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RESTRUCTURING & INSOLVENCY

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Restructuring & Insolvency

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Generated on: May 6, 2025

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GENERAL

Legislation

What main legislation is applicable to insolvencies and reorganisations?

The [Insolvency and Bankruptcy Code, 2016](#) (IBC) is the main legislation concerning insolvency and reorganisation in India and applies to companies, partnerships, limited liability partnerships and individuals. However, provisions for partnerships and individuals (except personal guarantors to corporate debtors) are yet to be notified. The Code, inter alia, encapsulates frameworks for, for example, corporate insolvency, fast-track and prepackaged insolvency, and voluntary liquidation. Further, certain provisions for winding-up of companies are also provided under the Companies Act, 2013.

Law stated - 13 January 2025

Excluded entities and excluded assets

What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The IBC was enacted to consolidate insolvency and reorganisation laws of partnership firms, individuals and corporate persons, which excludes entities acting as financial service providers (FSPs). However, section 227 of the IBC empowers the central government, in consultation with the appropriate regulators, to notify FSPs or categories of FSPs for bringing their corporate insolvency resolution process (CIRP) and liquidation under the IBC framework. In 2019, the government notified the FSP Rules, which currently apply only to the CIRP of non-banking financial companies (NBFCs) with an asset size exceeding 5 billion rupees (as per the most recent audited balance sheet of the NBFC).

Additionally, the provisions dealing with partnerships and individuals have been notified only for personal guarantors (ie, individuals who have issued and defaulted on guarantees issued on behalf of corporate debtors).

The Code does not specifically exclude any asset from the insolvency resolution process except in the bankruptcy process of individuals and partnerships, wherein it carves out essential assets of the bankrupt individual, including unencumbered assets meant for personal use from the bankruptcy estate. In addition, in a liquidation proceeding (LP), assets accruing for the benefit of employees and workers on account of labour welfare legislation such as provident fund and gratuity are excluded from the liquidation estate.

Law stated - 13 January 2025

Public enterprises

What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The Code does not distinguish between private and government corporate persons. Therefore, the procedure followed is admission of the corporate debtor (CD) into insolvency by the National Company Law Tribunal (NCLT) on an application made by an operational creditor or financial creditor, appointment of an interim resolution professional and declaration of a moratorium, public announcement and invitation of claims, constitution of a committee of creditors (CoC), submission of the plan, and approval of the plan by the CoC and the NCLT (if there is no plan or the plan is rejected by the NCLT, then the CD is liquidated). Accordingly, the creditors have the right to initiate a CIRP by filing an application before the NCLT.

Law stated - 13 January 2025

Protection for large financial institutions

Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

While, currently, there is no specific legislation to resolve 'too big to fail' entities, the insolvency processes of FSP entities are governed by sectoral regulators such as the Reserve Bank of India and the Securities and Exchange Board of India, except for certain FSPs – those being NBFCs with an asset size exceeding 5 billion rupees to which the FSP Rules have been notified. The mechanism for resolving FSPs under the FSP Rules marginally varies from that under the CIRP, to the extent that it is carried out in close consultation with the central government and the relevant FSR to ensure that such incidents do not create a domino effect or any other systemic risk. The process can commence only if the central government, in consultation with the relevant financial regulator, deems it necessary. Certain guardrails and procedures are also prescribed for dealing with third-party funds, securities and other assets in possession of the FSP during the CIRP, such as collection of receivables in securitisation transactions by NBFCs as an agent of the transferee, to which the moratorium does not apply.

Law stated - 13 January 2025

Courts and appeals

What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Under the Code, the NCLT is the adjudicating authority in respect of corporate persons, including personal guarantors to CDs, while the Debt Recovery Appellate Tribunal has been designated the adjudicating authority for individuals (with some exceptions for personal guarantors) and partnership firms.

Any person aggrieved by an order of the NCLT has a right to appeal to the National Company Law Appellate Tribunal and thereafter to the apex court of the country (ie, the Supreme Court); however, this must be within the relevant period of limitation.

While there is no statutory requirement under the IBC for depositing a security in appeal (unlike some other enforcement statutes), we have seen specific instances where the appellate courts have ordered deposit of certain amounts by way of their interim orders.

Law stated - 13 January 2025

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

A company that has not committed any default and intends to liquidate itself may initiate voluntary liquidation proceedings. This is subject to the following thresholds:

- the majority of directors declaring that the company has no debt outstanding or there is no asset liability mismatch and the liquidation is not to defraud any person;
- shareholders' special resolution; and
- approval by creditors representing two-thirds of the debt (if any).

When the affairs of the company are completely wound up by the liquidator, it shall file an application with the National Company Law Tribunal (NCLT) for dissolution of the company. The company is wound up from the date of the dissolution order of the NCLT.

The effect of the process is that the company ceases to carry on its business from the date of passing of the resolution for liquidation except as required for the beneficial winding-up of its business. However, the corporate state and corporate powers of the company shall continue until it is dissolved.

