

IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS

ISSUE 01 AUG. 2025

COVER STORY

**Evolving Landscape of
Avoidance Transactions
under IBC in Light of July
2025 Amendment** 04

PIVOTAL ISSUES

- » Need for Tapping Potential of Insolvency & Bankruptcy Fund under IBC 05
- » How Do Creditor-in-Control and Debtor-in-Possession Models Balance Recovery and Creditor Rights Under IBC, 2016? 06
- » Post-Dated Cheques and IBC Moratorium: NCLAT Clarifies Law in Sunil Gutte 07
- » Broadening Horizons for "Financial Creditor" under IBC: A Deep Dive into China Development Bank v. Doha Bank Q.P.S.C. & Ors. 08

SIGNIFICANT CASE LAWS

09

TRAINING & EVENTS

16

REGULATORY UPDATES

17



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Adaptation

is not merely a response to change, this edition of **IBC Insights** reflects how India's insolvency regime sharpens its legal tools, refines institutional responses, and rethinks normative boundaries. Our cover story examines the evolving contours of **avoidance transactions** under the IBC, with the **July 2025 amendment** spotlighting pre-insolvency dealings that erode creditor value. Enhanced disclosure norms in the Information Memorandum could mark a new phase of transparency and deterrence.

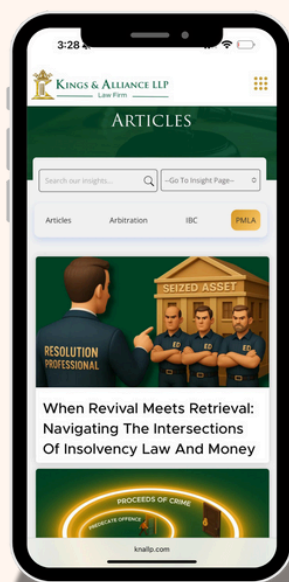
We also explore the **Insolvency and Bankruptcy Fund**, a provision that could become a financial anchor for insolvency professionals during interim financing gaps and cost defaults.

From theory to structure, another article dissects the **Creditor-in-Control vs. Debtor-in-Possession** models, questioning whether hybrid systems can better protect distressed firms and lenders.

This month's issue also covers *Sunil Gutte v. Avil Menezes*, where NCLAT held that Section 14's moratorium renders **post-dated cheques** largely unenforceable, and the Supreme Court ruling in **China Development Bank v. Doha Bank**, which broadens the notion of a financial creditor.

Whether regulatory, financial, procedural, or doctrinal, the message is clear: insolvency law in India is anticipatory, nuanced, and vital to commercial integrity.

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COVER STORY

04 Evolving Landscape of Avoidance Transactions under IBC in Light of July 2025 Amendment



PIVOTAL ISSUES

05 Need for Tapping Potential of Insolvency & Bankruptcy Fund under IBC



PIVOTAL ISSUES

06 How Do Creditor-in-Control and Debtor-in-Possession Models Balance Recovery and Creditor Rights Under IBC, 2016?



PIVOTAL ISSUES

07 Post-Dated Cheques and IBC Moratorium: NCLAT Clarifies Law in Sunil Gutte



PIVOTAL ISSUES

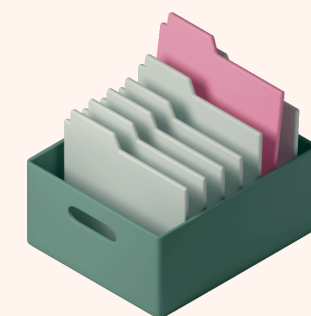
08 Broadening Horizons for "Financial Creditor" under IBC: A Deep Dive into China Development Bank v. Doha Bank Q.P.S.C. & Ors.



SIGNIFICANT CASE LAWS

09

- Satish Chander Verma v. Grand Reality Pvt. Ltd. & Ors
- Premium Transmission Pvt. Ltd. v. Utech Engineering Works (India) Pvt. Ltd.
- Janaseva Sahakari Bank Limited v. Ravindra P. Birole
- Dhruv Harjai v. PPG Asian Paints Pvt. Ltd. & Ors.
- Basil Enterprise v. Sebacic India Limited
- Innovators Cleantech Private Limited Versus Pasari Multi Projects Private Limited
- Hari Om Dixit v. Ajit Srivastava & Ors.



TRAINING & EVENTS

16 A close watch on insolvency related trainings, seminars and events across the globe.



REGULATORY UPDATES

17 Revised CSR-1 Form and Amended CIRP Regulations



COVER STORY

Evolving Landscape of Avoidance Transactions under IBC in Light of July 2025 Amendment

XYZ CORP.

