

Industrial Asset Valuation in Insolvency Proceedings: A Legal and Procedural Analysis Under The IBC

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Abstract

Valuation of assets is a cornerstone of effective insolvency resolution under the Insolvency and Bankruptcy Code (IBC), 2016. This paper examines the procedural framework and regulatory provisions governing valuation in the context of India's bankruptcy regime, focusing on both legal mandates and industry-specific challenges. Key elements include the role of registered valuers, valuation methodologies, sectoral nuances, and the influence of valuation on decision-making by the Committee of Creditors (CoC). Drawing from landmark judicial interpretations and international practices, the paper also explores systemic gaps such as inconsistent standards, data limitations, and divergence in reports. It concludes with recommendations to enhance transparency, accuracy, and sector alignment in the valuation ecosystem, positioning valuation as a strategic tool for value maximization and creditor protection.

Keywords

Valuation, Insolvency and Bankruptcy Code (IBC), Registered Valuers, Fair Value, Liquidation Value, CIRP, Committee of Creditors (CoC), Sector-Specific Valuation, Judicial Oversight, Asset Valuation in Insolvency

I. Introduction

A. Background of the Bankruptcy Code (IBC in India or Relevant Jurisdiction)

The **Insolvency and Bankruptcy Code (IBC), 2016**, was enacted by the Government of India to consolidate and amend the laws relating to insolvency and bankruptcy for companies, partnerships, and individuals. The Code seeks to ensure time-bound resolution of insolvency, maximize the value of assets, and promote entrepreneurship and credit availability (Government of India, 2016). The IBC marked a

significant shift from a debtor-in-possession to a creditor-in-control model, thereby empowering financial and operational creditors to initiate insolvency proceedings under a clearly defined legal framework (Sarkar & Sengupta, 2020).

B. Importance of Asset Valuation in Insolvency and Bankruptcy Resolution

C. Objectives of the Paper

The primary objective of this paper is to explore the procedural aspects of asset valuation as outlined under the Bankruptcy Code, with an emphasis on its industrial application. Specifically, the paper aims to:

1. Examine the legal and regulatory framework governing valuation during insolvency;
2. Analyze industry-specific challenges and best practices in asset valuation;
3. Evaluate the role of valuation in resolution plan approval and liquidation outcomes;
4. Identify key gaps in current practices and propose reforms for improved consistency and fairness.

D. Scope: Industry-Focused Procedures and Legal Perspectives

While the Bankruptcy Code offers a standardized process, asset valuation differs significantly across sectors due to the unique characteristics of industry assets—ranging from machinery and infrastructure to intangible technology assets. This paper focuses on procedural valuation frameworks with respect to industries such as manufacturing, real estate, energy, and technology, providing insights into how valuation professionals and insolvency professionals navigate sector-specific nuances. The legal perspectives include an examination of IBC regulations, IBBI guidelines, and judicial interpretations that shape the valuation process during insolvency proceedings.

Table 1: Key Provisions of the IBC Related to Valuation

Provision/Regulation	Description
IBC Section 30(2)	Mandates that resolution plans must provide for payment to operational creditors not less than the liquidation value.
IBC Section 35(1)(b)	Empowers the liquidator to verify claims and determine asset value for realization.
CIRP Regulation 27	Requires the Resolution Professional to appoint two registered valuers within 7 days of the insolvency commencement date.
CIRP Regulation 35	Specifies procedures for determining fair value and liquidation value, including appointment of a third valuer if needed.
Liquidation Regulation 34	Requires fresh valuation of assets during liquidation to determine their realizable value.
Companies (Registered Valuers and Valuation) Rules, 2017	Lays down eligibility, registration, and conduct rules for registered valuers under the IBC framework.

