Advanced International Journal for Research (AIJFR)
E-ISSN: 3048-7641 ● Website: www.aijfr.com ● Email: editor@aijfr.com

Complexities & Constraints in Avoidance Proceedings: A Way Forward In The Maze Of Avoidance

Mr. Shreekumar Venkatasubramanian[1], Dr. C.H. Venkateswarlu Venkateswarlu[2]

[1]Research Scholar, [2]Professor & HOD
[1,2]Legal Studies, Vels Institute of Science, Technology and Advanced Studies

Abstract

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") introduced a comprehensive framework for identifying and reversing suspect pre-insolvency transactions that diminish the value of the CD's estate. The statutory scheme of IBC amongst other substantial and procedural framework lays down certain safeguards to maintain the integrity of the insolvency process and these are the applications for avoidance of certain transactions[1]. The statute empowers insolvency practitioners to investigate and challenge preferential, undervalued, extortionate, and fraudulent transactions undertaken prior to commencement of insolvency proceedings. These provisions are intended to preserve the insolvency estate, protect creditor interests, and uphold the principle of equitable distribution.[2] However, despite the statutory significance of avoidance transactions within the insolvency framework, practical enforcement of such provisions has encountered substantial evidentiary, forensic, and institutional obstacles.

A significant value of insolvent entities is often locked in assets underlying avoidance transactions which are undertaken by the CD prior to the initiation of the CIRP[3]. Having due regards to this fact, this paper critically examines the evidentiary and forensic challenges that arise in avoidance transaction litigation under the IBC. It argues that while the statutory framework is conceptually robust, effective implementation remains constrained by lack of financial records, non-cooperation of suspended management, delayed commencement of insolvency proceedings, inadequate forensic infrastructure, complex corporate structures, and inconsistencies in judicial approaches. The paper further analyses the evolving jurisprudence of the Courts & Tribunals in relation to avoidance proceedings, particularly with respect to evidentiary thresholds, burden of proof, and standards of pleadings.

[1] *Inquest Fintech Pvt. Ltd. v. Ms. Maya Gupta Liquidator, (2023) ibclaw.in 488 NCLT*
[2] *Bharti Airtel Ltd. and Anr. v. Vijaykumar V. Iyer and Ors, (2024) ibclaw.in 02 SC*
[3] *Avoidance Transactions: Protecting Creditors' Interest under IBC, From Chairperson's Desk* | *Quarterly Newsletter of IBBI (July-Sep, 2024) | Vol. 32*

1. Introduction

The enactment of the IBC marked a transformative moment in Indian insolvency jurisprudence. Prior to the IBC, India's insolvency framework was fragmented across multiple legislations including the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the Companies Act, 2013. The fragmented regime suffered from excessive delays, overlapping jurisdictions, and poor recovery rates. The IBC was introduced with the objective of creating a unified and time-bound insolvency framework capable of preserving enterprise value and maximizing recoveries for stakeholders.[4]

One of the most important features of the IBC is the statutory framework governing avoidance transactions. Sections 43 to 51 and Section 66 empower insolvency professionals to identify and reverse transactions entered into prior to insolvency that unfairly deplete the CD's assets or prejudice creditor interests. These provisions are intended to prevent promoters and management from siphoning assets, creating artificial preferences, or engaging in fraudulent conduct during periods of financial distress. As of 31st March 2026, a total of 1,878 avoidance applications involving approximately Rs. 4,38,169.07 Crore have been filed before the Adjudicating Authority, comprising of preferential transactions, undervalued transactions, fraudulent transactions, extortionate transactions and combination of these transactions[5].

Avoidance provisions serve a critical economic and legal function within insolvency law. Insolvency does not merely involve collection and distribution of assets, it also requires restoration of the insolvency estate by reversing transactions that undermine creditor equality. The objective of avoidance applications is to enhance the asset pool for the benefit of creditors and prevent unjust enrichment of one party at the expense of others[6]. The rationale underlying avoidance jurisprudence is grounded in the principles of pari-passu distribution, anti fraud protection, and preservation of enterprise value. In the absence of such provisions, financially distressed companies could selectively transfer assets to preferred creditors, related parties, or promoters immediately prior to insolvency, thereby defeating the collective insolvency process.

Despite the conceptual strength of avoidance provisions under the IBC, practical enforcement has encountered serious challenges. Avoidance applications often involve complex financial structures, layered transactions, related party dealings, digital records, and allegations of fraudulent intent. Resolution Professionals (hereinafter referred to as"RPs") and Liquidators are frequently required to reconstruct years of financial history[7] within compressed timelines and with limited access to records. In many cases, books of accounts are incomplete, financial statements are outdated, bank records are inaccessible, and suspended management fails to cooperate with the insolvency process. The challenge becomes even more severe due to delays in admission of Corporate Insolvency Resolution Process (hereinafter referred to as"CIRP") applications. Since avoidance provisions historically calculated look back periods from the insolvency commencement date (hereinafter referred to as "ICD"), prolonged delays between filing and admission[8] often enabled suspect transactions to escape statutory scrutiny. Recent legislative amendments introducing the concept of "Initiation Date" reflect recognition of this practical difficulty.

[4] *R.K. Industries (Unit-II) LLP v. HR Commercials Pvt. Ltd., (2022) ibclaw.in 104 SC*
[5] *Quarterly Newsletter of IBBI (Jan-March, 2026) | Vol. 38*
[6] *Inquest Fintech Pvt. Ltd. v. Ms. Maya Gupta Liquidator, (2023) ibclaw.in 488 NCLT*
[7] *H. Sambasiva Rao (IRP) v. BSE Ltd. and Anr., (2025) ibclaw.in 2924 NCLT*
[8] *Assistant Commissioner CGST Division-Samba v. Emsons Organics Ltd., (2025) ibclaw.in 875 NCLT*

Another significant concern is the increasing judicial insistence upon strict evidentiary standards. Courts have repeatedly held that avoidance applications cannot succeed on the basis of broad allegations or generalized suspicions.[9] Instead, RPs must provide transaction specific evidence, documentary support, and clear legal pleadings demonstrating preferential treatment, undervaluation, or fraudulent intent. This has elevated the importance of forensic audits and transaction review mechanisms within insolvency proceedings.[10]

The present paper critically examines the evidentiary and forensic challenges associated with avoidance transaction litigation under the IBC. It argues that the effectiveness of avoidance jurisprudence is significantly undermined by institutional limitations, forensic deficiencies, data asymmetry, technological inadequacies, and procedural delays. The paper further contends that unless the insolvency ecosystem develops stronger evidentiary frameworks, specialized forensic infrastructure, and technologically integrated transaction review systems, avoidance provisions may fail to achieve their intended purpose of value preservation and creditor protection, thereby weakening overall confidence in the insolvency resolution and recovery process.

2. Conceptual Foundation of Avoidance Jurisprudence

Avoidance jurisprudence occupies a central position within modern insolvency law. The concept originates from the recognition that financially distressed debtors often attempt to protect preferred creditors, insiders, or related entities before the commencement of insolvency proceedings. Such conduct undermines the collective nature of insolvency and disturbs the principle of equitable distribution among creditors. Historically, avoidance provisions emerged from English bankruptcy law[11]. Early English statutes recognized that debtors nearing insolvency frequently transferred assets to favored creditors or relatives in order to shield assets from collective recovery. The doctrine of fraudulent preference evolved to invalidate transactions undertaken with the intention of preferring certain creditors over others.

The theoretical basis of avoidance law is rooted in multiple principles. The first is the pari-passu principle, which requires equal treatment of similarly situated creditors. Allowing debtors to selectively transfer assets before insolvency would defeat this principle and encourage inequitable recoveries. The second justification is preservation of the insolvency estate. Insolvency law aims to maximize the pool of assets available for collective distribution. Transactions that diminish or improperly divert the estate reduce recoveries for legitimate creditors. The third rationale is deterrence. Avoidance provisions discourage fraudulent behavior and prevent debtors from engaging in opportunistic conduct during periods of financial distress. The fourth rationale is market integrity. Commercial confidence depends upon predictable insolvency outcomes. A regime incapable of reversing fraudulent or preferential transactions undermines creditor confidence and increases systemic risk.

