INSOLVENCY AND BANKRUPTCY CODE

- Amendments in IBC relating to Avoidance and other provisions

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Insolvency and Bankruptcy Code Background and context

IBC – a Paradigm Shift

- Redesign of the entire resolution process
- Enforces the concept of 'Creditor in Control' instead of 'Debtor in Possession'
- RP is a court appointed officer to facilitate the process
- Underlying spirit of the Code: Resolution, not Recovery, not Liquidation
- Value maximization with fairness and speed-
- Defined time frame
- To provide for time bound resolution for viable businesses. Helps reorganisation and /or restructuring of business

Key Achievements of IBC

- **Post-Resolution Success:** Market capitalization of resolved firms reportedly grew from **Rs 2.8 lakh crore to Rs 9 lakh crore** within 5 years, demonstrating the long-term efficacy of the framework.

Key Achievements:

- By late 2025, IBC facilitated the recovery of **Rs 4.1 lakh crore** for creditors and successfully rescued over **1,300 companies**.
- Its greatest impact is a behavioral shift as over **30,310 cases** involving **Rs 13.78 lakh crore** were settled before admission, as promoters feared losing control.
- **High recovery efficiency**—averaging **170% of liquidation value**—has helped drive bank Gross NPAs to a record low of **2.3%**, strengthening the overall economy.
- **Banking Health and Recovery:** The IBC is a **primary driver** for improving the banking sector's **health**, accounting for **52.3% of total recoveries** by Scheduled Commercial banks , contributing Rs 54,528 crore of the total Rs 1.04 lakh crore recovered.

Critical Challenges that were being faced in IBC

- **Prolonged Resolution Delays:** While the **IBC mandates completion of the CIRP within 330 days**, the actual average was **exceeding 700 days** due to **overburdened NCLT benches**, high vacancies, and **excessive litigation**.
- **Erosion of Asset Value:** Extended timelines led to **suboptimal recovery rates** (averaging **32–36% of admitted claims**), resulting in "high haircuts" (the percentage of debt waived) for creditors that sometimes reached **80–95%**.
- **Judicial and Infrastructure Constraints:** Frequent and **frivolous litigation** by erstwhile promoters often interfered with the **"commercial wisdom" of the Committee of Creditors (CoC)**, while a shortage of technical members at the **NCLT** delayed case admissions.

Critical Challenges that were being faced in IBC

- **Underutilization of Specialized Schemes:** The **Pre-packaged Insolvency Resolution Process (PIRP) for MSMEs** remained largely ineffective. As a result, many distressed MSMEs continued to rely on the more time-consuming and costly CIRP or faced premature liquidation.

- **Liquidation over Resolution:** Contrary to the goal of keeping companies as a **"going concern,"** a high percentage of cases ended in **liquidation** rather than a successful resolution plan, often because the assets were already too degraded by the time they reach the IBC.

Critical Challenges that were being faced in IBC

- **Inter-Creditor Disputes:** Conflicts between **financial creditors and operational creditors**, or between **secured and unsecured creditors**, often led to prolonged litigation, delaying the distribution of proceeds under the **waterfall mechanism.**

- The **Waterfall Mechanism** dictates the specific order of priority in which the proceeds from the sale of a liquidated company’s assets are distributed to various stakeholders. The "waterfall" logic ensures that the money flows from the top tier of creditors to the bottom., but there was prolonged litigation in the interpretation of Sector 53

Synopsis of the Amendments

- **New Resolution Models**: The Bill replaces the **fast-track process** with a **creditor-initiated** insolvency framework featuring an **out-of-court settlement** option and a "**debtor-in-possession, creditor-in-control**" model to maintain business continuity.
- **Strict Timelines**:
- It sets a timeline of **180 days** for completion of liquidation, extendable up to **90 days**.
- Admissions of insolvency applications must occur **within 14 days** once a default is established.
- The Adjudicating Authority must approve or reject resolution plans **within 30 days**
- NCLAT **appeals** must be decided within **3 months**.

Synopsis of the Amendments

- **Compressed Process:** The new **out-of-court** initiation mechanism has a compressed **150-day timeline** to expedite the recovery process.

- **Cross-Border and Group Insolvency:** The Bill provides an enabling framework for **cross-border insolvency** and **group insolvency**, crucial for promoting international investor confidence and handling complex corporate structures.

Synopsis of the Amendments

- **Deterrents for Litigation:** To curb delays caused by extensive litigation, **penalties** ranging from **Rs 1 lakh to Rs 2 crore** will be imposed on individuals initiating **frivolous** or vexatious proceedings.

- **Protection of Workmen:** Under the IBC hierarchy, **workmen's dues** are given **high priority**, placed on par with **secured creditors** and ranked above unsecured financial creditors and government dues.

Synopsis of the Amendments

- The 2026 amendments transform the IBC from a **recovery tool** into a **value-maximization engine**.
- By addressing **cross-border complexities** and enforcing punitive deterrents against litigation delays, the Bill ensures that failed businesses achieve a "clean exit" or a "viable rebirth," ultimately safeguarding the **stability of India's banking sector** and investor confidence
- **Why this matters ?**
  - Faster debt resolution.
  - Lower burden on tribunals.
  - Better value recovery for lenders.
  - Greater certainty for investors and distressed businesses

Synopsis of the Amendments

- Creditor-Initiated Insolvency Resolution Process (CIIRP)

· A major new **out-of-court insolvency route**.

· Certain financial creditors can start insolvency without first going through the NCLT.

· Objective: **reduce tribunal delays** and enable faster rescue of stressed companies.

- Mandatory admission once default is proved

· The NCLT must admit insolvency applications once default is established.

· This reduces discretion and procedural delays at the admission stage.

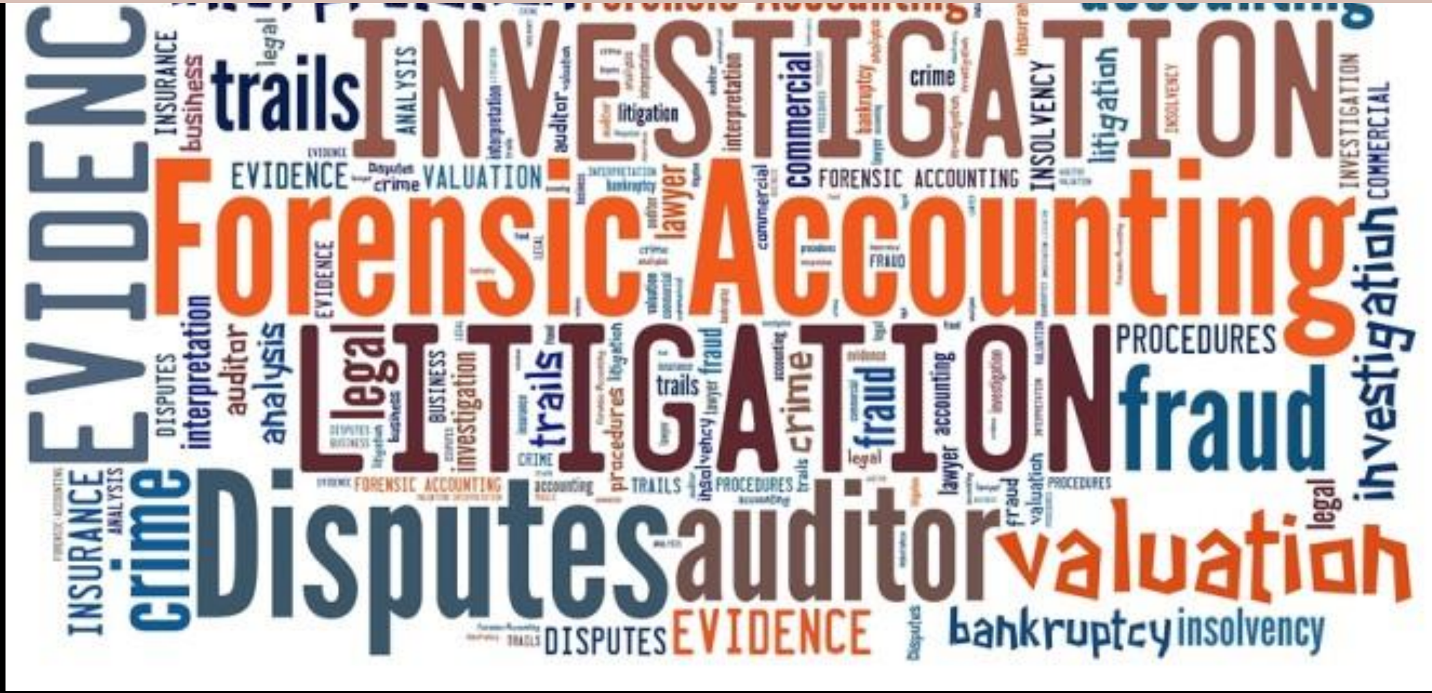
Synopsis of the Amendments

- Stricter timelines for resolution
  - Faster approval / rejection timelines for resolution plans.
  - Tighter caps on liquidation timelines.
  - Goal: improve recoveries and prevent erosion of asset value.
- Group insolvency framework
  - Allows insolvency resolution for **multiple related group companies together**.
  - Useful where subsidiaries / holding companies are financially linked.
- Cross-border insolvency provisions
  - Introduces a framework to handle companies with assets/ creditors in multiple countries.
  - Aligns India more closely with international insolvency practice

Synopsis of the Amendments

- Stronger creditor powers
  - More operational flexibility for lenders and resolution professionals:
    - better asset sale mechanisms,
    - improved supervision,
    - more clarity in the liquidation process.
- Clarification on secured creditors
  - Government dues / statutory charges are clarified **not to rank as secured debt** unless backed by consensual security.
  - This improves certainty in waterfall distribution.
- Tougher anti-abuse provisions
  - Broader avoidance transaction review.
  - Stronger action for fraudulent / wrongful trading.
  - Penalties for frivolous or bad-faith applications.

