

IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS

FEB'
2026



COVER STORY

Does the imposition of a moratorium prohibit a financial creditor from appropriating fixed deposits to satisfy pre-insolvency debt? 04

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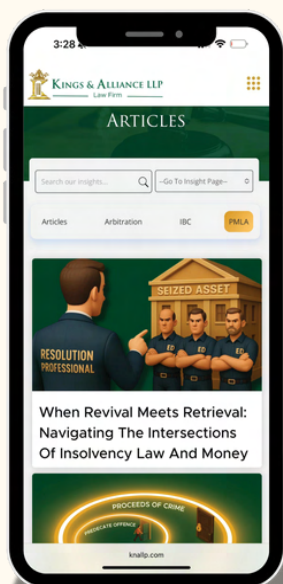
A legacy of discipline, a future of resolution. our cover story of this month captures the inviolability of the moratorium, reinforcing that **Section 14 of the IBC** serves as a definitive shield, preventing financial creditors from unilaterally liquidating fixed deposits to settle pre-insolvency obligations.

From this statutory protection, we transition to our **Pivotal Issues**, where we break down the **non-negotiable status of liquidator fees under Regulation 21A**, the failure of 'on-account' payments to bypass settlement breaches, and the **imperative for absolute RP independence in managing parent-subsidary conflicts**. Our analysis also highlights the **Doctrine of Estoppel**, barring Corporate Debtors from reclaiming assets once they have reaped the benefits of a slump sale.

We wrap up this edition with a **Regulatory Update on the Liquidation Process**, focused on the landmark modifications to **Regulation 47B** that introduce tech-enabled reporting and a new era of stage-wise transparency for Indian insolvency.

Let's dive in.

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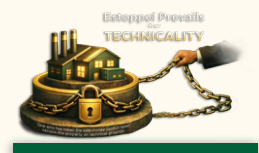
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COVER STORY

Does the imposition of a moratorium prohibit a financial creditor from appropriating fixed deposits to satisfy pre-insolvency debt?



Section 14's moratorium emerges as an unyielding bulwark against fixed deposit appropriations, subordinating bank liens to collective equity and prioritizing holistic revival over isolated grabs.



Moratorium vs. Banker's Lien

India has seen a sharp rise in IBC insolvency proceedings amid economic pressures, with creditors aggressively attaching properties, from real estate to fixed deposits to realize debts. This prompts a critical question: Does the imposition of a moratorium prohibit a financial creditor from appropriating fixed deposits to satisfy pre-insolvency debt? Post-CIRP admission, Section 14 of the IBC halts such actions, channeling recoveries through collective resolution.

Section 14 imposes an absolute bar on enforcing security interests, including fixed deposit adjustments via set-off or liens, to protect the insolvency estate for collective resolution. Fixed deposits fall within the ambit of debtor assets under Section 18, thereby vesting control and custody with the Resolution Professional upon commencement of the CIRP. This ensures that individual creditors cannot appropriate assets unilaterally, maintaining the integrity of the moratorium and facilitating equitable treatment among stakeholders as envisioned under the IBC framework. This analysis explores Section 14's framework, judicial interpretations, and implications, arguing for its expansive application to uphold IBC's resolution-centric ethos. By prohibiting unilateral recoveries, the moratorium ensures equitable creditor outcomes and maximizes going-concern value. The discussion emphasizes how Section 14 safeguards the insolvency estate to facilitate a collective, rather than fragmented, resolution process. The statutory moratorium under Section 14 of the IBC stands as the cornerstone of the insolvency resolution process, erecting a protective...

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Beyond Commercial Wisdom



The statutory "user-pay" principle mandates secured creditors to pay liquidator fees even when realizing assets independently

In the high-stakes arena of corporate insolvency, the statutory mandate of the IBC acts as a sentinel, ensuring that even when secured creditors march outside the common pool to realize their dues, they do not trample upon the administrative framework that sustains the process. The focus of modern insolvency law has shifted from mere debt recovery to a structured, time-bound liquidation where the "user-pay" principle ensures that those who benefit from the legal ecosystem contribute to its maintenance. One of such critical issues is whether the CoC can bypass the mandatory liquidator's fee prescribed under the IBBI Regulation 21A while realizing assets under the SARFAESI Act.

