IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS

JAN' 2026

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Editor's Note

Precision in process, clarity in law, we begin with our cover story on the NCLAT's ruling in **Sumer Radius Realty,** which establishes that collective mandates cannot override the IBC's requirement for explicit, individual consent from every homebuyer.

From consent requirements we move to this month's Pivotal Issues examining the **non-negotiable nature of EMD forfeiture** despite judicial delays, the **stringent requirements for locus standi in fraud claims,** and **the high threshold for "unclean hands"** in corporate deadlocks. We also analyse the **"Race to the Sale Certificate,"** clarifying that ownership only transfers upon issuance, potentially freezing bank auctions under the IBC.

The newsletter concluded with our Regulatory Update on **IBC 2.0,** detailing the 2025 reforms aimed at mandatory admission timelines and strengthened creditor oversight to revolutionise the Indian insolvency landscape.

Let's dive in.

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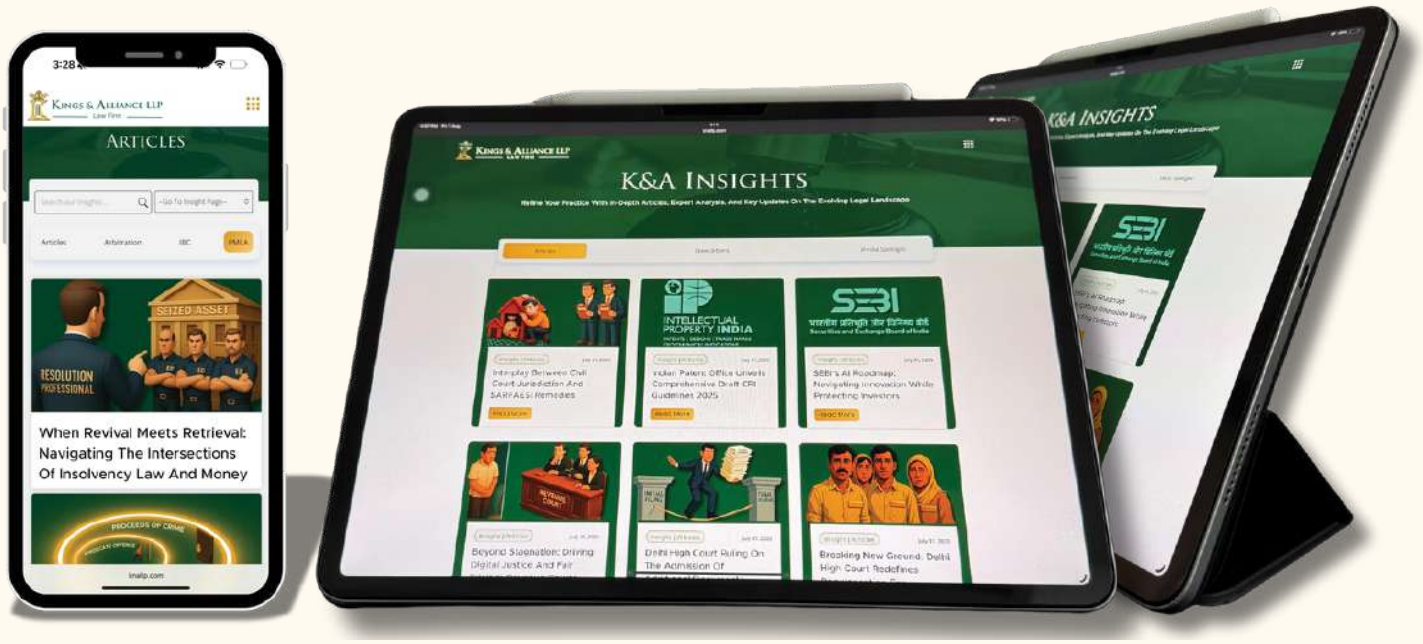

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COVER STORY

Consent Before Claim: Why a Society's Mandate Is Not Enough in the IBC Arena

> *Any authorisation has to be by all the members on whose behalf the application is claimed to be filed*

When a body of individuals, each holding a legitimate financial stake in a failing corporation, chooses to consolidate their strength by delegating authority to a registered society for legal action, the question arises: Does the efficiency of the collective supersede the explicit rights of the individual under law? The NCLAT, Delhi in Sumer Radius Realty Pvt. Ltd. Versus Avenue 54 Welfare Association, has unequivocally answered this, ruling that the initiation of an insolvency application by a homebuyers' society under the IBC must be anchored by explicit, individual authorisation from every single homebuyer.

