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## Lesson 1: Introduction to Insolvency and Bankruptcy Code (IBC)

### Need for a New Law

- Before IBC: No single law for insolvency/bankruptcy in India → multiple overlapping laws & forums.
- Existing laws:
  - **Companies:** SICA 1985, RDDBFI Act 1993, SARFAESI Act 2002, Companies Act 2013.
  - **Individuals:** Presidency Towns Insolvency Act 1909, Provincial Insolvency Act 1920.
- Multiple fora: **BIFR, DRT, NCLT, High Courts** → jurisdictional overlaps → delays.
- World Bank 2015: Average insolvency resolution in India = **4.3 years** vs UK (1 yr), USA (1.5 yrs).

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### Objectives of IBC

- **Time-bound** resolution for corporate, partnership, and individuals.
- **Maximization of asset value.**
- Promote **entrepreneurship & credit availability.**
- Balance **interests of all stakeholders** (including govt dues).
- Establish **Insolvency and Bankruptcy Fund.**
- Improve **Ease of Doing Business** → attract investments → higher economic growth.

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### Supreme Court Guidance: Key Cases

#### 1. Independent Sugar Corporation Ltd. vs Girish Sriram Juneja (2025)

- Market failure is natural; CIRP → rapid renegotiation for going concern → **maximize corporate debtor value.**
- If viable → restructuring; if unviable → rapid liquidation.
- IBC aligns with **creative construction & destruction**, modern laws, efficient institutions.

- Principles:
  1. Certainty for market efficiency & growth.
  2. Maximize asset value.
  3. Balance liquidation & reorganization.
  4. Equitable treatment of creditors.
  5. Timely, impartial resolution.
  6. Preserve insolvency estate for fair distribution.
  7. Transparent, predictable law → incentivize info sharing.
  8. Recognize creditor rights, clear claim priorities.
  9. Framework for **cross-border insolvency.**
- **CIRP + CCI compliance:** Resolution plan approval must follow statutory framework.
- **Rule of law & procedural safeguards** cannot be bypassed for expediency.

#### 2. Arun Kumar Jagatramka v Jindal Steel & Power Ltd (2021)

- IBC promotes **good corporate governance & rule of law.**
- Corporate insolvency = public interest issue; balances **creditors & stakeholders.**
- **Creditor collective decisions** are prioritized.
- Corporate enterprise interests ≠ promoter interests.
- **Liquidation** = last resort.
- **Purposive interpretation** ensures old regime problems don't re-enter.

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### Summary

- **IBC** = unified, modern law replacing fragmented insolvency regime.
- **Focus:** time-bound, value maximization, stakeholder balance, transparent process.
- Supports **entrepreneurship, credit growth, investments, and economic development.**
- **CIRP** ensures going concern → maximizes value; liquidation only if restructuring not viable.
- Strong emphasis on **procedural compliance, fairness, transparency, and rule of law.**

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## LESSON 2 – CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## 🔄 Replacement of Authorised Representative (AR)

### Reg 16A(1):

- IRP to select IP chosen by highest no. of FCs in class (Form CA)
- Form CA not valid if submitted after public announcement time

### Reg 16A(2):

- IRP to apply to AA for AR within 2 days of claim verification
- Until then, selected IP acts as interim AR, has same rights & duties as AR

### Reg 16A(3):

- Delay in AR appointment ≠ affect CoC decisions

### Reg 16A(3A):

- ≥10% voting share FCs in class → may request replacement of AR
- Request to IRP/RP, who must circulate & open voting for ≥ 24 hrs

### Reg 16A(3B):

- IRP/RP must offer min. 3 IPs including:
  - Suggested IP(s) under 3A
  - Existing AR

### Reg 16A(3C):

- RP to apply to AA for appointment of IP with highest voting %

## 💰 Fees Payable to AR (Per CoC Meeting):

### No. of Creditors Fee (₹)

10-100	30,000
101-1000	40,000
>1000	50,000

### Fee for Meeting with Creditors in Class:

### No. of Creditors Fee (₹)

10-100	10,000
101-1000	12,000
>1000	15,000

- Fee = IRP cost for 2 meetings/CoC meeting
- Extra meetings = IRP cost only if approved by CoC