International insolvency regimes similarly recognize the importance of avoidance jurisprudence. The United Kingdom Insolvency Act, 1986 contains provisions concerning transactions at undervalue, preferences, and wrongful trading. The United States Bankruptcy Code incorporates fraudulent transfer

[9] *Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd. & Ors., (2023) ibclaw.in 09 HC*
[10] *Arvind Agarwal, Forensic Review of Specific Transactions under IBC 2016, TaxGuru (Apr. 24, 2020)*
[11] *63 Moons Technologies Ltd. v. The Administrator of Dewan Housing Finance Corporation Ltd., (2022) ibclaw.in 95 NCLAT*

provisions under Sections 547 and 548. The UNCITRAL Legislative Guide on Insolvency Law also emphasizes the importance of transaction avoidance mechanisms. The IBC incorporates these principles through Sections 43 to 51 and Section 66. These provisions collectively empower insolvency professionals to investigate suspect transactions occurring prior to insolvency commencement and seek appropriate remedies from the Adjudicating Authority. Avoidance jurisprudence under the IBC therefore reflects a broader policy objective of balancing commercial freedom with insolvency accountability. However, the practical enforcement of these provisions depends heavily upon evidence, financial records, transaction tracing, and forensic analysis[12].

3. Role of the RP in Avoidance Proceedings

The RP occupies a central and indispensable position within the avoidance transaction framework under the IBC. The statutory architecture of the Code envisages the RP not merely as an administrative facilitator of the CIRP, but as a fiduciary custodian entrusted with preservation, protection, and maximization of the value of the CD's assets for the collective benefit of creditors.[13] Section 25 of the Code imposes a statutory obligation upon the RP to preserve and protect the assets of the CD, including continuation of business operations where necessary. This obligation necessarily extends to identification, investigation, and prosecution of transactions that improperly deplete, siphon, divert, or diminish the value of the insolvency estate. Avoidance proceedings therefore constitute an integral component of the RP's broader duty to safeguard the CD's asset base and ensure equitable treatment of stakeholders.

Although the insolvency resolution process under the IBC is fundamentally creditor driven and intended to safeguard the interests of creditors, with the CoC (hereinafter referred to as "CoC") playing a central role in key commercial decisions, the position is materially different in the context of avoidance transactions. The participation and approval of the CoC are not mandatory for decisions relating to the initiation of avoidance proceedings, including the appointment of transaction auditors or forensic auditors by the RP. In this regard, the Tribunal in **TJSB Sahakari Bank Ltd. v. Ms. Jovita Reema Mathias and Ors**[14] held that the RP is not required to obtain the approval or consultation of the CoC for undertaking actions connected with the examination and prosecution of avoidance transactions. Additionally, Section 28 as discussed in **Mr. Babubhai Shrimali v. The CoC**[15] enumerates specific actions for which CoC approval is mandatory, such as related party transactions, changes in capital structure, or management changes. However, the initiation of avoidance proceedings and appointment of auditors for forensic or transaction audits are not listed among these actions requiring CoC approval.

The procedural framework governing such proceedings is elaborated under Regulation 35A of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The Regulation prescribes a structured timeline requiring the RP to:

(i) Form an opinion on or before the 75th day from the ICD as to whether the CD has been subjected to preferential, undervalued, extortionate, or fraudulent transactions;

---

[12] *Shreya Nandi, 'Avoidance Transactions under Indian Insolvency Law: Moving Towards Creditor Protection?' (2023) Oxford Business Law*

[13] *Insolvency & Bankruptcy Bd. of India,* Role of RP / Liquidator in Respect of Avoidance Transactions, *Facilitation No. 001/2020 (May 8, 2020)*

[14] *(2024) ibclaw.in 469 NCLT*

[15] *(2022) ibclaw.in 861 NCLT*

(ii) Make a determination on or before the 115th day; and
(iii) File appropriate applications before the Adjudicating Authority on or before the one hundred and thirtieth or one hundred and 35th day, depending upon the applicable regulatory framework. The RP is also required to forward copies of such applications to prospective resolution applicants so that pending avoidance proceedings may be factored into the formulation and submission of resolution plans.

Notwithstanding the statutory timelines prescribed under Regulation 35A, judicial authorities have consistently held that these timelines are directory rather than mandatory. Consequently, delay in filing avoidance applications does not automatically invalidate the proceedings where sufficient justification exists. In **Chandresh Jajoo v. Vikas Garg, RP**[16], the Adjudicating Authority recognized that practical difficulties such as delayed receipt of transaction audit reports, incomplete financial disclosures, and non-cooperation by suspended management may legitimately impede timely filing of avoidance applications. The Tribunal accordingly held that the RP's statutory obligation to investigate and prosecute avoidable transactions cannot be defeated merely on account of procedural delay where bona fide reasons are demonstrated.

The jurisprudence concerning continuation of avoidance proceedings after conclusion of CIRP has likewise evolved considerably. Section 26 of the IBC expressly provides that filing of an avoidance application shall not affect the continuation of CIRP proceedings. Judicial interpretation has extended this principle to recognize that avoidance proceedings may survive independently even after approval of a resolution plan under Section 31. In the case **Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd. & Ors**[17]., the Delhi High Court held that avoidance applications are independent proceedings whose adjudication is not circumscribed by the timelines applicable to completion of CIRP. The Court clarified that while the RP bears the statutory responsibility of identifying and filing such applications during CIRP, adjudication of those proceedings may validly continue beyond conclusion of the resolution process.

At the same time, courts have emphasized that the RP's mandate itself is finite and ordinarily terminates upon approval of the resolution plan. The concept of a perpetual "Former RP" continuing indefinitely to prosecute proceedings is not contemplated under the statutory framework unless specifically provided for under the approved resolution plan or relevant judicial directions. In the case **Regen Powertech Pvt. Ltd. Represented by RP Ebenezar Inbaraj v. Veeral Controls Pvt. Ltd**[18] affirmed by NCLAT and in the case **TUF Metallurgical Pvt. Ltd. v. Monitoring Committee Through Vikash Jain**[19] the Tribunals consistently held that upon approval of the Resolution Plan, the RP becomes functus officio and cannot continue to prosecute avoidance applications under the IBC, as the RP's role is confined to the duration of the CIRP and any further pursuit of such applications must be undertaken by the CoC, Monitoring Committee, or the successful resolution applicant in accordance with the Resolution Plan.

The above position is reinforced by Section 35(1)(k) of the IBC, which empowers the liquidator to institute or defend legal proceedings on behalf of the CD during liquidation, including prosecution of avoidance

[16] *(2025) ibclaw.in 2257 NCLT*
[17] *(2023) ibclaw.in 09 HC*
[18] *(2022) ibclaw.in 619 NCLT*
[19] *(2021) ibclaw.in 127 NCLT*

applications initiated during CIRP. Legislative and regulatory developments have further sought to address practical uncertainties surrounding pending avoidance proceedings after resolution. Regulation 38(2)(d) of the CIRP Regulations mandates that resolution plans specifically provide for the manner in which pending avoidance applications and their potential proceeds shall be dealt with. This requirement ensures that unresolved avoidance claims are appropriately accounted for within the resolution framework and reduces ambiguity concerning entitlement to future recoveries.

The evolving jurisprudence therefore reflects an attempt to balance two competing objectives underlying the IBC framework, ensuring timely completion of insolvency resolution on the one hand, while simultaneously preserving the ability to recover value lost through suspect transactions on the other. The RP accordingly functions as the principal investigative and prosecutorial authority during CIRP, though the substantive survival of avoidance proceedings ultimately transcends the RP's tenure and may continue independently in accordance with the broader objectives of value maximization and equitable distribution embedded within the Code.

