



KINGS & ALLIANCE LLP
LAW FIRM

IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS

ISSUED ON

**1st Feb.
2025**



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To Our Readers,

Welcome to the latest edition of IBC Insights, with the legal landscape continuously shifting, we aim to provide you with a detailed understanding of the key issues at play.

In our cover story, we delve into a crucial question "*Can the Impregnable Wall Created by Section 32A Around Successful Resolution Applicants Be Breached by the Enforcement Directorate?*" This analysis explores the legal protections granted to resolution applicants and the challenges they may face from enforcement actions.

In addition, our in-depth articles provide critical perspectives on some of the most pressing IBC issues, including the fate of personal guarantors post-moratorium, the continuation of assessment proceedings during insolvency, and the classification of banks lending to homebuyers as financial creditors. We also take a closer look at how the Committee of Creditors navigates the distribution of assets when approving a resolution plan.

This edition has been thoughtfully curated to offer valuable insights and clarity on the IBC framework, making it an essential read for practitioners and stakeholders.

So, grab a coffee and dive into the analysis, we're confident it will be well worth your time.

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and more

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Offline and Online Events Scheduled in February 2025

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KEY HIGHLIGHTS

16.76%

downward trend in IBC cases in the first half of fiscal year 2024-25 compared to last year.

30%

decline in recovery rates from IBC in 2023-24 compared to last fiscal year.

28%

of the ₹1,63,943 crore involved has been recovered

14+

months for IBC case admissions, compared to the statutory provision of just 14 days.

80%

of Corporate Insolvency Resolution Processes (CIRPs) involving defaults below ₹1 crore were initiated by operational creditors.

80%

of CIRPs for defaults exceeding ₹10 crore were initiated by financial creditors.

₹11 lakh crore

worth of cases have been settled through IBC by withdrawal before reaching admission stage

₹3.6 lakh crore

has been returned to creditors since the implementation of the IBC

SOURCES: IBBI, RBI

REGULATORY UPDATES

Insolvency Resolution Process for Corporate Persons - Amendments 2025

- 4E(Handing over possession),
- 16C(Appointment of facilitators),
- 16D(Roles and responsibilities of the facilitator and more

[View Full Regulation](#)



Voluntary Liquidation Process - 2025

Regulation 33 Omitted, IBBI to maintain a corporate voluntary liquidation account, Liquidators must file specific forms (VL 1 to VL 4) and more

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Liquidation Process Amendment Regulations, 2025

Amendment in regulation 45, addition of subsection 47B, and many more principal regulations.

[View Full Regulation](#)



“

Fear of the law is better than using the law. People today do not want to default.

Ravi Mital - Chairperson of IBBI

”

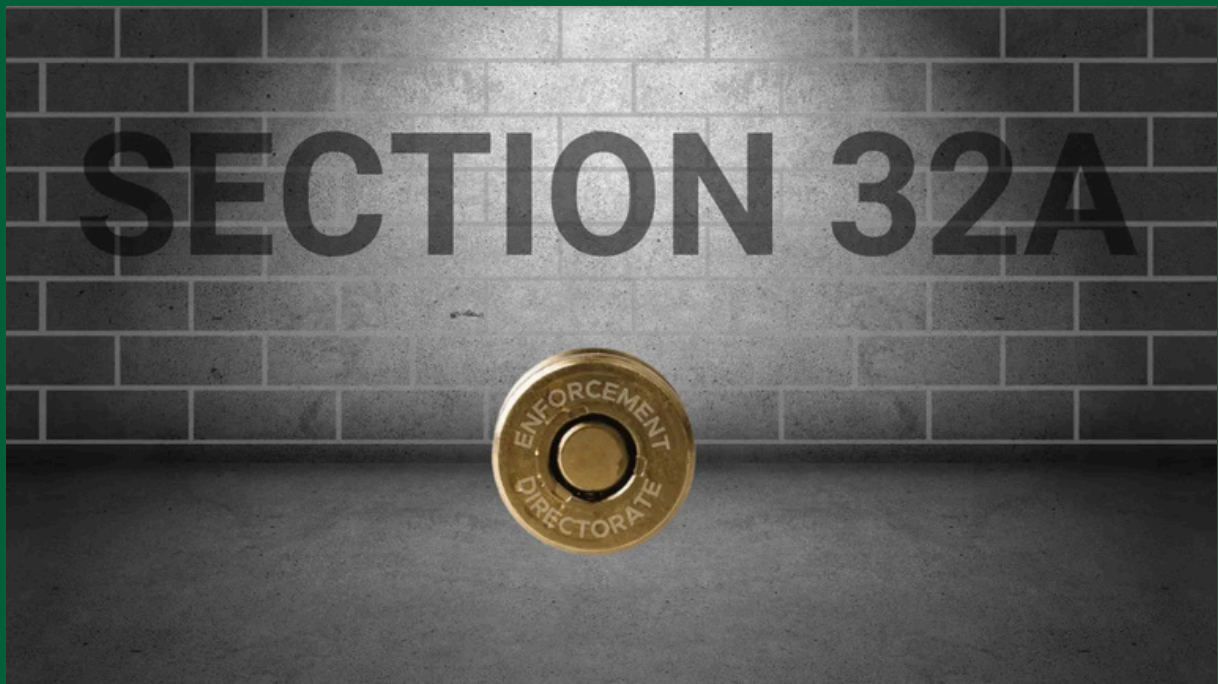
सत्यमेव जयते
Insolvency and
Bankruptcy Board
of India

