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SUPPLEMENT
PROFESSIONAL PROGRAMME

INSOLVENCY AND BANKRUPTCY -LAW AND PRACTICE

(FOR DECEMBER 2025 EXAMINATION)

GROUP 2

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CONTENTS

LESSON 1

INTRODUCTION TO INSOLVENCY AND BANKRUPTCY CODE

Need for a New Law Before the enactment of the Insolvency and Bankruptcy Code, there was no single law in the country to deal with insolvency and bankruptcy. There were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India. The framework for insolvency and bankruptcy was inadequate, ineffective and resulted in undue delays in resolution. The legal and institutional framework did not aid lenders in effective and timely recovery or restructuring of defaulted assets and causes undue strain on the Indian credit system.

Prior to the enactment of the Insolvency and Bankruptcy Code, the provisions relating to insolvency and bankruptcy for companies were made in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provided for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and their respective Appellate Tribunals. Liquidation of companies was handled by the High Courts. Individual bankruptcy and insolvency was dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920.

The liquidation of companies was handled under various laws and different authorities such as High Court, and Debt Recovery Tribunal had overlapping jurisdiction which was adversely affecting the debt recovery process. As per World Bank data in 2015, insolvency resolution in India took 4.3 years on an average, which was way higher when compared to other countries such as United Kingdom (1 year) and United States of America (1.5 years). These delays were caused due to time taken to resolve cases in courts, and confusion due to a lack of clarity about the current bankruptcy framework.

The Statement of Objects and Reasons for the IBC reads as follows:

"Statement of Objects and Reasons. —There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the

courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.

2.The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

In the case of *Independent Sugar Corporation Ltd. {Appellant(s)} Vs. Girish Sriram Juneja & Ors{Respondent(s)}, Civil Appeal No. 6071 of 2023, 2025 INSC 124, Judgement dated January 29, 2025*, Hon'ble Supreme Court of India emphasised the Policy Underlying the IBC. Apex Court said that the BLRC report notes and acknowledges that the failure of a few business plans is integral to the process of the market economy. When business failure occurs, the best outcome for society is to have a rapid renegotiation between the financiers to finance a going concern using new arrangements of capital and restructured management. The re-negotiating process is known as the "Corporate Insolvency Resolution Process". The primary object of this effort, briefly stated, is the value maximization of the corporate debtor. The CIRP keeps the corporate debtor as a going concern and runs on the theory that the value of the business is worth more than the realisation of the piecemeal distribution of assets. However, if this objective cannot be achieved, the best outcome for society is the rapid liquidation of a failing corporate debtor. When such statutory arrangements are put into place, the market process of creative construction, on the one hand, and creative destruction, on the other hand, will work smoothly with greater competitive vigour.

BLRC lays emphasis on a strong and mature market economy. This involves well-drafted modern laws that replace the laws of the preceding 100 years and high-performance institutions which enforce these new laws. The Committee has the end word to provide one critical building block of this process with a modern Insolvency and Bankruptcy Code and the statutory design associates institutional infrastructure, which reduces delays and transaction costs. The BLRC, through the IBC, compartmentalized the functions and duties of RP, CoC and the Adjudicating Authority.

The report recommended assessing the viability of a corporate debtor and noted that the economic purview presented an advantage by calling for the assessment of the viability of an enterprise or a project. An enterprise that has fastened financial failure is considered as a viable enterprise and there is possible financial re-arrangement that can earn the creditors a higher economic value in contrast to shutting down such an

enterprise. On the contrary, if the cost of financial re-arrangement required to keep the enterprise going is higher than the non-performance value of future expected cash flows, then the enterprise is considered unviable or bankrupt and is better shut down as soon as possible.

After taking note of the emerging Indian economy, the best practices of resolution and liquidation in other economies and the model code of UNCITRAL, the report has recommended the following guiding principles to the Parliament for a new Code. Broadly, the objects sought to be achieved by the IBC are (i) provision of certainty in the market to promote efficiency and growth, (ii) maximization of value of assets, (iii) striking a balance between liquidation and reorganisation, (iv) ensuring equitable treatment of similarly situated creditors, (v) provision of timely, efficient and impartial resolution of insolvency, (vi) preservation of the insolvency estate to allow equitable distribution to creditors, (vii) ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information, (viii) recognition of existing creditor rights and establishment of clear rules for ranking priority of claims, and (ix) establishment of a framework for cross-border insolvency.

In the case of *Independent Sugar Corporation Ltd. {Appellant(s)} Vs. Girish Sriram Juneja & Ors{Respondent(s)}, Civil Appeal No. 6071 of 2023, 2025 INSC 124, Judgement dated January 29, 2025*, Hon'ble Supreme Court of India in its conclusion said that:

148. As India aspires to establish itself as a global manufacturing powerhouse and investment hub, it is imperative that it is able to provide a reliable, robust and competitive business environment for both domestic and international stakeholders. In essence, the introduction of the Green Channel route, which strives to create a level-playing field and enable new entrants to effectively compete with established players in the Indian market, is a significant step in that direction. However, to ensure that entities operate with utmost confidence in the sanctity and fairness of India's legal and regulatory system, the objectives of the IBC and the Competition Act must also necessarily be in harmony with one another.

149. Within that context, while the IBC's primary objective is the timely resolution of stressed assets with maximised value realisation for the stakeholders, the significant delay seen in the present case is both unfortunate and regrettable. Nevertheless, expeditious resolution cannot come at the cost of disregarding statutory provisions. Providing relief for stressed assets must necessarily align with the statutory framework, as adherence to legal principles is fundamental to a fair and just resolution process.

150. In the present case, for reasons discussed above, the statutory provision and legislative intent unequivocally affirm the mandatory nature of the proviso to Section 31(4) of the IBC. For a Resolution Plan containing a combination, the CCI's approval to the Resolution Plan, in our opinion, must be obtained before and consequently, the CoC's examination and approval should be only after the CCI's decision. This interpretation respects the original legislative intent, and deviation from the same would not only undermine the statute but would also erode the faith posed by the stakeholders in the integrity of our legal and regulatory framework.

151. Where the provisions allow for dilution or departure from the intended scheme of the IBC or the Competition Act, it is the responsibility of the legislature to rectify such inconsistencies through appropriate legislative measures and the judiciary should not normally venture into the legislative domain.

152. Further, the indispensability of procedural safeguards as an integral component of a just legal order must be given its due weight, especially as procedural requirements are not mere formalities to be circumvented for expediency but substantive protections designed to ensure fairness and transparency. In that light, the procedural lapses with respect to objections to the proposed combination and the consequent divestiture modification proposed within the framework of the Competition Act, 2002, seriously vitiated the integrity of the process. It is therefore reiterated and reinforced that adherence to procedural propriety is non-negotiable and that the ends cannot justify the means.

153. By upholding the mandatory nature of the statutory provision and emphasising upon the critical importance of procedural safeguards, the principle of rule of law is upheld in alignment with global best practices which underscore fairness, predictability and transparency. Such an approach not only reinforces the integrity and credibility of the legal framework but also highlights India's commitment to fostering a regulatory environment, which is conducive to both business and innovation. Additionally, it also ensures the protection and enforcement of rights in an equitable manner, free from bias or favoritism.

154. Therefore, a balance between the need for expeditious relief and adherence to the statutory framework must necessarily be maintained, in order to ensure that the objectives of both, the IBC and the Competition Act are met in a manner that supports India's long-term economic aspirations.

in Arun Kumar Jagatramka v Jindal Steel & Power Ltd 4 (2021) 7 SCC 474 , Hon'ble Supreme Court observed as follows:

"41. ... First and foremost, the IBC perceives good corporate governance, respect for and adherence to the rule of law as central to the resolution of corporate insolvencies. Second, the IBC perceives corporate insolvency not as an isolated problem faced by individual business entities but places it in the context of a framework which is founded on public interest in facilitating economic growth by balancing diverse stakeholder interests. Third, the IBC attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that the timely resolution of corporate insolvency is necessary to ensure the growth of credit markets and encourage investment. Fourth, in its diverse provisions, the IBC ensures that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements. These salutary objectives of the IBC can be achieved if the integrity of the resolution process is placed at the forefront. Primarily, the IBC is a legislation aimed at reorganisation and resolution of insolvencies. Liquidation is a matter of last resort. These objectives can be

achieved only through a purposive interpretation which requires courts, while infusing meaning and content to its provisions, to ensure that the problems which beset the earlier regime do not enter through the backdoor through disingenuous stratagems."

The objective of the Insolvency and Bankruptcy Code is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. An effective legal framework for timely resolution of insolvency and bankruptcy will not only encourage entrepreneurship but will also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

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LESSON 2

CORPORATE INSOLVENCY RESOLUTION PROCESS

Replacement of Authorised Representative

Regulation 16A (1) of the IBBI(CIRP) Regulations 2016 states that the interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class.

Provided that the choice of an insolvency professional to act as an authorised representative by a financial creditor in a class in Form CA shall not be considered, if the Form CA is received after the time stipulated in the public announcement.]

Regulation 16A (2) provides that the interim resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representatives selected under sub-regulation (1) within two days of the verification of claims received under sub-regulation (1) of regulation 12.

Provided that till the application for appointment of the authorised representative for a class of creditors is under consideration before the Adjudicating Authority, the insolvency professional selected under sub-regulation (1) shall act as an interim representative for such class of creditors, and shall be entitled to attend the meetings of the committee and shall have such rights and duties as that of an authorised representative.

According to Regulation 16A(3) of the IBBI(CIRP) Regulations 2016 any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

Regulation 16A(3A) of the IBBI(CIRP) Regulations 2016 provides that the financial creditors in the class, representing not less than ten per cent. voting share may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional who shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours.

