



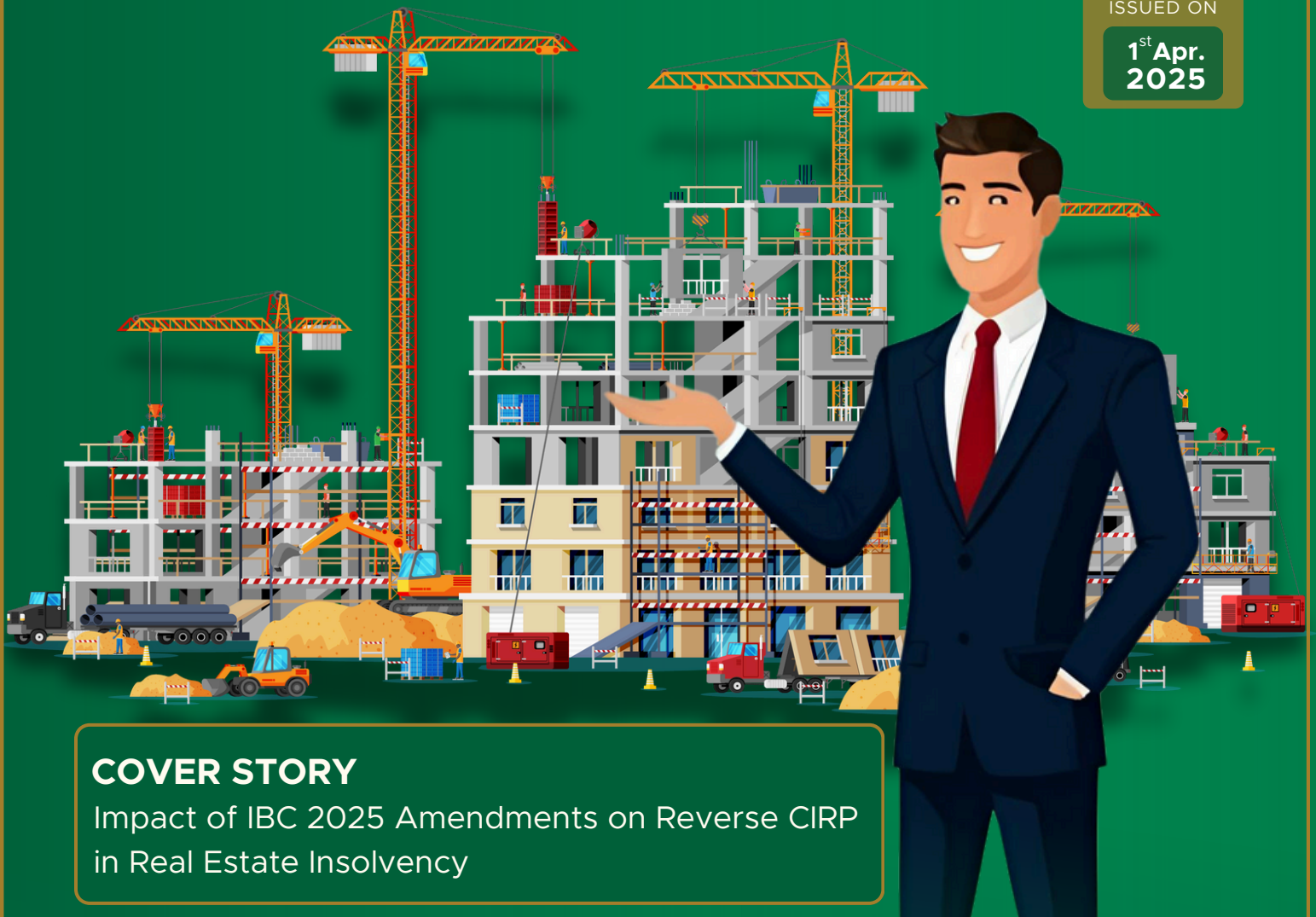
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IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS

ISSUED ON

1st Apr.
2025



COVER STORY

Impact of IBC 2025 Amendments on Reverse CIRP
in Real Estate Insolvency

In-Depth Analysis

- Examining the Legal Complexities of the Clean Slate Doctrine and its Implications for Post-approval Claims
 - Can the Demand Notice under Rule 7 of Personal Guarantors Rules, 2019 substitute Invocation of Guarantee?
 - How Will Mandatory CCI Approval Impact IBC Timelines Post Independent Sugar Corporation Judgment?
 - Criminal Liability of Company Directors in Cheque Dishonour Cases During CIRP.
- and many more in-depth analysis and case laws...*

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Dear Readers,

If history has taught us anything, it's that every tweak in the law brings a storm of interpretations, compliance hurdles, and strategic shifts. Each edition of IBC Insights is designed to deliver sharp insights and practical takeaways for those who need more than just updates.

