

# IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS



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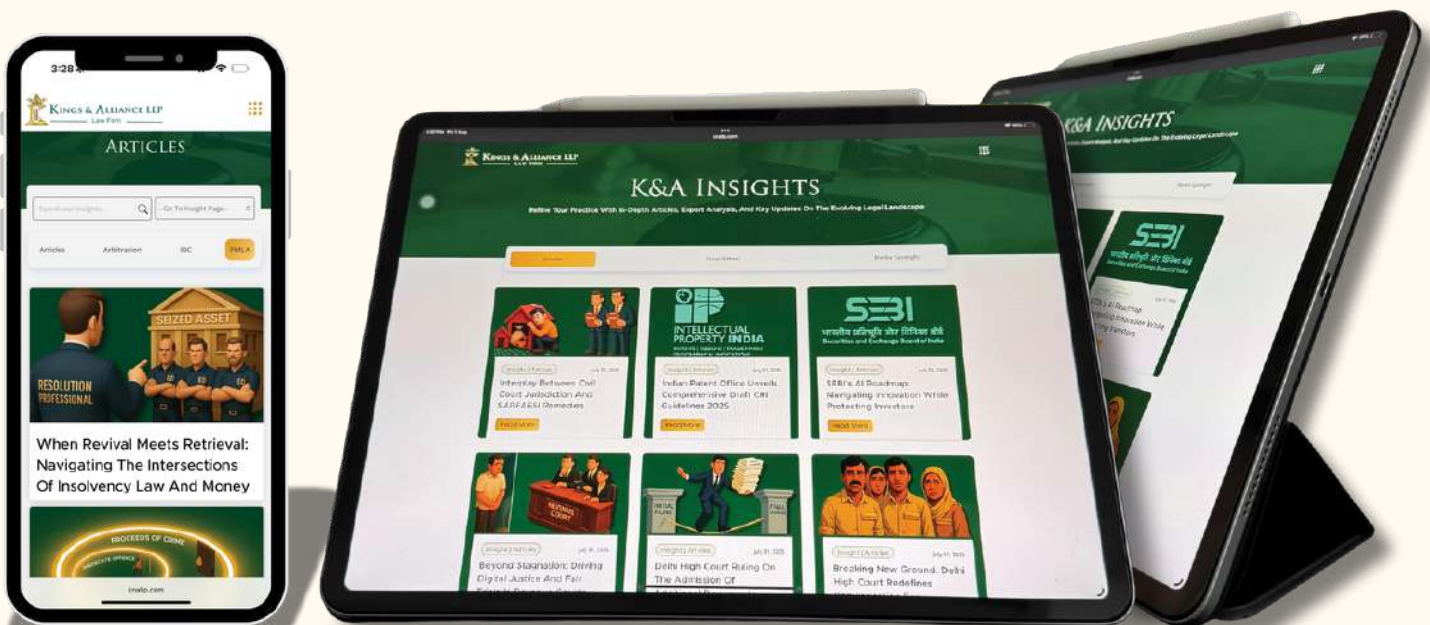


***From shadows to daylight***, lies at the heart of our cover story this month. Our analysis delves into the critical challenge of preventing unscrupulous promoters from regaining control through indirect means. This legal evolution is not just a procedural fix; it's a fundamental step toward preventing a "backdoor entry" for disqualified individuals and upholding the very purpose of the Code. The growing focus on piercing the veil ensures that the "clean slate" principle benefits the company and its creditors, not its wrongdoers.

This edition also brings you up to speed on other pivotal developments across the insolvency landscape. We highlight the NCLT's ruling that a pre-existing contractual right to set-off is not extinguished by the moratorium and also examine a landmark decision affirming the supremacy of the Committee of Creditors (CoC). Our analysis further explores how personal guarantor liability can survive a resolution plan. We also cover significant judgments that set a precedent against "double-dipping," and also feature rulings that the NCLT is not the appropriate forum for adjudicating on uncrystallized claims for damages or allowing the set-off of pre-CIRP tax dues against post-CIRP refunds.

Finally, we look at recent regulatory updates that signal the future of bankruptcy in India. Under the proposed IBC 2.0 framework, the government aims to introduce a Creditor-Initiated Insolvency Resolution Process (CIIRP) to expedite insolvency applications and a robust framework for group insolvency to handle complex, interconnected corporate structures. We've also included a list of key upcoming training and events to keep you ahead of the curve, including the 4th International Research Conference on Insolvency and Bankruptcy organized by the IBBI.