As per Regulation 16A(3B) Subject to clauses (a) and (b) of sub-regulation (2) of regulation 4A, the interim resolution professional or resolution professional, as the case may be, shall offer choice of at least three insolvency professionals to the financial creditors in the class including such insolvency professional(s) proposed under sub-regulation (3A) along with the existing authorised representative.

Regulation 16A(3C) of the IBBI(CIRP) Regulations 2016 provides that the resolution professional shall apply to the Adjudicating Authority for appointment of the authorised

representative who receives the highest percentage of voting share of financial creditors in that class.

Appointment of Facilitators

Regulation 16C of the CIRP Regulations provides that where the number of creditors in a class exceeds one thousand, the committee may, direct the interim resolution professional or resolution professional, as the case may be, to appoint an insolvency professional other than the interim resolution professional, resolution professional and authorised representative, or any other person, as facilitator for a sub-class within the creditors in a class, subject to the following conditions: -

(a) the appointment of facilitator shall be considered only if, after the first meeting of the committee, a sub-class comprising of at least one hundred creditors out of the total number of creditors in a class, request for the inclusion of an agenda for such appointment along with the name of the proposed facilitator;

(b) the total number of facilitators shall not exceed five; and

(c) the fee for facilitator for each sub-class shall be twenty per cent. of the fees specified for the authorised representative and such fee shall be part of the insolvency resolution process cost.

The committee may replace the facilitator on the recommendation of a majority of the members of the sub-class.

Roles and Responsibilities of the Facilitator

Regulation 16D of the CIRP Regulations states that the roles and responsibilities of the facilitator(s) shall include the following: -

(a) facilitating communication between the authorised representative and the creditors of the sub-class;

(b) attending the meetings of the committee, as observers, to facilitate communication between creditors of the respective sub-class;

(c) providing information and clarifications to the creditors in a sub-class about the insolvency resolution process, as per advice of the authorised representative; and

(d) any other tasks assigned by the committee to improve representation and communication.

Fees Payable to Authorised Representative

The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	30,000
101-1000	40,000
More than 1000	50,000

The authorised representative shall be entitled to receive fee for every meeting of the class of creditors convened by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of creditors in class with authorised representative (Rs.)
10-100	10,000
101-1000	12,000
More than 1000	15,000

Fee of AR to be part of IRP cost: The payment of fee to authorised representative shall be part of insolvency resolution process cost in respect of two meeting with the creditors he represents corresponding to a meeting of the committee of creditors.

Approval of fee of AR: The fee for any additional meeting beyond two meetings corresponding to a meeting of the committee of creditors shall be part of insolvency resolution process cost subject to approval of committee of creditors.

Duties of Authorised Representative

The Duties of Authorised Representative shall: -

(a) assist the creditors in a class he represents in understanding the discussions and considerations of the committee meetings and facilitate informed decision-making;

(b) review the contents of minutes prepared by the resolution professional and provide his comments to the resolution professional, if any;

(c) help the creditors in a class he represents during the consultations made by the resolution professional to prepare a strategy for marketing of the assets of the corporate debtor in terms of sub-regulation (1) of regulation 36C

(d) work in collaboration with the creditors in a class he represents to enhance the marketability of the assets of the corporate debtor in terms of sub-regulation (3) of regulation 36C;

(e) assist the creditors in a class he represents in evaluating the resolution plans submitted by resolution applicants;

(f) ensure that the creditors in a class he represents have access to any information or documents required to form an opinion on issues discussed in the committee meetings;

(g) update regularly the creditors in a class he represents on the progress of the corporate insolvency resolution process;

(h) make suggestions for modifications of the resolution plan as may be required by the creditors in class he represents;

(i) record proceedings and prepare the minutes of the meeting with the creditors in a class he represents; (The provisions regarding minutes of meetings in this regulation shall apply mutatis mutandis to class meetings) and

(j) act as a representative for the creditors in a class he represents in representations before the Adjudicating Authority, National Company Law Appellate Tribunal, and other regulatory authorities.

The creditors in a class may propose any additional responsibility upon the authorised representative in relation to the representation of their interest in the committee.

Regulatory Fee

Regulation 31A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value: Provided that this sub-regulation shall be applicable where resolution plan is approved under section 31, on or after 1st October 2022.

Explanation: For removal of doubts, it is hereby clarified that the regulatory fee under this sub-regulation, shall not be payable in cases where the approved resolution plan in respect of insolvency resolution of a real estate project is from an association or group of allottees in such real estate project.

A regulatory fee calculated at the rate of one per cent of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the interim resolution professional or resolution professional, as the case may be, for assistance in a corporate insolvency resolution process, shall be payable to the Board, in the manner as specified in regulation (7)(2) (cb) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Approval of Committee for Insolvency Resolution Process Costs

Regulation 31B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the insolvency professional shall place in each meeting of the committee, the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process costs.

Fee to be paid to Interim Resolution Professional and Resolution Professional

Regulation 34B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.

The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations.

Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

After the expiry of period mentioned in clause 2 of Schedule-II, the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be.

For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance-linked incentive structure as it deems necessary.

The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.

Information memorandum

Regulation 34B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that:

(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee 109[on or before the ninety-fifth day from the insolvency commencement date.

(2) The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying

significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor-

(a) assets and liabilities including contingent liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values. Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, geographical coordinates of fixed assets and any other relevant details.
(b) the latest annual financial statements;
(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
(e) particulars of a debt due from or to the corporate debtor with respect to related parties; (f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
(i) the number of workers and employees and liabilities of the corporate debtor towards them;
(j) company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other pre-existing facilities
(k) Details of business evolution, industry overview and key growth drivers in case of a corporate debtor having book value of total assets exceeding one hundred crores rupees as per the last available financial statements.
(ka) fair value: Provided that the committee may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such non-disclosure to be beneficial for the resolution process.
(l) other information, which the resolution professional deems relevant to the committee.

Issue of Information Memorandum, Evaluation Matrix and a Request for Resolution Plans

Regulation 36B (1) of the IBBI(CIRP) Regulations provides that the resolution professional shall, within five days of the date of issue of the final list under regulation

36A (12), issue the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list:

Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.

Strategy for Marketing of Assets of the Corporate Debtor

According to Regulation 36C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed one hundred crore rupees and may prepare such strategy in other cases.

Decision of implementing such strategy along with its cost shall be subject to the approval of the committee. The member(s) of committee may also take measures for marketing of the assets of the corporate debtor.

Assessment of Compromise or Arrangement.

Regulation 39BA(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that while deciding to liquidate the corporate debtor under section 33, the committee shall examine whether to explore compromise or arrangement as referred to under sub - regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee's recommendation to the Adjudicating Authority while filing application under section 33

Where a recommendation has been made under sub-regulation (1), the resolution professional and the committee shall keep exploring the possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority.

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LESSON 5

LIQUIDATION OF CORPORATE PERSON

Filing Forms to monitor liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder

During the liquidation process, the liquidator invites claim from stakeholders, forms a liquidation estate, endeavours to sell assets in consultation with the Stakeholders' Consultation Committee (SCC) and distributes the realized proceeds to stakeholders as per the waterfall mechanism provided under section 53 of the Code.

The Insolvency Professional (IP), functioning as a liquidator, is also required to ensure compliance with legal requirements and reporting to the Adjudicating Authority (AA) and IBBI. Presently, the IPs submit the details regarding the liquidation process to the Board through emails, which is time-consuming and inefficient.

To ease the compliance burden for Insolvency Professionals (IPs), a set of electronic forms has been developed by the Board to capture the details of the liquidation process. These forms are crucial for the liquidation process under the Insolvency and Bankruptcy Code (IBC), as they facilitate systematic and transparent record-keeping and seamless reporting. The key benefits of these forms include:

• Enhancing the efficiency and effectiveness of the liquidation process.

• Allowing liquidators to easily access and submit forms online, reducing delays and improving efficiency.

• Minimizing the likelihood of errors and omissions, ensuring more accurate and reliable information.

4. An overview of these Forms is as per the Table below:

Form No	Period Covered and Scope	Timeline
LIQ 1	From Commencement of Liquidation till Public Announcement: This includes details of the Liquidator, Corporate Debtor (CD), and the liquidator's fee	On or before the 10th day of the subsequent month, after a public announcement has been made.
LIQ 2	From Public Announcement till Progress Report: This includes details of valuation, sale, litigations, PUFE, SCC meetings, Receipts and Payments	On or before the 10th day of the subsequent month, after submission of the Progress report to the AA

LIQ 3	From last Progress Report to Application for Dissolution: This includes details of unclaimed proceeds, sale, litigations, PUFE, Realisation, distribution of proceeds, Receipts and Payments. (The details required in these forms are carried forward from the last Progress Report and hence need not be filled again)	On or before the 10th day of the subsequent month, after submission of the Dissolution /closure application to the AA.
LIQ 4	From Application for Dissolution to Order for Dissolution: This includes details of, the distribution of proceeds, Receipts and Payments, etc. (The details required in these forms are carried forward from the last Progress Report and hence need not be filled again)	On or before the 14 days of passing of the order for dissolution of corporate debtor or closure of the liquidation process by the AA.

The set of forms developed by the Board on an electronic platform has been hosted on its website at https://www.ibbi.gov.in. The IP handling the liquidation assignment shall access the platform with a unique username and password provided by the IBBI and upload/submit the Forms, along with relevant information and records, after affixing DSC or e-signing. Further, timely filing of complete and accurate information along with records is the sole responsibility of the IP.

It is directed that an IP shall file Forms through the electronic platform:

a. within the prescribed timeline for all cases where a liquidation order is passed on or after issuance of this circular.

b. for ongoing cases: Cases in which no application for dissolution of the corporate debtor/closure of the liquidation process has been filed, shall file form LIQ 1 and LIQ 2 (for the March 24 quarter) latest by 30th September 2024.

c. for cases where an application for dissolution of the corporate debtor/closure of the liquidation process has been filed with AA, shall file forms LIQ 1 and LIQ 2 (for the last quarter of the process), and LIQ 3 by 30th September 2024. d. for cases where an order for closure of the liquidation process or dissolution of the corporation debtor has been ordered by AA, shall file forms LIQ 1 and LIQ 2 (for the last quarter of the process), LIQ 3, and LIQ 4 by 30th September 2024.