## 📋 Duties of AR:

- Assist creditors in understanding CoC discussions
- Review CoC minutes, provide comments to RP
- Assist in marketing strategy (Reg 36C(1))
- Collaborate to enhance marketability (Reg 36C(3))
- Help evaluate resolution plans
- Ensure access to required docs/info
- Update creditors regularly on CIRP progress
- Suggest modifications to resolution plan
- Record & prepare minutes of class meetings
- Represent class before AA, NCLAT, regulators
- Class creditors may give extra responsibilities

## 🏢 Regulatory Fee (Reg 31A):

- 0.25% of realisable value > liquidation value → payable to IBBI
  - Applicable if plan approved u/s 31 on/after 01.10.2022
  - NOT applicable if plan by real estate allottees
- 1% of hiring cost of professional/services (IRP/RP) = Fee to Board
  - As per Reg 7(2)(cb) of IP Regs

## ✅ CoC Approval of IRP Costs (Reg 31B):

- RP to place corporate debtor status & get CoC approval for all IRP costs

## 👉 Fee to IRP/RP (Reg 34B):

- Fee under Reg 33/34 → as per applicant/CoC decision
- If appointed on/after 01.10.2022 → ≥ fee in Sch-II Clause 1
- CoC/applicant may fix higher fee based on:
  - Size, sector, activity, complexity
- After Sch-II period → fee = as per CoC/applicant
- Perf-linked incentive (≤ ₹5 Cr) allowed for plan approved on/after 01.10.2022
- Fee may be paid from:
  - Corp debtor funds
  - Applicant/CoC contribution
  - Interim finance
- Fee = part of CIRP cost

## 📄 Info Memo, Eval Matrix & RFRP (Reg 36B):

- Within 5 days of final list under Reg 36A(12) → RP to issue:
  - Info Memo, Eval Matrix, RFRP to all applicants in final list
- May also be provided to provisional list applicants, if available

## 📢 Marketing Strategy (Reg 36C):

- RP to prepare strategy in consultation with CoC if assets > ₹100 Cr
- May prepare in other cases too
- Strategy & cost → CoC approval needed
- CoC members may also take steps to market assets

## ☐ Assessment of Compromise/Arrangement (Reg 39BA):

- While deciding liquidation u/s 33 → CoC to examine if compromise/arrangement (under Reg 2B of Liquidation Regs) possible
- RP to submit CoC recommendation to AA
- If recommended, RP & CoC to keep exploring possibility until AA order on liquidation

## Lesson 5: Liquidation of Corporate Person

### Liquidation Process Overview

- Liquidator forms liquidation estate, invites claims, sells assets in consultation with SCC, distributes as per Sec 53 waterfall.
- Insolvency Professional (IP) files reports to AA & IBBI.
- Earlier via emails – now via electronic forms on IBBI portal.

### Benefits of Electronic Forms

- ↑ Efficiency, ↓ delays.
- Accurate, transparent record-keeping.
- Reduce errors, fast compliance.

### Forms Overview

Form No.	Scope	Timeline
LIQ 1	From Liquidation start till Public Announcement	10th of next month after Public Announcement
LIQ 2	Till Progress Report (valuation, sale, PUF, SCC, R&P)	10th of next month after Progress Report submission
LIQ 3	Till Dissolution Application (sale, PUF, Realisation, Distribution, R&P)	10th of next month after Dissolution App.

Form No.	Scope	Timeline
LIQ 4	Till Dissolution Order (Distribution, R&P)	Within 14 days of Dissolution Order

#### Electronic Filing – Portal Compliance

- File via <https://www.ibbi.gov.in> with DSC/e-sign.
- Responsibility of IP to file **accurate, complete info**.