AVOIDANCE TRANSACTIONS UNDER IBC with CHALLENGES AND ISSUES



Avoidance of Transactions:

Under the IBC, the director of a company facing a CIRP could be held liable for fraudulent or wrongful trading, preferential transactions, extortionate credit transactions, or undervalued transactions considered prejudicial to the interest of the creditors

- The transactions set out between Sections 43 and 51 of the Code are:
  - Preferential transactions
  - Undervalued transactions
  - Extortionate transactions
  - Defrauding transactions
  - Fraudulent transactions

Avoidance of Transactions: Section 5 - Definitions

Avoidance of Transactions: Definition added – Section 5(2A)Section 5(*2A*)

"avoidance transaction" means a transaction as referred to in sections 43, 45, 49 and 50

Section 5(9A)

(*9A*) "fraudulent or wrongful trading" means the fraudulent or wrongful trading as referred to in section 66

Regulations 35A of CIRP Regulations

- On or before the 75TH day of the insolvency commencement date, the RP shall form an opinion whether the corporate debtor has been subjected to Preferential transaction , Undervalued transaction , Extortionate Credit transaction or Fraudulent transaction covered under Sections 43, 45, 50 or 66 of the Code.
- Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the 115TH day of the insolvency commencement date, under intimation to the Board.
- Where the RP makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the 130TH day of the insolvency commencement date
- The RP shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated

Regulations 39(2) of CIRP Regulations

The RP shall submit to the COC all resolution plans along with the details of non-compliant plans and following transactions, if any, observed, found or determined by him

- Preferential transactions under section 43;
- Undervalued transactions under section 45;
- Extortionate credit transactions under section 50; and
- Fraudulent transactions under section 66,

- and the orders, if any, of the adjudicating authority in respect of such transactions

-Amended on 26th May 2025

Treatment of avoidance of transaction in Resolution Plan- *(Regulation 38 (2)(d) of CIRP Regulations*

A resolution plan shall provide

- for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed

Mandatory Content of Resolution Plan- Regulation 38(2)

A resolution plan shall provide:
(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

(d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed

Information memorandum: Regulation 36

(2) The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the PRA and shall contain the following details of the corporate debtor-

(ha) details of all identified avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code and subsequent filings before Adjudicating Authority, as referred under sub-regulation (3A) of regulation 35A;

Mandatory Content of Resolution Plan- Regulation 38(2A) – wef 4 July 2025

(2A) A resolution plan shall not provide for assignment of any avoidance transactions under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code that were not:

(a) disclosed in the information memorandum; and

(b) intimated to all prospective resolution applicants under sub-regulation (3A) of regulation 35A before the last date for submission of resolution plans:

Provided that this sub-regulation shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025

Amendments in LIQUIDATION – Section 35

Section / Provision	What Changed	Impact on Practice
Section 35(1) and (2) **CoC Supervisory Authority** **(Amended)**	Amended position: Section 35(1)(a) substituted: liquidator is to **maintain an updated list of claims of creditors**. Section 35(1)(j): words "**invite and**" omitted. Section 35(1)(l) substituted: liquidator may **continue or institute proceedings in respect of an avoidance transaction or fraudulent or wrongful trading**. Explanation inserted for transitional inapplicability to pre-commencement liquidations. Section 35(2) substituted: **The committee of creditors shall supervise the conduct of the liquidation process by the liquidator**.	Restructures claim administration, extends avoidance-related litigation powers, and firmly places liquidation under CoC supervision.

Section 35(L) of IBC - Powers and duties of liquidator (EARLIER)

- to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

Section 36(f) of IBC - Liquidation estate

the liquidation estate shall include the following: -

- (f) any assets or their value recovered through proceedings for avoidance of transactions

Section 35- Powers and duties of liquidator

Section 35(1) : Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -

k. to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;

l. continue or institute proceedings in respect of an avoidance transaction or fraudulent or wrongful trading (earlier it was "*to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions*");

Treatment of avoidance of transaction *(Regulation 44 A)*

- The liquidator shall, **with the approval of the committee**, provide in the application along with the final report filed under Regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed

Committee of creditors- Regulation 8 of Liquidation Regulations

- The liquidator shall not undertake the following without the prior approval of the committee obtained by a voting share of not less than 66 % , in matters relating to:
  - sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process;
  - the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after dissolution of the corporate debtor and the manner in which the proceeds, if any, from these proceedings shall be distributed; and
  - assignment of not readily realisable assets.

REGULATION 40 (E) OF CIRP REGULATIONS

DISSOLUTION OF CORPORATE DEBTOR DURING CORPORATE INSOLVENCY RESOLUTION PROCESS - *ADDED ON 1 JUNE 2026*

(1) Where the committee is satisfied that—

- the assets of the corporate debtor are insufficient to meet the insolvency resolution process costs and likely liquidation costs;

or

- the assets available with the corporate debtor are not capable of being effectively realised in the ordinary course of liquidation;

the committee may, by a vote of not less than 66 % of the voting share, resolve to seek dissolution of the corporate debtor.

REGULATION 40 (E) OF CIRP REGULATIONS

DISSOLUTION OF CORPORATE DEBTOR DURING CORPORATE INSOLVENCY RESOLUTION PROCESS - *ADDED ON 1 JUNE 2026*

(2) Upon passing of the resolution under sub-regulation (1), the RP shall, within ten days, intimate the Adjudicating Authority of the decision of the committee by filing an application enclosing—

- a copy of the resolution passed by the committee;
- details of assets of the corporate debtor, including movable, immovable, financial and intangible assets;
- **details of claims, avoidance transactions and contingent assets**, if any; and
- a statement demonstrating that continuation of the CIRP process or commencement of liquidation would not be economically beneficial for the stakeholders, having regard to the factors considered by the committee of creditors under sub-regulation (1)

NEW SECTIONS INTRODUCED IN IBC AMENDMENT ACT 2026

Section	Provision	Implications
Section 54(1A) & (1B)	CoC decides continuation and distribution of proceeds from avoidance or pending proceedings even during dissolution stage.	Ensures value recovery continues beyond closure of CIRP/liquidation.
Chapter VA (Section 59A)	Provides framework for group insolvency with coordination, common professionals, and joint proceedings.	Addresses group company complexities; enables holistic resolution.
Section 183A	Penalty for frivolous proceedings under individual insolvency (Part III).	Extends discipline regime beyond corporate insolvency.
Section 240B	Central Government may establish electronic portal for insolvency processes.	Push towards digitization and efficiency.
Section 240C	Framework for cross-border insolvency including recognition, cooperation, and coordination.	Aligns India with global insolvency frameworks.

DISSOLUTION OF CORPORATE DEBTOR (SECTION 54) - AMENDED ON 1 JUNE 2026

(*1A*) Where a proceeding in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47 is pending before an application is made under sub-section (*1*) or a decision is made to dissolve the corporate debtor under sub-section (2) of section 33, **the committee of creditors shall determine the manner of pursuing such proceedings and the distribution of the proceeds arising out of such proceedings, in such manner and subject to such conditions as may be specified**

DISSOLUTION OF CORPORATE DEBTOR (SECTION 54) - AMENDED ON 1 JUNE 2026

(1B) Where any suit or other legal proceeding against the corporate debtor in respect of any proceeds to be distributed under section 53 is pending before application is made under sub-section (*1*) or a decision is made to dissolve the corporate debtor under sub-section (2) of section 33, the **committee of creditors shall make appropriate arrangements for pursuing such suit or proceeding, and distribution of proceeds to the parties in such suit or proceedings,** in such manner and subject to such conditions as may be specified

DISSOLUTION OF CORPORATE DEBTOR (SECTION 54) - AMENDED ON 1 JUNE 2026

(2*B*) Notwithstanding anything contained in sub-section (2) and sub-section (2*A*), the passing of the dissolution order shall not affect the continuation of proceedings referred to in sub-sections (1*A*) and (1*B*) *(Avoidance Proceedings and Legal Proceedings regarding distribution)*

COMPLETION OF LIQUIDATION (Regulation 44 of Liquidation Regulations) - AMENDED ON 1 JUNE 2026

- The Liquidator shall liquidate the Corporate Debtor within a period of **180 DAYS** *(earlier one year)*, notwithstanding pendency of any application for avoidance of transactions under Chapter III of Part II of the Code, before the Adjudicating Authority or any action thereof:

- If the Liquidator fails to liquidate the Corporate Debtor within **180 DAYS** *(earlier one year)* , he shall, **on receiving an instruction from the committee under this regulation,**
  - make an application to the Adjudicating Authority to continue such liquidation, **(FOR NOT MORE THAN 90 DAYS)**
  - File a report explaining why the liquidation has not been completed and
  - specifying the additional time that shall be required for liquidation.

Broad description of transactions to be Avoided

- Any transfer made for the benefit of a creditor/ surety/guarantor so as to put the recipient in a beneficial position in relation to other creditors
- Gifts or Transfer of property at a value significantly lower than the consideration paid by the Debtor
- Any transaction deliberately intended
  - To put the Assets of entity beyond reach
  - Adversely affect the interests to any claim
- Any Financial or operating Debt on exorbitant terms

Avoidance of Transactions: Section 5 - Definitions

Section 5(11)

(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the NCLT for initiating CIRP or pre-packaged insolvency resolution process, as the case may be

Added in 2026 Amendments:

– Provided that where multiple applications for initiation of the CIRP in respect of a corporate debtor are pending before the Adjudicating Authority on the insolvency commencement date, the initiation date shall be the date on which the first such application was made before the Adjudicating Authority

Preferential transactions- Section 43

- Where the liquidator or the RP is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions
  - there is a transfer of property or an interest thereof of the CD for the benefit of a creditor/ surety/guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
  - Such transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

EXAMPLES

- Payment or set off of debts not yet due
- Granting of Security Interest to secure existing unsecured debtos
- Unusual methods of payment
- Payment of a debt of considerable size in comparison to the assets of the debtor
- Payment of debts in response to extreme pressure from a creditor

DEFENCES AVAILABLE

- Transaction consistent with normal commercial practice
- Ordinary course of business
- New credit and new value
- Counterparty proves that it was unaware of a preference
- No knowledge of the debtor's insolvency

Preferential transactions- Section 43(4)

(4) A preference shall be deemed to be given at a relevant time, if –

- It is given to a related party (other than by reason only of being an employee), during the **period starting from** two years **preceding the initiation date and ending on the insolvency commencement date** *(earlier was "insolvency commencement date")*; or
- a preference is given to a person other than a related party during the **period starting from** one year **preceding the initiation date and ending on the insolvency commencement date** *(earlier was "insolvency commencement date")*.

UNDERVALUED TRANSACTIONS-SECTION 45

- If the liquidator or RP, on an examination of the transactions of CD determines that certain transactions were made during the period starting from ONE YEAR (any person) or TWO YEARS (related party) preceding the initiation date and ending on the insolvency commencement date, which were undervalued, he shall make an application to the NCLT to declare such transactions as void and reverse the effect of such transaction.
- A transaction shall be considered undervalued where the corporate debtor–
  - makes a gift to a person; or
  - enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,
- and such transaction has not taken place in the ordinary course of business of the corporate debtor

- What is not an "Arms length" transaction
- Implies Unequal exchange
- Gift
- Significantly less value

SECTION 47- APPLICATION BY CREDITORS, MEMBER OR PARTNER IN CASE OF CERTAIN TRANSACTIONS OR TRADING (SUBSTITUTED IN 2026)

47(*1*) Where—

- a preferential transaction under section 43;
- an undervalued transaction under section 45;
- an extortionate credit transaction under section 50; or
- fraudulent or wrongful trading under section 66,

has occurred and the liquidator or the RP, as the case may be, has not reported it to the NCLT, a creditor, either by itself or jointly with other creditors, a member, or a partner of the corporate debtor, as the case may be, may make an application to the NCLT to pass orders in accordance with the respective provisions of this Chapter or Chapter VI, as the case may be.

SECTION 47- APPLICATION BY CREDITORS, MEMBER OR PARTNER IN CASE OF CERTAIN TRANSACTIONS OR TRADING (SUBSTITUTED IN 2026)

47(2) Where the NCLT, after examination of the application made under sub-section (*1*), is satisfied that the relevant transaction or trading under clause (*a*) or (*b*) or (*c*) or (*d*) of sub-section (*1*) has occurred, it shall pass an order, for the avoidance of such transaction or trading, as the case may be, as if such an application had been filed by a liquidator or a RP in accordance with the relevant provisions of this Chapter or Chapter VI.