It is clarified that an IP who do not comply with applicable provisions of the Code and the Regulations made thereunder, shall be liable for:

(i) failure to file a Form along with relevant information and records,

(ii) inaccurate and incomplete information and/or records filed in or along with a Form.

Time for Completion of Compromise or Arrangement

Regulation 2B of the IBBI (Liquidation Process) Regulations 2016 provides that where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013, it shall be completed within ninety days of the order of liquidation under section 33.

It is provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement. It is provided further that the liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Provided further that the liquidator shall not file such proposal after expiry of thirty days from the liquidation commencement date.

The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

Stakeholders' Consultation Committee

Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 mandates constitution of Stakeholders' Consultation Committee by the Liquidator, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;

(c) fees of the liquidator;

(d) valuation under sub- regulation (2) of regulation 35;

(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed;

(f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice.

Exclusion of Certain Assets from the Liquidation Estate

Regulation 46A of the IBBI (Liquidation Process) Regulations, 2016, provides for

exclusion of certain assets from the liquidation estate. It specifies that wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor for the purposes of clause (e) of sub-section (4) of section 36.

Early Dissolution

Regulation 14 of the IBBI (Liquidation) Process Regulations, 2016, provides that any time after the preparation of the Preliminary Report, if it appears to the liquidator that-

(a) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) the affairs of the corporate debtor do not require any further investigation;

he shall consult the consultation committee and if it advises for early dissolution, he may apply, along with a detailed report incorporating the views of the consultation committee, to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

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Lesson 6

VOLUNTARY LIQUIDATION OF COMPANIES

Filing Forms to monitor Voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder

A corporate person (CP) may initiate voluntary liquidation in terms of section 59 of the Insolvency and Bankruptcy Code and the IBBI (Voluntary Liquidation Process) Regulations, 2017. During the process, the liquidator invites claims and prepares a list of stakeholders based on the verified claims, sells assets of the CP in the manner and mode approved by the CP, and distributes proceeds as per section 53 of the Code. Upon completion, the liquidator submits the Final Report and an application for dissolution of CD, to the Adjudicating Authority.

The Insolvency Professional (IP), functioning as a liquidator, is also required to ensure compliance with legal requirements and reporting to the Adjudicating Authority (AA) and IBBI. Presently, the IPs submit the details regarding the voluntary liquidation process to the Board through emails, which is time-consuming and inefficient.

To alleviate the compliance burden for Insolvency Professionals (IPs), a set of forms on an electronic platform has been created by the IBBI to capture the details of the voluntary liquidation process. These forms are vital for the voluntary liquidation procedure under the Insolvency and Bankruptcy Code (IBC), as they enable systematic and transparent recordkeeping and seamless reporting. The primary advantages of these forms include:

- Boosting the efficiency and effectiveness of the voluntary liquidation process.
- Allowing liquidators to conveniently access and submit forms online, reducing delays and enhancing efficiency.
- Decreasing the chances of errors and omissions, ensuring more accurate and reliable information.

An overview of these Forms is as per the Table below

Form No	Period Covered and Scope	Timeline
VL 1	This includes details of the Corporate Debtor (CD) and the details of the Voluntary Liquidation Process	On or before the 10th day of the second month after the public announcement.
VL 2	Details of the meetings of contributories with the reasons for delay in the process and details of replacement of liquidator, if any	On or before the 10th day of the subsequent month, after 2 the meeting of contributories or replacement of liquidator.
VL 3	Details of dissolution application, details of Unclaimed Proceeds, Details of realisation and	On or before the 10th day of the subsequent month, after submission of the dissolution

	distribution made to stakeholders, Details of Pending Litigations, Detection of Fraud or Insolvency, if any.	application of the CP or withdrawal/suspension application for the voluntary liquidation process, to the Adjudicating Authority
VL 4	Details of order for Dissolution: This includes details of, the distribution of proceeds, Receipts and Payments, etc. (The details required in these forms are carried forward from the VL-3 form and hence need not be filled again)	On or before the 14 days of passing of the order for dissolution of the CP. or withdrawal / suspension of the voluntary liquidation process.

For the purpose of smooth filing of these Forms, a platform is hosted on the IBBI website at https://www.ibbi.gov.in. An IP shall access the platform with a unique username and password provided by the IBBI and upload/submit the Forms, along with relevant information and records, after affixing DSC or e-signing. Further, timely filing of complete and accurate information along with records is the sole responsibility of the IP.

It is directed that an IP shall file the forms on the electronic platform only:
a. within the prescribed timeline for all cases where a voluntary liquidation process has commenced on or after the date of issuance of this circular.
b. for the ongoing cases: in which no application for dissolution of the corporate person has been filed, the IP shall file the following forms latest by 30th September 2024:
- Form VL 1 for all cases
- Form VL 2 for cases where the process is delayed or the liquidator is replaced, as the case may be.

c. for cases where an application for dissolution or withdrawal / suspension of the voluntary liquidation process of the CP has been filed with AA, shall file forms VL1, VL2 and VL3 latest by 30th September 2024.
d. for cases where dissolution of the CP or withdrawal / suspension of voluntary liquidation process has been ordered by AA, shall file forms VL 1, VL 3, and VL 4 latest by 30th September 2024.
It is clarified that an IPs who do not comply with applicable provisions of the Code and the Regulations made thereunder, shall be liable as per applicable provisions of the Code and the Regulations made thereunder for:
(i) failure to file the requisite Forms along with relevant information and records,
(ii) inaccurate and incomplete information and/or records filed in or along with a Form.

IBBI (Voluntary Liquidation Process) Regulations, 2017 apply to the voluntary liquidation of corporate persons under Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016

Initiation of Liquidation

Regulation 3(1) of the IBBI (Voluntary Liquidation Process) Regulations provides that without prejudice to section 59(2), liquidation proceedings of a corporate person shall meet the following conditions, namely: —

(a) a declaration from majority of

(i) the designated partners, if a corporate person is a limited liability partnership,

(ii) individuals constituting the governing body in case of other corporate persons, as the case may be, verified by an affidavit stating that-

(i) they have made a full inquiry into the affairs of the corporate person and they have formed an opinion that either the corporate person has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the liquidation;

(ii) the corporate person is not being liquidated to defraud any person; and

(iii) the corporate person has made sufficient provision to meet the obligations arising on account of pending matters mentioned in sub-clause (iii) of clause (b).

(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely: —

(i) audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later;

(ii) a report of the valuation of the assets of the corporate person, if any prepared by a registered valuer; and

(iii) disclosure about pending proceedings or assessments before statutory authorities, and pending litigations, in respect of the corporate person.

(c) within four weeks of a declaration under sub-clause (a), there shall be-

(i) a resolution passed by a special majority of the partners or contributories, as the case may be, of the corporate person requiring the corporate person to be liquidated and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the partners or contributories, as the case may be, requiring the corporate person to be liquidated as a result of expiry of the period of its duration, if any, fixed by its constitutional documents or on the occurrence of any event in respect of which the constitutional documents provide that the corporate person shall be dissolved, as the case may be, and appointing an insolvency professional to act as the liquidator.

It may be noted that the corporate person owes any debt to any person, creditors representing two-thirds in value of the debt of the corporate person shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

As per Regulation3(2), the corporate person shall notify the Registrar and the Board about the resolution under sub-regulation (1) to liquidate the corporate person within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

Subject to approval of the creditors under sub-regulation (1), the liquidation proceedings in respect of a corporate person shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-regulation (1).

Reporting

According to Regulation 8(1), the liquidator shall prepare and submit-

(a) Preliminary Report;

(b) Status Report;

(c) Minutes of consultations with stakeholders; and

(d) Final Report in the manner specified under these Regulations.

Completion of Liquidation (Regulation 37)

(1) The liquidator shall endeavour to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 within: -

(a) two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under clause (c) of subsection (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, and

(b) ninety days from the liquidation commencement date in all other cases.

(2) In the event of the liquidation process continuing for more than the period stipulated in sub-regulation (1), the liquidator shall

(a) hold a meeting of the contributories of the corporate person within fifteen days –

(i) from the end of two hundred and seventy days or ninety days, as the case may be, and
(ii) thereafter at the end of every succeeding two hundred and seventy days or ninety days, as the case may be, as stipulated in sub-regulation (1), till submission of application for dissolution of the corporate person; and

(b) shall present Status Report(s)indicating progress in liquidation, including-

(i) settlement of list of stakeholders,

(ii) details of any assets that remains to be sold and realized,

(iii) distribution made to the stakeholders,

(iv) distribution of unsold assets made to the stakeholders;

(v) developments in any material litigation, by or against the corporate person;

(vi) filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code; and

(vii) the reasons for not completing the process within stipulated time period and the additional time required for completing the process.

(3) The Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

(4) The liquidator shall file the Status Report with the Board within seven days of the meeting of contributories.

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LESSON 15

PROFESSIONAL AND ETHICAL PRACTICES FOR INSOLVENCY PRACTITIONERS

Duties of Resolution Professional

Regulation 3A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for assistance and cooperation by the personnel of the corporate debtor as follows:

(1) *Duty to take custody and control*: The interim resolution professional or resolution professional, as the case may be, shall take custody and control as specified under this regulation from the personnel of the corporate debtor,its promoters or any other person associated with the management of the corporate debtor as the case may be, of the following:-

(a) the records of information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such other information required under regulation 36;

(b) the assets recorded in the balance sheet of the corporate debtor or in any other records referred in clause (f) of section 18.