#### Mandatory Filing

- For all cases **post-circular**, follow prescribed **timelines**.
- Ongoing cases** (no Dissolution App) – file **LIQ 1 & 2** (Mar 24 Qtr) by **30.09.2024**.
- Dissolution App filed** – file **LIQ 1, 2 (last Qtr) + LIQ 3** by **30.09.2024**.
- Dissolution Order passed** – file **LIQ 1, 2 (last Qtr), LIQ 3, LIQ 4** by **30.09.2024**.

#### Non-Compliance

- Liable for:
  - Not filing form
  - Filing **inaccurate/incomplete info**

#### Compromise/Arrangement – Sec 230 CA, 2013

- Must be completed within **90 days** from **Liquidation Order**.
- Ineligible person** (Sec 29A) cannot be party.
- Only if **Reg 39BA IRP Regs** recommends.
- File proposal within **30 days** of Liquidation Commencement.
- 90-day compromise period excluded** from liquidation timeline.

#### SCC – Stakeholders’ Consultation Committee (Reg 31A)

- Formed within **60 days** of Liquidation Commencement.
- Based on list under **Reg 31**.
- Advises Liquidator on:
  - Remuneration** of professionals
  - Sale process**, pre-bid, reserve price, strategy
  - Liquidator’s fees**
  - Valuation** under Reg 35(2)
  - PUFE/Fraud** transactions – strategy, distribution
  - Review strategy** if sale fails
  - Legal proceedings** (continuation/initiation)
  - Extension of sale consideration** (beyond 90 days, Para 1(12), Sch I)

#### Exclusion from Liquidation Estate (Reg 46A)

- Real estate possession** given to **allottees** – excluded from liquidation estate u/s **36(4)(e)**.

#### Early Dissolution (Reg 14)

- If:
  - Assets < Cost** of liquidation
  - No further **investigation needed**
- Liquidator may apply to AA after **SCC consultation**, with report.

### Lesson 6: Voluntary Liquidation of Companies

#### ◆ Initiation of Voluntary Liquidation (Sec 59 & Reg 3)

- Vol. Liquidation** can be initiated by a **Corporate Person (CP)** (not FIs).
- Pre-condition: CP must **not defraud** and be able to **pay off debts** or have **no debt**.
- Reg 3(1)**: Initiation requires:
  - Declaration by majority** of:
    - Designated partners (LLP) / Governing body (others)
    - Verified by **affidavit**
    - Declaring:

- Full inquiry done
  - CP has no debt / will pay in full from sale proceeds
  - No intent to defraud
  - Provision for **pending matters**
- Declaration to be accompanied by:
    - Audited FS** (2 yrs or since incorporation)
    - Valuation Report** (by RV)
    - Disclosure** of pending assessments/litigations

#### ◆ Resolutions & Creditor Approval

- Within **4 weeks** of declaration:
  - Special resolution** by members/partners for:
    - Liquidation & appointment of **IP as Liquidator**
    - OR liquidation due to expiry/event under charter docs
- If CP **owes debt**:
  - Creditors holding 2/3rd value** must approve within **7 days**
- CP must **notify ROC & IBBI** within **7 days** of resolution/creditor approval
- Liquidation commences from **date of resolution**

#### ◆ Reporting by Liquidator (Reg 8)

- Liquidator to submit:
  - Preliminary Report**
  - Status Reports**
  - Minutes of Stakeholder Consultations**
  - Final Report**

#### ◆ Timeline for Completion (Reg 37)

- Completion Timeline:
  - 270 days** – if creditors’ approval is required
  - 90 days** – in all other cases
- If exceeds:
  - Must **hold meeting of contributories** within **15 days** of expiry and **every 270/90 days**
  - Status Report** to include:
    - Stakeholder list
    - Assets pending realization
    - Distributions made (realized/unsold assets)
    - Litigation updates
    - Avoidance transaction status
    - Reasons for delay + req. additional time
  - Attach **audited liquidation accounts**
  - File with IBBI **within 7 days** of meeting

