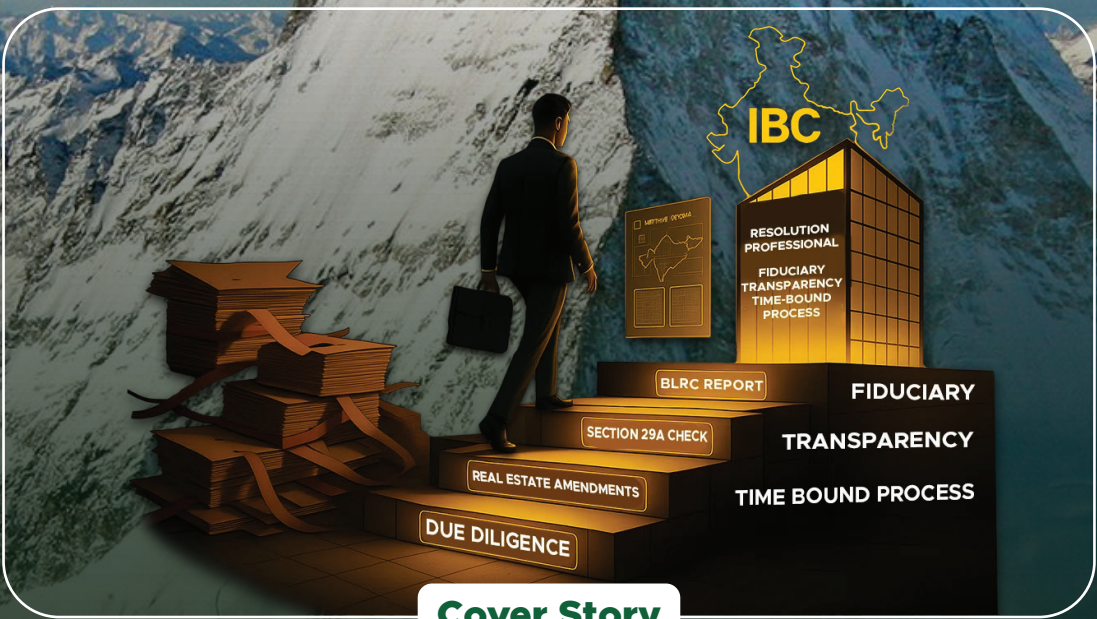




# IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS



Cover Story

## The Ever Evolving Role of Resolution Professionals under IBC 04

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KINGS & ALLIANCE LLP  
LAW FIRM

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# Editor's Note

***Evolution is the cornerstone of resilience*** — and this month's edition of IBC Insights examines how India's insolvency framework is continuously redefining roles, responsibilities, and remedies in response to emerging complexities.

Our cover story unpacks the **transformative journey of the Resolution Professional**—from a procedural overseer to a pivotal fiduciary navigating compliance, ethics, and creditor-debtor dynamics. As the backbone of CIRP, the RP now stands at the intersection of professional judgment and statutory responsibility, reshaping insolvency outcomes across sectors.

Elsewhere in this edition, we explore the growing call to embed **ESG principles into India's insolvency and restructuring fabric**, making sustainable development a serious variable in corporate recoveries. A key piece in this evolving puzzle is the **Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs**—an innovation that blends pre-negotiated outcomes with formal legal recognition, offering speed, certainty, and cost-efficiency.

We also spotlight the legal enigma of **group insolvency**, asking: when one entity fails, must all fall? The complexities of corporate webs challenge our legal frameworks, and this piece offers insight into the possible trajectories of Indian jurisprudence. Rounding off the edition is a timely **reflection on mediation's potential in insolvency**—a long-overdue complement to the IBC's litigation-heavy machinery, with its promise of swifter, less adversarial resolutions.