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## COVER STORY 04

From Loophole to Law: Piercing the Veil of Beneficial Ownership in India's Insolvency Law



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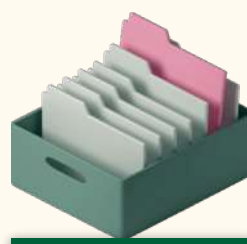
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- Nandini Choudhary Versus Canara Bank and Ors.
- Dream Warrior Pictures Vs Reliance Entertainment Studios Pvt. Ltd.
- Punjab National Bank Versus Unijules Life Sciences Limited



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# COVER STORY

## From Loophole to Law: Piercing the Veil of Beneficial Ownership in India's Insolvency Law



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*take out the corporate debtor from the clutches of those who brought it to insolvency.*

In India IBC was enacted to streamline the resolution of corporate insolvency in a time-bound manner, fostering a new era of business restructuring. At its core, the IBC seeks to balance the interests of all stakeholders, primarily creditors, while providing a "clean slate" for distressed assets. However, a critical challenge has persisted since its inception: how to prevent unscrupulous promoters and related parties, who caused the corporate debtor's downfall, from regaining control through indirect means? This is where the concept of beneficial ownership has emerged as a cornerstone of the IBC's integrity.

The IBC's framework, particularly through the Corporate Insolvency Resolution Process (CIRP), is designed to attract genuine, eligible resolution applicants. But what happens when the applicant isn't who they seem to be? Early on, it became evident that some individuals were using complex ownership structures—shell companies, cross-border entities, and layered trusts—to hide their true identity. The ultimate beneficial owner—the natural person who truly owns, controls, or benefits from the company—remained hidden. This practice allowed disqualified promoters to make a backdoor entry, essentially buying back their own company at a significant discount and undermining the very purpose of the Code. This wasn't merely a procedural loophole; it was a fundamental threat to the fairness and credibility of the entire insolvency process.

The judiciary, in its role as the ultimate guardian of the law's intent, has consistently and ...



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# PIVOTAL ISSUES

## The Nuanced Doctrine of Set-off in Insolvency: A Legal Analysis of the Bharti Airtel Precedent



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*where a right to set-off exists based on a contract predating the CIRP, is a simple matter of respecting pre-existing agreements*

The intricate tapestry of insolvency law, woven with the threads of creditor rights and the collective objective of resolution, presents a constant challenge of interpretation and application. One such critical knot lies at the intersection of a pre-existing contractual right to set-off and the statutory moratorium imposed by Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). This tension was at the heart of a recent application filed before the National Company Law Tribunal (NCLT), New Delhi Bench.

The Hon'ble Bench, comprising Shri Bachu Venkat Balaram Das (Member Judicial) and Shri Atul Chaturvedi (Member Technical), navigated this complex legal landscape with a nuanced and well-reasoned judgment. They held that the right to set-off, when arising from transactions entered into prior to the commencement of the CIRP, is not extinguished by the moratorium. The Tribunal's decision, therefore, is a powerful reminder that Section 14, while a potent tool for preserving the corporate debtor's value, does not operate in a vacuum. It must be read in a manner that respects pre-existing legal rights and commercial realities.

The intricate tapestry of insolvency law, woven with the threads of creditor rights and the collective objective of resolution, presents a constant challenge of interpretation and application. One such critical knot lies at the intersection of a pre-existing contractual right to set-off and the statutory moratorium imposed by Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). This tension was at the heart of a recent application filed ....



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# PIVOTAL ISSUES

## Redefining Fairness: The Evolution of Creditor Hierarchy in India's Insolvency and Bankruptcy Code



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*A case of a flawed plan, or simply the harsh reality of the Insolvency and IBC*

In the complex arena of corporate insolvency, where the fate of a failing company hangs in the balance, a crucial and often contentious question arises: how are the interests of different creditors balanced? Is a bank, which provided a large loan, more important than a small business that supplied goods or services? The recent pronouncement by the NCLAT in New Delhi offers a decisive answer, underscoring the supremacy of the CoC in the resolution process. The NCLAT, in a landmark ruling, held that an Adjudicating Authority (NCLT) cannot interfere with a resolution plan approved by a CoC with a 100% voting majority, even if the plan provides no payment to operational creditors, as long as their claims have been properly dealt with.