#### ◆ Final Steps

- On **completion**, Liquidator:
  - Prepares **Final Report** (Reg 38)
  - Files **Application for Dissolution** with **Adjudicating Authority (AA)**

#### ◆ Online Filing of VL Forms (IBBI Platform)

- Forms introduced to:
  - Enhance **efficiency**, reduce delays/errors
  - Ensure **systematic** reporting via IBBI portal
  - IP to **file forms with DSC/e-sign**

#### ◆ VL Forms Summary

Form	Content	Timeline
VL 1	Details of CP & Vol. Liqu. process	10th day of 2nd month after <b>public announcement</b>

Form	Content	Timeline
VL 2	Contributory meetings, delays, liquidator replacement	10th day of month after <b>meeting/replacement</b>
VL 3	Dissolution app, unclaimed proceeds, realisation, pending litigation/fraud	10th day of month after <b>filing app with AA</b>
VL 4	Order for dissolution, distribution, receipts/payments	14 days of <b>AA order</b> or withdrawal/suspension

#### ◆ Transitional Filing Deadlines (Circular Compliance)

- Applies where **VL process started after circular issuance**
- Ongoing cases with **no dissolution app**:
  - File **VL 1, VL 2** (if delay/replacement) by **30 Sept 2024**
- Cases with **dissolution/withdrawal app filed**:
  - File **VL 1, VL 2, VL 3** by **30 Sept 2024**
- Cases with **dissolution/withdrawal ordered**:
  - File **VL 1, VL 3, VL 4** by **30 Sept 2024**

#### ◆ Non-Compliance

- IP liable under Code & Regulations for:
  - Non-filing / incomplete / inaccurate info

### Lesson 15: Professional and Ethical Practices for Insolvency Practitioners.

#### Duties of Resolution Professional

##### Reg. 3A, CIRP Regs. 2016

##### ◆ Take custody/control of:

- Info: assets, finance, ops (Sec 18(a), Reg 36)
- Assets in BS/records (Sec 18(f))

##### ◆ Promoters/personnel duty:

- Provide list of assets/records during handover
- RP can assign custody if needed

##### ◆ If no list given → RP prepares list at time of taking over

##### ◆ List signing: By all present + 2 witnesses

##### ◆ RP shall requisition:

- Info not handed over (Sec 18(a), Reg 36)
- Assets in records but not handed over (Sec 18(f))

##### ◆ Sec 19(2) Application:

- Show requisition + absence in list (Sub-reg (2)/(3))

#### Eligibility for Registration (Reg. 4(1), IP Regs. 2016)

##### ✗ Not eligible if:

- Minor / Not resident in India
- Lacks required qual./exp. (Reg 5/9)
- Convicted (imprisonment > 6m) & 5 yrs not elapsed
- Convicted ≥ 7 yrs → permanently ineligible
- Undischarged insolvent / unsound mind
- Not fit & proper person

##### ✔ Fit & proper criteria:

- Integrity, reputation, character
- No convictions/restraint orders
- Competence, solvency, net worth

##### ◆ IPE → Not eligible if partner/director not fit & proper

#### Separate Bank A/c for RE Projects (Reg. 4D)

RP/IRP must operate separate bank a/c for each real estate project.

#### Application for Registration (Reg. 6)

##### 👤 Individual:

- Form A, ₹20,000, via IPA

##### 👥 IPE:

- Form AA, ₹2,00,000, via IPA

##### ✉ Timeline:

- IPA ack. in 7 days
- Forward to IBBI in 30 days (excluding doc collection time)

##### 👁 IBBI may:

- Ask docs/info
- Call for appearance

#### Surrender of Certificate (Reg. 10A)

##### ◆ Voluntary surrender → Request + original cert.

##### ◆ IBBI shall accept within 30 days if satisfied

##### ◆ Post-cancellation → Can't represent as IP

##### ☐ Special Procedure:

- Not bound by Reg. 11
- Issue notice → 21 days for reply
- IBBI decides: cancel/ask to complete assignments/pay fees
- Decision in 30 days from reply
- On death/winding up → Deemed cancelled
- Legal heirs/assignees → Must hand over records/assets