This crucial pronouncement by a bench of Chairperson Justice Ashok Bhushan and Technical Member Barun Mitra clarified that a mere resolution passed by the society's core committee is insufficient to meet the statutory requirement. The underlying issue arose when the Avenue 54 Welfare Association, representing 98 homebuyers, filed a Section 7 application against developers Sumer Radius Realty Private Limited and Sumer Buildcorp Private Limited. The Appellate Tribunal affirmed that while a financial creditor may act through an authorised person, "Any authorisation has to be by all the members on whose behalf the application is claimed to be filed," thereby directing the society to obtain individual affidavits from all 98 members. This ruling fundamentally examines the foundational principle upon which this pronouncement rests. The article delves into a profound analysis of the delicate balance between the practical demands of group action and the supreme legal requirement of uncompromised individual assent in the eyes of the...

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PIVOTAL ISSUES

Judicial Restraint is No Excuse: NCLAT Upholds EMD Forfeiture for Payment Default in IBC Auction

> *In IBC auctions, EMD forfeiture is a statutory consequence of default, overriding the contractual provisions of Section 74*

The specter of insolvency casts a long shadow over commercial transactions, making the rules governing the liquidation process a matter of paramount importance for all stakeholders. The NCLAT, Principal Bench, New Delhi, delivered a decisive judgment in the matter of Deepika Bhugra Prasad, Liquidator, M/s Ess Dee Aluminium Ltd. v. Lucky Holdings Pvt. Ltd.. This pivotal ruling, authored by Indevar Pandey, Member (T), primarily held that the Liquidator is fully justified in forfeiting the EMD of a successful bidder who fails to comply with the mandatory payment timelines under the E-Auction Process Document, even if the delay was initially occasioned by a third-party court-imposed interim restraint that was later vacated.

The key issue before the Court was whether the successful bidder's failure to pay the balance consideration immediately upon the vacation of a stay order constituted a material breach warranting EMD forfeiture, and specifically, whether Section 74 of the Contract Act, concerning liquidated damages, applies to forfeitures in statutory liquidation auctions. The law focus of the case in the modern era is on the sanctity and strict adherence to timelines prescribed in the IBC and its associated regulations. The Corporate Debtor entered liquidation after the failure of its CIRP, and the Liquidator (Appellant) conducted an e-auction where the Respondent was the highest bidder. The Respondent's required 25% payment by May 11, 2022, was stalled by a third-party stay order (May 9, 2022). The stay was vacated on June 15, 2022. Despite the Liquidator's immediate demands, the Respondent failed to pay...

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PIVOTAL ISSUES

The Locked Gate: Why Compelling Fraud Claims Failed to Grant Locus Standi

> *The integrity of the process demands that even the gravest allegations must be presented by a party with the requisite locus standi, as judicial remedies cannot be sought by strangers to the statute*

The spectre of corporate fraud looms large in the digital age, making the mechanism for initiating official investigations under the Companies Act, a critical safeguard for stakeholders and the public interest. The core legal focus of the jurisprudence governing corporate oversight hinges on who possesses the right to demand an investigation into the affairs of a company—the critical question of locus standi.

This was the principal issue before the NCLT, Ahmedabad, in the case of Parth Merchant v. Detox India Pvt Ltd & Ors.. The Coram, comprising Mr. Shammi Khan, Hon'ble Member (J), and Mr. Sanjeev Sharma, Hon'ble Member (T), primarily held that a petitioner who is neither a member nor a creditor, nor a person "connected with the affairs of the company," lacks the necessary locus standi to seek an investigation under Sections 212 and 213 of the Companies Act, 2013. Furthermore, they clarified that Section 212 does not permit intervention by private parties directly approaching the NCLT without a prior report from the ROC. The Petitioner who claimed to have a business association with Respondent No. 1 Company, filed a Company Petition under Sections 212 and 213 of the Companies Act. The petition alleged widespread manipulation of records, illegal allotments of shares, fraudulent valuations, diversion of funds (including violations of Sections 185 and 186), and other statutory non-compliances, primarily implicating the R-1 Company, its holding company (R-2), associated concerns (R-3, R-4), and various directors, officers, and professionals (R-5 to R-16). The Petitioner sought an interim order directing the ROC (R-17) to submit a...