Our cover story dissects the Impact of the *IBC 2025 Amendments on Reverse CIRP in Real Estate Insolvency*—a crucial shift that could redefine resolution frameworks for developers and homebuyers alike.

Meanwhile, corporate leaders have another worry—*Criminal Liability of Company Directors in Cheque Dishonour Cases During CIRP*. Can directors be held personally responsible? We dissect the legal intricacies.

But that's not all. We also explore *whether a Demand Notice under Rule 7 of the Personal Guarantors Rules, 2019 can replace a formal guarantee invocation* and many more...

Let's dive in.



We are just a click away to record and implement your suggestions to further refine our publications. Please do not hesitate to voice your opinion.

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IBBI's New Directive on Carry Forward Losses in Insolvency Proceedings

- The quantum of carry forward losses available to the corporate debtor.
- A breakdown of these losses under specific heads as defined in the Income Tax Act, 1961.
- The applicable time limits for utilizing such losses.
- A clear statement if no carry forward losses are available.

[View Analysis](#)



Competition Commission Divulge New Penalty Recovery Regime

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Insolvency and
Bankruptcy Board
of India

भारतीय दिवाला

और

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

-Ravi Mital - Chairperson of IBBI



KEY HIGHLIGHTS

31.4%

of admitted claims recovered by Financial Creditors in resolved insolvency cases.

25.4%

of admitted claims recovered by Operational Creditors in resolved insolvency cases.

₹210 lakh crore

the combined default amount in withdrawn insolvency applications.

41%

drop in insolvency cases admitted by NCLT from operational creditor applications

28,000+

insolvency applications withdrawn before admission

7%

reduction in insolvency cases admitted by NCLT from financial creditor applications

SOURCE: IBBI

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COVER STORY

Impact of IBC 2025 Amendments on Reverse CIRP in Real Estate Insolvency



Introduction

The Insolvency and Bankruptcy Code, 2016 (“IBC”) brought significant reforms to India’s insolvency framework, particularly impacting the real estate sector. In 2018, an important amendment was introduced under Section 5(8)(f) of the Code, recognising homebuyers as financial creditors, which granted them a seat at the table in the Committee of Creditors (“CoC”) and enhanced their ability to influence insolvency resolution proceedings. Despite these legislative improvements, the real estate sector continues to face persistent issues such as delayed project completions, opaque financial dealings, and a surge in insolvency cases. These problems have led to substantial delays in delivering possession of properties and instances of financial mismanagement by developers.

In response to these persistent challenges, the judiciary has developed a mechanism known as the Reverse Corporate Insolvency Resolution Process (“Reverse CIRP”) with the aim to protect homebuyers by allowing financially viable developers (promoters) to retain control over stalled projects and complete them without undergoing the standard CIRP process. In this article, we will explore the concept of Reverse CIRP...

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IN-DEPTH ANALYSIS

Criminal Liability of Company Directors in Cheque Dishonour Cases During CIRP



Introduction

The management of a company operates under a delicate balance between its board of directors and its shareholders, who act as risk bearers. As an artificial legal person, a company relies on its board of directors to function effectively and in compliance with the law. Directors have a legal obligation to act in the best interests of the company. However, their liability – especially criminal liability – becomes complex in cases where a company undergoes insolvency resolution.

This article analyzes the legal framework governing the criminal liability of directors, particularly in cheque dishonour cases under the Negotiable Instruments Act, 1881 (NI Act), and examines how insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) impact such liability.