#### Recognition of IPE (Reg. 12)

##### ✔ Eligibility:

- Co./LLP/RPF → Objective: IP support/services
- **Net worth ≥ ₹1 Cr**
- **Majority** equity/cap. contrib. by IPs
- **Majority** of partners/directors = IPs
- No partner/director in another IPE

##### ☐ Net worth:

- Co. → Sec 2(57), CA, 2013
- LLP/RPF → Cap. contrib. + undistributed profits – acc. losses

#### Code of Conduct for IPs

##### Integrity & Objectivity

- Honest, straightforward
- No misrep. or disrepute
- Free from bias/conflict/undue influence
- Disclose conflict of interest to stakeholders
- Must not acquire debtor's assets directly/indirectly
- No relatives permitted to acquire assets

##### Independence & Impartiality

- Conduct process independently
- During liquidation → Ensure no asset acquisition by self/relatives unless:
  - ✔ No conflict
  - ✔ IBBI approval obtained
- Shall not take up if not independent due to:
  - Self
  - Relatives
  - Partners/directors/IP entity

Let me know if you want the rest of the **Code of Conduct (points 8 onwards)** or a summary table for quick revision.

Here's a **summarized, structured note** for exam revision on the above content related to **Insolvency Professional's Code of Conduct** with **bolded keywords**, symbols, and separated sections for fast handwritten notes:

#### 📁 Information Management

##### 15. Communication

- Must be **clear, simple**, timely
- Include: **notices, reports, updates, clarifications**

##### 15A. Communication Details

- Must mention: **Name, Address, Email, Reg. No., AFA validity**

#### 15 (Duplication - Record Maintenance)

- Maintain **written records** of: decision, reasons, info/evidence
- Records must be sufficient for **reasonable person** to assess

#### 16. Private Communication

- **✗**No private communication unless allowed by **Code/regulations/orders**

#### 17. Inspections

- Must **cooperate & appear** for Board/IPA inspections/investigations

#### 18. Information Provision

- Provide info/records as demanded by **Board/IPA**

#### 19. Research/Audit

- Be available for **study, research, audit** by Board

### 🔒 Confidentiality

#### 20. Confidentiality

- Maintain confidentiality of process
- Disclosure **⇒**  only with **party consent** or **legal requirement**

### 🏠 Occupation, Employment & Restrictions

#### 21. Assignment Limit

- Avoid **too many assignments**
- Limit: **Max 10 CIRP**, of which **Max 3** with claims > ₹1000 Cr

#### 22A. Resignation

- Resign only with:
  - **Recommendation:** CoC/Consultation Cttee/Debtor/Creditor
  - **Approval:** AA
- Must continue till **approval of resignation**

#### 22. Employment Restriction

- **✗**Cannot take employment while:
  - Holding **valid AFA**
  - Or doing an **assignment**

#### 23A. Post-CIRP Employment Ban

- **✗**No employment/services (unless open recruitment) with:
  - **>10% voting creditor**
  - **RA/CD** or their related parties
- Restriction for **1 year** post-process

#### 23B. Appointment of Relatives

- **✗**Cannot engage relatives/related parties in assignment
- **IP Entity** can engage **partners/directors**, except for **valuation/audit**

#### 23C. Assignment by Relatives

- **✗**IP can't provide service for relative's assignment & vice versa
- IP entity can, except for **valuation/audit**

#### 23. Disrepute

- **✗**Avoid any business **inconsistent with profession's reputation**

### 💰 Remuneration & Costs

#### 24. Remuneration

- Must be **transparent, reasonable**, and per **regulations**

#### 25A. Fee Disclosure

- Disclose:
  - IP fee
  - IPE fee
  - Professional's fee
- To IPA **⇒**  must **publish on website**