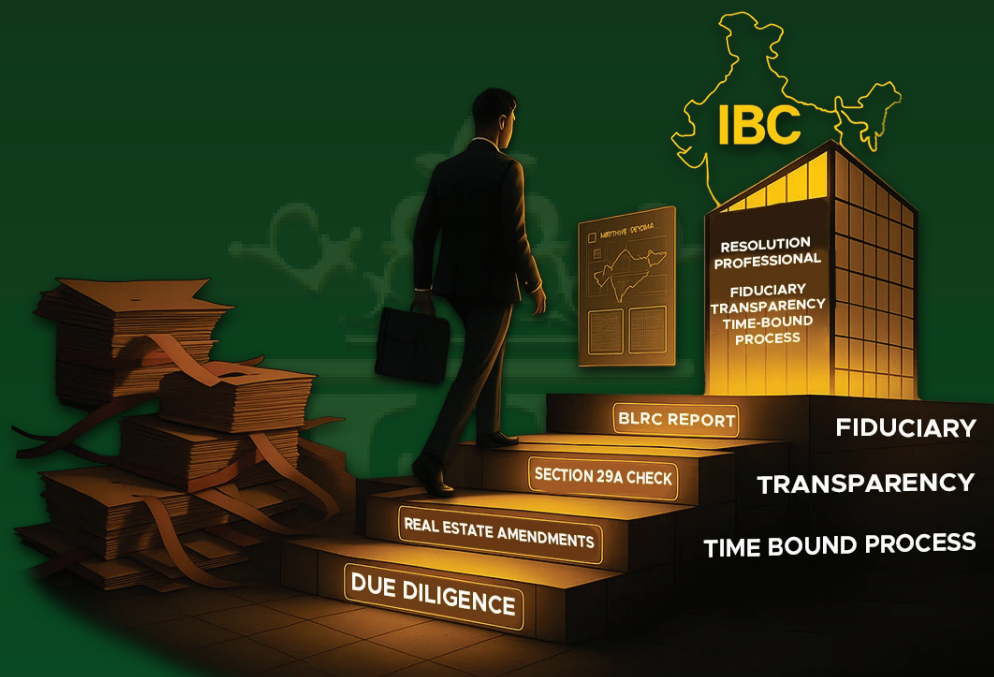
Whether it's reimagining the role of the professional, embedding sustainability, innovating for MSMEs, or questioning the status quo in multi-entity failures, this month's stories are bound by one common thread: India's insolvency regime is no longer static—it is strategic, and increasingly, systemic.

Join us as we decode its shifting contours.



# COVER STORY

## The Ever Evolving Role of Resolution Professionals under IBC



IBC has fundamentally reshaped India's corporate insolvency landscape to a time-bound, creditor-in-control, and market-driven process. At the core of this transformative framework stands the Resolution Professional (RP), an individual tasked with the monumental responsibility of steering a distressed corporate entity through the turbulent waters of the CIRP<sup>1</sup>. The role of the RP, once envisioned as primarily administrative, has undergone a significant evolution, shaped by a dynamic interplay of statutory amendments, regulatory refinements, and a series of landmark judicial pronouncements. Today, the RP is not merely a manager of the corporate debtor's affairs but a central fiduciary, a compliance officer, and a crucial link between the debtor, its creditors, and the adjudicating authorities. This evolution brings about a broader shift towards professional accountability and ethical governance under the legislation.

### From Bureaucratic Inertia to a Professional-Led Framework

Prior to IBC, India's insolvency regime was fragmented and plagued by institutional inefficiencies. The liquidation process under the Companies Act and the restructuring framework under the SICA<sup>2</sup> were largely managed by government-appointed officials like Official Liquidators and administrators from the Board for Industrial and Financial Reconstruction...



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# PIVOTAL ISSUES

## Integrating ESG into India's Insolvency and Restructuring Framework



**Environmental** - impact on the planet, **Social** - interaction with employees, customers, partners and the overall community, and **Governance** - corporate leadership standards (ESG) criteria have emerged at the forefront of corporate considerations globally, offering a robust framework to recalibrate business operations and investments. These collectively measure the sustainability and societal impact of an enterprise. These criteria are instrumental in discerning the future financial performance, encompassing both returns and risks, of companies.

The Global Sustainability Standards Board's GRI Sustainability Reporting Standards says that organisations, through their activities and business relationships, exert significant influence on the economy, environment, and people, thereby making either positive or negative contributions to sustainable development. This notion of sustainable development, famously defined as 'development which meets the needs of the present without compromising the ability of future generations to meet their own needs', serves as the bedrock for integrating ESG into corporate strategy.

Companies are increasingly recognising that their long-term operational purview extends beyond mere profit maximisation, encompassing contributions to broader societal and environmental welfare. Entities with strong ESG profiles are often associated with diminished risk and enhanced long-term profitability...



