



# THE INSOLVENCY PROFESSIONAL

Your Insight Journal

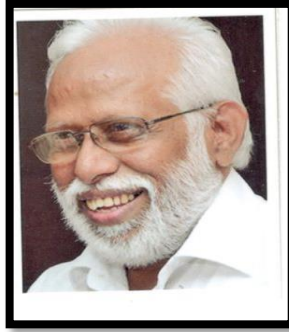


INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

# OVERVIEW

*Insolvency Professional Agency of Institute of Cost Accountants of India (IPA-ICMAI) is a Section 8 Company incorporated under the Companies Act-2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enroll there under solvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhering to fair, just and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.*

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# OUR PUBLICATIONS



## IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

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**IBC DOSSIER  
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**CASEBOOK**

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## MESSAGE FROM THE DESK OF MANAGING DIRECTOR

Dear Reader,

Greetings to you from TEAM IPA-ICMAI that carries our best wishes for a professionally satisfying year ahead in 2025. At IPA-ICMAI, our young team strives to be up to mark on both streams of our mandate – regulation and professional development.

Professional development happens through continuous professional education including updates on changes in code and relevant laws and regulations as also new case laws. The equally important side of professional development is expression of a professional's knowledge and experience with fellow professionals. In the IBC ecosystem which is still young and evolving, developments happen quite frequently and swiftly. All the more reason it is that practising professionals need to be keyed in always to be abreast of the latest developments. I invite more and more professionals to contribute articles and opinions to the E-Journal on all aspects that IBC ecosystem and related domains that will enrich the knowledge base of the readers.

At IPA-ICAI, we strive to make our publications relevant, informative, interesting and lucid. This issue of the 'Insolvency Professional – Your Insight Journal' has carries five interesting articles on a wide array of topics ranging from very practical issues like dealing with claim to increasingly important topics like mediation, digital assets and artificial intelligence-

- Relevance of IBC to infrastructure sector by Shri Padmanbhan Nair, IP,
- Powers and duties of IRP/RP/Liquidator vis a vis claims under IBC by CS Arvinder Singh Kindra, IP,
- Scope and benefits of mediation in Insolvency cases by CA (Dr) Kishore Kumar Pahuja, IP,
- Dealing with digital assets in insolvency by CA (Dr) Biswadev Dash, IP, and
- Potential role of Artificial Intelligence (AI) in various aspects of the insolvency resolution process) by Mohita Garg.

I am sure you will find all the articles interesting and useful. We welcome your responses to the published articles in this journal. You are welcome to write to [publication@ipaicmai.in](mailto:publication@ipaicmai.in). Wish you all happy reading.

**Mr. G.S. Narasimha Prasad**  
**Managing Director**



**PROFESSIONAL  
DEVELOPMENT  
INITIATIVES**

## EVENTS CONDUCTED

<b>JANUARY 2025</b>	
<b>Date</b>	<b>Events Conducted</b>
<b>04<sup>th</sup> to 7<sup>th</sup> January 2025</b>	<b>Residential Program: Deep Dive into Resolution in God's Own Country was successfully conducted from 4th to 7th January 2025, Alleppey, Kerala.</b>
<b>17<sup>th</sup> January 2025</b>	<b>Workshop for Insolvency Professionals was held on 17th January 2025 in Indore</b>
<b>23<sup>rd</sup> to 25<sup>th</sup> January 2025</b>	<b>Three-day "Executive Development Program on "Navigating the NCLT &amp; NCLAT Landscape from 23<sup>rd</sup> January to 25<sup>th</sup> January 2025</b>
<b>19<sup>th</sup> January 2025</b>	<b>Workshop on Cross Border and Group Insolvency was conducted on 19th January 2025,</b>
<b>31<sup>st</sup> January 2025</b>	<b>Workshop on "Understanding the Waterfall Mechanism" - Section 53 of IBC, 2016, held for January 31st, 2025</b>





# IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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*Our Daily  
Newsletter which  
keeps the  
Insolvency  
Professionals  
updated with the  
news on  
Insolvency and  
Bankruptcy Code*

# ARTICLES



INSOLVENCY PROFESSIONAL AGENCY  
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# DIGITAL ASSETS IN BANKRUPTCY: NAVIGATING THE INDIAN LEGAL LANDSCAPE

**CA (Dr) BISWADEV DASH  
INSOLVENCY PROFESSIONAL**

***Synopsis** - This article delves into the intricate relationship between cryptocurrency and insolvency law, particularly focusing on the treatment of non-fungible tokens (NFTs) and other digital assets during bankruptcy proceedings. The article explores the legal classification of cryptocurrencies, examining their status as property, securities, or commodities. It analyses the challenges associated with valuing and securing these digital assets, especially in the context of cross-border transactions. The article further discusses the role of insolvency professionals in handling cryptocurrency-related insolvencies. It highlights the technical and legal complexities involved, including the need for specialized expertise to manage digital assets. By examining the current state of the law and the emerging regulatory landscape, the article aims to shed light on the potential implications of cryptocurrency-related insolvencies and to provide insights for legal professionals, businesses, and regulators.*

The rapid rise of cryptocurrencies has ushered in a new era of digital finance, revolutionizing the way we perceive and conduct transactions. However, this technological advancement has also introduced novel legal and regulatory challenges, particularly in the realm of insolvency. As cryptocurrencies and non-fungible tokens (NFTs) gain popularity, understanding their treatment during insolvency proceedings becomes crucial.

This article delves into the complexities of crypto asset insolvency, examining the unique characteristics of these digital assets and their implications for traditional insolvency frameworks. We will explore the legal status of cryptocurrencies and NFTs, analyze the applicability of existing insolvency laws, and discuss the challenges faced by insolvency professionals in handling these digital assets. By understanding the intricacies of crypto asset insolvency, we can navigate the evolving legal landscape and mitigate potential risks. The rapid ascent of crypto assets has reshaped traditional financial landscapes, introducing both promising opportunities and complex challenges. One such challenge is the treatment of crypto assets during insolvency proceedings. As cryptocurrencies gain mainstream adoption, understanding the potential implications of bankruptcy on these digital assets and their holders becomes increasingly crucial.

The recent **Singapore High Court's** ruling on the Bored Ape Yacht Club (BAYC) NFTs has shed light on the property rights associated with non-fungible tokens (NFTs) and their potential impact on the future of crypto assets. This article delves into the current state of insolvency in the cryptocurrency world, examining the unique characteristics of crypto assets that may influence their legal treatment during bankruptcy proceedings. We will also discuss the existing legal frameworks and proposed solutions to address the complexities of insolvency in the crypto arena.

By exploring these issues, this article aims to provide valuable insights for individuals and organizations operating within the dynamic cryptocurrency ecosystem. It seeks to clarify the intricacies of insolvency in the crypto world and assist in informed decision-making.

## 1. What are Crypto Assets in the Context of the Bored Ape Case?

In a landmark decision, the Singapore High Court considered the property rights associated with BAYC NFTs. The Court clarified that crypto assets, including NFTs, are essentially digital information stored on a blockchain. These intangible assets are not physical objects and cannot be owned in the same way as traditional property. They exist within a decentralized system, deriving their value from smart contracts and consensus mechanisms.

The Court recognized that while information, in general, may not qualify as property, NFTs possess unique characteristics that distinguish them. The Court applied the Ainsworth criteria, a well-established legal test for determining property rights, to analyze the nature of NFTs.

## 2. What is a Non-Fungible Token (NFT)?

NFTs are unique digital assets with a specific identification code. They represent ownership of a particular digital item, such as art, music, or virtual real estate. Unlike fungible assets, which can be exchanged for identical items (e.g., money), NFTs are irreplaceable.

The rise in NFT popularity and value has also brought legal challenges, particularly in the context of insolvency. As NFT trading increases, questions arise about how these digital assets should be treated under insolvency laws.

## 3. The Ainsworth Criteria and Crypto Assets

The Ainsworth criteria, outlined by the House of Lords, requires that a right or

interest, to be considered property, must be:

- i. **Definable:** Capable of precise identification.
- ii. **Identifiable by third parties:** Recognizable by others.
- iii. **Capable of assumption by third parties:** Transferable to others.
- iv. **Having some degree of permanence or stability:** Enduring over time.

The Singapore High Court found that NFTs meet these criteria. Their unique identification codes, digital wallets, and the ability to transfer ownership through private keys contribute to their character as property.

## 4. Is the Bored Ape Case Decision Universal for All NFTs?

While the Singapore High Court's ruling is significant, it's important to note that the property rights associated with NFTs may vary depending on the specific platform and terms of service. Some platforms may have terms that limit the rights of NFT holders, potentially affecting their treatment in insolvency proceedings.

However, in general, the characteristics of NFTs, as highlighted by the Ainsworth criteria, suggest that they can be considered property. This has important implications for insolvency law, as it may require courts and insolvency practitioners to adapt to the unique nature of crypto assets.

## 5. The Regulatory Maze of Non-Fungible Tokens

The legal status of NFTs in the United States remains a subject of ongoing debate and uncertainty. While the Securities and Exchange Commission (SEC) has hinted at potential regulation of NFTs as "investment contracts," a clear regulatory framework is yet to emerge.

The concept of an "investment contract" was defined by the Supreme Court in *SEC v. W. J. Howey Co.* It involves investing money in a

common enterprise with the expectation of profits primarily derived from the efforts of others. Whether an NFT meets this definition is a complex issue that depends on its specific attributes and the promises associated with it.

In India, the Supreme Court's landmark judgment in *Internet and Mobile Association of India v. Reserve Bank of India* struck down a ban on cryptocurrency trading. This decision paved the way for the growth of the cryptocurrency ecosystem in India. However, the regulatory landscape for crypto assets, including NFTs, remains unclear.

While the Indian government has taken steps to recognize crypto assets as taxable property, a comprehensive regulatory framework is still lacking. This ambiguity creates challenges in determining the legal status of NFTs and their treatment under insolvency laws.

The Securities Contracts (Regulation) Act, 1956 (SCRA) in India defines derivatives as financial instruments whose value is contingent on the underlying asset. If NFTs are categorized as derivatives, they may be subject to the provisions of the SCRA, which could impact their trading and regulation.

The classification of NFTs as securities or commodities can vary depending on their specific characteristics. If an NFT represents fractional ownership in an underlying asset or promises future returns, it may be considered a security subject to securities regulations. On the other hand, if an NFT is a unique digital asset without investment-related promises, it may be treated as a commodity or property.

The evolving nature of NFTs and the rapid pace of technological advancements make it challenging to establish definitive legal classifications. As the regulatory landscape continues to develop, it is crucial for market participants to stay informed and adapt to the changing legal environment.

## **6. The Applicability of the Indian Insolvency and Bankruptcy Code (IBC) to Cryptocurrency**

The emergence of cryptocurrencies has posed significant challenges to traditional insolvency frameworks. The Indian Insolvency and Bankruptcy Code (IBC), 2016, designed for conventional assets, must now grapple with the unique characteristics of digital assets.

