

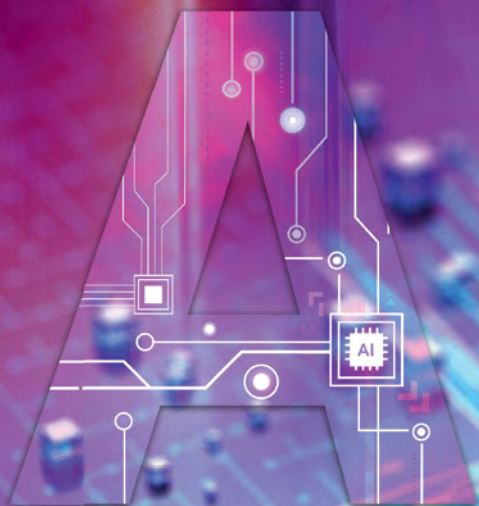


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THE AI ERA:
REDEFINING POSSIBILITIES,
RESHAPING FUTURES

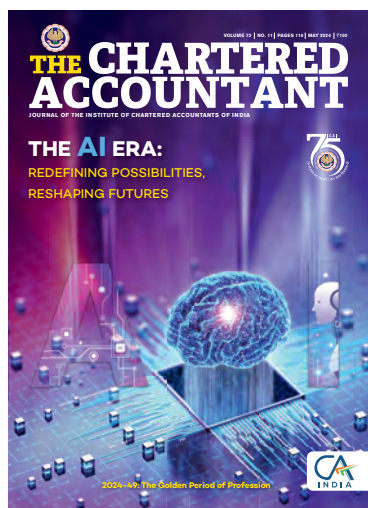


2024-49: The Golden Period of Profession



Contents

MAY 2024
IN THIS ISSUE...



VOICE

1323

EDITORIAL

The Digital Economy's Impact on Finance and Business

1326

FROM THE PRESIDENT

1329

ICAI IN ACTION

MEMBERS

1333

IN CONVERSATION

Shri Girish Chandra Murmu, CAG

1337

REPORT: Interaction with Chairperson, NFRA

Global AI Market
AI Impacting Labour Productivity
India's AI Mission
ICAI's AI Vision

1420

KNOW YOUR ETHICS

1424

OPINION

1432

CLASSIFIEDS



UPDATES

1380

REPORT - SURVEY ON AI IN CA FIRMS

1418

LIFESTYLE

1422

DEVELOPMENTS- NATIONAL/INTERNATIONAL

1429

ACCOUNTANT'S BROWSER

1429

RACK THE BRAIN

1430

REGULATORY UPDATES

1434

CROSSWORD



FEATURE

1343

ARTIFICIAL INTELLIGENCE

Harnessing AI: Transforming the Landscape of Chartered Accountancy
– CA. Dayaniwas Sharma & CA. Umesh Sharma

1347

ARTIFICIAL INTELLIGENCE

The Transformative Role of Artificial Intelligence in Elevating CA Practice
– CA. Arpit Jain

1353

ARTIFICIAL INTELLIGENCE

Harnessing AI: Shaping the Future of Work for the Chartered Accountants
– CA. Dhaval Kodilkar

1358

ARTIFICIAL INTELLIGENCE

The Rise of the Machines: How Artificial Intelligence is Revolutionizing the World of Auditing
– CA. Peeyush Sharma



Contents

THE CHARTERED ACCOUNTANT



VOLUME 72 | NO. 11 | PAGES 116 | MAY 2024 | ₹100

1365

ARTIFICIAL INTELLIGENCE

Bridging the Gap: Theoretical Advancements in AI and Real-World Applications

– CA. Manoj Kumar Vandanapu
– Sandeep Kumar

1373

ARTIFICIAL INTELLIGENCE

AI-Powered Knowledge Management: A Strategic Blueprint for Implementation

– Dr. Ragi T S

1382

TECHNOLOGY

An Exploratory Study of the Relationship between Financial Reporting Transparency and FVA Reliability: A Machine Learning-Based Approach

– Antima Sharma
– Dr. Nisha Kalra & Dr. G. Soral

1389

TAXATION

Dream House-Taxation, Legal and Financial Aspects

– CA. Shubham Agarwal

1394

PUBLIC FINANCE

Assessment of selected Urban Local Bodies preparedness for Timely Preparation of Annual Financial Statements in line with 15th Finance Commission

– Anuradha Goel & CA. Pankaj Goel

1401

INSOLVENCY

Revolutionizing Resolution: Proposals for Sculpting India's IBC 2.0 Framework

– CA. Reshma Mittal

1406

FINANCIAL MARKET

An investigation of the day-of-the-week effect and month effect in the stock markets of the Asia-Pacific Region

