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# **ACAE CHARTERED ACCOUNTANTS CPE STUDY CIRCLE OF EIRC OF ICAI**



## **IBC CONCLAVE 2023**

**at The Hotel Hindusthan International, Kolkata  
on 20th May, 2023**

6, Lyons Range, 3rd Floor, Unit - 2, Kolkata - 700 001  
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## CONTENTS

**3** Programme - IBC Conclave

**4** Convenor's Message

**5** Profiles

**9** The Emerging Role of the  
Information Utility

— Debajyoti Ray Chaudhuri

**11** Corporate Guarantee to Non-  
Corporate Entities and IBC  
Proceedings

— IP Yogesh Gupta

**12** Implementation of a  
Resolution Plan

— CA. Arun Kumar Gupta

**15** Resolution Professional as Public  
Servant: A Regulatory Quandary

— CA. Anil Goel

**17** Moratorium under Section 14 of the  
Insolvency and Bankruptcy Code,  
2016

— Compiled by Niraj Agrawal

**20** Special Procedure of GST on  
entities under 'CIRP'

— CA Anup Kumar Loharuka

**24** Income tax issues in insolvency,  
insolvent liquidation and voluntary  
liquidation

— Neha Malu

**27** Dilemma surrounding assignment of  
Not Readily Realisable Assets  
(‘NRRA’) under IBC

— Rohit Sharma

**30** Recent important case laws on the  
inter-play of GST/ Indirect Taxes  
with IBC

— CA. Tarun Kr. Gupta

**33** Some Important and recent Case  
Laws under IBC-2016

— Contributor : CS. Gururaj Sriram

**37** Activities at a Glance

**39** Photo Album

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# ACAE CHARTERED ACCOUNTANTS CPE STUDY CIRCLE OF EIRC OF ICAI

## IBC CONCLAVE 2023

Venue : **HHI**, Kolkata  
20th May, 2023 [10:00 AM to 6:00 PM]

### INAUGURAL & POWER SESSION

10:00 AM to 11:00 AM



#### Chief Guest

Hon'ble Justice Krishna Murari  
Supreme Court of India



#### Guest of Honour

Hon'ble Justice Rakesh Kumar Jain  
Member, NCLAT Delhi



#### Special Guest

Mr. Atul Nanda, Senior Advocate,  
Supreme Court of India &  
Former Advocate General, Punjab

### PANEL DISCUSSION

#### Role of Stakeholders in Fast Tracking Revival Process



#### Mrs. Bidisha Banerjee

Member Judicial, NCLT Kolkata



#### Mrs. Rameeza Hakeem

Advocate, Supreme Court of India



#### Mr. Rajan Balasubramanian

General Manager, SBI - SAMRO, Kolkata



#### CA Sumit Binani

Moderator

#### Session 1

Jurisprudence on  
PG to CD



#### Advocate Sandeep Bajaj

Managing Partner  
PSL Chambers, New Delhi

#### Session 2

Emerging Role of IU  
under the Code



#### Mr. Debajyoti Ray Chaudhuri

MD, NeSL  
New Delhi

#### Session 3

The Structure and Role of  
Bad Bank in IBC



#### Mr. Abizer Diwanji

Partner, EY  
Mumbai

#### Session 4

Jurisprudence on Claims  
under CIRP and Liquidation



#### Advocate Piyush Mishra

Partner, Luthra & Luthra  
Mumbai

#### Session 5

Tax Implications while Formulating  
a Resolution Plan/Dissolution



#### CA Sandip Khemka

Partner, Consultpreneurs LLP  
Kolkata



#### CA. Anup Kr. Banka

Convenor



#### CA. Vikash Kr. Banka

Dy. Convenor

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## Convenor's Message

Dear esteemed Members

It gives me immense pleasure to welcome you all to this **IBC Conclave 2023**.

It is an honour to have with us the Chief Guest of the Conclave, the Hon'ble Supreme Court Judge and most respected Hon'ble Justice Krishna Murari, Guest of Honour, Hon'ble Justice Rakesh Kumar Jain, Member Judicial, NCLAT, New Delhi, Special Guest, Mr. Atul Nanda, Senior Advocate, Hon'ble Supreme Court of India. Sir, we are extremely grateful to have you here with us. Your presence adds great value to this event, and we are privileged to have the opportunity to learn from your wisdom and experience. Your kind presence and wisdom shall immensely benefit all the participants, and it is a moment of pride for our city of joy.

We have a rich history of a legacy of judges who are known for farsighted and above reproach conduct, which has become a hallmark for generations to come. Since its inception, the Judiciary has consistently maintained the highest standards of conduct while discharging its responsibilities. It is the most trusted institution in the eyes of the people.

We have gathered here to discuss and deliberate on the various aspects of Insolvency and Bankruptcy Code in our country. The IBC provides four pillars under its ecosystem to protect, safeguard and implement the provisions of law and practices in respect of corporate insolvency resolution and liquidation processes, namely, Insolvency and Bankruptcy Board of India, Adjudicating Authority, Information Utility, and Insolvency Professionals.

What I admire about this law is that it looks at professionalizing the insolvency resolution process. It enables transparency in the way the entire process is handled and allows complete and comprehensive institutionalization of the process. The regulator undertakes regular and systematic training of the professionals to maintain the quality of professional services provided by them. Thus, the Code, equipped with such paraphernalia, which not only gives it life but also enables it to be relevant, absolutely addresses the issues and concerns of the people. I think the IBC is not only paving a graceful path for anyone who seeks to get out of business but is also laying the ground for what an ideal law should be like. An ideal law has to think comprehensively and not just stand out in becoming a silo of legislation. It has to conceptualize a framework that is supported by an institutional mechanism and stakeholders who keep it up and going, thereby addressing the emerging concerns of the people. Features such as time-bound processes, transparency, and professional dealing are all wonderfully laid and embedded into the Code, making it one of the most popular and robust legislations in recent times.

The IBBI is a regulator of a unique nature that has indeed stood the test of time, particularly in the present time, where all our activities are benchmarked against global standards and practices.

We have a line-up of esteemed speakers who will share their expertise and knowledge with us. The sessions will cover a wide range of topics, ranging from Emerging Jurisprudence in IBC, Expectations from Insolvency Professionals, Role of Stakeholders in Fast-Tracking Revival Process, Jurisprudence on PG to CD, Emerging Role of IU under the Code, The Structure and Role of Bad Bank in IBC, Jurisprudence on Claims under CIRP and Liquidation, and Tax Implications while Formulating a Resolution Plan/Dissolution.

Conclave is aimed at providing a platform for experts, industry leaders, policymakers, and practitioners to share their insights, experiences, and best practices related to the Code. It promises to be an enlightening and enriching experience for all participants.

I would like to thank all the participants for joining and making this event a grand success. I hope that this conclave will provide valuable insights and learning to all of us.

On behalf of ACAE CHARTERED ACCOUNTANTS CPE STUDY CIRCLE OF EIRC OF ICAI, I welcome you all once again, and I extend a warm welcome to our respected Chief Guest of the Conclave, the Hon'ble Justice Krishna Murari, Guest of Honour, Justice Rakesh Kumar Jain, Special Guests Mr. Atul Nanda and all our valuable guests and participants. Thank you.

With my best regards

**CA ANUP KUMAR BANKA**

**CONVENOR**

**ACAE CHARTERED ACCOUNTANTS CPE STUDY CIRCLE OF EIRC OF ICAI**

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### **Hon'ble Mr. Justice Krishna Murari**

*The Supreme Court of India*

Born on 09 July 1958, he Obtained his L.L.B degree from Allahabad University, Allahabad.

Enrolled as an Advocate on 23 December 1981. Practiced in the Allahabad High Court for over 22 years in Civil, Constitutional, Company, Service and Revenue matters and has specialized in Civil Revenue and Service cases. He was appointed as Standing Counsel of U.P. State Yarn Company Limited, Kanpur; Northern Railway Primary Co-operative Bank Limited; U.P. State Textile Corporation Limited, Kanpur; U.P. Co-operative Spinning Mills Federation Limited, Kanpur and Bundelkhand University, Jhansi.

He was also Appointed as an Additional Judge of the Allahabad High Court on 07 January 2004 and appointed as Permanent Judge of the Allahabad High Court on 18 August 2005.

He Took over as Chief Justice of Punjab and Haryana High Court, Chandigarh on 02 June 2018 and was elevated as Judge of Supreme Court of India on 23 September 2019.



### **Hon'ble Mr. Rakesh Kumar Jain**

*Member (Judicial), NCLAT, New Delhi*

Born on 01st October, 1958 at Hisar, Haryana in the family of Advocates. His father Shri Gulab Singh Jain was eminent Taxation Lawyer and MLA from Hisar.

After obtaining degree of B.Com LLB, enrolled as an 'Advocate' with the Bar Council of Punjab and Haryana at Chandigarh and after a short stint of practice in the District Court at Hisar, shifted to Chandigarh to practice in the Punjab and Haryana High Court. He remained 'Executive Member' of the Bar Association of Punjab and Haryana High Court Twice and after practicing practically in all branches of Law, elevated as a 'Judge' of the Punjab and Haryana High Court in the year 2007 and retired in the year 2020.

He was appointed as a 'Monitoring Judge' by the Hon'ble Supreme Court in the matter of Re-Lakhimpur violence case and thereafter, appointed as a 'Judicial Member' of the National Company Law Appellate Tribunal, Principal Bench, New Delhi w.e.f. 17th May, 2022.



### **Mr. Atul Nanda, Senior Advocate,**

*The Supreme Court of India & Former Advocate General, Punjab*

Presently a designated Senior Advocate with a legal practice spanning over 30 years with a specialisation in litigation, project set up related strategy and advisory services. He has a strong background of litigation expertise in constitutional and commercial law, defence, aviation minister and indirect taxation, [customs and excise]. He has also acted as an arbitrator as well as legal counsel in several commercial disputes. He is based in New Delhi with a primary practise in the Supreme Court of India and the various High Courts in his country.

He held the constitutional post of the Advocate General of Punjab from 2017 to 2021, advising the State Government and the Cabinet / Council of ministers with regard to legal matters affecting the State of Punjab as well as the appearing in all crucial and sensitive matters for the State before the Supreme Court of India as well as the High Court of Punjab & Haryana.

Before being designated as a Senior Advocate, Atul Nanda was also appointed as a Standing Counsel for the Government of India in the Delhi High Court from September 2009 to January 2011. During this period, he appeared for the Government of India in several important litigation. He was later engaged as Special Counsel for the Government of India in the Supreme Court of India.



**Mrs. Bidisha Banerjee**, *Member Judicial*  
*NCLT Kolkata*

Born on 28th January 1970. She enrolled with the Bar Counsel of West Bengal on 29th July 1995. She served as the Junior Counsel for the railways from 1998 also served as the standing Counsel (Sr. Group) Railways from 2006 to 2010. She was appointed as a Judicial Member in Central Administrative Tribunal on 22nd September 2011 and served until 15th November 2022 at Kolkata, Patna, Ranchi, A&N Islands, Guwahati, Chennai, and Allahabad for a brief period and during which she disposed more than 17000 cases.

She took over as HOD of Patna Bench, Kolkata Bench, A&N Circuit Bench, Ranchi Circuit Bench, etc from 2014 onwards.



**Ms. Rameeza Hakeem**, *Gold Medallist of the University of Mumbai -*  
*Faculty of Law Year 2000*

Ms. Rameeza Hakeem has been the Gold Medallist of the University of Mumbai- Faculty of Law Year 2000. She has also been the recipient of the N.M. Wadia Gold Medal for Excellence in Law, The BJ Patel Memorial Trust Gold Medal for Excellence in Law, The VN Bhudhisagar Gold Medal for Excellence in Law and The Pandit Jawaharlal Nehru Award for Excellence in Law.

Her varied practice includes Constitutional law, corporate law, defence, aviation, regulatory law as well as branches of criminal law. She was legal advisor to the Airport Tariff determining Authority (AERA) and was appointed as Member in the Justice Mudgal Committee for redrafting of The Cinematograph Act 1955.

She has been closely associated with the offices of the Advocate General for the State of Maharashtra as well as the office of the Solicitor General of India. She has also worked closely with State Governments and Government of India in the past on matters such as the Enron Dispute, matters relating to expulsion of Members from the State Legislative Assembly. She has appeared in several National and International arbitrations before the ICC Court of International Arbitration on shareholders issues. She was the Additional Advocate General for the State of Punjab from July 2017 to June 2021.



**Shri Ranjan Balasubamanian**, *General Manager, State Bank of India*  
*Stressed Assets Management Regional Office (SAMRO), Kolkata*

He joined the bank in the year 1987. He has vast experience in Credit having worked in different parts of the country in different assignments.

Before taking over the Stressed Assets Management Regional Office (SAMRO) at Kolkata, he was heading the Corporate Credit Group Regional Office (CCGRO) East.

He is right now overseeing the various recovery processes for SBI in the Eastern Region including DRT/CIRP etc.



**CA. Sumit Binani**, *Specializes in Consulting in Corporate Laws, Insolvency & Restructuring*

Sumit Binani specializes in consulting in corporate laws, insolvency & restructuring.

He is a Registered Insolvency Professional and holds the distinction of being the 1st person in India to pass the Limited Insolvency Examination. He has successfully spearheaded various large revival and liquidation process under the Insolvency regime in India.

Sumit is also a honours graduate in commerce. He has done his post-graduation diploma in business management with specialization in finance from Indian Institute of Management, Calcutta. He is also a Fellow Member of the Institute of Chartered Accountants of India and The Institute of Company Secretaries of India besides being an Associate Member of the Institute of Cost Accountants of India.

A Rank Holder Chartered Accountant, he has earlier worked in the Capital Markets Industry for 15 years. In his past associations, he has worked with Dalmia Securities Limited, HDFC Securities Limited, ICICI Bank Limited and SREI's Investment Banking arm in Senior Management positions.



**Shri Sandeep Bajaj**

<https://www.pslchambers.com/team/sandeep-bajaj/>

Sandeep Bajaj started his journey in 2007 and since then he has advised clients ranging from private entities involved in various sectors (from power sector to hospitality industry) to Union of India and government agencies including Government of NCT of Delhi and Municipal Corporation of Delhi.

He founded the law firm PSL (earlier known as Pamasias Law Chambers) in the year 2012 from a small office at Delhi, Jangpura with 2 colleagues. Today, after a period of almost 8 years, PSL is a known and leading law firm with head office at Delhi and other offices at Mumbai, Chandigarh along with a reference office in China and has team strength of around 40+ legal counsels.

He regularly advises big corporate houses in India in respect of disputes involving billions of rupees. He has worked extensively on the subject of Insolvency and Bankruptcy Code, 2016 and is a part of legal team working in the matters where the interpretation of various provisions of the Insolvency and Bankruptcy Code, 2016 (since its promulgation) is under consideration before the Hon'ble Supreme Court of India as well as Hon'ble National Company Law Appellate Tribunal.



**Shri Debajyoti Ray Chaudhuri**, *MD & CEO*  
*National E-Governance Services Limited*

Chaudhuri Shri Debajyoti Ray Chaudhuri is MD & CEO of National E-Governance Services Limited. He is an MBA from the Faculty of Management Studies (Delhi) and Certified Associate of the Indian Institute of Bankers. His articles on issues related to insolvency have been published in reputed publications/national newspapers and he has been a speaker in numerous seminars/workshops related to corporate insolvency and also in educational institutions like the NLUs. Prior to joining IBBI, he was at the corporate office of India's largest bank, SBI, where he was responsible for compliance and risk, and implementation of the Insolvency and Bankruptcy Code, at its largest business vertical. He was conferred the "Business Excellence and Innovative Best Practices Academia Awards-2020" by the New Delhi Institute of Management.