Law stated - 13 January 2025

Voluntary reorganisations

What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

The corporate insolvency resolution process (CIRP) can be commenced by the corporate debtor (CD) itself or any shareholder, director or person in charge of management of such CD upon such CD committing a default in respect of its debt. An application needs to be made to the NCLT, accompanied by a shareholders' special resolution, resolution professional (RP) details and the CD's books of accounts.

The NCLT has to admit or reject such application within 14 days of its filing (the timeline is directed by the Supreme Court). Upon admission, the NCLT declares a moratorium, and the management and control of the CD shift to the RP. The CIRP then commences, resulting in a plan being approved or the CD being liquidated.

Law stated - 13 January 2025

Successful reorganisations

How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability and, if so, in what circumstances?

The Insolvency and Bankruptcy Code, 2016 categorises creditors into two groups: operational creditors (OCs) and financial creditors (FCs). The committee of creditors (CoC) consists of FCs with voting rights proportionate to their admitted debt, except where a CD has no FCs, in which case the CoC consists only of OCs. The CoC can approve the plan by two-thirds majority, including the distribution of plan proceeds, which is, inter alia, subject to approval by the NCLT and compliance of the law, including the OCs and the dissenting FCs receiving a minimum liquidation value. Interestingly, the issue regarding minimum liquidation value payable to dissenting FCs and the role of their security interest has recently been referred by the Supreme Court to a larger bench in [India Resurgence ARC Private Limited v Amit Metaliks Limited & Anr \(2021\) 19 SCC 672](#) and [DBS Bank Ltd v Ruchi Soya Industries Ltd \(2024\) 3 SCC 752](#).

Further, non-debtor parties are not released automatically on approval of the plan unless otherwise provided in the plan. The Code, however, provides that CDs that have the benefit of any third-party security, such as a guarantee, can continue to avail their remedies against such security providers even after the plan's approval. Additionally, while the CD is given a clean slate regarding all offences and attachments relating to a pre-insolvency commencement date period, any individuals (officers, directors and members) personally responsible for any such offence continue to remain liable.

Practically, the creditors are wary of releasing non-debtor parties such as guarantors, as they wish to recoup the haircuts in the plan from such parties.

Law stated - 13 January 2025

Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

As per the code, a CD is placed into a liquidation proceeding (LP) if either the plan is not submitted or approved by the NCLT or if the CoC decides so by two-thirds majority. An LP can also be ordered if an approved plan is contravened in the course of its implementation. Once liquidation is ordered, a liquidator is appointed by the NCLT that has quasi-judicial powers. The liquidator is then required to collate all claims and finally satisfy the claims by undertaking a sale of assets. Post-commencement, there are no material differences in a voluntary liquidation compared with an involuntary liquidation.

Law stated - 13 January 2025

Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Involuntary reorganisations can be commenced either by an FC or an OC to a CD. While an FC has only to file an application within limitation, proving the existence of debt and default, an OC is required to serve upon the CD a demand notice seeking repayment of unpaid debt, which has to repay the debt within 10 days or notify the OC regarding a pre-existing dispute. If the debt remains unpaid and the OC is unconvinced regarding the pre-existing dispute, then the OC can file before the NCLT seeking CIRP initiation. However, if the CD is able to convince the NCLT regarding the pre-existing dispute, then such applications are not admitted. The effect of such an application being admitted is that the control of the CD shifts from the board to the RP and a moratorium is imposed. The RP then runs the CIRP, which may ultimately lead to approval of a plan.

Upon commencement, both voluntary and involuntary proceedings are mostly similar.

Law stated - 13 January 2025

Expedited reorganisations

Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

Yes, the fast-track insolvency resolution process is envisaged to be completed within 90 days, as compared with 180 days stipulated for a CIRP. The fast-track provisions currently apply to small companies, start-ups and unlisted companies with assets not exceeding [10 million rupees](#). The fast-track process, other than reducing the overall timeline, barely differs from the CIRP, which is why, to date, there have been minimal takers for this process.

The Code also provides for a prepackaged insolvency resolution process (PPIRP) exclusively applicable for resolving micro, small and medium-sized enterprises. To initiate a PPIRP, the CD must have, inter alia, committed a default of at least 1 million rupees and obtained special resolution of the shareholders and approval of creditors representing two-thirds of the debt. A PPIRP differs from a CIRP as it is intended to be a debtor-in-possession model with the supervision of an insolvency professional.

Law stated - 13 January 2025

Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

Proposed reorganisation under the Code is the approval of the plan by the NCLT. In the event that (1) the NCLT does not receive any plan until the conclusion of the CIRP or (2) the NCLT rejects the plan for non-compliance, the proposed reorganisation is considered a failure. Consequently, the NCLT shall pass an order for liquidation of the CD.

If there is failure on the part of a resolution applicant to implement the approved plan, the aggrieved stakeholder can apply to the NCLT for the setting aside of such plan and passing appropriate directions, which may include liquidation. Failure to implement the plan leads to onerous consequences for the resolution applicant, including forfeiture of performance security and debarment from participating in future CIRPs.