II. Legal Framework of Valuation under the Bankruptcy Code

A. Relevant Provisions in the Bankruptcy Code (e.g., IBC Sections, CIRP Regulations)

Valuation of assets during insolvency resolution is primarily governed by **Section 30(2)** and **Section 35(1)(b)** of the **Insolvency and Bankruptcy Code (IBC), 2016**, and further detailed in the **Insolvency Resolution Process for Corporate Persons Regulations, 2016**. According to **Regulation 27**, a resolution professional (RP) is required to appoint two registered valuers within seven days of the insolvency commencement date. **Regulation 35** mandates that the RP obtain estimates for **fair value** and **liquidation value** of the corporate debtor's assets, which are essential in evaluating resolution plans (IBBI, 2016). These values serve as benchmarks for assessing whether creditors are likely to recover more through resolution or liquidation.

B. Role of the Insolvency and Bankruptcy Board of India (IBBI)

The **IBBI** is the statutory regulatory body responsible for overseeing insolvency processes, including valuation. It sets the **eligibility criteria, code of conduct, and examination** requirements for registered valuers through the **Companies (Registered Valuers and Valuation) Rules, 2017**. The IBBI also issues **guidelines and model valuation reports** to ensure consistency and objectivity in the valuation process. By maintaining a panel of Registered Valuer Organizations (RVOs), the IBBI indirectly regulates valuers' performance, ethics, and disciplinary proceedings (IBBI, 2019).

C. Definition of Fair Value vs. Liquidation Value

Under **Regulation 35(2)** of the CIRP Regulations,

- **Fair Value** is defined as “the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction.”
- **Liquidation Value**, on the other hand, refers to “the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.” These definitions underscore the distinction between an ongoing concern approach (fair value) and a distressed sale scenario (liquidation value), both of which influence CoC decisions (CIRP Regulations, 2016).

D. Appointment and Role of Registered Valuers

Registered valuers play a vital role in estimating the fair and liquidation values of corporate debtors' assets. As per **Regulation 27**, the RP appoints two valuers from the IBBI-registered list. They must independently assess the assets and submit valuation reports within the stipulated time. The **average of the two valuations**

is considered the final value unless there is a significant deviation, in which case a third valuer may be appointed (CIRP Regulation 35(1)). These valuers must adhere to the **Valuation Standards issued by the Central Government or the IBBI**, and follow the **Code of Conduct prescribed under the Companies Act and IBBI guidelines**.

III. Valuation Process in Insolvency Proceedings

A. Stages Requiring Valuation (e.g., Admission, CIRP, Liquidation)

Valuation is crucial at multiple stages of the insolvency process under the IBC:

1. **Pre-admission** – While not mandatory, creditors or the adjudicating authority may consider approximate asset value to determine the viability of initiating CIRP.
2. **Corporate Insolvency Resolution Process (CIRP)** – Under **Regulations 27 and 35 of the CIRP Regulations**, the resolution professional must obtain fair and liquidation values for the corporate debtor.
3. **Liquidation** – If CIRP fails, the liquidator must conduct a fresh valuation of the corporate debtor's assets under **Regulation 34 of the Liquidation Regulations, 2016** to maximize recoveries.

B. Procedure for Appointment of Valuers

As per **Regulation 27**, within seven days of the insolvency commencement date, the resolution professional appoints two independent **Registered Valuers**, selected from the IBBI database. The valuer must be eligible under the **Companies (Registered Valuers and Valuation) Rules, 2017** and affiliated with a Recognized Valuer Organization (RVO). If significant deviation is observed between the two reports (typically >25%), a **third valuer** may be appointed, and the average of the two closest values is taken as the final figure.

C. Methodologies Mandated or Accepted

IBBI has not strictly mandated one method but encourages use based on asset type and market conditions. Common methods include:

- **Discounted Cash Flow (DCF)** – Applied for businesses with future revenue potential, commonly used for ongoing concerns or startups.
- **Market Approach** – Used when there are comparable companies or assets with observable market prices.
- **Asset-Based Approach (Net Asset Value)** – Suitable for asset-heavy businesses, especially in manufacturing or infrastructure.

Valuers must disclose assumptions, limitations, and sensitivity analyses in accordance with professional standards.