## **7. Classification of Cryptocurrency as Operational Debt**

Under the IBC, debts are categorized as either financial or operational. Cryptocurrency, being considered a "good," falls under the category of operational debt. This classification implies that creditors holding cryptocurrency claims can initiate insolvency proceedings against a defaulting debtor.

## **8. Role of the Insolvency Professional**

Once an insolvency resolution process commences, the Insolvency Professional (IP) assumes the role of managing the debtor's assets. As cryptocurrency is classified as a "good," the IP can take control of the debtor's cryptocurrency holdings, including those stored in private wallets. However, accessing and managing these assets can be complex due to the technical nature of cryptocurrencies.

### **8.1 Challenges and Considerations**

Several challenges hinder the effective application of the IBC to cryptocurrency-related insolvencies:

#### **8.1.1 Valuation Challenges:**

- Determining the fair market value of cryptocurrencies is complex due to their volatile nature and lack of standardized valuation methods.
- The absence of reliable pricing benchmarks and historical data makes accurate valuation difficult.

### 8.1.2 Technical Hurdles:

- Accessing and securing cryptocurrency assets, especially those stored in cold wallets, can be technically demanding.
- The IP must possess the necessary technical expertise to identify, secure, and manage these assets.

### 9. Regulatory Uncertainty:

- The evolving regulatory landscape for cryptocurrencies creates uncertainty and potential legal risks for IPs.
- The absence of clear guidelines can complicate the insolvency process.

### 10. Cross-Border Issues:

- Cryptocurrencies are often traded on global exchanges, making cross-border cooperation essential for effective insolvency proceedings.
- Jurisdictional differences and varying legal frameworks can pose significant challenges.

### 11. Security Risks:

- Cryptocurrencies are susceptible to hacking and cyberattacks, which can further complicate the insolvency process.
- The IP must implement robust security measures to protect the assets.

### Conclusion

While the IBC provides a general framework for insolvency proceedings, its application to cryptocurrencies requires careful consideration of the unique challenges posed by these digital assets. As the cryptocurrency market continues to evolve, it is imperative to develop specific guidelines and regulations to address the complexities of crypto-related insolvencies. By addressing these challenges and fostering international cooperation, policymakers and insolvency practitioners can ensure a fair and efficient resolution of crypto-related

insolvency cases.

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## CS ARVINDER SINGH KINDRA INSOLVENCY PROFESSIONAL

### ➤ Synopsis:

The Insolvency and Bankruptcy Code 2016 (“IBC”) is a strong piece of legislation in terms of governing the insolvency and liquidation of corporate entities. IBC and the IBBI (Insolvency Process for Corporate Persons) Regulations of 2016 (“CIRP Regulations”) have made elaborate provisions related to submission, verification and admission of claims, submitted by the creditors during Corporate Insolvency Resolution / Liquidation process. The process of submission of claims by the creditors, commences after the public announcement is made by the Resolution Professional. This Article aims to provide insight to provisions in respect of submission / verification of claims as prescribed under IBC & CIRP regulations at a glance which can help the reader as a ready reckoner for reference purposes.

### ➤ Introduction:

The Insolvency and Bankruptcy Code of India 2016 (“IBC”) and the IBBI (Insolvency Process for Corporate Persons) Regulations of 2016 (“CIRP Regulations”) have made elaborate provisions for submission of claims by different types of creditors including Workmen and employees and duties of the Interim Resolution Professional / Resolution Professional & Liquidator for verification and determination of such claims. IBC & CIRP Regulations incorporate and includes various terms / timelines etc. of immense relevance which shall be explained in this Article.

### ❖ RELEVANT SECTIONS / PROVISIONS OF CLAIMS IN CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) UNDER IBC 2016 AT A GLANCE:

#### Quote

#### Section 3 (6) “Claim means”

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

#### Section 13. Declaration of moratorium and public announcement. -

- (1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order **(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15;**

#### Section 15 (1) Public announcement of corporate insolvency resolution process. -

- (1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely: -



(c) **the last date for submission of claims, as may be specified;**

**Section 18. Duties of interim resolution professional. -**

The interim resolution professional shall perform the following duties, namely: -

.... (b) **receive and collate all the claims submitted by creditors** to him, pursuant to the public announcement made under sections 13 and 15;

**Section 21. Committee of creditors. -**

(1) The interim resolution professional shall **after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.**

**Section 25 (2). Duties of resolution professional. -**

.... (e) **maintain an updated list of claims;**

**Section 60. Adjudicating Authority for corporate persons. -**

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

(b) **any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India;**

❖ **RELEVANT IBBI CIRP REGULATIONS 2016 UNDER CHAPTER III / IV (PROOF OF CLAIMS) IN CORPORATE INSOLVENCY**

**RESOLUTION PROCESS (CIRP) UNDER IBC 2016 AT A GLANCE:**

**Regulation 6. Public Announcement**

(1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.

Explanation: 'Immediately' means not later than three days from the date of his appointment.

6(2) (ba) state **where claim forms can be downloaded or obtained from,** as the case may be;

6(2) provide **the last date for submission of proofs of claim,** which shall be **fourteen days from the date of appointment of the interim resolution professional.**

**Regulation 7. Claims by operational creditors.**

(1) A person claiming to be an **operational creditor, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule-I**

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(2) **The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-**

- the records available with an information utility, if any; or
- other relevant documents, including -
- a contract for the supply of goods and services with corporate debtor;
- an invoice demanding payment for

the goods and services supplied to the corporate debtor;

- an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
- financial accounts.
- copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable:

Provided that provisions of this sub-clause shall not apply to those creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax

**Regulation 8. Claims by financial creditors.**

(1) A person claiming to be a **financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule-I :**

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

**(2) The existence of debt due to the financial creditor may be proved on the basis of -**

- a) the records available with an information utility, if any; or
- b) other relevant documents, including -
  - a financial contract supported by financial statements as evidence of the debt;
  - a record evidencing that the amounts committed by the financial

creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

- financial statements showing that the debt has not been 36[paid]; or
- an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any

**Regulation 8A. Claims by creditors in a class.**

(1) A person claiming to be a **creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule-I**

**(2) The existence of debt due to a creditor in a class may be proved on the basis of-**

- (a) the records available with an information utility, if any; or
- (b) other relevant documents, including any-
  - (i) agreement for sale;
  - (ii) letter of allotment;
  - (iii) receipt of payment made; or
  - (iv) such other document, evidencing existence of debt.

**(3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.**

**Regulation 9. Claims by workmen and employees.**

(1) A person claiming to be a **workman or an employee of the corporate debtor shall submit claim with proof to the interim resolution professional in person, by post or**

**by electronic means in Form D of the Schedule-I:**

Provided that such person may submit supplementary documents or clarifications in support of the claim, on his own or if required by the interim resolution professional, before the constitution of the committee.

(2) Where there are dues to numerous workmen or employees of the corporate debtor, **an authorised representative may submit one claim with proof for all such dues on their behalf in Form E of the Schedule-I.**

(3) **The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of**

- 
- (i) records available with an information utility, if any; or other relevant documents, including -  
a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
- (ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or
- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any

**Regulation 9 A Claims by other creditors.**

(1) A person claiming to be a **creditor, other than those covered under [regulation 7, 8, 8A or 9,** shall submit its claim with proof to the interim resolution professional or resolution professional in person, **by post or by electronic means in Form F of the Schedule-I.**

(2) **The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of -**

(a) the records available in an information utility, if any, or

(b) other relevant documents sufficient to establish the claim, including any or all of the following:-

- (i) documentary evidence demanding satisfaction of the claim;
- (ii) bank statements of the creditor showing non-satisfaction of claim;
- (iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.

**Regulation 10. Substantiation of claims.**

The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

**Regulation 11. Cost of proof.**

A creditor shall bear the cost of proving the debt due to such creditor.

**Regulation 12. Submission of proof of claims.**

(1) A creditor shall submit claim with proof **on or before the last date mentioned in the public announcement.**

**Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later:**

Provided further that the **creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.**

(2) \*\*\*\*

(3) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

#### **Regulation 12A. Updation of claim.**

A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date

#### **Regulation 13. Verification of claims**

(1) The interim resolution professional or the resolution professional, as the case may be, shall **verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.**

(1A) where the interim resolution professional or the resolution professional, as the case may be, **does not collate the claim after verification, he shall provide reasons for the same.**

(1B) In the event that **claims are received after the period specified under sub-regulation (1) of regulation 12 and up to**

**seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.**

(1C) The interim resolution professional or resolution professional, as the case may be, shall:-

- a) Intimate the creditor within seven days of categorisation thereof under sub-regulation (1B) and provide reasons where such claim has been categorised as non-acceptable for collation; and
- b) put up the claims categorised as acceptable under sub-regulation (1B) and collated by him to:-
  - the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and
  - submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable

(2) The list of creditors shall be –

- (a) **available for inspection** by the persons who submitted proofs of claim;
- (b) **available for inspection by members, partners, directors and guarantors of the corporate debtor or their authorised representatives;**
- (c) **displayed on the website, if any, of the corporate debtor;**
  - (ca) **filed on the electronic platform of the Board for dissemination on its website;**

Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or

after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020

- (d) filed with the Adjudicating Authority; and
- (e) Presented at the first meeting of the committee.

**Regulation 14. Determination of amount of claim.**

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, **the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.**

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

**Regulation 15. Debt in foreign currency.**

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date.

**Explanation - “official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.**

**Regulation 36. Information memorandum**

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- -**

- (2) (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;

Unquote:

➤ **Summary of Claim Forms under CIRP :**

CIRP Regulations	Type of Creditor / stakeholder	Form as per Schedule I
Regulation 7	Operational Creditor	Form B
Regulation 8	Financial Creditor	Form C
Regulation 8A	Financial Creditors in a class	Form CA
Regulation 9	Workmen and Employees	Form D
Regulation 9	Authorised Representative of Workmen and Employees	Form E

Regulation 9A	Person claiming to be creditor other than operational/financial creditors, workmen and employees	Form F
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❖ **RELEVANT SECTIONS / PROVISIONS OF CLAIMS IN LIQUIDATION STAGE UNDER IBC 2016 AT A GLANCE:**

Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33 of the Code, the resolution professional appointed for the corporate insolvency resolution process shall act as the liquidator, unless replaced by the Adjudicating Authority under section 34(1) of IBC 2016.

Quote:

**Section 35. Powers and duties of liquidator. -**

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -  
**(a) to verify claims of all the creditors;**

**37. Powers of liquidator to access information.**

(1) Notwithstanding anything contained in any other law for the time being in force, the liquidator shall have the **power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor** from the following sources, namely: -  
 (a) an information utility;  
 (b) credit information systems regulated

under any law for the time being in force;  
 (c) any agency of the Central, State or Local Government including any registration authorities;  
 (d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;  
 (e) information systems for securities and assets posted as security interest regulated under any law for the time being in force;  
 (f) any database maintained by the Board; and  
 (g) any other source as may be specified by the Board.

(2) The creditors may require the liquidator to provide them any financial information relating to the corporate debtor in such manner as may be specified.