Law stated - 13 January 2025

Corporate procedures

Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

Apart from the Code, a company may be wound up under section 271 of the Companies Act, 2013 on an application to the NCLT by the company itself, its creditors, its contributors, the Registrar of Companies or the central government. Further, a company may also be voluntary wound up as per its constitutional documents and passing of a special resolution.

Law stated - 13 January 2025

Conclusion of case

How are liquidation and reorganisation cases formally concluded?

The liquidation proceedings are concluded by passing a dissolution order by the NCLT after the assets of the CD are liquidated and distributed among the creditors.

The CIRP is completed when the NCLT passes an order approving the plan.

Law stated - 13 January 2025

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency

What is the test to determine if a debtor is insolvent?

The Insolvency and Bankruptcy Code, 2016 follows the cash flow test for determining insolvency (ie, the ability of the corporate debtor (CD) to repay its debts as and when they become due and payable. Accordingly, a financial creditor can seek initiation of a corporate insolvency resolution process (CIRP) against the CD if it can satisfy the National Company Law Tribunal (NCLT) that there is debt and default (for an amount in excess of 10 billion rupees (ie, approximately US\$120,000)) and the application has been filed within limitation. Similarly, an operational creditor can seek initiation of a CIRP on the existence of debt and default, subject to proving that there is no pre-existing dispute with regard to the debt in question. Interestingly, the Hon'ble Apex Court in [Vidarbha Industries Power Limited v Axis Bank Limited \(2022\) 8 SCC 35 \(the Vidarbha judgment\)](#) held that the NCLT has discretion to admit or not admit a CD into a CIRP, even if there exists debt and default. The confusion created by the aforesaid judgment was substantially clarified by the Supreme Court in [M Suresh Kumar Reddy v Canara Bank](#)

[\(2023\) 8 SCC 387](#), which upheld a prior decision in [Innoventive Industries Limited v ICICI Bank \(2018\) 1 SCC 407](#) and limited the *Vidarbha* judgment to its own facts and held that once the NCLT is satisfied of the existence of debt and default, there is hardly any discretion left with it to refuse the admission of a CIRP initiation application under section 7 of the Code. It may, however, be noted that since both these decisions were of coordinate benches of the Supreme Court, there does exist some confusion as far as the absolute legal position is concerned.

Law stated - 13 January 2025

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

Under the extant laws, there is no such mandate.

Law stated - 13 January 2025

DIRECTORS AND OFFICERS

Directors' liability – failure to commence proceedings and trading while insolvent

If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

The extant law does not require directors or officers to mandatorily apply for a corporate insolvency resolution process (CIRP) under any circumstance; therefore, there is no liability for failure to apply for CIRP initiation. However, the business of any debtor in the sunset period (one to two years prior to the insolvency commencement date) is scrutinised by the resolution professional (RP) after their appointment.

If the RP identifies any transaction undertaken by the debtor in the sunset period as fraudulent, preferential, undervalued or extortionate credit transaction, then they apply to the National Company Law Tribunal for adequate remedies, including reversal of such transactions by the responsible persons, which may include the directors and officers in their personal capacity.

Law stated - 13 January 2025

Directors' liability – other sources of liability

Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

Under the Companies Act, 2013, directors and officers have a duty of care towards the company and all stakeholders. The Act provides for civil as well as criminal liability for doing certain acts or omitting to do certain acts by the responsible directors and officers. Certain such instances are fraud and lending to directors and officers in contravention of the Act.

Post-corporate insolvency resolution process (CIRP) initiation, the RP is required to assess whether the corporate debtor (CD) has entered into any avoidable transactions of the nature of fraudulent trading, preferential transaction, or undervalued or extortionate credit transaction. The relevant director or officer is generally made party to proceedings initiated by the RP on the basis of the above determination and can be held liable to make good the loss suffered by the company.

Law stated - 13 January 2025

Directors' liability – defences

What defences are available to directors and officers in the context of an insolvency or reorganisation?

If a director or officer is able to establish that they exercised reasonable care and diligence in minimising loss to the creditors in the 'twilight zone' (the review period, which is taken as two years from the insolvency commencement date), then they are protected under the provisions of the Code.

Law stated - 13 January 2025

Shift in directors' duties

Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

Once the CIRP commences, the powers of the board stand suspended, and the RP is vested with the management of the CD subject to overall supervision of the committee of creditors (CoC). All major decisions (eg, raising of interim finance and creation of security) are undertaken by the RP with the consent of the CoC representing two-thirds of the debt.

Law stated - 13 January 2025

Directors' powers after proceedings commence

What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

Once the CIRP commences, the management of the CD shifts to the RP. The incumbent directors have a right to participate, but not vote, in the meetings of the CoC. They are expected to guide the CoC in approving the best plan for the CD, considering their knowledge of the CD.