(3)After passing an order under sub-section (*2*), where NCLT is satisfied that the liquidator or the RP, as the case may be, after having sufficient information or opportunity to avail information of such transaction or trading, did not report such transaction or trading to the Adjudicating Authority, it shall pass an order requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional, as the case may be

SECTION 48- ORDERS THE NCLT CAN MAKE IF THEY ARE SATISFIED ABOUT UNDERVALUED TRANSACTION

Section 48 of the Code sets out the **orders the Adjudicating Authority can make if they are satisfied an undervalued transaction has taken place**:

- They may require any property transferred as part of the transaction to be vested in the Corporate Debtor (return of the property).
- They can release or discharge (in whole or in part) any security interest granted by the Corporate Debtor (reverse any security interest taken out).
- They may require any person to pay such sums, in respect of benefits received by such person, to the Liquidator or the RP as the Adjudicating Authority may direct.
- They can require the payment of such consideration for the transaction as may be determined by an independent expert

TRANSACTIONS DEFRAUDING CREDITORS- SECTION 49

- The transaction is an undervalued transaction under Section 45(2)
- Such transaction was deliberately entered into by the CD
- The transaction was entered into
  - for keeping assets of CD beyond the reach of any person who is entitled to make a claim
  - To adversely affect the interests of such a person in relation to the claim
- NCLT shall, by an order –
  - restore the position as it existed prior to such transaction;
  - Protect the interests of persons who are victims of such transactions:

TRANSACTIONS DEFRAUDING CREDITORS- SECTION 49

Provided that an order under this section -

- shall not affect any interest in property which was acquired from a person other than the corporate debtor **or a related party of the corporate debtor, as the case may be** and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and
- shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction

EXTORTIONATE CREDIT TRANSACTIONS- SECTION 50

- Receipt of financial or operational debt during the **period starting from two years preceding the initiation date and ending on** the insolvency commencement date, the liquidator or RP, may make an application for avoidance of such transaction to the NCLT **if the terms of such transaction required exorbitant payments to be made by the corporate debtor**

- Where the NCLT is satisfied that the terms of a credit transaction required exorbitant payments to be made by the CD , it shall, by an order –
  - restore the position as it existed prior to such transaction;
  - set aside the whole or part of the debt created on account of the extortionate credit transaction;
  - modify the terms of the transaction;
  - require any person who is, or was, a party to the transaction to repay any amount received by such person; or
  - require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the RP

Summary and Comparative Table of Avoidance Transactions

Particulars	What to Prove	Anterior Period	Presumption	Order
Preference Section 43	Benefit the creditor (or surety / guarantor) … to put them in a beneficial position	One year (unrelated) Two years (related) **from two years preceding the initiation date and ending on** the insolvency commencement date	If to a related party, presumed not received in good faith	Property transferred / vested / release any security interest / pay such sums in respect of benefit received
Undervalued Transactions Section 45	Gift (no consideration) or significantly less consideration	One year (unrelated) Two years (related) **from two years preceding the initiation date and ending on** the insolvency commencement date	None	Property transferred / release or discharge security interest / pay such sums in respect of benefit received
Transactions Defrauding Creditors Section 49	Gift (no consideration) or significantly less consideration and transaction deliberately entered into to put assets out of reach / adversely affect interests of Claimant	None	None	Restoration to position it would have been in had the transaction not been entered into / protecting interests of any victim of the transaction
Extortionate Credit Transactions Section 50	Extortionate interest rate on loan to Corporate Debtor / exorbitant	Two years **preceding the initiation date and ending on** the insolvency commencement date		Restore position / set aside all or part of loan / modify terms of transaction / repay loan

Section 65(2)

- One of the first tasks of the IRP is to evaluate the intent of the applicant when initiating a CIRP.

- Section 65 of the Code deals with the fraudulent or malicious initiation of proceedings and if it is perceived that the applicant's motivation when putting the process in motion was for any purpose other than that for the resolution of insolvency or Liquidation, the Adjudicating Authority may impose a penalty on that person (of between Rs 1 lakh and Rs 1 crore)

Fraudulent or wrongful trading – Section 66(1) of the Code

- Section 66 (1) of the Code provides that if during CIRP or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, any persons who were knowingly parties to the carrying on of the business in such manner **shall be liable to make such contributions to the assets of the corporate debtor** as the Hon'ble Adjudicating Authority may deem fit

Section 66(2) of the Code

Section 66(2) of the Code inter alia provides that

- if before the CIRP commencement date, a director of the corporate debtor knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP of the corporate debtor

and

- such director did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor,

NCLT may direct such director to make contribution to the assets of the corporate debtor.

Amendment- AVOIDANCE TRANSACTIONS Application not to effect processes- Section 26

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 26 Application in respect of certain transactions or trading not to affect processes **(Substituted)**	The **filing of an application in respect of an avoidance** transaction or fraudulent or wrongful trading or under section 47, **shall not affect the proceedings of the corporate insolvency resolution process or the liquidation** process, as the case may be. *Explanation*.––For the removal of doubts, it is hereby clarified that the completion of the CIRP or the liquidation process shall not affect the continuation of proceedings in respect of an avoidance transaction or fraudulent or wrongful trading or under section 47, as the case may be	Completion of CIRP or liquidation shall not affect continuation of such proceedings	Extends the non-derailment principle to section 47 and section 66-type matters and also to liquidation **Completion of CIRP or liquidation shall not affect continuation of such proceedings**

Amendments in AVOIDANCE TRANSACTIONS AND PENALITIES - Sections 43, 46, 47, 50)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 43(4), 46(1), 50(1) **Look-Back Period** **(Amended)**	**Look-back periods now run from the initiation date (filing date) rather than the insolvency commencement date, and extend to the commencement date**: 2 years (related parties) / 1 year (others) for preferences; 2 years / 1 year for undervalued; 2 years for extortionate credit.	**The gap between filing and admission (which could be months or years under Vidarbha-era discretion) shielded transactions from avoidance challenge.** **The initiation date anchor closes this gap.**	**Significantly wider challengeable window.** **Transactions between filing and admission are now capturable.** **Promoters and connected parties face heightened risk on pre-filing asset movements.** **RPs should look back from the earliest application date, not the admission order.**

Amendments in AVOIDANCE TRANSACTIONS AND PENALITIES - Sections 43, 46, 47, 50, 66)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 47 **Creditor-Triggered Avoidance** **(Substituted)** **Application by creditors, member or partner in case of certain transactions or trading.**	**Creditors (individually or jointly), members, or partners may apply directly to the AA for avoidance orders if the RP or liquidator has not filed avoidance applications under Section 43/45/50 or Section 66.** The application is deemed filed by the RP/liquidator. IBBI must initiate disciplinary action against a non-reporting RP/liquidator who had knowledge.	RPs and liquidators sometimes failed to pursue avoidance transactions due to conflicts, risk aversion, or negligence. No creditor-triggered backstop existed previously.	Critical new accountability mechanism. Creditors can bypass an inactive RP/liquidator on avoidance claims. IBBI disciplinary action becomes mandatory — not discretionary. RPs must document their avoidance analysis comprehensively or face regulatory consequences. Creates parallel enforcement tracks for value recovery.

Amendments in AVOIDANCE TRANSACTIONS AND PENALITIES - Section 49

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 49 **Transactions Defrauding Creditors (Amended)** Section 49 proviso (a) amended by adding: **"or a related party of the corporate debtor, as the case may be,"**.	**Good-faith buyer protection is narrowed: the carve-out does not apply where property came from the corporate debtor or its related party.** Provided that an order under this section - (a) shall not affect any interest in property which was acquired from a person other than the corporate debtor **or a related party of the corporate debtor, as the case may be** and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and	**Related-party 'round-trip' transactions were being structured to exploit the good-faith defence — CD transfers asset to related party, who sells to third party claiming good-faith protection.**	**Related-party routing of CD assets is no longer shielded.** **Purchasers from related parties of the CD must conduct heightened due diligence.** **Promoters face increased exposure on pre-CIRP transactions with their own associates.**

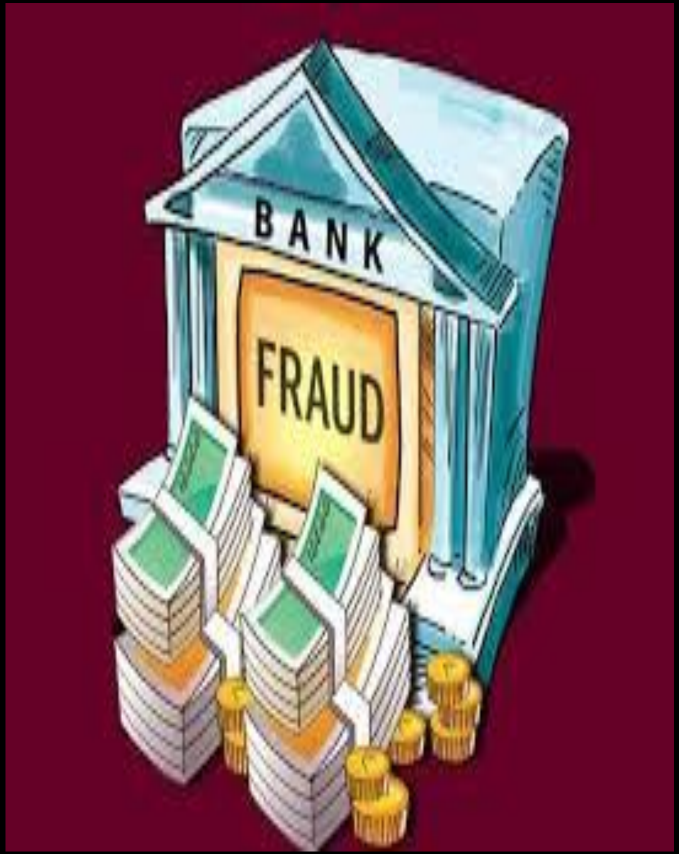
Amendments in AVOIDANCE TRANSACTIONS AND PENALITIES - Sections 66, 235A

