12A R.W. Regulation 30A, Supreme Court Observes In BYJU's Insolvency Matter

In a significant development, the Supreme Court in *GLAS Trust Company LLC Versus BYJU Raveendran & Ors.* held that the NCLT cannot be considered a post office that merely puts a stamp on the withdrawal application submitted by the parties through the IRP.

The Insolvency Law Committee (ILC), based on whose recommendations Section 12A was introduced, reasoned that there should be a consensus among all the stakeholders involved before filing an application, and it should not be limited to an affair between the applicant and the corporate debtor. It was never fathomed by the ILC that withdrawal of claims would remain a unilateral process, even though the application is admitted and CIRP has been initiated. The court further observed that the NCLAT was not justified in permitting...

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ANALYZING LANDMARK Judgments

Recovery Certificate or Evidence of Debt: What Guides Resolution Professionals in Admitting Claims?



In a recent decision delivered by the NCLT, Chandigarh in *Mudraksh Investment Pvt. Ltd. vs. Asian Alloys Limited* held that the Recovery Certificate issued by the Debt Recovery Tribunal (DRT) cannot be the sole basis for admitting the claim by the Resolution Professional. In this case, the RP relied on Recovery Certificate issued by the DRT and admitted the claim of the applicant while discarding other evidence of debt provided by the applicant.

In this article, we will analyse whether any order, judgment or decree can be the basis for initiating the insolvency proceedings against the corporate debtor. Further, we will unpack as to whether the RP can consider other evidence of debt for admitting claim of the creditor when a decree has been passed in favour of such a creditor...

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ANALYZING LANDMARK Judgments

Supreme Court Orders Liquidation of Jet Airways, Setting a Precedent for Non-Implementation of Resolution Plans



The Supreme Court of India has ordered the liquidation of Jet Airways, after the Jalan-Kalrock Consortium failed to implement the approved resolution plan. The ruling emphasizes the finality of resolution plans under the IBC framework.

Introduction

On November 7, 2024, a three-judge bench of the Supreme Court, consisting of Chief Justice DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra, ordered the liquidation of Jet Airways, one of India's largest private airlines, which has been grounded since 2019. The court overturned a previous National Company Law Appellate Tribunal (NCLAT) decision, which had allowed the transfer of ownership to the Jalan-Kalrock Consortium (JKC), despite significant delays in fulfilling key obligations under the resolution plan. The ruling emphasized the importance of adhering to approved resolution plans under the Insolvency and Bankruptcy Code (IBC), bringing an end to the long-drawn insolvency saga of Jet Airways...

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UPCOMING EVENTS

Second annual research workshop on Insolvency and Bankruptcy scheduled on 1st-2nd March 2025 by IBBI in association with **IIM Ahmedabad**

Important Dates

Submission of Abstract: 01 October 2024

Selection of Abstract: 15 October 2024

Full Paper Submission: 30 December 2024

Registration Fee

Ph.D scholars and students: INR 1,180

Faculty, Researchers, Practitioners, and others: INR 1,770

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For over 22 years, Kings & Alliance LLP has been a trusted advisor to both corporations and individuals, combining traditional legal wisdom with modern innovation to deliver exceptional results. Our core values of expertise, excellence, and integrity drive our commitment to providing practical, client-focused solutions, underpinned by innovative strategies and deep industry insights.

We offer a comprehensive range of services, including general and corporate litigation, arbitration, insolvency and bankruptcy, taxation, and competition law. Whether addressing complex corporate matters or navigating intellectual property and regulatory challenges, we tailor our approach to meet the unique needs of each client. Our expertise also extends to high-growth industries such as fintech, healthcare, and infrastructure, where we

help businesses succeed in these dynamic sectors.

In today's globalized market, we leverage strategic cross-border partnerships to guide our clients on ESG compliance, digital transformation, and international disputes, ensuring they are prepared for the evolving challenges of the modern business environment. Our goal is to enable businesses and individuals to operate with confidence, within a landscape that values fairness and security.

With more than two decades of experience, we have developed the foresight to anticipate challenges and craft solutions that protect and empower our clients—whether they are corporations, MSMEs, entrepreneurs, NGOs or indigent individuals, we ensure that regardless of their financial standing they receive equitable access to quality legal advice.

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