Law stated - 13 January 2025

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

On initiation of the corporate insolvency resolution process (CIRP), a moratorium comes into effect and no legal proceedings can be initiated against the corporate debtor (CD). Similarly, during a liquidation proceeding (LP), there is a prohibition on initiation or continuation of legal proceedings by or against the CD. Relief from such a moratorium is not provided for under the Insolvency and Bankruptcy Code, 2016 (IBC), as the 'calm period' is intended to be all-pervasive. However, recent judicial developments have shown that certain assets are being excluded from the purview of moratoriums on account of treaties and conventions. For example, aircraft leases have been excluded on account of the Geneva Convention in the recent insolvency proceedings of Go Air ([Accipiter Investments Aircraft 2 Limited v Union of India and Anr \(2024 SCC OnLine Del 3125\)](#)). The same has also been statutorily excluded via a recent notification of the [Ministry of Corporate Affairs](#). Additionally, as mentioned above, with regard to financial service providers (FSPs), certain third-party assets are excluded from the moratorium provisions of the IBC, despite such assets (such as receivables collected by an FSP as an agent for third parties in securitisation transactions) being in custody or possession of the FSP, and central government has prescribed the manner in which such assets are to be dealt with.

Law stated - 13 January 2025

Doing business

When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

The CD is expected to carry on its business in the 'ordinary course' during a CIRP. Even under liquidation, sale of the CD as a 'going concern' is prioritised over a piecemeal sale. Creditors who supply goods or services during a CIRP or liquidation get the benefit of their receivables being categorised as CIRP cost or liquidation cost, which get super-priority in distribution.

During a CIRP, the committee of creditors (CoC) is tasked with overall supervision, as the RP is also mandated to receive the approval of the CoC before taking major decisions, whereas, during liquidation, a liquidator has absolute decision-making powers. However, there is a stakeholder consultation committee comprising creditors to guide the liquidator.

Law stated - 13 January 2025

Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

During a CIRP, the RP has the authority to raise interim finance and create security interest over the property of the CD with prior consent of 66 per cent of the CoC. Such interim finance is provided as a priority and included as a CIRP cost under the plan.

Law stated - 13 January 2025

Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

During a CIRP, the RP is permitted to undertake the sale of unencumbered assets of the CD outside the ordinary course of business with the approval of 66 per cent of the CoC, if deemed necessary for better value realisation. However, the aggregate book value of all such assets sold shall not exceed 10 per cent of the total admitted claims. The assets sold are available as 'free and marketable' to a bona fide purchaser, irrespective of anything to the contrary contained in the shareholders' agreement, joint venture agreement or documents of a similar nature. The creditor claims with regard to the CD are settled in accordance with the Code.

In liquidation, the legislation does not provide for 'free and clear assets'; however, the tribunals have been granting reliefs to auction purchasers from past liabilities.

Law stated - 13 January 2025

Negotiating sale of assets

Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

These are not allowed under the Code.

Law stated - 13 January 2025

Rejection and disclaimer of contracts

Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

The liquidator is empowered to disclaim onerous contracts by applying to the NCLT within six months of the liquidation commencement date. In the event of such annulment, the other party shall be deemed to be a creditor of the CD for compensation or damages, which may, accordingly, be payable as a debt in liquidation.

Under a CIRP, the RP does not have any specific right to disclaim an unfavourable contract, and the contracts of the CD are expected to continue during a CIRP. If a debtor breaches a contract post-CIRP initiation, then it is protected from enforcement proceedings on account of the moratorium.

Law stated - 13 January 2025

Intellectual property assets

May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

Any agreement including intellectual property contracts may be terminated as per the provisions of such contract on initiation of a CIRP or liquidation. Notably, the Hon'ble Supreme Court in *Gujarat Urja Vikas Nigam Limited v Mr Amit Gupta & Ors* (Civil Appeal No. 9241 of 2019) held that, in the event that any contract is central to the existence of the CD and its termination would result in the CD's corporate death, the NCLT is empowered to prevent such termination.

Law stated - 13 January 2025

Personal data

Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

For a CD engaged in a business that requires collection of personal information or customer data, such data is expected to be collected, utilised and transferred as per applicable laws, including the Digital Personal Data Protection Act, 2023.

Law stated - 13 January 2025

Arbitration processes

How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Whether or not a dispute is arbitrable is dependent on the underlying contract between the parties, and commencement of a CIRP or liquidation does not have an effect on the nature of the dispute. The law on initiation of arbitration after commencement of a CIRP or LP has

crystallised to the extent that such proceedings can continue post-initiation; however, the final award cannot be enforced on account of the moratorium and gets treated as a claim. Additionally, the RP or liquidator always has the right to initiate arbitration if that is beneficial for the debtor.