(3) The liquidator shall provide information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information

**Section 38. Consolidation of claims. -**

(1) The liquidator **shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.**

(2) A **financial creditor may submit a claim** to the liquidator by **providing a record of such claim with an information utility:**

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor under sub-section (3).

(3) An **operational creditor may submit a claim to the liquidator in such form and in**

such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

#### **Section 39. Verification of claims.-**

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

#### **Section 40. Admission or rejection of claims. -**

(1) The liquidator may, after verification of claims under section 39, **either admit or reject the claim, in whole or in part, as the case may be:**

**Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.**

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate

**debtor within seven days of such admission or rejection of claims.**

#### **Section 41. Determination of valuation of claims. -**

The liquidator shall determine the value of claims admitted under section 40 in such manner as may be specified by the Board.

#### **Section 42. Appeal against the decision of liquidator. -**

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator **accepting or rejecting the claims within fourteen days of the receipt of such decision.**

#### **❖ RELEVANT IBBI LIQUIDATION PROCESS REGULATIONS 2016 UNDER CHAPTER III / IV, V( CLAIMS) IN LIQUIDATION PROCESS UNDER IBC 2016 AT A GLANCE:**

#### **Regulation 12 .Public announcement by liquidator.**

(1) The liquidator shall make a **public announcement in Form B of Schedule II within five days from his appointment.**

(2) The public announcement shall-

- (a) call upon stakeholders to submit their claims or update their claims** submitted during the corporate insolvency resolution process, as on the liquidation commencement date; and
- (b) provide the last date for submission or updation of claims, which shall be thirty days from the liquidation commencement date.**
- (c) provide that where a stakeholder does not submit its claims during the liquidation process, the claims submitted**

by such a stakeholder, and duly collated by the interim resolution professional or resolution professional, as the case may be, during the corporate insolvency resolution process under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be deemed to be submitted under section 38.

#### **Regulation 16 Submission of claim.**

(1) A person, who claims to be a stakeholder, shall submit its claim, or update its claim submitted during the corporate insolvency resolution process, including interest, if any, on or before the last date mentioned in the public announcement.

(2) A person shall prove its claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.

#### **Regulation 17 . Claims by operational creditors.**

(1) A person claiming to be an operational creditor of the corporate debtor, other than a workman or employee, **shall submit proof of claim to the liquidator in person, by post or by electronic means in Form C of Schedule II.**

(2) **The existence of debt due to an operational creditor under this Regulation may be proved on the basis of-**

- (a) the records available with an information utility, if any; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following -
  - (i) a contract for the supply of goods and services with corporate debtor;

(ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;

- (i) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and
- (ii) financial accounts.

#### **Regulation 18. Claims by financial creditors.**

(1) A person claiming to be a **financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.**

(2) **The existence of debt due to the financial creditor may be proved on the basis of-**

- (a) the records available in an information utility, if any; or
- (b) other relevant documents which adequately establish the debt, including any or all of the following-
  - i. a financial contract supported by financial statements as evidence of the debt;
  - ii. a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
  - iii. financial statements showing that the debt has not been repaid; and
  - iv. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

#### **Regulation 19. Claims by workmen and employees.**

(1) A person claiming to be a **workman or an employee of the corporate debtor shall submit proof of claim to the liquidator in person, by post or by electronic means in Form E of Schedule II.**



(2) Where there are dues to numerous workmen or employees of the corporate debtor, an authorized representative may submit one proof of claim for all such dues on their behalf in Form F of Schedule II.

(3) **The existence of dues to workmen or employees may be proved by them, individually or collectively, on the basis of-**

- (a) records available in an information utility, if any; or
- (b) other relevant documents which adequately establish the dues, including any or all of the following -
  - a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
  - evidence of notice demanding payment of unpaid amount and any documentary or other proof that payment has not been made; and
  - an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.

**(4) The liquidator may admit the claims of a workman or an employee on the basis of the books of account of the corporate debtor if such workman or employee has not made a claim.**

**Regulation 20. Claims by other stakeholders.**

(1) A person, claiming to be a stakeholder other than those under Regulations 17(1), 18(1), or 19(1), shall submit proof of claim to the liquidator in person, by post or by electronic means in Form G of Schedule II.

(2) The existence of the claim of the stakeholder may be proved on the basis of -

(a) the records available in an information utility, if any, or

(b) other relevant documents which adequately establish the claim, including any or all of the following-

- (i) documentary evidence of notice demanding payment of unpaid amount or bank statements of the claimant showing that the claim has not been paid and an affidavit that the documentary evidence and bank statements are true, valid and genuine;
- (ii) documentary or electronic evidence of his shareholding; and
- (iii) an order of a court, tribunal or other authority that has adjudicated upon the non-payment of a claim, if any.

**Regulation 21 Proving security interest.**

.....

**Regulation 21A. Presumption of security interest**

**Regulation 23 .Substantiation of claims.**

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim

**Regulation 24 . Cost of proof.**

(1) A claimant shall bear the cost of proving its claim.

(2) Costs incurred by the liquidator for verification and determination of a claim shall form part of liquidation cost:

Provided that if a claim or part of the claim is found to be false, the liquidator shall endeavor to recover the costs incurred for verification and determination of claim from such claimant and shall provide the details of the claimant to the Board.

### **Regulation 25. Determination of quantum of claim.**

Where the amount claimed by a claimant is not precise due to any contingency or any other reason, **the liquidator shall make the best estimate of the amount of the claim based on the information available with him.**

### **26. Debt in foreign currency.**

The claims denominated in foreign currency shall be valued in Indian currency **at the official exchange rate as on the liquidation commencement date.**

Explanation- "The official exchange rate" is the reference rate published by the Reserve Bank of India or derived from such reference rates.

### **Regulation 27 . Periodical payments.**

In the case of rent, interest and such other payments of a periodical nature, a person may claim only for any amounts due and unpaid up to the liquidation commencement date.

### **Regulation 28 Debt payable at future time.**

(1) A person may prove for a claim whose payment was not yet due on the liquidation commencement date and is entitled to distribution in the same manner as any other stakeholder.

(2) Subject to any contract to the contrary, where a stakeholder has proved for a claim under sub-regulation (1), and the debt has not fallen due before distribution, he is entitled to distribution of the admitted claim reduced as follows-  $X / (1+r)^n$ , where.....

### **Regulation 29. Mutual credits and set-off.**

Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.

### **Regulation 30. Verification of claims**

The liquidator shall **verify the claims submitted within thirty days from the last date for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.**

Provided that the liquidator **shall also verify the claims collated during the corporate insolvency resolution process but not submitted during the liquidation process, within thirty days from the last date for receipt of claims during liquidation process and may either admit or reject the claim, in whole or in part.**

### **Regulation 30A. Transfer of debt due to creditors. ....**

### **Regulation 31 List of stakeholders**

- (1) **The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations, with-**
- (a) the amounts of claim admitted, if applicable,
  - (b) the extent to which the debts or dues are secured or unsecured, if applicable,
  - (c) the details of the stakeholders, and
  - (d) the proofs admitted or rejected in part, and the proofs wholly rejected.

**(2) The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.**

**(3) The liquidator may apply to the Adjudicating Authority to modify an entry in the list of stakeholders filed with the Adjudicating Authority,** when he comes across additional information warranting such modification, and shall modify the entry in the manner directed by the Adjudicating Authority.

**(4) The liquidator shall modify an entry in the list of stakeholders filed with the Adjudicating Authority, in the manner directed by the Adjudicating Authority while disposing off an appeal preferred under section 42.**

**(5) The list of stakeholders, as modified from time to time, shall be-**

(a)available for inspection by the persons who submitted proofs of claim;

(b)available for inspection by members, partners, directors and guarantors of the corporate debtor;

(c)displayed on the website, if any, of the corporate debtor.

(d) filed on the electronic platform of the Board for dissemination on its website:

Provided that this clause shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.

**Regulation 31A. Stakeholders' consultation committee. ....**

(1) The liquidator shall constitute a consultation committee, 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 relating to-(a).....(e)

➤ Unquote:

**Summary of Claim forms under Liquidation Process:**

<b>Liquidation Process Regulations</b>	<b>Type of Creditor / stakeholder</b>	<b>Form as per Schedule II</b>
<b>Regulation 17</b>	Operational Creditor	Form C
<b>Regulation 18</b>	Financial Creditor	Form D
<b>Regulation 19</b>	Workmen & Employees	Form E
<b>Regulation 19</b>	Authorised Representative of Workmen and Employees	Form F
<b>Regulation 20</b>	Other Stakeholders	Form G

❖ **ROLE OF IRP / RP & LIQUIDATOR IN THE ECO-SYSTEM OF IBC 2016**

- ✓ Hon'ble Supreme Court – in the landmark Judgment **of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. Writ Petition (Civil) No. 99 of 2018**, inter alia, stated that:

Para 58 ...It is clear from a reading of the Code as well as the Regulations that the **resolution professional has no adjudicatory powers.**

Para 59.....It is clear from a reading of these Regulations that the **resolution professional is given administrative as opposed to quasi-judicial powers.**

Para 60.....As opposed to this, **the liquidator, in liquidation proceedings under the Code, has to consolidate and verify the claims, and either admit or reject such claims under Sections 38 to 40 of the Code. Sections 41 and 42, by way of contrast between the powers of the liquidator and that of the resolution professional, are set out herein below: Section 41 and 42 It is clear from these Sections that when the liquidator - “determines” the value of claims admitted under Section 40, such determination is a - decision”, which is quasi-judicial in nature, and which can be appealed against to the Adjudicating Authority under Section 42 of the Code.**

- ✓ Hon'ble Supreme Court in the matter **of Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Others [Civil Appeal No. 8766-67/2019 and other petitions, held** that the role of the resolution professional is not adjudicatory but administrative. Further, with respect to the claim, it has been stated that in the CIRP, all claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor.