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# PIVOTAL ISSUES

## Pre-Packaged Insolvency Resolution Process for MSMEs: A Comprehensive Analysis of Evolution, Challenges, and the Path Forward



The MSME sector stands as a crucial pillar of economies worldwide, particularly in India, where it significantly contributes to economic growth, job creation, and fostering innovation. Recognising the inherent vulnerabilities of MSMEs, especially amidst economic downturns, insolvency frameworks globally have sought to adapt and provide efficient mechanisms for their revival. In India, a landmark reform in this direction has been the introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) under IBC.

The PPIRP is a distinctive hybrid insolvency framework engineered to deliver a swift, cost-effective, and efficient resolution for financially distressed MSMEs. Introduced in India through Chapter IIIA amendments to the IBC in April 2021, it combines the flexibility and economic advantages of informal, out-of-court negotiations with legal certainty in formal insolvency proceedings.

PPIRP differs fundamentally from the traditional CIRP. In a CIRP, the resolution plan is typically formulated through a formal bidding process. Conversely, under PPIRP, the resolution plan is substantially discussed and agreed upon by the involved parties even before an application is filed with the Adjudicating Authority for final approval.



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# PIVOTAL ISSUES

## When One Falls, Do All Fall? The Challenge of Group Insolvency in India



The corporate landscape often presents a complex web of interconnected entities, operating under a common umbrella yet maintaining distinct legal identities. But what happens when one or more threads of this web begin to fray, threatening the stability of the entire structure? How does the legal framework in India address the insolvency of such a group, where individual companies, despite their separate legal status, are deeply intertwined in their operations, finances, and ownership? This question of "group insolvency" has long been a point of discussion and judicial contemplation in India, particularly under IBC.

Consider, for instance, a hypothetical scenario where Mr. Y establishes a listed company to own and operate hospitals across the country. This company acts as a holding entity, deriving royalties from the hospitals for consultancy services. The hospital buildings themselves are owned by an unlisted, wholly-owned subsidiary that secures bank loans for construction. Further layers of complexity are added as construction is managed by other subsidiary companies, majority-owned by Mr. Y and his non-corporate associates, and daily hospital operations are serviced by promoter-owned non-corporate entities.



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# PIVOTAL ISSUES

## Is Mediation the Missing Piece in India's Insolvency Puzzle? A Look at Its Role in the IBC



Can alternative dispute resolution, specifically mediation, provide the much-needed impetus to India's corporate insolvency resolution process, especially in light of persistent delays and overburdened tribunals? This question is fundamental for the ongoing discourse surrounding the efficacy of IBC<sup>1</sup>. While the IBC has undeniably revolutionized India's approach to corporate insolvency, ushering in a creditor-focused regime with significantly improved recovery rates compared to previous statutes like SARFAESI Act, 2002, its journey has not been without hurdles. The ideal 330-day timeframe for CIRP<sup>2</sup>, as enshrined in the proviso to Section 12(3) IBC, often remains an elusive target. Factors ranging from the unprecedented challenges posed by the pandemic to the perennial issues of overburdened tribunals and the proliferation of litigation have collectively contributed to these unwelcome delays. Such protracted timelines not only undermine the very spirit of the IBC's time-bound framework but also exacerbate the distress faced by businesses and creditors alike.



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# SIGNIFICANT CASE LAWS

## NCLT Mumbai: Section 7 IBC Application Admissible Without NeSL Certificate If Loan Disbursal & Default Proven by Other Documents

In the significant ruling of **Canara Bank Versus M/S Syska E-Retails LLP**, the National Company Law Tribunal, Mumbai bench, comprising Justice V.G. Bisht (Retd.) and Prabhat Kumar, Technical Member, have clarified a crucial aspect regarding the admissibility of applications under Section 7 of the Insolvency and Bankruptcy Code, 2016. This judgment establishes that the absence of a National E-Governance Services Ltd certificate is not an absolute bar to admitting a financial creditor's application, provided that the essential elements of loan disbursal and default can be convincingly demonstrated through alternative documentary evidence. The NCLT emphasized that while a NeSL certificate serves as a robust piece of evidence, its non-availability does not negate the core requirement of proving the debt and its default. The tribunal's pragmatic approach ensures that genuine financial creditors are not unduly prejudiced by the lack of a specific digital certificate, as long as they can present other reliable and relevant documents that sufficiently establish the financial debt and the debtor's failure to repay it. This ruling reinforces the principle that the IBC aims to facilitate the resolution of insolvency by focusing on the substantive proof of financial default, rather than strictly adhering to a particular form of evidence. It broadens the scope for financial creditors to initiate insolvency proceedings, provided they possess a comprehensive set of documents, such as bank statements, loan agreements, ledger accounts, and correspondence, that unequivocally prove the loan disbursement and the subsequent default. This decision is expected to provide greater clarity and flexibility for financial creditors navigating the IBC framework.