This issue was addressed in the recent matter of Ramesh Kumar Totla (Liquidator of M/s Raghuvanshi Cotton Ginning and Pressing Pvt. Ltd) v. State Bank of India, the NCLT Ahmedabad Bench, presided over by Mr. Shammi Khan (Judicial Member) and Mr. Sanjeev Sharma (Technical Member) primarily held that the obligation to pay liquidation costs under Regulation 21A is absolute and independent of whether the assets were sold by the liquidator or the creditor. The Corporate Debtor was ordered into liquidation and the Applicant was appointed as the Liquidator. The Respondent held a claim and elected not to relinquish its security interest, choosing instead to realize its sole asset, a factory land and building under the SARFAESI Act. Although the asset was successfully auctioned, the Respondent failed to remit the estimated liquidation costs and the liquidator's fee within the statutory 90-day window, leading the Liquidator to approach the Tribunal for relief...



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PIVOTAL ISSUES

Breach of Settlement and Restoration of Section 9 Petition

Accounting Tactics and the Limits of **CIRP** Evasion



Consolidating payments into a single ledger to project a 'nil balance' is a misleading tactic that cannot override the explicit terms of a settlement agreement.

The relentless march of new-age commerce demands a robust legal framework. This system must prioritize transparency and the swift resolution of financial defaults to maintain market stability. A critical legal dilemma arises when a Corporate Debtor attempts to veil a default through accounting maneuvers. Specifically, the court must determine if a debtor can legally misallocate payments between past arrears and fresh transactions. This brings the issue as to whether a Corporate Debtor can mask a default by misallocating payments between past arrears and fresh transactions.

In the landmark case of Dnyaneshwar Shankar Unde, Proprietor of Swadarshan Dairy Products v. Shukla Dairy Private Limited, NCLT, Ahmedabad Bench, presided over by Sh. Shammi Khan (Judicial Member) and Sh. Sanjeev Sharma (Technical Member), primarily held that the IBC remains a potent tool for operational creditors when a debtor fails to honor settlement terms, specifically ruling that the tactical "on-account" adjustment of payments toward new supply does not extinguish a pre-existing operational debt. The OC, a MSME-registered dairy proprietor, supplied milk to the CD from 2011 to 2018. Following a default in 2018, a petition was filed for an outstanding debt. During the proceedings, an MoU was signed in November 2020 to settle the principal amount in 15 installments. However, after the business relationship resumed, the CD allegedly failed to complete the settlement payments, leading the OC to seek restoration of the petition after an initial withdrawal based on the settlement. The Applicant contended that...

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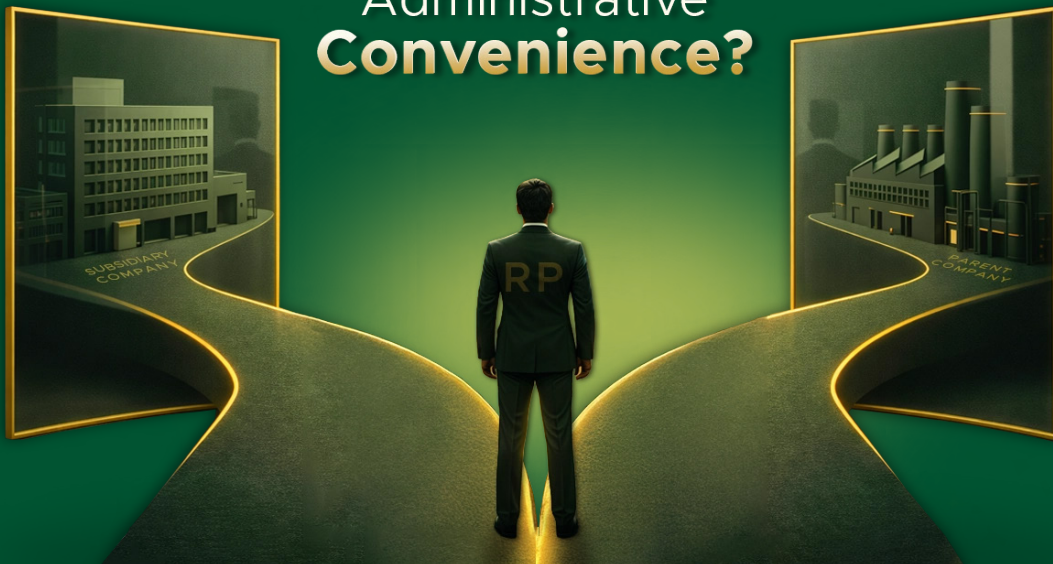
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PIVOTAL ISSUES