– Dr. Sahaj Wadhwa & Deepika Dewan

1413

INTERNATIONAL TRADE

Accounting and Auditing Services and India's Free Trade Agreements (FTAs): Opportunities and Challenges

– Dr. Pralok Gupta

ICAI NEWS

1432

ANNOUNCEMENT

Certificate Course on Concurrent Audit of Banks

1433

Invitation for empanelment as Examiners for Chartered Accountants Examinations

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Insolvency

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Revolutionizing Resolution: Proposals for Sculpting India's IBC 2.0 Framework



CA. Reshma Mittal

Member of the Institute

As India continues to refine its insolvency and bankruptcy ecosystem, the opportunity to introduce advanced reforms tailored to contemporary challenges becomes increasingly pertinent. This article presents a compendium of strategic improvements recommended for the next iteration of the Insolvency and Bankruptcy Code (IBC), encapsulated in a visionary IBC 2.0 framework. The author's suggestions are aimed at enhancing procedural efficacy, safeguarding stakeholder interests, and strengthening the overall economic foundation.

The anticipated IBC 2.0 framework is towards enhancing India's corporate insolvency resolution regime with key reforms centered around efficiency and value preservation. The proposals herein for the framework underscore the necessity for stringent enforcement of timelines, reduction of legal complexities, and the focused preservation of asset value. These proactive measures are intended to curtail the duration of insolvency proceedings and ensure a dynamic resolution process that prioritizes the health of the business ecosystem. The envisaged reforms are expected to instill a greater degree of confidence among creditors and investors, fostering an environment conducive to economic stability and growth. Through these strategic changes, the IBC 2.0 framework would be able to adapt to the evolving financial landscape and reinforce the integrity of India's insolvency and bankruptcy resolution process.

Introduction

The Insolvency and Bankruptcy Code (IBC) of 2016 laid the cornerstone for modern insolvency proceedings in India, signifying a paradigmatic shift in dealing with financial distress. While the IBC has heralded substantial progress, there remains room for evolution and refinement—pivotal in maintaining the Code's relevance and efficacy amidst an ever-changing economic landscape.

The article highlights the necessity for a holistic and adaptive IBC 2.0 framework, one that synergizes with economic imperatives and international standards, and which can ultimately serve as a catalyst for India's financial and entrepreneurial renaissance. Through this discourse, the author contemplates in sculpting an insolvency framework prepared to withstand future exigencies.

Strategic Imperatives: Charting the Course for India's IBC 2.0 Through Targeted Reforms

Insolvency

THE CHARTERED ACCOUNTANT

Streamlining the Resolution Process

The success of the Insolvency and Bankruptcy Code (IBC) hinges on its ability to facilitate the swift resolution of corporate insolvencies, a critical factor for preserving the intrinsic value of distressed assets. As the economic landscape shifts, there is an acknowledgment among policymakers and stakeholders of the need for an updated IBC - what is being termed as IBC 2.0. This updated code needs to encapsulate mechanisms to expedite the resolution process, effectively curtailing prolonged legal entanglements that have historically diminished asset values. Within the scholarly discourse of insolvency and bankruptcy reform, the following pivotal actions would be crucial to be incorporated into the IBC 2.0:

- The imposition of strict adherence to the code's prescribed timelines, thereby reducing the incidence of protracted resolution processes.
- The streamlining of legal complexities to avoid unnecessary delays in the resolution proceedings.
- The preservation and maximization of distressed assets' value by ensuring quick and efficient resolutions.

The proposed amendments to the IBC are not solely focused on procedural speed but also on enhancing the integrity and sustainability of the corporate insolvency resolution system. This approach not only benefits the companies involved but serves to minimize the economic fallout for creditors and other stakeholders. By implementing these changes, a fortified framework is envisaged—one where resolutions are timely, transparency is paramount, and the financial ramifications of insolvency are significantly mitigated. The essence of this initiative is to nurture a robust business environment that steadfastly maintains creditor trust and invigorates investment certainty.

Reinventing the NCLT for the New Era of Insolvency Resolution

The NCLT currently bears the brunt of an increasing volume of insolvency cases. An advanced, well-resourced NCLT is instrumental in dealing with the complexities of insolvency cases and in realigning the

expectations of all stakeholders with the realities of the IBC process.

Case management can be revolutionized through the implementation of cutting-edge technologies. A comprehensive digital platform could be established, which would handle everything from filing to the adjudication of cases. Automated case tracking systems would streamline workflow and help in the prioritization of cases based on urgency and complexity.

The use of AI in legal research can drastically reduce the time taken for case preparation. AI tools can assist legal professionals in quickly finding relevant precedents, laws, and judgments. Additionally, AI can be used for predictive analysis, offering insights into probable outcomes based on case data, which can aid in faster resolution of cases through settlements or alternative dispute resolution mechanisms. The expansion of the NCLT should also include recruiting additional technically qualified staff and providing extensive training to existing ones.