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# SIGNIFICANT CASE LAWS

## Payment during CIRP application pendency is irrelevant for Section 4 IBC threshold: NCLAT.

The National Company Law Appellate Tribunal, Principal Bench, New Delhi, in the case of **Devika Resources Pvt. Ltd. v. MAA Manasha Devi Alloys Pvt. Ltd.**, has decisively ruled that any payment made by a corporate debtor during the pendency of a CIRP application cannot be considered when calculating the minimum threshold for default under Section 4 of the Insolvency and Bankruptcy Code, 2016. This landmark decision, rendered by the coram of Justice Rakesh Kumar Jain, Member-Judicial and Naresh Salecha, Member-Technical, allowed an appeal filed by the operational creditor, providing significant clarity on a crucial aspect of insolvency law. The core issue presented before the Tribunal was whether the threshold amount for triggering CIRP should be assessed at the time the application is filed or at the time it is admitted by the Adjudicating Authority. The NCLAT's pronouncement emphasizes that the 'date of default' for the purpose of initiating CIRP is paramount, and subsequent payments, even if they bring the outstanding amount below the statutory threshold, do not negate the original default. This ensures that a corporate debtor cannot escape the initiation of CIRP by making partial payments after the application has been filed but before its admission. The Tribunal's reasoning underscores the legislative intent behind Section 4, which aims to ascertain the existence of a default exceeding the specified amount at the time the application is presented. Any payment made after this point is seen as an attempt to circumvent the insolvency process, rather than a genuine rectification of the initial default. This ruling safeguards the rights of creditors by preventing debtors from strategically reducing their liability post-filing to avoid CIRP, thereby maintaining the integrity and effectiveness of the insolvency framework.



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# SIGNIFICANT CASE LAWS

## Undischarged Liabilities: NCLAT Holds Corporate Debtor Remains Liable if Debenture Deed Rights are Transferred Without Prior Holder Approval.

In the case of **Anil Biyani Suspended Director of Future Ideas Company Ltd. Versus Axis Trustee Services Ltd. & Anr.**, the NCLAT, New Delhi bench, comprising Justice Ashok Bhushan delivered a significant ruling concerning the transfer of rights under a debenture deed. The NCLAT emphatically held that any transfer of rights or liabilities stipulated in a debenture deed as requiring the prior approval of the Debenture Trustee is rendered unenforceable if such approval is not obtained. This principle underscores the sanctity of contractual obligations, particularly in financial instruments like debentures, where the interests of various stakeholders are intricately balanced. The judgment clarifies that merely executing an Acquisition Agreement does not automatically discharge the Corporate Debtor from its liabilities towards debenture holders if the foundational debenture deed's explicit conditions regarding transfer of rights have been violated. The Tribunal's decision reinforces the imperative for strict adherence to the terms and conditions outlined in debenture deeds, emphasizing that any deviation, especially concerning prior approvals for transfer of rights, will not absolve the Corporate Debtor of its financial obligations. This ruling serves as a crucial precedent, ensuring that corporate debtors cannot unilaterally divest themselves of responsibilities through agreements that circumvent the express provisions of their original financial covenants. It protects the interests of debenture holders by affirming that their claims remain valid unless the prescribed legal and contractual procedures for transferring or discharging liabilities are meticulously followed.



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# SIGNIFICANT CASE LAWS

## Subsequent Section 95 IBC Applications Barred When Proceedings Against Same Personal Guarantor Are Ongoing: NCLAT, Chennai