Can a Common Resolution Professional Manage a Parent and Subsidiary during Insolvency?

Fiduciary Integrity or Administrative Convenience?



The CoC's commercial wisdom, while significant, cannot override the fundamental requirement of an RP being 'independent and impartial.'

The fundamental tenet that the scales of justice must not only be balanced but must be seen to remain untainted by the shadow of competing loyalties serves as the bedrock of a credible insolvency framework. In any adjudicatory or fiduciary role, the mere appearance of a conflict can be as damaging to the public trust as an actual instance of bias or impropriety. In the jurisprudence of complex corporate structures, the IBC faces a recurring dilemma: whether a single RP can effectively manage both a parent company and its subsidiary without compromising the integrity of either process.

This fundamental question of professional ethics and systemic efficiency lies at the heart of *Jubin Kishore Thakkar vs. Ashutosh Agarwala & Ors.* adjudicated by the National Company Law Tribunal (NCLT), Mumbai Bench, Court – III. Presided over by Hon'ble Smt. Lakshmi Gurung (Judicial Member) and Hon'ble Shri Hariharan Neelakanta Iyer (Technical Member), held that a common RP cannot simultaneously manage a parent and subsidiary if it creates a conflict of interest in adjudicating inter-company claims, thereby necessitating the RP's replacement to preserve the fiduciary integrity of the insolvency process. The Corporate Debtor was admitted into CIRP and its subsidiary was already under CIRP, with Respondent No. 1 eventually appointed as its RP. Conflict arose when Respondent No. 1, acting as RP for the subsidiary, rejected a massive claim of large sum and categorized part of the sum as contingent liability filed by the parent, only to later be appointed as the RP for parent as well. The Applicant, an erstwhile promoter, sought the RP's removal, alleging that the RP...



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PIVOTAL ISSUES

The Finality of Divestment: How the Doctrine of Estoppel Prevents "Unjust Enrichment" by Liquidators

Estoppel Prevails Over TECHNICALITY



A party cannot enjoy the fruit of a sale while simultaneously repudiating the sale itself to reclaim the asset.

The sanctity of a contract and the finality of property divestment represent the very soul of commercial stability, providing the certainty necessary for predictable business growth. These principles are frequently tested by the desperate measures of insolvency litigation, where technical flaws are used to challenge long-settled deals. In this context, the IBC serves as a vigilant guardian, protecting the market from attempts to claw back assets that were lawfully transferred in the past. By enforcing the doctrine of estoppel, the law prevents a debtor from reclaiming an asset after already enjoying the full financial benefits of its sale.

This central theme of "fiduciary overreach" versus "contractual finality" was the primary focus of Mr. Ramachander Rao Bikumalla (Liquidator for M/s Handum Industries Limited) v. M/s Splendid Metal Products Limited (SMPL), heard by the NCLT Hyderabad, Presided over by Shri Rajeev Bhardwaj (Member Judicial) and Shri Sanjay Puri (Member Technical), the court primarily held that a CD is stopped from claiming ownership over assets for which it has received full consideration, even if the transfer agreement remained unregistered. The issue before the court was whether property sold through a slump sale over a decade ago could be pulled back into the liquidation estate of the seller under Section 36 of the IBC. The CD executed a Slump Sale Agreement to sell its manufacturing unit to the buyer/ Respondent for a certain sum, a consideration that included the buyer taking over the CD's mortgage liability to a secured creditor. Following the sale, the buyer took possession and reflected the property in its own financial statements for years, while CD ceased to claim the ...