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PIVOTAL ISSUES

A Skeleton in the Closet: Unmasking the 'Unclean Hands' and the Myth of Deadlock for Corporate Survival

> *Winding up is a 'healing' measure of last resort, to be invoked only when the corporate substratum has truly vanished and all alternative remedies are exhausted.*

The sanctity of a corporate entity's life is a principle heavily guarded by the judiciary, reserved for dissolution only when the very purpose of its existence has evaporated or its internal gears have jammed beyond repair. In general, corporate law increasingly treats winding up as a remedy of "last resort," emphasizing the preservation of the corporate veil and the resolution of internal disputes through specific statutory mechanisms rather than the "nuclear option" of liquidation. The core issue before the court was whether the alleged mismanagement, loss of substratum following the termination of a distribution agreement, and shareholder deadlock justified the permanent closure of a company that still possessed significant assets and a functional majority.

This approach was central to the case of Mr. Gurinder Mohan Singh Nindrajog v. Hover Automotive India Private Limited, adjudicated by the National Company Law Tribunal (NCLT), Mumbai Bench - I. The Bench, comprising Shri Prabhat Kumar (Technical Member) and Shri Sushil Mahadeorao Kochey (Judicial Member), primarily held that a petition for winding up on "just and equitable" grounds is not maintainable when the petitioner has suppressed material facts and when efficacious alternative remedies, such as arbitration or proceedings for oppression and mismanagement, remain available. The factual matrix involves a joint venture between the Petitioner (a 27% minority shareholder) and the Majority Shareholders (73%) to handle a central third-party entity that served as the primary business partner for the joint venture for automobile distribution in India. Following the termination of...

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PIVOTAL ISSUES

Race to the Sale Certificate: IBC Freezes Bank Auction as Ownership Outlasts Redemption Rights

> *Ownership stands transferred only upon the issuance of the sale certificate; the loss of the right of redemption does not automatically strip a borrower of their title*

Possession is often described as nine-tenths of the law, but in the complex intersection of insolvency and debt recovery, the remaining one-tenth of ownership is where the fiercest battles are fought. This article delves into the critical timing of legal protections, specifically whether a personal insolvency moratorium can halt the final handover of property after a successful bank auction. The core issue of discussion in the article is whether the amendment to Section 13(8) of the SARFAESI Act, which limits the right of redemption to the date of auction notice, also results in the immediate extinguishment of the borrower's ownership rights.

The focus of new age jurisprudence lies in the statutory supremacy of the IBC versus the streamlined recovery mechanisms of the SARFAESI Act. Primarily, the High Court of Judicature at Bombay, coram R.I. Chagla and Farhan P. Dubash, JJ., in the matter of Arrow Business Development Consultants Pvt. Ltd. Vs. Union Bank of India & Ors., held that if a sale certificate is not issued and the full price not paid before an interim-moratorium under Section 96 of the IBC kicks in, the ownership remains with the borrower, thus staying further proceedings. The Respondent Bank classified the Borrowers' account as an NPA and subsequently took symbolic possession of their residential flat. An auction was conducted, where the Petitioner was declared the successful bidder; however, before the full sale consideration was paid and the sale certificate issued, one of the co-borrowers filed for personal insolvency under Section 94 of the IBC. This filing triggered an interim-moratorium...

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SIGNIFICANT CASE LAWS

NCLT Ahmedabad Reaffirms Sales Tax Dues as Secured Claims Under IBC

In State Tax Officer v. Vinod Tarachand Agrawal (RP of Amul Industries Pvt. Ltd.), the NCLT Ahmedabad Bench, led by Judicial Member Chitra Hankare and Technical Member Velamur G Venkata Chalapathy, held that Central Sales Tax (CST) dues must be treated as secured claims under the IBC. The dispute began when the Resolution Professional (RP) of Amul Industries classified ₹6.64 crore in CST dues as unsecured, despite treating Gujarat VAT dues as secured. The tax department challenged this, invoking the Supreme Court's landmark Rainbow Papers ruling, which established that Section 48 of the GVAT Act creates a "statutory first charge." The department argued that since CST is recovered using the same state machinery as local VAT, it should carry the same legal weight as a secured debt.

The Tribunal rejected the RP's argument that the CST Act lacked an express provision for creating a charge. It ruled that Section 9(2) of the CST Act, read with Section 48 of the GVAT Act, integrates the entire state enforcement framework, and denying this would create an "enforcement void." By directing the RP to reclassify the claim, the NCLT reaffirmed that government authorities holding a statutory first charge are secured creditors, significantly improving their position in the IBC's priority of payments, known as the Waterfall Mechanism. This ruling reinforces the protection of state revenue and provides clear guidance for RPs dealing with statutory dues across different tax legislations.