Law stated - 13 January 2025

CREDITOR REMEDIES

Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

Apart from the Insolvency and Bankruptcy Code, 2016, the secured creditors may enforce their security interest without the intervention of courts or tribunals under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. Secured creditors also have the right to enforce security created in their favour without court intervention in terms of the Transfer of Property Act, 1882 (this method is rarely used). All such enforcement mechanisms have to be undertaken in strict compliance with the applicable rules, and the concerned debtor has the right to approach the relevant tribunals in cases of any derogation from the rules.

Law stated - 13 January 2025

Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

Unsecured creditors have to approach the relevant civil courts for seeking enforcement of their claims. Pre-judgment attachments are possible; however, obtaining them is tedious. Additionally, such proceedings before a civil court are not summary in nature and are therefore time-consuming.

Law stated - 13 January 2025

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

Once a corporate insolvency resolution process (CIRP) or liquidation proceeding (LP) is initiated, the resolution professional (RP) or liquidator makes a public announcement seeking

claims. During a CIRP, the RP collates the claims and constitutes the committee of creditors (CoC), whose meetings are convened periodically, with one meeting being mandated per quarter. The RP is obliged to report to the CoC regarding the status of the CIRP, its business and operations, and creditor claims.

The liquidator is required to constitute a stakeholder consultation committee (SCC) to advise them on matters including valuation and initiation of legal proceedings. The SCC has access to all relevant information as may be needed. The liquidator convenes the first meeting of the SCC within seven days of the liquidation commencement date and may convene other meetings. The liquidator is required to keep the SCC apprised of developments in the LP.

Law stated - 13 January 2025

Creditor representation

What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

During a CIRP, the CoC, being constituted by the RP, is the seminal authority to approve the plan. The CoC can appoint advisers as per its discretion, whose costs are paid by the CoC.

Law stated - 13 January 2025

Enforcement of estate's rights

If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

A creditor cannot pursue the estate's remedies; it is required to be done by the liquidator. A creditor may, however, choose to not relinquish its security interests in favour of the liquidation estate and opt to pursue them independently. Further, the assignment of 'non-readily realisable assets' to third parties is permitted. Such assets include contingent or disputed assets.

Law stated - 13 January 2025

Claims

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?

A creditor is required to submit their claim with proof on or before the last date mentioned in the public announcement or on or before the 90th day of the insolvency commencement

date (ICD). When claims are received after the date of issue of request for resolution plans or 90 days from the ICD, the RP verifies such claims and categorises them as acceptable or non-acceptable for collation. If a claim has been categorised as 'non-acceptable', the RP shall inform the relevant creditor within seven days of categorisation with reasons thereof. If a claim has been categorised as 'acceptable', the RP shall put forth such claim before the CoC for its recommendation for inclusion in the list of creditors. On the CoC's acceptance of such claim, the RP shall apply to the National Company Law Tribunal (NCLT) for condonation of delay. Further, if an RP-accepted claim is rejected by the CoC, the RP shall apply to the NCLT for final adjudication of such claim.

All claims are verified and admitted by the RP. In the event of rejection or partial admission of a claim amount, the creditor may apply to the NCLT against the RP's decision. Contingent claims are generally admitted by the RP with adequate disclosure as to the nature of the claim being contingent.

Transfer or assignment of debt or claim amount may happen at any time during a CIRP. The parties entering into such an assignment transaction shall inform the RP within seven days of such assignment or transfer.

Law stated - 13 January 2025

Set-off and netting

To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

The Hon'ble Supreme Court in *Bharti Airtel Ltd v Aircel Ltd & Dishnet Wireless Ltd (Resolution Professional)* (2024) 4 SCC 668 recently held that the provisions of a CIRP do not permit or recognise the principles of insolvency set-off or contractual set-off. However, in a liquidation process, to the extent that there are mutual dealings between the CD and another party, the sums due from one party can be set off against the sums due from the other to arrive at the net amount payable to the CD or the other party.

Law stated - 13 January 2025

Modifying creditors' rights

May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

The courts and tribunals do not have the jurisdiction to change the ranking of a valid creditor's claim.

Law stated - 13 January 2025

Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

The liquidation and reorganisation costs get super-priority in distributions. Other than that, it is only the specified employee and worker claims that get priority over secured creditors.

Law stated - 13 January 2025

Employment-related liabilities

What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

Employee contracts can only be terminated as per the contract, and any amounts becoming due and payable to employees on account of such termination while the CIRP or LP is ongoing form part of the CIRP or liquidation cost.

Law stated - 13 January 2025

Pension claims

What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

In liquidation, any sums due to any worker or employee from the provident fund, pension fund and gratuity fund are excluded from the liquidation estate. This aspect has been reaffirmed by the Supreme Court in [Moser Baer Karamchari Union v Union of India \(2023\) 9 SCC 499](#).

As far as CIRPs are concerned, there is no specific provision corresponding to section 36(4) of the Insolvency and Bankruptcy Code, 2016 (IBC) with regard to the plan. However, the Hon'ble National Company Law Appellate Tribunal (NCLAT) held in *Nitin Gupta v Applied Electro-Magnetics (P) Ltd* 2022 SCC OnLine NCLAT 2289 that any gratuity or pension fund dues should be paid in full by the successful resolution applicant. This principle has also been extended to unpaid contributions through subsequent judgments, and a resolution applicant is required to meet such costs in full.