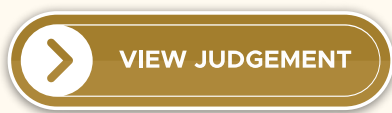
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SIGNIFICANT CASE LAWS

IBC Overrides and Third-Party Assets: Supreme Court Sets Strict Limits on Guarantees and Plan Discharge

In the case of UV Asset Reconstruction Company Limited v. Electrosteel Castings Limited (Civil Appeal No. 9701/2024), the Supreme Court of India has provided clarity on the boundaries of the Insolvency and Bankruptcy Code (IBC) and the Indian Contract Act. A bench of Justices Sanjay Kumar and Alok Aradhe ruled that a promoter's undertaking to "arrange funds" or "infuse capital" to help a borrower meet financial covenants does not constitute a "contract of guarantee" under Section 126 of the Contract Act. Consequently, such an undertaking does not create a "financial debt," effectively barring creditors from using it as a back-door to initiate insolvency proceedings against the promoter under Section 7 of the IBC.

Parallely, the Court addressed a crucial IBC issue regarding the extinguishment of debt. It held that while a NCLT-approved resolution plan discharges the Corporate Debtor (the borrower) from its liabilities, it does not automatically release third-party security providers or sureties. Unless the resolution plan specifically and expressly provides for the release of these third parties, their liability remains alive. In this case, even though the creditor issued a "no-due certificate" to the borrower post-insolvency, the Court observed that the rights against the promoter (ECL) as a security provider for "unsustainable debt" were preserved because the plan didn't explicitly wipe them out.



SIGNIFICANT CASE LAWS

Shattering the COVID-19 Shield: NCLAT Rules Section 10A Does Not Bar Post-Pandemic Defaults

In the case of *Airtech Airconditioning v. Parnika Commercial & Estate Private Limited* (2026 LLBiz NCLAT 2), the National Company Law Appellate Tribunal (NCLAT), Delhi, set aside an order of the NCLT that had dismissed an insolvency plea by incorrectly applying the COVID-19 era legal bar. A bench led by Chairperson Justice Ashok Bhushan and Technical Member Barun Mitra held that the Section 10A suspension, which prohibits insolvency filings for defaults occurring between March 25, 2020, and March 24, 2021, cannot be used as a blanket shield for debts that fell due after this period. The NCLAT observed that the lower tribunal's approach was "flawed" as it ignored specific invoices whose defaults occurred in late 2022, well beyond the protected timeline.

The dispute involved HVAC service projects at Vanijya Bhawan, a DRDO facility, and IIT Bombay. While some defaults did occur during the pandemic, the appellant, Airtech, highlighted two specific invoices for the Vanijya Bhawan project with default dates of April 14, 2022, and July 29, 2022. Since these two invoices totaled approximately Rs. 2.36 crore: surpassing the Rs. 1 crore statutory threshold required under Section 4 of the IBC, the NCLAT ruled that the insolvency application was maintainable. By restoring the application and remanding it to NCLT Delhi, the Appellate Tribunal clarified that even if a part of the total debt is barred by Section 10A, the presence of separate defaults outside that window is sufficient to trigger the Corporate Insolvency Resolution Process (CIRP).

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SIGNIFICANT CASE LAWS

Confidentiality vs. Transparency: NCLT Rejects Suspended Director's Plea for Valuation Reports

In the case of *Abhay Narhar Kadam vs. Vakati Balasubramanyam Reddy* (2026 LLBiz NCLT (MUM) 29), the Mumbai Bench of the National Company Law Tribunal (NCLT) dismissed a plea by a suspended director seeking the disclosure of confidential valuation reports and other CIRP documents. The coram, comprising Judicial Member Mohan Prasad Tiwari and Technical Member Charanjeet Singh Gulati, ruled that valuation reports are strictly confidential and intended solely for the commercial wisdom of the Committee of Creditors (CoC). The Tribunal emphasized that sharing such sensitive data with individuals who are also potential or competing resolution applicants would compromise the integrity of the insolvency process and provide an unfair competitive advantage.