#### 25B. Billing

- Raise bills/invoices **in own name**
- Payment via **banking channel**

#### 25C. Professionals' Billing

- Ensure IPE/professionals raise bills **in their name**
- Payment via **banking channel**

#### 25. Undisclosed Fees

- **✗**No fees except those **disclosed & approved**

#### 26A. Fee Sharing

- **✗**No fee/charge sharing from **appointed professionals/support services**

#### 26. Cost Disclosure

- Disclose all **IRP/Liquidation/Bankruptcy** costs
- Ensure **reasonableness** of costs

#### 27A. Law Compliance

- Ensure **corporate person complies** with laws during process

#### 27B. Penalty Restriction

- **✗**No inclusion of **penalty/loss** (due to non-compliance) in IRP/Liquidation costs

### 🎁 Gifts & Hospitality

#### 27. Acceptance

- **✗**No gift/hospitality if it **affects independence**

#### 28. Offering Gifts

- **✗**Cannot offer gift/advantage to public servant/others to **retain work/benefit**

### 📖 Important Case Law

#### Pooja Menghani vs. IBBI & Anr (Del HC, 20.11.2023)

- IP = **Heart & Brain** of CD during CIRP
- Any **disqualification** **⇒**  vitiates IBC's purpose

### case laws

#### 1. Prabhat Jain, Liquidator of Narmada Cereal Pvt Ltd v. MP Industrial Development Corp & Ors

🏠 NCLAT | 27.11.2024 | Comp. App. (AT) (Ins.) No. 697/2023

- **Issue:** Can Liquidator sub-lease land **not owned** by CD under **Sec 35(1)(d)** & override public land rules using **Sec 238?**
- **Held:**
  - Sec 35(1)(d) → No right to lease **3rd party land**.
  - Sec 238 → Can't override **public land regulation** by statutory bodies.
  - Cited: **SC in MCGM v. Abhilash Lal (2020)** – Statutory powers > IBC.
  - Also followed in:
    - **NOIDA v. Abhishek Anand**
    - **MIDC v. Santanu T Ray**
- **Conclusion:** Sub-lease to **Maa Yashoda Food Grains** = **illegal**. Liquidator needs **permission** from public authority.

#### 2. Murlidhar Vincom Pvt Ltd v. Skoda (India) Pvt Ltd

🏠 NCLAT | 26.11.2024 | Comp. App. (AT) (Ins.) No. 1334/2024

- **Issue:** Can **unrefunded share app. money** be **financial debt** under IBC?
- **Held:**
  - **Rule 2(c)(vii), CADR Rules** → needs nexus to **Sec 42, Cos Act, 2013**.
  - **No Private Placement Offer Letter** issued by CD.
  - **No valid agreement** or **allotment proof**.
  - Hence, **money ≠ deposit, ≠ financial debt**.
- **Conclusion:** **Sec 7 Application rejected**. Remedy = **civil recovery**.

#### 3. SBI & Ors v. Consortium of Murari Lal Jalan & Florian Fritsch

🏠 SC | 07.11.2024 | Civil Appeal Nos. 5023–5024/2024

- **Issue:** Can SRA **withdraw/modify** Plan after submission to NCLT but **before approval** under **Sec 31(1)?**
- **Held:**

- Cited: **Ebix Singapore v. CoC of Educomp (2022) 2 SCC 401.**
- Once **CoC-approved Plan** is submitted to NCLT → **binding, irrevocable.**
- No scope for **withdrawal/modification** by CoC/SRA/NCLT.
- **Conclusion: Submitted Plan = Final & Binding**, even before NCLT approval.

