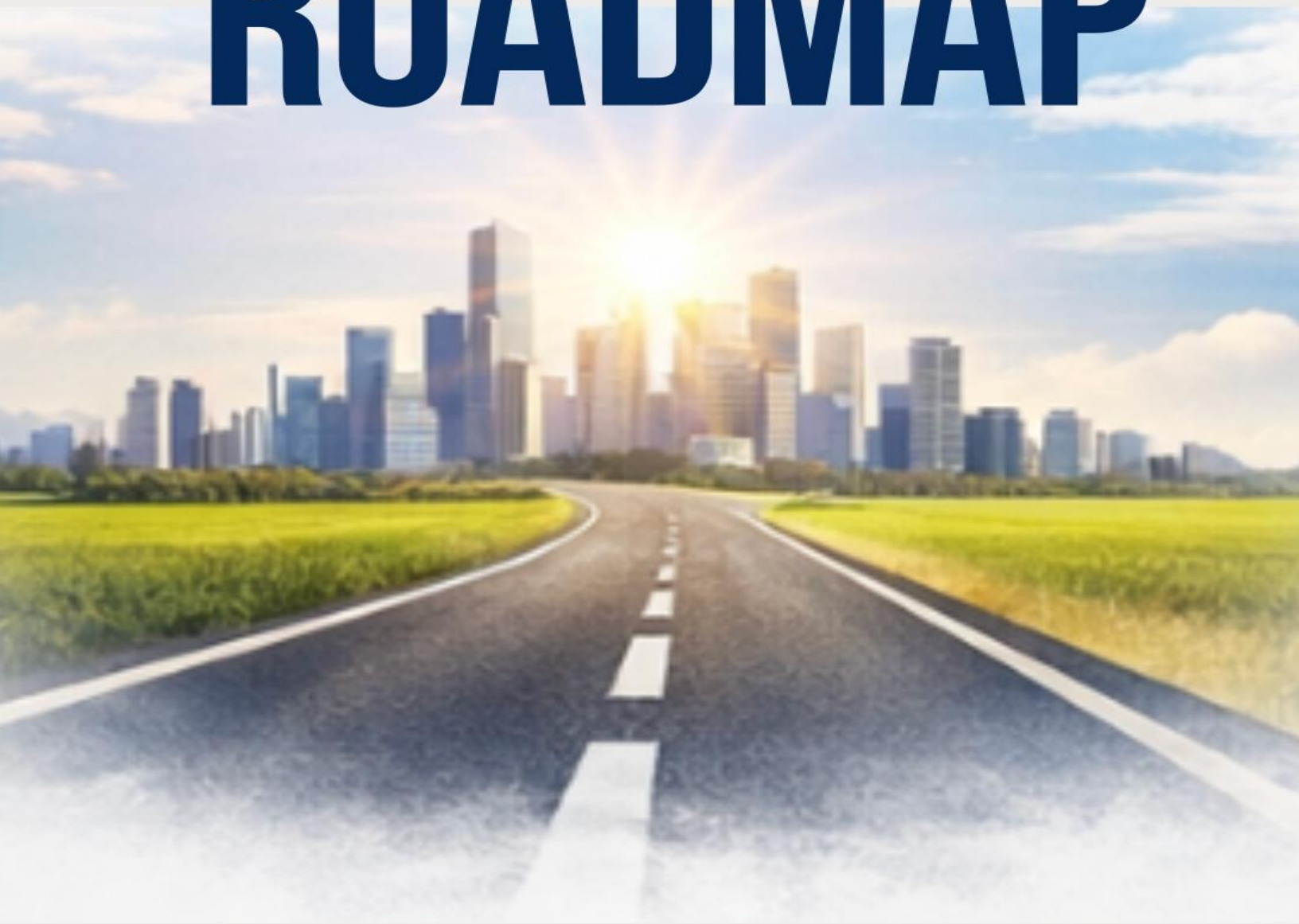


**DESIGN INNOVATIVE CONCEPT
PRESENTS**

**Insolvency and Bankruptcy - Law and
Practice**

CASE LAW BOOK

ROADMAP



**Designing Your Professional Success
- CA, CS & CMA**

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Roadmap – By Design Innovative Concept

Roadmap is designed to guide aspiring professionals through a structured path of learning, planning, and execution.

This book simplifies complex journeys into achievable milestones and provides clarity on how to approach professional studies with confidence and consistency.

Whether you are just starting or striving to improve your performance, this guide helps you build a strong mindset, develop effective study techniques, and stay focused on long-term success.

Your journey begins here.

Your roadmap starts now.

Resolution Strategies

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Restructuring through mergers, amalgamation and demerger

The NCLAT in Edelweiss Asset Reconstruction Company Ltd. v. Synergies Dooray Automotive Ltd. held that merger and amalgamation can be proposed in the Resolution Plan under the IBC.

It rejected the argument that such proposals violate Section 30(2)(e), affirming the overriding effect of the IBC.

While formal amalgamation orders under the Companies Act may be required later, the resolution plan can initially propose mergers.

Regulation 32A of IBBI (Liquidation Process) Regulations, 2016

The NCLT Hyderabad in Dr. Devaiah Pagidipati v. Southern Online Bio Technologies Ltd. held that sale of a corporate debtor under liquidation as a going concern does not require prior NCLT approval under the IBC.

However, for the sale to be effective, additional reliefs and concessions are necessary to operate the business as an ongoing concern. Without these essential reliefs, merely buying the assets as a going concern is ineffective and defeats the purpose of the sale.

NCLAT in M/s. Visisth Services Limited v. S. V. Ramani held that a sale as a 'Going Concern' under IBC means sale of both assets and liabilities together on an 'as is where is' basis. Bidders must unconditionally accept this without making conditional offers, preserving the integrity and purpose of the liquidation process.

The NCLT in Bank of Baroda v. Topworth Pipes & Tubes Pvt. Ltd. ruled that the successful bidder of a corporate debtor sold as a going concern during liquidation is not liable for any

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past liabilities of the corporate debtor before the effective date, including those from investigations, claims, or litigations.

This protects the bidder from prior debts, facilitating smoother sales under the IBC.

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The NCLT in Alchemist Asset Reconstruction Co. Ltd. v. Moser Baer India Ltd. held that a liquidator can sell perishable assets without prior permission if delay in permission would lead to significant value deterioration or perishability of the assets.

This interpretation prevents defeating the purpose of Regulation 33 of the Liquidation Process Regulations, allowing timely sale to preserve asset value.

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The High Court of Delhi in MRG Estates LLP v. Akash Shinghal directed IBBI to consider adopting the Swiss Challenge method as a valid auction process under the Liquidation Process Regulations.

This method involves an original bid followed by counter bids, ensuring transparency and maximizing value in insolvency asset sales.

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CASE LAWS

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NCLAT in Y. Shivram Prasad v. S. Dhanapal held that liquidation is a last resort when no resolution plan is viable. It rejected promoters' request for settlement after the allowed stages passed.

The liquidator must protect the corporate debtor, manage assets, verify claims, and continue business for beneficial liquidation under Section 35.

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If compromise proposals arise, the liquidator should seek approval under Section 230 of the Companies Act.

Failing that, the corporate debtor must be sold outright to preserve employee interests and maximize value, emphasizing revival even during liquidation.

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The NCLT Mumbai rejected Edelweiss Asset Reconstruction's resolution plan for Bharati Defence due to lack of upfront funds, uncertainties, and failure to protect all stakeholders.

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The plan involved a delayed sale and speculative value enhancement with majority equity held by the applicant.

The court found the plan inadequate and risky, leading to an order for liquidation instead.