(2) *Obligation of personnel/promoter etc. to provide list of assets and records while handing over their custody and control:* The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide to the interim resolution professional or resolution professional, as the case may be**,** a list of assets and records while handing over their custody and control, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.

(3) *Duty of IRP/RP to prepare list of assets and records:* Where any asset or record has not been handed over or the list has not been provided under sub-regulation (2), the interim resolution professional or resolution professional, as the case may be, shall himself prepare a list of assets and records while taking custody and control of assets and records, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.

(4) *Signing of list of assets and records:* Each list of assets and records under sub-regulation (2) and (3) shall be signed by the parties present and by at least two individuals who have witnessed the act of taking control and custody of such assets and records.

(5) *Requisition by IRP/RP for information required under the Code but not handed over:* The interim resolution professional or resolution professional, as the case may

be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such information required under regulation 36 which were required to be maintained by the corporate debtor but have not yet been handed over.

(6) *Requisition by IRP/RP for assets in records but not handed over:* The interim resolution professional or resolution professional, as the case may be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the assets which are recorded in the balance sheet or in any other records referred in clause (f) of section 18 and whose custody has not been handed over.

(7) An application made under sub-section (2) of section 19 in respect of failure to provide any asset or record as requisitioned under the Code and this regulation, shall show presence of such asset or record in the notice of requisition and absence of such asset or record in the list of assets and records taken in control and custody under sub-regulation (2) and (3).

Eligibility for Registration of Insolvency Professionals

Regulation 4(1) of the IBBI (Insolvency Professionals) Regulations, 2016 provides that no individual shall be eligible to be registered as an insolvency professional if he-

(a) is a minor;

(b) is not a person resident in India;

(c) does not have the qualification and experience specified in Regulation 5 or Regulation 9, as the case may be;

(d) has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(e) he is an undischarged insolvent, or has applied to be adjudicated as an insolvent;

(f) he has been declared to be of unsound mind; or

(g) he is not a fit and proper person; Explanation:

For determining whether an individual is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria-

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence, including financial solvency and net worth.

No insolvency professional entity, recognised by the Board under regulation 13, shall be eligible to be registered as an insolvency professional, if the entity and/or any of its partner or director, as the case may be, is not fit and proper person under clause (g)(i).

Operating separate bank account for each real estate project

According to Regulation 4D, where the corporate debtor has any real estate project, the interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project.

Application for Certificate of Registration

According to Regulation 6(1) an individual enrolled with an insolvency professional agency as a professional member may make an application to the Board through the insolvency professional agency of which he is a member, in Part – II of Form A of the Second Schedule to these Regulations, along with a nonrefundable application fee of twenty thousand rupees to the Board.

(1A) An insolvency professional entity eligible for registration as an insolvency professional under sub-regulation (2) of regulation 4 may make an application to the Board through the insolvency professional agency of which it is a member, in Part – II of Form AA of Second Schedule to these Regulations, along with a non-refundable application fee of two lakh rupees to the Board. The insolvency professional agency shall acknowledge an application made under this Regulation within seven days of its receipt.

(2A) The insolvency professional agency shall verify and forward the application to the Board within thirty days from the date of payment of fee under sub-regulations (1) or (1A), as the case may be, excluding the time given by the insolvency professional agency to the professional member for submitting additional documents, information, or clarification, as the case may be.

(3) The Board may require the applicant to submit, within reasonable time, additional documents, information or clarification that it deems fit.

(4) The Board may require the applicant to appear, within reasonable time, before the Board in person, or through its authorised representative for clarifications required for processing the application.

Surrender of Certificate of Registration.

Regulation 10A provides that an insolvency professional may surrender its certificate of registration by making a request to the Board, in writing along with the certificate of registration in original.

If the Board is satisfied, it may accept the request for surrender of certificate of registration within thirty days of its receipt and upon acceptance, the registration of such insolvency professional shall stand cancelled.

On and from the date of cancellation of certificate of registration, the concerned person shall not represent itself to be a holder of the certificate for carrying out the activity for which such certificate had been granted.

Special Procedure for Action on Surrender, Expulsion, etc.

According to Regulation 10A (1), while disposing of the matter under this regulation, the Board shall not be bound by the procedure specified in regulation 11.

(2) On receipt of information under clause (e) and (f) of sub-regulation (1) of regulation 10, the Board may issue a notice, if required, to such professional member, calling upon it to explain as to why the certificate of registration, granted under the regulations, should not be cancelled.

(3) The professional member may make written submission(s), if any, within a period not exceeding twenty-one days from the date of service of notice.

(4) On being satisfied with the submission(s) made under sub-regulation (3), the Board may decide to cancel the registration or issue directions to complete the ongoing assignments, make pending compliances including payment of fee, etc.

(5) The Board shall communicate its decision under sub-regulation (4) within thirty days from date of receipt of written submissions under sub-regulation (3).

(6) On receipt of information under clause (g) of sub-regulation (1) of regulation 10, the registration of such insolvency professional with the Board shall be deemed to have been cancelled from the date of demise or winding up or dissolution, as the case may be.

(7) On and from the date of cancellation of the certificate of registration, under this regulation, the legal heirs or assignee of the insolvency professional shall take steps for delivery of any record(s) or document(s) or assets that may be in its custody or control, within the time period and in the manner, as may be required under the relevant regulations or as may be directed by the Board.

Recognition of Insolvency Professional Entities

Regulation 12 of the IBBI (Insolvency Professionals) Regulations, 2016 states that a company, a registered partnership firm or a limited liability partnership may be recognised as an insolvency professional entity, if –

(a) its objective is to provide support services to insolvency professionals or to carry on the activities of an insolvency professional or both.

(b) it has a net worth of not less than one crore rupees;

(c) majority of its equity shares and voting rights are held by insolvency professionals, who are its directors, in case it is a company,

(d) majority of capital contribution is made by insolvency professionals, who are its partners, in case it is a limited liability partnership firm or a registered partnership firm;

(e) majority of its partners or directors, as the case may be, are insolvency professionals;

(f) majority of its whole-time directors are insolvency professionals; in case it is a company; and

(g) none of its partners or directors is a partner or a director of another insolvency professional entity.

It may be noted that 'net worth' means- (i) the net worth as defined under section 2(57) of the Companies Act, 2013 in case of a company; (ii) sum of partners' contribution in the capital account and their undistributed profits net of accumulated losses, if any, in case of a registered partnership firm or limited liability partnership.

Code of Conduct for Insolvency Professional

Integrity and Objectivity

1. An insolvency professional must maintain integrity by being honest, straightforward, and forthright in all professional relationships.
2. An insolvency professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.
3. An insolvency professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.

3A. An insolvency professional must disclose the details of any conflict of interests to the stakeholders, whenever he comes across such conflict of interest during an assignment.

4. An insolvency professional appointed as an interim resolution professional, resolution professional, liquidator, or bankruptcy trustee should not himself acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so.

Independence and Impartiality

5. An insolvency professional must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.
6. In cases where the insolvency professional is dealing with assets of a debtor

during liquidation or bankruptcy process, he must ensure that he or his relatives do not knowingly acquire any such assets, whether directly or indirectly unless it is shown that there was no impairment of objectivity, independence or impartiality in the liquidation or bankruptcy process and the approval of the Board has been obtained in the matter.

7. An insolvency professional shall not take up an assignment under the Code if he, any of his relatives, any of the partners or directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director is not independent, in terms of the regulations related to the processes under the Code, in relation to the corporate person/ debtor and its related parties.

8. An insolvency professional shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under sections 53 or 178 of the Code, and the concerned corporate person/ debtor as soon as he becomes aware of it, by making a declaration of the same to the applicant, committee of creditors, and the person proposing appointment, as applicable.

8A. An insolvency professional shall disclose as to whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor, to the committee of creditors and to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

8B. An insolvency professional shall disclose its relationship, if any, with the corporate debtor, other professionals engaged by it, financial creditors, interim finance providers, and prospective resolution applicants to the insolvency professional agency of which he is a member, within the time specified hereunder:

Relationship of the insolvency professional with	**Disclosure to be made within three days of**
(1)	(2)
Corporate debtor	his appointment.
Registered valuers / accountants/ legal professionals/ other professionals appointed by him	appointment of the professionals.
Financial creditors	the constitution of committee of creditors.
Interim finance providers	the agreement with the interim finance provider.
Prospective resolution applicant	the supply of information memorandum to the prospective resolution applicant.

If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising.

8C. An insolvency professional shall ensure disclosure of the relationship, if any, of the other professionals engaged by it with itself, the corporate debtor, the financial creditor, the interim finance provider, if any, and the prospective resolution applicant, to the insolvency professional agency of which he is a member, within the time specified as under:

Relationship of the other professional with	**Disclosure to be made within three days of**
(1)	(2)
Insolvency professional	the appointment of the other professional.
Corporate debtor	the appointment of the other professional.
Financial creditors	constitution of committee of creditors.
Interim finance providers	the agreement with the interim finance provider or three days of the appointment of the other professional, whichever is later.
Prospective resolution applicants	the supply of information memorandum to the prospective resolution applicant or three days of the appointment of the other professional, whichever is later.
If relationship with any of the above, comes to notice or arises subsequently	of such notice or arising.

Explanation: For the purposes of clause 8B and 8C above, 'relationship' shall mean any one or more of the following four kinds of relationships at any time or during the three years preceding the appointment of other professionals:

Kind of relationship	Nature of relationship
(1)	(2)
A	Where the insolvency professional or the other professional, as the case may be, has derived 5% or more of his / its gross revenue in a year from professional services to the related party.
B	Where the insolvency professional or the other professional, as the case may be, is a shareholder, director, key managerial personnel or partner of the related party.
C	Where a relative (spouse, parents, parents of spouse, sibling of self and spouse, and children) of the insolvency professional or the other professional, as the case may be, has a relationship of kind A or B with the related party.
D	Where the insolvency professional or the other professional, as the case may be, is a partner or director of a company, firm or LLP, such as, an insolvency professional entity or registered valuer, the relationship of kind A, B or C of every partner or director of such company, firm or LLP with the related party.