The role of the RP in avoidance litigation is highly multidisciplinary in nature. Effective prosecution of avoidance applications requires not merely legal competence but also substantial understanding of accounting systems, forensic investigation methodologies, valuation analysis, financial structuring, and evidentiary law. RPs are often required to reconstruct complex transactional histories extending across multiple entities, jurisdictions, and financial instruments. RPs and Liquidators often face significant challenges in reconstructing financial history due to incomplete books of accounts, outdated financial statements, inaccessible bank records, and non-cooperation from suspended management. The case **Rana Sarkar v. Bimal Agarwal (RP) and Ors**[20] illustrates this situation where the RP, after initiation of CIRP, filed an application under Section 19(2) of the Code to direct suspended directors to hand over books of accounts and relevant information. Despite directions from the tribunal and the appellate authority, the suspended management remained non-cooperative.

In practical terms, the effectiveness of avoidance proceedings depends substantially upon the RP's ability to secure access to records, coordinate with forensic experts, analyze banking data, preserve digital evidence, and prepare legally sustainable pleadings capable of satisfying judicial scrutiny. The RP therefore functions simultaneously as investigator, fiduciary, strategist, and litigant within the avoidance framework.

However, the discharge of these responsibilities is frequently impeded by multiple operational difficulties. Suspended management often fails to cooperate with the insolvency process, financial records may be incomplete or manipulated, and forensic investigations may involve substantial cost and technical complexity. Moreover, RPs are expected to undertake these functions within the compressed timelines governing CIRP proceedings. The RP's fiduciary responsibility requires performing duties without fear or favor, preserving the spirit of the IBC, and ensuring equitable treatment of stakeholders. As noted in the case **Nethi Mallikarjuna Setty RP of Kasargod Power Corporation Ltd**[21], the RP's discharge of

[20] *(2025) ibclaw.in 1059 NCLAT*
[21] *(2025) ibclaw.in 1477 NCLT*

duties is often hampered by lack of cooperation and incomplete records, which can undermine the avoidance regime's objectives.

Consequently, although the statutory framework formally empowers RPs to pursue avoidance actions, the practical effectiveness of such proceedings remains heavily contingent upon institutional support, forensic infrastructure, evidentiary accessibility, and judicial efficiency. The avoidance regime under the IBC therefore cannot be evaluated solely through doctrinal interpretation of statutory provisions but must be understood within the broader context of insolvency administration, market behavior, and institutional capability.

4. Evidentiary Challenges in Avoidance Transaction Litigation

Evidentiary limitations constitute one of the most formidable and structurally significant impediments confronting avoidance transaction litigation under the IBC. Although the statutory framework embodied in Sections 43 to 51 and Section 66 provides substantial powers to RPs and Liquidators to investigate and challenge suspect transactions, the practical effectiveness of these provisions remains deeply contingent upon the availability, reliability, and admissibility of evidence. **Dinkar T. Venkatasubramanian (RP) v. Arun Kumar Maiti and Ors**[22] reveal challenges in evidentiary accessibility, such as non-availability of supporting documents, incomplete bank statements, and lack of debtor balance confirmations, which impede the RP's ability to establish fraudulent or undervalued transactions. The RP's duty to collect and verify such evidence is critical for filing avoidance applications. Avoidance proceedings under the IBC are fundamentally retrospective in nature. Unlike ordinary civil litigation, which often concerns contemporaneous disputes between parties possessing access to relevant documentation, avoidance litigation requires insolvency professionals to reconstruct complex financial activity occurring months or even years prior to the commencement of insolvency proceedings. Such reconstruction is frequently undertaken in circumstances where records are incomplete, management is hostile, digital evidence is fragmented, and the financial affairs of the CD have already substantially deteriorated. The evidentiary complexity of avoidance litigation arises from the very nature of financial distress itself. CDs approaching insolvency commonly experience operational breakdown, governance failures, accounting irregularities, and managerial misconduct. During such periods, compliance mechanisms weaken, internal controls collapse, and financial reporting standards are often disregarded. In several cases, promoters anticipating insolvency deliberately engage in diversion of assets, manipulation of records, concealment of transactions, or destruction of evidence in order to shield assets from creditors. Consequently, by the time the RP assumes control of the CD, the evidentiary landscape is frequently characterized by informational asymmetry, incomplete documentation, and technological disarray.

The seriousness of these evidentiary deficiencies is amplified by the fact that avoidance applications cannot succeed merely on the basis of suspicion, commercial intuition, or generalized allegations of misconduct. Judicial authorities under the IBC have repeatedly emphasized that such proceedings must be supported by transaction specific pleadings, documentary evidence, forensic financial analysis, and clear demonstration of statutory violations. The burden imposed upon the RP is therefore exceptionally onerous, requiring the RP not merely to identify suspicious conduct, but to legally establish the existence of

[22] *(2026) ibclaw.in 36 NCLT*

preferential treatment, undervalued transactions, extortionate credit arrangements, or fraudulent intent through admissible evidence capable of withstanding rigorous judicial scrutiny.

The complexity is further aggravated by the procedural architecture governing avoidance applications. In **M/s Venus Recruiters Pvt. Ltd. v. Union of India and Ors**[23]., the court clarified that while avoidance applications must ordinarily be filed by the RP or the CoC before approval of the Resolution Plan, their adjudication may continue well beyond the completion of the Corporate Insolvency Resolution Process. Section 26 of the IBC expressly provides that the filing of avoidance applications does not affect the continuation of CIRP proceedings, thereby creating a legal separation between the insolvency resolution process and subsequent adjudication of avoidance claims. Although this framework preserves the continuity of resolution proceedings, it simultaneously creates substantial evidentiary difficulties relating to preservation of records, continuity of management, availability of witnesses, and institutional accountability once control of the CD shifts to the successful resolution applicant.

Further complications arise with respect to the treatment and distribution of recoveries arising from avoidance transactions. In the case **63 Moons Technologies Ltd. v. The Administrator of Dewan Housing Finance Corporation Ltd** [24], it was observed that resolution plans frequently assign nominal or even nil value to prospective recoveries arising from Section 66 proceedings, with such recoveries often accruing to the successful resolution applicant rather than directly benefiting creditors, subject to the commercial wisdom of the CoC. This creates additional disputes concerning entitlement, valuation methodology, and the evidentiary burden required to establish quantifiable recoveries attributable to fraudulent or wrongful conduct.

The inherently fact intensive nature of avoidance proceedings also contributes significantly to prolonged litigation and evidentiary complexity. Such transactions frequently involve promoters, related parties, shell entities, group companies, and third parties, each of whom may vigorously contest allegations and produce competing factual narratives. As observed in **Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd. & Ors**[25]., adjudication of avoidance applications requires detailed factual inquiry extending far beyond the comparatively objective determinations ordinarily undertaken during CIRP. Consequently, these proceedings demand extensive forensic reconstruction, examination of financial records, tracing of fund flows, assessment of commercial intent, and evaluation of surrounding circumstances, thereby substantially increasing the evidentiary burden placed upon insolvency professionals and adjudicatory authorities alike.

In sum, the evidentiary challenges associated with avoidance transaction litigation under the IBC emerge from a convergence of incomplete and opaque financial records, procedural complexities extending beyond resolution, disputes regarding recovery distribution, and the inherently intricate and contested factual nature of such proceedings. Unless supported by robust forensic infrastructure, technological integration, and institutional mechanisms for evidence preservation and transaction analysis, the effectiveness of avoidance jurisprudence may remain substantially constrained in achieving its intended objective of value maximization and creditor protection.

[23] *(2020) ibclaw.in 41 HC*
[24] *(2022) ibclaw.in 95 NCLAT*
[25] *(2023) ibclaw.in 09 HC*

4.1 Lack of Financial Records and Documentary Deficiencies

One of the most persistent challenges in avoidance litigation concerns the absence of reliable financial records. In a significant number of insolvency cases, the CD enters CIRP with severely deficient accounting infrastructure. Books of accounts may remain incomplete for several financial years, statutory filings may not have been updated, invoices and supporting documents may be missing, and ledgers may contain inconsistencies incapable of reconciliation. Such deficiencies materially impair the ability of the RP to conduct meaningful transaction analysis. Since each avoidance action brought under the IBC must be adjudicated to finality, RPs need to gather evidence and build a strong case, one that can withstand scrutiny from the adjudicating authority and typically, a prolonged litigation battle with the respondents. This is a challenging endeavor for RPs, made even more difficult, CDs very often lack proper maintenance of books of accounts and records.[26]

The problem is not merely one of administrative negligence but frequently one of deliberate suppression. Promoters and management personnel of financially distressed companies often anticipate the possibility of insolvency proceedings and may therefore intentionally manipulate or withhold records to obscure suspicious transactions. Bank statements may be selectively produced, accounting entries altered, vouchers destroyed, and digital backups erased. In certain cases, there may also be instances where statutory auditors record disclaimers or adverse observations regarding the non-availability of supporting documentation. Such circumstances can significantly weaken the evidentiary foundation necessary for pursuing avoidance proceedings.