#### 4. TRAI v. Reliance Telecom Ltd & Ors

🏠 NCLAT | 05.11.2024 | Comp. App. (AT) (Ins.) Nos. 273 & 355/2024

- **Issue:** Whether **TRAI Act** overrides IBC or vice versa?
- **Held:**
  - **Sec 238, IBC** → IBC overrides all **inconsistent laws.**
  - Cited: **A. Navinchandra Steels (2020)** – IBC = **special statute**, overrides **general/special laws.**
- **Conclusion: TRAI Act ≠ override IBC. IBC prevails.**

#### 5. Ramkrishna Forgings Ltd v. RP of ACIL Ltd & Anr

🏠 SC | 21.11.2023 | Civil Appeal No. 1527/2022

- **Issue:** Can NCLT/NCLAT interfere in **valuation/revaluation** if no objections raised during CIRP?
- **Held:**
  - 2 valuers used → FMV & LV not at variance.
  - **CoC (88.56%) approved** final plan → **commercial wisdom** prevails.
  - Cited:
    - **K. Sashidhar**
    - **Essar Steel**
    - **Maharashtra Seamless**
    - **Kalpraj Dharamshi**
- **Conclusion: No interference** unless violation of **Sec 30/31.** CoC decision = **final.**

#### 9. Sunil Kumar Agrawal v. NOIDA (NCLAT, 12 Jan 2023)

- **Sec 14(1)(d):** Bars recovery of property by **owner/lessor** if occupied by **Corporate Debtor** during **moratorium.**
- **Explanation:** Rights like **license, permit, clearance** etc. can't be **terminated/suspended** in insolvency if **dues are paid.**
- **Premium/Lease Rent** ≠ "similar grant/right" → Not protected under **Sec 14(1)(d).**
- **Held:** Order to pay lease rent valid during moratorium.

#### 10. Shri Guru Containers v. Jitendra Palande (NCLT, 22 Feb 2023)

- **IRP not at fault:** CIRP failure due to **non-cooperation** & no claims filed by **Operational Creditor (OC).**
- **OC** initiated CIRP but became **inactive.**
- **Creditors' role:** Must be **proactive; creditor-driven** system needs discipline on all sides.
- **Held:** IRP not scapegoat, OC conduct **deplorable.**

#### 11. Vallal RCK v. Siva Industries (SC, 3 Jun 2022)

- **Sec 12A:** Allows **withdrawal** of CIRP with **90% CoC** approval.
- Introduced by **2018 Amendment** → higher threshold than **Sec 30(4) (66%).**
- **Held:** CoC's **commercial wisdom** is **paramount**, no **judicial review** unless decision is **arbitrary/capricious.**

#### 12. NOIDA v. Anand Sonbhadra (SC, 17 May 2022)

- **Sec 5(8):** Defines **Financial Debt** → requires **disbursement** of funds.
- **NOIDA** gave lease, didn't **disburse funds** → **not Financial Creditor.**

- **Sec 5(8)(d):** Only **finance/capital leases** qualify, not regular leases.
- **Sec 5(8)(f):** Catch-all; requires **commercial borrowing effect** – not fulfilled.
- **Held:** NOIDA not Financial Creditor, but Parliament can **amend law** to include such lessors.

#### 13. Repetition of Sunil Kumar Agrawal v. NOIDA – Same as Point 9

→ No need to rewrite.

#### 14. Ashish Ispat Pvt Ltd v. Primuss Pipes (NCLAT)

- **Sec 12A** Withdrawal:
  - **Before CoC formation** → No 90% approval needed.
  - **After CoC formed** → 90% CoC approval mandatory.
- **Held:** Timing of application determines **requirement of CoC approval.**

#### 15. Jaypee Kensington Apt. Welfare Assn. v. NBCC (SC)

- **NCLT powers** limited to **legality** of Resolution Plan, not **commercial aspects.**
- **CoC's commercial wisdom** not substitutable by tribunal.
- CoC can **vote on multiple plans** simultaneously.
- **Held:** No **quantitative review** by courts; **debt/asset treatment** = CoC domain.