8D. An insolvency professional shall ensure timely and correct disclosures by it, and other professionals appointed by it and shall provide a confirmation to the insolvency professional agency of which he is a professional member to the effect that the appointment, if any, of every other professional has been made at arms' length relationship.

9. An insolvency professional shall not influence the decision or the work of the committee of creditors or debtor, or other stakeholders under the Code, so as to make any undue or unlawful gains for itself or its related parties, or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any mala fide objectives.

Professional Competence

10. An insolvency professional must maintain and upgrade his professional knowledge and skills to render competent professional service.

Representation of Correct Facts and Correcting Misapprehensions

11. An insolvency professional must inform such persons under the Code as may be required, of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.

12. An insolvency professional must not conceal any material information or knowingly make a misleading statement to the Board, the adjudicating authority or any stakeholder, as applicable.

Timeliness

13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution,

liquidation or bankruptcy process, as the case may be, and must carefully plan its actions, and promptly communicate with all stakeholders involved for the timely discharge of its duties.

14. An insolvency professional must not act with mala fide or be negligent while performing its functions and duties under the Code.

Information Management

15. An insolvency professional must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.

15A. An insolvency professional shall prominently state in all its communications to a stakeholder, its name, address, e-mail, registration number and validity of authorisation for assignment, if any, issued by the insolvency professional agency of which he is a member.

15. An insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. this shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of its decisions and actions.

16. An insolvency professional must not make any private communication with any of the stakeholders unless required by the Code, rules, regulations and guidelines thereunder, or orders of the adjudicating authority.

17. An insolvency professional must appear, co-operate and be available for inspections and investigations carried out by the Board, any person authorised by the Board or the insolvency professional agency with which he isenrolled.

18. An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.

19. An insolvency professional must be available and provide information for any periodic study, research and audit conducted by the Board.

Confidentiality

20. An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent it from disclosing any information with the consent of the relevant parties or requiredby law.

Occupation, Employability and Restrictions

21. An insolvency professional must refrain from accepting too many assignments, if he is unlikelyto be able to devote adequate time to each of his assignments.

Clarification: An insolvency professional may, at any point of time, not have more than ten assignments as resolution professional in corporate insolvency resolution process, of which not more than three shall have admitted claims exceeding one thousand crore rupees each.

22A. *Resignation by an Insolvency Professional:* An insolvency professional may resign from the assignment, subject to the recommendation of the committee of creditors in a corporate insolvency resolution process, consultation committee in liquidation process, the debtor or the creditor in the insolvency resolution process of personal guarantor to the corporate debtor, as the case may be, and the approval of the Adjudicating Authority. It is further explained that the insolvency professional shall continue to discharge his duties, functions and responsibilities till the approval of resignation by the Adjudicating Authority.

22. An insolvency professional must not engage in any employment when he holds a valid authorisation for assignment or when he is undertaking an assignment.

23A. Where an insolvency professional has conducted a corporate insolvency resolution process, he and his relatives shall not accept any employment, other than an employment secured through open competitive recruitment, with, or render professional services, other than services under the Code, to a creditor having more than ten percent voting power, the successful resolution applicant, the corporate debtor or any of their related parties, until a period of one year has elapsed from the date of his cessation from such process.

23B. An insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to any of his assignment.

For the purposes of this clause, the insolvency professional which is an insolvency professional entity may engage or appoint its partners or directors, as the case may be, for or in connection with any work relating to any of its assignment other than work related to valuation and audit of the debtor.

23C. An insolvency professional shall not provide any service for or in connection with the assignment which is being undertaken by any of his relatives or related parties.

Explanation - For the purpose of clauses 23A to 23C, "related party" shall have the same meaning as assigned to it in clause (24a) of section 5, but does not include an insolvency professional entity of which the insolvency professional is a partner or director.

For the purposes of this clause, the insolvency professional which is an insolvency professional entity may provide any service, other than service related to

valuation and audit, for or in connection with the assignment which is being undertaken by any of its partners or directors, as the case may be.

23. An insolvency professional must not conduct business which in the opinion of the Board is inconsistent with the reputation of the profession.

Remuneration and Costs

24. An insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.

25A. An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

25B. An insolvency professional shall raise bills or invoices in its name towards its fees, and such fees shall be paid to 86 it through banking channel.

25C. An insolvency professional shall ensure that the insolvency professional entity or the professional engaged by it raises bills or invoices in their own name towards their fees, and such fees shall be paid to them through banking channel.

25. An insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration.

26A. An insolvency professional shall not accept /share any fees or charges from any professional and/or support service provider who are appointed under the processes.

26. An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidationcosts, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable.

27A. An insolvency professional shall, while undertaking assignment or conducting processes, exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person complies with the applicable laws.

27B. An insolvency professional shall not include any amount towards any loss, including penalty, if any, in the insolvency resolution process cost or liquidation cost, incurred on account of non-compliance of any provision of the laws applicable on the corporate person while conducting the insolvency resolution process, fast track insolvency resolution process, liquidation process or voluntary liquidation process, under the Code.

Gifts and Hospitality

27. An insolvency professional, or his relative must not accept gifts or hospitality

which undermines or affects his independence as an insolvency professional.

28. An insolvency professional shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself, or to obtain or retain an advantage in the conduct of profession for himself.

In the case of *Pooja Menghani vs. Insolvency and Bankruptcy Board of India & Anr*, judgement dated November 20, 2023, Hon'ble High Court of Delhi inter alia observed that an Insolvency Professional performs very important functions in the insolvency resolution process of a company. An Insolvency Professional virtually takes over the company during the period it goes through the insolvency resolution process. An Insolvency Professional in fact becomes the heart and brain of the company under the insolvency resolution process and a person having slightest of disqualification cannot be permitted to be appointed as an Insolvency Professional otherwise the entire purpose of the IBC will get vitiated.

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CASE LAWS

1. In the case of *Prabhat Jain Liquidator of Narmada Cereal Pvt Ltd Vs. MP Industrial Development Corporation& Ors , Comp. App. (AT) (Ins.) No. 697 of 2023 & I.A. No. 2322 of 2023 judgement dated November 27, 2024* Hon'ble NCLAT observed that the Section 35(1)(d) of the Code does not entitle a Liquidator to grant sub-leases over properties not owned by the Corporate Debtor and therefore Section 238 of the Code cannot be interpreted in a manner that has the effect of overriding the Respondent No. 1 duty to enforce the relevant Rules on how public lands are to be regulated. NCLAT has already noted earlier that this is supported by a three-judge bench decision of the Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai vs. Abhilash La/, (2020) 13 SCC 234.* NCLAT found this judgment clearly negates the contention of the Appellant, that Section 238 of the Code override the provisions of the M.P. State Industrial Land and Building Management Rules, 2019.

NCLAT noted that the Hon'ble Supreme Court of India has categorically held that the statutory powers of a public body to regulate public lands cannot be overridden by provisions of the Code. Therefore, NCLAT found that the Appellant did not have right to create sub- leases over a third party's land. NCLAT also noted that this judgement has been followed by this Appellate Tribunal in *New Okhla Industrial Development Authority vs. Abhishek Anand, Liquidator of Mega Soft Infrastructure Pvt. Ltd., Company Appeal (AT) (Ins.) No. 998 of 2021 and Maharashtra Industrial Development Corporation vs. Santanu T Ray, Company Appeal (AT) (Ins.) No. 1004 of 2021 etc.,* and therefore, we are duty bound to follow the same.

In view of above detailed analysis, NCLAT held that action of the Appellant to sub-lease to M/s Maa Yashoda Food Grains, without specific permission of the Respondent No. 1 was incorrect and illegal as correctly held by the Adjudicating Authority in the Impugned Order.

2. In the case of Murlidhar Vincom Pvt Ltd Vs. Skoda (India) Pvt Ltd, Company Appeal (AT) (Insolvency) No. 1334 of 2024 judgement dated November 26, 2024, the question before the NCLAT is whether share application money can be treated as financial debt under IBC, where such money had not been refunded within the period prescribed under Section 42 of the Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules, 2014.

Hon'ble NCLAT inter alia observed that when we look at Rule 2(c)(vii) of the CADR Rules, 2014 and the explanatory clause appended thereto, it becomes clear that it refers to any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money. It flows therefrom that for the aforementioned CADR Rules to be attracted in respect of share application money, there has to be a clear nexus to show that

the share application money amount was advanced in conformity with the relevant provisions of the Companies Act, 2013. When we look at Section 42 of the Companies Act, 2013 it is clear that several statutory compliances are required to be met prior to issue of shares on private placement basis. Section 42(2) of the Companies Act stipulates the requirement of issue of private placement offer letter in such cases. From the records available on file, we do not find that the Corporate Debtor had issued any such private placement offer letter to the Appellant. There is no evidence of any valid concluded agreement between the two parties with respect to allotment of shares. Hence, the amount which was advanced by the Appellant cannot be treated to be amount in response to the private placement offer. Rule 2 of CADR Rules envisages that only if any amount is received pursuant to any private placement offer made in accordance with the provisions of the Companies Act, 2013 and no shares are allotted qua that amount, only then the sum becomes a deposit. When no proof of any private placement offer made in accordance with the provisions of the Companies Act, 2013 has been placed on record by the Appellant, the CADR Rules cannot be held to be applicable. Since the amount advanced cannot be related to Section 42 of the Companies Act, the applicability of Section 42(6) cannot be pressed as is being sought by the Appellant in the present case.