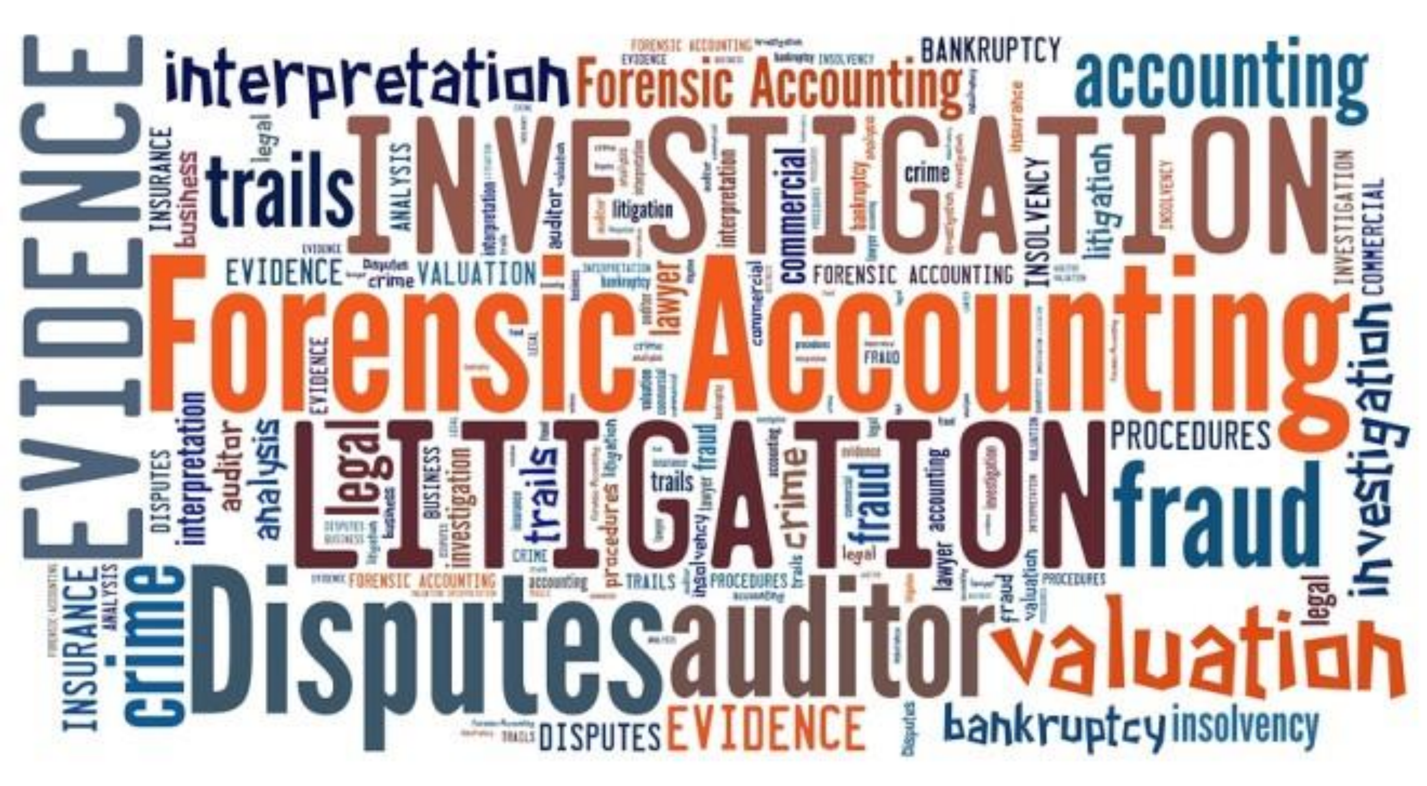
Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 66 **Fraudulent and Wrongful Trading (Amended)**	Liquidators (not just RPs) are now empowered to apply for fraudulent/wrongful trading orders.	Fraudulent trading claims could only be brought by the RP during CIRP. If the case went to liquidation without such claims being filed, the right was lost.	Liquidators can now pursue fraudulent trading claims independently. Value recovery mechanisms survive the CIRP-to-liquidation transition. Directors and promoters face sustained exposure throughout both phases.
Section 235A **Penalty Power (Substituted)**	Civil penalty regime: ₹1 lakh/day of continuing contravention + up to 3x loss/gain (whichever is higher); if unquantifiable, up to ₹5 crore. Applied on application by IBBI or Central Government.	Criminal penalties under the original Section 235A had a chilling effect on professionals and were rarely prosecuted. Civil penalties are more proportionate, certain, and recoverable.	Stronger deterrence through financial consequences rather than criminal prosecution. IBBI's enforcement toolkit becomes practically usable. The 3x formula creates significant deterrence for large-value contraventions.

Amendments in AVOIDANCE TRANSACTIONS AND PENALITIES –Section 74, 76, 235A, 64A, 183A)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 64A & 183A **Frivolous Proceedings Penalty** **(New sections)**	AA may impose penalties of ₹1 lakh to ₹2 crore for frivolous or vexatious filings under Part II (Section 64A) and Part III (Section 183A).	Frivolous applications were a major cause of delay. Section 65 (existing) covered fraudulent initiation but not merely vexatious filings. The fine range needed to be calibrated to be a real deterrent.	Financial deterrent against tactical delays and abuse of process. Creditors misusing Section 7/9 to pressure debtors face real penalty risk. Debtors filing frivolous objections also face exposure. Note: this is a new provision — old Section 65 (₹1 lakh to ₹1 crore) continues separately.
Section 74 & 76 Decriminalisation (Select Committee)	Criminal offences for contravention of moratorium or the Resolution Plan (Section 74) and Punishment for non-disclosure of dispute or payment of debt by operational Creditor (Section 76) are replaced by civil penalties under new Sections 67B and 67C.	Criminal liability for insolvency-related contraventions created a disproportionate chilling effect on professional participation and lender cooperation. Civil remedies are proportionate.	Professionals are more willing to participate in complex or risky CIRPs. Creditors and operational creditors face proportionate financial consequences rather than criminal prosecution risk for technical violations.

ISSUES AND CHALLENGES IN Fraudulent and Avoidance Transactions/





ISSUES IN AVOIDANCE- PUFE
No Dissolution during Pendency of Investigation

- GEE ISPAT PVT LTD: Filed Application as RP before the Honble NCLT under Sections 65, 66, 67, (read with Section 235 A) of the Insolvency and Bankruptcy Code, 2016 due to :
  - falsification in the books of accounts committed by the Corporate Debtor/ suspended Board of Directors of Corporate Debtor/ Operational Creditor/ Officers of the Corporate Debtor/
  - fraudulent / wrongful trading by the erstwhile promoters/
  - fake debtors, falsification of books of accounts,
  - fraudulent conduct of business (such as using fake invoices etc.),
  - defrauding of creditors (such as by inflating stock statements to avail more credit), unauthorized rice trading etc) which was filed on 15th February 2018,
- Orders had been passed by the Honble NCLT II Delhi, on 19th July 2019 that "**We therefore, order that the affairs of the Corporate Debtor ought to be investigated. Accordingly, the Central Government is directed to order an investigation into the affairs of the Corporate Debtor under Section 210(2) of the Companies Act 2013**"

ISSUES IN AVOIDANCE- PUFE
No Dissolution during Pendency of Investigation

- An issue has been addressed before Adjudicating the Application for Dissolution and that is *"Whether the pendency of any investigation on the Corporate Debtor creates a bar for passing an order of dissolution of a company?"*
  - The Honble Adjudicating authority has stated that :
  - **It is clear that the dissolution will put an end to the legal existence of a company.**
  - **Once a company is dissolved, it becomes a non-existent party and therefore, no action can be brought in its name.**
  - **Further, the Liquidator shall also not be able to represent the non-existent Corporate Debtor before any of the investigating forum.**
  - **Moreover, in case any recovery is effected or an asset is recovered through the investigation, the same needs to be vested in the Corporate Debtor.**
  - **However, if the Corporate Debtor is dissolved, the dissolved status of the Corporate Debtor will create an impediment in vesting such assets and benefits to the Corporate Debtor."**

ISSUES IN AVOIDANCE- PUFE
No Dissolution during Pendency of Investigation

- The **Section 54(1) of the IBC Code 2016 makes it mandatory for the Liquidator to make an application for dissolution** on the occurrence of the event, when the assets of the Corporate Debtor are completely liquidated, but the Honble Adjudicating authority held that "However, the investigation as ordered by the Honble NCLAT against the Corporate Debtor in the instant case creates a possibility of infusion of more assets into the Corporate Debtor on completion of such an investigation, and which will be required to be liquidated amongst the stakeholders.

- Furthermore, **the Regulation 44 of the IBBI Liquidation Regulations make it mandatory for the Liquidator to Liquidate the Corporate Debtor within 1 year** from the date of commencement of Liquidation, irrespective of pendency of an application for avoidance transactions, however there is nothing stipulated in the aforesaid Regulation which binds this Adjudicating authority to order dissolution of the Corporate Debtor"

ISSUES IN AVOIDANCE- PUFE
No Dissolution during Pendency of Investigation

- The Honble Adjudicating authority held that "In order to facilitate completion of investigation, maximisation of Assets and the value thereof and to ensure smooth distribution of proceeds arising out of such investigation amongst various stakeholders of the corporate debtor, the judicial propriety demands that the Corporate debtor should not be dissolved at this stage when the investigation as ordered by the Honble NCLAT is pending.
- Hence we are of the view that the pendency of an investigation creates a bar in ordering dissolution of the company."

ISSUES IN AVOIDANCE- PUFE
No Dissolution during Pendency of Investigation

Advise –

- Need to have clarity in code that when investigations take many years , how is the liquidator to continue / what fees / who will bear expenses especially legal costs – especially if not approved as Liquidation Costs at the time of deciding the Liquidators' Fees by the COC / if not approved by SCC ……
- Any Investigations which arise from Avoidance matters could be assigned to some outside specialised agency for the same………

Treatment of avoidance of transaction *(Regulation 44 A)*

- The liquidator shall, **with the approval of the committee**, provide in the application along with the final report filed under Regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed

CHALLENGES IN AVOIDANCE TRANSACTIONS

- An undue delay may benefit the erstwhile promoter/ management who may have initially been the cause of such transaction.
- There is a view in some quarters that a mechanism needs to be put in place to pursue such Investigations after the IP leaves, which would help pursue further course of action depending on order of the AA
- **Wherever SFIO, CBI, ED actions are ongoing, the applications may be dealt with by the respective agency….**

CHALLENGES IN AVOIDANCE TRANSACTIONS

- Though IBBI has amended the Regulation to include Treatment of Avoidance application in CIRP and Liquidation, but many times Resolution Applicants are not very interested to properly pursue such applications…….
  - Treatment of avoidance of transaction ***- Regulation 44 A of Liquidation Regulations***
  - Treatment of avoidance of transaction in Resolution Plan- ***Regulation 38 (2)(d) of CIRP Regulations***
- **Thus, it is advised that wherever SFIO, CBI, ED actions are ongoing, the applications / investigations may be dealt with by a specialized agency….**

CHALLENGES IN AVOIDANCE TRANSACTIONS

Clarification is therefore required around following issues:

1. **Obligation to follow up with adjudicating authority**

- **Where the term of the RP expires on completion of the CIRP, but the issues related to PUFE may not have been resolved, who would be responsible for taking the process forward with the AA?**

2. **Onus for implementation of order of AA**

- The order of AA, if require implementation, the responsibility rests with the RP during the CIRP process.
- Where the term of the RP is over on resolution, but the issues around PUFE may not have been resolved. Who would be responsible for implementing the orders of the AA… and what if the RA is not interested to pursue them (if decided as per ***Regulation 38***

CHALLENGES IN AVOIDANCE TRANSACTIONS

Clarification is therefore required around following issues:

3. Beneficiary of Gains arising from the order of the AA

- During the CIRP Process, the resolution plan accounts for assets of the corporate debtor, including such recoveries as may have accrued from the irregular transactions.
- However, post CIRP having been concluded, there could be instances of recovery of funds from the irregular transactions. In such cases, questions around the fate of the recovered funds arise.
- The basic question which will arise is whom do these funds belong to ???..
- There is **varying Jurisprudence**… should the gains belong to the CD… or distributed as per Section 53 of the Code…. Or distributed to certain Creditors….

CHALLENGES IN AVOIDANCE TRANSACTIONS

4. Monitoring the appeals post completion of CIRP/Liquidation process

- There could be situations where a matter pertaining to irregular transactions may go on appeal post approval of the transaction by the AA. In such a scenario, the umbilical cord would already be broken. Thus, who would take on the responsibility of pursuing the appeal to its logical conclusion and to ensure that the decision thereon gets implemented. Thus, there are issues around:
- (i) Who should be the responsible for pursuing the legal matters post the approval of the AA;- Erstwhile RP and Erstwhile MP ?
- (ii) Who would be responsible for ensuring implementation of the orders/outcomes of the appeal; Erstwhile RP and Erstwhile MP ?
- (iii) The decisions could rest around civil and /or criminal proceedings

CHALLENGES IN AVOIDANCE TRANSACTIONS

5. Who has to bear the expenses of the follow up activities post CIRP or liquidation

- The Code and the regulations provide for meeting the cost of the CIRP/liquidation. However, once the process under the Code abates, would the sources of funds to pursue legal options still be available. While this may be so for a corporate which survives as a going concern, the situation may be different there the corporate did not have financial resources during the CIRP. In such a situation wherefrom will the resources for funding come?