➤ **Claims have different treatment at CIRP & Liquidation process:**

well as the relevant judgments, it is seen that the Claims have different treatment at CIRP & Liquidation process, summarized below:

After reviewing the different aspects under IBC 2016 & Regulations made thereunder as

<i>Event Treatment</i>	<i>Corporate Insolvency Resolution Process</i>	<i>Liquidation Process</i>
<b>Public Announcement</b>	An insolvency professional shall make a <b>public announcement immediately on his appointment</b> as an interim resolution professional. <i>Explanation: 'Immediately' means not later than three days from the date of his appointment</i>	liquidator shall make a public announcement in Form B of Schedule II <b>within five days from his appointment</b>
<b>Submission of Claims</b>	<b>Within fourteen days</b> of appointment of Interim Resolution Professional to the IRP/RP.	<b>within thirty days</b> from the Liquidation Commencement Date to the Liquidator
<b>Verification of Claims</b>	Within seven days from the last date of receipt of claims.	Within thirty days from the last date of receipt of claims.
<b>Where Claims are not precise</b>	IRP or RP, as the case may be, shall make the best estimate of the amount of the claim based on the information available. However, IRP/ RP shall revise the amount of claims admitted when he comes across additional information.	Liquidator shall make the best estimate of the amount of the claim based on information available with him.
<b>Role</b>	IRP or RP helps the corporate debtor continue.	liquidator prepares the corporate debtor for dissolution
<b>Functions</b>	IRP/RP performs <b>administrative functions receive and collate all the claims submitted by creditors.</b>	liquidator performs a <b>quasi-judicial function and is required to admit or reject a claim, basis documentary evidence</b>
<b>Mutual Credit and set off</b>	Not allowed, no such provision.	Permitted, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.
<b>Committee of Creditors / Stakeholders Committee</b>	The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, <b>constitute a committee of creditors.</b>	liquidator shall <b>constitute a consultation committee</b> , comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date

❖ **RECENT AMENDMENT IN THE CIRP REGULATIONS - RELAXATIONS FOR CREDITORS / STAKEHOLDERS BY EXTENDING THE TIMELINE FOR SUBMITTING CLAIMS.**

As many of the Creditors / Stakeholders, could not submit their Claims under the stipulated timelines as stated under CIRP Regulations, due to which the CIR Process could not be completed in time as belated claims were submitted to the IRP/RP, which lead to applications before NCLT with appeals before NCLAT & Supreme Court for condonation of delay and acceptance of claims beyond time limits, which lead to **amendments in the IBBI CIRP regulations & judicial pronouncements. Regulation 12(2) was amended vide notification No IBBI/2018-19 GN /REG 031, dated 3.7.2018** through the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") **As per the said amendment, the claims could be filed before the interim resolution professional or the resolution professional, as the case may be, before the ninetieth day of the insolvency commencement date. Despite the said amendment, delay in filing the claims beyond the stipulated time period.**

✓ Hon'ble Supreme Court of India in **the judgment of Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta ("Essar Steel")**, was also faced with the issue of 'undecided claims' after the acceptance of the resolution plans. The Apex Court while not allowing such 'undecided claims' held that 'A successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan has been accepted as this would

amount to hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully takes over the business of the corporate debtor'. This was also reiterated later by the Apex Court in the case of **Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. ("Ghanashyam Mishra")**.

As, adjudication of applications for condonation of delays / acceptance of claims etc. has only burdened the NCLT / NCLAT with numerous litigations which was detrimental to the interest of the stakeholders and having impact on the timely completion of the resolution process. Keeping in view the above delays amongst other issues, **the Insolvency and Bankruptcy Board of India ("IBBI") introduced the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 ("Amendment") on September 18, 2023. Para 3 Press Release No. IBBI/PR/2023/10 dated 19th September, 2023 amongst other amendments vide para 3 as Notification No. No. IBBI/2023-24/GN/REG106, dated 18th September, 2023 (w.e.f 18-09-2023).**

To facilitate the Adjudicating Authority (AA) burdened with applications for acceptance of delayed claims, the Amendment Regulations **increase the timelines to file claims up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later. It further empowers the RP to give his view on the acceptance**

**of claim for its collation even for claims submitted beyond this time and committee of creditors (CoC) to recommend their acceptance for inclusion in the list of claims and its treatment in the resolution plan before the same is adjudicated or condoned by the AA. Accordingly, amendments have been made including in Regulation 12 (2), 13 on timelines for submission of proof of claims and verification of claims.**

**Conclusion:**

Corporate Insolvency Resolution Process is a creditor -driven process and therefore the claim submitted by a creditor is to be dealt in a proper & legitimate manner by IRP /RP & the Liquidator in CIRP as well Liquidation Process. As explained, the Resolution Professional has an important role to play in inviting, collating and verification of claims and his/her Role & duties as per IBC 2016 & Regulations made thereunder commences from the day the Public Announcement is made for inviting claims.

The legislation on the recommendation of the Insolvency Law Committee has amended the IBC 2016 and CIRP regulations from time to time and various judicial pronouncements have also paved the path for the Creditors to submit their claims in timely manner. The judicial pronouncements and the amendments to the CIRP regulations from time to time reflects the intent of the legislation in establishing an effective eco-system for creditors / stakeholders to submit their claims against corporate debtors and laying the powers, duties and responsibility of the Resolution Professional's, in protecting the legitimate interests of the Claimants in the resolution process and resulting in completion of the process in time bound manner.

*References:*

- 1. Insolvency and Bankruptcy Board of India (IBBI)*
- 2. The Insolvency and Bankruptcy Code, 2016, CIRP Regulations & Liquidation Process Regulations 2016.*
- 3. Reports of Insolvency Law Committee*
- 4. Judicial pronouncements.*

## PADMANABHAN NAIR INSOLVENCY PROFESSIONAL

Basically, there are three types of infrastructure companies affected by IBC code

- a) Developers such as SPV, Road Companies, Water Companies etc.
- b) EPC contractors of various kinds in different s
- c) Companies investing in the equity and debt of infrastructure vehicles other than banks and financial institutions (which are governed by the RBI)

By their very nature, such companies in India are more fallible than regular corporate setups due to the regulation of their operations and user fees by fairly stringent concession agreements. India is a developing country, which means that, almost by default, user charges and availability of services would need to be closely monitored by governments, even in the private sector. Populism would prevail in many cases, which would lead to politicians promising “free” services to various sections of the public in return for votes, without the concerned companies being able to enforce legal compliance on the said governments. All this may lead to many such companies being “cash strapped” with no prospect of adequate returns for funds invested. Many managements therefore may wish to opt out of these companies without the services being affected, and this is where the Insolvency and Bankruptcy code may come in useful

Infrastructure **lending is a very different business** from regular Corporate or retail lending. The human aspect is significantly less and Government involvement significantly more. This is because infrastructure can be defined as “assets for public use”. By this very definition, real estate, factories and other

privately owned assets are NOT infrastructure. By this very definition, the term “infrastructure” would relate to assets such as Roads, Ports, Power, Airports, Public Townships (NOT real estate societies!) as well as Social Infrastructure such as Universities, Hospitals and Tourist Infrastructure which are used by the public at large..

The Insolvency and Bankruptcy Code (IBC) is relevant to infrastructure companies in a number of ways, including:

- **Resolving insolvency:** The IBC provides a one-stop solution for resolving insolvency, which can be particularly useful for infrastructure and EPC sectors.
- **Protecting creditors:** The IBC aims to protect the interests of creditors and stakeholders in a company.
- **Reviving companies:** The IBC aims to revive companies in a timely manner.
- **Promoting Businesses:** The IBC aims to promote business by allowing entrepreneurs to take over ready-made companies with proven operational capability rather than recreate the whole thing again. They could then leverage their strength to make the companies work, thereby providing instant stakeholder value, be it investor’s creditors or even the economy at large. The Code help a lot in doing this
- **Increasing credit supply:** The IBC aims to increase the credit supply in the economy by providing relief to creditors. The creditors



would also likely be more responsive to a new management for reasons given above

- **Reallocating resources:** The IBC enables firms to restart with new management or liquidate assets and put them to new uses.

- **Credit culture**

The IBC has shifted the power balance in favor of creditors, and has helped to improve credit discipline. There would be a better allocation of resources all round

- **Insolvency risk**

The IBC has helped to reduce the number of fresh non-performing assets (NPAs) in the banking sector.

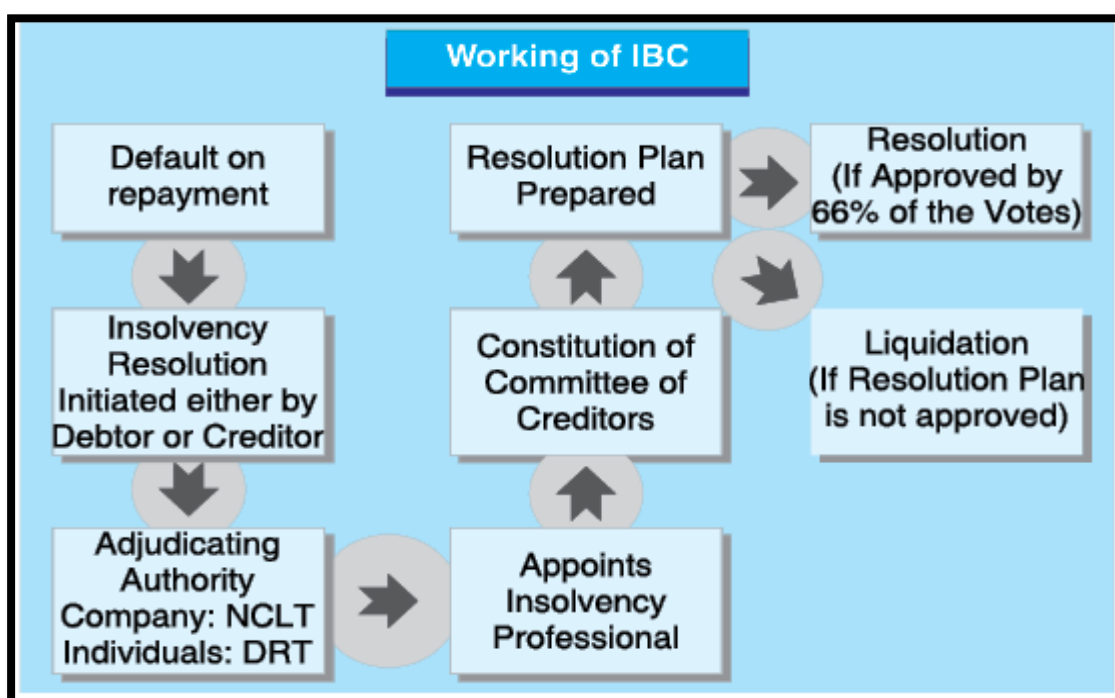
- **Project businesses**

The IBC can help to reduce the risk of project businesses going bankrupt, which can jeopardize the ability of a project to provide its intended services. Infrastructure projects can face financial difficulties during their long-term duration. The IBC can help to reduce the risk of these difficulties, and to help ensure that projects are able to provide their intended services.

Infrastructure Companies have significant operational differences from regular corporate companies

- The legal frameworks and monitoring are stricter, as the society (and hence the government) is involved
- Pure commercial user rates may not always come into the picture-Usually there is control, as the public at large are involved and infrastructure services are usually designated as “public services”.
- Cash flows are generally more defined and predictable and **indexed for inflation. This makes for greater predictability of cash flow.**
- Right of exclusivity is generally there again making the cash flows more predictable

**DIAGRAMMATICALLY THE IBC PROCESS FOR INFRASTRUCTURE COMPANIES WOULD BE AS FOLLOWS**



These parameters ensure more regulated **legal and operational frameworks** which are generally governed by Concession Agreements and thus lend themselves a little more easily to predictable monitoring should things go wrong. In other words should an operational SPV linked to a road, sewerage or urban township go bankrupt there would be a predictable system which would lend itself to easier implementation of the CIRP process. It makes it easier for a prospective resolution applicant (PRA) to estimate the kind of cash that would come into the company, the costs therein etc. **The system of bidding is also inherent in a PPP process** for infrastructure which is very much allied to what we would try to do in CIRP.