UNDISCLOSED
AVOIDANCE
TRANSACTIONS

2025
IBBI
AMENDMENT

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The interplay of legislative amendments and judicial interpretations will continue to shape the landscape of avoidance transactions

The Insolvency and Bankruptcy Code, 2016, has consistently evolved to address practical challenges and strengthen its objectives of value maximisation and timely resolution. A critical facet of this evolution lies in the treatment of "avoidance transactions," which are pre-insolvency dealings designed to unfairly benefit certain parties at the expense of the corporate debtor's overall financial health and, consequently, its creditors.

The latest amendment to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, specifically concerning the disclosure of avoidance transactions in the Information Memorandum (IM), marks a significant step towards greater transparency and improved creditor outcomes. Avoidance transactions, often referred to as "PUFE transactions," are a set of dealings that the Resolution Professional (RP) or Liquidator can seek to annul or reverse before the Adjudicating Authority. These are enshrined in Chapters III and VI of the IBC and include: Preferential Transactions (Section 43): These occur when the corporate debtor, during a "look-back period" (two years for related parties, one year for others), transfers property or provides a benefit to a creditor, surety, or guarantor, putting...



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PAGE 4



PIVOTAL ISSUES

Need for Tapping Potential of Insolvency & Bankruptcy Fund under IBC



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current design of Section 224 does not adequately incentivise contributions, as contributions are largely voluntary and utilisation is limited

Imagine a dispute brewing for years, discussions stretching into endless negotiations, and then, suddenly, one party decides to invoke arbitration. How long do they have? Can they wait indefinitely, hoping for a miracle resolution, or does the law, like a diligent timekeeper, step in to ensure disputes don't fester forever? This very question lies at the heart of the "law of limitation" in India, a legal principle beautifully encapsulated by the Latin maxim: “vigilantibus non dormientibus jura subveniunt” – the law assists the vigilant, not those who sleep over their rights.

This principle, enshrined in the Limitation Act of 1963, acts as a guardian, preventing parties from being subjected to an indefinite period of liability. Just as there are different deadlines for filing your taxes or renewing your passport, various legal actions have prescribed periods within which they must be initiated. While the Limitation Act provides a general framework, special laws often carve out their own specific timelines, and Arbitration Act is a prime example of legislation striving for faster dispute resolution.

Yet, despite the Arbitration Act's emphasis on speed, a curious gap has persisted...



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PAGE 5



PIVOTAL ISSUES

How Do Creditor-in-Control and Debtor-in-Possession Models Balance Recovery and Creditor Rights Under IBC, 2016?



The IBC's impact on behavioural change among lenders and borrowers in India is undeniable



In the realm of civil litigation, the existence of an arbitration clause in an agreement often presents a critical juncture, raising questions about a court's jurisdiction and the proper course of dispute resolution. While arbitration is a preferred mode for many commercial disputes, its invocation typically requires a formal application by the parties. It is against this backdrop that the Delhi High Court, in a significant judgement in *DIN Dayal Agrawal HUF Versus Capriso Finance Ltd.*, delivered by Justice Ravinder Dudeja, recently clarified the circumstances under which a plaint may be rejected under Order VII Rule 11(d) of CPC, when an arbitration agreement is present.

The court held that a court must refer parties to arbitration if a proper application is filed under Section 8 of the Arbitration and Conciliation Act, 1996, and may consequently reject the plaint as barred by law. However, crucially, the Court stipulated that the mere existence of an arbitration clause, without such an application or a prayer for reference to arbitration, is insufficient grounds for rejecting a plaint under Order VII Rule 11 CPC. This pronouncement arose from a petition filed under Article 227 of the Constitution of India, challenging an order of...



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PAGE 6



PIVOTAL ISSUES

Post-Dated Cheques and IBC Moratorium: NCLAT Clarifies Law in Sunil Gutte



it is true that the cheque dates back to the date of handover but it cannot be encashed after the moratorium starts



In the intricate landscape of contract law and dispute resolution, a recurring challenge arises: when do the terms of an original agreement, particularly an arbitration clause, continue to bind parties through subsequent contracts or even after the initial agreement's natural conclusion? This fundamental question often dictates whether a dispute lands before a court or an arbitral tribunal, profoundly impacting the trajectory of legal proceedings.