NCLAT did not find any infirmity in the order of the Adjudicating Authority rejecting the Section 7 application of the Appellant. It shall however remain open to the Appellant to seek refund/recovery of the share application money in appropriate proceedings before an appropriate forum in accordance with law. There is no merit in the Appeal. The Appeal is dismissed.

3. In the case of *State Bank of India & Ors {Appellant(s)} Versus the Consortium of Mr. Murari Lal Jalan and Mr. Florian FritsCH & Anr {Respondent(s)), Civil Appeal Nos. 5023-5024 of 2024 with Civil Appeal Nos. 12220-12221 of 2024 judgement dated November 07, 2024,* the question before the Supreme Court of India is whether a Resolution Applicant is entitled to withdraw or modify its Resolution Plan, once it has been submitted by the Resolution Professional to the Adjudicating Authority and before it is approved by Adjudicating Authority under Section 31(1) of the IBC, 2016?

In the above case, Hon'ble Apex Court referred the decided case of *Ebix Singapore Private Limited v. Committee Of Creditors of Educomp Solutions Limited and Another reported in (2022) 2 SCC 401* , wherein Supreme Court was faced with the issue whether withdrawals or modifications by successful resolution applicants were permissible under the IBC, 2016 i.e., whether a resolution applicant is entitled to withdraw or modify its Resolution Plan, once it has been submitted by the Resolution Professional to the Adjudicating Authority and before it is approved by such authority under Section 31(1) of the IBC, 2016. It was unequivocally held that, based on the plain terms of the IBC, 2016, the Adjudicating Authority lacks the power to allow the withdrawal or modification of the Resolution Plan by a successful resolution applicant or to give effect to any such clauses in the Resolution Plan…….. .

In light of the aforesaid, Supreme Court observed that it is clear that the existing insolvency framework does not provide any scope for effecting further modifications or withdrawals of the Resolution Plan approved by the CoC, at the behest of the successful resolution applicant, once the plan has been submitted to the adjudicating authority. The submitted Resolution Plan is binding and irrevocable as between the CoC and the successful resolution applicant in terms of the provisions of the IBC, 2016 and the 2016 Regulations as well. In other words, once a CoC-approved resolution plan is submitted to the Adjudicating Authority i.e., NCLT, it immediately becomes binding on the CoC and the SRA, even if the Adjudicating Authority has not yet given its stamp of approval on the same. While deciding so, this Court re-emphasized the object under Section 31(1) of the IBC, 2016 and observed that once the Adjudicating Authority has approved the plan under Section 31(1) of the IBC, 2016, the Resolution Plan is binding on all the stakeholders including those stakeholders who are not direct participants of the CIRP. Therefore, there is absolutely no scope for modification of the terms of a Resolution Plan which has received the imprimatur of the Adjudicating Authority, be it by the Adjudicating Authority itself, the CoC or the SRA.

4. In the case of *Telecom Regulatory Authority of India (Appellant) Versus Reliance Telecom Ltd. & Ors. (Respondents), Company Appeal (AT) (Insolvency) Nos. 273 & 355 of 2024, judgement dated November 05, 2024* National Company Law Appellate Tribunal (NCLAT)held that Section 238 of the IBC gives overriding effect to the provisions of the IBC to all other laws. Section 238 of the IBC is as follows:

"238. Provisions of this Code to override other laws. - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Learned Counsel for the Respondent has relied on the judgment of the Hon'ble Supreme Court in *A. Navinchandra Steels Pvt. Ltd. vs. SREI Equipment Finance Ltd. & ors. – Civil Appeal Nos.4230-4234 of 2020 decided on 01.03.2020.* The Hon'ble Supreme Court in paragraph 14 of the judgment has held that IBC is a special statute, which must prevail in the event of conflict, but has a non-obstante clause contained in Section 238. Paragraph 14 of the judgment of the Hon'ble Supreme Court is as follows*:*

"14. Having heard learned counsel for all the parties, it is important to restate a few fundamentals. Given the object of the IBC as delineated in paragraphs 25 to 28 of Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17 ["Swiss Ribbons"], it is clear that the IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail. Vis-à-vis the Companies Act, which is a general statute dealing with companies, including companies that are in the red, the IBC is not only a special statute which must prevail in the event of conflict, but has a non-obstante clause contained in Section 238, which makes it even clearer that in case of conflict, the provisions of the IBC will prevail."

Hon'ble NCLAT held that in view of the clear pronouncement of the above law, submission of the Appellant that TRAI Act is a special statute and would prevail over the IBC, has to be rejected.

5. In the case of *Ramkrishna Forgings Limited (Appellant) Vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.(Respondents), Civil Appeal No.1527 of 2022 judgement November 21, 2023*, Hon'ble Supreme Court inter alia observed that having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the Corporate Debtor*. K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd. (supra)* are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in *Maharashtra Seamless Limited (supra),* which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the CoC, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In *Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401,* the Court concluded that '*… in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom",* NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.' (Para 27)

6. In the case of *Mr. Shiv Charan & Ors vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 & Ors, Writ Petition (L) No.9943 of 2023 along With Writ Petition (L) No.29111 of 2023* judgement dated March 01, 2024, Hon'ble Bombay High Court inter alia observed that Section 32A (2) of the IBC, 2016 protects the property of the corporate debtor from any attachment and restraint in proceedings connected to the offense committed prior to the commencement of the CIRP. Once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan (the same ingredients as set out in Section 32A (1) are stipulated here too), the property of the corporate debtor would get immunity from further prosecution of proceedings. Clause (i) in the Explanation to Section 32A (2) removes all doubt about what the assets are given immunity from. The provision explicitly stipulates that an

"action against the property" of the corporate debtor, from which immunity would be available, "shall include the attachment, seizure, retention or confiscation of such property under such law" as applicable. The reference being to any action against the property under any law would evidently bring within its compass, attachments made under the PMLA, 2002. (Para 18)

Further the Hon'ble High Court in its summary of conclusions inter alia held that the NCLT in its capacity as the Adjudicating Authority under the IBC, 2016 has only interpreted the provisions of Section 32A and applied them to the facts at hand, to declare that the attachment of the Attached Properties by the ED must come to an end. It is possible that in a given case, the application of Section 32A of the IBC, 2016 may have an effect on existing and intended attachments and prosecution by enforcement agencies operating under laws such as the PMLA, 2002. However, since both Section 32A and Section 60(5) are non-obstante provisions, they would prevail, with no room for concern, real or imagined, about any conflict between legislations..…….. {Para 52(viii)}

7. In the case *of Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr Civil Appeal Nos.7590-7591 OF 2023 (Arising out of Diary No.3628 of 2023) judgement dated February 12, 2024* Hon'ble Supreme Court of India inter alia observed that ……. a Court or a Tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the Court. Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) of the IBC, which opens with a non-obstante clause, empowers the NCLT (the Adjudicating Authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to re-hear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court /Tribunal resulting in gross failure of justice.

In a recent decision (i.e., *Union Bank of India vs. Dinakar T. Vekatasubramanian & Ors.),* a five-member Full Bench of NCLAT held that though the power to review is not conferred upon the Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT Rules, 2016. It was held that power of recall of a judgment can be exercised when any procedural error is committed in delivering the earlier judgment; for example, necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. It was

observed that there may be other grounds for recall of a judgment one of them being where fraud is played on the Court in obtaining a judgment. This decision of NCLAT was upheld by a two-Judge Bench of Supreme Court *vide order dated 31.07.2023 in Civil Appeal No.4620 of 2023 (Union Bank of India vs. Financial Creditors of M/s Amtek Auto Ltd. & Ors.).*

8. In the case of *Dilip B Jiwrajka{Petitioner(s)} Vs. Union of India & Ors {Respondent(s)}, Supreme Court of India, Writ Petition (Civil) No 1281 of 2021 judgement dated November 09, 2023,* Hon'ble Supreme Court while upholding the constitution validity of Section 95-100 of the Insolvency and Bankruptcy Code (IBC), held that (i) No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC; (ii) The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application; (iii) The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review; (iv) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application; (v) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional; (vi) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100; (vii) The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application; (viii) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and (ix) The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.

9. in the case of *Sunil Kumar Agrawal (Appellant)vs. New Okhla Industrial Development Authority (Respondent) 12th January, 2023*, National Company Law Appellate Tribunal, Principal Bench, New Delhi Company Appeal (AT) (Ins.) No. 622 of 2022. Hon'ble National Company Law Appellate Tribunal inter-alia observed that Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. However, explanation

appended to Section 14(1) (d) says that with the prohibition of recovery of any property by an owner or lessor, a license, permit, registration, quota, concession, clearance or a similar grant or right either given by the Central Govt., State Govt. local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency but there would be a condition for its continuation if there is no default in payment of the dues of such license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent.

10. In the case of *Shri Guru Containers(Appellant)vs. Jitendra Palande (Respondent), National Company Law Tribunal, Mumbai Bench Company Appeal (AT) (Insolvency) No.106 of 2023 judgement dated 22/02/2023* Hon'ble National Company Law Tribunal inter alia observed that though the scope of CIRP related work became limited and restricted by the fact that progress got stonewalled due to lack of flow of information and lack of claims, diligence on the part of the IRP in proceeding with the CIRP cannot be found to be wanting. Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified. It is equally important for the creditors to play a catalytic role in the insolvency resolution process given the present regime of creditor-driven IBC. The rigours of similar standards of discipline should also apply on the creditors. This is clearly a case where the CIRP process was being hindered due to want of cooperation and participation from the creditors. The conduct of the Operational Creditor in the present case is deprecatory in that once the CIRP process had commenced, the Operational Creditor went into a sleeping mode. This position has been further aggravated by the fact that it was the Appellant/Operational Creditor who had triggered this judicial process and then abdicated himself from all responsibilities. That the Operational Creditor did not seem interested in resolution of the Corporate Debtor is evident from the fact that till date no claim has been filed with the IRP.