#### **A:IBC in construction industry**

The Indian construction sector is undergoing continuous regulatory evolution. The Insolvency and Bankruptcy Code (IBC), 2016 offers streamlined frameworks for dealing with insolvency. Subcontractors and suppliers can leverage the IBC to file claims and potentially recover dues.

The IBC offers a structured and time-bound process for resolving insolvency. Here's how subcontractors and suppliers can leverage the IBC:

**Claims:** Upon learning of a main contractor's insolvency proceedings, subcontractors and suppliers have the right to file claims with the Insolvency and Bankruptcy Board (IBBI). The claim should clearly outline the amount owed and supporting documentation. This could keep the sub-contractors in a healthy condition which is vital for building the infrastructure of the country, as a developer often works through a network of sub-contractors

**Priority of Claims:** The IBC categorizes claims into different classes with varying priorities during distribution of assets. Understanding these classifications is crucial for maximizing the chance of recovering

dues. For instance, secured creditors with guarantees often enjoy higher priority compared to unsecured creditors like subcontractors.

**Participation in the Resolution Process:** Subcontractors and suppliers can participate in the insolvency resolution process by attending creditor meetings even though they often cannot vote on restructuring plans or liquidation proposals. However, they can initiate such resolution processes by going to the NCLT and seeking bankruptcy proceedings. This often puts some pressure for credit discipline on the main contractors and developers.

- **B:Real estate projects**

Real estate projects are getting streamlined by the IBC process. As per Supreme Court ruling, the house owner is now a financial creditor. Mechanism for collective representation has also been worked out through the house owners being represented by an Authorised Representative (AR). The IBBI has proposed that real estate projects under CIRP should have separate bank accounts for each project. This would help with tracking project progress, identifying issues, and making informed decisions.

**If there a significant possibility of recovery, then financial discipline is likely to radically improve**, both in terms of extent of borrowing and discipline in use. Both are vital for the debt oriented infrastructure industry where maintaining a consistent cost base is vital for the success of a project. This is very much needed in the Real Estate and Construction industries, where cash flows are likely to be unsteady and inconsistent. Upfront cash is also asked for on many occasions and there should be consistency for the same.

**Definitely, the CIRP and establishment of RERA has resulted in a much more streamlined approach overall and the “financial creditor status” of the**

homeowner has definitely build up the confidence and established some discipline among builders and construction companies ,who are now accountable ,in a way they have not been before.

### **C: EPC companies**

The insolvency of EPC companies in India is a growing concern in recent years. There are several reasons for this, including delays in project approvals, a slowdown in infrastructure development, and a lack of funding. One of the major causes of insolvency in EPC companies is the delays in project approvals. These delays lead to cost overruns and a lack of cash flow, making it difficult for companies to continue operations.

Another major cause of insolvency in EPC companies is the slowdown in infrastructure development. This has led to a decline in demand for EPC services and a decrease in revenue for companies. The lack of funding is also a major factor contributing to the insolvency of EPC companies in India. Many companies are unable to secure funding from banks and other financial institutions due to their poor financial health.

There are many cases of EPC companies coming under the IBC code including Lanco Infratech Limited .This was among the 12 biggest companies that were recommended by the RBI to be admitted into the insolvency process back when the Code was first introduced. A good case study !There was an overreliance on favourable government policy as is often the case of large infrastructure companies, where supportive policy is so critical, especially in the initial stage. However, soon due to various reasons, including changes in policies of the government relating to the power sector, the company accumulated huge debts, which it was unable to repay.

The company was facing financial difficulties due to delays in project approvals, cost overruns, and a lack of cash flow. The company as admitted into the Corporate Insolvency Resolution Process and subsequently, several of its subsidiaries also went under the insolvency process.

In case of Jaypee Infratech Limited, the company was facing financial difficulties due to delays in project approvals, a slowdown in infrastructure development, and a lack of funding.

The company was admitted into insolvency resolution process in 2017 and its assets were taken over by the interim resolution professional under the IBC.

The case involved the claims of thousands of homebuyers. However, the case took a very long time to resolve but did lead to development of policy for homeowners. The establishment of RERA also came about as the Central Government realised that large real estate projects would need to be professionalized to regulate the fiscally undisciplined construction industry.



Source: Hindu Business Line

As given above in the diagram, The Insolvency and Bankruptcy Code (IBC) of 2016 has had an impact on the infrastructure sector in India in a number of ways, including:

## 2(i) Solution to Delayed payments

The late-payment culture in the Indian construction industry has led to insolvency for many organizations under the IBC. Much

of the solution to problematic infrastructure projects consist of replacing the management of an existing SPV with another management. There are generally not too many operational creditors involved, mostly very long term lenders. Equity tends to be either wholly with the concessionaire, or partly with a private equity firm or the Government thrown in. There could be some Institutional holdings. In India, generally there are not many widely held companies in infrastructure sector, certainly not public companies. Thus the number of investors are finite and informed. This facilitates the IBC process greatly as there is likely to be a very strong and knowledgeable Committee of creditors, who understand the issues involved. But it is the dedicated project companies that are a lot easier to transfer to viable managements, infrastructure being a “project driven process”

We can go through the issues step by step to show the basic compatibility of Infrastructure Project companies (SPV) with the IBC code

## ii) Financial crunch faced by contractors in India

Tolls are collected immediately but the bulk of receivables are usually from Institutional Investors and public bodies or even the Govt directly. **The latter often tend to drag payments due to budgetary constraints.** This often puts the contractor in terrible jeopardy, to the extent that they often refuse to take up perfectly viable projects! The IBC comes in handy here in that PRA’s start with a totally clean slate and the authorities (who are generally keen to get the infrastructure going once again) may cough up or restructure the receivables. They would not generally do this for a

specific industry or company which would be allowed to fail! But here, there are social concerns with potential electoral concerns. All this would make the IBC relatively effective in resolving issues relating to public infrastructure.

One negative is that because the amounts tend to be large, and the Committee is full of public institutions, the bargaining tends to be very harsh and the decision making is slow. Nobody wants to be told that they "have lost 1000 crore" even if that loss is notional. In addition, public institutions have all sorts of due diligence who can pigeon-hole officials for agreeing to a proposal, **even if that proposal gets the project back on track expeditiously.** This is a major problem and some leniency would need to be given to bank and institutional officials in settling with prospective resolution applicants. If this is done, then many more PRA's would come, attracted by the fact that they get already set up infrastructure at **an agreed upon discount**, so that they could calculate their returns suitably. As Infrastructure is a public asset, it is far more important both economically (and also electorally!) that the asset be up and running as compared to an individual private assets.

The IBC provides an option of exit which encourages investment in relatively riskier ventures.

Many companies are going bankrupt because of the load of infrastructure loans. If the assets in an SPV could be transferred expeditiously to someone who has both the professional expertise and financial capacity to run it, the existing corporate could also be saved in many cases and could go about its other businesses, thereby contributing to the economy and

employment. So two birds are killed with one stone.

## **CONCLUSION**

Therefore to sum up, the IBC provides the following added advantages to Infrastructure companies

1. A certain level of credit discipline to their sub-contractors and suppliers, thereby keeping the network healthy
2. The option of exit, should the cash flow become constrained due to political or other reasons. **The overriding power of the code, allows other managements to come in more easily.**
3. Greater confidence by the financial creditors, knowing that they hold sizeable cards should there be financial indiscipline/wilful default/operational cash crunch.
4. Instant benefit to the business community, employees and stakeholders by taking over a company, **free of undefined liabilities** and making it operational immediately.

**Ms. Mohita Garg**  
**Registered Valuer**

## SYNOPSIS

The Insolvency and Bankruptcy Code (IBC), enacted in 2016, marked a significant shift in India's approach to corporate distress. By streamlining the resolution process, the IBC aimed to improve efficiency and maximize value recovery for stakeholders. While the code has demonstrably improved the system compared to its predecessor, there's growing recognition that leveraging Artificial Intelligence (AI) can further enhance its effectiveness. This article explores the potential of AI in revolutionizing various aspects of the IBC framework.

### The Need for Innovation in Insolvency Resolution

The global pandemic's economic fallout highlighted the need for efficient insolvency resolution mechanisms. Countries worldwide have adopted various measures to expedite recovery and bolster their economies. Notably, the legal sector has witnessed a surge in digitalization, with AI and machine learning playing an increasingly prominent role in facilitating swift resolution of financial and business disputes.

In India, the Insolvency and Bankruptcy Board of India (IBBI) has consistently strived to accelerate the insolvency resolution process. Recent discussion papers on "changes in the corporate insolvency resolution process (CIRP) to reduce delays and improve the resolution value" (DISCUSSION PAPER - CIRP, 2022) and "streamlining the liquidation process" (DISCUSSION PAPER- IBBI, 2022) illustrate

this commitment. However, the sheer volume of cases, process complexities, and vast amounts of documentation continue to impede progress.

*The National Company Law Tribunal (NCLT) President, during a national-level conference, emphasized the importance of early insolvency resolution through AI* (RELEASE, 2022). AI's capabilities can significantly contribute to achieving time-bound resolutions envisioned under the IBC framework. In this era of "big data," AI can streamline the entire process for stakeholders.

### AI's Potential Across the IBC Lifecycle

This section delves into the potential applications of AI throughout the three key stages of the IBC process: pre-insolvency, CIRP, and liquidation<sup>ii</sup>.

#### STGAE-1 Pre-Insolvency Stage: Predictive Analytics and Early Warning Systems

Traditionally, insolvency identification relied on expert analysis of a company's financial health, often a time-consuming and resource-intensive process. AI offers a transformative solution through predictive analytics and early warning systems.

- **Identifying Distress Signals:** AI algorithms can analyse vast datasets encompassing financial statements, market trends, and even social media sentiment to detect early warning signs of financial distress in companies. This proactive approach allows for timely intervention and preventive measures, potentially averting insolvency altogether.

- **Risk Assessment and Scoring:** AI-powered models can assess the risk of insolvency for individual companies and industries. This empowers lenders to make informed lending decisions and proactively manage their credit portfolios.
- **Big Data and AI: A Powerful Combination:** Insolvency assessments involve analysing massive amounts of data to understand a company's financial standing. AI excels at handling such "big data," characterized by high volume, velocity, and variety. AI algorithms can process these vast datasets in a fraction of the time and resources required by humans. For instance, Professor Yuri Zelenko's AI model utilizes machine learning for insolvency and bankruptcy prediction. This approach mitigates the impact of data imbalances by training numerous independent classification algorithms. The most effective algorithms are then selected and combined to enhance prediction accuracy. Additionally, companies like Obviously.ai (<https://www.obviously.ai/>) offer custom-built AI solutions based on client needs. Their innovative platform paves way for clients to deploy insolvency prediction mechanisms in future through a no-code automation machine learning tool.