D. Timelines and Regulatory Compliance

IV. Sector-Specific Valuation Considerations

A. Manufacturing and Heavy Industry

- **Challenges:** Asset obsolescence, undervaluation of plant and machinery, difficulty in valuing semi-finished inventory.
- **Case Example:** *Bhushan Steel Ltd.*, where valuation had to factor in aging equipment and environmental liabilities.
- **Regulatory Insight:** Focus on asset-based valuation with depreciation adjustments and environmental compliance factored in.

B. Real Estate and Infrastructure

- **Challenges:** Market fluctuation, zoning/legal disputes, incomplete projects.
- **Case Example:** *Jaypee Infratech Ltd.*, where land value varied drastically due to pending litigations and stalled construction.
- **Approach:** Combination of market and asset-based methods, often requiring third-party land surveys and legal due diligence.

C. Financial Services and NBFCs

- **Challenges:** Difficulty valuing loan books, NPAs, contingent liabilities.
- **Case Example:** *DHFL* insolvency involved complex DCF valuation of performing vs. non-performing loan assets.
- **Regulatory Note:** RBI and SEBI disclosures may be used, but RPs often engage domain-specific valuation experts.

D. Technology and Startups

- **Challenges:** Lack of tangible assets, high dependency on IP, volatile earnings.
- **Case Example:** In *Stayzilla's insolvency*, valuation of software and user data was critical yet subjective.
- **Methodology:** Primarily DCF or market multiple-based valuation of intangible assets and projected cash flows.

E. Power and Energy Sector

- **Challenges:** Regulatory risks, PPAs (Power Purchase Agreements), and long asset life.
- **Case Example:** *Lanco Infratech Ltd.* involved valuation complexities due to government contracts and fluctuating energy tariffs.
- **Approach:** Asset-heavy, with discounted project cash flows and legal risk assessments.

V. Role of the Committee of Creditors (CoC) in Valuation

A. Evaluation of Resolution Plans Using Valuation Reports

The CoC uses valuation reports to determine the commercial viability of resolution plans and assess whether they meet or exceed the liquidation value, as mandated by **Section 30(2)(b)** of the IBC. The valuation serves as a benchmark for minimum acceptable recovery and aids in selecting the highest-value plan in accordance with the principle of **value maximization**.

B. Weightage to Fair vs. Liquidation Value in Plan Approval

While **liquidation value is the statutory floor**, **fair value** represents the business’s market potential. Courts have clarified that CoC has the commercial wisdom to approve a resolution plan that delivers more than liquidation value, even if less than fair value (e.g., *K. Sashidhar v. Indian Overseas Bank*, 2019). However, any plan offering less than liquidation value is likely to be rejected unless justified under exceptional circumstances.

C. Judicial Precedents Impacting CoC Decisions on Valuation

Several landmark judgments have clarified valuation’s role:

- **Essar Steel (2019)** – Supreme Court upheld CoC's primacy but emphasized fairness in distribution among creditors.
- **Binani Cement (2018)** – NCLAT stressed that resolution value should consider operational creditors fairly and not just meet the liquidation value.
- **Monnet Ispat (2018)** – Reiterated that valuation is not binding but serves as guidance, reinforcing CoC’s commercial autonomy.
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Table 4: Sector-Specific Valuation Challenges and Methods

Sector	Valuation Challenges	Preferred Methods	Example Case
Manufacturing & Heavy Industry	Asset obsolescence, varying machinery conditions, environmental liabilities	Asset-Based Approach, Market Comparables	Bhushan Steel Insolvency
Real Estate & Infrastructure	Zoning issues, incomplete projects, market fluctuations	Market Approach with Legal Due Diligence	Jaypee Infratech Resolution
Financial Services & NBFCs	Valuing NPAs, contingent liabilities, future cash flows	Discounted Cash Flow, Loan Book Analysis	DHFL Insolvency

V. Role of the Committee of Creditors (CoC) in Valuation

A. Evaluation of Resolution Plans Using Valuation Reports

The **Committee of Creditors (CoC)** plays a pivotal role in the insolvency resolution process by evaluating and approving resolution plans based on commercial viability. Valuation reports—providing **fair value** and **liquidation value**—serve as essential benchmarks. These help the CoC assess whether the offered plan ensures maximum asset realization and satisfies the interests of stakeholders, especially **financial creditors** (IBC §30(4); IBBI, 2016). However, these reports are non-binding and advisory, enabling the CoC to exercise discretion based on market realities.