Interplay Between the NI Act and IBC

1. Criminal Liability Under Section 138 of the NI Act

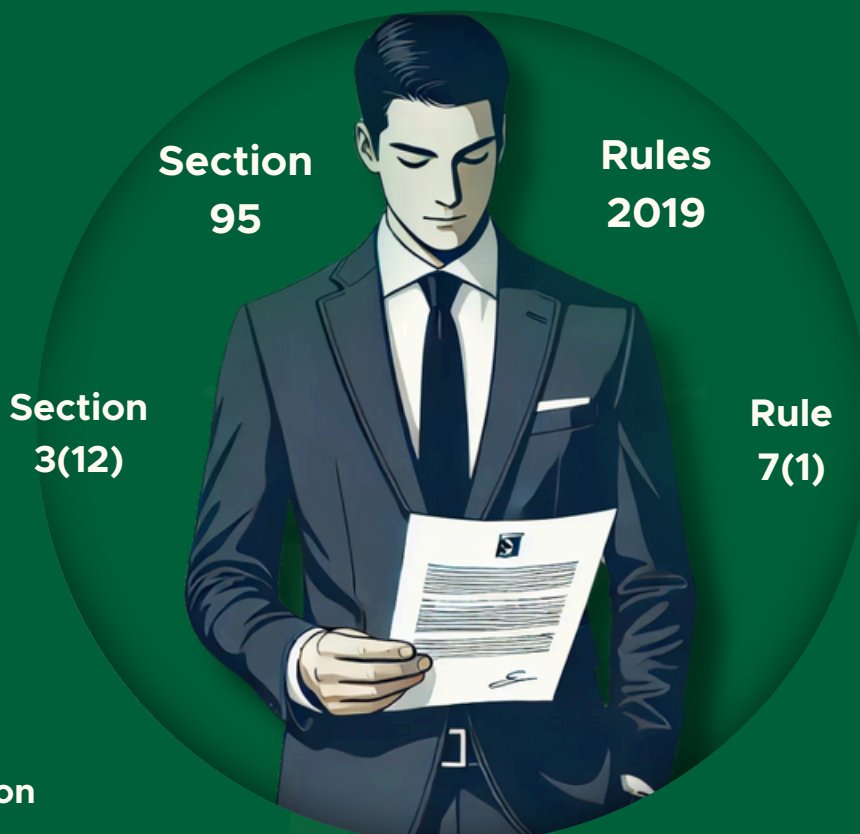
The dishonour of a cheque is a criminal offence under Section 138 of the NI Act. This provision seeks to prevent fraud and ensure financial accountability by imposing liability on individuals who issue cheques without sufficient funds. Section 141 of the NI Act extends this liability to directors and officers of a company who were in charge of...

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IN-DEPTH ANALYSIS

Can the Demand Notice under Rule 7 of Personal Guarantors Rules, 2019 substitute Invocation of Guarantee?



Introduction

On 28th February 2025, the National Company Law Appellate Tribunal (**NCLAT**) in the case of *State Bank of India v. Mr Deepak Kumar Singhania*, clarified that a statutory demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**Rules 2019**) does not amount to a valid invocation of the purpose of initiating resolution proceedings under **Section 95** of the Insolvency and Bankruptcy Code, 2016 (**IBC**). This ruling is a significant legal clarification concerning insolvency proceedings against personal guarantors. In light of the above judgment, this article discusses the ambiguity of whether a statutory demand notice under Rule 7(1) of the Rules 2019 can be treated as an invocation of guarantee.

Brief Facts

The State Bank of India ("Appellant") extended financial assistance to LML Limited (Corporate Debtor), for which Mr. Deepak Kumar Singhania (Respondent) executed a...

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IN-DEPTH ANALYSIS

How Will Mandatory CCI Approval Impact IBC Timelines Post Independent Sugar Corporation Judgment?

Introduction

On January 29th 2025, the Supreme Court introduced a critical regulatory checkpoint for acquisitions of distressed companies with the aim to further tighten the merger control safeguards in the evolving insolvency landscape. The case, Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Ors. has upended settled practices by mandating that Competition Commission of India (CCI) approvals be secured before presenting a resolution plan to the Committee of Creditors (COC).



In this article we will analyze this judgement, interpretation of Section 31(4) IBC and its key outcomes. We will also examine the commercial and procedural implications of such regulatory change in the context of procedure under the Competition Act and IBC.

Overview Of Case And Key Outcomes

In this article we will analyze this judgement, interpretation of Section 31(4) IBC and its key outcomes. We will also examine the commercial and procedural implications of such regulatory...

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CIRP



IN-DEPTH ANALYSIS

Examining the Legal Complexities of the Clean Slate Doctrine and its Implications for Post-approval Claims



Introduction

A significant challenge to the process of Corporate Insolvency Resolution Process (CIRP) is the tendency of claimants to continue enforcing claims post-approval of the resolution plan by the Committee of Creditors (CoC), which creates what the court called a hydra-headed litigation scenario.¹ The Supreme Court has time and again emphasised that such claims must be extinguished to ensure economic revival and certainty for the resolution plan.

Insolvency and Bankruptcy Code, 2016 (IBC) has provided for the binding nature of the approved resolution plan upon all stakeholders involved in the resolution plan under Section 31 IBC. It was in significant rulings by the Supreme Court in *Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta* and *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* that the 'clean slate doctrine' was established. This doctrine ensures that once CIRP is completed and a resolution plan is approved under Section 31(1) IBC, the corporate debtor is free from past liabilities and gets a fresh start. This was further clarified through the 2019 Amendment,⁴ which extended its scope to include Central and State governments as well as local authorities to whom...