This judgment emerged from three appeals filed by operational creditors against an NCLT order that approved a resolution plan, which became the focal point of a legal battle. The central question before the tribunal was whether the approved resolution plan, which provided zero payment to the operational creditors, was legally sound. Was this a case of a flawed plan, or simply the harsh reality of the Insolvency and Bankruptcy Code (IBC)?

The appellants, the operational creditors, entered the legal fray with a passionate plea for equity, arguing that the resolution plan did not adequately consider their claims. Their counsel contended that the Adjudicating Authority had committed a grave error by approving a plan that effectively ignored them. They emphasized that operational...



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# PIVOTAL ISSUES

## Personal Guarantor Liability After Resolution Plans: Analysing Section 7 IBC and the Doctrine of Excluded Rights



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*resolution of debts cannot be misconstrued as full satisfaction of debts payable to the creditors*

When a company defaults on its loans, a common question arises: what happens to the individuals who guaranteed those loans? In the complex world of corporate finance, a personal guarantee is a promise made by a person, often a director or promoter of the company, to be personally liable for the company's debt if it fails to pay. Imagine a situation where a small business owner takes out a loan for their company, and to secure it, they personally promise to pay the bank back if the business goes under. This promise, this personal guarantee, is a critical safety net for the lender. But what happens to this promise when the company enters the IBC process, and a resolution plan is approved? Does the approval of the plan, which restructures the company's debt, also wipe away the personal liability of the guarantor?

This very question lies at the heart of a significant judgement in *M/s IFCI Limited VERSUS M/s ACCIL Hospitality Private Limited* by the National Company Law Tribunal (NCLT), New Delhi Bench, presided over by Shri Manni Sankariah Shanmuga Sundaram (Hon'ble Member Judicial) and Shri Atul Chaturvedi (Hon'ble Member Technical). This decision, a pivotal one for creditors, clarifies that even after a resolution plan is approved for a corporate debtor, financial creditors can still proceed against personal guarantors as long as their rights under the guarantee are explicitly preserved. This nuanced stance challenges the notion that a clean slate for the company automatically means a clean slate for its guarantors. It's a powerful reminder that promises made aren't easily forgotten, even in the labyrinthine ...



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# PIVOTAL ISSUES

## Resolution Professionals as 'Public Servants': A Judicial Conundrum



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*RP's function is more "administrative" and "purely recommendatory"*

In a significant ruling that adds a new dimension to corporate insolvency law, the Madras High Court recently directed the IBBI to consider granting sanction for the prosecution of a RP. The case involves serious allegations of mismanagement of a company's funds during the resolution process, and the core of the court's decision hinges on a crucial question: is a Resolution Professional a 'public servant' under the PC Act?

This question has created a judicial split, with different High Courts holding opposing views. The recent Madras High Court judgment, delivered by Justice Bharatha Chakravarthy, unequivocally states that a Resolution Professional qualifies as a public servant. This conclusion was based on the court's interpretation of key sections from the PC Act's definition of a public servant.

Section 2(c)(v): This part of the Act defines a public servant as "any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court." The Madras High Court reasoned that an RP, appointed by the National Company Law Tribunal (NCLT)—which functions as a court of justice for corporate matters—falls squarely within this category.

Section 2(c)(vi): This section includes "any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent...



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# SIGNIFICANT CASE LAWS

## NCLAT: Illegal Debt Assignment Nullifies Assignee's Right to File Section 7 IBC Application

In *Rajesh Vilasrao Patil Versus Savannah Lifestyle Pvt. Ltd. & Anr.*, the National Company Law Appellate Tribunal (NCLAT) held that if the assignment of a debt is found to be illegal and unauthorized, the applicant cannot claim the status of a financial creditor under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016. This finding effectively nullified the basis for filing an application under the said section, leading the NCLAT to allow the appeal and set aside the NCLT's order that had previously admitted the application. The decision emphasized that a financial creditor's status, which is a prerequisite for initiating a Section 7 application, cannot be established through an unlawful transaction.