It is against this backdrop that the Calcutta High Court, through the astute observations of Justice Shampa Sarkar, recently provided a significant clarification in *Bimla Devi Jaiswal Vs. M/S. Indus Towers Limited*. In allowing an application for the appointment of an arbitrator, the Court unequivocally held that critical preliminary issues—such as the misjoinder or non-joinder of parties, and whether an arbitration clause from a principal agreement has been validly incorporated by reference into a subsequent agreement between successors-in-interest—fall squarely within the exclusive domain of the arbitral tribunal itself.

The heart of the matter revolved around a dispute concerning a mobile tower...



PAGE 7

PIVOTAL ISSUES

Broadening Horizons for "Financial Creditor" under IBC: A Deep Dive into China Development Bank v. Doha Bank Q.P.S.C. & Ors.

China Development Bank
v.
Doha Bank Q.P.S.C. & Ors.



A consortium of banks including China Development Bank, could be classified as "Financial Creditors" within the meaning of Section 5(7) of the IBC

In a significant judgement in *Raheja Developers Limited Versus Ahluwalia Contractors India Ltd.*, concerning the procedural landscape of arbitration in India, the Delhi High Court, through the discerning bench of Justice Manoj Kumar Ohri, recently articulated a pivotal principle regarding the scope of Section 34 petitions under the A&C Act. This decision delves into the intricate balance between procedural adherence and substantive justice, particularly when it comes to challenging arbitral awards. Can an omission in the initial challenge be rectified later, especially if it strikes at the very heart of the tribunal's authority?

The Court decisively held that an omission to plead a ground of challenge in the original Section 34 petition, specifically concerning non-adherence to the mandatory procedure of Section 29A of the A&C Act, would not divest the Section 34 Court of its jurisdiction to scrutinize such a critical defect. This ruling underscores a crucial carve-out, aligning with the exceptions delineated by the Supreme Court in the landmark case of *State of Maharashtra v. Hindustan Construction*.

This article will delve into a detailed analysis of the rationale behind this judgment,...



PAGE 8

SIGNIFICANT CASE LAWS

NCLAT Affirms Reverse CIRP and Closes Insolvency Proceedings: A Homebuyer-Centric Resolution.

In the case of *Satish Chander Verma v. Grand Reality Pvt. Ltd. & Ors* in which Satish Chander Verma filed an appeal against Grand Reality Pvt. Ltd., a real estate company, seeking to reverse the ongoing Corporate Insolvency Resolution Process (CIRP) in a more effective way, considering the interests of homebuyers. During the pendency of the appeal, PAX Homes LLP, a third-party developer, filed an application to intervene and offer to complete the stalled construction project. The NCLAT allowed a court-monitored "reverse CIRP" to enable the developer to proceed with the construction so that possession of homes could be handed over to buyers.

This approach helped protect the interests of stakeholders without a complete overhaul of the resolution process. The project was successfully completed, and occupation certificates were issued in May 2024. A Local Commissioner appointed by the Tribunal confirmed that the construction was complete and possessions were ready to be given. The Supreme Court of India directed the NCLAT to conclude the proceedings quickly, as all parties were in agreement and only the Resolution Professional (RP) was causing delays.

The Supreme Court emphasized that the matter was essentially resolved and there was no reason for continued delay. The NCLAT relied on previous rulings in similar cases and the Supreme Court's decision in *GLAS Trust Company LLC v. BYJU Raveendran*, which allows for closure of CIRP using inherent powers of the Tribunal when all claims are settled and there are no other creditors involved. The Tribunal held that requiring a formal Section 12A application would be unnecessary in such situations. Ultimately, the NCLAT closed the CIRP, discharged the Resolution Professional, and set aside the earlier NCLT order. Even contempt applications pending in the case were disposed of, as the appellant chose not to pursue them further.



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PAGE 9



SIGNIFICANT CASE LAWS

Accountability of Successful Resolution Applicant Reinforced: Liquidation Ordered in Utech Engineering Insolvency

The case concerns a petition filed by Premium Transmission Pvt. Ltd. against Utech Engineering Works (India) Pvt. Ltd., leading to CIRP in June 2019. A Resolution Plan was later submitted by Mr. Ravindra P. Birole, the Successful Resolution Applicant (SRA), and was approved by the National Company Law Tribunal (NCLT). The approved resolution plan provided for scheduled payments to creditors and CIRP cost. However, the SRA failed to fulfil several important obligations under the plan. These included failure to pay the full CIRP cost of ₹67,04,255 on time, delayed or missed instalment payments to creditors, and failure to pay interest on Working Capital Term Loan (WCTL) and Funded Interest Term Loan (FITL) accounts. Despite being repeatedly reminded by the Monitoring Committee, the SRA did not comply with the terms of the resolution plan. As a result, Janaseva Sahakari Bank Ltd., the secured financial creditor, filed an application under Section 33(3) read with Section 60(5) of the Insolvency and Bankruptcy Code (IBC), 2016, seeking liquidation of the corporate debtor due to contravention of the resolution plan.