In undervalued transaction litigation, the RP is required to demonstrate that the CD transferred assets for consideration significantly below market value or without adequate consideration altogether. Such analysis necessarily depends upon valuation reports, sale agreements, board approvals, accounting entries, and supporting commercial records. If such documents are unavailable or unreliable, the evidentiary basis for the application becomes substantially weakened.

The absence of records becomes even more problematic in cases involving fraudulent trading. Fraudulent intent is rarely express or explicit. Consequently, courts infer fraudulent purpose through surrounding circumstances, patterns of financial conduct, unusual transactions, and contemporaneous records. Where books of accounts are incomplete or manipulated, establishing the requisite nexus between conduct and intent becomes exceptionally difficult. The collapse of reliable documentation therefore directly undermines prosecutorial viability. The RP may strongly suspect asset diversion or fraudulent conduct, yet remain unable to produce legally sustainable evidence capable of satisfying judicial standards. This evidentiary vacuum often results in potentially avoidable transactions escaping scrutiny merely because the underlying records necessary to establish liability no longer exist.

4.2 Non-Cooperation of Suspended Management

The problem of evidentiary insufficiency is significantly aggravated by the persistent non-cooperation of suspended management. Section 19 imposes a statutory obligation upon the personnel and promoters of the CD to cooperate with the RP and provide all information necessary for conduct of the

[26] *IBBI, Consultation paper on issues related to reducing delays in CIRP (April 2022)*

CIRP. In theory, this provision seeks to ensure smooth transition of control and preservation of operational continuity. In practice, however, enforcement of cooperation obligations remains deeply inconsistent.

Suspended directors frequently refuse to disclose financial records, deny access to digital systems, withhold passwords, fail to provide banking credentials, or altogether avoid communication with the RP. In many cases, there may be situations where management personnel shift responsibility to former employees, accountants, consultants, or outsourced service providers. Such fragmentation of information can significantly impede effective transaction investigation.

Despite the regulatory framework and procedural support recognized in **Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd. & Ors[27],** including Regulation 35A of the CIRP Regulations mandating timely identification and filing of avoidance applications supported by audit reports and creditor inputs, significant evidentiary challenges continue to persist in avoidance transaction litigation owing to non-cooperation by suspended managements, inadequate disclosure of financial records, and concealment of relevant transactional information.

The practical implications of such non-cooperation are severe. Modern corporate operations are heavily dependent upon digital infrastructure including enterprise resource planning systems, cloud based accounting platforms, email servers, and online banking systems. Without administrative access credentials, RPs may be effectively prevented from accessing critical financial information. In some cases, servers may be deactivated due to non-payment of subscriptions or hosting charges, resulting in permanent loss of data. Moreover, suspended management often possesses superior knowledge concerning the commercial rationale underlying impugned transactions. Even where documents are available, interpretation of financial records frequently requires contextual explanation from management personnel familiar with the CD's operations. Deliberate refusal to cooperate therefore creates substantial informational asymmetry.

Although the Adjudicating Authority possesses power to issue directions compelling cooperation, practical enforcement remains time consuming and procedurally cumbersome. By the time coercive orders are obtained and implemented, evidence may already have deteriorated or become inaccessible. Furthermore, the IBC presently lacks sufficiently stringent and expeditious penal consequences capable of effectively deterring non-cooperation in all cases.

The issue becomes particularly acute in cases involving family controlled businesses or closely held corporate structures where operational information remains concentrated within a small group of promoters. In such cases, institutional memory itself may effectively disappear once management ceases cooperation. Consequently, the RP is often compelled to reconstruct the affairs of the CD through fragmented third party records rather than internal documentation.

[27] *(2023) ibclaw.in 09 HC*

4.3 Delay in Admission of CIRP and Its Evidentiary Consequences

A further structural difficulty affecting avoidance litigation arises from delays in the admission of insolvency proceedings before the AA, such delay has also been recognized by IBBI[28]. Historically, the look back periods for avoidance transactions under the IBC were computed retrospectively from the ICD. However, in practice, considerable time often elapsed between the filing and admission of insolvency applications, thereby diluting the effectiveness of such scrutiny. This challenge is compounded by the fact that the IBC does not prescribe specific timelines for adjudication of avoidance applications, which effectively fall outside the strict timelines governing the corporate insolvency resolution process[29]. Coupled with the administrative and infrastructural constraints faced by the Tribunals, these factors have contributed to significant delays and a lack of focused adjudicatory attention towards avoidance proceedings.

This temporal gap created significant practical difficulties. During the pendency of admission proceedings, promoters often continued to retain control over the corporate debtor and engage in financial transactions without insolvency oversight. Assets could be dissipated, records altered, funds diverted, and liabilities selectively discharged, while certain transactions undertaken in anticipation of insolvency could potentially escape effective scrutiny. The evidentiary consequences of such delay are equally serious. Over time, financial records may deteriorate, digital systems become inaccessible, banking archives harder to retrieve, and key personnel or third party professionals possessing relevant information may no longer be available. Consequently, the ability of the Resolution Professional to reconstruct and investigate historical transactions becomes substantially impaired with the passage of time.

4.4 Burden of Proof, Intent, and Evidentiary Complexity

Avoidance litigation under the IBC involves exceptionally complex evidentiary burdens because the relevant statutory provisions frequently require proof not merely of objective transactions but also of subjective intent, commercial purpose, and preferential effect. This is particularly evident in proceedings involving fraudulent and wrongful trading under Section 66. In the context of fraud allegations in IBC avoidance applications, a high degree of proof is required to establish fraudulent intent. The NCLAT in **Nalinesh Kumar Paurush and Ors. v. Arvind Mittal (RP) and Anr. (2025)** emphasized that fraudulent trading under Section 66 of the IBC requires a "very high degree of proof" linked strictly to fraudulent intent. The tribunal clarified that the intent to defraud must be shown by establishing that the business was carried on with dishonest intentions, and that directors knowingly continued business despite insolvency. While the concealment of the true financial position could also fall under fraudulent trading, the standard of proof remains strictly demanding. Mere allegations are entirely insufficient, and compelling evidence must satisfy the tribunal on a preponderance of probability as ruled in the case **HDFC Bank Ltd v. Terlin Engineerings OPC Pvt Ltd**[30]. Further, the ruling in **Swapan Kumar Saha v. Ashok Kumar Agarwal (RP)**[31] reiterates this high threshold, establishing that an application under Section 66 must explicitly plead

---

[28] *Insolvency & Bankruptcy Board of India: Discussion Paper Proposed Amendments to IBBI (Liquidation Process) Regulations, 2016*

[29] *Anoop Rawat, Saurav Panda & Amrit Mahal, Looking to a Settlement Mechanism for Avoidance Actions under the IBC, India Corp. L. Blog dated 13-06-2023, 2023 SCC OnLine Blog Exp 51 [https://www.scconline.com/blog/post/2023/06/13/looking-to-a-settlement-mechanism-for-avoidance-actions-under-the-ibc/].*

[30] *(2026) ibclaw.in 1150 NCLT*

[31] *(2025) ibclaw.in 911 NCLAT*

and prove that the business was carried on with the specific intent to defraud creditors, and that the directors failed to exercise requisite due diligence.