The core issue was whether Respondent No. 1, Savannah Lifestyle Pvt. Ltd. & Anr., was a legitimate financial creditor of the Corporate Debtor, thereby having the right to file an application under Section 7 of the IBC. The appellant argued that the assignment of debt from a cooperative bank to Respondent No. 1 was illegal and had been subsequently recalled by the Bombay High Court, stripping Respondent No. 1 of any standing. In contrast, Respondent No. 1 contended that the payment it made to the bank constituted a financial debt on behalf of the Corporate Debtor, entitling it to be considered a financial creditor.

The Tribunal's rationale was based on the Bombay High Court's ruling, which had declared the debt transfer and subsequent compromise between the cooperative bank and Respondent No. 1 as unlawful. The court had also recalled its prior order approving the compromise. Consequently, the NCLAT concluded that the very foundation of the Section 7 application—Respondent No. 1's claim as a financial creditor—was "knocked out." The NCLAT also noted that the payment made by Respondent No. 1 was to protect its possession of club premises, not a disbursement to the Corporate Debtor in a commercial transaction, further solidifying its stance that Respondent No. 1 was not a financial creditor and could not file the application.



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# SIGNIFICANT CASE LAWS

## NCLAT: Rescheduling Payments Doesn't Nullify Original Loan Repayment Obligations

The National Company Law Appellate Tribunal (NCLAT) in *Vikram Bhavanishankar Sharma, Member of the Suspended Board of Directors of Supreme Panvel Indapur Tollways Pvt. Ltd. Versus State Bank of India & Anr.* has ruled that a mere rescheduling of a loan's repayment schedule does not amount to a novation of the original agreement. The tribunal held that an application under Section 7 of the Insolvency and Bankruptcy Code (IBC) can still be filed based on the original Common Loan Agreement, as the core repayment obligations of the debtor remain intact. This decision clarifies that altering payment dates without fundamentally changing the nature of the debt does not extinguish the lender's right to initiate insolvency proceedings under the original terms.

The central issue in the appeal was whether a subsequent Tripartite Agreement dated November 9, 2016, had novated the original Common Loan Agreement, thereby invalidating the State Bank of India's (SBI) Section 7 application. The appellant argued that the new agreement superseded the old one and changed the repayment priority, while the respondent countered that the agreement only provided a revised repayment mechanism and that the corporate debtor's interest liability continued. The respondent also pointed to the appellant's repeated offers of One Time Settlement (OTS) as an acknowledgment of the debt.

The NCLAT's reasoning was rooted in a careful analysis of the Tripartite Agreement's clauses. The tribunal found that the agreement did not extinguish the corporate debtor's liability under the Common Loan Agreement. Instead, it merely rescheduled the repayment dates and outlined a "waterfall mechanism" for payments. The NCLAT also considered the appellant's multiple OTS proposals, which served as evidence that the debt and the underlying obligation to repay it continued to exist even after the new agreement was executed. Therefore, the tribunal concluded that the default was valid and the appeal was dismissed.



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# SIGNIFICANT CASE LAWS

## NCLAT: RP's Failure to Individually Notify Homebuyers Vitiates IBC Proceedings

In the case of *Bharti Goyal and Anr. Versus Hector Realty Venture Pvt. Ltd. and Ors.*, the National Company Law Appellate Tribunal (NCLAT) held that a Resolution Professional's failure to individually notify homebuyers about insolvency proceedings, especially during the Covid-19 pandemic, is a violation of Regulation 6A of the CIRP Regulations, 2016, and vitiates the entire process. The NCLAT held that an order allowing the withdrawal of the Corporate Insolvency Resolution Process (CIRP) can be recalled if it was obtained through fraud and without the mandatory 90% approval of the Committee of Creditors (CoC). This decision underscores the judiciary's role in protecting the rights of all creditors, particularly vulnerable ones like homebuyers, and ensuring the procedural integrity of the IBC.

The central issue before the NCLAT was whether the NCLT was wrong in rejecting an application to recall an order that allowed the withdrawal of CIRP. The appellants, who were homebuyers, argued that the withdrawal order was fraudulent and should be set aside. They contended that they were not properly informed of the insolvency proceedings and that the withdrawal was secured without the required CoC approval. Conversely, the respondents claimed that the appellants lacked the standing to challenge the withdrawal order because they had not filed claims or participated in the initial proceedings.