6. Reference to SFIO and /or to other authorities

7. Adequacy of current framework in dealing with fraudulent cases

CHALLENGES IN AVOIDANCE TRANSACTIONS

Proposal:

- **Fate of Investigations arising out of PUFE applications after CIRP/ Liquidation is over needs to be addressed……….**
- **A NARCL like institution is needed.**
- **Reference to SFIO and/or to other authorities, Adequacy of current framework in dealing with fraudulent cases needs to be ascertained,**

IN THE MATTER OF NTL ELECTRONICS

REGARDING AVOIDANCE

- In the matter of **NTL Electronics India Ltd,** an application had been filed on behalf of the Resolution Professional under Section 43, 45 & 66 read with Section 25(2)(j) of the Insolvency and Bankruptcy Code, 2016 for seeking appropriate directions for avoidance of certain transactions entered by the corporate debtor and consequential directions
- **Orders had been passed on 2 March 2022 regarding the said Application for Avoidance transactions under Section 43, 45 and 66 read with section 25(2)(j) and the said application for Preferential transactions had been allowed by the Honble Adjudicating Authority**

IN THE MATTER OF NTL ELECTRONICS

REGARDING AVOIDANCE

- By an order dated 2 March 2022 ("**Order**"), the Hon'ble Adjudicating Authority had partly allowed the Avoidance Application and held certain transactions to be preferential in terms of Section 43 of the Code and accordingly directed the parties involved in the preferential transactions to refund of INR 6,37,29,325 for the benefit of the secured financial creditors, who are entitled to get it, in accordance with the resolution plan and provisions of law

IN THE MATTER OF NTL ELECTRONICS

REGARDING AVOIDANCE

Para 66 of the Order provides as follows –

- *"66. Accordingly, the respondents no. 1,2,4,5,6 and 7 are directed to refund the amount within three months from the date of order and **the applicant is directed to take steps to distribute the said amounts among the the Financial** Creditor/creditors, who are entitled to get it, in accordance with provision of law within a month from the date of receipt of the said amount and submit the compliance report soon thereafter. AND IF THE RESPONDENTS NO. 1,2,4,5,6 AND 7 FAILED TO DEPOSIT THE SAID AMOUNT WITHIN THE PERIOD **THEN SAME SHALL BE RECOVERED IN ACCORDANCE WITH THE PROVISION OF LAW."***

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023 GVR Consulting / GVR Electronics vs Pooja Bahry / Dyna Rasayan vs Pooja Bahry and Related parties vs Pooja Bahry matters

SYNOPSIS OF THE NCLAT ORDER:

- Landmark NCLAT Orders/ Judgement passed regarding the law with respect to Preferential transactions, in respect of avoidance application in GVR Consulting / GVR Electronics vs Pooja Bahry / Dyna Rasayan vs Pooja Bahry and related party vs Pooja Bahry matters ….
- All 3 Appeals against the NCLT Avoidance orders dismissed on 24 April 2023 by the NCLAT ….
- Respondents have been asked to refund the amounts of preferential transactions and to distribute among the Financial creditors as per law….
- **Many issues regarding Preferential transactions have been addressed in the Judgement and law laid down regarding Preferential Transactions….**

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

SYNOPSIS OF THE NCLAT ORDER:

- The judgment "clarifies the scope and meaning of preferential transaction" and one of it's exceptions – "ordinary course of 'Financial Affairs'".
- "Question of intent and motive" is not relevant while examining as to whether transaction is a preferential transaction
- Any transaction under any notice, demand or threat shall not lose its character of preferential transaction merely on the above reason

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

SYNOPSIS OF THE NCLAT ORDER:

- Detailed analysis of Ordinary Course of Business or Financial Affairs of the Corporate Debtor has been done
- The intent of the Corporate Debtor is not relevant since the Section 43 envisages statutory fiction as has been noted above.
- Whether the Act is voluntary or not has no relevance while coming to the conclusion whether transaction is preferential or not

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

SYNOPSIS OF THE NCLAT ORDER:

- Even if a Composite application is filed by the RP, but if allegations and averments were separately made in different heads, then filing of composite application does not lead to any infirmity in the Application and ought not to have been rejected (as Preferential transaction and Undervalued transactions and Fraudulent transaction were prayed for in different heads)
- Pursuing avoidance application after the plan approval order by the erstwhile RP- the Judgement of Venus Recruiters has already been overruled by the Division Bench of the Delhi High Court in "Tata Steel BSL Ltd. Vs. Venus Recruiters Pvt. Ltd." decided on 13.01.2023 hence no more applicable

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

REGARDING THE NCLAT ORDER:

- In the IBC, preferential transaction and fraudulent transaction has been separately dealt, INGREDIENTS TO PROVE ARE DIFFERENT FOR PREFERENTIAL TRANSACTION.
- THERE IS NO NEED TO PROVE ANY FRAUDULENT INTENT FOR A PREFERENTIAL TRANSACTION.
- When we look into the scheme of Section 43 of the Code, sub-section (2), **a clear statutory provision is that a corporate debtor shall be deemed to have given a preference if conditions as mentioned in paragraph 'a' and 'b' are fulfilled.**

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

REGARDING THE NCLAT ORDER:

- When a provision provides for deeming fiction, '***deeming fiction***' come into play on fulfilment of the requirement even if in fact it may not be so. In sub-section (3) of Section 43, certain exception has been provided.
- Thus those transactions which fall as exception under Sub-Section (3) can be taken out of sub-section 2 of Section 43, ***rest shall be covered by deeming fiction***

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

REGARDING THE NCLAT ORDER:

- **Taking financial assistance from related and non-related parties** which transactions are subject of enquiry in the present Appeal **can not be held to be ordinary course of business of the Corporate Debtor**.
- **The expression "ordinary course of business" or "financial affairs of the Corporate Debtor" has to be read "ejusdem generis".**

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

REGARDING THE NCLAT ORDER:

- The expression "financial affairs of the Corporate Debtor" *cannot be given an extended meaning* *as contended by Learned Counsel for the Appellants* *that all financial transactions done by the Corporate Debtor is covered within expression 'financial affairs'* **hence the loan taken by the corporate debtor from different related and non-related parties is part of the financial affairs cannot be accepted.**

FINAL NCLAT JUDGEMENT wrt Preferential Transactions- 24/04/2023

REGARDING THE NCLAT ORDER:

- Now **coming to the submission of Learned Counsel for the Appellant** that composite application under Section 43, 44, 45, 46, 66, 67 and 60(5) of the Code could not have been filed by the RP **as per law laid down by the Hon'ble Supreme Court.**
- **What has been emphasized by the Hon'ble Supreme Court is** that ingredients of Section 43, 45 and 66 are different **and** Resolution Professional is expected to keep such requirement in view while making motion to the Adjudicating Authority.

SUPREME COURT ORDERS DATED 14 JULY 2023 AND 31 JULY 2023

REGARDING THE SUPREME COURT ORDERS:

AS PER SC ORDER DATED 14 JULY 2023:

- We find no reason to interfere with the impugned order dated 24 April 2023 passed by the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No 369 of 2022 and Company Appeal (AT) (Insolvency) No 405 of 2022..
- The Civil Appeals are accordingly dismissed

AS PER SC ORDER DATED 31 JULY 2023:

- **We are not inclined to entertain this appeal.**
- **The civil appeal stands dismissed**

SUPREME COURT ORDERS DATED 14 JULY 2023 AND 31 JULY 2023

REGARDING THE SUPREME COURT ORDERS:

- Thus Finality has been reached regarding the law with respect to Preferential transactions, in respect of avoidance application in Pooja Bahry vs NTL electronics matters ….
- All Appeals against the NCLT Avoidance orders had been dismissed on 24 April 2023 by the NCLAT and further Appeals against the NCLAT orders have now been dismissed on 14 July 2023 and 31 July 2023 by the Honble Supreme Court of India
- Many issues regarding Preferential transactions had been addressed in the NCLAT Judgement and the NCLAT Judgement had in detail highlighted the law, which has now reached finality by the dismissal of the Appeals before the Supreme Court of India

THE ISSUE- EVEN AFTER SUPREME COURT ORDERS ………….

WHAT IF THE CONTRIBUTION IS STILL NOT MADE, DESPITE SUPREME COURT ORDERS ?

WHAT RECOURSE IS AVAILABLE TO THE RP/ LIQUIDATOR??? What powers does the Erstwhile RP have?

IF THE RP/ LIQUIDATOR FILES CONTEMPT….. DOES THE LAW AND THE CODE SUPPORT HIM ???

AND IF THE COC/ SCC REFUSES TO PAY THE COSTS… WHO WILL ???

THE ISSUE- EVEN AFTER SUPREME COURT ORDERS …………..

WHEN THE PERSONS WHO ARE TO CONTRIBUTE AS PER ORDERS OF AVOIDANCE, AND THEN THEY FILE "PG", THEN ???

- IS INTERIM MORATORIUM IS APPLICABLE ? (This is no more applicable as Interim Moratorium has been removed in 2026 Amendments)
- ARE THESE AMOUNTS "EXCLUDED DEBT" ??
- Can They give a "Repayment Plan" saying that they cannot Contribute as per Adjudicated Avoidance ?

ISSUES WRT PG TO CD- INTERPLAY BETWEEN AVOIDANCE AND PERSONAL INSOLVENCY

- Is **the money ordered to be paid by the NCLT / NCLAT/ Supreme court, under the Avoidance Transactions a part of "excluded debt" defined under Section 79 (15) of the Insolvency and Bankruptcy Code, 2016.**
- **We have submitted before the NCLT that if the PG petition is admitted then it would set a wrong precedent as parties would claim interim moratorium by virtue of filing petition under Chapter III of the Code.**
- **It would be beneficial (in the interest of IBC) to kindly clarify whether any amount which has been "adjudicated" in an Avoidance application filed by the RP/ Liquidator would be construed as "Excluded Debt" or not and**
- **Whether that amount can become a part of the "Repayment Plan" by the Personal Guarantors (and consequentially be reduced)**
- **If the Code/ Regulations clarify the said points, then the same would be beneficial for all stakeholders and will reduce unnecessary and frivolous litigations.**

ISSUES WRT PG TO CD-PERSONAL INSOLVENCY MATTERS

REGARDING PERSONAL INSOLVENCIES

- There are many Grey areas in the Personal Guarantee matters, which need to be plugged
- The PGs are siphoning off Personal Assets and there are no provisions which can be utilized by the RP
- In most big cases, the PGs have transferred the assets out of India, and there is no provision to make those assets a part of the Repayment Plan and no way that the RP can get any data regarding such assets, especially regarding Cross Border assets.- THOUGH ENABLING CROSS BORDER INSOLVENCY PROVISIONS HAVE BEEN ADDED IN 2026

ISSUES WRT PG TO CD- PERSONAL INSOLVENCY MATTERS

REGARDING PERSONAL INSOLVENCIES

- In cases where Investigations are pending and the PG cases result in "Bankruptcy Orders", wherein the PGs state that they are "Bankrupt", then there is no meaning even if the said Investigation Report results in confirmation of "Fraud" / "Siphoning" etc and *even if the Investigation results in "creating a possibility of infusion of more assets into the Corporate Debtor on completion of such an investigation"* , AS THE PG WOULD ALREADY BE DECLARED "BANKRUPT"…..
- A "Bankruptcy" Order in such a case may result in misuse of the Provisions of Bankruptcy where Investigations of Fraud are ongoing…… Clarification needed in such cases…..