**Shri Abizer Diwanji**, *Partner for the Restructuring & Turnaround team at EY India*

Abizer Diwanji is a Partner for the Restructuring & Turnaround team at EY India.

He is a Rank holder Chartered Accountant and holds a Bachelor's degree in Commerce.

Abizer is very active in the financial services sector and the distressed debt, fund raising and Financial services M&A

Abizer has been involved within the Indian Banking and non-banking financial services companies, Insurance Companies, Asset reconstruction firms, fund investors for over two decades.

Apart from advising over 100 transactions, overseeing around 50 restructurings, Abizer and has also been instrumental in 2 Global insolvency resolutions, i.e. Lehman Brothers (Liquidation) and MF Global (Distressed Sale)

Abizer is also part of key industry and Government advisory bodies. He was Member of Taskforce for RBI on development of secondary market for corporate loans and is currently a member of the Taskforce on ARC regulations.



**Advocate Piyush Mishra**, *Insolvency and Restructuring Practice in Luthra and Luthra Law Offices India*

Piyush leads the Insolvency and Restructuring Practice in Luthra and Luthra Law Offices India. He has over 20 years of experience in representing the entire spectrum of participants involved in the restructuring and insolvency/liquidation process including committees of creditors, resolution applicants, resolution professionals and large distressed funds. Some of his key insolvency and restructuring deals include Reliance Capital Limited, Sintex BAPL, SKS Power, Punj Lloyd Limited, Monnet Ispat, Jhabua Power Limited, Bhushan Power and Steel Limited and so on.



**Shri Sandip Khemka**  
<https://consultpreneurs.com/specialists/sandip-khemka/>

Sandip Khemka has been engaged in Management Consulting and Advisory Services. He has wide expertise in areas like Direct Tax (Domestic and International), Cross Border Taxation, Transfer Pricing, tax litigation, re-organizations & restructuring and FEMA Advisory. He has worked with a wide range of listed, multinational groups and entrepreneurial businesses across a whole range of business sectors. With his business experience, he helps clients, leading corporates in India and globally, identify & successfully leverage international opportunities. His ability to relate business objectives and strategies of clients to the tax and regulatory spectrum is unique which has enabled him to come up with effective and practical solutions for clients. He has worked extensively with diverse set of clientele.





**Debajyoti Ray Chaudhuri**  
MD, NeSL

## The Emerging Role of the Information Utility

**India is today one of the fastest growing among the large economies in the world.** As on date, the prospects of growth in many parts of the world look bleak, however, the view about the Indian economy largely remains optimistic. This is because the growth in the Indian economy is being driven by the digital infrastructure which has been created over the last few years. The corner stone of this digital infrastructure is of course Aadhaar and the so called “JAM” or “Jan Dhan- Aadhaar-Mobile” trinity. In 2014-15, it was the vision of Hon’ble PM, Shri Narendra Modi ji to have a bank account for every Indian. The campaign to open accounts under “Jan Dhan” was spearheaded by the public sector banks and within a short span of time, more than 500 Mio Jan Dhan accounts were opened. This was made possible because Aadhaar facilitated digital identification of a customer. UPI is another integral part of our digital infrastructure, and this has enabled us to surpass China in the number of digital transactions. UPI is now global; one can now pay in Indian currency even outside India. UPI would not have been possible without a bank account. UPI and the subsequent tax reforms have ensured formalisation of the economy and increased availability of credit, especially to the SME sector. There are other examples where our country’s digital infrastructure has stood us in good stead. The credit for the successful response to the COVID-19 pandemic was as much due to our scientists as to our software professionals who rolled out the COWIN app to monitor and track the progress of vaccination.

**The Information Utility (IU), a fully electronic repository can make a difference to outcomes under the Insolvency and Bankruptcy Code (IBC, 2016 or Code).** The Insolvency of an airline company made headlines a couple of days back, however even as the application for initiation of Corporate Insolvency Resolution Process (CIRP) was filed with the Adjudicating Authority (NCLT), the information about the same flowed seamlessly from IBBI through an API to NeSL and subsequently, all the bankers of the corporate debtor (CD) received an email in their inbox advising them of the same. This was even before the application was admitted for initiation of insolvency proceedings.

This case made headlines as public interest was involved, but in most cases, creditors may not even come to know when an application for initiation of CIRP is filed by some other creditor. However, if a creditor is registered on the IU, it will get a notification from the IU regarding the same. Such advance intimation would help a creditor take steps to protect its own interests and that of the debtor, as it’s generally accepted that economic and financial stress, if managed at the early stages, has an improved possibility of resolution.

**National E-Governance Services Limited (NeSL), is registered with The Insolvency and Bankruptcy Board of India (IBBI) as an IU.** While many parts of the Code have their inspiration from insolvency legislation in advanced jurisdiction, the IU as an institution has no parallel anywhere in the world. The user of the services of an IU, which could be an operational or financial creditor, can register to access the information in the IU, but the IU makes it simpler. It gives the user push notification by email on occurrence of some events.

**When an information of default is reported to an IU,** the IU gets it authenticated by the debtor in the manner provided in the Regulations notified by IBBI. On completion of authentication, the IU makes a default broadcast by email to all the creditors of the debtor. They can then take measures to protect their interests. Initiation of CIRP under the IBC is one option, but not the only one. It is quite likely that, on receipt of notification from the IU and/or on the default broadcast by the IU to all the creditors, the debtor may come to the negotiation table with its creditors. It could request to restructure its debts or bring in additional capital or collateral to give comfort to its creditors. If all efforts fail, if the entity is a corporate entity, the Record of Default (ROD) of the IU would facilitate initiation of CIRP against the CD.

**The second type of broadcast** is the one I referred to earlier in paragraph 2 about the case of an airline company, on filing of application for initiation of CIRP by any creditor.

**There is a third type of broadcast** when the CIRP is

initiated, and the Insolvency professional (IP) makes public announcement inviting submission of claims. Such a public announcement is made in a newspaper and there is possibility that a creditor may miss out on such an announcement and is not able to submit his claim. There is enough jurisprudence in the matter that after approval of resolutions plans such claims cannot be accepted. A creditor who is registered on the IU platform gets an email from the IU stating that public announcement has been made and, as a creditor one can submit one's claim to the IP within the time provided in the public announcement.

**The IU has a lot to offer for IPs in a CIRP or liquidation process.** The Code makes it mandatory for a financial creditor to submit information to the IU. The IBBI Regulations provide that a creditor shall update the information as on the last day within the first week of the following month. Information of default has to be updated within 7 days of occurrence of the same of the same. RBI has issued advisories to its regulated entities like banks/NBFCs to submit information to the IU. Debenture trustees also submit information to the IU, and the IU also facilitates submission of dues related to operational credit. The Code gives the authority to the IP to access the electronic records of CD from IU. The IBBI Regulations provide that existence of debt due to Financial Creditors, operational Creditors and others may be proved on the basis of records available with IU. This information available in the IU, can be used for verification of claims received, consequent to the public announcement. Moreover an IP can reach out to any creditor if it has submitted information to the IU but has not submitted his claims to the IP. This will ensure against unnecessary litigation later from creditors who have not submitted their claims. He can also substantiate the claims based on records with the IU, any substantial variance could be subjected to usual due diligence.

The IP's role is quite challenging, the timelines under the Code do not provide for weekend or holidays. During the recent pandemic, many IPs could not access their offices when lock down was imposed by the government. **NeSL provides an end-to-end CIRP** case management system where every activity of CIRP can be carried out in a web-

based portal. It ensures that the IP can step out and access the records from anywhere in a secure manner. He can also authorise or delegate authority and at the same time be in overall control. It facilitates time bound resolution and compliance with the provisions of the Code. Finally, it also enables storage "on the go". The IP does not have to worry about data getting corrupted and lost, or unauthorised access to data. Data, which is confidential in nature like valuation reports, resolution plans can be uploaded directly in the platform, without the need of any email service provider with its attendant risks.

**NeSL also provides a facility of Digital Document Execution or DDE.** The IU Regulations provide for submission of data and documents. When NeSL started operations, it was realised that, while financial information can flow seamlessly to the IU through SFTP mode, there was a challenge in submission of documents. This was because the documents were voluminous, and the authenticity of scanned documents could not be established. NeSL therefore provided a facility of execution of documents on its platform. The documents would be authenticated by all parties thereby complying with the provisions of the Code and then stored in the IU in a secure manner. When insolvency proceedings commence against the CD, the documents evidencing debt, duly authenticated by all parties, and the Record of Default could flow seamlessly from the IU to the AA. This would provide all the documents to the Adjudicating Authority (AA) needs to decide on the application for initiation of CIRP.

**The eBG or electronic bank guarantee has been launched by NeSL in association with the Indian Banks' Association.** E-BG addresses all the challenges in the existing physical process of BGs, it provides for a quick turnaround in all BG processes like issuance, cancellation, invocation etc and easy validation. As on date, 12 banks are already using this platform to issue eBGs and more than 600 eBGs have been issued. As this becomes popular, the IP can ascertain the eBGs issued in favour or on behalf of the CD and validate claims related to the contingent liabilities of the CD. Even otherwise, there has been a need among stakeholders for a central repository of BGs and NeSL as an entity which is regulated by the IBBI could perform this function.



IP Yogesh Gupta

## Corporate Guarantee to Non-Corporate Entities and IBC Proceedings

In business groups having corporate and non-corporate entities, as members under the same ownership, providing guarantee is a normal affair and very common.

The Companies Act, 2013 (CA 13) has come up with a change in the concept of 'Loan and Investment, beside guarantee and securities provided'. Let's see the provisions of Section 186(2) of CA 13 : no company shall directly or indirectly :

- give any loan to any person or other body corporate,
- give any guarantee or provide security in connection with a loan to any other body corporate or person and
- acquire by way of subscription, purchase or otherwise, the securities of any other body corporate exceeding 60% of its paid-up share capital plus free reserves plus securities premium account or 100% of its free reserves plus securities premium account, whichever is more.

So, a corporate entity can definitely provide corporate guarantee to a non-corporate entity also.

Recently, the Supreme Court [SC] in *K Paramasivam Vs The Karur Vysya Bank Ltd* held that a Corporate Insolvency Resolution Process [CIRP] can be initiated against a corporate guarantor, even if the principal borrower is not a corporate person.

Maharaja Theme Parks and Resorts Private Limited [Guarantor Company] being a corporate entity had guaranteed payment of credit facilities availed by three borrowers viz., [1] Sri Maharaja Refineries, a partnership firm [2] Sri Maharaja Industries, a proprietary concern and [3] Sri Maharaja Enterprises, a proprietary concern [these three entities were Principal Borrowers from Karur Vysya Bank Limited [Financial Creditor]

The Principal Borrowers defaulted in making repayment of debts due to Financial Creditor as a result the Financial Creditor in October 2018 filed an application under section 7 of IBC for initiation of CIRP against the Guarantor Company, in view of the co-extensive liability of the Guarantor Company.

The Guarantor Company challenged the jurisdiction of NCLT with a contention that it cannot be considered as a 'Corporate Guarantor' under sec 5[5A] of IBC 2016, i.e, corporate person who is the surety in a contract of guarantee to a corporate debtor, as the Principal Borrower

being a non-corporate entity, hence does not fall under the ambit of the definition of 'corporate debtor' as defined under section 3[8] and 3[7] of IBC 2016.

This application under section 7 of IBC was admitted by NCLT but was dismissed by the NCLAT and hence the matter went to SC.

The Guarantor Company argued before NCLT and NCLAT that when the Principal Debtor itself is not a corporate person which is not liable to fall under the ambit of 'corporate debtor' and hence it is untenable for the Guarantor Company to be considered as a corporate guarantor under sec 5[2A] of IBC 2016.

The Financial Creditor argued on the basis of a judgement of SC re *Laxmi Pat Surana Vs Union Bank of India* and submitted that not only can CIRP be initiated against the corporate guarantor without proceeding against the principal borrower, but also can be initiated against corporate guarantors for loans availed by non-corporate entities as the corporate guarantor assumes the status of the corporate debtor for purpose of initiation of CIRP under the IBC.

SC ruled in favour of the Financial Creditor and dismissed the appeal, relying on the ratio that has been laid down in the case of *Laxmi Pat Surana*, mainly the observation of the SC was in relation to paragraph 21 and 25 of the said decision.

*"21. Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/debtor (be it a corporate person or otherwise) commits default in payment of its debt."*

*25. ...The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of the expression "corporate debtor" in Section 3(8) IBC."*

It is now well settled that CIRP can be initiated by financial creditors against a corporate guarantor who has provided a guarantee to secure the dues of a corporate or non-corporate entity.



**CA. Arun Kumar Gupta**  
Chartered Accountant and Insolvency Professional

## Implementation of a Resolution Plan

The primary objective of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code), as per its preamble, includes the words - "reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons".

The process of insolvency resolution rests on the fact that the resolution plan, which enlists steps for insolvency resolution, is implemented in its right earnest and no roadblock or surprise comes in its way.

After following a detailed procedure as laid down in the Code and also in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, commonly referred to as CIRP Regulations, the Insolvency Resolution Professional (RP) alongwith the Committee of Creditors (COC) and the successful resolution applicant (SRA) approach the Adjudicating Authority for its approval of the resolution plan under Section 31 of the Code.

A bare reading of Section 31 of the Code would make it abundantly clear, that once the Resolution Plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by COC meets the requirements as referred to in sub section (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the Code is, revival of the Corporate Debtor and to make it a running concern. The relevant part of Section 31 of the Code is quoted below:

*"Section 31 (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in*

*respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.*

*PROVIDED that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation".*

Hence it is clear that the Adjudicating Authority shall approve a resolution plan only if it is satisfied that the resolution plan has provisions for its effective implementation. This shows that apart from meeting other requirements, the stakeholders including the RP, COC and SRA have to ensure that the resolution plan document has clear provisions for its effective implementation.

An entrepreneur (resolution applicant) who comes forward to revive a troubled and insolvent enterprise should, on his part, conduct his due diligence properly and propose or commit only to the extent that he knows he can fulfil in the resolution plan. The principle of *caveat emptor* is squarely applicable here as well.

The fraternity is increasingly witnessing that after all the hard work that goes behind in getting a resolution plan approved and also the legal cover that an approved resolution plan enjoys vide provisions of Section 31 of the Code, still it is very difficult to get the ball rolling and effectively implement the resolution plan to its full extent such that it resolves the insolvency of the defaulter enterprise.

Most of the times the reasons for delay in implementation of an approved resolution plan are unforeseen and come as a surprise. Procedural steps could delay but those are sorted out eventually but some complexities erupt only later on. In many matters, the conditions precedent do not get achieved which delays the successful implementation.

The challenge in implementation surprises us from multiple and unknown fronts. Foremost to air grievances





are claimants who have not been settled fully to their liking viz. electricity department, government departments, workmen, suppliers and others. Many a times dissenting financial creditors or who have not voted in favour of a resolution plan in the COC also initiate litigation during the implementation stage. Prolonged litigation delays the implementation and increases cost commitments for the SRA and also may lead to a change in the distribution schedule as per the resolution plan approved in its original form.

To avoid or at least address the grievances of other dissatisfied claimants, the provisions of Section 30 of the Code relating to payment of debts to operational creditors and dissenting financial creditors, as specified in the Code and in the CIRP Regulations should be followed and calculations should be documented in detail.

The unexpected surprise comes from the SRA who has a change of heart after the resolution plan is approved and due to various factors, now wants to find out ways to avoid fulfilling his obligations in a timely manner. The best option available to him is to cast an aspersion on the quality and quantity of information provided to him during the insolvency resolution process conducted by the RP. Hence the RP should carefully prepare a detailed information memorandum and include all relevant details therein to avoid any such quarrel later.