11. In the matter of *Vallal RCK Vs. M/s Siva Industries and Holdings Limited and Ors. [Civil Appeal Nos. 1811-1812 of 2022]* the Hon'ble Supreme Court in its judgment dated 3rd June, 2022 observed that Section 12A was brought on the basis of the Insolvency Law Committee's Report. Though by the Amendment Act No. 26 of 2018, the voting share of 75% of CoC for approval of the resolution plan was brought down to 66%, section 12A of the Insolvency and Bankruptcy Code, 2016 (Code) which was brought by the same amendment, requires the voting share of 90% of CoC for approval of withdrawal of corporate insolvency resolution process (CIRP).

The provisions under section 12A of the Code have been made more stringent as compared to Section 30(4) of the Code. Whereas under section 30(4) of the Code, the voting share of CoC for approving the resolution plan is 66%, the requirement under section 12A of the Code for withdrawal of CIRP is 90%.

When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC.

This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts.

The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, and irrational and de hors (outside) the provisions of the statute or the Rules.

12. In the case of *NOIDA vs. Anand Sonbhadra [Civil Appeal No. 2222, 2367-2369 of 2021] Judgement dated 17th May, 2022, Hon'ble* Supreme Court inter-alia observed that a debt is a liability or an obligation in respect of a right to payment. Irrespective of whether there is adjudication of the breach, if there is a breach of contract, it may give rise to a debt. In the context of section 5(8), disbursement has been understood as money, which has been paid. In the context of the transaction involved in such real estate projects, the homebuyers advance sums to the builder, who would then utilise the amount towards the construction in the real estate project.

What is relevant is to attract section 5(8), on its plain terms, is disbursement. While, it may be true that the word 'transaction' includes transfer of assets, funds or goods and services from or to the corporate debtor, in the context of the principal provisions of section 5(8) of the Code, to import the definition of 'transaction' in section 2(33), involving the need to expand the word 'disbursement', to include a promise to pay money by a debtor to the creditor, will be uncalled for straining of the provisions.

'Debt' means a liability or obligation, which relates to a claim. The claim or right to payment or remedy for breach of contract occasioning a right to payment must be due from any person.

In the lease in question, there has been no disbursement of any debt (loan) or any sums by the NOIDA to the lessee.
The subject matter of section 5(8)(d) is a lease or a hire-purchase contract. It is not any lease or a hire purchase contract, which would entitle the lessor to be treated as the financial creditor. There must be a lease or hire-purchase contract, which is deemed as a finance or capital lease. The law giver has not left the courts free to place, its interpretation on the words 'finance or capital lease'. The legislature has contemplated the finance or a capital lease, which is deemed as such a lease under the Indian Accounting Standards.

The Appellant is not the financial lessor under section 5(8)(d) of the Code. Needless to say, there is always power to amend the provisions which essentially consist of the Indian Accounting Standards in the absence of any rules prescribed under section 5(8)(d) of the Code by the Central Government.

Section 5(8)(f) is a residuary and catch all provision. A lease, which is not a finance or a capital lease under section 5(8)(d), may create a financial debt within the meaning of section 5(8)(f), if, on its terms, the Court concludes that it is a transaction, under which, any amount is raised, having the commercial effect of the borrowing.

The lease in question does not fall within the ambit of section 5(8)(f). This is for the reason that the lessee has not raised any amount from the Appellant under the lease, which is a transaction. The raising of the amount, which, according to the Appellant, constitutes the financial debt, has not taken place in the form of any flow of funds from the Appellant/Lessor, in any manner, to the lessee. The mere permission or facility of moratorium, followed by staggered payment in easy instalments, cannot lead to the conclusion that any amount has been raised, under the lease, from the Appellant, which is the most important consideration.

The appeal failed, Supreme Court held that the Appellant is not a Financial Creditor.

However, the Apex court indicated that the Centre can bring a prospective amendment to classify NOIDA as a financial creditor. Hon'ble Justice K.M. Joseph in his initial remark noted that hardly six years old, the Insolvency and Bankruptcy Code (hereinafter referred to as the 'IBC") continues to be a fertile ground to spawn 2 litigation.

13. In the case of *Sunil Kumar Agrawal (Appellant) vs. New Okhla Industrial Development Authority (Respondent) 12th January, 2023,* National Company Law Appellate Tribunal, Principal Bench, New Delhi Company Appeal (AT) (Ins.) No. 622 of 2022, Hon'ble National Company Law Appellate Tribunal inter-alia observed that Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. However, explanation appended to Section 14(1) (d) says that with the prohibition of recovery of any property by an owner or lessor, a license, permit, registration, quota, concession, clearance or a similar grant or right either given by the Central Govt., State Govt. local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency but there would be a condition for its continuation if there is no default in payment of the dues of such license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent.

14. In the matter of *Ms. Ashish Ispat Private Limited Vs Primuss Pipes & Tubes Ltd.*, NCLAT held that when a withdrawal application u/s 12A of the Code is filed prior to constitution of CoC, the requirement of 90% vote of CoC is not applicable, and the Adjudicating Authority has to consider the application without requiring any approval from CoC. Approval of 90% shall be applicable only when Committee of Creditors is constituted and withdrawal application u/s 12A of IBC has been filed post that.

15. Supreme Court in the matter of *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors.* held that:

- The AA has limited jurisdiction in the matter of approval of a resolution plan. In the adjudicatory process concerning a resolution plan under IBC, NCLT does not have scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by CoC.
- There is no scope for the NCLT or the NCLAT to proceed on basis of perceptions or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors.
- There is no prohibition in the scheme of IBC and CIRP Regulations, that CoC cannot simultaneously consider and vote upon more than one resolution plan at the same time for electing one of the available plans. i.e. CoC can vote upon multiple resolution plans at the same time.

12. The Supreme Court in the matter of *Lalit Kumar Jain Vs. Union of India & Ors*. upheld the validity of notification dated November 15, 2019 enforcing the provisions related to personal guarantor to corporate debtor under the Code. Approval of resolution plan of a corporate debtor undergoing CIRP does not per se operate as a discharge to its surety/guarantor of their liabilities under the contract of guarantee. The nature and extent of liability would depend upon the terms of guarantee.

16. In the matter of *Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Others,* Supreme Court held that:

- Any debt due to government (Central/State/Local Authority) including statutory dues is covered under the term "Creditor" and in any other case by the term "Other Stakeholders" as provided u/s 31(1) of IBC,2016 and hence an approved resolution plan is also binding on government.
- After the approval of Resolution Plan no surprise claim should flung upon the successful resolution applicant. Once a resolution plan is approved by an Adjudicating Authority, the claim forming part of Resolution Plan stands frozen and claims not forming part of Resolution Plan stands extinguished and no one would be entitled to initiate or continue any proceeding in respect of the claim which is not part of the approved Resolution Plan.
- An approved Resolution Plan is binding upon the Corporate Debtor, its employees, members, creditors, government (Central/State/Local Authority) and any other stakeholder.

17. In the case of *Vbuiltfine Properties Private Ltd(Appellant) vs. Registrar of Companies, Mumbai (Respondent) Company Appeal (AT) No.27 of 2023,* the appellant's name was struck of from the register of companies and an appeal for restoration of the name was filed by the Appellant before the NCLT. By the impugned order under challenge, NCLT directed the ROC Mumbai to restore the name of the company i.e., Vbuiltfine Properties Pvt Ltd, to the register of Registrar of Companies with imposition of cost of Rs. 5,00,000/- Appellant challenged the imposition of this huge cost.

National Company Law Appellate Tribunal in its judgement dated August 18, 2023 inter alia observed that ongoing through the aforesaid order it is difficult to infer as to under what circumstances the company petition was allowed and direction was issued for restoration of the name of the company along with imposition of costs.

It is evident from the impugned order that the company petition was preferred under Section 252(1) of the Companies Act, 2013. However, since the date of striking off the name of the company is not mentioned. It is difficult to infer as to whether the petition was filed within three years from the striking off the name of the company or not. The order does not reflect any plausible reason for passing an order for restoration. Similarly, nothing has been indicated as to under what circumstances the cost of Rs.5 lakhs was imposed.

On examination of aforesaid provision, it is evident that from the date of striking off the name of the company from the register of Registrar of Companies, one can prefer an appeal within a period of three years from the date of striking off the name of the company. In the order impugned date of striking off under Section 248(5) of Companies Act, 2013 has not been mentioned. On examination of the impugned order, it is evident that though date of striking off was not mentioned, the appeal was preferred after four years. The order on this issue appears to be completely vague. Moreover, if the NCLT was exercising its jurisdiction under Section 252(3) of the Companies Act, 2013, in such situation the appellant was required to satisfy the NCLT that on the date of striking off the company, the company was carrying on business or in operation. There was third condition for passing of the restoration order in case it was otherwise just for restoring the name of the company.

The order does not meet either of the three criteria under Section 252(3) of the Act. Moreover, since the appeal was preferred under Section 252(1) of the Companies Act, 2013 the learned NCLT was required to examine the appeal strictly in accordance with the provision under Section 252(1) of the Companies Act, 2013. In absence of exact date of striking off it would be difficult to approve the impugned order. Moreover, learned NCLT has imposed cost of Rs. 5 lakhs but no plausible reason has been given for imposing such cost. In such view of the matter, we are left with no option but to set aside the order and remit back the matter to the NCLT for passing order afresh after affording opportunity to both the parties i.e., Appellant and ROC.