The NCLT found substance in the application. It referred to Section 33(4) of the IBC, which mandates liquidation if the terms of an approved resolution plan are not followed. The Tribunal also relied on important judgments of the Supreme Court, especially in the cases of *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta* and *Kalyani Transco v. Bhushan Power and Steel Ltd.*, which held that once a resolution plan is approved, any failure in its implementation must necessarily lead to liquidation, and no undue relaxation should be given to the defaulting party. Accordingly, the NCLT ordered the liquidation of Utech Engineering Works (India) Pvt. Ltd. and appointed Mr. Rajesh S. Shah as the Liquidator. It also directed that the moratorium under Section 14 would end, and a new moratorium would commence under Section 33(5). All powers of the Board of Directors, Key Managerial Personnel (KMPs), and other officers were transferred to the Liquidator. The Liquidator was instructed to carry out the process as per Chapter III of Part II of the IBC and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The order also clarified that liquidation is a legal consequence of non-compliance with an approved resolution plan. This reflects the judiciary's firm approach towards ensuring that resolution applicants fulfil their commitments and do not treat the insolvency resolution process lightly.



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SIGNIFICANT CASE LAWS

NCLT Upholds Strict Enforcement of IBC: Liquidation Ordered in Janaseva Sahakari Bank Case

The case of Janaseva Sahakari Bank Limited Versus Ravindra P. Birole revolves around the Corporate Insolvency Resolution Process (CIRP) initiated against Utech Engineering Works (India) Pvt. Ltd., following a Section 9 application filed by Premium Transmission Pvt. Ltd., an operational creditor.

The CIRP began in June 2019, and Ms. Neelima Bhate was appointed as the Resolution Professional. Mr. Ravindra P. Birole submitted a Resolution Plan as the Successful Resolution Applicant (SRA), which was approved by the NCLT Mumbai Bench on 11 February 2022. The plan outlined specific payment obligations to various stakeholders, including financial creditors, operational creditors, statutory authorities, and CIRP costs. However, the SRA failed to meet multiple obligations under the approved resolution plan, leading Janaseva Sahakari Bank Ltd., the sole secured financial creditor, to file an application under Section 33(3) read with Section 60(5) of the IBC, seeking liquidation of the corporate debtor due to contravention of the resolution plan. The SRA argued that the corporate debtor had been non-operational since 2018, affecting its business, credibility, and ability to execute the plan.

The NCLT observed that the SRA had indeed failed to comply with the key terms of the approved resolution plan, especially concerning the financial creditor's dues. The Tribunal emphasized that any person prejudiced by the breach of the plan can seek liquidation, and if the plan is contravened, the Tribunal must order liquidation. The NCLT allowed the application for liquidation under Section 33(4) of the IBC, and Mr. Rajesh S. Shah was appointed as the Liquidator under Section 34. The Liquidator was directed to proceed as per the Liquidation Process Regulations, with powers vested in him under Sections 35 to 54 of the IBC. The Tribunal clarified that liquidation was a mandatory consequence of non-compliance with the resolution plan and stressed that the resolution process cannot be treated lightly.



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PAGE 11



SIGNIFICANT CASE LAWS

Financial Agreement Beyond Supply Obligations Triggers CIRP: Legal Classification Clarified in Harjai Case

In the case of Dhruv Harjai V. PPG Asian Paints Pvt. Ltd. & Ors., a suspended director of Sidhi Vinayak Vehicles Pvt. Ltd., challenged the National Company Law Tribunal (NCLT)'s order on 08.12.2022. The NCLT admitted an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by PPG Asian Paints Pvt. Ltd. for a default of ₹42,35,000 and appointed Rajan Sharma as the Interim Resolution Professional (IRP). The corporate debtor, engaged in automotive sales and servicing, entered into a Bodyshop Agreement dated 21.03.2018 with the financial creditor. PPG provided a financial contribution of ₹35 lakhs for the purchase of painting equipment and promotional activities, in return, the CD committed to procure products worth ₹1 crore over four years. A promissory note of ₹35 lakhs with 12% annual interest was executed to secure this. The CD defaulted on the commitment to purchase products, resulting in the alleged breach of contract. PPG Asian Paints filed an application under Section 7 of the IBC, asserting that the default occurred on 01.04.2019.