Another complication arises in the calculation of insolvency resolution cost which may sometimes go beyond the set estimates in the resolution plan and also on the other hand, if the enterprise earns a profit during the insolvency resolution process period, then the stakeholders do not agree on who would pocket the profits.

The issue of payment of provident fund and gratuity dues seems to have been settled by recent judgments of the Hon'ble Supreme Court but many issues still remain to be clarified for which juris prudence has to develop over the course of time.

Common issues which could be proactively addressed in the resolution plan document are -

- Identifying who would be the Chairman of the monitoring committee and what would be his fees
- Steps to be taken to ensure preservation of value of assets and division of related roles and responsibilities upon each stakeholder
- Steps to be taken and distribution of roles and responsibilities in managing the day to day affairs of the enterprise and legal compliances

- Role and powers of the monitoring committee viz-a-viz the board of directors
- Detailed list and its treatment thereof of licenses or empanelments, permissions, litigations, reliefs and concessions required, which are critical for the implementation, instead of a generic clause in the resolution plan
- Steps to be taken in case of default by the SRA including interest payable for delayed payments
- Degree of control that the creditors could exercise over the assets during and after expiry of the implementation period
- Vote share distribution between various members of the monitoring committee and process of decision taking during the period of implementation
- Term of the monitoring committee

We have seen that the most common issues faced in the implementation of a resolution plan is the process of handing over control and custody of assets and business alongwith books and records of the enterprise by the RP to the SRA. Another common problem would be regularising the lapses of the past in legal compliances and bring them upto date for setting stage for regular compliance of current and future obligations. While the RP has a limited period of time, after his appointment and all ills of the past cannot be cured within the CIRP timeline of 180 days, but still the RP should make all efforts to cure them to the best possible extent and keep the COC and RA informed of the status of compliances and custody of assets and records of the enterprise.

In case of any problem during the implementation, the SRA can make an application under CIRP Regulation No.39(8) to the Adjudicating Authority for direction and order for assistance of local administration in implementing the terms of the approved Resolution Plan.

Appreciating the issues faced during implementation of an approved resolution plan, the Ministry of Corporate Affairs has proposed changes in the Code wherein comments have been invited from the public. Apart from other matters, the changes proposed include –

- a) Separation of resolution plans and the distribution of proceeds – it is being considered that the Code may be amended to segregate the concept of the resolution plan from the manner of distribution of proceeds received from the SRA(s). It is also proposed that the Code may be amended to statutorily provide an equitable scheme of distribution of proceeds received

pursuant to a resolution plan(s) through a separate waterfall mechanism in the CIRP. As per this scheme, creditors will receive proceeds up to the CD's liquidation value for their claims in the order of priority provided in section 53. Any surplus over such liquidation value will be rateably distributed between all creditors in the ratio of their unsatisfied claims. Finally, any remaining amount or further surplus would be distributed to the shareholders and partners of the corporate debtor, as the case may be. It is expected that this will make the distribution process fairer and more equitable for all the stakeholders.

- b) Monitoring the implementation of the plan – It is being considered that section 30 may be amended to provide that the CoC may provide for constitution of a

monitoring committee for monitoring and supervising the implementation of the resolution plan(s) after its approval by the AA.

- c) AA to provide an opportunity to cure the defects in the resolution plan – It is being considered that Section 31 may be amended to clarify that the AA can send the resolution plan back to the CoC for curing defects.

While lot of water has flown down the Ganges since IBC was notified and started to be used actively from 2017, however all stakeholders are still learning with experience and the Government and IBBI are open to changes and invite suggestions from the public at regular intervals which have led to multiple amendments to streamline the process, but certainly more is still required and expectedly will have to happen.



CA. Anil Goel

## Resolution Professional as Public Servant: A Regulatory Quandary

The evolving landscape of insolvency law in India has been witness to some significant judicial deliberations. One such recent issue pertains to the role of Resolution Professionals (RPs) and their classification as public servants. This emanates from the High Court of Jharkhand's judgement in *Sanjay Kumar Agarwal vs. Central Bureau of Investigation, Anti-Corruption Bureau, Dhanbad Cr. M.P. No. 1048 of 2021*. Justice Choudhary, in his judgement, placed the Resolution Professional under the ambit of a public servant as per the Prevention of Corruption (PC) Act, Section 2(c).

The rationale lies in the expansive definition of a public servant within the PC Act, which is not limited to those serving under the Government. The definition includes those discharging a public duty authorized by a court of justice including a Liquidator, receiver or commissioner or associated with the administration of justice. Thus, by virtue of their appointment and role in the resolution process, RPs fulfil these criteria, essentially equating them to public servants.

However, the crucial question that arises is whether the functions of an RP truly partake the character of a 'public duty'. Justice Choudhary acknowledged that the Insolvency and Bankruptcy Code (I&B Code) does not enumerate RPs as public servants under Section 232. Those deemed as public servants enjoy certain immunities from criminal prosecution under the Indian Penal Code (IPC), for offences under Section 197 of the Criminal Procedure Code (Cr.P.C), subject to government sanction. Yet, this immunity does not extend to offences under the Prevention of Corruption Act.

The judge further noted that the I&B Code is a self-contained code, but only with respect to matters provided therein. It does not cover situations where an RP allegedly accepts bribes to favor a party, for which the Prevention of Corruption Act is squarely applicable. Hence, RPs are not immune from criminal prosecution under the PC Act, even if they are not explicitly recognized as public servants under the I&B Code.

Turning to the protections and immunities provided to RPs under the I&B Code, we find that Section 233 provides immunity from lawsuits or proceedings for actions done or intended in 'good faith' under the Code. Recently, the Supreme Court of India emphasized the protective privilege of the RP as a court-appointed officer, as per this section.

However, the interpretation of 'good faith' is pivotal. Section 52 of the IPC defines 'good faith' as any act done or believed without due care and attention. The essence of 'good faith' in criminal jurisprudence is different from simply believing in the truth of what is said. It requires a degree of reasonableness in the care exercised, akin to the care an ordinary prudent person would exercise under the circumstances.

Thus, the classification of RPs as public servants places them in a regulatory quandary. While the role of RPs is undeniably crucial in the resolution process, their classification as public servants bring about additional layers of responsibility, liability, and potential repercussions under the PC Act. The implications of this judgement and its possible effects on the functioning of RPs, the insolvency resolution process, and the broader insolvency regime merit comprehensive deliberation and clarity.

### THE PREVENTION OF CORRUPTION ACT

The Prevention of Corruption Act, 1988, presents an extensive definition of the term 'public servant'. It encompasses individuals in service or pay of the Government or remunerated by the Government for performing any public duty. It includes individuals serving a local authority or a corporation established under a Central, Provincial, or State Act. The definition also extends to Judges, or anyone empowered by law to discharge any adjudicatory functions. Furthermore, it includes individuals authorized by a court of justice to perform any duty associated with the administration of justice including court appointed officers, liquidators, receivers or commissioners.

## INDIAN PENAL CODE

Turning to the Indian Penal Code (IPC), Section 21 outlines several categories of public servants. For instance, it includes every Commissioned Officer in the Military, Naval, or Air Forces and every Judge including anyone empowered by law to discharge any adjudicatory functions. It also covers every officer of a Court of Justice whose duty is to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, among other responsibilities including any court appointed officer.

## IMMUNITY AND PROTECTION TO RESOLUTION PROFESSIONALS

The Insolvency and Bankruptcy Code (I&B Code) offers certain protections to Resolution Professionals (RPs). Particularly, Section 233 of the I&B Code stipulates that no suit or proceedings can be initiated against an RP for anything done or intended to be done in good faith under the Code. This provision reflects the recognition of the challenging role that RPs play in the resolution process, balancing the interests of various stakeholders while preserving the value of the debtor's assets.

However, the concept of 'good faith' is not straightforward. As per Section 52 of the IPC, 'good faith' denotes actions or beliefs undertaken without due care and attention. It demands a degree of reasonableness in the care exercised, reflecting the care an ordinarily prudent person would exercise under similar circumstances. In essence, 'good faith' does not merely imply an honest belief in the truth of what is said, but also the due care and attention employed in the process.

The Supreme Court of India, in the case of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Limited & Ors., confirmed the immunity provided

to RPs, declaring them to be court-appointed officers. The Court ordered the immediate release of an RP who had been arrested, emphasizing the protection available under Section 233 of the I&B Code.

However, the protection of a public servant from any action without the approval of the employer need to be clarified to the insolvency professionals. It is not clear that the approval is required from Insolvency and Bankruptcy Board of India, the inventor, architect, and regulator of Insolvency Professionals or the National Company Law Tribunal who has appointed him and passed an order by which the insolvency professional has become a court appointed officer or liquidator or resolution professional and draws his powers under the Insolvency and Bankruptcy Code, 2016.

## Implications and Conclusions

The classification of RPs as public servants, thereby falling under the ambit of the Prevention of Corruption Act, certainly expands their responsibilities and potential liabilities. This classification, combined with the protection granted to them under the I&B Code, creates a complex regulatory situation that requires careful navigation.

Furthermore, this classification could potentially impact the insolvency resolution process and the insolvency regime as a whole, by possibly deterring competent professionals from taking up the role of RPs due to the heightened risk of criminal prosecution.

It is therefore essential to strike a balance between holding RPs accountable for their actions and providing them with adequate protection to perform their duties effectively. This balance, if achieved, could reinforce the credibility of the insolvency resolution process and promote the overall objectives of the I&B Code.





## Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016

Compiled by **Niraj Agrawal**  
CA, CS, MBA, IP

Section 14 of the Insolvency and Bankruptcy Code, 2016 deals with the aspect of “Moratorium” during the Corporate Insolvency Resolution Process (CIRP). According to this section:

“(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

**Explanation** – For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or

suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to —

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]
- (b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

The rationale for having a moratorium during the CIRP period is to have a “calm period” wherein debt collection actions by the creditors of the Corporate Debtor (CD) is suspended so that it is value maximising for the CD to continue operations even as viability is being assessed during the CIRP.

However, the question which now arises is whether this moratorium provides complete immunity to the CD? Whether, all sort of proceedings against the Corporate

Debtor are covered under this? Here, we shall make an attempt to understand some of such scenarios.

### ► The General Rule

The Hon'ble Delhi High Court in the matter of **Power Grid Corporation of India Limited v. Jyoti Structures Limited, REED 2017 Del 12676**, held that for testing the applicability of section 14 of Code one has to see the nature of proceedings and see if such proceedings are against the corporate debtor or are in its favour. In light of the purpose or object behind the moratorium, section 14 of the Code would not apply to the proceedings that benefit the corporate debtor.

Hon'ble NCLAT in the matter of **Canara Bank vs. Deccan Chronicle Holdings Limited** stated that Section 14(1) (a) specifically does not exclude any Court, including the High Courts or even the Apex Court. However, there are certain constitutional provisions which must be considered and there is no provision to file any money suit or suit for recovery before the Supreme Court except under Article 131 of the Constitution; some High Courts have original jurisdiction to entertain the suits, which may include money suit or suit for recovery of money. However, the writ jurisdiction conferred on the Supreme Court and the High Court under Article 32 and Article 226 of the Constitution of India, being a constitutional power, cannot be curtailed by any provision of an Act or court. **Therefore, the moratorium will not affect any suit or case pending under Article 32 or 226. Similarly, an order passed under Article 136 of the Constitution of India shall not be covered by the moratorium.**

### ► IBC and PMLA

The Prevention of Money Laundering Act, 2002 (PMLA) aims to prevent money-laundering and inter-alia provides for confiscation of property derived from or involved in money-laundering. Now, what powers do the Enforcement Directorate have under the PMLA vis-à-vis a Corporate Debtor undergoing CIRP?

Hon'ble NCLT Jaipur Bench vide its order dated 05.12.2022 in the matter of **M/s Packwell (India) Ltd. vs M/s Emgee Cables and Communication Ltd.** has held that:

"..., the PMLA would cease to have the power to attach the property at this juncture when the order of the Liquidation has already been passed. Further, the attachment of the properties of the Corporate Debtor under the PMLA has to be lifted in lieu of section 32A of the IBC..."

Various judgements were referred to in this order, a summary of which is as follows:

Hon'ble NCLAT in the matter of **The Directorate of**

**Enforcement Vs Manoj Kumar Agarwal & Ors.** and in the matter of **The Directorate of Enforcement Vs Vishal Ghisulal Jain and Others** dated 09.04.2021 held that: *"In our view, there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfill objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A."*

Hon'ble High Court of Delhi in the case of **Deputy Director, Directorate of Enforcement Delhi vs. Axis Bank & Ors. 2019 SCC Online Del. 7854** "146.....A view to the contrary, if taken, would defeat the objective of PMLA by opening an escape route. After all, a person indulging in money-laundering cannot be permitted to avail of the proceeds of crime to get a discharge for his civil liability towards his creditors for the simple reason such assets are not lawfully his to claim."

147. To sum up on the issue, the objective of the legislation in PMLA being distinct from the purposes of the three other enactments viz. RDBA, SARFAESI Act and Insolvency Code, the latter cannot prevail over the former. There is no inconsistency. The purpose, the text and context are different. This court thus rejects the arguments of prevalence of the said laws over PMLA."

In the matter of **Nitin Jain, Liquidator, PSL Limited Vs Enforcement Directorate W.P.(C) 3261/2021 dated 15.12.2021**, the Hon'ble Delhi High Court held that: "102. Accordingly, and for all the aforesaid reasons, this writ petition shall stand allowed in the following terms. The Liquidator is held entitled in law to proceed further with the liquidation process in accordance with the provisions of the IBC. The respondent shall hereby stand restrained from taking any further action, coercive or otherwise, against the liquidation estate of the corporate debtor or the corpus gathered by the Liquidator in terms of the sale of liquidation assets as approved by the Adjudicating Authority under the IBC. The Court grants liberty to the petitioner to move the Adjudicating Authority for release of the amounts presently held in escrow in terms of the interim order passed in these proceedings."

In the judgment of the Hon'ble High Court of Delhi in **Rajiv Chakraborty Resolution Professional of EIEL Vs Directorate of Enforcement W.P. (C) 9531/2020 dated 11.11.2022**, it was held that: "105..... Notwithstanding the above, the Legislature chose to structure that provision in a manner that the authorities under the PMLA would cease to have the power to attach or confiscate only when a Resolution Plan had been approved or where a measure towards



*liquidation had been adopted. The statutory injunct against the invocation or utilisation of the powers available under the PMLA was thus ordained to come into effect only once the trigger events envisaged under Section 32A came into effect. The Legislature thus in its wisdom chose to place an embargo upon the continuance of criminal proceedings including action of attachment under the PMLA only once a Resolution Plan were approved or a measure in aid of liquidation had been adopted."*

As per the order of the Hon'ble NCLT, Jaipur Bench ["... the PMLA would cease to have the power to attach the property at this juncture when the order of the Liquidation has already been passed. Further, the attachment of the properties of the Corporate Debtor under the PMLA has to be lifted in lieu of section 32A of the IBC which is reproduced below:

*Section 32A. Liability for prior offences, etc.*

*"(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person."*

*Thus, the IBC creates a specific bar with respect to proceedings that may be initiated under the PMLA by virtue of the provisions contained in Section 32A. Moreover, Section 32A cannot possibly be read as being applicable prior to a Resolution Plan being approved or a liquidation measure being enforced. Further, it can therefore be construed that the objective and intention of the Code is providing a free hand to the creditors if the properties of the Corporate Debtor are attached then it will jeopardize the Liquidation Process.]*

#### ➤ **IBC and Negotiable Instruments Act, 1881**

In the matter of P Mohanraj & Ors vs. M/s Shah Brothers Ispat Pvt Ltd, the Hon'ble Supreme Court has held that:

*"The gravity of complaint under Negotiable Instruments Act, 1881 cannot be equated with criminal offences under*

*IPC or other criminal offences. An offence under section 138 of Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones"*

Hence, the cases under NI Act cannot continue after moratorium has been imposed. However, the Apex Court provided the exception wherein moratorium provision would not extend to persons other than the corporate debtor.