In **Indian Bank v. K.R. Tirumuruhan**, the National Company Law Appellate Tribunal, Chennai bench, comprising Justice Sharad Kumar Sharma delivered a significant ruling concerning applications under **Section 95** of the Insolvency and Bankruptcy Code. The NCLAT held that if proceedings under Section 95 of the IBC have already been initiated by one Financial Creditor against a Personal Guarantor, a subsequent application under the same provision by another creditor targeting the identical Personal Guarantor is explicitly barred by Section 96 of the Code. This decision clarifies the procedural landscape for creditors seeking to initiate insolvency proceedings against personal guarantors. The core of the ruling rests on the interpretation of Section 96, which mandates an interim moratorium once an application under Section 95 is filed. This moratorium, as interpreted by the NCLAT, is intended to prevent a multiplicity of proceedings and ensure an orderly resolution process. Allowing multiple Section 95 applications against the same guarantor would lead to chaos and frustrate the very purpose of the moratorium, which is to protect the guarantor from new legal actions and allow for a comprehensive assessment of their financial position. The NCLAT's judgment emphasizes the legislative intent behind the IBC, which prioritizes a streamlined and efficient insolvency resolution process. It prevents a scenario where a personal guarantor is subjected to multiple, simultaneous insolvency applications, which could create undue burden and complexity. This ruling provides much-needed clarity for both financial creditors and personal guarantors, establishing a 'first in time' principle for Section 95 applications. It ensures that once the machinery of the IBC is set in motion against a personal guarantor by one creditor, other creditors must await the outcome of the initial proceedings rather than initiating their own separate applications, thereby upholding the integrity and effectiveness of the insolvency framework.



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# SIGNIFICANT CASE LAWS

## Corporate Debtor Cannot Retract Prior Approval of Transaction: NCLT Delhi

In a significant ruling, as demonstrated in the case of **M/s Liberium Global Resources Private Limited V/s Amritsar MSW Limited**, the National Company Law Tribunal (NCLT) Delhi Bench, recently affirmed a fundamental principle of commercial dealings: a corporate debtor cannot subsequently disavow a transaction for which it had previously granted approval. This decision, arising from a Section 9 petition filed under the Insolvency & Bankruptcy Code, 2016, underscores the importance of consistency and the legal ramifications of a party's prior consent. The NCLT's ruling specifically highlighted that if a Corporate Debtor has assented to an amendment in a wage structure, it is stopped from denying that amendment at a later stage. This principle is crucial for maintaining the sanctity of agreements and ensuring predictability in business transactions, particularly within the framework of insolvency proceedings. The implication is that once a corporate entity has given its go-ahead, especially on matters directly impacting its financial obligations, it cannot later claim ignorance or object to the very terms it sanctioned. This prevents corporate debtors from using shifts in stance as a tactic to evade their liabilities or delay the resolution process under the Code. The judgment reinforces the legal premise that actions, once taken and approved, carry binding consequences. It establishes a clear precedent that prevents corporate debtors from unilaterally withdrawing their consent, thereby offering greater certainty to operational creditors and other stakeholders engaging with companies. This ruling aims to streamline the insolvency resolution process by reducing frivolous objections and ensuring that the focus remains on the genuine aspects of debt and default, rather than on a corporate debtor's attempts to backtrack on previously agreed-upon terms.



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# SIGNIFICANT CASE LAWS

## NCLT Delhi: Time Value of Money Essential for Interest-Free Debt to Constitute Financial Debt

In the significant case of **Sunil Chopra V/s CAPL Hotels & SPA Private Limited**, the National Company Law Tribunal (NCLT) Delhi Bench recently delivered a pivotal ruling regarding the nature of interest-free debt under the Insolvency and Bankruptcy Code, 2016. The Tribunal dismissed a petition filed under Section 7 of the Code, asserting that for a loan granted without any explicit interest to qualify as "financial debt," it must inherently involve a consideration for the time value of money. This pronouncement clarifies a crucial aspect of financial debt definition, ensuring that transactions masquerading as debt but lacking genuine commercial intent are not misused under the IBC framework. The NCLT's reasoning underscores the principle that any genuine financial debt, even in the absence of a stated interest rate, must account for the diminishing purchasing power of money over time. Without such an embedded consideration, the transaction lacks the fundamental characteristics of a commercial borrowing, where the lender expects a return on their investment beyond the mere principal repayment. This judgment effectively mandates that a mere advancement of funds, without any element reflecting the cost of capital or the economic benefit derived from its use over a period, cannot be unilaterally categorized as financial debt for the purpose of initiating insolvency proceedings. The decision aims to prevent the abuse of the IBC by classifying benevolent or non-commercial transactions as financial debt, thereby upholding the true spirit and intent of the Code, which is to address genuine financial distress arising from commercial obligations. The ruling therefore serves as a vital precedent, guiding future interpretations of "financial debt" and emphasizing the economic realities that must underpin such classifications.