Law stated - 13 January 2025

Environmental problems and liabilities

Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency

administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Not many environmental claims in CIRPs or LPs have gained traction to date. However, any claims arising from non-compliances in relation to environment law will be crystallised on the ICD and filed as claims.

Since the RP or the liquidator manages the CD as a going concern, they have to ensure compliance with the applicable environmental laws. Their personal liability for any breach of environment laws is yet to be tested by tribunals; however, we have seen that the RP or liquidator ensures that responsible officers are in place as required under the specific environmental legislation.

Law stated - 13 January 2025

Liabilities that survive insolvency or reorganisation proceedings Do any liabilities of a debtor survive an insolvency or a reorganisation?

In relation to CIRPs, the Supreme Court, in several judgments, has held that all claim with regard to the CD (whether or not filed or contingent) stand extinguished on approval of the plan (the 'clean slate principle').

During an LP, the liquidator has the power to sell the assets of the CD as a going concern and, in such a circumstance, the clean slate principle will apply, as has been held by courts and the NCLAT in several judgments, including *Su-Kam Power System Ltd v State of HP* 2024 SCC OnLine HP 4056, *Chinar Steel Segments Centre (P) Ltd v Samir Kumar Agarwal* 2023 SCC OnLine NCLAT 741 and *Shiv Shakti Inter Globe Exports (P) Ltd v KTC Foods (P) Ltd* (2023) 21 Comp Cas-OL 632.

Law stated - 13 January 2025

Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

In a CIRP, distribution of proceeds is done in accordance with the terms of the approved plan, which, in effect, is decided by the CoC, subject to compliance with the provisions of the IBC.

In an LP, the liquidator is required to open a bank account, deposit all proceeds and then distribute such proceeds within 90 days of its receipt to the stakeholders, in accordance with the order of priority set out in the IBC.

Law stated - 13 January 2025

SECURITY

Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

The type of security taken on immovable property is a mortgage. The Transfer of Property Act, 1882 primarily governs the creation of mortgages and allows five types of mortgages, but the usual ones in India are English mortgages through a registered deed and equitable mortgages, which are created by deposit of title deeds. Stamp duty and registration fees are key determinants for parties to choose the nature of mortgage.

Law stated - 13 January 2025

Secured lending and credit (movables)

What principal types of security are taken on movable (personal) property?

The types of security interest that can be created over movable assets include pledges, hypothecations, charges and liens.

Law stated - 13 January 2025

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

Preferential transactions

If the corporate debtor (CD) has given any preference (ie, a transfer of property that has put the counterparty in a beneficial position, subject to certain exceptions) to any party within two years (if it is a related party) or within one year (if it is an unrelated party) preceding the insolvency commencement date (ICD), then the resolution professional (RP) or the liquidator can file an application before the National Company Law Tribunal (NCLT) for avoidance of such transaction. The NCLT may pass orders, inter alia, requiring the property so transferred to be vested in the CD or requiring any person to pay back the amounts received.

Undervalued transactions

If the CD has given a gift or undertaken a sale of its assets at a significantly less value to a party within two years (if it is a related party) or within one year (if it is an unrelated party) preceding the ICD, then the RP, liquidator, creditor, member or partner of the CD can file an application before the NCLT to declare such transaction as void. The NCLT may pass orders, inter alia, requiring the transferred property to be vested in the CD or requiring any person to pay back the amounts received.

Transactions defrauding creditors

If the NCLT is satisfied that an undervalued transaction was deliberately entered into for keeping assets of the CD beyond the reach of any claimant or in order to adversely affect the interests of any claimant, then, subject to certain exceptions, the NCLT may pass an order restoring the position or protecting the interests of affected persons.

Extortionate credit transactions

If the CD has been a party to an extortionate credit transaction during two years preceding the ICD, then the RP or the liquidator can make an application before the NCLT for avoiding such transactions. The NCLT, on being satisfied, shall, inter alia, restore the position or set aside the debt.

Wrongful or fraudulent trading

If, during a CIRP or liquidation proceeding, it is found that the CD's business has been carried on with intent to defraud its creditors or for any fraudulent purpose, then the NCLT may pass an order against persons being complicit to make contributions to the assets of the CD.

The NCLT can also direct a CD's director or partner to make contribution to the CD's assets if

- such director or partner knew or ought to have known that there was no reasonable prospect of avoiding a CIRP; and
- such director or partner did not exercise due diligence.

The aforesaid provisions, *mutatis mutandis*, apply to prepackaged insolvency resolution processes.

Law stated - 13 January 2025

Equitable subordination

Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

Any related-party financial creditor will not have any rights in the committee of creditors. Through judicial pronouncements, a plan not providing any payments to related-party creditors has been held to be valid.