B. Weightage to Fair vs. Liquidation Value in Plan Approval

The **liquidation value** serves as the statutory floor for acceptable plans, ensuring that creditors do not receive less than they would in liquidation. **Fair value**, however, informs the potential market value of the corporate debtor as a going concern. CoC members are guided—but not bound—by these metrics. Courts have consistently upheld that **commercial wisdom of the CoC prevails**, and no rigid weightage formula applies, as long as minimum liquidation value is achieved (*Essar Steel*, 2019).

C. Judicial Precedents Impacting CoC Decisions on Valuation

Key rulings emphasize that while valuation is central, **resolution value need not match fair value**, and CoC's business judgment must not be interfered with unless arbitrary:

- **K. Sashidhar v. Indian Overseas Bank (2019)**: Reaffirmed CoC's exclusive domain over plan approval.
- **Binani Industries v. Bank of Baroda (2018)**: Resolution value must equitably consider operational creditors.
- **Essar Steel v. Satish Gupta (2019)**: Supreme Court recognized CoC's primacy but encouraged fair and balanced distribution.

VI. Judicial and Regulatory Interpretations

A. Case Laws Where Valuation Was Contested

- **Essar Steel (2019)**: Valuation methodology was contested as undervaluing the business; the court allowed CoC discretion in adopting the most viable bid.
- **Bhushan Power and Steel (2020)**: Allegations were raised over conflicting valuation reports; NCLT permitted resolution based on averaged fair value after third valuer assessment.
- **Binani Cement (2018)**: Demonstrated how valuation was used to ensure equitable treatment, rejecting bids that offered less than liquidation value to some creditors.

B. NCLT/NCLAT Rulings on Valuation Methodology and Integrity

Tribunals have emphasized the importance of transparency and independence in valuation. In **RP of M/s Siva Industries (2021)**, NCLT rejected a resolution plan significantly below liquidation value, questioning the objectivity of the valuation and intent of CoC. Consistency and third-party audit trails were stressed in **Electrosteel Steels Ltd. case**.

C. IBBI Guidelines and Circulars on Valuation

The **IBBI**, via its **Handbook for Valuers** and **Model Template for Valuation Reports (2020)**, has laid down best practices including:

- Disclosure of assumptions and risks.
- Use of internationally recognized standards.
- Emphasis on independence and professional skepticism.