The NCLT admitted the application, holding that there existed a financial debt and default, as the corporate debtor had acknowledged dues in a legal notice but failed to repay. The suspended director contested the maintainability of the application, arguing that the transaction pertained to the supply of goods and services, and thus the alleged debt should be categorized as an operational debt under Section 5(21) of the IBC. The NCLAT referred to the Supreme Court's judgment in Global Credit Capital Ltd. v. Sach Marketing Pvt. Ltd., which clarified that the real nature of the transaction must be assessed when classifying debt. The appellate tribunal dismissed the appeal on 15 July 2025, reaffirming the principles that the nature of the transaction must determine the classification of debt. Financial support with interest liability, even if linked to commercial activity, constitutes financial debt. CIRP under Section 7 is maintainable in such cases. No costs were imposed, and all connected applications were disposed off.



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PAGE 12



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SIGNIFICANT CASE LAWS

Contentious CoC Constitution and Related Party Claims Stall CIRP: NCLT Guidance in Basil Enterprise Case

In the case of Basil Enterprise V/s Sebacic India Limited, Basil Enterprise instituted a petition against Sebacic India Limited, a corporate debtor, under Section 9 of the Insolvency and Bankruptcy Code, 2016. The case was admitted by NCLT on 15 May 2024, and Mr. Manish Kumar Bhagat was appointed as the Interim Resolution Professional (IRP) to administer the Corporate Insolvency Resolution Process (CIRP). Though, several issues arose concerning the constitution of the Committee of Creditors (CoC), such as fights over some creditors' categorization as related parties and a logjam in appointing the Resolution Professional (RP) under Section 22 of IBC.

A major issue concerned Sterling Auxiliaries Pvt. Ltd., who professed to be a financial creditor on the basis of a bridge loan of ₹16.73 crore extended to the corporate debtor to enable it to pay an One-Time Settlement (OTS) to State Bank of India. Tushar Patel, the erstwhile director and shareholder, questioned the validity of the loan, stating that it was a fictitious transaction aimed at carrying out a hostile takeover of Sebacic India Ltd. He argued that Sterling could be treated as a related party rather than a true financial creditor. Silver Auxiliaries requested the deletion of a few other money creditors from the CoC because they were claimed to be related parties under Section 5(24) of the IBC. The IRP formed the CoC on the basis of money claims and shareholding registers as of the date of CIRP admission (15 May 2024).

The resolution did not proceed due to the failure to achieve the 66% under Section 22(2) of the IBC. The Tribunal found that these disputes were intricate and needed further determination of facts. It directed parties to move to the correct forum or raise the disputes through legally allowed means for resolution. The IRP was asked to proceed with the CIRP and see to it that the process continues to be fair, transparent, and in accordance with the IBC.



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PAGE 13



SIGNIFICANT CASE LAWS

Operational Creditor's Claim Rejected Amid Real Disputes: A Section 9 Bar Clarified in Cleantech Case

In the case of *Innovators Cleantech Private Limited Versus Pasari Multi Projects Private Limited*, Innovators Cleantech Pvt. Ltd., an operational creditor, aggrieved against the National Company Law Tribunal (NCLT) dismissal of a Section 9 application in relation to pre-existing disputes.

The appellant had availed a contract with Pasari Multi Projects Pvt. Ltd. for facade and design-build works in a commercial and hotel building project titled "Bio wonder." A Letter of Intent (LoI) was given in 2015 for about ₹10.68 crore. The operational creditor had filed a number of Running Account Bills (RABs), one of them being RAB-19 worth ₹4.91 crore, which were not paid. The operational creditor had issued a demand notice under Section 8 of the IBC, which was withdrawn and modified for ₹4.75 crore.

To this, the corporate debtor returned a notice of dispute on 03.05.2019, citing existing disagreements and noting that the civil suit had already been initiated on 16.04.2019 prior to the issuance of the second demand notice. On this basis, the NCLT dismissed the Section 9 application, holding that a pre-existing dispute existed. The appellant contends that the initial demand notice, though withdrawn, preceded the issue of the civil suit and must be used as the relevant date in determining pre-existing disputes.