The dispute arose during the insolvency proceedings of Megi Agro Chem Limited, where the suspended director, Abhay Narhar Kadam, alleged that the Resolution Professional had undermined transparency by withholding CoC minutes and valuation data. However, the Tribunal noted that Kadam and parties linked to the former management had expressed interest in submitting their own resolution plans. Consequently, the NCLT held that protecting the "sanctity of the process" outweighed the director's request for disclosure, as transparency must not come at the cost of the Code's ultimate goal: value maximization. Finding no merit in the allegations of procedural irregularity, the Tribunal cleared the path for the approval of the resolution plan submitted by Arainfra Projects Private Limited.

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SIGNIFICANT CASE LAWS

Restorative, Not Punitive: NCLT Kochi Clarifies Limits of Avoidance Provisions

In the case of CA Sreenivasan PR vs. Astern Realtors Pvt Ltd & Ors (2026 LLBiz NCLT (KOC) 26), the Kochi Bench of the National Company Law Tribunal (NCLT) clarified that avoidance provisions under the Insolvency and Bankruptcy Code (IBC) are designed to restore the corporate debtor's estate rather than punish beneficiaries. Judicial Member Vinay Goel, while adjudicating an application under Sections 43 and 44, emphasized that the primary goal is to neutralize the "preferential effect" of a transaction: returning the assets to a state they would have been in had the preference not occurred. This ensures a level playing field for all creditors during the distribution of assets.

The case involved Astern Properties and Developers Pvt Ltd, where the Resolution Professional identified over Rs. 15 crores in preferential transfers to its holding company, Astern Realtors Pvt Ltd, and other related parties during the two-year look-back period. While the Tribunal found these transactions were technically "preferential," it also noted that the holding company had simultaneously infused significant funds back into the debtor. To prevent "unjust enrichment" of the debtor's estate, the NCLT ordered a net refund of Rs. 7.92 crore after adjusting for these capital infusions. The Tribunal further ruled that once the preferential amounts are returned, the original claims of the beneficiaries would revive, to be settled strictly according to the Section 53 waterfall mechanism.



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SIGNIFICANT CASE LAWS

NCLT Master of Roster: Supreme Court to Decide if Inter-State Case Transfers Under IBC are Valid

In the case of *Anitha Rayapati v. ArcelorMittal Nippon Steel India Private Limited* (SLP(C) No. 848/2026), the Supreme Court of India has stepped in to settle a crucial jurisdictional debate affecting the Corporate Insolvency Resolution Process (CIRP). A bench of CJI Surya Kant and Justice Joymalya Bagchi issued a notice challenging a Gujarat High Court ruling that restricted the NCLT President's powers. The High Court had held that while the President can manage the "roster" administratively, they cannot transfer cases across state lines (e.g., from Gujarat to Maharashtra), as this would effectively "alter" the territorial jurisdictions established by the Central Government.

The legal standoff stems from the high-stakes aftermath of the Essar Steel insolvency. After multiple NCLT Ahmedabad benches recused themselves due to alleged "intimidation" by counsel, the NCLT President used administrative orders to move the pending contempt and recall petitions to NCLT Mumbai to ensure the case didn't stall. The Supreme Court, expressing "prima facie doubt" over the High Court's restrictive view, noted that if a local bench is unavailable due to conflict or pressure, an inter-state transfer might be the only way to uphold the IBC's mandate for time-bound resolution. The apex court emphasized that judicial proceedings cannot be held hostage by "browbeating" tactics or a total absence of an impartial local bench.



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SIGNIFICANT CASE LAWS

Claims vs. Enforcement: NCLT Rejects 12-Year Limitation Period for Mortgage Debts in CIRP

In the case of Omkara Asset Reconstruction Private Limited v. Gigeo Construction Private Limited and ors. (2026 LLBiz NCLT (MUM) 30), the Mumbai Bench of the National Company Law Tribunal (NCLT) established a critical distinction between enforcing a mortgage and filing a claim during insolvency. A coram of Judicial Member Sushil Mahadeorao Kochey and Technical Member Prabhat Kumar ruled that secured creditors cannot invoke the 12-year limitation period (Article 62 of the Limitation Act) meant for enforcing security rights when submitting claims in a Corporate Insolvency Resolution Process (CIRP). Instead, the Tribunal held that such claims are governed by a three-year limitation period, as they represent a procedural claim for "money payable" rather than a suit to sell or recover mortgaged property.