Strengthening Asset Valuation methodologies

To address common valuation discrepancies and to bolster the confidence of all stakeholders, a more robust and transparent valuation framework is essential. The establishment of standardized methodologies, approved by a regulatory body, would help create consistency in valuations across different cases. These

The success of the Insolvency and Bankruptcy Code (IBC) hinges on its ability to facilitate the swift resolution of corporate insolvencies, a critical factor for preserving the intrinsic value of distressed assets.



Insolvency

THE CHARTERED ACCOUNTANT

methods should consider the unique characteristics of each asset class, industry-specific nuances, and the current economic conditions, to ensure that they reflect realistic market values as accurately as possible.

Implementing a peer review process for valuation firms can provide an additional layer of scrutiny and can help to uphold the integrity of the valuation process. Under this system, the valuation reports would be subject to review by independent valuers who can affirm or challenge the methodology and assumptions used. This not only serves as a quality check but also encourages valuers to adhere strictly to the best practices and methodologies.

The IBC 2.0 framework should inherently incorporate a comprehensive approach to group insolvency, streamlining the resolution for corporate groups with interconnected liabilities and assets.

These members, endowed with the requisite authority to enact critical decisions, should be cornerstone contributors to the formulation of the CD's resolution plan. Their specialized insights and strategic choices are instrumental in deciphering the complexities of the insolvency proceedings, ensuring a more streamlined and efficacious route to the rehabilitation of the CD. Through their substantial involvement, the CoC can not only accelerate the resolution process but also substantially improve the prospects for a successful and equitable resolution for all vested parties.

Addressing Small and Operational Creditors

Small and operational creditors often find themselves without a voice in the resolution process. To ensure that small and operational creditors are not left with negligible recoveries, establishing minimum recoverable thresholds could be beneficial. This could mean that these creditors are assured of a base level percentage of their claims before any additional distributions are made to larger and Financial creditors. Such thresholds would need to be calibrated carefully to balance the aim of equitably compensating small creditors with the need to maintain the overall economic viability of the resolution plan.

Small and operational creditors often lack the resources or the technical understanding to navigate the insolvency process effectively. The IBC 2.0 could mandate the creation of resources and educational programs to assist these creditors in understanding their rights and the insolvency process. This could include web portals with FAQs, regular webinars or workshops, and plain language guides on how to participate in the resolution process.

Strengthening the Role of the Committee of Creditors (CoC)

In order to enhance the effectiveness of the resolution process for a Corporate Debtor, it is of paramount importance that members of the Committee of Creditors (CoC) bring not just a profound understanding of the CD's financial health to the table, but also take a proactive stance in the CoC deliberations.

Streamlined E-Voting Process for CoC

The IBC 2.0 framework needs to integrate a streamlined electronic voting process for the Committee of Creditors to aid in swift and decisive resolution outcomes. The e-voting process should be tightly governed by a framework that mandates:

- Procedures should be established to automatically close voting at the stipulated time, with clear consequences for non-compliance. These procedures will facilitate a more disciplined and structured voting environment, ensuring that no member delays the process.
- Precise stipulations for when e-voting should be concluded, thereby instituting uniformity and ensuring that votes are lodged within the prescribed



Insolvency

THE CHARTERED ACCOUNTANT

window. Members would be furnished with a clear and unambiguous voting schedule that aligns with meeting agendas.

By enforcing such a regimented e-voting protocol within the IBC 2.0 framework, the resolution process will benefit from increased efficiency and diminished delays, ultimately benefiting all parties involved in the insolvency proceedings by expediting the resolution process.

Cross-Border Insolvency

The IBC 2.0 framework should be equipped with a robust set of provisions dedicated to cross-border insolvency. These provisions must facilitate the seamless integration of India's insolvency regime with international protocols, allowing for efficient coordination between domestic and foreign insolvency proceedings. The framework must provide clear guidance on the recognition of foreign proceedings and relief measures, cooperation with foreign courts and insolvency professionals, and coordination of parallel insolvency proceedings involving the same debtor in different countries.

To ensure a global standard of practice, the framework should align with the principles outlined in the UNCITRAL Model Law on Cross-Border Insolvency. The adoption of such internationally recognized guidelines would enhance India's legal infrastructure to effectively manage cases where the insolvent debtor has assets or creditors in multiple jurisdictions. By integrating these cross-border insolvency provisions, the IBC 2.0 framework would elevate India's handling of international insolvency cases, promoting legal certainty for cross-border investors and creditors, and fortify the country's standing in the global market.