## Key Supreme Court Judgements under IBC & SARFAESI

### 1. Lalit Kumar Jain vs Union of India (2019)

- Upheld validity of **personal guarantor provisions** under IBC (Nov 15, 2019 notification).
- Approval of corporate debtor's Resolution Plan **does NOT discharge guarantors.**
- Liability depends on **terms of guarantee.**

### 2. Ghanashyam Mishra & Sons Pvt Ltd vs Edelweiss ARC

- **Government debts** (Central/State/Local) = covered under "Creditors" or "Other Stakeholders" (Sec 31(1) IBC).
- Once **Resolution Plan approved**, claims included = **frozen**, claims excluded = **extinguished.**
- Approved plan **binding on:** corporate debtor, employees, members, creditors, govt, other stakeholders.

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### 3. *Vbuiltfine Properties Pvt Ltd vs ROC Mumbai (2023)*

- NCLT restored company name & imposed **cost Rs. 5 lakh**, appeal challenged.
- Apex Court observations:
  - Appeal must be within **3 years** of striking off (Sec 252(1) Companies Act).
  - Restoration requires satisfying **3 conditions** under Sec 252(3).
  - NCLT order vague → **set aside & remitted** for fresh hearing.
  - Cost imposition must have **plausible reason**.

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### 4. *Kalyani Transco vs Bhushan Power & Steel Ltd (2024-2025)*

- Resolution Plan of JSW Steel for BPSL **quashed; Liquidation directed**.
- **Chronology Highlights:**
  - 2016: MCA probe into BSL/BPSL & group companies.
  - 2017: RBI mandates CIRP for “Dirty Dozen” accounts including BPSL.
  - 2019: NCLT approves JSW plan; ED attaches assets.
  - 2020: NCLAT allows JSW acquisition; ED & promoters approach SC.
  - 2021: JSW completes acquisition, pays Rs 19,350 Cr.
  - 2024-25: SC directs liquidation → Resolution Plan violated IBC.

#### SC Observations:

- **IBC silent on implementation phase**, but no leeway for SRA to **violate plan**.
- JSW delayed plan ~**2 years** → frustrated IBC purpose.
- Resolution Plan binds: **Corporate Debtor, creditors, govt, stakeholders, SRA** (Sec 31).
- **F frivolous litigation** cannot delay implementation.
- **CoC commercial wisdom** = must consider IBC, Regulations, time-bound resolution, asset value maximization.

#### • Failures noted:

- RP did not discharge statutory duties.
- CoC failed to exercise commercial wisdom, approve mandatory-compliant plan.
- SRA (JSW) misrepresented & delayed implementation.

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### 5. *Bank of India vs Sri Nangli Rice Mills Pvt Ltd (2025)*

- Analyzed **Sec 11 SARFAESI Act** (dispute resolution).

#### Key points:

- Sec 11 = **mandatory arbitration/conciliation** for disputes on securitisation, reconstruction, or non-payment.
- **Twin conditions:**
  1. Dispute between **bank/financial institution/ARC/qualified buyer**.
  2. Dispute relates to **securitisation/reconstruction/non-payment**.
- Section 11 includes **third-party defaults**, wide import of “non-payment including interest”.
- **Disputes between banks** = Sec 11 not applicable.
- “Borrower” includes **lender-turned-borrower** (receives assistance & creates security interest).
- **Legal fiction:** written arbitration agreement not required.
- Sec 11 is **mandatory** → cannot bypass or seek recourse elsewhere.

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#### *Exam-Ready Takeaways*

- **Resolution Plan** binds all stakeholders; violation = legal consequences (Sec 31 & 74 IBC).
- **CoC must exercise commercial wisdom** w.r.t eligibility, feasibility, viability, compliance.
- **Government dues = creditors;** post-plan approval, claims frozen/extinguished.

- **Restoration of company name** must satisfy Sec 252(1/3) criteria.
  - **SARFAESI Sec 11** = mandatory arbitration for disputes among covered parties; cannot be bypassed.
  - Delays, misrepresentation, or abuse of process → SC **quashes plan & directs liquidation.**
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For main notes-

<https://drive.google.com/drive/folders/10vIMvSQBN7u1EwyXfuCnvf-OSYrT6RnY?usp=sharing>

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