The ruling came after BSEL Algo Limited (whose rights were assigned) challenged the Resolution Professional's rejection of its Rs. 22.94 crore claim against Gigeo Construction. The claimant argued that the debt, being secured by a registered mortgage, should benefit from the extended 12-year window. However, the Tribunal clarified that filing a claim is not an "act of enforcement," especially since Section 14 of the IBC expressly prohibits the enforcement of any security interest once a moratorium is in place. After accounting for COVID-19 exclusions, the Tribunal found that the limitation for the debt had expired in October 2023, rendering the January 2025 filing time-barred.

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SIGNIFICANT CASE LAWS

Residuary Power & Nexus: NCLAT Confirms NCLT's Authority to Evict Illegal Occupants

In the case of Fivebro Water Services Pvt. Ltd. and Anr. Vs. Bijay Murmuria, Liquidator of Doshion Pvt. Ltd. and Ors. (2026 LLBiz NCLAT 5), the National Company Law Appellate Tribunal (NCLAT), Delhi, upheld the power of the NCLT to order the eviction of subsidiaries from properties owned by a company in liquidation. A bench of Chairperson Justice Ashok Bhushan and Technical Member Barun Mitra ruled that under Section 60(5) of the IBC, the Adjudicating Authority possesses "residuary jurisdiction" to decide questions of law or fact that have a direct nexus with the insolvency or liquidation process. The Tribunal rejected the subsidiaries' argument that eviction was a purely civil contractual matter, stating that recovering possession of assets is essential for a Liquidator to fulfill their statutory duty of forming a "liquidation estate."

The dispute involved two subsidiaries, Fivebro Water Services and Gondwana Engineers, occupying premises in Ahmedabad and Mumbai. The Liquidator argued that the lease agreements were invalid: one being an unregistered document and the other being a "post-moratorium" lease executed on the day CIRP began (violating Section 14). The NCLAT agreed, noting that an unregistered lease is legally unenforceable for recovery of possession. By affirming the eviction order, the Tribunal clarified that the NCLT can bypass traditional civil court routes for eviction when the occupant's claim to the property is legally void and interferes with the time-bound liquidation of the corporate debtor.



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REGULATORY UPDATE:

Revision to Liquidation Process: Modification of Regulation 47B and Associated Forms

IBBI 2026

भारतीय दिवाला और शोधन अक्षमता बोर्ड
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

The IBBI has recently notified an amendment to the IBBI (Liquidation Process) Regulations, 2016 via Notification No. **IBBI/2025-26/GN/REG134** dated 2nd January, 2026. The amendment revises Regulation 47B, which governs the filing of forms during the liquidation process. The revised forms have been structured to reduce the compliance burden on insolvency professionals by eliminating duplicative disclosures, rationalising data requirements, and leveraging technological features such as auto-population of information already available on the portal. As a result, the revisions are expected to substantially reduce the time and effort required for regulatory compliance while ensuring that the Board continues to receive all essential information in a timely and effective manner.

The revised forms, with the exception of Form LIQ-2, are scheduled to be made available on the IBBI website from 1 January 2026, with the existing forms standing discontinued from that date. Form LIQ-2, being required to be filed only on or after 1 February 2026, will be made available in accordance with the applicable filing timeline. In addition, the Board has introduced a transitional facilitation period to enable insolvency professionals to familiarise themselves with the revised reporting framework and to address any initial technical or operational challenges. During the first quarter of implementation, spanning January to March 2026, no penalty is proposed to be levied for any delays in filing the revised forms...



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TRAINING AND EVENTS

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Organised By: NIER



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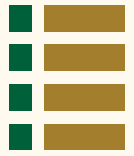
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