#### ➤ **Moratorium does not prohibit the withdrawal of monies deposited by appellant in the Trial Court**

The Hon'ble Bombay High Court in its order dated 04.01.2023 in IA No. 1161 of 2020 in First Appeal No. 1539 of 2012 in the matter of Reliance Communication Limited vs Rajendra P Bansal has inter-alia held that :

*"... (a) The moratorium that has come into existence under Section 14 of the IBC as a result of appellant going into insolvency does not preclude respondent from seeking withdrawal of the monies deposited pursuant to the order dated 10th December 2012. This is because (A) the moratorium extends only to the assets which belong to the corporate debtor and (B) the monies deposited by appellant in the Trial Court do not constitute an asset of appellant.*

*A. The scope of moratorium under Section 14 of the IBC*

*(b) The moratorium that is imposed under Section 14 applies only to proceedings against the corporate debtor and only applies qua the assets and properties of the corporate debtor. If monies deposited in court or any other asset/property does not belong to the corporate debtor, the moratorium would not preclude/prevent a creditor from enforcing its rights against the monies/assets/properties. This is clear from a plain reading of Section 14 of the IBC...*

*... A bare perusal of Section 14(1) makes it clear that subclause (a) only prohibits the institution or continuation of suits or proceedings against the corporate debtor. This clearly would not be attracted in the present case as the present proceedings are an appeal filed by the corporate debtor. That being so, the moratorium can never apply to the present First Appeal since it is filed by the corporate debtor."*



CA Anup Kumar Loharuka

## Special Procedure of GST on entities under 'CIRP'

Enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) and the Goods and Services Tax Act, 2017 (GST Act) are two major economic reforms of recent years which overhauled the existing system by introducing a comprehensive framework to govern the aspects of corporate insolvency and to streamline the levy of indirect taxes in India, respectively.

The **Insolvency and Bankruptcy Code, 2016** provides the procedure for the initiation of corporate insolvency resolution process against the corporate debtor who failed to pay the debts to the financial creditor/operational creditors. The corporate applicant may itself proceed the said process. The object of the Code is for the revival of the corporate debtor's business.

The GST Council, in its 39th meeting held on 14.03.2020, recommended a special procedure for registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 and are undergoing the corporate insolvency resolution process (CIRP) so as to enable them to comply with the provisions of GST Laws during the CIRP period.

The move of the GST Council in notifying the special procedures can be seen as a resolution to the various issues/ difficulties that were being faced by entities under CIRP.

As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over, and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT").

Notification no.11/2020-Central Tax notifies those registered persons (hereinafter referred to as the

erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process.

However, the said notified class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the CGST Act for all the tax periods prior to the appointment of IRP/RP.

The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP or by 30th June 2020, whichever is later.

This article lists down the GST Compliances of Companies under IBC under the following heads i.e.:

- **Registration**
- **Dues Under GST for Pre-CIRP Period Pre CIRP-Period return**
- **First Return**
- **Refund of Deposit of the Cash Ledger in erstwhile registration of the corporate Debtors**

that is required to be followed by the registered person who are the corporate debtors and are undergoing Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

The Central Government vide following notification and circular have notified registered person who are undergoing the corporate insolvency resolution process, so as to enable them to comply with the provisions of GST





Laws during the CIRP period: -

- Notification no. 11/2020 – Central Tax dt. March 21, 2020, as amended vide Notification no. 39/2020 – Central Tax dt. May 5, 2020
- Circulars no. 134/04/2020-GST dt. March 23, 2020, and 138/08/2020-GST dt. May 6, 2020, 187/19/2022 dt December 27, 2022 providing clarification on issues

being faced by entities covered under Insolvency and Bankruptcy Code, 2016.

Moreover, other notifications and Circulars may also be referred from time to time by the registered person.

Let us now analyze the above-mentioned notifications and circulars and the special procedure to be complied mentioned therein: -

Sl. No.	
1.	<b>Registration</b>
Reference	Details
<p><b>Notification No. 11/2020 – Central Tax dated 21/03/2020 as Amended by notification No. 39/2020–Central Tax, dated 05<sup>th</sup> May 2020.</b></p> <p><b>Circular No. 134/04/2020-GST, 138/08/2020-GST dt. May 6, 2020</b></p>	<ul style="list-style-type: none"> <li>• The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a <b>distinct person</b> of the corporate debtor</li> <li>• IRP/RP shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier.</li> <li>• New registration should be taken within <b>thirty days</b> of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.</li> <li>• GST registration should not be cancelled for the entity against which CIRP has been initiated. The Department may, if needed, suspend the registration.</li> <li>• In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.</li> <li>• In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an <b>amendment in the registration form</b>. Changing the authorized signatory is a non- core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory.</li> <li>• It is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).</li> <li>• The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment.</li> </ul> <p>Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.</p>

<b>2.</b>	<b>Dues Under GST for Pre-CIRP Period</b>
<b>Circular No.</b> <b>134/04/2020-GST</b> <b>Circular No.</b> <b>187/19/2022-GST</b>	<p><b>How the dues under GST Pre CIRP will be dealt?</b></p> <p>It was clarified that the dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT.</p> <p>Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.</p> <p>Now there may be cases where statutory dues under GST Law in respect of the taxpayer for whom the proceeding have been finalized under the Insolvency &amp; Bankruptcy Code, 2016 are reduced/revised as a result of appeal or <b>other proceeding</b>.</p> <p>In these cases, it was clarified that Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes <b>FORM GST DRC-25</b> for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in <b>FORM GST DRC-07/DRC 07A</b> against the corporate debtor.</p>
<b>Circular No.</b> <b>134/04/2020-GST, dated</b> <b>March 23, 2020,</b> <b>Circular No. 138/08/</b> <b>2020-GST dt. May 6,</b> <b>2020</b>	<p><b>Pre CIRP-Period return</b></p> <p>First Question that comes to the mind is that how the <b>Pre CIRP-Period return</b> would be dealt?</p> <p>In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements <b>for period after the Insolvency Commencement Date</b>. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.</p>
<b>Notification No. 11/2020</b> <b>– Central Tax</b>	<p><b>First Return</b></p> <p>The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under <b>section 40</b> of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.</p> <p><i>As per <b>Section 40 of CGST Act</b>, every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.</i></p> <p><b>How will the IRP/RP avail the Input Tax Credit in First Return?</b></p> <p>The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under <b>section 40</b>.</p> <p>The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rules made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020. <b>This exception is made only for the first return filed under section 40 of the CGST Act.</b></p>
<b>Circular No.</b> <b>134/04/2020-GST, dated</b> <b>March 23, 2020</b>	<p><b>Refund of Deposit of the Cash Ledger in erstwhile registration of the corporate Debtors</b></p> <ul style="list-style-type: none"> <li>□ Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration.</li> <li>□ Refund shall be available under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.</li> </ul>

Apart from the above-mentioned procedures, the IRP/RP should also refer other provisions of GST as may be applicable in various instances.

**Disclaimer:** The views and opinion expressed here are those of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In case where the reader has any legal issues, he/she must in all cases seek independent legal advice.

**Neha Malu**

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## Income tax issues in insolvency, insolvent liquidation and voluntary liquidation

The recent tumult across the nature and status of income tax dues under the Insolvency and Bankruptcy Code, 2016 ('IBC') has put the same into a paramount discussion. The provisions of IBC have an overriding effect over other enactments in case of contradiction. Hence, it is pertinent to examine the interplay of IBC vis-a-vis income tax and the impact on the latter. There are 2 stages of proceedings under IBC in case of Insolvent Company- CIRP and Liquidation. During CIRP/Liquidation process, concerns on tax implication arises at the following instances-

- (a) At the time of commencement of CIRP/liquidation process
- (b) During the CIRP/liquidation
- (c) Completion of CIRP /liquidation Process

While provisions of Income Tax Act has been amended to some extent to include the tax implication pursuant to CIRP process, however the said Act is silent on liquidation process. Hence, in order to deal with tax implication during liquidation, reliance has been placed upon the judiciary.

In this write up, the author has attempted to discuss the tax implication under various stages of IBC in addition to analysing the nature of the same in light of the Supreme Court ruling in the matter of State Tax officer(1) v. Rainbow Papers Ltd.

### Nature of tax liabilities under IBC

Previously, the Supreme Court in the matter of Ghanashyam Mishra And Sons vs Edelweiss Asset Reconstruction Company Limited held that an operational creditor would also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute. Similar view was also taken up in the matter of Akshay Jhunjhunwala & Anr vs Union Of India, DCIT v. Bhuvan Madan, RP for Diamond Power Infrastructure Ltd. etc.

However, the recent Supreme Court ruling in State Tax officer(1) v. Rainbow Papers Ltd held that the State is a secured creditor under GVAT Act and are to be treated at par with the first priority creditors u/s 53 of IBC. The same was followed by NCLAT in Principal Commissioner of Income Tax & Ors. v. Assam Company India Ltd.. Therefore, the question arises whether section 178 (6) of the Income Tax Act imply that tax liability is a secured claim?

Given section 238 of IBC it is obvious that the IBC will

override anything inconsistent contained in any other enactment, including the Income-Tax Act. We may also refer in this connection to Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co. & Ors. (2000) 5 SCC 694 and its progeny, making it clear that income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons. Pr. Commissioner Of Income Tax vs Monnet Ispat And Energy Ltd. (SC). Further, tax dues, being an input to the Consolidated Fund of India and of the States, clearly come within the ambit of Section 53(1)(e) of the IBC. Therefore, the Income-tax Department, not being a secured creditor, must necessarily take recourse to distribution of the liquidation assets as per Section 53 of the Code. Leo Edibles & Fats Limited vs The Tax Recovery Officer.

### How to deal with Govt claims citing Rainbow Papers Ruling?

After the Supreme Court ruling in State Tax officer(1) v. Rainbow Papers Ltd, the tax authorities have started filing claims seeking status at par with secured creditors, citing provisions of respective laws and the SC ruling in Rainbow Papers. Since, the Supreme Court ruling is effective as the law of the land, and therefore, the Insolvency Professionals are mandatorily required to abide by it

However, a secured creditor is one whose security interest is evidenced by certificate of charge registration issued by RoC, record of IU, proof of certification of charge by CERSAI. Further, Reg. 21 of Liquidation Regulations provide –

*The existence of a security interest may be proved by a secured creditor on the basis of –*

- (a) the records available in an information utility, if any;
- (b) certificate of registration of charge issued by the Registrar of Companies; or
- (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India

In addition to the above, it is also important to note sec. 26B of the SARFAESI Act, according to which only registered government claims/attachment will be treated at par with secured creditors provided other secured creditors have filed their claims under CERSAI.



### Tax implications during CIRP

The key issues relating to income tax that generally arises in the CIRP stage includes the following:

1. Whether the benefit of carry forward and set-off of accumulated losses will be available?
2. Whether any write-offs/hairecuts being done as part of resolution plan may:
  - 2.1. result into taxability of income u/s 41 or any other provision of the Income Tax Act?
  - 2.2. result into MAT in case of companies subject to MAT?
3. Whether any MAT credit to which the corporate debtor was entitled be applicable to the resolution applicant?
4. Whether resolution applicants are burdened with past tax claims against the corporate debtor?
5. Corporate debtor may quite often be transferred into a separate entity by way of a merger/demerger:
  - 5.1. Whether the tax benefits will be available in such a case?

### Carry forward and set-off of losses u/s 79

As per the general rule contained u/s 72 of the Income Tax Act, carry forward of business losses is permitted for eight assessment years. However, in case of “**companies in which public is not substantially interested**”, section 79(1) of the income Tax Act provides that the same is conditional on continuation of beneficial holding of not less than 51% of the voting power in the company. Therefore, to determine the applicability of the same, the status of company at the time when the change in shareholding pattern takes place is becomes relevant. In this regard, may also refer to the ruling of ITAT in the matter of *ITO v. Edelweiss Commodities Services Ltd.*

The exemption from the provision contained u/s 79(1) is carved out u/s 79(2) which vide Finance Act, 2018 has clarified that nothing contained in the section 79(1) shall apply in cases where change in shareholding has taken place pursuant to a resolution plan approved under IBC subject to reasonable opportunity of hearing to Pr. Commissioner/Commissioner. However, no carve-out has been expressly provided for in case of liquidation sales or going concern sale in liquidation.

Further, with respect to the applicability of the said section 79 in case of listed companies, since listed companies do not qualify as a “**company in which public are substantially interested**” pursuant to section 2(18) of the Income tax Act, the said section is not applicable in case of listed companies.

### Tax implications in case of “Scheme of Arrangement” during CIRP

As per section 37 of IBC, resolution plan may provide for restructuring of corporate debtor by way of merger, amalgamation and demerger. Certain points of concerns that crop up in case of Scheme of Arrangement during CIRP

are as follows:

1. Whether scheme forming part of the resolution plan will be given the benefits of tax neutrality?
2. Whether benefits of set off and carry forward of losses will be available in case of such schemes?
3. What will be the procedural requirements in case of scheme of arrangement forming part of Resolution Plan?

Prayers for concessions/relaxations under Income Tax Act are not explicitly granted by the adjudicating authorities, but the resolution applicants are allowed to apply to competent authorities. One may also refer to the following orders in this regard:

NCLT order in the matter of Bhushan Steel where the adjudicating authority remarked it would not be competent for the adjudicating authority to grant relaxation, concession or waiver which is wholly within the domain of competent authority.

In case of DHFL, while approving reverse merger of SRA PCHFL with DHFL, NCLT observed that waivers, etc. shall be subject to approval of competent authorities in light of the rulings in Ghanshyam Mishra.

### Tax Implications in case of slump sale and partial sale

As per Section 2(42C) of the Income Tax Act, slump sale means transfer of business **undertaking** as a going concern for lump sum consideration without values being assigned to individual assets and liabilities. The said arrangement is taxable pursuant to the provisions contained under section 50B of the Income Tax Act.

In case of partial sale, the concept of which has been recently proposed to be included in the IBC pursuant to the MCA discussion paper dated 18<sup>th</sup> January, 2023 and which is already a part of regulation 37(1)(m) of CIRP Regulations, the Income Tax Act presently do not accommodate the provisions dealing with taxation of such arrangement, therefore, the provisions of slump sale under sec 50B may be applicable.

### Treatment of tax proceedings/claims - during and after resolution

Supreme Court in Pr. Commissioner Of Income Tax v. Monnet Ispat And Energy Ltd., held that the moratorium under section 14 of IBC will also apply to appeals being made by the Income Tax Department against the orders of Income Tax Appellate Tribunal, in respect of tax liability of a debtor under CIRP. Further in Kitply Industries Ltd. Vs. Assistant Commissioner of Income Tax (TDS) and Anr., it was held that the proceeding before the Income-tax Department which has resulted in freezing of the bank accounts is a proceeding of quasi-judicial nature and continuation of such a proceeding during moratorium period is illegal in view of the prohibitions under section 14(1)(a) of the Code.

With respect to the proceedings/claims after resolution,

Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.* held that *Successful Resolution Applicants are not to be burdened with undecided claims at the stage of implementation of the Resolution Plan.* Further, in *Ghanashyam Mishra And Sons ... vs Edelweiss Asset Reconstruction Company Limited.*, it was held that the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued.