Synergizing Group Insolvency Dynamics

The IBC 2.0 framework should inherently incorporate a comprehensive approach to group insolvency, streamlining the resolution for corporate groups with interconnected liabilities and assets. It necessitates a synchronized insolvency mechanism that acknowledges the intertwined operations and financials of group entities, ensuring a consolidated handling of insolvency cases. This shift towards a group-centric insolvency paradigm would encourage cooperative resolution strategies, potentially maximizing asset value while

minimizing administrative costs and complexities.

Instituting such provisions within the IBC 2.0 framework would align with global best practices, offering a legally sound and economically efficient methodology for the resolution of group insolvencies. It would enable the resolution professional to manage the group's assets and liabilities in a holistic manner, facilitating a more strategic and coordinated restructuring or liquidation process.

The adoption of group insolvency provisions within the IBC 2.0 framework would signal India's commitment to evolving insolvency law in consonance with the complexities of modern corporate structures, thereby enriching the IBC with the capability to handle high-stakes group insolvency cases with agility and precision.

Strengthening Residential Real Estate Insolvency Resolutions

The forthcoming IBC 2.0 framework is to be designed not just as legislation, but as a commitment to protect the aspirations of homebuyers. It should inbuilt special mechanisms for addressing the complexities of distressed real estate projects, ensuring the sanctity of homeownership is upheld. Such mechanisms must facilitate the timely and successful completion of housing complexes, thereby preserving the value

IBC 2.0 framework may address the ambiguity surrounding personal guarantors to corporate debtors, ensuring their liabilities are comprehensively covered within the purview of insolvency proceedings.



Insolvency

THE CHARTERED ACCOUNTANT

of investments made by countless individuals. The framework needs to incorporate a distinct set of accelerated and result-oriented procedures that directly align with the urgency of delivering homes to buyers within an insolvency context.

Enlistment of Sector-Sage Resolution Professionals

India is set to greatly benefit from the niche expertise of Resolution Professionals. These experts are not just adept in insolvency law but also possess a deep understanding of specific business sectors. Their keen industry insights enable them to identify and execute more effective and innovative resolution strategies. This tailored approach is anticipated to not only expedite the resolution process but also to boost the likelihood of higher recoveries and successful corporate turnarounds. Additionally, it reassures creditors and investors of a more rational and informed decision-making process, which is critical for maintaining confidence in the financial system. The infusion of specialized knowledge within the IBC framework is a strategic enhancement that aims to maximize the value of distressed assets and promote a healthier credit environment.

Personal Guarantor Liability

IBC 2.0 framework may address the ambiguity surrounding personal guarantors to corporate debtors, ensuring their liabilities are comprehensively covered within the purview of insolvency proceedings. It is expected that the framework will unequivocally define the extent of personal guarantor liabilities, firmly establishing their responsibilities within insolvency proceedings. This move is designed to eliminate any existing ambiguities, making guarantors fully accountable and providing a more transparent and predictable legal landscape for creditors. Such definitive measures aim to ensure that all aspects of a debtor's financial obligations are addressed, safeguarding the integrity of the insolvency resolution process.

Enhanced Powers for Tracing Assets of Personal Guarantors

The IBC 2.0 framework should empower Resolution Professionals with broader authority to diligently trace and reclaim assets of personal guarantors. This would involve:

- Granting Resolution Professionals, the ability to access information from tax authorities to uncover undisclosed assets.

- Collaborating with cyber cells to trace digital footprints, such as mobile number usage, which could lead to asset identification.
- Facilitating fluid information exchange between the RPs of corporate debtors (CDs) and those of personal guarantors for a more comprehensive understanding of overlapping assets and liabilities.
- Enabling RPs to requisition information from personal guarantors' advocates, subject to legal confidentiality constraints, to potentially identify assets shielded by complex legal structures.

Enhancing the Role and Efficiency of Information Utilities

The IBC 2.0 framework should encompass advanced provisions for empowering Information Utilities (IUs). Acknowledging their essential contribution to the insolvency resolution framework, the statutory architecture must be equipped to reinforce IUs as robust, centralized repositories. This will expedite the verification of claims, enhancing both the process's speed and transparency. By integrating state-of-the-art digital technology, the framework is to amplify the efficiency, correctness, and pace at which insolvency resolutions unfold, thereby bringing greater clarity and dependability to the entire ecosystem.

Conclusion

The envisioned IBC 2.0 framework is about being more inclusive, efficient, and equipped to handle the complexities of a growing economy. It is about laying the foundation for an insolvency resolution ecosystem that can adapt to the needs of diverse stakeholders and withstand economic vicissitudes. The proposals outlined look beyond the immediate hurdles and focus on building a scalable, resilient mechanism that anticipates and adapts to the changing economic scenarios. Through these amendments, IBC 2.0 will strengthen India's commitment to becoming a premier investment destination while fostering economic rejuvenation and growth.



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