18. In the case of *Kalyani Transco (Appellant) Versus M/S. Bhushan Power and Steel Ltd. & Ors (Respondents) Civil Appeal No. 1808 of 2020 With Civil Appeal Nos. 2192-2193 of 2020, 2025 INSC 621* Judgement dated May 02, 2024, Supreme Court rejected the Resolution Plan as submitted by JSW Steel(Successful Resolution Applicant) as approved by the CoC for Bhushan Steel and Power Ltd and held that that the Resolution Plan of JSW Steel was illegal and not in conformity with the provisions contained in Section 30(2), read with Section 31(2) of IBC also directed NCLT to initiate the Liquidation Proceedings against the Corporate Debtor-BPSL under Chapter III of the IBC and in accordance with law.

Chronological Events

2016

Ministry of Corporate Affairs ordered a probe into the affairs of Bhushan Steel Limited (BSL), Bhushan Steel and Power Limited (BSPL), and 13 other group companies, 12 of which were related to BSPL, while one was related to BSL.

2017

After the enactment of the IBC 2016 & Banking Regulation Act, 1949 was amended w.e.f. 04.05.2017, to enable the RBI to issue directions to the Indian Banks to mandatorily initiate the Corporate Insolvency Resolution Process (CIRP). The RBI vide its Circular dated 13.06.2017, therefore identified 12 big accounts for resolution, infamously known as the ***"dirty dozen", which included Bhushan Power and Steel Ltd (BPSL)*** constituting about 25% of total non-performing assets in the country, for immediate admission under the IBC. BPCL admitted for CIRP.

The Interim Resolution Professional received various claims, out of which the Resolution Professional admitted claims to the tune of INR 4,72,04,51,78,073.88 (Rupees Forty-Seven Thousand Two Hundred and Four Crores Fifty-One Lakhs Seventy-Eight Thousand and Seventy-Three and Eighty-Eight Paise) in respect of Financial Creditors.

2019

NCLT approved the Resolution Plan of JSW Steel for BPCL.

After the approval of the plan by the NCLT as aforesaid, the Directorate of Enforcement (ED) of Central Government, Passed An Order (PAO) on 10.10.2019 provisionally attaching the assets of the Corporate Debtor -BPSL under Section 5 of the Prevention of Money Laundering Act, 2002.

2020

NCLAT allowed JSW Steel to acquire Corporate Debtor -BPSL.

Directorate of Enforcement (ED) & Promotors of BPSL approached to Supreme Court against NCLAT Order.

2021

JSW has complete acquisition and paid Rs. 19,350 crores to financial creditors.

2024

Directorate of Enforcement is directed by Supreme Court to handover attached assets tot Successful Resolution Applicant JSW Steel.

2025

Supreme Court quashed Resolution Plan of JSW Steel and declared it illegal also directed NCLT to initiate the Liquidation Proceedings against the Corporate Debtor-BPSL under Chapter III of the IBC and in accordance with law.

Observation of the Supreme Court

IBC is silent with regard to the phase of implementation of the Resolution Plan

Hon'ble Apex Court observed that it is quite clear that merely because the Code is silent with regard to the phase of implementation of the Resolution Plan by the Successful Resolution Applicant, neither the Tribunal nor the Courts should give excessive leeway to the Successful Resolution Applicant to act in flagrant violation of the terms of the Resolution Plan or in a lackadaisical manner. In the instant case, SRA/JSW did not implement the Resolution Plan for about two years since its approval by the NCLAT, though there was no legal impediment in implementing the same. Such flagrant violation of the terms of the Resolution Plan, has frustrated the very object and purpose of the Code.

It is needless to say that the Resolution Plan, after its approval by the Adjudicating Authority i.e. NCLT under Section 31, is binding not only to the Corporate Debtor, its employees, members, creditors and the Government authorities but also to all the stakeholders including the successful Resolution Applicant itself. It may be noted that any contravention of the terms of the approved Resolution Plan, by any person on whom such plan is binding under Section 31, is liable to be prosecuted and punished under sub-section (3) of Section 74 of the IBC. (Para 82)

Delaying the implementation of Resolution Plan

Further, Supreme Court inter alia opined that nobody should be permitted to misuse the Process of law nor should be permitted to take undue advantage of the pendency of any proceedings in any Court or Tribunal. Instituting vexatious and frivolous litigations in the NCLT or NCLAT and delaying the implementation of Resolution Plan under the garb of pendency of proceedings, has clearly proved the mala fide and dishonest intention on the part of JSW, in firstly securing highest score making misrepresentation before CoC and then not implementing the same under the garb of pendency of proceedings, though the Resolution Plan was supposed to be an unconditional one. Such acts of misuse and abuse of process of law cannot be vindicated by this Court, which otherwise would tantamount to ratifying and pardoning the illegal acts committed by JSW and thereby giving them a clean chit. (Para 78)

Non-Exercise of CoC Commercial Wisdom

The position of law, propounded by this Court is that commercial wisdom of CoC means a considered decision taken by the CoC with reference to the commercial interest, the interest of revival of Corporate Debtor and maximization of value of its assets. This wisdom is not a matter of rhetoric but is denoting a well-considered decision by the CoC as the protagonist of CIRP. The CoC therefore has to take into consideration the mandatory requirements of the Code as well as the Regulations framed by the Board, and to see that the Insolvency Resolution of the Corporate Debtor is completed in a time bound manner and for maximization of value of assets of the Corporate Debtor.

The mandatory requirements under the Code are, the compliance of the time limit specified in Section 12, the compliance of Section 29A to see whether the Resolution Applicant is an eligible applicant to submit the plan, the compliance of sub-section (2) of Section 30 of IBC etc. The mandatory requirements stated in Regulation 38 of the Regulations, 2016 are that the Resolution Plan must demonstrate that it addresses the cause of default, that it is feasible and viable, it has the provisions for its effective implementation and the Resolution Applicant has the capability to implement the Resolution Plan in a time bound manner. If the Resolution Plan does not comply with such mandatory requirements and such plan is approved by the CoC, it could not be said that the CoC had exercised its commercial wisdom while approving such Resolution Plan. (Para 73)

Conclusion

Having thoroughly examined the entire matter factually and legally, Hon'ble Apex Court inter alia arrived at the following irresistible conclusions: -

(i) The Resolution Professional had utterly failed to discharge his statutory duties contemplated under the IBC and the CIRP Regulations during the course of entire CIR proceedings of the Corporate Debtor-BPSL.

(ii) The CoC had failed to exercise its commercial wisdom while approving the Resolution Plan of the JSW, which was in absolute contravention of the mandatory provisions of IBC and CIRP Regulations. The CoC also had failed to protect the interest of the Creditors by taking contradictory stands before this Court, and accepting the payments from JSW without any demurer, and supporting JSW to implement its ill-motivated plan against the interest of the creditors.

(iii)The SRA-JSW after securing the highest score in the Evaluation matrix in the 18th meeting of CoC, submitted the revised consolidated Resolution Plan with addendum under the garb of complying with the amendments made in the CIRP Regulations, 2016, and got the same approved from the CoC. However, JSW even after the approval of its Plan by the NCLAT, willfully contravened and not complied with the terms of the said approved Resolution Plan for a period of about two years, which had frustrated the very object and purpose of the IBC, and consequently had vitiated the CIR proceedings of the Corporate Debtor-BPSL.

19. *Bank of India {Appellants(s)} Versus M/S Sri Nangli Rice Mills Pvt. Ltd. & Ors {Respondent(s)},* Civil Appeal No. 7110 of 2025, (Arising out of Special Leave Petition

(Civil) No. 16735 of 2022) judgement dated May 23, 2025, Supreme Court of India Analyzed of Section 11 of the SARFAESI Act by Apex Court

Judgement

The above matter involving a dispute between two nationalised banks which touched upon the technicalities of Section 11 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

The Provisions of Section 11 SARFAESI Act is reproduced below:

Resolution of disputes

Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank or financial institution or asset reconstruction company or qualified buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Hon'ble Supreme Court summarized its final conclusion as under: -

(I) Section 11 of the SARFAESI Act deals with resolution of disputes relating to securitisation, reconstruction or non-payment of any amount due between the bank or financial institution or asset reconstruction company or qualified buyer.

(II) In order to attract the provision of Section 11 of the SARFAESI Act, twin conditions have to be fulfilled being; first, the dispute must be between any bank or financial institution or asset reconstruction company or qualified buyer and secondly, the dispute must relate to securitisation or reconstruction or non-payment of any amount due including interest. Where the aforesaid two conditions are found to be prima-facie satisfied, there the DRT will have no jurisdiction and the proper recourse would only be through Section 11 of the SARFAESI Act read with the Act, 1996.

(III) The expression "non-payment of any amount due, including interest" used in Section 11 of the SARFAESI Act is of wide import and would include a various range of scenarios of 'disputes' connected to unpaid amounts including those arising due to third-party defaults, such as indirect defaults of the borrowers.

(IV) Any dispute between two banks, financial institutions, asset reconstruction companies or qualified buyers etc., where the jural relation between the two is of a lender and borrower, then Section 11 of the SARFAESI Act will have no application whatsoever. The use of the phrase "any person" in the definition of 'borrower' in Section 2(f) of the SARFAESI Act, makes it abundantly clear that even a bank, financial institution or asset reconstruction company or qualified buyer can be considered a borrower, if they receive financial assistance from a bank or financial institution etc by providing or creating a security interest. Thus, a lender-turned-borrower would also fall within the scope of a

"borrower" under the SARFAESI Act and shall be governed by the same statutory framework as any ordinary borrower.

(V) Section 11 of the SARFAESI Act, provides for a statutory arbitration for any dispute mentioned therein between any of the parties enumerated thereunder. There is no need for an explicit written agreement to arbitrate between such parties in order to attract Section 11 of the SARFAESI Act. The said provision creates a legal fiction as regards the existence of an arbitration agreement notwithstanding whether such agreement exists or not in actuality.

(VI) Section 11 of the SARFAESI Act is mandatory in nature. The use of the word "shall" therein, the mandate of the said provision cannot be bypassed or subverted by the parties by seeking recourse elsewhere.

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