### **Continuation of assessment on successor and power of adjudicating authority to modify tax demands**

Section 170 of the Income Tax Act provides that the successor shall be assessed in respect of the income of the previous year after the date of succession. And the proceedings and assessments done on the predecessor shall be deemed done on the successor after succession.

With respect to the power of the adjudicating authority to modify tax demands, sec 156A of the Income Tax Act has been explained in the Objects and Reasons, and in the detailed *Circular* as if it is connected with sec 170A, however, looking at the language of the section, it seems there is a power to AA to modify a demand as a part of the resolution process.

### **Book profits tax on write-back of liabilities - sec 115JB**

Sec 115JB of the Income Tax Act deals with the provisions of book profit and MAT. As per the said section, while computing the book profits, the brought forward loss or depreciation, as per books of the company, whichever is lower is allowed to be deducted for computing book profits. In case of CIRP, as the company would have done for restructuring, the carried forward loss/depreciation would have been wiped out from the books. Consequently there may be a tax on the write back of liabilities. To avoid this, Finance Act 2018 allowed deduction of tax loss/brought forward depreciation in CIRP cases.

### **Tax holiday/benefits to companies resolved under IBC**

There are various provisions in the Income Tax Act that deal with tax holidays, e.g. 10A, 10AA, 10B, 10C, 80-IA, 80-IB, 80-IC. Certain conditions which are found common in these provisions –

- undertaking should not be formed by the splitting up or reconstruction of a business already in existence
- undertaking is not formed by the transfer to a 'new business' of plant/machinery previously used for any purpose

In *Commissioner Of Income Tax vs Tata Communications Internet Services Ltd.*, it was held, "Insofar as the objection of the revenue that there had been change in the name

of pattern of shareholding it does not make any difference as it is a well settled rule of law that benefit under Section 80IA of the Act is available to an undertaking and not to the assessee since the undertaking **continues to carrying on its business without any reconstruction of business already in existence.**" Cited by *Ultratech Cement Ltd, Mumbai vs Dcit Cen Cir 1(4), Mumbai, ITAT Mumbai.*

### **Tax implications in going concern sale**

Law permits going concern sale of the corporate debtor in both liquidation stage and CIRP stage (by way of a resolution plan). However, there is no expressed provision providing for set-off and carry forward of business losses in case of going concern sale during liquidation stage unlike CIRP stage (Sec 79(2)(c) of Income tax Act). However, in certain rulings, namely, *Gaurav Jain v. Sanjay Gupta, liquidator of Topworth Pipes & tubes Pvt. Ltd.*, *Nitin Jain, Liquidator of PSL Limited v. Lucky Holdings Pvt.. Ltd* etc, the Hon'ble NCLT has allowed carry forward of losses in case of going concern sale during liquidation, but again, **subject to approval of the Income Tax Authorities.**

### **Tax implications in liquidation stage**

Some of the key tax issues relating to income tax that crops up during the liquidation stage includes the following:

1. Whether capital gains, if any, arising on sale of assets during liquidation should be treated as liquidation costs?
  - a. NCLT Allahabad contends that the same shall be payable as per sec. 53. *LML Limited Vs. Office of Commissioner of Income Tax, Mumbai.* However, the same will lead to breach of tax provisions, as the tax liability arises during liquidation, and is not a claim on liquidation estate
2. Whether TDS deductible on sale of assets u/s 194-IA [1% on sale of immovable property]?
  - a. There is inconsistency between the provisions contained u/s 194-IA of Income Tax Act and sec 53 of IBC. Section 53 shall prevail. See NCLAT ruling in *Om Prakash Agarwal Vs. Chief Commissioner Of Income Tax (TDS) & Anr.*
3. Whether extinguishment of liabilities pursuant to statutory provisions same as remission?
  - a. In liquidation, all liabilities become a claim against the 'liquidation estate'.

### **Distribution of assets by companies in liquidation- Capital gains & deemed dividend**

Typically, distribution of assets by companies in liquidation happens only in cases of voluntary liquidation. In this regard, sec 46(1) of the Income Tax Act provides that the assets distributed to the shareholders of a company on its liquidation shall not be regarded as a transfer by the company. And the money or other assets received by the shareholders from the company shall be chargeable to income-tax under the head "Capital gains".





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# Dilemma surrounding assignment of Not Readily Realisable Assets ('NRRRA') under IBC

## Introduction

By way of a notification dated 13.11.2020<sup>1</sup>, the Insolvency and Bankruptcy Board of India ('IBBI') inserted regulation 37A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Process Regulations'), which states as follows:

### **37A. Assignment of not readily realisable assets.**

*(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.*

*Explanation. — For the purposes of this sub-regulation, "not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.]*

Pursuant to the aforesaid amendment, the liquidator can choose to assign a not readily realizable asset ('NRRRA') to any person who is not ineligible as per Section 29A of the Code. One of the purpose of the said amendment that can be linked to the amendment is the fact that the monumental time taken by the liquidator to dissolve a corporate debtor owing to the pendency of any litigation in a corporate debtor can be reduced. As per the report of the CARE Ratings dated 20<sup>th</sup> February, 2023 (as on December, 2022)<sup>2</sup>, 1,901 matters have ended in liquidation, out of which around 50% of the cases (950 cases) are pending for more than 2 years, while 25% of the cases (475 cases) are pending for more than 1 year.

In many cases, assets of a corporate debtor are disposed-off by the liquidator or there is no asset and the liquidator is in a position to distribute the proceeds from liquidating the assets pursuant to Section 53 of the Code, however,

owing to any pending litigation in the matter of a corporate debtor- the liquidator is unable to file an application for dissolution before the Adjudicating Authority which ultimately leads to wastage of time while waiting for that specific litigation(s) to get over. One example of such litigation could be applications filed under Section 43 or 66 of the Code for preferential or fraudulent transactions conducted by the erstwhile director or promoter of the corporate debtor, as these applications, generally, takes a lot of time for its adjudication, for which the liquidator cannot proceed with filing the dissolution application.

With the said amendment, the Liquidator may with the consultation of the stakeholder's consultation committee ('SCC'), call for a bid from the public at large for assigning the said asset (including any litigation associated with it) to a third person and straight away file for dissolution of the corporate debtor if all the compliances pursuant to the Code is dealt with. Needless to say, that the said assignment brings along with it several challenges that the liquidator faces. Firstly, in order to obtain approval of the SCC for assignment of NRRRA and secondly, in laying down a procedure for the progress of the said assignment after the dissolution of the corporate debtor. The author attempts to deliberate on the *prima facie* issues with such assignment of NRRRA, along with its impact.

## **Challenges under the methodology of NRRRA**

The following challenges arise at the time of the planning to assign a debt through NRRRA:

### **1. Voting on the highest bidder for NRRRA:**

One important aspect of the assignment of NRRRA is that the Liquidator is required to invite bids for assignment of debt. In general practice and during CIRP also, the mode of rating the prospective bidders is assigned already which is conducted viz. the evaluation matrix. The bidders put in their bids, basis the said document which in turn aids them in planning their preparation of the resolution plan, both in technical terms and in financial terms. However, in the case of assignment of NRRRA, analysing a bid is a challenging task for the reason which can be understood with the below

mentioned example.

**Ex:** A company named ABC Ltd. is under liquidation. ABC Ltd. has the following debts which can be assigned under NRRRA pursuant to Reg. 37A of the Liquidation Process Regulations:

- 100 debtors having average outstanding of Rs. 100 each, aggregating to Rs. 10,000/-.
- 500 cars having average value to Rs. 100 each, aggregating to Rs. 50,000/-.

However, the issue is such that all 500 cars are dispersed in different parts of the country and the liquidator does not possess the exact location of the cars as there has been non-cooperation from the erstwhile director of the corporate debtor and the bare minimum aforesaid details were also collated by the Liquidator on the basis of the books of accounts and some employees of ABC Ltd. The cars which are in the possession of the liquidator- he is unable to sell them due to obligations with the regional transport office ('RTO') who refuses to transfer the name of the vehicle to a new owner owing to the car being registered in the name of the erstwhile promoter/ director of the company, etc. The same requires liaisoning and/ or litigation, hence is a time taking process. The liquidator in consultation with the SCC decides to assign the cars and debtors to a third person as per the provisions of the Reg. 37A of the Liquidation Process Regulations.

Digressing for a moment, the total asset looks in the range of Rs. 60,000/-, however it is to be borne in mind that against the total number of debtors the claim against a few debtors may have been hit by limitation and/or a few debtors is undergoing CIRP/ winding up themselves, etc. for which reason the chance of recovery is very less or negligible. However, in case of the cars, the value would have been further depreciated since the time of the aforesaid valuation, as with the lapse of time the condition of the cars have deteriorated, etc. Hence, while expecting that the appropriate bid from a bidder would be Rs. 60,000/- as the value of the asset is also Rs. 60,000/-, but the same may not be economically viable for the bidder.

Coming back to the case, the liquidator issues notice under Regulation 37A for assignment of debt and receives two offers, from Mr. X and Mr. Y. the details of their offers are as follows:

Description	Offer of Mr. X	Offer of Mr. Y
Upfront payment	Rs. 10,000/- upfront +	Rs. 0 as upfront +
Upon realization	10% of the realizable value	75% of the realizable

In the aforesaid case, it is very difficult to ascertain which bidder is giving a better offer as Mr. X's upfront payment is

Rs. 10,000/- plus 10% would be paid upon realization from sale of cars and recovery from the debtors, while Mr. Y's upfront payment is nil albeit, upon realization Mr. Y agrees to pay 75%.

Consequently, in such a peculiar situation, it would be difficult for the SCC and the liquidator to evaluate the bidder, but one may argue that Mr. X's offer looks better considering that there is a component of upfront payment also. However, it may be noted that Mr. Y is offering 75% upon realization, and considering the best-case scenario that out of the total debt being assigned (Rs. 60,000/-) the entire amount is recovered, in that scenario 75% of Rs. 60,000/- = Rs. 45,000/- would go to the SCC, whilst Mr. X's total cash outflow would be Rs. 10,000/- towards upfront payment and 10% of Rs. 60,000/- = Rs. 6,000/-, aggregating to Rs. 16,000/-. Not to forget that the realizable value may be much lesser than Rs. 60,000/-.

Therefore, it would be difficult in whose favour should the SCC vote for or who shall be declared as the successful bidder. In such a scenario, the author suggests that the notice should be published and bids shall be invited. Generally, due diligence is already done by the liquidator and a tentative recovery value is already known to the SCC/ liquidator. A bidder who puts in a bid near the tentative recoverable amount – the said bid can be approved, on the contrary, the Liquidator/ SCC can always exercise its sole discretion in rejecting or accepting the offer of the bidder. But looking from another angle, the liquidator has only two options in such a situation, that is either to continue pursuing those matters which of course, is at the expense of Liquidation time or to try publishing a notice for NRRRA and avail an opportunity to resolve the issue by assigning the same to a third party.

## 2. Variation in the realizable amount from the assets offered under NRRRA :

Generally, the nature of the assets which are kept under NRRRA varies drastically. For instance, going back to the example given aforesaid, with the passage of time the machine of the cars will stop working and the use of car will be diminished, leading to drastic depreciation in its value. Hence, a notice issued today will invite value X from the bidders, whereas a notice issued one year thence will invite value X-1 from the bidders. The same also leads to a situation that one bidder may see a value in putting up a better upfront offer and keep miniscule offering towards realization value, on the contrary, another bidder may see a totally opposite view of offering no upfront payment and only paying certain per centage upon realization from the asset.

Further, there also comes a challenge whereby the bidder wants to settle with any debtor for an amount less than



the claim amount, the bidder will be under an obligation to recover the entire amount as the said recovery will be bifurcated between the bidder and the stakeholders, hence the stakeholder may not be ready to take a haircut on such settlements. In search of the effort to recover the entire amount from the said debtor, the recoverable amount (after haircut) may also be lost. Therefore, a liberty to take the best possible call has to be given to the bidder as the bidder will also be partaking in the distribution of the said recovery.

### 3. Who will monitor the assignment of NRR?

The biggest challenge that surfaces in the case of NRR is that who will be responsible for smooth functioning of the litigations associated with the NRR or proper management/ arrangement owing to the recovery process from the NRR after the corporate debtor is dissolved. Going back to the example aforesaid, the bidder may have to initiate legal actions against the debtors of the

Corporate Debtor which may run for quite a few year(s). In the meantime, the liquidator of ABC Ltd. is dissolved, the question arises who will keep the track of the said litigation being pursued by the bidders as in the case of both the bidders, that is, Mr. A's offer and Mr. B's offer, there is an amount payable on the realization.

Unlike the case of CIRP, in the case of NRR – there is no concept of a monitoring committee which is formed with the purpose of monitoring the smooth and proper implementation of the resolution plan by the resolution applicant. Generally, the resolution professional is also a member of the said monitoring committee.

In case the debts are assigned and the liquidator files an application for dissolution of the corporate debtor, there remains a question that remains to be answered as to who will look after the progress of the NRR or who will the bidder apprise of the progress in the assigned litigations or consult with regarding the litigation or for settling at a lower amount than the claim amount? Hence, *prima facie* in such a situation it would be prudent to have a committee, which may include a member of the lead bank or members from the SCC, to whom the bidder shall give a quarterly or bi-monthly progress about the matter or do consultation with.

### Judgement related to NRR

In the matter of **ICICI Bank Limited vs. S R Foils and Tissues Limited**, the liquidation was initiated against the Corporate Debtor on 04.03.2020. There was a pending dispute between S R Foils and Tissues Limited ('S R Foils') and Rajasthan State Industrial Development and Investment Corporation Limited ('RIICO') for an approximately amount of Rs. 53 lakhs which became pending towards the land belonging to S R Foils. The Liquidator has not been able to sell the land owing to the dispute on the land and the litigation having been initiated by RIICO for the said

amount. The Liquidator attempted to sell the Corporate Debtor as a going concern, twice. Both the attempts failed, subsequently, the Liquidator put up a proposal before the SCC of S R Foils to transfer/ assign the said land (alongwith the litigation associated with it) as NRR as per the provisions of Regulation 37A of the Liquidation Process Regulations. SCC gave their confirmation and the Liquidator proceeded with issuing notice for the said assignment. Fortunately, the Liquidator was able to get three bids for the said assignment of NRR and the bid of Kalpatru Resolution Private Limited for an amount of approximately Rs. 21 crores emerged as the highest bid which was approved by the SCC as well as the Hon'ble NCLT, Delhi Bench, *vide* its order dated 02.03.2023<sup>3</sup>.

### Conclusion

Assignment of NRR is a win-win situation for all the stakeholders as well as for the liquidator as the same aids in meeting the objective of the Code of maximization of value and abides by the time bound process as deliberated in the Code. There have been numerous matters in which the liquidators have come out with notice regarding assignment of NRR. For instance, in the matter of Shilpi Cables Technologies Limited (in Liquidation)- the Liquidator invited bids for assignment of NRR around Rs. 1500 crores<sup>4</sup>, in the matter of Alupan Composite Panels Private Limited (in Liquidation) - the liquidator invited bids for NRR of approximately Rs. 25 crores<sup>5</sup>, in the matter of FE (India) Limited (in Liquidation)- the liquidator invited bids for NRR of approximately Rs. 277 crores<sup>6</sup> and the list goes on.

However, not only is the bidder required to put in a bid very carefully, that is after thorough due diligence, but even the liquidator and the SCC shall exercise precaution while drafting the agreement for the progress of the matter after the dissolution of the corporate debtor. Alternatively, it also seems that there is a loophole in the Regulations *apropos* the situation wherein the fate of the progress of litigation or recovery proceedings, after the dissolution of the corporate debtor, has not been dealt with appropriately.