### **STAGE -2 AI in the Corporate Insolvency Resolution Process (CIRP)**

The IBC framework allows for initiating CIRP in cases of default by corporate debtors. The CIRP process involves filing applications, obtaining moratoriums, appointing Resolution Professionals (RPs), and forming Committees of Creditors (CoCs). This intricate process necessitates handling vast amounts of data, a task ideally suited for AI's capabilities.

- **Streamlining Decision-Making for Resolution Professionals:** AI can

significantly reduce the time required for RPs to make crucial decisions by analysing a company's Key Performance Indicators (KPIs)<sup>iii</sup>. AI can identify correlations between performance metrics and insolvency risk, enabling businesses to take corrective actions before facing financial collapse.

- **Enhanced Investigative Efficiency:** Investigators can leverage AI systems to conduct efficient file discovery searches across crucial storage repositories and email servers. AI algorithms continuously learn to recognize relevant documents and sources, accelerating case progression and expediting the delivery of findings. This translates to a significant reduction in the time between case filing and the commencement of CIRP.
- **Augmenting Professional Efficiency and Reducing Costs:** As AI becomes more integrated into CIRP, it has the potential to augment the efficiency of professionals involved in the process while simultaneously reducing costs.

### **STAGE -3 AI in Liquidation**

Time-bound liquidation remains an elusive goal for the IBC. The Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 (2019), 2022), mandate liquidators to complete the liquidation process within one year. However, IBBI data

### **Challenges and Considerations in relation to AI & IBC**

While AI holds immense potential, its integration into the IBC framework requires careful consideration of several challenges:

- **Data Quality and Bias:** The accuracy of AI models depends heavily on the quality and completeness of training data. Biases in historical data can lead to biased outcomes.

Robust data governance practices are essential.

- **Data Privacy and Security:** The collection, storage, and processing of sensitive data during insolvency proceedings raise significant privacy and security concerns. Implementing robust safeguards is crucial to protect this information.
- **Ethical Considerations:** The use of AI raises ethical considerations, such as potential job displacement, algorithmic bias, and the need for human oversight to ensure fairness and accountability.
- **Regulatory Framework:** A clear regulatory framework is needed to govern the use of AI in the IBC, addressing issues such as data privacy, algorithmic transparency, and liability.

### The Road Ahead: A Collaborative Approach

The successful integration of AI into the IBC framework requires a collaborative approach involving:

- **Policymakers:** Developing clear regulations and guidelines for responsible AI use in insolvency resolution.
- **Regulators:** Establishing robust data governance practices and ensuring data privacy and security.
- **Industry Stakeholders:** Embracing AI and investing in AI-powered tools to enhance efficiency.
- **AI Experts:** Collaborating with stakeholders to develop and implement ethical and effective AI solutions.

### Conclusion

AI has the potential to revolutionize the insolvency resolution process in India by automating routine tasks, improving data analysis, and providing valuable insights. By addressing the challenges and fostering a collaborative approach, India can leverage AI to create a more efficient, transparent, and effective insolvency regime that benefits all stakeholders.

#### <sup>1</sup> What is big data?

Big data refers to data collections that are extremely large, complex, and fast-growing — so large, in fact, that traditional data processing software cannot manage them. These collections may contain both structured and unstructured data. While there is no widely accepted, technically precise definition of "big data," the term is commonly used for massive data collections that expand rapidly.

<sup>1</sup> Key Performance Indicators (KPIs) are quantifiable measurements you can make that help you understand how your company is performing. An effective KPI has to be:

- measurable and well-defined.
- crucial to achieving your goals.
- applicable to your particular business.

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## CA (Dr) KISHORE KUMAR PAHUJA INSOLVENCY PROFESSIONAL

The Insolvency and Bankruptcy Board of India (IBBI) has proposed new regulations allowing operational creditors to opt for voluntary mediation before initiating insolvency proceedings against a company. This initiative aims to alleviate the burden on the judiciary and reduce delays in the insolvency process. If the mediation fails, the mediator will prepare a non-settlement report, which must be submitted alongside the application for the Corporate Insolvency Resolution Process (CIRP) to the adjudicating authority (AA). This process is designed to streamline insolvency proceedings and make them more efficient. The proposal is based on recommendations from an expert committee, which emphasized pre-institutional mediation as a necessary first step before filing insolvency applications. By incorporating mediation, the IBBI seeks to promote quicker and less adversarial resolutions. The move is part of broader efforts to improve the insolvency and bankruptcy framework in India.

Mediation is gradually becoming an increasingly useful tool in resolving disputes and facilitating efficient solutions to complex financial challenges. Insolvency, whether personal or corporate, often involves a multitude of stakeholders, including debtors, creditors, employees, and regulatory bodies, each with different interests and objectives. Traditional litigation processes can be slow, costly, and adversarial, and may not lead to the best outcomes for all involved parties. Mediation provides an alternative method of resolving disputes and facilitating negotiations in insolvency proceedings.

### **What is Mediation?**

Mediation is a voluntary, confidential process in which a neutral third party (the mediator) helps disputing parties to reach a mutually acceptable resolution. Unlike litigation, which involves a judge or arbitrator making decisions based on the law, mediation empowers the parties to negotiate directly and control the outcome of the process. The mediator does not make decisions but instead facilitates communication, helps identify common ground, and assists in finding solutions that satisfy all parties involved. Mediation is widely used in various legal contexts, including family law, commercial disputes, and employment issues, and its application to insolvency cases has proven to be particularly beneficial.

### **Insolvency Cases- Need for Mediation**

Insolvency cases often involve complex financial structures, multiple creditors, and competing interests. These cases can be particularly contentious because the available assets are limited, and the stakeholders involved may have conflicting goals. For example, creditors may be eager to recover as much of their debt as possible, while the debtor may seek to avoid liquidation and preserve the business or individual's financial future. In addition, insolvency cases can involve regulatory authorities, employees, and shareholders, each with their own interests. Without mediation, these disputes often end up in court, where the outcome is uncertain and the process can be expensive and time-consuming.

The benefits of mediation in insolvency proceedings are particularly clear when one considers the following challenges typically faced in these cases:

- **Multiple stakeholders with different priorities:** In corporate insolvency, a business may owe debts to numerous creditors, each with different interests. These creditors may include secured lenders, unsecured creditors, employees, suppliers, and tax authorities. Balancing these competing interests often requires careful negotiation, which is where mediation can play a pivotal role.

- **Pressure to resolve disputes quickly:** Insolvency cases, particularly corporate bankruptcies, often require urgent decisions to preserve assets, prevent asset dissipation, and prevent further losses. Court procedures can be slow and may not yield timely resolutions. Mediation, on the other hand, allows for more flexibility and can help expedite the resolution process.

- **Complex financial and legal issues:** Insolvency involves technical financial issues such as asset valuation, debt restructuring, and claims priority, as well as legal matters concerning the debtor's obligations and rights. Mediation can help simplify these issues by allowing the parties to engage in open discussions and work toward a practical solution.

- **Preserving business relationships:** Insolvency cases often involve ongoing business relationships between debtors and creditors. A contentious court battle can further damage these relationships, making future cooperation difficult. Mediation fosters cooperation and can help preserve the possibility of future business dealings.

Given these challenges, mediation presents an opportunity to resolve insolvency disputes in a less adversarial and more efficient manner than litigation.

## The Key Roles of Mediation in Insolvency Cases

Mediation can address a wide range of issues in insolvency cases. Below are some of the key roles that mediation can play:

### 1. Resolving Disputes Between Creditors and Debtors

One of the primary applications of mediation in insolvency is resolving disputes between the debtor and creditors. In many insolvency cases, creditors may seek repayment of debts while the debtor may be struggling to meet obligations due to a lack of liquidity or financial distress. Mediation provides a platform for both sides to express their concerns, share relevant financial information, and work toward a resolution that satisfies all parties.

Mediation can also assist in negotiating more favourable repayment terms, such as extending repayment periods, reducing debt amounts, or restructuring the debt in a way that allows the debtor to continue operations. For creditors, the goal is often to recover as much of their debt as possible, while for the debtor, the goal is typically to avoid liquidation or preserve the business. Mediation helps reconcile these interests and find a balanced solution.

### 2. Debt Restructuring and Workouts

In cases of corporate insolvency, mediation can be particularly effective in facilitating debt restructuring or debt workouts. A debt restructuring process involves renegotiating the terms of outstanding debts, often to make them more manageable for the debtor while ensuring that creditors are still compensated sufficiently. This could involve changes to interest rates, repayment schedules, or even the principal amount of the debt.

The mediator can guide the negotiations between the debtor and creditors to ensure

that the restructuring process is conducted fairly and transparently. By engaging the parties in open dialogue, the mediator helps bridge differences and fosters a collaborative approach to addressing the debtor's financial difficulties. In some cases, mediation may lead to a voluntary debt settlement or an agreement to convert debt into equity.

### **3. Avoiding Bankruptcy Proceedings**

One of the most significant advantages of mediation is that it can help parties avoid lengthy and costly bankruptcy proceedings. Bankruptcy, while providing a legal framework for resolving insolvency, often results in the liquidation of assets and the cessation of operations, which may not be in the best interest of the debtor or the creditors. Mediation, on the other hand, allows the parties to explore alternatives to bankruptcy, such as reorganization or debt forgiveness.

In cases where the debtor is a business, bankruptcy may mean the loss of jobs, damage to the business's reputation, and the destruction of shareholder value. Mediation provides an opportunity to reach an agreement that can allow the business to continue operating while still addressing the financial issues.

### **4. Facilitating Communication Between Parties**

In insolvency cases, communication between the debtor and creditors can be difficult, especially when there are multiple parties involved. Creditors may be distrustful of the debtor's intentions or may feel that their claims are being ignored. Similarly, debtors may be reluctant to share financial information due to fear of legal consequences or the potential loss of assets.

Mediation helps break down these communication barriers by creating a structured environment for dialogue. The

mediator ensures that both parties have an opportunity to present their views and concerns. By facilitating respectful and open communication, mediation helps foster mutual understanding, which can lead to more productive negotiations.

### **5. Promoting Settlement Over Litigation**

Litigation in insolvency cases can be time-consuming, expensive, and adversarial. It often involves multiple legal steps, including filing lawsuits, discovery, hearings, and appeals. The outcome of litigation is uncertain and may not satisfy all parties involved. In contrast, mediation promotes settlement by focusing on collaboration and compromise rather than adversarial tactics.

In mediation, the parties have control over the outcome, which allows for more creative and flexible solutions. For example, rather than having a court decide on the distribution of assets, the parties may agree to a more equitable arrangement that addresses the unique needs of each creditor.

### **6. Cross-Border Insolvency Cases**

In an increasingly globalised world, insolvency cases often involve multiple jurisdictions, complicating matters further. When the debtor's assets are spread across different countries, or when creditors are located in different regions, resolving disputes can become more complicated. Different legal systems, regulatory frameworks, and cultural approaches to dispute resolution can create friction.

Mediation can be particularly effective in cross-border insolvency cases because it allows for greater flexibility in accommodating different legal systems and cultural differences. Mediators with experience in international insolvency cases can help bring together stakeholders from various jurisdictions and facilitate negotiations that align with local laws and customs.