ISSUES WRT PG TO CD- PERSONAL INSOLVENCY MATTERS

REGARDING PERSONAL INSOLVENCIES

- There are grey areas regarding what will happen to pending investigations ordered by courts/ before MCA / SFIO etc
- There should be clarity … as per the HC Calcutta Judgement (24.12.2021) in Adarsh Jhunjhunwala Vs. State Bank of India & Anr. [WPO 1548 of 2021] that "*To stay wilful defaulter proceedings, criminal proceeding or quasi criminal proceeding under any Moratorium under Section 96 would defeat the object and purpose of the part III of the IBC and Stay of such collateral proceedings would also result in putting a premium on the impropriety and illegality for which the proceedings under Section 95 are initiated*"

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AMENDS THE IBBI (LIQUIDATION PROCESS) REGULATIONS, 2016 – 13 NOVEMBER 2020

37A- Assignment of not readily realisable assets

- A liquidator may assign or transfer a not readily realisable asset through a transparent process, **with prior approval of the committee**, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.
- **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 in Sections 43 to 51 and 66 of the Code **whether crystallised or not** (*added on 1/6/2026*)

ISSUES REGARDING IMPLEMENTATION OF REGULATION 37A- Assignment of NRRAs

- Valuation of the NRRAs ??
- At what value would the Liquidator sell these assets if the value of the Debtors / Loans and Advances comes at NIL Value in the Valuation obtained during CIRP/ Liquidation
- Who will buy these assets?- Market for NRRAs not yet developed……
- If there is ongoing investigation in various Government Departments/ underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions in Sections 43 to 51 and 66 of the Code, who will assist the Departments in such proceedings?

The IBC CODE NEEDS TO ADDRESS THE ABOVE CONCERNS

NCLT Can't Adjudicate Avoidance Application Pursued By Third Party To Whom Debt Was Assigned U/S 43, 45, 50 And 66 Of IBC: NCLT Delhi- Ritu Tandon v M/s Rain Automotive India- CLARIFIED IN 2026 AMENDMENTS

- The Bench concluded that the NCLT has no jurisdiction to adjudicate an Avoidance/PUFE application pursued by a Third Party or an Assignee.

- "In terms of Section 60(5) of IBC 2016, this Adjudicating Authority has no jurisdiction to adjudicate an Avoidance/PUFE application pursued by a Third Party or an Assignee i.e., a dispute between two third parties (i.e., the Assignee and Respondents of the Avoidance Applications, neither of whom represents the Corporate Debtor) which will be dehors the insolvency proceedings of the Corporate Debtor."

The Bench declined to substitute the Assignee in place of Liquidator and dismissed the application.

Case Title: Ritu Tandon v M/s Rain Automotive India Private Limited Case No.: Company Petition No. (IB)-1095(ND)/2

NCLT Can't Adjudicate Avoidance Application Pursued By Third Party To Whom Debt Was Assigned U/S 43, 45, 50 And 66 Of IBC: NCLT Delhi-

Ritu Tandon v M/s Rain Automotive India

CLARIFIED IN 2026 AMENDMENTS

- Brief Facts:

  1. Liquidation process was initiated and PUFE application was also filed before the Hon'ble NCLT

  2. However, as per Regulation 37A of IBBI (Liquidation Process) Regulations, 2016, the applications were put up as actionable claims and bids were invited for the same.

  3. The Liquidator had assigned all the rights to assets and recoveries emanating from PUFE applications to the Assignee for a consideration of Rs. 50,000 as they were NRRA.

  4. Hence, the Assignee had approached Hon'ble NCLT to substitute its name as Applicant in the PUFE applications.

NCLT Can't Adjudicate Avoidance Application Pursued By Third Party To Whom Debt Was Assigned U/S 43, 45, 50 And 66 Of IBC: NCLT Delhi- Ritu Tandon v M/s Rain Automotive India

- View of Hon'ble NCLT:

  POINT I- When can the Liquidator assign NRRA i.e., PUFE application?

  1. NRRA under Regulation 37A describes that any asset included in Liquidation Estate can be sold as NRRA, and the liquidation estate Section 36(3)(e) and Section 36(3)(f) any Assets or their value recovered through proceedings for avoidance of transactions.
  2. Further, there is ambiguity in determining the actual value for PUFE application prior to adjudication of the same.
  3. The basic objective of PUFE is to transfer due benefit back to the Creditors of the CD, however, in the instant case the PUFE application worth more that Rs. 26 Crores has been assigned for meagre Rs. 50,000, thus it will enrich the Assignee and not the Creditors.

NCLT Can't Adjudicate Avoidance Application Pursued By Third Party To Whom Debt Was Assigned U/S 43, 45, 50 And 66 Of IBC: NCLT Delhi- Ritu Tandon v M/s Rain Automotive India

Issue 1
At what stage the Liquidator could assign the NRRAs - Is it before or after the adjudication of an Application filed for Avoidance transactions by the Liquidator?

Discussion
- As per Regulation 37A of Liquidation Regulations, assets recovered through avoidance applications can be included in liquidation estate only after adjudication.
- In the absence of any adjudication, there will be arbitrariness in valuation of claims and liquidator may assign NRRA for meagre amounts.
- The avoidance applications enhance the asset pool of CD. Assignment before adjudication facilitates the enrichment of assignee at the expense of creditors.
- The intent behind avoidance applications is not recovery, but maximizing assets.

NCLT's Decision
The liquidator cannot assign debts/NRRAs arising from avoidance applications before adjudication of such applications and determination of the debt amount by NCLT. The debt can be assigned only after crystallization of demand, once the proceedings are concluded.

NCLT Can't Adjudicate Avoidance Application Pursued By Third Party To Whom Debt Was Assigned U/S 43, 45, 50 And 66 Of IBC: NCLT Delhi- Ritu Tandon v M/s Rain Automotive India

- POINT II - Can NCLT adjudicate such PUFE application pursued by Assignee?

1. Section 43, 45, 47, 50 and 60 of the IBC, 2016, expressly mentions RP or Liquidator as the person preferring application before Hon'ble NCLT.
2. The application filed by any third party (Assignee), cannot be adjudicated by the NCLT in this regard.

Hence, it was promulgated by Hon'ble NCLT that only after crystallization of the application, debt can be ascertained and hence assigned.

Issue:

This although is a very strict interpretation of the statute, but bears some merit. However, this will somehow frustrate the already skewed liquidation processes. If the PUFE application can only be pursued by the RP/Liq., and only be assigned after adjudication, sale as going concern or scheme under compromise and arrangement could be even more challenging.

NCLT Can't Adjudicate Avoidance Application Pursued By Third Party To Whom Debt Was Assigned U/S 43, 45, 50 And 66 Of IBC: NCLT Delhi-

Ritu Tandon v M/s Rain Automotive India

Issue 2

If the NRRAs are assigned before the adjudication of an Avoidance/PUFE Application, whether the AA have jurisdiction to hear an Application filed/pursued by the Assignee?

Discussion

-Avoidance applications can only be filed by RP/Liquidator under IBC. No provision for assignee to pursue such applications.

- After assignment, disputes will be between assignee and respondents instead of CD and respondents. Hence such applications by assignee will cease to be an issue arising from CIRP/liquidation of CD.

- Section 60(5) of IBC stipulates NCLT can admit applications by or against CD. Avoidance applications by assignee will not fall within the purview of said section.

NCLT's Decision:

NCLT does not have jurisdiction under Section 60(5) of IBC to adjudicate avoidance applications pursued by the assignee instead of the liquidator. The dispute would be between the assignee and respondents instead of the corporate debtor and respondents, and hence outside NCLT's jurisdiction.

NCLT Can't Adjudicate Avoidance Application Pursued By Third Party To Whom Debt Was Assigned U/S 43, 45, 50 And 66 Of IBC: NCLT Delhi- Ritu Tandon v M/s Rain Automotive India

- NCLT has held that in terms of Section 60(5) of IBC, the NCLT has no jurisdiction to adjudicate an Avoidance/PUFE application pursued by a Third Party/Assignee to whom debt was assigned under Section 43, 45, 50 and 66 of IBC, since neither the Assignee nor the respondents of the Avoidance Applications represent the Corporate Debtor, which will be dehors the insolvency proceedings of the Corporate Debtor.

- "However, if a debt is assigned to a Third Party or an Assignee under Sections 43, 45, 50, and 66 of IBC 2016, the application or claim cannot be deemed to be pursued by the Corporate Debtor.
- Moreover, the Avoidance/PUFE transactions underlying such applications pursued by a Third Party or an Assignee will cease to be an issue arising out of CIRP or Liquidation of the Corporate Debtor in terms of Section 60(5)(c), as the beneficiary of those proceedings or claims would be the Third Party or Assignee and recovery if any, would be realised and added to the asset pool of the Assignee.
- Furthermore, what was earlier a dispute between the "Corporate Debtor, Through RP/ Liquidator Vs. Respondents of PUFE Application", will now, become a dispute between "an Assignee and Respondents of PUFE Applications, which will be dehors the insolvency proceedings of the Corporate Debtor.

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AMENDS THE IBBI (LIQUIDATION PROCESS) REGULATIONS, 2016 – 13 NOVEMBER 2020

37A- Assignment of not readily realisable assets

- A liquidator may assign or transfer a not readily realisable asset through a transparent process, **with prior approval of the committee**, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.
- **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 in Sections 43 to 51 and 66 of the Code **whether crystallised or not** (*added on 1/6/2026*)

CHALLENGES FACED- Non- Cooperation

- The most common forms of non-cooperation are non-furnishing of records/information in relation to the CD…...
- In many cases the promoters/Directors do not co-operate with the RP/ Liquidator in providing the complete records
- The non-cooperation applications remain pending for years and the directors do not respond even to non-bailable warrants issued against them….
- The AA being already overburdened takes some time in disposing off non-cooperation application filed by the RP/ Liquidators.
- There are cases where the Financials for many years preceding CIRP are not available… **HOW ARE THE PUFE TRANSACTIONS TO BE OPINIED BY RP ? DETERMINED? FILED IN NCLT?... Within Timelines ?**

ISSUE WHICH ARISES DUE TO THE NON-COOPERATION…..

- On or before the 75TH day of the insolvency commencement date, the RP shall form an opinion ………… he shall make a determination on or before the 115TH day of the insolvency commencement date, under intimation to IBBI…..and apply to the Adjudicating Authority for appropriate relief on or before the 130TH day of the insolvency commencement date….

- BUT WHAT IF NO DATA IS PROVIDED BY THE SBOD ?
- IF THERE IS DELIBERATE NON- COOPERATION?
- IF THERE IS GENUINE INABILITY TO FORM OPINION ?

- THE AUDIT REPORT WILL HAVE A "DISCLAIMER" AND SO WILL THE AVOIDANCE APPLICATION HAVE A "DISCLAIMER"….