Fraudulent intent is rarely documented explicitly since corporate actors do not ordinarily record admissions indicating an intention to defraud creditors or dissipate assets. The AA therefore infers intent through a mosaic of circumstantial evidence. This includes analyzing the precise timing of the transaction relative to the onset of insolvency, identifying key financial distress indicators, scrutinizing unusual or non-arm's length related-party involvement, detecting abnormal payment patterns departing from established trade practices, and evaluating the complete absence of a legitimate commercial justification. Such inferential analysis creates substantial evidentiary uncertainty. Distinguishing between poor commercial judgment and fraudulent conduct is inherently difficult. A company may undertake commercially risky decisions that ultimately fail without necessarily engaging in fraud. As noted in Nalinesh Kumar Paurush (2025), a bona fide belief by directors that the company would recover from financial difficulties effectively negates liability for fraudulent trading.

Similarly, payments made or assets transferred within complex corporate structures may arise from genuine business necessity rather than preferential or fraudulent intent. For instance, in **Renuka Devi Rangaswamy IRP v. Mr. Madhusudan Khemka**[32], the NCLAT held that a transfer of assets within group companies does not per se constitute fraudulent trading under Section 66(1) of the IBC. It observed that Section 66 cannot be invoked without clear evidence of fraud or dishonest intent, rejecting the application because the applicant failed to prove fraud beyond sweeping allegations, and because the management provided a plausible commercial justification for the intra group transfer. This aligns with broader commercial realities, a distressed company may also discharge dues owed to a critical supplier shortly before insolvency in order to maintain operational continuity. Whether such a transaction constitutes an avoidable preference or falls safely within the ordinary course of business depends upon a detailed contextual analysis. Consequently, tribunals require highly transaction specific evidence capable of demonstrating both the economic effect and the underlying commercial rationale of the impugned conduct.

The burden becomes even more onerous because insolvency proceedings frequently involve hindsight bias. Transactions undertaken during periods of severe financial distress are retrospectively examined after insolvency has materialized. Conduct that may initially have appeared commercially reasonable to management at the time may subsequently appear deeply suspicious once the company enters the CIRP. Recognizing this distorting effect, judicial authorities exercise extreme caution in characterizing ordinary commercial conduct as fraudulent or preferential merely because insolvency eventually occurred[33].

Ultimately, the statutory necessity of proving intent significantly increases the system's dependence upon sophisticated forensic analysis and circumstantial reconstruction. RPs cannot rely on superficial accounting checks or presumptive assertions. Instead, they must identify complex behavioral and financial patterns across multiple interconnected transactions to establish deliberate asset diversion or creditor prejudice as record satisfaction for initiating any remedial measures. Such an analysis requires advanced

[32] *(2022) ibclaw.in 823 NCLAT*
[33] *[2020] ibclaw.in 06 SC*

financial investigation techniques and comprehensive forensic audits that extend far beyond conventional accounting reviews[34].

The burden of proof in avoidance proceedings becomes particularly onerous where transactions involve related parties, layered corporate structures, and digital financial systems. Modern corporate misconduct is seldom executed through direct and easily identifiable transfers[35]. Instead, funds are frequently routed through subsidiaries, shell entities, intermediary accounts, associate concerns, or circular transactions[36] designed to conceal the true economic substance and ultimate beneficiary of the arrangement.

Transactions may initially appear to be part of the company's ordinary business operations, even though they indirectly benefit promoters or related parties through multiple layers of transfers. The difficulty for the RP is that there is often no direct proof readily available to reveal the true nature or purpose of such transactions. Instead of examining a single transaction in isolation, the RP is usually required to trace a larger financial trail spread across different entities, bank accounts, and jurisdictions. This may involve analyzing banking records, corporate filings, shareholding patterns, common directorships, tax documents, and even communication exchanges. The process becomes far more complicated when offshore entities or cross border transactions are involved, since confidentiality restrictions and practical difficulties in accessing foreign records often limit the availability of evidence[37]. Traditional accounting and auditing methods are often insufficient in such investigations because they are primarily designed to verify accounting compliance rather than uncover the real economic substance behind transactions. As a result, avoidance proceedings increasingly rely on forensic accounting techniques that can trace hidden connections, indirect transfers, and coordinated movement of funds across related entities.

At the same time, the increasing digitization of corporate operations has significantly changed the evidentiary framework of insolvency litigation. Most corporate transactions today take place through electronic banking systems, cloud based accounting software, ERP platforms, digital invoices, and email communications. Although digital systems can improve traceability, they also create serious challenges relating to the authenticity, preservation, integrity, and admissibility of electronic evidence.

In many cases, the RP takes control of the corporate debtor only after the business has already faced substantial operational disruption. By that stage, digital systems may no longer be fully accessible, servers may have been shut down, backups may be missing, or records may have been damaged or corrupted. Recovering and preserving usable electronic evidence therefore requires specialized technical expertise. Even metadata contained within electronic records, such as creation dates, modification history, access logs, and user activity, may become critical in establishing the sequence and authenticity of transactions. At the same time, any improper extraction or handling of such data can itself affect the reliability of the evidence.

[34] *Ministry of Corporate Affairs, Report of the Bankruptcy Law Reforms Committee vol. I, at 109–12 (2015)*
[35] *Vodafone International Holdings B.V. v. Union of India, (2012) 6 SCC 613*
[36] *Kristin van Zwieten, Related Party Transactions in Insolvency, ECGI Law Working Paper No. 401/2018 (2018)*
[37] *UNCITRAL,* Legislative Guide on Insolvency Law*, Part Four, at 311–15 (2005)*

5. Forensic Audit and Transaction Review Mechanisms

Forensic audits have emerged as one of the most indispensable instruments within the framework of avoidance transaction litigation under the IBC. The increasing sophistication of corporate financial structures, coupled with the complexity of modern commercial transactions has significantly transformed the nature of insolvency investigation. Traditional accounting scrutiny and ordinary financial review are often inadequate to identify concealed asset diversion, layered transactions, preferential transfers, or fraudulent conduct undertaken during periods of financial distress. Consequently, insolvency professionals increasingly depend upon forensic audits and transaction review mechanisms to reconstruct the financial affairs of the CD and identify transactions capable of being challenged under IBC.

The forensic audit report plays a critical role in identifying undervalued or suspect transactions, as seen in the detailed forensic audit and transaction audit reports discussed in **Dinkar T. Venkatasubramanian (RP) v. Arun Kumar Maiti and Ors**[38] where lack of cooperation and incomplete documentation hindered the ascertainment of transaction genuineness, highlighting the need for robust forensic infrastructure and cooperation for effective investigation. The importance of forensic audits within insolvency proceedings must be understood in the context of the broader objectives underlying the IBC itself. The Code is fundamentally designed to preserve and maximize the value of the CD's estate for the collective benefit of creditors. However, this objective cannot be effectively realized if the assets of the CD have already been depleted, diverted, concealed, or preferentially transferred prior to commencement of insolvency proceedings. Avoidance provisions therefore operate as restorative mechanisms intended to recover value improperly removed from the insolvency estate. Forensic audits provide the practical investigative foundation necessary to operationalize these statutory provisions.

Modern corporate financial misconduct frequently operates through complex and layered transactional structures[39] that cannot be identified merely through examination of balance sheets or statutory financial statements. Funds may be routed through shell entities, related party arrangements, fictitious consultancy payments, circular transactions, or intermediary banking channels in a manner that conceals the true economic substance of the transaction. Consequently, forensic auditing has emerged as a specialized discipline combining accounting expertise, investigative methodology, financial analysis, and evidentiary reconstruction. Unlike conventional statutory audits, which are primarily compliance oriented and intended to verify whether financial statements present a true and fair view, forensic audits are investigative and adversarial in nature. Their objective is not simply to assess accounting accuracy, but to uncover financial irregularities, reconstruct suspicious transactions, identify fraudulent conduct, and generate evidence capable of supporting legal proceedings.