## 7. Confidentiality in Mediation

Confidentiality is a fundamental feature of the mediation process. Unlike court proceedings, which are generally open to the public, mediation is private, and the details of the negotiations do not become part of the public record. This confidentiality can encourage parties to engage in more honest and open discussions.

In case of debtors, confidentiality provides protection against reputational damage or loss of customer confidence. While for creditors, it can ensure that sensitive financial information is not disclosed to competitors or other stakeholders. The confidential nature of mediation promotes an atmosphere of trust, which is essential for reaching a successful resolution.

## 8. Creative Solutions and Flexibility

Mediation is not bound by the same rigid rules as court proceedings. This flexibility allows the parties to explore creative solutions that might not be available in a courtroom. For example, creditors may agree to accept partial debt forgiveness in exchange for an expedited repayment plan, or a debtor may agree to sell certain assets to satisfy debts without having to liquidate the entire business.

The mediator's role is to help the parties come up with innovative solutions that address their respective interests. This creative problem-solving process is particularly important in insolvency cases, where the traditional solutions may not always be the most practical or effective.

### Advantages of Mediation in Insolvency

1. Mediation in insolvency cases offers numerous advantages over traditional litigation. Some of the key benefits include:
2. **Cost Efficiency:** Mediation is generally less expensive than litigation because it avoids

the need for extensive legal proceedings and expert testimony.

3. **Time Efficiency:** Mediation can be scheduled and completed more quickly than court hearings, which can take months or even years to resolve.
4. **Preservation of Relationships:** Because mediation focuses on collaboration rather than confrontation, it is less likely to damage relationships between the debtor and creditors, which is important for future cooperation.
5. **Control Over Outcomes:** In mediation, the parties have greater control over the resolution, as they are involved in crafting the solution rather than leaving it to a judge.
6. **Confidentiality:** Mediation is a private process, which helps protect the interests and reputations of all involved parties.

### Challenges of Mediation in Insolvency

Despite its advantages, mediation in insolvency cases is not without challenges. Some of the key challenges include:

1. **Power Imbalances:** In some insolvency cases, there may be a power imbalance between the debtor and creditors, especially when a creditor holds significant leverage. The mediator must ensure that both sides are treated fairly and that the weaker party is not coerced into an unfavourable agreement.
2. **Lack of Willingness to Compromise:** For mediation to be successful, both parties must be willing to negotiate and make concessions. If one party is unwilling to compromise, mediation may not lead to a resolution.
3. **Enforcement of Agreements:** While mediation can result in a binding agreement, the enforceability of that agreement depends on the parties' willingness to comply. In some cases,

even after mediation, the parties may fail to uphold their commitments.

### Requirement of Mediation under Insolvency and Bankruptcy Code 2016

The Insolvency and Bankruptcy Board of India (IBBI) has proposed revised regulations to allow operational creditors to opt for voluntary mediation before starting insolvency proceedings against a company. The aim is to ease the burden on the judiciary and reduce delays in insolvency processes.

“In case of failure of mediation settlement, the mediator will prepare a non-settlement report, which shall be annexed with the application for initiation of Corporate Insolvency Resolution Process (CIRP) before the adjudicating authority (AA),” the IBBI said, adding that the proposal would reduce the burden on the authority and expedite admissions.

The IBBI proposal follows recommendations from an expert committee, which in a report submitted in January, had called for pre-institutional mediation as a preliminary step before filing insolvency applications.

### **Conclusion**

Mediation is a valuable tool in insolvency cases because it provides a cost-effective, time-efficient, and flexible alternative to traditional litigation. It allows parties to reach mutually beneficial solutions, preserving relationships and encouraging cooperation. Whether resolving disputes between creditors and debtors, facilitating debt restructuring, or avoiding bankruptcy, mediation can significantly improve the chances of a positive outcome for all involved. However, successful mediation requires the willingness of all parties to engage in the process, and the mediator must ensure that the process is fair, transparent, and balanced.

# CASE LAWS

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INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

## SECTION 238A - LIMITATION PERIOD

### **Vidyasagar Prasad v. UCO Bank [2024] 168 taxmann.com 24 (SC)**

*Where corporate debtor had issued a letter to financial creditor on 7-6-2016, wherein it had given one time settlement proposal, since said letter amounted to acknowledgement of liability by corporate debtor, application filed under section 7 on 13-2-2019 was not barred by limitation.*

The appellant-corporate debtor had availed credit facilities from the respondent-financial creditor. However, the corporate debtor failed to pay interest and principal amount as agreed and its account was classified as NPA (Non-Performing Assets) on 5-11-2014. The financial creditor filed an application under section 7 on 13-2-2019. NCLT by order admitted said application. The corporate debtor challenged said order on ground that application filed under section 7 was time barred. NCLAT vide impugned order held that

the corporate debtor had issued a letter to financial creditor on 7-6-2016, wherein it had given one time settlement proposal, since said letter amounted to acknowledgement of liability by the corporate debtor, application filed under section 7 on 13-2-2019 was not time barred.

Held that commencement of a fresh period of limitation from time of acknowledgment of debt is part of statutory scheme and section 238A extends applicability of provisions of Limitation Act to proceedings under Code. Since acknowledgment of debt in balance sheet as well as in OTS proposal, had been considered by NCLAT while dismissing appeal, impugned order passed by NCLAT was correct in law and fact.

Case Review : Order of NCLAT (new delhi) in [2021] 133 taxmann.com 105 (NCLAT -New Delhi), affirmed.

## SECTION 238 - OVERRIDING EFFECT OF CODE

### **Ramesh Kumar Chugh v. Assets Care & Construction Enterprises Ltd. [2024] 168 taxmann.com 44 (NCLAT- New Delhi)**

*Where interim moratorium had come into play only with respect to personal guarantee of appellant as personal guarantor and not of partnership firm, there were no good grounds for NCLT to have entertained application of appellant to withdraw notice issued under rule 8(6) and restrain respondent from taking further action on these notices with respect to subject property having been put to auction.*

The appellant stood as a personal guarantor for repayment of operational debt owed by the principal borrower. A petition under section 95 was filed by the operational creditor against the appellant and, interim moratorium under section 96 commenced. The appellant was also a partner in a partnership firm i.e.,

S.E, which had availed itself of loan facilities from banks, in which the appellant was also a Guarantor to loan facilities. Meanwhile, several banks had assigned loans given to the principal borrower along with underlying securities in favour of the respondent. Due to non-repayment of debt, respondent had put up properties for auction. The appellant filed an application before NCLT to direct respondent to withdraw notices issued under rule 8(6) of Security Interest (Enforcement) Rules and to restrain them from taking any further action pursuant to these notices in respect of property put to auction. NCLT vide impugned order dismissed said application.

Held that moratorium imposed under section 96 would apply only to security interest created by the appellant under personal guarantee in his capacity as a personal guarantor with respect to default of the



operational debt and merely because the appellant claimed to be an erstwhile partner of partnership firm, whose dissolution had been purportedly triggered by the appellant, interim moratorium would not cover subject property against which SARFAESI proceedings had been initiated by respondent. Since interim moratorium had come into play

only with respect to personal guarantee of the appellant as personal guarantor and not of partnership firm, there were no good grounds for NCLT to have entertained application of the appellant to withdraw notice issued under rule 8(6) and restrain respondent from taking further action on these notices with respect to subject property having been put to auction.

## SECTION 220 - INSPECTION AND INVESTIGATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES - DISCIPLINARY COMMITTEE - APPOINTMENT OF

**Vijendra Kumar Jain v. Insolvency & Bankruptcy Board of India [2024] 168 taxmann.com 52 (Bombay)**

*Where Disciplinary Committee of IBBI suspended registration of petitioner as Resolution Professional (RP) for one year on ground that petitioner had failed to perform his duties under Code, exercise undertaken by IBBI was within its jurisdiction and powers conferred by section 220 and, therefore, no case was made out to interfere in exercise of writ jurisdiction.*

Pursuant to initiation of Corporate Insolvency Resolution Process (CIRP) of the corporate debtor, the petitioner was appointed as Resolution Professional (RP). Insolvency and Bankruptcy Board of India (IBBI) issued a show cause notice to the petitioner alleging lack of due diligence while verifying resolution plan of the corporate debtor and non-intimation of claim of KCIL despite being aware of partial admission of its claim. Disciplinary Committee of IBBI passed an order stating that

as the petitioner had failed to perform his duties under Code read with relevant Regulations made thereunder, petitioner's registration as RP was suspended for a period of one year. The petitioner filed writ petition challenging said order.

Held that in light of material available with Disciplinary Committee and especially judgment passed by NCLAT in an appeal against approval of resolution plan in respect of the corporate debtor, action of suspending registration of the petitioner as RP was justified. Exercise undertaken by IBBI was within its jurisdiction and powers conferred by section 220. The petitioner's suspension for a period of one year could not be said to be highly disproportionate that would shock conscience of Court for it to interfere in exercise of writ jurisdiction.

## SECTION 95 - INDIVIDUAL /FIRM'S INSOLVENCY RESOLUTION PROCESS - APPLICATION BY CREDITOR

**Buoyant Technology Constellations (P.) Ltd. v. Manyata Realty [2024] 168 taxmann.com 60 (Karnataka)**

*Stage of filing application under sections 94 or 95, is too preliminary a stage to perceive and*

*conceive any adjudicatory attribute and, hence, it is not permissible for Registrar, NCLT, to go into merits of petition and/or to decide about maintainability thereof on merits.*

The appellant filed a petition under section 95

against the respondent-partnership firm M. It was stated that the petitioner with other entities, all were engaged in the business of real estate development. One of such entity was corporate debtor which was a private limited company. The petition was against the personal guarantors. It was stated that admittedly there was a default on part of the said corporate debtors which had failed to discharge its obligation under the Loan Agreement as also in respect of invocation of personal guarantors. It was stated that the corporate debtor was a private limited company registered under the Companies Act, 2013 and was an affiliate entity of M and that the individual partners of the firm had interest in the said private limited company. It was further stated that number of agreements were entered into amongst the financial creditor-applicant-appellant, the corporate debtor as well as its affiliate concern-M. The respondent filed a writ petition under article 226 of the Constitution praying to declare that the e-filing of petition under section 95 was void ab initio and illegal. The Single Judge allowed the writ petition and declared that e-filing of the petition by the appellant under section 95 to be non est and illegal, consequently setting aside all the connected proceedings.