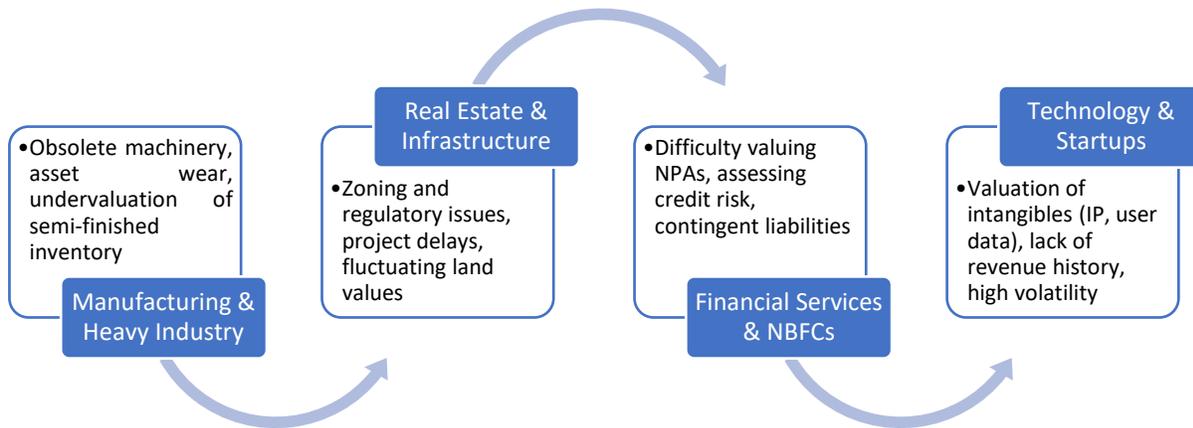


Figure 6: Sector-Specific Valuation Challenges

VII. Challenges in the Valuation Ecosystem

A. Subjectivity and Divergence in Valuer Reports

Different valuers often produce **widely divergent estimates** for the same asset due to methodological choices, discount rates, or assumptions, making it difficult for RPs and CoC to identify the most reliable figure.

B. Limited Data Availability and Sectoral Volatility

Access to **financial records, real-time asset data**, or market comparables is often limited, especially in distressed companies. This is particularly severe in dynamic industries like technology or startups.

C. Regulatory Loopholes or Enforcement Gaps

Although IBBI prescribes valuer registration and discipline, enforcement of **valuation standards is weak**, especially for conflict of interest, poor disclosures, or underqualified valuers.

D. Inadequate Industry-Specific Standards

The lack of **sector-specific templates** leads to one-size-fits-all valuations, which are unsuitable for sectors like NBFCs, pharma, or power. Valuation of IPs, brands, or environmental liabilities is especially inconsistent.

VIII. International Best Practices

A. Comparative Analysis: US Chapter 11 vs. UK Insolvency Code

- **United States:** Under **Chapter 11**, valuation is often court-supervised with a focus on **enterprise value**. Expert testimony and **market testing** (auctions) are integral.
- **United Kingdom:** Emphasis on **independent administrators** and market-based valuations. Valuation reports are subject to public scrutiny and creditor challenges.

B. Lessons for India or Similar Jurisdictions

- Emphasis on **court oversight and independent review** of valuation reports.
- Use of **cross-examination or auctions** to validate enterprise value.
- Mandatory **disclosure of conflict of interest** and continuous valuation education.

C. Recommendations for Harmonization with Global Valuation Standards

India could benefit from adopting:

- **IVS (International Valuation Standards)** by the IVSC for consistency and credibility.
- **IFRS-compliant valuation disclosures** to enhance financial comparability.
- Cross-referencing IBBI norms with **global best practices** for investor confidence.

IX. Recommendations for Policy and Practice

A. Strengthening Regulatory Norms for Valuers

- Mandatory peer review and audits for large valuations.
- Centralized red-flag system for valuers with adverse records.
- Stiffer penalties for misreporting or collusion.

B. Creating Sector-Specific Valuation Frameworks

- IBBI to develop **industry-specific guidelines**, especially for sectors like fintech, pharma, and infrastructure.
- Integration of sector consultants in the valuation process.

C. Use of Technology and Data Analytics in Valuation

- Encouraging AI-based benchmarking tools, satellite imaging (for land), and financial forensics.
- Creation of a **national distressed asset database** to aid comparative valuation.

D. Enhancing Transparency and Accountability in CIRP Valuation

- Public availability of sanitized valuation reports post-resolution.
- Mandatory disclosure of assumptions, risks, and conflict-of-interest statements.

X. Conclusion

Valuation is the **cornerstone of insolvency resolution**, influencing outcomes not just in terms of financial recovery but also stakeholder equity and system trust. While the IBC provides a foundational framework, **inconsistencies in implementation**, lack of sectoral alignment, and regulatory gaps dilute its effectiveness. Strengthening the ecosystem through **standardization, oversight, and industry-specific adaptations**, while learning from global best practices, will ensure that valuation becomes a **robust and reliable pillar** of India's insolvency architecture.

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