With passage of time and comfort of the stakeholders in getting accustomed to the nuances of the assignment of debt under the provisions of Regulations 37A of the Liquidation Process Regulations, such assignments will flourish in the country with the loopholes that comes in the way gets plugged there by supporting the objective of the Code.

<sup>1</sup> <https://ibbi.gov.in/uploads/legalframework/23cc8982d0a5921ae7e40f2d757d0b55.pdf>

<sup>2</sup> [https://www.careratings.com/uploads/newsfiles/20022023114544\\_Insolvency\\_and\\_Bankruptcy\\_Code\\_Update\\_December\\_2022.pdf](https://www.careratings.com/uploads/newsfiles/20022023114544_Insolvency_and_Bankruptcy_Code_Update_December_2022.pdf)

<sup>3</sup> <https://ibbi.gov.in/uploads/order/eb91f5ac4ee1609d98e6d5743c98274f.pdf>

<sup>4</sup> <http://www.shilpicables.com/pdf/SCTL-Process-Documents-NRR-India-20-2022.pdf>

<sup>5</sup> <http://www.arck.in/arckcasefile/Alupan37A/PID-NRRMerged.pdf>

<sup>6</sup> <https://www.rrinsolvency.com/wp-content/uploads/2022/05/FE-India-NRR-Process-Information-Documents-12.05.2022-1.pdf>



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## Recent important case laws on the inter-play of GST/ Indirect Taxes with IBC

### Introduction

Goods & Services Tax (GST)/ Other Indirect Taxes (hereinafter collectively referred to as 'Indirect Taxes') dues are treated as operational debts under the Insolvency & Bankruptcy Code (IBC). Operational debts include dues arising from the provision of goods, services, or employment and they are distinct from financial debts. **IBC defines operational debts broadly and Indirect Taxes dues typically fall within this category as they arise from the provision of services or supply of goods.** IBC establishes a priority hierarchy for the distribution of proceeds during the insolvency resolution process, often referred to as the waterfall. Operational creditors, including those with Indirect Taxes dues, fall below financial creditors in terms of priority. Financial creditors, such as banks and financial institutions, have higher priority for the distribution of proceeds. **However, IBC does not provide specific priority for Indirect Taxes dues within the category of operational debts.** NCLT, the adjudicating authority for insolvency cases under the IBC, has the power to determine the treatment of Indirect Taxes dues. **In specific cases, the NCLT has considered whether Indirect Taxes dues should be classified as operational debts or treated differently based on the specific facts and circumstances.** NCLT's decisions have contributed to the evolving jurisprudence on the treatment of Indirect Taxes dues in insolvency proceedings.

The interpretation of Goods and Services Tax (GST)/ Indirect Taxes dues within the framework of the Insolvency and Bankruptcy Code (IBC) in India has been a subject of legal deliberation and evolving jurisprudence. Here are some key aspects related to the interpretation of GST/ Indirect Taxes dues in the IBC:

1. **Overriding effect over all other laws including laws related to revenue and binding nature of Resolution Plan:** Section 31(1) of the Insolvency and Bankruptcy Code (IBC) makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all the stakeholders, including the Government. This is for the reasons that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were totally new.

In the matter of *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta* (2020) 8 SCC 531, it was held

by the Apex Court that once a Resolution Plan is approved by the CoC, it shall be binding on all stakeholders. All claims shall have to be submitted and decided by the Resolution Professional (RP) so that a prospective resolution applicant knows exactly what needs to be paid in order, it may then take over and run the business of the corporate debtor.

In the matter of *Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited* 2021 SCC Online SC 313, it has been held by the Tribunal that the Resolution Plan, as has been finalised, is binding upon the parties.

Further in a recent matter of the *Garden Silk Mills Versus Commissioner of Central Excise and Customs, Surat-I* (2023) 4 Centax 204 (Guj.), it has been held that once the resolution plan is approved and the approval order has been given under Section 31(1) of the Code, the same would have an overriding effect over all other laws in force including the Central Excise Act, 1944.

Thus, it has been held on a number of occasions that IBC has an overriding effect over all other laws including laws related to revenue and a resolution plan, once approved by the Committee of Creditors, has a binding effect on all parties, including the Government.

2. **All claims/ dues of Government shall automatically get extinguished and proceedings relating thereto for period prior to resolution stands terminated if not made a part of the plan:** The provisions of Section 238 of IBC states that the provisions of IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Further, crown debts do not take precedence even over secured creditors, who are private persons. Therefore, if the departments of Central or State Governments do not file an application or participate in the resolution process, their claims automatically get extinguished and the proceedings related thereto shall stand terminated (following the judgment of the Hon'ble Supreme Court in the case of *Ghanashym Mishra (Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited* 2021 SCC Online SC 313)). - *Union of India Versus Ruchi Soya Industries Ltd.* 2021 (377) E.L.T. 659 (Kar.).



It was also held in the matter of *Ultra Tech Nathdwara Cement Limited v. Union of India* 2020 (37) G.S.T.L. 289 (Raj.) that since the 2019 amendment to Section 31 of IBC was clarificatory and declaratory in nature, it would have a retrospective operation. As such, if the resolution plan approved by the National Company Law Tribunal, does not comprise all the claims of the Central/ State Government or the local authority, the said claim shall stand extinguished and the proceedings relating thereto shall stand terminated.

**3. Resolution Applicant should decide on payment of pending dues by inclusion in the Resolution Plan:** IBC allows the submission of resolution plans by prospective resolution applicants during the insolvency resolution process. These plans outline the proposed revival or resolution of the insolvent entity. In the resolution plan, the treatment of Indirect Taxes dues can vary depending on the specifics of each case. **The resolution plan may provide for the payment of GST dues either fully or partially, depending on the financial viability and feasibility of the plan.**

Further it has been held that **a claim of department from insolvent assessee which is not a part of said plan, cannot be recovered** (as decided in the matter of *Ruchi Soya Industries Ltd. Versus Union Of India* 2022 (380) E.L.T. 8 (S.C.)). In the said matter, the Customs Department did not lodge any claim with Resolution Professional for their dues in respect of the demand in response to Public Notice issued by said authority under Sections 13 and 15 of IBC. It was held that in view of precedent judgment of Apex Court in *Ghanashyam Mishra & Sons Pvt. Ltd.* reported at (2021) 9 SCC 657, on date of approval of aforesaid Plan by NCLT, all claims of dues from appellant, stood frozen. Accordingly, the claim of Customs authorities, not being a part of said Plan, was held not sustainable. Further the amount deposited by appellant at time of admission of appeal, was also directed to be refunded with interest in terms of Section 31 of Insolvency and Bankruptcy Code, 2016.

**4. Benefit of previous amnesty schemes cannot be denied just because payment of tax could not be done because of moratorium under IBC:** It is a well-known principle that no one can be expected to do the impossible. In a case where an assessee had applied for availing a scheme under the relevant statute, but could not comply with the conditions due to moratorium, it cannot be said that conditions have not been complied since one could not have done so, because of the moratorium imposed under the IBC law. **Thus it has been held that since the assessee could not make the payment (read: comply with the scheme's conditions) due to legal disability, the benefit of the scheme could not be denied.**

In the matter of *Shekhar Resorts Ltd. Versus Union of India* (2023) 2 Centax 99 (S.C.), it has been held that, the benefit of SVLDRS Scheme would not be denied to the assessee who could not deposit due amount before last date on

account of legal moratorium under IBC and immediately on lifting of moratorium, the appellant had approached the concerned authorities.

**5. Outgoing Directors of a Company, which has undergone resolution, can be called upon to reply in an adjudication process for period prior to resolution:** The question is whether a Key Managerial Personnel (KMP) which includes a Director, can be called upon to submit replies and appear before the authorities for transactions relating to the period prior to coming into force of the resolution plan even when it has been held that all claims/ dues of Government shall automatically get extinguished and proceedings relating thereto for period prior to resolution stands terminated if not made a part of the plan (*supra*)?

In a matter, a Show Cause Notice (SCN) was issued against the 'Outgoing Chairman & Managing Director' or 'Outgoing Director' or 'Director' of M/s. Bhusan Power & Steel Limited (BPSL) and for transactions relating to the period prior to coming into force of the resolution plan. The Court, without expressing any view in the matter, directed the Outgoing Director to raise all the pleas that they had urged in the petition, in their reply to the impugned SCN and for the adjudication proceedings to be concluded in a time-bound manner. Thus, no relief as such from proceedings for the period prior to resolution period, was made available to the petitioners. The adjudicating authority was directed to take into account all such pleas and deal with them in the adjudication order to be passed after giving the Petitioners an opportunity of hearing and considering their requests, if any, as regards summoning persons or documents, in accordance with law (in the matter of *Sanjay Singal Versus Union of India* (2023) 3 Centax 216 (Ori.)).

**6. All proceedings under GST to be stayed till conclusion of proceedings before NCLT and lifting of moratorium:** Section 14 of the IBC clearly indicates that there is a complete/ total embargo/ bar to initiate and continue proceedings against the Company before any other authority including the GST authority during the pendency of proceedings before the NCLT and appeal(s) to be filed against the same, if any, when the moratorium/ CIRP is in force and has not been lifted.

It is also relevant to state that in *P. Mohan Raj v. Shah Brothers Ispat Pvt. Ltd.* (2021) 6 SCC 258, a three Judge Bench of the Apex Court has categorically held that the moratorium provision contained in Section 14 of the IBC would include proceedings under Section 138 of the Negotiable Instruments Act also and by token of the same reasoning, proceedings initiated by the respondent under the GST Act would also attract the embargo contained in Section 14 of the IBC. It was further held that appeal(s), if any, can be filed only after lifting of the moratorium and completion of the corporation insolvency resolution process. - *Associate Decor Ltd. Versus Deputy Commissioner of Commercial Taxes, Bengaluru* (2022) 1 Centax 174 (Kar.)

**7. No recovery proceedings can be started once moratorium has started:** It has been held in various cases that the Insolvency Resolution Professional has powers to take control and possession of all assets of Corporate Debtor and in terms of Section 14 of Code, assets of Corporate Debtor cannot be alienated, transferred or sold to a third party.

The NCLAT, in the matter of *Commissioner of Cus. (Preventive), West Bengal Versus Ram Swarup Industries Ltd.* 2020 (374) E.L.T. 726 (NCLAT), while confirming the Order of NCLT, in the matter of National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. No. 116 of 2018 in C.P. No. (IB)-349(KB)/2017, confirmed that since ownership of goods remained with Corporate Debtor as on date of initiation of resolution process although possession was with Customs authorities, in terms of Sections 18(1)(f) and 18(1)(g) of Insolvency and Bankruptcy Code, 2016, after initiation of process, Insolvency Resolution Professional has power to take control and possession of all assets of Corporate Debtor and in terms of Section 14 of Code, assets of Corporate Debtor cannot be alienated, transferred or sold to a third party. The matter reached the Apex Court in the matter of *Commissioner of Cus. (Preventive), West Bengal Versus Ram Swarup Industries Ltd.* 2022 (382) E.L.T. 470 (S.C.) on appeal by the Department. The Hon'ble Supreme Court was however not inclined to interfere with the order passed by the NCLAT and the appeal was accordingly dismissed.

In a similar matter in *Sundaresh Bhatt Versus C.B.I. & C.* 2022 (381) E.L.T. 731 (S.C.), it has been held that once moratorium is imposed in terms of Section 14 or 33(5) of IBC, 2016, Customs authority can only determine quantum of customs duty and other levies but cannot initiate recovery by means of sale/confiscation, as provided under Customs Act.

**8. Insolvency and Bankruptcy Code (IBC) does not address assets over which debtor has no title; such assets are specifically excluded from liquidation process:** The intention of the Code was never to address those assets over which a debtor had no title. Such assets, infact, stood specifically excluded from the liquidation process, being assets where the debtor might hold some right, but was not the owner to title of the asset, a pre-condition set out is the inclusion of the asset in question in the inventory of the debtor. - *Czarnikow Group Ltd. Versus Senior Intelligence Officer, Directorate Of Revenue Intelligence, Hyderabad Zonal Unit* 2022 (380) E.L.T. 595 (Mad.).

**9. Company is required to pay the approved percentage for operational creditors to the Department of the Total Demand and not Unpaid Demand; any excess payment has to be refunded:** The Department is entitled only to the percentage as approved in the Resolution Plan by the Committee of Creditors of the total demand as per Show Cause Notice or Order and not the unpaid

amount. E.g. in case the demand is for Rs. 100/- of which the company has already paid Rs. 60/-, the unpaid amount being Rs. 40/-. Now in case the percentage approved for operational creditors is 20%, the Department will be entitled to 20% of total demand of Rs. 100/- and not 20% of unpaid demand of Rs. 40/- (in which case the total realisation of the Government would be Rs. 60/- (+) Rs. 8/- = Rs. 68/- i.e. 68% against the approved 20%). Thus the entitlement being Rs. 20/- and payment already made of Rs. 60/-, the company is entitled to a refund of Rs. 40/- i.e. Rs. 60/- less Rs. 20/-.

It has been held that the Department would be duty bound to refund the balance amount to the company which will not only be in terms of the resolution plan and thus in accordance with law but will also be a step in the right direction for revival of the petitioner which is the key objective of the Code. There is no question of retaining the said amount. - *GGs Infrastructure Private Limited* in WP-LD-VC-No. 268 of 2020 judgment dated 22nd December, 2020 [2021 (51) G.S.T.L. 187 (Bom.)]. The same proposition has also been held in the matter of *Jagat Janani Services Versus GST Council* 2021 (54) G.S.T.L. 283 (Ori.).

**10. Where in e-auction, there is sale of assets as a going concern and not transfer of business as a going concern, such supply is not exempted from GST:** In an e-auction conducted by the liquidator appointed by NCLT corporate debtor's business was not transferred as a going concern; rather the corporate debtor's assets were sold as a going concern. It was held that there was a supply of goods under section 8 of CGST Act, 2017 and it was subject to GST and that it was out of purview of exemption Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, which covers cases where transfer is supply of service only [Section 11, read with section 8 of Central Goods and Services Tax Act, 2017]. It was thus held that exemption provided under serial no. 2 of the Notification No. 12/2017-Central Tax (Rate), dated-28-6-2017 was not applicable to the said supply of assets, even as a going concern' and GST at the applicable rate was leviable on the said supply. - *Before the Authority for Advance Ruling under GST, Chhattisgarh re: Shikhar Commodities* (2023) 2 Centax 269 (A.A.R. - GST - Chh.) (Readers may kindly note that Advance Rulings are applicable only on the party which has sought the Ruling. It can at best have persuasive value for others in similar matters).

### Conclusion

It's important to note that the interpretation and treatment of GST dues in the IBC can vary depending on the specifics of each case and the evolving legal landscape. As the IBC and GST laws continue to be interpreted and refined through judicial pronouncements, further clarity and guidance on the treatment of GST dues in insolvency proceedings are likely to emerge. It is advisable to consult legal experts or seek professional advice for specific cases and up-to-date information on this matter.





## Some Important and recent Case Laws under IBC-2016

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**'Some Important and recent Case Laws under IBC-2016'**, it is an compilation of few of the Orders of the Hon'ble Supreme Court, Hon'ble High Courts, Hon'ble NCLT and the Hon'ble NCLAT in relation to the Insolvency and Bankruptcy Code, 2016 for easy reference and convenience.