On writ appeal:

Held that stage of filing application under sections 94 or 95, is too preliminary a stage to perceive and conceive any adjudicatory attribute at that stage. Registrar of NCLT would receive and register petition and Registrar, NCLT in receiving filed or lodged

petition under Section 94 or Section 95, respectively by a debtor or creditor, as case may be, to initiate insolvency resolution process before Registrar of NCLT, performs pure administrative function. Act of receiving of petition initiating insolvency resolution process is ministerial and procedural in nature; it is an elementary stage which does not have any adjudicatory process. This act on part of Registrar in receiving petitions under sections 94 or 95, as case may be, has no judicial trapping. It is not permissible for Registrar, NCLT, to go into merits of petition and/or to decide about maintainability thereof on merits, for, Registrar does not discharge any adjudicatory or judicial function at this stage. Resolution professional who would be appointed under section 97, is required to submit report to adjudicating authority recommending for approval or rejection of application. Stage of discharge of duties by resolution professional is also not adjudicatory. It is stage of section 100, which marks commencement of adjudicatory process. Thus, adjudicatory function could not be pinned or performed at stage of receipt of petition by Registrar, who has no legal sanction to assume role of adjudicator to decide maintainability of petition.

**Case Review :** Order of Single Judge of High Court of Karnataka in *Manyata Reality v. Registrar National Company Law Tri Bengaluru Bench* [Writ Petition No.26977 of 2023,dated 6-3-2024] set aside

## SECTION 240A - MICRO, SMALL AND MEDIUM ENTERPRISES-APPLICATION OF CODE TO

**Ashish Singh, Resolution Professional of Vibrant Buildwell (P.) Ltd. v. Raj Kumar Sahani [2024] 168 taxmann.com 371 (NCLAT- New Delhi)**

*Where CIRP was initiated against corporate debtor and RP got corporate debtor registered as MSME prior to approval of resolution plan,*

*benefit of section 240A would be extended to corporate debtor and ineligibility under section 29A(c) could not be relied upon for declaring successful resolution applicant ineligible.*

CIRP was initiated against the corporate debtor. RP got the corporate debtor registered as MSME. Resolution plan submitted by the

Successful Resolution Applicant (SRA) i.e. 'B' was approved by CoC. Suspended director of the corporate debtor filed an application objecting to resolution plan submitted by 'B' on ground that 'B' was not eligible to submit a resolution plan under section 29A. NCLT by impugned order accepted objection raised by suspended director and consequently rejected application filed by RP for approval of resolution plan.

Held that when section 240A is applied, ineligibility in Resolution Applicant, under whose management and control, account of CD was declared non-performing, cannot be reckoned. Since the corporate debtor had been

registered as MSME prior to approval of resolution plan, benefit of section 240A would be extended and ineligibility under section 29A(c) could not be relied for declaring SRA ineligible, thus, order passed by NCLT rejecting resolution plan was to be set aside.

Case Review : Raj Kumar Sahani v. Ashish Singh Resolution Professional of Vibrant Buildwell Private Limited [2024] 168 taxmann.com 111 (NCLT - New Delhi), set aside.

## SECTION 31 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

### **State Bank of India v. Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch [2024] 168 taxmann.com 421 (SC)**

*Where in terms of approved resolution plan successful resolution applicant (SRA) was required to pay Performance Bank Guarantee (PBG) of Rs. 150 crores in favour of appellant SBI and infuse first tranche of payment of Rs. 350 crores, Performance Bank Guarantee (PBG) could not have been adjusted against first tranche payment which was to be made under Resolution Plan, within 180 days from Effective Date and, thus, non-implementation of Resolution Plan by SRA necessarily lead to consequence of liquidation as under section 33(3).*

NCLT admitted application for initiation of CIRP filed by SBI in respect of the corporate debtor-Jet Airways. The respondent No. 1/SRA submitted its Resolution Plan which was approved by the CoC. In terms of resolution plan SRA was required to infuse funds of Rs. 350 crores and furnish an unconditional and irrevocable performance bank guarantee (PBG) of Rs. 150 crores in favour of SBI. NCLT approved resolution plan subject to fulfilment of condition precedent within stipulated

period, which was extended several times. Appellants disputed fulfilment of condition precedent by respondent No. 1. While Company Appeal was pending before NCLAT, appellants filed Lender's Affidavit before NCLAT which provided if respondent No. 1 followed all terms and conditions of resolution plan, they would withdraw company appeal. Respondent No. 1 filed adjustment application and NCLAT partly allowed same. On appeal, the Supreme Court by order dated 18-1-2024 held that PBG could not be permitted to be adjusted against first tranche payment and, therefore, directed that amount of Rs. 150 crores be infused in cash on or before 31-1-2024. Respondent No.1 failed to deposit Rs. 150 crore in cash by 31-1-2024 as directed by Court. Later, NCLAT, vide its impugned order dated 12-3-2024, dismissed Company Appeal filed by appellants against order of NCLT dated 13-1-2023 while holding that Respondent No. 1 had fulfilled all conditions precedent and had also complied with all other terms of Resolution Plan. Appellants had challenged said impugned order of NCLAT dated 12-3-2024 by way of instant appeals.

Held that impugned order of NCLAT directing SRA to adjust PBG of Rs. 150 crore against first tranche payment of Rs. 350 crore was in

flagrant disregard of order of the Supreme Court dated 18-1-2023, terms of Resolution Plan and established law. Non-infusion and payment of funds in compliance with applicable laws and terms of Resolution Plan had led to circumstances causing a failure of Resolution Plan. PBG could not be adjusted towards any consideration or payment, which had to be made by SRA. An adjustment of PBG against first tranche payment would also be in violation of Regulation 36B(4A) of 2016 Regulations. SRA not having infused first tranche payment of Rs. 350 crore within a period of 180 days from Effective Date and within multiple extensions granted therefrom, had defaulted on its obligation towards payment of CIRP costs (which included airport dues). Consequence of failure to implement

Resolution Plan was that appellants were entitled to invoke PBG automatically without any reference to SRA and, therefore, it was directed that PBG might be invoked by appellants in accordance with terms of Resolution Plan. Since Resolution Plan was no longer capable of being implemented, it must be ensured that at least liquidation remained as a 'viable' last resort for the corporate debtor and its creditors. Thus, impugned order passed by NCLAT was perverse and unsustainable in law and same was to be set aside.

Case Review : Order of NCLAT in State Bank of India v. J.C. Flowers Asset Reconstruction (P.) Ltd. [Company Appeal (AT) (INS) Nos. 129-130 of 2023, dated 12-3-2024], set aside

## SECTION 238 - OVERRIDING EFFECT OF CODE

**Surendra Kumar Patwa v. Dharmendra Vohra [2024] 168 taxmann.com 445 (Madhya Pradesh)**

*Moratorium declared under section 96 of IBC has also application over proceedings of section 138 of N.I. Act and thus, proceedings initiated against debtor under section 138 of N.I. Act, would remain stayed till moratorium declared by NCLT in a pending proceeding of section 96 of IBC, was in operation.*

One of creditors of the petitioner filed an application for initiating insolvency resolution process under Section 95 of IBC. NCLT, in terms of Section 96 of IBC, declared interim-moratorium with respect to all debts of petitioner and all proceedings pending against him. Meanwhile, the respondent had preferred a criminal complaint under Section 138 of N.I. Act against the petitioner. The petitioner filed an application seeking stay on proceedings pending before Trial Court on basis of interim-moratorium declared. Said application was rejected by the Trial Court. Revisional Court dismissed revision holding that IBC did not contain any provision regarding stay on proceedings of Section 138 of N.I. Act. It was observed that the Supreme Court in case of P. Mohanraj v. Shah Brothers Ispat Private

Limited [2021] 125 taxmann.com 39/167 SCL 327 (SC), held that moratorium declared under Section 96 of IBC has also application over proceedings of Section 138 of N.I. Act. That ratio of P. Mohanraj (supra) had not been disturbed even in case of Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited [2023] 148 taxmann.com 280/178 SCL401 (SC), but on contrary, the Supreme Court had followed ratio of P. Mohanraj (supra) and therefore, no question regarding ignoring legal position as had been settled by Supreme Court in case of P. Mohanraj (supra) arises.

Held that interim-moratorium would apply to proceedings initiated against petitioner in respect of any of transactions in which he was involved and proceedings were initiated for recovery of debts from such debtor, thus, proceedings initiated against the petitioner under Section 138 of N.I. Act, would remain stayed till moratorium declared by NCLT in a pending proceeding of Section 96 of IBC, was in operation.

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## SECTION 115 - INDIVIDUAL/FIRM'S INSOLVENCY RESOLUTION PROCESS - REPAYMENT PLAN - EFFECT OF ORDER OF ADJUDICATING AUTHORITY ON

**Sudip Dutta @ Sudip Bijoy Dutta v. Prashant Jain [2024] 168 taxmann.com 645 (NCLAT-New Delhi)**

*Where no repayment plan was submitted by personal guarantor, NCLT had not committed any error in giving liberty to creditors to file an application for bankruptcy against personal guarantor.*

An application under section 95 was filed by bank against the appellant-personal guarantor. NCLT admitted section 95 application and RP was appointed. RP asked the appellant to submit a repayment plan. However, no repayment plan was submitted by the personal guarantor. Consequently, RP filed an application before NCLT seeking for terminating insolvency resolution process of personal guarantor and discharging RP and

granting liberty to creditors of personal guarantor to initiate bankruptcy process against personal guarantor. NCLT vide impugned order allowed said application.

Held that since no repayment plan having been prepared, there was no occasion to pass an order for either accepting or rejecting resolution plan. Since no repayment plan having been submitted by personal guarantor, NCLT had not committed any error in giving liberty to creditors to file an application for bankruptcy under Chapter IV, which was a statutory consequence under section 115(2), thus, there was no merit in instant appeal and same was to be dismissed.

Case Review : Order of NCLT(KOLKATA) in Prashant Jain v Sudip Bijoy Dutta [IA(IBC)/449(KB)2024 in C.P. (IB)/54(KB)2021,dated 10-4-2024] affirmed.

*Residential Program, "Deep Dive into Resolution in God's own Country," - Alleppey, Kerala.*















# Participants Feedback

*Mr. Amit*

Thanks to the organisers from NHPC team for organizing such a wonderful program

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*Thanks to all for the wonderful time.  
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*Mr. Sanjeevi*

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*Mr. Avinash*

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# Participants Feedback

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*Mr. Vijay sai*

*Thanks to the organisers for arranging such a memorable program.*



*Mr. Ashok*

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*Mr. Patanjali*

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# Participants Feedback

*Mr. Sunil*

*Dear IPA team Led by Mr Narasimha Prasad, thank you for the wonderful work, seamless logistics, well crafted sessions, the idea of cruise, and the Gala evening I on behalf of Resurgent family wish you all the success in personal and professional arena.*

*Mr. Deepak*

*Thanks to the team of IPA CMA for this wonderful program, comfortable stay, cruise experience, entertainment & gala dinner,*

*Waiting for your next announcement,*

*Ms. Rita*

*Great thanks to the team of IPA CMA lead by Mr Narasimha Prasad for the wonderful work.*

*Mr. TSN Raja*

*IPA team Congratulations Thank you for the arrangements*

# GUIDELINES FOR ARTICLE

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- ✓ The length of the article should be 2500-3000 words.
- ✓ The article should also have an executive summary of around 100 words.
- ✓ The article should contain headings, which should be clear, short, catchy, and interesting.
- ✓ The authors must provide the list of references if any at the end of article.
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