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VITAL JUDGMENTS

Penalties U/S 65 Of IBC Can Be Imposed Against Those Who Fraudulently Initiate Insolvency Process: NCLAT

In **Rakesh Arora & Anr. V. Acute Daily Media Pvt. Ltd. & Ors. in Rockman Advertising & Marketing (India) Ltd. V. Acute Daily Media Pvt.**, the National Company Law Appellate Tribunal (NCLAT) addressed the central question of whether penalties under **Section 65** of the Insolvency and Bankruptcy Code (IBC) should have been directly imposed. The NCLAT's stance was that while the National Company Law Tribunal (NCLT) had indeed found that the Corporate Insolvency Resolution Process (CIRP) was initiated fraudulently, it acted correctly in not imposing penalties immediately. This determination rested on the NCLAT's interpretation of Section 65 of the IBC, which, being a penal provision, necessitates strict construction.

The tribunal emphasized that **Section 65** specifically refers to the "person who initiates" the insolvency resolution process. This was interpreted to mean financial creditors, corporate applicants, or operational creditors, as these are the entities empowered to initiate such processes. Consequently, the NCLAT reasoned that penalties under Section 65 can only be levied against those who initiated the process fraudulently or maliciously, and not against other parties potentially involved, such as promoters. Ultimately, the NCLAT upheld the NCLT's jurisdiction to determine the appropriate penalty, a decision to be made after considering the responses to the show-cause notice.

[View Judgment](#)



VITAL JUDGMENTS

Approved Resolution Plan Cannot Be Reopened For Belatedly Agitated Claims: NCLAT

The NCLAT in the case of **Shri Krishan V. H.S Oberoi Buildtech Private Ltd.** dismissed appeals filed by home buyers regarding a real estate project, "Earth Iconic," developed by Earth Infrastructure Ltd. (EIL). These home buyers had invested in the project but failed to file their claims within the prescribed timelines after EIL and Celestial Estate Pt. Ltd. (CEPL) underwent Corporate Insolvency Resolution Process (CIRP). The NCLAT's decision rested on the fact that the appellants filed their claims after an inordinate delay, despite the commencement of the CIRP. The tribunal reasoned that accepting such belated claims would unjustly subject the Successful Resolution Applicant (SRA) to the uncertainty of undecided claims.

Furthermore, the NCLAT dismissed the appellants reliance on a previous judgment, stating that the facts were different. The NCLAT also cited judgments stating that once a resolution plan is approved, claims not part of it are extinguished, and new claims cannot be imposed on the resolution applicant. Ultimately, the NCLAT concluded that the appellants failed to exercise due diligence in protecting their rights within the stipulated timelines.

[View Judgment](#)



verdict



VITAL JUDGMENTS

IBC Moratorium Does Not Bar Execution Of Penalties Imposed Under Consumer Protection Act : Supreme Court

In a case of **Saranga Anilkumar Aggarwal versus Bhavesh Dhirajlal Sheth & Ors.** concerning the interplay between the Insolvency & Bankruptcy Code (IBC) and the Consumer Protection Act (CP Act), the Supreme Court ruled that an interim moratorium under Section 96 of the IBC does not apply to penalty proceedings under **Section 27** of the CP Act. The Supreme Court clarified that **Section 79(15)** of the IBC excludes certain liabilities, including fines and penalties, from the moratorium's effect. Consequently, penalties imposed by Consumer Redressal Forums under regulatory statutes like the CP Act are not covered by the IBC moratorium.

The Court reasoned that penalties under the CP Act are regulatory and punitive, aimed at enforcing consumer protection laws, and do not constitute "debt" under the IBC. Allowing insolvency proceedings to shield against such penalties would contradict public policy and the legislative intent of the CP Act to protect consumer rights.

[View Judgment](#)



VITAL JUDGMENTS

Corporate Debtor Immune From Prosecution Under PMLA Post Approval Of Resolution Plan: Delhi High Court

The Delhi High Court in the case of **Bhushan Power & Steel Limited vs. Union of India & Anr.** addressed the conflict between the Insolvency and Bankruptcy Code (IBC) and the Prevention of Money Laundering Act (PMLA) in the case of Bhushan Power & Steel Limited (BPSL). BPSL underwent a successful resolution process under the IBC, with JSW Steel Ltd. as the resolution applicant. However, prior to the resolution, CBI and ED initiated investigations against BPSL and its former management for fraud and money laundering. The core issue was whether BPSL, having successfully completed the IBC resolution, could be prosecuted for offences committed before the Corporate Insolvency Resolution Process (CIRP) began. The ED argued that the ongoing challenge to the resolution plan in the Supreme Court warranted continued investigation, especially regarding the previous management's alleged money laundering.