The Tribunal's rationale was multifaceted. First, it noted that newspaper notices were an inadequate method for informing creditors during the pandemic, and the RP had a duty to use all available records to contact creditors individually. It also emphasized that the failure to inform homebuyers, who are often dispersed and lack legal expertise, violated the "spirit of the IBC." Secondly, the NCLAT found that the withdrawal application was fraudulent because it falsely claimed the CoC had not been constituted and was approved without the mandatory 90% vote required under Section 12A of the IBC. The tribunal considered this a fundamental breach of a substantive legal protection, warranting the recall of the order to prevent the selective settlement of dues.





# SIGNIFICANT CASE LAWS

## NCLAT: Investors Can't Claim Funds Under Both Settlement and Resolution Plan

In *Shobhana Thakkar Versus Monitoring Committee of Ashiana Landcraft Realty Pvt. Ltd. and Ors.*, the National Company Law Appellate Tribunal (NCLAT) held that an investor who has already received payment through a settlement agreement and has given an unconditional undertaking to waive all claims under the Resolution Plan is barred from seeking further recovery under that plan. The tribunal emphasized that seeking a dual recovery from both the settlement and the resolution plan is impermissible. This decision establishes a clear precedent against double-dipping, reinforcing the principle that parties must choose one avenue of recovery if the terms of their agreements are mutually exclusive.

The core issue in this appeal was whether the appellants, who were investors in the Corporate Debtor, could claim additional amounts and shares under an approved Resolution Plan, even after they had already received money under a separate settlement agreement. The appellants argued that they were entitled to the full amount specified in the plan, while the respondents contended that the appellants had already received more than their due under the plan via the settlement agreement and had also given an undertaking to forgo all further claims.

The NCLAT's rationale was straightforward. It noted that the appellants' claim for a "dual recovery" was fundamentally flawed. The Tribunal found that the investors had been presented with a clear choice: either accept the terms of the settlement agreement and waive their rights under the Resolution Plan or forfeit the settlement and claim under the Resolution Plan. By accepting the settlement and giving an unconditional undertaking, the appellants had effectively forfeited their right to seek further recovery. The NCLAT also rejected the appellants' argument that they were not properly represented in the Committee of Creditors (CoC) because they had not raised any objections to the plan at the appropriate time.



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# SIGNIFICANT CASE LAWS

## NCLAT: Premature to Hear Arguments on Merits if Litigant Hasn't Filed Reply to RP Report

In the case of *Nandini Choudhary Versus Canara Bank and Ors.*, the National Company Law Appellate Tribunal (NCLAT) ruled that it is unjust to require a litigant to argue on the merits of a case when they haven't had the opportunity to file a reply to the Resolution Professional's report. The Tribunal found that if a litigant has a valid and "sufficiently explained" reason for not filing a reply—like the concurrent illness of a spouse in a joint case—then an ex-parte order is premature and unjustified. This ruling emphasizes the importance of providing a fair chance to present one's case, even in the fast-paced context of insolvency proceedings.

The central issue was whether the National Company Law Tribunal (NCLT) was justified in rejecting the appellant's application to recall two ex-parte orders. The appellant argued that her non-appearance and failure to file a reply were due to her husband's illness, and this was not properly considered by the NCLT. The respondent, however, contended that the appellant had been given ample opportunity to file her reply but had failed to do so and was not present in court on the specified date.

The NCLAT's rationale was based on the principle of natural justice. The tribunal noted that the appellant's and her husband's cases were being heard together and that the NCLT had acknowledged the husband's illness in his petition but failed to recognize the same in the wife's case. The NCLAT found that the reason for her non-appearance and delay in filing a reply—the husband's illness—was a valid and sufficient cause. The tribunal concluded that since she had not even been able to file her reply to the Resolution Professional's report, it was premature and unjustified to require her to argue on the merits of the case.



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# SIGNIFICANT CASE LAWS

## NCLT: Claims Arising from Copyright and Contract Disputes are Not "Operational Debt" Under IBC

The National Company Law Tribunal (NCLT), Mumbai Bench in Dream Warrior Pictures Vs Reliance Entertainment Studios Pvt. Ltd. has held that it is not the appropriate forum to adjudicate on matters involving copyright violations, contract termination, or uncrystallized claims for damages. The Tribunal clarified that such disputes, which do not constitute a clear "operational debt" under the Insolvency and Bankruptcy Code (IBC), must be pursued before a competent legal forum with the necessary jurisdiction. This ruling reinforces the principle that the NCLT's role under the IBC is limited to insolvency resolution and not to resolving general contractual or intellectual property disputes.