Law stated - 13 January 2025

Lender liability

Are there any circumstances where lenders could be held liable for the insolvency of a debtor?

There are no such circumstances.

Law stated - 13 January 2025

GROUPS OF COMPANIES

Groups of companies

In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

A parent company can be held liable for the liability of its subsidiaries or affiliates only if there is a contractual recourse to the parent.

Pro rata distribution of group company assets without regard to assets of the individual corporate entities is not permitted.

Law stated - 13 January 2025

Combining parent and subsidiary proceedings

In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

The Insolvency and Bankruptcy Code, 2016 does not explicitly provide for a group insolvency framework. The National Company Law Tribunal (NCLT) Mumbai Bench, in [State Bank of India v Videocon Industries Ltd 2018 SCC OnLine NCLT](#)

[13182](#), which has subsequently been upheld by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in multiple judgments, including *Radico Khaitan Ltd v BT & FC Pvt Ltd Company Appeal (AT) (Ins)* No. 919/2020, *Oase Asia Pacific Pte Limited v Axis Bank, Financial Creditors Company Appeal (AT) (Ins)* No. 780/2020 and *Giriraj Enterprises v Regen Powertech (P) Ltd 2023 SCC OnLine NCLAT 254*, first laid down parameters for consolidation of corporate insolvency resolution processes (CIRPs), being, inter alia, common control, common assets and intricate links between the companies. Accordingly, on the aforesaid parameters being met, the NCLT or NCLAT may order consolidation of CIRPs to achieve value maximisation.

Law stated - 13 January 2025

INTERNATIONAL CASES

Recognition of foreign judgments

Are foreign judgments or orders recognised, and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

The Civil Procedure Code, 1908 deals with the procedure for enforcement of foreign judgments and decrees in India and states that, for enforcement of a foreign judgement or decree, the judgment or decree has to be a conclusive one, passed on the merits of the case and by a superior court with competent jurisdiction. Further, a decree of any superior court of a reciprocating territory shall be executed in India as a decree passed by the Indian district

court. Where a judgment or decree is not of a superior court of a reciprocating territory, a suit has to be filed in an Indian court on that foreign judgment or on the original cause of action, or both.

India is not a signatory to any treaty on international insolvency. However, for complete justice, the Hon'ble National Company Law Appellate Tribunal in *Jet Airways (India) Ltd v State Bank of India* (2019) 8 Comp Cas-OL 468 recognised an insolvency protocol prepared by the resolution professional in India and the Dutch administrator.

Law stated - 13 January 2025

UNCITRAL Model Laws

Have any of the UNCITRAL Model Laws in relation to insolvency been adopted or is adoption under consideration in your country?

India is yet to adopt any of the UNCITRAL Model Laws in relation to insolvency.

Law stated - 13 January 2025

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

There is no distinction between a foreign and a resident creditor.

Law stated - 13 January 2025

Cross-border transfers of assets under administration

May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

This is subject to India having any reciprocal arrangements with such country or nation pursuant to section 234 of the Insolvency and Bankruptcy Code, 2016 (IBC), which are currently not in place.

Law stated - 13 January 2025

COMI

What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

While there is no legislation currently in this regard, the ['Report on the rules and regulations for cross-border insolvency resolution'](#)

[dated June 2020](#), elaborates on the parameters that may be used while ascertaining COMI, which includes assessment of the place where the corporate debtor's (CD) central administration takes place that is readily ascertainable by third parties, including its creditors. In making the assessment, the National Company Law Tribunal (NCLT) shall, inter alia, consider, in relation to the CD, the location of and from (1) its assets, book of accounts, directors and senior management; and (b) its creditors.

Law stated - 13 January 2025

Cross-border cooperation

Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

Currently, India is not a signatory to any treaty on international insolvency. However, the Indian government may enter into arrangements with any other country to enforce the IBC. Further, the IBC allows the NCLT to send letters of request to those courts with which the bilateral agreement has been signed. Interestingly, the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Jet Airways (India) Ltd v State Bank of India (2019)* 8 Comp Cas-OL 468 recognised an insolvency protocol prepared by the resolution professional (RP) in India and the Dutch administrator.

Law stated - 13 January 2025

Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

Currently, India does not have a formal cross-border insolvency protocol. The Hon'ble NCLAT in *Jet Airways (India) Ltd v State Bank of India* had recognised an insolvency protocol prepared by the RP in India and the Dutch administrator.

Law stated - 13 January 2025

Winding-up of foreign companies

What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

The Companies Act, 2013 provides for a winding-up procedure for unregistered companies, which will include foreign companies doing business in India. Further, the tribunal or official

liquidator may exercise powers or any act that they might exercise or do in winding-up of companies registered under the Act.

Law stated - 13 January 2025

QUICK REFERENCE

Summary of law and procedure

Applicable insolvency law, reorganisations and liquidations

The Insolvency and Bankruptcy Code, 2016 (the Code) and the Companies Act, 2013.