The Delhi High Court, while applying **Section 32A(1)** of the IBC, determined that a corporate debtor, like Bhushan Power & Steel Limited (BPSL), which has undergone a successful resolution process under Section 31, is shielded from prosecution for offences predating the CIRP. While acknowledging the Enforcement Directorate's (ED) concerns about the pending Supreme Court appeal challenging the resolution plan, the court emphasized the statutory protection provided by the IBC to rehabilitated companies.

Consequently, the court quashed the ED's prosecution complaint against BPSL, though subject to the Supreme Court's final verdict, while clarifying that former officers remain liable and that BPSL's role in their alleged offenses, particularly under PMLA Section 70, will be examined during their trial.

[View Judgment](#)



VITAL JUDGMENTS

No S.138 NI Act Case Against Ex-Director Of Company When Cause Of Action Arose After IBC Moratorium Was Declared: Supreme Court

The Supreme Court in the case of **Vishnoo Mittal versus M/s Shakti Trading Company** clarified the liability of ex-directors in cheque dishonor cases under **Section 138** of the Negotiable Instruments Act (NI Act) when a moratorium IBC is in effect. In this case, the Court held that if the cause of action for cheque dishonor arises post-moratorium, the ex-director cannot be held liable. The Court distinguished this case from *P. Mohan Raj*, where the cause of action arose pre-moratorium. In this case, the cheque was dishonored before the moratorium, but the statutory demand notice, crucial for triggering Section 138 proceedings, was issued afterwards. Consequently, the cause of action accrued after the **Insolvency Resolution Professional (IRP)** took control, suspending the director's powers. The Court emphasized that the cause of action under Section 138 arises not upon cheque dishonor, but after 15 days from the demand notice, if the payment remains outstanding. Given that the demand notice was issued post-moratorium, the ex-director lacked the authority to discharge the debt, as the IRP managed the company's finances. The Court ruled that the High Court erred in not quashing the proceedings, as the ex-director could not be held accountable for actions outside his control due to the IBC's moratorium. This judgment underscores the importance of the timing of the demand notice in relation to the moratorium, demonstrating that the IBC's provisions can shield ex-directors from liabilities arising during the IRP's control.

[View Judgment](#)



VITAL JUDGMENTS

Demand Notice Issued U/S 13(2) Of SARFAESI Act Without Obligating Guarantor To Make Payment Is Not An Invocation Of Guarantee: NCLT Mumbai

In a case of **Bank Of Maharashtra Vs Mrs. Kavita Ninad Mestry**, the NCLT Mumbai ruled on the requirements for initiating insolvency proceedings against a personal guarantor. The bank had filed a **Section 95** application under the IBC against Mestry, who was a personal guarantor for a loan to M/s Autocrat Automotive Stamping Private Limited. The NCLT focused on whether the guarantee had been properly invoked, which is crucial for determining default by a personal guarantor. It held that neither a demand notice under **Rule 7(1) of the Personal Guarantors Rules, 2019**, nor a notice under **Section 13(2) of SARFAESI Act** constitutes a valid invocation of the guarantee.

Drawing upon the Supreme Court's decision in **Syndicate Bank Vs. Channaveerappa Belari**, the tribunal emphasized that a personal guarantor's liability arises only upon explicit demand by the financial creditor after the guarantee has been invoked. In this case, the NCLT found that the financial creditor's notices lacked the explicit invocation necessary to establish default by the personal guarantor. Consequently, the **Section 95** application was dismissed for not meeting the IBC's requirements. The ruling highlights the necessity of a clear and explicit invocation of the guarantee before initiating insolvency proceedings against a personal guarantor.

[View Judgment](#)



UPCOMING EVENTS

INSOL International - Lima Seminar

Date: 6th May 2025 (Tuesday)

Registration Deadline: 2nd May 2025

Mode: Offline

Registration Fee: Starts from £520

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Student-driven National Conclave on Insolvency and Bankruptcy Laws

Date : 12th – 13th April, 2025

Registration Deadline: 10th Apr. 2025

Duration: 14 Hours (Over two days)

Registration Fee : Starts from ₹700

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ICAI Organized Webinars

Emerging Jurisprudence - 4th April, Friday

Interface with Banking Laws & conducting COC meetings - 11th April, Friday

Mediation under IBC - 17th April, Thursday

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Pre- Registration Educational Course *Batch 67*

14th April 2025 to 20th April 2025

Registration Fees: INR 15000/- + 18% GST (INR 17,700)

Registration Deadline: : 11th April 2025; 5:00 PM

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