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SIGNIFICANT CASE LAWS

NCLT Kochi: Homebuyers Can Invoke IBC Against Developer Despite Pending RERA Cases

In Jacob P P and Ors. Vs. Alka Ventures Pvt. Ltd, the NCLT Kochi Bench, comprising Judicial Member Vinay Goel and Technical Member Madhu Sinha, ruled that homebuyers are not barred from initiating insolvency proceedings even if they have parallel complaints pending before the Real Estate Regulatory Authority (RERA). The Tribunal admitted a Section 7 application filed by 30 homebuyers (representing 98 allottees) against Alka Ventures Private Limited for a default of ₹11.85 crore. The case involved the "Skywings Township" project in Kakkanad, which had been delayed for over a decade despite multiple extensions and assurances from the developer.

The Tribunal clarified that the IBC and RERA serve distinct purposes; while RERA handles project delays and construction grievances, the IBC addresses financial distress and commercial inability to perform. Relying on the Supreme Court's ruling in Mansi Brar Fernandes v. Shubha Sharma, the Bench emphasized that homebuyers are legally recognized as financial creditors under Section 5(8) of the Code. By holding that persistent non-delivery constitutes a "default," the NCLT affirmed that the insolvency process is a valid remedy for allottees when a builder fails to complete a project or refund collections, regardless of ongoing RERA litigation.

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SIGNIFICANT CASE LAWS

Civil Court Cannot Grant Injunctions in NCLT Matters: Kerala High Court

In T. Beena vs Vysali Pharmaceuticals Ltd & Ors, the Kerala High Court, presided over by Justice K Natarajan, reaffirmed that civil courts have zero jurisdiction over matters falling within the exclusive domain of the National Company Law Tribunal (NCLT). The court dismissed a review petition filed by a claimant seeking to uphold an ad-interim injunction against a company in liquidation. It held that any injunction granted by a civil court in violation of the Insolvency and Bankruptcy Code (IBC) is "patently illegal" and must be struck down, as Section 63 and Section 231 of the Code explicitly bar civil courts from entertaining such proceedings.

The Court further clarified that even if there are disputes regarding the maintainability of a claim before the NCLT, those objections must be raised within the tribunal itself rather than through a civil suit. Justice Natarajan emphasized that the High Court holds the authority under Article 227 of the Constitution to interfere and set aside such orders to correct jurisdictional errors. By dismissing the review, the ruling reinforces the "single-window" adjudication principle of the IBC, ensuring that the liquidation process is not stalled by fragmented litigation in lower civil courts.

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SIGNIFICANT CASE LAWS

NCLAT: CoC Retains Primary Authority in Liquidator Appointments

In Omkara Asset Reconstruction Pvt Ltd v. Amit Vijay Karia, the NCLAT New Delhi Bench delivered a significant ruling on the power to appoint a liquidator under the Insolvency and Bankruptcy Code (IBC). The core issue was determining who holds the authority to select a replacement liquidator when the existing Resolution Professional (RP) refuses to give consent under Section 34(1). The Tribunal concluded that the Committee of Creditors (CoC) retains the primary authority to nominate the liquidator, while the Adjudicating Authority's (NCLT) role is restricted to formally appointing that nominee.

The NCLAT's reasoning stems from an inferred legislative intent to maintain "creditor primacy" throughout the process. Although the Code is silent on who selects a replacement when an RP declines consent under Section 34(4)(c), the Tribunal noted that at no other stage—such as the appointment of an Interim Resolution Professional (IRP) or a permanent RP—does the NCLT have the power to independently pick its own candidate. By importing the mechanism of Section 27 into the liquidation stage, the NCLAT ensured that the NCLT cannot bypass the CoC's choice by selecting an individual from its own panel. This ruling preserves the consistency of the appointment framework, even as the corporate debtor transitions from the resolution phase to liquidation.

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SIGNIFICANT CASE LAWS

NCLT Mumbai Approves Ashdan Properties' ₹900 Crore Plan to Revive Rolta India

In Union Bank of India vs Rolta India Limited, the NCLT Mumbai Bench, comprising Judicial Member Sushil Mahadeorao Kochey and Technical Member Prabhat Kumar, approved a ₹900 crore resolution plan submitted by Ashdan Properties Pvt Ltd. The tribunal held that once a resolution plan complies with the statutory requirements of the Insolvency and Bankruptcy Code (IBC), the judiciary cannot interfere with the "commercial wisdom" of the lenders. Rolta India, a multinational tech firm specializing in defense and geospatial systems, had been admitted into insolvency in early 2023 following a default on loans from Union Bank of India, with total admitted claims reaching nearly ₹14,000 crore.