Forensic investigations are particularly important in tracing diversion of funds[40] and identifying concealed related party dealings. Insolvent companies frequently route operational funds through multiple entities in order to obscure traceability and conceal ultimate beneficiaries. Through transaction mapping and fund flow reconstruction, forensic auditors may reveal that apparently legitimate payments were in fact

---

[38] *(2026) ibclaw.in 36 NCLT*
[39] *Reinhard Bork, Transactions Avoidance Rules, in The Anatomy of Corporate Insolvency Law 158, 165–68 (Reinhard Bork & Renato Mangano eds., Oxford Univ. Press 2024)*
[40] *Aurelio Gurrea-Martínez, The Avoidance of Pre-Bankruptcy Transactions: An Economic and Comparative Approach, 93 Chi.-Kent L. Rev. 711, 729–35 (2018)*

mechanisms for promoter enrichment or creditor prejudice. Such investigations often uncover fabricated invoices, inflated expenses, shell entities, and interconnected transaction chains that would ordinarily remain undetected through traditional accounting review. Forensic audits also perform an important litigation support function[41] by assisting RPs in preparing transaction specific pleadings, identifying statutory violations, and establishing the evidentiary nexus between financial conduct and avoidance provisions under the IBC. However, despite their growing significance, forensic audit practices under the IBC continue to suffer from substantial limitations. One of the principal concerns is the absence of standardized methodology or uniform evidentiary frameworks. Different forensic firms adopt varying investigative approaches and reporting standards, resulting in inconsistent quality and reliability of reports. Many reports identify suspicious conduct without adequately correlating their findings to the statutory ingredients necessary to sustain avoidance proceedings.

Further difficulties arise from delayed initiation of forensic investigations, incomplete records, fragmented digital infrastructure, non-cooperation by promoters, and severe informational asymmetry. RPs are often compelled to reconstruct financial activity through partial bank statements, incomplete ledgers, and third party documentation under compressed statutory timelines. Additionally, the high cost of comprehensive forensic investigations creates structural inequality within the insolvency framework, where large insolvencies benefit from sophisticated investigative mechanisms while smaller CIRPs frequently lack adequate resources to effectively identify and pursue avoidable transactions.

6. Key Issues and Challenges in Forensic Audits and Avoidance Transactions

Forensic audits have become one of the most important investigative tools in avoidance proceedings under the IBC. These reports therefore frequently form the foundation of avoidance applications before the NCLT. Despite their growing importance, forensic investigations under the IBC continue to face serious practical limitations. There is presently no uniform framework governing investigative methodology, evidentiary standards, or reporting practices. Consequently, the quality and reliability of forensic reports often vary significantly. In many cases, reports identify suspicious transactions but fail to clearly connect those findings with the statutory requirements necessary to sustain avoidance proceedings. This creates difficulties not only for RPs, but also for adjudicating authorities required to assess highly technical financial material.

Another major concern is delay in commencement of forensic investigations. Ideally, forensic review should begin immediately after initiation of CIRP so that financial records and digital evidence may be preserved. In practice, however, investigations are frequently delayed due to funding constraints, delayed constitution of the CoC, or operational priorities during CIRP. By the time the investigation begins, records may already be incomplete, digital systems inaccessible, and relevant personnel unavailable. RPs are therefore often compelled to reconstruct financial history through fragmented banking records, incomplete ledgers, and third party documentation within compressed timelines. The evidentiary value of forensic reports is itself limited. Courts have consistently clarified that such reports are investigative tools and not conclusive proof of liability. Avoidance applications cannot succeed solely on broad forensic observations or suspicion. The RP must still establish the statutory ingredients of the relevant avoidance

[41] *Indian Institute of Insolvency Professionals of ICAI,* Study on Avoidance Transactions under IBC, 2016: Improving Outcomes *52–61 (2023)*

provision through admissible and corroborative evidence. This challenge becomes even more significant in cases involving electronic evidence, where compliance with Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 becomes necessary for admissibility.

Going forward, the effectiveness of forensic investigations under the IBC will increasingly depend upon technological integration and advanced data analysis. Artificial intelligence, transaction mapping systems, and digital forensic tools have significant potential to identify abnormal fund flows, layered transactions, and concealed related party arrangements. However, the present insolvency framework still relies heavily upon manual review and fragmented investigative processes. Unless stronger forensic infrastructure and evidentiary standardization are developed, the practical effectiveness of avoidance proceedings may continue to remain constrained.

The evidentiary limitations of forensic reports have been expressly recognized in judicial precedent. In **Mr. Anuj Bajpai RP v. Surendra Lodha**[42], it was held that a forensic report could not be exclusively relied upon to establish liability under Section 66 of the IBC. The Tribunal noted that the transaction auditor himself had clarified that the report was not intended to constitute a definitive pronouncement regarding the conduct of any individual or the CD, and that the auditor had not independently affirmed the veracity of the underlying material. Emphasizing the serious nature of allegations relating to fraudulent trading, the Tribunal observed that the degree of proof required must be "unimpeachable," and that tentative or inferential findings contained in a forensic audit report are insufficient in the absence of independent corroborative evidence. Consequently, the RP's exclusive reliance upon the forensic report, without supporting admissible evidence, was held inadequate to establish fraudulent conduct.

A similar approach was adopted by the National Company Law Appellate Tribunal in **State Bank of India v. Dommeti Surya Rama Krishna Saibaba and Ors**[43]., where it was held that an inconclusive forensic audit report lacking supporting documentary material could not form the sole basis for determination of an application under Section 66. The Tribunal further observed that where suspended management fails to cooperate and material information is unavailable, a forensic audit alone may be insufficient to conclusively establish fraudulent transactions, and in appropriate cases only a comprehensive criminal investigation may be capable of uncovering the necessary evidence.

Additional evidentiary complications in avoidance proceedings arise from the increasing reliance on electronic records such as emails, ERP data, digital ledgers, online banking records, and cloud based communications. Since modern forensic investigations are largely dependent upon electronically stored information, admissibility becomes subject to compliance with Section 65B of the Indian Evidence Act, 1872. Failure to satisfy the mandatory certification requirements under Section 65B may render otherwise significant electronic evidence inadmissible, thereby weakening the evidentiary basis of avoidance applications under the IBC. Accordingly, the evidentiary value of forensic reports depends not only upon investigative sophistication and financial analysis, but also upon procedural compliance, documentary substantiation, and statutory admissibility.

[42] *(2023) ibclaw.in 479 NCLT*
[43] (*2025) ibclaw.in 708 NCLAT*

The effectiveness of forensic investigations under the IBC is also increasingly dependent upon technological integration and advanced data analytics. Contemporary corporate operations generate vast quantities of digital transactional data that cannot realistically be examined through purely manual methods. Advanced forensic tools, including AI driven analytics and transaction mapping systems, can assist in identifying abnormal payment patterns, layered transfers, circular fund movements, and concealed related party relationships. However the ecosystem presently lacks institutional integration of such technologies, with most investigations still relying heavily on manual review and fragmented analytical processes. As financial systems become increasingly digitized, the absence of robust technological infrastructure may significantly constrain the effectiveness of avoidance transaction litigation under the IBC.

7. Institutional and Market Constraints Affecting Avoidance Jurisprudence

The effectiveness of avoidance litigation is influenced not merely by statutory design but also by institutional and market realities. Institutional capacity constraints within the NCLT represent a major structural challenge affecting the overall effectiveness of avoidance jurisprudence. The insolvency ecosystem has expanded rapidly following enactment of the IBC, but adjudicatory infrastructure has struggled to expand proportionately. Many benches continue to face shortages of judicial members, technical members, research support, and administrative infrastructure. Complex forensic litigation requires substantial judicial time and technical comprehension, yet overburdened benches frequently lack the institutional capacity necessary for sustained examination of intricate financial disputes. **M/s Venus Recruiters Pvt. Ltd. v. Union of India and Ors**[44] extensively discusses the timelines and jurisdictional aspects of avoidance applications. It highlights that avoidance applications should ideally be filed and adjudicated within the CIRP timeline

This institutional limitation becomes particularly problematic because avoidance proceedings are fundamentally evidence intensive. Unlike ordinary insolvency applications that may primarily involve legal interpretation, avoidance litigation often requires extensive examination of accounting records, banking transactions, valuation methodologies, digital evidence, and forensic reconstruction. Judicial authorities must evaluate not merely legal arguments but also technical financial material of considerable complexity. Infrastructural limitations therefore directly affect adjudicatory quality and speed.