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# SIGNIFICANT CASE LAWS

## NCLT Delhi: Financial Debt Can Be Established Without Formal Written Agreement

In a significant ruling, the NCLT Delhi Bench, comprising Shri Mahendra Khandelwal, Judicial Member and Shri Atul Chaturvedi, Technical Member, in the case of **Fashion Suitings Pvt. Ltd. vs. Shriya Overseas Private Limited**, has unequivocally held that the mere absence of a formal written loan agreement does not automatically negate the existence of a financial debt. This decision underscores a pragmatic approach to identifying financial obligations, emphasizing the substance over the strict form of documentation. The Tribunal clarified that while a formal agreement is often preferred, it is not an indispensable prerequisite for proving a financial debt under Section 5(8) of the Insolvency & Bankruptcy Code, 2016. Instead, the NCLT highlighted the crucial role of circumstantial and documentary evidence in establishing such a debt. The ruling specifically pointed to various forms of documentary evidence that can collectively serve to prove the existence of a financial debt, even without a standalone loan agreement. These include, but are not limited to, tax filings such as Form 26AS, which provides a consolidated statement of tax deducted at source. Furthermore, evidence of Tax Deducted at Source deductions themselves, regardless of whether a formal agreement explicitly mandates them, can strongly indicate a financial transaction. Ledger entries, meticulously maintained by parties involved, also serve as critical proof of monetary transactions and outstanding balances. Financial statements, which are audited and prepared in accordance with accounting principles, provide a comprehensive overview of a company's financial position and can clearly reflect outstanding debts. Finally, written acknowledgments of debt, even if informal in nature, can provide strong corroborative evidence. This ruling by the NCLT Delhi Bench provides much-needed clarity, ensuring that genuine financial creditors are not prejudiced by mere technicalities in documentation, thereby upholding the spirit and intent of the IBC.



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# REGULATORY UPDATES

## India's ESG Debt Framework: Paving the Way for a Credible Sustainable Future

SEBI Framework for ESG Debt Securities defines 3 categories of Bonds in the circular.

- Social Bonds
- Sustainability Bonds
- Sustainability-Linked Bonds



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## SEBI's Game-Changing Move: Streamlining Co-Investments in Unlisted Securities

SEBI has simplified co-investments in unlisted securities through a new framework for AIFs

- SEBI streamlines co-investments
- Boosts capital for unlisted firms
- Easier and more transparent



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# KEY TAKEAWAYS

## Data from regulator Insolvency and Bankruptcy Board of India

- In Fiscal Year 2025, only ₹71,322 crore, which is one-tenth of the amount involved in 'avoidance transactions' disposed of by tribunals, was recovered.
- Overall, just 12% of the ₹165,650 crore worth of voidable deals, executed by promoters and management of 368 companies where tribunals have given their verdict, were recovered, according to the IBBI.
- According to IBBI's estimates, a decision on avoidance transactions by tribunals would conservatively add at least 10% to the recovery for creditors.
- Only deals made within two years before the insolvency process can be reviewed.
- Till the end of March 2025, close to 1,200 bankrupt enterprises have been restructured under the Insolvency and Bankruptcy Code (IBC).
- Creditors of these restructured companies recovered ₹3.89 trillion, which is about one-third of their admitted claims.



# TRAINING AND EVENTS

## 1. INSOL India Seminar Hyderabad 2025

**Date:** July 19, 2025

**Venue:** Centre of Excellence, ICAI, Hyderabad

**Organized by:** INSOL India in collaboration with Insolvency Valuation Standards Board, ICAI



## 2. IBC Conclave on 30th Aug 2025

**Date:** August 30, 2025

**Venue:** Hotel Taj Bengal, Kolkata

**Organized by:** Insolvency & Valuation Standards Board, ICAI



## 3. International Conference on Insolvency and Bankruptcy Law: Challenges and Opportunities

**Date:** September 6-7, 2025

**Venue:** Rajiv Gandhi National University of Law (RGNUL), Punjab

**Organized by:** Insolvency and Bankruptcy Law Division of the Centre for Business Laws and Taxation, RGNUL



## 4. 4th International Research Conference on Insolvency and Bankruptcy

**Date:** September 28-29, 2025

**Venue:** Indian School of Business, Hyderabad (in-person)

**Organized by:** Insolvency and Bankruptcy Board of India (IBBI) & Indian School of Business (ISB), Hyderabad





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help businesses succeed in these dynamic sectors.

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