The approved plan stipulates an upfront payment, allocating ₹808.55 crore to secured financial creditors and ₹64.20 crore to unsecured financial creditors, while also settling employee and government dues. Despite objections from stakeholders regarding valuation methodology and the extinguishment of share capital, the NCLT rejected these challenges, noting that the offer exceeded both the fair and liquidation values of the company. By approving the plan, the tribunal reaffirmed that its role is limited to ensuring compliance with Section 30(2) and Section 29A of the IBC, directing the immediate handover of assets to Ashdan Properties to ensure a time-bound revival of the debt-laden company.

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SIGNIFICANT CASE LAWS

NCLAT: Personal Guarantor Entitled to Appeal Insolvency Admission as "Aggrieved Person"

In Ashwin Smith v. Invent Assets Securitisation and Reconstruction Pvt Ltd, the NCLAT New Delhi Bench, led by Chairperson Justice Ashok Bhushan and Technical Member Barun Mitra, held that a personal guarantor qualifies as an "aggrieved person" under the IBC and has the locus standi to appeal the admission of insolvency proceedings. The appellant, a former director and guarantor for CM Smith & Sons Ltd, challenged a Section 7 admission, arguing that the insolvency of the corporate debtor directly exposed him to personal insolvency and coercive recovery. The financial creditor objected, claiming that as an ex-director who had resigned and transferred his shares, Smith was a "stranger" to the corporate debtor's management.

The Appellate Tribunal rejected this objection on two primary grounds: first, the Adjudicating Authority (NCLT) had already permitted Smith to participate in the initial proceedings by filing a reply; and second, his status as a personal guarantor intrinsically linked his legal interests to the fate of the corporate debtor. Relying on the Supreme Court's broad interpretation in GLAS Trust Company LLC vs Byju Raveendran, the NCLAT noted that Section 61 does not impose a rigid locus requirement. While the Tribunal upheld the insolvency admission on its merits, it granted Smith liberty to approach the NCLT to raise specific pleas regarding any "fraudulent or malicious" initiation of the process, ensuring that the guarantor's right to legal recourse remains protected.

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SIGNIFICANT CASE LAWS

Supreme Court: Debtor's Ledger and Post-Notice Payments Negate "Moonshine" Defence under Section 9 IBC

In M/s. Saraswati Wire and Cable Industries v. Mohammad Moinuddin Khan and others, the Supreme Court Bench comprising Justice Sanjay Kumar and Justice Alok Aradhe clarified the standards for a "pre-existing dispute" under the Insolvency and Bankruptcy Code (IBC). The Court held that a dispute capable of barring a Section 9 application must be real, genuine, and supported by substantive evidence. It specifically warned against "moonshine defences"—baseless claims raised by Corporate Debtors (CD) solely to obstruct the Corporate Insolvency Resolution Process (CIRP) and delay the inevitable.

The Court's ruling was based on several critical facts that the NCLAT had previously overlooked. The Corporate Debtor had attempted to allege quality issues in the supplies provided by the Operational Creditor; however, the CD's own ledger account acknowledged the debt, and they had even made payments totaling ₹61 lakhs after receiving the Section 8 demand notice. The Bench noted that these minor quality issues did not stop further supplies or payments, proving the defence was mere "bluster." By setting aside the NCLAT's decision, the Supreme Court reaffirmed that the CIRP cannot be defeated by fraudulent claims of dispute when the debtor's own financial records and conduct establish a clear admission of liability.

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REGULATORY UPDATE:

IBC 2.0: The 2025 Revolution of Indian Insolvency

The Insolvency and Bankruptcy Code (IBC), 2016, is undergoing its most significant overhaul to date with the introduction of the **IBC (Amendment) Bill, 2025.** This legislative push is closely linked with a series of recent discussion papers released by the Ministry of Corporate Affairs (MCA) and the Insolvency and Bankruptcy Board of India (IBBI). The core objective is to transition from a process plagued by "judicial discretion" and "procedural bottlenecks" to one defined by "mandatory timelines" and "institutional transparency." By addressing gaps in admission, liquidation, and group insolvency, the 2025 reforms aim to solidify the Code's role as a tool for value maximization rather than a mere debt recovery mechanism.

A primary focus of the discussion has been the "14-day rule." Following the Vidarbha Industries judgment, which allowed the NCLT discretion to reject even proven defaults, the Bill mandates that if a debt and default are established specifically through a record from an Information Utility (IU), the NCLT must admit the case within 14 days. This change aims to restore the "literal interpretation" of the Code and eliminate extraneous factors that have historically delayed the initiation of the CIRP. One of the most innovative concepts introduced is the CIIRP—a largely out-of-court mechanism. Unlike the traditional CIRP, where control immediately shifts to a Resolution Professional (RP), the CIIRP adopts a "debtor-in-possession" model. This allows the existing management to run the company under RP supervision, aiming to...

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