Law stated - 13 January 2025

Summary of law and procedure

Customary kinds of security devices on immovables

Mortgage.

Law stated - 13 January 2025

Summary of law and procedure

Customary kinds of security devices on movables

Pledges, hypothecations, charges and liens.

Law stated - 13 January 2025

Summary of law and procedure

Stays of proceedings in reorganisations/liquidations

The order of insolvency or liquidation, once initiated by the National Company Law Tribunal, may be appealed against in the National Company Law Appellate Tribunal. The relevant adjudicating authority may put a stay on the process if the requirement for the same is established before it.

Law stated - 13 January 2025

Summary of law and procedure

Duties of the insolvency administrator

The resolution professional under the Code is responsible for maintaining the corporate debtor as a going concern and managing the day-to-day operation of the corporate debtor during the insolvency.

Law stated - 13 January 2025

Summary of law and procedure

Set-off and post-filing credit

The Code does not recognise or permit the principle of insolvency set-off or contractual set-off during insolvency. However, mutual set-off is permitted in a liquidation process. Post-filing credit is not given any special status under the Code; credit availed by the corporate debtor post-admission is, however, recognised as interim finance and given super-priority.

Law stated - 13 January 2025

Summary of law and procedure

Creditor claims and appeals

The resolution professional under the Code verifies and admits the claims of all creditors. The creditor may appeal against their decision before the Hon'ble National Company Law Tribunal.

Law stated - 13 January 2025

Summary of law and procedure

Priority claims

The claims under insolvency are provided priority as per section 53 of the Code, which includes, foremost, corporate insolvency resolution process cost, worker cost, debts to secured creditors that have relinquished their security, wages of employees and workers, debts to unsecured creditors and statutory dues.

Law stated - 13 January 2025

Summary of law and procedure

Major kinds of voidable transactions

Post-corporate insolvency resolution process initiation, the resolution professional is required to assess whether the corporate debtor has entered into any avoidable transaction in the nature of fraudulent trading, preferential transaction, and undervalued or extortionate credit transaction. The relevant director or officer is generally made party to proceedings initiated by the resolution professional on the basis of the above determination and can be held liable to make good the loss suffered by the company.

Law stated - 13 January 2025

Summary of law and procedure

Operating and financing during reorganisations

During insolvency, the resolution professional may raise interim finance, which is provided priority of payment under the resolution plan.

Law stated - 13 January 2025

Summary of law and procedure

International cooperation and communication

There is no provision in the Code for international cooperation and communication. However, in particular cases, the courts have encouraged coordination between Indian and foreign insolvency professionals. For example, the Hon'ble National Company Law Appellate Tribunal in *Jet Airways (India) Ltd v State Bank of India* recognised an insolvency protocol prepared by the resolution professional in India and the Dutch administrator.

Law stated - 13 January 2025

Summary of law and procedure

Liabilities of directors and officers

The extant law does not require directors or officers to mandatorily apply for a corporate insolvency resolution process under any circumstance; therefore, there is no liability for failure to apply for corporate insolvency resolution process initiation. However, the business of any debtor in the sunset period (one to two years prior to the insolvency commencement date) is scrutinised by the resolution professional after their appointment. If the resolution professional identifies any transaction undertaken by the debtor in the sunset period as a fraudulent, preferential, undervalued or extortionate credit transaction, then they apply to the National Company Law Tribunal for adequate remedies, including reversal of such transactions by the responsible persons, which may include the directors or officers in their personal capacity.

Law stated - 13 January 2025

Summary of law and procedure

Pending legislation

Post-initiation of a corporate insolvency resolution process, a moratorium under section 14 of the Code starts operating against all pending legislation against the corporate debtor.

Law stated - 13 January 2025

UPDATE AND TRENDS

Trends and reforms

Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

Time and again, the appropriateness of the Insolvency and Bankruptcy Code, 2016 to deal with the corporate insolvency resolution processes (CIRPs) of real estate companies has been debated. The courts and tribunals have improvised by introducing concepts such as reverse CIRPs to suitably deal with project-based CIRPs (which does not extend to other assets of the real estate company) and provide relief to homebuyers. Accordingly, amendments are expected to modify the Code to deal with real estate insolvencies. In addition, group insolvency has been an evolving concept, which, despite having no place in the statute, has seen certain successful resolutions where the liability of the entire group has been dealt with as a singular process and resolved through a common resolution plan.

With the increasing number of out-of-court settlements happening immediately prior to CIRP commencement, the Indian government is also exploring mediation as a form of settling insolvency law disputes and a unique creditor-led resolution framework to optimise insolvency resolutions. A proposal to incorporate the cross-border insolvency framework is also in advanced stages of discussion.

Interestingly, the default threshold, which was raised from 100,000 rupees (approximately US\$1,200) to 10 million rupees (approximately US\$120,000) to deal with the impact of the covid-10 pandemic, has not yet been rolled back and is still in effect, despite the current minimal impact of covid-19.

Law stated - 13 January 2025