The core issue was whether the applicant's claim for payment, following the termination of a "Remake Rights Agreement" due to an alleged copyright violation, constituted a valid "operational debt" under Section 9 of the IBC. The applicant argued that the debt exceeded the statutory threshold and the failure to issue an invoice was not a bar to payment. The respondent, however, contended that the claim was for uncrystallized damages for breach of contract, which does not fall under the definition of an operational debt, and that the agreement specifically required an invoice as a pre-condition for payment.

The Tribunal's rationale was that once the agreement was terminated and the rights reverted to the applicant, the consideration for those rights ceased to be payable. The claim therefore transformed from a debt into an uncrystallized claim for damages, which requires adjudication by a different forum. The NCLT distinguished the present case from precedents where damages could be quantified from the contract itself. It concluded that because the debt was not yet crystallized, was disputed, and arose from a copyright/contract termination dispute, the NCLT lacked the jurisdiction to admit the Section 9 application.





# SIGNIFICANT CASE LAWS

## NCLT Mumbai: No Set-Off of Pre-CIRP Tax Dues Against Post-CIRP Refunds

The National Company Law Tribunal (NCLT), Mumbai Bench, in the case of Punjab National Bank V/S Unijules Life Sciences Limited, held that pre-Corporate Insolvency Resolution Process (CIRP) tax dues cannot be adjusted against post-CIRP tax refunds. The Tribunal's ruling is based on the principle that the moratorium imposed under the Insolvency and Bankruptcy Code (IBC) prevents such a set-off unless there is a pre-existing contractual agreement allowing for it. Since no such agreement existed, the adjustment of the pre-CIRP tax dues against the post-CIRP refund was deemed illegal and against the provisions of the IBC.

The central issue was whether the Income Tax Department's action of adjusting a pre-CIRP tax liability against a post-CIRP tax refund was permissible under the IBC. The Resolution Professional filed an application to have this adjustment declared illegal. The Tribunal examined the nature of the tax dues and refunds to determine if they fell under any recognized exceptions to the general rule that prevents such set-offs during CIRP.

The NCLT's rationale was based on the Supreme Court's precedent in the Bharti Airtel Ltd. case, which clarified that a set-off during CIRP is only permissible if it arises from a pre-existing contractual provision or a clear, undisputed equitable set-off from the same transaction. In the present case, the Tribunal found that neither exception applied. There was no prior contractual agreement for a set-off, and the pre-CIRP tax dues and post-CIRP tax refunds were related to different assessment years, meaning they did not arise from the same transaction. Therefore, the Income Tax Authority was directed to release the adjusted amount.



[VIEW JUDGEMENT](#)



# REGULATORY UPDATE:

## IBC 2.0: The Future of Bankruptcy in India



India's Finance Minister Nirmala Sitharaman has introduced The Insolvency And Bankruptcy Code (Amendment) Bill, 2025, a pivotal legislative measure aimed at significantly overhauling the Insolvency and Bankruptcy Code (IBC), 2016. This bill introduces a series of transformative changes designed to expedite insolvency proceedings, maximise asset value, and align India's framework with global best practices. The proposed amendments focus on three key areas: a new creditor-initiated resolution process, streamlining the admission of insolvency applications, and establishing a robust framework for group and cross-border insolvency.

**Creditor Initiated Insolvency Resolution:** One of the most significant changes is the introduction of a creditor-initiated insolvency resolution process (CIIRP). This new mechanism allows select financial institutions to bypass the traditional court-based process and initiate insolvency proceedings outside of court. This is a game-changer, designed to tackle delays and preserve the value of distressed assets. Under CIIRP, a corporate debtor continues to manage the company, but with crucial oversight from a resolution professional who has veto powers and attends board meetings.

The process includes a 30-day window for the corporate debtor to raise objections. If a resolution plan is not reached within 150 days or is rejected, the adjudicating...



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# TRAINING AND EVENTS

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Organised by: Insolvency and Bankruptcy Board of India (IBBI)



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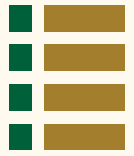


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