WHICH WILL BE "USED AGAINST" THE RP/ LIQUIDATOR DURING THE ARGUMENTS ……

Amendments in Section 19 – "Persons" to extend co-operation to IRP/ RP

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 19 **"Persons" to extend co-operation to IRP/ RP (in place of "Personnel "**	**Any person who is or has been a personnel of the corporate debtor or its promoter or associated with the management of the corporate debtor, or engaged in a contract for service with the corporate debtor, shall extend all assistance and cooperation** to the IRP as may be required by him for the purposes of managing the affairs of the corporate debtor or performing the duties conferred on him under this Chapter"	Section 19 - **Cooperation with IRP/RP** Amended text: Heading changed to "**Persons**". Section 19(1) substituted to cover "**Any person who is or has been a personnel ... or engaged in a contract for service with the corporate debtor**". Section 19(2): reference changed to "**any person referred to in sub-section (1)**". Section 19(3): "direct such **person referred to in sub-section (1)**"; and "resolution professional" replaced by "**interim resolution professional**". **Explanation inserted**: references to IRP also include the RP	Substantially widens the universe of persons who can be compelled to assist and expressly carries the section through from IRP to RP.

Regulation 3A OF CIRP REGULATION - <u>*AMENDED ON 1 JUNE 2026*</u>

"Duty" to extend assistance and cooperation.

- (1) The interim resolution professional or resolution professional, as the case may be, shall take custody and control as specified under this regulation **<u>from any person as covered under section 19</u>** (*EARLIER IT WAS ONLY THE "the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case may be"*), of the following:-
  - the records of information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such other information required under regulation 36, in such format as notified by the Board;
  - the assets recorded in the balance sheet of the corporate debtor or in any other records referred in clause (f) of section 18.
- (2) **<u>Any person as covered under section 19</u>** (*EARLIER IT WAS ONLY THE "the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor"*) shall provide to the IRP or RP, as the case may be, a list of assets and records while handing over their custody and control, and the IRP or RP may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.

Regulation 4 OF CIRP REGULATION - AMENDED ON 1 JUNE 2026

ACCESS TO BOOKS

Regulation 4(1)(3) The IRP or RP, as the case may be, may seek from any creditor including financial institutions and statutory authorities, such information or records as he may deem fit, including the relevant extracts of information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and any such other information which shall assist the IRP or RP in preparing the information memorandum, getting valuation determined and in conducting the CIRP process and the **creditors shall provide the requisite information:**

Provided that every creditor shall, at the first meeting of the committee, furnish to the IRP or RP, as the case may be, all information and records in its possession relating to the assets and liabilities of the corporate debtor, as may be relevant for the conduct of the CIRP process

SECTION 34(3) AMENDMENTS-
SECTION 19 APPLICABLE IN LIQUIDATION

(3) Any person who is or has been a personnel of the corporate debtor, or its promoter, or associated with the management of the corporate debtor, or **engaged in a contract for service** with the corporate debtor, shall extend all assistance and cooperation to the liquidator as may be required by him for the purposes of managing the affairs of the corporate debtor or performing the duties conferred on him under this Chapter and the provisions of section 19 shall apply in relation to liquidation and voluntary liquidation process as they apply in relation to CIRP Process with the substitution of references to the liquidator for references to the IRP and RP and references to the CIRP with liquidation and voluntary liquidation process, respectively

Regulation 9 OF LIQUIDATION REGULATION - Personnel to extend cooperation to liquidator- *AMENDED ON 1 JUNE 2026*

- The liquidator may make an application to the Adjudicating Authority for a direction that a person who
  (1) is or has been an officer, auditor, employee, promoter or partner of the corporate debtor or any other person referred to in sub-section (3) of section 34;
  (2) was the interim resolution professional, resolution professional or the previous liquidator of the corporate debtor; or
  (3) has possession of any of the properties of the corporate debtor;
- shall cooperate with him in the collection of information necessary for the conduct of the liquidation.
- An application may be made under this Regulation only after the liquidator has made reasonable efforts to obtain the information from such person and failed to obtain it

SOME OTHER AMENDMENTS IN IBC 2026

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K) –

- The CIIRP (Chapter IV-A) replaces the defunct Fast-Track CIRP (Chapter IV, Sections 55–58, entirely omitted).
- It is India's first statutory out-of-court insolvency initiation mechanism

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58A Eligibility (New)	**Available to corporate debtors in notified categories (by asset/income/debt threshold set by Central Government).** CD must not have undergone CIIRP, PPIRP, or completed CIRP in preceding 3 years. No pending CIRP/ PPIRP/ liquidation.	**A blanket application of CIIRP to all CDs would overwhelm the informal mechanism and create misuse.** **Calibrating eligibility ensures the process is used for appropriately-sized, genuinely distressed entities.**	**Eligibility depends on Central Government notifications yet to be issued.** **The 3-year bar prevents repeat use as a delay tactic.** **MSMEs and mid-size CDs are likely primary targets once thresholds are set.**

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58B Initiation Process (New)	Step 1: 51% of notified FC class approves initiation. Step 2: CD given ≥30 days to make representations. Step 3: Fresh 51% approval within 30 days of CD's representation. Step 4: RP appointed by financial creditors (no NCLT involvement). Step 5: RP makes public announcement + compliance report to NCLT and IBBI. CIIRP commences from the date of public announcement — no NCLT order required. Once commenced, no CIRP/PPIRP application can be filed or admitted during the CIIRP Period.	Standard CIRP requires NCLT admission — a process that was taking months. CIIRP eliminates this bottleneck entirely for eligible cases. The dual approval system gives the debtor a meaningful hearing without NCLT involvement.	Financial creditors can commence resolution in weeks rather than months. The RP appointment by creditors (not NCLT) eliminates the appointment delay. The bar on parallel CIRP/PPIRP filing prevents tactical use of competing processes. NCLT workload is reduced at the front end.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58C **Corporate Debtor Objection** **(New)**	• CD may object to NCLT within 30 days of commencement. • NCLT must decide within 30 days. • If no default: CIIRP declared void ab initio. • If default exists but process was defective: mandatory conversion to CIRP.	The out-of-court initiation means no NCLT scrutiny at commencement. The post-commencement objection window provides a judicial safety valve without requiring upfront court involvement.	Debtors with a genuine 'no default' defence can challenge the CIIRP. The conversion-to-CIRP outcome (on procedural defects with a real default) ensures no genuine default is wasted. Creates litigation risk for CDs who are actually in default but try to use procedural objections.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58D Timeline (New)	**150 days from commencement.** **Extension of 45 days possible with 66% CoC vote and NCLT order.** **Total maximum: 195 days.**	The defunct Fast-Track CIRP was 90 days — too tight for most cases. 150+45 days provides a viable pre-insolvency window while maintaining urgency.	Significantly faster than standard CIRP (330 days). 195-day outer limit creates strong commercial pressure to resolve. The NCLT-approved extension requirement ensures extensions are not automatic.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58E **RP Duties (New)**	RP must: invite claims, collate/verify claims, constitute CoC per Section 21, prepare Information Memorandum, invite resolution plans, exercise Section 18(a)-(c) and Section 25(2)(e)-(j) duties. Section 29A and Section 30 apply mutatis mutandis to resolution plans.	CIIRP is a creditor-driven process but needs the same core resolution infrastructure (claims, IM, CoC, plans) as CIRP to produce a valid, court-approved outcome.	Claims from all creditor classes (FC, OC, workmen, employees) must be invited. Full CIRP plan eligibility and content requirements apply. RPs in CIIRP need the same competencies as CIRP — this is not a lighter-touch role.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58F **Debtor-in-Possession Model** **(New)**	Management stays with the board of directors/partners throughout CIIRP (subject to RP supervisory oversight). RP attends board meetings with veto powers over resolutions inconsistent with CIIRP objectives.	Removing management in CIRP (IRP takeover) often destroys operational value — especially for service businesses and developers. Debtor in Possession preserves institutional knowledge and business relationships.	The RP's role is fundamentally different from CIRP: supervisory, not managerial. Promoters continue running operations but under close watch. RP veto power provides creditor protection. New competency requirement for IPs — financial restructuring and workout skills become essential.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58G **Optional Moratorium** **(New)**	• Moratorium is NOT automatic. • RP applies to NCLT with CoC approval (or 51% FC approval pre-CoC). • Moratorium Effective from date of application. • NCLT confirms or rejects. • RP must publicly announce application and any rejection.	Unlike CIRP, CIIRP does not need an automatic moratorium in all cases — the DIP model may allow normal business operations to continue. Making it optional avoids unnecessary disruption for businesses that can continue trading normally.	Creditors choose whether moratorium is needed case by case. The moratorium is creditor-controlled, not debtor-triggered. Prevents misuse of moratorium protection. Moratorium effective from application (not NCLT order) — provides immediate interim protection when applied for.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58H **Conversion to CIRP** **(New)**	Mandatory conversion: **(a) no plan received within 150 + 45 days;** **(b) Debtor/ its personnel non-cooperation;** **(c) NCLT rejects plan**. Voluntary conversion: **66% CoC.** Conversion order specifies stage from which CIRP commences (no duplication of completed work). CIIRP costs become CIRP costs. CIIRP commencement date = CIRP initiation date for look-back purposes (avoidance).	CIIRP failure must lead somewhere. Unlike CIRP → liquidation, CIIRP → CIRP is preferable because maximum resolution attempts are desirable before liquidation.	Two-stage resolution architecture: informal CIIRP first, formal CIRP on failure. No wasted work – CoC constitution, claims, IM, avoidance analysis all carry over. Creditors cannot be worse off than if they had filed under Section 7 initially. Significantly different from PPIRP failure.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58I **Withdrawal (New)**	• Withdrawal requires 90% CoC vote. • Permissible only after CoC constitution and before the first invitation for resolution plans. • NCLT must pass order within 14 days.	The same logic as amended Section 12A — the window for withdrawal must be narrow enough to prevent strategic abuse without being so restrictive as to block genuinely beneficial settlements.	Tight window prevents gaming. 90% threshold means near-unanimous creditor consent required. The 14-day NCLT order deadline is tighter than Section 12A (30 days) — CIIRP's shorter timeline demands faster judicial response.
Section 58J **Resolution Plan Approval** **(New)**	• Plan approved by 66% CoC. RP submits to NCLT. • NCLT approves under Section 31 mutatis mutandis. • Plan has the same binding effect as CIRP resolution plan including clean-slate (Section 31(5)/(6)).	CIIRP resolution must have the same statutory force as CIRP resolution to be commercially credible to resolution applicants and their lenders.	CIIRP-approved plans carry full Section 31 binding force. Clean-slate applies. Licences are protected. Guarantors remain liable. CCI approval must precede NCLT filing (as per amended Section 31(4)). Identical legal finality to CIRP creates bankable certainty.

Creditor-Initiated Insolvency Resolution Process (New Sections 58A–58K)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 58K **Applicable CIRP Provisions (New)**	CIRP provisions applied mutatis mutandis: Sections 21, 24, 25A, 26, 27, 28, 28A, 29, 32, 32A, 43–51, Chapter VI, Chapter VII, and others.	**CIIRP is a new process but the underlying resolution infrastructure (CoC functioning, avoidance, plan eligibility, judicial oversight) is mature.** Importing CIRP provisions avoids reinventing the wheel.	• CoC constitution (Section 21), • meeting procedures (Section 24), • RP replacement (Section 27), • CoC approvals for transactions (Section 28), • Guarantor asset transfers (Section 28A), • Resolution applicant eligibility (Section 29), • Section 32A liability protection, • entire Avoidance framework ALL apply. CIIRP produces a legally robust resolution outcome using established mechanisms.