*The extracts have been reiterated from the Orders pronounced by the respective Hon'ble Supreme Court, Hon'ble High Courts, Hon'ble NCLT and NCLAT.*

- **12.04.2023 [Hon'ble NCLT- Mumbai Bench-] CP (IB) No.778/MB-IV/2021**  
**M/s Wellcome Steel Vs Kavish International Trading Private Limited**

**Observation : An affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt under Section 9(3)(b) is Mandatory.**

The case of the Operational Creditor is that the Operational Creditor had supplied M S Scrap to the Corporate Debtor during the period from 20.07.2018 to 07.06.2019. A copy of account of the applicant in the books of the Corporate Debtor has been annexed with the application. Pursuant to the said supply, the Operational Creditor had raised and issued various invoices upon the Corporate Debtor. The Corporate Debtor has made part payments against the running invoices issued by the Operational Creditor. Thereafter the Operational creditor issued demand Notice in Form -3 for the Total Claim Amount of Rs. Rs.2,21,02,450/-.As the Corporate Debtor has not made the payment. The Operational filed the Application under section 9 of the Code for Initiating CIRP against Corporate Debtor.

Corporate Debtor failed to Appear in this matter. The Hon'ble Adjudicating Authority before passing the order notice that, Applicant has not filed Section 9 (3) (b) Affidavit alongwith the application as required under the Code which is a mandatory requirement under code.

Therefore the Bench considered view that the Affidavit under section 9 (3) (b) of the Code is required to be filed and the same must be in relation to the notice of dispute with regard to receipt or non- receipt of the payments made by the Corporate Debtor. Hence, in view of the aforesaid, the Petition filed by the Operational Creditor deserves to be dismissed on the ground of non-filing of the Affidavit under section 9 (3) (b).

Accordingly the Application stands dismissed.

- **28.03.2023 [Hon'ble NCLT- New Delhi Bench-V]**  
**In the Matter of Rohit Prasad (Financial Creditor) Vs M/s S and N Lifestyle Infraventures Pvt. Ltd. (Corporate Debtor)**

**Observation: A Person Who Comes In A Project As A Speculative Investor In Garb Of A Lender Cannot Be Accorded The Status Of A Financial Creditor**

*In this instant case, the Financial creditor has advanced a sum of Rs.99,99,999 to M/s. S and N Lifestyle Infraventures Pvt. Ltd ("Corporate Debtor") for purchase of 5% equity share at a housing project at The Highlands, Dehradun vide a general agreement dated 18.10.2014. The amount was agreed to be locked in for a period of 4 years from the date of the agreement and the Corporate Debtor guaranteed to pay the Financial Creditor his investment and profit in the project pro-rata to his equity share. It was further an unconditional guarantee that the Corporate Debtor would pay the Financial Creditor a minimum amount not less than Rs. 2,00,00,000 as return of capital and profit, in any condition. It was also agreed that if the Corporate Debtor fails to complete the project within 4 years, then an additional grace period of 3 months would be provided and the Corporate Debtor would pay an additional 1.5% interest per month for these 3 months. As the Corporate Debtor failed to fulfill its promise the Financial Creditor filed an Application before the Hon'ble Adjudicating Authority under section 7 of IBC.*

*The Corporate Debtor in their counter reply submitted that, the investment of Rs.99,99,999/- doesn't fall within the definition of Financial debt as the Financial Creditor invested for 5% equity shares in the project and not the company. The invested amount was to be returned with 5% profit which would be minimum Rs.2,00,00,000 and maximum Rs. 3,50,00,000 and if the invested amount was not returned, the Financial Creditor was entitled to get land equivalent to the amount.*

*Since there is no amount which is due and payable by the*

Corporate Debtor to the Financial Creditor and there is only a default in transferring the land, no claim arises under IBC, 2016 due to lack of consideration for Time Value of Money.

After perusal of the documents and hearing both the parties the Hon'ble Adjudicating Authority has observed that, the financial creditor has not advanced a loan to the Corporate Debtor to enable the construction and commercial sale of the housing project. The agreement was a sale agreement with settled base return and profits amounting to contingencies with a maximum ceiling. The Financial Creditor had made an investment in the housing project where he was 5% equity holder and hence had a 5% share in the profits.

The Hon'ble Tribunal further observed that the debt claimed by the Financial Creditor was a Lucrative Agreement Situation where the Financial Creditor claimed 3.5 crores as a principle amount and 1.26 crores as interest against a 1 crore investment. The Financial Creditor has further secured his interests by way of transfer of land by the Corporate Debtor for the amount payable in case of default. The Hon'ble NCLT referred the NCLAT Judgment of Ankit Goyal vs.. Sunita Agarwal [Company Appeal ((AT))((INS)) No.. 1020//2019]] wherein it was held that in situations where the allottee seeks to benefit from a "lucrative agreement" where he has secured his money by way of an agreement which gives him lien over the flats, he cannot be considered a Financial Creditor. Further reliance was placed on the NCLAT judgement of Sudha Sharma vs Mansi Brar and another [Company Appeal (AT)) ((INS)) No83 of 2020 wherein it was held that money invested for speculative purposes does not entitle a person to be considered a Financial Creditor by virtue of being an allottee of a housing unit.

The Tribunal observed that the status of Financial Creditor cannot be accorded to a person who comes in the project as a speculative investor in the garb of a lender and files exorbitant claims for mere recovery of monies.

**With the aforesaid observations, the Tribunal dismissed the petition.**

- **24.04.2023 [Hon'ble NCLT- Chennai]**

**In the Matter of Step Stones Infra Private Limited (Financial Creditor) Vs M/s Yes and Yes Infracon Private. Ltd. (Corporate Debtor)**

**Observation: Transfer of the same work by a subsequent MOU would not alter the nature of the original transaction.**

In this case the Financial Creditor and Srico Projects private limited (Principal Contractor) has entered into an MOU Agreement dated 14.06.2017 for sub-contracting the construction of dwelling units. The Financial Creditor deposited a refundable security deposit to the Principal Contractor for the said contract. Thereafter the Financial Creditor and Yes and Yes Infracon (P) Ltd ("Corporate Debtor") vide an MOU dated 28.09.2019 agreed to transfer the construction work in the name of the Corporate Debtor

in lieu of the security deposit amount, the retention amount and yardstick payment payable by the Financial Creditor to the Principal Contractor. The Corporate Debtor issued post dated cheques as guarantee which got dishonoured upon presentation. Aggrieved by the dishonor, the Financial Creditor issued a legal notice dated 20.01.2020. In turn the corporate debtor sent reply dated 03.02.2020 denying the claim. Hence this Application is filed.

The Corporate Debtor submitted their counter reply that the aforementioned amount is not a Financial Debt. No disbursement has been made by the Financial Creditor towards the Corporate Debtor and payments were made only towards the Principal Contractor. Further there is no disbursement against consideration for time value of money.

Hon'ble Adjudicating Authority after perusal of the documents submitted and hearing both the sides and observed that, that under the MOU dated 14.06.2017 the Financial Creditor had deposited Rs. 1 crores to the Principal Contractor for construction work and this transaction was operational in nature. The MOU dated 28.09.2020 transferred the same construction work to the Corporate Debtor. It was held that Transfer of the same work by a subsequent MOU would not alter the nature of the original transaction. The Hon'ble Bench referred the NCLT New Delhi judgment of jambudwip exports and imports limited Vs UP bone mills Private Limited (IB)-447(ND)/2021

Hon'ble NCLT further observed that the 14 % interest component in the MOU for delay in payment cannot be considered the time value of money and referred the NCLAT judgement of Budhpur Buildcon Pvt. Ltd. vs Mr. Abhay Narayan Manudhane [CA(AT) (Ins) No. 589 of 2021]

Where in it was held that interest per se in any business contract cannot be termed to convert the debt into a "financial debt", if it is in the nature of penal interest which is a result of compensation of breach of contract.

In view of the aforesaid observations the Hon'ble NCLT rejected the Petition.

- **31.03.2023 [Hon'ble NCLT- Mumbai Bench]**

**In the Matter of D.S. Kulkarni and Associates**

**Through its Authorised Representative Mrs. Hemanti Kulkarani Vs Manoj Kumar Agarwal (Resolution Professional)**

**In the matter of Bank of Maharashtra vs DS Kulkarni Developers Ltd.**

**Case No. IA No. 721/MB/C-1/2023 in C.P. (IB) No. 1633/MB/C-1/2019**

**Observation: New Claims Cannot Be Admitted When Resolution Plan Is Approved By The CoC And Is Pending Before the Adjudicating Authority for Approval.**

In this case the Corporate Debtor **DS Kulkarni Developers Ltd** was admitted to Insolvency by the Adjudicating Authority in its order dated 26.09.2019. D.S.Kulkarni and Associates ("Applicant") was a sister concern of the Corporate Debtor and was engaged in



various transactions with the Corporate Debtor. The Applicant and the Corporate Debtor entered into an MOU dated 01.01.2011 vide which the Corporate Debtor agreed to allot various properties to the Applicant for a consideration of Rs. 110 crores. In the year 2017, Due to various criminal cases were registered against the key personnel of DSK Group including i.e. Authorized Signatory, Mrs. Hemanti Kulkarni, the Applicant herein. Pursuant to the said cases Mrs. Hemanti, Kulkarni, was behind the bars. In the aforesaid circumstances the Applicant through the daughter in law of the Authorized representative i.e. Hemanti Kulkarni, filed the Claim before the IRP in FORM CA for the advances being Rs. 166,74,48,579/- and in FORM F for Rs.59,000/- on 07/10/2019 The resolution Professional through his reply mail on 14/10/2019 sought for documents in support of the claim of the Applicant and also sent various remainder mails and final mail was sent on 28/05/2021. But even after this mail the Applicant has not provided the supporting documents therefore the resolution professional has rejected the claim for lack of supporting document relating to claim of applicant. It was further submitted that the Committee of Creditors ("CoC") had approved the Resolution Plan of the Corporate Debtor on 13.08.2021 and an application for approval of the Resolution Plan was pending before the Adjudicating Authority.

The Hon'ble Adjudicating Authority after hearing the both sides and referred the Hon'ble NCLAT judgment of Mukul Kumar vs RPS Infrastructure Limited wherein it was held that if new claims are entertained at the stage when the resolution plan has already been approved by the CoC and is pending before the Adjudicating Authority for approval, then the CIRP would be jeopardized and the purpose of IBC, 2016 would be defeated.

The Tribunal further observed that the resolution plan has been approved by the CoC and has been submitted before the Adjudicating Authority for its approval, which has also reserved its order. It was not desirable to entertain such claims when the resolution plan is pending for approval before the Tribunal.

Therefore in view of the above said reasons the Application stands rejected.

**24.03.2023 [Hon'ble NCLT- Mumbai Bench]** CP (IB) No.88/MB-IV/2018

**In the matter of**

**S. V. R Enterprises  
Creditor/Petitioner**

**...Operational**

**V/s**

**Netizen Engineering Private Limited  
Debtor/Respondent**

**...Corporate**

**Observation: Different invoices Different Work Orders Can Be Clubbed to Satisfy the Minimum Threshold under IBC.**

The Operational Creditor has executed work contracts during the year 2007 - 2010 in relation to Telecom cable

laying, Splicing, Trenching, Ducting, etc for projects within Hyderabad developed by a Corporate Debtor. The Operational Creditor has further submitted that according to the terms of work orders, payments have to be made immediately after invoices are raised within 21 days.

The Operational creditor has claimed a sum of Rs. 1,09,73,819/- (Rs. 98,92,925/- as principal amount and Rs. 10,80,894/- Retention amount). The Operational Creditor has also further claimed an interest @18% as due from the Corporate Debtor on account of the 33 invoices and retention money which fell due for the payment of invoices raised. The Corporate Debtor also acknowledged the debt in an email dated 23.01.2015. The Operational Creditor issued a demand notice u/s 8 of the Code dated 30.12.2017 and the same was received by the Corporate Debtor. However, no reply was received from the Corporate Debtor. Hence this Application under section 9 was filed by the Operational Creditor.

The Corporate Debtor in their counter reply submitted the Operational Creditor refers to 33 work orders on the basis of which invoices were raised. However, the Operational Creditor has only annexed 13 work orders to the application. Further, the invoices on which the Operational Creditor is basing its claim have been raised on various entities. It was also submitted that the amount claimed is due under several invoices which pertain to diverse work orders.

Combining multiple claims under different work orders is not permissible as it seeks to pursue multiple causes of action in one application.

The Tribunal observed that debts arising from different work order(s) can be clubbed to satisfy the minimum threshold limit. M/s. A2 Interiors Products Pvt. Ltd. Vs. M/s. Ahluwalia Contracts (India) Ltd. (2021) SCC online NCLT 438, the Hon'ble NCLAT had allowed the petition holding that debts arising from different work order(s) can be clubbed to satisfy the minimum threshold limit separate claims can be part of single application.

The Tribunal further observed that although the invoices were raised in the years 2008-2011 and were payable within 21 days, the debt is not barred by limitation as the Corporate Debtor had deducted TDS on 15.07.2014 on two of its invoices the aggregate of which exceeded 1 lakh. Further, vide an Email dated 23.01.2015, the Corporate Debtor admitted the liability for various invoices which were claimed to have been received on and verified on 21.01.2015. Thus, the petition was filed within 3 years of 21.01.2015 and hence was not barred by limitation.

In view of aforesaid reasons the petition is admitted and CIRP process is initiated.

**02.05.2023 [Hon'ble NCLT- New delhi Bench]** -(IB) 598(ND)2022

**In the matter of**

**Bhothika Trade and Services Private Limited  
...Operational Creditor/Petitioner**

V/s

**Avinash EM Projects Private Limited  
Debtor/Responde**

...Corporate

**Observation: Interest Can Be Added to reach 1 Crore threshold only If provided in the Agreement.**

In this case the Applicant during the year 2013-2014 sold various construction and welding equipments to the respondent who is engaged in the business of Government Contracts, The respondent issued various debit balance confirmation as the Respondent was having dispute with his main client Gas Authority of India Limited (GAIL) which is also informed to the Applicant. Since GAIL is an Government enterprise which had to pay respondent. The Applicant had sold goods on credit and accepted the debit balance confirmations from the respondent. As there was default in payment by the respondent the Applicant has sent demand notice under section 8 of IBC which was replied by the Respondent wherein they had raised certain quality related disputes.

However during the hearing the respondent has admitted the debt due to applicant. The Hon'ble Adjudicating Authority after perusal of the invoices of the Applicant had notice that, the Principal amount is Rs.51,85,102.76/- and Interest is Rs.48,45,033.46/-. There is no specific agreement between the parties on record or produced pursuant to which the interest could be claimed by the applicant nor there is any delayed payment clause with interest in the invoices .

The Hon'ble Tribunal Referred the NCLAT judgement dated 15.07.2022 in company Appeal(AT) No.690 of 2022, prashant Agarwal vs Vikas Parasrampur & another wherein it was held that, Interest Can Be Added to reach 1 Crore threshold only If Provided in the Agreement or invoice.

Considering the above judgement the present application is not Maintainable since the principal amount outstanding in the instant case is less than one crore.

Accordingly the Petition stands Dismissed.

**18.04.2023 [Hon'ble NCLT- Hyderabad Bench] - IA No. 96/2021**

In C.P (IB) No. 166/7/HDB/2019

**In the matter of**

**State Bank of India  
Creditor/Petitioner**

...Financial

V/s

**Suriyayoti Spinning Mills Limited  
Debtor/Respondent**

...Corporate

**And in the matter of**

**Mr. Ram Ratan Kanoonge ... Applicant/Resolution  
Professional**

**Observation: CoC Resolution With 66% voting Share not a Pre-Condition for Liquidation When No Resolution Plan Received by the Adjudicating Authority.**

In this case, the Corporate Debtor (CD) was taken to Corporate Insolvency Resolution Process (CIRP) by an order of this Tribunal dated 05/09/2019 in CP No. 166/7/HDB/2019 and an Interim Resolution Professional (IRP) was appointed. As no resolution Plan was received before the expiry of the Corporate Insolvency Resolution Process period. The Resolution Professional filed the Application for Liquidation of the Corporate Debtor under section 33(1) of IBC.