भारतीय दिवाला
और
शोधन अक्षमता बोर्ड



COVER STORY

Whether Impregnable Wall Created By Section 32A Around Successful Resolution Applicant Can Be Breached By Enforcement Directorate



Introduction

The Insolvency and Bankruptcy Code, 2016 (Code) was introduced to revive the distressed companies from their insolvencies by giving an opportunity to other people who can do something innovative so that the company could be revived therefore the primary purpose of the code is to sell the corporate debtor as a going concern with the liquidation is its last resort. However, experience of the code demonstrated that the Resolution Applicant was hesitant in buying a company unless they were not made sure that their liability would arise against the corporate debtor if they have purchased it through a plan. To allay this fear, the parliament amended the code and introduced section 32A which provided immunity to the corporate debtor and its properties from any offences committed prior to commencement of the CIRP.

Section 32A of IBC

Section 32A was introduced into the Insolvency and Bankruptcy Code (IBC) in...

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IN-DEPTH ANALYSIS

What Happens to Personal Guarantors After the 180-Day IBC Moratorium?



In this article, we will explore the statutory scheme related to personal guarantors under the Insolvency and Bankruptcy Code (IBC). Thereafter, we will examine whether the time period provided under Section 101, after which the moratorium shall cease to have effect, is mandatory or directory.

Statutory Scheme

An insolvency application against a personal guarantor can be filed either by the guarantor himself or by creditors under Sections 94 and 95 of the IBC. Once an application is filed under either of these sections, a moratorium under Section 96 comes into effect. This is known as an interim moratorium, which remains in force until a decision regarding the admission or rejection of the application, based on the report submitted by the Resolution Professional under Section 99, is passed by the...

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IN-DEPTH ANALYSIS

A Judicial Flip Flop

Assessment Proceedings To Continue Or Stop During Moratorium Under IBC?



Introduction

The IBC was introduced to consolidate laws related to insolvency. Corporate Insolvency Resolution Process can be initiated by financial creditor, operational creditor or corporate debtor under section 7, 9 or 10 of the code respectively. Once insolvency application is admitted by the Adjudicating Authority, moratorium under section 14 of the code kicks in which ensures that no coercive proceedings are continued or instituted against the corporate debtor until approval of a resolution plan or initiation of the liquidation process.

Moratorium Under Sections 14 and 33(5) of IBC

One of the primary focuses of the moratorium is to keep the assets of the...

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IN-DEPTH ANALYSIS

Whether Banks Lending to Homebuyers Be Considered Financial Creditors Under IBC?



Introduction

The Insolvency and Bankruptcy Code, 2016 ('Code') passed on May 28th, 2016 did not explicitly have homebuyers designated as 'Financial Creditors'. Subsequent amendment in 2018 stated what was already an accepted position by various courts in respect of homebuyers who purchase property under 'assured returns/committed returns'

The recognition of Banks that have provided loans to Homebuyers of Corporate Debtor as a Financial Creditor would be instrumental to Banks in a few respects:

1. Banks as Financial Creditors allay the risk wherein the Allottees or borrowers, who received the loan have not submitted any claims to the Resolution Professional owing to their lack of expertise in navigating through the Corporate Insolvency Resolution Process ('CIRP'). Banks can represent their (homebuyers) interests...

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IN-DEPTH ANALYSIS

Security Interest or Voting Shares? How the CoC Decides Distribution While Approving Resolution Plan In IBC



The insolvency resolution process can be initiated by a financial creditor, operational creditor, or the corporate debtor. Once the corporate debtor is admitted into insolvency, an interim resolution professional (IRP) takes over the management and issues a public announcement. Based on this, creditors file their claims, after which a committee of creditors (CoC) is constituted. Thereafter, the CoC can either confirm the IRP as the resolution professional (RP) or replace them with a new RP.

An Expression of Interest is issued to prospective resolution applicants, who then submit their plans. The RP receives these plans and presents them to the CoC. After considering the feasibility and viability of the plans, the CoC either approves or rejects the plans. The methodology for distributing the amount proposed in the plan is decided by the RP, but it must be approved by the CoC. The distribution can be based either on the security interest or the voting shares of the respective financial...