But NCLAT upheld NCLT's decision, holding that the second notice of demand was itself termed as a "fresh demand notice" by the appellant and had materially different information regarding date of default, amount, and last invoice. The tribunal also took the cue from the Supreme Court's decision in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, where it was stated that if there exists any real dispute prior to the receipt of the demand notice, then the application under Section 9 should be dismissed.



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PAGE 14



SIGNIFICANT CASE LAWS

Strict Enforcement of IBC Amendment Invalidates Admitted CIRP

The case of Hari Om Dixit Versus Ajit Srivastava & Ors. concerns the National Company Law Tribunal (NCLT) in New Delhi, which accepted a Section 7 application by homebuyers to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s Gayatri Hospitality and Realcon Ltd. The IBC was revised in 2020, incorporating a threshold requirement for real estate allottees. The amendment also provided a third proviso that where an application under Section 7 was made prior to the amendment but yet to be admitted, the applicants were required to reframe the application within 30 days of the date of the amendment to meet the threshold. The NCLT admitted such applications and held that upon impleadment, the threshold was satisfied, and the debt and default were established. But Hari Om Dixit, suspended director of the Corporate Debtor, filed an appeal on the grounds that the application was not amended within the 30-day period after amendment, delayed impleadment applications could not rectify the original defect, numerous added allottees cancelled bookings or adjusted claims, and overwhelming majority of true homebuyers were against the CIRP and favored completion of the project or refund under settlement.

The NCLAT considered the statutory timeline of the third proviso and held that the applicants did not amend the Section 7 application within the requisite 30 days from 28.12.2019 or from the Supreme Court judgment dated 19.01.2021. The first impleadment application was submitted way after the time. Thus, the application was deemed to have been withdrawn, and the order passed by the NCLT admitting the CIRP was declared to be invalid. In view of the repeated complaints of homebuyers, the Tribunal directed a settlement offer made voluntarily by the suspended director, viz., offering refunds to exiting allottees and reinstating cancelled allotments for others. The NCLAT interfered in the order passed by the NCLT admitting the CIRP, considered the Section 7 application as withdrawn, and ordered the corporate debtor to abide by the terms of the settlement pertaining to refunds and possession. Both the Appeals are disposed with appropriately.



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PAGE 15



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REGULATORY UPDATES

India Fortifies CSR Compliance: MCA Unveils Revised CSR-1 Form and Stricter Guidelines

In a pivotal move to elevate accountability and transparency within corporate social responsibility initiatives, the Ministry of Corporate Affairs issued a notification, vide no. G.S.R. 452(E), on July 7, 2025. This notification introduces critical amendments to the CSR framework under the Companies Act, 2013. These revised regulations, officially termed as Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025, and slated to become effective on July 14, 2025. A central element of this update is the...

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IBBI Amends CIRP Regulations: Enhancing Transparency in Insolvency Proceedings

The IBBI has recently enacted significant amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) via Press Release No.IBBI/2025-26/GN/REG128. These changes, effective July 4, 2025, primarily aim to improve the disclosure and treatment of avoidance transactions, as well as fraudulent or wrongful trading, throughout the CIRP. The amendments, introduced as the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025, are...

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EXPOSITORS

Adv. Khushboo Saraf
Adv. Archana Shukla
Dilraj Singh (*intern*)

LEADERSHIP



MOHIT CHAUDHARY

FOUNDER AND MANAGING PARTNER

Former AAG for State of J&K at Supreme Court of India

Advocate on Record, Supreme Court of India



+91 98106 63997



mohit@knallp.com



mohitchaudhary2020@gmail.com



KUNAL SACHDEVA

PARTNER



+91 99536 55270



kunal@knallp.com



kunalsachdeva826@gmail.com



PUJA CHAUDHARY

PARTNER



+91 98106 22198



puja@knallp.com



kunalsachdeva826@gmail.com



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 info@knallp.com

 www.knallp.com



Kings & Alliance LLP

wa.me/919819815818

WhatsApp Business Account



LOCATIONS

CORPORATE OFFICE

13 Ring Road, Lajpat Nagar IV,
New Delhi - 110024

CHAMBER

511, Ad. Complex, Supreme Court
of India, New Delhi - 110001

IPR OFFICE

T 518, Sector 99, Supreme Tower,
Noida, Uttar Pradesh - 201303

INSIGHT DIVISION

62/6, Channi Himmat
(Green Belt), Jammu - 180015



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Corporate Office - 13 Ring Road, Lajpat Nagar IV, New Delhi - 110024

Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001

 +91 981 981 5818
 INFO@KNALLP.COM
 WWW.KNALLP.COM