Group Insolvency - Section 59A

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 59A (New Chapter VA) Group Insolvency (New enabling provision)	Central Government may prescribe rules for coordinated resolution of interconnected corporate debtors. 'Group' = 2+ CDs connected by control or 26%+ voting rights (holding/subsidiary/associate). Common NCLT benches, common IPs, CoC committees, binding coordination agreements permissible. Rules must be laid before Parliament for 30 days — Parliament retains disapproval/modification power.	Videocon, Reliance Communications, Amrapali, Jaypee, Supertech — all involved multi-entity group structures. Courts were fashioning ad hoc coordination mechanisms without statutory backing. Fragmented proceedings destroyed inter-entity value.	Statutory foundation for coordinated multi-entity resolution. Avoids race-to-the-bottom between separate CoCs of related entities. Particularly relevant for real estate SPV structures, NBFCs with subsidiaries, and infrastructure groups. However: enabling framework only — rules yet to be framed. Parliamentary oversight creates policy risk.

Cross-Border Insolvency - Section 240C

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 240C **Cross-Border Insolvency** **(New enabling provision)**	**Central Government may prescribe rules modifying the Code or Companies Act for cross-border cases.** Select Committee recommendation: codify UNCITRAL Model Law principles directly in the statute (not just delegated rules). 'Corporate debtor' definition may include foreign entities with India-connected assets, creditors, or operations.	Sections 234–235 (bilateral agreements) were entirely dormant — no agreement was ever signed. Cross-border insolvency of entities like Jet Airways required complex workarounds. UNCITRAL Model Law provides a globally accepted framework.	First real statutory step towards a cross-border insolvency regime. UNCITRAL principles in the statute (not just rules) provide permanence and credibility. Foreign creditors and entities with Indian operations can expect a legal pathway. However: detailed framework through rules still awaited. Operationally limited until rules are notified.

Insolvency Professional & IPE Ecosystem (Sections 196, 220)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 196(1)(sa) **IBBI Power regarding CoC Conduct** **(New clause)**	IBBI is empowered to specify standards of conduct for CoC members, including decision-making timelines.	CoC conduct was largely unregulated. Decisions delayed by CoC inaction, internal disagreements, or conflicts of interest were contributing to CIRP timeline breaches.	IBBI can now regulate CoC behavior — a significant expansion. Decision-making timelines for CoC votes may be specified. Introduces accountability for creditor-side conduct, not just IP conduct. Will require new governance protocols for CoC participants.
Section 220 **Disciplinary Committee** **(Amended)**	Board may constitute one or more disciplinary committees. Penalty ceiling raised from ₹1 crore to ₹2 crore. Appeals to NCLAT within 30+15 days. Remedies expressly include disgorgement and restitution.	IBBI's disciplinary capacity was constrained by a single committee structure and an outdated penalty ceiling. Given the size of transactions IPs handle, ₹1 crore was an insufficient deterrent.	IBBI can process more disciplinary cases simultaneously. Doubled penalty ceiling (₹2 crore) is a meaningful deterrent. Disgorgement of profits removes any financial benefit from misconduct. NCLAT appellate route provides judicial oversight of disciplinary decisions.

Insolvency Professional & IPE Ecosystem (Sections 240B and 215)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 240B **Electronic Portal for facilitating procedures** **(New section)**	Electronic portal for insolvency proceedings. All filings, communications, and workflows to be digitised through a mandated portal.	Insolvency proceedings were largely paper-based and jurisdictionally fragmented. Digitisation enables transparency, auditability, and eventually AI-enabled process monitoring.	Transformational for practice efficiency. Standardised digital filings reduce errors. Real-time monitoring of CIRP timelines becomes possible. Foundation for IBBI's data analytics and predictive oversight. IPs must develop digital competencies. Comparable to what eCourts did for litigation.
Sections 215(3) & (4) **Information Utilities –** **Mandatory Use (Amended)**	Section 215(3): Operational creditors SHALL (changed from 'may') submit financial information to IU before filing Section 9 application. Section 215(4): CD/debtor must authenticate IU information within specified time – if not, deemed authenticated.	Frivolous Section 9 applications were filed without IU-verified default records, wasting NCLT time. Debtors were delaying authentication to prevent IU records from being used against them.	IU-based verification becomes mandatory for OC filings, reducing frivolous Section 9 applications. Deemed authentication prevents debtor obstruction. Operationally creditors must now register with IUs and upload default information before filing. Creates a richer, more reliable IU database.

Personal Guarantor / Individual Insolvency Reforms (Sections 96, 99)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 96(4) **Interim Moratorium** **(New sub-section)**	**Section 96 interim moratorium does NOT apply where an application is filed for initiating insolvency of a personal guarantor to a corporate debtor.** Parallel Section 124(4) applies the same carve-out to bankruptcy.	**Personal guarantors were filing self-applications under Section 94 solely to obtain the interim moratorium and stay SARFAESI and other recovery actions against them. This was a significant abuse route.**	**Eliminates the 'moratorium as shield' strategy for PG-guarantors.** Creditors can pursue personal guarantors through SARFAESI and other routes without being stayed by a tactical Section 94 filing. Significantly strengthens lender position vis-à-vis defaulting promoter-guarantors.
Section 99 **RP Report Timeline (Amended)**	• RP review period extended from 10 to 21 days. • RP report now goes to both debtor and creditor (not just the AA).	10 days was insufficient for thorough analysis of a guarantor's financial position, especially where guarantees covered complex multi-entity structures.	RP analysis quality improves. Both parties receive the report directly — eliminating information asymmetry and enabling prompt response. Slightly longer process but more robust outcome.

Personal Guarantor / Individual Insolvency Reforms (Sections 106, 164A)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 106(1A) & (3A) **Repayment Plan Process (New sub-sections)**	**Section 106(1A): If no repayment plan within 21 days, AA shall terminate PIR and debtor/creditors may proceed directly to bankruptcy.** Section 106(3A): RP must call creditors' meeting when plan is submitted.	Debtors were submitting repayment plans that creditors never properly considered. And when no plan was submitted, the process stalled with no clear exit.	**Creates a hard deadline and consequence (bankruptcy) for failure to propose a plan.** **Mandatory creditors' meeting ensures proper evaluation of submitted plans. Accelerates Part III proceedings significantly.**
Section 164A **Transactions Defrauding Creditors** **(Individuals)** **(New section)**	NCLT can reverse undervalued transactions by individuals/partners where the intent was to keep assets beyond creditors' reach or adversely affect creditor interests. Good-faith third-party purchasers are protected.	Part III lacked the avoidance transaction powers available in corporate insolvency under Section 43–51. Personal guarantors were stripping assets before creditors could enforce, without consequence.	Powerful new tool against pre-emptive asset dissipation by guarantors and individual debtors. Mirrors Section 49 for individuals. Creates a credible deterrent against asset-stripping before filing. Practitioners advising guarantors must counsel clients on transaction risk well ahead of insolvency.

Personal Guarantor / Individual Insolvency Reforms (Sections 178, 183A)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 178 **Government Dues Priority** **(Personal) (Amended)**	Government dues in personal insolvency mirror the corporate waterfall: 2-year dues at an equivalent 5th-priority position, with longer-standing dues at lower priority.	Rainbow Papers (2022) had created uncertainty about government dues priority in personal insolvency. The amendment aligns personal insolvency with the clarified corporate waterfall position.	Consistent treatment across corporate and personal insolvency regimes. Government tax departments cannot claim elevated priority in personal bankruptcy proceedings beyond the 2-year cap. Strengthens the position of other creditors.

Pre-Packaged Insolvency Resolution Process Changes (Section 54A)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 54A(2)(e) **PPIRP Initiation Threshold** **(Amended)**	**Unrelated financial creditor approval threshold for initiating PPIRP reduced from 66% to 51%.** Applies both to initiation approval and RP appointment approval.	66% was proving too difficult to achieve in practice, especially where multiple lenders were involved. The Select Committee recommended 51% to align with the new CIIRP threshold.	PPIRP becomes more accessible. Majority creditors (by value) can initiate without needing a super-majority. Aligns with CIIRP threshold — creating a coherent informal resolution framework. Minority creditors (holding 10%–34%) retain the ability to vote against but cannot block initiation.

Pre-Packaged Insolvency Resolution Process Changes (Section 54A)

Section / Provision	What Changed	Why (Reasoning)	Impact on Practice
Section 54A **Cross-reference to CIIRP** **(Amended)**	A CD that has undergone CIIRP in the preceding 3 years is ineligible for PPIRP. Reciprocal: a CD in CIIRP cannot receive a PPIRP application (Section 58B(5)).	The two informal resolution mechanisms (PPIRP and CIIRP) must be mutually exclusive to prevent parallel use or abuse of the informal resolution tracks.	Clear demarcation between the two informal tracks. **Creditors must choose between PPIRP (debtor-initiated, Swiss challenge mechanism) and CIIRP (creditor-initiated, no Swiss challenge) based on their situation and leverage.**
Section 54L **Clean Slate for PPIRP Plans** **(Amended)**	New Section 31(5) and (6) (clean-slate, licence protection, guarantor carve-out) now expressly apply to PPIRP plans. Before rejecting a plan, AA must give CoC opportunity to rectify defects.	PPIRP plans were not explicitly covered by the clean-slate provisions. The defect-rectification requirement mirrors the Section 31(1) amendment applied to CIRP plans.	Resolution applicants acquiring companies through PPIRP now have the same licence protection and claims extinguishment as CIRP. PPIRP becomes a legally comparable (and faster) alternative to CIRP for eligible CDs.

Statutory Timeline Changes

Process / Stage	Previous Position	New Statutory Timeline
NCLT Admission (Section 7 / 9 / 10)	No defined timeline — often 6–18 months	14 days (written reasons if missed)
CIRP Completion	330 days (statutory) — average 602 days (actual)	330 days reinforced; timelines now enforceable
CIIRP Completion	Not previously available	150 days + 45 day extension = 195 days maximum
Liquidation Completion	No statutory deadline	180 days + 90 day extension = 270 days maximum
Dissolution Order	No deadline	30 days from liquidator's application
Voluntary Liquidation	No deadline	1 year mandatory completion
NCLT Plan Approval	No deadline	30 days from CoC-approved plan submission
NCLAT Appeal Disposal	No deadline — often 1–3 years	3 months (Select Committee recommendation)
Restored CIRP (from liquidation)	Not previously available	120 days (one-time only)
Secured Creditor Election (Liquidation)	No defined timeline	14 days from LCD (else deemed relinquishment)
Liquidation Order (by NCLT)	No deadline	30 days from receipt of application
IBBI Nomination of Liquidator	No deadline	10 days from NCLT reference

CONCLUSION- IBC – a Paradigm Shift

- Underlying spirit of the Code: Resolution, not Recovery, not Liquidation
- Redesigned the entire resolution process
- Value maximization with fairness and speed
- Defined time frame
- To consolidate and amend the laws relating to reorganisation and insolvency resolution
- Balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues
- Distribution of funds as per Section 53; de-prioritization of government dues
- Different types of creditors; there is an intelligible differentia between financial creditors and operational creditors
- The Code envisages submission of claims by creditors in time
- Approved Resolution Plan is binding on all the stakeholders
- All the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the Resolution Plan, shall stand extinguished
- Once a resolution plan is duly approved by the Adjudicating Authority under Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the creditors including statutory authorities

M/s Rajput Jain & Associates

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THANK YOU

Disclaimer: The content of this document is intended to provide a general guide to the subject matter. Every effort has been made to keep the information cited error-free. The contents are for information purposes only and do not constitute advice or a legal opinion; they reflect the understanding of Rajput Jain & Associates of the law and provisions prevailing as on the date of preparation and may vary according to one's interpretation of the law. This should not be relied upon as the sole basis for any decision which may affect you or your business. For specific guidance, please consult us directly.

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