The cost of forensic investigations constitutes another important institutional and market constraint influencing judicial outcomes. Comprehensive forensic audits involving transaction tracing, digital reconstruction, related party mapping, and valuation analysis require substantial financial resources. Large insolvency proceedings involving major corporate groups may justify such expenditure because potential recoveries are substantial. However, smaller CIRPs frequently lack sufficient funds to engage specialized forensic professionals. This creates structural inequality within the insolvency framework. Large insolvencies may benefit from sophisticated investigative capabilities while smaller cases remain dependent upon limited financial review or incomplete forensic analysis. Consequently, the quality of avoidance litigation frequently correlates with the financial capacity of the insolvency estate itself. Judicial insistence upon rigorous evidentiary standards, while legally justified, therefore inadvertently disadvantages smaller insolvency proceedings lacking adequate forensic resources.

[44] *(2020) ibclaw.in 41 HC*

Information asymmetry further complicates avoidance litigation. Promoters and suspended management ordinarily possess superior knowledge regarding the financial affairs, transactional history, and operational conduct of the CD. By contrast, the RP typically assumes control only after financial distress has substantially materialized. Consequently, the RP frequently operates with incomplete information while the former management retains informational advantage. This informational imbalance becomes especially problematic where records are incomplete, manipulated, or deliberately withheld. Suspended directors may refuse cooperation, deny access to digital systems, withhold passwords, or claim non availability of documents. Although Section 19 of the IBC imposes cooperation obligations upon former management, practical enforcement often remains slow and ineffective. Judicial proceedings seeking cooperation directions consume additional time, thereby delaying forensic investigation and evidentiary preservation.

The incentive structure within CIRP itself also affects judicial treatment of avoidance litigation. The insolvency framework prioritizes completion of resolution within strict statutory timelines. Consequently, the CoC frequently focus primarily upon approval of viable resolution plans rather than prolonged avoidance proceedings whose outcomes remain uncertain and time consuming. This creates practical disincentives for extensive forensic investigation. Resolution applicants similarly may prefer commercial certainty rather than prolonged litigation concerning historical transactions. As a result, avoidance proceedings are sometimes treated as secondary or collateral issues rather than central components of value maximization. Judicial authorities have increasingly recognized this structural tension between rapid resolution and comprehensive avoidance enforcement.

The absence of specialized insolvency forensic infrastructure further compounds institutional difficulties. India presently lacks dedicated public forensic institutions specifically designed for insolvency related investigation. Avoidance litigation therefore depends heavily upon fragmented private forensic services operating without uniform standards or specialized institutional coordination. Unlike certain advanced insolvency jurisdictions possessing specialized insolvency investigation agencies, the Indian framework remains relatively decentralized and fragmented. These institutional constraints demonstrate that the effectiveness of avoidance jurisprudence depends not merely upon statutory drafting or judicial interpretation but also upon broader systemic realities involving adjudicatory capacity, forensic infrastructure, informational asymmetry, market incentives, and technological capability. Judicial insistence upon rigorous evidentiary standards is normatively justified in order to prevent speculative or abusive litigation. However, the practical ability of RPs to satisfy such standards remains significantly constrained by institutional limitations inherent within the insolvency ecosystem.

8. Recommendations and Reform Proposals

The effectiveness of avoidance jurisprudence under the IBC can be strengthened only through a combination of legislative clarification, institutional strengthening, procedural reform, technological modernization, and enhancement of forensic capacity. Although the provisions postulate a comprehensive framework governing preferential, undervalued, extortionate, and fraudulent transactions, the practical enforcement of these provisions continues to face serious evidentiary and structural challenges. Contemporary avoidance litigation demonstrates that successful enforcement depends not merely upon statutory drafting, but also upon the ability of RPs, forensic experts, and adjudicating authorities to identify, preserve, analyze, and present complex financial evidence within the strict timelines of the CIRP. Accordingly, reforms must address the broader institutional ecosystem governing insolvency investigation, adjudication, and evidentiary preservation.

8.1 Mandatory Early Forensic Review

One of the principal weaknesses within the present framework is the delayed commencement of forensic review. In many CIRPs, forensic audits are initiated only after substantial progress has already occurred, by which stage records may have deteriorated, digital evidence may have been deleted, and transaction trails may have become difficult to reconstruct. Such delay weakens the evidentiary foundation necessary for successful avoidance proceedings.

Accordingly, a structured and time bound forensic review mechanism should commence immediately upon initiation of CIRP. Early stage transaction mapping should focus upon transactions occurring within the statutory look back periods with particular attention to related party transactions, sudden creation of security interests, and diversion of receivables, irregular repayments, and suspicious asset transfers. Early forensic engagement would improve litigation preparedness and reduce evidentiary deterioration.

Simultaneously, mandatory evidence preservation protocols should be introduced upon commencement of CIRP. Such protocols should include preservation of email servers, ERP systems, cloud-based financial records, electronic invoices, and banking communications. Since modern commercial transactions increasingly operate through digital systems, early preservation of electronic evidence is indispensable for effective avoidance enforcement.

8.2 Standardized Forensic Reporting Framework

A major practical deficiency within the insolvency ecosystem is the absence of uniformity in forensic audit methodology and reporting standards. Different forensic firms presently adopt varying investigative approaches, analytical structures, and evidentiary standards, resulting in inconsistency in the quality and reliability of avoidance applications. IBBI may therefore formulate standardized templates and protocols governing forensic audits and transaction review reports. Uniform reporting standards would improve consistency, judicial comprehension, and evidentiary reliability. Such frameworks should prescribe mandatory disclosure regarding transaction chronology, identification of beneficiaries, valuation methodology, related party mapping, digital evidence certification, and statutory classification of transactions.

Particular attention must also be paid to caveats and qualifying language used within forensic reports. In practice, forensic professionals frequently include broad disclaimers such as findings being based upon “limited records” or “management representations.” While professional caution may be necessary where records are incomplete, excessive caveats often weaken the evidentiary credibility of forensic findings before adjudicating authorities. Regulatory guidance should therefore distinguish between legitimate professional qualifications and overbroad disclaimers that undermine investigative reliability. Reports should specifically disclose the nature of missing information, assumptions relied upon, and the degree of confidence attached to conclusions.

8.3 Specialized Avoidance Benches

Avoidance transaction litigation frequently involves highly technical disputes requiring extensive judicial engagement in the way of appreciation of evidence such as forensic accounting, valuation analysis, layered transactions, digital evidence, and complex financial arrangements. However, the NCLT presently operates under significant infrastructural and staffing limitations and handling multiple jurisdictions under IBC as well as Companies Act, 2013. Existing benches remain burdened with multiple categories of insolvency litigation, resulting in prolonged delays and fragmented adjudication of avoidance applications. Despite various institutional measures, including colloquiums conducted for members of the NCLT to facilitate knowledge sharing and improve coordination in the discharge of institutional functions, there continues to be a significant inadequacy of specialized technical expertise in dealing with avoidance applications. Most of these efforts are largely focused on administrative discussions, institutional functioning, and broader policy directions, with comparatively limited emphasis on dissemination of technical knowledge and detailed deliberation on complex financial, forensic, and evidentiary issues arising in avoidance proceedings.

Dedicated NCLT benches or designated hearing structures for avoidance applications would substantially improve adjudicatory efficiency. Institutional specialization would enable judicial authorities to develop greater familiarity with forensic methodologies, financial fraud indicators, and evidentiary complexities specific to avoidance litigation. Specialized adjudication would also improve consistency in interpretation and application of evidentiary principles in relation to avoidance transactions. Further, specialized adjudicatory mechanisms would reduce delays in disposal of avoidance proceedings. Presently, prolonged pendency often results in deterioration of evidence, increased litigation costs, and reduced practical utility of recoveries. Faster and technically informed adjudication would therefore materially strengthen avoidance enforcement.

8.4 Technological Integration

The increasing sophistication of corporate financial misconduct necessitates greater technological integration within insolvency investigation and transaction review mechanisms. Modern commercial transactions increasingly involve online banking platforms, digital accounting systems, electronic fund transfers, and layered corporate structures that are difficult to analyze through conventional manual review methods. Integrated transaction analytics platforms may be developed for insolvency proceedings under the IBC after a complete assessment of existing software and tools. Such systems could automate transaction tracing, identify abnormal payment behavior, detect circular fund movements, map related party networks, and preserve digital evidentiary trails. Advanced data analytics and artificial intelligence tools may further assist in identifying deviations from historical financial conduct and recognizing suspicious transactional patterns.