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VITAL JUDGMENTS

Adjudicating Authority Can Recall Its Orders Obtained Through Fraud By Exercising Its Inherent Powers Under Rule 11 Of the NCLT Rules

The NCLAT, in an important judgment in *Marvel Landmarks Pvt Ltd. vs. Jay Nihalani & Ors.*, held that when an order is obtained through fraud by suppressing material facts—facts that, if disclosed, would have led to a different conclusion—the Adjudicating Authority can recall the order by exercising its inherent powers under Rule 11 of the NCLT Rules, 2016.

In this case, the corporate debtor falsely inflated the number of homebuyers to show that an application under Section 7 of the IBC did not meet the required 10% threshold of allottees. Upon discovering the actual number of homebuyers, which confirmed that the application met the threshold, the Adjudicating Authority recalled its earlier rejection order and admitted the corporate debtor into insolvency.

[View Judgment](#)



Unilateral Revocation of Irrevocable Guarantee Does Not Discharge Guarantor From His Obligations

In a significant judgment in *State Bank of India Versus Gourishankar Poddar and Anr.*, the NCLAT held that the unilateral revocation of a personal guarantee does not discharge the guarantor's obligation, especially when such revocation is not accepted by the creditors.

In this case, the director of the corporate debtor had signed two irrevocable deeds of guarantee. He argued that his liability was discharged upon resigning and sending a revocation letter to the bank. However, the tribunal rejected this argument, affirming that a guarantor remains bound by the terms of an irrevocable guarantee unless the creditor consents to its revocation.

[View Judgment](#)



VITAL JUDGMENTS

Insolvency Application Against Personal Guarantor Is Maintainable Before The NCLT As Per Section 60(1) Of IBC Even If No CIRP or Liquidation Process Is Pending Against CD

The NCLAT, in a recent judgment in Anita Goyal Versus Vistra ITCL (India) Ltd. & Anr, held that an insolvency application under Section 95 of the IBC can be filed before the NCLT, even when no resolution or liquidation process is pending against the corporate debtor.

It was argued before the tribunal that, as per Section 60(2) of the IBC, since no resolution or liquidation process is pending against the corporate debtor before the NCLT, an application under Section 95 should not be filed before the NCLT instead the DRT should have been approached for taking any actions against the personal guarantors with respect to the debt. However, the tribunal rejected this submission, stating that Section 60(2) begins with the phrase "without prejudice to Section 60(1)" of the IBC. Section 60(1) provides that the Adjudicating Authority for insolvency or liquidation proceedings against the corporate debtor or personal guarantors shall be the NCLT. The tribunal held that the phrase "without prejudice" means that it does not affect the generality of the provision. Therefore, under Section 60(1) of the IBC, the NCLT remains the adjudicating authority for initiating the insolvency process against personal guarantors even if no resolution process or liquidation process is pending against the corporate debtor.

[View Judgment](#)



verdict

VITAL JUDGMENTS

Eviction Of Tenant From The Property Of CD Cannot Be Sought Under Section 60(5) of IBC

In **Sumati Suresh Hegde & Ors. v. Anand Sonbhadra**, the NCLAT held that the eviction of a tenant must be sought under the Maharashtra Rent Control Act, which governed the tenancy created before the commencement of the CIRP, rather than under Section 60(5) of the IBC. In this case, the tenancy was created before the CIRP began. After the corporate debtor's admission into insolvency, the Resolution Professional filed an application under Section 60(5) seeking the tenant's eviction, which the NCLT allowed. However, on appeal, the NCLAT set aside the impugned order, ruling that eviction must be pursued under the applicable rent control law.

The tribunal relied on the Supreme Court judgment in **Embassy Property Developments (P) Ltd. Vs. State of Karnataka, (2020)** where it was held that “wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

[View Judgment](#)



UPCOMING EVENTS

One-Day Virtual Workshop Mastering Legal Skills, Pleading & Court Processes under IBC

Date: 15th February 2025 (Saturday)

Time: 10:30AM- 04:30PM

Mode: Online

Registration Fee: Rs 1000/- + GST

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INSOL INTERNATIONAL, UK in association with Indian Institute of Insolvency Professional of ICAI (IIPI) is organizing INSOL International Mumbai Seminar

Date: 8th February 2025

Four Seasons Hotel, Mumbai

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EXECUTIVE DEVELOPMENT PROGRAM - Managing Corporate Debtor as Going Concern under CIRP (For IPs)

Last Date to Register: 17th February 2025 by 5pm

Program Date: 18th February – 22nd February 2025

Duration: 30 Hours (over 5 days)

Fees: Rs.7500/- + GST

Mode: Online

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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

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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.

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