No counter was filed, but, both the learned counsel extended their arguments and filed written submissions. The Id. Counsel for the respondent raised an objection stating that there is no resolution passed by the CoC and that there is no coordination between the RP and the CoC and in such circumstances, no order for liquidation can be made. He contends that for an order to be passed under subsection (1) of section 33, a resolution with 66% of voting is a precondition.

The Id. Counsel for the Petitioner counters the argument of the Id. Counsel for the respondent by contending that the said condition is applicable only when an application for liquidation is filed during the insolvency resolution process and when a resolution plan is pending and it does not apply when the maximum period permitted for completion of the corporate insolvency resolution process is over and when no resolution plan is received.

After hearing both the parties, the Hon'ble Adjudicating Authority was convinced by the Argument of the Id. Counsel for the Resolution Professional/Applicant and observed that when, under section 33(1)(a), the Adjudicating Authority has power to order for liquidation when no resolution plan is submitted to it, it implies that the Adjudicating Authority has to only see whether any resolution plan has come up before it for approval prior to the order for liquidation under section 33(1)(a). As no resolution plan is received by the Adjudicating Authority, the questions whether CoC has resolved for liquidation or whether there is no coordination between RP and CoC, are immaterial for the Adjudicating Authority to order for liquidation u/s 33(1)(a).

In view of the above, we do not find any reason to reject the request made by the RP to order for liquidation of the Corporate Debtor. The Application is allowed and the Corporate Debtor is ordered for Liquidation and the Liquidator is appointed.

**Disclaimer:** Nothing contained in this document is to be construed as a legal opinion or view of Mamta Binani & Associates whatsoever and the content is to be used strictly for educative purposes only.



## Activities at a Glance ...

### ACAE CHARTERED ACCOUNTANTS CPE STUDY CIRCLE OF EIRC OF ICAI

Sl.No.	Date	Topics & Speaker
1.0	03.02.2023 (Rotary Sadan, Kolkata)	<b>3 CPE Hours Seminar on Union Budget 2023. Speakers :</b> CA. K R Sekar, Bengaluru – Direct Tax; CA. Rohini Agarwal, Delhi – Indirect Tax; Shri Utsav Parekh, Kolkata – Industry and Prof. (Dr.) Suman K Mukerjee – Economy.
2.0	21.02.2023 (Kala Mandir, Kolkata)	<b>Felicitation Programme</b> of CA. Aniket Sunil Talati on being elected as the President (2023-2024) and CA. Ranjeet Kr Agarwal on being elected as the Vice President (2023-2024) of The Institute of Chartered Accountants of India, New Delhi, organized by EIRC of ICAI along with ACAE Chartered Accountants CPE Study Circle of EIRC of ICAI and other Study Circles.
3.0	27.02.2023 (ACAE, Emami Conference Hall)	<b>2CPE Hours Lecture Meeting on New ITR Form AY 2023-24 – A Walkthrough. Speakers :</b> CA. Ayush Goel, Kolkata.
4.0	02.03.2023 (ACAE, Emami Conference Hall)	<b>2CPE Hours Lecture Meeting on Recent Changes in GST and Provisions of Finance Bill, 2023. Speakers :</b> CA. Arup Dasgupta, Kolkata.
5.0	03.03.2023 (4A Short Street, Kolkata)	<b>EIRC of ICAI in association with all Study Circles of EIRC organised Holi Milan</b> followed by Dinner. Musical Programmes, Games, Thandai, Snacks, Folk Songs & Dhap, Luck Draw.
6.0	17.03.2023 (ACAE, Emami Conference Hall)	<b>2CPE Hours Lecture Meeting on Inquiry and Inspection under Companies Act, 2013 by ROC and RD. Speaker :</b> CS. Mohan Ram Goenka, Kolkata.
7.0	23.03.2023 (Virtual)	<b>2CPE Hrs Seminar on Bank Audit – A Practical Approach. Speaker :</b> CA. Lokesh Gupta, Delhi.
8.0	01.04.2023 (ACAE, Emami Conference Hall)	<b>2CPE Hours Lecture Meeting on Professional Networking – A Powerful tool to increase your business. Speaker:</b> Mr. Lokesh Nathany, Hyderabad.
9.0	10.04.2023 (ACAE, Emami Conference Hall)	<b>2CPE Hours Lecture Meeting on Finance Act 2023. Speaker :</b> CA. Sanjay Bhattacharya, Kolkata and Advocate Ramesh Kr Patodia, Kolkata.
10.0	12.04.2023 (ACAE, Emami Conference Hall)	<b>3CPE Hours Lecture Meeting on Audit Trail and CSR. Topic : Corporate Social Responsibility – Speaker :</b> CA. Mayur Agrawal, Kolkata; <b>Topic : Provisions relating to Audit Trail and ICAI Guidelines – Speaker :</b> CA. Nitesh Sureka, Kolkata. <b>Discussion on Practical Issues in Accounting Software : Tally and Zoho – Speakers :</b> CA. Suyash Tulsyan, Kolkata and CA. Sarita Agarwal, Kolkata.
11.0	21.04.2023 (ACAE, Emami Conference Hall)	<b>2CPE Hours Lecture Meeting on Charitable Trusts – Comprehensive Analysis with latest Amendments and Judicial Pronouncements. Speaker :</b> CA. Suresh Kumar Kejriwal, Kolkata.
12.0	27.04.2023 (ACAE, Emami Conference Hall)	<b>2CPE Lecture Meeting on GST Amnesty Schemes &amp; WB Settlement of Disputes (SOD) Scheme, 2023. Speaker :</b> CS. Aditya Singhania, Kolkata.

Forthcoming Programme :

**GST Conclave – 2023** on Saturday, 17th June, 2023 at The Hotel Hindusthan International, Kolkata.





**ACAIE CHARTERED ACCOUNTANTS CPE STUDY CIRCLE OF EIRC OF ICAI**  
**GOODS AND SERVICES TAX (GST) CONCLAVE 2023**

**Decoding the future of GST:  
Compliance, Enforcement and Litigation**

**6 CPE HOURS**

**Saturday, the 17th June, 2023**

**The Hotel Hindusthan International, Kolkata**

**Registration : 9.30 AM to 10.00 AM**

**Inaugural Session : 10.00 AM to 11.00 AM**



**Guest of Honour**

Shri Ashutosh Awasthi, IRS\*  
Chief Commissioner of CGST & CX



**Chief Guest**

The Hon'ble Justice T. S. Sivagnanam\*  
Chief Justice, Calcutta High Court



**Special Guest**

CA. Sushil Kr Goyal  
Chairman, GST & Indirect Taxes Committee, ICAI

**TECHNICAL SESSION I - 11.00 AM to 12.00 NOON**

**GST Compliance**



CA. Jatin Christopher  
Bengaluru

**TECHNICAL SESSION II - 12.00 NOON to 1.00 PM**

**GST Enforcement**



Shri Ashish Chandan, IRS  
Principal Commissioner, CGST & CX



Advocate J K Mittal  
Supreme Court of India

**TECHNICAL SESSION III - 2.00 PM to 3.00 PM**

**GST Litigation**



Advocate Bharat Raichandani  
Supreme Court of India

**PANEL DISCUSSION ON DECODING THE FUTURE OF GST :  
COMPLIANCE, ENFORCEMENT AND LITIGATION**  
**3.00 PM to 5.00 PM**

**Panelists:**



Shri Khalid Aizaz Anwar, IAS  
Commissioner, West Bengal GST



CA. Jatin Christopher  
Bengaluru



Advocate J K Mittal  
Supreme Court of India



Advocate Bharat Raichandani  
Supreme Court of India



Shri Sandeep Chatterjee  
Ex - CFO, DIC Industries Ltd.



Moderator: CA. Arun Kr Agarwal  
Kolkata

\*confirmation awaited

**PLEASE REGISTER IN ADVANCE :**  
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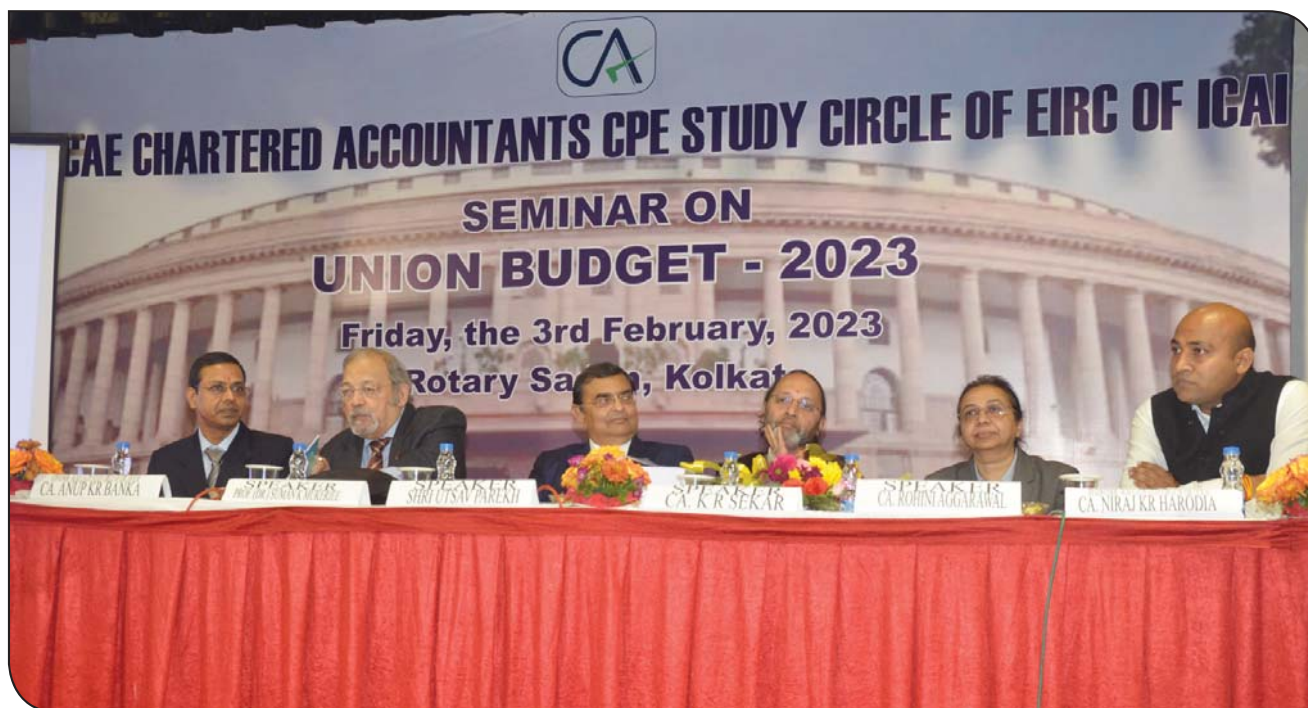
**CA. Anup Kr Banka**  
Convenor

**CA. Vikash Kr Banka**  
Dy Convenor



## ACAE CA Study Circle at a Glance ...

3CPE Hours Seminar on Union Budget 2023  
on Friday, 3rd February, 2023 at Rotary Sadan, Kolkata



Convenor CA. Anup Kr Banka, Speakers Prof. (Dr.) Suman K Mukerjee, Shri Utsav Parekh, CA. K R Sekar, CA. Rohini Aggarawal and Dy. Convenor CA. Niraj Kr Harodia



Cross-section of the audience

**Felicitation programme organised by EIRC of ICAI along with all Study Circles  
on Tuesday, 21st February, 2023 at Kala Mandir, Kolkata**



Felicitation of CA. Aniket Sunil Talati on being elected as the President (2023-24) and CA. Ranjeet Kumar Agarwal on being elected as the Vice President (2023-24) of ICAI by Convenor CA Anup Kumar Banka and Dy. Convenor CA Vikash Kumar Banka and other members of Study Circle

**2 CPE Hours Lecture Meeting on New ITR Form AY 2023-24 – A Walkthrough  
on Monday, 27th February, 2023 at ACAE, Emami Conference Hall**



On the dais (L-R) Convenor CA Anup Kumar Banka, Speaker CA. Ayush Goel and CA Sital Khemka.



Presentation of Memento to Speaker CA. Ayush Goel.

**2CPE Hours Lecture Meeting on Recent Changes in GST and Provisions of Finance Bill, 2023  
on Thursday, 2nd March, 2023 at ACAE, Emami Conference Hall**



Speaker CA. Arup Dasgupta, Kolkata giving his deliberation.



Presentation of Memento to Speaker CA. Arup Dasgupta, Kolkata.



EIRC of ICAI in Association with all Study Circles of EIRC organised Holi Milan on Friday, 3rd March, 2023 at 4A, Short Street, Kolkata





**2CPE Hours Lecture Meeting on Inquiry and Inspection under Companies Act, 2013 by ROC and RD  
on Friday, 17th March, 2023 at ACAE, Emami Conference Hall, Kolkata**



On the dais (L-R) Convenor CA. Anup Kr Banka and Speaker CS. Mohan Ram Goenka.



Presentation of Memento to Speaker CS. Mohan Ram Goenka.

**2CPE Hours Lecture Meeting on Professional Networking – A Powerful tool to increase your business  
on Saturday, 1st April, 2023 at ACAE, Emami Conference Hall, Kolkata**



On the dais (L-R) Convenor CA. Anup Kr Banka, Speaker Mr. Lokesh Nathany and Dy. Convenor CA. Vikash Kr Banka.



Presentation of Memento to Speaker Mr. Lokesh Nathany.

**2CPE Hours Lecture Meeting on Finance Act 2023  
on Monday, 10th April, 2023 at ACAE, Emami Conference Hall, Kolkata**



On the dais (L-R) Convenor CA. Anup Kr Banka, Speakers CA. Sanjay Bhattacharya, Advocate Ramesh Kr Patodia and CA Sital Khemka.



On the dais (L-R) Speaker CA. Sanjay Bhattacharya giving his deliberation, Convenor CA. Anup Kr Banka and Advocate Ramesh Kr Patodia.

**3CPE Hours Lecture Meeting on Audit Trail and CSR  
on Wednesday, 12th April, 2023 at ACAE, Emami Conference Hall**



On the dais (L-R) Speakers CA. Nitesh Sureka, CA. Mayur Agrawal, Convenor CA. Anup Kr Banka, Speakers CA. Suyash Tulsyan and CA. Sarita Agarwal.



Presentation of Memento to Speaker CA. Sarita Agarwal.

**2CPE Hours Lecture Meeting on Charitable Trusts – Comprehensive Analysis with latest Amendments and Judicial Pronouncements on Friday, 21st April, 2023 at ACAE, Emami Conference Hall**



On the dais (L-R) Speaker CA. Suresh Kumar Kejirwal and Dy. Convenor CA. Vikash Kr Banka.



Presentation of Memento to Speaker CA. Suresh Kumar Kejirwal.

**2CPE Lecture Meeting on GST Amnesty Schemes & WB Settlement of Disputes (SOD) Scheme, 2023  
on Thursday, 27th April, 2023 at ACAE, Emami Conference Hall**



CA Tarun Kumar Gupta introducing Speaker CS. Aditya Singhania.



Presentation of Memento to Speaker CS. Aditya Singhania.



**ACAE CHARTERED ACCOUNTANTS  
CPE STUDY CIRCLE OF EIRC OF ICAI**

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