Technological integration may also facilitate consolidation of information from bank statements, MCA filings, GST records, statutory returns, and financial statements into unified investigative dashboards. Such integration would reduce informational fragmentation and improve efficiency of forensic analysis. However, technological modernization must operate within robust cybersecurity and data protection safeguards. Insolvency proceedings involve highly sensitive financial and commercial information, requiring strong mechanisms relating to encryption, access control, audit trails, and data confidentiality.

8.5 Stronger Enforcement of Cooperation Obligations

Non-cooperation by suspended management remains one of the most serious practical obstacles affecting effective avoidance litigation. Former promoters and directors frequently refuse to disclose records, deny access to accounting systems, withhold passwords, conceal documents, or avoid participation in investigative processes. Such conduct materially impairs the ability of the RP to identify suspect transactions and prosecute avoidance applications within statutory timelines.

Although Section 19 imposes a statutory duty upon suspended management to cooperate with the RP and paves for a civil mechanism for ensuring cooperation, enforcement remain slow and procedurally cumbersome. Consequently, legislative and procedural reforms could provide for expedited adjudication of cooperation related applications, stricter financial penalties, and adverse evidentiary presumptions in cases of deliberate obstruction. If RPs are given streamlined and timely access to statutory filings, banking information, GST records, and related party disclosures without excessive procedural formalities, the informational asymmetry that presently exists between promoters and insolvency professionals can be substantially reduced, thereby enabling more effective investigation and prosecution of avoidance transactions.

8.6 Post-Resolution Continuation

Significant jurisprudential uncertainty has historically surrounded the continuation of avoidance proceedings after the approval of resolution plans and the conclusion of the CIRP. Divergent judicial approaches have emerged regarding the authority to continue such proceedings, the standing of former RPs, the role of successful resolution applicants, and the treatment and distribution of recoveries obtained through avoidance litigation. This lack of uniformity created a pressing need for comprehensive legislative clarification within the IBC.

While early judicial and regulatory developments remained fragmented, crucial legal benchmarks have since emerged. In judicial pronouncements such as **Kunwer Sachdev v. Su-Kam Power Systems Ltd**[45]. and **Sh. B. Prashanth Hegde v. State Bank of India**[46], courts recognized that assets or value recovered through avoidance proceedings form part of the liquidation estate, while Regulation 44A of the CIRP Regulations contemplates the continuation of such proceedings even after the closure of liquidation.

More decisively, the landmark judgment of the Delhi High Court Division Bench in **Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd. (2023)** cleared significant ambiguity by ruling that avoidance applications do not automatically terminate upon the approval of a resolution plan and can indeed survive CIRP. Subsequent jurisprudence has increasingly emphasized that the treatment of these proceedings is fundamentally governed by the text of the approved Resolution Plan itself.

Despite these judicial strides, relying on case to case judicial interpretation to fill a legislative lacuna is insufficient for long-term market stability. Uncertainty regarding entitlement to recoveries continues to materially undermine litigation incentives and commercial certainty. Resolution applicants may be disinclined to pursue complex and prolonged avoidance litigation where the contractual treatment of

[45] *(2023) ibclaw.in 80 NCLAT*
[46] *(2019) ibclaw.in 125 NCLAT*

recoveries within a plan remains ambiguous or poorly drafted. Conversely, creditors may hesitate to incur substantial costs toward forensic audits and evidentiary investigations without absolute statutory certainty regarding future benefits.

Therefore, the IBC should expressly codify a uniform legal framework governing the post resolution continuation of avoidance proceedings rather than leaving it solely to the mechanics of individual resolution plans. Legislative intervention must explicitly:

- Identify the exact persons entitled to prosecute such proceedings after the conclusion of CIRP.
- Statutorily determine the default locus standi of former RPs, steering committees, or successful resolution applicants.
- Prescribe a clear, default statutory mechanism for the distribution of amounts recovered through avoidance applications, ensuring they primarily benefit the creditors rather than creating an unintended windfall for the successful resolution applicant.

A clearly codified, explicit statutory framework governing post resolution avoidance proceedings would bridge the gap between judicial precedent and legislative intent. By institutionalizing these mechanisms, the IBC would enhance institutional efficiency, strengthen confidence among global and domestic stakeholders, and promote the effective prosecution of avoidance applications for the ultimate maximization of asset value.

8.7 Capacity Building and Specialized Training

The increasingly technical nature of avoidance litigation requires specialized multidisciplinary expertise throughout the insolvency ecosystem. Effective prosecution of avoidance applications now demands knowledge not only of insolvency law, but also forensic accounting, digital evidence management, valuation principles, transaction analytics, and fraud investigation methodologies.

Regular training programs may therefore be institutionalized for insolvency professionals, forensic auditors, legal practitioners, valuation experts, and judicial officers. Such programs should focus upon identification of avoidable transactions, evidentiary standards, forensic methodologies, digital evidence preservation, and drafting of legally sustainable avoidance applications. Additionally, IBBI and with the aid of Insolvency Professional Agencies may develop specialized certification programs dedicated specifically to avoidance law and forensic insolvency investigation. India may also consider establishment of specialized insolvency forensic institutions or accredited investigative panels possessing expertise in corporate distress investigation. Development of specialized forensic infrastructure would significantly strengthen the overall effectiveness, consistency, and credibility of avoidance transaction enforcement under the IBC.

9. Conclusion

A decade after the enactment of IBC, avoidance jurisprudence has emerged as one of the most significant yet structurally challenging components of India's insolvency framework. The legislative architecture governing preferential, undervalued, extortionate, and fraudulent transactions reflects a clear recognition that insolvency resolution cannot succeed merely through redistribution of remaining assets, it must also address the wrongful depletion, diversion, and concealment of value preceding insolvency. In this sense, avoidance proceedings perform a restorative function central to the broader objectives of the

IBC, namely value maximization, equitable treatment of creditors, preservation of commercial confidence, and promotion of responsible corporate conduct.

Over the past ten years, the insolvency ecosystem has made substantial progress in developing jurisprudential foundations for avoidance litigation. Judicial authorities have clarified important principles concerning fraudulent intent, evidentiary standards, continuation of proceedings beyond CIRP, and the role of forensic material in insolvency adjudication. Simultaneously, insolvency professionals, forensic auditors, creditors, regulators, and adjudicatory institutions have collectively contributed toward operationalizing an entirely new framework of financial investigation within Indian insolvency law. The increasing use of forensic audits, transaction review mechanisms, digital evidence analysis, and structured financial reconstruction demonstrates the growing institutional maturity of the system. At the same time, the experience of the last decade reveals that the effectiveness of avoidance proceedings remains significantly constrained by institutional and operational realities. Delays in initiation of investigations, fragmented records, non-cooperation by suspended management, and infrastructural limitations within the NCLT, inconsistent forensic methodologies, informational asymmetry, and evidentiary complexities continue to impede efficient enforcement. The increasing sophistication of corporate misconduct through layered transactions, shell entities, digital fund movements, and related party structures has further intensified these challenges. Avoidance litigation today demands not only legal adjudication, but also technological competence, forensic expertise, and coordinated institutional support.

The future development of avoidance jurisprudence under the IBC therefore depends upon a collaborative strengthening of every pillar within the insolvency ecosystem. Legislative clarity, judicial specialization, regulatory standardization, technological integration, professional training, and stronger forensic infrastructure must evolve together rather than in isolation. Resolution Professionals, Adjudicating Authorities, the IBBI, forensic experts, financial institutions, and market participants must collectively contribute toward building a system capable of effectively identifying and reversing value destructive transactions. Ultimately, the success of the IBC cannot be measured solely by speed of resolution or recovery statistics. Its enduring legitimacy will depend equally upon the system’s ability to ensure transparency, accountability, and integrity within corporate insolvency. A robust and institutionally supported avoidance framework is therefore not merely ancillary to insolvency resolution, it is indispensable to the long term credibility and effectiveness of the IBC itself.